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OF THE

PHILIPPINES

FROM

JUNE 11, 2018 TO JUNE 20, 2018

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MANILA
2020

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PHILIPPINE REPORTS
CONTENTS

I. CASES REPORTED xiii

II. TEXT OF DECISIONS 1

III. SUBJECT INDEX 1137

IV. CITATIONS 1243

PHILIPPINE REPORTS

Page

Abierra, Alex – People of the Philippines *vs.* 276
Abosta Shipmanagement Corporation,
Panstar Shipping Co., Ltd., and/or Gaudencio
Morales *vs.* Rodel D. Delos Reyes 760
ABS-CBN Publishing, Inc. *vs.* Director
of the Bureau of Trademarks 791
Agramon, Gerry People of the Philippines *vs.* 747
Alaestante, Atty. Edwin M. –
Berlin V. Gabertan, et al. *vs.* 378
Alaestante, Atty. Edwin M. –
Rodolfo M. Yumang, et al. *vs.* 378
Aliling, Hilario B. *vs.* People of the Philippines 146
Amores, M.D., Jose Pepito M. –
Fernando A. Melendres *vs.* 329
Andrada *y* Caampued, Roberto –
People of the Philippines *vs.* 999
Angeles *y* Namil, Rey – People of the Philippines *vs.* 822
Anyayahan *y* Taronas, Ricky *vs.*
People of the Philippines 927
Bacani, et al., Antonio – Philippine National Bank *vs.* 668
Balmaceda, Edmund *vs.* Atty. Romeo Z. Uson 596
Bañares, Atty. Danilo B. – Franco B. Gonzales *vs.* 578
Banco De Oro, Inc. (Formerly Equitable PCI Bank, Inc.)
– D.M. Ragasa Enterprises, Inc. *vs.* 640
Banguilan, namely: Benigna Gumabay, et al.,
Heirs of Regino – Department of Education,
Culture and Sports (now Department of Education),
represented by its Regional Director,
Teresita Domalanta *vs.* 943
Bank of the Philippine Islands –
Commissioner of Internal Revenue *vs.* 97
Barangay Tongonan, Ormoc City, represented
by its Punong Barangay, Isagani R. Bañez *vs.*
Hon. Apolinario M. Buaya, in his capacity as
Presiding Judge, Regional Trial Court, Branch 35,
Ormoc City, et al. 723
Bases Conversion and Development Authority *vs.*
Commissioner of Internal Revenue 734
Battung *y* Narmar, Lulu – People of the Philippines *vs.* 959

Page

Benong-Linde, Constancia *vs.* Feladelfa L. Lomantas, Social Welfare Officer II, Office of the Clerk of Court, Regional Trial Court, Tagbilaran City, Bohol 43
BSA Tower Condominium Corporation *vs*. Atty. Alberto Celestino B. Reyes II 588
Buaya, in his capacity as Presiding Judge, Regional Trial Court, Branch 35, Ormoc City, et al., Hon. Apolinario M. – Barangay Tongonan, Ormoc City, represented by its Punong Barangay, Isagani R. Bañez *vs*. 723
Cadampog, Ardin Cuesta – People of the Philippines *vs.* 206
Career Executive Service Board, represented by its Executive Director, Maria Anthonette Velasco-Allones *vs.* Commission on Audit, et al. 433
Cariat *alias* Dodong Mango, Ron Aries Dagatan – People of the Philippines *vs*. 345
Cebu Holdings, Inc. – Commissioner of Internal Revenue *vs*. 624
Citigroup, Inc. *vs.* Citystate Savings Bank, Inc. 168
Citystate Savings Bank, Inc. – Citigroup, Inc. *vs.* 168
Commission on Audit, et al. – Career Executive Service Board, represented by its Executive Director, Maria Anthonette Velasco-Allones *vs*. 433
Commissioner of Internal Revenue – Bases Conversion and Development Authority *vs*. 734
Commissioner of Internal Revenue *vs.* Bank of the Philippine Islands 97
Commissioner of Internal Revenue *vs.* Cebu Holdings, Inc. 624
Consolidated Distillers of the Far East, Inc. *vs*. Rogel N. Zaragoza 888
Court of Appeals-Cebu City, et al. – Government Service Insurance System Board of Trustees, et al. *vs.* 978
D.M. Ragasa Enterprises, Inc. *vs*. Banco De Oro, Inc. (Formerly Equitable PCI Bank, Inc.) 640
Daomilas, Jr., Presiding Judge, Branch 11, Regional Trial Court, Cebu City, Cebu, et al. – Hon. Ramon B. Atty. Makilito B. Mahinay *vs*. 310

Page

De Asis *y* Balquin, Rico – People of the Philippines *vs.* 110
De Castro, Raquel A. – Field Investigation Unit-Office
of the Deputy Ombudsman for Luzon *vs.* 1016
Dela Cruz *a.k.a.* "Barok", Ronnie –
People of the Philippines *vs.* 238
Deles, Atty. Romulo A. – Helen Gradiola *vs.* 299
Delos Reyes, Rodel D. – Abosta Shipmanagement
Corporation, Panstar Shipping Co., Ltd., and/or
Gaudencio Morales *vs.* 760
Department of Education, Culture and Sports
now Department of Education), represented by its
Regional Director, Teresita Domalanta *vs.* Heirs of
Regino Banguilan, namely: Benigna Gumabay, et al. 943
Director of the Bureau of Trademarks –
ABS-CBN Publishing, Inc. *vs.* 791
Domasig *a.k.a.* "Mando" or "Pilikitot", Benjamin –
People of the Philippines *vs.* 192
Enanor, Elmer V. – Magsaysay Maritime Corp., et al. *vs.* 876
Erguiza, Spouses Juanito and Mila –
Lily S. Villamil, substituted by her heirs
Rudy E. Villamil, et al. *vs.* 686
Fabugais, Oliver *vs.* Atty. Berardo C. Faundo, Jr. 19
Faundo, Jr., Atty. Berardo C. – Oliver Fabugais *vs.* 19
Field Investigation Unit-Office of the Deputy
Ombudsman for Luzon *vs.* Raquel A. De Castro 1016
First Sarmiento Property Holdings, Inc. *vs.*
Philippine Bank of Communications 400
Foodsphere, Inc. – San Miguel Pure
Foods Company, Inc. *vs.* 771
Foodsphere, Inc. *vs.* San Miguel Pure
Foods Company, Inc. 771
Gabertan, et al., Berlin V. *vs.* Atty. Edwin M. Alaestante 378
Gamboa *y* Francisco @ "Kuya", Manuel –
People of the Philippines *vs.* 1055
Gidwani, Manu – Philippine Deposit
Insurance Corporation *vs.* 1081
Gonzales, Franco B. *vs.* Atty. Danilo B. Bañares 578
Gonzales, Kimeldes *vs.* Atty. Prisco B. Santos 370

Page

Government Service Insurance System
Board of Trustees, et al. *vs.* Court of
Appeals-Cebu City, et al. 978
Gradiola, Helen *vs*. Atty. Romulo A. Deles 299
Gutierrez, et al., Ombudsman Ma. Merceditas N.
– Fernando A. Melendres *vs*. 329
Herederos De Ciriaco Chunaco Distileria, Inc.
– Land Bank of the Philippines *vs.* 53
Junnels Marketing Corporation, et al. –
Metropolitan Bank and Trust Company *vs*. 1107
Land Bank of the Philippines *vs*.
Herederos De Ciriaco Chunaco Distileria, Inc. 53
Lim, Paulino *vs.* Atty. Socrates R. Rivera 609
Lomantas, Social Welfare Officer II,
Office of the Clerk of Court, Regional Trial Court,
Tagbilaran City, Bohol, Feladelfa L. –
Constancia Benong-Linde *vs.* 43
Macalalad, namely: Marieta Macalalad, et al.,
Heirs of Paz *vs*. Rural Bank of Pola, Inc., et al. 709
Magsaysay Maritime Corp., et al. *vs*. Elmer V. Enanor 876
Mahinay, Atty. Makilito B. *vs*. Hon. Ramon B.
Daomilas, Jr., Presiding Judge, Branch 11,
Regional Trial Court, Cebu City, Cebu, et al. 310
Melendres, Fernando A. *vs*.
Jose Pepito M. Amores, M.D. 329
Melendres, Fernando A. *vs.* Ombudsman
Ma. Merceditas N. Gutierrez, et al. 329
Mendoza, et al., Lolita Espiritu Santo *vs*.
Spouses Ramon Palugod, Sr. and Natividad Palugod 838
Mercader, Melanie B. – People of the Philippines *vs.* 1031
Metropolitan Bank and Trust Company *vs.*
Junnels Marketing Corporation, et al. 1107
Nangcas, Gloria – People of the Philippines *vs.* 218
Noel, Atty. Lauro G. United Coconut Planters Bank *vs*. 354
Palugod, Spouses Ramon, Sr. and Natividad –
Lolita Espiritu Santo Mendoza, et al. *vs.* 838
People of the Philippines – Hilario B. Aliling *vs.* 146
People of the Philippines –
Ricky Anyayahan *y* Taronas *vs*. 927

Page

People of the Philippines *vs.* Alex Abierra 276
Gerry Agramon 747
Roberto Andrada *y* Caampued 999
Rey Angeles *y* Namil 822
Lulu Battung *y* Narmar 959
Ardin Cuesta Cadampog 206
Ron Aries Dagatan Cariat *alias* Dodong Mango 345
Rico De Asis *y* Balquin 110
Ronnie Dela Cruz *a.k.a.* "Barok" 238
Benjamin Domasig *a.k.a.* "Mando" or "Pilikitot" 192
Manuel Gamboa *y* Francisco @ "Kuya" 1055
Melanie B. Mercader 1031
Gloria Nangcas 218
Evelyn Seguiente *y* Ramirez 811
Vicente Sipin *y* De Castro 67
Ricardo Tanglao *y* Egana 253
Herminio Vibal, Jr. *y* Uayan @ "Pato", et al. 900
Junrel R. Villalobos 123
Philippine Bank of Communications –
First Sarmiento Property Holdings, Inc. *vs*. 400
Philippine Deposit Insurance Corporation *vs.*
Manu Gidwani 1081
Philippine National Bank *vs*. Antonio Bacani, et al. 668
Re: CA-G.R. CV No. 96282 (Spouses Bayani and
Myrna M. Partoza *vs*. Lilian B. Montano and
Amelia Solomon) *vs.* Atty. Claro Jordan M. Santamaria 33
Re: Deceitful Conduct of Ignacio S. Del Rosario,
Cash Clerk III, Records and Miscellaneous
Matter Section, Checks Disbursement Division,
FMO-OCA 390
Re: Dropping from the Rolls of Mr. Florante B.
Sumangil, Clerk III, Regional Trial Court of Pasay City,
Branch 119 619
Republic of the Philippines, represented by Solicitor
General Jose C. Calida *vs*. Maria Lourdes P.A. Sereno 449
Reyes II, Atty. Alberto Celestino B. –
BSA Tower Condominium Corporation *vs*. 88
Rivera, Atty. Socrates R. – Paulino Lim *vs.* 609

Page

Rural Bank of Pola, Inc., et al. –
Heirs of Paz Macalalad, namely:
Marieta Macalalad, et al. *vs.* 709
San Miguel Pure Foods Company, Inc. –
Foodsphere, Inc. *vs.* 771
San Miguel Pure Foods Company, Inc. *vs.*
Foodsphere, Inc. 771
Santamaria, Atty. Claro Jordan M. –
Re: CA-G.R. CV No. 96282 (Spouses Bayani
and Myrna M. Partoza *vs.* Lilian B. Montano
and Amelia Solomon) *vs.* 33
Santiago, Delfina Hernandez *vs.*
Atty. Zosimo Santiago, et al. 1
Santiago, et al., Atty. Zosimo –
Delfina Hernandez Santiago *vs.* 1
Santos, Atty. Prisco B. – Kimeldes Gonzales *vs.* 370
Seguiente *y* Ramirez, Evelyn –
People of the Philippines *vs.* 811
Sereno, Maria Lourdes P.A. – Republic
of the Philippines, represented by Solicitor
General Jose C. Calida *vs.* 449
Sipin *y* De Castro, Vicente –
People of the Philippines *vs.* 67
Tanglao *y* Egana, Ricardo –
People of the Philippines *vs.* 253
United Coconut Planters Bank *vs.*
Atty. Lauro G. Noel 354
Uson, Atty. Romeo Z. – Edmund Balmaceda *vs.* 596
Vibal, Jr. *y* Uayan @ "Pato", et al., Herminio –
People of the Philippines *vs.* 900
Villalobos, Junrel R. – People of the Philippines *vs.* 123
Villamil, substituted by her heirs
Rudy E. Villamil, et al., Lily S. *vs.*
Spouses Juanito Erguiza and Mila Erguiza 686
Yumang, et al., Rodolfo M. *vs.*
Atty. Edwin M. Alaestante 378
Zaragoza, Rogel N. – Consolidated Distillers
of the Far East, Inc. *vs.* 888

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 3921. June 11, 2018]

DELFINA HERNANDEZ SANTIAGO, *complainant, vs.* **ATTY. ZOSIMO SANTIAGO and ATTY. NICOMEDES TOLENTINO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ATTORNEYS; DISBARMENT OR SUSPENSION OF ATTORNEYS; THE RESOLUTION OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP) BOARD OF GOVERNORS IS MERELY RECOMMENDATORY, AS THE FINAL ACTION THEREON LIES WITH THE COURT.— At the outset, we reject complainant's contention that the IBP infringed on this Court's jurisdiction in dismissing her complaint and denying her motion for reconsideration thereon. The case was initiated upon the filing of the complaint for disbarment with this Court and the same was subsequently referred to the IBP for investigation, report, and recommendation in accordance with Section 1, Rule 139-B of the Rules of Court. The Resolution Nos. XVIII-2008-225 and XIX-2011-413 of the IBP Board of Governors embody their recommendation to this Court. As succinctly stated in *Cojuangco, Jr. v. Palma*: Clearly, the resolution of the IBP Board of Governors is merely recommendatory. The "power to recommend" includes the power to give "advice, exhortation or indorsement, which is essentially persuasive in character, not binding upon the party to whom it

is made." Necessarily, the "*final action*" on the resolution of the IBP Board of Governors still lies with this Court. x x x Verily, there is nothing in the IBP resolutions that would suggest that the same already constituted the final determination of the case and were beyond the power of the Court to review.

2. ID.; ID.; ID.; DECEIT, GROSS MISCONDUCT AND VIOLATION OF THE ATTORNEY'S OATH AS GROUNDS FOR DISBARMENT; ALTHOUGH A LAWYER WHO HOLDS A GOVERNMENT OFFICE MAY NOT BE DISCIPLINED AS A MEMBER OF THE BAR FOR INFRACTIONS HE COMMITTED AS A GOVERNMENT OFFICIAL, HE MAY, HOWEVER, BE DISCIPLINED AS A LAWYER IF HIS MISCONDUCT CONSTITUTES A VIOLATION OF HIS OATH AS A MEMBER OF THE LEGAL PROFESSION.— Section 27, Rule 138 of the Rules of Court provides for the grounds for the imposition of the penalty of disbarment x x x. In this case, complainant accused the respondents of deceit, gross misconduct and of violating their Attorney's Oath in issuing the Resolution dated December 19, 1988 that allegedly contained false statements and which was arrived at without her being informed of the charges or given the opportunity to present evidence. As Commissioner Andres correctly ruled, deceit covers intentional falsehoods or false statements and representations that are made with malice or with the intent to do wrong. Gross misconduct, on the other hand, is "any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e*., conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose." Similarly, on the charge of the alleged violation of the Attorney's Oath, the settled rule is that: The Code of Professional Responsibility does not cease to apply to a lawyer simply because he has joined the government service. In fact, by the express provision of Canon 6 thereof, the rules governing the conduct of lawyers '"shall apply to lawyers in government service in the discharge of their official tasks." **Thus, where a lawyer's misconduct as a government official is of such nature as to affect his qualification as a lawyer or to show moral delinquency, then he may be disciplined as a member of the bar on such grounds.** Although the general rule is that a lawyer who holds

a government office may not be disciplined as a member of the bar for infractions he committed as a government official, he may, however, be disciplined as a lawyer if his misconduct constitutes a violation of his oath [as] a member of the legal profession.

3. **ID.; ID.; ID.; COMPLAINANT MUST ESTABLISH BY SUBSTANTIAL EVIDENCE THE MALICIOUS AND INTENTIONAL CHARACTER OF THE MISCONDUCT COMPLAINED OF THAT EVINCE THE MORAL DELINQUENCY OF RESPONDENT-ATTORNEYS BEFORE THE LATTER MAY BE DISBARRED.—** Before the Court may impose against respondents the severe disciplinary sanction of disbarment, complainant must be able to establish by substantial evidence the malicious and intentional character of the misconduct complained of that evince the moral delinquency of respondents. Substantial evidence is the amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Except for complainant's allegations, however, she failed to present sufficient evidence to substantiate her complaint. The Court agrees with the findings of Commissioner Andres that complainant has not proffered any evidence that tended to show that respondents intentionally and deliberately made false statements in the Resolution dated December 19, 1988 in order to deceive and induce Mayor Asistio to dismiss complainant from service. She neither offered any documentary evidence to buttress her arguments nor presented any witness to corroborate her claims.

4. **ID.; ID.; ID.; CHARGES BASED ON MERE SUSPICION AND SPECULATION CANNOT BE GIVEN CREDENCE, AND TO JUSTIFY DISBARMENT OR SUSPENSION, THE CASE AGAINST THE LAWYER MUST BE CLEAR AND FREE FROM DOUBT, NOT ONLY AS TO THE ACT CHARGED BUT AS TO HIS MOTIVE.—** We find [complainant's] line of argumentation distinctly wanting. Complainant cannot simply rely on speculations and suspicions, no matter how deep-seated, without evidence to support the same. We held in *Osop v. Fontanilla* that charges meriting disciplinary action against a lawyer generally involve the motives that induced him to commit the act charged and that, to justify disbarment or suspension, the case against the lawyer must be clear and free from doubt, not only as to the act charged but as

to his motive. Furthermore, in *Cabas v. Sususco*, we ruled that "mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence."

5. ID.; ID.; ID.; A DISBARMENT CASE CANNOT BE RESORTED TO IN ORDER TO ATTACK THE LEGALITY OF A RESOLUTION OR TO NULLIFY ITS CONSEQUENCES, FOR THE ONLY ISSUE THAT SHOULD BE DETERMINED THEREIN IS WHETHER RESPONDENT-ATTORNEYS COMMITTED MISCONDUCT THAT PUT INTO QUESTION THEIR MORAL CHARACTER AND MORAL FITNESS TO CONTINUE IN THE PRACTICE OF LAW.— [T]he Court deliberately dispensed with any discussion regarding the validity of the Resolution dated December 19, 1988. Commissioner Andres aptly pointed out that complainant may file in the proper tribunal a separate case against respondents, as City Legal Officers, for possible lapses in the procedure undertaken by them in the administrative investigation of the charge against her and/or the propriety of her dismissal. x x x. What is at once clear is that this case for disbarment cannot be resorted to as another remedy in order to attack the legality of said Resolution or to nullify its consequences. The only issue that should be determined in this case is whether respondents committed misconduct that put into question their moral character and moral fitness to continue in the practice of law. x x x [T]his issue had been answered in the negative.

R E S O L U T I O N

LEONARDO-DE CASTRO,[*] *J.*:

We resolve the administrative case for disbarment[1] filed by complainant Judge Delfina Hernandez Santiago against respondents Atty. Zosimo Santiago and Atty. Nicomedes Tolentino, charging them with deceit, gross misconduct and violating their oaths as members of the Bar.

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

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

During the time when the material events transpired in this case, complainant was the City Personnel Officer of Caloocan City while respondents Santiago and Tolentino respectively held the positions of City Legal Officer and Legal Officer II in the City Government of Caloocan.

In 1988, complainant applied for, and was granted, a sick leave of absence with commuted pay covering 240 days from January 25 to December 31, 1988.[2] Sometime in February 1988, complainant received a Memorandum[3] from then Mayor Macario A. Asistio, Jr., which cancelled all leaves of absence of city officials and employees. She also received a memorandum,[4] detailing her to the Office of the Secretary to the Mayor. Complainant apparently paid no heed to said memoranda. She was later directed to return to work in a letter[5] dated April 21, 1988 signed by respondent Tolentino, which pertinently state:

> On February 5, 1988 you were served with a [Memorandum] from the Office of the Mayor that all [leaves] of absence of city officials and employees were cancelled in the interest of public service. [In spite] of the aforesaid memo you did not return to work thereby, ignoring the memo of the Hon. Mayor Macario A. Asistio, Jr.
>
> In this [regard], we are giving you another five (5) days from receipt hereof to report for work, otherwise, the undersigned may be constrained to take drastic action against you.

Complainant replied with a handwritten note,[6] asking for ten days within which to answer and/or act on the letter. She, however, did not return to work. At the end of her leave, she tendered her resignation.[7] She subsequently received a memorandum[8] dated May 18, 1989 from Mayor Asistio

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

[3] *Id*. at 56.

[4] *Id*. at 55.

[5] *Id*. at 58.

[6] *Id*. at 59.

[7] *Id*. at 16-17.

[8] *Id*. at 15.

terminating her employment. Enclosed therewith was a **Resolution**[9] **dated December 19, 1988** signed by respondents Santiago and Tolentino, which recommended her dismissal from service.

Complainant then filed the present case, accusing the respondents of making deceitful statements in said Resolution, committing gross misconduct and violating their Attorney's Oath for recommending her dismissal without just cause or due process. Quoted hereunder is the aforesaid resolution with emphasis on the allegedly false statements:

RESOLUTION

This is a case involving Atty. Delfina H. Santiago, Asst. City Administrator, indorsed to this office by the Hon. Mayor, Macario A. Asistio, Jr. for appropriate action.

The facts of the case are as follows:

1. In 1972, Atty. Delfina H. Santiago was, per court decision, dismissed illegally as Asst. City Administrator on Personal Matters.

2. In 1976, Atty. Santiago, was appointed Chief, Administrative Office, a position of lower rank.

3. **In 1983, Atty. Santiago was charged administratively for UNAUTHORIZED ABSENCES, in violation of Civil Service laws**. Upon recommendation of the Office of the City Legal Office, Atty. Santiago was validly and lawfully ordered to be dropped from the rolls which was subsequently approved and affirmed by the Civil Service Commission in the latter's order dated October 1983 x x x.

x x x x x x x x x

4. In 1985, the Supreme Court, in affirming an RTC decision, ordered the reinstatement of Santiago as Asst. City Administrator on Personal Matters and declaring the 1972 dismissal as illegal.

5. In 1986, Atty. Santiago was appointed by Mayor Martinez as Asst. City Administrator, her former position, pursuant to the Supreme Court decision.

6. **In January 1988 Atty. Santiago filed a leave of absence (Sick Leave & Vacation Leave)** on advice of her Doctor, a Med. Cert.

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[9] *Id*. at 11-14.

was attached thereto and the duration of the leave was 240 days starting January 25 up to December 31, 1988.

The said leave of absence was initially approved but later disapproved by the Hon. Macario A. Asistio, Jr. when the latter issued a Memorandum dated February 5, 1988 cancelling all leave of absence of which Memo Atty. Santiago was duly served with. However despite service of the said Memo to Atty. Delfina H. Santiago she failed and refused to report for work [continuously] up to the present. There was not even a semblance of showing that she would comply with the memorandum.

At this juncture the office of the City Mayor indorsed this case against Atty. Delfina H. Santiago for appropriate action. **This office conducted an investigation and summoned Atty. Delfina H. Santiago for several times to appear before the undersigned; present her evidence and explain her side in consonance with the due process mandated by the constitution. Despite several notice sent to Delfina Santiago the latter did not heed the said notices**, thereby, leaving the undersigned without any alternative but to decide the case on the basis of the evidence available and the records pertaining to Atty. Delfina Santiago.

FINDINGS

The records disclosed that the memorandum dated February 5, 1988 issued by the Hon. City Mayor, Macario A. Asistio, Jr. to all employees of the City Government cancelled all leave of absences in the interest of service effective 5 February 1988. There is no doubt also that Atty. Santiago was duly served with the said memo as appearing on the said memo is her signature, an evidence of receipt thereof. Having received the said memo Atty. Santiago was fully aware of the cancellation of her leave of absence and therefore as a prudent employee she should have obeyed the memorandum of the City Mayor by way of reporting for work as called for. What happened instead was that Atty. Santiago never showed-up, thereby, neglecting her duty as Asst. City Administrator and committed, in effect, insubordination.

What is nagging and aggravates the predicament of Atty. Santiago is that the instant case is already her second violation which places her in the category of incorrigible employees. The first is when she was charged of UNAUTHORIZED ABSENCES, punished for said act and made to suffer the corresponding penalty thereof.

Under the Civil Service Law, Art. 9, Section 36 Par. 3, "No office or employee in the Civil Service shall be suspended except for the cause as provided by law and after due process."

The following shall be grounds for disciplinary action:

x x x x x x x x x

3. Neglect of Duty x x x

27. Insubordination

The actuations of the respondent Atty. Santiago squarely falls on the aforequoted grounds for dismissal as her failure to report for work amounts to [willful] disobedience to her superior officer. Nothing can be more important to the upholding and maintenance of the public service in its integrity and good name than the enforcement of the reasonable discipline of laws. In the discharge of an official duty and obligation Atty. Santiago as a government employee is expected to obey the order and instruction of the duly constituted authorities and she should not ignore or disregard a legitimate official order. Her act is inimical to the public service. To tolerate Santiago to get away with it would be tantamount to allowing her to act as she suits and satisfies her personal convenience in violation of her superior's order. An act which would be certainly demoralizing to the public service. **As may be gleaned from the foregoing discussions Atty. Santiago had [willfully] ignored her superior's order without any attempt to comply with it and therefore insubordination is clearly present aside from neglect of duty.**

RECOMMENDATION

WHEREFORE, the instant case being the second [infraction] of the Civil Service law by Atty. Santiago, it is respectfully. recommended that the latter be dismissed from service.[10] (Emphases and underscoring supplied.)

Complainant contended that she was not administratively charged for any offense in 1983 or in 1988. Thus, she was not an incorrigible employee. Instead of being sent a notice or summons, she received respondent Tolentino's letter dated April 21, 1988, but the same neither stated that an administrative case had been filed against her nor did it require her to appear

[10] *Id.* at 11-14.

in any investigation. Since she was on a sick leave of absence, not a vacation leave, she could not be guilty of neglect of duty as she had no duties to perform. She was also not in a position to defy any lawful order, which would have amounted to insubordination. Annexed to the complaint were copies of: (a) the Resolution December 19, 1988; (b) Mayor Asistio's dismissal order dated May 18, 1989; (c) complainant's resignation letter; (d) her approved sick leave of absence application; and (e) the commutation voucher showing the payment of her salaries.

In respondent Santiago's comment[11] to the complaint, he argued that the allegedly deceitful statements in the above Resolution were not malicious imputations of falsehoods. If the statements were inaccurate, the same may have been caused by a misappreciation of facts or evidence. As to whether complainant was formally charged for unauthorized absences in 1983, the material point considered was that she was dismissed because of unauthorized absences. It also did not matter that she filed a sick leave of absence, not a. vacation and sick leave, as the issue of the investigation was whether she was liable for disobeying Mayor Asistio's directives.

Respondent Santiago further alleged that Mayor Asistio indorsed[12] to the City Legal Office the matter of complainant's noncompliance with the Mayor's return to work order and this referral was equivalent to an administrative complaint. Complainant was sent a notice regarding her failure to report for work, thereby informing her that she could be subjected to disciplinary action. Her failure to answer indicated her intent to disregard Mayor Asistio's order and her option not to participate in the investigation. Respondents' investigation proceeded *ex parte* and the assailed Resolution was issued on the basis of the evaluation of the evidence at hand. Without proof of bad faith or adverse personal motives, respondents cannot be held administratively liable for issuing the Resolution in the discharge of their official duties even if the same turned out to be erroneous.

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[11] *Id.* at 72-91.

[12] *Id.* at 94.

In respondent Tolentino's comment,[13] he likewise argued that Mayor Asistio's referral of the case to the City Legal Office was treated as a complaint. Complainant was apprised of the nature thereof and she even requested ten days within which to answer the same. After the City Legal Office conducted an investigation wherein complainant failed to participate, respondents decided the case on the basis of records and evidence available. Anent the charge that she was not administratively charged in 1983, what was considered was that she did incur unauthorized absences that led to her dropping from the rolls. That she filed a sick leave of absence, not sick leave and vacation leave, was immaterial as Mayor Asistio's memorandum did not qualify the nature of the leaves of absence being cancelled.

Among the documents attached to respondent Tolentino's comment were copies of: (a) Mayor Asistio's letter[14] to complainant dated August 4, 1982 about her sick leave of absence; (b) Mayor Asistio's letter[15] to complainant dated July 5, 1983 about her unauthorized absences; (c) letter[16] dated August 4, 1982 of Administrative Officer Soriano to Mayor Asistio, seeking advice on the action to be taken on complainant's situation; (d) Mayor Asistio's indorsement[17] dated October 5, 1983 to the City Legal Office of complainant's case; (e) the indorsement[18] from the City Legal Office dated October 6, 1983, recommending that complainant be dropped from the roll of employees; (f) the order[19] of Mayor Asistio dated October 19, 1983 regarding complainant's separation from service; and (g) the Orders[20] dated October 27, 1983 and November 3, 1983 from the office of the

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[13] *Id*. at 27-42.

[14] *Id*. at 43.

[15] *Id*. at 44.

[16] *Id*. at 45-47.

[17] *Id*. at 48.

[18] *Id*. at 49-51.

[19] *Id*. at 52.

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

Regional Director of the Civil Service Commission (CSC)-National Capital Region (NCR), approving the complainant's dismissal.

Complainant insisted in her Consolidated Reply[21] that the indorsement of Mayor Asistio was not at all signed by the Mayor and it was merely an indorsement of documents for study and recommendation. She was also not informed of said document. She asked for a period of ten days within which to answer and/or act on respondent Tolentino's letter dated April 21, 1988 and she did report to Atty. Enrique Cube, the Mayor's secretary to explain why she cannot go back to work yet. As no administrative case was filed against her in 1988, there could not have been a valid investigation under Presidential Decree No. 807.[22] Yet, respondents made up fictitious statements of facts and conclusions of law in recommending her dismissal.

The Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.[23]

The IBP Report and Recommendation

IBP Investigating Commissioner Mario V. Andres issued a Report and Recommendation[24] dated April 4, 2008, which recommended the dismissal of the complaint for lack of merit. Commissioner Andres found that complainant failed to present convincing evidence that respondents acted in bad faith in rendering the Resolution dated December 19, 1988. Thus, they were held to be entitled to the legal presumption of innocence.

According to Commissioner Andres, respondents concluded that complainant was previously charged for unauthorized absences by relying on existing records that showed that she was dropped from the rolls in 1983. Complainant's letter asking for a period of ten days to reply to respondents' April 21, 1988

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[21] *Id.* at 109-119.

[22] The Civil Service Decree of the Philippines.

[23] *Rollo*, p. 122.

[24] *Id.* at 267-277.

letter also meant that she understood that an investigation was underway. When she failed to respond, respondents assumed that she waived her right to present evidence. Respondents may have only been careless in their choice of words when they wrongly assumed that complainant was administratively charged in 1983 and they used the term summons in referring to the letter dated April 21, 1988. Still, respondents cannot be held liable for deceit without proof that they deliberately worded their Resolution to mislead Mayor Asistio into dismissing complainant.

Respondents were also not found guilty of misconduct as their actions neither indicated moral depravity, nor did it affect their qualifications as lawyers. Respondents may have erred in failing to follow the procedure under Section 38[25] of Presidential Decree No. 807 and they may be investigated for such lapses as government officials before some other venue. However, absent evidence showing respondents' moral depravity in issuing the said Resolution, they cannot be penalized therefor as members of the Bar.

Lastly, Commissioner Andres ruled that respondents did not violate their oath as members of the Bar, particularly the oath to "do no falsehood, nor consent to the doing of any in court."[26] The falsehood contemplated in the Attorney's Oath is one that is intentional or committed with malice. Although the allegedly deceitful statements in respondents' Resolution may not be wholly accurate, the same were found to be based on documents and made in the discharge of respondents' official functions as City Legal Officers.

In Resolution No. XVIII-2008-225[27] passed on May 22, 2008, the IBP Board of Governors approved Commissioner Andres's recommendation.

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[25] Section 38 of Presidential Decree No. 807 is entitled Procedure in Administrative Cases Against Non-Presidential Appointees.

[26] RULES OF COURT, Appendix of Forms, Form 28, Attorney's Oath.

[27] *Rollo*, p. 266.

Complainant filed a Motion for Reconsideration with Motion to Vacate Resolution of the IBP,[28] which the Office of the Bar Confidant (OBC) of the Supreme Court referred to the IBP for appropriate action.[29]

In an Order[30] dated September 30, 2008, the IBP required the respondents to comment on the above motion. Only respondent Tolentino commented[31] thereon, praying that it be denied for being a mere rehash of complainant's previous pleadings and issues that had already been passed upon.

Complainant filed before this Court an Ex Parte Motion to Vacate IBP Order dated September 30, 2008/to Declare this Case Submitted for Decision,[32] arguing that the Court's referral of her complaint to the IBP did not include the latter's authority to decide it. She averred that the IBP was also not in a position to take cognizance of her motion for reconsideration since the pleading was not addressed to the latter. Moreover, since respondents failed to present their case before the IBP, they were allegedly precluded from presenting any evidence in their behalf and any comment to complainant's motion for reconsideration will not serve any purpose.

In a Resolution[33] dated March 11, 2009, the Court referred to the IBP complainant's Motion for Reconsideration with Motion to Vacate Resolution of the IBP and her *Ex Parte* Motion to Vacate IBP Order dated September 30, 2008/to Declare this Case Submitted for Decision.

In Resolution No. XIX-2011-413[34] passed on June 26, 2011, the IBP Board of Governors denied complainant's motion for

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[28] *Id*. at 278-304.

[29] *Id*. at 378.

[30] *Id*. at 419.

[31] *Id*. at 426-428.

[32] *Id*. at 319-322.

[33] *Id*. at 375-376.

[34] *Id*. at 438.

reconsideration as it found no cogent reason to reverse its previous ruling.

The IBP then transmitted the record of the case to the Court for final action.

Undaunted, complainant filed with this Court a Motion to Disregard IBP Resolution No. XIX-2011-413 dated June 26, 2011,[35] arguing that the IBP had no jurisdiction to dismiss her complaint or to rule on her motion for reconsideration. She insisted that the Resolution Nos. XVIII-2008-225 and XIX-2011-413 of the IBP Board of Governors should have only been recommendatory in nature and the IBP should not have arrogated unto itself the power of the Court to decide on her complaint.

The Ruling of the Court

The Court finds no merit in the complaint.

At the outset, we reject complainant's contention that the IBP infringed on this Court's jurisdiction in dismissing her complaint and denying her motion for reconsideration thereon.

The case was initiated upon the filing of the complaint for disbarment with this Court and the same was subsequently referred to the IBP for investigation, report, and recommendation in accordance with Section 1, Rule 139-B[36] of the Rules of

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[35] *Id.* at 451-455.

[36] Prior to its amendment, Section 1, Rule 139-B, which took effect on June 1, 1988, states in part:

SEC. 1. *How Instituted.* — Proceedings for disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

The IBP Board of Governors may, *motu proprio* or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against erring attorneys including those in the government service.

Court. The Resolution Nos. XVIII-2008-225 and XIX-2011-413 of the IBP Board of Governors embody their recommendation to this Court. As succinctly stated in *Cojuangco, Jr. v. Palma*:[37]

> Clearly, the resolution of the IBP Board of Governors is merely recommendatory. The "power to recommend" includes the power to give "advice, exhortation or indorsement, which is essentially persuasive in character, not binding upon the party to whom it is made." Necessarily, the "*final action*" on the resolution of the IBP Board of Governors still lies with this Court. x x x (Citation omitted.)

Verily, there is nothing in the IBP resolutions that would suggest that the same already constituted the final determination of the case and were beyond the power of the Court to review.

After thoroughly reviewing the record of this case, the Court affirms the recommendation of Commissioner Andres and the IBP Board of Governors that the instant complaint should be dismissed.

Section 27, Rule 138 of the Rules of Court provides for the grounds for the imposition of the penalty of disbarment, to wit:

> SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. x x x

In this case, complainant accused the respondents of deceit, gross misconduct and of violating their Attorney's Oath in issuing the Resolution dated December 19, 1988 that allegedly contained false statements and which was arrived at without her being informed of the charges or given the opportunity to present evidence.

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[37] 501 Phil. 1, 10 (2005).

As Commissioner Andres correctly ruled, deceit covers intentional falsehoods or false statements and representations that are made with malice or with the intent to do wrong. Gross misconduct, on the other hand, is "any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose."[38] Similarly, on the charge of the alleged violation of the Attorney's Oath, the settled rule is that:

> The Code of Professional Responsibility does not cease to apply to a lawyer simply because he has joined the government service. In fact, by the express provision of Canon 6 thereof, the rules governing the conduct of lawyers '"shall apply to lawyers in government service in the discharge of their official tasks." **Thus, where a lawyer's misconduct as a government official is of such nature as to affect his qualification as a lawyer or to show moral delinquency, then he may be disciplined as a member of the bar on such grounds.** Although the general rule is that a lawyer who holds a government office may not be disciplined as a member of the bar for infractions he committed as a government official, he may, however, be disciplined as a lawyer if his misconduct constitutes a violation of his oath [as] a member of the legal profession.[39] (Citations omitted; emphasis supplied.)

Before the Court may impose against respondents the severe disciplinary sanction of disbarment, complainant must be able to establish by substantial evidence the malicious and intentional character of the misconduct complained of that evince the moral delinquency of respondents. Substantial evidence is the amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[40]

Except for complainant's allegations, however, she failed to present sufficient evidence to substantiate her complaint.

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[38] *Lahm III v. Mayor, Jr.*, 682 Phil. 1, 8 (2012).

[39] *Ali v. Bubong*, 493 Phil. 172, 182 (2005).

[40] *Re: Rafael Dimaano*, A.M. No. 17-03-03, July 11, 2017.

The Court agrees with the findings of Commissioner Andres that complainant has not proffered any evidence that tended to show that respondents intentionally and deliberately made false statements in the Resolution dated December 19, 1988 in order to deceive and induce Mayor Asistio to dismiss complainant from service. She neither offered any documentary evidence to buttress her arguments nor presented any witness to corroborate her claims.

Quite the contrary, complainant herself revealed her lack of certainty as to the malicious intent or other ill motives of respondents when she made the following statements on her Motion for Reconsideration with Motion to Vacate Resolution of the IBP before the Court:

> [Respondents] knew that there was never a first nor a second administrative case against her. Yet they twisted their facts and language to suit their purpose. **Whether they misled the Hon. Mayor Asistio to dismiss her from the service, or they conspired to engineer her removal from the service, or followed a directive from Mayor Asistio to justify her dismissal, she does not specifically know. But certainly, their Resolution is not an honest mistake of judgment, as shown by the malicious warp and woof of the Resolution itself**.[41] (Emphasis supplied.)

We find such line of argumentation distinctly wanting. Complainant cannot simply rely on speculations and suspicions, no matter how deep-seated, without evidence to support the same. We held in *Osop v. Fontanilla*[42] that charges meriting disciplinary action against a lawyer generally involve the motives that induced him to commit the act charged and that, to justifY disbarment or suspension, the case against the lawyer must be clear and free from doubt, not only as to the act charged but as to his motive. Furthermore, in *Cabas v. Sususco*,[43] we ruled that "mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence."

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[41] *Rollo*, pp. 297-298.

[42] 417 Phil. 724, 730 (2001).

[43] A.C. No. 8677, June 15, 2016, 793 SCRA 309, 315.

As a final point, the Court deliberately dispensed with any discussion regarding the validity of the Resolution dated December 19, 1988. Commissioner Andres aptly pointed out that complainant may file in the proper tribunal a separate case against respondents, as City Legal Officers, for possible lapses in the procedure undertaken by them in the administrative investigation of the charge against her and/or the propriety of her dismissal. On this matter, complainant admitted in her complaint and consolidated reply that she had indeed filed administrative cases against respondents before the CSC, as well as a separate administrative case against Mayor Asistio, in order to impugn the validity of her dismissal from service. However, the specific details, stages and/or outcome of said cases were not properly manifested before this Court. Complainant merely stated that she was not satisfied with these other proceedings so she opted to file the instant case for disbarment.[44]

The Court cannot allow this to be done.

What is at once clear is that this case for disbarment cannot be resorted to as another remedy in order to attack the legality of said Resolution or to nullify its consequences. The only issue that should be determined in this case is whether respondents committed misconduct that put into question their moral character and moral fitness to continue in the practice of law. As previously discussed, this issue had been answered in the negative.

Considering that complainant failed to discharge the burden of proof to warrant the imposition of administrative penalty against respondents Santiago and Tolentino, we dismiss the complaint.

WHEREFORE, the complaint for disbarment against respondents Atty. Zosimo Santiago and Atty. Nicomedes Tolentino is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Del Castillo, Jardeleza, and *Gesmundo*,[**] *JJ.*, concur.

Tijam, J., on official leave.

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[44] *Rollo*, p. 116.

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

FIRST DIVISION

[A.C. No. 10145. June 11, 2018]

OLIVER FABUGAIS, *complainant, vs.* **ATTY. BERARDO C. FAUNDO, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ATTORNEYS; DISBARMENT OR SUSPENSION; A DISBARMENT CASE CAN PROCEED IN SPITE OF COMPLAINANT'S DEATH AND THE LACK OF INTEREST ON THE PART OF COMPLAINANT'S HEIRS, AS DISCIPLINARY PROCEEDINGS AGAINST LAWYERS ARE *SUI GENERIS* IN NATURE WHICH ARE INTENDED AND UNDERTAKEN PRIMARILY TO LOOK INTO THE CONDUCT OR BEHAVIOR OF LAWYERS, TO DETERMINE WHETHER THEY ARE STILL FIT TO EXERCISE THE PRIVILEGES OF THE LEGAL PROFESSION, AND TO HOLD THEM ACCOUNTABLE FOR ANY MISCONDUCT OR MISBEHAVIOR WHICH DEVIATES FROM THE MANDATED NORMS AND STANDARDS OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— It bears stressing that this case can proceed in spite of complainant's death and the apparent lack of interest on the part of complainant's heirs. Disciplinary proceedings against lawyers are *sui generis* in nature; they are intended and undertaken primarily to look into the conduct or behavior of lawyers, to determine whether they are still fit to exercise the privileges of the legal profession, and to hold them accountable for any misconduct or misbehavior which deviates from the mandated norms and standards of the Code of Professional Responsibility, all of which are needful and necessary to the preservation of the integrity of the legal profession. Because not chiefly or primarily intended to administer punishment, such proceedings do not call for the active service of prosecutors.

2. LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE CHARGES; "IMMORAL CONDUCT" DEFINED; TO WARRANT DISCIPLINARY ACTION, THE IMMORAL

CONDUCT MUST BE "GROSSLY IMMORAL," THAT IS, IT MUST BE SO CORRUPT AND FALSE AS TO CONSTITUTE A CRIMINAL ACT OR SO UNPRINCIPLED AS TO BE REPREHENSIBLE TO A HIGH DEGREE.— "Immoral conduct" has been defined as that conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. This Court has held that for such conduct to warrant disciplinary action, the same must be "grossly immoral, that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree." It is not easy to state with accuracy what constitutes "grossly immoral conduct," let alone what constitutes the moral delinquency and obliquity that renders a lawyer unfit or unworthy to continue as a member of the bar in good standing. In the present case, going by the eyewitness testimony of complainant's daughter Marie Nicole, raw or explicit sexual immorality between respondent lawyer and complainant's wife was not established as a matter of fact. Indeed, to borrow the Investigating Commissioner's remark: "[o]ne would need to inject a bit of imagination to create an image or something sexual."

3. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; LAWYERS ARE MANDATED TO DO HONOR TO THE BAR AT ALL TIMES AND TO HELP MAINTAIN THE RESPECT OF THE COMMUNITY FOR THE LEGAL PROFESSION UNDER ALL CIRCUMSTANCES.—** That said, it can in no wise or manner be argued that respondent lawyer's behavior was par for the course for members of the legal profession. Lawyers are mandated to do honor to the bar at all times and to help maintain the respect of the community for the legal profession under all circumstances. Canon 7 of the Code of Professional Responsibility provides: A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar. Rule 7.03 of the Code of Professional Responsibility further provides: A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

4. ID.; ID.; ID.; AS OFFICERS OF THE COURT, LAWYERS MUST IN FACT AND IN TRUTH BE OF GOOD MORAL CHARACTER, MUST BE SEEN OR APPEAR TO BE OF GOOD MORAL CHARACTER, AND BE SEEN OR APPEAR TO LIVE A LIFE IN ACCORDANCE WITH THE HIGHEST MORAL STANDARDS OF THE COMMUNITY.— "There is perhaps no profession after that of the sacred ministry in which a high-toned morality is more imperative than that of the law." As officers of the court, lawyers must in fact and in truth be of good moral character. They must moreover also be *seen* or *appear* to be of good moral character; and be *seen* or *appear* to – live a life in accordance with the highest moral standards of the community. Members of the bar can ill-afford to exhibit any conduct which tends to lessen in any degree the confidence of the public in the fidelity, the honesty, and the integrity of the legal profession. The Courts require adherence to these lofty precepts because any thoughtless or ill-considered actions or actuations by any member of the Bar can irreversibly undermine public confidence in the law and, consequently, those who practice it.

5. REMEDIAL LAW; ATTORNEYS; DISBARMENT OR SUSPENSION; THE POWER TO DISBAR OR SUSPEND MEMBERS OF THE BAR OUGHT ALWAYS TO BE EXERCISED NOT IN A SPIRIT OF SPITE, HOSTILITY OR VINDICTIVENESS, BUT ON THE PRESERVATIVE AND CORRECTIVE PRINCIPLE, WITH A VIEW TO SAFEGUARDING THE PURITY OF THE LEGAL PROFESSION; HENCE, THAT POWER SHOULD NOT BE EXERCISED OR ASSERTED WHEN A LESSER PENALTY OR SANCTION WOULD ACCOMPLISH THE END DESIRED.— In deciding upon the appropriate sanction to be imposed upon respondent lawyer in this case, this Court is ever mindful that administrative disciplinary proceedings are essentially designed to protect the administration of justice and that this lofty ideal can be attained by requiring that those who are honored by the title "Attorney" and counsel or at law are men and women of undoubted competence, unimpeachable integrity and undiminished professionalism, men and women in whom courts and clients may repose confidence. This Court moreover realizes only too well that the power to disbar or suspend members of the bar ought always to be exercised not in a spirit of spite, hostility or vindictiveness, but on the

preservative and corrective principle, with a view to safeguarding the purity of the legal profession. Hence, that power can be summoned only in the service of the most compelling duty, which must be performed, in light of incontrovertible evidence of grave misconduct, which seriously taints the reputation and character of the lawyer as an officer of the court and as member of the Bar. It goes without saying moreover that it should not be exercised or asserted when a lesser penalty or sanction would accomplish the end desired. In the context of the circumstances obtaining in this case, and hewing to jurisprudential precedence, and considering furthermore that this is respondent lawyer's first offense, this Court believes that a one-month suspension from the practice of law, as recommended by the IBP, would suffice.

APPEARANCES OF COUNSEL

Mario R. Frez for complainant.

D E C I S I O N

DEL CASTILLO, *J.*:

In both their professional and personal lives, lawyers must conduct themselves in such a way that does not reflect negatively upon the legal profession.

Factual Antecedents

This is a Complaint[1] filed by complainant Oliver Fabugais (complainant) against Atty. Berardo C. Faundo, Jr. (respondent lawyer), for gross misconduct and conduct unbecoming of a lawyer for having allegedly engaged in illicit and immoral relations with his wife, Annaliza Lizel B. Fabugais (Annaliza).

In her *Sinumpaang Salaysay*,[2] then 10-year old girl Marie Nicole Fabugais (Marie Nicole), daughter of complainant, alleged that sometime in October 2006, she, along with her mother,

[1] *Rollo,* pp. 7-9.

[2] *Id*. at 287-289.

Annaliza. Ate Mimi (Michelle Lagasca), and a certain Ate Ada (Ada Marie Campos), stayed in a house in Ipil, Zamboanga-Sibugay, that belonged to respondent lawyer, whom Marie Nicole referred to as "Tito Attorney." Marie Nicole said that when night-time fell, respondent lawyer slept in the same bed with her and her mother and that she saw respondent lawyer embracing her mother while they were sleeping.

Marie Nicole further recounted that the next morning, while she was watching television along with her mother, Ate *Mimi* and Ate Ada, respondent lawyer who just had a shower, and clad only in a towel or *"tapis,"* suddenly entered the room; that she (Marie Nicole) along with her Ate Mimi and her Ate Ada, were told to step outside the room (either by respondent lawyer, or by her mother Annaliza), while her mother and respondent lawyer remained inside the room.

Because of these developments, complainant filed a case for the declaration of nullity of his marriage with Annaliza, with prayer for the custody of their minor children. In said case, respondent lawyer entered his appearance as collaborating counsel for Annaliza.[3]

Complainant moreover narrated that, on February 17, 2007, while he was driving his motorcycle along the San Jose Road in Baliwasan, Zamboanga City, respondent lawyer, who was then riding in tandem in another motorcycle with his own driver, slowed down next to him (complainant) and yelled at him angrily, "*Nah, cosa man?!"* ("So, what now?!"); that he (complainant) also noticed that respondent lawyer kept following and shouting at him (complainant), and even challenged him to a fistfight, and threatened to kill him.[4]

Complainant further alleged that respondent lawyer also harassed his sister on February 27, 2007 by chasing and trailing after her car.[5]

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[3] *Id*. at 222-223.

[4] *Id*. at 220.

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

In his Answer,[6] respondent lawyer asserted that the chasing incident actually took place on February 16, 2007, and that it was in fact complainant himself who stared menacingly at him (respondent lawyer) while he was riding a motorcycle in tandem with his driver. Respondent lawyer sought to reinforce this assertion through the affidavit of respondent lawyer's driver, Romeo T. Mirasol,[7] and two other individuals.[8]

Respondent lawyer denied that he had had any immoral relations with Annaliza. He claimed that he was merely assisting Annaliza in her tempestuous court battle with complainant for custody of her children. Respondent lawyer asserted that when Marie Nicole's maternal grandmother, Ma. Eglinda L. Bantoto, sought out his help in this case, he told them that they could hide in his (respondent lawyer's) parents' house in Ipil.[9]

Respondent lawyer claimed that the cordial relationship he had had with Annaliza could be traced to her being the stepdaughter of his (respondent lawyer's) late uncle, and also to her having been his former student at the Western Mindanao State University in Zamboanga City. Respondent lawyer insisted that he was incapable of committing the misconduct imputed to him for three simple reasons to wit: because he is a good father to his three children, because he is a respected civic leader, and because he had never been the subject even of a complaint with the police. He claimed that complainant filed the instant complaint simply "to harass him from practicing his legitimate profession, and for no other reason."[10]

Upon recommendation of the IBP-ZAMBASULTA Chapter Board, this case was forwarded to the Integrated Bar of the Philippines (IBP) Board of Governors (BOG) in April 26, 2007.[11]

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[6] *Id*. at 75-83.

[7] *Id*. at 92.

[8] *Id*. at 88-91.

[9] *Id*. at 277-278.

[10] *Id*. at 82.

[11] Resolution No. 5, series of 2007. *Id*. at 2.

And, in an Order dated August 2, 2007 this case was then consolidated with a similar case filed by the same complainant against the same respondent.[12]

Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation,[13] IBP Investigating Commissioner Dennis A. B. Funa (Investigating Commissioner) found respondent lawyer guilty of violating Rule 1.01 of the Code of Professional Responsibility and recommended his suspension from the practice of law for one (1) month.

The Investigating Commissioner noted that on the accusation that respondent lawyer had chased complainant in his motorcycle on February 17, 2007, this accusation had not been fully substantiated with convincing evidence. He opined that "there [was] doubt as to whether the incident did occur with the [respondent lawyer's] presence and participation. [Since] the motorcycles were moving fast and the parties were wearing helmets[, the] identity of respondent [lawyer] could not be [categorically] established."[14]

The Investigating Commissioner likewise found no sufficient evidence to establish that respondent lawyer harassed complainant's sister.

However, the Investigating Commissioner found respondent lawyer to have acted inappropriately with Annaliza which created the appearance of immorality, *viz.*:

> As can be gleaned from the records or the hearing, no categorical sexual activity took place between respondent and complainant's wife. One would need to inject a bit of imagination to create an image of something sexual. But as can be read, no sexual activity took place based on the witness' account.
>
> However, it would be erroneous to conclude that respondent's behavior was in total and complete accord with how a lawyer should

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[12] *Id*. at 285.

[13] *Id*. at 517-525.

[14] *Id*. at 520.

behave, particularly in the presence of a minor. Was respondent's behavior toward a woman, in the presence of her minor daughter of 11 years, proper and in keeping with the dignity of the legal profession? It is clear that there was impropriety on the part of respondent.

In Tolosa v. Cargo (A.M. No. 2385, March 8, 1989), the Court held that creating the appearance that a lawyer is flouting with moral standards is sanctionable. Thus, while the charge of immorality, *viz[.],* adulterous relationship, was not factually established, certain behavior of the respondent did not escape notice of the Court.

In this case, while sexual immorality was not established, respondent should be held to account for his inappropriate behavior which created the image or appearance of immorality especially in the presence of a minor girl. Respondent's act of lying in bed with another married woman, while he himself is a married man, in the presence of the woman's daughter could raise suspicions, as in fact it did. x x x.

Respondent should have been considerate of the feelings and perceptions of other people, particularly of minor children.[15]

The Investigating Commissioner, thus, recommended respondent lawyer's suspension for one (1) month for violating Rule 1.01 of the Code of Professional Responsibility.

Report and Recommendation of the IBP-BOG

The IBP-BOG in its Resolution No. XIX-2011-302[16] adopted and approved the findings and recommendation of the Investigating Commissioner.

Sometime in 2011, complainant's counsel Atty. Mario Frez (Atty. Frez) filed a Notice, Manifestation, and Motion for Withdrawal[17] from this case, stating that complainant had passed away on June 12, 2011; and that he was not sure whether complainant's heirs were still willing to pursue the disbarment case against respondent lawyer since he has had no contact with the complainant since June 1, 2009; and he has had no information as to the whereabouts of complainant's heirs.

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[15] *Id.* at 520-524.

[16] *Id.* at 516.

[17] *Id.* at 542-544.

Notwithstanding the Motion for Withdrawal filed by Atty. Frez and considering the Motion for Reconsideration filed by the respondent lawyer in 2013, the IBP-BOG issued on June 21, 2013 a Resolution[18] denying respondent lawyer's motion for reconsideration.

Pursuant to Section 12(c) of Rule 139-B of the Rules of Court, this case is before us for final action.

Our Ruling

We find substantial merit in the findings of facts of the IBP. And we reject respondent lawyer's highly implausible defense that the complainant filed the instant case for no other reason but simply "to harass him from practicing his legitimate profession."[19] There is absolutely nothing in the record to support it.

It bears stressing that this case can proceed in spite of complainant's death and the apparent lack of interest on the part of complainant's heirs. Disciplinary proceedings against lawyers are *sui generis* in nature; they are intended and undertaken primarily to look into the conduct or behavior of lawyers, to determine whether they are still fit to exercise the privileges of the legal profession, and to hold them accountable for any misconduct or misbehavior which deviates from the mandated norms and standards of the Code of Professional Responsibility, all of which are needful and necessary to the preservation of the integrity of the legal profession. Because not chiefly or primarily intended to administer punishment, such proceedings do not call for the active service of prosecutors.[20]

We first rule on the accusation relative to the chasing incidents. This Court agrees with the IBP's findings that the evidence presented by complainant upon this point was insufficient to establish the fact that respondent lawyer had committed the alleged acts against the complainant and his sister.

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[18] *Id.* at 547-548.

[19] *Id.* at 82.

[20] *Gonzalez v. Atty. Alcaraz,* 534 Phil. 471, 482 (2006). See also *Gatchalian Promotions Talents Pools, Inc. v. Atty. Naldoza,* 374 Phil. 1, 10-11 (1999).

We now turn to the accusation in regard to the immoral acts claimed to have been committed by respondent lawyer with complainant's wife Annaliza. The issue to be resolved here is this: Did respondent lawyer in fact commit acts that are grossly immoral, or acts that amount to serious moral depravity, that would warrant or call for his disbarment or suspension from the practice of law?

"Immoral conduct" has been defined as that conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community.[21] This Court has held that for such conduct to warrant disciplinary action, the same must be "grossly immoral, that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree."[22]

It is not easy to state with accuracy what constitutes "grossly immoral conduct," let alone what constitutes the moral delinquency and obliquity that renders a lawyer unfit or unworthy to continue as a member of the bar in good standing.[23]

In the present case, going by the eyewitness testimony of complainant's daughter Marie Nicole, raw or explicit sexual immorality between respondent lawyer and complainant's wife was not established as a matter of fact. Indeed, to borrow the Investigating Commissioner's remark: "[o]ne would need to inject a bit of imagination to create an image or something sexual."[24]

That said, it can in no wise or manner be argued that respondent lawyer's behavior was par for the course for members of the legal profession. Lawyers are mandated to do honor to the bar at all times and to help maintain the respect of the community

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[21] Black's Law Dictionary 6th edition, citing *In re Monaghan* 126 Vt. 53, 222 A.2d 665, 674. See also *Ui v. Atty. Bonifacio,* 388 Phil. 691, 706 (2000).

[22] *Ui v. Atty. Bonifacio,* 388 Phil. 691, 707 (2000).

[23] *Advincula v. Atty. Macabata,* 546 Phil. 431, 442 (2007).

[24] *Rollo,* p. 556.

for the legal profession under all circumstances.[25] Canon 7 of the Code of Professional Responsibility provides:

> A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar.

Rule 7.03 of the Code of Professional Responsibility further provides:

> A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

"There is perhaps no profession after that of the sacred ministry in which a high-toned morality is more imperative than that of the law."[26] As officers of the court, lawyers must in fact and in truth be of good moral character. They must moreover also be *seen* or *appear* to be of good moral character; and be *seen* or *appear* to – live a life in accordance with the highest moral standards of the community.[27] Members of the bar can ill-afford to exhibit any conduct which tends to lessen in any degree the confidence of the public in the fidelity, the honesty, and the integrity of the legal profession.[28] The Courts require adherence to these lofty precepts because any thoughtless or ill-considered actions or actuations by any member of the Bar can irreversibly undermine public confidence in the law and, consequently, those who practice it.[29]

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[25] *Burbe v. Atty. Magulta,* 432 Phil. 840, 848 (200), citing R. Agpalo, *Legal Ethics*, 1997 ed., p. 156.

[26] *Tapucar v. Atty. Tapucar,* 355 Phil. 66, 72 (1998), citing Ruben Agpalo, *Legal Ethics*, 4th ed. (1989), p. 22.

[27] *Tolosa v. Cargo,* 253 Phil. 154 (1989); *Barrientos v. Daarol,* 291-A Phil. 33, 44 (1993); *Narag v. Atty. Narag,* 353 Phil. 643, 655 (1998), *Ui v. Atty. Bonifacio, supra* note 23; *Zaguirre v. Atty. Castillo,* 446 Phil. 861, 869 (2003).

[28] *Sipin-Nabor v. Atty. Baterina,* 412 Phil. 419, 424 (2001).

[29] *Ducat, Jr. v. Atty. Villalon Jr.,* 392 Phil. 394, 403-404 (2000).

The acts complained of in this case might not be grossly or starkly immoral in its rawness or coarseness, but they were without doubt condemnable. Respondent lawyer who made avowals to being a respectable father to three children, and also to being a respected leader of his community apparently had no qualms or scruples about being seen sleeping in his own bed with another man's wife, his arms entwined in tender embrace with the latter. Respondent lawyer's claim that he was inspired by nothing but the best of intentions in inviting another married man's wife and her 10-year old daughter to sleep with him in the same bed so that the three of them could enjoy good night's rest in his airconditioned chamber, reeks with racy, ribald humor.

And in aggravation or the aforementioned unseemly behavior, respondent lawyer apparently experienced neither qualms nor scruples at all about exploding into the room occupied by a married man's wife and her 10-year old daughter and their two other women companions clad with nothing else but a *"tapis"* or a towel. Of course, respondent lawyer sought to downplay this boorish impropriety by saying in his Motion for Reconsideration that he was wearing a *malong* and not *tapis* at that time. And, of course, this plea will not avail because his scanty trappings gave him no license to intrude into a small room full of women. Respondent lawyer could have simply asked everyone in the room to step outside for a little while. Or he could have donned his clothing elsewhere. But these things seemed to have been totally lost to respondent lawyer's density. Indeed, respondent lawyer seemed to have forgotten that there are rules other men — decent men, — live by.

Respondent lawyer's defense that he was a "respectable father with three children" and that he was a "respected civic leader" to boot, flies in the face of a young girl's perception of his diminished deportment. It does not escape this Court's attention that the 10-year old Marie Nicole called respondent lawyer "Tito Attorney." Indeed, by calling respondent lawyer as "Tito Attorney" Marie Nicole effectively proclaimed her avuncular affection for him, plus her recognition of his being a member of the legal profession. We believe that Marie Nicole must have

been a bit disappointed with what she saw and observed about the manners, predilections and propensities of her "Tito Attorney." In fact, a close examination of Marie Nicole's testimony cannot fail to show that in Marie Nicole's young mind, it was clearly not right, appropriate or proper for her "Tito Attorney" to be sharing the same bed with her and her mother, and for her mother to remain alone in the same room with her "Tito Attorney," while this "Tito Attorney" was dressing up. In all these happenings, a modicum of decency should have impelled this "Tito Attorney" to behave more discreetly and more sensitively, as he could not have been unaware that Marie Nicole was observing him closely and that she could be forming her impressions of lawyers and the legal profession by the actions and the behavior of this, her "Tito Attorney."

In deciding, upon the appropriate sanction to be imposed upon respondent lawyer in this case, this Court is ever mindful that administrative disciplinary proceedings are essentially designed to protect the administration of justice and that this lofty ideal can be attained by requiring that those who are honored by the title "Attorney" and counsel or at law are men and women of undoubted competence, unimpeachable integrity and undiminished professionalism, men and women in whom courts and clients may repose confidence.[30] This Court moreover realizes only too well that the power to disbar or suspend members of the bar ought always to be exercised not in a spirit of spite, hostility or vindictiveness, but on the preservative and corrective principle, with a view to safeguarding the purity of the legal profession. Hence, that power can be summoned only in the service of the most compelling duty, which must be performed, in light of incontrovertible evidence of grave misconduct, which seriously taints the reputation and character of the lawyer as an officer of the court and as member of the Bar.[31] It goes without

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[30] *Ting-Dumali v. Atty. Torres,* 471 Phil. 1, 14 (2004) citing *In Re MacDougall,* 3 Phil. 70 (1903).

[31] *Pangasinan Electric Cooperative I v. Atty. Montemayor,* 559 Phil. 438, 445-446 (2007).

saying moreover that it should not be exercised or asserted when a lesser penalty or sanction would accomplish the end desired.[32]

In the context of the circumstances obtaining in this case, and hewing to jurisprudential precedence, and considering furthermore that this is respondent lawyer's first offense, this Court believes that a one-month suspension from the practice of law, as recommended by the IBP, would suffice.

WHEREFORE, premises considered, respondent lawyer Atty. Berardo C. Faundo, Jr. is hereby **SUSPENDED** from the practice of law for one (1) month, reckoned from receipt of a copy or this Decision. He is hereby **WARNED** to be more careful and more circumspect in all his actions, and to be mindful of the kind of example be holds up, especially to impressionable young people, lest he brings upon himself a direr fate the second time around.

Let a copy of this Decision be entered into the personal records of Atty. Berardo C. Faundo, Jr. as a member or the Bar, and copies furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

Tijam, J., on official leave.

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[32] *Soriano v. Dizon,* 515 Phil. 635, 647 (2006).

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

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

FIRST DIVISION

[A.C. No. 11173. June 11, 2018]
(Formerly CBD No. 13-3968)

RE: CA-G.R. CV NO. 96282 (SPOUSES BAYANI AND MYRNA M. PARTOZA *vs.* LILIAN[*] B. MONTANO AND AMELIA SOLOMON), complainant, vs. ATTY. CLARO JORDAN M. SANTAMARIA, *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; ROLE OF LAWYERS IN THE ADMINISTRATION OF JUSTICE, EXPLAINED.— This Court explained the crucial role played by lawyers in the administration of justice in *Salabao v. Villaruel, Jr.*, *viz.*: While it is true that lawyers owe 'entire devotion' to the cause of their clients, it cannot be emphasized enough that their first and primary duty is 'not to the client but to the administration or justice.' Canon 12 of the Code of Professional Responsibility states that 'A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.' x x x This is a fundamental principle in legal ethics and professional responsibility that has iterations in various forms: x x x Because a lawyer is an officer of the court called upon to assist in the administration of justice, any act of a lawyer that obstructs, perverts, or impedes the administration of justice constitutes misconduct and justifies disciplinary action against him.

2. ID.; ID.; ID.; A LAWYER IS DUTY BOUND TO UPHOLD THE DIGNITY AND AUTHORITY OF THE COURT, AND HIS REPEATED FAILURE TO COMPLY WITH THE RESOLUTIONS OF THE COURT OF APPEALS IS CONTUMACIOUS, FOR HE OUGHT TO KNOW THAT A RESOLUTION ISSUED BY THE COURT OF APPEALS, OR ANY COURT, IS NOT A MERE REQUEST THAT MAY BE COMPLIED WITH PARTIALLY OR SELECTIVELY.

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[*] Also referred to as Lilia in some parts of the *rollo*.

— There is no dispute that respondent did not comply with five Resolutions of the CA. His actions were definitely contumacious. By his repeated failure, refusal or inability to comply with the CA resolutions, respondent displayed not only reprehensible conduct but showed an utter lack of respect for the CA and its orders. Respondent ought to know that a resolution issued by the CA, or any court for that matter, is not mere request that may be complied with partially or selectively. Lawyers are duty bound to uphold the dignity and authority of the court. In particular, Section 20(b), Rule 138 of the Rules of Court states that it "is the duty of an attorney [t]o observe and maintain the respect due to courts of justice and judicial officers." In addition, Canon 1 of the Code of Professional Responsibility mandates that "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes." Also, Canon 11 provides that a "lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others."

3. ID.; ID.; ID.; DELIBERATELY AND REPEATEDLY IGNORING THE RESOLUTIONS OF THE COURT OF APPEALS CONSTITUTES A VIOLATION OF THE LAWYER'S DUTY TO OBSERVE AND MAINTAIN THE RESPECT DUE THE COURTS; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS IMPOSED.— "Lawyers are particularly called upon to obey court orders and processes, and this deference is underscored by the fact that willful disregard thereof may subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well." In this case, respondent deliberately ignored five CA Resolutions, thereby violating his duty to observe and maintain the respect due the courts. In one case, the Court suspended a lawyer from the practice of law for one year for having ignored twelve (12) CA Resolutions. The Court found that the said lawyer's conduct gave the impression that he was above the duly constituted judicial authorities of the land, and looked down on them with a patronizing and supercilious attitude. In this case, we find the penalty of suspension for six (6) months, as recommended by the IBP, commensurate under the circumstances.

R E S O L U T I O N

DEL CASTILLO, *J.*:

A recalcitrant lawyer who defies the directives of the court "must deservedly end in tribulation for the lawyer and in victory for the higher ends of justice."[1]

The administrative liability of a lawyer who repeatedly ignores the directives of the Court of Appeals (CA) is properly resolved in this case.

Factual Antecedents

A civil action for Declaration of Nullity of Deed of Real Estate Mortgage, Reconveyance of Transfer Certificate of Title No. T-710729 and Damages[2] was filed by the spouses Bayani and Myrna M. Partoza (spouses Partoza) against Lilia B. Montano and Amelia T. Solomon.

The case was dismissed[3] by the Regional Trial Court.

On November 25, 2010, a Notice of Appeal[4] was filed by the counsel on record, Atty. Samson D. Villanueva (Atty. Villanueva). The appeal was docketed as CA G.R. CV No. 96282 and in a Notice[5] dated March 25, 2011, the CA required the submission of the Appellant's Brief pursuant to Rule 44, Section 7 of the Rules of Civil Procedure.

On April 27, 2011, however, Atty. Villanueva filed his Withdrawal of Appearance;[6] subsequently, a Motion for Extension of Time to File Appellant's Brief[7] dated May 19, 2011,

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[1] *Cuizon v. Atty. Macalino*, 477 Phil. 569, 571 (2004).

[2] Docketed as Civil Case No. N-7918.

[3] See Decision dated October 28, 2010, *rollo*, pp 26-46.

[4] *Id*. at 47-48.

[5] *Id*. at 49.

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

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

was also filed. Atty. Villanueva's Withdrawal of Appearance carried the conformity of the appellant's attorney-in-fact, Honnie M. Partoza (Honnie) who, on the same occasion, also acknowledged receipt of the entire records of the case from Atty. Villanueva.

Thereafter, respondent Atty. Claro Jordan M. Santamaria (respondent) submitted an Appellant's Brief[8] dated July 4, 2011.

In a Resolution[9] dated August 4, 2011, the CA directed Atty. Villanueva to submit proof of authority of Honnic to represent appellants as their attorney-in-fact and the latter's conformity to Atty. Villanueva's Withdrawal of Appearance; in the san1e resolution, the CA also required respondent to submit his formal Entry of Appearance, *viz.*:

CA G.R. CV No. 96282	Sps. BAYANI P. PARTOZA and MYRNA M. PARTOZA vs. LILIA B. MONTANO and AMELIA T. SOLOMON

Before acting on the counsel for appellant's Withdrawal of Appearance, [Atty. Villanueva] is directed to submit within five (5) days from notice the proof of authority of Honnie M. Partoza to represent the appellants and to signify his conformity to the Withdrawal of Appearance. In the meantime, the Motion for Extension of Time to File Appellants' Brief is granted in the interest of justice.

[Respondent] is directed to submit within five (5) days from notice his formal Entry of Appearance as counsel for appellants and to secure and submit to this Court also within the same period the written conformity of his clients to his appearance as their counsel. Likewise, said counsel is also directed to furnish this Court the assailed RTC Decision that should have been appended to the Appellant's Brief also within the same period.

Atty. Villanueva then filed a Manifestation with Motion[10] dated August 31, 2011 explaining that he communicated with

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[8] *Id*. at 54-60.

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

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

Honnie and with appellants as well, but was informed that appellants were residing abroad (in Germany at the time). He then requested for a period of 15 days, or until September 15, 2011, to comply with the CA's Resolution.

On March 20, 2012, the CA issued a Resolution granting the Manifestation and Motion filed by Atty. Villanueva, and ordered the latter to show cause, within 10 days from notice, why he should not be cited in contempt for his failure to comply with the CA's Resolution of August 4, 2011; and why the Appellant's Brief filed by respondent should not be expunged from the *rollo* of the case and the appeal dismissed for his failure to comply with the August 4, 2011 Resolution.

On September 5, 2012 the CA, in another Resolution,[11] declared that: 1) as shown by the Registry Return Receipt dated April 4, 2012, respondent received the copy of its March 20, 2012 Resolution; 2) on June 19, 2012, the Judicial Records Division reported that no compliance with the March 20, 2012 Resolution had been filed by respondent; and 3) respondent was, for the last time, directed to comply with the March 20, 2012 Resolution within five days from notice and to show cause why he should not be cited for contempt for his failure to comply with the CA's Resolutions, dated August 4, 2011 and March 20, 2012; and why the Appellant's Brief filed by him should not be expunged from the *rollo* of the case and the appeal be dismissed.

All these directives by the CA were ignored by the respondent.

Thus, in a Resolution[12] dated October 25, 2012, the CA cited respondent in contempt of court and imposed on him a fine of ₱5,000.00. In the same Resolution, the CA once again directed respondent: (1) to comply with requirements of a valid substitution of counsel and to file his formal Entry of Appearance within five days from notice; and (2) to show cause, within the same period, why the Appellant's Brief filed should not be

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[11] *Id.* at 67-69.

[12] *Id.* at 71-73.

expunged from the *rollo* of the case and the appeal be dismissed for his failure to comply with the Rules of Court.

Ultimately, in a Resolution dated April 11, 2013, the CA ordered the Appellant's Brief filed by respondent expunged from the *rollo* and dismissed the appeal. More than that, the CA directed respondent to explain why he should not be suspended from the practice of law for willful disobedience to the orders of the court.

Respondent paid no heed to this Resolution.

So it was that the CA, in a Resolution[13] dated September 17, 2013, referred the unlawyerly acts of respondent to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

Report and Recommendation the Investigating Commissioner

In his Answer[14] of November 13, 2013, respondent contended: (1) that the spouses Partoza sought his opinion regarding their case and later on requested that he handle their appeal before the CA; (2) that he advised the spouses Partoza to inform Atty. Villanueva of their decision to engage the services of a new counsel; (3) that he relied on the Withdrawal of Appearance filed by Atty. Villanueva and then prepared the Appellant's Brief; (4) that he was not aware of the authority of Honnie to represent spouses Panoza as well as of Honnie's conformity to the Withdrawal of Appearance by Atty. Villanueva; (5) that he believed that he had no personality to represent the spouses Partoza in the case, and to address the problems/compliances pertaining to appellant's appeal; and (6) that it was still Atty. Villanueva who should have continued to represent the spouses Partoza.

The Investigating Commissioner Michael G. Fabunan (Investigating Commissioner) found respondent liable for willful disobedience to the lawful orders of the CA and recommended

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[13] *Id.* at 75-77.

[14] *Id.* at 8-10.

that he be suspended from the practice of law for six months. The Investigating, Commissioner gave the reasons for the said recommendation in his Report and Recommendation,[15] *viz.*:

> The act of respondent in not filing any of the compliances required of him in the 4 August 2011, 20 March 2012, 5 September 2012, and 25 October 2012 Resolutions of the [CA] despite due notice, emphasized his contempt and total disregard of the legal proceedings, for which he should be held liable.
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> x x x x x x x x x
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> Granting that he [was] not aware of the problem between Atty. Villanueva and [Honnie], he could have explained this fact by complying with the court resolutions and not just ignored them on the premise that he has no personality to represent the [spouses Partoza]. The compliances required of the respondent by the [CA] are provided under the rules for a valid substitution of counsel and validity of the appeal and may not be disregarded.
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> The nonchalant attitude of the respondent cannot be left unsanctioned. Clearly, his acts constitute willful disobedience of the lawful orders of the [CA], which under Section 27, Rule 138 of the Rules of Court is a sufficient case for suspension. x x x

Resolution of the IBP Board of Governors

The IBP Board of Governors resolved[16] to adopt and approve the recommendation of the Investigating Commissioner.

In its Report[17] dated March 18, 2016, the Office of the Bar Confidant informed this Court that no petition for review or motion for reconsideration has been filed by either party. Thus, pursuant to Section 12(c) of Rule 139-B of the Rules of Court, this case is now before us for final action.

Issue

Whether or not respondent is administratively liable.

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[15] Dated October 15, 2014; *id*. at 83-87.

[16] Resolution No. XXI-2015-124 dated January 31, 2015; *id*. at 81-82.

[17] *Id*., unpaginated.

Our Ruling

This Court adopts the findings of fact of, and the penalty recommended by, the IBP Board of Governors.

This Coutt explained the crucial role played by lawyers in the administration of justice in *Salabao v. Villaruel, Jr.*,[18] *viz.*:

> While it is true that lawyers owe 'entire devotion' to the cause of their clients, it cannot he emphasized enough that their first and primary duty is not to the client but to the administration or justice. Canon 12 of the Code of Professional Responsibility slates that 'A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.' x x x This is a fundamental principle in legal ethics and professional responsibility that has iterations in various forms:
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> x x x x x x x x x
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> Because a lawyer is an officer of the court called upon to assist in the administration of justice, any act of a lawyer that obstructs, perverts, or impedes the administration of justice constitutes misconduct and justifies disciplinary action against him. (citations omitted)

There is no dispute that respondent did not comply with five Resolutions of the CA. His actions were definitely contumacious. By his repeated failure, refusal or inability to comply with the CA resolutions, respondent displayed not only reprehensible conduct but showed an utter lack of respect for the CA and its orders. Respondent ought to know that a resolution issued by the CA, or any court for that matter, is not mere request that may be complied with partially or selectively.

Lawyers are duty bound to uphold the dignity and authority of the court. In particular, Section 20(b), Rule 138 of the Rules of Court states that it "is the duty of an attorney [t]o observe and maintain the respect due to courts of justice and judicial officers." In addition, Canon 1 of the Code of Professional Responsibility mandates that "[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect

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[18] 767 Phil. 548, 553-554 (2015).

for law and legal processes." Also, Canon 11 provides that a "lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others."

Section 27, Rule 138 of the Rules of Court provides:

> SECTION 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a **wilful disobedience of any lawful order of a superior court**, or for corruptly or wilfully appealing as an attorney for a party to a case without authority [to do so]. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

This Court, in *Anudon v. Cefra*[19] citing *Sebastian v. Atty. Bajar*,[20] held that a lawyer's obstinate refusal to comply with the Court's orders not only betrayed a recalcitrant flaw in his character; it also underscored his disrespect towards the Court's lawful orders which was only too deserving of reproof

"Lawyers are particularly called upon to obey court orders and processes, and this deference is underscored by the fact that willful disregard thereof may subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well."[21] In this case, respondent deliberately ignored five CA Resolutions, thereby violating his duty to observe and maintain the respect due the courts.

In one case,[22] the Court suspended a lawyer from the practice of law for one year for having ignored twelve (12) CA Resolutions.

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[19] 753 Phil. 421, 431-433 (2015).

[20] 559 Phil. 211 (2007).

[21] *Bantolo v. Atty. Castillon, Jr.*, 514 Phil. 628, 632 (2005).

[22] *In Re: Resolution Dated August 14, 2013 of the Court of Appeals in CA-G.R. CV No. 94656 v. Atty. Mortel*, 791 Phil. 1 (2016).

The Court found that the said lawyer's conduct gave the impression that he was above the duly constituted judicial authorities of the land, and looked down on them with a patronizing and supercilious attitude. In this case, we find the penalty of suspension for six (6) months, as recommended by the IBP, commensurate under the circumstances.

WHEREFORE, respondent Atty. Claro Jordan M. Santamaria is **SUSPENDED** from the practice of law for six (6) months effective upon his receipt of this Resolution. He is **STERNLY WARNED** that repetition of the same or similar act shall be dealt with more severely.

Let a copy of this Resolution be attached to respondent's personal records as attorney, and be furnished to the Integrated Bar of the Philippines and all courts in the country through the Office of the Court Administrator.

SO ORDERED.

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

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

[***] Per raffle dated June 11, 2018.

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

FIRST DIVISION

[A.M. No. P-18-3842. June 11, 2018]
(Formerly OCA IPI No. 12-3965-P)

CONSTANCIA BENONG-LINDE, *complainant, vs.* **FELADELFA L. LOMANTAS, SOCIAL WELFARE OFFICER II, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, TAGBILARAN CITY, BOHOL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; THE FILING OF AN AFFIDAVIT OF DESISTANCE BY THE COMPLAINANT FOR ALLEGED LOSS OF INTEREST DOES NOT *IPSO FACTO* RESULT IN THE TERMINATION OF THE ADMINISTRATIVE CASE NOR DOES IT RENDER THE CASE MOOTED.— At the outset, this Court agrees that the OCA has taken the right stance in insisting that the present administrative case must proceed notwithstanding complainant's execution of an Affidavit of Desistance. The filing of the said affidavit by the complainant for alleged loss of interest does not *ipso facto* result in the termination of the administrative case nor does it render the case mooted. In *Sy v. Binasing,* we held that —An affidavit of desistance by a complainant in an administrative case against a member of the judiciary does not divest the Supreme Court of its jurisdiction to investigate the matters alleged in the complaint or otherwise to wield its disciplinary authority because the Court has an interest in the conduct and behavior of its officials and employees and in ensuring the prompt delivery of justice to the people. Its efforts in that direction cannot thus be frustrated by any private arrangement of the parties. Neither can the disciplinary power of this Court be made to depend on a complainant's whims. To rule otherwise would undermine the discipline of court officials and personnel.

2. ID.; ID.; COURT PERSONNEL; THOSE WHO ARE PART OF THE MACHINERY DISPENSING JUSTICE, FROM THE LOWLIEST CLERK TO THE PRESIDING JUDGE, MUST CONDUCT THEMSELVES WITH UTMOST

DECORUM AND PROPRIETY TO MAINTAIN THE PUBLIC'S FAITH AND RESPECT FOR THE JUDICIARY. — In *Judge Yrastorza, Sr. v. Latiza,* this Court ruled — Court employees bear the burden of observing exacting standards of ethics and morality. This is the price one pays for the honor of working in the judiciary. Those who are part of the machinery dispensing justice, from the lowliest clerk to the presiding judge, must conduct themselves with utmost decorum and propriety to maintain the public's faith and respect for the judiciary. x x x We agree with the investigating judge and with the OCA both of whom found respondent guilty of simple misconduct, in displaying improper deportment and reprehensible arrogance by officially meddling in a custody case which had been archived by the court, and in which she was not at all involved in any manner. Stress must be laid on the fact that respondent had not at all received any order from the court directing her to conduct any case study, and with which she had no connection at all.

3. **ID.; ID.; ID.; SIMPLE MISCONDUCT IS DEFINED AS AN UNACCEPTABLE BEHAVIOR THAT TRANSGRESSES THE ESTABLISHED RULES OF CONDUCT FOR PUBLIC OFFICERS, WHICH IS CLASSIFIED AS A LESS GRAVE OFFENSE PUNISHABLE BY SUSPENSION FOR THE FIRST OFFENSE AND DISMISSAL FOR THE SECOND OFFENSE.—** Under the *Uniform Rules on Administrative Cases in the Civil Service,* administrative offenses are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service. Simple misconduct is a less grave offense punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense. By definition, "[s]imple misconduct is a transgression of some established rule of action;" an unacceptable behavior that transgresses the established rules of conduct for public officers. "Any act deviating from the procedure laid down by the Rules is misconduct that warrants disciplinary action." Misconduct may be considered simple if the additional elements of corruption, willful intent to violate the law or to disregard established rules are not present.

4. **ID.; ID.; ID.; ID.; THE EMPLOYEE'S ACTS OF MEDDLING OR INTERVENING IN AN OTHERWISE ARCHIVED CUSTODY CASE AND CONCEITED DISPLAY OF SELF-IMPORTANCE CONSTITUTE SIMPLE MISCONDUCT;**

PENALTY OF FINE IMPOSED.— In the case at bench, we find reprehensible respondent's acts of meddling or intervening in an otherwise archived custody case and in arrogantly flouting that the success of the said case rested upon the "tip of her ballpen." Such a conceited display of self-importance is a failure of circumspection that calls for disciplinary sanction by this Court. "The law does not tolerate misconduct by a civil servant." There is hardly any doubt that respondent had acted in such a way that is an assault upon the norm of decency, and diminishes the people's respect for those in the government service, particularly for those employed in the judiciary. Nevertheless, we find it proper to modify the penalty to be meted out against respondent in view of a supervening event. The Court would have imposed upon respondent the recommended penalty of one month suspension were it not for the fact that she had retired from the government service on September 2, 2017. Hence, we take the view that the appropriate penalty to be meted out against respondent, in lieu of suspension, is, as it ought to be, a fine in an amount equivalent to her salary for one month.

D E C I S I O N

DEL CASTILLO, *J.*:

We resolve a Complaint dated September 22, 2012 filed by Constancia Benong-Linde (complainant) charging Social Welfare Officer II Feladelfa L. Lomantas (respondent), with abuse of authority, dishonesty and conduct unbecoming a court employee, relative to SP Proc. No. 2853, entitled *Constancia Benong-Linde v. Archiles B. Linde and Aloha B. Sarzuelo,* for custody of minor children pending before the Regional Trial Court (RTC) of Tagbilaran City, Branch 03.

Factual Background

Complainant averred that minors Mary Arianne Sarzuelo (Mary) and Alec Joriz Sarzuelo (Alec) were born out of wedlock to her son, Archiles B. Linde (Archiles) and his former girlfriend, Aloha Sarzuelo (Aloha). When Archiles and Aloha parted ways, complainant took care of Mary and Alec. Believing that exercising custody over these minor children was in their best

interest, complainant filed before the RTC of Tagbilaran City a verified Petition[1] for custody docketed as SP Proc. No. 2853. However, in an Order[2] dated August 9, 2012, the RTC of Tagbilaran City archived the custody case for failure to personally serve summons upon Archiles who was abroad at the time.

According to complainant, at around 9:00 p.m. on April 30, 2012, respondent went to her house and forced her to house Mary and Alec from their sleep purportedly to enable her (respondent) to conduct a case study on these minors. The respondent also informed her that the success or failure of the case "depended upon the tip of her ballpen." Complainant was surprised at this arrogant outburst as the proceedings for the custody case had yet to commence; moreover, the RTC had not yet directed respondent to conduct a case study.

On September 8, 2012, at around 7:00 a.m., respondent again went to complainant's house and tried to force complainant and her grandchildren to board her car, purportedly as part of her case study. Complainant refused, and told respondent that they would hear mass at 12:00 noon that day, as it was Mary's 12th birthday. However, when complainant and Mary arrived at the church, they were met by respondent and Aloha, who, along with four other persons, got hold of Mary. Complainant then went to the police station near the church to have the incident recorded. Complainant claimed that respondent also repaired to the police station, and therein announced that she had control over the custody case. Complainant then suggested to respondent that Mary be allowed to go home as she (complainant) had planned a birthday party for her; and that after the birthday party Aloha could spend time with Mary. However, Aloha did not agree to this suggestion. All of a sudden, Mercy Sarzuelo (Mercy), Aloha's mother, dragged Mary and forced her inside respondent's car. Complainant tried to go with them, but respondent pushed her out of the car, causing her to fall down on the pavement. Respondent then left with her companions,

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[1] *Rollo,* pp. 11-19.

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

taking Mary with them. Complainant promptly made a police report of this incident. Later, complainant learned that on September 19, 2012, Aloha, together with Mercy and respondent, went to Mary's school, and asked for the issuance of Mary's card and her Form 137. On said occasion, respondent bragged to Mary's teacher that nobody could file a case against her because she was a court employee.

Respondent denied the charges against her. She claimed: (1) that on the morning of September 8, 2012, she received a text message from Aloha and Mercy informing her that they had arrived at Tagbilaran City from Leyte and that they intended to go to the church where Mary was expected to hear mass, as it was Mary's birthday; (2) that she (respondent) and her daughter were also at the church as they usually hear mass on a Saturday; (3) that outside the church, she saw Mary hugging Aloha while complainant who was nearby appeared to be arguing with Aloha; (4) that she went near them, and when asked about her opinion, she said that the law favors the choice of the minor and since the minor wanted to live with Aloha, the minor's preference should be respected; (5) that complainant was infuriated by her opinion; (6) that desirous of a peaceful resolution of the problem, she advised the parties to repair to the police station to discuss their problem; (7) that after this, Aloha requested her (respondent) to bring them to the Greenwich Plaza Marcela; and (8) that she asked complainant to join them there, but the latter refused. Respondent claimed that on September 19, 2012, she merely accompanied Aloha to Mary's school.

In her Reply-Affidavit,[3] complainant claimed that she was constrained to file the present administrative complaint because she wanted to bring to the attention of the proper authorities respondent's rude behavior as a Social Worker, specifically her uncalled for and officiou s meddling in a pending custody case that was none of her business at all.

The Court, upon recommendation of the Office of the Court Administrator (OCA), resolved[4] to refer the matter to the

[3] *Id*. at 113-119.

[4] Resolution dated February 17, 2016; *id*. at 192-193.

Executive Judge of RTC Tagbilaran City, Bohol for investigation, report and recommendation.

Report and Recommendation of the Investigating Judge

In his Investigation Report[5] of June 29, 2016, Investigating Judge Suceso A. Arcamo (Judge Arcamo) of the RTC of Tagbilaran City noted that complainant, in an Affidavit of Desistance[6] dated June 1, 2016, had manifested her loss of interest in pursuing the instant administrative case. In the said affidavit, complainant said that she had already forgiven respondent and that she wanted to buy peace as she had been ordained as 3rd Order of the Servants of Mary.

Notwithstanding this Affidavit of Desistance, Judge Arcamo, however, thought it proper to proceed with the investigation given the fact that complainant did not say that the allegations in the complaint were false or made up. In due course, Judge Arcamo made the following findings: (1) that it was improper for respondent, as a social welfare officer, to prematurely intervene in the custody case which had been archived for failure to serve summons; (2) that respondent's behavior and conduct showed bias and partiality to one party *i.e.* Aloha; and (3) that respondent clearly displayed arrogance in stating that the success or failure of your case depends upon the tip of my ballpen." Hence, Judge Arcamo recommended that respondent be held guilty of simple misconduct and that she be penalized with suspension for one month.

OCA Report and Recommendation[7]

The OCA agreed *in toto* with the findings and recommendation of Judge Arcamo thus —

> In the instant case, as correctly pointed out by x x x Judge Arcamo, there was no reason for respondent x x x to intervene on behalf of either party since the custody case was archived by the court. It is

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[5] *Id*. at 195-205.

[6] *Id*. at 212.

[7] *Id*. at 216-222.

admitted by respondent x x x that on 8 September 2012, Aloha x x x texted her that she was in Tagbilaran City to see her daughter at the St. Joseph Cathedral. Thus, it can be surmised that there was prior communication between them to meet at the St. Joseph Cathedral and it was not by mere coincidence that respondent x x x witnessed the altercation between complainant x x x and Aloha x x x. Respondent x x x even assisted Aloha x x x in bringing them to Greenwich Plaza Marcela.

Furthermore, respondent x x x went to the extent of using force against complainant x x x. This Office agrees with x x x Judge Arcamo that more weight and credence should be given to the allegations of complaint x x x that she was pushed out of the car by respondent x x x. This was corroborated by the affidavit of a certain Christine S. Zamora, a candle vendor in the church, who saw complaint x x x limping. The incident was also recorded in the police blotter under Entry No. 504 dated 8 September 2012.

Moreover, this Office finds credence in the allegation of arrogance on the part of respondent x x x. Respondent x x x denied that she boasted that the success or failure of the custody case is in the "tip of her ballpen". However, there is a whiff of truth that respondent x x x displayed arrogance when she accompanied Aloha x x x to the San Isidro Elementary School. In the affidavit, Corazon E. Mendez, the teacher-in-charge of Mary x x x, stated that respondent x x x boasted that she could not be refused because she is a Supreme Court employee and going to the school is part of her case study on the custody case of Mary x x x.

Clearly, respondent x x x failed to meet the exacting standards required of employees of the judiciary when she persisted in intervening in the custody case despite its having been archived. Also, respondent['s] arrogance is further shown when she brandished her position and used the name of the Court. The conduct and behavior of respondent x x x are tantamount to misconduct which should not countenanced.[8]

The OCA recommended that respondent be found guilty of simple misconduct and that she be suspended for a period of one (1) month without pay.[9]

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[8] *Id*. at 220-221.

[9] *Id*. at 222.

Our Ruling

At the outset, this Court agrees that the OCA has taken the right stance in insisting that the present administrative case must proceed notwithstanding complainant's execution of an Affidavit of Desistance. The filing of the said affidavit by the complainant for alleged loss of interest does not *ipso facto* result in the termination of the administrative case nor does it render the case mooted.

In *Sy v. Binasing,*[10] we held that —

> An affidavit of desistance by a complainant in an administrative case against a member of the judiciary does not divest the Supreme Court of its jurisdiction to investigate the matters alleged in the complaint or otherwise to wield its disciplinary authority because the Court has an interest in the conduct and behavior of its officials and employees and in ensuring the prompt delivery of justice to the people. Its efforts in that direction cannot thus be frustrated by any private arrangement of the parties. Neither can the disciplinary power of this Court be made to depend on a complainant's whims. To rule otherwise would undermine the discipline of court officials and personnel.[11]

This Court finds the OCA's report and recommendation well-taken, and fully substantiated, and is adopting the same, save for a minor modification in the penalty.

In *Judge Yrastorza, Sr. v. Latiza,*[12] this Court ruled —

> Court employees bear the burden of observing exacting standards of ethics and morality. This is the price one pays for the honor of working in the judiciary. Those who are part of the machinery dispensing justice, from the lowliest clerk to the presiding judge, must conduct themselves with utmost decorum and propriety to maintain the public's faith and respect for the judiciary. x x x

We agree with the investigating judge and with the OCA both of whom found respondent guilty of simple misconduct,

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[10] 563 Phil. 491 (2007).

[11] *Id.* at 494, citing *Atty. Pineda v. Judge Pinto,* 483 Phil. 243, 252 (2004).

[12] 462 Phil. 145, 153 (2003).

in displaying improper deportment and reprehensible arrogance by officially meddling in a custody case which had been archived by the court, and in which she was not at all involved in any manner. Stress must be laid on the fact that respondent had not at all received any order from the court directing her to conduct any case study, and with which she had no connection at all.

Under the *Uniform Rules on Administrative Cases in the Civil Service,* administrative offenses are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

Simple misconduct is a less grave offense punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense.

By definition, "[s]imple misconduct is a transgression of some established rule of action;"[13] an unacceptable behavior that transgresses the established rules of conduct for public officers. "Any act deviating from the procedure laid down by the Rules is misconduct that warrants disciplinary action."[14] Misconduct may be considered simple if the additional elements of corruption, willful intent to violate the law or to disregard established rules are not present.[15]

In the case at bench, we find reprehensible respondent's acts of meddling or intervening in an otherwise archived custody case and in arrogantly flouting that the success of the said case rested upon the "tip of her ballpen." Such a conceited display of self-importance is a failure of circumspection that calls for disciplinary sanction by this Court. "The law does not tolerate misconduct by a civil servant."[16]

There is hardly any doubt that respondent had acted in such a way that is an assault upon the norm of decency, and diminishes

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[13] *Campos v. Judge Campos,* 681 Phil. 247, 254 (2012).

[14] *Raut-Raut v. Gaputan,* 769 Phil. 590, 597 (2015).

[15] *Samson v. Restrivera,* 662 Phil. 45, 61 (2011).

[16] *Santos v. Rasalan,* 544 Phil. 35, 44 (2007).

the people's respect for those in the government service, particularly for those employed in the judiciary.

Nevertheless, we find it proper to modify the penalty to be meted out against respondent in view of supervening event.

The Court would have imposed upon respondent the recommended penalty of one month suspension were it not for the fact that she had retired from the government service on September 2, 2017. Hence, we take the view that the appropriate penalty to be meted out against respondent, in lieu of suspension, is, as it ought to be, a fine in an amount equivalent to her salary for one month.

A final word: this Court, in disciplining its employees, does so with the end in view of improving the public service and preserving the public's faith and confidence in the government as "the Constitution stresses that a public office is a public trust and public officers 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. These constitutionally-enshrined principles x x x are not mere rhetorical nourishes or idealistic sentiments. They should be taken as working standards by all in the public service."[17]

WHEREFORE, respondent Social Welfare Officer II Feladelfa L. Lomantas is found **GUILTY** of simple misconduct and is **FINED** in an amount equivalent to her salary for one (1) month. In view of respondent's retirement from the service on September 2, 2017, the Finance Division, Financial Management Office of the Office of the Court Administrator is **DIRECTED** to deduct the amount corresponding to her one month's salary from the retirement benefits due her.

Let a copy of this Decision be attached to the personnel records of respondent in the Office or the Administrative Services, Office of the Court Administrator.

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[17] *Government Service Insurance System v. Mayordomo,* 665 Phil. 131, 151, (2011) citing *Civil Service Commission v. Cortez,* 474 Phil. 670 (2004).

SO ORDERED.

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

Tijam, J., on official leave.

THIRD DIVISION

[G.R. No. 206992. June 11, 2018]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEREDEROS DE CIRIACO CHUNACO DISTILERIA, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP) (R.A. NO. 6657); JUST COMPENSATION; THE TAKING OF PROPERTY UNDER R.A. NO. 6657 IS AN EXERCISE OF THE POWER OF EMINENT DOMAIN BY THE STATE; HENCE, THE VALUATION OF PROPERTY OR DETERMINATION OF JUST COMPENSATION IN EMINENT DOMAIN PROCEEDINGS IS ESSENTIALLY A JUDICIAL FUNCTION, WHICH IS VESTED WITH THE COURTS AND NOT WITH ADMINISTRATIVE AGENCIES.— The valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies. The executive department or the legislature may make the initial determination, but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute,

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

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

decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation. Accordingly, R.A. No. 6657 vests Special Agrarian Courts original and exclusive jurisdiction in the determination of just compensation under the said law x x x. Fittingly, as the taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State, the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function, which is vested with the courts and not with administrative agencies. Consequently, the SAC can properly take cognizance of any petition for determination of just compensation.

2. **ID.; ID.; ID.; THE DEPARTMENT OF AGRARIAN REFORM HAS NO AUTHORITY TO QUALIFY OR UNDO THE REGIONAL TRIAL COURT-SPECIAL AGRARIAN COURT'S (RTC-SAC) ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL PETITIONS FOR THE DETERMINATION OF JUST COMPENSATION TO LANDOWNERS, ANY EFFORT TO TRANSFER SUCH JURISDICTION TO THE ADJUDICATORS AND TO CONVERT THE ORIGINAL JURISDICTION OF THE RTCs INTO APPELLATE JURISDICTION WOULD BE VOID.—** Indeed, Section 57 of R.A. No. 6657 clearly vests on the RTC-SAC the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Section 57 and therefore would be void. The DAR has no authority to qualify or undo the RTC-SAC's jurisdiction over the determination of just compensation under R.A. No. 6657. Thus, the 15-day reglementary period under Section 11, Rule XIII of the DARAB Rules cannot be sustained. The RTC-SAC cannot simply be reduced to an appellate court which reviews administrative decisions of the DAR within a short period to appeal.

3. **ID.; ID.; ID.; A PETITION FOR JUDICIAL DETERMINATION OF JUST COMPENSATION UNDER R.A. NO. 6657 MUST BE FILED BEFORE THE RTC-SAC WITHIN TEN (10) YEARS FROM THE TIME THE LANDOWNER RECEIVES THE NOTICE OF COVERAGE UNDER THE CARP; ANY**

INTERRUPTION OR DELAY CAUSED BY THE GOVERNMENT SHOULD TOLL THE RUNNING OF THE PRESCRIPTIVE PERIOD.— It was also determined in *Dalauta* that the proper prescriptive period to file a petition for judicial determination of just compensation under R.A. No. 6657 is ten (10) years pursuant to Article 1144 (2) of the Civil Code. Considering that payment of just compensation is an obligation created by law, it is only proper that the ten (10)-year period start from the time the landowner receives the notice of coverage under the CARP. In addition, any interruption or delay caused by the government, like proceedings in the DAR, should toll the running of the prescriptive period. The statute of limitations has been devised to operate against those who slept on their rights, but not against those desirous to act but cannot do so for causes beyond their control. In this case, respondent voluntarily offered for sale its twelve (12) parcels of land in November 2001. Accordingly, the 10-year prescriptive period began at that moment because respondent knew that its lands would be covered by the CARP. Thus, the petition for judicial determination of just compensation filed on April 12, 2004 before the RTC-SAC, which was even tolled by the proceedings before the PARAD, was squarely and timely filed within the 10-year prescriptive period. Consequently, as the fifteen (15)-day reglementary period under Section 11, Rule XIII of the DARAB Rules had been set aside, it is now immaterial to determine whether a fresh fifteen (15)-day period should be given to a party when the PARAD denies its motion for reconsideration to file a petition for judicial determination of just compensation.

4. ID.; ID.; ID.; THE DECISION OF THE PROVINCIAL AGRARIAN REFORM ADJUDICATOR (PARAD) ON JUST COMPENSATION CANNOT BE ENFORCED WHERE THERE IS STILL A PENDING JUDICIAL DETERMINATION OF JUST COMPENSATION BEFORE THE RTC-SAC, AS IT IS ONLY WHEN THE SAID JUDICIAL DETERMINATION ATTAINS FINALITY THAT THE AWARD OF JUST COMPENSATION MAY BE EXECUTED.— It was also stated in *Dalauta* that a landowner should withdraw his case with the DAR before filing his petition before the RTC-SAC and manifest the fact of withdrawal by alleging it in the petition itself. Failure to do so would be a ground for a motion to suspend judicial proceedings

until the administrative proceedings are terminated. Here, when the PARAD denied its motion for reconsideration on the preliminary determination of just compensation, petitioner did not anymore appeal before the DARAB. Instead, it timely filed a petition for judicial determination of just compensation before the RTC-SAC. Thus, the administrative proceedings on the determination of just compensation were terminated. It was only when the PARAD ordered the execution of its decision and issued the writ of execution, even though there was a timely petition for judicial determination of just compensation before the RTC-SAC, that petitioner sought refuge from the DARAB. Evidently, petitioner's cause of action is essentially to stop the enforcement of the decision of the PARAD because of a pending petition before the RTC-SAC. [T]he PARAD cannot enforce its February 17, 2004 decision because there is still a pending judicial determination of just compensation before the courts. It is only when the said judicial determination attains finality that the award of just compensation may be executed.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Del Rosario & Almoguera Law Office for private respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal by *certiorari* seeking to reverse and set aside the April 26, 2013 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. SP No. 98113. The CA denied the petition for *certiorari* seeking to annul and set aside the Resolutions[2] dated July 7, 2005 and December 19, 2006, respectively, of the Department of Agrarian Reform Adjudication Board (*DARAB*) in DSCA No. 0383, a case for preliminary determination of just compensation.

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[1] *Rollo*, pp. 31 47; penned by Associate Justice Michael P. Elbinias with Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela, concurring.

[2] CA *rollo*, pp. 97-103 and 118-119.

Herederos De Ciriaco Chunaco Distileria, Inc. (*respondent*) was the owner of several parcels of land with an aggregate area of 22.587 hectares situated at Barangay Masarawag, Guinobatan, Albay. These lands are covered by twelve (12) Transfer Certificate of Title (*TCT*) Nos. T-63245, T-63227, T-63230, T-63246, T-63231, T-63233, T-63226, T-63229, T-63572, T-63575, T-63573 and T-63232.

In November 2001, respondent voluntarily offered for sale the subject lots to the Republic of the Philippines (*Republic*) under the Comprehensive Agrarian Reform Program (*CARP*).[3] Land Bank of the Philippines (*petitioner*), by virtue of its mandate under Republic Act (R.A.) No. 6657, came up with the CARP compensation for the subject lands and offered the same to respondent in the amount of ₱957,991.30. Upon receipt of the valuation of the properties, respondent rejected the offered compensation.

Hence, twelve (12) cases for preliminary administrative determination of just compensation covering the said parcels of land were conducted by the Provincial Agrarian Reform Adjudicator of Albay, Branch 1 (*PARAD*).

During trial, petitioner insisted that the compensation of the subject lands should only be ₱957,991.30. On the other hand, respondent countered that the subject lands were worth P195,410.07 per hectare.

The PARAD Ruling

In its Decision[4] dated February 17, 2004, the PARAD ruled in favor of respondent and held that the just compensation for the subject lands should be ₱195,410.07 per hectare, or a total of ₱4,455,349.00. The decretal portion reads:

> WHEREFORE, taking into account the evidences (sic) presented by the parties, the valuation pegged at ₱958,010.82 for the subject properties of landowner/protestant is hereby set aside and new one

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[3] *Id*. at 59.

[4] *Id*. at 31-45.

entered at ₱4,455,349.62 as the just and fair value thereof or the equivalent of ₱195,410.07 per hectare. The Land Bank of the Philippines Valuation Office, Legazpi City is hereby ordered to effect payment to herein landowners/protestants pursuant to pertinent guidelines.

SO ORDERED.[5]

The said decision was received by petitioner on February 24, 2004. After thirteen (13) days, or on March 9, 2004, petitioner filed a Motion for Reconsideration[6] before the PARAD.

In its Resolution[7] dated April 1, 2004, the PARAD denied petitioner's motion for reconsideration. The said resolution was received by petitioner on April 6, 2004.

On April 12, 2004, petitioner filed a Petition for Judicial Determination of Just Compensation[8] before the Regional Trial Court of Legaspi City, Branch 3 (*RTC*), acting as Special Agrarian Court (*SAC*), and docketed as Civil Case No. 04-04. It argued that the PARAD erroneously arrived at the amount for the just compensation without considering the formula set forth by the Department of Agrarian Reform (*DAR*).

On July 27, 2004, the PARAD issued an Order[9] declaring that the February 17, 2004 decision was final and executory. On September 10, 2004, a Writ of Execution[10] was issued by the PARAD.

On October 12, 2004, petitioner filed a petition for *certiorari* before the DARAB assailing the July 27, 2004 order and September 10, 2004 writ of execution of the PARAD. Petitioner also argued that the petition for *certiorari* was the valid remedy

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[5] *Rollo*, p. 34.

[6] CA *rollo*, p. 46.

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

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

[9] *Id*. at 52-55.

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

before the DARAB as it was stated in its Rules of Procedure (*Rules*).

The DARAB Ruling

In its Resolution dated July 7, 2005, the DARAB denied the petition for lack of merit. It held that the petition for determination of just compensation in the RTC-SAC was filed beyond the fifteen (15)-day reglamentary period under Section 11, Rule XIII of the DARAB Rules. The DARAB opined that the said petition was filed out of time because a total of twenty-four (24) days had lapsed before it was filed, hence, the PARAD decision on the just compensation already became final and executory. The *fallo* of the decision states:

> WHEREFORE, in the light of the foregoing considerations, the instant Petition is hereby DENIED for lack of merit.
>
> SO ORDERED.[11]

Petitioner filed a Motion for Reconsideration[12] but it was denied by the DARAB in its resolution dated December 19, 2006.

Undaunted, petitioner filed a petition for *certiorari* before the CA.

The CA Ruling

In its decision dated April 26, 2013, the CA denied the petition. It held that the February 17, 2004 decision of the PARAD already attained finality because the petition for judicial determination of just compensation was belatedly filed in the RTC-SAC, beyond the 15-day reglementary period. It added that the fresh fifteen (15)-day period under *Neypes v. Court of Appeals*[13] is not applicable in administrative proceedings. The CA also held that the determination of just compensation by the PARAD was proper because the latter's determination was not limited to

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[11] *Id*. at 102.

[12] *Id*. at 104-115.

[13] 506 Phil. 613 (2005).

the factors enumerated in DAR Administrative Order 05, series of 1998, and it could properly consider other factors.

Hence, this petition.

ISSUE

WHETHER OR NOT A FRESH FIFTEEN (15)-DAY PERIOD IS AVAILABLE TO COMMENCE AN ACTION IN THE SPECIAL AGRARIAN COURT (SAC), NOTWITHSTANDING ANY RULE TO THE CONTRARY, AFTER DENIAL OF A MOTION FOR RECONSIDERATION OF THE DECISION OF THE AGRARIAN REFORM ADJUDICATOR UNDER THE CARP LAW (R.A. 6657, AS AMENDED).[14]

Petitioner argues that: when it received the February 17, 2004 PARAD decision on February 24, 2004, it timely filed a motion for reconsideration thereof, on March 9, 2004; when it received the April 1, 2004 resolution of the PARAD denying its motion for reconsideration on April 6, 2004, it had a fresh fifteen (15)-day period within which to file the petition for judicial determination of just compensation before the RTC-SAC; from the moment that the petition was filed in the RTC-SAC, the PARAD lost its jurisdiction over the determination of just compensation; and the PARAD cannot anymore enforce or execute its February 17, 2004 decision.

In its Comment,[15] respondent argues that: the February 17, 2004 decision of the PARAD had become final and executory because the petition for judicial determination of just compensation was belatedly filed in the RTC-SAC under Section 11 of the DARAB Rules; when petitioner received the said decision on February 24, 2004, it took petitioner thirteen (13) days, or on March 9, 2004, to file a motion for reconsideration; when the said motion was denied, petitioner only had two (2) days left to file the petition for judicial determination of just compensation but failed to do so; the fresh fifteen-day period does not apply in administrative proceedings as stated in *Pajolino*

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[14] *Rollo*, p. 19.

[15] *Id.* at 85-97.

v. Tajala;[16] and petitioner is guilty of forum shopping for filing a petition for judicial determination of just compensation even though the PARAD decision was already final and executory.

In its Reply,[17] petitioner reiterated that: it had a fresh 15-day reglementary period after its motion for reconsideration was denied by the PARAD, hence, the petition for judicial determination of just compensation before the RTC-SAC was timely filed; the RTC-SAC's original and exclusive jurisdiction for determination of just compensation under R.A. No. 6657 must be acknowledged; and the February 17, 2004 decision of the PARAD cannot be executed.

The Court's Ruling

The Court finds the petition meritorious.

The petition for judicial determination of just compensation was timely filed

The valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies. The executive department or the legislature may make the initial determination, but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[18]

Accordingly, R.A. No. 6657 vests Special Agrarian Courts original and exclusive jurisdiction in the determination of just compensation under the said law, to wit:

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[16] 636 Phil. 313 (2010).

[17] *Rollo*, pp. 108-122.

[18] *Export Processing Zone Authority v. Judge Dulay*, 233 Phil. 313, 326 (1987).

SECTION 56. Special Agrarian Court. — The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court.

The Supreme Court may designate more branches to constitute such additional Special Agrarian Courts as may be necessary to cope with the number of agrarian cases in each province. In the designation, the Supreme Court shall give preference to the Regional Trial Courts which have been assigned to handle agrarian cases or whose presiding judges were former judges of the defunct Court of Agrarian Relations.

The Regional Trial Court (RTC) judges assigned to said courts shall exercise said special jurisdiction in addition to the regular jurisdiction of their respective courts.

The Special Agrarian Courts shall have the powers and prerogatives inherent in or belonging to the Regional Trial Courts.

SECTION 57. Special Jurisdiction. — The Special Agrarian Courts shall have **original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners**, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act (emphasis supplied)

Fittingly, as the taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State, the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function, which is vested with the courts and not with administrative agencies.[19] Consequently, the SAC can properly take cognizance of any petition for determination of just compensation.

Nevertheless, the DARAB Rules restrict the period wherein a party may avail of the judicial determination of just compensation before the RTC-SAC. Section 11 of the DARAB Rules states the remedy and the period to assail the preliminary determination of just compensation by PARAD, to wit:

SECTION 11. Land Valuation and Preliminary Determination and Payment of Just Compensation. — The decision of the Adjudicator

[19] *Land Bank of the Philippines v. Dalauta*, G.R. No. 190004, August 8, 2017; citing *Land Bank v. Sps. Montalvan, et al.*, 689 Phil. 641 (2012).

on land valuation and preliminary detem1ination and payment of just compensation shall not be appealable to the Board but **shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof**. Any party shall be entitled to only one motion for reconsideration. (emphasis supplied)

The conflict between R.A. No. 6657 and the DARAB Rules, however, is not of first impression.

In the recent case of *Land Bank of the Philippines v. Dalauta*[20] (*Dalauta*), the 15-day prescriptive period under Section 11 of the DARAB Rules was struck down because it undermined and unnecessarily impeded the original and exclusive jurisdiction of the RTC-SAC to determine just compensation under Section 57 of R.A. No. 6656. Further, it finally settled once and for all the period within which to file a petition for judicial determination of just compensation before the RTC-SAC.

In *Dalauta*, the preliminary determination of just compensation was referred to the PARAD. In its resolution dated December 4, 1995, the PARAD affirmed the valuation of the petitioner therein. On February 28, 2000, or four (4) years and three (3) months later, the respondent filed a petition for judicial determination of just compensation before the RTC-SAC. One of the issues that had to be resolved by the Court was whether a petition for judicial determination of just compensation in the RTC-SAC proscribes if not filed within the 15-day period under the DARAB Rules. The Court ruled:

> Since the determination of just compensation is a judicial function, **the Court must abandon** its ruling in *Veterans Bank, Martinez* and *Soriano* that a petition for determination of just compensation before the SAC shall be proscribed and adjudged dismissible if not filed within the 15-day period prescribed under the DARAB Rules.
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> To maintain the rulings would be incompatible and inconsistent with the legislative intent to vest the original and exclusive jurisdiction in the determination of just compensation with the SAC. Indeed, such rulings judicially reduced the SAC to merely an appellate court

[20] *Id*.

to review the administrative decisions of the DAR. This was never the intention of the Congress.

As earlier cited, in Section 57 of R.A. No. 6657, **Congress expressly granted the RTC, acting as SAC, the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. Only the legislature can recall that power. The DAR has no authority to qualify or undo that.** The Court's pronouncement in *Veterans Bank, Martinez, Soriano*, and *Limkaichong*, reconciling the power of the DAR and the SAC essentially barring any petition to the SAC for having been filed beyond the 15-day period provided in Section 11, Rule XIII of the DARAB Rules of Procedure, cannot be sustained. The DAR regulation simply has no statutory basis.

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While R.A. No. 6657 itself does not provide for a period within which a landowner can file a petition for the determination of just compensation before the SAC, it cannot be imprescriptible because the parties cannot be placed in limbo indefinitely. The Civil Code settles such conundrum. **Considering that the payment of just compensation is an obligation created by law, it should only be ten (10) years from the time the landowner received the notice of coverage.** The Constitution itself provides for the payment of just compensation in eminent domain cases. Under Article 1144, such actions must be brought within ten (10) years from the time the right of action accrues. Article 1144 reads:

> Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> (1) Upon a written contract;
>
> (2) Upon an obligation created by law;
>
> (3) Upon a judgment.

Nevertheless, any interruption or delay caused by the government like proceedings in the DAR should toll the running of the prescriptive period. The statute of limitations has been devised to operate against those who slept on their rights, but not against those desirous to act but cannot do so for causes beyond their control.

In this case, Dalauta received the Notice of Coverage on February 7, 1994. He then filed a petition for determination of just compensation

on February 28, 2000. Clearly, the filing date was well within the ten-year prescriptive period under Article 1141.[21] (emphases supplied)

Indeed, Section 57 of R.A. No. 6657 clearly vests on the RTC-SAC the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Section 57 and therefore would be void.[22] The DAR has no authority to qualify or undo the RTC-SAC's jurisdiction over the determination of just compensation under R.A. No. 6657. Thus, the 15-day reglementary period under Section 11, Rule XIII of the DARAB Rules cannot be sustained. The RTC-SAC cannot simply be reduced to an appellate court which reviews administrative decisions of the DAR within a short period to appeal.

It was also determined in *Dalauta* that the proper prescriptive period to file a petition for judicial determination of just compensation under R.A. No. 6657 is ten (10) years pursuant to Article 1144 (2) of the Civil Code. Considering that payment of just compensation is an obligation created by law, it is only proper that the ten (10)-year period start from the time the landowner receives the notice of coverage under the CARP. In addition, any interruption or delay caused by the government, like proceedings in the DAR, should toll the running of the prescriptive period. The statute of limitations has been devised to operate against those who slept on their rights, but not against those desirous to act but cannot do so for causes beyond their control.[23]

In this case, respondent voluntarily offered for sale its twelve (12) parcels of land in November 2001. Accordingly, the 10-year prescriptive period began at that moment because respondent

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[21] *Id*.

[22] *Land Bank of the Philippines v. Sps. Montalvan, et al.*, supra note 19 at 652.

[23] *Coderias v. Estate of Juan Chioco*, 712 Phil. 354, 370 (2013).

knew that its lands would be covered by the CARP. Thus, the petition for judicial determination of just compensation filed on April 12, 2004 before the RTC-SAC, which was even tolled by the proceedings before the PARAD, was squarely and timely filed within the 10-year prescriptive period.

Consequently, as the fifteen (15)-day reglementary period under Section 11, Rule XIII of the DARAB Rules had been set aside, it is now immaterial to determine whether a fresh fifteen (15)-day period should be given to a party when the PARAD denies its motion for reconsideration to file a petition for judicial determination of just compensation. To recapitulate, the correct period to file a petition for judicial determination of just compensation under R.A. No. 6657 before the RTC-SAC is ten (10) years pursuant to Article 1144 (2) of the Civil Code.

When the petition was filed before the RTC-SAC, the proceedings before the PARAD had been completed

It was also stated in *Dalauta* that a landowner should withdraw his case with the DAR before filing his petition before the RTC-SAC and manifest the fact of withdrawal by alleging it in the petition itself. Failure to do so would be a ground for a motion to suspend judicial proceedings until the administrative proceedings are terminated.

Here, when the PARAD denied its motion for reconsideration on the preliminary determination of just compensation, petitioner did not anymore appeal before the DARAB. Instead, it timely filed a petition for judicial determination of just compensation before the RTC-SAC. Thus, the administrative proceedings on the determination of just compensation were terminated.

It was only when the PARAD ordered the execution of its decision and issued the writ of execution, even though there was a timely petition for judicial determination of just compensation before the RTC-SAC, that petitioner sought refuge from the DARAB. Evidently, petitioner's cause of action is essentially to stop the enforcement of the decision of the PARAD because of a pending petition before the RTC-SAC.

In fine, the PARAD cannot enforce its February 17, 2004 decision because there is still a pending judicial determination of just compensation before the courts. It is only when the said judicial determination attains finality that the award of just compensation may be executed.

WHEREFORE, the petition is **GRANTED**. The April 26, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 98113 is hereby **REVERSED** and **SET ASIDE**. The Provincial Agrarian Reform Adjudicator of Albay, Branch 1 shall not enforce its February 17, 2004 Decision until after the finality of the judicial determination of just compensation.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 224290. June 11, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VICENTE SIPIN *y* DE CASTRO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT No. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— For a successful prosecution of an offense for illegal sale of dangerous drugs, on the one hand, the following essential elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor. The delivery of the illicit drug to the *poseur*-buyer and the

receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti,* as evidence. In prosecutions for illegal possession of dangerous drugs, on the other hand, it must be shown that (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug. The existence of the drug is the very *corpus delicti* of the crime of illegal possession of dangerous drugs and, thus, a condition *sine qua non* for conviction.

2. ID.; ID.; CHAIN OF CUSTODY RULE; DISCUSSED.— Since the *corpus delicti* in dangerous drugs cases constitutes the dangerous drugs itself, proof beyond reasonable doubt that the seized item is the very same object tested to be positive for dangerous drugs and presented in court as evidence is essential in every criminal prosecution under R.A. No. 9165. To this end, the prosecution must establish the unbroken chain of custody of the seized items, thus: The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. Moreover, as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.

3. ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY; SERIOUS INCONSISTENCIES IN THE TESTIMONIES

OF THE POLICE OFFICERS BROKE THE CHAIN OF CUSTODY OF THE DANGEROUS DRUGS FROM THE TIME THEY WERE SEIZED FROM APPELLANT UNTIL THEY WERE PRESENTED IN COURT, THEREBY UNDERMINING THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED EVIDENCE.— The links that must be established in the chain of custody in a buy-bust situation, are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turn-over of the illegal drug seized to the investigating officer; (3) the turn-over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turn-over and submission of the illegal drug from the forensic chemist to the court. Here, the prosecution failed to establish beyond reasonable doubt the third link in the chain of custody. As aptly pointed out by the PAO, there is an unreconciled conflict between the testimonies of PO1 Diocena and PO1 Gorospe as to who actually gave PO1 Diocena the specimens before they were brought to the crime laboratory for examination. Investigating Officer PO1 Gorospe testified that he gave PO1 Diocena the specimens for laboratory examination, whereas PO1 Diocena stated that it was PO1 Raagas who gave him the specimens for delivery to the crime laboratory. x x x. Serious inconsistencies in the testimonies of the police officers also broke the chain of custody of the dangerous drugs from the time they were seized from appellant until they were presented in court, thereby undermining the integrity and evidentiary value of the seized evidence.

4. **ID.; ID.; SECTION 21, ARTICLE II THEREOF; MANDATORY PROCEDURE IN THE CUSTODY AND DISPOSITION OF CONFISCATED DANGEROUS DRUGS; INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS; THREE -WITNESS RULE.—** The failure of the prosecution to establish an unbroken chain of custody was compounded by the police officers' non-compliance with the procedure for the custody and disposition of seized dangerous drugs as set forth in Section 21(1), Article II of R.A. No. 9165 x x x. 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 is not amiss to state 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 a 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."

5. 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. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

6. ID.; ID.; ID.; ID.; JUSTIFIABLE REASONS FOR NON-COMPLIANCE WITH THE THREE-WITNESS RULE.—

As correctly noted by the trial court, the police officers testified that there was an inventory prepared by PO1 Gorospe at the police station, but failed to submit in evidence the said document, and that they did not have any *barangay* official or media person with them during the operation. Even so, the prosecution proffered no justifiable reason why the police officers dispensed with the requirements of taking of photograph and conduct of physical inventory of the accused and the seized items in the presence of representatives from the DOJ and the media, and an elected public official, not just at the crime scene but also at the police station. The prosecution never alleged and proved that the presence of 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 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) **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.**

7. ID.; ID.; ID.; ID.; THE 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, AS THE PRESUMPTION MAY ONLY ARISE WHEN THERE IS A SHOWING THAT THE APPREHENDING OFFICERS/ TEAM FOLLOWED THE REQUIREMENTS OF SECTION 21 OR WHEN THE SAVING CLAUSE FOUND IN THE IMPLEMENTING RULES AND REGULATIONS IS SUCCESSFULLY TRIGGERED.— 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 officers/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.

8. **ID.; ID.; ID.; ID.; NON COMPLIANCE WITH THE POLICE INVESTIGATION PROCEDURES CALLS FOR ADMINISTRATIVE SANCTIONS BUT 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.

9. **ID.; ID.; ID.; ID.; APPELLANT MUST BE ACQUITTED OF THE CHARGE OF ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS WHERE THE PROSECUTION FAILED TO ESTABLISH BEYOND REASONABLE DOUBT THE UNBROKEN CHAIN OF CUSTODY OF THE DRUGS SEIZED FROM APPELLANT, AND TO PROVE AS A FACT ANY JUSTIFIABLE REASON FOR NON-COMPLIANCE WITH SECTION 21**

OF R.A. NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.— [T]he burden of proving the guilt of an accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt becomes a matter of right, irrespective of the reputation of the accused who enjoys the right to be presumed innocent until the contrary is shown. For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from appellant, and to prove as a fact any justifiable reason for non-compliance with Section 21 of R.A. No. 9165 and its IRR, appellant must be acquitted of the crimes charged.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Court of Appeals (*CA*) Decision[1] dated April 16, 2015 in CA-G.R. CR-HC No. 05641, which affirmed the judgment[2] of the Regional Trial Court of Binangonan, Rizal, Branch 70, (*RTC*) finding accused-appellant (*appellant*) Vicente Sipin *y* De Castro guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act No. (*R.A.*) 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, for illegal sale and illegal possession of dangerous drugs, respectively, and sentencing him as follows:

1. In Criminal Case No. 07-476, to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand

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[1] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Andres B. Reyes, Jr. (now a member of this Court) and Ricardo R. Rosario, concurring; CA *rollo*, pp. 157-168.

[2] Penned by Judge Ma. Conchita Lucero-De Mesa; *id*. at 18-37.

Pesos (₱500,000.00), without subsidiary imprisonment in case of insolvency.

2. In Criminal Case No. 07-477, to suffer imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00), without subsidiary imprisonment in case of insolvency.

The facts are as follows:

Appellant Vicente Sipin *y* De Castro was charged with illegal sale and illegal possession of dangerous drugs, as follows:

Criminal Case No. 07-476

That, on or about the 11th day of August, 2007, in the Municipality of Binangonan, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly possess and have in his custody and containing 0.02 gram of white crystalline substance contained in one (1) heat sealed transparent plastic sachet, which was found positive to the test for Methylamphetamine hydrochloride also known as "shabu", a dangerous drug, in violation of the above-cited law.[3]

Criminal Case No. 07-477

That, on or about the 11th day of August, 2007, in the Municipality of Binangonan, 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 sell and give away to a poseur-buyer one (1) heat sealed transparent plastic sachet containing 0.02 gram of white crystalline substance, which was found positive to the test for Methylamphetamine hydrochloride also known as "shabu", a dangerous drug, in consideration of the amount of Php100.00, in violation of the above-cited law.[4]

Upon arraignment, appellant, assisted by his counsel, pleaded not guilty to both charges. Trial ensued with the prosecution

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[3] Records (Criminal Case No. 07-476), p. 1.

[4] Records (Criminal Case No. 07-477), p. 1.

presenting as witnesses the following members of Binangonan, Rizal, Philippine National Police Station: (1) PO1 Arnel Diocena, the arresting officer; (2) PO1 Richard Raagas, the *poseur* buyer, (3) PO1 Dennis Gorospe, the back-up and investing officer; and (4) Forensic Chemist P/Insp. Mark Ballesteros.

According to the prosecution witnesses, on August 11, 2007 at about 12:00 midnight, a confidential asset arrived at the Binangonan Police Station with an information that a certain *Enteng* was selling shabu at *Barangay* Calumpang. The information was recorded in the blotter and reported to the chief, P/Supt. Herminio Cantaco, who then ordered the formation of a buy-bust team and the conduct of an operation. A *poseur* money was marked with the initials "GAD" by team leader SPO3 Gerardo Delos Reyes, and a pre-operational coordination was made with the Provincial Anti-Illegal Drugs Task Force by PO1 Gorospe.

Upon arrival aboard a motorcycle at Antazo Street, *Barangay* Calumpang, Binangonan, Rizal, PO1 Raagas and the asset went into the alley, while PO1 Diocena stayed around 3 to 6 meters away from where he could see everything. SPO3 Delos Reyes stayed in the police vehicle, while PO1 Gorospe who served as back-up was around 20 meters away. Alias *Enteng* then approached the asset and PO1 Raagas, and asked if they would buy or "i-score." When PO1 Raagas replied that he would, *Enteng* pulled out something out of his pocket and handed it to PO1 Raagas, who in turn gave *Enteng* the marked 100 bill. Thereafter, PO1 Raagas revealed himself as a police officer and removed his hat as pre-arranged signal. Upon seeing the signal, PO1 Diocena approached, ordered *Enteng* to take out the contents of his pocket, placed him under arrest, and read him his rights. PO1 Diocena confiscated the marked money and the plastic containing shabu, then turned them over to PO1 Raagas who marked the item he bought and the other plastic container confiscated by PO1 Diocena with the markings "VDS-1" and "VDS-2" in the presence of the accused, PO1 Diocena and PO1 Gorospe.

From the place of the incident to the police station, PO1 Raagas took custody and hand-carried the specimens wrapped

in a bond paper, then turned them over to PO1 Gorospe, who prepared the booking sheet, the arrest report and the request for laboratory examination of the specimens. PO1 Gorospe also took pictures of *Enteng* and the specimens in the presence of PO1 Raagas and PO1 Diocena. The specimens were then given to PO1 Diocena who brought them to the crime laboratory. P/Insp. Ballesteros personally received the request for laboratory examination and the subject specimens, which later tested positive for shabu, a dangerous drug. Results of the examination were reflected in the Initial Laboratory Report and the Chemistry/ Physical Science Report. P/Insp. Ballesteros marked the sachet with marking "VDS-1" as "A" and the sachet with marking "VDS-2" as "B" before turning them over to the evidence custodian of the laboratory.

For the defense, only appellant testified. At around 10:00 p.m. of August 11, 2007, appellant was on his way home from his sister's house when he met Rolly who was an asset of the "*munisipyo*". When Rolly asked him to send a text message when he sees the notorious group of Jun Bisaya who frequents his place, appellant refused to cooperate because his life and those of his loved ones would be in danger. Rolly got angry and told him, "*Enteng alam mo naman masama akong magalit, baka kung ano lang mangyari sa iyo."* Rolly then told appellant to just forget what they have talked about, and just accompany him to the person they were talking about. When appellant accommodated Rolly's request, in less than 20 minutes, he saw 2 male persons approaching the place where he and Rolly were talking. Rolly then said *"Sir, ayaw pong makipagtulungan sa atin.*" After Rolly held him, the person, who later turned out to be a policeman, placed his arm on appellant's shoulder then told him that he would like to talk him at the municipal building. Appellant went with the men peacefully, thinking that they would ask about Jun Bisaya. The three men tried to convince appellant to cooperate with them and told him to send a text message when he sees Jun Bisaya. Out of fear, appellant still refused to cooperate. The persons, who happened to be policemen, got angry and ordered that he be put in jail. They also brought appellant to Pritil for medical examination, and returned him

to the police station where he was punched and forced to point to a shabu.

After trial, the court found appellant guilty beyond reasonable doubt of illegal sale of 0.02 gram of shabu and illegal possession of 0.02 gram of shabu, and sentenced him to suffer life imprisonment, plus a fine of ₱500,000.00 and imprisonment from 12 years and 1 day to 14 years and 8 months, and to pay the fine of ₱300,000.00, respectively.

The trial court ruled that the clear and positive testimony of PO1 Raagas, corroborated by PO1 Diocena, is more than sufficient to prove that an illegal sale of shabu took place. PO1 Raagas was able to give a clear and consistent account that an illegal drug was sold to him and another sachet was found in possession of appellant after his arrest. The court found no reason not to give full faith and credence to the testimonies of the police officers. It also upheld the presumption of regularity in the performance of official duty in favor of the police officers, since appellant failed to present clear and convincing evidence to overturn such presumption.

The trial court found no evidence to prove his defenses of denial and frame-up, and rejected appellant's claim that the police officers merely got mad at him for his refusal to send a text message in the event that he sees Jun Bisaya's notorious group. The court also noted that no relative of appellant came forward to testify, even as he supposedly wrote his siblings that he was in jail, and that they should keep such fact a secret from their parents who were sick. As regards the non-presentation of the police asset, the court held that it was no longer necessary because it would merely corroborate the testimony of PO1 Raagas who already detailed the circumstances surrounding the illegal sale based on his personal knowledge as *poseur*-buyer during the buy-bust operation.

Anent compliance with Section 21 of R.A. No. 9165, the trial court noted that the police officers testified that there was an inventory prepared by PO1 Gorospe at the police station but failed to submit it in evidence, and that they did not have any *barangay* official or media person with them during the

operation. Be that as it may, the trial court held that such non-compliance is not fatal to the prosecution's case because its evidence shows that the integrity and evidentiary value of the specimens were safeguarded. In particular, the specimens were immediately marked at the place of the incident, the chain of custody was preserved, and the evidence strongly prove beyond doubt that what was examined at the crime laboratory and found positive for shabu were the same specimens bought from appellant and found in his possession.

Aggrieved by the RTC Decision, appellant, through the Public Attorney's Office (*PAO*), filed an appeal.

The PAO argued that the trial court erred in giving full weight and credence to the testimonies of the prosecution witnesses, relying on the presumption of regularity in the performance of official duty in favor of the police officers, and on the appellant's failure to impute ill motive on them. The PAO also pointed out the conflicting testimonies of PO1 Diocena and PO1 Gorospe as to who actually gave PO1 Diocena the specimens before they were brought to the crime laboratory. The PAO further faulted PO1 Diocena for failing to remember and specifically name P/Insp. Ballesteros as the "*officer-on-duty*" who actually received the specimens at the crime laboratory, as well as the prosecution for failure to demonstrate the precautionary measures undertaken by the person who had temporary custody of the specimens. The PAO likewise stressed that no inventory containing the signature of the appellant, a representative from the media, any elected public official and a representative of the DOJ was presented and identified in court by the prosecution witnesses, and that no justifiable reason was offered to excuse non-compliance with Section 21(a) of R.A. No. 9165.

The Office of the Solicitor General (*OSG*) argued that the testimonies of PO1 Raagas and PO1 Gorospe complimented each other, and showed that the latter was actually the one who turned over the plastic sachets of shabu to PO1 Diocena, and that the handling of the sachets were always accounted for every step of the way. The OSG also asserted that PO1 Diocena's testimony that the specimens were received by a "*person-in-*

charge," does not contradict the testimony of P/Insp. Ballesteros that he was the one who actually received the specimens at the crime laboratory, as such fact was corroborated by the stamp receipt on the request for chemistry evaluation. Assuming that the chain of custody of the seized drugs was not perfectly observed, the OSG stressed that what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items. Thus, the procedural infirmities concerning the lack of DOJ, *Barangay* and media representatives neither affect the prosecution of the case, nor render appellant's arrest illegal or the items seized from him inadmissible.

The Court of Appeals dismissed the appeal for lack of merit, and affirmed the RTC Decision. The CA agreed with the trial court that the integrity of the seized items were duly preserved because the prosecution has presented and offered in court the key witnesses who had established the chain of custody of the seized drugs from their confiscation from appellant, to their marking and forwarding to the crime laboratory for examination.

Dissatisfied with the CA Decision, the PAO filed this appeal. The PAO and the OSG manifested that they are dispensing with the filing of supplemental briefs to avoid repetition of arguments raised before the CA.

The Court finds the appeal to be impressed with merit, and resolves to acquit appellant of the charges of illegal possession and illegal sale of dangerous drugs for failure to establish the unbroken chain of custody of said drugs, and to proffer any justifiable ground for the non-compliance with Section 21 of R.A. No. 9165.

For a successful prosecution of an offense for illegal sale of dangerous drugs, on the one hand, the following essential elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[5] The delivery

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[5] *People v. Rusgie Garrucho y Serrano,* G.R. No. 220449, July 4, 2016, citing *People v. Dalawis,* 772 Phil. 406, 419-420 (2015).

of the illicit drug to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. What is material, therefore, is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti,* as evidence.[6] In prosecutions for illegal possession of dangerous drugs, on the other hand, it must be shown that (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.[7] The existence of the drug is the very *corpus delicti* of the crime of illegal possession of dangerous drugs and, thus, a condition *sine qua non* for conviction.[8]

Since the *corpus delicti* in dangerous drugs cases constitutes the dangerous drugs itself,[9] proof beyond reasonable doubt that the seized item is the very same object tested to be positive for dangerous drugs and presented in court as evidence is essential in every criminal prosecution under R.A. No. 9165. To this end, the prosecution must establish the unbroken chain of custody of the seized items, thus:

> The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused until the time they are presented in court. Moreover, as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened

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[6] *Id.,* citing *People of the Philippines v. Rosauro,* 754 Phil. 346, 353-354 (2015).

[7] *Id.,* citing *Miclat, Jr. v. People*, 672 Phil. 191, 209 (2011).

[8] *Id., People v. Martinez*, 652 Phil 347, 369 (2010).

[9] *People v. Quebral*, 621 Phil. 226, 233 (2009).

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.[10]

The links that must be established in the chain of custody in a buy-bust situation, are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turn-over of the illegal drug seized to the investigating officer; (3) the turn-over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turn-over and submission of the illegal drug from the forensic chemist to the court.[11]

Here, the prosecution failed to establish beyond reasonable doubt the third link in the chain of custody.

As aptly pointed out by the PAO, there is an unreconciled conflict between the testimonies of PO1 Diocena and PO1 Gorospe as to who actually gave PO1 Diocena the specimens before they were brought to the crime laboratory for examination. Investigating Officer PO1 Gorospe testified that he gave PO1 Diocena the specimens for laboratory examination, whereas PO1 Diocena stated that it was PO1 Raagas who gave him the specimens for delivery to the crime laboratory.

[PROSECUTOR PACURIBOT]
Q. What else did you do then after you brought the accused for medical examination to Pritil?

[PO1 GOROSPE]
A. I gave the specimen to PO1 Diocena and then he brought it to the crime lab.[12]

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[10] *People v. Enad,* 780 Phil. 346, 358-359 (2016), citing *People v. Dalawis*, *supra,* and *People v. Flores*, 765 Phil. 535, 541-542 (2015).

[11] *People v. Amaro,* G.R. No. 207517, June 1, 2016, and *People v. Mammad, et al., 769* Phil. 782, 790 (2015).

[12] TSN, March 11, 2010, p. 6.

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[COURT]

Q. But you stated earlier that you were the one who delivered them to the crime laboratory. So, how did it come to be in your possession when according to you it was Raagas who had possession of the specimen while on the way to the police station?

[PO1 DIOCENA]

A. He carried the items from the place of the incident to the police station because we would prepare a request in the crime laboratory at Camp Crame.

Q. So, how did it come to be in your possession?
A. After the request was made, I was the one who personally delivered them.

Q. How did the specimen get to be in your possession?
A. It was given to me by PO1 Raagas.

Q. Where? Where did he give it to you?
A. In the police station, ma'am.

Q. While the request was being prepared, who had custody of the specimen?
A. He was the one in possession.

Q. Raagas. So, at what point did he transfer it to you?

A. *Bago po maibigay sa akin iyon, pinicturean muna ng investigator namin.* After the request was made. Your Honor.

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Q. Who was the investigator who took the picture?
A. PO1 Dennis Gorospe, ma'am.

Q. So, at what point did the specimen come to be in your possession because when the picture was taken where was the specimen.
A. It was with PO1 Raagas, your Honor. It was placed on a piece of paper, we took the pictures and then they were placed inside the plastic bag.

Q. After it was placed in the plastic bag, what happened to the specimen?
A. We brought it to the crime laboratory.

Q. How did it come to be with you, did you pick it up?
A. He gave it to me.

Q. Who gave it to you?
A. PO1 Raagas.

Q. Who picked it up from the table?
A. He got it, ma'am.

Q. And then, he gave it to you?
A. Yes, ma'am.[13]

Serious inconsistencies in the testimonies of the police officers also broke the chain of custody of the dangerous drugs from the time they were seized from appellant until they were presented in court, thereby undermining the integrity and evidentiary value of the seized evidence.

First, it is not clear whether it was PO1 Diocena or PO1 Raagas who confiscated the other sachet of suspected *shabu* found in possession of appellant. PO1 Diocena testified that after ordering appellant to empty his pocket, he confiscated the marked money and the said sachet, then gave them to PO1 Raagas for marking. In contrast, PO1 Raagas stated that he was the only one who recovered both plastic sachets from appellant.

[PROSECUTOR PACURIBOT]
Q. Now Mr. Witness, aside from the money and the one (1) piece of sachet of suspected shabu was there anything else that was recovered from the said person?

[PO1 DIOCENA]
A. Aside from what I had confiscated, Officer Raagas also purchased something from him.

Q. What happened to that thing that was purchased by Officer Raagas?
A. He placed his initials on its markings.

Q. What about the sachet that you recovered?
A. Only one (1) sachet. I gave it to him and it was also marked.

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[13] TSN, May 22, 2008, pp. 14-15.

Q. So, it was PO1 Raagas who marked it?
A. Yes, ma'am.[14]

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[PROSECUTOR PACURIBOT]
Q. At the time Diocena asked him [accused] to put out the content of his pocket, where were you?

[PO1 RAAGAS]
A. I was there right beside him.

Q. And then what happened?
A. I took the item and then Diocena read his rights.

Q. What item did you take?
A. The one in the plastic sachet.

Q. How many plastic sachet?
A. Only one (1), ma'am.

Q. From whom did you get the plastic sachet?
A. From Enteng, ma'am.

Q. You said Diocena asked him to take out the content of his pocket, did he comply?
A. Yes, ma'am.

Q. So, how did you take the plastic sachet from him?
A. I took it from him, from his hand.

Q. Then, after that, what happened?
A. I asked what his name was.

Q. What was the name given to you?
A. Vicente de Castro Sipin, then I placed marking on the plastic sachet.

Q. What marking did you place?
A. I placed his initial on it, ma'am , VDS.

Q. Then after the marking, what else happened?
A. We brought him to the police station.

Q. Who was in custody of the specimen that you got?
A. Gorospe, ma'am.

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[14] *Id.* at 9-10.

Q. How many specimens did you get?
A. Two (2) ma'am.

Q. You said a while ago you only took one (1), so where [did] the other come from?
A. The one we had purchased.

Q. So, who recovered the other one from the said person?
A. I am the one, ma'am.

Q. How about the other specimen?
A. Ma'am, I was also the one?

Q. So you were the only one who recovered?
A. Yes, ma'am, I turned it over to Gorospe.[15]

Second, it is doubtful whether a commotion took place after appellant was arrested, which supposedly prevented the police officers from making an inventory and taking pictures of the seized evidence. PO1 Raagas claimed that nobody else was present, and that appellant did not call the attention of anyone when he was arrested, but PO1 Gorospe insisted that there was a commotion caused by appellant's relatives.

[DEFENSE COUNSEL ATTY. MA. VICTORIA LIRIO]
Q. Why did you not take pictures on the said place of the incident instead of doing that in the police station?

[PO1 GOROSPE]
A. Because a commotion have already broken out in the vicinity perpetrated by his relatives. They were already beside us so we had to bring him to the police station.[16]

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[ATTY. LIRIO]

Q. When these marked allegedly received items were made, were there any other independent persons aside from your team and this alias Enteng, Mr. Witness?

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[15] TSN, May 21, 2009, pp. 5-7.

[16] TSN, March 11, 2010, p. 9.

[PO1 RAAGAS]
A. Nobody else, ma'am. We were the only ones, sir.

Q. What was the reaction then of the accused, at that time, Mr. Witness?
A. He had no reaction, ma'am.

Q. You mentioned a while ago that he was in front of his house. Did your operation not call the attention of his housemates or any other persons, at that time?
A. No, ma'am.[17]

Third, a crucial question looms over the safekeeping of the seized items which were placed in a container on the way back to the police station. PO1 Diocena testified that PO1 Raagas was in custody of recovered items contained in a stapled plastic container, but PO1 Raagas said that the items were placed in a mere bond paper.

[DEFENSE COUNSEL Atty. Lirio]
Q. The recovered items, Mr. Witness, who was in custody of the recovered items, Mr. Witness?

[PO1 Diocena]
A. PO1 Raagas, Ma'am.

Q. Would you know whether the said articles were sealed or contained in a sealed container?
A. In plastic, ma'am.

Q. But it was not sealed?
A. It was stapled, ma'am.[18]

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[DEFENSE COUNSEL ATTY. LIRIO]
Q. How did you carry the items? You describe how you brought it to the police station.

[PO1 Raagas]
A. I placed it inside a bond paper. I wrapped it.

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[17] TSN, August 13, 2009, p. 9.

[18] TSN, February 19, 2009, pp. 8-9.

Q. How many items did you put inside the bond paper?
A. Two (2) ma'am.

Q. After you put it inside the folded bond paper, what did you do with the bond paper?
A. I turned it over to Gorospe, Your Honor.[19]

Fourth, the records do not indicate that an inventory was identified and formally offered in evidence, and the prosecution witnesses could not agree on whether there was an inventory of the items seized from appellant. PO1 Diocena claimed that there was none, but PO1 Raagas said that PO1 Gorospe prepared one at the police station. PO1 Gorospe added that he did not give an inventory despite the presence of appellant's relatives.

[DEFENSE COUNSEL ATTY. LIRIO]
Q. By the way, Mr. Witness, did you make any inventory of the recovered specimens as well as the marked money?

[PO1 DIOCENA]
A. None, ma'am.[20]

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[PROSECUTOR PACURIBOT]
Q. And then you mentioned a while ago that Officer Gorospe made an inventory of the specimen. How did you do that?

[PO1 RAAGAS]
A. I was at the police station.

Q. When you said that Officer made an inventory of the specimen, were you present at the time that the picture was taken?
A. I was present then.

Q. And it was Officer Gorospe who took that picture?
A. Yes, ma'am.

Q. I am showing to you this picture marked as Exhibit "I", is this the picture when there was an inventory of the items that you mentioned?

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[19] TSN, August 13, 2009, p. 11.

[20] TSN, February 19, 2009, p. 8.

A. Yes, ma'am.[21]

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[DEFENSE COUNSEL ATTY. LIRIO]
Q. Why did you not take pictures on the said place of the incident instead of doing that in the police station?

[PO1 GOROSPE]
A. Because a commotion ha[s] already broken out in the vicinity perpetrated by his [accused'] relatives. They were already beside us so we had to bring him to the police station.

Q. Having said that, Mr. Witness, your team failed, given the fact that there were relatives of the accused present thereat, your team failed to give an inventory or copies of the items allegedly recovered from alias "Enteng"?
A. Yes, ma'am.

Q. Despite the presence of the relatives you failed to give them a copy of the alleged items recovered.
Q. Yes, ma'am.[22]

The failure of the prosecution to establish an unbroken chain of custody was compounded by the police officers' non-compliance with the procedure for the custody and disposition of seized dangerous drugs as set forth in Section 21(1), Article II of R.A. No. 9165, which 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

[21] TSN, August 13, 2009, p. 12.

[22] TSN, March 11, 2010, p. 9.

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;

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:[23]

(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 is not amiss to state 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.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded

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[23] *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

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."[24] 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."[25]

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."[26] 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.
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[24] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[25] *Id.*

[26] *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.[27]

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

[27] *Id.* at 349-350.

given a 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."[28]

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.[29] 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.[30] Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.[31]

As correctly noted by the trial court, the police officers testified that there was an inventory prepared by PO1 Gorospe at the police station, but failed to submit in evidence the said document, and that they did not have any *barangay* official or media person with them during the operation.[32] Even so, the prosecution preferred no justifiable reason why the police officers dispensed with the requirements of taking of photograph and conduct of physical inventory of the accused and the seized items in the

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[28] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

[29] *People v. Miranda, supra; People v. Paz,* G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

[30] *People v. Saragena,* G.R. No. 210677, August 23, 2017.

[31] *Id.*

[32] Records, pp. 181-182; Decision dated July 5, 2011, pp. 18-19.

presence of representatives from the DOJ and the media, and an elected public official, not just at the crime scene but also at the police station.

The prosecution never alleged and proved that the presence of 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 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**[33] **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

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[33] 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.

themselves are affirmative proofs of irregularity.[34] The presumption may only arise when there is a showing that the apprehending officers/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.[35]

At this point, it is not amiss for the *ponente* to express his 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, the *ponente* agrees with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[36] 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.

The *ponente* subscribes 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.

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[34] *People v. Ramirez, supra.*

[35] *People v. Gajo*, G.R. No. 217026, January 22, 2018.

[36] G.R. No. 202206, March 5, 2018.

The *ponente* further submits 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.

At any rate, the burden of proving the guilt of an accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.[37] When moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt becomes a matter of right, irrespective of the reputation of the accused who enjoys the right to be presumed innocent until the contrary is shown.[38] For failure of the prosecution to establish beyond reasonable doubt the

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[37] *People v. T/Sgt. Angus, Jr.*, 640 Phil. 552, 566 (2010).

[38] *Zafra, et al. v. People*, 686 Phil. 1095, 1109 (2012).

unbroken chain of custody of the drugs seized from appellant, and to prove as a fact any justifiable reason for non-compliance with Section 21 of R.A. No. 9165 and its IRR, appellant must be acquitted of the crimes charged.

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated April 16, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05641, which affirmed the judgment of the Regional Trial Court of Binangonan, Rizal, Branch 70, in Criminal Cases Nos. 07-476 and 07-477 for violation of Sections 5 and 11, Article II of R.A. No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002,* respectively, is **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Vicente Sipin *y* De Castro is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

Let copies of this Decision be furnished the Department of Justice (DOJ) and the Philippine National Police (PNP) for their information and guidance.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Leonardo-de Castro, Perlas- Bernabe, and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 224327. June 11, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. **TAXATION; EXPANDED JURISDICTION OF THE COURT OF TAX APPEALS (REPUBLIC ACT No. 9282); EXCLUSIVE APPELLATE JURISDICTION; THE COURT OF TAX APPEALS HAS JURISDICTION OVER CASES ASKING FOR THE CANCELLATION AND WITHDRAWAL OF A WARRANT OF DISTRAINT AND/OR LEVY.—** [T]he CTA did not err in its ruling that it has jurisdiction over cases asking for the cancellation and withdrawal of a warrant of distraint and/or levy as provided under Section 7 of Republic Act (*R.A.*) No. 9282, thus: Sec. 7 Jurisdiction. – The CTA shall exercise: a. Exclusive appellate jurisdiction to review by appeal, as herein provided: 1. x x x 2. Inaction by the Commissioner of the Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial.

2. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FINDINGS OF FACT BY THE COURT OF TAX APPEALS (CTA) ARE ACCORDED THE HIGHEST RESPECT, AND THESE FINDINGS OF FACT CAN ONLY BE DISTURBED ON APPEAL IF THEY ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE OR THERE IS A SHOWING OF GROSS ERROR OR ABUSE ON THE PART OF THE CTA.—** It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority. We thus accord the findings of fact by the CTA with

the highest respect. These findings of facts can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect. Nevertheless, the factual findings of the CTA are supported by substantial evidence.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE; PROTESTING OF ASSESSMENT; THE RELEASE, MAILING OR SENDING OF THE NOTICE OF ASSESSMENT AND THE RECEIPT THEREOF BY THE TAXPAYER MUST BE CLEARLY AND SATISFACTORILY PROVED.— The CTA was correct in ruling that petitioner failed to prove that it sent a notice of assessment and that it was received by respondent x x x. In the case of *Nava v. Commissioner of Internal Revenue*, this Court stressed on the importance of proving the release, mailing or sending of the notice. While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration x x x, this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense. Thus, the failure of petitioner to prove the receipt of the assessment by respondent would necessarily lead to the conclusion that no assessment was issued.

4. ID.; ID.; ID.; A WAIVER OF THE STATUTE OF LIMITATIONS, BEING A DEROGATION OF THE TAXPAYER'S RIGHT TO SECURITY AGAINST PROLONGED AND UNSCRUPULOUS INVESTIGATIONS, MUST BE CAREFULLY AND STRICTLY CONSTRUED; AN INVALID WAIVER OF THE STATUTE OF LIMITATIONS WILL NOT OPERATE TO TOLL OR EXTEND THE PERIOD OF PRESCRIPTION.— As to the contention of petitioner that through the principle of estoppel, respondent is not allowed to raise the defense of prescription against the efforts of the government to collect the tax assessed against it, such is misplaced. Its argument that respondent's belated assertions relative to the alleged defects and flaws in

the waivers it signed in favor of the government should not be given merit, is also amiss. Petitioner cannot implore the doctrine of estoppel just to compensate its failure to follow the proper procedure. As aptly ruled by the CTA: It is well established that issues raised for the first time on appeal are barred by estoppel. However, in the leading case of *Commissioner of Internal Revenue v. Kudos Metal Corporation*, the Supreme Court held that: x x x. Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. x x x Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed. Applying the said ruling in the case at bench, BPI is not estopped from raising the invalidity of the subject Waivers as the BIR in this case caused the defects thereof. As such, the invalid Waivers did not operate to toll or extend the period of prescription.

5. **ID.; ID.; ID.; A TAXPAYER IS NOT LIABLE TO PAY THE DEFICIENCY TAX ASSESSMENT WHERE THE RIGHT OF THE COMMISSIONER OF INTERNAL REVENUE TO ASSESS THE TAXPAYER, AS WELL AS THE PERIOD OF TAX COLLECTION, HAD ALREADY PRESCRIBED; ALTHOUGH TAXES ARE THE LIFEBLOOD OF THE GOVERNMENT, THEIR ASSESSMENT AND COLLECTION SHOULD BE MADE IN ACCORDANCE WITH LAW AS ANY ARBITRARINESS WILL NEGATE THE VERY REASON FOR GOVERNMENT ITSELF.—** [I]t is clear that the right of petitioner to assess respondent has already prescribed and respondent is not liable to pay the deficiency tax assessment. The period of collection has also prescribed. It must be remembered that [T]he law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence. Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Du-Baladad and Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's resolution is the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Civil Procedure assailing the Decision[2] dated September 16, 2015 and Resolution[3] dated April 21, 2016 of the Court of Tax Appeals (*CTA*) *En Banc* in CTA EB No. 1173 (CTA CASE No. 8350) on petitioner Commissioner of Internal Revenue's (*CIR*) tax assessment against respondent Bank of the Philippine Islands (*BPI*).

The facts follow.

Citytrust Banking Corporation (*CBC*) filed its Annual Income Tax Returns for its Regular Banking Unit, and Foreign Currency Deposit Unit, for taxable year 1986 on April 15, 1987.

Thereafter, on August 11, 1989, July 12, 1990 and November 8, 1990, CBC executed Waivers of the Statute of Limitations under the National Internal Revenue Code (*NIRC*).

On March 7, 1991, petitioner CIR issued a Pre-Assessment Notice (*PAN*) against CBC for deficiency taxes, among which is for deficiency Income Tax for taxable year 1986 in the total amount of ₱19,202,589.97. The counsel for CBC filed its protest against the PAN on April 22, 1991.

Petitioner, on May 6, 1991, issued a Letter, with attached Assessment Notices, demanding for the payment of the deficiency

[1] Dated June 16, 2016.

[2] Penned by Associate Justice Cielito N. Mindaro-Grulla, with the concurrence of Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban, *rollo*, pp. 46-59.

[3] *Rollo*, pp. 60-64.

taxes within thirty (30) days from receipt thereof. The counsel for CBC filed its Protest against the assessments on May 27, 1991 and another Protest on February 17, 1992.

A Letter was again issued by petitioner on February 5, 1992 requesting for the payment of CBC's tax liabilities, within ten (10) days from receipt thereof.

The counsel for CBC, on March 29, 1994, issued a Letter addressed to petitioner offering a compromise settlement on its deficiency Income Tax assessment for Taxable year 1986, with an attached Application for Compromise Settlement/ Abatement of Penalties under Revenue Memorandum Order (*RMO)* No. 45-93, in the amount of ₱1,721,503.40, or twenty percent (20%) of the subject assessment, which was received on March 30, 1994. On May 2, 1994, the counsel for CBC issued a Letter addressed to petitioner, reiterating its Letter of offer of compromise settlement dated March 29, 1994 and Application for Compromise Settlement/Abatement under RMO No. 45-93.

Petitioner, on October 12, 1994, approved the earlier mentioned Application for Compromise Settlement of CBC, provided that one hundred percent (100%) of its deficiency Income Tax assessment for the year 1986, or in the amount of ₱8,607,517.00, be paid within fifteen (15) days from receipt thereof.

The counsel for CBC, on November 28, 1994, issued a Letter addressed to petitioner, requesting for a reconsideration of the approved amount as compromise settlement, and offering to pay the amount of ₱1,600,000.00 as full and final settlement of the subject assessment. The same counsel for CBC issued a Letter on March 8, 1995 reiterating its request for reconsideration and offering to increase its full and final settlement in the amount of ₱3,200,000.00.

On March 28, 1995, petitioner approved the Application for Compromise Settlement of CBC dated March 30, 1994, provided that CBC pay the amount of ₱8,607,517.00 within fifteen (15) days from receipt thereof.

Later, on May 4, 1995, the counsel for CBC issued another Letter addressed to petitioner, requesting for a final reconsideration,

and reiterating its offer of compromise in the amount of ₱3,200,000.00.

Petitioner, however, disapproved the Application for Compromise Settlement of CBC dated March 30, 1994. The counsel of CBC, on July 27, 1995, issued a Letter addressed to petitioner requesting for reconsideration and offering to pay the increased amount of ₱4,303,758.50.

Meanwhile, on October 4, 1996, the Securities and Exchange Commission approved the Articles of Merger between respondent BPI and CBC, with BPI as the surviving corporation.

Afterwards, on May 26, 2011, petitioner issued a Notice of Denial addressed to respondent, requesting for the payment of CBC's deficiency Income Tax for taxable year 1986, within fifteen (15) days from receipt thereof, and on July 28, 2011, petitioner issued another Letter addressed to respondent, denying the offer of compromise penalty, and requesting for the payment of the amount of ₱19,202,589.97, plus all increments incident to delinquency, pursuant to Sections 248 (A) (3) and 249 (C) (3) of the 1997 NIRC, as amended.

Consequently, on September 21, 2011, petitioner issued a Warrant of Distraint and/or Levy against respondent BPI which prompted the latter to file a Petition for Review with the CTA on October 7, 2011.

In a Decision[4] dated February 12, 2014, the CTA Special Third Division granted the petition for review, thus:

> WHEREFORE, the Petition for Review is hereby GRANTED. Accordingly, the Warrant of Distraint and/or Levy dated September 21, 2011 is hereby CANCELLED and SET ASIDE.
>
> SO ORDERED.[5]

According to the CTA Special Third Division, BPI can validly assail the Warrant of Distraint and/or Levy, as its appellate

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[4] Penned by Associate Justice Lovell R. Bautista, with the concurrence of Associate Justice Amelia R. Cotangco-Manalastas; *id.* at 65-81.

[5] *Roll*o, p. 80.

jurisdiction is not limited to cases which involve decisions of the Commissioner of Internal Revenue on matters relating to assessments or refunds. The Court further ruled that the Assessment Notices, being issued only on May 6, 1991, were already issued beyond the three-year period to assess, counting from April 15, 1987, when CBC filed its Annual Income Tax Returns for the taxable year 1986. The same Court also held that the Waivers of Statute of Limitations executed on July 12, 1990 and November 8, 1990 were not in accordance with the proper form of a valid waiver pursuant to RMO No. 20-90, thus, the waivers failed to extend the period given to petitioner to assess.

After the denial of petitioner's motion for reconsideration, a petition for review was filed with the CTA *En Banc*, in which the latter Court denied the said petition, thus:

> WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. Accordingly, the Decision and the Resolution, dated February 12, 2014 and April 25, 2014, respectively, are hereby AFFIRMED.
>
> SO ORDERED.[6]

Hence, the present petition after the CTA *En Banc* denied petitioner's motion for reconsideration.

Petitioner raises the following grounds for the allowance of the present petition:

> THE CTA *EN BANC* ERRED IN AFFIRMING THE CTA SPECIAL THIRD DIVISION'S EXERCISE OF JURISDICTION OVER THE INSTANT CONTROVERSY.
>
> THE CTA *EN BANC* ERRED IN AFFIRMING THE ANNULMENT OF THE WARRANT OF DISTRAINT AND/OR LEVY AGAINST RESPONDENT GIVEN PETITIONER'S CLEAR RIGHT TO THE SAME.[7]

Petitioner argues that the CTA did not acquire jurisdiction over the case for respondent's failure to contest the assessments

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[6] *Id*. at 58.

[7] *Id*. at 24.

made against it by the Bureau of Internal Revenue (*BIR*) within the period prescribed by law. Petitioner also contends that by the principle of estoppel, respondent is not allowed to raise the defense of prescription against the efforts of the government to collect the tax assessed against it.

In its Comment[8] dated August 22, 2016, respondent claims that the assessment notice issued against it, is not yet final and executory and that the CTA has jurisdiction over the case. It further asserts that the right of petitioner to assess deficiency income tax for the taxable year 1986 had already prescribed pursuant to the Tax Code of 1977 and that the right of petitioner to collect the alleged deficiency income tax for the taxable year 1986 had already prescribed. Respondent also insists that it is not liable for the alleged deficiency income tax and increments for the taxable year 1986.

The petition lacks merit.

First of all, the CTA did not err in its ruling that it has jurisdiction over cases asking for the cancellation and withdrawal of a warrant of distraint and/or levy as provided under Section 7 of Republic Act (*R.A.)* No. 9282, thus:

> Sec. 7 Jurisdiction. — The CTA shall exercise:
>
> a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> 1. x x x
>
> 2. Inaction by the Commissioner of the Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or **other matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue**, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
>
> x x x x x x x x x

[8] *Id.* at 88-115.

Anent the other grounds relied upon by petitioner, such are factual in nature. It is doctrinal that the Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[9] We thus accord the findings of fact by the CTA with the highest respect. These findings of facts can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. In the absence of any clear and convincing proof to the contrary, this Court must presume that the CTA rendered a decision which is valid in every respect.[10] Nevertheless, the factual findings of the CTA are supported by substantial evidence.

An assessment becomes final and unappealable if within thirty (30) days from receipt of the assessment, the taxpayer fails to file his or her protest requesting for reconsideration or reinvestigation as provided in Section 229 of the NIRC, thus:

> SECTION 229. *Protesting of assessment*. — When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
>
> **Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise, the assessment shall become final and unappealable.**

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[9] *CIR v. De La Salle University, Inc*. G.R. No. 196596*, De La Salle University, Inc. v. CIR*, G.R. No. 198841, *CIR v. De La Salle University, Inc*., G.R. No. 198941, November 9, 2016, 808 SCRA 156, 192, citing *Commissioner of Internal Revenue v. Asian Transmission Corporation*, 655 Phil. 186, 196 (2011).

[10] *Id*., citing *Commissioner of Internal Revenue v. Toledo Power, Inc.*, 725 Phil. 66, 82-83 (2014), citing *Barcelon, Roxas Securities, Inc. v. Commissioner of Internal Revenue*, 529 Phil. 785, 795 (2006).

If the protest is denied in whole and in part, the individual, association or corporation adversely affected by the decision on the protest may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision; otherwise, the decision shall become final, executory and demandable.[11]

Petitioner insists that respondent failed to elevate the tax assessment against it to the CTA within the required period. Respondent, on the other hand, claims that it never received any final decision on the disputed assessment from petitioner granting or denying the same, whether in whole or in part.

The CTA was correct in ruling that petitioner failed to prove that it sent a notice of assessment and that it was received by respondent, thus:

> The February 5, 1992 Decision of the CIR which she insists to be the reckoning point to protest, was not proven to have been received by BPI when the latter denied its receipt. Thus, the assessment notice dated May 6, 1991 should be deemed as the final decision of the CIR on the matter, in which BPI timely protested on May 27, 1991. While a mailed letter is deemed received by the addressee in the ordinary course of mail, this is still merely a disputable presumption subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee. (Republic v. Court of Appeals, G.R. No. L-38540, April 30, 1987, 149 SCRA 351, 355.) In the instant case, BPI denies receiving the assessment notice, and the CIR was unable to present substantial evidence that such notice was, indeed, mailed or sent before the BIR's right to assess had prescribed and that said notice was received by BPI. As a matter of fact, there was an express admission on the part of the CIR that there was no proof that indeed the alleged Final Assessment Notice was ever sent to or received by BPI. As stated in the Transcript of stenographic Notes on the court hearing dated October 29, 2012:
>
> Q: And you anchor your argument based on this document (Letter dated February 5, 1992) that this is the final decision of the BIR, is that correct?
> A: Yes.

[11] Emphasis ours.

Q: When was this received by the petitioner City Trust Banking Corporation?
A: I think it was only mailed.

Q: What is your proof that it was mailed?
A: Because the BIR…(interrupted by Atty. Nidea)

Q: Do you have any proof that it was mailed?
A: No, I don't have any proof.

Q: So, you don't have any proof. So you don't have any proof that it was received by the petitioner?
A: I don't have any idea.

Q: You don't have any proof.

Moreover, as correctly pointed out in the assailed Resolution, whether or not the Letter dated February 5, 1992 constitutes as the Final Decision on the Disputed Assessment appealable under Section 229 of the 1977 Tax Code, or whether the same was validly served and duly received by BPI, are immaterial matters which will not cure the nullity of the said Preliminary Assessment Notice and Assessment Notices, as they were clearly made beyond the prescriptive period.[12]

In the case of *Nava v. Commissioner of Internal Revenue*,[13] this Court stressed on the importance of proving the release, mailing or sending of the notice.

While we have held that an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration (Coll. of Int. Rev. vs. Bautista, L-12250 and L-12259, May 27, 1959), this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved. Mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; otherwise, the taxpayer would be at the mercy of the revenue offices, without adequate protection or defense.

Thus, the failure of petitioner to prove the receipt of the assessment by respondent would necessarily lead to the conclusion that no assessment was issued.

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[12] *Rollo*, pp. 54-55.

[13] 121 Phil. 117, 123-124 (1965).

As to the contention of petitioner that through the principle of estoppel, respondent is not allowed to raise the defense of prescription against the efforts of the government to collect the tax assessed against it, such is misplaced. Its argument that respondent's belated assertions relative to the alleged defects and flaws in the waivers it signed in favor of the government should not be given merit, is also amiss.

Petitioner cannot implore the doctrine of estoppel just to compensate its failure to follow the proper procedure. As aptly ruled by the CTA:

> It is well established that issues raised for the first time on appeal are barred by estoppel. However, in the leading case of *Commissioner of Internal Revenue v. Kudos Metal Corporation*, the Supreme Court held that:
>
> > The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. x x x As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. x x x
> >
> > Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. x x x Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.
>
> Applying the said ruling in the case at bench, BPI is not estopped from raising the invalidity of the subject Waivers as the BIR in this case caused the defects thereof. As such, the invalid Waivers did not operate to toll or extend the period of prescription.[14]

From the above disquisitions, it is clear that the right of petitioner to assess respondent has already prescribed and

[14] *Rollo*, p. 56.

respondent is not liable to pay the deficiency tax assessment. The period of collection has also prescribed. As held by the CTA:

> As to the period of collection, We uphold the ruling of the Division that such has already prescribed. Regardless if We will reckon the period to collect from May 6, 1991, or the alleged Final Demand Letter on February 5, 1992, counting the three-year period therein to collect in accordance with Section 223 (c) of the 1977 Tax Code, obviously, the mode of collection through the issuance of Warrant of Distraint and/or Levy on October 05, 2011 was made beyond the prescriptive period.[15]

It must be remembered that [T]he law imposes a substantive, not merely a formal, requirement. To proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative investigations: that taxpayers should be able to present their case and adduce supporting evidence.[16] Although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself."[17]

WHEREFORE, the Petition for Review on *Certiorari* dated June 16, 2016 of petitioner Commissioner of Internal Revenue is **DENIED** for lack of merit. Consequently, the Decision dated September 16, 2015 and the Resolution dated April 21, 2016 of the Court of Tax Appeals *En Banc* in CTA EB No. 1173 (CTA CASE No. 8350), are **AFFIRMED**.

SO ORDERED.

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

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[15] *Id.* at 58.

[16] *CIR v. Reyes*, 516 Phil. 176, 190 (2006), citing *Ang Tibay v. Court of Industrial Relations,* 69 Phil. 635 (1940).

[17] *Marcos II v. CA*, 339 Phil. 253, 263 (1997).

FIRST DIVISION

[G.R. No. 225219. June 11, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICO DE ASIS *y* BALQUIN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUG; ELEMENTS.—** x x x [I]t is beyond cavil that appellant was guilty of illegal sale of dangerous drug considering that the following elements of this crime were fully established: (a) the identity of the seller (appellant) and the buyer (Agent Gacus); (b) the consideration of the sale (₱500.00 marked money); and (c) the delivery of the thing sold *(shabu)*and its payment to the seller.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT SHOWING THAT THE PHILIPPINE DRUG ENFORCEMENT AGENTS ACTED WITH MALICE IN TESTIFYING AGAINST APPELLANT, THEIR CATEGORICAL AND STRAIGHTFORWARD STATEMENTS DESERVED FULL WEIGHT AND CONSIDERATION.—** Both Agents Gacus and Taghoy positively identified appellant as the person who sold Agent Gacus 0.05 gram of *shabu* during the buy-bust operation conducted on June 1, 2011. Immediately after the sale, Agent Taghoy recovered from the pocket of appellant the marked money used in the transaction. Added to this, there was no showing that Agents Gacus and Taghoy acted with malice in testifying against appellant. Hence, their categorical and straightforward statements deserved full weight and consideration.

3. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002(REPUBLIC ACT NO. 9165); ILLEGAL POSSESSION OF PROHIBITED DRUGS; ELEMENTS.—** x x x [A]ppellant was also guilty of illegal possession of prohibited drugs because as incident of the buy-bust, four sachets of *shabu* were found in his pocket; such possession was not shown to be authorized by law; and, appellant

freely and consciously possessed them in violation of Section 11, Article II, RA 9165.

4. ID.; ID.; CHAIN OF CUSTODY REQUIREMENTS; COMPLIED WITH; FOR DRUG-RELATED CASES TO PROSPER, THE *CORPUS DELICTI* – THE DRUG/S SUBJECT OF THE OFFENSE CHARGED – MUST BE DULY IDENTIFIED, PROVED, AND PRESENTED IN COURT.— x x x [C]ontrary to appellant's contention, there was full compliance with the chain of custody requirement in this case. Jurisprudence has consistently stressed that for drug-related cases to prosper, the *corpus delicti* — the drug/s subject of the offense charged — must be duly identified, proved, and presented in court. As such, Section 21, Article II of RA 9165, as amended by RA 10640, outlines the required chain of custody of the seized illegal drugs and related items x x x. Essential aspects of the chain of custody are: (1) the immediate marking, inventory, and taking of photographs of the recovered items; (2) the examination of the Forensic Chemist attesting that the seized items yielded positive results for the presence of illegal drugs; and, (3) the presentation of the same evidence in court. All these requirements were fully complied with here.

5. ID.; ID.; ILLEGAL SALE AND ILLEGAL POSSESSION OF SHABU; PROPER IMPOSABLE PENALTY.— x x x [T]he Court finds the penalties imposed against appellant to be in order. For having been found guilty of illegal sale of *shabu*, the RTC, as affirmed by the CA, properly sentenced him to life imprisonment, and to a fine in the amount of ₱500,000.00. And, for committing illegal possession of *shabu* weighing less than five grams, the CA correctly imposed against him 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 a fine amounting to ₱300,000.00.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

DEL CASTILLO, *J.*:

On appeal is the April 21, 2016 Decision[1] of the Court of Appeals (CA) in CA-GR. CR-HC No. 01293-MIN. The CA affirmed with modification the April 15, 2014 Judgment[2] of the Regional Trial Court (RTC) of Cagayan de Oro City (CDO), Branch 25, which found Rico de Asis *y* Balquin (appellant) guilty of illegal sale and illegal possession of dangerous drugs in violation of Sections 5 and 11 respectively of Article II, Republic Act (RA) No. 9165.[3]

Factual Antecedents

Appellant was charged in three separate Informations for illegal (a) sale, and (b) possession of dangerous drugs as well as (c) possession of drug paraphernalia, reading as follows:

[Criminal Case No. 2011-497]

That on June 1, 2011, at around 1:30 o'clock in the afternoon, more or less, at Barangay 35, Limketkai, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, deliver, or give away to another, any dangerous drugs, did then and there willfully, unlawfully, and criminally sell to IO1 Rubitania Gacus, a member of PDEA-10, who acted as a poseur-buyer and who at that time was accompanied by a confidential informant, one (1) heat-scaled transparent plastic sachet containing white crystalline substance of methamphetamine hydrochloride, locally known as shabu, a dangerous drug, weighing .05 [gram], in consideration of Php 500.00, which after a confirmatory test conducted by the PNP Crime Laboratory, was found positive of the presence of methamphetamine hydrochloride, accused knowing the same to be a dangerous drug.

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[1] CA *rollo*, pp. 76-90; penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Edgardo T. Lloren.

[2] Records in Crim. Case No. 2011-499, pp. 105-112; penned by Presiding Judge Arthur L. Abundiente.

[3] Comprehensive Dangerous Drugs Act of 2002.

Contrary to and in violation of Section 5, Article II, of R.A. 9165.[4]

[Criminal Case No. 2011-498]

That on June 1, 2011, at around 1:30 o'clock in the afternoon, more or less, at Barangay 35, Limketkai, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drug, did then and there willfully, unlawfully, criminally and knowingly have in his possession, custody and control four (4) heat-sealed transparent plastic sachets containing white crystalline substance of methamphetamine hydrochloride, locally known as shabu, a dangerous drug, weighing .03 [gram], .04 [gram], .02 [gram] and .05 (gram], respectively, accused well-knowingly that what was recovered from his possession and/or control is a dangerous drug; that after a screening and confirmatory tests conducted by the Philippine National Police (PNP) Regional Crime Laboratory, Office-10, Camp Evangelista, Patag, Cagayan de Oro City, of the recovered items from accused's possession and control, the same were found positive of the presence of Methamphetamine Hydrochloride (shabu), a dangerous drug.

Contrary to and in violation of Section 11, Article 2, of R.A. 9165.[5]

[Criminal Case No. 2011-499]

That on June 1, 2011, at around 1:30 o'clock in the afternoon, more or less, at Barangay 35, Limketkai, 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 willfully, unlawfully, criminally and knowingly have in his possession, custody and control three (3) pieces improvised aluminum foil strips used as gutter with methamphetamine hydrochloride residues, one (1) piece transparent plastic sachet with suspected shabu residu[e] and three (3) disposable lighters with improvised needles, which instruments or apparatus are drug paraphernalia intended for smoking, consuming, administering, ingesting or introducing dangerous drug methamphetamine hydrochloride or locally known as shabu, into the body.

Contrary to and in violation of Section 12, Article 2, of RA. 9165.[6]

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[4] Records in Crim. Case No. 2011-497, p. 3.

[5] Records in Crim. Case No. 2011-498, p. 3.

[6] Records in Crim. Case No. 2011-499, p. 3.

When arraigned, appellant pleaded "Not Guilty"[7] to these charges against him.

Trial on the merits thereafter ensued.

Version of the Prosecution

At about 10:00 a.m. on June 1, 2011, the PDEA[8] Regional Director of CDO briefed his team for a buy-bust operation based on the information given by a civilian informant. The team discussed the description of the subject — a person named Rico de Asis, a.k.a *Ikong,* from *Barangay* 35, Limketkai Drive.[9] The team designated Agents Rubietania Gacus[10] (Gacus) and Elvis M. Taghoy (Taghoy) as poseur-buyer, and arresting and back-up officer, respectively. It also prepared a camera, pens, a pental pen for marking, evidence bag, inventory sheets, and ₱500.00 marked money for the buy-bust.[11]

At about 1:15 p.m. of the same day, Agent Gacus and the informant alighted from a public utility vehicle and proceeded to the house of appellant located at *Barangay* 35, Limketkai Drive, CDO. The rest of the buy-bust team stayed at a distance of about 200 meters therefrom. Meanwhile, upon entering said house, the informant introduced Agent Gacus to appellant as a drug user who would buy P500.00 worth of *shabu* from him. Upon appellant's demand, Agent Gacus handed him the marked money. In turn, appellant pulled out from his shorts a blue-colored case containing sachets of suspected *shabu.* Appellant gave one sachet to Agent Gacus.[12]

Agent Gacus examined the sachet, put it into her pocket, and asked permission to leave saying that she did not want to

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[7] Records in Crim. Case Nos. 2011-497, p. 20; 2011-498, p. 19; 2011-499, pp. 19-22.

[8] Philippine Drug Enforcement Agency.

[9] TSN, August 6, 2013, pp. 4-5.

[10] Referred as Rubietania Aguilar in some parts of the records.

[11] TSN, October 16, 2012, pp. 2-3.

[12] TSN, October 16, 2012, pp. 3-5, 12; November 12, 2012, p. 17.

be seen in the area. And while on her way out, she "missed call" Agent Taghoy. Seconds thereafter, she met the buy-bust team and they altogether entered the house of appellant.[13]

The buy-bust team then introduced themselves, as PDEA agents, to appellant. Agent Taghoy informed him of his rights and violations, and frisked him. In turn, Agent Gacus told Agent Taghoy that sachets of *shabu* were inside the pocket of appellant's shorts. Upon his search, Agent Taghoy recovered from appellant the marked money and four (4) sachets of suspected *shabu.*[14]

While still inside appellant's house, Agent Taghoy marked the item that Agent Gacus bought from appellant with "BB EMT" for "Elvis M. Taghoy," and the date, "06/01/11." He also marked the four sachets he recovered from appellant's pocket with "EMT-1 ," "EMT-2," "EMT-3," and "EMT-4" with the date "06/01/11" indicated in each of them.[15] Agent Taghoy likewise made an inventory of the foregoing items, and the drug paraphernalia found on a table inside appellant's house. The conduct of the inventory was witnessed by a *barangay kagawad* and a representative from the media Meanwhile, Agent Gacus took photographs of these items.[16]

After preparing a request for examination of the seized items at their office, Agent Taghoy, along with Agent Gacus, Agent Vincent Cecil Orcales and appellant, brought the subject items to the PNP[17] Crime Laboratory. According to Agent Taghoy, he remained in custody of these items from their confiscation until they were brought to the PDEA office and thereafter, to the Crime Laboratory.[18]

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[13] TSN, October 16, 2012, pp. 5, 13.

[14] TSN, October 16, 2012, pp. 6-7; November 12, 2012, p. 9.

[15] TSN, October 16, 2012, pp. 6-7; Records in Crim. Case No. 2011-499, p. 10.

[16] TSN, November 12, 2012, pp. 9-13; Records in Crim. Case No. 2011-499, p. 17.

[17] Philippine National Police.

[18] TSN, November 12, 2012, pp. 13-14; August 6, 2013, p. 10.

During the trial, the prosecution dispensed with the testimony of PCI[19] Joseph T. Esber (PCI Esber) since the counsel for appellant already admitted that PCI Esber was an expert witness; that he received on June 1, 2011, letter-requests for the examination of the specimens and drug paraphernalia attached to the same; and that he conducted an examination thereof.[20] Particularly, Chemistry Report No. D-184-2011 indicated that the specimens with the following markings and corresponding weight all tested positive for the presence of methamphetamine hydrochloride or *shabu*:

BB EMT 06/01/11	0.05 gram
EMT-1 06/01/11E	0.03 gram
MT-2 06/01/11	0.04 gram
EMT-3 06/01/11	0.02 gram
EMT-4 06/01/11	0.05 gram

Version of the Defense

In the afternoon of June 1, 2011, appellant was at home attending to his three children — his eldest was 15 while his youngest was just seven months old. Suddenly, his second child, who at that time was taking a bath, told him that they ran out of shampoo. Thus, he asked his eldest son to buy one. While his eldest son was away, a man wearing a PDEA vest barged into their house, and pointed a gun at appellant. Other PDEA agents followed and handcuffed him. When his eldest son returned, appellant told him to get his siblings, and ordered them to get out of the house.[21]

Thereafter, the PDEA agents covered appellant's head with a towel. They hit him while continually asking him about *shabu* to which he denied knowledge of. When the towel was later removed, appellant noticed that there were already *shabu,* money, and papers on the table.[22] Later, a *kagawad* arrived at his house

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[19] Police Chief Inspector.

[20] Records in Crim. Case No. 2011-499, pp. 11, 13, 45-46.

[21] TSN, September 10, 2013, pp. 4-6.

[22] *Id.* at 6.

to see the items on the table. ATV reporter also arrived. Appellant told the *kagawad* that he had no participation in any activity related to those items. The PDEA agents then brought appellant to their office, where he was detained until such time he was brought to the city jail.[23]

Ruling of the Regional Trial Court

On April 15, 2014, the RTC found appellant guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs, ruling in this wise:

> WHEREFORE, premises considered, this Court hereby finds the accused:
>
> 1. In Criminal Case No. 2011-497, GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 5, Article II of RA. 9165, and hereby imposes the penalty of LIFE IMPRISONMENT and Fine in the amount of ₱500,000.00 without subsidiary imprisonment in case of non-payment of Fine;
> 2. In Criminal Case No. 2011-498, GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 11, Article II of R.A. 9165, and hereby imposes a penalty of TWELVE YEARS AND ONE DAY to THIRTEEN [13] YEARS and Fine in the amount of ₱300,000.00 without subsidiary imprisonment in case of non-payment of Fine.
> 3. In Criminal Case No. 2011-499, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, he is hereby acquitted of the offense charged.
>
> x x x x x x x x x
>
> SO ORDERED.[24]

According to the RTC, the prosecution established these elements for illegal sale of dangerous drug: (a) the identity of the seller (appellant) and the buyer (Agent Gacus); (b) the object

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[23] TSN, September 10, 2013, pp. 7-8; September 24, 2013, p. 7.

[24] Records in Crim. Case No. 2011-499, p. 112.

(shabu); and, (c) the consideration for the sale (₱500.00). It also held that the straightforward testimonies of prosecution witnesses deserved due weight noting that these witnesses were not shown to have any ill motive in testifying against appellant.

The RTC also convicted appellant of illegal possession of prohibited drugs, which were recovered from him immediately after the buy-bust, but acquitted him of illegal possession of drug paraphernalia for lack of showing that he possessed or used the same.

Finally, the RTC ruled that there was due compliance to the chain of custody requirement ratiocinating as follows:

> x x x Taghoy showed that he was able to observe the formalities required under Section 21 of R.A. 9165. He conducted the Inventory at the scene of the crime, and the inventory was witnessed by a barangay official and a media representative. Pictures were taken at the crime scene, and thereafter, he took custody of the seized evidence from the crime scene to their office, where they prepared certain documents, then to the crime laboratory. x x x He also delivered the evidence for laboratory examination within 24 hours from the arrest, as required by the law.
>
> Moreover, Gacus and Taghoy were able to observe the chain of custody of [the] evidence by accounting their possession of the same. The buy-bust sachet was duly identified, and the other sachets seized subsequent to the buy-bust transaction were also duly identified and accounted for. In other words, the prosecution witnesses were able to preserve the integrity and probative value of the seized evidence by accounting for each and every link in the chain.[25]

Ruling of the Court of Appeals

The CA affirmed the RTC Decision with modification in that appellant was sentenced to an indeterminate penalty of twelve (12) years and one (1) day, as minimum term, to fourteen (14) years and eight (8) months, as maximum term, and to pay a fine of ₱300,000.00 for illegal possession of dangerous drugs.

Hence, this appeal

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[25] *Id.* at 111.

Issue

Whether appellant is guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs.

Our Ruling

The appeal is bereft of merit.

First, it is beyond cavil that appellant was guilty of illegal sale of dangerous drug considering that the following elements of this crime were fully established: (a) the identity of the seller (appellant) and the buyer (Agent Gacus); (b) the consideration of the sale (₱500.00 marked money); and (c) the delivery of the thing sold *(shabu)* and its payment to the seller.[26]

Both Agents Gacus and Taghoy positively identified appellant as the person who sold Agent Gacus 0.05 gram of *shabu* during the buy-bust operation conducted on June 1, 2011. Immediately after the sale, Agent Taghoy recovered from the pocket of appellant the marked money used in the transaction. Added to this, there was no showing that Agents Gacus and Taghoy acted with malice in testifying against appellant. Hence, their categorical and straightforward statements deserved full weight and consideration.[27]

Second, appellant was also guilty of illegal possession of prohibited drugs because as incident of the buy-bust, four sachets of *shabu* were found in his pocket; such possession was not shown to be authorized by law; and, appellant freely and consciously possessed them in violation of Section 11, Article II, RA 9165.[28]

Third, contrary to appellant's contention, there was full compliance with the chain of custody requirement in this case.

Jurisprudence has consistently stressed that for drug-related cases to prosper, the *corpus delicti* — the drug/s subject of the

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[26] *People v. Flor,* G.R. No. 216017, January 19, 2018.

[27] *Id.*

[28] *People v. Pundugar,* G.R. No. 214779, February 7, 2018.

offense charged — must be duly identified, proved, and presented in court.[29] As such, Section 21, Article II of RA 9165, as amended by RA 10640, outlines the required chain of custody of the seized illegal drugs and related items in this manner:

> *Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs x x x.* — The PDEA shall take charge and have custody of all dangerous drugs x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs x x x shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs x x x the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
>
> (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s [.] x x x

Essential aspects of the chain of custody are: (1) the immediate marking, inventory, and taking of photographs of the recovered items; (2) the examination of the Forensic Chemist attesting that the seized items yielded positive results for the presence

[29] *Id.*

of illegal drugs; and, (3) the presentation of the same evidence in court.[30]

All these requirements were fully complied with here.

Records reveal that after Agent Gacus turned over the item she bought from appellant to Agent Taghoy, the latter *immediately marked* it and the four sachets he (Agent Taghoy) recovered from appellant at the very place where the buy-bust operation transpired. Agent Taghoy specifically marked them with his initials "EMT" (with successive numbers) and the date of the buy-bust operation.

While still at appellant's house, and *in the presence of a barangay kagawad* and *a media representative,* Agent Taghoy made an *inventory* of the seized items.

In turn, Agent Gacus took *photographs* of these items, the taking of the inventory, including the signing of the inventory by the *kagawad* and the representative of the media.

Subsequently, PCI Esber personally received the suspected sachets of *shabu* at the Crime Laboratory;[31] and based on his admitted testimony, he confirmed that the specimens with the following markings and weight were positive of *shabu*:

BB EMT 06/01/11	0.05 gram
EMT-1 06/01/11	0.03 gram
EMT-2 06/01/11	0.04 gram
EMT-3 06/01/11	0.02 gram
EMT-4 06/01/11	0.05 gram

During the trial, Agents Gacus and Taghoy *identified and attested* that those items seized from appellant, which were duly marked, inventoried, and photographed at the crime scene, and later on, examined in the Crime Laboratory, were the same ones presented in court.

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[30] *People v. Ejan,* G.R. No. 212169, December 13, 2017.

[31] See Request for Laboratory Examination on Drug Evidence; RTC Records in Crim. Case No. 2011-499, p. 10.

Evidently, the required chain of custody of the seized illegal drugs was followed here. Without doubt, their evidentiary value was preserved from its confiscation until its presentation in court.[32]

Lastly, the Court finds the penalties imposed against appellant to be in order. For having been found guilty of illegal sale of *shabu*, the RTC, as affirmed by the CA, properly sentenced him to life imprisonment, and to a fine in the amount of ₱500,000.00. And, for committing illegal possession of *shabu* weighing less than five grams, the CA correctly imposed against him 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 a fine amounting to ₱300,000.00.[33]

WHEREFORE, the appeal is **DISMISSED.** The assailed April 21, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01293-MIN is hereby **AFFIRMED.**

SO ORDERED.

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

Tijam, J., on official leave.

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[32] *People v. Ejan, supra* note 30.

[33] *People v. Pundugar, supra* note 28.

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

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

SECOND DIVISION

[G.R. No. 228960. June 11, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUNREL R. VILLALOBOS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; THE FACT ALONE THAT THE JUDGE WHO HEARD THE EVIDENCE WAS NOT THE ONE WHO RENDERED THE JUDGMENT, BUT MERELY RELIED ON THE RECORD OF THE CASE, DOES NOT RENDER HIS JUDGMENT ERRONEOUS OR IRREGULAR, AND SUCH RELIANCE ON THE TRANSCRIPT OF STENOGRAPHIC NOTES TAKEN DURING THE TRIAL AS BASIS OF HIS DECISION DOES NOT VIOLATE SUBSTANTIVE AND PROCEDURAL DUE PROCESS OF LAW. — Preliminarily, the fact alone that the judge who heard the evidence was not the one who rendered the judgment, but merely relied on the record of the case, does not render his judgment erroneous or irregular. This is so even if the judge did not have the fullest opportunity to weigh the testimonies, not having heard all the witnesses speak or observed their deportment and manner of testifying. Hence, the Court generally will not find any misapprehension of facts as it can be fairly assumed under the principle of regularity of performance of duties of public officers that the transcripts of stenographic notes were thoroughly scrutinized and evaluated by the judge himself. Thus, albeit Judge Montejo-Gonzaga was not the judge who heard the testimony of AAA, the same would not pose sufficient justification to overturn the findings of fact of the RTC on the credibility of the said private complainant. Ideally, the judge who will write the judgment should be the same judge who had earlier heard all the testimonies of the witnesses personally. However, there are instances when a different judge might pen the decision because the predecessor judge has retired, died or has been reassigned. In such situations, it is not correct to say that the findings of fact of the judge who took over the case are not reliable and do not deserve the respect of the appellate

courts. The judge who was not present during the trial can always rely on the transcript of stenographic notes taken during the trial as basis of his decision. Said reliance does not violate substantive and procedural due process of law. To rule otherwise would create an absurd situation wherein, every time the judge who, wholly or partly, heard a case dies or leaves the service, such case cannot be decided and a new trial will have to be conducted for the taking anew of the testimonies of the witnesses by the successor judge. This should not be so.

2. **ID.; ID.; ID.; ID.; EXCEPTIONS; NOT PRESENT.—** Surely, the correctness and efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is showing of grave abuse of discretion in the factual findings reached by him. The other reason for disregarding the findings of fact of the trial court is when there is a manifest indication that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the accused. In the case at bench, no such reasons exist for us to set aside the findings of fact of Judge Montejo-Gonzaga.

3. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, THE CONVICTION OF THE ACCUSED RESTS HEAVILY ON THE CREDIBILITY OF THE VICTIM.—** In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Here, the trial court found AAA's testimony to be credible as it was made in a "candid and straightforward manner," "coupled with her occasional crying while relaying her story." Notably, the CA agreed with the RTC on this point and saw no reason to overturn the same. After approximating the perspective of the trial court thru a meticulous scrutiny of the records, the Court likewise finds no justification to disturb the findings of the RTC. Despite his vigorous protestations, the Court agrees with the findings of the courts *a quo* that the prosecution was able to prove beyond reasonable doubt that Villalobos raped AAA on that fateful night of June 7, 2008.

4. **ID.; ID.; ID.; WHEN THE TESTIMONY OF A RAPE VICTIM IS CONSISTENT WITH THE MEDICAL FINDINGS, SUFFICIENT BASIS EXISTS TO WARRANT A CONCLUSION THAT THE ESSENTIAL REQUISITE OF**

CARNAL KNOWLEDGE HAS THEREBY BEEN ESTABLISHED.— In addition, AAA's testimony was corroborated by the medical findings of Dr. Philip Nolan Demaala (*Dr. Demaala*). Dr. Demaala testified that when he conducted a physical examination on AAA, he noted that the latter sustained a contusion between her neck and chest as well as redness in her *labia minora* and near the area where the urine comes out. According to Dr. Demaala, such medical findings confirmed penile penetration on AAA. It has been said that when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established. Hence, such testimony of Dr. Demaala strengthens even more the claim of rape by AAA against Villalobos.

5. ID.; ID.; ID.; THE CREDIBILITY OF A RAPE VICTIM IS ENHANCED WHEN SHE HAS NO MOTIVE TO TESTIFY AGAINST THE ACCUSED OR WHERE THERE IS ABSOLUTELY NO EVIDENCE WHICH EVEN REMOTELY SUGGESTS THAT SHE COULD HAVE BEEN ACTUATED BY SUCH MOTIVE.— The credibility of a rape victim is enhanced when, as in the case at bench, she has no motive to testify against the accused or where there is absolutely no evidence which even remotely suggests that she could have been actuated by such motive. Further, the fact that AAA resolved to face the ordeal and relate in public what she suffered evinces that she did so to obtain justice. Her willingness and courage to face the authorities as well as to submit to medical examination, are mute but eloquent confirmation of her sincere resolve to vindicate the outrageous wrong done to her person, honor and dignity. AAA's natural interest in securing the conviction of the perpetrator would strongly deter her from implicating a person other than the real culprit. We are thus convincingly assured that the RTC prudently fulfilled its obligation as a factual assessor and legal adjudicator.

6. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; THE FIRST DUTY OF THE PROSECUTION IS NOT TO PROVE THE CRIME BUT TO PROVE THE IDENTITY OF THE PERPETRATOR, FOR EVEN IF THE COMMISSION OF THE CRIME CAN BE ESTABLISHED, THERE CAN BE NO CONVICTION WITHOUT PROOF OF IDENTITY OF THE CULPRIT BEYOND

REASONABLE DOUBT.— Proving the identity of the accused as the malefactor is the prosecution's primary responsibility. Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the perpetrator, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the culprit beyond reasonable doubt. In the case at bench, the prosecution's evidence on the identity of Villalobos as the offender is clear and unmistakable.

7. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN CONDITIONS OF VISIBILITY ARE FAVORABLE, AND WHEN THE WITNESS DOES NOT APPEAR TO BE BIASED, HER ASSERTION AS TO THE IDENTITY OF THE MALEFACTOR SHOULD NORMALLY BE ACCEPTED. — While Villalobos attempted to hide his identity by covering his face with a shirt in the blackness of the night, his identity has been revealed and the darkness that is his cover has been dispelled by the credible testimony of AAA that, while it was indeed dark in the place where the rape incident took place, there was, however, adequate moonlight which illuminated the area. Thus, she was able to take a good look at and remember the face of Villalobos, who then had already removed the shirt covering his face, as her ravisher. These details make her testimony and positive identification of Villalobos more reliable. Visibility is indeed a vital factor in determining whether an eyewitness could have identified the perpetrator of a crime. It is settled that when conditions of visibility are favorable, and when the witness does not appear to be biased, her assertion as to the identity of the malefactor should normally be accepted. In proper situations, illumination produced by a kerosene or wick lamp, a flashlight, even moonlight or starlight may be considered sufficient to allow identification of persons. Under such circumstance, any attack on the credibility of witnesses, based solely on the ground of insufficiency or absence of illumination, becomes unmeritorious.

8. ID.; ID.; ID.; WITNESSES CAN REMEMBER THE IDENTITIES OF CRIMINALS WITH A HIGH DEGREE OF RELIABILITY AT ANY GIVEN TIME BECAUSE OF THE UNUSUAL ACTS OF VIOLENCE COMMITTED RIGHT BEFORE THEIR EYES.— To be sure, AAA had an unobstructed view of Villalobos because of their proximity with

each other at the time of the incident. Given her familiarity with the voice and face of Villalobos being her neighbor and a frequent visitor of his cousin Joel, as well as the illumination provided by the moonlight on the evening of June 7, 2008, eliminated any possibility of mistaken identification. Moreover, experience suggests that it is precisely because of the unusual acts of violence committed right before their eyes that witnesses can remember the identities of criminals with a high degree of reliability at any given time. All throughout her testimony, AAA never faltered about the identity of appellant Villalobos and his commission of the felonious *coitus*.

9. CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE FAILURE OF THE RAPE VICTIM TO SHOUT OR OFFER TENACIOUS RESISTANCE CAN NEITHER BE CONSTRUED AS A VOLUNTARY SUBMISSION TO CULPRIT'S DESIRES, NOR NEGATE RAPE, AS PHYSICAL RESISTANCE NEED NOT BE ESTABLISHED IN RAPE WHEN INTIMIDATION IS EXERCISED UPON THE VICTIM AND THE LATTER SUBMITS HERSELF AGAINST HER WILL TO THE RAPIST'S ADVANCES BECAUSE OF FEAR FOR HER LIFE AND PERSONAL SAFETY.— The failure to shout or offer tenacious resistance cannot be construed as a voluntary submission to culprit's desires. Also, failure of the victim to shout for help does not negate rape. It is enough if the prosecution had proven that force or intimidation concurred in the commission of the crime as in this case. The law does not impose upon a rape victim the burden of proving resistance. Besides, physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety. In any event, the workings of the human mind placed under emotional stress are unpredictable such that different people react differently to a given situation or type of situation and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience. In the case at bench, it was established that AAA was cowed into silence and gave in to the vile desires of Villalobos for fear that said appellant would make good his threat to shoot her with the handgun he pointed against her, which he later placed close by him. At any rate, this is a trivial matter which does not go into the "why's" and "wherefore's" of the crime.

10. ID.; ID.; ID.; THE PRECISE DURATION OR EXACT LENGTH OF TIME OF THE COMMISSION OF RAPE IS NOT AN ESSENTIAL ELEMENT THEREOF; LUST OF A LECHEROUS MAN RESPECTS NEITHER TIME NOR PLACE.— [T]here is no evidence on record that AAA had an extramarital affair with Villalobos nor was there any proof that she was attracted to him enough to consent and willingly give in to the bestial desires of the latter. In any event, the precise duration or exact length of time of the commission of rape is not an essential element of the felony. Besides, case law shows numerous instances of rape committed under indirect and audacious circumstances because the lust of a lecherous man respects neither time nor place. In *People v. Diaz*, the Court elucidates that the testimony of the private complainant to the effect that the rape occurred for a rather long time would not diminish her credibility x x x.

11. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL; AS NEGATIVE EVIDENCE, DENIAL PALES IN COMPARISON WITH A POSITIVE TESTIMONY THAT ASSERTS THE COMMISSION OF A CRIME AND THE IDENTIFICATION OF THE ACCUSED AS ITS CULPRIT.— Villalobos' denial must be rejected as the same could not prevail over AAA's unwavering testimony and of her positive and firm identification of him as the perpetrator. As negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit. We find that the facts in the instant case do not present any exceptional circumstance warranting a deviation from this established rule.

12. ID.; ID.; DEFENSE OF ALIBI; TO PROSPER, IT IS NOT ENOUGH TO PROVE THAT THE ACCUSED HAS BEEN SOMEWHERE ELSE DURING THE COMMISSION OF THE CRIME; IT MUST ALSO BE SHOWN THAT IT WOULD HAVE BEEN IMPOSSIBLE FOR HIM TO BE ANYWHERE WITHIN THE VICINITY OF THE CRIME SCENE.— The defense of alibi is likewise unavailing. In order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene. Villalobos failed to do so. Worse, he admitted during trial that

his house is just 300 meters away from AAA's house, which thus effectively negates the physical impossibility of him committing the crime against AAA on the night of June 7, 2008. The fact that Villalobos presented his sister, Elmie Joy Villalobos, and brother, Robson Villalobos, to corroborate his alibi, is of no moment. When the defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism due to the very nature of alibi the witness affirms. An accused can easily fabricate an alibi and ask his relatives and friends to corroborate it. Given the positive identification by AAA of Villalobos as the culprit, and the lack of physical impossibility for said appellant to be at the scene of the crime at the time of its commission, his defenses of denial and alibi crumble like a sand fortress. Villalobos' defense of extortion must likewise fail considering that the same was not substantiated by competent and independent evidence.

13. CRIMINAL LAW; REVISED PENAL CODE; RAPE; PROPER IMPOSABLE PENALTY.— Whenever the crime of rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death as provided under Article 266-B of the Revised Penal Code. The prosecution was able to sufficiently allege in the Information and establish during trial that a handgun was used in the commission of rape. Considering that no aggravating or mitigating circumstance attended the commission of the crime, the lesser penalty of *reclusion perpetua* is the proper imposable penalty. However, the RTC, in its decision, added the qualification of "without eligibility for parole" to describe or qualify *reclusion perpetua*, and this was affirmed by the CA. In light of the attendant circumstances in the case at bench, there is no more need to append the phrase "without eligibility for parole" to Villallobos' prison term in line with the instructions given by the Court in A.M. No. 15-08-02- SC. Therefore, the dispositive portion of this decision should simply state that Villalobos is sentenced to suffer the penalty of *reclusion perpetua* without any qualification.

14. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Coming now to the pecuniary liabilities, the Court finds that the CA is correct in awarding ₱75,000.00 each for civil indemnity, moral damages and exemplary damages being consistent with our pronouncement in *People v. Jugueta*. Further, six percent (6%) interest *per annum* shall be imposed

on all damages awarded to be reckoned from the date of the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Assailed in this appeal is the September 29, 2016 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 01316-MIN, which affirmed with modification the April 1, 2014 Decision[2] of the Regional Trial Court, Branch 4, Panabo City (*RTC*), finding accused-appellant Junrel R. Villalobos (*Villalobos*) guilty beyond reasonable doubt of the crime of Rape committed against AAA.[3]

The Facts

Villalobos was indicted for the crime of Rape, defined and penalized under Article 266-A of the Revised Penal Code in an Information, the accusatory portion of which states:

That on or about June 7, 2008 in the City of Panabo, within the jurisdiction of this Honorable Court, the above-named accused, being

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[1] Penned by Associate Justice Oscar V. Badelles, with Associate Justice Romulo V. Borja and Associate Justice Ronaldo B. Martin, concurring; *rollo* pp. 3-14.

[2] Penned by Judge Dorothy P. Montejo-Gonzaga; CA *rollo* pp. 31-40.

[3] Per this Court's Resolution dated 19 September 2006 in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), pursuant to Republic Act No. 9262 or the "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules, the real name of the victims and their immediate family members other than the accused are to be withheld and fictitious initials are to be used instead. Likewise, the exact addresses of the victims are to be deleted.

armed of a handgun and employing force, threats and intimidation, willfully, unlawfully and feloniously had carnal knowledge or sexual intercourse with AAA, against her will, to the damage and prejudice of the above-named complaining victim.

CONTRARY TO LAW.

Upon arraignment, Villalobos pleaded not guilty to the charge. After pre-trial was terminated, trial on the merits followed.

Version of the Prosecution

The Office of the Solicitor General narrates the factual version of the prosecution as follows:

At around 8:30 p.m. of 7 June 2008, private complainant AAA was sleeping in her room together with her two minor children, aged two and four. Somebody then entered the room and held AAA's right leg which awakened her. The intruder, whose face was covered such that his eyes were the only ones visible, lifted the mosquito net and pointed a gun at AAA while covering her mouth. AAA asked "Who are you?" and the intruder replied "Wake up because we will go outside?"

At gun point, AAA followed the intruder. AAA then recognized the voice of the intruder to be that of the accused-appellant as he frequently visited her cousin Joel.

Accused-appellant brought AAA to a *nipa* hut located along a road about 50 meters away from AAA's house. Accused-appellant ordered AAA to remove her dress. She refused and answered "no." Accused-appellant then put down the gun, removed his short pants and thereafter undressed AAA and sucked her breast. Thereafter, he touched and rubbed AAA's vagina and ordered her to lie down while he inserted his penis into her vagina.

Not contented, accused-appellant then ordered AAA to suck his penis. After minutes, he lifted her buttocks and inserted his penis into her anus for another half hour. AAA begged accused-appellant to stop because it was already painful, but accused-appellant ignored AAA's pleas. He continued to make a push and pull movement. Accused-appellant again rubbed her vagina after he put saliva on his hands. AAA was made to suck accused-appellant's penis for over another half an hour.

Although the *nipa* hut was not lighted, AAA saw and recognized the face of the accused-appellant in the moonlight. Also, accused-

appellant by then had already removed the t-shirt he used to cover his face. AAA was not able to shout because accused-appellant pointed the gun at her and warned her to keep silent. AAA cried silently.

A "multicab" later approached the direction of the *nipa* hut and the vehicle's light passed through the *nipa* hut. This gave AAA a chance to run away. As she was running towards her house, AAA thought of hiding behind a tree for fear that the accused might be following her. However, she fell into a ditch. AAA had no short pants and only had her shirt on. She cried hard upon reaching her house and reported the incident to her mother.

AAA reported the incident to the police on the following day, 8 June 2008, at about 8:30 in the morning. She also went to a doctor for medical examination.

Police Officer (PO3) Rommel Gumtang, who was assigned at the Panabo City Police Station, testified that he met AAA when she asked that accused-appellant be arrested. At a store near Peda St., Purok 6, San Francisco, Panabo City, AAA pointed to the accused-appellant, who, the police immediately arrested.

Dr. Philip Nolan Demaala conducted the medical examination of AAA. He testified and reported that AAA experienced sexual intercourse or penile penetration. He also found that AAA suffered contusion around her neck and chest.[4]

Version of the Defense

Villalobos, on the other hand, relates his version of the facts in this manner:

Appellant claimed that he and AAA were neighbors for three or four years. Since he and AAA's husband were friends, there were occasions in the past that he visited AAA's house. But he stopped his visits when AAA's husband left for Manila to work.

Appellant denied having sexual intercourse with AAA in the evening of 7 June 2008, as he was already sleeping in his house at the time of the alleged incident. When he woke up the following day (8 June 2008), a certain Joel Baghucan, AAA's cousin, called him while he was fetching water. Joel invited him for a drink. Appellant accepted the invitation, and he and Joel Baghucan drank in the latter's house.

[4] CA *rollo*, pp. 61-63.

While they were drinking, Joel told the appellant that according to AAA, appellant allegedly raped her. Appellant ignored Joel's remark because he got used to the latter's jokes. But a while later, he saw police officers going to the house of AAA. Not long after, AAA arrived and pointed to him. Thereafter, the police officers arrested him and detained him at the police station.

While appellant was on detention, a person visited him with the message that AAA would withdraw the case if he will give the person the amount of ₱30,000.00. According to appellant, he remembered the person as the one who placed his arm around the shoulders of AAA when he met the latter before the alleged incident. Thus, he believes that the present case was filed to harass and extort money from him.

Appellant's younger sister, Elmie Joy Villalobos, confirmed his testimony. Specifically, Elmie Joy Villalobos claimed that her family, including the appellant, ate their dinner together at 6:30 in the evening of 7 June 2008. After their dinner, appellant went to sleep while Elmie Joy Villalobos watched television until 11:00 o'clock in the evening. During that entire time, appellant was sleeping in his room. She also confirmed regarding appellant's testimony that a person went to him to ask for ₱30,000.00 in exchange for the withdrawal of the case.

Robson Villalobos, elder brother of the appellant, also corroborated the latter's testimony. He claimed that he went to sleep at 7:30 in the evening of 7 June 2008 in the same room where appellant was sleeping. Robson knows that appellant remained sleeping in the room because when he woke up at 10:00 in the evening to dress for work, appellant was still on his bed. Also, Robson's bed was positioned barring the door, thus, appellant could not leave the room without his knowledge.[5]

The RTC Ruling

In its Decision dated April 1, 2014, the RTC found Villalobos guilty as charged. The RTC held that the prosecution was able to establish with certitude that Villalobos had carnal knowledge of AAA through force and intimidation, and such fact was established through the clear and convincing testimony of the said victim who has no motive to falsely testify against Villalobos.

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

The trial court noted that AAA's claim of the rape incident was amply corroborated by the medical report which showed that AAA sustained contusions and fresh hymenal lacerations suggestive of previous penetration. It rejected the twin defenses of denial and alibi interposed by Villalobos declaring the same to be unconvincing and self-serving negative evidence which could not prevail over the positive identification of him by AAA as the culprit to the dastardly deed. The RTC likewise ruled out appellant's defense of extortion for want of sufficient and competent proof. The dispositive portion of the said decision reads:

> WHEREFORE, with the foregoing, the accused is hereby found GUILTY beyond reasonable doubt of the felony of rape and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is further ordered to pay the victim the amounts of Fifty Thousand Pesos (₱50,000.00) as moral damages, Thirty Thousand Pesos (₱30,000.00) as exemplary damages, and interest on all damages at the rate of six percent (6%) per annum from the finality of the judgment until fully paid.
>
> Accordingly, the accused shall be committed to the Davao Penal Colony for the service of his sentence thereat.
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> SO ORDERED.[6]

Not in conformity, Villalobos appealed the April 1, 2014 RTC Decision before the CA.

The CA Ruling

On September 29, 2016, the CA rendered its assailed Decision affirming the conviction of Villalobos for Rape. The appellate court declared that the credible testimony of AAA was sufficient to sustain Villalobos' conviction for the crime charged. It debunked appellant's denial and alibi declaring that the same were not satisfactorily established and not at all persuasive when pitted against the positive and convincing identification by the victim. According to the CA, appellant's claim that he was in his room sleeping at the time AAA was raped, did not preclude the possibility of his presence at the place of the crime at the

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[6] *Id*. at 40.

time of its commission considering that he lived 300 meters away from AAA. It increased the amounts awarded for moral damages and exemplary damages to ₱75,000.00 each in consonance with the prevailing jurisprudence. The CA likewise determined that AAA is entitled to the award of ₱75,000.00 by way of civil indemnity, the *fallo* of which reads:

> WHEREFORE, premises considered, the instant appeal is DISMISSED. The Decision dated April 1, 2014 of the Regional Trial Court, 11th Judicial Region, Branch 4, Panabo City, in Crim. Case No. 201-2008, finding accused-appellant Junrel R. Villalobos, guilty beyond reasonable doubt for rape is AFFIRMED with MODIFICATION. Junrel R. Villalobos is ORDERED to PAY AAA the amounts of ₱75,000 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Further, six percent interest (6%) *per annum* is imposed on all the amounts awarded reckoned from the date of finality of this judgment until the damages are fully paid.
>
> SO ORDERED.[7]

The Issues

Unfazed, Villalobos filed the present appeal and posited the same issues he previously raised before the CA, to wit:

1. Whether the evidence for the prosecution established beyond reasonable doubt that voluntariness on the part of the offended party, during the alleged rape, was absolutely wanting.
2. Whether the trial court failed to appreciate substantial facts and circumstances to cast doubt on the credibility of the private complainant.[8]

In the Resolution[9] dated March 1, 2017, the Court directed both parties to submit their supplemental briefs, if they so desired. On April 17, 2017, the Office of the Solicitor General filed its Manifestation (Re: In Lieu of Supplemental Brief)[10] stating that

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[7] *Rollo*, p. 13.

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

[9] *Rollo* pp. 20-21.

[10] *Id.* at 26-28.

it will no longer file a supplemental brief as its Appellee's Brief had sufficiently ventilated the issues raised. On April 19, 2017, the accused-appellant filed a Manifestation In Lieu of Supplemental Brief[11] averring that he would adopt all his arguments in his Appellant's Brief filed before the CA.

Essentially, accused-appellant argues that the RTC erred in giving credence to the testimony of AAA and claims that the prosecution evidence failed to overcome his constitutional presumption of innocence. Villalobos submits that a reading of AAA's narration of the events leading to the alleged rape would reveal that the coitus was actually committed with her acquiescence because: (1) there was no testimony that she objected or offered even a small amount of resistance to the sexual advances; (2) she did not shout for help or escape from the perpetrator despite the opportunity to do so; and (3) the alleged coitus lasted for more than 90 minutes. Villalobos further submits that doubt exists on AAA's identification of the culprit because the place was not illuminated, except for the bleak moonlight. He clarifies that he is not abandoning his defense of denial but intends only to highlight the improbabilities in AAA's testimony which tends to cast serious doubt on the veracity of her charge.

Lastly, Villalobos asserts that Judge Dorothy P. Montejo Gonzaga (*Judge Montejo Gonzaga*), the RTC judge who wrote the April 1, 2014 decision, was not the judge who observed first-hand private complainant AAA when she testified during direct and cross-examinations. The presiding judge of the RTC, Branch 4, Panabo City who heard the testimony of AAA then was Judge Virginia Hofileña-Europa. He argues that since Judge Montejo Gonzaga did not have the opportunity to observe AAA's demeanor and deportment on the witness stand, said judge could not have discerned and gauged if private complainant was telling the truth, which further resulted in the failure of the RTC to properly appreciate his defenses and contentions.

The Court's Ruling

The appeal is barren of merit.

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

Preliminarily, the fact alone that the judge who heard the evidence was not the one who rendered the judgment, but merely relied on the record of the case, does not render his judgment erroneous or irregular. This is so even if the judge did not have the fullest opportunity to weigh the testimonies, not having heard all the witnesses speak or observed their deportment and manner of testifying.[12] Hence, the Court generally will not find any misapprehension of facts as it can be fairly assumed under the principle of regularity of performance of duties of public officers that the transcripts of stenographic notes were thoroughly scrutinized and evaluated by the judge himself.[13]

Thus, albeit Judge Montejo Gonzaga was not the judge who heard the testimony of AAA, the same would not pose sufficient justification to overturn the findings of fact of the RTC on the credibility of the said private complainant. Ideally, the judge who will write the judgment should be the same judge who had earlier heard all the testimonies of the witnesses personally. However, there are instances when a different judge might pen the decision because the predecessor judge has retired, died or has been reassigned. In such situations, it is not correct to say that the findings of fact of the judge who took over the case are not reliable and do not deserve the respect of the appellate courts. The judge who was not present during the trial can always rely on the transcript of stenographic notes taken during the trial as basis of his decision. Said reliance does not violate substantive and procedural due process of law.[14] To rule otherwise would create an absurd situation wherein, every time the judge who, wholly or partly, heard a case dies or leaves the service, such case cannot be decided and a new trial will have to be conducted for the taking anew of the testimonies of the witnesses by the successor judge. This should not be so.

Surely, the correctness and efficacy of a decision is not necessarily impaired by the fact that its writer only took over

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[12] *Lumanog, et al. v. People*, 644 Phil. 296, 395 (2010).

[13] *Agdeppa v. Honorable Office of the Ombudsman,* 734 Phil. 1, 46 (2014).

[14] *People v. Hapa*, 413 Phil. 679, 695 (2001).

from a colleague who had earlier presided at the trial, unless there is showing of grave abuse of discretion in the factual findings reached by him.[15] The other reason for disregarding the findings of fact of the trial court is when there is a manifest indication that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the accused.[16] In the case at bench, no such reasons exist for us to set aside the findings of fact of Judge Montejo Gonzaga.

In rape cases, the conviction of the accused rests heavily on the credibility of the victim. Here, the trial court found AAA's testimony to be credible as it was made in a "candid and straightforward manner," "coupled with her occasional crying while relaying her story."[17] Notably, the CA agreed with the RTC on this point and saw no reason to overturn the same. After approximating the perspective of the trial court thru a meticulous scrutiny of the records, the Court likewise finds no justification to disturb the findings of the RTC. Despite his vigorous protestations, the Court agrees with the findings of the courts *a quo* that the prosecution was able to prove beyond reasonable doubt that Villalobos raped AAA on that fateful night of June 7, 2008.

The trial court's reliance on the victim's testimony is apt, considering that it was credible in itself and buttressed by the testimony of the medico-legal officer. AAA narrated in the painstaking and well-nigh degrading public trial her unfortunate and painful ordeal in a logical manner. Without hesitation, AAA pointed an accusing finger against appellant as the person who ravished and sexually molested her on the night of June 7, 2008. She credibly recounted how Villalobos, at gunpoint, ordered her to leave her room, where her two minor children, ages two and four, were then sleeping, and brought her to a *nipa* hut which is 50 meters from her house; that appellant ordered her

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[15] *People v. Sansaet*, 426 Phil. 826, 833 (2002).

[16] *People v. Buayaban*, 448 Phil. 57, 68 (2003).

[17] CA *rollo*, p. 38.

to remove her dress but she refused; that appellant undressed her, sucked her breast and inserted his penis into her vagina; that still unsatisfied, appellant made her suck his penis for almost half an hour, then inserted his penis into her anus and made a push-and-pull movement for another half an hour; that she begged appellant to stop the sexual assault because it was already painful, but the latter simply ignored her pleas; that thereafter, appellant made her suck his penis again for half an hour; and that when Villalobos was distracted by the light that passed through the *nipa* hut coming from a vehicle, she immediately fled from the hut.

AAA was not able to shout because appellant's handgun was pointed at her which, later on, was placed close by him. Appellant threatened to shoot her if she would make a sound while he consummated his carnal knowledge of her. She just cried silently. Thus, we are convinced that Villalobos had employed intimidation to subjugate AAA's will and break her resistance down. AAA's statements pertaining to the identity of Villalobos as her violator and the perverse acts he visited upon her were straightforward and categorical. Hailed to the witness stand, AAA never wavered neither did her statements vacillate between uncertainty and certitude.

In addition, AAA's testimony was corroborated by the medical findings of Dr. Philip Nolan Demaala (*Dr. Demaala*). Dr. Demaala testified that when he conducted a physical examination on AAA, he noted that the latter sustained a contusion between her neck and chest as well as redness in her *labia minora* and near the area where the urine comes out. According to Dr. Demaala, such medical findings confirmed penile penetration on AAA. It has been said that when the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established.[18] Hence, such testimony of Dr. Demaala strengthens even more the claim of rape by AAA against herein appellant.

The credibility of a rape victim is enhanced when, as in the case at bench, she has no motive to testify against the accused

[18] *People v. Tormis*, 595 Phil. 589, 603 (2008).

or where there is absolutely no evidence which even remotely suggests that she could have been actuated by such motive. Further, the fact that AAA resolved to face the ordeal and relate in public what she suffered evinces that she did so to obtain justice. Her willingness and courage to face the authorities as well as to submit to medical examination, are mute but eloquent confirmation of her sincere resolve to vindicate the outrageous wrong done to her person, honor and dignity. AAA's natural interest in securing the conviction of the perpetrator would strongly deter her from implicating a person other than the real culprit. We are thus convincingly assured that the RTC prudently fulfilled its obligation as a factual assessor and legal adjudicator.

Next, Villalobos posits that it was improbable for AAA to see and identify the perpetrator of the rape because it was dark in the place where the alleged rape incident happened. The defense concludes that the prosecution failed to establish with moral certainty the identity of the perpetrator as that of the appellant. The contention is untenable.

Proving the identity of the accused as the malefactor is the prosecution's primary responsibility. Indeed, the first duty of the prosecution is not to prove the crime but to prove the identity of the perpetrator, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the culprit beyond reasonable doubt.[19] In the case at bench, the prosecution's evidence on the identity of Villalobos as the offender is clear and unmistakable.

While Villalobos attempted to hide his identity by covering his face with a shirt in the blackness of the night, his identity has been revealed and the darkness that is his cover has been dispelled by the credible testimony of AAA that, while it was indeed dark in the place where the rape incident took place, there was, however, adequate moonlight which illuminated the area. Thus, she was able to take a good look at and remember the face of appellant, who then had already removed the shirt

[19] *People v. Espera*, 718 Phil. 680, 694 (2013).

covering his face, as her ravisher. These details make her testimony and positive identification of Villalobos more reliable.

Visibility is indeed a vital factor in determining whether an eyewitness could have identified the perpetrator of a crime.[20] It is settled that when conditions of visibility are favorable, and when the witness does not appear to be biased, her assertion as to the identity of the malefactor should normally be accepted.[21] In proper situations, illumination produced by a kerosene or wick lamp, a flashlight, even moonlight or starlight may be considered sufficient to allow identification of persons.[22] Under such circumstance, any attack on the credibility of witnesses, based solely on the ground of insufficiency or absence of illumination, becomes unmeritorious.[23]

To be sure, AAA had an unobstructed view of Villalobos because of their proximity with each other at the time of the incident. Given her familiarity with the voice and face of Villalobos being her neighbor and a frequent visitor of his cousin Joel, as well as the illumination provided by the moonlight on the evening of June 7, 2008, eliminated any possibility of mistaken identification. Moreover, experience suggests that it is precisely because of the unusual acts of violence committed right before their eyes that witnesses can remember the identities of criminals with a high degree of reliability at any given time.[24] All throughout her testimony, AAA never faltered about the identity of appellant Villalobos and his commission of the felonious coitus.

Villalobos contends that AAA's testimony was neither credible nor consistent with human nature as she could have easily shouted and asked for help had she wanted to during and immediately after the alleged rape incident, but she failed to do so. The argument is specious.

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[20] *People v. Ramirez*, 409 Phil. 238, 250 (2001).

[21] *People v. Cogonon*, 331 Phil. 208, 219 (1996).

[22] *People v. Licayan*, 428 Phil. 332, 344 (2002).

[23] *People v. Biñas*, 377 Phil. 862, 897 (1999).

[24] *People v. Porras*, 413 Phil. 563, 587 (2001).

The failure to shout or offer tenacious resistance cannot be construed as a voluntary submission to culprit's desires.[25] Also, failure of the victim to shout for help does not negate rape.[26] It is enough if the prosecution had proven that force or intimidation concurred in the commission of the crime as in this case. The law does not impose upon a rape victim the burden of proving resistance.[27] Besides, physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety.[28] In any event, the workings of the human mind placed under emotional stress are unpredictable such that different people react differently to a given situation or type of situation and there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience.[29] In the case at bench, it was established that AAA was cowed into silence and gave in to the vile desires of Villalobos for fear that said appellant would make good his threat to shoot her with the handgun he pointed against her, which he later placed close by him. At any rate, this is a trivial matter which does not go into the "why's" and "wherefore's" of the crime.

In his last-ditch effort to secure for an acquittal, Villalobos tries to interject reasonable doubt by pointing out that the duration of the alleged rape which lasted for more than 90 minutes was indicative of consensual sexual intercourse between him and AAA. His attempt is futile.

To begin with, there is no evidence on record that AAA had an extramarital affair with Villalobos nor was there any proof that she was attracted to him enough to consent and willingly give in to the bestial desires of the latter. In any event, the precise duration or exact length of time of the commission of

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[25] *People v. Talaboc,* 326 Phil. 451, 461 (1996).

[26] *People v. Barcelona,* 382 Phil. 46, 54 (2000).

[27] *People v. Dusohan,* 297 Phil. 1020, 1024 (1993).

[28] *People v. Besmonte,* 735 Phil. 234, 251 (2014).

[29] *People v. Silvano*, G.R. No. 127356, June 29, 1999.

rape is not an essential element of the felony. Besides, case law shows numerous instances of rape committed under indirect and audacious circumstances because the lust of a lecherous man respects neither time nor place.[30] In *People v. Diaz*,[31] the Court elucidates that the testimony of the private complainant to the effect that the rape occurred for a rather long time would not diminish her credibility, thus:

> We also affirm the finding of the Court of Appeals that Mara's credibility was not eroded by her testimony that the accused-appellant tarried for two hours in her room. The Court of Appeals said it well: when one is being raped, forcibly held, weak and in great pain, and in shock, she cannot be reasonably expected to keep a precise track of the passage of time down to the last minute. Indeed, for a woman undergoing the ordeal that Mara underwent in the hands of the accused-appellant, every moment is like an eternity of hell and the transit of time is a painfully slow crawl that she would rather forget. In addition, the precise duration of the rape is not material to and does not negate the commission of the felony. Rape has no regard for time and place. It has been committed in all manner of situations and in circumstances thought to be inconceivable.[32]

Appellant's denial must be rejected as the same could not prevail over AAA's unwavering testimony and of her positive and firm identification of him as the perpetrator. As negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit.[33] We find that the facts in the instant case do not present any exceptional circumstance warranting a deviation from this established rule.

The defense of alibi is likewise unavailing. In order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him

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[30] *People v. Jastiva,* 726 Phil. 607, 634 (2014)

[31] 711 Phil. 227 (2013).

[32] *People v. Diaz, supra*, at 237. (Underscoring ours).

[33] *People v. Canares,* 599 Phil. 60, 76 (2009).

to be anywhere within the vicinity of the crime scene.[34] Villalobos failed to do so. Worse, he admitted during trial that his house is just 300 meters away from AAA's house, which thus effectively negates the physical impossibility of him committing the crime against AAA on the night of June 7, 2008. The fact that appellant presented his sister, Elmie Joy Villalobos, and brother, Robson Villalobos, to corroborate his alibi, is of no moment. When the defense witness is a relative of an accused whose defense is alibi, courts have more reason to view such testimony with skepticism due to the very nature of alibi the witness affirms.[35] An accused can easily fabricate an alibi and ask his relatives and friends to corroborate it.[36] Given the positive identification by AAA of Villalobos as the culprit, and the lack of physical impossibility for said appellant to be at the scene of the crime at the time of its commission, his defenses of denial and alibi crumble like a sand fortress. Appellant's defense of extortion must likewise fail considering that the same was not substantiated by competent and independent evidence.

Having ascertained the guilt of Villalobos for the crime of Rape beyond reasonable doubt, the Court shall now proceed to the determination of the proper penalty.

Whenever the crime of rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death as provided under Article 266-B of the Revised Penal Code. The prosecution was able to sufficiently allege in the Information and establish during trial that a handgun was used in the commission of rape. Considering that no aggravating or mitigating circumstance attended the commission of the crime, the lesser penalty of *reclusion perpetua* is the proper imposable penalty. However, the RTC, in its decision, added the qualification of "without eligibility for parole" to describe or qualify *reclusion perpetua*, and this was affirmed by the CA. In light of the attendant circumstances in the case at bench,

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[34] *People v. Abella,* 624 Phil. 18, 36 (2010).

[35] *People v. Sumalinog, Jr.*, 466 Phil. 637, 650-651 (2004).

[36] *People v. Torres,* 743 Phil. 552, 567 (2014).

there is no more need to append the phrase "without eligibility for parole" to appellant's prison term in line with the instructions given by the Court in A.M. No. 15-08-02-SC.[37] Therefore, the dispositive portion of this decision should simply state that appellant is sentenced to suffer the penalty of *reclusion perpetua* without any qualification.

Coming now to the pecuniary liabilities, the Court finds that the CA is correct in awarding ₱75,000.00 each for civil indemnity, moral damages and exemplary damages being consistent with our pronouncement in *People v. Jugueta*.[38] Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this judgment until fully paid.[39]

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals dated September 29, 2016 in CA-G.R. CR-HC No. 01316-MIN is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant Junrel R. Villalobos is found **GUILTY** beyond reasonable doubt of the crime of Rape and is sentenced to suffer the penalty of *Reclusion Perpetua*.

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[37] Section II of A.M. No. 15-08-02-SC (Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties) states:

x x x x x x x x x

II.

In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "*without eligibility for parole*":

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility for parole" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "without eligibility for parole" *shall be used* to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[38] 783 Phil. 806 (2016).

[39] *People v. Romobio,* G.R. No. 227705, October 11, 2017.

He is **ORDERED** to **PAY** the victim AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 by way of exemplary damages.

Accused-appellant is also **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the time of finality of this Decision until fully paid, to be imposed on the civil indemnity, moral damages and exemplary damages.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 230991. June 11, 2018]

HILARIO B. ALILING, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF ACCUSED; PRESUMPTION OF INNOCENCE; ACCUSATION DOES NOT AMOUNT TO CONVICTION, ONLY WHEN THE PROSECUTION HAS ESTABLISHED GUILT BEYOND REASONABLE DOUBT SHALL THE PRESUMPTION OF INNOCENCE BE OVERTURNED.— In criminal prosecutions, a person who stands charged of a crime enjoys the presumption of innocence, as enshrined in the Bill of Rights. He is designated as the *accused* precisely because the allegations against him have to be proven beyond reasonable doubt. Due process dictates that an accused is entitled to a fair trial where both the prosecution and defense can present their respective versions of the events, and submit proof thereof. Accusation does not amount to conviction. Only when the

prosecution has established guilt beyond reasonable doubt shall the presumption of innocence be overturned. In this case, the prosecution did not overcome the burden of proof.

2. ID.; CIVIL PROCEDURE; APPEALS; A PETITION FOR REVIEW ON *CERTIORARI* SHALL ONLY RAISE QUESTIONS OF LAW AS THE COURT IS NOT A TRIER OF FACTS; EXCEPTION PRESENT.— It has been consistently held that a petition for review on certiorari under Rule 45 shall only raise questions of law as the Court is not a trier of facts. A factual question would necessitate the reevaluation of the evidence submitted before the trial court. This is allowed in the exceptional circumstance where the judgment is based on a misapprehension of the facts. Such is the situation in this case.

3. ID.; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; THE DEFENSES OF DENIAL AND ALIBI SHOULD NOT BE SO EASILY DISMSSED BY THE COURT AS UNTRUE; IF FOUND CREDIBLE, THE DEFENSES OF DENIAL AND ALIBI MAY BE CONSIDERED COMPLETE AND LEGITIMTE DEFENSES, AND THE BURDEN OF PROOF DOES NOT SHIFT BY THE MERE INVOCATION OF SAID DEFENSES.— Positive testimony is generally given more weight than the defenses of denial and alibi which are held to be inherently weak defenses because they can be easily fabricated. However, the defenses of denial and alibi should not be so easily dismissed by the Court as untrue. While, indeed, the defense of denial or alibi can be easily fabricated, the same can be said of untruthful accusations, in that they can be as easily concocted. In considering the defenses of denial and alibi, the Court held in *Lejano v. People*: But not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. So how can such accused penetrate a mind that has been made cynical by the rule drilled into his head that a defense of alibi is a hangman's noose in the face of a witness positively swearing, "I saw him do it."? Most judges believe that such assertion automatically dooms an alibi which is so easy to fabricate. This quick stereotype thinking, however, is distressing. For how else can the truth that the accused is really innocent

have any chance of prevailing over such a stone-cast tenet? There is only one way. A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job of deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused's claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can. The lying witness can also say as forthrightly and unequivocally, "He did it!" without blinking an eye. Thus, if found credible, the defenses of denial and alibi may be considered complete and legitimate defenses. The burden of proof does not shift by the mere invocation of said defenses; the presumption of innocence remains in favor of the accused. In alibi, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise physically impossible for him to be at the scene of the crime at the time thereof. Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.

4. ID.; ID.; CREDIBILITY OF WITNESSES; SELF-CONTRADICTIONS AND INCONSISTENCIES ON A VERY MATERIAL AND SUBSTANTIAL MATTER SERIOUSLY ERODES THE CREDIBILITY OF A WITNESS; FOR EVIDENCE TO BE BELIEVED MUST NOT ONLY PROCEED FROM THE MOUTH OF A CREDIBLE WITNESS, BUT MUST BE CREDIBLE IN ITSELF-SUCH AS THE COMMON EXPERIENCE AND OBSERVATION OF MANKIND CAN APPROVE AS PROBABLE UNDER THE CIRCUMSTANCES.— The Court has held that "[s]elf-contradictions and inconsistencies on a very material and substantial matter seriously erodes the credibility of a witness." As the Court further held in *People v. Amon*: For evidence to be believed "must not only proceed from the mouth of a credible witness, but must be *credible in itself* — such as the *common experience* and *observation* of mankind can approve *as probable* under the circumstances. There is no test of the truth of human testimony, except its *conformity* to *our knowledge, observation* and *experience*. Whatever is repugnant to these belongs to the miraculous and is outside of

judicial cognizance." In the instant case, the testimonies of the prosecution witnesses are contradictory on a material point.

5. **ID.; ID.; ID.; THE INCONSISTENCY IN THE STATEMENTS OF THE PROSECUTION WITNESSES ON MATERIAL POINTS SIGNIFICANTLY ERODES THE CREDIBILITY OF THEIR TESTIMONIES, JUXTAPOSED AGAINST THE FORTHRIGHT AND CONSISTENT TESTIMONIES OF THE DEFENSE WITNESSES.—** The Court has previously held that minor inconsistent statements in a witness' affidavit and in his testimony in court do not necessarily affect his credibility. However, in this case, the detail as to whether the victim had seen the accused with or without a companion is a material detail as it goes into the very execution of the crime. The inconsistency in the statements of the prosecution witnesses on material points significantly erodes the credibility of their testimonies, juxtaposed against the forthright and consistent testimonies of the defense witnesses. With the probative value of the prosecution witnesses' testimony greatly diminished, the alibi of the accused is given credence. In the instant case, the prosecution failed to overcome the burden of proving the accused's guilt beyond reasonable doubt. Acquittal, therefore, is in order.

6. **ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; WHILE ABSOLUTE CERTAINTY IS NOT REQUIRED, THE EVIDENCE PRESENTED BY THE PROSECUTION MUST PRODUCE IN THE MIND OF THE COURT A MORAL CERTAINTY OF THE ACCUSED'S GUILT; WHEN THERE IS EVEN A SCINTILLA OF DOUBT, THE COURT MUST ACQUIT.—** In this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction. While the law does not require absolute certainty, the evidence presented by the prosecution must produce in the mind of the Court a moral certainty of the accused's guilt. When there is even a scintilla of doubt, the Court must acquit. As the Court succinctly held in *People v. Erguiza*: It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical and inevitable conclusion. What is required of it is to justify the conviction of the accused with moral certainty. Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court, lest its mind be tortured

with the thought that it has imprisoned an innocent man for the rest of his life.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondent.
Lacebal-Pagkanlungan Ungson-Liu Padre & Magsombol Law Offices for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review[1] (Petition) under Rule 45 of the Rules of Court, assailing the Decision[2] dated November 24, 2016 (Assailed Decision) and Resolution[3] dated March 30, 2017 (Assailed Resolution) of the Court of Appeals (CA) in CA-G.R. CR No. 38335, which affirmed the Decision[4] dated November 25, 2015 of the Regional Trial Court (RTC), Branch 5, Lemery, Batangas (RTC Decision), finding petitioner Hilario B. Aliling *alias* "Larry" (Aliling), guilty of Frustrated Murder and sentencing him to suffer imprisonment 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.

The Facts

Aliling was charged under the following Information:

That on or about the 18th day of April, 2010, at about 10:00 o'clock in the evening, at Barangay Matingain 1, Municipality of Lemery, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with an unlicensed

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[1] *Rollo*, pp. 3-40.

[2] *Id*. at 42-53. Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Francisco P. Acosta and Stephen C. Cruz concurring.

[3] *Id*. at 54-55.

[4] *Id*. at 104-109. Penned by Acting Presiding Judge Eleuterio Larisma Bathan.

short firearm, with intent to kill and with the qualifying circumstances of treachery and evident premeditation, without any justifiable cause, did then and there [willfully], unlawfully and feloniously attack, assault, and shoot with the said firearm one Jerry Tumbaga *y* Marasigan, suddenly and without warning, thereby inflicting upon the latter 0.5 cm Gun Shot Wound L1-L2 Paravertebral Area, Left and 0.5 cm. [gunshot wound], Infrascapular Area, Right which required medical attendance and incapacitated him from performing his customary work for a period of more than three (3) months, the said accused having performed all the acts of execution which should have produced the crime of murder as a consequence, but which nevertheless was not produced by reason of some cause independent of the will of the perpetrator, that is because of the timely and able medical attendance rendered to the said Jerry Tumbaga *y* Marasigan, which prevented his death.

Contrary to law.[5]

Aliling filed a Motion for Bail which was approved by the RTC in its Order[6] dated August 24, 2010. Upon arraignment, Aliling pleaded "not guilty."[7]

The RTC summarized the facts for both the prosecution and the defense, as follows:

VERSION OF THE PROSECUTION

The prosecution first presented the alleged victim in this case, Jerry Tumbaga *y* Marasigan. The witness testified that on April 18, 2010, at 10:00 o'clock in the evening, he was watching a basketball game in Barangay Matingain, together with his uncle Jesus Marasigan. [He] then left the place and proceeded to his motorcycle which was then parked at about 7-8 meters away. When he was about to board his motorcycle, he was shot at the back and when he looked back, he recognized accused Hilario Aliling as the one firing. The accused then fired again, and the victim was again hit at the back. The witness ran away, felt dizzy and subsequently fell down near the basketball court. The witness further testified that he was brought to Metro Lemery Hospital and after about an hour, he was transferred to Batangas Regional Hospital where he underwent surgery.

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[5] Records, pp. 1-2.

[6] *Id*. at 35.

[7] Minutes dated November 9, 2010, *id*. at 63.

The second prosecution witness is Jesus Marasigan y Camson, uncle of the private complainant. The witness testified that on the date and time alleged in the Information, he was at a basketball court in Matingain I, Lemery, Batangas together with Jerry Tumbaga. The private complainant then asked permission to leave. The private complainant then went towards his parked motorcycle in front of the basketball court. The witness saw Jerry Tumbaga [ride] his motorcycle and then suddenly, accused Hilario Aliling arrived and fired twice at the private complainant. The private complainant ran away and then fell down while the accused [likewise] ran, rode a motorcycle and escaped. Thereafter, the witness, together with other persons brought Jerry Tumbaga to Metro Lemery Hospital.

The third prosecution witness was Dr. Mark Louie M. Lanting x x x who conducted the operation on Jerry Tumbaga x x x and [issued] the medico[-]legal certificate x x x dated April 29, 2010.

VERSION OF THE [DEFENSE]

The first [defense] witness is Hilario Aliling y Bathan. The accused testified that on April 18, 2010, between 7:00 o'clock and 8:00 o'clock in the morning, he was at Barangay Masalisi together with Annie, Tessie, Janno, Piolo[,] Coring and Melody. They were campaigning for a certain Apacible. According to the accused, they finished campaigning at around 6:00 o'clock in the evening of the same day and waited for the start of the "[*miting de avance*]". They left the "[*miting de avance*]" at around 12:00 midnight and proceeded to the house of Annie, their coordinator, at Barangay Matingain and arrived there at around 1:00 o'clock in the morning. Thereafter, he took his motorcycle and went home. The accused arrived at his house at around 1:30 o'clock. The next day, he went campaigning again.

The accused further testified that he first learned that he was a suspect on June 22 when he received a subpoena. The accused went further on testifying that the private complainant [was] probably mad at him due to their previous confrontation that happened in Barangay Butong.

The next defense witness was Adrian Cabral Atienza. The witness testified that on April 18, 2010, from 8:00 o'clock in the morning up to 1:00 o'clock of the following day, he was with the accused, together with several others, at Barangay Masalisi. He likewise testified that they were campaigning that day for candidate Apacible.

The last defense witness was Michael Perez Bathan. [The] witness testified that he was at the basketball court in Barangay Matingain on April 18, 2010. He was then watching the basketball game when he heard two gunshots. He testified further that the private complainant was about to ride his motorcycle when he was shot. The private complainant ran and then fell to the ground. The witness also testified that he did not see accused Hilario Aliling at the place when the shooting happened and instead saw an unidentified man shot the private complainant.[8]

On November 25, 2015, the RTC rendered its Decision finding Aliling guilty beyond reasonable doubt of Frustrated Murder. The trial court gave more credence to the testimonies of the victim, Jerry M. Tumbaga (Tumbaga) and the other eyewitness Jesus C. Marasigan (Marasigan) who both identified Aliling as the gunman, as against Aliling's defense of alibi. The RTC noted that there was an inconsistency in Aliling's testimony when he stated that he used his motorcycle on the day of the incident but then on cross-examination, he stated that he left his motorcycle at the house of their coordinator. The lower court further held that the positive allegations of the prosecution witnesses prevailed over the negative assertions of the defense witnesses.

Thus, Aliling filed a Notice of Appeal[9] which was given due course by the RTC in its Order dated December 10, 2015. Aliling's Motion for Bail pending appeal was also granted.[10] The CA affirmed the RTC Decision in its Assailed Decision. On the alibi, the appellate court noted that the corroborative witness testified that he did not know Aliling's whereabouts at the time of the incident.[11] Aliling's Motion for Reconsideration[12] was subsequently denied by the CA in its Assailed Resolution. Thus, he elevated the case before the Court through this Petition.

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[8] *Rollo*, pp. 105-106.

[9] Records, pp. 315-316.

[10] See RTC Order dated November 27, 2015, *id*. at 310.

[11] *Rollo*, p. 52.

[12] CA *rollo*, pp. 137-148.

The Petition

Aliling contends that the CA committed reversible error in affirming the judgment of the RTC. He maintains his innocence and alleges that the prosecution was not able to discharge the burden of proving his guilt beyond reasonable doubt. Aliling claims that the testimonial evidence of the prosecution cannot be relied on as they were inconsistent and incredible.

Aliling also alleges that the CA failed to properly consider the defense's evidence. According to him, the defense was able to present and submit unbiased testimonies of credible witnesses who supported his alibi that he was in *Barangay* (*Brgy.*) Masalisi doing campaign activities until 1:00 o'clock in the morning on the day of the shooting. The eyewitness, Michael P. Bathan (Bathan), friend of both Aliling and Tumbaga, also testified that he witnessed the shooting incident and saw that the gunman was not Aliling but an unidentified person.

Issue

Whether the CA erred in affirming the RTC's judgment of conviction.

The Court's Ruling

The Petition is meritorious.

In criminal prosecutions, a person who stands charged of a crime enjoys the presumption of innocence, as enshrined in the Bill of Rights.[13] He is designated as the *accused* precisely

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[13] CONSTITUTION, Art. III, Sec. 14 states:

(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 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.

because the allegations against him have to be proven beyond reasonable doubt. Due process dictates that an accused is entitled to a fair trial where both the prosecution and defense can present their respective versions of the events, and submit proof thereof. Accusation does not amount to conviction. Only when the prosecution has established guilt beyond reasonable doubt shall the presumption of innocence be overturned. In this case, the prosecution did not overcome the burden of proof.

It has been consistently held that a petition for review on certiorari under Rule 45 shall only raise questions of law as the Court is not a trier of facts. A factual question would necessitate the reevaluation of the evidence submitted before the trial court. This is allowed in the exceptional circumstance where the judgment is based on a misapprehension of the facts.[14] Such is the situation in this case.

Positive identification versus denial and alibi

Positive testimony is generally given more weight than the defenses of denial and alibi which are held to be inherently weak defenses because they can be easily fabricated.[15] However, the defenses of denial and alibi should not be so easily dismissed by the Court as untrue. While, indeed, the defense of denial or alibi can be easily fabricated, the same can be said of untruthful accusations, in that they can be as easily concocted.

In considering the defenses of denial and alibi, the Court held in *Lejano v. People*[16]:

> But not all denials and alibis should be regarded as fabricated. Indeed, if the accused is truly innocent, he can have no other defense but denial and alibi. So how can such accused penetrate a mind that has been made cynical by the rule drilled into his head that a defense of alibi is a hangman's noose in the face of a witness positively swearing, "I saw him do it."? Most judges believe that such assertion automatically dooms an alibi which is so easy to fabricate. This quick stereotype thinking, however, is distressing. For how else can the

[14] See *Pascual v. Burgos*, 776 Phil. 167, 182-183 (2016).

[15] *Crisostomo v. People*, 644 Phil. 53, 65 (2010).

[16] 652 Phil. 512 (2010).

truth that the accused is really innocent have any chance of prevailing over such a stone-cast tenet?

There is only one way. A judge must keep an open mind. He must guard against slipping into hasty conclusion, often arising from a desire to quickly finish the job of deciding a case. A positive declaration from a witness that he saw the accused commit the crime should not automatically cancel out the accused's claim that he did not do it. A lying witness can make as positive an identification as a truthful witness can. The lying witness can also say as forthrightly and unequivocally, "He did it!" without blinking an eye.[17]

Thus, if found credible, the defenses of denial and alibi may be considered complete and legitimate defenses. The burden of proof does not shift by the mere invocation of said defenses; the presumption of innocence remains in favor of the accused.

In alibi, the accused must prove not only that he was at some other place at the time the crime was committed, but that it was likewise physically impossible for him to be at the scene of the crime at the time thereof.[18] Physical impossibility refers to the distance between the place where the appellant was when the crime transpired and the place where it was committed, as well as the facility of access between the two places.[19]

Purported inconsistencies in defense's evidence

In the instant case, the RTC and CA did not give credence to the defense's testimonial evidence based on the alleged inconsistencies of the witnesses' statements. However, the Court finds that Aliling's alibi was straightforward, credible, **and corroborated by an impartial witness**. **Furthermore, there was eyewitness testimony to the effect that Aliling was not the gunman**.

Contrary to the findings of the RTC, there was no inconsistency in Aliling's testimony as regards his use of his motorcycle.

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[17] *Id*. at 581.

[18] *People v. Agcanas*, 674 Phil. 626, 632 (2011).

[19] *People v. Anticamara*, 666 Phil. 484, 507-508 (2011).

Thus, a reexamination of his testimony is necessary to clarify the alleged inconsistency. Aliling testified as follows:

> [*Direct examination of Aliling by Atty. Myla Magsombol*[20] *(Atty. Magsombol)*]
>
> Q Can you recall where were you on April 18, 2010?
> A Yes, ma'am.
>
> Q Where were you?
> A I was at Brgy. Masalisi, ma'am.
>
> Q What were you doing in Brgy. Masalisi?
> A I was campaigning, ma'am.
>
> Q Do you recall what time you arrived in Brgy. Masalisi on April 18, 2010?
> A Between 7:00 o'clock and 8:00 o'clock, ma'am.
>
> Q In the morning or in the evening?
> A In the morning, ma'am.
>
> Q When you arrived at 7:00 o'clock in the morning in Brgy. Masalisi on April 18, 2010, what did you do?
> A I proceeded campaigning by posting the flyers of candidate Apacible, ma'am.
>
> x x x x x x x x x
>
> Q What time did you finish with the campaigning?
> A At 6:00 o'clock, ma'am.
>
> x x x x x x x x x
>
> Q [What did you do next?]
> A We waited for the 'meeting de avanse' (*sic*), ma'am.
>
> Q How long did you wait for the meeting de avance?
> A For almost one (1) hour, ma'am.
>
> Q After you have waited at about one (1) hour, what next did you do?
> A We attended the 'meeting de avanse' (*sic*), ma'am.
>
> Q And who were with you during the 'meeting de avanse' (*sic*)?
> A Ate Annie, Melody, ate Fe, Piolo and Janno, ma'am.

[20] Also spelled as "Magsumbol" in other parts of the TSNs.

Q Who is this ate Annie that you keep mentioning?
A Our coordinator, ma'am.

Q Okay, in what time this meeting de avanse (*sic*) ended?
A We left the place at around 12:00 o'clock in the evening although the meeting is not yet through, ma'am.

Q And when you left the meeting de avanse (*sic*), where did you proceed?
A In Brgy. Matingain at the house of the coordinator, ma'am.

Q The house of this ate Annie?
A Yes, ma'am.

Q What time did you arrive at ate Annie's place?
A At 1:00 o'clock, ma'am.

Q In the morning?
A Yes, ma'am.

Q And after that, what did you do next?
A **I took my motorcycle and ate Dang went home, ma'am**.

Q Who is this ate Dang?
A My sister-in-law, ma'am.

Q What time did you arrive at your house?
A Around 1:30 o'clock, ma'am.[21] (Emphasis supplied)

[*Cross-examination of Aliling by Atty. Hermogenes De Castro (Atty. De Castro)*]

Q Mr. Aliling, you stated on direct examination that on April 18, 2010 during the daytime you were in Barangay Masalisi, Lemery, Batangas?
A Yes, sir.

x x x x x x x x x

Q During that time in the evening of that day, April 18, 2010 you were (*sic*) with your motorcycle, is that correct?
A No, sir.

Q How did you go home that evening?
A I rode in our service vehicle, sir.

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[21] TSN, June 19, 2012, pp. 4-5.

Q Your service vehicle was a motorcycle?
A No, sir.

Q What was your service vehicle?
A A pick up, sir.

Q What time did you leave that place?
A Around 1:00 o'clock in the morning, sir.

Q **Did you say on direct examination that you have your motorcycle with you in that evening?**
A **I used it only up to the house of our coordinator, sir.**

Q Where is the house of your coordinator?
A In Matingain II, sir.[22] (Emphasis supplied)

There is no inconsistency in the above testimony. In sum, Aliling testified that on April 18, 2010, he drove his motorcycle to the house of their campaign coordinator "Ate Annie" in *Brgy.* Matingain II. He left his motorcycle there. Together with a group of campaigners, he proceeded to *Brgy.* Masalisi between 7:00 a.m. and 8:00 a.m. on board their service vehicle, a pick-up truck. Their group finished campaigning at 6:00 p.m. They stayed in *Brgy.* Masalisi until the *miting de avance* which started at around 7:00 p.m. They left the *miting de avance* at around 12:00 midnight and went back to the house of "Ate Annie," using again their service vehicle. Their group arrived thereat around 1:00 a.m. Using his motorcycle, which he had left earlier, Aliling went home with his sister-in-law, and arrived at his house at 1:30 a.m.

Aliling's testimony as to his whereabouts is corroborated by Adrian C. Atienza (Atienza), who testified that he was with Aliling from 8:00 a.m. on April 18, 2010 until the early morning hours of April 19, 2010:

[*Direct examination of Atienza by Atty. Magsombol*]

Q Mr. Witness, can you recall where were you on April 18, 2010, if you can?
A Yes, ma'am, I was at Barangay Masalisi.

Q What were you doing at Barangay Masalisi?
A I was attending a meeting de abanse (*sic*), ma'am.

[22] TSN, August 22, 2013, pp. 2-3.

Q Who were with you during that time at Barangay Masalisi, if you can recall?
A Many, ma'am.

Q Mention some?
A Larry, Ate Annie Razon Mendoza, ma'am.

Q Who else?
A Ate Fe Reyes, Marie Jameson Razon, ma'am.

Q Can you state what time you arrived in Masalisi on April 18, 2010?
A At around 8:00 o'clock in the morning, ma'am.

Q When you arrived at Barangay Masalisi, at 8:00 o'clock in the morning, who were with you?
A The same persons I mentioned earlier, ma'am.

Q What time did you leave Barangay Masalisi?
A At around 1:00 o'clock in the morning ma'am.

Q The next day?
A Yes, ma'am.

Q Who were your companions when you left Barangay Masalisi?
A The same persons I mentioned, ma'am.

Q x x x [W]here did you proceed?
A In the house of Annie Mendoza, ma'am.

Q Where was that?
A In Matinggain, ma'am.

Q x x x [W]ho were your companion[s] again, if any?
A **The same persons, we used only one vehicle at that time so we have only one group, ma'am.**[23] (Emphasis supplied)

The above testimony of Atienza corroborates the testimony of Aliling as to his whereabouts at the time of the incident and as to the use of their service vehicle. Contrary to the findings of the CA,[24] Atienza did not state that he did not know the whereabouts of his companions at the time of the incident. He stated that the whole day of April 18, 2010, he was with Aliling

[23] TSN, October 30, 2014, pp. 6-7.

[24] *Rollo,* p. 52.

as they were partners in the posting of campaign materials. He also testified that he was beside Aliling during the *miting de avance* which coincided with the time of the shooting incident. On this point, Atienza testified as follows:

[*Clarificatory questions by the Court for Atienza*]

Q You were in the group of campaigners?
A Yes, your honor.

Q Your boss was?
A Tom Apacible, your honor.

Q Your duty that time was as a tacker?
A Yes, your honor.

Q Where was Hilario at the time when you were tacking posters of Apacible?
A I and Larry were partners, your honor.

Q What was he doing that time while you were tacking posters?
A He was the one folding the posters I was tacking that time, your honor.

x x x x x x x x x

Q Where were you at exactly 10:00 in the evening of April 18, 2010?
A We were watching and listening to the meeting de abanse (*sic*), your honor.

x x x x x x x x x

Q What was the purpose of being there?
A To support the candidacy of Tom Apacible, your honor.

Q While you were acting as supporters what were you doing at that time?
A We were the one tasked to clap hands for him (tagapalakpak), your honor.

Q Where were you positioned that time while according to you tagapalakpak?
A At the side, your honor.

Q **How about the other members of the group where were they?**
A **I do not know, your honor.**

Q **You do not know where the others, you were referring to whom?**
A **Melody Razon, Fe Reyes, Marie Razon, Felix Collado, your honor.**

x x x x x x x x x x x

Q x x x **[W]ho were the persons according to you they were scattered when you were tagapalakpak?**

A **We were beside each other, your honor. I, ate Annie, and Larry [the accused] were beside each other, your honor.**[25] (Emphasis supplied)

Thus, when Atienza stated that he did not know where his companions were during the *miting de avance*, he was referring to Melody Razon, Fe Reyes, Marie Razon, and Felix Collado. With regard to his position in relation to Aliling, Atienza testified that he was beside Aliling and their coordinator, "Ate Annie."

It is also worthy to note that among the witnesses, Atienza is the only one without any familial relationship with Aliling or to the victim, Tumbaga. Atienza testified that he met Aliling only during the campaign period. On the other hand, he had known Tumbaga for a long time because they lived in the same *barangay* and Tumbaga's grandmother was their former neighbor.[26] Hence, Atienza's status as an impartial witness is beyond dispute, having no relationship with either the accused or the victim. Atienza's testimony, on this score, is straightforward, credible, and unbiased as, indeed, he has no reason to lie.

Bolstering the alibi of Aliling is the eyewitness account of Bathan who positively testified that he witnessed the shooting incident and saw that the culprit was not Aliling. He testified as follows:

[*Direct examination of Bathan by Atty. Magsombol*]

Q Mr. Witness, do you remember where you were on the date April 18, 2010?
A Yes, ma'am.

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[25] TSN, October 30, 2014, pp. 11-13.

[26] *Id.* at 5-6, 10.

Q Where were you?
A I was in Barangay Matingain near the basketball court, ma'am.

x x x x x x x x x

Q Mr. Witness, do you know the private complainant, Jerry Tumbaga?
A Yes, ma'am.

Q How long x x x?
A For a long time already, ma'am.

Q How about the accused, Hilario Aliling?
A Yes, ma'am.

Q How long?
A Since birth because he is a relative of mine, ma'am.

x x x x x x x x x

Q Did you actually see Jerry Tumbaga shot?
A Yes, ma'am.

Q How far x x x were you from Jerry Tumbaga when he was shot?
A From the place where I was seated up to the door of this courtroom, ma'am, which is estimated to be 10 to 15 meters.

Q **How many shots did you hear?**
A **Two (2), ma'am.**

Q **x x x Those shots that you heard, were they immediately one after the other x x x?**
A **One after the other, ma'am.**

Q When Jerry Tumbaga was shot, what happened next?
A He was riding in (*sic*) his motorcycle and about to leave when he was shot. As the motorcycle dropped he ran to the other ring of the basket[ball court] and he fell to the ground.

Q After that, what happened next?
A The players present brought him to the hospital, ma'am.

Q **Having witnessed the incident, did you see the accused Larry Aliling?**
A **No, ma'am.**

Q **How about the person whom you said who shot Jerry Tumbaga, did you see him?**

A **I saw the person whom I do not know shot Jerry Tumbaga, ma'am.**

Q Do you know Jesus Marasigan?
A Yes, ma'am.

Q Who is he?
A He is the uncle of Jerry Tumbaga, ma'am.

Q Was he there when the incident transpired?
A Yes, ma'am.

Q What was he doing?
A He was beside us, ma'am.[27] (Emphasis supplied)

Eyewitness Bathan testified that he saw the shooting incident and categorically stated that the shooter was not Aliling. Bathan is familiar with the features of Aliling, having known him for a long time as they are relatives. Thus, the eyewitness account of the shooting bolsters Aliling's denial that he was not the gunman.

Testimonial evidence for the prosecution

The Court has held that "[s]elf-contradictions and inconsistencies on a very material and substantial matter seriously erodes the credibility of a witness."[28] As the Court further held in *People v. Amon*[29]:

> For evidence to be believed "must not only proceed from the mouth of a credible witness, but must be *credible in itself* — such as the *common experience* and *observation* of mankind can approve *as probable* under the circumstances. There is no test of the truth of human testimony, except its *conformity* to *our knowledge, observation* and *experience*. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance."[30]

In the instant case, the testimonies of the prosecution witnesses are contradictory on a material point. Marasigan claimed that the gunshots were successively fired. He testified as follows:

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[27] TSN, April 8, 2015, pp. 2-4.

[28] *People v. Amon,* 218 Phil. 355, 361 (1984).

[29] *Id*.

[30] *Id*. at 361.

[*Cross-examination of Marasigan by Atty. Magsombol*]

Q You said that you witnessed the shooting of your nephew, do you recall how were the shots fired against (*sic*) your nephew?
A He took his gun from his pocket. Witness pointing to his right pocket. Then he fired shots at my nephew.

Q **Were the shots fired one after the other?**
A **Yes ma'am.**

Q **It was one shot right after the other?**
A **Yes ma'am.**[31] (Emphasis supplied)

However, the victim, Tumbaga testified that there was a pause between the shots:

[*Cross-examination of Tumbaga by Atty. Magsombol*]

Q You also testified before that your position was your back was facing the assailant, correct?
A Yes, ma'am.

Q Incidentally, how were the shots fired, one after the other?
A The first shot hit me at the back and when I turned my back I saw the accused firing at me, ma'am.

Q **Not immediately one after the other?**
A **Yes ma'am. There was a pause.**

x x x x x x x x x

Q **You said that you were shot for the first time and you turned your back, how did you turn your back?**
A **Like this ma'am.**

COURT INTERPRETER
(Witness demonstrating by turning right his head towards his back)

ATTY. MAGSUMBOL

Q **Then the second shot was fired?**
A **When I was about to descend or alight from the motorcycle he again fired at me, ma'am.**

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[31] TSN, August 22, 2011, pp. 8-9.

COURT

Q **Were you hit by the second fire?**
A **Yes, Your Honor.**

Q Where, what part of your body?
A Here, Your Honor.

COURT INTERPRETER
(Witness pointing to his back.)

Q So, both gunshots hit you at the back?
A Yes, Your Honor.[32] (Emphasis supplied)

At first glance, it would seem that the succession of the gunshots is not a material point. However, the manner of execution of the crime is of prime significance especially in the testimony of Tumbaga, the victim himself, as he testified that the pause between shots supposedly gave him the opportunity to turn his head and see the culprit after he was shot for the first time in the back. However, this testimony is contradicted by Marasigan who testified that the shots were successive. Notably, the testimony of Marasigan as to the continuous succession of shots is corroborated by the testimony of defense witness Bathan, who also testified that the shots were fired one after another.[33]

Furthermore, in his *Sinumpaang Salaysay*[34] dated April 22, 2010, which he identified and authenticated before the RTC, Tumbaga attested that Aliling had a companion that night at the basketball court. However, during his cross-examination, he denied his statement:

[*Cross-examination of Tumbaga by Atty. Magsombol*]

Q When you said that it was the accused who shot you, can you describe his attire that night?
A He was wearing a jacket, ma'am.

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[32] TSN, June 6, 2011, pp. 7-9.

[33] TSN, April 8, 2015, p. 4.

[34] Exhibit "A," Folder and Index of Exhibits.

Q What kind?
A A black jacket, ma'am.

Q **You also said that he was with somebody?**
A **I do not know whether he has a companion during that time, ma'am.**

Q **You do not know?**
A **I saw him only, ma'am.**[35] (Emphasis supplied)

The Court has previously held that minor inconsistent statements in a witness' affidavit and in his testimony in court do not necessarily affect his credibility.[36] However, in this case, the detail as to whether the victim had seen the accused with or without a companion is a material detail as it goes into the very execution of the crime.

The inconsistency in the statements of the prosecution witnesses on material points significantly erodes the credibility of their testimonies, juxtaposed against the forthright and consistent testimonies of the defense witnesses. With the probative value of the prosecution witnesses' testimony greatly diminished, the alibi of the accused is given credence. In the instant case, the prosecution failed to overcome the burden of proving the accused's guilt beyond reasonable doubt. Acquittal, therefore, is in order.

In this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction. While the law does not require absolute certainty, the evidence presented by the prosecution must produce in the mind of the Court a moral certainty of the accused's guilt. When there is even a scintilla of doubt, the Court must acquit.[37]

As the Court succinctly held in *People v. Erguiza:*[38]

It is the primordial duty of the prosecution to present its side with clarity and persuasion, so that conviction becomes the only logical

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[35] TSN, June 6, 2011, p. 10.

[36] *Sarabia v. People*, 414 Phil. 189, 198 (2001).

[37] *Caunan v. People and Sandiganbayan*, 614 Phil. 179, 194 (2009).

[38] 592 Phil. 363 (2008).

and inevitable conclusion. What is required of it is to justify the conviction of the accused with moral certainty. Upon the prosecution's failure to meet this test, acquittal becomes the constitutional duty of the Court, lest its mind be tortured with the thought that it has imprisoned an innocent man for the rest of his life.[39]

WHEREFORE, the Decision dated November 24, 2016 and Resolution dated March 30, 2017 of the Court of Appeals in CA-G.R. CR No. 38335 are **REVERSED** and **SET ASIDE**. Hilario B. Aliling is **ACQUITTED** of the crime of Frustrated Murder in Criminal Case No. 57-2010 as his guilt was not proven beyond reasonable doubt. The Regional Trial Court, Branch 5, Lemery, Batangas is **ORDERED** to **CANCEL** the cash bail bond and **RETURN** the same to Aliling.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 205409. June 13, 2018]

CITIGROUP, INC., *petitioner, vs.* **CITYSTATE SAVINGS BANK, INC.** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; TRADEMARK LAW; SIMILARITY AND LIKELIHOOD OF CONFUSION; THE DOMINANCY AND THE HOLISTIC TEST, DISTINGUISHED.— There is no objective test for determining whether the confusion is likely. Likelihood of confusion must be determined according to the particular circumstances of each case. To aid in determining

[39] *Id.* at 388.

the similarity and likelihood of confusion between marks, our jurisprudence has developed two (2) tests: the dominancy test and the holistic test. This Court explained these tests in *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.*: The dominancy test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement. If the competing trademark contains the main, essential, and dominant features of another, and confusion or deception is likely to result, infringement occurs. Exact duplication or imitation is not required. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive consumers. In contrast, the holistic test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but also on the other features appearing on both marks in order that the observer may draw his conclusion whether one is confusingly similar to the other. With these guidelines in mind, this Court considered "the main, essential, and dominant features" of the marks in this case, as well as the contexts in which the marks are to be used.

2. ID.; ID.; ID.; DOMINANCY TEST, APPLIED; NO LIKELIHOOD OF CONFUSION OR CONFUSING SIMILARITY BETWEEN THE PETITIONER "CITI" MARK AND THE RESPONDENT'S "CITY CASH WITH GOLDEN LION'S HEAD" MARK.— This Court finds that the use of the "CITY CASH WITH GOLDEN LION'S HEAD" mark will not result in the likelihood of confusion in the minds of customers. A visual comparison of the marks reveals no likelihood of confusion. x x x Applying the dominancy test, this Court sees that the prevalent feature of respondent's mark, the golden lion's head device, is not present at all in any of petitioner's marks. The only similar feature between respondent's mark and petitioner's collection of marks is the word "CITY" in the former, and the "CITI" prefix found in the latter. This Court agrees with the findings of the Court of Appeals that this similarity alone is not enough to create a likelihood of confusion.

3. ID.; ID.; ID.; ID.; ID.; THE RESPONDENT'S MARK "CITY CASH WITH GOLDEN LIONS HEAD" IS TO BE USED FOR ITS ATM SERVICES, WHICH COULD ONLY BE SECURED AT RESPONDENT'S PREMISES AND NOT IN AN OPEN MARKET OF ATM SERVICES,

DIMINISHES THE POSSIBILITY OF CONFUSION ON THE PART OF PROSPECTIVE CUSTOMERS; CASE OF EMERALD MANUFACTURING COMPANY V. COURT OF APPEALS (321 PHIL. 101 (1995)), APPLIED.— This Court also agrees with the Court of Appeals that the context where respondent's mark is to be used, namely, for its ATM services, which could only be secured at respondent's premises and not in an open market of ATM services, further diminishes the possibility of confusion on the part of prospective customers. Thus, this Court quotes with approval the Court of Appeals, which made reference to *Emerald Manufacturing*: Moreover, more credit should be given to the "ordinary purchaser." Cast in this particular controversy, the ordinary purchaser is not the "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved. It bears to emphasize that the mark "CITY CASH WITH GOLDEN LION'S HEAD" is a mark of respondent for its ATM services which it offers to the public. It cannot be gainsaid that an ATM service is not an ordinary product which could be obtained at any store without the public noticing its association with the banking institution that provides said service. Naturally, the customer must first open an account with a bank before it could avail of its ATM service. Moreover, the name of the banking institution is written and posted either inside or outside the ATM booth, not to mention the fact that the name of the bank that operates the ATM is constantly flashed at the screen of the ATM itself. With this, the public would accordingly be apprised that respondent's "CITY CASH" is an ATM service of the respondent bank, and not of the petitioner's.

4. ID.; ID.; ID.; ID.; THE SIMILARITY BETWEEN THE SOUNDS OF RESPONDENT'S "CITI" AND PETITIONER'S "CITY" IN A RADIO ADVERTISEMENT ALONE NEITHER IS SUFFICIENT TO CONCLUDE THAT THERE IS A LIKELIHOOD THAT A CUSTOMER WOULD BE CONFUSED NOR CAN OPERATE TO BAR RESPONDENT FROM REGISTERING ITS MARK.— More relevant than the scenario discussed by petitioner is the stage when a bank is trying to attract customers to avail of its services. Petitioner points out that in advertisements, such as in radio, newspapers, and the internet, which are shown beyond the bank premises, there may be no golden lion's head device to disambiguate "CITY CASH" from any of petitioner's own marks and services. This Court finds this unconvincing. ATM services, like other bank services, are generally not marketed as

independent products. Indeed, as pointed out by petitioner itself, ATM cards accompany the basic deposit product in most banks. They are generally adjunct to the main deposit service provided by a bank. Since ATM services must be secured and contracted for at the offering bank's premises, any marketing campaign for an ATM service must focus first and foremost on the offering bank. Hence, any effective internet and newspaper advertisement for respondent would include and emphasize the golden lion's head device. Indeed, a radio advertisement would not have it. It should not be forgotten, however, that a mark is a question of visuals, by statutory definition. Thus, the similarity between the sounds of "CITI" and "CITY" in a radio advertisement alone neither is sufficient for this Court to conclude that there is a likelihood that a customer would be confused nor can operate to bar respondent from registering its mark. This Court notes that any confusion that may arise from using "CITY CASH" in a radio advertisement would be the same confusion that might arise from using respondent's own trade name. Aurally, respondent's very trade name, which is not questioned, could be mistaken as "CITISTATE SAVINGS BANK," and all of petitioner's fears of possible confusion would be just as likely.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles Law Offices for petitioner.

Santiago Arevalo Asuncion & Associates for respondent.

D E C I S I O N

LEONEN, *J.*:

This resolves a Petition for Review on Certiorari[1] assailing the August 29, 2012 Decision[2] and the January 15, 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 109679.

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[1] *Rollo*, pp. 18-55.

[2] *Id.* at 150-181. The Decision was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes of the Fourteenth Division, Court of Appeals, Manila.

[3] *Id.* at 208-209. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Victoria Isabela A. Paredes of the Fourteenth Division, Court of Appeals, Manila.

The facts which led to the controversy before this Court, as summarized by the Court of Appeals, are as follows:

Petitioner Citigroup, Inc. is a corporation duly organized under the laws of the State of Delaware engaged in banking and financial services.

In the late 1970s, Citibank N.A., a wholly-owned subsidiary of petitioner, installed its first automated teller machines in over a hundred New York City branches. In 1984, Citibank N.A., Philippine Branch, began the development of its domestic Automated Teller Machine (ATM) network, and started operating ATMs and issuing ATM cards in the Philippines. Citibank N.A., Philippine Branch then joined Bancnet Inc. ("Bancnet") in 1990, the first year Bancnet commenced operations. To date, Citibank N.A., Philippine Branch has six branches and 22 ATMs in the Philippines.

In 2005, Citibank Savings, Inc. became an indirect wholly-owned subsidiary of Citibank, N.A. As a pre-existing thrift bank, it offered ATM services in the Philippines in 1995 and joined Bancnet in 2005. Citibank Savings, Inc. now has 36 branches and 27 ATMs in the Philippines.

Combining the branches and ATMs of Citibank N.A., Philippine Branch and Citibank Savings, Inc., there are a total of 42 branches and 29 ATMs in the Philippines marketed and identified to the public under the CITI family of marks.

The ATM cards issued by Citibank N.A., Philippine Branch and Citibank Savings, Inc. are labelled "CITICARD". The trademark CITICARD is owned by Citibank N.A. and is registered in the [Intellectual Property Office] of the Philippines on 27 September 1995 under Registration Number 34731.

In addition, petitioner or Citibank N.A., a wholly-owned subsidiary of petitioner, owns the following other trademarks currently registered with the Philippine [Intellectual Property Office], to wit: "CITI and arc design", "CITIBANK", "CITIBANK PAYLINK", "CITIBANK SPEEDCOLLECT", "CITIBANKING", "CITICARD", "CITICORP", "CITIFINANCIAL", "CITIGOLD", "CITIGROUP", "CITIPHONE BANKING'', and "CITISERVICE".

On the other hand, sometime in the mid-nineties, a group of Filipinos and Singaporean companies formed a consortium to establish respondent Citystate Savings Bank, Inc. The consortium included

established Singaporean companies, specifically Citystate Insurance Group and Citystate Management Group Holdings Pte, Ltd.

Respondent's registered mark has in its name affixed a lion's head, which is likened to the national symbol of Singapore, the Merlion. On 08 August 1997, respondent opened its initial branch in Makati City. From then on, it endeavored to expand its branch network. At present it has 19 branches in key cities and municipalities including 3 branches in the province of Bulacan and 1 in Cebu City. Respondent had also established off site ATMs in key locations in the Philippines as one of its banking products and services.

In line with this, respondent filed an application for registration with the [Intellectual Property Office] on 21 June 2005 of the trademark "CITY CASH WITH GOLDEN LION'S HEAD" for its ATM service, under Application Serial No. 42005005673.[4]

After respondent Citystate Savings Bank, Inc. (Citystate) applied for registration of its trademark "CITY CASH WITH GOLDEN LION'S HEAD" with the Intellectual Property Office, Citigroup, Inc. (Citigroup) filed an opposition to Citystate's application. Citigroup claimed that the "CITY CASH WITH GOLDEN LION'S HEAD" mark is confusingly similar to its own "CITI" marks.[5] After an exchange of pleadings, the Director of the Bureau of Legal Affairs of the Intellectual Property Office rendered a Decision[6] dated November 20, 2008. The Intellectual Property Office concluded that the dominant features of the marks were the words "CITI" and "CITY," which were almost the same in all aspects. It further ratiocinated that Citigroup had the better right over the mark, considering that 'its "CITI" and "CITI"-related marks have been registered with the Intellectual Property Office, as well as with the United States Patent and Trademark Office, covering "financial services" under Class 36 of the International Classification of Goods.[7] Thus, applying the dominancy test and considering that Citystate's dominant feature of the applicant's mark was identical or

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[4] *Id*. at 151-153.

[5] *Id*. at 151-154.

[6] *Id*. at 86-100.

[7] *Id*. at 98.

confusingly similar to a registered trademark, the Intellectual Property Office ruled that approving it would be contrary to Section 138 of the Intellectual Property Code and Citigroup's exclusive right to use its marks.

This was appealed to the Office of the Director General of the Intellectual Property Office. In a Decision[8] dated July 3, 2009, Director General Adrian S. Cristobal, Jr. (Director General Cristobal) reversed the November 20, 2008 Decision of the Director of the Bureau of Legal Affairs and gave due course to Citystate's trademark application. He made a visual comparison of the parties' respective marks and considered the golden lion head device to be the prominent or dominant feature of Citystate's mark, and not the word "CITY." Thus, Citystate's mark did not resemble Citigroup's mark such that deception or confusion was likely. Director General Cristobal found plausible Citystate's explanation for choosing "CITYSTATE," i.e., that its name was based on the country of Singapore, which was referred to as "city-state," and that the golden lion head device was similar to the national symbol of Singapore, the *merlion*.[9] He appreciated that availing of the products and services related to the parties' marks would entail very detailed procedures, like sales representatives explaining the products and clients filling up and submitting application forms, such that customers would necessarily be well informed and not confused.[10]

Thus, Citigroup filed a Petition for Review[11] before the Court of Appeals, which dismissed the petition. The Court of Appeals found that Director General Cristobal did not act with grave abuse of discretion in ruling that the parties' trademarks were not confusingly similar, and in giving due course to Citystate's trademark application.[12] It found that Citystate's mark was not confusingly or deceptively similar to Citigroup's marks:

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[8] *Id*. at 102-112.

[9] *Id*. at 110.

[10] *Id*. at 111.

[11] *Id*. at 113-143.

[12] *Id*. at 179-180.

[Citystate's] trademark is the entire "CITY CASH WITH GOLDEN LION'S HEAD". Although the words "CITY CASH" are prominent, the entirety of the trademark must be considered, and focus should not be made solely on the phonetic similarity of the words "CITY" and "CITI".

The dissimilarities between the two marks are noticeable and substantial. [Citystate's] mark, "CITY CASH WITH GOLDEN LION'S HEAD", has an insignia of a golden lion's head at the left side of the words "CITY CASH", while [Citigroup's] "CITI" mark usually has an arc between the two I's. A further scrutiny of the other "CITI" marks of [Citigroup] would show that their font type, font size, and color schemes of the said "CITI" marks vary for each product or service. Most of the time, [Citigroup's] "CITI" mark is joined with another term to form a single word, with each product or service having different font types and color schemes. On the contrary, the trademark of [Citystate] consists of the words "CITY CASH", with a golden lion's head emblem on the left side. It is, therefore, improbable that the public would immediately and naturally conclude that [Citystate's] "CITY CASH WITH GOLDEN LION'S HEAD" is but another variation under [Citigroup's] "CITI" marks.

Verily, the variations in the appearance of the "CITI" marks by [Citigroup], when conjoined with other words, would dissolve the alleged similarity between them and the trademark of [Citystate]. These dissimilarities, and the insignia of a golden lion's head before the words "CITY CASH" in the mark of [Citystate] would sufficiently acquaint and apprise the public that [Citystate's] trademark "CITY CASH WITH GOLDEN LION'S HEAD" is not connected with the "CITI" marks of [Citigroup].

Moreover, more credit should be given to the "ordinary purchaser." Cast in this particular controversy, the ordinary purchaser is not the "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved. It bears to emphasize that the mark "CITY CASH WITH GOLDEN LION'S HEAD" is a mark of [Citystate] for its ATM services which it offers to the public. It cannot be gainsaid that an ATM service is not an ordinary product which could be obtained at any store without the public noticing its association with the banking institution that provides said service. Naturally, the customer must first open an account with a bank before it could avail of its ATM service. Moreover, the name of the banking institution is written and posted either inside or outside the ATM

booth, not to mention the fact that the name of the bank that operates the ATM is constantly flashed at the screen of the ATM itself. With this, the public would accordingly be apprised that [Citystate's] "CITY CASH" is an ATM service of [Citystate], and not that of [Citigroup's].[13] (Citation omitted.)

Thus, the Court of Appeals quoted Director General Cristobal:

In evaluating the relevance of the prefix "CITI", due attention should be given not only to the other features of the competing marks but also to the attendant circumstances of the case. Otherwise, a blind adherence to [Citigroup's] claim over the prefix CITI is tantamount to handing it a monopoly of all marks with such prefix or with a prefix that sounds alike but with a different spelling like the word "city". Accordingly, the kind of products and services involved should likewise be scrutinized.

. . . . . .

Thus, this Court finds no cogent reason to believe [Citigroup's] contention that consumers may confuse the products and services covered by the competing trademarks as coming from the same source of origin. The fear that the consumer may mistake the products as to the source or origin, or that the consumers seeking its products and services will be redirected or diverted to [Citystate], is unfounded. The products or services involved are not the ordinary everyday products that one can just pick up in a supermarket or grocery stores (sic). These products generally require sales representatives explaining to their prospective customers the features of and entitlements thereto. Availing the products and services involved follows certain procedures that ordinarily and routinely gives the prospective customers or clients opportunity to know exactly with whom they are dealing with (sic). The procedures usually include the clients filling-up and submitting a *pro-forma* application form and other documentary requirements, which means that the person is wel[l]-informed and thus, cannot be misled into believing that the product or service is that of [Citystate] when in fact it is different from [Citigroup's].

The likelihood of confusion between two marks should be taken from the viewpoint of the prospective buyer. In *Emerald Garment Manufacturing Corp. vs. Court of Appeals, et al.*, the Supreme Court ruled that:

[13] *Id.* at 175-177.

> "Finally, in line with the foregoing discussions, more credit should be given to the 'ordinary purchaser.' Cast in this particular controversy, the ordinary purchaser is not the 'completely unwary consumer' but is the 'ordinarily intelligent buyer' considering the type of product involved.
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> The definition laid down in *Dy Buncio v. Tan Tiao Bok* is better suited to the present case. There, the 'ordinary purchaser' was defined as one 'accustomed to buy, and therefore to some extent familiar with, the goods in question. The test of fraudulent simulation is to be found in the likelihood of the deception of some persons in some measure acquainted with an established design and desirous of purchasing the commodity with which that design has been associated. The test is not found in the deception, or the possibility of deception, of the person who knows nothing about the design which has been counterfeited, and who must be indifferent between that and the other. The simulation, in order to be objectionable, must be such as appears likely to mislead the ordinary intelligent buyer who has a need to supply and is familiar with the article that he seeks to purchase."[14]

Citigroup filed a Motion for Reconsideration,[15] which the Court of Appeals denied in its January 15, 2013 Resolution.[16]

Thus, Citigroup filed a Petition for Review[17] against Citystate before this Court. After respondent filed its Comment/Opposition[18] and petitioner filed its Reply,[19] respondent filed its Memorandum.[20]

Petitioner claims that the Court of Appeals erred in finding that there was no confusing similarity between the trademark that respondent applied for and petitioner's own trademarks.[21]

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[14] *Id.* at 177-179.

[15] *Id.* at 183-207.

[16] *Id.* at 208-209.

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

[18] *Id.* at 1462-1477.

[19] *Id.* at 1487-1507.

[20] *Id.* at 1516-1538.

[21] *Id.* at 28.

It avers that *Emerald Manufacturing Company v. Court of Appeals*[22] is not applicable to this case.[23] Contrary to the Court of Appeals' finding, the arc design is not an integral part of petitioner's "CITI" family of marks.[24]

Petitioner asserts that when the dominancy test is applied to the Court of Appeals' findings of fact, the necessary result is a finding of confusing similarity.[25] It points out that the Court of Appeals found that "CITY CASH" is the dominant feature of respondent's applied trademark. However, because the word "CASH" was disclaimed in respondent's trademark application, only "CITY" may be considered the dominant part of the mark. "'CITY' . . . appears nearly identical to 'CITI'."[26]

Further, petitioner argues that the Court of Appeals did not understand the services offered in relation to respondent's mark when it said that the mark is to be applied only in relation to respondent's ATMs and within the bank premises. It insists that in actuality, the mark could be used outside the bank premises, such as in radio, newspapers, and the internet, where there would not necessarily be a "GOLDEN LION'S HEAD" symbol to disambiguate the mark from any of petitioner's marks. It argues that the Court of Appeals should have appreciated the difference between basic financial services on one hand, which include ATM services, and sophisticated financial services on the other hand. It avers that customers do not select ATM services after cautious evaluation, and that ATM services are marketed to ordinary consumers. Thus, petitioner claims that the Court of Appeals erred when it concluded that customers are intelligent purchasers, and failed to consider ordinary purchasers who have not yet used the financial services of petitioner and respondent.[27]

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[22] 321 Phil. 1001 (1995) [Per *J.* Kapunan, First Division].

[23] *Rollo*, pp. 32-33.

[24] *Id.* at 34.

[25] *Id.* at 37.

[26] *Id.* at 38.

[27] *Id.* at 44-47.

It further holds that it is not claiming a monopoly of all marks prefixed by words sounding like "city." It stresses that it opposes only marks which are registered under class 36 used in products directly related and in competition with its "CITI" family of marks, sold under the same business channels, and sold to the same group of consumers.[28]

Respondent argues that its mark is not confusingly similar to petitioner's[29] and that petitioner's fears are purely speculative.[30] It claims that the phonetic similarity between "CITY" and "CITI" is not sufficient to deny its registration, asserting that this Court has ruled that *idem sonans* alone is insufficient basis for a determination of the existence of confusing similarity. As for petitioner's arguments on possible confusion due to advertising, respondent states that advertisement aims to inform the public of a certain entity's product and that not mentioning a supplier's trade name in its advertisement defeats the purpose of advertisement. It disputes petitioner's claims on ATM services and the kind of caution exercised prior to obtaining an ATM card, asserting that before customers may avail of ATM services, they have to open an account with the bank offering them.[31]

This Court denies the Petition.

The sole issue for this Court's resolution is whether or not the Court of Appeals committed an error of law in finding that there exists no confusing similarity between petitioner Citigroup, Inc.'s and respondent Citystate Savings Bank, Inc.'s marks.

In *La Chemise Lacoste, S.A. v. Fernandez*,[32] this Court explained why trademarks are protected in the market:

The purpose of the law protecting a trademark cannot be overemphasized. They are to point out distinctly the origin or ownership

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

[29] *Id.* at 1522.

[30] *Id.* at 1528.

[31] *Id.* at 1523-1524.

[32] 214 Phil. 332 (1984) [Per *J.* Gutierrez, Jr., First Division].

of the article to which it is affixed, to secure to him, who has been instrumental in bringing into market a superior article of merchandise, the fruit of his industry and skill, and to prevent fraud and imposition (*Etepha v. Director of Patents*, 16 SCRA 495).

The legislature has enacted laws to regulate the use of trademarks and provide for the protection thereof. Modem trade and commerce demands that depredations on legitimate trade marks of non-nationals including those who have not shown prior registration thereof should not be countenanced. The law against such depredations is not only for the protection of the owner of the trademark but also, and more importantly, for the protection of purchasers from confusion, mistake, or deception as to the goods they are buying. (*Asari Yoko Co., Ltd. v. Kee Boc*, 1 SCRA 1; *General Garments Corporation v. Director of Patents*, 41 SCRA 50).

The law on trademarks and tradenames is based on the principle of business integrity and common justice. This law, both in letter and spirit, is laid upon the premise that, while it encourages fair trade in every way and aims to foster, and not to hamper, competition, no one, especially a trader, is justified in damaging or jeopardizing another's business by fraud, deceit, trickery or unfair methods of any sort. This necessarily precludes the trading by one dealer upon the good name and reputation built up by another (*Baltimore v. Moses*, 182 Md 229, 34 A (2d) 338).[33]

In *Mirpuri v. Court of Appeals*,[34] this Court traced the historical development of trademark law:

A "trademark" is defined under R.A. 166, the Trademark Law, as including "any word, name, symbol, emblem, sign or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured, sold or dealt in by others." This definition has been simplified in R.A. No. 8293, the Intellectual Property Code of the Philippines, which defines a "trademark" as "any visible sign capable of distinguishing goods." In Philippine jurisprudence, the function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the

[33] *Id.* at 355-356.

[34] 376 Phil. 628 (1999) [Per *J.* Puno, First Division].

fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.

Modern authorities on trademark law view trademarks as performing three distinct functions: (1) they indicate origin or ownership of the articles to which they are attached; (2) they guarantee that those articles come up to a certain standard of quality; and (3) they advertise the articles they symbolize.

Symbols have been used to identify the ownership or origin of articles for several centuries. As early as 5,000 B.C., markings on pottery have been found by archaeologists. Cave drawings in southwestern Europe show bison with symbols on their flanks. Archaeological discoveries of ancient Greek and Roman inscriptions on sculptural works, paintings, vases, precious stones, glassworks, bricks, etc. reveal some features which are thought to be marks or symbols. These marks were affixed by the creator or maker of the article, or by public authorities as indicators for the payment of tax, for disclosing state monopoly, or devices for the settlement of accounts between an entrepreneur and his workmen.

In the Middle Ages, the use of many kinds of marks on a variety of goods was commonplace. Fifteenth century England saw the compulsory use of identifying marks in certain trades. There were the baker's mark on bread, bottlemaker's marks, smith's marks, tanner's marks, watermarks on paper, *etc.* Every guild had its own mark and every master belonging to it had a special mark of his own. The marks were not trademarks but police marks compulsorily imposed by the sovereign to let the public know that the goods were not "foreign" goods smuggled into an area where the guild had a monopoly, as well as to aid in tracing defective work or poor craftsmanship to the artisan. For a similar reason, merchants also used merchants' marks. Merchants dealt in goods acquired from many sources and the marks enabled them to identify and reclaim their goods upon recovery after shipwreck or piracy.

With constant use, the mark acquired popularity and became voluntarily adopted. It was not intended to create or continue monopoly but to give the customer an index or guarantee of quality. It was in the late 18th century when the industrial revolution gave rise to mass production and distribution of consumer goods that the mark became an important instrumentality of trade and commerce. By this time,

trademarks did not merely identify the goods; they also indicated the goods to be of satisfactory quality, and thereby stimulated further purchases by the consuming public. Eventually, they came to symbolize the goodwill and business reputation of the owner of the product and became a property right protected by law. The common law developed the doctrine of trademarks and tradenames "to prevent a person from palming off his goods as another's, from getting another's business or injuring his reputation by unfair means, and, from defrauding the public." Subsequently, England and the United States enacted national legislation on trademarks as part of the law regulating unfair trade. It became the right of the trademark owner to exclude others from the use of his mark, or of a confusingly similar mark where confusion resulted in diversion of trade or financial injury. At the same time, the trademark served as a warning against the imitation or faking of products to prevent the imposition of fraud upon the public.

Today, the trademark is not merely a symbol of origin and goodwill; it is often the most effective agent for the actual creation and protection of goodwill. It imprints upon the public mind an anonymous and impersonal guaranty of satisfaction, creating a desire for further satisfaction. In other words, the mark actually sells the goods. The mark has become the "silent salesman," the conduit through which direct contact between the trademark owner and the consumer is assured. It has invaded popular culture in ways never anticipated that it has become a more convincing selling point than even the quality of the article to which it refers. In the last half century, the unparalleled growth of industry and the rapid development of communications technology have enabled trademarks, tradenames and other distinctive signs of a product to penetrate regions where the owner does not actually manufacture or sell the product itself. Goodwill is no longer confined to the territory of actual market penetration; it extends to zones where the marked article has been fixed in the public mind through advertising. Whether in the print, broadcast or electronic communications medium, particularly on the Internet, advertising has paved the way for growth and expansion of the product by creating and earning a reputation that crosses over borders, virtually turning the whole world into one vast marketplace.[35] (Citations omitted)

There is also an underlying economic justification for the protection of trademarks: an effective trademark system helps

[35] *Id.* at 645-649.

bridge the information gap between producers and consumers, and thus, lowers the costs incurred by consumers in searching for and deciding what products to purchase. As summarized in a report of the World Intellectual Property Organization:

> Economic research has shown that brands play an important role in bridging so-called asymmetries of information between producers and consumers. In many modem markets, product offerings differ across a wide range of quality characteristics. Consumers, in turn, cannot always discern these characteristics at the moment of purchase; they spend time and money researching different offerings before deciding which product to buy. Brand reputation helps consumers to reduce these search costs. It enables them to draw on their past experience and other information about products — such as advertisements and third party consumer reviews. However, the reputation mechanism only works if consumers are confident that they will purchase what they intend to purchase. The trademark system provides the legal framework underpinning this confidence. It does so by granting exclusive rights to names, signs and other identifiers in commerce. In addition, by employing trademarks, producers and sellers create concise identifiers for specific goods and services, thereby improving communication about those goods and services.[36]

Recognizing the significance, and to further the effectivity of our trademark system,[37] our legislators proscribed the registration of marks under certain circumstances:

> Section 123. *Registrability*. — 123.1. A mark cannot be registered if it:
>
> (a) Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;
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> (b) Consists of the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;

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[36] World Intellectual Property Report, Brands — *Reputation and Image in the Global Marketplace* (2013).

[37] Rep. Act No. 8293, sec. 2.

(c) Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow;

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

(i) The same goods or services, or

(ii) Closely related goods or services, or

(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: *Provided*, That in determining whether a mark is well- known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: *Provided*, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: *Provided, further*, That the interests of the owner of the registered mark are likely to be damaged by such use;

(g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;

(h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;

(i) Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in *bona fide* and established trade practice;

(j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose,

value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services;

(k) Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value;

(l) Consists of color alone, unless defined by a given form; or

(m) Is contrary to public order or morality.

Based on this proscription, petitioner insists that respondent's mark cannot be registered because it is confusingly similar to its own set of marks. Thus, granting the petition rests solely on the question of likelihood of confusion between petitioner's and respondent's respective marks.

There is no objective test for determining whether the confusion is likely. Likelihood of confusion must be determined according to the particular circumstances of each case.[38] To aid in determining the similarity and likelihood of confusion between marks, our jurisprudence has developed two (2) tests: the dominancy test and the holistic test. This Court explained these tests in *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.*:[39]

The dominancy test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement. If the competing trademark contains the main, essential, and dominant features of another, and confusion or deception is likely to result, infringement occurs. Exact duplication or imitation is not required. The question is whether the use of the marks involved is likely to cause confusion or mistake in the mind of the public or to deceive consumers.

In contrast, the holistic test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. The discerning eye of the observer must focus not only on the predominant words but

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[38] *ESSO Standard Eastern, Inc. v. Court of Appeals*, 201 Phil. 803 (1982) [Per *J*. Teehankee, First Division].

[39] 628 Phil. 13 (2010) [Per *J*. Carpio, Second Division].

also on the other features appearing on both marks in order that the observer may draw his conclusion whether one is confusingly similar to the other.[40] (Citations omitted)

With these guidelines in mind, this Court considered "the main, essential, and dominant features" of the marks in this case, as well as the contexts in which the marks are to be used. This Court finds that the use of the "CITY CASH WITH GOLDEN LION'S HEAD" mark will not result in the likelihood of confusion in the minds of customers.

A visual comparison of the marks reveals no likelihood of confusion.

Respondent's mark is:

This Court agrees with the observation of Director General Cristobal that the most noticeable part of this mark is the golden lion's head device,[41] and finds that after noticing the image of the lion's head, the words "CITY" and "CASH" are equally prominent.

On the other hand, petitioner's marks, as noted by the Court of Appeals, often include the red arc device:

Petitioner's other registered marks which do not contain the red arc device include the following:

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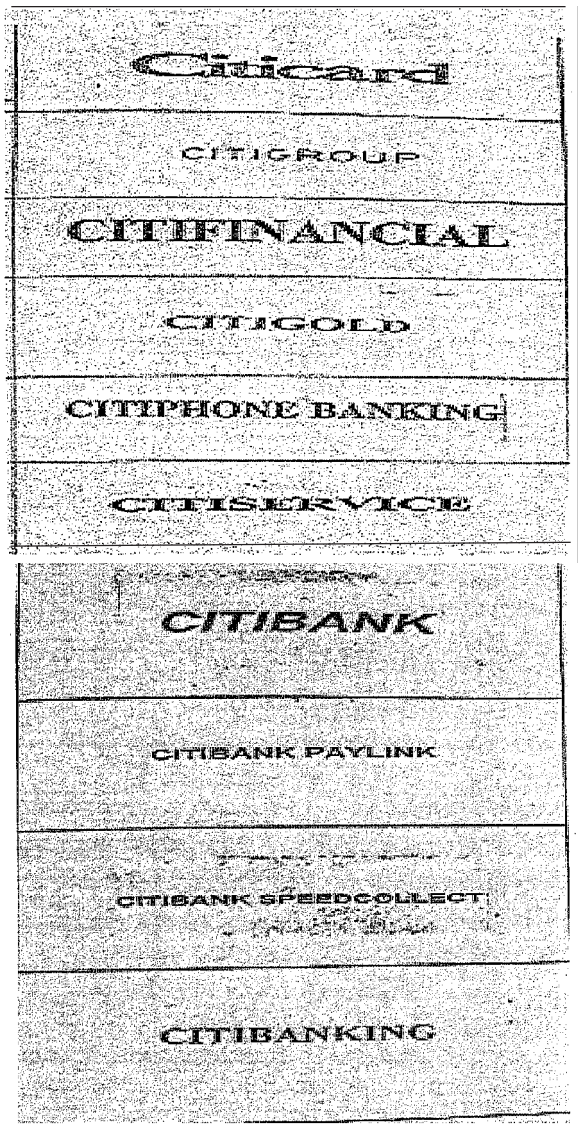
[40] *Id.* at 24.

[41] *Rollo*, p. 110.



Examining these marks, this Court finds that petitioner's marks can best be described as consisting of the prefix "CITI" added to other words.

Applying the dominancy test, this Court sees that the prevalent feature of respondent's mark, the golden lion's head device, is not present at all in any of petitioner's marks. The only similar feature between respondent's mark and petitioner's collection of marks is the word "CITY" in the former, and the "CITI" prefix found in the latter. This Court agrees with the findings of the Court of Appeals that this similarity alone is not enough to create a likelihood of confusion.

> The dis[s]imilarities between the two marks are noticeable and substantial. Respondent's mark, "CITY CASH WITH GOLDEN LION'S HEAD", has an insignia of a golden lion's head at the left side of the words "CITY CASH", while petitioner's "CITI" mark usually has an arc between the two I's. A further scrutiny of the other "CITI" marks of petitioner would show that their font type, font size, and color schemes of the said "CITI" marks vary for each product or service. Most of the time, petitioner's "CITI" mark is joined with another term to form a single word, with each product or service having different font types and color schemes. On the contrary, the trademark of respondent consists of the words "CITY CASH", with a golden lion's head emblem on the left side. It is, therefore, improbable that the public would immediately and naturally conclude that respondent's "CITY CASH WITH GOLDEN LION'S HEAD" is but another variation under petitioner's "CITI" marks.
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> Verily, the variations in the appearance of the "CITI" marks by petitioner, when conjoined with other words, would dissolve the alleged similarity between them and the trademark of respondent. These dissimilarities, and the insignia of a golden lion's head before the words "CITY CASH" in the mark of the respondent would sufficiently acquaint and apprise the public that respondent's trademark "CITY CASH WITH GOLDEN LION'S HEAD" is not connected with the "CITI" marks of petitioner.[42]

This Court also agrees with the Court of Appeals that the context where respondent's mark is to be used, namely, for its ATM services, which could only be secured at respondent's premises and not in an open market of ATM services, further diminishes the possibility of confusion on the part of prospective

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[42] *Id.* at 175-176.

customers. Thus, this Court quotes with approval the Court of Appeals, which made reference to *Emerald Manufacturing*:

> Moreover, more credit should be given to the "ordinary purchaser." Cast in this particular controversy, the ordinary purchaser is not the "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved. It bears to emphasize that the mark "CITY CASH WITH GOLDEN LION'S HEAD" is a mark of respondent for its ATM services which it offers to the public. It cannot be gainsaid that an ATM service is not an ordinary product which could be obtained at any store without the public noticing its association with the banking institution that provides said service. Naturally, the customer must first open an account with a bank before it could avail of its ATM service. Moreover, the name of the banking institution is written and posted either inside or outside the ATM booth, not to mention the fact that the name of the bank that operates the ATM is constantly flashed at the screen of the ATM itself. With this, the public would accordingly be apprised that respondent's "CITY CASH" is an ATM service of the respondent bank, and not of the petitioner's.[43]

Petitioner argues that *Emerald Manufacturing* is distinguishable from this case, insisting that ATM services are more akin to ordinary household items than they are akin to brand name jeans, in terms of how their customers choose their providers:

> 73. The *Emerald Manufacturing* case involved the marks "Lee" and "Stylistic Mr. Lee", and the Supreme Court focused on the nature of the products as "not the ordinary household items", pointing to the fact that, "the average Filipino consumer generally buys his jeans by brand. He does not ask the sales clerk for his generic jeans but for, say a Levis, Guess, Wrangler or even an Armani."
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> 74. In contrast, when an ordinary consumer of ATM services wishes to withdraw cash, more often than not he will simply locate the nearest ATM, without reference to brand as long as the ATM accepts his card. When dealing with banks that belong to an ATM network such as Bancnet, which both parties do, the cards are almost universally and interchangeably accepted.[44]

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

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

This scenario is unclear, and thus, unconvincing and insufficient to support a finding of error on the part of the Court of Appeals. Petitioner hypothesizes that there could be some confusion because ATM users "simply locate the nearest ATM, without reference to brand as long as the ATM accepts [their] card."[45] This Court is at a loss to see how this supports petitioner's claims that ATM users locate the nearest ATMs and use them without reference to brand as long as the ATM accepts their cards. If petitioner's speculation is true, then bank branding is wholly irrelevant after the ATM service has been secured. This Court is hard pressed to accept this assumption. In any case, this Court simply cannot agree that a bank or ATM service is more akin to ordinary household items than it is to brand name Jeans.

More relevant than the scenario discussed by petitioner is the stage when a bank is trying to attract customers to avail of its services. Petitioner points out that in advertisements, such as in radio, newspapers, and the internet, which are shown beyond the bank premises, there may be no golden lion's head device to disambiguate "CITY CASH" from any of petitioner's own marks and services.[46] This Court finds this unconvincing. ATM services, like other bank services, are generally not marketed as independent products. Indeed, as pointed out by petitioner itself, ATM cards accompany the basic deposit product in most banks.[47] They are generally adjunct to the main deposit service provided by a bank. Since ATM services must be secured and contracted for at the offering bank's premises, any marketing campaign for an ATM service must focus first and foremost on the offering bank. Hence, any effective internet and newspaper advertisement for respondent would include and emphasize the golden lion's head device. Indeed, a radio advertisement would not have it. It should not be forgotten, however, that a mark is a question of visuals, by statutory definition.[48] Thus, the similarity

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[45] *Id*. at 33.

[46] *Id*. at 44.

[47] *Id*. at 45.

[48] Rep. Act No. 8293, Sec. 121.

between the sounds of "CITI" and "CITY" in a radio advertisement alone neither is sufficient for this Court to conclude that there is a likelihood that a customer would be confused nor can operate to bar respondent from registering its mark. This Court notes that any confusion that may arise from using "CITY CASH" in a radio advertisement would be the same confusion that might arise from using respondent's own trade name. Aurally, respondent's very trade name, which is not questioned, could be mistaken as "CITISTATE SAVINGS BANK," and all of petitioner's fears of possible confusion would be just as likely.

This Court agrees with Director General Cristobal's recognition of respondent's history and of "Citystate" as part of its name.[49] Upon consideration, it notes that it may have been more aligned with the purpose of trademark protection for respondent to have chosen the trademark "CITYSTATE CASH" instead of "CITY CASH" to create a stronger association between its trade name and the service provided. Nonetheless, there is no law requiring that trademarks match the offeror's trade name precisely to be registrable. The only relevant issue is the likelihood of confusion.

This Court also recognizes that there could be other situations involving a combination of the word "city" and another word that could result in confusion among customers. However, it is not convinced that this is one of those situations.

Thus, having examined the particularities of this case, this Court affirms the Court of Appeals' finding that Director General Cristobal of the Intellectual Property Office did not commit any grave abuse of discretion in allowing the registration of respondent's trademark.

WHEREFORE, the petition is **DENIED**. The Court of Appeals August 29, 2012 Decision and January 15, 2013 Resolution in CA-G.R. SP No. 109679 are **AFFIRMED**.

SO ORDERED.

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

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[49] *Rollo*, p. 110.

THIRD DIVISION

[G.R. No. 217028. June 13, 2018]

PEOPLE OF THE PHILIPPINES *plaintiff-appellee, vs.* **BENJAMIN DOMASIG** *a.k.a.* **"MANDO" OR "PILIKITOT"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ELEMENTS.— Robbery with homicide qualifies when a homicide is committed either by reason or on occasion of the robbery. In charging robbery with homicide, the *onus probandi* is to establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with *animus lucrandi* or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used in the generic sense, was committed. A conviction requires that robbery is the main purpose and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life, but the killing may occur before, during or after the robbery.

2. ID.; ID.; ID.; IN ORDER FOR THE CRIME OF ROBBERY WITH HOMICIDE TO EXIST, IT MUST BE ESTABLISHED THAT A ROBBERY HAS ACTUALLY TAKEN PLACE AND THAT, AS A CONSEQUENCE OR ON THE OCCASION OF ROBBERY, A HOMICIDE BE COMMITTED; CRIME OF ROBBERY NOT PROVED IN CASE AT BAR.— [I]n order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of the crime. In order for the crime of robbery with homicide to exist, it must be established that a robbery has actually taken place and that, as a consequence or on the occasion of robbery, a homicide be committed. For robbery to apply, there must be taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon things. In this case, the testimony of Gloriana was offered to prove that robbery was committed.

A closer look at the testimony of Gloriana, however, failed to convince us that indeed robbery had taken place x x x. The element of taking, as well as the existence of the money alleged to have been lost and stolen by accused-appellant, was not adequately established.

3. ID.; ID.; ID.; THE PROSECUTION MUST FIRMLY ESTABLISH THE OFFENDER'S INTENT TO TAKE PERSONAL PROPERTY BEFORE THE KILLING, REGARDLESS OF THE TIME WHEN THE HOMICIDE IS ACTUALLY CARRIED OUT; WHERE THE EVIDENCE DOES NOT CONCLUSIVELY PROVE THE ROBBERY, THE KILLING OF THE VICTIM WOULD BE CLASSIFIED EITHER AS A SIMPLE HOMICIDE OR MURDER, DEPENDING UPON THE ABSENCE OR PRESENCE OF ANY QUALIFYING CIRCUMSTANCE, AND NOT A CRIME OF ROBBERY WITH HOMICIDE.— [A]ssuming that robbery indeed took place, the prosecution must establish with certitude that the killing was a mere incident to the robbery, the latter being the perpetrator's main purpose and objective. It is not enough to suppose that the purpose of the author of the homicide was to rob; a mere presumption of such fact is not sufficient. Stated different in a conviction requires certitude that the robbery is the main purpose, and the objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery. What is crucial for a conviction for the crime of robbery with homicide is for the prosecution to firmly establish the offender's intent to take personal property before the killing, regardless of the time when the homicide is actually carried out. In this case, there was no showing of accused-appellant's intention, determined by his acts prior to, contemporaneous with; and subsequent to the commission of the crime, to commit robbery. No shred of evidence is on record that could support the conclusion that accused-appellant's primary motive was to rob the victim and that he was able to accomplish it. Mere speculation and probabilities cannot substitute for proof required in establishing the guilt of an accused beyond reasonable doubt. Where the evidence does not conclusively prove the robbery, the killing of the victim would be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the crime of robbery with homicide.

4. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; POSITIVE IDENTIFICATION WHERE CATEGORICAL AND CONSISTENT AND WITHOUT ANY SHOWING OF ILL MOTIVE ON THE PART OF THE EYEWITNESS TESTIFYING ON THE MATTER PREVAILS OVER A DENIAL WHICH, IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE, IS NEGATIVE AND SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW; DEFENSE OF ALIBI NOT PROVED.— Gloriana, however, clearly and positively testified that accused--appellant stabbed the victim several times which resulted in his death. His testimony was corroborated by the findings of Dr. Lee. Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters. It is worthy to note that accused-appellant's alibi that he was working at an amusement park at the time of the incident could have been easily proven by the testimonies of his manager and co-employees who would have seen him on that date, considering that he was allegedly the caller in a bingo game and his presence or absence would be surely noticeable. Accused-appellant, however, failed to present any proof which would have substantiated his alibi.

5. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; DESIGNATION OF THE OFFENSE; THE NATURE AND CHARACTER OF THE CRIME CHARGED ARE DETERMINED NOT BY THE GIVEN DESIGNATION OF THE SPECIFIC CRIME BUT BY THE FACTS ALLEGED IN THE INFORMATION; FAILURE TO ALLEGE IN THE INFORMATION ANY CIRCUMSTANCE WHICH WOULD QUALIFY THE VICTIM'S KILLING TO MURDER, ACCUSED-APPELLANT SHOULD BE HELD LIABLE ONLY FOR THE CRIME OF HOMICIDE. — [T]he Court recognizes that the information charged accused-appellant with the crime robbery with homicide. The established rule, however, is that the nature and character of the crime charged are determined not by the given designation of the specific crime but by the facts alleged in the information. In

this case, all the elements relevant to the killing and the taking of property were properly stated in the information but the specific crime committed should be correctly made. The information failed to allege any circumstance which would qualify the victim's killing to murder. Thus, accused-appellant should be held liable only for the crime of homicide.

6. CRIMINAL LAW; REVISED PENAL CODE; HOMICIDE; ACCUSED-APPELLANT FOUND GUILTY OF THE CRIME OF HOMICIDE; PROPER IMPOSABLE PENALTY.— The Court downgrades accused-appellant's conviction for the crime of homicide. Consequently, 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 minimum, to seventeen (17) years of *reclusion temporal*, as maximum, with all the concomitant accessory penalties.

7. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. — [I]n line with prevailing jurisprudence, accused-appellant should pay the heirs of the victim civil indemnity amounting to ₱50,000.00 and moral damages in the amount of ₱50,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

This is an appeal from the 18 September 2014 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 06489 which affirmed with modification the 20 September 2013 Decision[2] of the Regional Trial Court, Branch 51, Sorsogon City (*RTC*), in Criminal Case No. 2004-6306 finding Benjamin

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[1] *Rollo*, pp. 2-15.

[2] Records, pp. 188-199; penned by Presiding Judge Flerida P. Zaballa-Banzuela.

Doniasig a.k.a. "Mando" or "Pilikitot" (*accused-appellant*) guilty of Robbery with Homicide.

THE FACTS

In an Information, dated 5 October 2004, accused-appellant was charged of the crime robbery with homicide. The information reads:

> That on or about the 5th day of September, 2004, at about 11:00 o'clock in the evening, along [XXX], [XXX] City, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to gain, armed with a bladed weapon, did then and there, wilfully, unlawfully and feloniously took, steal and carry away from one [AAA],[3] a 14 years old minor, cash money amounting to ₱300.00 against his will and without his consent and when said victim resisted, accused thereafter covered his mouth and simultaneously stabbed him four times inflicting upon him mortal wounds which caused his instantaneous death, to the damage and prejudice of his legal heirs.[4]

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

Version of the Prosecution

On 5 September 2004, Gerald Gloriana (*Gloriana*) testified that he was outside the City Mart along Magsaysay Street with his friend, 14-year-old victim AAA. They had just finished buying and selling plastic bottles and scrap materials. The victim put his earnings for the day, amounting to ₱300.00, inside a plastic container which he then placed inside the cart which served as his makeshift bed as he often slept on the streets. At around 11:00 o'clock in the evening, Gloriana went down a nearby bridge to defecate, leaving behind the victim who was sleeping inside the cart. Later, as Gloriana was climbing up from under the bridge, he saw accused-appellant standing over the sleeping victim. Accused-appellant then stabbed the victim several times before running away. Gloriana, shocked and terrified, went back

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[3] The complete name of the victim. in this case is replaced with fictitious initials, in compliance with Supreme Court Administrative Circular 83-2015.

[4] Records, p. 1.

under the bridge where he spent the night in hiding.[5] When the victim's body was discovered the following morning, the police officers recovered the plastic container inside the cart, but the money was missing.[6]

Gloriana further testified that he was approximately six (6) to eight (8) meters away from the incident, but he recognized accused-appellant because the area was well-lit and because of a conspicuous tattoo on accused-appellant's right arm. He added that he and the victim used to be friends with accused-appellant.[7]

Dr. Inocencio Lee (*Dr. Lee*) affirmed that he conducted the post-mortem examination on the body of the victim. The victim suffered three stab wounds on the shoulder and one on the chest which pierced the left lateral surface of the heart, causing instantaneous death. Dr. Lee further stated that the victim died in a prone position without any defensive wounds.[8]

Version of the Defense

Accused-appellant denied robbing and killing the victim. He claimed that on 5 September 2004, he was at Barangay Bato, Nabua, Albay, and was working as a caller in a bingo game at an amusement park where he had been employed since 2003. The manager prohibited workers from leaving the grounds during work hours. Further, he denied knowing the victim and Gloriana.[9]

The Regional Trial Court's Ruling

In its decision, the RTC found accused-appellant guilty of robbery with homicide. It ruled that the consistent, clear, and categorical statements of Gloriana that it was accused-appellant who took the victim's money and then stabbed him deserve full faith and credence. The trial court added that the testimony of Gloriana was corroborated by Dr. Lee. It declared that in

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[5] TSN, 9 February 2007, pp. 5-7.

[6] *Id*. at 8.

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

[8] TSN, 9 July 2007, pp. 3-11.

[9] TSN, 25 January 2012, pp. 3-7.

the face of the positive identification of accused-appellant by the prosecution witness, the defense of denial and alibi must fail. The RTC opined that accused-appellant did not present any witness to strengthen his defense of alibi and that it was not shown that it was physically impossible for him to be present in Sorsogon City, on 5 September 2004. The *fallo* reads:

> **WHEREFORE**, the Court finds accused **Benjamin Domasig** @ Mando/Pilikitot, **GUILTY** beyond reasonable doubt of the crime of robbery with homicide defined and penalized under Article 294, paragraph 1 of the Revised Penal Code in relation to Article 63 paragraph 1 thereof and hereby sentences him to suffer the penalty of ***reclusion perpetua***.
>
> He is further ordered to indemnify the heirs of [AAA] the amounts of Php50,000.00 as civil indemnity and Php50,000.00 as moral damages.
>
> The Warden of the Bureau of Jail Management and Penology, Sorsogon City District Jail is hereby ordered to bring the accused to the National Penitentiary in Muntinlupa City to serve his sentence and to inform this Court of his compliance thereof.[10]

Aggrieved, accused-appellant appealed before the CA.

The Court of Appeals Ruling

In its decision, the CA affirmed the conviction of accused-appellant. It held that Gloriana's testimony was not affected by his inconsistent statements regarding the number of times accused-appellant stabbed the victim because he testified before the trial court more than two (2) years after the incident. The appellate court lent credence to Gloriana's testimony that the area where the victim was sleeping was well-lit, enabling him to see clearly the crime as it unfolded; and that the victim and accused-appellant were friends, thereby substantiating his claim that even if accused-appellant's back was against him, he could identify the latter because of a tattoo on his right arm. It disposed of the case in this wise:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DENIED**. The Decision dated September 20, 2013 of the Regional

[10] Records, p. 199.

Trial Court, Branch 51, Sorsogon City is **AFFIRMED with MODIFICATION** in that all the amounts of damages awarded are subject to interest at the legal rate of 6% per annum, to be reckoned from the date of finality of this judgment until fully paid.[11]

Hence, this appeal.

ISSUE

WHETHER THE GUILT OF ACCUSED-APPELLANT FOR ROBBERY WITH HOMICIDE HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

Accused-appellant argues that Gloriana made contradictory statements regarding the name of the perpetrator. On one hand, he identified him as "Mando" while his sworn statement revealed that he gave the full name of the accused-appellant; that Gloriana's attention was not focused on the stabbing incident because he was answering the call of nature at that time; that Gloriana was around six to eight meters away from the incident; and that Gloriana failed to describe the clothing or any other striking feature of accused-appellant for purposes of identification.

THE COURT'S RULING

Robbery with homicide qualifies when a homicide is committed either by reason or on occasion of the robbery. In charging robbery with homicide, the *onus probandi* is to establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is characterized with *animus lucrandi* or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used in the generic sense, was committed.[12] A conviction requires that robbery is the main purpose and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life, but the killing may occur before, during or after the robbery.[13]

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[11] *Rollo*, p. 14.

[12] *People v. Beriber*, 693 Phil. 629, 640-641 (2012).

[13] *People v. Palma*, 754 Phil. 371, 378 (2015).

First, in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proven as conclusively as any other essential element of the crime.[14] In order for the crime of robbery with homicide to exist, it must be established that a robbery has actually taken place and that, as a consequence or on the occasion of robbery, a homicide be committed.[15]

For robbery to apply, there must be taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon things.[16] In this case, the testimony of Gloriana was offered to prove that robbery was committed. A closer look at the testimony of Gloriana, however, failed to convince us that indeed robbery had taken place:

[Court]: After buying bottles what happened?

[Gloriana]: Late in the evening of that day, this Black Jack was sleeping in his pushcart.

Q: And what is the real name of this Black Jack you have just mentioned?
A: Only Black Jack, I call him Black Jack.

Q: This Black Jack is the victim in this case?
A: Yes, Ma'am.

Q: Can you tell us where was Black Jack in the evening of September 5, 2004?
A: Inside his pushcart.

Q: What was he doing inside his pushcart?
A: He was sleeping.

Q: Where was the pushcart located?
A: The pushcart was in front of the City Mart.

Q: You saw Black Jack at that time?
A: Yes, Ma'am.

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[14] *People v. Orias*, 636 Phil. 427, 442 (2010).

[15] *People v. Abundo*, 402 Phil. 616, 636 (2001).

[16] *People v. Obedo*, 451 Phil. 529, 538 (2003).

Q: What were you doing at that time?
A: I was answering the call of nature.

Q: Then what happened?
A: I did not come out of my place because I was afraid.

Q: What are you afraid of?
A: I was afraid because I saw Mando stabbed Black Jack.

Q: Before answering the call of nature, was the victim already stabbed?
A: When I was about to come out, I saw Mando stabbing Black Jack.

[Prosecutor Zacarias]: Where did you have your call of nature?
A: Under the bridge.

Q: After answering the call of nature, what did you do next?
A: I came out of the cover.

[Court]: Can you see people in the street if you were out of the street?
A: Yes, Your Honor and at that time I was about to climb over the bridge.

Q: And then you saw this accused Mando?
A: Yes, Your Honor.

[Prosecutor Zacarias]: What did you see after climbing over the bridge?
A: I saw Mando holding an ice pick.

Q: What was he doing then?
A: (witness was in the act of stabbing)

Q: Stabbing whom?
A: Stabbing Black Jack.

Q: How many times did you saw him stabbed Black Jack?
A: Five (5) times, Ma'am.

[Court]: When you saw the accused stabbed Black Jack, what did you do?
A: I ran for cover, Your Honor.

Q: Where did you run for cover?
A: The same place where I had my call of nature.

[Prosecutor Zacarias]: You did not go out of the bridge that night?
A: Until morning.

Q: You mean to say, you spent the night under the bridge?
A: Yes, Ma'am.

Q: Now, do you know of any reason why the accused stabbed the victim in this case?
A: Because of the ₱300.00.

Q: What is the ₱300.00 you are referring to?
A: It was the money earned by Black Jack that day.

Q: Where did he keep the money?
A: Inside a container.

Q: In a plastic container?
A: Yes, Ma'am.

Q: This plastic container is with him?
A: Yes, Ma'am.[17] x x x (emphases supplied)

From the above testimony, it can be inferred that Gloriana merely saw accused-appellant stab the victim. He did not see accused-appellant taking the ₱300.00 which the victim allegedly had. Moreover, that the victim had ₱300.00 in his possession at the time of the incident was based solely on Gloriana's declaration that the victim kept his earnings in a plastic container which he then placed in the cart. When the victim's body was found the next morning, the ₱300.00 was gone. Even assuming that the victim had ₱300.00 in his possession when he was assaulted, it is not impossible that someone other than accused-appellant took the money. Based on his testimony, Gloriana merely presumed that the victim was killed because of the ₱300.00 he supposedly had in his possession. Thus, it appears that Gloriana had no personal knowledge that the victim was robbed. The element of taking, as well as the existence of the money alleged to have been lost and stolen by accused-appellant, was not adequately established.

It is, therefore, clear from the foregoing that the evidence presented to prove the robbery aspect of the special complex

[17] TSN, 9 February 2007, pp. 5-7.

crime of robbery with homicide, does not show that robbery had actually been committed.

In addition, assuming that robbery indeed took place, the prosecution must establish with certitude that the killing was a mere incident to the robbery, the latter being the perpetrator's main purpose and objective. It is not enough to suppose that the purpose of the author of the homicide was to rob; a mere presumption of such fact is not sufficient.[18] Stated different in a conviction requires certitude that the robbery is the main purpose, and the objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[19] What is crucial for a conviction for the crime of robbery with homicide is for the prosecution to firmly establish the offender's intent to take personal property before the killing, regardless of the time when the homicide is actually carried out.[20] In this case, there was no showing of accused-appellant's intention, determined by his acts prior to, contemporaneous with; and subsequent to the commission of the crime, to commit robbery.[21] No shred of evidence is on record that could support the conclusion that accused-appellant's primary motive was to rob the victim and that he was able to accomplish it.[22] Mere speculation and probabilities cannot substitute for proof required in establishing the guilt of an accused beyond reasonable doubt.[23] Where the evidence does not conclusively prove the robbery, the killing of the victim would be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the crime of robbery with homicide.[24]

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[18] *People v. Algarme*, 598 Phil. 423, 450 (2009).

[19] *Id*. at 446.

[20] *People v. Canlas*, 423 Phil. 665, 684 (2001).

[21] *People v. Algarme*, *supra* note 18.

[22] *People v. Canlas*, *supra* note 20.

[23] *Id*. at 684-685.

[24] *People v. Orias*, *supra* note 14.

Gloriana, however, clearly and positively testified that accused-appellant stabbed the victim several times which resulted in his death. His testimony was corroborated by the findings of Dr. Lee. Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. They cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[25] It is worthy to note that accused-appellant's alibi that he was working at an amusement park at the time of the incident could have been easily proven by the testimonies of his manager and co-employees who would have seen him on that date, considering that he was allegedly the caller in a bingo game and his presence or absence would be surely noticeable. Accused-appellant, however, failed to present any proof which would have substantiated his alibi.

Finally, the Court recognizes that the information charged accused-appellant with the crime robbery with homicide. The established rule, however, is that the nature and character of the crime charged are determined not by the given designation of the specific crime but by the facts alleged in the information.[26] In this case, all the elements relevant to the killing and the taking of property were properly stated in the information but the specific crime committed should be correctly made. The information failed to allege any circumstance which would qualify the victim's killing to murder. Thus, accused-appellant should be held liable only for the crime of homicide.

Penalty and award of damages

The Court downgrades accused-appellant's conviction for the crime of homicide. Consequently, 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

[25] *People v. Caisip*, 352 Phil. 1058, 1065.

[26] *Espino v. People*, 713 Phil. 377, 384 (2013).

minimum, to seventeen (17) years of *reclusion temporal*, as maximum, with all the concomitant accessory penalties.

Further, in line with prevailing jurisprudence,[27] accused-appellant should pay the heirs of the victim civil indemnity amounting to ₱50,000.00 and moral damages in the amount of ₱50,000.00.

WHEREFORE, the appeal is **PARTIALLY GRANTED**. The 18 September 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06489 is **SET ASIDE**. Accused-appellant Benjamin Domasig a.k.a. "Mando" or "Pilikitot" is found **GUILTY** beyond reasonable doubt of the crime of **HOMICIDE** for the killing of AAA 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 AAA the amount of ₱50,000.00 as civil indemnity and ₱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.

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[27] *People v. Jugueta*, 783 Phil. 806, 852 (2016).

THIRD DIVISION

[G.R. No. 218244. June 13, 2014]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARDIN CUESTA CADAMPOG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; THE PROSECUTION MUST FIRST PROVE THE IDENTITY OF THE CRIMINAL, NOT THE CRIME, FOR EVEN IF THE COMMISSION OF THE CRIME IS ESTABLISHED, THERE CAN BE NO CONVICTION WITHOUT PROOF OF THE IDENTITY OF THE CRIMINAL BEYOND REASONABLE DOUBT.— The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal; for, even if the commission of the crime is established, there can be no conviction without proof of the identity of the criminal beyond reasonable doubt. After a careful evaluation of the records, the Court is convinced that Alicia positively identified Ardin as the perpetrator. The case for the prosecution was adequately woven by Alicia's clear and straightforward narration of events.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; IN THE ABSENCE OF ANY EVIDENCE SHOWING REASON OR MOTIVE FOR WITNESSES TO PERJURE, THEIR TESTIMONY AND IDENTIFICATION OF THE ASSAILANT SHOULD BE GIVEN FULL FAITH AND CREDIT.— Ardin failed to show that the prosecution witnesses were prompted by any ill motive to falsely testify or accuse him of so grave a crime as murder. Besides, as widow of the victim, it is consistent with reason that Alicia would desire punishment for the real perpetrator of the crime. It is unnatural for a victim's relative interested in vindicating the crime to accuse somebody other than the real culprit. Human nature tells us that the aggrieved relatives would want the real killer punished for their loss, and would not accept a mere scapegoat to take the rap for the real malefactor. Concomitantly, the Court adheres to the established rule that, in the absence of any evidence

showing reason or motive for witnesses to perjure, their testimony and identification of the assailant should be given full faith and credit.

3. ID.; ID.; ID.; THE SUPREME COURT DEFERS TO THE TRIAL COURT'S FACTUAL FINDINGS AND EVALUATION OF THE CREDIBILITY OF WITNESSES, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, IN THE ABSENCE OF ANY CLEAR SHOWING THAT THE TRIAL COURT HAS OVERLOOKED OR MISCONSTRUED COGENT FACTS AND CIRCUMSTANCES THAT WOULD JUSTIFY ALTERING OR REVISING SUCH FINDINGS AND EVALUATION.— Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court has overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty, and candor.

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THE SUDDEN AND UNEXPECTED ATTACK BY THE AGGRESSOR ON AN UNSUSPECTING VICTIM, DEPRIVING THE LATTER OF ANY REAL CHANCE TO DEFEND HIMSELF, THEREBY ENSURING ITS COMMISSION WITHOUT RISK TO THE AGGRESSOR AND WITHOUT THE SLIGHTEST PROVOCATION ON THE PART OF THE VICTIM; TREACHERY QUALIFIES THE KILLING TO MURDER.— Both the RTC and the CA found that the killing was attended by treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to

defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim. There is no doubt that the act of Ardin in shooting the victim through the bamboo slats qualifies the crime with *alevosia*. Florencio was having supper when he was shot. He had no suspicion that he was to be assaulted; and the sudden, swift attack gave him no opportunity to defend himself. Therefore, this Court agrees with the tribunals *a quo* that the crime committed was murder.

5. ID.; MURDER; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Anent the award of damages, the Court deems it proper to modify the amount in order to conform to recent jurisprudence. Following the ruling in *People v. Jugueta*, Ardin shall be liable for the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; and exemplary damages of ₱75,000.00. Civil indemnity in the amount of ₱75,000.00 was properly awarded by the CA. Thus, the Court modifies the assailed decision only with respect to the amount of moral and exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

Before the Court is an appeal seeking to reverse and set aside the 29 October 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR HC No. 01740, which affirmed the 3 June 2013 Decision[2] of the Regional Trial Court, Branch 18, Cebu City *(RTC),* in Criminal Case No. CBU-84765 finding accused-appellant

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[1] *Rollo*, pp. 4-14; penned by Associate Justice Edgardo L. Delos Santos, with Associate Justice Marilyn B. Lagura-Yap and Associate Justice Jhosep Y. Lopez, concurring.

[2] CA *rollo,* pp. 26-32; penned by Presiding Judge Gilbert P. Moises.

Ardin Cuesta Cadampog *(Ardin)* guilty beyond reasonable doubt of the crime of Murder.

THE FACTS

In an Information filed by the Cebu City Prosecutor's Office on 18 November 2008, Ardin was charged with the crime of murder, the accusatory portion of which reads:

> That on or about the 31st day of October 2008, at about 8:00 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a handgun, with deliberate intent, with intent to kill, with treachery, did then and there [shoot] one Florencio Leonor Napoles, hitting the latter on his trunk, thereby inflicting upon him gunshot wounds, and as a consequence of which Florencio Leonor Napoles died [a] few minutes later.
>
> CONTRARY TO LAW.[3]

Ardin was arraigned on 15 December 2008 and, with the assistance of counsel, he pleaded not guilty. Thereafter, trial ensued.

Evidence for the Prosecution

The prosecution presented four (4) witnesses, namely: Alicia Napoles *(Alicia),* wife of the victim Florencio Leonor Napoles *(Florencio)*; Mark Francis Inguito[4] *(Mark);* Margie Tambagan *(Margie);* and Senior Police Officer 2 *(SPO2)* Rogelio Nedamo, Jr. The prosecution's evidence was summarized by the CA in this wise:

> On October 31, 2008, at around 8:00 o'clock in the evening, the victim, his wife Alicia Napoles, and the latter's mother was having dinner in the kitchen of the house of Alicia's nephew when Alicia suddenly heard two gun bursts. Alicia then saw his bloodied husband fall down. Alicia then stood up, peeped through the bamboo slats and saw the accused-appellant running towards his house. Alicia was certain that it was the accused-appellant because he passed by a lighted place and having known him for two years, she was familiar with the accused-appellant's build, height and profile of the body.

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[3] Records, p. 1.

[4] Also referred to as "Mark Francis Enguito" in some parts of the *rollo*.

The accused-appellant was wearing a dark jacket, short pants and a bullcap with the firearm in his hand. When Alicia saw the accused-appellant running away, she went out of the house and shouted, "Ardin, why did you shoot my husband?" Alicia then attended to her husband and shouted for help. The victim was brought to the hospital but was declared dead on arrival.

Alicia further testified that prior to the shooting incident the victim uprooted a *kalamunggay* tree. When the accused-appellant learned about it, he told a child that he would kill whoever uprooted the tree. However, Alicia did not report to the police about what the child told her since there was no altercation between her husband and the accused-appellant involving the uprooting of the tree.

Margie Tambangan corroborated Alicia's testimony and testified that on the day of the incident, at around 8:00 o'clock in the evening, while she was inside her house, she heard two gun bursts at the victim's house. She then went to the house of the victim and saw people helping him to be brought to the hospital. She later learned from the wife of the victim, Alicia, that the victim was shot by the accused-appellant. On her way home, the witness saw the accused-appellant, who was wearing short pants, black jacket and cap, crossing a creek and walking fast towards Cabancalan.

Mark Francis [I]nguito, another witness for the prosecution, testified that on October 31, 2008, from 7:00 to 8:00 in the evening, he was on his way home when he met the accused-appellant who was walking fast that the latter almost bumped him. According to the witness, the accused-appellant was wearing short pants, a cap and dark jacket. He later learned that the victim was shot.[5]

Evidence for the defense

The defense presented three (3) witnesses, namely: Narciso Cuesta, Corazon Cadampog, and Ardin himself. The CA summed up the defense's version of the facts, thus:

On October 31, 2008, at around 8:00 o'clock in the evening, the accused-appellant was at their house when the shooting incident happened. Previous to that, the accused-appellant was cleaning their place at the cemetery. He went home at 11:00 o'clock in the morning, helped [his] sister cook "*budbud*" and then had lunch with her.

[5] *Rollo*, pp. 5-6.

Thereafter, the accused-appellant went to the house of their neighbor where they had a conversation.

At around 8:00 o'clock of the same day the accused-appellant had supper with his sister when his uncle arrived and requested his help to butcher a pig. At around 10:00 o'clock in the evening, after helping his uncle, the accused-appellant went home and went to sleep. The following day, the accused-appellant went to the cemetery to light candles for the dead. On November 3, 2008, the accused-appellant was arrested at his workplace.

Corazon Cadampog corroborated her brother's testimony and testified that on the day of the incident, she was at her house attending to her store while the accused-appellant was cleaning in the cemetery in preparation for the All Soul's Day the next day. Around 11:00 o'clock in the morning of the same day, the accused-appellant came home and assisted her in preparing sticky rice wrapped in banana leaves locally known as "*budbud*". Then they had lunch together after which the accused-appellant conversed with their neighbors outside their house. At around 8:00 o'clock in the evening, they had supper together and after 30 minutes later the accused-appellant was fetched by their uncle to butcher a pig. At 10:00 o'clock in the evening, the accused-appellant and their uncle left and went to the house of the latter which is ten meters away from their house. The accused-appellant came back home at 10:30 in the evening, washed himself and went to sleep. Hence, the witness was surprised when her brother was arrested.

Narciso Cuesta, the accused-appellant's cousin testified that on the night of the incident, at around 8:00 in the evening, the witness was at home watching TV when somebody informed him that someone was shot. Since he was the only one nearby with a vehicle, his vehicle was borrowed to bring the victim to the hospital. Thereafter, on November 3, 2008, the policemen came and invited the accused-appellant to go with them to the station. When the witness asked the policemen what was wrong, he was told that his worker was a suspect in the shooting incident.[6]

The RTC Ruling

In its decision, the RTC found Ardin guilty beyond reasonable doubt of the crime of murder and sentenced him to suffer the penalty of *reclusion perpetua*.

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

The trial court gave credence to Alicia's positive identification of Ardin as the person responsible for the death of Florencio. It found worthy of belief Alicia's testimony that she saw Ardin running away from the crime scene with a gun; and that she was familiar with Ardin's build and height. Furthermore, it emphasized that prosecution witnesses Mark and Margie corroborated Alicia's description of the assailant's outfit on the night Florencio died. It pointed out that both Mark and Margie saw Ardin hurriedly walking away from the crime scene wearing a dark jacket, short pants, and a bullcap — the same set of clothes described by Alicia in her testimony.

The RTC ruled that as against positive identification, Ardin was only able to proffer denial and alibi. In finding that the crime committed was murder, it held that the killing was attended by treachery. According to the RTC, the attack was sudden and unexpected because Florencio was eating supper when Ardin shot him through the bamboo slats of the kitchen. The dispositive portion reads:

> **WHEREFORE**, in view of the foregoing consideration, judgment is hereby rendered finding the accused ARDIN CUESTA CADAMPOG guilty beyond reasonable doubt of murder qualified by treachery and hereby sentences him to the penalty of *reclusion perpetua* with all its accessory penalties. He is likewise directed to indemnify the heirs of the victim the amount of ₱50,000.00 as civil indemnity, ₱26,500.00 as actual damages, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.
>
> **SO ORDERED.**[7]

Unconvinced, Ardin filed an appeal before the CA.

The CA Ruling

In the assailed CA decision, the appellate court affirmed with modification the RTC ruling. It held that Alicia's positive and categorical testimony sufficiently established her identification of Ardin as the one who shot Florencio.

The appellate court observed that when Alicia saw the man who fired the gun, she even addressed him by name, shouting,

[7] CA *rollo*, p. 32.

"Ardin, why did you shoot my husband?" Thus, it concluded that Alicia was able to readily identify Ardin as the assailant.

The CA also upheld the RTC's appreciation of the qualifying aggravating circumstance of treachery. It observed that the killing was carried out in a manner that rendered the victim defenseless and unable to retaliate. The *fallo* reads:

> **WHEREFORE**, the decision of the Regional Trial Court, Branch 18, Cebu City dated June 3, 2013 finding accused-appellant Ardin Cuesta Cadampog guilty beyond reasonable doubt of the crime of MURDER is hereby **AFFIRMED** with the following **MODIFICATIONS** —
>
> (1) Civil indemnity is increased to Seventy-Five Thousand Pesos (₱75,000.00);
>
> (2) Exemplary damages is likewise increased to Thirty Thousand Pesos (₱30,000.00); and
>
> (3) Interest at the rate of 6% per annum shall be imposed on all damages awarded from the date of the finality of this judgement until fully paid.
>
> **SO ORDERED**.[8]

Hence, this appeal.

In the main, Ardin impugns Alicia's credibility as a witness and contends that there was no positive identification. He argues that Alicia did not see his face when she peeped through the bamboo slats. As the assailant was allegedly running away at the moment Alicia peeped, Ardin insists that she could not have possibly seen his face.

ISSUE

Whether IT WAS PROVEN BEYOND REASONABLE DOUBT THAT ARDIN IS GUILTY OF MURDER.

THE COURT'S RULING

The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal; for, even if the

[8] *Rollo*, p. 13.

commission of the crime is established, there can be no conviction without proof of the identity of the criminal beyond reasonable doubt.[9]

After a careful evaluation of the records, the Court is convinced that Alicia positively identified Ardin as the perpetrator. The case for the prosecution was adequately woven by Alicia's clear and straightforward narration of events, to wit:

Pros. Macabaya on direct examination:

Q: And then while you were eating with your mother and your husband, what happened next?
A: I heard two (2) gunbursts.

Q: Then what did you do?
A: When I saw my husband fell down bloodied I stood up immediately.

Q: By the way, where did the gunburst come from?
A: At the back of the kitchen.

Q: How did you know that it came from the back of the kitchen?
A: Because I saw the gunburst where it came from because I noticed a fire.

Q: You mentioned "*kalayo*" what do you mean by that?
A: I noticed or I saw somewhat circle fire.

Q: How did you see it?
A: I saw it with my two (2) eyes because I was facing towards that portion.

Q: Where did you see that circle fire?
A: It was something placed in between the bamboo strips and then I saw a circling fire.

Q: And what did you do next?
A: I stood up and peeped through in between the bamboo strips.

Q: After peeping, what did you observe or see?
A: Then I saw Ardin Cadampog.

Q: What was he doing at that time?
A: He ran.

[9] *People v. Caliso*, 675 Phil. 742, 752 (2011).

Q: What was he wearing at that time?
A: Dark jacket and a short pants and he was bringing with him a firearm and he was also wearing a [bull]cap.

Q: How were you able to see him considering the fact that the incident happened on October 31, 2008 at around 8:00 o'clock in the evening?
A: While he was running he passed through a lighted place.

Q: How far was Ardin Cadampog from you when you saw him?
A: About three (3) fathoms.[10]

The foregoing readily establishes the fact that Alicia had the opportunity to observe the circumstances surrounding her husband's death. It is not in conflict with common experience and human behavior that after seeing the muzzle flashes, Alicia's instincts made her immediately peep through the bamboo slats to see who fired the shots. This natural and spontaneous reaction enabled her to catch a glimpse of the shooter's face. The gaps between the bamboo slats permitted adequate observation of the surroundings outside the house. At the moment Alicia peeped, she was positive that it was Ardin whom she saw.

First, Alicia recounted that Ardin passed by a place where there was illumination; thus, although the incident happened at about 8:00 o'clock in the evening, it was not impossible for Alicia to recognize Ardin's face.

Second, after seeing Ardin, Alicia even called him by name, *viz*:

Pros. Macabaya on direct examination:

Q: And you said after seeing, you said he was running towards what direction?
A: Towards his house.

Q: Then after that what happened next?
A: When I saw him I went out from the kitchen and shouted.

Q: What did you shout?
A: I shouted Ardin why did you shoot my husband.

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[10] TSN, dated 22 April 2009, pp. 6-7.

Q: Then what happened next?
A: Then I went back to the kitchen.[11]

Finally, two other disinterested witnesses, Mark and Margie, corroborated Alicia's description of the assailant's attire. Alicia recounted that Ardin was wearing a dark jacket, short pants, and a bullcap. This matched Mark and Margie's description of Ardin's attire when they saw the latter on the night Florencio was killed.

Ardin failed to show that the prosecution witnesses were prompted by any ill motive to falsely testify or accuse him of so grave a crime as murder. Besides, as widow of the victim, it is consistent with reason that Alicia would desire punishment for the real perpetrator of the crime. It is unnatural for a victim's relative interested in vindicating the crime to accuse somebody other than the real culprit. Human nature tells us that the aggrieved relatives would want the real killer punished for their loss, and would not accept a mere scapegoat to take the rap for the real malefactor. Concomitantly, the Court adheres to the established rule that, in the absence of any evidence showing reason or motive for witnesses to perjure, their testimony and identification of the assailant should be given full faith and credit.[12]

Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court has overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in the unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty, and candor.[13]

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[11] *Id.* at 10.

[12] *People v. Togahan*, 551 Phil. 997, 1011 (2007).

[13] *Medina v. People*, 724 Phil. 226-234-235 (2014).

Both the RTC and the CA found that the killing was attended by treachery. There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime without risk to himself arising from the defense which the offended party might make. The essence of treachery is the sudden and unexpected attack by the aggressor on an unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring its commission without risk to the aggressor and without the slightest provocation on the part of the victim.[14]

There is no doubt that the act of Ardin in shooting the victim through the bamboo slats qualifies the crime with *alevosia*. Florencio was having supper when he was shot. He had no suspicion that he was to be assaulted; and the sudden, swift attack gave him no opportunity to defend himself.[15] Therefore, this Court agrees with the tribunals *a quo* that the crime committed was murder.

Anent the award of damages, the Court deems it proper to modify the amount in order to conform to recent jurisprudence. Following the ruling in *People v. Jugueta*,[16] Ardin shall be liable for the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; and exemplary damages of ₱75,000.00. Civil indemnity in the amount of ₱75,000.00 was properly awarded by the CA. Thus, the Court modifies the assailed decision only with respect to the amount of moral and exemplary damages.

WHEREFORE, the instant appeal is **DISMISSED**. The CA Decision dated 29 October 2014 in CA-G.R. CR HC No. 01740 is **AFFIRMED** with the following **MODIFICATIONS**:

(1) Exemplary damages is increased to ₱75,000.00.

(2) Moral damages is likewise increased to ₱75,000.00.

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[14] *People v. Lovedorial*, 402 Phil. 446, 461 (2001).

[15] *Id*.

[16] *People v. Jugueta*, 783 Phil. 806 (2016).

The assailed decision is affirmed in all other aspects.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 218806. June 13, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GLORIA NANGCAS**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (REPUBLIC ACT NO. 9208); QUALIFIED TRAFFICKING IN PERSONS; ELEMENTS; ESTABLISHED.— Nangcas was charged and convicted for qualified trafficking in persons under Section 4(a), in relation to Section 6(a) and (c), and Section 3(a), (b), and (d) of R.A. No. 9208, which read: **Section 4.** *Acts of Trafficking in Persons*. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts: (a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage; **Section 6.** *Qualified Trafficking in Persons*. — The following are considered as qualified trafficking: (a) When the trafficked person is a child; x x x (c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons,

individually or as a group x x x. The information filed against Nangcas sufficiently alleged the recruitment and transportation of Judith and three (3) other minor victims for forced labor or services, with Nangcas taking advantage of the vulnerability of the young girls through her assurance and promises of good salary, accessibility of place of work to their respective residences, and weekly dayoff. Pursuant to Section 6 of R.A. No. 9208, the crime committed by Nangcas was qualified trafficking, as it was committed in a large scale and three (3) of her victims were under 18 years of age. The presence of the crime's elements was established by the prosecution witnesses who testified during the trial. The testimonies of Judith and three (3) other minor victims established that Nangcas employed deception and fraud in gaining both the victims and their parents' trust and confidence.

2. ID.; ID.; ID.; ELEMENT OF DECEIT AND FRAUD; EXPLAINED; PRESENT.— *Deceit* is 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; while *fraud* is every kind of deception whether in the form of insidious machinations, manipulations, concealments or misrepresentations, for the purpose of leading another party into error and thus execute a particular act. From the factual milieu, it is clear that actual fraud and deception are present in this case, such as when Nangcas induced and coaxed the victims to go with her. She promised the victims and their parents that their daughters would be working within Cagayan De Oro City, with an enticing salary of ₱1,500.00 per month.

3. ID.; ID.; ID.; ELEMENT OF SLAVERY; SLAVERY IS DEFINED AS THE EXTRACTION OF WORK OR SERVICES FROM ANY PERSON BY ENTICEMENT, VIOLENCE, INTIMIDATION OR THREAT, USE OF FORCE OR COERCION, INCLUDING DEPRIVATION OF FREEDOM, ABUSE OF AUTHORITY OR MORAL ASCENDANCY, DEBT BONDAGE OR DECEPTION; PRESENT.— Nangcas alleges that the victims were not sold to slavery as they knew that they would be working as house helpers; as such, there was no slavery or involuntary servitude. Her argument is completely unfounded. Slavery is defined as

the extraction of work or services from any person by enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage or deception. In this case, Judith and the three (3) other minor victims were enticed to work as house helpers after Nangcas had told them of their supposed salary and where they would be working; only to discover that they were brought to another place without their consent. In Marawi, the victims were constrained to work with the intention to save money for their fare going back home; however, when they asked for their salary they were told that it had already been given to Nangcas.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ITS ASSESSMENT OF THE CREDIBILITY OF WITNESSES AND THE PROBATIVE WEIGHT OF THEIR TESTIMONIES, AND THE CONCLUSIONS BASED ON THESE FACTUAL FINDINGS ARE TO BE GIVEN THE HIGHEST RESPECT; INCONSISTENCIES IN THE PROSECUTION WITNESSES' TESTIMONIES WHICH PERTAIN TO MINOR DETAILS COULD NOT NEGATE ACCUSED-APPELLANT'S COMMISSION OF THE CRIME.— Nangcas still sought an acquittal by claiming that the prosecution witnesses' testimonies were conflicting and improbable. Such alleged inconsistencies pertained to the testimonies of Judith and the other minor victims as to who was employed by whom. These inconsistencies, however, are of no consequence to the fact that Judith and the three minor victims were taken by appellant to Marawi City against their will and were made to work as house helpers without pay. It is evident that the supposed inconsistencies in the witnesses' testimonies pertained to minor details that, in any case, could not negate Nangcas' unlawful activity and violation of R.A. No. 9208. Moreover, the Court has ruled time and again that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. As a rule, the Court will not weigh anew the evidence already passed upon by the trial court and affirmed by the CA.

5. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (REPUBLIC ACT NO. 9208); QUALIFIED

TRAFFICKING IN PERSONS; ACCUSED-APPELLANT FOUND GUILTY THEREOF; PENALTY OF LIFE IMPRISONMENT AND A FINE IMPOSED.— [T]he Court finds no cogent reason to reverse Nangcas' conviction for qualified trafficking under R.A. No. 9208. The RTC and the CA correctly imposed the penalty of life imprisonment and a fine of ₱2,000,000.00, applying Section 10(c) of R.A. No. 9208.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

For review is the Decision[1] dated 6 March 2015, of the Court of Appeals *(CA)* in CA-G.R. CRHC No. 01092-MIN, which affirmed *in toto* the Decision,[2] dated 8 October 2012, of the Regional Trial Court *(RTC)* of Cagayan de Oro City, 10th Judicial Region, Branch 19, in Criminal Case No. FC-2009-643, finding herein accused-appellant Gloria Nangcas *(Nangcas)* guilty beyond reasonable doubt of the crime of Qualified Trafficking in Persons under Section 4 in relation to Section 6 of Republic Act No. 9208,[3] committed against Marivel Nacalaban *(Marivel)*,[4]

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[1] CA *rollo*, pp. 78-90 penned by Associate Justice Henri Jean Paul B. Inting and concurred in by Associate Justices Edgardo A. Camello and Pablito A. Perez.

[2] *Id*. at 33-44 penned by Judge Evelyn Gamotin Nery.

[3] "Anti-Trafficking in Persons Act of 2003" An act to institute policies to eliminate trafficking in persons especially women and children, establishing the necessary institutional mechanisms for the protection and support of trafficked persons and providing penalties for its violations.

[4] This is pursuant to the ruling of this Court in *People v. Cabalquinto* [G.R. No. 167693, 19 September 2006, 502 SCRA 419], wherein this Court resolved to withhold the real name of the victims-survivors and to use fictitious initials instead to represent them in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to

Wendy Sanditan *(Wendy)*,[5] Rosemarie Nacalaban *(Rosemarie)*,[6] and Judith Singane *(Judith)*, and imposing upon her the penalty of life imprisonment and a fine of Two Million Pesos (₱2,000.000.00).

THE FACTS

Accused-appellant was charged for Violation of Republic Act No. 9208 or the "Anti-Trafficking in Persons Act of 2003" per the Information, dated 24 September 2009, which reads:[7]

"That on 22 March 2009 at about 3:00 o'clock in the afternoon and thereafter, commencing in Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully and unlawfully recruit, transport, transfer, harbor and provide four (4) women, namely, fourteen (14) year-old Marivel Nacalaban thirteen (13) year-old Wendy Sanditan seventeen (17) year-old Rosemarie Nacalaban and nineteen (19) year-old Judith Singane, by means of fraud, deception, or taking advantage of the vulnerability of said victims for the purpose of offering and selling said victims for forced labor, slavery or involuntary servitude, that is, by promising them local employment (as househelpers in Camella Homes, Upper Cramen, Cagayan de Oro City) with a monthly salary of PhP1,500.00 each and that they could go home every Sunday, but instead, said accused brought them to Marawi City and sold them for PhP1,600.00 each to their great damage and prejudice.

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establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as AAA, BBB, CCC, and so on. Addresses shall appear as XXX as in No. XXX Street, XXX District, City of XXX.

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective 15 November 2004.

[5] *Id*.

[6] *Id*.

[7] Records, pp. 3-4.

Contrary to and in violation of Sec. 4, in relation to Section 6, of Republic Act No. 9208.

By virtue of the Warrant dated 18 December 2009,[8] Nangcas was arrested and committed to the jurisdiction of the court *a quo* on 13 January 2010.[9] With the assistance of her counsel, Nangcas pleaded "not guilty" to the offense charged.[10]

The Version of the Prosecution

The prosecution presented Judith, Marivel, Wendy, P/Insp. Exodio Vidal, and Enerio Singane *(Enerio)* as witnesses. Their testimonies, taken together, tended to establish the following:

On 22 March 2009, at around three o'clock in the afternoon, Judith was with Marivel at Dansolihon when they saw her uncle Junjun Singane and aunt Marites Simene with Nangcas. The latter approached them and asked if they wanted to work.[11] Judith, being interested, brought Nangcas to her house to ask permission from her parents. Nangcas informed Judith's parents that the latter would be working as a house helper at Camella Homes in Cagayan de Oro City, with a salary of ₱1,500.00 per month and with a rest day every Sunday. Judith's father, Enerio, was adamant at first, but Judith insisted because of the salary Nangcas offered and the location of the employer was nearby at Camella Homes; hence, Enerio gave his consent.[12] Thereafter, Judith had her things all ready and went with Nangcas. Nangcas, on the other hand, left her cellphone number with Enerio.[13]

Since Marivel, who was only fourteen (14) years old then,[14] showed interest in Nangcas' proposition, the latter then proceeded to Marivel's residence to meet her parents. There, Nangcas also

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[8] *Id*. at 24.

[9] Records, p. 25, Detention Commitment dated 23 January 2010.

[10] *Id*. at 34, Certificate of Arraignment dated 27 January 2010.

[11] TSN, 4 May 2010, pp. 3-6.

[12] *Id*. at 6.

[13] TSN, 1 February 2011, p. 96.

[14] TSN, 8 June 2010, p. 33.

met Rosemarie, Marivel's sister, who was only seventeen years old at that time. Rosemarie also expressed her interest to work as a house helper. Nangcas explained to Marivel and Rosemarie's parents that both would be working as house helpers at Camella Homes in Cagayan de Oro, with a salary of ₱1,500.00 each. The father of the two girls rejected the idea since he could still manage to support them. Their mother was also apprehensive that her daughters might be brought to Marawi. However, since Marivel and Rosemarie were very much interested and Nangcas assured their parents that they would only work at Camella Homes, the parents eventually agreed, thinking that both their daughters would be within each other's reach as they would both be working at Camella Homes.[15] Thereafter, Judith, Marivel, Rosemarie, and Nangcas proceeded to the house of Wendy, a cousin of Marivel and Rosemarie, to inform her of the job offer.[16]

Wendy was home attending to her younger sibling when Judith, Marivel, Rosemarie, and Nangcas arrived. After Nangcas told her of work available at Camella Homes, Wendy agreed thinking that her mother could just visit her there.[17]

All the recruits resided at Dansolihon, Cagayan de Oro City.

After the girls had packed their things, Nangcas brought them to Camella Homes. The alleged employer was not there, so Nangcas informed them that they had to go to Cogon. When they were already in Cogon, Nangcas instructed them to board a van as they would proceed to Iligan City where the employer was. Though hesitant and doubtful, the girls followed Nangcas' instructions. Judith, however, noticed that they were already travelling far and tried to talk to Nangcas but to naught, as the latter slept during the trip.[18] Upon reaching their destination, it was only then that Nangcas told them that they would be working as house helpers in Marawi. The girls complained that their agreement was only to work at Camella Homes in Cagayan

[15] TSN, 4 May 2010, pp. 6-7.

[16] *Id*. at 7-8.

[17] TSN, 28 July 2010, pp. 62-64.

[18] TSN, 4 May 2010, pp. 11-13.

de Oro. But Nangcas informed them that their alleged employer in Iligan was no longer looking for helpers; and that it was in Marawi where they were needed. The girls wanted to go home but they didn't have any money for their fare going back to Cagayan de Oro.[19] They had no other choice but to stay in Marawi. They were then brought to the house of one Baby Abas *(Baby)* where they slept for the night.

The following day, Nangcas brought Judith and Wendy to the house of Baby's sister, Cairon Abantas *(Cairon)*, while Marivel and Rosemarie remained to work for Baby. Nangcas went back to Cagayan de Oro.

The recruits worked in Marawi for more than a month. They were not paid their salaries as, according to their employers, Nangcas had already collected ₱1,600.00 for each of them. They were also made to eat leftover rice with only "pulaka" (mixed ginger, chili and onion) as their viand.[20] Furthermore, they were threatened not to go out or attempt to escape or else, the soldiers would kill them since they were Christians.

Since Judith failed to go home on her scheduled day-off on Sunday, Enerio called up Nangcas to ask about his daughter. The latter told him that Judith was with her just the other day and that she could go home only after two (2) months.

On 14 April 2009, Judith asked permission to go home since it was her birthday, but she was denied. Subsequently, with the help of the "kasambahay" of the neighboring house who lent them her cellphone, Judith was able to call her father informing him of her whereabouts.[21] Alarmed by the news from his daughter, Enerio went to the Lumbia Police Station to report the incident and seek assistance to rescue her daughter and three (3) other minors.

P/Insp. Exodio Vidal then assisted Enerio in looking for Nangcas. They went to Nangcas' house but only her children were there. They left a message inviting Nangcas to their station

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[19] *Id.* at 8-11.

[20] TSN, 4 May 2010, pp. 14-15.

[21] *Id.* at 16-17.

but she did not respond.[22] On 5 May 2009, P/Insp. Vidal received orders to proceed to Marawi City to retrieve the girls. The girls' parents and a couple of Muslims accompanied the police officers. Enerio Singane called the cellphone number used by Judith to contact him and he was able to talk to the cellphone's owner. The latter gave him the directions to the house of Judith's employer.[23] The police officers successfully rescued the four (4) girls. The parents of the recruited girls filed the instant action against Nangcas.

The Version of the Defense

Nangcas and Cairon testified for the defense.

Nangcas denied the accusation against her. She claimed that her friend Joni Mohamad *(Joni)* was looking for two (2) house helpers to work for him at Camella Homes, Cagayan de Oro, and two (2) others for his mother who lived in Iligan City.[24] She went to Dansolihon to look for interested applicants and there met a couple who told her that their neighbor was interested. The couple took her to Judith who expressed interest so she decided to meet her parents to ask for their permission. She informed the parents that Judith would be working at Camella Homes, Cagayan de Oro, with a salary of ₱1,500.00.[25] She then went to the parents of Marivel and Rosemarie and made the same offer. The girls' parents gave their consent provided that the siblings would work in the same house.[26] After the girls had packed their things, she brought them to Camella Homes.

Nangcas alleged that while they were at the terminal, she chanced upon Wendy, a cousin of Marivel and Rosemarie. The former requested to accompany them to Camella Homes so that she would know where to visit her cousins on her day-off.[27]

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[22] TSN, 11 August 2010, pp.81-82.

[23] TSN, 1 February 2011, p. 98.

[24] TSN, 5 May 2011, p. 114.

[25] TSN, 7 July 2011, pp. 125-129.

[26] *Id*. at 130.

[27] *Id*. at 132.

She agreed; hence, Wendy went with them to Camella Homes. When they arrived at Camella Homes, she introduced the girls to Joni. However, Joni only needed two (2) helpers and chose Judith and Rosemarie to work for him but the latter refused because she wanted to work as a house helper with her sister Marivel. Joni then called his mother to inform her about the house helpers. The latter instructed him to send them to Iligan and that she would pay for their fare.[28] Nangcas took the four (4) girls with her to Cogon and boarded a van going to Iligan. However, before they could reach Iligan, Joni's mother called her and informed her that she was no longer hiring the helpers as her current helper decided not to go home anymore.[29] She asked the driver if he could take them back to Cagayan de Oro but the latter asked for an additional charge. When she replied that she had no money left, Judith immediately suggested that they proceed to Marawi where she has an uncle. However, Judith could not contact her uncle, hence she asked the girls if it was okay for them to go to Marawi and they all agreed. She then contacted her friend Baby Abas *(Baby)* in Marawi and the latter lent her money to pay the van driver.[30] They stayed in Baby's house for the night. When Baby asked the girls if they were willing to work as house helpers, they said yes.

Nangcas furthermore alleged that on the following day, Marivel and Rosemarie remained with Baby while she brought Judith and Wendy to the house of Baby's sister, Cairon, to work as house helpers with ₱1,500.00 salary each. Before she left for Cagayan de Oro, Baby gave her ₱500.00 while Cairon gave her ₱1,600.00 for providing them the helpers;[31] Nangcas added that Judith specifically asked her not to tell their parents about their whereabouts as they would call to inform them themselves.[32]

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[28] TSN, 12 August 2011. p. 138.

[29] *Id*. at 139.

[30] *Id*. at 141-142.

[31] *Id*. at 144-145.

[32] *Id*. at 146.

Nangcas finally alleged that by the end of March 2009, she went back to Marawi to follow up on the girls and there learned that Judith failed to inform their parents of their whereabouts. Nevertheless, all the girls assured her that they were fine. On 5 May 2009, she was supposed to fetch Judith, who was scheduled to go home for her birthday but she failed to do so because she had to attend to her husband who was hospitalized for pneumonia. On 7 May 2009, Judith's father called and informed her that he had already fetched his daughter and the other girls.

Cairon also testified and professed that she came to know Nangcas only when she brought the girls to work for her. She recalled offering to pay the girls a salary of ₱1,500.00 to which the girls agreed. She claimed that she even asked for Enerio's number to inform him that his daughter was in good hands.[33] She further claimed that Nangcas did not ask for money but she volunteered to reimburse Nangcas' expenses incurred in bringing the girls. Finally, Cairon alleged that she paid the girls their salaries and she was surprised when their parents came to her house to get them.[34]

The Ruling of the Regional Trial Court

In its decision,[35] the RTC[36] found Nangcas guilty beyond reasonable doubt of the crime of Qualified Trafficking in Persons.

The RTC ratiocinated that Nangcas' deception was apparent in the manner with which she dealt with Enerio, Judith, and three other private complainants: that they were made to believe that the victims would be working as house helpers at Camella Homes in Cagayan de Oro City; and that Nangcas never bothered to call the girls' parents to inform them of their children's whereabouts. The RTC also reasoned that Nangcas further deceived Enerio when she told him during the last week of March that Judith and the other girls were at Camella Homes when she fully knew that they were in Marawi; that she employed

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[33] TSN, 5 May 2011, p.113.

[34] *Id.* at 116-118.

[35] CA *rollo*, pp. 33-44.

[36] Branch 19, Cagayan de Oro City.

the same deception when she brought the girls from one place to another until they reached Marawi; that the girls were left penniless and thus had no fare to go back home, thus, leaving no choice but to work against their will. Finally, The RTC declared that if there was truth to the claim of Nangcas, she should have presented Joni Mohamad and his mother; that Nangcas had also admitted previously providing helpers to others, and that the incident on 22 March 2009 was not the only occasion he did so. The *fallo* reads:

> ALL THE FOREGOING CONSIDERED, the Court finds accused Gloria Nangcas guilty beyond reasonable doubt of the crime of Qualified Trafficking in Persons and for which the Court hereby imposes upon GLORIA NANGCAS the penalty of life imprisonment and a fine of Two Million Pesos (₱2,000,000.00).
>
> IT IS SO ORDERED.[37]

Feeling aggrieved with the decision of the RTC, Nangcas appealed to the Court of Appeals, Cagayan de Oro City.[38]

The Assailed CA Decision

The CA, through its Twenty-Second Division, accorded respect to the findings of fact of the trial court in the absence of clear and convincing evidence that the latter ignored facts and circumstances which, if considered on appeal, would have reversed or modified the outcome of the case. The CA found no merit in the arguments raised by Nangcas, to wit:

> First, there is no doubt that the accused-appellant recruited and transported the private complainants to their supposed employer in Marawi. These are well within the acts that may constitute trafficking, to wit: recruitment, transportation, transfer or harboring. This meets the first elements of the offense. Second, we are convinced that the accused- appellant employed fraud and deceit and took advantage of the victims' vulnerability to successfully recruit them. These means satisfy the second element. Lastly, the foregoing acts and means resulted in the victims' forced labor and slavery.[39]

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[37] CA *rollo*, p. 44.

[38] *Id.* at 22-32.

[39] *Rollo*, p.12.

The CA disposed of the case in this wise:

WHEREFORE, the appeal is dismissed. The October 8, 2012 Decision of the Regional Trial Court, Branch 19, Cagayan de Oro City in Criminal Case No. 2009-643 for qualified trafficking in persons is AFFIRMED.

SO ORDERED.[40]

Hence, this appeal.

The Present Appeal

On 19 August 2015, the Court issued a Resolution notifying the parties that they could file their respective supplemental briefs.[41] However, both Nangcas and the Office of the Solicitor General, as counsel for plaintiff-appellee People of the Philippines, manifested that they would no longer file supplemental briefs, as their respective briefs filed with the CA sufficiently addressed their particular arguments.[42]

Based on the arguments raised in Nangcas' brief before the CA, the Court is called upon to resolve the following assignment of errors:

I. THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE APPELLANT OF THE OFFENSE CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.[43]

II. THERE WAS NO FRAUD, DECEPTION OR TAKING ADVANTAGE OF THE VULNERABILITY OF THE ALLEGED VICTIMS.[44]

III. THE ALLEGED VICTIMS WERE NOT OFFERED OR SOLD FOR FORCED LABOR, SLAVERY OR INVOLUNTARY SERVITUDE.[45]

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[40] *Id*. at 15.

[41] *Id*. at 21.

[42] *Id*. at 23-24; 27-28.

[43] CA *rollo* pp. 28-29.

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

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

IV. INCONSISTENT TESTIMONIES OF THE PRIVATE COMPLAINANTS.[46]

The Arguments of the Accused

Nangcas argues that there was no deception in this case. She maintained that she did not deceive any of the private complainants nor their parents when their daughters were hired as house helpers. She also maintained that in bringing the alleged victims to Iligan City, she had no idea that the mother of Joni would no longer be needing house helpers; hence, with no money to pay for the fare, she had no other choice but to stay with Baby Abas in Marawi City.

Nangcas further argues that contrary to the findings of the court, she did not recruit the victims under the pretext of domestic employment for the purpose of forced labor, slavery or involuntary servitude. She averred that the alleged victims worked as house helpers as previously agreed upon, that they were not forced to work contrary to their agreement. She also averred that the alleged victims were not enticed to work with a high salary and the amount offered was not that big to entice anyone to leave one's home and work for someone else.

Nangcas finally argues that there were inconsistencies in the testimonies of the private complainants in the following manner: that Judith testified that she and Wendy were brought to the house of Cairon Abantas, the sister of Baby; while Marivel testified that it was she and Wendy who stayed with Baby while Judith and Rosemarie were brought to Cairon.

THE COURT'S RULING

We affirm accused-appellant Nangcas' conviction.

Accused-appellant's guilt was established beyond reasonable doubt.

Nangcas was charged and convicted for qualified trafficking in persons under Section 4(a), in relation to Section 6(a) and (c), and Section 3(a), (b), and (d) of R.A. No. 9208, which read:

[46] *Id.* at 31.

Section 4. *Acts of Trafficking in Persons.* — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

Section 6. *Qualified Trafficking in Persons.* — The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

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(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;

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 care of or protect himself/herself from abuse, neglect, cruelty,

exploitation, or discrimination because of a physical or mental disability or condition.

x x x x x x x x x

(d) *Forced Labor and Slavery* — refer to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception.

Under Republic Act No. 10364,[47] the elements of trafficking in persons have been expanded to include the following acts:

(1) The act of "recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders;"

(2) The means used include "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."

(3) The purpose of trafficking includes "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." (emphasis supplied)

The information filed against Nangcas sufficiently alleged the recruitment and transportation of Judith and three (3) other minor victims for forced labor or services, with Nangcas taking advantage of the vulnerability of the young girls through her assurance and promises of good salary, accessibility of place of work to their respective residences, and weekly dayoff. Pursuant to Section 6 of R.A. No. 9208, the crime committed by

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[47] AN ACT EXPANDING REPUBLIC ACT NO. 9208, ENTITLED "AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS AND FOR OTHER PURPOSES."

Nangcas was qualified trafficking, as it was committed in a large scale and three (3) of her victims were under 18 years of age.

The presence of the crime's elements was established by the prosecution witnesses who testified during the trial. The testimonies of Judith and three (3) other minor victims established that Nangcas employed deception and fraud in gaining both the victims and their parents' trust and confidence.

In the instant case, we concur with the trial court's decision, to wit:

"Deception was apparent in the manner with which accused dealt with Enerio, Judith and the three other private complainants. Enerio was made to believe that Judith and company will be working as house helpers at Camella Homes in Cagayan De Oro City. Through the haze with which the private complainants were transported from Cagayan de Oro City to Marawi City, what is clear is that Nangcas has Enerio's number but she never called him to inform him they were proceeding to Marawi City. Much worse, she deceived Enerio anew when she told him sometime in the last week of March 2009 that Judith and her friends were in Camella when she fully knew they were made to work in Marawi City."[48]

The testimonies of the victims and Enerio gave a clear picture as to how the victims were deceived by Nangcas into going with her, and how she orchestrated the entire trip pretending to take them first to Cagayan De Oro City, then to Iligan, and finally to Marawi City, so as to be sure that the victims have no other choice but to go to Marawi City and serve as house helpers. The prosecution has aptly shown that the victims would not have agreed or would not have been allowed by their parents if Nangcas would directly offer them work at Marawi City; that she deliberately fabricated a story to delude her victims and their parents.

All told, the prosecution has adequately proved Nangcas' guilt beyond reasonable doubt of the offense as defined in Section 4 of R.A No. 9208.

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[48] CA *rollo*, p. 44.

Nangkas employed fraud and deception in order to bring the victims to Marawi City.

Deceit is 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;[49] while *fraud* is every kind of deception whether in the form of insidious machinations, manipulations, concealments or misrepresentations, for the purpose of leading another party into error and thus execute a particular act.[50]

From the factual milieu, it is clear that actual fraud and deception are present in this case, such as when Nangcas induced and coaxed the victims to go with her. She promised the victims and their parents that their daughters would be working within Cagayan De Oro City, with an enticing salary of ₱1,500.00 per month.

At the outset, the intent of Nangcas was obvious. She specifically employed several deceptive tactics to lure the victims and their parents into agreeing to take the victims, who were mostly minors, and bring them allegedly to Camella Homes in Cagayan De Oro City, to serve as house helpers. Nangcas represented to Judith and her parents that Judith would be employed as a house helper, would be allowed to go home once a week, and would be paid ₱1,500.00 monthly. After having convinced Judith and her parents, Nangcas used Judith to entice some more of her friends to go with her as house helpers in Cagayan De Oro City. After recruiting Judith and the three other minor victims, Nangcas immediately boarded them in a jeepney to Cagayan De Oro City supposedly to bring Judith and her friends to their employer at Camella Homes.

The record shows that Nangcas' decision to bring the victims to Marawi City was planned, contrary to her defense that she

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[49] *Asia United Bank v. Guy*, 704 Phil. 463, 470 (2013).

[50] Tolentino, *Civil Code of the Philippines* 475.

only took them there after the supposed employer in Iligan changed her mind to accept them as her house helpers. It was sufficiently established that in Marawi City, Nangcas already had Baby and Cairon ready and waiting for her to bring the recruits to them and collect her fees. Nangcas' failure to notify the victims' parents of their whereabouts bolsters the allegation that it was really her intention to conceal the fact that the work was actually in Marawi City and not in Cagayan de Oro; her acts thus constitute deceit and fraud as defined by law.

The victims were sold for forced labor, slavery or involuntary servitude.

Nangcas alleges that the victims were not sold to slavery as they knew that they would be working as house helpers; as such, there was no slavery or involuntary servitude. Her argument is completely unfounded.

Slavery is defined as the extraction of work or services from any person by enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage or deception.[51] In this case, Judith and the three (3) other minor victims were enticed to work as house helpers after Nangcas had told them of their supposed salary and where they would be working; only to discover that they were brought to another place without their consent. In Marawi, the victims were constrained to work with the intention to save money for their fare going back home; however, when they asked for their salary they were told that it had already been given to Nangcas.

Alleged inconsistencies are minor and do not affect the credibility of the witnesses.

Nangcas still sought an acquittal by claiming that the prosecution witnesses' testimonies were conflicting and improbable. Such alleged inconsistencies pertained to the

[51] R.A. No. 9208, Section 3 par. (f).

testimonies of Judith and the other minor victims as to who was employed by whom. These inconsistencies, however, are of no consequence to the fact that Judith and the three minor victims were taken by appellant to Marawi City against their will and were made to work as house helpers without pay. It is evident that the supposed inconsistencies in the witnesses' testimonies pertained to minor details that, in any case, could not negate Nangcas' unlawful activity and violation of R.A. No. 9208. Moreover, the Court has ruled time and again that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. As a rule, the Court will not weigh anew the evidence already passed upon by the trial court and affirmed by the CA. [52]

Given the foregoing, the Court finds no cogent reason to reverse Nangcas' conviction for qualified trafficking under R.A. No. 9208. The RTC and the CA correctly imposed the penalty of life imprisonment and a fine of ₱2,000,000.00, applying Section 10(c) of R.A. No. 9208, to wit:

> **Section 10.** *Penalties and Sanctions.* — The following penalties and sanctions are hereby established for the offenses enumerated in this Act:
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> 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).

WHEREFORE, the appeal is **DISMISSED.** The Decision dated 6 March 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01092 for Qualified Trafficking in Persons is **AFFIRMED.**

SO ORDERED.

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

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[52] *People v. Mamaruncas*, 680 Phil. 192, 211 (2012).

THIRD DIVISION

[G.R. No. 219088. June 13, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, vs. **RONNIE DELA CRUZ *a.k.a.* "BAROK"** *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.— Under Article 266-A(1) of the RPC, rape is committed when a man has carnal knowledge of a woman under any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; or (d) when the offended party is under 12 years old or demented, even if none of the above circumstances are present. In short, the following are the elements of rape: (1) accused had carnal knowledge of the victim; and (2) it was accomplished (a) through force, threat or intimidation; (b) when the victim is deprived of reason; or (c) against a victim below 12 years of age or is demented. In the case at bar, there is no dispute that Dela Cruz had carnal knowledge of AAA. In her testimony, she vividly recalled how he had sex with her while they were alone in his house. In addition, AAA's testimony was corroborated by the findings of Dr. Ebdane, who found fresh lacerations in her hymen indicating that it was penetrated by a blunt object such an erect penis. Further, it is noteworthy that Dela Cruz never categorically denied having intercourse with AAA. He merely testified that he could not exactly remember what happened that night and, if indeed he had carnal knowledge with her, it was consensual.

2. ID.; ID.; ID.; THE VICTIM NEED NOT PROVE RESISTANCE BECAUSE IT IS NOT AN ELEMENT OF RAPE AND THE LACK THEREOF DOES NOT RENDER THE VICTIM'S ACT VOLUNTARY.— Rape is essentially sexual intercourse *sans* consent. In her testimony, AAA narrated how Dela Cruz defiled her, notwithstanding her refusal to have sex with him x x x. AAA clearly and steadfastly recalled how she was forced to have sexual intercourse with Dela Cruz. She

told him to stop and twice tried to push him away but it was all for naught as he continued with his desire to ravish her. In addition, the fact that AAA admitted that she did not resist "hard enough" cannot be taken against her. In rape, the victim need not prove resistance because it is not an element of rape and the lack thereof does not render the victim's act voluntary.

3. ID.; ID.; ID.; ELEMENT OF FORCE OR VIOLENCE; FORCE OR VIOLENCE THAT IS REQUIRED IN RAPE CASES IS RELATIVE. WHEN APPLIED, IT NEED NOT BE OVERPOWERING OR IRRESISTIBLE, AS IT ENABLES THE OFFENDER TO CONSUMMATE HIS PURPOSE IS ENOUGH; SEXUAL CONGRESS WITH A PERSON WHO EXPRESSES RESISTANCE THROUGH WORDS OR DEEDS CONSTITUTES FORCE.— In *People v. Joson*, the Court expounded that the force required in rape varies depending on the circumstances, to wit: The Supreme Court has, time and again, ruled that **force or violence that is required in rape cases is relative; when applied, it need not be overpowering or irresistible**. That it enables the offender to consummate his purpose is enough. The parties' relative age, size and strength should be taken into account in evaluating the existence of the element of force in the crime of rape. **The degree of force which may not suffice when the victim is an adult may be more than enough if employed against a person of tender age.** Sexual congress with a person who expresses resistance through words or deeds constitutes force. Here, AAA verbally and physically manifested her resistance towards Dela Cruz's advances — at one point she even cried. Nonetheless, he persisted and ultimately consummated his desire to have carnal knowledge of her. The degree of force he employed becomes immaterial in view of AAA's minority and the fact that her intoxication impaired her physical strength.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FINDINGS OF THE TRIAL COURT AS TO THE CREDIBILITY OF WITNESSES ARE NOT TO BE DISTURBED, CONSIDERING THAT TRIAL COURTS ARE AT A MORE ADVANTAGEOUS POSITION TO FULLY SCRUTINIZE WITNESSES; EXPLAINED.— It is axiomatic that, as a rule, findings of the trial court as to the credibility of witnesses are not to be disturbed. This is true considering that trial courts are at a more advantageous position

to fully scrutinize witnesses. Thus, in *People v. Sapigao, Jr.*, the Court explained: It is well-settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witness firsthand and to note their demeanor, conduct and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness credibility, and the trial courts have the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in the transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, there is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skilful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court. AAA's testimony was straightforward and categorical as she never flinched in describing what happened to her and in identifying Dela Cruz as the one who did it. While she was testifying, the trial court was able to observe her demeanor and conduct and assess it in its entirety. As such, the fact that AAA was smiling at one point during her testimony does not necessarily destroy her credibility and the isolated incident cannot discount the trauma she endured at Dela Cruz's hand.

5. ID.; ID.; ID.; THE FAILURE OF THE RAPE VICTIM TO SHOUT FOR HELP OR TO OFFER SPIRITED PHYSICAL RESISTANCE CANNOT BE USED AS BASIS TO DAMAGE HER CREDIBILITY, FOR IN RAPE CASES, THERE IS NO EXPECTED UNIFORM REACTION FROM THE VICTIM CONSIDERING THAT THE WORKINGS OF THE HUMAN MIND PLACED UNDER EMOTIONAL

STRESS ARE UNPREDICTABLE.— AAA's failure to shout for help or to offer spirited physical resistance cannot be used as basis to damage her credibility. In rape cases, there is no expected uniform reaction from the victim considering that the workings of the human mind placed under emotional stress are unpredictable. It must be remembered that AAA had already tried to resist Dela Cruz but failed; thus, coupled with her intoxication, it would be understandable why she no longer offered further resistance or tried to shout for help after her previous futile attempts.

6. **ID.; ID.; ID.; THE RAPE VICTIM'S URGENCY IN REPORTING THE INCIDENT TO THE AUTHORITIES STRENGTHENS HER CREDIBILITY.—** Her urgency in reporting the incident to the authorities strengthens her credibility. AAA immediately told her aunt about the rape once she got home, who in turn notified AAA's parents. Thus, together with her parents, she was able to promptly report the same to the authorities. AAA did not hesitate to seek and obtain justice for the wrong done against her by Dela Cruz.

7. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; CIVIL LIABILITY OF ACCUSED-APPELLANT.—** While the Court agrees with the conviction handed out by the courts *a quo*, the appealed decision must be modified to conform to recent jurisprudence. x x x *People v. Jugueta (Jugueta)* set the standard for damages to be awarded in certain heinous crimes, and settled that victims in simple rape are entitled to the following damages: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; and (c) ₱75,000.00 as exemplary damages. In conformity with *Jugueta*, all damages awarded to AAA should be increased accordingly.

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 22 December 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06397, which affirmed with modification the 26 September 2013 Decision[2] of the Regional Trial Court, XXX City *(RTC),* in Criminal Case No. MC08-2728-FC, finding accused-appellant Ronnie dela Cruz *(Dela Cruz)* guilty beyond reasonable doubt of the crime of Rape.

THE FACTS

In an Information[3] dated 19 May 2008, Dela Cruz was charged with the crime of Rape under Article 266-A(a) of the Revised Penal Code *(RPC)* in relation to Republic Act *(R.A.)* No. 7610 committed against AAA.[4] The accusatory portion of the information reads:

That on or about the 4th day of April 2008, in the City of [XXX], a place within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threat and intimidation, did then and there wilfully, unlawfully and feloniously commit an act of sexual assault upon the person of [AAA], a minor, 14 years of age, against

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[1] *Rollo*, pp. 2-16; penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justices Franchito N. Diamante and Melchor Q. Sadang.

[2] CA *rollo*, pp. 37-47; penned by Presiding Judge Monique A. Quisumbing-Ignacio.

[3] Records (Book I), pp. 1-2.

[4] The true name of the victim had been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (Subject: *Protocols And Procedures In the Promulgation, Publication, And Posting On The Websites Of Decisions, Final Resolutions, And Final Orders Using Fictitious Names).*The confidentiality of the identity of the victim is mandated by R.A. No. 7610 *("Special Protection of Children Against Abuse, Exploitation and Discrimination Act");* R.A. No. 8505 *("Rape Victim Assistance And Protection Act of 1998");* R.A. No. 9208 *("Anti-Trafficking In Persons Act Of 2003");* R.A. No. 9262 *("Anti-Violence Against Women And Their Children Act Of 2004");* and R.A. No. 9344 *("Juvenile Justice And Welfare Act Of 2006").*

the latter's will and consent by having carnal knowledge of the said [AAA], thereby affecting the victim's normal growth and development as a child, to her damage and prejudice.

At his arraignment on 27 August 2008, Dela Cruz, with the assistance of his counsel, pleaded "Not Guilty."[5]

Evidence for the Prosecution

The prosecution presented AAA, her 17-year-old aunt BBB, and Dr. Marianne Ebdane *(Dr. Ebdane)* as witnesses. Their combined testimonies tended to establish the following:

On 3 April 2008, at around 10:00 P.M., AAA and BBB were drinking in the house of a certain "Noknok," BBB's boyfriend at that time. Dela Cruz and his friends then arrived and joined them.[6] They finished drinking at midnight but stayed in Noknok's house until 2:00 A.M. the following day. BBB noticed that AAA was already sleepy. He asked Dela Cruz if AAA could sleep in his house because AAA did not want to go home as she had a fight with her parents, and Noknok's house was too small to accommodate her.[7]

Thereafter, AAA and Dela Cruz went to the latter's house to check the room where she was supposed to stay. BBB stayed behind in Noknok's house because Dela Cruz told them that they would not take long as his house was just around the next corner.[8]

Upon arriving at his house, Dela Cruz pointed to an unlit room and told AAA that was where she would be staying; nobody else was in the house. When AAA went inside the room, Dela Cruz followed her and started to kiss her. She pushed him away and told him to stop but he continued to take off her clothes. Once AAA's clothes were removed, Dela Cruz mounted her

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[5] *Id*. at 28.

[6] TSN dated 10 September 2009, pp. 6-8; TSN dated 20 May 2010, pp. 3-6.

[7] TSN dated 10 September 2009, pp. 9-11; TSN dated 20 May 2010, pp. 7-8.

[8] *Id*.

and inserted his penis into her vagina. AAA cried and pushed him away but he carried on with the sexual intercourse that lasted for about ten (10) minutes.[9]

After Dela Cruz was done, AAA got dressed and wanted to leave the room but was afraid that he might pull her back and violate her again. On 4 April 2008, at around 6:00 A.M., she finally left Dela Cruz's house and looked for BBB at Noknok's house. Upon seeing BBB, she told her it was time to go home but she did not yet disclose what happened to her for fear that other people would know.[10]

Once she got home, AAA told her aunt about the incident, who in turn informed her parents. Consequently, her mother accompanied her to the authorities to report the incident. After giving her statement, she was subjected to a medical examination which revealed that AAA had fresh lacerations at 8 o'clock position in her hymen suggesting that a blunt object was inserted into her genitalia.[11]

Evidence for the Defense

The defense presented Dela Cruz as its lone witness, whose testimony follows:

On 4 April 2008, Dela Cruz went to the store near Noknok's house to buy cigarettes. On his way, he saw AAA and BBB drinking with Noknok in his house. Dela Cruz joined them to drink after Noknok invited him. At around 5:30 P.M., he brought AAA to his home after BBB requested that AAA spend the night in his house. They were both drunk and as such he could not remember very well what happened once they got home. Nevertheless, Dela Cruz was sure that if something did happen between him and AAA, it was consensual. At around 5:00 P.M., AAA's parents fetched her from his house.[12]

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[9] TSN dated 10 September 2009, pp. 12-15.

[10] *Id.* at 16-18.

[11] TSN dated 9 December 2010, pp. 11-12.

[12] TSN dated 2 May 2013, pp. 5-11.

The RTC Ruling

In its decision, the RTC found Dela Cruz guilty of Rape defined and penalized under Article 266-A(a) of the RPC. The trial court ruled that carnal knowledge was sufficiently established, taking into account AAA's testimony as corroborated by the findings of the medical examination conducted on her. It pointed out that Dela Cruz was able to have sexual intercourse with the victim through force because he persisted despite her pleas for him to stop and her efforts to push him away. The RTC noted that the amount of force applied is inconsequential because the same need not be irresistible so long as it was enough to bring about the desired result.

The trial court gave more credence to AAA's testimony because it was categorical and straightforward and made in a spontaneous and candid manner. In addition, it pointed out that no proof of ill motive on her part to falsely testify against accused was offered. As such, the RTC explained that Dela Cruz's defense of denial and alibi fails to convince in the light of AAA's positive identification of him as her abuser. Nevertheless, the trial court expounded that Dela Cruz was guilty only of rape under the RPC, and not of child abuse under R.A. No. 7610, because the information failed to allege the elements thereof. The dispositive portion reads:

> **WHEREFORE**, in view of the foregoing premises, the court finds the accused guilty beyond reasonable doubt of the crime of rape and he is hereby sentenced the penalty of RECLUSION PERPETUA. He is further ordered to pay the offended party the sum of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages including interest at the rate of six percent (6%) per annum on all damages awarded from the date of finality of this judgment until fully paid.
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> SO ORDERED.[13]

Aggrieved, Dela Cruz appealed before the CA.

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[13] CA *rollo*, pp. 46-47.

The CA Ruling

In its assailed decision, the CA affirmed the decision of the RTC. The appellate court agreed that AAA's testimony as corroborated by the findings of the medical examination gave sufficient evidence of carnal knowledge. It explained that in rape cases, the force and violence required is relative in that it need not be overpowering. The CA expounded that force should be viewed from the perception and judgment of the victim. The appellate court noted that AAA pushed Dela Cruz away when he tried to kiss her and told him to stop, yet he continued to do so. It highlighted that AAA's intoxication rendered her too weak to run away or to exert sufficient resistance against Dela Cruz.

The CA disregarded Dela Cruz's argument that AAA's testimony was contrary to human experience elaborating that there is no standard on how rape victims should react. The appellate court sustained the trial court's assessment of AAA's credibility considering that it was in the best position to ascertain and measure the spontaneity and sincerity of the witnesses taking into account their demeanor while testifying on the witness stand. It ruled:

> WHEREFORE, premises considered, the appeal is DENIED. The Decision dated 26 September 2013 of the Regional Trial Court, National Capital Judicial Region, [XXX], in Criminal Case No. MC08-2728-FC finding accused-appellant Ronnie dela Cruz alias Barok guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of reclusion perpetua and to pay the offended party AAA the sums of ₱50,000.00 as civil indemnity, ₱50,000.000 as moral damages and ₱30,000.00 as exemplary damages including interest at the rate of six percent (6%) per annum on all damages awarded from the date of finality of this judgment until fully paid is AFFIRMED with MODIFICATION, in that accused-appellant is not eligible for parole.
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> SO ORDERED.[14]

Hence, this appeal raising:

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[14] *Rollo*, pp. 14-15.

ISSUE

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF RAPE.

THE COURT'S RULING

The appeal has no merit.

Under Article 266-A(1) of the RPC, rape is committed when a man has carnal knowledge of a woman under any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; or (d) when the offended party is under 12 years old or demented, even if none of the above circumstances are present. In short, the following are the elements of rape: (1) accused had carnal knowledge of the victim; and (2) it was accomplished (a) through force, threat or intimidation; (b) when the victim is deprived of reason; or (c) against a victim below 12 years of age or is demented.[15]

In the case at bar, there is no dispute that Dela Cruz had carnal knowledge of AAA. In her testimony, she vividly recalled how he had sex with her while they were alone in his house. In addition, AAA's testimony was corroborated by the findings of Dr. Ebdane, who found fresh lacerations in her hymen indicating that it was penetrated by a blunt object such as an erect penis. Further, it is noteworthy that Dela Cruz never categorically denied having intercourse with AAA. He merely testified that he could not exactly remember what happened that night and, if indeed he had carnal knowledge with her, it was consensual.

Nevertheless, the circumstances surrounding the sexual act are contested. AAA assails that Dela Cruz forced her to have sex with him even after she pushed him away and told him to stop. On the other hand, Dela Cruz claims that he has no recollection of what transpired that night but assured that if he had sex with AAA it was done without coercion.

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[15] *People v. Perez*, 673 Phil. 373, 379 (2011).

Degree of force in rape is relative.

Rape is essentially sexual intercourse *sans* consent.[16] In her testimony, AAA narrated how Dela Cruz defiled her, notwithstanding her refusal to have sex with him, to wit:

Direct Examination

PROSECUTOR RODRIGUEZ:

Q: When you entered the room, what happened then?
A: When I entered the room, Barok followed me immediately and started kissing me.

Q: And what was your reaction since you were there only to sleep?
A: I told him to stop and I pushed him away from me but he did not stop, ma'am.

Q: What happened after that?
A: He took off my clothes, ma'am.

Q: After he took off your clothes, what did he do?
A: He went on top of me, ma'am.

Q: When you said, he went on top of you, what happened?
A: I just felt something painful.

Q: Why? What did he do to you when you say painful?
A: He inserted his private part into mine, ma'am.

Q: When you say private part, are you referring to the penis of the accused?
A: Yes, ma'am.

Q: And what did you feel at that time while he was inserting his penis into your private part?
A: I was crying at that time because I really don't want what he was doing to me, so I pushed him away from me but he did not stop.[17]

Cross-Examination

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[16] *People v. Nogopo*, 603 Phil. 722, 743 (2009).

[17] TSN dated 10 September 2009, pp. 13-14.

ATTY. REYES:

Q: So, where at the (sic) both of you?
A: Just on the floor, ma'am.

Q: So, you were lying down?
A: He pushed me to lie down.

Q: Did you not resist?
A: I did, ma'am.

Q: Not hard enough?
A: Yes, ma'am.

AAA clearly and steadfastly recalled how she was forced to have sexual intercourse with Dela Cruz. She told him to stop and twice tried to push him away but it was all for naught as he continued with his desire to ravish her. In addition, the fact that AAA admitted that she did not resist "hard enough" cannot be taken against her. In rape, the victim need not prove resistance because it is not an element of rape and the lack thereof does not render the victim's act voluntary.[18]

Dela Cruz argues that AAA's testimony was insufficient to establish that he exerted force to have sex with her. He explains that his act of following her into the room and kissing her hardly constitutes force. In *People v. Joson*,[19] the Court expounded that the force required in rape varies depending on the circumstances, to wit:

> The Supreme Court has, time and again, ruled that **force or violence that is required in rape cases is relative; when applied, it need not be overpowering or irresistible**. That it enables the offender to consummate his purpose is enough. The parties' relative age, size and strength should be taken into account in evaluating the existence of the element of force in the crime of rape**. The degree of force which may not suffice when the victim is an adult may be more than enough if employed against a person of tender age.**[20] (emphasis supplied)

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[18] *People v. Palanay*, G.R. No. 224583, 1 February 2017.

[19] 751 Phil. 450 (2015).

[20] *Id*. at 459.

Sexual congress with a person who expresses resistance through words or deeds constitutes force.[21] Here, AAA verbally and physically manifested her resistance towards Dela Cruz's advances — at one point she even cried. Nonetheless, he persisted and ultimately consummated his desire to have carnal knowledge of her. The degree of force he employed becomes immaterial in view of AAA's minority and the fact that her intoxication impaired her physical strength.

Trial court's assessment of AAA's credibility deserves weight

Dela Cruz seeks to malign AAA's credibility by highlighting her demeanor while she was testifying. In addition, he claims that her actions during and after the time of the incident were contrary to human experience. He notes that AAA could have easily cried out for help because she was not gagged and that she remained placid during her alleged ordeal.

It is axiomatic that, as a rule, findings of the trial court as to the credibility of witnesses are not to be disturbed.[22] This is true considering that trial courts are at a more advantageous position to fully scrutinize witnesses. Thus, in *People v. Sapigao, Jr.,*[23] the Court explained:

> It is well-settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witness firsthand and to note their demeanor, conduct and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness credibility, and the trial courts have the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the

[21] *People v. Quintos*, 746 Phil. 809, 828 (2014).

[22] *People v. Mangune*, 689 Phil. 759, 769 (2012).

[23] G.R. No. 178485, 614 Phil. 589 (2009).

witness contained in the transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, there is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skilful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court.[24]

AAA's testimony was straightforward and categorical as she never flinched in describing what happened to her and in identifying Dela Cruz as the one who did it. While she was testifying, the trial court was able to observe her demeanor and conduct and assess it in its entirety. As such, the fact that AAA was smiling at one point during her testimony does not necessarily destroy her credibility and the isolated incident cannot discount the trauma she endured at Dela Cruz's hand.

Further, AAA's failure to shout for help or to offer spirited physical resistance cannot be used as basis to damage her credibility. In rape cases, there is no expected uniform reaction from the victim considering that the workings of the human mind placed under emotional stress are unpredictable.[25] It must be remembered that AAA had already tried to resist Dela Cruz but failed; thus, coupled with her intoxication, it would be understandable why she no longer offered further resistance or tried to shout for help after her previous futile attempts.

Moreover, contrary to Dela Cruz's belief, AAA's actions after the incident were in line with human experience. She remained inside the room because he was still there and she feared that Dela Cruz might abuse her again. Also, she was in an unfamiliar place and the streets were unlit; there were no

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[24] *Id*. at 599.

[25] *People v. Lucena*, 728 Phil. 147, 162-163 (2014).

people around, so she waited for sunlight before she left to be more secure. She had to ask for directions to reach Noknok's house.

Her urgency in reporting the incident to the authorities strengthens her credibility. AAA immediately told her aunt about the rape once she got home, who in turn notified AAA's parents. Thus, together with her parents, she was able to promptly report the same to the authorities. AAA did not hesitate to seek and obtain justice for the wrong done against her by Dela Cruz.

While the Court agrees with the conviction handed out by the courts *a quo*, the appealed decision must be modified to conform to recent jurisprudence.

In its decision, the RTC ordered Dela Cruz to pay AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The CA modified the trial court's decision to clarify that he was not eligible for parole but affirmed the amount of damages awarded.

People v. Jugueta (Jugueta)[26] set the standard for damages to be awarded in certain heinous crimes, and settled that victims in simple rape are entitled to the following damages: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; and (c) ₱75,000.00 as exemplary damages.[27] In conformity with *Jugueta*, all damages awarded to AAA should be increased accordingly.

WHEREFORE, the 22 December 2014 Decision of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06397 is **AFFIRMED with MODIFICATION**. Accused-appellant Ronnie dela Cruz a.k.a. "Barok" is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages with interest at six percent (6%) per annum computed from the finality of this judgment until fully paid.

SO ORDERED.

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

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[26] 783 Phil. 806 (2016).

[27] *Id.* at 806-856.

THIRD DIVISION

[G.R. No. 219963. June 13, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO TANGLAO *y* EGANA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.—** For a successful prosecution of rape, the following elements must be proved beyond reasonable doubt, to wit: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force and intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

2. **ID.; ID.; STATUTORY RAPE; ELEMENTS.—** In this case, there was no issue that the accused-appellant was the father of AAA and that she was only 7 years old during the time material to this case, thus, qualifying the rape committed against AAA as one under Art. 266-A(l)(d) of R.A. No. 8353 or statutory rape where the child victim's consent is immaterial because the law presumes that her young age makes her incapable of discerning good from evil. Its elements are as follows: (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; GUIDING PRINCIPLES IN THE REVIEW OF RAPE CASES.—** [T]hree (3) principles guide the Court in the review of rape cases: (*a*) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (*b*) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (*c*) the evidence for the prosecution must stand or fall on its own merit, and cannot be

allowed to draw strength from the weakness of the evidence for the defense. In this case, it was not only AAA's testimony which endured the test of credibility, but so was DDD's whose testimony corroborated her declarations on the witness stand.

4. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE REVELATION OF AN INNOCENT CHILD WHOSE CHASTITY WAS ABUSED DESERVES FULL CREDENCE, AS YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.— AAA positively identified the accused-appellant as the one who raped her on 14 September 2001; this was incisively re-echoed by DDD when he testified. On the element of carnal knowledge, AAA's testimony on the rape incident was straightforward and convincing, consistent as it was with DDD's testimony on material and important details x x x. Clearly applicable in this case is the well-settled rule that the testimony of a rape victim who is of tender age is credible. The revelation of an innocent child whose chastity was abused deserves full credence. Youth and immaturity are generally badges of truth and sincerity. The child's willingness to undergo the trouble and humiliation of a public trial is an eloquent testament to the truth of her complaint. The same can be said of her brother DDD who, despite being a minor during the time he took the witness stand, courageously and credibly testified against the accused-appellant. Most importantly, a review of AAA's and DDD's respective testimonies proves that neither wavered in their statements despite the gruelling cross-examination by the defense.

5. ID.; ID.; ID.; ABSENT ILL MOTIVES TO TESTIFY AGAINST ACCUSED-APPELLANT, THE TESTIMONIES OF THE PROSECUTION WITNESSES SHOULD BE ACCORDED FULL FAITH AND CREDENCE.— The record is bereft of any showing that there was reason for AAA and DDD to falsely testify against the accused-appellant, their father. A reading of the testimony of the accused-appellant would readily establish that AAA had nowhere to go but to him when she left BBB 's care as she was allegedly being abused by BBB, EEE, and Reyes. The accused-appellant was expectedly AAA's only refuge; hence, it was beyond cognition that she would want him placed behind bars. In the same vein, DDD, who lived with the accused-appellant, was aware that it would be to his great disadvantage if his father would be incarcerated; yet, this

truth did not deter him from revealing before the RTC what he witnessed on the night of 14 September 2001. To stress, DDD was not only a witness to the dastardly act committed by the accused-appellant upon AAA, but was himself a victim of his father's moral depravity. Considering, therefore, that there was no showing that the witnesses for the prosecution had ill motives to testify against accused-appellant, their testimonies should be accorded full faith and credence.

6. **ID.; ID.; ID.; THE MEDICO-LEGAL FINDINGS WHICH BOLSTER THE PROSECUTION'S TESTIMONIAL EVIDENCE PRODUCED A MORAL CERTAINTY THAT THE ACCUSED-APPELLANT INDEED RAPED THE VICTIM.—** What makes the case against the accused-appellant stronger were the medical findings on AAA. According to Dr. Baluyot, the photographs of AAA's genitalia validated that she was sexually abused. Likewise, Dr. Baluyot's report indicated that her impression with regard to her examination of AAA's genitalia was "suggestive of blunt force or penetrating trauma." On the other hand, Dr. Leynes reported in her psychiatric evaluation that the chief complaint on AAA was that "kinakagat niya ang sarili niya" (she bites herself) which is a symptom of a child sexually abused. Dr. Leynes' psychiatric diagnosis of AAA showed she was a victim of sexual abuse who had problems with her primary support group, i.e., her parents. These medico-legal findings bolster the prosecution's testimonial evidence. Together, these pieces of evidence produce a moral certainty that the accused-appellant indeed raped the victim.

7. **ID.; ID.; ID.; GUIDELINES IN THE ASSESSMENT OF THE CREDIBILITY OF WITNESSES.—** Jurisprudence has trenchantly maintained that when the issue of credibility of witnesses is presented before the Court, certain guidelines should be followed, *viz*: **First**, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. **Second**, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been

overlooked or disregarded. **And third**, the rule is even more stringently applied if the CA concurred with the RTC. The Court has stringently reviewed the records of this case but found nothing that would support a conclusion that the findings of the RTC and the CA were arrived at arbitrarily, or that significant facts or circumstances were overlooked, misapprehended or misappreciated that, if properly considered, would have affected the outcome of this case.

8. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; AN INTACT HYMEN DOES NOT NEGATE A FINDING THAT THE VICTIM WAS RAPED, AS PENETRATION OF THE PENIS BY ENTRY INTO THE LIPS OF THE VAGINA, EVEN WITHOUT LACERATION OF THE HYMEN, IS ENOUGH TO CONSTITUTE RAPE, AND EVEN THE BRIEFEST OF CONTACT IS DEEMED RAPE.— Indeed, the legal teaching consistently upheld by the Court is that "[p]roof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape." Dr. Baluyot's finding that there was "penetrating trauma" on AAA's genitalia supported AAA's credible testimony that she was raped by the accused-appellant.

9. ID.; ID.; ID.; PROPER IMPOSABLE PENALTY.— Under Art. 266-B of R.A. No. 8353, the penalty of death shall be imposed if the victim of the rape is under eighteen (18) years of age and the offender is a parent. However, with the effectivity of R.A. No. 9346, the penalty of reclusion perpetua without eligibility for parole, instead of death, shall be imposed.

10. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Following the Court's decision in *People v. Jugueta*, the Court modifies the award of damages to AAA and thus holds the accused-appellant liable for the following: civil indemnity of ₱100,000.00; moral damages of ₱100,000.00; and exemplary damages of ₱100,000.00. The accused-appellant shall further pay interest at six percent (6%) per annum on the civil indemnity and the moral and exemplary damages reckoned from the finality of this decision until full payment.

APPEARANCES OF COUNSEL

Office of the Solicitor for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

MARTIRES, *J.*:

Accused-appellant Ricardo Tanglao *y* Egana appeals from the 15 September 2014 Decision[1] of the Court of Appeals (*CA*), Special Tenth Division, in CA-G.R. CR.-HC. No. 05567 affirming, with modification as to the award of damages, the 6 January 2012 Decision[2] of the Regional Trial Court (*RTC*), Branch 130, Caloocan City, finding him guilty of Rape defined and penalized under Article (*Art.*) 266-A, paragraph (*par.*) 1(d) of Republic Act (*R.A.*) No. 8353.

THE FACTS

The accused-appellant was charged with violation of R.A. No. 8353,[3] in relation to R.A. No. 7610,[4] in an Information docketed as Crim. Case No. C-63671, the accusatory portion of which reads:

That on or about the 14th day of September, 2001 in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and taking

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[1] CA *rollo*, pp. 211-224. Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Nina Antonio-Valenzuela and Maria Elisa Sempio Diy.

[2] Records, Vol. II, pp. 296-304. Penned by Judge Raymundo G. Vallega.

[3] Entitled "An Act Expanding the Definition of the Crime of Rape, Reclassifying the same as a Crime Against Persons, Amending for the Purpose Act No. 3815, as amended, otherwise known as the Revised Penal Code, and for Other Purposes" dated 30 September 1997.

[4] Entitled "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes" dated June 17, 1992.

advantage of his superior strength as a father, by means of force, threats, and intimidation employed on the person of Jennelyn Galingacion Tanglao,[5] a minor of seven (7) years old, did then and there wilfully, unlawfully, and feloniously lie with and have sexual intercourse with said minor victim, against the latter's will and without her consent.

Contrary to law.[6]

When arraigned, the accused-appellant, with the assistance of counsel, pleaded not guilty;[7] hence, trial proceeded.

To prove its case against the accused-appellant, the prosecution called to the witness stand the following: Jocelyn Galingacion-Tanglao (*Jocelyn*), Jennelyn Galingacion (*Jennelyn*), Tanglao's mother; Jorick Tanglao (*Jorick*), Jennelyn's older brother; Jennelyn; Dr. Irene Baluyot (*Dr. Baluyot*), a pediatrician at the Philippine General Hospital Child Protection Unit (*PGH-CPU*); and Dr. Cynthia Leynes (*Dr. Leynes*), chairperson of the PGH psychology department and a consultant of the PGH-CPU.

The defense on the one hand presented the accused-appellant and Edsel Pelete (*Pelete*), a special investigator of the National Bureau of Investigation (*NBI*). The testimony of Rosie Ponce, the NBI records and evidence custodian, was dispensed with by the parties after it was stipulated that the records she brought were in the custody of her office.

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[5] The true name of the victim had been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (Subject: *Protocols And Procedures In the Promulgation, Publication, And Posting On The Websites Of Decisions, Final Resolutions, And Final Orders Using Fictitious Names).*The confidentiality of the identity of the victim is mandated by R.A. No. 7610 *("Special Protection of Children Against Abuse, Exploitation and Discrimination Act");* R.A. No. 8505 *("Rape Victim Assistance And Protection Act of 1998");* R.A. No. 9208 *("Anti-Trafficking In Persons Act Of 2003");* R.A. No. 9262 *("Anti-Violence Against Women And Their Children Act Of 2004");* and R.A. No. 9344 *("Juvenile Justice And Welfare Act Of 2006").*

[6] Records, Vol. I, p. 1.

[7] *Id*. at 40.

Version of the Prosecution

Born to the marriage of the accused-appellant and Jocelyn were Jerico Tanglao (*Jerico*), Jorick, and Jennelyn. In 1999, the accused-appellant and Jocelyn separated causing Jennelyn to stay with her mother, while Jerico and Jorick stayed with their father.[8]

Sometime in September 2001, Jennelyn, who was then seven years old, went to the accused-appellant's house which doubled as a junk shop. When the accused-appellant arrived home on the night of 14 September 2001, he told Jennelyn and Jorick to go to sleep, put out the light, and then placed himself between Jennelyn and Jorick at the upper portion of a double-deck bed. Suddenly, the accused-appellant covered Jennelyn's mouth, kissed her lips and neck, and forcefully inserted his penis into her vagina causing her so much pain. She wanted to shout but was unable to do so.[9]

Jorick, who was then positioned beside the wall, heard Jennelyn whimpering as if her mouth was covered; so, he asked her what was the matter. Jennelyn did not answer and the accused-appellant admonished Jorick to go back to sleep. Because he was afraid of the accused-appellant, Jorick tried to get some sleep and avoided looking at Jennelyn's direction as the accused-appellant might be doing something to his sister. Jorick had a hard time going to sleep because the bed was shaking. With the light coming from the lamppost outside, Jorick saw that Jennelyn's legs were quivering and that the accused-appellant seemed to be "malikot" (restless) moving his body back and forth. After a few minutes, Jennelyn left the room to urinate after asking permission from the accused-appellant. The accused-appellant turned on the light and followed Jennelyn[10] downstairs.

When Jennelyn came back to the room, she and Jorick occupied the lower deck while the accused-appellant who came

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[8] TSN, 29 March 2005, p. 16; TSN, 7 December 2005, p. 7.

[9] TSN, 7 December 2005, pp. 5-13.

[10] TSN, 17 August 2005, pp. 6-15.

thereafter occupied the upper deck. Jennelyn whispered to Jorick "ni rape ako ni papa" (I was raped by papa); thus, Jorick suggested they trade places. Later, the accused-appellant got down to the lower deck, carried Jorick up to the upper deck, kissed him, touched his penis, and then pushed him away.[11]

The following morning, as Jennelyn was taking a bath, the accused-appellant saw her bloodied underwear and threw it away. He gave Jennelyn ₱15.00 to buy spaghetti and soda. On her way to the eatery, Jennelyn saw the helper of Susan, her mother's regular customer as a manicurist. Jennelyn and the helper went to Susan's house where they saw Jocelyn. Jennelyn and Jocelyn proceeded to the barangay hall with the intention of proving that Jocelyn did not kidnap Jennelyn.[12]

At the barangay hall, Jennelyn told Jocelyn that the accused-appellant had carnal knowledge of her; thus, they proceeded to an aunt's place so that Jocelyn could check on Jennelyn's vagina. Jocelyn saw that Jennelyn's vagina was swollen so they went immediately to the police station to report the incident.[13] Jennelyn expressed her anger at the accused-appellant and said she wanted him killed.[14]

On 16 September 2001, the NBI referred[15] Jennelyn to Dr. Baluyot who, after securing Jocelyn's consent[16] to conduct a medical examination on Jennelyn, interviewed her. Jennelyn told Dr. Baluyot that she was raped by the accused-appellant. Dr. Baluyot wrote down her interview with Jennelyn and, thereafter, she examined Jennelyn from head to toe.[17]

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[11] *Id*. at 15-18.

[12] TSN, 7 December 2005, pp. 14-17.

[13] Records, Vol. I, p. 5; Exh. "B".

[14] TSN, 7 December 2005, pp. 17-19.

[15] Records, Vol. I, p. 203; Exh. "C".

[16] *Id*. at 204; Exh. "D".

[17] TSN, 27 November 2007, pp. 7-10.

At the PGH, pictures were taken of Jennelyn's anus and genitalia.[18] Dr. Baluyot wrote her final medico-legal report[19] containing the following pertinent findings and impressions:

HYMEN: Tanner stage 1, attenuated posterior rim of hymen from 3 to 9 o'clock area, Type of Hymen: annular.

IMPRESSIONS

Genital examination findings suggestive of blunt force or penetrating trauma.

On 14 January 2002, Dr. Leynes met Jennelyn at her PGH-CPU office. In assessing Jennelyn's mental condition, Dr. Leynes conducted a psychological evaluation by interviewing Jennelyn and Jocelyn. Her psychiatric evaluation[20] of Jennelyn revealed the following:

Psychiatric Diagnosis

x x x x x x x x x

Axis 4:
Sexual abuse
Problems with primary support group

Axis 5:

71-80 – Symptoms are transient and expectable reactions to psychosocial stresses.

Version of the Defense

On 4 September 2001, the accused-appellant saw Jennelyn crying while embracing Jorick at his welding shop. When the accused-appellant asked Jennelyn why she came to the shop, she replied that she wanted to complain to him that Jocelyn and her live-in partner, Ronnie Reyes (*Reyes*), whom she called "demonyo" (*devil*), were hurting her. Consequently, the accused-appellant went to Jocelyn's cousins and confronted them with

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[18] Records, Vol. I, p. 205; Exhs. "E", "E-1-A", "E-2", "E-3-A", and "E-4".

[19] *Id*. at 206; Exhs. "F", "F-1", "F-2", "F-3", "F-4", and "F-5".

[20] *Id*. at 207-208; Exh. "G".

Jennelyn's complaint. The accused-appellant also went to Roger Santos of Media In Action to complain but he was referred instead to the Department of Social Welfare and Development (*DSWD*).[21]

On 5 September 2001, the accused-appellant and Jennelyn went to the DSWD. After an interview with Jennelyn in a separate room, the DSWD employee asked the accused-appellant who Jason Galingacion (*Jason*) was because Jennelyn had claimed that Jason had mounted her. The accused-appellant informed the DSWD employee that Jason was Jocelyn's brother. With the information gathered from the DSWD employee, the accused-appellant and Jennelyn proceeded to the NBI to file a complaint[22] against Jocelyn, Jason, and Reyes. Jennelyn was medically examined[23] for her burn marks and hematoma. The accused-appellant was also advised to ascertain the exact address of Jocelyn, Jason, and Reyes and to coordinate with the barangay. When the accused-appellant went to the barangay, he learned that Reyes was a *kagawad* (councilman).[24]

On 15 September 2001, the accused-appellant reported to the barangay that Jennelyn was missing. Jennelyn's grandmother reported to him that Jennelyn was taken by someone who rode a black vehicle.[25]

On 17 September 2001, the accused-appellant was arrested by two police officers on the basis of a complaint filed by Jocelyn for the rape of Jennelyn.[26]

The RTC Ruling

The RTC held that the prosecution was able to competently and sufficiently establish the elements of violation of Art. 266-A

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[21] TSN, 24 November 2009, pp. 10-14.

[22] Records, Vol. II, p. 259; Exh. "1".

[23] *Id*. at 255; Exh. "4".

[24] TSN, 24 November 2009, pp. 18-30, 36-39.

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

[26] *Id*. at 40-42.

of R.A. No. 8353. It pointed out that jurisprudence dictates that in an incestuous rape of a minor, neither actual force nor intimidation need be employed; nor proof of force and violence exerted by the aggressor is essential. It ruled that in a rape by a father of his own daughter, the former's moral ascendancy and influence substitute for violence and intimidation.[27]

The RTC held that Jennelyn's testimony and positive identification of the accused-appellant as her rapist were further bolstered by Jorick's categorical declaration during the trial of what he had heard and observed when his sister was raped by the accused-appellant. The RTC found that, like Jennelyn, Jorick would gain nothing from falsely testifying against the accused-appellant. The RTC noted that the inconsistencies as to the dates or events that transpired prior to the rape on 14 September 2001 were inconsequential to the crime charged. On the one hand, the defense of the accused-appellant failed to override the strong, clear, precise, and convincing evidence identifying him as the perpetrator.[28]

The RTC resolved the case against the accused-appellant as follows:

> **WHEREFORE**, the foregoing considered, this Court hereby finds accused RICARDO TANGLAO y EGANA *GUILTY* beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A, paragraph 1(d) of Republic Act No. 8353 and sentences him to suffer an imprisonment of **Reclusion Perpetua** and to pay the complainant AAA the amount of **Fifty Thousand Pesos** *(₱50,000.00)* as civil indemnity; **Fifty Thousand Pesos** *(₱50,000.00)* as moral damages and **Twenty Five Thousand Pesos** (*₱25,000.00*) as exemplary damages.
>
> **SO ORDERED.**[29]

Not satisfied with the disposition of his case, the accused-appellant appealed to the CA.

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[27] Records, Vol. II, pp. 301-302.

[28] *Id*. at 302.

[29] *Id*. at 304.

The CA Ruling

The CA found no merit in the appeal. It held that the accused-appellant's contention that Jennelyn could not have been raped because there was "no evident injury" in her genitalia deserves no consideration. According to the CA, the absence of external injuries does not negate rape and that an intact hymen does not disprove a finding that the victim was actually sexually violated. It further ruled that it will not disturb the findings of the RTC that Jennelyn's testimony deserves full faith and credence especially that there were no facts or circumstances of weight or substance that the trial court had overlooked, misapprehended, or misinterpreted.[30]

While the CA affirmed the RTC ruling that the penalty of reclusion perpetua should be imposed upon the accused-appellant, it found the need to modify the award of damages. Thus, the CA resolved the appeal as follows:

WHEREFORE, the instant appeal is **DENIED** for lack of merit. The assailed January 6, 2012 Decision is however **MODIFIED** by **ORDERING** the accused-appellant to pay AAA:

(1) ₱75,000.00 as civil indemnity;
(2) ₱75,000.00 as moral damages; and
(3) ₱30,000.00 as exemplary damages.

SO ORDERED.[31]

ISSUES

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PRIVATE COMPLAINANT'S TESTIMONY.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[32]

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[30] CA *rollo*, pp. 12-13.

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

[32] CA *rollo*, p. 35.

OUR RULING

The appeal is without merit.

The elements of violation of Art. 266-A of R.A. No. 8353 vis-à-vis the evidence presented by the prosecution

The accused-appellant was charged with violation of Art. 266-A of R.A. No. 8353, which pertinently reads:

> Article 266-A. Rape: *When And How Committed.* — Rape is committed:
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

For a successful prosecution of rape, the following elements must be proved beyond reasonable doubt, to wit: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force and intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[33]

In this case, there was no issue that the accused-appellant was the father of Jennelyn and that she was only 7 years old during the time material to this case, thus, qualifying the rape committed against Jennelyn as one under Art. 266-A(l)(d) of R.A. No. 8353 or statutory rape where the child victim's consent is immaterial because the law presumes that her young age makes her incapable of discerning good from evil. Its elements are as

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[33] *People v. Primavera*, G.R. No. 223138, 5 July 2017.

follows: (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.[34]

Relatedly, three (3) principles guide the Court in the review of rape cases: (*a*) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (*b*) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (*c*) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[35] In this case, it was not only Jennelyn's testimony which endured the test of credibility, but so was Jorick's whose testimony corroborated her declarations on the witness stand.

Jennelyn positively identified the accused-appellant as the one who raped her on 14 September 2001; this was incisively re-echoed by Jorick when he testified. On the element of carnal knowledge, Jennelyn's testimony on the rape incident was straightforward and convincing, consistent as it was with Jorick's testimony on material and important details, *viz*:

> The direct examination of AAA by LI Mitra reads:
>
> Q. Who were with you on the night of September 14, 2001?
> A. My kuya Jorick.
>
> x x x x x x x x x
>
> Q. While you and your kuya Jorick were lying down, did anyone arrive?
> A. Yes, my father.
>
> x x x x x x x x x

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[34] *People v. Francia*, G.R. No. 208625, 6 September 2017.

[35] *People v. Rubillar*, G.R. No. 224631, 23 August 2017.

Q. x x x Then when your father arrived, what did he do or say?
A. He told us to go to sleep.

Q. After telling you to go to sleep, what did you do next?
A. He turned off the light.

Q. What happened next?
A. He went at the portion of the double deck and lied down in the middle.

x x x x x x x x x

Q. When your father lied down on the bed, what did you do next?
A. My father was silent. I was not able to go to sleep immediately and he covered my mouth.

Q. What did he do after covering your mouth?
A. He kissed me.

Q. Where did he kiss you? On what part of your body?
A. On my lips and neck.

Q. After kissing you on the lips and neck, what did he do next?
A. I felt he was inserting his penis to my vagina.

Q. When you felt his penis is being inserted to your vagina what did you do?
A. I was about to shout, but because I was very young then, I was not able to do so, "hindi ko po siya kinaya."

x x x x x x x x x

Q. After doing the act, what happened next?
A. I asked his permission to urinate. I went out of the house. He turned on the light and followed me.

Q. After urinating, did you go back to the shop?
A. Yes, mam.

Q. What did you do after entering the room?
A. I told kuya Jorick about what happened to me because I saw him he went down.

x x x x x x x x x

(continuation) From the upper portion of the double deck, my kuya Jorick told me to be certain. We have to change position. When my father arrived, he was able to bring my

brother to the upper portion of the double deck. And I saw my father removed the clothes of my kuya Jorick.[36]

The direct examination of Jorick by LI Menez was as follows:

Q: Now on the night of September 14, 2001, you are then residing with your father?
A: Yes, mam.

x x x x x x x x x

Q. So, Jennelyn was there, your father was there, and he was lying between the two of you?
A. Yes, mam.

Q. So can you recall, if any unusual incident happened on that night when you were about to sleep or you are sleeping?
A. Yes, mam.

Q. Did you hear anything unusual?
A. There was, mam.

Q. And what was that?
A. My sister is umuungol, mam.

Q. And what did you do upon hearing the ungol?
A. I look at my father, mam.

Q. Did you ask Jennelyn why Jennelyn was making ungol?
A. Yes, mam.

Q. And did Jennelyn answer?
A. No, mam.

x x x x x x x x x

LI MENEZ: x x x Who was that?
A. My father, mam.

Q. What did he say?
A. Matulog ka na.

COURT: Then what happened next after that?
A. I did not look at their direction because I was frightened, mam.

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[36] TSN, 7 December 2005, pp. 8-13.

Q. Why were you frightened?
A. He might be doing something to my sister, mam.

Q. After your father told you matulog ka na, were you able to note the tone of his voice when he said this?
A. Yes, mam.

Q. And what was his tone?
A. It was loud, mam.

Q. So your father told you to go to sleep, were you able to go to sleep?
A. No, mam.

Q. Were you able to note anything else?
A. Ang paa ng kapatid ko nanginginig, mam.

Q. And were you able to observe anything unusual?
A. Yes, mam.

Q. And what was that?
A. My father was moving, mam.

Q. How was your father moving?
A. Malikot, mam.

Q. x x x Can you demonstrate to us now the movement of your father when you said he was malikot?
A. His body was moving back and forth, mam.

Q. Given that this was night time, how were you able to say that your father is moving back and forth?
A. There was a window that was bright at the foot of our bed, mam.

Q. Why did you say that the window was bright?
A. Because it was near the post, mam.

Q. Aside from saying that your father was making a certain movement what else did you see as to the movement of your father.

x x x x x x x x x

A. The bed is also moving, malikot, mam.

Q. After Jennelyn told your father that she wants to urinate, what did your father do?
A. He turned on the light and he went downstairs, mam.

x x x x x x x x x

Q. After Jennelyn urinated, did she go back to the room?
A. Yes, mam.

x x x x x x x x x

Q. You are on the lower portion of the bed?
A. Jennelyn and I, mam.

Q. And where did your father go?
A. In the upper portion of the bed, mam.

Q. So after that what happened next?
A. My sister whispered something to me "ni rape ako ni papa," mam. I told my sister Jennelyn palit tayo ng pwesto para sigurado, my father carried me and brought me at the upper portion of the double deck, mam.

x x x x x x x x x

Q. After your father carried you and transferred you on top of the bed, was there anything unusual that happened?
A. Yes, mam.

Q. And what was that?
A. My father kissed me and he removed my shorts and after touching my penis he pushed me away mam.[37]

Clearly applicable in this case is the well-settled rule that the testimony of a rape victim who is of tender age is credible. The revelation of an innocent child whose chastity was abused deserves full credence.[38] Youth and immaturity are generally badges of truth and sincerity.[39] The child's willingness to undergo the trouble and humiliation of a public trial is an eloquent testament to the truth of her complaint.[40] The same can be said of her brother Jorick who, despite being a minor during the time he took the witness stand, courageously and credibly testified against the accused-appellant. Most importantly, a review of

[37] TSN, 17 August 2005, pp. 7-17.

[38] *People v. Udtohan*, G.R. No. 228887, 2 July 2017.

[39] *People v. Tuballas*, G.R. No. 218572, 19 June 2017.

[40] *Quimvel v. People*, G.R. No. 214497, 18 April 2017.

Jennelyn's and Jorick's respective testimonies proves that neither wavered in their statements despite the gruelling cross-examination by the defense.

The record is bereft of any showing that there was reason for Jennelyn and Jorick to falsely testify against the accused-appellant, their father. A reading of the testimony of the accused-appellant would readily establish that Jennelyn had nowhere to go but to him when she left Jocelyn's care as she was allegedly being abused by Jocelyn, Jason, and Reyes. The accused-appellant was expectedly Jennelyn's only refuge; hence, it was beyond cognition that she would want him placed behind bars. In the same vein, Jorick, who lived with the accused-appellant, was aware that it would be to his great disadvantage if his father would be incarcerated; yet, this truth did not deter him from revealing before the RTC what he witnessed on the night of 14 September 2001. To stress, Jorick was not only a witness to the dastardly act committed by the accused-appellant upon Jennelyn, but was himself a victim of his father's moral depravity. Considering, therefore, that there was no showing that the witnesses for the prosecution had ill motives to testify against accused-appellant, their testimonies should be accorded full faith and credence.[41]

Significantly, the day after the accused-appellant had carnal knowledge of her, Jennelyn informed Jocelyn of what had happened to her. Jennelyn and Jocelyn immediately proceeded to the police station to report the incident and to execute their respective statements. These facts persuasively confirm that Jennelyn did not have the luxury of time to fabricate a rape story.[42]

What makes the case against the accused-appellant stronger were the medical findings on Jennelyn. According to Dr. Baluyot, the photographs[43] of Jennelyn's genitalia validated that she was

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[41] *People v. Pusing*, 789 Phil. 541, 558-559 (2016).

[42] *People v. Empuesto*, G.R. No. 218245, 17 January 2018.

[43] Records, Vol. I, p. 205; Exhs. "E", "E-1-A", "E-2", "E-3-A", and "E-4".

sexually abused.[44] Likewise, Dr. Baluyot's report[45] indicated that her impression with regard to her examination of Jennelyn's genitalia was "suggestive of blunt force or penetrating trauma." On the other hand, Dr. Leynes reported in her psychiatric evaluation[46] that the chief complaint on Jennelyn was that "kinakagat niya ang sarili niya" (she bites herself) which is a symptom of a child sexually abused. Dr. Leynes' psychiatric diagnosis of Jennelyn showed she was a victim of sexual abuse who had problems with her primary support group, i.e., her parents.[47] These medico-legal findings bolster the prosecution's testimonial evidence. Together, these pieces of evidence produce a moral certainty that the accused-appellant indeed raped the victim.[48]

Jurisprudence has trenchantly maintained that when the issue of credibility of witnesses is presented before the Court, certain guidelines should be followed, *viz:*

First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.

Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.

And third, the rule is even more stringently applied if the CA concurred with the RTC.[49]

The Court has stringently reviewed the records of this case but found nothing that would support a conclusion that the

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[44] TSN, 27 November 2007, p.12.

[45] Records, Vol. I, p. 206; Exhs. "F", "F-1", "F-2", "F-3", "F-4", and "F-5",

[46] *Id*. at 207-208; Exh. "G".

[47] TSN, 19 August 2008, pp. 16-18.

[48] *People v. Deniega*, G.R. No. 212201, 28 June 2017.

[49] *Id*.

findings of the RTC and the CA were arrived at arbitrarily, or that significant facts or circumstances were overlooked, misapprehended or misappreciated that, if properly considered, would have affected the outcome of this case.

The defense presented by the accused-appellant was inherently weak.

It must be stressed that both the RTC and the CA found Jennelyn 's testimony to be credible, which further placed the onus upon the accused-appellant to present clear and persuasive reasons to convince the Court to reverse their unanimous determination of her credibility as a witness in order to resolve the appeal his way.[50] The accused-appellant miserably failed to discharge his burden.

The accused-appellant primarily anchored his defense on the assertion that Jennelyn could not have been truthful in her narration of what took place on 14 September 2001, because she failed to state that prior to that incident she and the accused-appellant had gone to the NBI to complain about Jocelyn, Jason, and Reyes. He insisted that he could not have concocted this story as this was supported by documentary evidence; that it would be preposterous for him to file a complaint before the NBI to cover up a crime he intends to commit afterwards.[51]

The accused-appellant's defense has no merit.

Noteworthily, the incident in this case took place on 14 September 2001. On the other hand, it can be gathered from the accused-appellant's documentary evidence that the incident subject of his complaint before the NBI allegedly took place on 20 August 2001; thus, his complaint was inconsequential to Jennelyn's charge against him for rape.

Even granting that there was truth to the accused-appellant's complaint before the NBI that Jocelyn, Jason, and Reyes abused

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[50] *People v. Domingo,* G.R. No. 225743, 7 June 2017.

[51] CA *rollo*, p. 46.

Jennelyn, this however, does not destroy the very glaring truth substantiated by the records of this case that the accused-appellant had carnal knowledge of Jennelyn on 14 September 2001. The revelation of an innocent child whose chastity was abused deserves full credence.[52] Further, in cases of incestuous rape, the Court usually gives more weight to the testimony of a young rape victim.[53]

Records will reveal that the accused-appellant never claimed that it was improbable for him to have carnal knowledge of Jennelyn because he was somewhere else when the offense was committed; and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[54] Instead, the accused-appellant insisted on the implausibility of him having carnal knowledge of Jennelyn because he had earlier filed a complaint against Jocelyn, Jason, and Reyes for their alleged abuse of Jennelyn. Accused-appellant's defense, to stress, did not find any meaning to the resolution of the present charge against him. His defense easily crumbled when evaluated against the positive identification of Jennelyn and her credible and forthright testimony.

In a last-ditch effort to exculpate himself from liability, the accused-appellant ineffectually tried to make an issue on the findings of Dr. Baluyot which he claimed did not suggest that sexual abuse had taken place. He contended that it would be hard to conceive that a seven-year-old child would not sustain any injury on her perineum if she was sexually abused. Furthermore, there was nothing in Dr. Baluyot's testimony that Jennelyn was already in a non-virgin state.[55]

Jurisprudence is not wanting on this particular issue raised by the accused-appellant. Indeed, the legal teaching consistently

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[52] *People v. Agoncillo*, G.R. No. 229100, 20 November 2017.

[53] *People v. Barrozo*, 433 Phil. 231, 247 (2002).

[54] *People v. Palanay*, G.R. No. 224583, 1 February 2017

[55] CA *rollo*, p. 49.

upheld by the Court is that "[p]roof of hymenal laceration is not an element of rape. An intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape."[56] Dr. Baluyot's finding that there was "penetrating trauma" on Jennelyn's genitalia supported Jennelyn's credible testimony that she was raped by the accused-appellant.

Under Art. 266-B of R.A. No. 8353, the penalty of death shall be imposed if the victim of the rape is under eighteen (18) years of age and the offender is a parent. However, with the effectivity of R.A. No. 9346,[57] the penalty of reclusion perpetua without eligibility for parole, instead of death, shall be imposed.

Following the Court's decision in *People v. Jugueta*,[58] the Court modifies the award of damages to Jennelyn and thus holds the accused-appellant liable for the following: civil indemnity of ₱100,000.00; moral damages of ₱100,000.00; and exemplary damages of ₱100,000.00. The accused-appellant shall further pay interest at six percent (6%) per annum on the civil indemnity and the moral and exemplary damages reckoned from the finality of this decision until full payment.[59]

WHEREFORE, the appeal is **DISMISSED**. The assailed Decision of the Court of Appeals finding the accused-appellant Ricardo Tanglao *y* Egana **GUILTY** beyond reasonable doubt of Rape under Art. 266-A of R.A. No. 8353 is hereby **AFFIRMED** with **MODIFICATION**. He is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and is **ORDERED** to pay Jennelyn civil indemnity of ₱100,000.00; moral damages of ₱100,000.00; and exemplary damages of ₱100,000.00;

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[56] *People v. Aycardo*, G.R. No. 218114, 5 June 2017.

[57] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines" dated 24 June 2006.

[58] 783 Phil. 806 (2016).

[59] *Id*. at 854.

with interest at the rate of six percent (6%) per annum reckoned from the finality of this Decision until full payment.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 227504. June 13, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODOLFO GRABADOR, JR., ROGER ABIERRA, DANTE ABIERRA and ALEX ABIERRA,** *accused,* **ALEX ABIERRA,** *accused-appellant.*

SYLLABUS

1. CRMINAL LAW; REVISED PENAL CODE; MURDER; DEFINED; ESSENTIAL ELEMENTS; PROVED.— Essentially, murder is defined under Article 248 of the RPC as the unlawful killing of a person, which is not parricide or infanticide, committed through any of the following qualifying circumstances, to wit: 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity. 2. In consideration of a price, reward or promise. 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin. 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or 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. It is an elementary rule in criminal law that each of the qualifying circumstances must be alleged in the Information, and must be proven as clearly as the crime itself. Every element of the offense must be shown to exist beyond reasonable doubt and cannot be the mere product of speculation. In the absence of a qualifying circumstance, the crime committed is homicide, and not murder. In the case at bar, the prosecution proved beyond reasonable doubt the existence of all the essential elements to warrant a conviction for murder. There is no doubt that (i) the victim, Dennis was killed; (ii) he was killed by Alex; (iii) the killing was attended by treachery; and (iv) Dennis is not the father, or child, ascendant or descendant of Alex.

2. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE.— The records show that Alex was indicted for murder qualified by treachery and evident premeditation. There is treachery or *alevosia* when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make. "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow." A frontal attack may be regarded as treacherous when it was so sudden on an unsuspecting, or an unarmed victim, who had no chance to repel the attack or avoid it.

3. ID.; ID. ID.; ID.; REQUISITES IN ORDER TO BE APPRECIATED AGAINST THE ACCUSED.— [I]n order for the qualifying circumstance of treachery to be appreciated, the following requisites must be proven, namely, (i) "the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (ii) the means, method, or manner of execution was deliberately or consciously adopted by the offender." In the instant case, Dennis had no inkling that an attack was forthcoming. Although Dennis and Rodolfo had an altercation, they shook hands before parting ways. The said gesture assuaged Dennis into believing that their

issues have been sorted. However, to Dennis' surprise, Rodolfo came back after 15 minutes, this time accompanied by three other armed men. Dennis, who was unarmed, was completely unaware of the imminent peril to his life. In a rapid motion, the men, including Alex, suddenly shot Dennis with their *sumpak.* The onslaught was so sudden and unexpected that Dennis had no chance to run, mount a defense or evade the bullets. The deliberate stealth and swiftness of the attack employed by Alex and his cohorts, significantly diminished the risk of retaliation from Dennis. Indubitably, there is no denying that the collective acts of the accused and Alex reek of treachery.

4. ID.; ID.; ID.; EVIDENT PREMEDITATION; ESSENCE; NO EVIDENT PREMEDITATION WHEN THE DETERMINATION TO COMMIT THE CRIME WAS IMMEDIATELY FOLLOWED BY EXECUTION.— Remarkably, "the essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment." The premeditation to kill must be plain and notorious, and thereafter proven by evidence of outward acts showing such intent to kill. It is imperative to prove that the accused indeed underwent a process of "cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act." Accordingly, there can be no evident premeditation when the determination to commit the crime was ***immediately followed*** by execution.

5. ID.; ID.; ID.; ID.; REQUISITES IN ORDER TO BE APPRECIATED AGAINST THE ACCUSED; NOT PROVED.— [I]n order to establish the existence of evident premeditation, the following requisites must be proven during the trial: (i) the time when the offender determined to commit the crime, (ii) an act manifestly indicating that he clung to his determination, and (iii) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act, and to allow his conscience to overcome the resolution of his will. Evident premeditation cannot be presumed in the absence of evidence showing when and how the accused planned, and prepared for the crime, and that a sufficient amount of time had lapsed between his determination and execution. It bears stressing that absent any clear and positive

evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, shall be deemed insufficient. In the instant case, the prosecution failed to identify the time when Alex decided to kill Dennis. This is necessary to prove that indeed, a sufficient period of time passed between the determination to kill and its actual execution, which would have allowed Alex to meditate and reflect on his plans, and allow his conscience to overcome the determination of his will. Instead, the prosecution randomly concluded that there was evident premeditation from the fact that Rodolfo left, and came back after 15 minutes with Alex, and thereafter killed Dennis.

6. **ID.; ID.; ID.; ID.; THE KILLING OF THE VICTIM IS NOT ATTENDED BY EVIDENT PREMEDITATION WHERE THE PROSECUTION FAILED TO ESTABLISH THAT THE PLAN TO KILL THE VICTIM WAS PRECEDED BY A DELIBERATE PLANNING, AND THAT THERE WAS A LAPSE OF AMPLE AND SUFFICIENT TIME TO ALLOW THE ACCUSED'S CONSCIENCE TO OVERCOME THE DETERMINATION OF HIS WILL, IF HE HAD SO DESIRED, AFTER MEDITATION AND REFLECTION.—** Exceptionally, a lapse of 15 minutes preceding the attack is not sufficient to conclude that evident premeditation attended the commission of the offense. This statement stems from the Court's ruling in *People v. Illescas,* where the Court ruled that a 15-minute interval cannot be deemed as sufficient time for the accused to coolly reflect on his acts. x x x In the same vein, in *People v. Dadivo,* the Court warned that there can be no evident premeditation if the accused's act of leaving the crime scene was too short a time to meditate or reflect upon his decision to stab the victim. Particularly, the Court stressed that one cannot infer that the act of the accused in temporarily leaving the *situs* of the crime, is in itself an overt act manifesting his determination to stab the victim. Hence, evident premeditation cannot be considered in the absence of proof showing how and when the plan to kill was hatched or what time elapsed before it was carried out. x x x Guided by the foregoing, the Court finds that the killing of Dennis was not attended by evident premeditation. The prosecution failed to establish the fact that the plan to kill Dennis was preceded by a deliberate planning, and that there was a lapse of ample and sufficient time to allow Alex's conscience to overcome

the determination of his will, if he had so desired, after meditation and reflection.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A LONE PROSECUTION WITNESS, IF CREDIBLE AND POSITIVE, CAN PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.— Time and again, the Court has ruled that the testimony of a lone prosecution witness, if credible and positive, can prove the guilt of the accused beyond reasonable doubt. The trial court found that Noel described what he saw and heard in the afternoon of April 13, 2001, in full and vivid details. Noel, who was standing seven meters away from the incident, witnessed the crime, and positively identified Alex as one of the culprits who shot Dennis. Plainly, Noel knew the malefactors, as they were his neighbors, and thus, could not have mistakenly identified them.

8. ID.; ID.; ID.; ABSENT ANY REASON OR MOTIVE FOR THE PROSECUTION WITNESS TO PERJURE HIMSELF, THE LOGICAL CONCLUSION IS THAT HE WAS SOLELY IMPELLED TO BRING JUSTICE TO HIS BROTHER'S UNTIMELY DEMISE.— [A]lex did not attribute any improper motive for Noel to falsely testify against him. Likewise, there is nothing in the records to show that Noel harbored any ill-will against Alex or any of his co-accused. Neither did he have any reason to fabricate his testimony. Thus, absent any reason or motive for Noel to perjure himself, the logical conclusion is that he was solely impelled to bring justice to his brother's untimely demise.

9. ID.; ID.; ID.; WITNESSES OF STARTLING OCCURRENCES REACT DIFFERENTLY DEPENDING UPON THEIR SITUATION AND STATE OF MIND.— Neither does the Court agree with Alex's allegation that Noel's behavior of standing idly, while witnessing his brother's attack was unnatural, thereby rendering his testimony suspect. It bears noting that witnesses of startling occurrences react differently depending upon their situation and state of mind. Incidentally, in *People v. Bañez, et al.,* the defense attacked the credibility of the witness, who allegedly acted in an unnatural manner when he merely stood idly, and did not move, or run away from the scene of the crime. The Court rejected this characterization and held that the witness' reaction "was not at all uncommon or unnatural

so as to make his testimony incredible." In affirming the witness' credibility, the Court explained that: [T]here could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case. Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus — some may shout, some may faint, and others may be plunged into insensibility. Clearly, one cannot expect a typical reaction from Noel. More so, the situation was so horrific and stressful, considering that it was his own brother who was being attacked by four armed men right before his very eyes. Thus, his lack of an immediate response, or his manner of handling the situation, do not in any way affect his credibility and the veracity of his testimony.

10. ID.; ID.; DEFENSES OF DENIAL AND ALIBI; INHERENTLY WEAK, AND EASILY CRUMBLE AGAINST THE POSITIVE IDENTIFICATION MADE BY A RELIABLE EYE WITNESS, AND WILL NOT PREVAIL IF CORROBORATED NOT BY CREDIBLE WITNESSES, BUT BY THE ACCUSED'S RELATIVES AND FRIENDS.— Neither do Alex's defenses of denial and alibi exculpate him from criminal liability. Alex's claim that it was impossible for him to have committed the offense considering that he was in Bicol at the time of its commission is not worthy of credence. Needless to say, the twin defenses of denial and alibi are inherently weak, and easily crumble against the positive identification made by a reliable eye witness. Similarly, it does not help that Alex's alibi was corroborated only by Maribel and Virgie, who are Alex's sister, and family friend, respectively. Worse, Virgie admitted that Alex's mother asked her to testify in court. Significantly, a denial and alibi will not prevail if corroborated ***not*** by credible witnesses, but by the accused's relatives and friends. This was the important dictum laid by the Court in *People v. Adriano, et al,* and *People v. Las Piñas*.

11. CRIMINAL LAW; REVISED PENAL CODE; MURDER; PROPER IMPOSSIBLE PENALTY.— Murder is penalized under Article 248, as amended by Republic Act No. 7659, with

reclusion perpetua to death. Considering that, apart from treachery, there are no aggravating circumstances that attended the commission of the offense, the RTC correctly held that the proper imposable penalty is *reclusion perpetua.*

12. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— With respect to Alex's civil liability, the prevailing rule is that when the circumstances surrounding the crime call for the imposition of a penalty of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amounts awarded should be Php 75,000.00 as civil indemnity, Php 75,000.00 as moral damages and Php 75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present. In line with this rule, the CA's award of exemplary damages in the amount of Php 30,000.00, must be increased to Php 75,000.00. Additionally, the amount of temperate damages awarded by the CA should be increased to Php 50,000.00, in line with the Court's ruling in *People of the Philippines v. Roger Racal @ Rambo*. It must be noted that when the actual damages proven by receipts during the trial is less than the sum allowed by the Court as temperate damages, then an award of temperate damages should be granted in lieu of actual damages. Otherwise, it would be unfair to the victim's heirs, who tried and succeeded in presenting receipts and other evidence to prove actual damages, to receive an amount that is even less than the temperate damages given to those who were not able to present any evidence at all. Based on the foregoing, the heirs of Dennis, who presented receipts amounting to Php 16,067.00, shall be entitled to the greater amount of Php 50,000.00 by way of temperate damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, JR., *J.*:

The killing of a person that is attended by treachery and evident premeditation is murder. The prosecution must prove

all the elements of these qualifying circumstances. The essence of treachery is the sudden and unexpected onslaught on an unsuspecting victim. This mode of attack must have been deliberately adopted by the accused to diminish the risk from the victim's retaliation. As for evident premeditation, the execution of the criminal act must be preceded by cool thought and reflection.[1] *Thus, there must be proof showing when and how the accused planned, and prepared for the crime. It is imperative to prove that a sufficient amount of time had indeed lapsed between the malefactor's determination and execution.*[2] *Without these essential requisites, one cannot haphazardly assume that evident premeditation attended the commission of the offense.*

This treats of the Notice of Appeal[3] under Rule 124 of the Rules on Criminal Procedure filed by herein accused-appellant Alex Abierra (Alex), seeking the reversal of the Decision dated November 4, 2015, rendered by the Court of Appeals (CA) in CA-G.R. CR-HC No. 05886, which affirmed the trial court's ruling convicting him of Murder under Article 248 of the Revised Penal Code (RPC).

The Antecedents

On June 5, 2001, an Information was filed against Rodolfo Grabador, Jr. (Rodolfo), Roger Abierra (Roger), Dante Abierra (Dante), and herein accused-appellant Alex, charging them with murder. The accusatory portion of the said information reads:

> On or about April 13, 2001, in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together, and all of them mutually helping and aiding one another, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shot Dennis Sumugat *y* Gequilapay hitting him on different parts of his body with an improvised firearm, thereby

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[1] *People v. Isla*, 699 Phil. 256, 270 (2012).

[2] *People of the Philippines v. Roger Racal @ Rambo*, G.R. No. 224886, September 4, 2017.

[3] CA *rollo*, pp. 129-130.

inflicting upon said Dennis Sumugat *y* Gequilapay gunshot wounds, which directly caused his death.

Contrary to law.[4]

The case was initially archived, pending the apprehension of all the four accused. On December 6, 2006, the Regional Trial Court (RTC) issued an Order reviving the case in view of the apprehension of Alex.[5] The rest of the accused however remained at large.

Meanwhile, on March 23, 2004, Alex was arraigned and pleaded not guilty. Trial on the merits ensued thereafter.[6]

Evidence for the Prosecution

Noel Sumugat (Noel), brother of victim Dennis Sumugat (Dennis), related that at around 4:00 p.m. of April 13, 2001, while he was sitting outside of his house at 75 PNR Site, East Service Road, Western Bicutan, Taguig City, he saw his brother Dennis talking to Rodolfo.[7] Noel was situated seven meters away from Dennis and Rodolfo.[8] The two had an altercation, but shook hands after their argument. Thereafter, Rodolfo left for home.[9]

Later on, at around 5:30 p.m., Rodolfo came back. He was accompanied by Alex, Roger and Dante. All of them were carrying a homemade shotgun (*sumpak*). Suddenly, Alex shot Dennis. Noel knew the assailants because they were his neighbors.[10]

Seeing his brother being shot, Noel immediately rushed to his aid. The four men scampered away. He saw that Dennis had a gunshot wound, so he rushed him to the Philippine General Hospital. Thereafter, Dennis was operated and confined in the

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[4] *Id*. at 15.

[5] *Id*. at 85.

[6] *Id*. at 45.

[7] *Id*. at 33-34.

[8] *Id*. at 46.

[9] *Id*. at 46.

[10] *Id*.

hospital for multiple shotgun wounds with cardiac pulmonary injury. Dennis remained in the hospital from April 13, 2001 until his demise on April 21, 2001.[11]

Version of the Defense

On the other hand, Alex vehemently denied the charge leveled against him. He testified that Roger and Dante are his brothers. However, he denied knowing his co-accused Rodolfo and the victim Dennis.[12]

Alex claimed that on April 13, 2001, he was residing in Bicol. On that day, he and his family attended the wake of their father in Naga. After the funeral, his brothers Dante and Roger left for Manila, while he stayed in Bicol with his mother. He was working as a fisherman in Naga, and sold his daily catch to his neighbor Virgie Nalda (Virgie). He moved to Manila on May 15, 2004, and has not seen his brothers since 2001.[13]

Maribel Abierra (Maribel), Alex's sister, testified that at around 5:00 p.m. of April 13, 2001, Alex, Roger, and Dante were all in Bicol attending their father's wake.[14]

This was also affirmed by Virgie who narrated that on April 13, 2001, Maribel, Roger, Dante, Alex, and their mother were in Bicol because their father died in November 2000. Alex remained in Bicol, and left only in 2003. She saw Alex everyday between the years 2000 and 2003, since they were neighbors.[15]

Ruling of the RTC

On November 27, 2012, the RTC rendered a Decision[16] finding Alex guilty beyond reasonable doubt for the crime of Murder.

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[11] *Id*. at 34.

[12] *Id*. at 46.

[11] *Id*. at 34.

[12] *Id*. at 46.

[13] *Id*. at 34.

[14] *Id*. at 46.

[15] *Id*. at 47.

[16] Rendered by Acting Presiding Judge Aida Estrella Macapagal; *id.* at 49.

The RTC found that the prosecution proved all the elements for the crime of murder. The fact of death was duly established, and Alex was proven to be one of the persons who killed the victim. The killing was qualified by treachery and evident premeditation. Noel testified that although an altercation ensued between Dennis and Rodolfo, they parted ways in good terms, thereby making the attack on Dennis sudden and unexpected. Also, the RTC noted that evident premeditation was present considering that Rodolfo returned to the place of the incident, armed with a *sumpak,* and accompanied by the other accused. This shows that they had planned to kill the victim, and went to the place to carry out their intention. The RTC rejected Alex's defenses of denial and alibi.[17]

The dispositive portion of the RTC decision reads:

WHEREFORE, this Court finds [ALEX] **GUILTY BEYOND REASONABLE DOUBT** of the crime of murder and hereby sentences him to suffer the penalty of *reclusion perpetua* which carries with it the accessory penalties of civil interdiction for life and that of perpetual absolute disqualification which he shall suffer even though pardoned unless the same shall have been expressly remitted therein.

[Alex] is likewise ordered to pay the heirs of the victim the amounts of Eighteen Thousand Six Hundred Ninety-Nine (Php 18,699.00) as actual damages; Fifty Thousand Pesos (Php 50,000.00) as civil indemnity *ex delicto;* Forty Thousand Pesos (Php 40,000.00) as moral damages; and Twenty Thousand Pesos (Php 20,000.00) as exemplary damages.

The City Jail Warden is hereby ordered to transfer said accused to the National Penitentiary in Muntinlupa City, immediately upon receipt of this Decision.

As regards accused [Rodolfo], [Roger] and [Dante], this case as against them remains in archive. The alias warrants of arrest issued against them stay.

SO ORDERED.[18]

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[17] *Id.* at 47.

[18] *Id.* at 49.

Aggrieved, Alex filed an appeal[19] before the CA.

Ruling of the CA

On November 4, 2015, the CA rendered the assailed Decision.[20] The CA affirmed the trial court's conviction, upon finding that all the elements for the crime of murder were sufficiently proven. The CA agreed that Dennis was killed by Alex, that the killing was attended by the qualifying circumstance of treachery, and the killing was not infanticide or parricide. However, the CA ruled that the crime was not attended by evident premeditation. According to the CA, the prosecution failed to prove that the decision to kill prior to the moment of its execution was the result of meditation, calculation, reflection or persistent attempts. The CA ratiocinated that it was not shown that Alex had enough opportunity to reflect upon the consequences of his intended act, as the prosecution merely presumed the premeditation from the lapse of time.[21]

Additionally, the CA modified the damages awarded to the heirs of the victim. Although it agreed with the trial court that the award of civil indemnity, moral damages and exemplary damages were proper, the CA modified the amounts awarded to conform with current jurisprudence, and thereby increased the amounts to Php 75,000.00; Php 75,000.00; and Php 30,000.00, respectively.[22]

As for the award of actual damages, the CA found that the amount supported by the receipts presented by the prosecution only amounted to Php 16,067.00. Considering that the amount of actual damages falls below Php 25,000.00, the CA awarded temperate damages amounting to Php 25,000.00, in lieu of actual damages.[23]

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[19] *Id*. at 29-43.

[20] *Id*. at 116-124.

[21] *Id*. at 121.

[22] *Id*. at 123.

[23] *Id*.

The dispositive portion of the assailed CA decision reads:

WHEREFORE, in view of the foregoing premises, the instant Appeal is hereby DENIED, and the assailed Decision dated November 27, 2012 rendered by branch 153 of the [RTC] of Pasig City in Criminal Case No. 121118-H is hereby AFFIRMED, subject to the MODIFICATION of the amount of damages awarded. [Alex] is hereby ordered to pay *civil indemnity in the amount of Php 75,000.00, moral damages in the amount of Php 75,000.00, exemplary damages in the amount of Php 30,000.00, and temperate damages in the amount of Php 25,000.00.*

SO ORDERED.[24]

The Issue

The main issue raised for the Court's resolution is whether or not the prosecution proved the guilt of Alex beyond reasonable doubt.

In his appeal, Alex claims that the trial court erred in convicting him despite the failure of the prosecution to prove his guilt beyond reasonable doubt. He claims that the testimony of Noel was riddled with inconsistencies that seriously cast doubt unto the veracity of his claim.[25] In the first part of Noel's testimony, he related that Alex was already waiting for the victim prior to the incident, but later prevaricated and stated that Alex arrived later with Rodolfo.[26] Likewise, Alex assails that Noel's acts during the incident were unnatural and contrary to ordinary human experience.[27] It was odd how Noel simply watched idly while his brother was being attacked by malefactors. He did not shout or warn his brother, or hide, or run for cover.[28]

Moreover, Alex argues that he could not have committed the offense, as he was in Bicol at the time of the commission

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[24] *Id*.

[25] *Id*. at 36.

[26] *Id*. at 37.

[27] *Id*. at 38.

[28] *Id*.

of the crime. The distance between Manila and Bicol rendered it impossible for him to have been at the *situs* of the crime.[29]

Alternatively, Alex claims that even assuming for the sake of argument that he indeed killed Dennis, he avers that the prosecution failed to prove that the killing was attended by treachery and evident premeditation.[30] Although Noel claimed that Rodolfo and Dennis shook hands after the altercation, which purportedly assuaged the latter, it was impossible for Noel to ascertain the nature of their exchange as he was standing at a distance of seven meters from where they were. Further, although Noel testified that Rodolfo left and returned armed with a *sumpak* and attacked Dennis, this fact alone would not establish evident premeditation.[31] The record is actually bereft of any proof that Rodolfo and Alex indeed meditated and reflected upon their decision to kill Dennis.[32]

The People, through the Office of the Solicitor General, avers that the alleged inconsistencies referred to by Alex are minor and do not affect the veracity of Noel's testimony. Likewise, Noel's credibility as a witness cannot be measured on the basis of his reaction while his brother was being attacked.[33] People react differently when placed under emotional stress.[34] Noel was unable to react because of the startling occurrence. His inaction should not be taken against him.[35] Notably, Noel's testimony was corroborated by the Medico Legal Certificate.[36] Moreover, the fact remains that the victim died because of the gunshot wound inflicted by Alex and his co-accused, which was personally witnessed by Noel.[37] More importantly, there

[29] *Id*. at 36.

[30] *Id*. at 31.

[31] *Id*. at 39.

[32] *Id*.

[33] *Id*. at 88.

[34] *Id*. at 40.

[35] *Id*.

[36] *Id*. at 40.

[37] *Id*. at 89.

appears no ill-motive on the part of Noel to falsely testify against Alex.[38]

Anent the second argument of alibi, the People contends that Virgie, Alex's witness (who confirmed that the latter was at Bicol at the time of the murder) was merely requested by Alex's mother to testify, which fact renders her testimony suspect. Likewise, Maribel and Virgie failed to produce any proof to show that Alex was indeed in Bicol at the time of the murder. In this regard, Alex's alibi cannot stand against Noel's positive identification pointing to him as the malefactor.[39]

Finally, the People maintains that treachery attended the commission of the offense considering that the attack employed by Alex was sudden. At the time of the attack, Dennis was unarmed, and had no chance to resist the fatal blow. The malefactors' act of arming themselves with a *sumpak,* positioning themselves around the victim, rendering him helpless when they deliberately inflicted the gunshot wound, are clear indications that they employed means and methods to ensure the successful execution of their attack.[40] However, the People did not contest Alex's argument that there was no evident premeditation.

Ruling of the Court

The instant appeal is bereft of merit.

The Prosecution Proved Beyond Reasonable Doubt that Alex is Guilty of Murder Qualified By Treachery

Essentially, murder is defined under Article 248 of the RPC[41] as the unlawful killing of a person, which is not parricide or infanticide, committed through any of the following qualifying circumstances, to wit:

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[38] *Id*.

[39] *Id*. at 89.

[40] *Id*. at 94-95.

[41] As amended by Republic Act No. 7659.

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or 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.

It is an elementary rule in criminal law that each of the qualifying circumstances must be alleged in the Information,[42] and must be proven as clearly as the crime itself.[43] Every element of the offense must be shown to exist beyond reasonable doubt and cannot be the mere product of speculation.[44] In the absence of a qualifying circumstance, the crime committed is homicide, and not murder.[45]

In the case at bar, the prosecution proved beyond reasonable doubt the existence of all the essential elements to warrant a conviction for murder. There is no doubt that (i) the victim, Dennis was killed; (ii) he was killed by Alex; (iii) the killing was attended by treachery; and (iv) Dennis is not the father, or child, ascendant or descendant of Alex.

The records show that Alex was indicted for murder qualified by treachery and evident premeditation. There is treachery or *alevosia* when the offender commits any of the crimes against

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[42] *People v. Lab-eo*, 424 Phil. 482, 495 (2002).

[43] *People v. Dadivo*, 434 Phil. 684, 688-689 (2002).

[44] *Id*.

[45] *People of the Philippines v. Nestor M. Bugarin*, G.R. No. 224900, March 15, 2017, citing *People v. Placer*, 719 Phil. 268, 280 (2013).

persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[46] "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape the sudden blow."[47] A frontal attack may be regarded as treacherous when it was so sudden on an unsuspecting, or an unarmed victim, who had no chance to repel the attack or avoid it.[48]

Thus, in order for the qualifying circumstance of treachery to be appreciated, the following requisites must be proven, namely, (i) "the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (ii) the means, method, or manner of execution was deliberately or consciously adopted by the offender."[49]

In the instant case, Dennis had no inkling that an attack was forthcoming. Although Dennis and Rodolfo had an altercation, they shook hands before parting ways. The said gesture assuaged Dennis into believing that their issues have been sorted. However, to Dennis' surprise, Rodolfo came back after 15 minutes, this time accompanied by three other armed men. Dennis, who was unarmed, was completely unaware of the imminent peril to his life. In a rapid motion, the men, including Alex, suddenly shot Dennis with their *sumpak.* The onslaught was so sudden and unexpected that Dennis had no chance to run, mount a defense or evade the bullets. The deliberate stealth and swiftness of the attack employed by Alex and his cohorts, significantly diminished the risk of retaliation from Dennis. Indubitably, there is no denying that the collective acts of the accused and Alex reek of treachery.

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[46] *People of the Philippines v. Nestor M. Bugarin*, *id.*

[47] *Id*.

[48] *Id*.

[49] *Id*.

In fact, the medico-legal report confirmed that Dennis sustained multiple gunshot wounds on various parts of his body. More so, the manner of the attack was witnessed by Noel, who was seated seven meters away from the commotion.

The Prosecution Failed to Establish that the Killing was Attended by Evident Premeditation

Remarkably, "the essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment."[50] The premeditation to kill must be plain and notorious, and thereafter proven by evidence of outward acts showing such intent to kill.[51] It is imperative to prove that the accused indeed underwent a process of "cold and deep meditation, and a tenacious persistence in the accomplishment of the criminal act."[52] Accordingly, there can be no evident premeditation when the determination to commit the crime was ***immediately followed*** by execution.[53]

Accordingly, in order to establish the existence of evident premeditation, the following requisites must be proven during the trial: (i) the time when the offender determined to commit the crime, (ii) an act manifestly indicating that he clung to his determination, and (iii) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act, and to allow his conscience to overcome the resolution of his will.[54] Evident premeditation cannot be presumed in the absence of evidence showing when and how

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[50] *People v. Isla*, *supra* note 1.

[51] *People v. Dadivo*, supra note 43, citing *People v. Chua*, 357 Phil. 907, 921 (1998).

[52] *People v. Macaspac*, G.R. No. 198954, February 22, 2017, citing *People v. Gonzales*, 76 Phil. 473, 479 (1946).

[53] *Id*.

[54] *People of the Philippines v. Roger Racal @ Rambo*, *supra* note 2, citing *People v. Serenas, et al.*, 636 Phil. 495, 511 (2010).

the accused planned, and prepared for the crime, and that a sufficient amount of time had lapsed between his determination and execution.[55] It bears stressing that absent any clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, shall be deemed insufficient.[56]

In the instant case, the prosecution failed to identify the time when Alex decided to kill Dennis. This is necessary to prove that indeed, a sufficient period of time passed between the determination to kill and its actual execution, which would have allowed Alex to meditate and reflect on his plans, and allow his conscience to overcome the determination of his will. Instead, the prosecution randomly concluded that there was evident premeditation from the fact that Rodolfo left, and came back after 15 minutes with Alex, and thereafter killed Dennis.

Exceptionally, a lapse of 15 minutes preceding the attack is not sufficient to conclude that evident premeditation attended the commission of the offense. This statement stems from the Court's ruling in *People v. Illescas*,[57] where the Court ruled that a 15-minute interval cannot be deemed as sufficient time for the accused to coolly reflect on his acts, *viz.*:

> As this Court has repeatedly held, **the premeditation to kill must be plain notorious and sufficiently proven by the evidence of outward acts showing the intent to kill.** In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient.
>
> **We cannot agree with the prosecution's theory that the 15-minute interval is sufficient time for the accused to coolly reflect on their plan to kill the victim.** It has been held in one case that even the lapse of 30 minutes between the determination to commit a crime and the execution thereof is insufficient for full meditation on the consequences of the act.[58] (Citations omitted and emphasis Ours)

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[55] *People of the Philippines v. Roger Racal @ Rambo*, id.

[56] *People v. Dadivo*, *supra* note 43, citing *People v. Chua*, *supra* note 51.

[57] 396 Phil. 200 (2000).

[58] *Id*. at 210.

In the same vein, in *People v. Dadivo,*[59] the Court warned that there can be no evident premeditation if the accused's act of leaving the crime scene was too short a time to meditate or reflect upon his decision to stab the victim. Particularly, the Court stressed that one cannot infer that the act of the accused in temporarily leaving the *situs* of the crime, is in itself an overt act manifesting his determination to stab the victim. Hence, evident premeditation cannot be considered in the absence of proof showing how and when the plan to kill was hatched or what time elapsed before it was carried out.[60]

Additionally, in *People v. Sarmiento,*[61] the Court required the existence of proof that the accused actually made plans to commit the crime. Added to this, the time when the accused decided to kill the victim must be determined with certainty. Without which, it cannot be haphazardly assumed that the accused had clung to a determination to kill the victim.

Guided by the foregoing, the Court finds that the killing of Dennis was not attended by evident premeditation. The prosecution failed to establish the fact that the plan to kill Dennis was preceded by a deliberate planning, and that there was a lapse of ample and sufficient time to allow Alex's conscience to overcome the determination of his will, if he had so desired, after meditation and reflection.

Noel was a Credible and Reliable Eye Witness. His Positive Identification of Alex as the Assailant Prevails Over the Latter's Denial and Alibi

Seeking exoneration from the charge, Alex discredits Noel's testimony, claiming that it was riddled with inconsistencies, and that the latter's actions during the purported attack on Dennis were unnatural and contrary to human experience.

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[59] 434 Phil. 684 (2002).

[60] *People v. Illescas*, supra note 57, at 210, citing *People v. Basao*, 369 Phil. 1005, 1041 (1999). *See* also *People v. Narit*, 274 Phil. 613, 630 (1991), citing *People v. Camano*, 201 Phil. 268 (1982).

[61] 118 Phil. 266, 271 (1963).

Time and again, the Court has ruled that the testimony of a lone prosecution witness, if credible and positive, can prove the guilt of the accused beyond reasonable doubt.[62] The trial court found that Noel described what he saw and heard in the afternoon of April 13, 2001, in full and vivid details. Noel, who was standing seven meters away from the incident, witnessed the crime, and positively identified Alex as one of the culprits who shot Dennis. Plainly, Noel knew the malefactors, as they were his neighbors, and thus, could not have mistakenly identified them.

Added to this, Alex did not attribute any improper motive for Noel to falsely testify against him. Likewise, there is nothing in the records to show that Noel harbored any ill-will against Alex or any of his co-accused. Neither did he have any reason to fabricate his testimony. Thus, absent any reason or motive for Noel to perjure himself, the logical conclusion is that he was solely impelled to bring justice to his brother's untimely demise.

Neither does the Court agree with Alex's allegation that Noel's behavior of standing idly, while witnessing his brother's attack was unnatural, thereby rendering his testimony suspect. It bears noting that witnesses of startling occurrences react differently depending upon their situation and state of mind.[63]

Incidentally, in *People v. Bañez, et al.,*[64] the defense attacked the credibility of the witness, who allegedly acted in an unnatural manner when he merely stood idly, and did not move, or run away from the scene of the crime. The Court rejected this characterization and held that the witness' reaction "was not at all uncommon or unnatural so as to make his testimony incredible."[65] In affirming the witness' credibility, the Court explained that:

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[62] *People v. Jalbonian*, 713 Phil. 93, 95 (2013), citing *People v. Gonzales*, 300 Phil. 296, 301 (1994).

[63] *People v. Bañez, et al.*, 770 Phil. 40, 46 (2015), citing *People v. Malibiran, et al.*, 604 Phil. 556, 581 (2009).

[64] 770 Phil. 40 (2015).

[65] *Id.* at 46, citing *People v. Malibiran, et al.*, *supra* note 63.

> [T]here could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case. Witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. The workings of the human mind placed under emotional stress are unpredictable, and people react differently to shocking stimulus — some may shout, some may faint, and others may be plunged into insensibility.[66] (Citations omitted)

Clearly, one cannot expect a typical reaction from Noel. More so, the situation was so horrific and stressful, considering that it was his own brother who was being attacked by four armed men right before his very eyes. Thus, his lack of an immediate response, or his manner of handling the situation, do not in any way affect his credibility and the veracity of his testimony.

Neither do Alex's defenses of denial and alibi exculpate him from criminal liability. Alex's claim that it was impossible for him to have committed the offense considering that he was in Bicol at the time of its commission is not worthy of credence. Needless to say, the twin defenses of denial and alibi are inherently weak, and easily crumble against the positive identification made by a reliable eye witness. Similarly, it does not help that Alex's alibi was corroborated only by Maribel and Virgie, who are Alex's sister, and family friend, respectively. Worse, Virgie admitted that Alex's mother asked her to testify in court. Significantly, a denial and alibi will not prevail if corroborated ***not*** by credible witnesses, but by the accused's relatives and friends.[67] This was the important dictum laid by the Court in *People v. Adriano, et al,*[68] and *People v. Las Piñas*.[69]

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[66] *People v. Bañez, et al., id*.

[67] *People v. Adriano, et al*., 764 Phil. 144, 159 (2015).

[68] 764 Phil. 144 (2015).

[69] 739 Phil. 502 (2014).

The Proper Penalty and Civil Liability

Murder is penalized under Article 248, as amended by Republic Act No. 7659, with *reclusion perpetua* to death. Considering that, apart from treachery, there are no aggravating circumstances that attended the commission of the offense, the RTC correctly held that the proper imposable penalty is *reclusion perpetua.*

With respect to Alex's civil liability, the prevailing rule is that when the circumstances surrounding the crime call for the imposition of a penalty of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amounts awarded should be Php 75,000.00 as civil indemnity, Php 75,000.00 as moral damages and Php 75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present.[70] In line with this rule, the CA's award of exemplary damages in the amount of Php 30,000.00, must be increased to Php 75,000.00.

Additionally, the amount of temperate damages awarded by the CA should be increased to Php 50,000.00, in line with the Court's ruling in *People of the Philippines v. Roger Racal @ Rambo*.[71] It must be noted that when the actual damages proven by receipts during the trial is less than the sum allowed by the Court as temperate damages, then an award of temperate damages should be granted in lieu of actual damages. Otherwise, it would be unfair to the victim's heirs, who tried and succeeded in presenting receipts and other evidence to prove actual damages, to receive an amount that is even less than the temperate damages given to those who were not able to present any evidence at all.[72] Based on the foregoing, the heirs of Dennis, who presented receipts amounting to Php 16,067.00, shall be entitled to the greater amount of Php 50,000.00 by way of temperate damages.

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[70] *People of the Philippines v. Roger Racal @ Rambo*, *supra* note 2, citing *People v. Jugueta*, 783 Phil. 806, 825 (2016).

[71] G.R. No. 224886, September 4, 2017.

[72] *Id*.

Finally, all the amounts due shall be subject to a legal interest of six percent (6%) *per annum* from the finality of this Decision until fully paid.[73]

WHEREFORE, the instant appeal is hereby **DISMISSED for lack of merit.** Accordingly, the Decision dated November 4, 2015 of the Court of Appeals, in CA-G.R. CR-HC No. 05886, convicting accused-appellant Alex Abierra of Murder, is **AFFIRMED with the following modifications:**

1. The award of exemplary damages is increased to Php75,000.00;
2. The award of temperate damages is increased to Php50,000.00; and
3. All amounts due shall earn legal interest of six percent (6%) *per annum* from the finality of this Decision until full payment.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 10267. June 18, 2018]

HELEN GRADIOLA,* *complainant, vs.* **ATTY. ROMULO A. DELES,** *respondent.*

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[73] *People v. Jugueta*, *supra* note 70, at 854, citing *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 280 (2013).

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

SYLLABUS

LEGAL ETHICS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; FOR THE COURT TO EXERCISE DISCIPLINARY POWERS, THE CASE AGAINST THE LAWYER MUST BE ESTABLISHED BY CLEAR, CONVINCING AND SATISFACTORY PROOF; CASE AT BAR.— A full-dress investigation involving a careful evaluation of evidence from both of the parties is necessary to resolve factual issues. The serious imputations hurled at respondent lawyer warrant an observance of due process, *i.e.*, to accord him the opportunity to explain his side of the story. x x x We note that Atty. Mampang candidly declared that it was John who consulted him and sought his legal services, and, thus, it cannot be said that respondent lawyer voluntarily and intelligently accepted Atty. Mampang to represent him. Respondent lawyer, with his condition, could not even communicate with Atty. Mampang regarding the case at the time of filing of the Answer, which compelled the counsel to merely rely on the available documents. In effect, Atty. Mampang substituted his judgment for that of respondent lawyer. x x x With respondent lawyer not yet in a position to factually dispute the accusations and defend himself, and considering that there was no established lawyer-client relationship at all between him and Atty. Mampang, albeit the latter acted for respondent lawyer's best interest, proceeding with the investigation of the administrative case against him would amount to a denial of a fair and reasonable opportunity to be heard. This Court has consistently held that an attorney enjoys the legal presumption that he is innocent of charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. "For the Court to exercise its disciplinary powers, the case against the respondent [lawyer] must be established by clear, convincing and satisfactory proof. Indeed, considering the serious consequences of disbarment or suspension of a member of the Bar, the Court has consistently held that a clear preponderant evidence is necessary to justify the imposition of the administrative penalty." "The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant." Under the circumstances, both duty and conscience impel us to remand this administrative case for further proceedings. Fairness cannot be ignored.

APPEARANCES OF COUNSEL

Beldia Nifras Solidum Lavides & Associates for complainant.
Carlito V. Mampang, Jr. for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This is a Complaint[1] for disbarment filed by Helen Gradiola (Helen), charging respondent lawyer Atty. Romulo A. Deles (respondent lawyer) with violating the Code of Professional Responsibility, specifically Rule 9.01 and Rule 9.02 of Canon 9; and Rule 10.1 and Rule 10.02 of Canon 10 thereof.[2]

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[1] *Rollo*, p. 24.

[2] CANON 9 — A lawyer shall not, directly or indirectly, assist in the unauthorized practice of law.

Rule 9.01 — A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the bar in good standing.

Rule 9.02 — A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, except:

a) Where there is a pre-existing agreement with a partner or associate that, upon the latter's death, money shall be paid over a reasonable period of time to his estate or to the persons specified in the agreement; or

b) Where a lawyer undertakes to complete unfinished legal business of a deceased lawyer; or

c) Where a lawyer or law firm includes non-lawyer employees in a retirement plan, even if the plan is based in whole or in part, on a profit-sharing arrangement.

CANON 10 — A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

Rule 10.02 — A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

Helen claimed that respondent lawyer was her counsel in a civil case then pending before the Court of Appeals (CA) docketed as CA-G.R. CV No. 63354.[3]

Helen asserted that respondent lawyer abetted the unauthorized practice of law when he assigned or delegated his professional duties as her lawyer to "Atty. Ernesto S. Araneta" ("Atty. Araneta"). Helen alleged that instead of attending full time to her case, respondent lawyer allowed "Atty. Araneta" to do the legal research works and the preparation of various pleadings relative to the civil case.

Moreover, Helen averred that she was assured the case was in "good hands" because respondent lawyer and "Atty. Araneta" have a "contact" in the CA in Cebu City. Helen narrated that she was told that the CA in Cebu City had reconsidered its April 28, 2005 Decision, as she was shown a photocopy of a November 13, 2006 Resolution[4] of the CA in Cebu City which, this time, declared her and her spouse as the owners of the four lots subject-matter of the said CA-G.R. CV No. 63354. Helen added that respondent lawyer nonetheless cautioned that their adversaries in the case had appealed to the Supreme Court, hence they had to prepare their own "position paper"[5] to support the appeal before this Court. And, that naturally, this would inevitably entail monetary expenses.

"Atty. Araneta" soon billed Helen for these expenses and issued her all the receipts[6] for these payments. These receipts all bore the signatures "Atty. Ernie/Ernesto Araneta." From May 2005 until October 26, 2006, Helen paid this "Atty. Araneta" a total of ₱207,500.00. Helen claimed that this "Atty. Araneta" split the attorney's fees with respondent lawyer.

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[3] Entitled *Spouses Antonio and Helen Gradiola, Plaintiffs-Appellants v. Neville Y. Lamis and Lilluza L. Yu and Spouses Rodolfo B. Bausing and Ma. Consolacion Bausing, Defendants-Appellees.*

[4] *Rollo*, pp. 5-7.

[5] *Id*. at 8-11. Helen likewise attached the supposed position paper filed with the SC by their opponent in the case; *id*. at 12-15.

[6] *Id*. at 23, 25, 26-28.

However, to her chagrin and dismay, Helen discovered that this "Atty. Araneta" had not only been disbarred from the practice of law; but worse, the aforementioned November 13, 2006 CA Resolution was a total fabrication, even as the "position paper" that was supposedly filed with this Court was an utter simulation. With this discovery, Helen went herself to the CA in Cebu City, and there found out, as a matter of fact, that she and her husband had lost their case, as shown in a genuine copy of the February 10, 2006 CA Resolution,[7] which denied their Motion for Reconsideration, as well as their Supplemental Manifestation in Support of their Motion for Reconsideration in said CA-G.R. CV No. 63354. And, even more distressing, the records likewise revealed that this genuine Resolution had become final and irrevocable, thereby forever foreclosing their right to pursue further reliefs in the case.

Whereupon, Helen immediately filed with the City Prosecutor of Bacolod City a criminal complaint[8] for estafa through falsification of public document against respondent lawyer and "Atty. Ernesto S. Araneta." The City Prosecutor of Bacolod City found Helen's criminal complaint well grounded, and instituted a criminal information therefor, now pending before Branch 53 of the Regional Trial Court (RTC) of Bacolod City.[9]

Helen likewise filed an administrative complaint for disbarment against respondent lawyer before the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP). This is the case at bench.

The IBP issued its Order[10] directing respondent lawyer' to submit his Answer. In a Manifestation,[11] John P. Deles (John), respondent lawyer's eldest son, informed the IBP, that about three weeks before receipt of the IBP's Order, his father suffered

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[7] *Id*. at 16-18.

[8] *Id*. at 19-22.

[9] *Id*. at 82. Docketed as Criminal Case No. 08-31970.

[10] *Id*. at 56.

[11] *Id*. at 57.

a stroke and underwent a brain surgery. John implored the IBP to hold in abeyance this administrative case until his father is finally able to physically and intelligently file an Answer to Helen's complaint. John claimed that at that time, his father could hardly move and could not talk. He submitted pictures of his father and a medical certificate.

Helen, however, asserted that the proceedings could not be indefinitely suspended considering that respondent lawyer could very well hire his own counsel.[12]

John then filed a Supplemental Manifestation[13] informing the IBP that his father was "in a vegetative state" and committing to update the IBP of his father's medical condition.

The Investigating Commissioner, however, denied John's request and directed respondent lawyer to file his Answer.[14]

Atty. Carlito V. Mampang Jr. (Atty. Mampang) tendered the required Answer[15] to the administrative complaint, which was signed by John, and not by respondent lawyer. Atty. Mampang qualified in the Answer that it was his friend John who secured his services pro bono. The counsel averred, that as of the date of filing the Answer, respondent lawyer, dependent on his children's help, could not communicate to explain his side as he remained in a vegetative' state, unable to speak, and had lost his motor skills.

Notably, the Answer filed on respondent lawyer's behalf relied chiefly on (a) "Atty. Araneta's" counter-affidavit[16] dated August 21, 2008 which the latter submitted to the City Prosecutor of Bacolod City; and (b) "Atty. Araneta's" letter[17] addressed to Helen's counsel dated June 4, 2008.

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[12] *Id*. at 65.

[13] *Id*. at 72.

[14] *Id*. at 75.

[15] *Id*. at 80-86.

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

[17] *Id*. at 105.

The Answer further painted respondent lawyer as a victim too of the chicanery perpetrated by "Atty. Araneta," and that respondent lawyer was not Helen's counsel of record; that although respondent lawyer's name appeared in the fictitious pleadings, the signatures appearing thereon were not by respondent lawyer. To substantiate this claim, Atty. Mampang submitted for comparison machine or xerox copies of respondent lawyer's alleged pleadings[18] in some cases whereon he signed as counsel of record.

Report and Recommendation[19] *of the Investigating Commissioner and the Board of Governors*

On February 23, 2010, the Investigating Commissioner, Oliver A. Cachapero, recommended respondent lawyer's suspension from the practice of law for one year for violating Rule 9.01 of Canon 9, and Rule 10.1 and Rule 10.2 of Canon 10 of the Code of Professional Responsibility.

Rejecting the defense that respondent lawyer was in no way at all involved in CA-G.R. CV No. 63354, the Investigating Commissioner found that Helen had consistently maintained that she directly employed and dealt solely with respondent lawyer as her counsel; and that, indeed, the pleadings that Helen submitted in evidence before the IBP showed that these were signed and subscribed by respondent lawyer as Helen's counsel.

Furthermore, based on "Atty. Araneta's" counter-affidavit which, among others, mentioned "Carlo Sanchez" as "contact man" in Cebu City, the Investigating Commissioner had reasonable grounds to believe that "Atty. Araneta" (as well as respondent lawyer) was part of a wide-ranging racket that plagued, and even extended to the CA at Cebu City — a racket which enabled Ernesto (and by extension respondent lawyer) to bilk and milk unsuspecting litigants of huge sums of money in exchange for the "successful" follow-up of cases, which in this case, turned out to be nothing else but a fly-by-night hustle

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[18] *Id.* at 106-115.

[19] *Id.* at 131-133.

and swindle. The Investigating Commissioner also gave short shrift to respondent lawyer's claim that Helen in fact knew of "Atty. Araneta's" scheme, especially of the fact that he had a "contact man" in the CA in Cebu, and pointed to the fact that Helen had never ever mentioned this "Carlo Sanchez" in her complaint. The Investigating Commissioner even doubted the existence of "Carlo Sanchez," and suggested that "Carlo Sanchez" could be a mere lure or decoy to divert attention away from the committed shenanigans. Thus, the Investigating Commissioner concluded:

> With the foregoing disquisition, the performance of a series of odious acts which saw the hapless Complainant being extorted huge amount of money and the participation of Respondent are all too evident. Respondent's participation and knowledge of the same in every stage can be traced from his willfull introduction of Araneta into the defense panel of Complainant.[20]

The IBP Board of Governors in Resolution No. XX-2013-511,[21] adopted and approved the Investigating Commissioner's findings and recommendation.

The Court's Ruling

There seems to be truth that "Atty. Ernesto S. Araneta" was not a lawyer at all as Helen was made to believe. His name does not appear in the Law List,[22] and there seems to be truth to the information Helen gathered that this "Atty. Ernesto S. Araneta" was disbarred because in A.C. No. 1109 (which this Court promulgated on April 27, 2005), this Court ordered the disbarment of a certain "Atty. Ernesto S. Araneta" due to his conviction of a crime involving moral turpitude.

While "Atty. Araneta" admitted of his involvement in a fraudulent scheme in defrauding litigants that included Helen, we cannot immediately conclude that respondent lawyer himself

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[20] *Id*. at 133.

[21] *Id*. at 130.

[22] http://sc.judiciary.gov.ph/baradmission/lawlist/index.php, last visited on June 7, 2018.

was likewise part of this racket that duped Helen. It must be stressed that, because of his medical condition, respondent lawyer could not yet explain his side. While indeed, an Answer was filed, it was John who signed the same and not respondent lawyer. As such, we cannot consider respondent lawyer to have been adequately represented.

A full-dress investigation involving a careful evaluation of evidence from both of the parties is necessary to resolve factual issues. The serious imputations hurled at respondent lawyer warrant an observance of due process, *i.e.*, to accord him the opportunity to explain his side of the story. We explained:

> Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of due process. x x x The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. In other words, it is not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimony.[23]

We note that Atty. Mampang candidly declared that it was John who consulted him and sought his legal services, and, thus, it cannot be said that respondent lawyer voluntarily and intelligently accepted Atty. Mampang to represent him. Respondent lawyer, with his condition, could not even communicate with Atty. Mampang regarding the case at the time of filing of the Answer, which compelled the counsel to merely rely on the available documents. In effect, Atty. Mampang substituted his judgment for that of respondent lawyer.

Significantly, the Answer contained the following disavowals by Atty. Mampang:

> 5. That the Respondent as of now may be said to have lost most of his essential human faculties, such as speech, motor, even his bowel movement, and he eat[s] only through the

[23] *Samalio v. Court of Appeals*, 494 Phil. 456, 465-466 (2005).

help of his children. Literally, he is in vegetative state, and his life is dependent only on the help, both physical and financial, of his children. He was discharged from the hospital, not because he has recovered but rather because his children do not have money anymore to pay for his hospital bills. As of now, the only "medical development" is that the tube used in feeding him was removed, and he is feeding through the help of his daughter, the yow1ger sister of John P. Deles;

6. That it is on this premise that this counsel has to rely solely on the documents available, such as those annexed in the complaint filed by the complainant, as Respondent cannot convey any idea pertinent to the actual incidents of this case that would explain his side on the allegations contained in the complaint.

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7. That [neither] this counsel [nor Respondent's son John Deles] have in [their] possession, neither [do they have] other relevant documents x x x so that this answer for the Respondent is simply couched on facts, documents and records available, [primarily] the Affidavit-Complaint of Helen Gradiola[. This] counsel cannot in anyway relate, comprehend or decipher [communication] from [Respondent], as he is incapable of uttering, communicating or responding to any question[s] ask[ed] of him;[24]

With respondent lawyer not yet in a position to factually dispute the accusations and defend himself, and considering that there was no established lawyer-client relationship at all between him and Atty. Mampang, albeit the latter acted for respondent lawyer's best interest, proceeding with the investigation of the administrative case against him would amount to a denial of a fair and reasonable opportunity to be heard.

This Court has consistently held that an attorney enjoys the legal presumption that he is innocent of charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath.[25]

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[24] *Rollo*, pp. 81-82.

[25] *Aba v. Atty. De Guzman, Jr.*, 678 Phil. 588, 601 (2011).

"For the Court to exercise its disciplinary powers, the case against the respondent [lawyer] must be established by clear, convincing and satisfactory proof. Indeed, considering the serious consequences of disbarment or suspension of a member of the Bar, the Court has consistently held that a clear preponderant evidence is necessary to justify the imposition of the administrative penalty."[26] "The burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant."[27]

Under the circumstances, both duty and conscience impel us to remand this administrative case for further proceedings. Fairness cannot be ignored.

WHEREFORE, Resolution No. XX-2013-511 of the Integrated Bar of the Philippines adopting and approving the Report and Recommendation of the Investigating Commissioner is hereby **ANNULLED and SET ASIDE**. This case is ordered **REMANDED** to the Commission on Bar Discipline of the Integrated Bar of the Philippines for further investigation, report and recommendation. The Integrated Bar of the Philippines is hereby instructed to: 1) require respondent lawyer's son, John P. Deles, to provide an update on his father's health condition and, on the basis of such update: 2) to hold the case in abeyance if respondent lawyer's stroke aftermath has significantly impaired his cognitive ability and speech that he is not capable of presenting his defense or 3) to direct respondent lawyer to file his Answer and continue with the proceedings if he is found to be medically fit and his condition having improved over time, having regained his cognitive and communication skills.

SO ORDERED.

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

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[26] *Bellosillo v. Board of Governors of the IBP*, 520 Phil. 676, 689 (2006).

[27] *Joven v. Atty. Cruz*, 715 Phil. 531, 538 (2013).

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

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

SECOND DIVISION

[A.M. No. RTJ-18-2527. June 18, 2018]
(Formerly OCA IPI No. 16-4563-RTJ)

ATTY. MAKILITO B. MAHINAY, *complainant, vs.* **HON. RAMON B. DAOMILAS, JR., Presiding Judge, and ATTY. ROSADEY E. FAELNAR-BINONGO, Clerk of Court V, both of Branch 11, Regional Trial Court, Cebu City, Cebu,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; CHARGE OF GROSS IGNORANCE OF THE LAW; NOT EVERY ERROR OR MISTAKE OF A JUDGE IN THE PERFORMANCE OF HIS OFFICIAL DUTIES RENDERS HIM LIABLE; FOR LIABILITY TO ATTACH FOR IGNORANCE OF THE LAW, THE ASSAILED ORDER, DECISION OR ACTUATION OF THE JUDGE IN THE PERFORMANCE OF OFFICIAL DUTIES MUST NOT ONLY BE FOUND ERRONEOUS BUT, IT MUST ALSO BE ESTABLISHED THAT HE WAS MOVED BY BAD FAITH, DISHONESTY, HATRED, OR SOME OTHER LIKE MOTIVE.— Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. The Court however has also ruled that "*not every error or mistake of a judge in the performance of his official duties renders him liable*." For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. 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.

2. ID.; ID.; ID.; ERRORS ATTRIBUTED TO JUDGES PERTAINING TO THE EXERCISE OF THEIR ADJUDICATIVE FUNCTIONS SHOULD BE ASSAILED IN JUDICIAL PROCEEDINGS, INSTEAD OF IN AN ADMINISTRATIVE CASE, AS THE DETERMINATION OF MATTERS WHICH ARE JUDICIAL IN NATURE ARE BEYOND THE AMBIT OF AN ADMINISTRATIVE PROCEEDING.— Atty. Mahinay questions the propriety of the following acts taken by respondent Judge Daomilas, Jr. in SRC Case No. SRC-233-CEB, to wit: (1) issuing the January 20, 2016 Order, allowing the defendants to post a counter-bond; (2) not issuing a writ of preliminary injunction in favor of the plaintiffs, which allegedly defeated the purpose of the November 6, 2015 Order; and (3) allowing the defendants to file a motion for reconsideration and setting the same for hearing on a shorter notice. The Court agrees with the OCA that these matters are judicial in nature, the determination of which are beyond the ambit of an administrative proceeding as it will involve the evaluation of factual matters and the interpretation of applicable laws. Assuming *arguendo* that respondent Judge Daomilas, Jr. erred in his actions in the subject case, the same does not necessarily render him administratively liable. The Court has invariably ruled that the errors attributed to judges pertaining to the exercise of their adjudicative functions should be assailed in judicial proceedings instead of in an administrative case. Consistent with the Court's policy, a judge cannot be subjected to any liability — civil, criminal or administrative — for any of his official acts, no matter how erroneous as long as he acts in good faith. Only judicial errors tainted with fraud, dishonesty and corruption, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned.

3. ID.; ID.; ID.; A JUDGE IS ALLOWED REASONABLE LATITUDE FOR THE OPERATION OF HIS OWN INDIVIDUAL VIEW OF THE CASE, HIS APPRECIATION OF FACTS AND HIS UNDERSTANDING OF THE APPLICABLE LAW ON THE MATTER.— The Court agrees with the OCA that whether or not the arguments offered by respondent Judge Daomilas, Jr. are correct, it is not for the Court to determine because the determination thereof is a judicial function that belongs to the regular court. A judge is allowed reasonable latitude for the operation of his own individual view of the case, his appreciation of facts and his understanding of

the applicable law on the matter. Thus, not every error or mistake committed by a judge in the performance of his official duties renders him administratively liable. In this case, if there is any error committed by respondent Judge Daomilas, Jr., the Court is not inclined to characterize the same as so depraved as to constitute gross ignorance of the law, but may be tantamount to error of judgment only which cannot be corrected through an administrative proceeding.

4. ID.; ID.; UNDUE DELAY IN THE DISPOSITION OF CASES; DELAY IN RESOLVING MOTIONS AND INCIDENTS WITHIN THE REGLEMENTARY PERIOD AS PRESCRIBED BY THE CONSTITUTION IS NOT EXCUSABLE AND CONSTITUTES GROSS INEFFICIENCY.— Be that as it may, the Court finds that respondent Judge Daomilas, Jr. demonstrated inefficiency in handling the pending incidents in SRC Case No. SRC-223-CEB, which resulted in undue and inordinate delay in the resolution of the application for a writ of preliminary injunction. The November 6, 2015 Order was rendered beyond the ninety (90)-day period within which a judge should decide a case or resolve a pending matter, reckoned from the date of the filing of the last pleading, in accordance with Section 15, paragraphs (1) and (2), Article 8 of the 1987 Constitution. Time and again, the Court has stressed the importance of reasonable promptness in relation to the administration of justice as justice delayed is justice denied. 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. This is more so the case with trial judges who serve as the frontline officials of the judiciary expected to act all time with efficiency and probity. The Court has held: As a frontline official of the Judiciary, a trial judge should at all times act with efficiency and probity. He is duty-bound not only to be faithful to the law, but also to maintain professional competence. The pursuit of excellence ought always to be his guiding principle. Such dedication is the least that he can do to sustain the trust and confidence that the public have reposed in him and the institution he represents. The Court cannot overstress its policy on prompt disposition or resolution of cases. Delay in the disposition of cases is a major culprit in the erosion of public faith and confidence in the judicial system, as judges have the sworn duty to administer justice without undue delay. Thus, judges

have been constantly reminded to strictly adhere to the rule on the speedy disposition of cases and observe the periods prescribed by the Constitution for deciding cases, which is three months from the filing of the last pleading, brief or memorandum for lower courts. To further impress upon judges such mandate, the Court has issued guidelines (Administrative Circular No. 3-99 dated January 15, 1999) that would insure the speedy disposition of cases and has therein reminded judges to scrupulously observe the periods prescribed in the Constitution. The Court has been consistent in holding that the delay of a judge of a lower court in resolving motions and incidents within the reglementary period as prescribed by the Constitution is not excusable and constitutes gross inefficiency.

5. **ID.; ID.; ID.; A JUDGE MUST AT ALL TIMES REMAIN IN FULL CONTROL OF THE PROCEEDINGS IN HIS COURT AND STRICTLY OBSERVE THE INTERDICTIONS AGAINST UNREASONABLE DELAY IN THE DISPOSITION OF CASES AND PENDING INCIDENTS IN ORDER TO AVOID A MISCARRIAGE OF JUSTICE.—** Respondent Judge Daomilas, Jr.'s cavalier treatment of the pending matters in his court betrays the kind of management he instituted in his courtroom. A judge must at all times remain in full control of the proceedings in his court and strictly observe the interdictions against unreasonable delay in the disposition of cases and pending incidents in order to avoid a miscarriage of justice. Court management is ultimately his responsibility. He should be reminded that that the moment he dons the judicial robe, he is bound to strictly adhere to and faithfully comply with his duties delineated under the New Code of Judicial Conduct for the Philippine Judiciary, particularly Section 5, Canon 6 which reads: SEC. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6. **ID.; ID.; ID.; UNDUE DELAY IN RENDERING AN ORDER IS CLASSIFIED AS A LESS SERIOUS CHARGE PUNISHABLE BY SUSPENSION FROM OFFICE, OR A FINE.—** In view of respondent Judge Daomilas, Jr.'s failure to measure up to the exacting standard set for judges of the court, he is administratively liable for Undue Delay in Rendering an Order, which is classified as a less serious charge under Section 9 (1), Rule 140 of the Rules of Court, punishable by

suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. The Court however, in a string of cases, has recognized the presence of mitigating circumstances that may temper the penalty for the administrative infraction committed by an erring magistrate, such as physical illness, good faith, first offense, length of service, admission of the offense, or other analogous circumstances. Here, the Court finds it reasonable to modify the penalty to be imposed on respondent Judge Daomilas, Jr. The Court recognizes the struggle encountered by respondent Judge Daomilas, Jr. in managing two (2) court stations at the same time, with a limited number of personnel, which adversely affected his efficiency to keep track of the status of the cases raffled to him. The sheer volume of respondent Judge Daomilas, Jr.'s work serves to mitigate the penalty to be imposed upon him, as in the case of *Angelia v. Judge Grageda* where the fine was reduced to ₱5,000.00 given therein respondent judge's 800 pending cases before his sala. In the present case, a fine of ₱5,000.00 would be sufficient, after considering the fact that respondent Judge is managing two (2) court stations. As well, the Court takes note of the OCA's observation that this is the first time that he is found guilty of an administrative charge.

7. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; A CLERK OF COURT HAS NO DISCRETION TO REFUSE TO RECEIVE PLEADINGS AND MOTIONS EVEN IF THEY ARE CONTRARY TO OR PROHIBITED BY LAW AS THIS IS A JUDICIAL FUNCTION THAT BELONGED TO THE JUDGE.— The Court likewise finds no merit in the administrative charges of inefficiency and collusion against respondent Clerk of Court Faelnar-Binongo. As clerk of court, she had no discretion to refuse to receive pleadings and motions even if they are contrary to or prohibited by law as this was judicial function that belonged to the judge. Atty. Mahinay also failed to substantiate his charge of collusion in the delay in the resolution of the case. In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Hence, respondent Clerk of Court Faelnar-Binongo must be exonerated from the administrative charges against her.

D E C I S I O N

CAGUIOA, *J.:*

Before the Court is the Complaint[1] dated April 18, 2016 filed before the Office of the Court Administrator (OCA) by Atty. Makilito B. Mahinay against respondent Hon. Ramon B. Daomilas, Jr., Presiding Judge, and Atty. Rosadey E. Faelnar-Binongo, Clerk of Court, both of Branch 11, Regional Trial Court (RTC), Cebu City, Cebu.

Antecedents

Atty. Mahinay charged respondent Judge Daomilas, Jr. and Atty. Faelnar-Binongo with gross inexcusable negligence and gross ignorance of the law relative to SRC Case No. SRC-223-CEB entitled *PJH Lending Corporation, Bernard R. Twitchett, Rosalie Canlom Farley and Canuto T. Barle, Jr. vs. Wilma L. Zamora, Ian Paul Z. Estremos, Mark Lester Z. Estremos, Fritz Sembrino, Roselo M. Alfar and the Securities and Exchange Commission, Regional Office, Cebu City* (SRC-223-CEB), wherein Atty. Mahinay is the counsel of the plaintiffs in the case.

The plaintiffs in SRC-223-CEB filed their complaint for Judicial Declaration of Nullity of Shareholdings with Prayer for Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order[2] on December 19, 2012. The subject case was raffled to RTC Branch 11, presided by respondent Judge Daomilas, Jr.

Atty. Mahinay alleged that respondent Judge Daomilas, Jr. violated the Interim Rules of Procedure for Intra-Corporate Controversies when he failed to act on the Prayer for TRO and/or a Writ of Preliminary Injunction despite the lapse of more than two (2) years from the date the matter was submitted for

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

[2] *Id*. at 20-42.

resolution sometime in March 2013,[3] as well as the repeated motions filed for the early resolution thereof.

On November 3, 2015, Atty. Mahinay wrote the OCA for assistance in the early disposition of the pending prayer for TRO in the subject case due to the protracted inaction of respondent Judge Daomilas, Jr.[4]

On November 6, 2015, respondent Judge Daomilas, Jr. issued an Order[5] granting plaintiffs' prayer for a Writ of Preliminary Injunction conditioned upon plaintiffs' posting of a bond in the amount of Ten Million Eight Hundred Seventy-Four Thousand Nine Hundred Ninety-Two Pesos (₱10,874,992.00), to enjoin the defendants from interfering with the management of the PJH Lending Corporation. In a Motion[6] dated November 12, 2015, the defendants sought reconsideration of the November 6, 2015 Order and prayed that they be allowed to post a counter-bond. The motion was set for hearing the next day or on November 13, 2015.

Defendants thereafter filed a Manifestation,[7] reporting on the misrepresentations made by plaintiff regarding the status of SRC Case No. SRC-223-CEB. The plaintiffs sent letters to the managers of the depositary banks of the PJH Lending Corporation, informing them that the defendants already lost in SRC-223-CEB and that they should refrain from transacting with the defendants.[8]

On November 16, 2015, the plaintiffs posted Surety Bond No. 00117 issued by Liberty Insurance Corporation for the issuance of a writ of preliminary injunction. In an Order[9] issued

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[3] The date when the respective memoranda of the parties were required to be submitted. *Id*. at 10.

[4] *Rollo*, pp. 99-a to 103-a.

[5] *Id*. at 104-108.

[6] *Id*. at 110-124.

[7] *Id*. at 158-161.

[8] *Id*. at 167-174.

[9] *Id*. at 109.

on the same day, respondent Judge Daomilas, Jr. directed the plaintiffs to comment on defendants' Motion for Reconsideration, with an Urgent Prayer to Post a Counter-bond.[10] Plaintiffs filed their Manifestation and Compliance[11] dated November 17, 2015 in compliance thereof.

On January 18, 2016, Atty. Mahinay wrote the OCA again, reporting that respondent Judge Daomilas, Jr. dilly-dallied in issuing the writ of preliminary injunction in favor of his clients despite the latter's November 6, 2015 Order.[12] He asked that a new judge be designated to issue the writ of preliminary injunction in SRC Case No. SRC-223-CEB. Before the OCA responded to Atty. Mahinay's January 18, 2016 Letter, respondent Judge Daomilas, Jr. issued an Order[13] dated January 20, 2016, the *fallo* of which reads:

> Wherefore, the Motion for Reconsideration is hereby DENIED but the Motion to File Counter[-]bond is hereby GRANTED. Defendants are directed to file their counter-bond in [an] amount equal to the injunction bond (P10,874,992.00) previously filed by the plaintiffs. This counter-bond shall answer for whatever damages the plaintiffs may suffer.
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> **SO ORDERED.**[14] (Emphasis in the original)

Plaintiffs filed a *Motion to Recall and/or Expunge from the Records the Order dated January 20, 2016*,[15] but the same was subsequently withdrawn because the plaintiffs manifested that they intend to file a petition for mandamus and certiorari before the Court of Appeals (Cebu Station) to compel respondent Judge Daomilas, Jr. to enforce the November 6, 2015 Order and set aside the January 20, 2016 Order.[16]

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[10] *Id*. at 110-124.

[11] *Id*. at 125-130.

[12] *Id*. at. 132-133.

[13] *Id*. at 134-136.

[14] *Id*. at 136.

[15] *Id*. at 137-145.

[16] Manifestation dated January 30, 2016 filed by plaintiffs. *Id*. at 146.

Atty. Mahinay also accused respondent Clerk of Court Faelnar-Binongo of malfeasance in the performance of her functions. He averred that Clerk of Court Faelnar-Binongo colluded with respondent Judge Daomilas, Jr. in delaying the issuance of the writ of preliminary injunction by allowing the filing of the defendants' Motion for Reconsideration, knowing that the same is a prohibited pleading.

In a 1st Indorsement[17] dated May 19, 2016, the OCA directed respondents Judge Daomilas, Jr. and Clerk of Court Faelnar-Binongo to file their respective Comments within ten (10) days from receipt thereof.[18]

In his Comment[19] dated July 7, 2016, respondent Judge Daomilas, Jr. denied that he delayed the resolution of plaintiffs' prayer for TRO and the Writ of Preliminary Injunction. Respondent Judge Daomilas, Jr. admitted that with cases heard in the morning and the afternoon, he had only very limited time to study and evaluate motions and cases for decision.[20] Respondent Judge Daomilas, Jr. explained that concurrent to his regular branch, he was previously assigned to the RTC in Toledo City, in Lapu Lapu City and in Mandaue City.[21] He took the responsibility inspite of the fact that his branch (RTC, Branch 11, Cebu City) had a very limited support staff to help him since said court lacks a legal researcher, two (2) stenographers and a docket clerk.[22] Respondent Judge Daomilas, Jr. averred that he was doing everything within his means and authority to perform his judicial functions to the best of his abilities despite his heavy caseload, coupled with the fact that he was recently designated as Assisting Judge in Branch 55, RTC, Mandaue City, Cebu.[23]

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[17] *Rollo,* pp. 147-148.

[18] *Id*.

[19] *Id*. at 152-157.

[20] *Id*. at 153.

[21] *Id*.

[22] *Id*.

[23] *Id*. at 152.

Respondent Judge Daomilas, Jr. asserted that he issued the January 20, 2016 Order allowing the defendants to post a counter-bond because the posting of a counter-bond is allowed under Rule 58[24] of the Rules of Court and the same is not barred under the Interim Rules. Respondent Judge Daomilas, Jr. averred that Order dated January 20, 2016 was not issued to frustrate the legal effect of the November 6, 2015 Order, which granted the motion for the issuance of the Writ of Preliminary Injunction, but to address the confusion brought about by plaintiffs' misrepresentations with respect to the status of the case.[25]

With respect to the early setting for hearing of the defendants' Motion for Reconsideration, respondent Judge Daomilas, Jr. alleged that the Rules allow a motion to be set for hearing earlier than the three (3) day notice for good cause. Respondent Judge Daomilas, Jr. averred that he found the urgent prayer to post a counter-bond filed by the defendants as a "*good cause*"[26] to set the motion for hearing immediately. Furthermore, respondent Judge Daomilas, Jr. was informed by respondent Clerk of Court Faelnar-Binongo that the parties were already notified of the schedule of hearing of the said Motion.[27]

Anent his alleged failure to act on the *Motion to Recall and/or Expunge from the Records the Order dated January 20, 2016*, respondent Judge Daomilas, Jr. argued that he was prevented from taking action thereon because the plaintiffs manifested their intent to withdraw the same to give way to the petition for mandamus and certiorari that they filed before the Court of Appeals.[28]

In his Comment[29] dated July 1, 2016, respondent Clerk of Court Faelnar-Binongo denied colluding with respondent Judge

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[24] Rule on Preliminary Injunction.

[25] *Rollo*, pp. 153-154.

[26] *Id.* at 154; italics supplied.

[27] *Id.*

[28] *Id.* at 157.

[29] *Id.* at 183-187.

Daomilas, Jr. on the alleged delay in the resolution of the incidents in the subject case. She averred that as clerk of court, it is her ministerial duty to receive pleadings, motions and other court papers for the consideration of the court. She emphasized that she had no discretion to decide whether a pleading filed is prohibited under the rules because such determination is a judicial function that belongs to the judge.

On the alleged haste in the setting of the hearing for the defendants' motion for reconsideration, respondent Clerk of Court Faelnar-Binongo averred that Section 4,[30] Rule 15 of the Rules of Court allow a shorter period of giving notice of hearing to the parties "*for a good cause*." She alleged that plaintiffs and Atty. Mahinay already received a copy of the defendants' motion for reconsideration when the same was filed before the court on November 12, 2015. Respondent Clerk of Court Faelnar-Binongo alleged that Atty. Mahinay is known for his propensity to file baseless administrative cases against lawyers and judges who offend him.[31]

Atty. Mahinay emphasized in his Reply[32] dated July 20, 2016 that respondent Judge Daomilas, Jr. did not refute the allegation that there was a delay of two (2) years and eight (8) months in the issuance of the injunctive writ prayed for by the plaintiffs. In addition, Atty. Mahinay also accused respondent Judge Daomilas, Jr. of not acting promptly on their Motion for Summary Judgment in related cases, docketed as SCR Case Nos. 206 and 207, which is a violation of the mandate of the Interim Rules to promote the objective of securing a just, summary,

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[30] SEC. 4. *Hearing of motion.*%Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of the hearing, unless the court for good cause sets the hearing on shorter notice.

[31] *Rollo*, p. 186.

[32] *Id.* at 201-214.

speedy and inexpensive determination of the action or proceeding.[33]

Finally, Atty. Mahinay reiterated that respondent Judge Daomilas, Jr. grossly erred when he entertained the defendants' Motion for Reconsideration. According to him, it does not matter whether the said motion was accompanied with an urgent prayer to post a counter-bond as no Writ of Preliminary Injunction was yet issued by the trial court; and that an offer of a counter-bond does not suffice to dissolve the writ of preliminary injunction. Atty. Mahinay further claimed that respondent Judge Daomilas, Jr. could not vary or modify his November 6, 2015 Order because the same already became *ipso facto* final and executory, pursuant to Section 4,[34] Rule 1 of the Interim Rules.

OCA Report and Recommendation

In a Memorandum[35] dated February 12, 2018, the OCA recommended that respondent Judge Daomilas, Jr. be found guilty of Undue Delay in Rendering an Order.

The OCA ratiocinated as follows:

> x x x The records show that he issued the Order dated 6 November 2015 which granted the writ in favor of the plaintiffs more than two years after the matter was deemed submitted for resolution sometime in March 2013 and despite the repeated demands for its early resolution. He did not refute this fact in his comment. And, it appears that respondent Judge Daomilas, Jr. would not have issued the order if complainant Atty. Mahinay had not written a letter dated 3 November 2015, informing this Office about the undue delay in the resolution of his application for a writ of preliminary injunction.
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> Indubitably, the Order dated 6 November 2015 was rendered beyond the mandatory ninety (90)-day period within which a judge should

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[33] *Id*. at 202.

[34] SEC. 4. *Executory nature of decisions and orders.*%All decisions and orders issued under these Rules shall immediately be executory. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

[35] *Rollo*, pp. 217-225.

decide a case or resolve a pending matter, reckoned from the date of the filing of the last pleading, in accordance with Section 15, paragraphs (1) and (2), Article 8 of the 1987 Constitution. The delay could have been addressed if only respondent Judge Daomilas, Jr. had filed a written motion for an extension of time to resolve the pending matter, citing his heavy workload and additional responsibility as an assisting judge of Branch 55, RTC, Mandaue City, Cebu, but he failed to do so. It cannot be gainsaid that delay in resolving motions and incidents pending before a judge within the reglementary period fixed by the Constitution and the law is inexcusable and cannot be condoned.[36]

The OCA however recommended that the penalty to be imposed on respondent Judge Daomilas, Jr. be reduced to a reprimand, taking into account his unusually heavy caseload. Apart from his regular functions as Presiding Judge of Branch 11, RTC, Cebu City, Cebu, he was also the Acting Presiding Judge of Branch 55, RTC, Mandaue City from 2012 to 2014, and was saddled with heavy caseload of 3,121 as of December 2014.[37]

As to the administrative charges of inefficiency and collusion against respondent Clerk of Court Faelnar-Binongo, the OCA recommended that the same be dismissed for lack of merit. The OCA explained that she had no discretion to refuse to receive the said motion outright even if the same is contrary to law or non-compliant with the rules as the same constitutes a judicial function that belongs to the judge.[38]

The Court's Ruling

In view of the foregoing, the Court agrees with the findings of the OCA, subject to modification as to the penalty.

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence.[39] A judge may also be administratively

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[36] *Id*. at 222-223.

[37] *Id*. at 224.

[38] *Id*.

[39] *Department of Justice v. Mislang*, A.M. No. RTJ-14-2369, July 26, 2016, 798 SCRA 225, 234.

liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.[40]

The Court however has also ruled that "*not every error or mistake of a judge in the performance of his official duties renders him liable*."[41]

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. 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.[42]

Atty. Mahinay questions the propriety of the following acts taken by respondent Judge Daomilas, Jr. in SRC Case No. SRC-233-CEB, to wit: (1) issuing the January 20, 2016 Order, allowing the defendants to post a counter-bond; (2) not issuing a writ of preliminary injunction in favor of the plaintiffs, which allegedly defeated the purpose of the November 6, 2015 Order; and (3) allowing the defendants to file a motion for reconsideration and setting the same for hearing on a shorter notice.[43]

The Court agrees with the OCA that these matters are judicial in nature, the determination of which are beyond the ambit of an administrative proceeding as it will involve the evaluation of factual matters and the interpretation of applicable laws.

Assuming *arguendo* that respondent Judge Daomilas, Jr. erred in his actions in the subject case, the same does not necessarily render him administratively liable. The Court has invariably ruled that the errors attributed to judges pertaining to the exercise

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[40] *Id*.

[41] *Dipatuan v. Judge Mangotara*, 633 Phil. 67, 76 (2010); italics supplied.

[42] *Salvador v. Judge Limsiaco, Jr.*, 519 Phil. 683, 687 (2006).

[43] *Rollo*, p. 221.

of their adjudicative functions should be assailed in judicial proceedings instead of in an administrative case.[44] Consistent with the Court's policy, a judge cannot be subjected to any liability – civil, criminal or administrative – for any of his official acts, no matter how erroneous as long as he acts in good faith. Only judicial errors tainted with fraud, dishonesty and corruption, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned.[45]

The Court agrees with the OCA that whether or not the arguments offered by respondent Judge Daomilas, Jr. are correct, it is not for the Court to determine because the determination thereof is a judicial function that belongs to the regular court. A judge is allowed reasonable latitude for the operation of his own individual view of the case, his appreciation of facts and his understanding of the applicable law on the matter.[46] Thus, not every error or mistake committed by a judge in the performance of his official duties renders him administratively liable.[47] In this case, if there is any error committed by respondent Judge Daomilas, Jr., the Court is not inclined to characterize the same as so depraved as to constitute gross ignorance of the law, but may be tantamount to error of judgment only which cannot be corrected through an administrative proceeding.

The Court likewise finds no merit in the charge of gross ignorance of the law against respondent Judge Daomilas, Jr. As respondent Judge Daomilas, Jr. aptly explained in his January 20, 2016 Order, while a motion for reconsideration is a prohibited pleading under the Interim Rules, the same rules do not proscribe the filing of an urgent prayer to post a counter-bond.

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[44] *Hebron v. Judge Garcia II*, 698 Phil. 615, 622-623 (2012), citing *Spouses Chan v. Judge Lantion*, 505 Phil. 159, 164 (2005).

[45] *Maylas, Jr. v. Judge Sese*, 529 Phil. 594, 597 (2006); *Del Mar-Schuchman v. Cacatian*, 662 Phil. 623, 631 (2011), citing *Edaño v. Judge Asdala,* 651 Phil. 183, 189 (2010).

[46] *Ad Hoc Committee Report- Judge Tayao, RTC, Br. 143 Makati*, 299 Phil. 774, 782 (1994).

[47] *Dipatuan v. Judge Mangotara*, *supra* note 41.

Be that as it may, the Court finds that respondent Judge Daomilas, Jr. demonstrated inefficiency in handling the pending incidents in SRC Case No. SRC-223-CEB, which resulted in undue and inordinate delay in the resolution of the application for a writ of preliminary injunction. The November 6, 2015 Order was rendered beyond the ninety (90)-day period within which a judge should decide a case or resolve a pending matter, reckoned from the date of the filing of the last pleading, in accordance with Section 15, paragraphs (1) and (2),[48] Article 8 of the 1987 Constitution.

Time and again, the Court has stressed the importance of reasonable promptness in relation to the administration of justice as justice delayed is justice denied. 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.[49] This is more so the case with trial judges who serve as the frontline officials of the judiciary expected to act all time with efficiency and probity.[50] The Court has held:

> As a frontline official of the Judiciary, a trial judge should at all times act with efficiency and probity. He is duty-bound not only to be faithful to the law, but also to maintain professional competence. The pursuit of excellence ought always to be his guiding principle. Such dedication is the least that he can do to sustain the trust and confidence that the public have reposed in him and the institution he represents.
>
> The Court cannot overstress its policy on prompt disposition or resolution of cases. Delay in the disposition of cases is a major culprit

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[48] *Section 15.* (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all [other] lower courts.

(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.

[49] *Magtibay v. Judge Indar*, 695 Phil. 617, 625 (2012).

[50] *Angelia v. Judge Grageda*, 656 Phil. 570, 573 (2011).

in the erosion of public faith and confidence in the judicial system, as judges have the sworn duty to administer justice without undue delay. Thus, judges have been constantly reminded to strictly adhere to the rule on the speedy disposition of cases and observe the periods prescribed by the Constitution for deciding cases, which is three months from the filing of the last pleading, brief or memorandum for lower courts. To further impress upon judges such mandate, the Court has issued guidelines (Administrative Circular No. 3-99 dated January 15, 1999) that would insure the speedy disposition of cases and has therein reminded judges to scrupulously observe the periods prescribed in the Constitution.[51] (Underscoring supplied)

The Court has been consistent in holding that the delay of a judge of a lower court in resolving motions and incidents within the reglementary period as prescribed by the Constitution is not excusable and constitutes gross inefficiency.[52]

Respondent Judge Daomilas, Jr.'s cavalier treatment of the pending matters in his court betrays the kind of management he instituted in his courtroom. A judge must at all times remain in full control of the proceedings in his court and strictly observe the interdictions against unreasonable delay in the disposition of cases and pending incidents in order to avoid a miscarriage of justice.[53] Court management is ultimately his responsibility.[54] He should be reminded that that the moment he dons the judicial robe, he is bound to strictly adhere to and faithfully comply with his duties delineated under the New Code of Judicial Conduct for the Philippine Judiciary, particularly Rule 5, Canon 6 which reads:

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[51] *Re: Failure of Judge Carbonell to Decide Cases and to Resolve Pending Motions in the RTC, Br. 27, San Fernando, La Union*, 713 Phil. 594, 597-598 (2013).

[52] *Angelia v. Judge Grageda*, supra note 50, citing *Prosecutor Visbal v. Judge Buban*, 443 Phil. 705, 708 (2003).

[53] *Bernardo, Jr. v. Judge Montojo*, 648 Phil. 222, 229 (2010).

[54] *Report on the Judicial Audit Conducted in the MCTC-DAPA, Surigao del Norte*, 482 Phil. 712, 725 (2004), citing *OCA v. Judge Salva*, 391 Phil. 13, 22 (2000).

RULE. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

In view of respondent Judge Daomilas, Jr.'s failure to measure up to the exacting standard set for judges of the court, he is administratively liable for Undue Delay in Rendering an Order, which is classified as a less serious charge under Section 9 (1), Rule 140 of the Rules of Court, punishable by suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

The Court however, in a string of cases,[55] has recognized the presence of mitigating circumstances that may temper the penalty for the administrative infraction committed by an erring magistrate, such as physical illness, good faith, first offense, length of service, admission of the offense, or other analogous circumstances.

Here, the Court finds it reasonable to modify the penalty to be imposed on respondent Judge Daomilas, Jr. The Court recognizes the struggle encountered by respondent Judge Daomilas, Jr. in managing two (2) court stations at the same time, with a limited number of personnel, which adversely affected his efficiency to keep track of the status of the cases raffled to him. The sheer volume of respondent Judge Daomilas, Jr.'s work serves to mitigate the penalty to be imposed upon him, as in the case of *Angelia v. Judge Grageda*[56] where the fine was reduced to ₱5,000.00 given therein respondent judge's 800 pending cases before his sala.

In the present case, a fine of ₱5,000.00 would be sufficient, after considering the fact that respondent Judge is managing two (2) court stations. As well, the Court takes note of the OCA's

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[55] *OCA v. Chavez*, A.M. No. RTJ-10-2219, August 1, 2017, p. 4; *Rubin v. Judge Corpus-Cabochan*, 715 Phil. 318, 334 (2013); *Atty. Fernandez v. Judge Vasquez*, 669 Phil. 619, 634-635 (2011).

[56] *Supra* note 50.

observation that this is the first time that he is found guilty of an administrative charge.

The Court likewise finds no merit in the administrative charges of inefficiency and collusion against respondent Clerk of Court Faelnar-Binongo. As clerk of court, she had no discretion to refuse to receive pleadings and motions even if they are contrary to or prohibited by law as this was judicial function that belonged to the judge. Atty. Mahinay also failed to substantiate his charge of collusion in the delay in the resolution of the case.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[57] Hence, respondent Clerk of Court Faelnar-Binongo must be exonerated from the administrative charges against her.

WHEREFORE, the Court finds respondent Judge Ramon B. Daomilas, Jr., Presiding Judge, Branch 11, Regional Trial Court, Cebu City, Cebu, **GUILTY of Undue Delay in Rendering an Order** and impose on him a **FINE** of Five Thousand Pesos (5,000.00). He is **STERNLY WARNED** that a repetition of the same or a similar offense shall be dealt with more severely.

The administrative charges of inefficiency and collusion against respondent Atty. Rosadey E. Faelnar-Binongo, Clerk of Court V, Branch 11, Regional Trial Court, Cebu City, Cebu, are **DISMISSED** for lack of merit.

SO ORDERED.

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

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[57] *Filoteo v. Calago,* 562 Phil. 474, 480 (2007).

FIRST DIVISION

[G.R. No. 194346. June 18, 2018]

FERNANDO A. MELENDRES, *petitioner, vs.* **OMBUDSMAN MA. MERCEDITAS N. GUTIERREZ AND JOSE PEPITO M. AMORES, M.D.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE RIGHT TO APPEAL IS A STATUTORY PRIVILEGE, AND MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF LAW; FAILURE TO ABIDE IN CASE AT BAR RESULTS IN THE FORFEITURE OF THE RIGHT TO APPEAL.— The right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. As such, the party seeking relief from the appellate court must strictly comply with the requirements set forth by the rules. Compliance with the procedural rules is essential for the speedy disposition of justice. x x x In this case, the appellate court required submission of certain documents and expressly warned Melendres that dismissal is forthcoming in case of failure to comply. Melendres, despite the extension given him, still failed to comply with the documents required by the appellate court. Clearly, dismissal is justified under the Rules of Court. Melendres' failure to abide by the procedural requirements, under the aforesaid circumstances, results in the forfeiture of his right to appeal. "The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional."

2. ID.; ID.; THE PRIMORDIAL POLICY IS A FAITHFUL OBSERVANCE OF THE RULES OF COURT, AND THEIR RELAXATION OR SUSPENSION SHOULD ONLY BE FOR PERSUASIVE REASONS AND ONLY IN MERITORIOUS CASES; APPLICATION IN CASE AT BAR.— Though this Court has invariably relaxed the rule on

technicalities in order to afford litigants their day in court, liberal application of procedural rules is still the exception. [T]he primordial policy is a faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. In this case, it does not appear that Melendres has offered a sufficient reason for the liberal application of the rules. We agree with the appellate court that, instead, it is evident that Melendres' counsel has been negligent in handling the petition x x x However, in the interest of substantial justice, this Court deems it wise to overlook procedural technicalities in order to rule on the substantive issue put forth in the instant petition.

3. POLITICAL LAW; PUBLIC OFFICERS AND EMPLOYEES; SIMPLE MISCONDUCT; TRANSFER OF FUNDS WITHOUT AN INVESTMENT CONTRACT AND THE SPECIFIC AUTHORITY REQUIRED, IS A SERIOUS LAPSE OF JUDGMENT SUFFICIENT TO HOLD A PUBLIC OFFICER FOR SIMPLE MISCONDUCT; PENALTY.— "Misconduct generally means wrongful, improper or unlawful conduct, motivated by 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." In addition, in order to be considered grave misconduct, it must be shown that the acts involve the additional elements of corruption or willful intent to violate the law or disregard of established rules; otherwise, the misconduct is only simple. In this case, this Court finds that the evidence on record do not establish that the placement of LCP funds with the PVB was attended with corrupt motives or willful disregard of established rules as to fully satisfy the standard of substantial evidence. Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. "Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another

person, contrary to duty and the rights of others." x x x The circumstances surrounding the placement of LCP funds in PVB leaves much to be desired. Indeed, Melendres transferred the funds without an investment contract and specific authority from the LCP Board of Trustees which authorizes him, or another official to invest in PVB the amount of ₱73,258,377.00. By such acts, Melendres committed a serious lapse of judgment sufficient to hold him liable for simple misconduct. "The penalty for simple misconduct is suspension for one month and one day to six months for the first offense." Considering that no mitigating or aggravating circumstance can be appreciated in his favor, the medium penalty of three months suspension is the appropriate penalty.

APPEARANCES OF COUNSEL

Macam Raro Ulep & Partners for petitioner.
Baterina Baterina Casals Lozada and Tiblani for respondent J.P. Amores.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Resolutions dated June 15, 201[2] and November 9, 2010[3] of the Court of Appeals (CA) in CA-G.R. SP No. 113143, which dismissed petitioner Fernando A. Melendres' (Melendres) appeal for failure to comply with the CA Resolution[4] dated April 6, 2010 directing him to submit various documents material to his petition.

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[1] *Rollo*, pp. 24-56.

[2] Penned by Associate Justice Ramon M. Bato, Jr., concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florino S. Macalino; *id*. at 14-15.

[3] *Id*. at 18-21.

[4] *Id*. at 220-221.

Antecedents

The Department of Health (DOH) and Department of Budget and Management (DBM) approved the realignment of funds in the amount of ₱73,258,377.00 for the completion of the rehabilitation of the Lung Center of the Philippines (LCP). The realignment of funds was covered by a Special Allotment Release Order[5] (SARO) No. BMB-B-00-0192.[6]

Melendres, then Executive Director of the LCP, entrusted with the implementation and administration of the SARO, requested the Branch Manager of the Land Bank of the Philippines West Triangle Branch for the issuance of a Manager's Check in the amount of ₱73,258,377.00.[7]

On February 4, 2002, Melendres requested the Office of the Government Corporate Counsel (OGCC) to review and evaluate a supposed investment Management Agreement (IMA) with Philippine Veterans Bank (PVB).[8]

On February 13, 2002, even prior to the response of the OGCC for the contract review, Melendres transmitted the manager's check to PVB with instructions to place the same under an IMA for 30 days.[9]

On May 3, 2002, the OGCC replied to Melendres' request, the pertinent portions of which are quoted hereunder:

> In your letter requesting our Office to evaluate, review and make suggestions on your proposed Investment Contract with the Bank, the only attachment you submitted is the proposed Contract only. Hence, we are constrained to advise you to submit the Resolution

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[5] *Id*. at 187.

[6] *Id*. at 82.

[7] *Id*. at 83, 188.

[8] *Id*. at 83, 112.

[9] *Id*. at 83, 197.

from the LCP Board of Trustees containing the following:

1. The authority to place an investment management account with PVB;

2. The amount of money authorized to be placed in the investment management account;

3. The person authorized by LCP to enter into the Contract, sign for and in its behalf and transact business with PVB relative to this investment management account, designating his capacity and position in LCP;

While PVB has been recognized as a government depository pursuant to Republic Act No. 3518[,] as amended by Republic Act No. 7169, the Memorandum issued by then former President Joseph Ejercito Estrada and the Monetary Board Resolution No. 578 dated June 13, 1996 which was implemented by BSP Circular No. 110, Series of 1996, we also advise you to first verify with the Bangko Sentral ng Pilipinas (BSP for brevity) whether PVB is duly authorized to engage in investment management business. If it is so authorized, you should do business directly with the Trust Department of PVB and verity who is the Trust Officer of PVB in the Trust Department with whom LCP should be directly transacting business with. This is in consonance with the BSP regulations.

The proposed [IMA] appears to be a modified sample agreement contained in the Manual of Regulations for Banks prepared by the BSP. The Agreement is one of agency. It is for this reason that the funds invested by LCP should be invested by PVB in government securities only and shall be in the name of LCP. If the investment is made in the name of PVB, there should be an indication that PVB is acting merely as an agent of LCP who is the principal.

x x x x x x x x x

Even as the Investment Agreement does not partake the nature of a "Trust Agreement" but is merely one of "Agency", we still suggest provisions on the liability of PVB for grossly disadvantageous transactions attended by fraud, gross negligence and abuse of authority.

x x x x x x x x x.[10]

Nevertheless, despite the letter from the OGCC, it appears

that Melendres, along with Albilio C. Cano (Cano), Manager of the Administrative and Ancillary Department of the LCP, and Angeline Rojas (Rojas), Chief of Finance Services of the LCP, continued to authorize the roll over of the funds placed in PVB.[11]

On June 5, 2002, Ma. Milagros Campomanes-Yuhico (Yuhico) requested Melendres to return the signed IMA and to submit certain documents. Melendres referred the letter to the Cash Division with the following note:

> In view of the inability of the Board of Trustees to convene for the past months, we could not immediately satisfy the requirements of PVB. Transfer our deposits to DBP PHC instead.[12]

Hence, on October 22, 2002, a complaint for Grave Misconduct[13] was filed by Jose Pepito Amores (Amores), the Deputy Director for Hospital Support Services of the LCP against Melendres, Cano, Rojas, Chona Victoria Reyes-Guray (Guray), Branch Head of the PVB Aurora Boulevard Branch and Yuhico as Assistant Vice-President of PVB. The complaint alleged that Melendres, along with the other officials of LCP, "in clear conspiracy with one another", caused undue injury to the government and the LCP when they misappropriated the funds for LCP's renovation by utilizing the same for private investment purposes to the detriment of the government medical service. The complaint also charged them with attempt to hide the anomaly by failing to disclose the invested amount in the Balance Sheet of LCP, as of March 31, 2002.[14]

The complaint likewise contended that the IMA was grossly disadvantageous to the government, per the opinion of the OGCC.

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[10] *Id*. at 113-115.

[11] *Id*. at 84, 203, 206, 210, 211, 215.

[12] *Id*. at 84, 217.

[13] *See* Ombudsman Decision dated August 24, 2009, *id*. at 81-95.

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

Amores also emphasized that the respondents therein, including Melendres, continued the IMA accounts until they were required to submit the necessary documents.[15]

Melendres, for his part, denied Amores' accusations and claimed that PVB is an authorized government depositary bank. He explained that the decision to transfer ₱73,258,377.00 from LBP to PVB was not a placement under an IMA, but merely a special savings deposit with an interest yield of 7.25% for thirty (30) days. He contended that such act was authorized under the LCP Board of Trustees' Resolution dated January 30, 2002.[16]

He explained that he did not place the money in an IMA because he was awaiting the advice and opinion of the OGCC on the matter. Melendres claimed that the IMA was never formalized nor implemented, as he has not signed the IMA.[17]

He asserted that the transfer of funds to PVB was authorized under the LCP Board of Trustees' Resolution of January 30, 2002 which provides, in part:

RESOLUTION

WHEREAS, LCP has savings, trust funds, and other funds that will be utilized sooner or later which may be placed in profitable but safe investments to generate income pending utilization;

WHEREAS, the said funds may be invested in treasury bills or deposited with any of the four (4) government depository banks: namely Land Bank of the Philippines ("LBP") or Development Bank of the Philippines ("DBP") or Philippine National Bank ("PNB") or Philippine Veterans Bank ("PVB"), whichever of the aforementioned banks shall give the highest yield or interest rates;

NOW, THEREFORE, RESOLVED, that pending utilization, the savings and other funds of LCP be invested in treasury bills or deposited with the LBP, DBP, PNB, or PVB whichever of the aforementioned banks shall offer the highest yield or interest income for LCP;

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[15] *Id*. at 84.

[16] *Id*. at 525.

[17] *Id*. at 525-526.

RESOLVED, FURTHER, that, for this purpose, the Executive Director, or in his absence, the Administrative Officer, be authorized, as he is hereby authorized, to invest the said unutilized funds and savings as directed above, and to sign and execute in behalf of LCP such papers and documents as may be necessary to implement the foregoing mandate."[18]

Ruling of the Ombudsman

In a Decision[19] dated April 30, 2007, the Ombudsman found Melendres, Cano and Rojas guilty of grave misconduct. The Ombudsman found that it was clear from the correspondence of the therein respondents with the PVB officials that they intended to enter into an investment agreement. It did not give credit to Melendres' claim that the placement of LCP funds to PVB was authorized considering it was done prior to the execution of the LCP Board Resolution. The dispositive portion of the Ombudsman decision, states:

WHEREFORE, respondents [Guray and Yuhico] are ABSOLVED of the administrative charge of Grave Misconduct. The instant complaint against them is hereby DISMISSED, with the admonition that they should be more circumspect in their actions as bank personnel to avoid the appearance of impropriety in their business dealings.

Respondents [MELENDRES, CANO and ROJAS] are hereby found GUILTY of GRAVE MISCONDUCT and are hereby meted the penalty of DISMISSAL FROM THE SERVICE with all its accessory penalties, pursuant to Section 52, Rule IV, Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999.

The Honorable Francisco Duque, Secretary of the Department of Health, is hereby directed to implement this decision in accordance with law and rules, and to forthwith inform this Office of the action taken.

SO RESOLVED.[20]

Likewise, the Ombudsman denied petitioner's motion for

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[18] *Id*. at 525.

[19] *Id*. at 81-95.

reconsideration in its Resolution[21] dated August 24, 2009.

Ruling of the CA

Melendres then appealed the decision of the Ombudsman to the CA under Rule 43 of the Rules of Court.

On April 6, 2010, the CA issued a Resolution[22] requiring Melendres to submit, within three (3) days from receipt, clearly legible copies of material portions of the record and other supporting documents, with warning that failure to comply will result to the dismissal of the petition.

Melendres then submitted a motion requesting for an extension of 15 days within which to comply with the April 6, 2010 Resolution of the CA.

On June 15, 2010, as aforestated, the appellate court dismissed the petition for failure to comply with the April 6, 2010 Resolution. The CA also denied Melendres' motion for reconsideration[23] of the June 15, 2010 Resolution in its November 9, 2010 Resolution. [24]

Melendres also filed an Urgent Manifestation and Motion with Leave of Court (To Consolidate the Case before this Court to the Case of *Angeline Rojas versus Ombudsman Ma. Merceditas N. Gutierrez et al*., CA-GR SP No. 113649 and *Albilio C. Cano versus Ombudsman Ma. Merceditas N. Gutierrez et al*., CA-GR SP No. 114495) dated August 16, 2010.[25] The CA merely noted the motion in its Resolution[26] dated November 9, 2010.

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

[21] *Id*. at 96-100.

[22] *Id*. at 220-221.

[23] *Id*. at 65-74.

[24] *Id.* at 18-21.

[25] *Id*. at 101-106.

[26] *Id*. at 18-21.

Hence, the instant petition.

Issues

Melendres raised the following arguments in support of his petition:

I. THE DECISION OF PUBLIC RESPONDENT OMBUDSMAN IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE[;]

II. THE PLACEMENT OF THE FUNDS THROUGH AN [IMA] WAS AUTHORIZED BY THE BOARD OF TRUSTEES[;]

III. THE GOVERNMENT CORPORATE COUNSEL WHICH HAS OVERSIGHT AUTHORITY OVER LCP DID NOT STATE IN ITS OPINION THAT THE IMA IS GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT[;]

IV. THERE WAS NO [IMA] SIGNED BY [MELENDRES] AS THE DEPOSIT BY THE REALIGNED FUNDS WITH PVB WAS AN INTEREST YIELDING TIME DEPOSIT IN MEANTIME THAT THE FUNDS WERE NOT BEING UTILIZED FOR THE REHABILITATION OF THE LCP[;]

V. IN ACCORD WITH THE MANDATE OF THE BOARD RESOLUTION OF JANUARY 30, 2002, [MELENDRES] WAS VALIDLY CLOTHED WITH AUTHORITY TO ENTER INTO SAVINGS DEPOSIT WHICH, INDEED, HE UNDERTOOK PENDING UTILIZATION OF THE REALIGNED FUNDS AND THE DEPOSIT MADE WITH PVB WAS IN CONSONANCE WITH THE JANUARY 30, 2002 BOARD RESOLUTION OF THE LCP BOARD OF TRUSTEES[; AND]

VI. THERE WAS NO GROSS MISCONDUCT FOR THE ACTS IMPUTED AGAINST [MELENDRES], AS, IN FACT, NOT EVEN SIMPLE MISCONDUCT EXISTS TO WARRANT THE HOLDING THAT [MELENDRES] IS GUILTY OF MISCONDUCT TO BE METED WITH SUCH A SEVERE PENALTY OF DISMISSAL FROM SERVICE WITH SUCH ACCESSORY PENALTIES INDICATED IN THE DISPOSITIVE PORTION OF THE DECISION.[27]

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[27] *Id*. at 35-44.

Summed up, the fundamental issues in the instant case are as follows: 1) whether the CA correctly dismissed the petition for failure to comply with its April 6, 2010 Resolution; and 2) whether Melendres is guilty of grave misconduct.

Ruling of the Court

The CA correctly dismissed the appeal

The right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.[28] As such, the party seeking relief from the appellate court must strictly comply with the requirements set forth by the rules. Compliance with the procedural rules is essential for the speedy disposition of justice.

In this case, Rule 43 provides for the following requirements:

Section 4. *Period of appeal.* The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

Section 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.

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[28] *Boardwalk Business Ventures, Inc. v. Elvira A. Villareal (deceased), et al.*, 708 Phil. 443, 445 (2013).

Upon the filing of the petition, the petitioner shall pay to the clerk of court of the Court of Appeals the docketing and other lawful fees and deposit the sum of ₱500.00 for costs. Exemption from payment of docketing and other lawful fees and the deposit for costs may be granted by the Court of Appeals upon a verified motion setting forth valid grounds therefor. If the Court of Appeals denies the motion, the petitioner shall pay the docketing and other lawful fees and deposit for costs within fifteen (15) days from notice of the denial.

Section 6. *Contents of the petition*. — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein.

Section 7. *Effect of failure to comply with requirements*.— **The failure of the petitioner to comply with any of the foregoing requirements** regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, **and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.** (Emphasis ours)

In this case, the appellate court required submission of certain documents and expressly warned Melendres that dismissal is forthcoming in case of failure to comply. Melendres, despite the extension given him, still failed to comply with the documents required by the appellate court. Clearly, dismissal is justified under the Rules of Court. Melendres' failure to abide by the procedural requirements, under the aforesaid circumstances, results in the forfeiture of his right to appeal. "The perfection of an appeal in the manner and within the period permitted by law is not only mandatory, but also jurisdictional."[29]

[29] *Spouses Espejo v. Ito*, 612 Phil. 502, 514 (2009).

Though this Court has invariably relaxed the rule on technicalities in order to afford litigants their day in court, liberal application of procedural rules is still the exception.[30] [T]he primordial policy is a faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[31]

In this case, it does not appear that Melendres has offered a sufficient reason for the liberal application of the rules. We agree with the appellate court that, instead, it is evident that Melendres' counsel has been negligent in handling the petition in that:

> Third. [Melendres'] counsel is fully aware of the legal consequence of his failure to comply with the Resolution of the Court. In fact, [Melendres'] counsel even filed a Motion for Time dated April 13, 2010 to submit the required documents up to April 10, 2010. But despite his request for extension of fifteen days, as of June 15, 2010, [Melendres'] counsel through his own fault and/or negligence failed to submit the required documents. Had he instituted a system of monitoring his cases he could have easily complied with the submission of the documents within the period he requested. Blaming his legal secretary for his predicament will not absolve him of his responsibility. Negligence of clerks, which affects the cases handled by lawyers, is binding upon the latter (B.R. Sebastian Enterprises vs. CA, G.R. No. 41862, February 7, 1992). Undoubtedly, [Melendres'] counsel is negligent in performing his obligation to his client and to his commitment to the Court.[32]

However, in the interest of substantial justice, this Court deems it wise to overlook procedural technicalities in order to rule on the substantive issue put forth in the instant petition.

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[30] *See Building Care Corp./Leopard Security & Investigation Agency, et al. v. Macaraeg*, 700 Phil. 749 (2012).

[31] *Birkenstock Orthopaedie GmbH and Co. KG v. Phil. Shoe Expo Marketing Corp.*, 21 Phil. 867, 875-876 (2013).

[32] *Rollo*, pp. 225-226.

Melendres is liable for simple misconduct

"Misconduct generally means wrongful, improper or unlawful conduct, motivated by premeditated, obstinate or intentional purpose."[33] "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."[34] In addition, in order to be considered grave misconduct, it must be shown that the acts involve the additional elements of corruption or willful intent to violate the law or disregard of established rules; otherwise, the misconduct is only simple.[35]

In this case, this Court finds that the evidence on record do not establish that the placement of LCP funds with the PVB was attended with corrupt motives or willful disregard of established rules as to fully satisfy the standard of substantial evidence. Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[36]

"Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others."[37] In this case, the following circumstances militate against the finding that there is corruption:

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[33] *SPO1 Acuzar v. Jorolan, et al.*, 631 Phil. 514, 522 (2010).

[34] *Office Of The Ombudsman v. PS/SUPT. Rainier A. Espina*, G.R. No. 21350, March 15, 2017.

[35] *Civil Service Commission v. Almojuela*, 707 Phil. 420, 435 (2013).

[36] *Mira v. Vda. de Erederos, et al.*, 721 Phil. 513, 527 (2015).

[37] *Atty. Gonzales v. Serrano*, 755 Phil. 513, 527 (2015).

First, Melendres has sought the legal opinion of the OGCC with respect to the act of entering an IMA with PVB. Verily, the OGCC was made aware of petitioner's intent to place a certain amount of LCP's funds so that the same might yield interests. Regardless of the denomination of the contract entered into between LCP and PVB, Melendres' act of revealing his intent to place LCP's funds in a bank is inconsistent with corruption.

Second, Melendres, as the LCP's Executive Director was authorized under LCP Board of Trustees Resolution dated January 30, 2002 to invest its funds pending utilization in banks who can offer high yields or interest income.

Third, the purported intent to conceal the placement of funds with PVB was negated by Rojas' explanation in her Counter-Affidavit,[38] where it was stated that the amount invested in short-term investments, such as that placed in PVB, were reported under the heading "*Other Assets, Miscellaneous & Deferred Charges*" and not under the heading "*Investments and Fixed Assets*", contrary to the claim of Amores.

Based from the foregoing, it is apparent that the record simply did not show how Melendres purportedly used his position as LCP's Executive Director to procure unwarranted benefits from the transaction. We note that the aforesaid findings are also consistent with the Order[39] of the public respondent Ombudsman dated May 12, 2011 in OMB-C-C-02-0428-G, the relevant portion of which, states:

> As stated in the questioned Order, the Commission on Audit (COA), which have the exclusive authority to audit and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties, finds no irregularity on the disposition of the subject fund.
>
> As established by the COA and by the records, the said fund was withdrawn from the Land Bank of the Philippines and was indeed,

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[38] *Rollo*, pp. 514-521.

[39] *Id*. at 290-294.

placed under a special deposit account with the PVB which offered a higher interest rate of 7.5% *per annum* pursuant to the Resolution of the LCP Board of Trustees adopted during its meeting on 30 January 2002 authorizing the LCP to invest its savings, trust funds, and other funds that are not yet utilized in a profitable and safe investments with the authorized government depository banks such as the PVB. Being the nature of a short term investment, the same was classified and recorded in the book of LCP under the account name-Miscellaneous Assets and Deferred Charges (8-73-300) pursuant to the Government Accounting and Auditing Manual, Volume II.

As it is, this Office finds no probable cause to prosecute the respondents for the aforesaid charges simply because the subject fund was never controverted or used into personal purpose or purposes and that there was no undue injury caused to any party, including the government, if any. In fact, as established by the COA, the subject fund was already utilized and disposed of for the rehabilitation and restoration of the building of the LCP through the Department of Public Works and Highways.[40]

The foregoing notwithstanding, this Court finds that Melendres cannot be completely exonerated from administrative liability. The circumstances surrounding the placement of LCP funds in PVB leaves much to be desired. Indeed, Melendres transferred the funds without an investment contract and specific authority from the LCP Board of Trustees which authorizes him, or another official to invest in PVB the amount of ₱73,258,377.00. By such acts, Melendres committed a serious lapse of judgment sufficient to hold him liable for simple misconduct.

"The penalty for simple misconduct is suspension for one month and one day to six months for the first offense."[41] Considering that no mitigating or aggravating circumstance can be appreciated in his favor, the medium penalty of three months suspension is the appropriate penalty.[42]

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[40] *Rollo*, pp. 292-293.

[41] *Seville v. Commission On Audit*, 699 Phil. 27, 33 (2012).

[42] *See Yamson v. Castro*, G.R. Nos. 194763-64, July 20, 2016, 797 SCRA 592, 686.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the Resolutions dated June 15, 2010 and November 9, 2010 of the Court of Appeals in CA-G.R. SP No. 113143. In its place, the Court **FINDS** petitioner Fernando A. Melendres liable for **SIMPLE MISCONDUCT** and **IMPOSES** on him the penalty of **three (3) months suspension without pay** in accordance with Section 49(b), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 223565. June 18, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONATHAN PAL, THANIEL MAGBANTA, ALIAS DODONG MANGO [RON ARIES DAGATAN CARIAT] AND ALIAS TATAN CUTACTE, *accused*, RON ARIES DAGATAN CARIAT ALIAS DODONG MANGO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.— To secure a conviction for rape under Article 266-A of the Revised Penal Code, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise

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[*] Designated Acting Member per Special Order No. 2560 dated May 11, 2018.

unconscious, or when she was under twelve years of age or was demented. In this case, the prosecution had sufficiently established the existence of the elements above. The testimony of "AAA" established that Magbanta had sexual intercourse with her with the assistance of appellant, Pal, and Cutacte. "AAA" testified that appellant held her, pointed a knife at her, and helped his co-accused drag her to a secluded grassy area where Magbanta punched her and forced her to lie down. Magbanta then undressed her and inserted his penis inside her vagina while her legs were held by appellant. These circumstances show that Magbanta had sexual intercourse with "AAA" against her will through force, threat, and intimidation and with the assistance of appellant and the other accused.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AS A RULE, THE TRIAL COURT'S ASSESSMENT OF A WITNESS' CREDIBILITY IS ENTITLED TO GREAT WEIGHT, IF NOT CONCLUSIVE ON THE SUPREME COURT.— Absent any evidence that it was tainted with arbitrariness or patent error, the trial court's assessment of a witness' credibility is entitled to great weight, if not conclusive on this Court. Time and again, the Court has held that "assigning of values to declarations of witnesses is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the demeanor of witnesses and assess their credibility." It is with more reason to uphold the assessment made by the trial court when the CA affirms the same, as in the present case.

3. CRIMINAL LAW; REVISED PENAL CODE; CONSPIRACY; THERE IS CONSPIRACY WHEN THE ACTS OF THE ACCUSED DEMONSTRATE A COMMON DESIGN TOWARDS THE ACCOMPLISHMENT OF THE SAME UNLAWFUL PURPOSE; CASE AT BAR.— The Court likewise finds that conspiracy was established in this case. There is conspiracy "when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose." While appellant did not personally have sexual intercourse with "AAA", the acts of appellant, Magbanta, Pal, and Cutacte clearly demonstrated a common design to have carnal knowledge of "AAA". Appellant helped Magbanta, Pal, and Cutacte in restraining "AAA" and in dragging her to a

secluded grassy area. He also pointed a knife at "AAA" and held her while Magbanta inserted his penis into "AAA's" vagina. Unmistakably, appellant concurred in the criminal design to rape "AAA". Since there was conspiracy among appellant, Magbanta, Pal, and Cutacte, the act of one was the act of all making them equally guilty of the crime of rape against "AAA".

4. ID.; CIVIL LIABILITY; AWARD OF DAMAGES, WHEN PROPER; ALL DAMAGES AWARDED SHALL EARN INTEREST AT THE RATE OF 6% PER ANNUM FROM FINALITY OF THE DECISION UNTIL FULL PAYMENT.— Finally, as to the award of damages, the Court enunciated in *People v. Jugueta,* that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, x x x the proper amounts [of civil liability] should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 exemplary damages, regardless of the number of qualifying aggravating circumstances present." Thus, there is a need to increase the award of civil indemnity to ₱75,000.00, moral damages to ₱75,000.00 and to further impose exemplary damages in the amount of ₱75,000.00. Moreover, all damages awarded shall earn interest at the rate of 6% *per annum* from finality of this Decision until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This resolves the appeal filed by Ron Aries Dagatan Cariat *alias* Dodong Mango (appellant) assailing the October 12, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC

[1] CA *rollo,* pp. 55-68; penned by Associate Justice Henri Jean-Paul B. Inting and concurred in by Associate Justices Edgardo A. Camello and Rafael Antonio M. Santos.

No. 01261-MIN which affirmed with modification the March 28, 2012 Judgment[2] of the Regional Trial Court (RTC) of Davao City, Branch 11, in Criminal Case No. 63,897-08 finding him guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua.*

On July 2, 2008, an Information was filed charging appellant three co-accused with the crime of rape allegedly committed as follows:

> That on or about July 26, 2007, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, accused THANIEL MAGBANTA, conspiring and confederating with the other above-named accused[,] with force and intimidation, willfully, unlawfully[,] and feloniously had carnal knowledge of [AAA],[3] while accused alias DODONG MANGO was pointing a knife and holding the legs of the latter and while other accused JONATHAN PAL and alias TATAN CUTACTE were watching and laughing, to her damage and prejudice.
>
> CONTRARY TO LAW.[4]

Of the four accused, only appellant was arrested and brought under the jurisdiction of the RTC. The other three accused have remained fugitives from justice.

Appellant pleaded not guilty to the offense charged when he was arraigned on August 1, 2008. Thereafter, trial on the merits followed.

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[2] Records, pp. 80-86, penned by Judge Virginia Hofileña-Europa.

[3] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610. An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties for its Violation And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children. Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadog,* 667 Phil. 664, 669 (2011).

[4] Records, p. 1.

Version of the Prosecution

"AAA" testified that on July 26, 2007 at around 11:00 p.m., she was on her way home when her neighbors, accused Jonathan Pal (Pal) and Thaniel Magbanta (Magbanta), invited her to join them celebrate Pal's birthday.[5] "AAA" accepted their invitation and joined the drinking spree. After taking several shots of rum, "AAA " felt dizzy and intoxicated.

Thereafter, "AAA" averred that Magbanta approached and punched her stomach twice. Pal, Magbanta, Tatan Cutacte (Cutacte), and appellant held her hands and dragged her to a grassy and secluded area near Pal's house about 500 meters away. Appellant was then holding and pointing a knife at "AAA". Feeling weak and numb, "AAA" cried for help but no one heard her. Magbanta punched her again three times and pushed her to the ground to stop her from shouting. Magbanta warned "AAA" not to resist or else he would kill her.

"AAA" further narrated that appellant held her legs while Pal and Cutacte acted as lookout. Magbanta then undressed and raped "AAA". Magbanta laid on top of her and forcibly inserted his penis inside her vagina. "AAA" recalled that appellant, Pal, and Cutacte were all laughing as they watched Magbanta insert his penis in side "AAA's" vagina. After raping her, Magbanta again punched "AAA" in her stomach which caused her to faint.

"AAA" regained consciousness around 3:00 a.m. of July 27, 2007. She was only wearing her bra and panty. She looked for her clothes and after finding them, she went home afterward.

Traumatized by her harrowing experience, "AAA" kept the incident to herself for three months. Her sisters confronted her when they noticed a change in her disposition. "AAA" subsequently disclosed to them what had happened to her. Her sister then referred "AAA" to a psychiatrist. "AAA" also had

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[5] It is stated in some parts of the record that it was the birthday of Pal's father.

a medical check-up on November 13, 2007 and was then asked to stay at her sister's convent for her security.

Version of the Defense

For his defense, appellant claimed that on July 26, 2007 while they were celebrating the birthday of Pal's father, "AAA" arrived around 8:00 p.m. and joined their drinking spree. When all the rum was consumed, "AAA" brought out another bottle from her back pocket. She also procured two bottles of tuba and cigarettes.

Later in the evening, "AAA" asked to be excused to relieve herself outside. She asked Mabanta to accompany her. A few moments later, only Mabanta returned. Soon appellant's friends went home. Appellant then went to sleep.

Appellant denied that he held "AAA" and dragged her outside their house to a grassy area. He denied that he pointed a knife at "AAA" while Magbanta raped her.

Ruling of the Regional Trial Court

On March 28, 2012, the RTC of Davao City, Branch 11 rendered judgment finding appellant guilty as charged. The RTC was convinced that the prosecution, through the testimony of "AAA", was able to establish conspiracy among the four accused to commit the crime of rape. The RTC held that, while it was Magbanta who had sexual intercourse with "AAA", the fact the appellant held her legs which allowed Magbanta to consummate the rape constituted direct participation in the commission of the crime.

The dispositive portion of the RTC's Judgment reads:

> Wherefore, in view of the foregoing, judgment is hereby rendered finding Ron Aries Cariat alias Dodong Mango GUILTY beyond rensonable doubt of the crime of Rape.
>
> He is hereby sentenced to suffer the penalty of reclusion perpetua. He is further sentenced to pay the private complainant [AAA] the amount of FIFTY THOUSAND (₱50,000.00) PESOS as moral damages.

Issue alias warrant of arrest for Nathaniel Magbanta, Jonathan Pal and one alias Tata Cutacte.

SO ORDERED.[6]

Aggrieved by the RTC's Judgment, appellant appealed to the CA.

Ruling of the Court of Appeals

On October 12, 2015, the CA affirmed with modification the RTC's Judgment and held as follows:

> WHEREFORE, the Judgment dated March 28, 2012 of the Regional Trial Court, Branch 11, Davao City, in Criminal Case No. 63,897-08 is hereby AFFIRMED with MODIFICATION. Accused-appellant RON ARIES DAGATAN CARIAT alias DODONG MANGO is hereby found GUILTY beyond reasonable doubt of the crime of rape and is sentenced to suffer the penalty of *reclusion perpetua.*
>
> Accused-Appellant is ORDERED to pay AAA the amount of P50,000.00 as civil indemnity and another P50,000.00 as moral damages and interest on all damages at the rate of six percent (6%) per annum from the finality of judgment until fully paid.
>
> SO ORDERED.[7]

Dissatisfied with the CA's Decision, and after denial of his Motion for Reconsideration, appellant filed a Notice of Appeal[8] dated December 4, 2015 manifesting his intention to appeal the CA Decision.

Hence, this appeal.

Issue

The issue in this case is whether appellant was guilty of the crime of rape. According to appellant, the RTC erred in convicting him of rape in view of the prosecution's failure to

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[6] Records, p. 85.

[7] CA *rollo,* pp. 67-68.

[8] *Id.* at 72-73.

prove his guilt beyond reasonable doubt. Appellant claims that the fact of sexual and physical assault were not sufficiently proven. He also argues that the prosecution failed to establish the existence of a conspiracy.

Our Ruling

The Court upholds appellant's conviction and dismisses his appeal for lack of merit.

To secure a conviction for rape under Article 266-A of the Revised Penal Code, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented.

In this case, the prosecution had sufficiently established the existence of the elements above. The testimony of "AAA" established that Magbanta had sexual intercourse with her with the assistance of appellant, Pal, and Cutacte. "AAA" testified that appellant held her, pointed a knife at her, and helped his co-accused drag her to a secluded grassy area where Magbanta punched her and forced her to lie down. Magbanta then undressed her and inserted his penis inside her vagina while her legs were held by appellant. These circumstances show that Magbanta had sexual intercourse with "AAA" against her will through force, threat, and intimidation and with the assistance of appellant and the other accused.

Contrary to appellant's contention, the fact of sexual and physical assault were sufficiently established through the testimony of "AAA". This Court finds no cogent reason to reverse the RTC's assessment of "AAA's" credibility. Absent any evidence that it was tainted with arbitrariness or patent error, the trial court's assessment of a witness' credibility is entitled to great weight, if not conclusive on this Court. Time and again, the Court has held that "assigning of values to declarations of witnesses is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe

the demeanor of witnesses and assess their credibility."[9] It is with more reason to uphold the assessment made by the trial court when the CA affirms the same, as in the present case.

The Court likewise finds that conspiracy was established in this case. There is conspiracy "when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose."[10] While appellant did not personally have sexual intercourse with "AAA", the acts of appellant, Magbanta, Pal, and Cutacte clearly demonstrated a common design to have carnal knowledge of "AAA". Appellant helped Magbanta, Pal, and Cutacte in restraining "AAA" and in dragging her to a secluded grassy area. He also pointed a knife at "AAA" and held her while Magbanta inserted his penis into "AAA's" vagina. Unmistakably, appellant concurred in the criminal design to rape "AAA". Since there was conspiracy among appellant, Magbanta, Pal, and Cutacte, the act of one was the act of all making them equally guilty of the crime of rape against "AAA".

Finally, as to the award of damages, the Court enunciated in *People v. Jugueta,*[11] that "when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, x x x the proper amounts [of civil liability] should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 exemplary damages, regardless of the number of qualifying aggravating circumstances present."[12] Thus, there is a need to increase the award of civil indemnity to ₱75,000.00, moral damages to ₱75,000.00 and to further impose exemplary damages in the amount of ₱75,000.00. Moreover, all damages awarded shall earn interest at the rate of 6% *per annum* from finality of this Decision until full payment,

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[9] *People v. Nuyok,* 759 Phil. 437, 447 (2015).

[10] *People v. Hidalgo.* 768 Phil. 355, 364 (2015).

[11] 783 Phil. 806 (2016).

[12] *Id.* at 840.

Based on the evidence on record, save as to the amount of damages awarded, the Court finds no reason to disturb the findings of the CA that appellant was guilty beyond reasonable doubt of the crime of rape.

WHEREFORE, the October 12, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01261-MIN is **AFFIRMED** with the further **MODIFICATIONS** in that appellant Ron Aries Dagatan Cariat *alias* Dodong Mango is ordered to pay the victim "AAA" the increased amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. He is further ordered to pay ₱75,000.00 as exemplary damages. All damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

EN BANC

[A.C. No. 3951. June 19, 2018]

UNITED COCONUT PLANTERS BANK, *complainant, vs.* **ATTY. LAURO G. NOEL,** *respondent.*

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

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

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER WHO PERFORMS HIS DUTY WITH DILIGENCE AND CANDOR NOT ONLY PROTECTS THE INTEREST OF HIS CLIENT, HE ALSO SERVES THE ENDS OF JUSTICE, DOES HONOR TO THE BAR, AND HELPS MAINTAIN THE RESPECT OF THE COMMUNITY TO THE LEGAL PROFESSION.— Canon 17 of the Code provides that "a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him." Canon 18, in turn, imposes upon a lawyer the duty to serve his client with competence and diligence. Further, Rule 18.03, Canon 18 expressly states that "[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment, subject, however, to Canon 14 of the Code. However, once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.

2. ID.; ATTORNEYS; INEXCUSABLE NEGLIGENCE; THE LAWYER'S FAILURE TO ASSERT ANY OF THE

DEFENSES AND REMEDIES AVAILABLE TO HIS CLIENT UNDER THE APPLICABLE LAWS CONSTITUTES INEXCUSABLE NEGLIGENCE WARRANTING AN EXERCISE BY THE SUPREME COURT OF ITS POWER TO DISCIPLINE HIM.— The Court is of the view that respondent's conduct constitutes inexcusable negligence. He grossly neglected his duty as counsel to the extreme detriment of his client. He willingly and knowingly allowed the default order to attain finality and he allowed judgment to be rendered against his client on the basis of *ex parte* evidence. He also willingly and knowingly allowed said judgment to become final and executory. He failed to assert any of the defenses and remedies available to his client under the applicable laws. This constitutes inexcusable negligence warranting an exercise by this Court of its power to discipline him.

3. **ID.; ID.; WILFULL DISREGARD OF COURT PROCESSES; REPEATED FAILURE TO COMPLY WITH THE SUPREME COURT'S ORDERS CONSTITUTES EVIDENT AND WILLFUL DISREGARD OF COURT PROCESSES WARRANTING DISCIPLINARY MEASURE AGAINST THE LAWYER.—** In addition, respondent's evident and willful disregard of court processes constitutes further reason to discipline him. Respondent has repeatedly failed to comply with this Court's orders. He failed to file a comment on the administrative complaint despite numerous resolutions of the Court ordering him to do so. He was found guilty of contempt of court and was fined twice as result of his disobedience. He was even detained by the NBI due to his failure to comply with the Court's orders. He filed a pleading reserving his right to file an extended comment in order to escape detention but the extended comment never came into fruition. Later on, he asked for an additional period of twenty (20) days to file a comment, which the Court liberally granted. However, twenty-five (25) years has passed and respondent has yet to file such. x x x Undoubtedly, respondent's gross misconduct and willful disobedience have resulted in the extreme and inordinate delay of the instant proceedings. In doing so, he violated Canon 12 of the Code, which provides that "[a] lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice." He also violated Rule 12.03, Canon 12 of the Code, which states that "[a] lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or

briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so." To stress, the practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code. Falling short of this standard, the Court will not hesitate to discipline an erring lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion in consideration of the surrounding facts.

4. **ID.; ID.; DISBARMENT OR SUSPENSION; A FINDING OF GROSS MISCONDUCT AND WILLFUL DISOBEDIENCE OF ANY LAWFUL ORDER OF A SUPERIOR COURT IS SUFFICIENT CAUSE FOR SUSPENSION OR DISBARMENT; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF THREE (3) YEARS, PROPER IN CASE AT BAR.—** Under Section 27, Rule 138 of the Rules of Court, a finding of gross misconduct and willful disobedience of any lawful order of a superior court is sufficient cause for suspension or disbarment. The determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion. The penalties for a lawyer's failure to file a brief or other pleading range from reprimand, warning with fine, suspension and, in grave cases, disbarment. Considering his inexcusable negligence in handling complainant's case, his gross misconduct, and his willful disobedience of the lawful orders of this Court resulting in extreme and inordinate delay, the Court deems it proper to impose upon him the penalty of suspension from the practice of law for a period of three (3) years.

APPEARANCES OF COUNSEL

Catapang Tiongco Torres & Martin for complainant.

D E C I S I O N

GESMUNDO, *J.*:

Before the Court is a Petition[1] filed by United Coconut Planters Bank *(complainant)* seeking the disbarment and/or suspension of Atty. Lauro Noel *(respondent)* allegedly for violation of the Lawyer's Oath.

The Antecedents

On November 22, 1990, complainant retained the legal services of respondent in a case for injunction and damages with writ of preliminary injunction and prayer for temporary restraining order (*LMWD case*) filed by Leyte Metro Water District (*LMWD*) before the Regional Trial Court of Palo, Leyte.

On November 23, 1990, respondent, on behalf of complainant, attended the hearing in connection with the LMWD case. During the said hearing, respondent promised to file a comment on the application for preliminary injunction within ten (10) days. Respondent failed to file the promised comment.

Respondent also failed to file an answer to the complaint.

Thus, on December 7, 1991, LMWD's counsel, Atty. Francisco P. Martinez, moved to declare complainant in default.

On February 15, 1991, the motion to declare complainant in default was granted and LMWD was subsequently allowed to present evidence *ex-parte*.

On November 15, 1991, the decision in the said case was served on complainant. It referred the said decision to respondent, who assured complainant's Branch Manager in Tacloban, Mr. Francisco Cupin, Jr., that he need not worry since respondent would take care of everything.

On January 1, 1992, a writ of execution was served on the manager of complainant's Tacloban Branch. Again, the writ of execution was referred by complainant's Branch Manager

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

to respondent, who once again reassured him that everything was alright and that he would take care of it.

On February 5, 1992, the sheriff enforced the writ of execution. Complainant was forced to open Savings Account No. 11724 in the name of said sheriff to satisfy the judgment.

Hence, complainant filed herein complaint for disbarment against respondent on November 17, 1992.

Proceedings before this Court

On January 25, 1993, the Court issued a Resolution[2] requiring respondent to comment on the complaint for disbarment within ten (10) days from notice. Respondent failed to comply with said resolution.

On July 31, 1995, the Court issued another Resolution[3] requiring respondent to show cause why he should not be disciplinarily dealt with or held in contempt for failing to file a comment within the required period. It reiterated its order for respondent to file a comment within ten (10) days from notice. Respondent again failed to comply with the resolution.

On August 5, 1996, the Court issued another Resolution[4] imposing on respondent a fine of Five Hundred Pesos (₱500.00) payable within ten (10) days from receipt thereof or to suffer imprisonment of five (5) days if the fine was not paid within the prescribed period. The Court then reiterated its July 31, 1995 resolution requiring an explanation and his comment. Records show that respondent received the August 5, 1996 resolution on August 29, 1996. However, he still failed to comply therewith.

Thus, on February 23, 1998, the Court issued a Resolution[5] increasing the fine to One Thousand Pesos (₱1,000.00) payable

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[2] *Id*. at 6.

[3] *Id*. at 8.

[4] *Id*. at 9.

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

to the Court within ten (10) days from receipt and, again, required respondent to comply with the July 31, 1995 and August 5, 1996 resolutions. It warned respondent that failure on his part to pay the increased fine and to comply with the resolutions within the period given would compel the Court to order his immediate arrest and detention until he satisfactorily complied with the said resolutions. Respondent again failed to comply with the resolution.

On September 5, 2001, the Court issued a Resolution[6] declaring respondent guilty of contempt of court and ordered his detention until he complies with the Court's January 25, 1993 resolution by filing the required comment and pays the fine of ₱1,000.00.

On September 5, 2001, the Court issued the Order of Arrest and Commitment.[7] It commanded the Director of NBI to commit respondent in a detention cell until he complies with the January 25, 1993 resolution by submitting the required comment and remitting the increased fine of ₱1,000.00. It directed the NBI to make an immediate return of compliance therewith.

On November 5, 2001, the NBI filed a 1st Endorsement[8] informing the Court that it served respondent the order of arrest and commitment on October 29, 2001 at about 9:30 a.m. Respondent was detained at the NBI Eastern Visayas Regional Office, Tacloban City. At about 12:00 a.m. of the same day, respondent was released from custody upon submission of the required comment and payment of fine *via* postal money order.

In his Comment[9] dated October 29, 2001, respondent stated that he had not been furnished a copy of the administrative complaint filed against him for which reason he had not filed his comment. He also alleged that he was not furnished a copy of the resolution declaring him guilty of contempt and adjudging him liable for a fine. In compliance with the order declaring

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[6] *Id*. at 15.

[7] *Id*. at 16-17.

[8] *Id*. at 26.

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

him in contempt, he attached a money order in the amount of ₱1,000.00 as payment for the fine imposed but with reservation to file his extended comment upon receipt of a copy of the administrative complaint filed against him.

On January 28, 2002, the Court issued a Resolution[10] noting (1) the NBI 1st endorsement; (2) respondent's comment; and (3) Official Receipt No. 15925598 issued on November 29, 2001 by the Collecting Officer of the Court evidencing payment by respondent of the fine of ₱1,000.00. In the said resolution, the Court resolved to require (1) complainant to furnish respondent a copy of the administrative complaint and its annexes and to submit proof of such service within five (5) days from notice, and (2) for respondent to file his comment within ten (10) days from receipt thereof.

On March 21, 2002, complainant filed its Manifestation and Compliance.[11] It manifested that it served respondent a copy of the complaint for disbarment on March 20, 2002 as evidenced by Registry Receipt No. 68540 and LBC Official Receipt No. 1510779. This manifestation and compliance was noted by the Court in its May 22, 2002 Resolution.[12]

On December 7, 2005, the Court issued a Resolution[13] stating that respondent still had yet to comply with the January 28, 2002 resolution requiring him to submit his comment despite service upon him of a copy of the complaint on March 21, 2002. Thus, it resolved to require respondent to show cause why he should not be disciplinarily dealt with or held in contempt for such failure and to comply with the January 28, 2002 resolution within ten (10) days from notice.

On December 15, 2010, the Court issued a Resolution[14] noting that respondent still had yet to comply with the December 7,

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[10] *Id.* at 34-35.

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

[12] *Id.* at 41.

[13] *Id.* at 42.

[14] *Id.* at 44.

2005 resolution. Thus, it again resolved to require respondent to show cause why he should not be disciplinarily dealt with or held in contempt for such failure and to comply with the December 7, 2005 resolution within ten (10) days from notice.

In a Report,[15] dated February 17, 2012, the Office of the Bar Confidant informed the Court that respondent did not comply with the resolutions dated December 7, 2005 and December 15, 2010.

Thus, on July 11, 2012, the Court issued a Resolution[16] resolving to (1) impose upon respondent a fine of ₱1,000.00 within ten (10) days from notice thereof or a penalty of imprisonment of five (5) days if the fine is not paid within the said period; and (2) require respondent to comply with the December 7, 2005 resolution by filing the comment within ten (10) days from notice hereof.

On September 19, 2012, respondent filed a Motion for Extension of Time to File Comment,[17] praying that he be given an extension of twenty (20) days from September 20, 2012 to file his comment on the administrative complaint. He alleged in his motion that he was not able to file his comment because the files related to the administrative case had not yet been located in the records of the Regional Trial Court of Leyte.

On September 27, 2012, respondent filed a Compliance[18] to the July 11, 2012 resolution of the Court. He attached a photocopy of Official Receipt No. 0057019-SC-EP, dated September 14, 2012, as proof that he had paid the fine imposed upon him in the July 11, 2012 resolution.

On November 19, 2012, the Court issued a Resolution[19] (1) granting respondent's motion for an extension of twenty

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[15] *Id*. at 45.

[16] *Id*. at 47-48.

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

[18] *Id*. at 49.

[19] *Id*. at 55.

(20) days from September 20, 2012 within which to file a comment; and (2) noting and accepting his compliance with the July 11, 2012 resolution ordering him to pay a fine.

In the Report for Agenda,[20] dated August 3, 2015, the Office of the Bar Confidant informed the Court that respondent's extended period to file his comment expired on October 10, 2012 without his compliance therewith.

On August 19, 2015, the Court, in a Resolution[21] resolved to (1) consider respondent's right to file his comment as deemed waived; and (2) referred the complaint before the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation.

Thereafter, the IBP Commission on Bar Discipline (*Commission*) issued a Notice of Mandatory Conference[22] notifying and directing the parties to appear during the mandatory conference set on December 8, 2015 at 9:00 a.m. Only respondent appeared during the conference, as stated in the Minutes of the Hearing,[23] dated December 8, 2015.

The Commission issued an Order[24] requiring him to file his verified answer to the complaint within five (5) days or until December 14, 2015. It expressly stated that respondent's failure to file his answer shall be deemed a waiver of the right thereof. The record is bereft of any evidence that respondent filed his answer.

Recommendation of the IBP Board of Governors

In its Report and Recommendation,[25] dated April 7, 2017, the Commission recommended the disbarment of respondent.

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[20] *Id.* at 57.

[21] *Id.* at 58.

[22] *Id.* at 60.

[23] *Id.* at 61.

[24] *Id.* at 62.

[25] *Id.* at 68-75.

It ruled that respondent violated the Lawyer's Oath and the Code of Professional Responsibility (*Code*), specifically Canons 1 and 12, because of his blatant refusal to obey the orders of the Court and the Commission. It noted that his conduct clearly manifests his dishonesty and lack of respect for the orders of the duly constituted authorities for a period of twenty-five (25) years. It also found that respondent violated Canons 17 and 18 of the Code when he ignored his responsibility to complainant, his client. It stated that his failure to file an answer in the LMWD case resulted to an adverse decision against his client. It further found that he has not shown any remorse for his mistake or any vigilance to remedy the same. These acts, for the Commission, were clear manifestations of his lackadaisical behavior and conduct, warranting his removal from the Roll of Attorneys.

In its Resolution No. XXII-2017-1082,[26] dated May 27, 2017, the IBP – Board of Governors adopted the report and recommendation of the Commission, as follows:

> RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner imposing the penalty of **disbarment**.[27]

The record is bereft of any evidence that either party filed a motion for reconsideration or petition for review thereto.

The Ruling of the Court

The Court agrees with the IBP – Board of Governors that respondent violated the Lawyer's Oath and the Code. However, it does not agree with the recommended penalty.

The core issue before the Court is whether respondent committed culpable negligence in failing to file an answer on behalf of complainant in the LMWD case for which reason complainant was declared in default and judgment rendered against it on the basis of *ex parte* evidence.

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[26] *Id.* at 66-67.

[27] *Id.* at 66.

The Court answers in the affirmative.

Canon 17 of the Code provides that "a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him."[28] Canon 18, in turn, imposes upon a lawyer the duty to serve his client with competence and diligence.[29] Further, Rule 18.03, Canon 18 expressly states that "[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."[30]

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment, subject, however, to Canon 14 of the Code. However, once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[31]

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[28] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 17.

[29] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18.

[30] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18, Rule 18.03.

[31] *Santiago v. Atty. Fojas*, 318 Phil. 79, 86-87 (1995).

In the instant case, it is uncontested that respondent failed to file an answer on behalf of complainant in the LMWD case. As a result, complainant was declared in default. When the matter of default was referred to respondent by complainant, he assured it that he would take care of it. He, however, did not do anything, hence, LMWD was allowed to present evidence *ex parte* and judgment was rendered in its favor. Again, complainant referred the adverse judgment to respondent. Once more, he assured it that he would take care of the matter. He failed to do so. Thus, the adverse judgment rendered on the basis of *ex parte* evidence was enforced and executed against complainant.

The Court is of the view that respondent's conduct constitutes inexcusable negligence. He grossly neglected his duty as counsel to the extreme detriment of his client. He willingly and knowingly allowed the default order to attain finality and he allowed judgment to be rendered against his client on the basis of *ex parte* evidence. He also willingly and knowingly allowed said judgment to become final and executory. He failed to assert any of the defenses and remedies available to his client under the applicable laws. This constitutes inexcusable negligence warranting an exercise by this Court of its power to discipline him.

In addition, respondent's evident and willful disregard of court processes constitutes further reason to discipline him.

Respondent has repeatedly failed to comply with this Court's orders. He failed to file a comment on the administrative complaint despite numerous resolutions of the Court ordering him to do so. He was found guilty of contempt of court and was fined twice as result of his disobedience. He was even detained by the NBI due to his failure to comply with the Court's orders. He filed a pleading reserving his right to file an extended comment in order to escape detention but the extended comment never came into fruition. Later on, he asked for an additional period of twenty (20) days to file a comment, which the Court liberally granted. However, twenty-five (25) years has passed and respondent has yet to file such.

In *Sebastian v. Atty. Bajar,*[32] the lawyer therein was required by the Court to file a rejoinder within ten (10) days from notice. However, she only submitted the rejoinder after she was detained at the NBI for five (5) days for failure to heed the Court's order. When she was directed to file a comment to the other party's manifestation, she instead filed a manifestation, almost four months thereafter. Hence, the Court found her guilty of willful disobedience of the lawful orders of this Court and of gross misconduct, and imposed upon her the penalty of suspension from the practice of law for three (3) years.

By reason of parity, the Court finds that respondent's acts constitute willful disobedience of the lawful orders of this Court, as well as gross misconduct.

In *Sebastian v. Atty. Bajar,*[33] the Court stated that:

> Respondent's cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Respondent's conduct indicates a high degree of irresponsibility. A Court's Resolution is 'not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively.' Respondent's obstinate refusal to comply with the Court's orders 'not only betrays a recalcitrant flaw in her character; it also underscores her disrespect of the Court's lawful orders which is only too deserving of reproof.'
>
> Lawyers are called upon to obey court orders and processes and respondent's deference is underscored by the fact that willful disregard thereof will subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. In fact, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes.
>
> Respondent's failure to comply with the Court's directive to file a Rejoinder and to file a Comment also constitutes gross misconduct. The Court defined gross misconduct as 'any inexcusable, shameful, flagrant, or unlawful conduct on the part of the person concerned in the administration of justice which is prejudicial to the rights of the

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[32] 559 Phil. 211 (2007).

[33] *Id*.

parties or to the right determination of a cause.' It is a 'conduct that is generally motivated by a premeditated, obstinate, or intentional purpose.'

In *Bernal Jr. v. Fernandez,* the Court held that failure to comply with the Court's directive to comment on a letter-complaint constitutes gross misconduct and insubordination, or disrespect. In *Cuizon v. Macalino,* a lawyer's failure to comply with the Court's Resolutions requiring him to file his comment was one of the infractions that merited his disbarment. [34]

Undoubtedly, respondent's gross misconduct and willful disobedience have resulted in the extreme and inordinate delay of the instant proceedings. In doing so, he violated Canon 12 of the Code, which provides that "[a] lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice."[35] He also violated Rule 12.03, Canon 12 of the Code, which states that "[a] lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so."

To stress, the practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code. Falling short of this standard, the Court will not hesitate to discipline an erring lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion in consideration of the surrounding facts.[36]

Under Section 27, Rule 138 of the Rules of Court,[37] a finding of gross misconduct and willful disobedience of any lawful

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[34] *Id.* at 224-225.

[35] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 12.

[36] *Del Mundo v. Atty. Capistrano,* 685 Phil. 687, 693 (2012).

[37] RULES OF COURT, Rule 138, Sec. 27.

order of a superior court is sufficient cause for suspension or disbarment.

The determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion. The penalties for a lawyer's failure to file a brief or other pleading range from reprimand, warning with fine, suspension and, in grave cases, disbarment.[38]

Considering his inexcusable negligence in handling complainant's case, his gross misconduct, and his willful disobedience of the lawful orders of this Court resulting in extreme and inordinate delay, the Court deems it proper to impose upon him the penalty of suspension from the practice of law for a period of three (3) years.

WHEREFORE, respondent ATTY. LAURO G. NOEL is **SUSPENDED** from the practice of law for three (3) years, effective upon receipt of this judgment. He is **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be entered into the respondent's personal record. Copies shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[38] *Figueras, et al. v. Atty. Jimenez*, 729 Phil. 101, 108 (2014).

SO ORDERED.

Carpio,[*] *Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam,* and *Reyes, Jr., JJ.,* concur.

Jardeleza, J., no part, close relation to party.

EN BANC

[A.C. No. 10178. June 19, 2018]

KIMELDES GONZALES, *complainant, vs.* **ATTY. PRISCO B. SANTOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; THE RELATIONSHIP BETWEEN A LAWYER AND HIS CLIENT IS HIGHLY FIDUCIARY WHICH DEMANDS GREAT FIDELITY AND GOOD FAITH ON THE PART OF THE LAWYER; VIOLATION IN CASE AT BAR.— Regarding the first charge, we find respondent administratively liable for failing to deliver within reasonable time the title to complainant or to her sister, Josephine, who acted as her representative. The relationship between a lawyer and his client is highly fiduciary; it demands great fidelity and good faith on the part of the lawyer. Rule 16.01 of the Code of Professional Responsibility (CPR) requires lawyers to account for all money and property collected or received for and from their clients. In addition, Rule 16.03 mandates that a lawyer shall deliver the funds and property of his client when due or upon demand. In the present case, there is no doubt that

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[*] Senior Associate Justice, per Section 12, R.A. 296, The Judiciary Act of 1948, as amended.

respondent's services led to the issuance of a new title in complainant's name. Accordingly, and upon demand by complainant's representative, Josephine, respondent was expected to timely deliver the title to her. This, respondent failed to do.

2. **ID.; ID.; A LAWYER IS REQUIRED TO BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM; THE LAWYER IN CASE AT BAR VIOLATED HIS CLIENT'S TRUST WHEN HE RECEIVE AN AMOUNT FOR THE PURPOSE OF FILING EJECTMENT SUIT, KNOWING THAT HE COULD NOT FILE THE SAID SUIT BECAUSE SOME OF THE OCCUPANTS OF HIS CLIENT'S PROPERTY ARE HIS FRIENDS.—** Canon 17 of the CPR directs a lawyer to be mindful of the trust and confidence reposed in him. In the present case, it is uncontested that respondent received an additional ₱20,000.00 from complainant. Respondent, however, denied that it is payment for the filing of an ejectment suit against the occupants of complainant's property. Nonetheless, he does not proffer any reason to explain why such amount was given him. As this is a "he said, she said" scenario, we find complainant's version more logical and convincing. We agree with the IBP that it is incredible for respondent to receive an additional ₱20,000.00 without a clear reason for its payment. As complainant stated, respondent received ₱20,000.00 through his ATM account on June 20, 2007 for the ejectment case and even acknowledged its receipt on June 22, 2007. We find it more likely that the amount of ₱20,000.00 was for a given purpose, that is, to file an ejectment suit. Respondent violated his client's trust when he received said amount despite knowing that he could not file the ejectment suit because some of the occupants of complainant's property are his friends. Indeed, he was not able to file the case but without informing complainant of his reasons.

3. **ID.; ID.; ID.; IN ADDITION TO THE PENALTY OF THREE (3) YEARS SUSPENSION FROM THE PRACTICE OF LAW, THE LAWYER IS DIRECTED TO IMMEDIATELY RETURN THE MONEY HE RECEIVED FROM HIS CLIENT.—** As for the proper penalty, we adopt the recommendation of the IBP to suspend respondent from the practice of law for three years. In *Lopez v. Limos*, we imposed a similar penalty for violations of Rule 1.01 of Canon 1,

Canon 11, Rule 12.04 of Canon 12, Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the CPR. Moreover, since respondent refused to file the suit requested, we find the return of the amount of ₱20,000.00 to complainant in order. We have previously held that when a lawyer receives money from his client for a particular purpose and the lawyer does not use the money for such purpose, the lawyer must immediately return the money to his client.

APPEARANCES OF COUNSEL

Beetlee-Ian J. Barraquias for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This resolves the petition[1] filed by Kimeldes Gonzales (complainant) against Atty. Prisco B. Santos (respondent) before the Integrated Bar of the Philippines (IBP) for dishonesty and abuse of trust and confidence of his client.

On November 5, 2001, complainant bought a parcel of land in Tumaga, Zamboanga City. As she was then living in Quezon City, complainant appointed her sister, Josephine Gonzales (Josephine), to act as her representative in matters concerning said property. Josephine thereafter engaged the services of respondent to: (1) register the title in complainant's name; and (2) commence an ejectment suit against the occupants of the property. Josephine gave respondent a total of ₱60,000.00—₱40,000.00 as fee for the transfer of title and the remaining ₱20,000.00 as filing fee for the ejectment case.[2] Respondent signed two receipts acknowledging complainant's payments: (1) on June 12, 2007 for ₱15,000.00 as partial payment for the transfer of title; and (2) on June 22, 2007 for ₱25,000.00 as

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

[2] *Id.* at 2.

full payment for the transfer of title, and ₱20,000.00 as partial payment, the purpose of which was not indicated.[3]

Complainant then entrusted the owner's duplicate copy of the Transfer Certificate of Title (TCT) to respondent for its cancellation. On August 2, 2007, a new title was issued in complainant's name. This, however, was never surrendered to Josephine, despite her efforts to claim it.[4]

Later, complainant discovered that her property had been mortgaged to A88 Credit Corporation by one Norena F. Bagui (Norena), who turned out to be respondent's relative. It appears that Norena used a forged special power of attorney to effect said mortgage.[5]

Moreover, complainant learned that respondent never filed an ejectment case against the occupants of her property despite receipt of the corresponding filing fees.[6]

Respondent, in his answer,[7] denied having any participation in Norena's act. He narrated that after obtaining the new title to the property, he instructed his niece, Nemalyn Falcasantos, to deliver it to Josephine. He was surprised to learn that the title had not been delivered to Josephine and worse, that Norena had used it to mortgage the property. He claimed that when he confronted Norena about it, the latter assured him that she did so upon complainant's instruction. According to Norena, complainant is her close friend in Manila, and that she made similar transactions for complainant whenever the latter needed cash.[8]

Respondent also denied having been engaged to file an ejectment suit against the occupants of complainant's property.

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[3] *Id.* at 2, 6.

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

[5] *Id.* at 3.

[6] *Id.*

[7] *Rollo*, pp. 14-18.

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

According to respondent, he was shocked to discover an additional ₱20,000.00 in his bank account. Nevertheless, he insisted that he never agreed to file an ejectment suit, citing the fact that some of the occupants are his friends.[9]

Acting on the complaint, Investigating Commissioner Oliver A. Cachapero (Investigating Commissioner Cachapero) found that respondent was complicit in the constitution of a real estate mortgage over complainant's property. The mortgage was executed only five days after complainant's title over the parcel of land had been issued. Hence, respondent's failure to deliver the title to complainant's sister, Josephine, despite repeated follow-ups, tends to no other conclusion—that respondent participated in the fraudulent transaction.[10]

Investigating Commissioner Cachapero also found it suspicious that respondent would readily accept Norena's alleged narrative of the events. According to the Investigating Commissioner, it is unthinkable that respondent's nieces, who are from Zamboanga City, would be able to secure complainant's signature within five days. Commissioner Cachapero added that the fact that complainant had not seen the title—and that Josephine had been repeatedly demanding for its surrender—is inconsistent with respondent's claim that complainant authorized the mortgage.[11]

In any case, even if it were true that respondent's nieces solely authored the fraudulent transaction, Investigating Commissioner Cachapero finds that it was still respondent's duty to hold his client's property in trust. He should have been more prudent in ensuring that the title would be safely delivered to Josephine.[12]

As regards the second charge, the Investigating Commissioner rejected respondent's argument that he was not contracted to

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

[10] *Id.* at 70-72.

[11] *Id.* at 71-72.

[12] *Id*. at 72.

file an ejectment case against the occupants of complainant's property. According to Investigating Commissioner Cachapero, it would seem incredible that respondent would receive ₱20,000.00 from complainant for no reason at all. Indeed, respondent even acknowledged receipt of the same through a handwritten receipt.[13]

Considering these circumstances, Investigating Commissioner Cachapero recommended that respondent be found guilty as charged and suspended from the practice of law for three years.[14]

Finding the report and recommendation of Investigating Commissioner Cachapero to be fully supported by the evidence on record and the applicable laws and rules, the IBP Board of Governors, in its Resolution No. XX-2013-390[15] dated March 22, 2013, resolved to approve and adopt the same.

We concur with the report and recommendation of the IBP.

Regarding the first charge, we find respondent administratively liable for failing to deliver within reasonable time the title to complainant or to her sister, Josephine, who acted as her representative. The relationship between a lawyer and his client is highly fiduciary; it demands great fidelity and good faith on the part of the lawyer.[16] Rule 16.01 of the Code of Professional Responsibility (CPR) requires lawyers to account for all money and property collected or received for and from their clients. In addition, Rule 16.03 mandates that a lawyer shall deliver the funds and property of his client when due or upon demand.

In the present case, there is no doubt that respondent's services led to the issuance of a new title in complainant's name. Accordingly, and upon demand by complainant's representative,

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[13] *Id.*

[14] *Rollo*, p. 73.

[15] *Id.* at 68.

[16] *Lopez v. Limos*, A.C. No. 7618, February 2, 2016, 782 SCRA 609, 617.

Josephine, respondent was expected to timely deliver the title to her. This, respondent failed to do.

Respondent's excuse that he neither knew about nor participated in his nieces' scheme also deserves scant consideration.

We give merit to the IBP's findings and conclusion. First, the mortgage was executed only five days after complainant's title had been issued over the parcel of land. At this point, complainant had not even seen the title. In fact, respondent did not deny that Josephine had repeatedly demanded for its surrender. Second, upon his alleged discovery of the fraudulent mortgage, respondent readily accepted Norena's claim. Josephine's repeated follow-ups should have alerted respondent to irregularities attending the mortgage. Respondent's failure to ensure the timely turnover of the title to complainant and/or her representative led to, if not facilitated, the constitution of the fraudulent mortgage. Neither does it appear that respondent took steps to verify his niece's claim. We are thus inclined to agree with the IBP's conclusion that respondent's nieces are used here as mere scapegoats and that respondent had a hand in the fraudulent mortgage.[17]

Regarding the second charge, we concur with the IBP and find respondent guilty of abusing his client's trust and confidence. Canon 17 of the CPR directs a lawyer to be mindful of the trust and confidence reposed in him.

In the present case, it is uncontested that respondent received an additional ₱20,000.00 from complainant. Respondent, however, denied that it is payment for the filing of an ejectment suit against the occupants of complainant's property. Nonetheless, he does not proffer any reason to explain why such amount was given him. As this is a "he said, she said" scenario, we find complainant's version more logical and convincing. We agree with the IBP that it is incredible for respondent to receive an additional ₱20,000.00 without a clear reason for its payment. As complainant stated, respondent received ₱20,000.00 through

[17] *Rollo,* pp. 71-72.

his ATM account on June 20, 2007 for the ejectment case and even acknowledged its receipt on June 22, 2007.[18] We find it more likely that the amount of ₱20,000.00 was for a given purpose, that is, to file an ejectment suit.

Respondent violated his client's trust when he received said amount despite knowing that he could not file the ejectment suit because some of the occupants of complainant's property are his friends. Indeed, he was not able to file the case but without informing complainant of his reasons.

As for the proper penalty, we adopt the recommendation of the IBP to suspend respondent from the practice of law for three years. In *Lopez v. Limos*,[19] we imposed a similar penalty for violations of Rule 1.01 of Canon 1, Canon 11, Rule 12.04 of Canon 12, Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the CPR.[20] Moreover, since respondent refused to file the suit requested, we find the return of the amount of ₱20,000.00 to complainant in order. We have previously held that when a lawyer receives money from his client for a particular purpose and the lawyer does not use the money for such purpose, the lawyer must immediately return the money to his client.[21]

WHEREFORE, respondent Atty. Prisco B. Santos is hereby **SUSPENDED** from the practice of law for three years, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely. In addition, he is **ORDERED** to return to complainant the amount of ₱20,000.00 within 90 days upon finality of this Decision.

Respondent is also **DIRECTED** to report to this Court the date of his receipt of this Decision to enable this Court to determine the effectivity of his suspension.

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[18] See *id.* at 3, 15, 49.

[19] *Supra* note 16.

[20] *Id.* at 620-621.

[21] *Anacta v. Resurreccion*, A.C. No. 9074, August 14, 2012, 678 SCRA 352, 365-367.

Let a copy of this Decision be attached to respondent's personal record with the Office of the Bar Confidant and copies be furnished to all chapters of the Integrated Bar of the Philippines and to all courts of the land.

SO ORDERED.

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

EN BANC

[A.C. No. 10992. June 19, 2018]

RODOLFO M. YUMANG, CYNTHIA V. YUMANG and ARLENE TABULA, *complainants, vs.* **ATTY. EDWIN M. ALAESTANTE,** *respondent.*

[A.C. No. 10993. June 19, 2018]

BERLIN V. GABERTAN and HIGINO GABERTAN, *complainants, vs.* **ATTY. EDWIN M. ALAESTANTE,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISCIPLINE OF LAWYERS; DISBARMENT OR SUSPENSION OF ATTORNEYS; THE SUPREME COURT, ACTING AS THE LEGAL PROFESSION'S SOLE DISCIPLINARY BODY, IS NOT STRICTLY BOUND BY THE TECHNICAL RULES OF

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[*] Per Sec. 12 of Republic Act No. 296, The Judiciary Act of 1948, as amended.

PROCEDURE AND EVIDENCE.— The IBP was correct when it said: The absence of a written contract will not preclude the finding that there was a professional relationship between the parties. **Documentary formalism is not an essential element in the employment of an attorney; the contract may be express or implied**. To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession. x x x What is more, administrative cases are *sui generis.* This Court, acting as the legal profession's sole disciplinary body, is not strictly bound by the technical rules of procedure and evidence. Indeed, hewing strictly to technical rules of procedure and evidence could at times thwart this Court's efforts to rid the legal profession of unscrupulous individuals who use their very knowledge of the law to perpetrate fraud or commit transgressions to the detriment of their clients, who purposefully have sought their legal opinion and assistance in the hopes of attaining justice.

2. ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; THE ABSENCE OF MONETARY CONSIDERATION DOES NOT EXEMPT LAWYERS FROM COMPLYING WITH THE PROHIBITION AGAINST PURSUING CASES WITH CONFLICTING INTERESTS, WHICH ATTACHES FROM THE MOMENT THE ATTORNEY-CLIENT RELATIONSHIP IS ETABLISHED AND EXTENDS EVEN BEYOND THE DURATION OF THE PROFESSIONAL RELATIONSHIP.— It is almost a cliché to say that a lawyer is forbidden "from representing conflicting interests except by written consent of all concerned given after a full disclosure of the facts. Such prohibition is founded on principles of public policy and good taste as the nature of the lawyer-client relations is one of trust and confidence of the highest degree. Lawyers are expected not only to keep inviolate the client's confidence, but also to avoid the appearance of [impropriety] and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice." The alleged "non-payment of professional [fees, even if true, would] not exculpate respondent [lawyer] from liability. [The a]bsence of monetary consideration does not exempt lawyers from complying with the prohibition against pursuing cases with conflicting interests. The prohibition attaches from the moment the attorney-client relationship is

established and extends even beyond the duration of the professional relationship."

3. ID.; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); THE SENDING OF THE UNSEALED SCURRILOUS LETTER BY A LAWYER TO THE DEPARTMENT OF JUSTICE SECRETARY IS A VIOLATION OF THE RULE 8.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; CASE AT BAR.— The sending of the unsealed scurrilous letter by respondent lawyer to DOJ Secretary De Lima, was a violation of Rule 8.01 of the Code of Professional Responsibility, which stipulates that "[a] lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper." In that letter, not only did respondent lawyer employ intemperate or unbridled language, he was also guilty of corner-cutting unprofessionally. His act of directly asking the Secretary of Justice to intervene immediately in the syndicated estafa, grave threats and qualified theft cases showed his propensity for utterly disregarding the rules of procedure which had been formulated precisely to regulate and govern legal and judicial processes properly.

D E C I S I O N

DEL CASTILLO, *J.*:

Subject of the present Decision are two administrative cases for disbarment, separately filed against Atty. Edwin M. Alaestante (respondent lawyer) by complainants Rodolfo M. Yumang (Rodolfo), Cynthia V. Yumang (Cynthia), and Arlene Tabula (Arlene), in A.C. No. 10992, and Berlin V. Gabertan (Berlin), and Higino Gabertan (Higino), in A.C. No. 10993, (collectively, complainants). Complainants charged respondent lawyer with violating the Code of Professional Responsibility; gross ignorance of the law; grave misconduct; grave abuse of authority; gross dishonesty; malpractice; and infidelity to the client.[1]

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[1] See *rollo* (A.C. No. 10992), p. 2; See also *rollo* (A.C. No. 10993), p. 2.

Facts

On January 3, 2012, respondent lawyer wrote then Department of Justice (DOJ) Secretary Leila De Lima (Secretary De Lima) a letter,[2] *viz.*:

Dear Secretary De Lima:

May I respectfully request from your Honorable Office for the conduct of preliminary investigation and/or Prosecution of respondent Cynthia V. Yumang, et al., for the crimes of syndicated Estafa, Qualified Theft and Grave Threats.

Though mindful that venue/jurisdiction of the alleged crimes is primarily vested with your Public Prosecutor at Marikina City, we earnestly seek your good favor, and instead take a direct action on our case since respondent Cynthia V. Yumang is a savvy businesswoman and possesses material wealth and tremendous political clout and influence at Marikina City, and Complainants have [a] well[-]grounded belief that they could not obtain justice in [the] said venue. Complainants have already suffered injustice when they [first] lodged their complaint before the local police but they were instead given [a] run-around and advised for the 9th time to go back and forth to the Marikina Police Headquarters.

Compounding complainant[']s predicament, they are Engineers/Contractors based at Balanga City[,] Bataan and have no means and method[s] to steal-mate [sic] respondents' influence and political clout at Marikina City, except *via* the direct intervention of your office.[3]

On even date, respondent lawyer's clients, Ernesto S. Mallari (Ernesto) and Danilo A. Rustia, Jr. (Danilo), executed a Joint Complaint Affidavit against herein complainants for syndicated estafa, qualified theft and grave threats cases.[4]

Claiming that respondent lawyer's January 3, 2012 letter contained scurrilous statements intended to malign and besmirch Cynthia's reputation and business standing, Cynthia and her

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[2] *Rollo* (A.C. No. 10992), p. 8.

[3] *Id*.

[4] Docketed as NPS XVI-INV-12A-00002, see *id*. at 9.

husband, the complainant Rodolfo, filed a libel complaint against respondent lawyer, Ernesto, and Danilo before the Pasig City Prosecutor's Office (libel case).[5]

In their counter-affidavit, Ernesto and Danilo denied any knowledge of, or participation in, the writing of the said letter.[6]

On the other hand, respondent lawyer admitted that he was the author of the letter.[7] He denied, however, that the letter was libelous or defamatory, and insisted that the same was privileged communication. He claimed that he wrote the letter to protect and advance the interests of Ernesto and Danilo.[8]

In a Resolution[9] dated October 5, 2015, the Office of the City Prosecutor of Pasig found probable cause to indict respondent lawyer, as well as Ernesto, and Danilo, for the crime of libel.

In the meantime, in a Resolution[10] dated November 28, 2012, the DOJ dismissed for lack of merit, the complaint for syndicated estafa, qualified theft, and grave threats filed by Ernesto and Danilo against herein complainants.

Based on the foregoing, herein complainants filed on March 7, 2013, two separate disbarment complaints against respondent lawyer before the Integrated Bar of the Philippines (IBP).

In their Joint Affidavit of Complaint/Petition for Disbarment,[11] complainants Rodolfo, Cynthia, and Arlene averred that respondent lawyer violated his Oath of Office and the Code of Professional Responsibility, when he prepared, wrote, signed, and published the malicious and libelous January 3, 2012 letter.

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[5] Docketed as NPS XV-14-INV-126-01812, see *id*. at 26.

[6] *Id.* at 27.

[7] *Id*. at 26-27, 44. See also *rollo* (A.C. No. 10993), p. 7.

[8] *Rollo* (A.C. No. 10992), p. 28.

[9] *Id*. at 26-30.

[10] *Id*. at 9-22.

[11] Docketed as CBD Case No. 13-3766. *Id*. at 2.

For their part, complainants Berlin and Higino declared in their *Sinumpaang Salaysay*[12] that they were the respondents in the alleged syndicated estafa, grave threats and qualified theft cases alongside their relatives, Cynthia and Arlene. They claimed that they had previously engaged respondent lawyer's legal services in other cases; that since they knew respondent lawyer, they approached him regarding his letter dated January 3, 2012, but respondent lawyer told them not to worry about the cases mentioned in the said letter, and promised to draft the appropriate pleadings for their defense; that indeed respondent lawyer drafted their Counter-Affidavit and their Rejoinder by way of defense; and that in payment for his professional legal services, they issued respondent lawyer a Bank of Commerce check in the amount of ₱50,000.00.

Higino stressed that respondent lawyer's act of preparing their responsive pleadings in the syndicated estafa, grave threats and qualified theft cases was violative of the proscription against lawyers representing conflicting interests since he was the very same lawyer who initiated and/or drafted the complaint in these cases against them; and that as a consequence thereof, he (Berlin) moved to discharge respondent lawyer as counsel in another case.[13]

In his Answer,[14] respondent lawyer admitted that he was the author of the January 3, 2012 letter to then DOJ Secretary De Lima; but he insisted that the letter was privileged because it was written in response to a moral or legal duty, he being the lawyer for his clients in the cases mentioned in the letter. He denied that he was the defense counsel for Berlin and Higino in the syndicated estafa, grave threats and qualified theft cases, and averred that the ₱50,000.00 check that was issued in his favor by Berlin and Higino was just a "petty portion" of the

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[12] Docketed as CBD Case No. 13-3767. *Rollo* (A.C. No. 10993), pp. 2-5.

[13] Civil Case No. 2469-11 pending before Branch 76 of the Regional Trial Court in San Mateo, Rizal. See *rollo* (A.C. No. 10992), pp. 37-38.

[14] *Rollo* (A.C. No. 10992), pp. 44-48.

₱1.1 million that he previously entrusted to Berlin and Higino relative to a case that he lawyered for them.

Report and Recommendation of the Investigating Commissioner:

In a Report and Recommendation[15] dated September 10, 2013, the Investigating Commissioner[16] recommended respondent lawyer's suspension from the practice of law for six months, in connection with the disbarment case filed by Cynthia, Rodolfo, and Arlene; and suspension from the practice of law for one year, in regard to the disbarment case filed by Berlin and Higino.

The Investigating Commissioner ratiocinated that —

It is admitted that Respondent authored a letter addressed to the Secretary of DOJ on January 03, 2012 and the matter was investigated by the DOJ but the same was dismissed for lack of merit. x x x

That prior to January 03, 2012 x x x filing of the charges with the DOJ, against herein Complainants, Berlin and Higino Gabertan engaged the services of Respondent as their counsel in several cases since April 2011 to August 31, 2012.

That Respondent received the amount of ₱50,000.00 from Berlin and Higino Gabertan thru Bank of Commerce check No. 0000008 dated June 11, 2012 and personally encashed by the Respondent (Exh. H). x x x

That because of that letter filed with the DOJ by Respondent and [which] was [later] dismissed, complainants filed a libel case with the RTC, Pasig City Branch 157 (Exh. D).

That the letter filed by Respondent with the DOJ [was] correctly ruled by the Office of the City Prosecutor of Pasig City, as not privileged communication as it [was] not made in the course of judicial proceedings. (Exh. C).

That Respondent acted as defense counsel for Berlin and Higino Gabertan whom he charged together with the other complainants with the DOJ (Exh. L).

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[15] *Id.* at 261-265.

[16] Ernesto A. Villamor.

Clearly, Respondent violated the prohibition that [a] lawyer should not represent new clients whose interest oppose those of a former client in any manner, whether or not they are parties in the same action or totally unrelated cases. (In Re Dela Rosa, 27 Phil. 258. Lim, et al. *vs*. Villorosa A.C. 5303 June 15, 2006).

It is enough that the counsel of one party had a hand in the preparation of the pleading of the other party, claiming adverse and conflicting interest with that of his original client. (Artezuela *vs.* Madferazo, A.C. No. 4354 April 22, 2002).

Respondent violated his Lawyer's Oath when he sent unsealed malicious and libelous letter against herein Complainants without any effort to ascertain the truth thus constituted gross evident bad faith for which act he is liable in CBD Case No. 13-3767 while for acting as counsel for the complainant in the case before the DOJ and [at] the same time preparing the counter affidavit of Berlin and Higino Gabertan who were Respondent[s] in the DOJ case he filed against herein complainants, thus he is also liable under CBD Case No. 13-3767.

It was found out also [that] the Respondent was the defense counsel of Berlin Gabertan whom he charged before the DOJ in an ongoing civil case at San Mateo, Rizal RTC Branch 76 but claimed that he was just acting as counsel pro-bono.

Complainants having presented sufficient evidence thus proving their case by clear preponderance of evidence[,] it is hereby recommended that Respondent be meted the appropriate penalty for the violation he committed.[17]

Report and Recommendation of the IBP-Board of Governors (BOG):

Finding the Report and Recommendation supported by law and the evidence, the IBP-BOG adopted and accepted the Investigating Commissioner's recommendation, but with modification as regards the recommended penalty in that respondent lawyer be suspended from the practice of law for

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[17] *Rollo* (A.C. No. 10992), pp. 264-265.

one year in the complaint filed by Cynthia, Rodolfo, and Arlene; and for two years, in the case filed by Berlin and Higino,[18] said penalties to be served successively.

Ruling

These administrative cases bear some factual resemblance to *Pacana, Jr. v. Atty. Pascual-Lopez*.[19] In *Pacana, Jr.*, the lawyer denied any lawyer-client relationship with the complainant, saying that no formal agreement had been entered to that effect; also, the therein counsel questioned the admissibility of an electronic mail he sent to therein complainant. In said case, the lawyer likewise assured the complainant that there was nothing to worry about when the latter expressed doubts over the propriety of the lawyer's representing conflicting interests. We therein rejected the erring lawyer's defenses, thus:

> Respondent also tries to disprove the existence of such relationship by arguing that no written contract for the engagement of her services was ever forged between her and complainant. This argument all the more reveals respondent's patent ignorance of fundamental laws on contracts and of basic ethical standards expected from an advocate of justice. The IBP was correct when it said:
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> > The absence of a written contract will not preclude the finding that there was a professional relationship between the parties. **Documentary formalism is not an essential element in the employment of an attorney; the contract may be express or implied**. To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession.
>
> Given the situation, the most decent and ethical thing which respondent should have done was either to advise complainant to engage the services of another lawyer since she was already representing the opposing parties, or to desist from acting as representative of Multitel investors and stand as counsel for complainant. She cannot be permitted to do both because that would

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[18] *Id.* at 259-260.

[19] 611 Phil. 399 (2009).

amount to double-dealing and violate our ethical rules on conflict of interest.[20] (Emphasis in the original)

What is more, administrative cases are *sui generis*.[21] This Court, acting as the legal profession's sole disciplinary body, is not strictly bound by the technical rules of procedure and evidence.[22] Indeed, hewing strictly to technical rules of procedure and evidence could at times thwart this Court's efforts to rid the legal profession of unscrupulous individuals who use their very knowledge of the law to perpetrate fraud or commit transgressions to the detriment of their clients, who purposefully have sought their legal opinion and assistance in the hopes of attaining justice.

Here, even disregarding the electronic mail sent by respondent lawyer, we are satisfied that other incontrovertible evidence supports the allegation that a lawyer-client relationship did exist, or had been established, between respondent lawyer on the one hand, and Berlin and Higino on the other. For one thing, it was remarkable that respondent lawyer never refuted or denied Berlin's claim that he (Atty. Alaestante) represented him in a civil case pending before the Regional Trial Court of San Mateo, Rizal (RTC-Rizal). As against a Motion to Discharge Counsel duly filed with the RTC-Rizal, respondent lawyer's bare denial of the existence of a lawyer-client relationship is of no avail.[23] Caught in a web of lies, Atty. Alaestante even contradicted himself when he stated that "[a]fter having been convinced of the personalities of Berlin and Higino Gabertan in relation to counsel'[s] pro bono handling of the case in RTC San Mateo, as well as the smell of estafa having been committed by Berlin Gabertan against the plaintiff thereof, counsel decided not to pursue defending defendant Gabertan."[24] That is the problem with fibs, falsehoods, dissemblances, prevarications, and half-

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[20] *Id.* at 410-411.

[21] *Rico v. Atty. Salutan*, A.C. No. 9257, March 5, 2018.

[22] *Tumbaga v. Atty. Teoxon*, A.C. No. 5573, November 21, 2017.

[23] See *rollo* (A.C. No. 10992), p. 45.

[24] *Id.* at 47.

truths. They not only collide with the truth, they also collide with each other.

More than these, guided by the tenor of a Memorandum of Agreement[25] (MOA) constituted between or amongst, Berlin, respondent lawyer, and two other persons, it can hardly be doubted that Berlin and respondent lawyer had a close relationship with the parties therein, and that he offered his legal expertise to the said parties. This is evident from the language of the MOA where Berlin and respondent lawyer were collectively referred to as the "second parties" who were able to secure "a favorable decision dated August 26, 2011 from the Honorable Metropolitan Trial Court of Manila[,] Branch 26" and were hired "to recover actual and physical possession over" a parcel of land.[26]

It is almost a cliché to say that a lawyer is forbidden "from representing conflicting interests except by written consent of all concerned given after a full disclosure of the facts. Such prohibition is founded on principles of public policy and good taste as the nature of the lawyer-client relations is one of trust and confidence of the highest degree. Lawyers are expected not only to keep inviolate the client's confidence, but also to avoid the appearance of [impropriety] and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice."[27]

The alleged "non-payment of professional [fees, even if true, would] not exculpate respondent [lawyer] from liability. [The a]bsence of monetary consideration does not exempt lawyers from complying with the prohibition against pursuing cases with conflicting interests. The prohibition attaches from the moment the attorney-client relationship is established and extends even beyond the duration of the professional relationship."[28]

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[25] *Id.* at 62-63. Emphasis supplied.

[26] *Id.* at 62.

[27] *Gonzales v. Cabucana, Jr.,* 515 Phil. 296, 304 (2006). Citations omitted.

[28] *Castro-Justo v. Atty. Galing,* 676 Phil. 139, 144 (2011), citing *Buted v. Atty. Hernando*, 280 Phil. 1, 8 (1991).

The sending of the unsealed scurrilous letter by respondent lawyer to DOJ Secretary De Lima, was a violation of Rule 8.01 of the Code of Professional Responsibility, which stipulates that "[a] lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper." In that letter, not only did respondent lawyer employ intemperate or unbridled language, he was also guilty of corner-cutting unprofessionally. His act of directly asking the Secretary of Justice to intervene immediately in the syndicated estafa, grave threats and qualified theft cases showed his propensity for utterly disregarding the rules of procedure which had been formulated precisely to regulate and govern legal and judicial processes properly.

Under the circumstances, we find the penalty of suspension for six (6) months from the practice of law, in connection with A.C. No. 10992, and suspension for one (1) year from the practice of law, in connection with A.C. No. 10993, as recommended by the Investigating Commissioner, proper and commensurate.

ACCORDINGLY, this Court resolves to **SUSPEND** Atty. Edwin M. Alaestante from the practice of law for six (6) months in A.C. No. 10992 and for one (1) year in A.C. No. 10993, reckoned from his receipt of this Decision, said penalties to be served in succession, with a **WARNING** that a repetition of the same or similar offense will warrant a more severe penalty.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant, and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is also **DIRECTED** to append a copy of this Decision to respondent's record as a member of the Bar.

SO ORDERED.

Carpio, Acting C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

EN BANC

[A.M. No. 2011-05-SC. June 19, 2018]

RE: DECEITFUL CONDUCT OF IGNACIO S. DEL ROSARIO, CASH CLERK III, RECORDS AND MISCELLANEOUS MATTER SECTION, CHECKS DISBURSEMENT DIVISION, FMO-OCA.

IGNACIO S. DEL ROSARIO, *petitioner.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDICIAL CLEMENCY; JUDICIAL CLEMENCY IS AN ACT OF MERCY REMOVING ANY DISQUALIFICATION FROM THE ERRING OFFICIAL; GUIDELINES IN RESOLVING REQUESTS FOR JUDICIAL CLEMENCY, ENUMERATED.— Judicial clemency is an act of mercy removing any disqualification from the erring official. It is not a privilege or a right that can be availed of at any time. The Court will only grant it in meritorious cases. Proof of reformation and a showing of potential and promise are considered as indispensable requirements to the grant of judicial clemency. In *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency*, the Court laid down the following guidelines in resolving requests for judicial clemency: 1. There must be proof of remorse and reformation. x x x. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation. 2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation. 3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself. 4. There must be a showing of promise x x x as well as potential for public service. 5. There must be other relevant factors and circumstances that may justify clemency.

2. ID.; ID.; ID.; A PLEA FOR JUDICIAL CLEMENCY WILL NOT BE HEEDED WHEN TO GRANT SUCH A REQUEST WOULD PUT THE GOOD NAME AND INTEGRITY OF

THE COURTS OF JUSTICE IN PERIL.— In the case at bar, what is being considered is the preservation and promotion of the public's confidence in the integrity of the Judiciary. It cannot be denied that petitioner took advantage of the trust and confidence ascribed to him as a court employee. Petitioner's infractions tainted the public perception of the image of the Court, casting serious doubt as to the ability of the Court to effectively exercise its power of administrative supervision over its employees. In an array of cases, the Court has come down hard and wielded the rod of discipline against members of the Judiciary who have failed to meet the exacting standards of judicial conduct. Judicial clemency is not a privilege or a right that can be availed of at any time. It will only be granted by the Court if there is a showing that it is merited. A plea for judicial clemency will not be heeded when to grant such a request would put the good name and integrity of the courts of justice in peril.

3. **ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; ALL COURT PERSONNEL ARE MANDATED TO ADHERE TO THE STRICTEST STANDARDS OF HONESTY, INTEGRITY, MORALITY, AND DECENCY IN BOTH THEIR PROFESSIONAL AND PERSONAL CONDUCT; FAILURE TO MEET THE EXACTING STANDARD IN CASE AT BAR.—** Time and time again, the Court has repeatedly held that the image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel. All court personnel are mandated to adhere to the strictest standards of honesty, integrity, morality, and decency in both their professional and personal conduct. In order to preserve the good name and integrity of the courts of justice, they must exemplify the highest sense of honesty and integrity not only in the performance of their official duties but also in their private dealings with other people. It cannot be gainsaid that, as an OCA employee, it was expected from petitioner to set a good example for other court employees in the standards of propriety, honesty, and fairness. It was incumbent upon petitioner to practice a high degree of work ethic and to abide by the exacting principles of ethical conduct and decorum in both his professional and private dealings. Clearly, petitioner failed to meet the aforesaid standards, having placed his personal interest over the interest of Primo, who trusted him wholeheartedly as a friend and confidant. Blatantly overlooking

the Court's interest in the preservation and promotion of the integrity of the Judiciary, petitioner misappropriated the money that was entrusted to him by Primo and made misrepresentations to cover up his misappropriation of the entrusted sum. Petitioner did not even immediately return the money he misappropriated, despite Primo's demands. Petitioner's proffered reason for the misappropriation of the money that was entrusted to him by Primo hardly warrants any showing of mercy and compassion from the Court. In addition, while petitioner eventually paid Primo's financial liability with the Court, it was pointed out by the OAS that such restitution was only borne from petitioner's fear of possible administrative sanction.

R E S O L U T I O N

CARPIO, *J.*:

The Case

For resolution is a petition for clemency dated 4 September 2017 filed by Ignacio S. Del Rosario (petitioner), a former Cash Clerk III of the Records and Miscellaneous Matter Section, Checks Disbursement Division, Financial Management Office-Office of the Court Administrator.

The Facts

On 19 April 2011, the Office of the Court Administrator (OCA) was furnished a copy of the letter-complaint dated 6 April 2011 of Noel G. Primo (Primo), a retired Sheriff of the Regional Trial Court, Branch 65, Bulan, Sorsogon. The letter-complaint of Primo was addressed to petitioner, demanding the return of a sum of money that was entrusted to petitioner by him.

According to Primo, he entrusted to petitioner the amount of ₱34,000.00, because petitioner offered to help him process his retirement papers. Out of the said amount, ₱32,421.43 would be paid by petitioner to the Court's cashier, while the balance would belong to petitioner as a token for the services that he

had rendered to Primo. From December 2010 to January 2011, petitioner assured Primo that his retirement papers were already being processed by the Government Service Insurance System (GSIS). In fact, petitioner even blamed the GSIS for the slow processing of Primo's retirement papers. However, Primo later on discovered that his retirement papers were still with the Court and that petitioner did not actually pay his financial liability with the Court. Hence, Primo demanded from petitioner that he return the money that was entrusted to him. Unfortunately, Primo's demands were unheeded by petitioner. In his letter-complaint, Primo accused petitioner of dishonesty, grave abuse of trust and confidence, and conduct extremely prejudicial to the best interest of the service.

Court Administrator Jose Midas P. Marquez indorsed the matter for appropriate action to the Office of Administrative Services (OAS). The OAS directed petitioner to file his comment on the letter-complaint of Primo. In his undated letter, petitioner admitted that he received ₱34,000.00 from Primo and explained that he failed to pay ₱32,421.43 to the Court's cashier, because he was compelled to use the money to pay for his son's hospitalization. He averred that he was already able to pay Primo's financial liability with the Court, with the help of his friends and relatives, and thus, he requested that the matter be considered as settled and that the complaint against him be dismissed. On his part, Primo manifested that he no longer desired to continue his complaint against petitioner, because of the restitution and payment made by petitioner.

After evaluating Primo's letter-complaint and petitioner's comment, the OAS recommended that petitioner be held liable for serious dishonesty and conduct prejudicial to the best interest of the service. According to the OAS, petitioner's subsequent act of finally paying Primo's financial liability with the Court was only a mere afterthought, because of his fear of a possible administrative sanction. For his penalty, the OAS recommended that petitioner be suspended from office for six months, without pay, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

On 6 September 2011, the Court En Banc rendered a Decision agreeing with the finding of the OAS that petitioner's actions constituted dishonesty and demonstrated conduct prejudicial to the best interest of the service. However, instead of accepting the recommended penalty imposed by the OAS, the Court imposed the penalty of dismissal from the service. The dispositive portion of the subject Decision reads:

> WHEREFORE, premises considered, we hereby DISMISS Ignacio S. Del Rosario, Cash Clerk III of the Records and Miscellaneous Matter Section, Checks Disbursement Division, [Financial] Management Office-Office of the Court Administrator, from the service for Dishonesty and Conduct Prejudicial to the Best Interest of the Service. The penalty of dismissal shall carry the accessory penalties of forfeiture of all his retirement benefits, except accrued leave benefits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.[1]

On 19 September 2011, petitioner's wife and children filed a pleading for compassion and mercy with the Court. In their pleading for compassion and mercy, petitioner's wife and children prayed that petitioner be afforded one last chance to be reinstated, considering his 33 years of service in the Judiciary or, if reinstatement was no longer feasible, that petitioner be allowed to retire from the service, in order for him to avail of the financial benefits therefrom. In a Resolution dated 20 September 2011, the Court En Banc resolved to treat the pleading for compassion and mercy filed by petitioner's wife and children as a motion for reconsideration of the En Banc Decision dated 6 September 2011 and deny with finality the said motion for reconsideration, there being no substantial matters raised to warrant the reversal of the challenged Decision.

On 4 October 2011, petitioner himself filed a motion for reconsideration of the En Banc Decision dated 6 September 2011. In his motion for reconsideration, petitioner did not question the finding of his guilt, fully admitting his

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[1] *Rollo*, p. 39.

transgressions. Petitioner noted that, up until his dismissal, he had served the Judiciary for 33 years and, except for his administrative case, he had not been charged with any other misdemeanor, during his entire period of employment. In a Resolution dated 11 October 2011, the Court En Banc resolved to deny with finality the said motion for reconsideration, there being no substantial matters raised to warrant the reversal of the questioned Decision.

Petitioner filed a letter dated 3 November 2016 requesting the Court for clemency in connection with the En Banc Decision dated 6 September 2011. Through a letter dated 29 November 2016, the Office of the Chief Justice referred to then Clerk of Court Felipa B. Anama for appropriate action the letter dated 3 November 2016 of petitioner. In a Resolution dated 6 June 2017, the Court En Banc resolved to note the letter dated 3 November 2016 of petitioner and direct the OCA to comment on the said letter.

In compliance with the Resolution of the Court En Banc dated 6 June 2017, the OCA, in its Memorandum dated 19 July 2017, recommended that the letter dated 3 November 2016 of petitioner requesting clemency in connection with the En Banc Decision dated 6 September 2011 be granted.

After almost a year since he filed his letter requesting the Court for clemency, petitioner filed a petition for clemency dated 4 September 2017 with the Court. Through a letter dated 29 November 2017, the Office of the Chief Justice referred to then Clerk of Court Felipa B. Anama for appropriate action the petition for clemency dated 4 September 2017 of petitioner. In a Resolution dated 10 January 2018, the Court En Banc resolved to refer to the OCA for comment the petition for clemency dated 4 September 2017 of petitioner.

The OCA's Recommendation

In compliance with the Resolution of the Court En Banc dated 10 January 2018, the OCA, in its Memorandum dated 24 January 2018, commented that the petition for clemency dated 4 September 2017 of petitioner is a rehash of his earlier letter

dated 3 November 2016 requesting the Court for clemency. The OCA further noted that, in its Memorandum dated 19 July 2017, it had already recommended that petitioner's request for clemency in his letter dated 3 November 2016 be granted, to wit:

> This Office has reexamined respondent Del Rosario's case and notes certain circumstances that can be considered in his petition for judicial clemency.
>
> First, respondent Del Rosario has rendered thirty-three (33) years of government service and this is the first and only administrative case filed against him. Second, respondent Del Rosario does not question the decision dismissing him from the service. In fact, he has owned up to his mistakes and claims to have learned his lesson. Third, he was dismissed five (5) years ago and regrets what he did because he saw how his family suffered as a consequence. He claims that he is a much better person now, with so much faith in God. Lastly, due to old age, he is suffering from various illnesses that require medical treatment which he cannot afford due to poverty caused by his unemployment and dismissal with forfeiture of retirement benefits.
>
> Considering the aforementioned circumstances and respondent Del Rosario's repentance for what he did, his plea for clemency merits compassion from the Court. For humanitarian reasons, this Office recommends that respondent Del Rosario be allowed to reap the fruits of his thirty-three (33) years of government service particularly his retirement benefits to support him and his medical needs.[2]

In its Memorandum dated 24 January 2018, the OCA recommended that the request of petitioner for clemency contained in his petition for clemency dated 4 September 2017 in connection with the En Banc Decision dated 6 September 2011 be granted.

The Court's Ruling

The Court disagrees with the recommendation of the OCA in its Memorandum dated 24 January 2018.

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[2] *Id*. at 111.

Judicial clemency is an act of mercy removing any disqualification from the erring official. It is not a privilege or a right that can be availed of at any time. The Court will only grant it in meritorious cases. Proof of reformation and a showing of potential and promise are considered as indispensable requirements to the grant of judicial clemency.[3]

In *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency*,[4] the Court laid down the following guidelines in resolving requests for judicial clemency:

1. There must be proof of remorse and reformation. x x x. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.
2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation.
3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.
4. There must be a showing of promise x x x as well as potential for public service.
5. There must be other relevant factors and circumstances that may justify clemency.[5]

In support of the instant petition for clemency, petitioner merely rehashed his averments in his letter dated 3 November 2016 requesting the Court for clemency in connection with the En Banc Decision dated 6 September 2011. In both his letter and petition for clemency, petitioner did not question the subject Decision, which dismissed him after 33 years of service for

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[3] *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency*, 560 Phil. 1, 5 (2007).

[4] 560 Phil. 1 (2007).

[5] *Id*. at 5-6.

dishonesty and conduct prejudicial to the best interest of the service. Petitioner commented that, after his dismissal from the service, he has repented and continues to be remorseful for his past misdeeds, because of the adverse effects they had on his family.

In his petition for clemency, petitioner attached a Certificate of Good Moral Standing dated 30 August 2017 issued by the Office of the Sangguniang Barangay of Sta. Cruz, Naga City, certifying that he has been an active partner in various programs and activities conducted in their barangay, and a Certificate of Good Moral Standing dated 30 August 2017 issued by the San Lorenzo Ruiz de Manila Parish, Abella, Naga City, affirming his earnest efforts to become a renewed and devoted Catholic and attesting that he has been an active member of the Parish Lay Ministry. Nevertheless, the aforementioned do not sufficiently prove that he has already fully and effectively reformed himself after his dismissal from the service meriting the Court's liberality. Being an active member in his barangay and Parish Lay Ministry does not necessarily show true repentance and reformation, considering that what is at stake is the integrity of the Judiciary.

While petitioner claims that he has been remorseful for his actions, there is no strong indication that he has creditably reformed himself. It is incumbent upon petitioner to prove in sufficient terms how he has effectively reformed himself, given his past transgressions which tarnished the Court's image and reputation. Moreover, petitioner likewise failed to present any evidence to demonstrate his promise and potential for public service. To emphasize, proof of reformation and a showing of potential and promise are considered as indispensable requirements to the grant of judicial clemency.[6]

Time and time again, the Court has repeatedly held that the image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel. All court personnel are mandated

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[6] *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency*, *supra*.

to adhere to the strictest standards of honesty, integrity, morality, and decency in both their professional and personal conduct. In order to preserve the good name and integrity of the courts of justice, they must exemplify the highest sense of honesty and integrity not only in the performance of their official duties but also in their private dealings with other people.[7]

It cannot be gainsaid that, as an OCA employee, it was expected from petitioner to set a good example for other court employees in the standards of propriety, honesty, and fairness. It was incumbent upon petitioner to practice a high degree of work ethic and to abide by the exacting principles of ethical conduct and decorum in both his professional and private dealings. Clearly, petitioner failed to meet the aforesaid standards, having placed his personal interest over the interest of Primo, who trusted him wholeheartedly as a friend and confidant.

Blatantly overlooking the Court's interest in the preservation and promotion of the integrity of the Judiciary, petitioner misappropriated the money that was entrusted to him by Primo and made misrepresentations to cover up his misappropriation of the entrusted sum. Petitioner did not even immediately return the money he misappropriated, despite Primo's demands. Petitioner's proffered reason for the misappropriation of the money that was entrusted to him by Primo hardly warrants any showing of mercy and compassion from the Court. In addition, while petitioner eventually paid Primo's financial liability with the Court, it was pointed out by the OAS that such restitution was only borne from petitioner's fear of possible administrative sanction.

Considering the abovementioned circumstances, the Court believes that its compassion has to yield to the higher demand of upholding the integrity of the Judiciary. In the case at bar, what is being considered is the preservation and promotion of the public's confidence in the integrity of the Judiciary. It cannot be denied that petitioner took advantage of the trust and confidence ascribed to him as a court employee. Petitioner's

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[7] *Floria v. Sunga*, 420 Phil. 637, 650 (2001).

infractions tainted the public perception of the image of the Court, casting serious doubt as to the ability of the Court to effectively exercise its power of administrative supervision over its employees. In an array of cases, the Court has come down hard and wielded the rod of discipline against members of the Judiciary who have failed to meet the exacting standards of judicial conduct. Judicial clemency is not a privilege or a right that can be availed of at any time. It will only be granted by the Court if there is a showing that it is merited.[8] A plea for judicial clemency will not be heeded when to grant such a request would put the good name and integrity of the courts of justice in peril.

WHEREFORE, the petition for clemency dated 4 September 2017 of petitioner Ignacio S. Del Rosario is hereby **DENIED**.

SO ORDERED.

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

EN BANC

[G.R. No. 202836. June 19, 2018]

FIRST SARMIENTO PROPERTY HOLDINGS, INC., *petitioner, vs.* **PHILIPPINE BANK OF COMMUNICATIONS,** *respondent.*

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[8] *Concerned Lawyers of Bulacan v. Villalon-Pornillos*, A.M. No. RTJ-09-2183, 14 February 2017, 817 SCRA 440, 446.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; THE ISSUE OF JURISDICTION IS A PURE QUESTION OF LAW, HENCE, DIRECT FILING OF APPEAL WITH THE SUPREME COURT IS PROPER PURSUANT TO LAW AND PREVAILING JURISPRUDENCE.—** Rule 45 of the Rules of Court allows for a direct recourse to this Court by appeal from a judgment, final order, or resolution of the Regional Trial Court. x x x Thus, there is no question that a petitioner may file a verified petition for review directly with this Court if only questions of law are at issue; however, if both questions of law and of facts are present, the correct remedy is to file a petition for review with the Court of Appeals. x x x In the case at bar, the underlying question for this Court's resolution pertains to jurisdiction, or to be more precise, whether the Regional Trial Court attained jurisdiction over petitioner's Complaint with the amount of docket fees paid. Considering that the issue of jurisdiction is a pure question of law, petitioner did not err in filing its appeal directly with this Court pursuant to law and prevailing jurisprudence.

2. **ID.; ACTIONS; JURISDICTION; COURTS EXERCISE THE POWERS CONFERRED ON THEM WITH BINDING EFFECT IF THEY ACQUIRE JURISDICTION OVER THE CAUSE OF ACTION OR THE SUBJECT MATTER OF THE CASE, THE THING OR THE *RES*; THE PARTIES AND THE REMEDY; EXPLAINED.—** Jurisdiction is "the power and authority of a court to hear, try and decide a case" brought before it for resolution. Courts exercise the powers conferred on them with binding effect if they acquire jurisdiction over: "(a) the cause of action or the subject matter of the case; (b) the thing or the res; (c) the parties; and (d) the remedy." x x x Jurisdiction over the thing or the *res* is a court's authority over the object subject of litigation. The court obtains jurisdiction or actual custody over the object through the seizure of the object under legal process or the institution of legal proceedings which recognize the power and authority of the court. Jurisdiction over the parties is the court's power to render judgment that are binding on the parties. The courts acquire jurisdiction over the plaintiffs when they file their initiatory pleading, while the

defendants come under the court's jurisdiction upon the valid service of summons or their voluntary appearance in court. Jurisdiction over the cause of action or subject matter of the case is the court's authority to hear and determine cases within a general class where the proceedings in question belong. This power is conferred by law and cannot be acquired through stipulation, agreement between the parties, or implied waiver due to the silence of a party. Jurisdiction is conferred by the Constitution, with Congress given the plenary power, for cases not enumerated in Article VIII, Section 5 of the Constitution, to define, prescribe, and apportion the jurisdiction of various courts.

3. ID.; BATAS PAMBANSA BLG. 129, AS AMENDED BY REPUBLIC ACT NO. 7691 (THE JUDICIARY REORGANIZATION ACT OF 1980, AS AMENDED); THE JUDICIARY REORGANIZATION ACT OF 1980, AS AMENDED BY REPUBLIC ACT NO. 7691 PROVIDED FOR THE JURISIDICTIONAL DIVISION BETWEEN THE FIRST AND SECOND LEVEL COURTS BY CONSIDERING THE COMPLEXITY OF THE CASES AND THE EXPERIENCE NEEDED BY THE JUDGES ASSIGNED TO HEAR THE CASES; ELUCIDATED.— Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980 as amended by Republic Act No. 7691, provided for the jurisdictional division between the first and second level courts by considering the complexity of the cases and the experience needed of the judges assigned to hear the cases. In criminal cases, first level courts are granted exclusive original jurisdiction to hear complaints on violations of city or municipal ordinances and offenses punishable with imprisonment not exceeding six (6) years. In contrast, second level courts, with more experienced judges sitting at the helm, are granted exclusive original jurisdiction to preside over all other criminal cases not within the exclusive jurisdiction of any other court, tribunal, or body. The same holds true for civil actions and probate proceedings, where first level courts have the power to hear cases where the value of personal property, estate, or amount of the demand does not exceed ₱100,000.00 or ₱200,000.00 if in Metro Manila. First level courts also possess the authority to hear civil actions involving title to, possession of, or any interest in real property where the value does not exceed ₱20,000.00 or ₱50,000.00 if the real property is situated in

Metro Manila. Second level courts then assume jurisdiction when the values involved exceed the threshold amounts reserved for first level courts or when the subject of litigation is incapable of pecuniary estimation. First level courts were also conferred with the power to hear the relatively uncomplicated cases of forcible entry and unlawful detainer, while second level courts are authorized to hear all actions in admiralty and maritime jurisdiction with claims above a certain threshold amount. Second level courts are likewise authorized to hear all cases involving the contract of marriage and marital relations, in recognition of the expertise and probity required in deciding issues which traverse the marital sphere.

4. ID.; ID.; REGIONAL TRIAL COURTS (RTC); THE LAW PROVIDES THE RTC WITH EXCLUSIVE, ORIGINAL JURISDICTION OVER ALL CIVIL ACTIONS IN WHICH THE SUBJECT OF THE LITIGATION IS INCAPABLE OF PECUNIARY ESTIMATION; CLARIFIED.— Section 19(1) of Batas Pambansa Blg. 129, as amended, provides Regional Trial Courts with exclusive, original jurisdiction over "all civil actions in which the subject of the litigation is incapable of pecuniary estimation." *Lapitan v. Scandia* instructed that to determine whether the subject matter of an action is incapable of pecuniary estimation, the nature of the principal action or remedy sought must first be established. This finds support in this Court's repeated pronouncement that jurisdiction over the subject matter is determined by examining the material allegations of the complaint and the relief sought. x x x However, *Lapitan* stressed that where the money claim is only a consequence of the remedy sought, the action is said to be one incapable of pecuniary estimation: x x x *Heirs of Sebe v. Heirs of Sevilla* likewise stressed that if the primary cause of action is based on a claim of ownership or a claim of legal right to control, possess, dispose, or enjoy such property, the action is a real action involving title to real property. A careful reading of petitioner's Complaint convinces this Court that petitioner never prayed for the reconveyance of the properties foreclosed during the auction sale, or that it ever asserted its ownership or possession over them. Rather, it assailed the validity of the loan contract with real estate mortgage that it entered into with respondent because it supposedly never received the proceeds of the ₱100,000,000.00 loan agreement. x x x *Far East Bank and Trust Company v. Shemberg Marketing Corporation*

stated that an action for cancellation of mortgage has a subject that is incapable of pecuniary estimation.

5. CIVIL LAW; MORTGAGE; ACT NO. 3135, AS AMENDED (AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES); THE REGISTRATION OF THE CERTIFICATE OF SALE ISSUED BY THE SHERIFF AFTER AN EXTRAJUDICIAL SALE IS A MANDATORY REQUIREMENT; THUS, IF THE CERTIFICATE OF SALE IS NOT REGISTERED WITH THE REGISTRY OF DEEDS, THE PROPERTY SOLD AT AUCTION IS NOT CONVEYED TO THE NEW OWNER AND THE PERIOD OF REDEMPTION DOES NOT BEGIN TO RUN; APPLICATION IN CASE AT BAR.— Section 6 of Act No. 3135, as amended, provides that a property sold through an extrajudicial sale may be redeemed "at any time within the term of one year from and after the date of the sale": x x x *Mahinay v. Dura Tire & Rubber Industries Inc.* clarified that "[t]he date of the sale referred to in Section 6 is the date the certificate of sale is registered with the Register of Deeds. This is because the sale of registered land does not 'take effect as a conveyance, or bind the land' until it is registered." The registration of the certificate of sale issued by the sheriff after an extrajudicial sale is a mandatory requirement; thus, if the certificate of sale is not registered with the Registry of Deeds, the property sold at auction is not conveyed to the new owner and the period of redemption does not begin to run. In the case at bar, the Ex-Officio Sheriff of the City of Malolos, Bulacan was restrained from registering the certificate of sale with the Registry of Deeds of Bulacan and the certificate of sale was only issued to respondent after the Complaint for annulment of real estate mortgage was filed. Therefore, even if the properties had already been foreclosed when the Complaint was filed, their ownership and possession remained with petitioner since the certificate of sale was not registered with the Register of Deeds. This supports petitioner's claim that it never asked for the reconveyance of or asserted its ownership over the mortgaged properties when it filed its Complaint since it still enjoyed ownership and possession over them.

6. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; TWO INSTANCES WHEN

A TEMPORARY RESTRAINING ORDER MAY BE ISSUED BY A TRIAL COURT, DISTINGUISHED.— Rule 58, Section 5 of the Rules of Court provides the instances when a temporary restraining order may be issued: x x x It is clear that a temporary restraining order may be issued by a trial court in only two (2) instances: *first*, when great or irreparable injury would result to the applicant even before the application for writ of preliminary injunction can be heard; and *second*, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury. The executive judge of a multi-sala court or the presiding judge of a single-sala court may issue a 72-hour temporary restraining order. In both instances, the temporary restraining order may be issued *ex parte*. However, in the first instance, the temporary restraining order has an effectivity of only 20 days to be counted from service to the party sought to be enjoined. Likewise, within those 20 days, the court shall order the enjoined party to show why the injunction should not be granted and shall then determine whether or not the injunction should be granted. In the second instance, when there is extreme urgency and the applicant will suffer grave injustice and irreparable injury, the court shall issue a temporary restraining order effective for only 72 hours upon issuance. Within those 72 hours, the court shall conduct a summary hearing to determine if the temporary restraining order shall be extended until the application for writ of preliminary injunction can be heard. However, in no case shall the extension exceed 20 days. If the application for preliminary injunction is denied or not resolved within the given periods, the temporary restraining order is automatically vacated and the court has no authority to extend or renew it on the same ground of its original issuance.

7. ID.; ID.; ID.; A TEMPORARY RESTRAINING ORDER CANNOT BE EXTENDED INDEFINITELY TO TAKE THE PLACE OF A WRIT OF PRELIMINARY INJUNCTION, SINCE A TEMPORARY RESTRAINING ORDER IS INTENDED ONLY TO HAVE A LIMITED LIFESPAN AND DEEMED AUTOMATICALLY VACATED UPON THE EXPIRATION OF 72 HOURS OR 20 DAYS, AS THE CASE MAY BE; VIOLATION IN CASE AT BAR.— Despite the clear wording of the rules, the Regional Trial Court issued a status quo ante order dated January 4, 2012, indefinitely extending the temporary restraining order on the registration

of the certificate of sale with the Registry of Deeds. Petitioner applied for a writ of preliminary injunction, yet the Regional Trial Court did not conduct any hearing for that purpose and merely directed the parties to observe the status quo ante. *Miriam College Foundation, Inc v. Court of Appeals* explained the difference between preliminary injunction and a restraining order. x x x A temporary restraining order cannot be extended indefinitely to take the place of a writ of preliminary injunction, since a temporary restraining order is intended only to have a limited lifespan and is deemed automatically vacated upon the expiration of 72 hours or 20 days, as the case may be. As such, the temporary restraining order has long expired and, in the absence of a preliminary injunction, there was nothing to stop the sheriff from registering the certificate of sale with the Registry of Deeds. This Court has repeatedly expounded on the nature of a temporary restraining order and a preliminary injunction. Yet lower courts consistently interchange these ancillary remedies and disregard the sunset clause inherent in a temporary restraining order by erroneously extending it indefinitely. Such ignorance or defiance of basic remedial measures is a gross disservice to the public, who look towards the court for legal guidance and legal remedy. More importantly, this cavalier attitude towards these injunctive reliefs might even be construed as a deliberate effort to look the other way to favor a party, which will then sully the image of the entire judiciary. Henceforth, this Court will demand stricter compliance with the rules from the members of the bench as regards their issuances of these injunctive reliefs.

APPEARANCES OF COUNSEL

Dabu and Associates for petitioner.
Alba & Partners for respondent.

D E C I S I O N

LEONEN, *J.*:

To determine the nature of an action, whether or not its subject matter is capable or incapable of pecuniary estimation, the nature of the principal action or relief sought must be ascertained. If

the principal relief is for the recovery of a sum of money or real property, then the action is capable of pecuniary estimation. However, if the principal relief sought is not for the recovery of sum of money or real property, even if a claim over a sum of money or real property results as a consequence of the principal relief, the action is incapable of pecuniary estimation.

This resolves the Petition for Review[1] filed by First Sarmiento Property Holdings, Inc. (First Sarmiento) assailing the April 3, 2012 Decision[2] and July 25, 2012 Order[3] of Branch 11, Regional Trial Court, Malolos City, Bulacan in Civil Case No. 04-M-2012.

The facts as established by the parties are as follows:

On June 19, 2002,[4] First Sarmiento obtained from Philippine Bank of Communications (PBCOM) a ₱40,000,000.00 loan, which was secured by a real estate mortgage[5] over 1,076 parcels of land.[6]

On March 15, 2003,[7] the loan agreement was amended[8] with the increase of the loan amount to ₱51,200,000.00. On September 15, 2003, the loan agreement was further amended[9] when the loan amount was increased to ₱100,000,000.00.

On January 2, 2006,[10] PBCOM filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage.[11] It claimed in its Petition

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[1] *Rollo,* pp. 3-20.

[2] *Id.* at 21-22. The Decision was penned by Judge Basilio R. Gabo, Jr.

[3] *Id.* at 23. The Resolution was penned by Judge Basilio R. Gabo, Jr.

[4] *Id.* at 53.

[5] *Id.* at 33-34.

[6] *Id.* at 21 and 35-52.

[7] *Id.* at 21.

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

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

[10] *Id.* at 179.

[11] *Id.* at 57-64.

that it sent First Sarmiento several demand letters, yet First Sarmiento still failed to pay the principal amount and accrued interest on the loan. This prompted PBCOM to resort to extrajudicial foreclosure of the mortgaged properties, a recourse granted to it under the loan agreement.[12]

On December 27, 2011, First Sarmiento attempted to file a Complaint for annulment of real estate mortgage with the Regional Trial Court. However, the Clerk of Court refused to accept the Complaint in the absence of the mortgaged properties' tax declarations, which would be used to assess the docket fees.[13]

On December 29, 2011, Executive Judge Renato C. Francisco (Judge Francisco), First Vice-Executive Judge Ma. Theresa A. Mendoza Arcega, Second Vice-Executive Judge Ma. Belen R. Liban, and Third Vice-Executive Judge Basilio R. Gabo, Jr. of the Regional Trial Court of City of Malolos, Bulacan, granted First Sarmiento's Urgent Motion to Consider the Value of Subject Matter of the Complaint as Not Capable of Pecuniary Estimation, and ruled that First Sarmiento's action for annulment of real estate mortgage was incapable of pecuniary estimation.[14]

Also on December 29, 2011, the mortgaged properties were auctioned and sold to PBCOM as the highest bidder.[15]

On January 2, 2012, First Sarmiento filed a Complaint for annulment of real estate mortgage and its amendments, with prayer for the issuance of temporary restraining order and preliminary injunction.[16] It paid a filing fee of ₱5,545.00.[17]

First Sarmiento claimed in its Complaint that it never received the loan proceeds of ₱100,000,000.00 from PBCOM, yet the latter still sought the extrajudicial foreclosure of real estate

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[12] *Id.* at 62-64.

[13] *Id.* at 155.

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

[15] *Id.* at 179.

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

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

mortgage. It prayed for the issuance of a temporary restraining order and preliminary injunction to enjoin the Ex-Officio Sheriff from proceeding with the foreclosure of the real estate mortgage or registering the certificate of sale in PBCOM's favor with the Registry of Deeds of Bulacan.[18]

That same day, Judge Francisco issued an ex-parte temporary restraining order for 72 hours, enjoining the registration of the certificate of sale with the Registry of Deeds of Bulacan.[19]

On January 4, 2012, the Regional Trial Court directed the parties to observe the status quo ante.[20]

On January 24, 2012, the Clerk of Court and Ex-Officio Sheriff of Malolos City, Bulacan issued a certificate of sale to PBCOM.[21]

In its Opposition (Re: Application for Issuance of Temporary Restraining Order),[22] PBCOM asserted that the Regional Trial Court failed to acquire jurisdiction over First Sarmiento's Complaint because the action for annulment of mortgage was a real action; thus, the filing fees filed should have been based on the fair market value of the mortgaged properties.[23]

PBCOM also pointed out that the Regional Trial Court's directive to maintain the status quo order beyond 72 hours constituted an indefinite extension of the temporary restraining order, a clear contravention of the rules.[24]

On April 3, 2012, Branch 11, Regional Trial Court,[25] Malolos City, Bulacan dismissed the Complaint for lack of jurisdiction:

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

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

[20] *Id.* at 21.

[21] *Id.* at 179.

[22] *Id.* at 71-81.

[23] *Id.* at 76-77.

[24] *Id.* at 77-79.

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

Following the High Court's ruling in the case of Home Guaranty Corporation v. R. II Builders, Inc. and National Housing Authority, G.R. No. 192549, March 9, 2011, cited by the bank in its Rejoinder, which appears to be the latest jurisprudence on the matter to the effect that an action for annulment or rescission of contract does not operate to efface the true objective and nature of the action which is to recover real property, this Court hereby RESOLVES TO DISMISS the instant case for lack of jurisdiction, plaintiff having failed to pay the appropriate filing fees.

Accordingly, the instant case is hereby **DISMISSED.**

SO ORDERED.[26]

On July 25, 2012, the Regional Trial Court[27] denied First Sarmiento's motion for reconsideration.[28]

On August 17, 2012, First Sarmiento sought direct recourse to this Court with its Petition for Review[29] under Rule 45. It insists that its Complaint for the annulment of real estate mortgage was incapable of pecuniary estimation.[30] It points out that the Executive Judge and Vice-Executive Judges of the Regional Trial Court likewise acknowledged that its action was incapable of pecuniary estimation.[31]

Petitioner highlights that the Supreme Court *En Banc* in *Lu v. Lu Ym* held "that an action for declaration of nullity of issuance of shares or an action questioning the legality of a conveyance is one not capable of pecuniary estimation."[32] Furthermore, petitioner maintains that the Supreme Court *En Banc* in *Bunayog v. Tunas* also established that a complaint questioning the validity of a mortgage is an action incapable of pecuniary estimation.[33]

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[26] *Id.* at 22.

[27] *Id.* at 23.

[28] *Id.* at 90-94.

[29] *Id.* at 3-20.

[30] *Id.* at 11-13.

[31] *Id.* at 10.

[32] *Id.* at 14.

[33] *Id.* at 14.

It emphasizes that *Home Guaranty Corporation v. R-II Builders,* which the Regional Trial Court relied on to dismiss its complaint for lack of jurisdiction, was rendered by a division of the Supreme Court; hence, it cannot modify or reverse a doctrine or principle of law laid down by the Supreme Court *En Banc*.[34]

On September 19, 2012,[35] this Court directed respondent PBCOM to comment on the petition.

In its Comment,[36] respondent contends that petitioner's action to annul the real estate mortgage and enjoin the foreclosure proceedings did not hide the true objective of the action, which is to restore petitioner's ownership of the foreclosed properties.[37]

Respondent maintains that this Court has already settled that "a complaint for cancellation of sale which prayed for both permanent and preliminary injunction aimed at the restoration of possession of the land in litigation is a real action."[38]

It likewise stresses that since petitioner's primary objective in filing its Complaint was to prevent the scheduled foreclosure proceedings over the mortgaged properties and the conveyance of their ownership to the highest bidder, the case was a real action.[39]

Finally, it denies that *Home Guaranty Corporation* modified and reversed *Lu v. Lu Ym* because the factual and legal milieus of these two (2) cases were different.[40]

On November 26, 2012,[41] this Court required petitioner to file a reply to the comment.

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

[35] *Id.* at 113.

[36] *Id.* at 118-133.

[37] *Id.* at 122.

[38] *Id.*

[39] *Id.* at 125.

[40] *Id.* at 128-129.

[41] *Id.* at 137.

On February 1, 2013, petitioner filed its Reply[42] where it denies that its Complaint was for the annulment of the foreclosure sale, because when it filed its Complaint, the foreclosure sale had not yet happened.[43]

It proclaims that its Complaint sought the removal of the lien on the mortgaged properties and was not intended to recover ownership or possession since it was still the registered owner with possession of the mortgaged properties when it filed its Complaint.[44]

On February 27, 2013,[45] this Court noted petitioner's reply and directed the parties to submit their respective memoranda.

On May 30, 2013, the parties filed their respective memoranda.[46]

In its Memorandum,[47] petitioner continues to insist that it did not receive the loan proceeds from PBCOM which is why it filed its Complaint for annulment of real estate mortgage in response to the latter's Petition for Extrajudicial Foreclosure of Real Estate Mortgage.[48]

Petitioner reiterates that its Complaint for annulment of real estate mortgage was an action incapable of pecuniary estimation because it merely sought to remove the lien on its properties, not the recovery or reconveyance of the mortgaged properties.[49]

It states that it never expressly or impliedly sought the conveyance of the mortgaged properties because it was still

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[42] *Id.* at 138-144.

[43] *Id.* at 138-139.

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

[45] *Id.* at 145.

[46] *Id.* at 154-174, First Sarmiento's Memorandum; and *rollo,* pp. 175-196, PBCOM's Memorandum.

[47] *Id.* at 154-174.

[48] *Id.* at 155.

[49] *Id.* at 158-159.

the registered owner of the mortgaged properties when its Complaint was first presented for filing with the Clerk of Court.[50]

On the other hand, respondent in its Memorandum[51] restates its stand that petitioner's Complaint involved a real action; hence, the estimated value of the mortgaged properties should have been alleged and used as the basis for the computation of the docket fees.[52]

Respondent claims that the allegations in petitioner's Complaint reveal the latter's real intention to assert its title and recover the real properties sold at the public auction.[53]

The only issue for this Court's resolution is whether or not the Regional Trial Court obtained jurisdiction over First Sarmiento Corporation, Inc.'s Complaint for annulment of real estate mortgage.

I

Rule 45 of the Rules of Court allows for a direct recourse to this Court by appeal from a judgment, final order, or resolution of the Regional Trial Court. Rule 45, Section 1 provides:

> Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

Rule 41, Section 2(c) likewise provides:

> Section 2. Modes of appeal. —
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> . . . . . .

[50] *Id*. at 166.

[51] *Id*. at 175-196.

[52] *Id*. at 181.

[53] *Id*. at 182-183.

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

Thus, there is no question that a petitioner may file a verified petition for review directly with this Court if only questions of law are at issue; however, if both questions of law and of facts are present, the correct remedy is to file a petition for review with the Court of Appeals.[54]

Doña Adela Export International v. Trade and Investment Development Corp.[55] differentiated between a question of law and a question of fact as follows:

> We stress that a direct recourse to this Court from the decisions, final resolutions and orders of the RTC may be taken where only questions of law are raised or involved. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a question of fact when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether the conclusion drawn therefrom is correct or not, is a question of law.[56] (Citation omitted)

In the case at bar, the underlying question for this Court's resolution pertains to jurisdiction, or to be more precise, whether the Regional Trial Court attained jurisdiction over petitioner's Complaint with the amount of docket fees paid.

Considering that the issue of jurisdiction is a pure question of law,[57] petitioner did not err in filing its appeal directly with this Court pursuant to law and prevailing jurisprudence.

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[54] *Marilao Water v. Intermediate Appellate Court,* 278 Phil. 444, 452 (1991) [Per *J*. Narvasa, First Division]; *Mendoza v. Villas,* 659 Phil. 409, 415-416 (2011) [Per *J*. Velasco, Jr., First Division]; *Doña Adela Export International v. Trade & Investment Development Corp.,* 753 Phil. 596, 610 (2015) [Per *J*. Villarama, Jr., Third Division].

[55] 753 Phil. 596 (2015) [Per *J*. Villarama, Jr., Third Division].

[56] *Id.* at 610.

[57] *Victorias Milling Co. Inc. v. Intermediate Appellate Court*, 277 Phil. 1, 8 (1991) [Per *J*. Davide, Jr., Third Division].

II

Petitioner contends that its Complaint for annulment of real estate mortgage has a subject incapable of pecuniary estimation because it was not intended to recover ownership or possession of the mortgaged properties sold to respondent during the auction sale.[58] It insists that it had ownership and possession of the mortgaged properties when it filed its Complaint; hence, it never expressly or impliedly sought recovery of their ownership or possession.[59]

The petition is meritorious.

Jurisdiction is "the power and authority of a court to hear, try and decide a case"[60] brought before it for resolution.

Courts exercise the powers conferred on them with binding effect if they acquire jurisdiction over: "(a) the cause of action or the subject matter of the case; (b) the thing or the *res;* (c) the parties; and (d) the remedy."[61]

Jurisdiction over the thing or the *res* is a court's authority over the object subject of litigation.[62] The court obtains jurisdiction or actual custody over the object through the seizure of the object under legal process or the institution of legal proceedings which recognize the power and authority of the court.[63]

Jurisdiction over the parties is the court's power to render judgment that are binding on the parties. The courts acquire

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

[59] *Id.* at 166.

[60] *Zamora v. Court of Appeals*, 262 Phil. 298, 304 (1990) [Per *J.* Cruz, First Division].

[61] *De Pedro v. Romasan Development Corp.*, 748 Phil. 706, 723 (2014) [Per *J.* Leonen, Second Division].

[62] *Id.* at 723-724.

[63] *Macahilig v. Heirs of Magalit*, 398 Phil. 802, 817 (2000) [Per *J.* Panganiban, Third Division].

jurisdiction over the plaintiffs when they file their initiatory pleading, while the defendants come under the court's jurisdiction upon the valid service of summons or their voluntary appearance in court.[64]

Jurisdiction over the cause of action or subject matter of the case is the court's authority to hear and determine cases within a general class where the proceedings in question belong. This power is conferred by law and cannot be acquired through stipulation, agreement between the parties,[65] or implied waiver due to the silence of a party.[66]

Jurisdiction is conferred by the Constitution, with Congress given the plenary power, for cases not enumerated in Article VIII, Section 5[67] of the Constitution, to define,

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[64] See *Villagracia v. Fifth Shari'a District Court,* 734 Phil. 239 (2014) [Per *J.* Leonen, Third Division].

[65] *Heirs of Concha, Sr. v. Spouses Lumocso*, 564 Phil. 580, 592-593 (2007) [Per *C.J.* Puno, First Division].

[66] *Peralta-Labrador v. Bugarin*, 505 Phil. 409, 415 (2005) [Per *J.* Ynares-Santiago, First Division]

[67] CONST., Art. VIII, Sec. 5 provides:

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

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

(e) All cases in which only an error or question of law is involved.

(3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.

prescribe, and apportion the jurisdiction of various courts.[68]

Batas Pambansa Blg. 129, or the Judiciary Reorganization Act of 1980 as amended by Republic Act No. 7691, provided for the jurisdictional division between the first and second level courts by considering the complexity of the cases and the experience needed of the judges assigned to hear the cases.

In criminal cases, first level courts are granted exclusive original jurisdiction to hear complaints on violations of city or municipal ordinances[69] and offenses punishable with imprisonment not exceeding six (6) years.[70] In contrast, second level courts, with more experienced judges sitting at the helm, are granted exclusive original jurisdiction to preside over all other criminal cases not within the exclusive jurisdiction of any other court, tribunal, or body.[71]

The same holds true for civil actions and probate proceedings, where first level courts have the power to hear cases where the value of personal property, estate, or amount of the demand does not exceed ₱100,000.00 or ₱200,000.00 if in Metro Manila.[72]

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(4) Order a change of venue or place of trial to avoid a miscarriage of justice.

(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.

(6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

[68] CONST., Art. VIII, Sec. 2.

[69] Batas Blg. 129, Sec. 32(1).

[70] Batas Blg. 129, Sec. 32(2).

[71] Batas Blg. 129, Sec. 20.

[72] Batas Blg. 129, Sec. 33(1).

First level courts also possess the authority to hear civil actions involving title to, possession of, or any interest in real property where the value does not exceed ₱20,000.00 or ₱50,000.00 if the real property is situated in Metro Manila.[73] Second level courts then assume jurisdiction when the values involved exceed the threshold amounts reserved for first level courts[74] or when the subject of litigation is incapable of pecuniary estimation.[75]

First level courts were also conferred with the power to hear the relatively uncomplicated cases of forcible entry and unlawful detainer,[76] while second level courts are authorized to hear all actions in admiralty and maritime jurisdiction[77] with claims above a certain threshold amount. Second level courts are likewise authorized to hear all cases involving the contract of marriage and marital relations,[78] in recognition of the expertise and probity required in deciding issues which traverse the marital sphere.

Section 19(1) of Batas Pambansa Blg. 129, as amended, provides Regional Trial Courts with exclusive, original jurisdiction over "all civil actions in which the subject of the litigation is incapable of pecuniary estimation."

Lapitan v. Scandia[79] instructed that to determine whether the subject matter of an action is incapable of pecuniary estimation, the nature of the principal action or remedy sought must first be established. This finds support in this Court's repeated pronouncement that jurisdiction over the subject matter is determined by examining the material allegations of the

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[73] Batas Blg. 129, Sec. 33(3).

[74] Batas Blg. 129, Sec. 19(2) and (4).

[75] Batas Blg. 129, Sec. 19(1).

[76] Batas Blg. 129, Sec. 33(2).

[77] Batas Blg. 129, Sec. 19(3).

[78] Batas Blg. 129, Sec. 19(5).

[79] 133 Phil. 526 (1968) [Per *J.* Reyes, J.B.L, *En Banc*].

complaint and the relief sought.[80] *Heirs of Dela Cruz v. Heirs of Cruz*[81] stated, thus:

> It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs.[82]

However, *Lapitan* stressed that where the money claim is only a consequence of the remedy sought, the action is said to be one incapable of pecuniary estimation:

> A review of the jurisprudence of this Court indicates that 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, or where the money claim is purely incidental to, or a consequence of, the principal relief sought like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment of a judgment or to foreclose a mortgage, 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. The rationale of the rule is plainly that the second class cases, besides the determination of damages, demand an inquiry into other factors which the law has deemed to be more within the competence of courts of first instance,

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[80] *Figueroa v. People*, 580 Phil. 58, 78 (2008) [Per *J.* Nachura, Third Division] citing *Villagracia v. Fifth Shari'a District Court,* 734 Phil. 239 (2014) [Per *J.* Leonen, Third Division]; *Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz*, 512 Phil. 389 (2005) [Per *J.* Callejo, Second Division]; *Spouses Atuel v. Spouses Valdez*, 451 Phil. 631 (2003) [Per *J.* Carpio, First Division].

[81] 512 Phil. 389 (2005) [Per *J.* Callejo, Second Division].

[82] *Id.* at 400.

which were the lowest courts of record at the time that the first organic laws of the Judiciary were enacted allocating jurisdiction (Act 136 of the Philippine Commission of June 11, 1901).[83] (Citation omitted)

Heirs of Sebe v. Heirs of Sevilla[84] likewise stressed that if the primary cause of action is based on a claim of ownership or a claim of legal right to control, possess, dispose, or enjoy such property, the action is a real action involving title to real property.[85]

A careful reading of petitioner's Complaint convinces this Court that petitioner never prayed for the reconveyance of the properties foreclosed during the auction sale, or that it ever asserted its ownership or possession over them. Rather, it assailed the validity of the loan contract with real estate mortgage that it entered into with respondent because it supposedly never received the proceeds of the ₱100,000,000.00 loan agreement.[86] This is evident in its Complaint, which read:

GROUNDS FOR THE APPLICATION OF PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

7. Defendant PBCOM knows fully well that plaintiff did not receive from it the loan it (PBCOM) alleged to have granted in its favor.

8. Despite this, defendant PBCOM has filed with the Ex-Officio Sheriff of Bulacan, a petition for extra judicial foreclosure of real estate mortgage, bent on foreclosing the real estate properties of plaintiff, photocopy of the petition is hereto attached as Annex "F".

9. The auction sale of the properties is set on December 29, 2011.

10. Defendant PBCOM, well knowing the facts narrated above and willfully disregarding the property rights of plaintiff, wrongfully filed an extra judicial foreclosure of real estate mortgage and pursuant to said petition, the Ex-Officio Sheriff now does offer for sale, the

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[83] *Lapitan v. Scandia,* 133 Phil. 526, 528 (1968) [Per *J.* Reyes, J.B.L, *En Banc*].

[84] 618 Phil. 395 (2009) [Per *J.* Abad, Second Division].

[85] *Id.* at 407.

[86] *Rollo,* pp. 25-26.

real estate properties of the plaintiff as set forth in its (PBCOM) said petition.

11. Unless defendants PBCOM and Ex-Officio Sheriff are restrained by this Honorable Court, they will infringe the property rights of the plaintiff in the manner herein before related.[87]

Far East Bank and Trust Company v. Shemberg Marketing Corporation[88] stated that an action for cancellation of mortgage has a subject that is incapable of pecuniary estimation:

Here, the primary reliefs prayed for by respondents in Civil Case No. MAN-4045 is the cancellation of the real estate and chattel mortgages for want of consideration. In *Bumayog v. Tumas*, this Court ruled that where the issue involves the validity of a mortgage, the action is one incapable of pecuniary estimation. In the more recent case of *Russell v. Vestil*, this Court, citing *Bumayog*, held that an action questioning the validity of a mortgage is one incapable of pecuniary estimation. Petitioner has not shown adequate reasons for this Court to revisit *Bumayog* and *Russell*. Hence, petitioner's contention [cannot] be sustained. Since respondents paid the docket fees, as computed by the clerk of court, consequently, the trial court acquired jurisdiction over Civil Case No. MAN-4045.[89]

It is not disputed that even if the Complaint were filed a few days after the mortgaged properties were foreclosed and sold at auction to respondent as the highest bidder, the certificate of sale was only issued to respondent after the Complaint was filed.

Section 6 of Act No. 3135,[90] as amended, provides that a property sold through an extrajudicial sale may be redeemed "at any time within the term of one year from and after the date of the sale":

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

[88] 540 Phil. 7 (2006) [Per *J.* Sandoval-Gutierrez, Second Division].

[89] *Id.* at 21 citing *Bunayog v. Tunas,* 106 Phil. 715 (1959) [Per *J.* Bautista Angelo, *En Banc*] and *Russell v. Vestil,* 364 Phil. 392 (1999) [Per *J.* Kapunan, First Division].

[90] An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real-Estate Mortgages.

Section 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Mahinay v. Dura Tire & Rubber Industries Inc.[91] clarified that "[t]he date of the sale referred to in Section 6 is the date the certificate of sale is registered with the Register of Deeds. This is because the sale of registered land does not 'take effect as a conveyance, or bind the land' until it is registered."[92]

The registration of the certificate of sale issued by the sheriff after an extrajudicial sale is a mandatory requirement; thus, if the certificate of sale is not registered with the Registry of Deeds, the property sold at auction is not conveyed to the new owner and the period of redemption does not begin to run.[93]

In the case at bar, the Ex-Officio Sheriff of the City of Malolos, Bulacan was restrained from registering the certificate of sale with the Registry of Deeds of Bulacan and the certificate of sale was only issued to respondent after the Complaint for annulment of real estate mortgage was filed. Therefore, even if the properties had already been foreclosed when the Complaint was filed, their ownership and possession remained with petitioner since the certificate of sale was not registered with the Registry of Deeds. This supports petitioner's claim that it

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[91] G.R. No. 194152, June 5, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/194152.pdf> [Per *J.* Leonen, Second Division].

[92] *Id.* at 5 citing *Reyes v. Noblejas,* 129 Phil. 256, 262 (1967) [Per *J.* Angeles, *En Banc*].

[93] *Reyes v. Noblejas,* 129 Phil. 256, 261-262 (1967) [Per *J.* Angeles, *En Banc*].

never asked for the reconveyance of or asserted its ownership over the mortgaged properties when it filed its Complaint since it still enjoyed ownership and possession over them.

Considering that petitioner paid the docket fees as computed by the clerk of court, upon the direction of the Executive Judge, this Court is convinced that the Regional Trial Court acquired jurisdiction over the Complaint for annulment of real estate mortgage.

Furthermore, even if it is assumed that the instant case were a real action and the correct docket fees were not paid by petitioner, the case should not have been dismissed; instead, the payment of additional docket fees should have been made a lien on the judgment award. The records attest that in filing its complaint, petitioner readily paid the docket fees assessed by the clerk of court; hence, there was no evidence of bad faith or intention to defraud the government that would have rightfully merited the dismissal of the Complaint.[94]

III

Although not raised in the Petition, this Court nonetheless deems it proper to pass upon the legality of the Regional Trial Court January 4, 2012 Order, which directed the parties to observe the status quo ante,[95] effectively extending indefinitely its 72-hour ex-parte temporary restraining order issued on January 2, 2012.[96]

Rule 58, Section 5 of the Rules of Court provides the instances when a temporary restraining order may be issued:

> Section 5. Preliminary injunction not granted without notice; exception. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant

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[94] *Fedman Development Corp. v. Agcaoili*, 672 Phil. 20 (2011) [Per *J.* Bersamin, First Division].

[95] *Rollo,* p. 21.

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

before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex-parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from service on the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

It is clear that a temporary restraining order may be issued by a trial court in only two (2) instances: *first,* when great or irreparable injury would result to the applicant even before the application for writ of preliminary injunction can be heard;

and *second,* if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury. The executive judge of a multi-sala court or the presiding judge of a single-sala court may issue a 72-hour temporary restraining order.

In both instances, the temporary restraining order may be issued *ex parte*. However, in the first instance, the temporary restraining order has an effectivity of only 20 days to be counted from service to the party sought to be enjoined. Likewise, within those 20 days, the court shall order the enjoined party to show why the injunction should not be granted and shall then determine whether or not the injunction should be granted.

In the second instance, when there is extreme urgency and the applicant will suffer grave injustice and irreparable injury, the court shall issue a temporary restraining order effective for only 72 hours upon issuance. Within those 72 hours, the court shall conduct a summary hearing to determine if the temporary restraining order shall be extended until the application for writ of preliminary injunction can be heard. However, in no case shall the extension exceed 20 days.

If the application for preliminary injunction is denied or not resolved within the given periods, the temporary restraining order is automatically vacated and the court has no authority to extend or renew it on the same ground of its original issuance.

Despite the clear wording of the rules, the Regional Trial Court issued a status quo ante order dated January 4, 2012, indefinitely extending the temporary restraining order on the registration of the certificate of sale with the Registry of Deeds.

Petitioner applied for a writ of preliminary injunction, yet the Regional Trial Court did not conduct any hearing for that purpose and merely directed the parties to observe the status quo ante.

Miriam College Foundation, Inc v. Court of Appeals[97] explained the difference between preliminary injunction and a restraining order as follows:

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[97] 401 Phil. 431 (2000) [Per *J*. Kapunan, First Division].

Preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to perform to refrain from performing a particular act or acts. As an extraordinary remedy, injunction is calculated to preserve or maintain the status quo of things and is generally availed of to prevent actual or threatened acts, until the merits of the case can be heard. A preliminary injunction persists until it is dissolved or until the termination of the action without the court issuing a final injunction.

The basic purpose of restraining order, on the other hand, is to preserve the status quo until the hearing of the application for preliminary injunction. Under the former Â§5, Rule 58 of the Rules of Court, as amended by Â§5, Batas Pambansa Blg. 224, a judge (or justice) may issue a temporary restraining order with a limited life of twenty days from date of issue. If before the expiration of the 20-day period the application for preliminary injunction is denied, the temporary order would thereby be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said 20 days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary. In the instant case, no such preliminary injunction was issued; hence, the TRO earlier issued automatically expired under the aforesaid provision of the Rules of Court.[98] (Citations omitted)

A temporary restraining order cannot be extended indefinitely to take the place of a writ of preliminary injunction, since a temporary restraining order is intended only to have a limited lifespan and is deemed automatically vacated upon the expiration of 72 hours or 20 days, as the case may be. As such, the temporary restraining order has long expired and, in the absence of a preliminary injunction, there was nothing to stop the sheriff from registering the certificate of sale with the Registry of Deeds.

This Court has repeatedly expounded on the nature of a temporary restraining order[99] and a preliminary injunction.[100]

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[98] *Id.* at 447-448.

[99] *Carpio-Morales v. Court of Appeals,* 772 Phil. 627, 736-738 (2015) [Per *J.* Perlas-Bernabe, *En Banc*]; *Miriam College Foundation, Inc v. Court of Appeals,* 401 Phil. 431, 447-448 (2000) [Per *J.* Kapunan, First Division].

[100] *Carpio Morales v. Court of Appeals,* 772 Phil. 627, 736-738 (2015).

Yet lower courts consistently interchange these ancillary remedies and disregard the sunset clause[101] inherent in a temporary restraining order by erroneously extending it indefinitely. Such ignorance or defiance of basic remedial measures is a gross disservice to the public, who look towards the court for legal guidance and legal remedy. More importantly, this cavalier attitude towards these injunctive reliefs might even be construed as a deliberate effort to look the other way to favor a party, which will then sully the image of the entire judiciary. Henceforth, this Court will demand stricter compliance with the rules from the members of the bench as regards their issuances of these injunctive reliefs.

IV

Finally, there is a need to reassess the place of *Home Guaranty v. R-II Builders*[102] in our jurisprudence.

In *Home Guaranty,* R-II Builders, Inc. (R-II Builders) filed a Complaint for the rescission of the Deed of Assignment and Conveyance it entered into with Home Guaranty Corporation and National Housing Authority. The Complaint was initially determined to have a subject that is incapable of pecuniary estimation and the docket fees were assessed and paid accordingly.[103]

R-II Builders later filed a motion to admit its Amended and Supplemental Complaint, which deleted its earlier prayer for the resolution of its Deed of Assignment and Conveyance, and prayed for the conveyance of title to and/or possession of the entire Asset Pool. The Regional Trial Court ruled that the

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[Per *J.* Perlas-Bernabe, *En Banc*]; *The Incorporators of Mindanao Institute, Inc. v. The United Church of Christ in the Philippines,* 685 Phil. 21, 32-34 (2012) [Per *J.* Mendoza, Third Division]; *Dungog v. Court of Appeals,* 455 Phil. 675, 684-685 (2003) [Per *J.* Carpio, First Division].

[101] *Bankers Association of the Philippines v. Comelec,* 722 Phil. 92, 100 (2013) [Per *J.* Brion, *En Banc*].

[102] 660 Phil. 517 (2011) [Per *J.* Perez, First Division].

[103] *Id*. at 523.

Amended and Supplemental Complaint involved a real action and directed R-II Builders to pay the correct docket fees.[104]

Instead of paying the additional docket fees, R-II Builders withdrew its Amended and Supplemental Complaint and instead filed a motion to admit its Second Amended Complaint, which revived the prayer in its original Complaint to resolve the Deed of Assignment and Conveyance and deleted the causes of action for conveyance of title to and/or possession of the entire Asset Pool in its Amended and Supplemental Complaint.[105] The Regional Trial Court granted the motion to admit the Second Amended Complaint, ratiocinating that the docket fees to the original Complaint had been paid; that the Second Amended Complaint was not intended to delay the proceedings; and that the Second Amended Complaint was consistent with R-II Builders' previous pleadings.[106]

The Court of Appeals upheld the ruling of the Regional Trial Court and reiterated that the case involved a subject that was incapable of pecuniary estimation.[107] However, *Home Guaranty* reversed the Court of Appeals Decision, ruling that the Complaint and the Amended and Supplemental Complaint both involved prayers for the conveyance and/or transfer of possession of the Asset Pool, causes of action which were undoubtedly real actions. Thus, the correct docket fees had not yet been paid:[108]

> Although an action for resolution and/or the nullification of a contract, like an action for specific performance, fall squarely into the category of actions where the subject matter is considered incapable of pecuniary estimation, we find that the causes of action for resolution and/or nullification of the [Deed of Assignment and Conveyance] was erroneously isolated by the [Court of Appeals] from the other causes of action alleged in R-II Builders' original complaint and

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[104] *Id*. at 524-525.

[105] *Id*. at 525.

[106] *Id*. at 526.

[107] *Id*. at 527.

[108] *Id*. at 532.

Amended and Supplemental Complaint which prayed for the conveyance and/or transfer of possession of the Asset Pool. In *Gochan v. Gochan*, this Court held that an action for specific performance would still be considered a real action where it seeks the conveyance or transfer of real property, or ultimately, the execution of deeds of conveyance of real property.

. . . . . .

Granted that R-II Builders is not claiming ownership of the Asset Pool because its continuing stake is, in the first place, limited only to the residual value thereof, the conveyance and/or transfer of possession of the same properties sought in the original complaint and Amended and Supplemental Complaint both presuppose a real action for which appropriate docket fees computed on the basis of the assessed or estimated value of said properties should have been assessed and paid. . . .[109] (Citations omitted)

Home Guaranty stated that to determine whether an action is capable or incapable of pecuniary estimation, the nature of the principal action or remedy prayed for must first be determined.[110] Nonetheless, in citing *Ruby Shelter Builders v. Formaran*, *Home Guaranty* looked beyond R-II Builder's principal action for annulment or rescission of contract to purportedly unmask its true objective and nature of its action, which was to recover real property.[111]

In a dissenting opinion in the *Home Guaranty*[112] June 22, 2011 Resolution that dismissed R-II Builders' motion for reconsideration, Associate Justice Presbitero Velasco, Jr. stressed that one must first look at the principal action of the case to determine if it is capable or incapable of pecuniary estimation:

Whether or not the case is a real action, and whether or not the proper docket fees were paid, one must look to the main cause of action of the case. In all instances, in the original Complaint, the

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[109] *Id*. at 536 and 538.

[110] *Id*. at 535.

[111] *Id*. at 537-538.

[112] 667 Phil. 781 (2011) [Per *J*. Perez, Special First Division].

Amended and Supplemental Complaint and the Amended Complaint, it was all for the resolution or rescission of the [Deed of Assignment and Conveyance], with the prayer for the provisional remedy of injunction and the appointment of a trustee and subsequently a receiver. In the Second Amended Complaint, the return of the remaining assets of the asset pool, if any, to respondent R-II Builders would only be the result of the resolution or rescission of the [Deed of Assignment and Conveyance].

Even if real property in the Asset Pool may change hands as a result of the case in the trial court, the fact alone that real property is involved does not make that property the basis of computing the docket fees. *De Leon v. Court of Appeals* has already settled the matter. That case, citing *Bautista v. Lim*, held that a case for rescission or annulment of contract is not susceptible of pecuniary estimation. On the other hand, in the Decision We rendered on July 25, 2005 in *Serrano v. Delica*, We ruled that the action for cancellation of contracts of sale and the titles is a real action. Similarly, on February 10, 2009, We ruled in *Ruby Shelter Builders and Realty Development Corporation v. Formaran III (Ruby Shelter)* that an action for nullification of a Memorandum of Agreement which required the lot owner to issue deeds of sale and cancellation of the Deeds of Sale is a real action.[113] (Citations omitted)

Whatever confusion there might have been regarding the nature of actions for nullity of contracts or legality of conveyances, which would also involve recovery of sum of money or real property, was directly addressed by *Lu v. Lu Ym*.[114] *Lu* underscored that "where the basic issue is something other than the right to recover a sum of money, the money claim being only incidental to or merely a consequence of, the principal relief sought, the action is incapable of pecuniary estimation."[115]

This finds support in numerous decisions where this Court proclaimed that the test to determine whether an action is capable or incapable of pecuniary estimation is to ascertain the nature

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[113] *Id*. at 802.

[114] 585 Phil. 251 (2008) [Per *J*. Nachura, *En Banc*].

[115] *Id*. at 273.

of the principal action or relief sought. Thus, if the principal relief sought is the recovery of a sum of money or real property, then the action is capable of pecuniary estimation. However, if the principal relief sought is not for the recovery of money or real property and the money claim is only a consequence of the principal relief, then the action is incapable of pecuniary estimation.[116]

Considering that the principal remedy sought by R-II Builders was the resolution of the Deed of Assignment and Conveyance, the action was incapable of pecuniary estimation and *Home Guaranty* erred in treating it as a real action simply because the principal action was accompanied by a prayer for conveyance of real property.

It is clear that subject matter jurisdiction cannot be dependent on the supposed ultimate motive or true objective of the complaint because this will require the judge to speculate on the defenses of the plaintiff beyond the material allegations contained in the complaint. Likewise, in attempting to pinpoint the true objective of the complaint at the initial stages of trial, the judge might end up dictating the result outside of the evidence still to be presented during the trial, opening up the judge to charges of partiality and even impropriety. Furthermore, the judge is not aware of the evidence to be presented by either party when the complaint is filed; thus, there is no reliable basis that can be used to infer the true objective of the complaint. It is imperative then that the competing claims as basis of subject matter jurisdiction be textually based, finding its basis in the body of the complaint and the relief sought without reference to extraneous facts not alleged or evidence still to be presented.

Nonetheless, if subject matter jurisdiction is assailed during the course of the trial and evidence is presented to prove the

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[116] See *Lapitan v. Scandia, Inc., et al.*, 133 Phil. 526, 528 (1968) [Per *J*. Reyes, J.B.L, *En Banc*]; *Singson v. Isabela Sawmill,* 177 Phil. 575, 588 (1979) [Per *J*. Fernandez, First Division]; *Spouses Huguete v. Spouses Embudo*, 453 Phil. 170, 176-177 (2003), *Far East Bank and Trust Company v. Shemberg Marketing Corporation,* 540 Phil. 7, 21 (2006) [Per *J*. Sandoval-Gutierrez, Second Division].

defense's allegation of lack of jurisdiction, this will lead to an anomaly where the defense's evidence, instead of the complaint, will effectively determine the remedy and cause of action.

In the case at bar, petitioner contends that its complaint prayed for the annulment of the real estate mortgage it entered into with respondent and not for the recovery or reconveyance of the mortgaged properties because it was still the registered owner when it filed its complaint. The evidence on record supports petitioner's claim; hence, there was no reason for the dismissal of its Complaint for lack of jurisdiction.

Home Guaranty likewise erred in dismissing the action because of non-payment of the correct filing fees. *Fedman Development Corporation v. Agcaoili*[117] reiterated that where the assessed docket fees have been paid and the assessment turns out to be insufficient, the court still acquires jurisdiction over the case, subject to payment of the deficiency assessment.[118] The only exception is when the deficiency in docket fees is accompanied with bad faith and an intention to defraud the government.[119] It is not disputed that R-II Builders paid the assessed docket fees when it filed its Complaint, negating bad faith or intent on its part to defraud the government.

In light of the foregoing, this Court reaffirms that the nature of an action is determined by the principal relief sought in the complaint, irrespective of the other causes of actions that may also crop up as a consequence of the principal relief prayed for. The contrary rule espoused in *Home Guaranty* is thereby set aside.

WHEREFORE, this Court resolves to **GRANT** the Petition. The assailed April 3, 2012 Decision and July 25, 2012 Order of Branch 11, Regional Trial Court, City of Malolos, Bulacan in Civil Case No. 04-M-2012 are **REVERSED** and **SET ASIDE**.

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[117] 672 Phil. 20 (2011) [Per *J.* Bersamin, First Division].

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

[119] *Id*. at 29.

The case is ordered **REMANDED** to Branch 11, Regional Trial Court, City of Malolos, Bulacan for continued trial on First Sarmiento Property Holdings, Inc.'s Complaint for annulment of real estate mortgage and its amendments.

SO ORDERED.

Carpio (Acting Chief Justice), Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

EN BANC

[G.R. No. 212348. June 19, 2018]

CAREER EXECUTIVE SERVICE BOARD, represented by its EXECUTIVE DIRECTOR, MARIA ANTHONETTE VELASCO-ALLONES, *petitioner, vs.* **COMMISSION ON AUDIT; THE AUDIT TEAM LEADER, CAREER EXECUTIVE SERVICE BOARD; and THE SUPERVISING AUDITOR, CLUSTER A – GENERAL PUBLIC SERVICES I, NATIONAL GOVERNMENT SECTOR,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; THE COMMISSION ON AUDIT (COA); IN THE DISCHARGE OF ITS CONSTITUTIONAL MANDATE, THE COA HAS BEEN VESTED WITH ENOUGH LATITUDE TO DETERMINE, PREVENT AND DISALLOW IRREGULAR, UNNECESSARY EXCESSIVE, EXTRAVAGANT, OR UNCONSCIONABLE EXPENDITURES OF GOVERNMENT FUNDS.— In the discharge of its constitutional mandate, the COA has been vested with enough latitude to determine, prevent

and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether or not public funds were utilized for the purpose for which they had been intended. Being the guardian of public funds, it has been vested by the 1987 Constitution with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.

2. ID.; ID.; CIVIL SERVICE COMMISSION (CSC); APPROPRIATION; TRANSFER OF FUNDS; THE CAREER EXECUTIVE SERVICE BOARD (CESB), ALTHOUGH INTENDED TO BE AN AUTONOMOUS ENTITY, IS ADMINISTRATIVELY ATTACHED TO THE CIVIL SERVICE COMMISSION (CSC), AND DOES NOT WIELD THE POWER TO AUTHORIZE THE AUGMENTATION OF ITEMS OF ITS APPROPRIATIONS FROM SAVINGS IN OTHER ITEMS OF ITS APPROPRIATION.— Section 29(1), Article VI of the 1987 Constitution ordains that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." The only exception is found in Section 25(5), Article VI of the 1987 Constitution, by which the President of the Philippines, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Philippines, and the heads of the Constitutional Commissions are authorized to transfer appropriations to augment any item in the GAA for their respective offices from the savings in other items of their respective appropriations. The CESB is definitely not among the officials or agencies authorized to transfer their savings in other items of its appropriation. The CESB came into being by virtue of Presidential Decree No. 1 on September 1, 1974. The CESB, although intended to be an autonomous entity, is administratively attached to the Civil Service Commission (CSC), and does not wield the power to authorize the augmentation of items of its appropriations from savings in other items of its appropriations. With the CSC being the office vested with fiscal autonomy by the 1987 Constitution, the CESB's use of its savings to cover the CNA benefits for its employees had no legal basis.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* AND PROHIBITION; GRAVE ABUSE OF DISCRETION, AS A GROUND; THE ABUSE OF DISCRETION MUST BE GRAVE AS WHERE THE POWER IS EXERCISED IN AN ARBITRARY OR DESPOTIC MANNER BY REASON OF PASSION OR PERSONAL HOSTILITY AND MUST BE SO PATENT AND GROSS AS TO AMOUNT TO AN EVASION OF POSITIVE DUTY OR TO A VIRTUAL REFUSAL TO PERFORM THE DUTY ENJOINED BY OR TO ACT AT ALL IN CONTEMPLATION OF LAW.— By *grave abuse of discretion* is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.

4. POLITICAL LAW; PUBLIC OFFICERS AND EMPLOYEES; THE DISALLOWANCE OF PAYMENTS OR DISBURSEMENTS BY THE COMMISSION ON AUDIT (COA) DOES NOT AUTOMATICALLY CAST LIABILITY ON THE RESPONSIBLE OFFICERS WHEN GOOD FAITH CAN BE CONSIDERED AS A VALID DEFENSE; CASE AT BAR.— The validity of the disallowance notwithstanding, we note that the CESB's officials who authorized and caused the payment of the CNA benefits to covered officers and employees, and the latter as the recipients of the disallowed payments enjoyed the benefit of good faith and should be absolved from the liability to refund. x x x This doctrine of good faith has been consistently followed in many other rulings. Recently, in *Philippine Economic Zone Authority v. Commission on Audit* (*PEZA v. COA*), the Court has reiterated that the affirmance of the disallowance of payments or disbursements does not automatically cast liability on the responsible officers when good faith could be considered as a valid defense.

5. ID.; ID.; ID.; REQUIREMENTS WHEN GOOD FAITH MAY BE APPRECIATED IN FAVOR OF THE PUBLIC OFFICIALS AND EMPLOYEES, ENUMERATED.— [G]ood faith is properly appreciated in favor of the public officials and employees involved when: (1) the concerned public officials authorize or the concerned employees receive the disallowed payment upon an honest belief that such authority to cause payment or to receive payment is valid and legal; or (2) there is absence of circumstances that ought to put the concerned public officials or employees upon inquiry as to the validity or legality of the payment; or (3) the document relied upon and signed shows no palpable, or patent, or definite defects; or (4) the concerned public officer's trust and confidence in his subordinates upon whom the duty to ensure the validity or legality of the payment primarily devolves are within the parameters of tolerable judgment and permissible margins of error; or (5) there has been no prior jurisprudence or ruling on the allowance or disallowance of the subject or similar payment.

D E C I S I O N

BERSAMIN, *J.*:

By petition for *certiorari* and prohibition, petitioner Career Executive Service Board (CESB), through its then Executive Director Maria Anthonette Velasco-Allones, assails COA Decision No. 2010-121 rendered on November 19, 2010 by the Commission on Audit (COA) affirming the Notice of Disallowance (ND) issued by the Audit Team Leader (ATL) vis-à-vis the payment of the monetary benefits for Calendar Years (CY) 2002 and 2003 to its covered officials and employees out of the CESB's savings.[1]

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[1] *Rollo,* pp. 46-51 (Entitled *Petition of Ms. Mary Ann Z. Fernandez-Mendoza, Executive Director, Career Executive Service Board (CESB), for review of Legal and Adjudication Office-National (LAO-N) Resolution No. 2005-134A dated November 22, 2005, denying the appeal from Notice of Disallowance (ND) No. 2004-067 dated November 9, 2004 amounting to ₱2,386,000.00 representing economic benefits granted to CESB employees pursuant to the Collective Negotiation Agreement (CNA*).)

The CESB asserts herein that COA Decision No. 2010-121 was null and void for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.[2]

Antecedents

The CESB granted to its officials and employees various monetary benefits in CY 2002 and CY 2003 pursuant to Section 2, Article V of the Collective Negotiation Agreement (CNA) it had entered into with the Samahan ng Kawaning Nagkakaisa sa Diwa, Gawa at Nilalayon (SANDIGAN), a duly accredited organization of its employees.

Section 2, Article V of the CNA stipulated as follows:

Section 2. Monetary Benefits. The [CESB] SECRETARIAT shall grant all CESB employees the following benefits, subject to existing laws and regulation and availability of funds:

1. **Fringe benefits** in the amount of not less than ten thousand pesos (₱10,000.00) each year;
2. **Rice Subsidy allowance** of one thousand pesos (₱1,000.00) a month;
3. **Birthday Cash Gift** in the amount of two thousand pesos (₱2,000.00) effective January 1, 2002 subject to such guidelines as the [CESB]SECRETARIAT and SANDIGAN may adopt;
4. **Christmas Grocery** in the form of groceries or gift check in the amount of not less than ten thousand pesos (₱10,000.00) effective year 2002 subject to such guidelines as the [CESB] SECRETARIAT and SANDIGAN may adopt;
5. **Loyalty Award** in the amount of one thousand pesos (₱1,000.00) for every year of service starting on the 10th year;
6. **Retirement Benefit**. In addition to the [CESB] SECRETARIAT'S [Program on Awards and Incentives for Service Excellence], pursuant to Civil Service Commission rules and regulations, the [CESB] SECRETARIAT shall likewise provide a cash incentive

[2] *Id*. at 18-26.

of ten thousand pesos (₱10,000.00) to retirees whether under the optional or compulsory retirement schemes. The retiree should have rendered at least ten (10) years of satisfactory service in the [CESB] SECRETARIAT.

7. Funeral Assistance amounting to thirty thousand pesos (₱30,000.00) to the family of a SANDIGAN member.[3]

Upon post-audit, respondent ATL issued Audit Observation Memorandum (AOM) No. 2003 AAR-12, dated February 11, 2004, assailing the legality of the grant of benefits.

In due time, the Director of the Legal and Adjudication Office–National (LAO-N) issued ND No. 2004-67 dated November 9, 2004,[4] to wit:

We have audited the Audit Observation Memorandum (AOM) No. 2003 AAR-12 dated February 11, 2004 and the accompanying supporting documents, issued by the Audit Team Leader, Career Executive Service Board, Quezon City relative to the payment of monetary benefits like Birthday Bonus, Fringe Benefits, Christmas Grocery and Retirement Pay in the total amount of ₱2,386,000.00 to its rank and files (sic) employees. The result of our audit shows that the payment of said monetary benefits has no legal support.[5]

On December 10, 2004, the CESB's Executive Director, Mary Ann Z. Fernandez-Mendoza, filed a request dated November 9, 2004 seeking the reconsideration of ND No. 2004-67.[6] However, the LAO-N denied the request for reconsideration through Decision Number 2005-134 dated April 22, 2005.[7]

The CESB appealed,[8] but the LAO-N denied the appeal through Resolution No. 2005-134A dated November 22, 2005.[9]

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[3] *Id*. at 91-92.

[4] *Id*. at 30-33.

[5] *Id*. at 30.

[6] *Id*. at 34-35.

[7] *Id*. at 36-38.

[8] *Id*. at 39-42.

[9] *Id*. at 43-45.

Ultimately, respondent COA rendered the assailed Decision No. 2010-121 to affirm ND No. 2004-67 dated November 9, 2004.[10]

Hence, this present recourse.

Issues

The CESB defines the issues to be resolved, as follows:

a. Whether respondent COA committed grave abuse of discretion when it affirmed the recommendation of the Audit Team Leader (ATL) and the Supervising Auditor (SA) disallowing the monetary benefits granted by the petitioner;[11] and

b. Whether respondent COA committed grave abuse of discretion when it ordered the refund of the amounts received by the CESB employees.[12]

Ruling of the Court

The Court finds that the respondents did not gravely abused their discretion in disallowing the payment of the monetary benefits under the CNA, but declares that the officials approving the payment and the employees receiving the monetary benefits are not required to reimburse the disallowed amounts on the ground of their good faith.

1.
The COA did not commit grave abuse of discretion

We uphold the disallowance by the COA of the monetary benefits granted by the CESB for being based on cogent legal grounds.

In the discharge of its constitutional mandate, the COA has been vested with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds. It has the power to ascertain whether or not public funds were utilized

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[10] *Id.* at 46-51.

[11] *Id.* at 18.

[12] *Id.* at 22.

for the purpose for which they had been intended.[13] Being the guardian of public funds, it has been vested by the 1987 Constitution with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.[14]

In this instance, the CESB granted the monetary benefits pursuant to Section 2, Article V of the CNA. It argues that it needed no new appropriation to grant the benefits inasmuch as its agency savings were utilized for the purpose. In justification, it stresses that the use of the savings for the benefits was authorized by the Department of Budget and Management (DBM) under National Budget Circular No. 487, which embodied the guidelines for the release of funds for CY 2003.

Section 3.10 of National Budget Circular No. 487 reads:

> As an exception to Section 55 of the General Provisions of R.A. No. 9206, agencies are authorized to use savings to cover payment of TLB, RA x x x and collective negotiation agreement (CNA) incentives even if no specific appropriation is provided for the purpose.

The CESB submits that National Budget Circular 487 was issued primarily to enforce or implement an existing law, that is, Republic Act (R.A.) No. 9206 (*General Appropriations Act of 2003*);[15] and that the DBM had the authority to identify such other compensations that could be granted over and above the standardized salary rates pursuant to Section 12 of R.A. No. 6758 (*Salary Standardization Law*), to wit:

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[13] *Sanchez v. Commission on Audit,* G.R. No. 127545, April 23, 2008, 552 SCRA 471, 487-488.

[14] *Yap v. Commission on Audit*, G.R. No. 158562, April 23, 2010, 619 SCRA 154, 167-168.

[15] *Rollo,* p. 21.

> Section 12. Consolidation of Allowances and Compensation. —
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> All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.
>
> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

that National Budget Circular 487, in conjunction with Section 12 of the SSL, in effect included the benefits paid under the CNA among those *not* integrated in or consolidated with the standardized salary rates pursuant to R.A. No. 6758;[16] and that the DBM authorized the use of savings for the payment of the CNA benefits pursuant to the catch-all proviso ("*such other additional compensation not otherwise specified herein as may be determined by the DBM*") contained in Section 12 of R.A. No. 6758.

The submissions of the CESB are unfounded.

To begin with, the DBM did not have any hand in the determination of the CNA benefits and incentives to be given to the CESB's employees and officers because the CNA had been entered into only by and between the CESB and SANDIGAN. As such, the DBM could not have expressly determined and authorized the additional compensations in the form of fringe benefits, rice subsidy allowance, birthday cash gift, Christmas grocery, loyalty award, retirement benefits and funeral assistance agreed upon by and between the CESB and

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[16] *Id.* at 22.

SANDIGAN, and thus were not deemed to have been included in the prescribed standardized salary rates. The nature of such additional benefits for the CESB's employees required their still being included in the regular budget of the CESB, and such benefits would still be subject to approval by the DBM.

Secondly, Section 2, Rule VIII of the IRR enumerated the benefits that could be the subject of negotiation, *viz.*:

> Section 2. The following concerns, among others, may be the subject of negotiation between the employer and the accredited employees' organization:
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> a) Schedule of vacation and other leaves;
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> b) Work assignment of pregnant women;
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> c) Personnel growth and development;
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> d) Communication system-lateral and vertical;
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> e) Provision for protection and safety;
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> f) Provision for facilities for handicapped personnel;
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> g) Provision for first aid medical services and supplies;
>
> h) Physical fitness program;
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> i) Provision for family planning services for married women;
>
> j) Annual medical/physical examination;
>
> k) Recreational, social, athletic and cultural activities and facilities.[17]

On the other hand, Section 3, Rule VIII of the IRR listed the benefits that were not subject to negotiation, to wit:

> Section 3. Those that require appropriation of funds, such as the following, are not negotiable:
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> a. Increase in the salary emoluments and other allowances not presently provided for by law;
>
> b. Facilities requiring capital outlays;

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[17] *Id.* at 47-48.

c. Car plan;

d. Provident fund;

e. Special hospitalization, medical and dental services;

f. Rice/sugar/other subsidies;

g. Travel expenses;

h. Increase in retirement benefits.[18]

In light of the foregoing provisions, the COA was correct in holding that the benefits given under the CNA were not allowed under Executive Order (EO) 180[19] and its Implementing Rules and Regulations (IRR) because the benefits given by the CESB to its employees and officers were not subject to negotiation.

And, thirdly, the CESB's reliance on National Budget Circular 487 was bereft of legal anchor considering that the CESB had no legal authority to use its savings for the payment of the monetary benefits.

To explain, Section 29(1), Article VI of the 1987 Constitution ordains that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." The only exception is found in Section 25(5),[20] Article VI of the 1987 Constitution, by which the President of the Philippines, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Philippines, and the

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[18] *Id.* at 48.

[19] *Exercise of the Right to Organize of Government Employees*

[20] Section 5. x x x

x x x x x x x x x

5. No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

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heads of the Constitutional Commissions are authorized to transfer appropriations to augment any item in the GAA for their respective offices from the savings in other items of their respective appropriations.[21] The CESB is definitely not among the officials or agencies authorized to transfer their savings in other items of its appropriation. The CESB came into being by virtue of Presidential Decree No. 1 on September 1, 1974. The CESB, although intended to be an autonomous entity, is administratively attached to the Civil Service Commission (CSC),[22] and does not wield the power to authorize the augmentation of items of its appropriations from savings in other items of its appropriations. With the CSC being the office vested with fiscal autonomy by the 1987 Constitution, the CESB's use of its savings to cover the CNA benefits for its employees had no legal basis.

We find no grave abuse of discretion on the part of the COA in issuing COA Decision No. 2010-121 dated November 19, 2010. By *grave abuse of discretion* is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[23] The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave.[24]

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[21] *Nazareth v. Villar,* G.R. No. 188635, January 29, 2013, 689 SCRA 385, 402-405.

[22] *Eugenio v. Civil Service Commission*, G.R. No. 115863, March 31, 1995, 243 SCRA 196, 204.

[23] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331.

[24] *Tan v. Antazo,* G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

On the contrary, the COA only discharged and adhered to its duty and responsibility to exercise its general audit power under the 1987 Constitution.

2.
CESB and its employees need not return the benefits received because of their good faith

The validity of the disallowance notwithstanding, we note that the CESB's officials who authorized and caused the payment of the CNA benefits to covered officers and employees, and the latter as the recipients of the disallowed payments enjoyed the benefit of good faith and should be absolved from the liability to refund. To hold so conforms to the ruling in *De Jesus v. Commission on Audit*,[25] *viz.*:

> Nevertheless, our pronouncement in Blaquera v. Alcala supports petitioners' position on the refund of the benefits they received. In Blaquera, the officials and employees of several government departments and agencies were paid incentive benefits which the COA disallowed on the ground that Administrative Order No. 29 dated 19 January 1993 prohibited payment of these benefits. While the Court sustained the COA on the disallowance, it nevertheless declared that:
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> > Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.
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> This ruling in Blaquera applies to the instant case. Petitioners here received the additional allowances and bonuses in good faith under the honest belief that LWUA Board Resolution No. 313 authorized such payment. At the time petitioners received the additional

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[25] G.R. No. 149154, June 10, 2003, 403 SCRA 666, 676-677.

allowances and bonuses, the Court had not yet decided Baybay Water District [v. Commission on Audit]. Petitioners had no knowledge that such payment was without legal basis. Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.

This doctrine of good faith has been consistently followed in many other rulings.[26] Recently, in *Philippine Economic Zone Authority v. Commission on Audit* (*PEZA v. COA*),[27] the Court has reiterated that the affirmance of the disallowance of payments or disbursements does not automatically cast liability on the responsible officers when good faith could be considered as a valid defense. To appreciate good faith as a valid defense of a public official being required to refund or reimburse a disallowed payment, however, the Court has required in *PEZA v. COA* that such public official must possess:

> x x x [A] state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious

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[26] *Veloso v. Commission on Audit*, G.R. No. 193677, September 6, 2011, 656 SCRA 767, 782 ("xxx The city officials disbursed the retirement and gratuity pay remuneration in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such reward."); *Casal v. Commission on Audit*, G.R. No. 149633, November 30, 2006, 509 SCRA 138, 150 ("As to the employees who received the incentive award without participating in the approval thereof, it cannot be said that they were either in bad faith or grossly negligent in so doing. The imprimatur given by the approving officers on such award certainly tended to give it a color of legality from the perspective of these employees. Being in good faith, they cannot, following *Blaquera,* be compelled to refund the benefits already granted to them."); *Singson v. Commission on Audit,* G.R. No. 159355, August 9, 2010, 627 SCRA 36; *Molen, Jr. v. Commission on Audit,* G.R. No. 150222, March 18, 2005, 453 SCRA 769; *Querubin v. Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City*, G.R. No. 159299, July 7, 2004, 433 SCRA 769; *De Jesus v. Commission on Audit*, G.R. No. 156641, February 5, 2004, 422 SCRA 287; *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 152688, November 19, 2003, 416 SCRA 245.

[27] G.R. No. 210903, October 11, 2016, 805 SCRA 618, 642.

advantage of another, even though technicalities of law, together with absence of all information, notice or benefit or belief of facts which render transaction unconscientious."[28]

Thus, guided by the recognition of the good faith on the part of the public officials and employees involved in *Arias v. Sandiganbayan,*[29] *Sistoza v. Desierto*[30] and *Social Security System v. Commission on Audit,*[31] the Court has fittingly concluded in *PEZA v. COA* that:

> x x x [I]t is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society.[32]

In fine, good faith is properly appreciated in favor of the public officials and employees involved when: (1) the concerned public officials authorize or the concerned employees receive the disallowed payment upon an honest belief that such authority to cause payment or to receive payment is valid and legal;[33] or (2) there is absence of circumstances that ought to put the concerned public officials or employees upon inquiry as to the validity or legality of the payment;[34] or (3) the document relied

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[28] *Id*. at 642.

[29] G.R. No. 81563, December 19, 1989, 180 SCRA 309.

[30] G.R. No. 144784, September 3, 2002, 388 SCRA 307.

[31] G.R. No. 210940, September 6, 2016, 802 SCRA 229.

[32] G.R. No. 210903, October 11, 2016, 805 SCRA 618, 645-646.

[33] *De Jesus v. Commission on Audit,* G.R. No. 149154, June 10, 2003, 403 SCRA 666, 676-677; see also *Veloso v. Commission on Audit,* G.R. No. 193677, September 6, 2011, 656 SCRA 767, 782.

[34] *Social Security System v. Commission on Audit,* G.R. No. 210940, September 6, 2016, 802 SCRA 229, 252-255.

upon and signed shows no palpable, or patent, or definite defects;[35] or (4) the concerned public officer's trust and confidence in his subordinates upon whom the duty to ensure the validity or legality of the payment primarily devolves are within the parameters of tolerable judgment and permissible margins of error;[36] or (5) there has been no prior jurisprudence or ruling on the allowance or disallowance of the subject or similar payment.[37]

The officials of the CESB who authorized and caused the disallowed payment of the CNA benefits apparently acted and believed in the honest belief that the grant of the monetary benefits was proper and had legal basis. Indeed, the CESB, relying on its autonomous character, which was not negated by its being an attached agency of the CSC,[38] sincerely believed in good faith that it had the legal authority to use its savings to pay the CAN benefits. Similarly, the recipients of the disallowed payment honestly believed that they were legally entitled to said benefits as the product of the CNA between the CESB and SANDIGAN, and thus received the benefits in good faith.

The CESB officers and employees' basis of good faith further stemmed from the fact that there had been no prior ruling yet to the effect that the CNA benefits were not deemed included in the prescribed standardized salary rates; that such benefits were in fact not negotiable; and that the CESB had no legal authority to pay such benefits out of its savings. With their good faith having been sufficiently established, it becomes just and imperative to release the concerned officials and employees of the CESB from any financial accountability or legal obligation of reimbursement respecting the disallowed payments of the CNA benefits.

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[35] *Sistoza v. Desierto,* G.R. No. 144784, September 3, 2002, 388 SCRA 307, 316.

[36] *Id*.

[37] See *Mendoza v. Commission on Audit,* G.R. No. 195395, September 10, 2013, 705 SCRA 306, 337-339.

[38] *Id*. at 205.

WHEREFORE, the Court **PARTLY GRANTS** the petition for *certiorari*; and **UPHOLDS** Decision No. 2010-121 dated November 19, 2010 of the Commission on Audit subject to the **MODIFICATION** that all the officials of petitioner Career Executive Service Board who approved the granting of the monetary benefits under the Collective Negotiation Agreement, and all the officials and employees of the Career Executive Service Board who received the monetary benefits pursuant to the grant in question need not refund the disallowed amounts received.

No pronouncement on costs of suit.

SO ORDERED.

Carpio, Acting C.J., Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Jardeleza, J., no part, prior OSG action.

EN BANC

[G.R. No. 237428. June 19, 2018]

REPUBLIC of the PHILIPPINES, represented by SOLICITOR GENERAL JOSE C. CALIDA, *vs.* **MARIA LOURDES P. A. SERENO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISQUALIFICATION OF JUDICIAL OFFICERS; MERE IMPUTATION OF BIAS OR PARTIALITY IS NOT ENOUGH GROUND FOR INHIBITION, ESPECIALLY WHEN THE CHARGE IS WITHOUT BASIS; CASE AT BAR.— Respondent also harps

on the alleged bias on the part of the six (6) Justices and that supposedly, their failure to inhibit themselves from deciding the instant petition amounts to a denial of due process. Respondent's contentions were merely a rehash of the issues already taken into consideration and properly resolved by the Court. To reiterate, mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Acts or conduct clearly indicative of arbitrariness or prejudice has to be shown. Verily, for bias and prejudice to be considered sufficient justification for the inhibition of a Member of this Court, mere suspicion is not enough. x x x Indeed, the Members of the Court's right to inhibit are weighed against their duty to adjudicate the case without fear of repression. Respondent's motion to require the inhibition of Justices Teresita J. Leonardo-De Castro, Lucas P. Bersamin, Diosdado M. Peralta, Francis H. Jardeleza, Samuel R. Martires, and Noel Gimenez Tijam, who all concurred to the main Decision, would open the floodgates to the worst kind of forum shopping, and on its face, would allow respondent to shop for a Member of the Court who she perceives to be more compassionate and friendly to her cause, and is clearly antithetical to the fair administration of justice.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; THE CONSTITUTION DOES NOT LIMIT THE SUPREME COURT'S *QUO WARRANTO* JURISDICTION ONLY TO CERTAIN PUBLIC OFFICIALS OR THAT EXCLUDES IMPEACHABLE OFFICIALS THEREFROM.— The Court reaffirms its authority to decide the instant *quo warranto* action. This authority is expressly conferred on the Supreme Court by the Constitution under Section 5, Article VIII x x x Section 5 of Article VIII does not limit the Court's *quo warranto* jurisdiction only to certain public officials or that excludes impeachable officials therefrom. x x x The Constitution defines judicial power as a "duty" to be performed by the courts of justice. Thus, for the Court to repudiate its own jurisdiction over this case would be to abdicate a constitutionally imposed responsibility. As the Court pointed out in its Decision, this is not the first time the Court took cognizance of a *quo warranto* petition against an impeachable officer. In the consolidated cases of *Estrada v. Macapagal-Arroyo* and *Estrada v. Desierto*, the Court assumed jurisdiction over a *quo warranto* petition that challenged Gloria

Macapagal-Arroyo's title to the presidency. x x x *Estrada* was dismissed not because the Court had no jurisdiction over the *quo warranto* petition but because Estrada's challenge to Macapagal-Arroyo's presidency had no merit. In ruling upon the merits of Estrada's *quo warranto* petition, the Court has undeniably exercised its jurisdiction under Section 5(1) of Article VIII. Thus, *Estrada* clearly demonstrates that the Court's *quo warranto* jurisdiction extends to impeachable officers.

3. ID.; ID.; ID.; *QUO WARRANTO* AND IMPEACHMENT ARE TWO DISTINCT PROCEEDINGS, ALTHOUGH BOTH MAY RESULT IN THE OUSTER OF A PUBLIC OFFICER; *QUO WARRANTO* AND IMPEACHMENT, DISTINGUISHED. — *Quo warranto* and impeachment are two distinct proceedings, although both may result in the ouster of a public officer. Strictly speaking, *quo warranto* grants the relief of "ouster", while impeachment affords "removal." A *quo warranto* proceeding is the proper legal remedy to determine a person's right or title to a public office and to oust the holder from its enjoyment. It is the proper action to inquire into a public officer's eligibility or the validity of his appointment. Under Rule 66 of the Rules of Court, a *quo warranto* proceeding involves a judicial determination of the right to the use or exercise of the office. Impeachment, on the other hand, is a political process undertaken by the legislature to determine whether the public officer committed any of the impeachable offenses, namely, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. It does not ascertain the officer's eligibility for appointment or election, or challenge the legality of his assumption of office. Conviction for any of the impeachable offenses shall result in the removal of the impeachable official from office. x x x Determining title to the office on the basis of a public officer's qualifications is the function of *quo warranto*. For this reason, impeachment cannot be treated as a substitute for *quo warranto*. Furthermore, impeachment was designed as a mechanism "to check abuse of power." The grounds for impeachment, including culpable violation of the Constitution, have been described as referring to "serious crimes or misconduct" of the "vicious and malevolent" kind.

4. ID.; ID.; ID.; THE AUTHORITY TO HEAR *QUO WARRANTO* PETITIONS AGAINST APPOINTIVE IMPEACHABLE

OFFICERS EMANATES FROM SECTION 5 (1) OF ARTICLE VIII OF THE CONSTITUTION, WHICH GRANTS *QUO WARRANTO* JURISDICTION TO THE SUPREME COURT WITHOUT QUALIFICATION AS TO THE CLASS OF PUBLIC OFFICERS OVER WHOM THE SAME MAY BE EXERCISED; ELUCIDATED.— As the Court previously held, "where the dispute is on the eligibility to perform the duties by the person sought to be ousted or disqualified a *quo warranto* is the proper action." x x x The Court's *quo warranto* jurisdiction over impeachable officers also finds basis in paragraph 7, Section 4, Article VII of the Constitution which designates it as the sole judge of the qualifications of the President and Vice-President, both of whom are impeachable officers. With this authority, the remedy of *quo warranto* was provided in the rules of the Court sitting as the Presidential Electoral Tribunal (PET). Respondent, however, argues that *quo warranto* petitions may be filed against the President and Vice-President under the PET Rules "only because the Constitution specifically permits" them under Section 4, Article VII. According to respondent, no counterpart provision exists in the Constitution giving the same authority to the Court over the Chief Justice, the members of the Constitutional Commissions and the Ombudsman. x x x The argument, to begin with, acknowledges that the Constitution in fact allows *quo warranto* actions against impeachable officers, albeit respondent limits them to the President and Vice-President. This admission refutes the very position taken by respondent that *all* impeachable officials cannot be sued through *quo warranto* because they belong to a "privileged class" of officers who can be removed only through impeachment. x x x Furthermore, that the Constitution does not show a counterpart provision to paragraph 7 of Section 4, Article VII for members of this Court or the Constitutional Commissions does not mean that *quo warranto* cannot extend to non-elected impeachable officers. The authority to hear *quo warranto* petitions against appointive impeachable officers emanates from Section 5(1) of Article VIII which grants *quo warranto* jurisdiction to this Court without qualification as to the class of public officers over whom the same may be exercised. x x x Indeed, contrary to respondent's claim, Section 4 of Article VII is not meant to limit the Court's *quo warranto* jurisdiction under Article VIII of the Constitution. x x x By its plain language, however, Section 2 of Article XI does not

preclude a *quo warranto* action questioning an impeachable officer's **qualifications** to assume office. These qualifications include age, citizenship and professional experience — matters which are manifestly outside the purview of impeachment under the above-cited provision. Furthermore, Section 2 of Article XI cannot be read in isolation from Section 5(1) of Article VIII of the Constitution which gives this Court its *quo warranto* jurisdiction, or from Section 4, paragraph 7 of Article VII of the Constitution which designates the Court as the sole judge of the qualifications of the President and Vice-President. x x x Section 2 of Article XI provides that the impeachable officers may be removed from office on impeachment for and conviction of culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. Lack of qualifications for appointment or election is evidently not among the stated grounds for impeachment. It is, however, a ground for a *quo warranto* action over which this Court was given original jurisdiction under Section 5(1) of Article VIII. The grant of jurisdiction was not confined to unimpeachable officers. In fact, under Section 4, paragraph 7 of Article VII, this Court was expressly authorized to pass upon the qualifications of the President and Vice-President. Thus, the proscription against the removal of public officers other than by impeachment does not apply to *quo warranto* actions assailing the impeachable officer's eligibility for appointment or election. This construction allows all three provisions to stand together and to give effect to the clear intent of the Constitution to address not only the impeachable offenses but also the issue of qualifications of public officers, including impeachable officers.

5. ID.; ID.; ID.; THE TITLE TO PUBLIC OFFICE MAY NOT BE CONTESTED EXCEPT DIRECTLY BY *QUO WARRANTO* PROCEEDINGS, HENCE, IT CANNOT BE ASSAILED COLLATERALLY THROUGH A PETITION FOR *CERTIORARI*; EXPLAINED.— Unmoving is the rule that title to a public office may not be contested except directly, by *quo warranto* proceedings. As it cannot be assailed collaterally, *certiorari* is an infirm remedy for this purpose. It is for this reason that the Court previously denied a *certiorari* and prohibition petition which sought to annul appointment to the Judiciary of an alleged naturalized citizen. *Aguinaldo, et al. v. Aquino, et al.*, settles that when it is the *qualification* for

the position that is in issue, the proper remedy is *quo warranto* pursuant to *Topacio*. But when it is the act of the appointing power that is placed under scrutiny and not any disqualification on the part of the appointee, a petition for *certiorari* challenging the appointment for being unconstitutional or for having been done in grave abuse of discretion is the apt legal course. In *Aguinaldo*, the Court elucidated: x x x A *certiorari* petition also lacks the safeguards installed in a *quo warranto* action specifically designed to promote stability in public office and remove perpetual uncertainty in the title of the person holding the office. For one, a *certiorari* petition thrives on allegation and proof of grave abuse of discretion. In a *quo warranto* action, it is imperative to demonstrate that the respondent have usurped, intruded into or unlawfully held or exercised a public office, position or franchise. For another, *certiorari* may be filed by any person alleging to have been aggrieved by an act done with grave abuse of discretion. In a *quo warranto* action, it is the Solicitor General or a public prosecutor, when directed by the President or when upon complaint or when he has good reason to believe that the grounds for *quo warranto* can be established by proof, who must commence the action. The only instance when an individual is allowed to commence such action is when he or she claims to be entitled to a public office or position usurped or unlawfully held or exercised by another. In such case, it is incumbent upon the private person to present proof of a clear and indubitable right to the office. If *certiorari* is accepted as the proper legal vehicle to assail eligibility to public office then any person, although unable to demonstrate clear and indubitable right to the office, and merely upon claim of grave abuse of discretion, can place title to public office in uncertainty.

6. ID.; ID.; ID.; THE RULES ON *QUO WARRANTO* DO NOT REQUIRE THAT THE RECOMMENDING OR APPOINTING AUTHORITY BE IMPLEADED AS A NECESSARY PARTY, MUCH LESS MAKES THE NULLIFICATION OF THE ACT OF THE RECOMMENDING AUTHORITY A CONDITION PRECEDENT BEFORE THE REMEDY CAN BE AVAILED OF; CASE AT BAR.— Tellingly also, the rules on *quo warranto* do not require that the recommending or appointing authority be impleaded as a necessary party, much less makes the nullification of the act of the recommending authority a condition

precedent before the remedy of *quo warranto* can be availed of. The JBC itself did not bother to intervene in the instant petition. Under Section 6, Rule 66 of the Rules of Court, when the action is against a person for usurping a public office, position or franchise, it is only required that, if there be a person who claims to be entitled thereto, his or her name should be set forth in the petition with an averment of his or her right to the office, position or franchise and that the respondent is unlawfully in possession thereof. All persons claiming to be entitled to the public office, position or franchise may be made parties and their respective rights may be determined in the same *quo warranto* action. The appointing authority, or in this case the recommending authority which is the JBC, is therefore not a necessary party in a *quo warranto* action. In any case, the rules on *quo warranto* vests upon the Court ancillary jurisdiction to render such further judgment as "justice requires." Indeed, the doctrine of ancillary jurisdiction implies the grant of necessary and usual incidental powers essential to effectuate its jurisdiction and subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates. Accordingly, "demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance."

7. ID.; ID.; ID.; THE RULE PROVIDING A PRESCRIPTIVE PERIOD FOR FILING OF AN ACTION FOR A *QUO WARRANTO* REVEALS THAT SUCH LIMITATION CAN BE APPLIED ONLY AGAINST PRIVATE INDIVIDUALS CLAIMING RIGHTS TO A PUBLIC OFFICE, NOT AGAINST THE STATE; RATIONALE.— The long line of cases decided by this Court since the 1900's, which specifically explained the spirit behind the rule providing a prescriptive period for the filing of an action for *quo warranto*, reveals that such limitation can be applied only against private individuals claiming rights to a public office, *not* against the State. Indeed,

there is no proprietary right over a public office. Hence, a claimed right over a public office may be waived. In fact, even Constitutionally-protected rights may be waived. Thus, We have consistently held that the inaction of a person claiming right over a public office to assert the same within the prescriptive period provided by the rules, may be considered a waiver of such right. This is where the difference between a *quo warranto* filed by a private individual as opposed to one filed by the State through the Solicitor General lies. There is no claim of right over a public office where it is the State itself, through the Solicitor General, which files a petition for *quo warranto* to question the eligibility of the person holding the public office. As We have emphasized in the assailed Decision, unlike Constitutionally-protected rights, Constitutionally-required qualifications for a public office can never be waived either deliberately or by mere passage of time. While a private individual may, in proper instances, be deemed to have waived his or her right over title to public office and/or to have acquiesced or consented to the loss of such right, no organized society would allow, much more a prudent court would consider, the State to have waived by mere lapse of time, its right to uphold and ensure compliance with the requirements for such office, fixed by no less than the Constitution, the fundamental law upon which the foundations of a State stand, especially so when the government cannot be faulted for such lapse. On another point, the one-year prescriptive period was necessary for the government to be immediately informed if any person claims title to an office so that the government may not be faced with the predicament of having to pay two salaries, one for the person actually holding it albeit illegally, and another to the person not rendering service although entitled to do so. It would thus be absurd to require the filing of a petition for *quo warranto* within the one-year period for such purpose when it is the State itself which files the same not for the purpose of determining who among two private individuals are entitled to the office. Stated in a different manner, the purpose of the instant petition is not to inform the government that it is facing a predicament of having to pay two salaries; rather, the government, having learned of the predicament that it might be paying an unqualified person, is acting upon it head-on. Most importantly, urgency to resolve the controversy on the title to a public office to prevent a hiatus or disruption in the delivery of public service is the

ultimate consideration in prescribing a limitation on when an action for *quo warranto* may be instituted. However, it is this very same concern that precludes the application of the prescriptive period when it is the State which questions the eligibility of the person holding a public office and not merely the personal interest of a private individual claiming title thereto. Again, as We have stated in the assailed Decision, when the government is the real party in interest and asserts its rights, there can be no defense on the ground of laches or limitation, otherwise, it would be injurious to public interest if this Court will not act upon the case presented before it by the Republic and merely allow the uncertainty and controversy surrounding the Chief Justice position to continue. x x x From the foregoing disquisition, it is clear that this Court's ruling on the issue of prescription is not grounded upon provisions of the Civil Code, specifically Article 1108(4) thereof. Instead, the mention thereof was intended merely to convey that if the principle that "prescription does not lie against the State" can be applied with regard to property disputes, what more if the underlying consideration is public interest.

8. ID.; ID.; ID.; CERTAIN CIRCUMSTANCES PRECLUDE THE ABSOLUTE AND STRICT APPLICATION OF THE PRESCRIPTIVE PERIOD PROVIDED UNDER THE RULES IN FILING A PETITION FOR *QUO WARRANTO*, CLARIFIED.— To be clear, this Court is not abolishing the limitation set by the rules in instituting a petition for *quo warranto*. The one-year presciptive period under Section 11, Rule 66 of the Rules of Court still stands. However, for reasons explained above and in the main Decision, this Court made distinctions as to when such prescriptive period applies, to wit: (1) when filed by the State at its own instance, through the Solicitor General, prescription shall not apply. This, of course, does not equate to a blanket authority given to the Solicitor General to indiscriminately file baseless *quo warranto* actions in disregard of the constitutionally-protected rights of individuals; (2) when filed by the Solicitor General or public prosecutor at the request and upon relation of another person, with leave of court, prescription shall apply except when established jurisprudential exceptions are present; and (3) when filed by an individual in his or her own name, prescription shall apply, except when established jurisprudential exceptions are present. In fine, Our pronouncement in the assailed Decision as to this

matter explained that certain circumstances preclude the absolute and strict application of the prescriptive period provided under the rules in filing a petition for *quo warranto*.

9. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; STATEMENT OF ASSETS, LIABILITIES, AND NET WORTH (SALN); OFFENSES AGAINST THE SALN LAWS ARE NOT ORDINARY OFFENSES BUT VIOLATIONS OF A DUTY WHICH EVERY PUBLIC OFFICER AND EMPLOYEE OWES TO THE STATE AND THE CONSTITUTION.— The SALN laws were passed in aid of the enforcement of the Constitutional duty to submit a declaration under oath of one's assets, liabilities, and net worth. This positive Constitutional duty of filing one's SALN is so sensitive and important that it even shares the same category as the Constitutional duty imposed upon public officers and employees to owe allegiance to the State and the Constitution. As such, offenses against the SALN laws are not ordinary offenses but violations of a duty which every public officer and employee owes to the State and the Constitution. In other words, the violation of SALN laws, by itself, defeats any claim of integrity as it is inherently immoral to violate the will of the legislature and to violate the Constitution. Integrity, as what this Court has defined in the assailed Decision, in relation to a judge's qualifications, should not be viewed separately from the institution he or she represents. Integrity contemplates both adherence to the highest moral standards and obedience to laws and legislations. Integrity, at its minimum, entails compliance with the law.

LEONARDO-DE CASTRO, *J.*, *separate concurring opinion*:

POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; STATEMENT OF ASSETS, LIABILITIES AND NET WORTH (SALN); THE SALN ISSUE LIES AT THE HEART OF THE QUALIFICATION OF INTEGRITY REQUIRED FOR APPOINTMENT AS CHIEF JUSTICE; CASE AT BAR.— The SALN issue lies at the heart of the qualification of integrity required for appointment as Chief Justice. Respondent's omission to file her SALNs was an antecedent fact or a prior factual requirement before she could qualify for appointment as Chief Justice. The foregoing only

reinforces the ruling of the Court that under the particular circumstances of this case, the remedy of *quo warranto* before the Supreme Court is appropriate to challenge respondent's qualifications to be Chief Justice as there can be no void in available remedies so as to hold respondent accountable for the consequences of her actions prior to her invalid appointment and assumption to the position of Chief Justice, *i.e.*, her failure to submit to the JBC her SALNs for the 10-year period before 2012, particularly for 2002, 2003, 2004, 2005, 2006, and August 24, 2010, which were explicitly required for applications for the Chief Justice vacancy in 2012, as well as her deceptive letter dated July 23, 2012 to the JBC to justify her non-submission. As I pointed out during the Oral Arguments, if respondent succeeds in preventing the Court, and also the Senate, from looking into her SALNs, nobody will ever know whether or not she has properly complied with the constitutionally mandated obligation of the filing of SALNs. Respondent's obvious defense strategy is to avoid revealing the truth about her missing SALNs whether in this Petition for *Quo Warranto* or in the Senate Impeachment Court.

PERALTA, *J.*, *separate concurring opinion*:

1. LEGAL ETHICS; DISQUALIFICATION OF JUDICIAL OFFICERS; RESPONDENT'S RIGHT TO DUE PROCESS IS NOT VIOLATED WHEN THE ALLEGED GROUNDS FOR INHIBITION, SUCH AS BIAS AND PARTIALITY ARE UNSUBSTANTIATED; CASE AT BAR.— Contrary to respondent's view that Section 5(a), Canon 8 of the New Code of Judicial Conduct, which mandates that the inhibition of a judge who has "actual bias or prejudice against a party" is a compulsory ground for inhibition, the said ground is merely voluntary or discretionary under Rule 137 of the Rules of Court and Rule 8 of the Internal Rules of the Supreme Court, which are the applicable rules governing inhibition in this petition for *quo warranto.* x x x As to the respondent's right to due process, I have already explained in a Separate Concurring Opinion that my participation in the Congressional Hearings did not violate her right to due process, because it was never shown that I am disqualified on either compulsory or voluntary grounds for inhibition under the Rules of Court and the Internal Rules of the Supreme Court. Respondent's allegations of actual

bias and partiality are unsubstantiated, conjectural, and not founded on rational assessment of the factual circumstances on which the motion to inhibit is anchored. When I made the statements before the Congressional Hearings for the determination of probable cause to impeach the respondent Chief Justice, no petition for *quo warranto* was filed yet before the Court, hence, I could not have pre-judged the case. Once again, the genuine issue in this petition for *quo warranto* is not the eligibility of respondent to be appointed as Chief Justice in 2012, but her qualification of "proven integrity" when she was appointed as an Associate Justice in 2010 despite concealment of her habitual failure to file SALNs. Of utmost importance is the fact that I, like every other member of the Supreme Court, have never let personal reasons and political considerations shroud my judgment and cast doubt in the performance of my sworn duty, my only guide in deciding cases being a clear conscience in rendering justice without fear or favor in accordance with the law and the Constitution.

2. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; SECTION 2, ARTICLE XI OF THE 1987 CONSTITUTION; NOTHING IN THE PROVISION STATES THAT MEMBERS OF THE SUPREME COURT, AMONG OTHER PUBLIC OFFICERS, MAY BE REMOVED FROM OFFICE "ONLY" THROUGH IMPEACHMENT; CLARIFIED.—Jointly addressing the substantive issues in respondent's *Ad Cautelam* Motion for Reconsideration, I restate my position that there is nothing in Section 2, Article XI of the 1987 Constitution that states that Members of the Supreme Court among other public officers, may be removed from office "only" through impeachment. The provision simply means than only the enumerated high government officials may be removed via impeachment, but it does not follow that they could not be proceeded against in any other manner, if warranted. Otherwise, the constitutional precept that public office is a public trust would be undermined simply because political or other improper consideration may prevent an impeachment proceeding being initiated. Since Section 2, Article XI of the 1987 Constitution is clear and unambiguous, it is neither necessary nor permissible to resort to extrinsic aids for its interpretation, such as the records of deliberation of the constitutional convention, history or realities existing at the time of the adoption of the Constitution, changes

in phraseology, prior laws and judicial decisions, contemporaneous constructions, and consequences of alternative interpretations. It is only when the intent of the framers does not clearly appear in the text of the provision, as when it admits of more than one interpretation, where reliance on such extrinsic aids may be made. After all, the Constitution is not primarily a lawyer's document, and it does not derive its force from the convention that framed it, but from the people who ratified it.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; THE ONE-YEAR PRESCRIPTIVE PERIOD TO FILE A PETITION FOR *QUO WARRANTO* SHOULD COMMENCE FROM THE TIME OF DISCOVERY OF THE CAUSE FOR THE OUSTER FROM PUBLIC OFFICE, ESPECIALLY IN CASES WHERE THE GROUND FOR DISQUALIFICATION IS NOT APPARENT OR IS CONCEALED.— As a rule, an action against a public officer or employee for his ouster from office – within one year from the date the petitioner is ousted from his position or when the right of the claimant to hold office arises. Exception to the rule is when the petitioner was constantly promised and reassured or reinstatement, in which case laches may not be applied because petitioner is not guilty of inaction, and it was the continued assurance of the government, through its responsible officials, that led petitioner to wait for the government to fulfill its commitment. Thus, I posit that the one-year prescriptive period to file a petition for *quo warranto* should commence from the time of discovery of the cause for the ouster from public office, especially in cases where the ground for disqualification is not apparent or is concealed.

4. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; STATEMENT OF ASSETS, LIABILITIES AND NET WORTH (SALN); SUBMISSION OF SALN IS A PRE-REQUISITE OF THE JUDICIAL AND BAR COUNCIL FOR APPLICANTS TO THE JUDICIARY WHO COME FROM GOVERNMENT SERVICE, WHICH IS SIGNIFICANT IN DETERMINING THE INTEGRITY OF THE APPLICANTS; CASE AT BAR.— In sum, the filing of Statement of Assets, Liabilities and Net Worth (*SALN*) is a constitutional and statutory obligation of public officers and employees. Submission of SALN is a pre-requisite of the Judicial and Bar Council for applicants to the Judiciary who come from

government service. Its significance in determining the integrity of applicants to the Judiciary came to the fore when former Chief Justice Renato C. Corona was impeached for failure to properly declare assets in his SALNs. Based on the certifications issued by the University of the Philippines Human Resource Department Office and the Office of the Ombudsman Central Records Division, respondent failed to file her SALNs for the years 2000, 2001, 2003, 2004, 2005 and 2006. When respondent deliberately concealed from the JBC the fact that she failed to file her said SALNs while she was a Professor at the University of the Philippines College Law, she demonstrated that her integrity is dubious and questionable. Therefore, her appointment as an Associate Justice in August 16, 2010 is void *ab initio,* for she lacks the constitutional qualification of "proven integrity" in order to become a member of the Court.

JARDELEZA, *J.*, *concurring opinion*:

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; IMPEACHMENT IS FUNDAMENTALLY POLITICAL IN NATURE, AS IT INVOLVES GOVERNMENT AND THE INTERPLAY OF THE SOVEREIGN POWER IN REMOVING UNFIT PUBLIC OFFICIALS VIS-À-VIS THE STATE'S PROTECTION OF ITS HIGH-LEVEL PUBLIC OFFICERS.— Impeachment is an exceptional method of removing public officials lodged with, and exercised by, the Congress with great circumspection. It is fundamentally political in nature, as it involves government and the interplay of the sovereign power in removing unfit public officials vis-à-vis the state's protection of its high-level public officers. From the face of Sections 1 to 3 of Article XI of the 1987 Constitution, it further discernibly appears that the main purpose of the institution of an impeachment proceeding is to exact accountability in the enumerated impeachable public officers. As it stands now in accordance with our Constitution, in the judicial branch, it is only the Justices of the Supreme Court who are removable via impeachment. In contemplation of the lengthier terms that Supreme Court justices may occupy their positions, impeachment was created as a recourse against an erring judicial officer who would otherwise remain unremoved until retirement.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; WHILE JUDICIAL INDEPENDENCE AND FREEDOM ARE UNQUESTIONABLY DESIRABLE VALUES, JUDICIAL DISCIPLINE IS ALSO EQUALLY IMPORTANT TO ENSURE THAT THE CONDUCT OF THE JUSTICE SYSTEM'S INDIVIDUAL JUDGES, ESPECIALLY ITS HIGHEST MAGISTRATES, IS BEYOND QUESTION, HENCE, THE CONSTITUTION SETS OUT SEVERAL DISCIPLINARY POWERS THAT NECESSARILY CAPACITATE THE COURT TO PRESERVE THE INTEGRITY OF THE JUDICIAL SYSTEM; EXPLAINED.— Judicial independence, or the independence of the judiciary as an institution from other branches of government, is said to be most crucial in "periods of intolerance." Here, it has been repeatedly alleged that, by giving due course to the Solicitor General's petition for *quo warranto* filed against respondent, the Court may have irreparably compromised its independence for political ends. Not only does this argument have no basis other than the fact that respondent has styled herself as one of the staunchest critics of the present Administration, it also appears to operate on the erroneous premise that judicial independence is incompatible with judicial discipline. x x x Conversely, a proscription against the Court disciplining its own members — by virtue of the argument that impeachment (undertaken solely by Congress) is the only administrative disciplinary proceeding available — is arguably *counterintuitive* to the spirit of judicial independence, as it ties the Court's hands from meting out the extreme penalty of removal in the disciplining of its own bench. Indeed, while judicial independence and freedom are unquestionably desirable (if not necessary) values, judicial discipline is also equally important to ensure that the conduct of the justice system's individual judges, especially its highest magistrates, is beyond question. The purpose of judicial discipline is, after all, not to punish the erring judge but more to preserve the integrity of the judicial system and safeguard the bench and the public from those who are unfit. Thus, and in concrete terms, our Constitution sets out several disciplinary powers that necessarily capacitate the Court to "keep its own house in order," and thereby preserve the integrity of the judicial system, namely: (1) admission and discipline of members of the Bar, (2) contempt powers, (3) discipline and removal of judges of lower courts, and

(4) the general power of administrative supervision over *all* courts and the personnel thereof. Moreover, the Internal Rules of the Supreme Court (2010) expressly included, for the first time, "cases involving the discipline of a Member of the Court" as among those matters and cases falling within the purview of the Court *en banc*. There have been at least three cases of judicial discipline respecting sitting members of the Supreme Court. x x x While the Decisions in these cases meted penalties short of removal (in *In Re Del Castillo*, the Court eventually resolved to dismiss the case for lack of merit), all of them unequivocally signified an acknowledgment on the part of the Court of its power to enforce judicial discipline within its ranks.

3. ID.; ID.; ID.; AS SHOWN BY HISTORY, JUDICIAL DISCIPLINE AND ACCOUNTABILITY HAVE ALWAYS HELD THE LINE TO SAFEGUARD BOTH INSTITUTIONAL AND INDIVIDUAL JUDICIAL INDEPENDENCE, AND TO IMPUTE THAT THE FREEDOM OF DISSENT WILL BE NEGATED BY THE OPTION OF THE JUDICIAL REMOVAL IS A PRECARIOUS FALLACY OF UNWARRANTED ASSUMPTIONS; RATIONALE.— As shown by history, judicial discipline and accountability have always held the line to safeguard both institutional and individual judicial independence, and to impute that the freedom of dissent will be negated by the option of judicial removal is a precarious fallacy of unwarranted assumptions. In converse truth, the very existence of the elbow room for dissent owes itself in large measure to judicial accountability, inasmuch as dissents continuously ensure that no one sitting magistrate may stifle the voice of another who is moved to "show why the judgment of his fellows are worthy of contradiction." Disabusing the Court from the notion that judicial unanimity was required for legitimacy, the subsequent and prevailing tradition has since been to allow dissenting opinions to serve many utilities, including: (1) leading the majority opinion to sharpen and polish its initial draft; (2) attracting public attention for legislative change; and (3) giving the Court the farsighted contingency to correct its mistake in case of a future opportunity. A dissenter has indeed been described as one whose opinion 'speak[s] to the future… his voice… pitched to a key that will carry through the years," "recording prophecy and shaping history." Most dissents that have become the majority opinion in later years

have also proven right by Chief Justice Hughes' elegant definition of the same when he said "a dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed." These celebrated dissents were made possible through the synergized efforts of striving for judicial independence without sacrificing the system's corporate and individual integrity. Judicial accountability provided a court environment conducive for the flourishing of dissents by serving as the constant check for abuse and intimidation. x x x Judicial accountability and integrity operatively protect *all* types of dissent, whether self-seeking or sincere, whether truly intuitive of future wisdom or merely self-consciously done for the sake of itself. It safeguards dissents whether borne out of honest convictions or self-perpetuation. What remains to be seen is verifiable empirical proof to substantiate the belief that the dissenting voice has been persecuted in the historical experience of judicial removal; an unease that seems to be more apparent than it is real. There is only therefore a cognitive leap between judicial options for removal and stifling of dissent, as judicial accountability and integrity give dissent a protected platform and a breathing room, a voice that warrants the belief of authenticity.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Alexander J. Poblador, Dino Vivencio A.A. Tamayo, Anzen P. Dy, Justin Christopher C. Mendoza, Sandra M.T. Magalang and *Jayson C. Aguilar* for respondent.

R E S O L U T I O N

TIJAM, *J.*:

This resolution treats of the following motions:

1. Maria Lourdes P. A. Sereno's (respondent) *Ad Cautelam* Motion for Reconsideration of this Court's Decision[1]

[1] *Rollo*, pp. 6230-6382.

dated May 11, 2018, the dispositive portion of which states:

WHEREFORE, the Petition for *Quo Warranto* is **GRANTED**. Respondent Maria Lourdes P. A. Sereno is found **DISQUALIFIED** from and is hereby adjudged **GUILTY of UNLAWFULLY HOLDING and EXERCISING** the **OFFICE OF THE CHIEF JUSTICE**. Accordingly, Respondent Maria Lourdes P. A. Sereno is **OUSTED** and **EXCLUDED** therefrom.

The position of the Chief Justice of the Supreme Court is declared vacant and the Judicial and Bar Council is directed to commence the application and nomination process.

This Decision is immediately executory without need of further action from the Court.

Respondent Maria Lourdes P.A. Sereno is ordered to **SHOW CAUSE** within ten (10) days from receipt hereof why she should not be sanctioned for violating the Code of Professional Responsibility and the Code of Judicial Conduct for transgressing the *sub judice* rule and for casting aspersions and ill motives to the Members of the Supreme Court.

SO ORDERED.[2]

2. Respondent's *Ad Cautelam* Motion for Extension of Time to File Reply (to the Show Cause Order dated 11 May 2018).

We first dispose of respondent's Motion for Reconsideration.

Respondent claims denial of due process because her case was allegedly not heard by an impartial tribunal. She reiterates that the six (6) Justices ought to have inhibited themselves on the grounds of actual bias, of having personal knowledge of disputed evidentiary facts, and of having acted as a material witness in the matter in controversy. Respondent also argues denial of due process when the Court supposedly took notice of extraneous matters as corroborative evidence and when the Court based its main Decision on facts without observing the mandatory procedure for reception of evidence.

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[2] *Id.* at 6380.

She reiterates her arguments that the Court is without jurisdiction to oust an impeachable officer through *quo warranto*; that the official acts of the Judicial and Bar Council (JBC) and the President involves political questions that cannot be annulled absent any allegation of grave abuse of discretion; that the petition for *quo warranto* is time-barred; and that respondent was and is a person of proven integrity.

By way of Comment, the Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG), seeks a denial of respondent's motion for reconsideration for being *pro forma.* In any case, the OSG argues that respondent's motion lacks merit as there was no denial of due process and that *quo warranto* is the appropriate remedy to oust an ineligible impeachable officer. The OSG adds that the issue of whether respondent is a person of proven integrity is justiciable considering that the decision-making powers of the JBC are limited by judicially discoverable standards. Undeviating from its position, the OSG maintains that the petition is not time-barred as Section 11, Rule 66 of the Rules of Court does not apply to the State and that the peculiar circumstances of the instant case preclude the strict application of the prescriptive period.

Disputing respondent's claims, the OSG reiterates that respondent's repeated failure to file her Statement of Assets, Liabilities and Net Worth (SALN) and her non-submission thereof to the JBC which the latter required to prove the integrity of an applicant affect respondent's integrity. The OSG concludes that respondent, not having possessed of proven integrity, failed to meet the constitutional requirement for appointment to the Judiciary.

Carefully weighing the arguments advanced by both parties, this Court finds no reason to reverse its earlier Decision.

I

Respondent is seriously in error for claiming denial of due process. Respondent refuses to recognize the Court's jurisdiction over the subject matter and over her person on the ground that

respondent, as a purported impeachable official, can only be removed exclusively by impeachment. Reiterating this argument, respondent filed her Comment to the Petition, moved that her case be heard on Oral Argument, filed her Memorandum, filed her Reply/Supplement to the OSG's Memorandum and now, presently moves for reconsideration. All these representations were made *ad cautelam* which, stripped of its legal parlance, simply means that she asks to be heard by the Court which jurisdiction she does not acknowledge. She asked relief from the Court and was in fact heard by the Court, and yet she claims to have been denied of due process. She repeatedly discussed the supposed merits of her opposition to the present *quo warranto* petition in various social and traditional media, and yet she claims denial of due process. The preposterousness of her claim deserves scant consideration.

Respondent also harps on the alleged bias on the part of the six (6) Justices and that supposedly, their failure to inhibit themselves from deciding the instant petition amounts to a denial of due process.

Respondent's contentions were merely a rehash of the issues already taken into consideration and properly resolved by the Court. To reiterate, mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Acts or conduct clearly indicative of arbitrariness or prejudice has to be shown.[3] Verily, for bias and prejudice to be considered sufficient justification for the inhibition of a Member of this Court, mere suspicion is not enough.

Moreover, as discussed in the main Decision, respondent's allegations on the grounds for inhibition were merely based on speculations, or on distortions of the language, context and meaning of the answers given by the concerned Justices as resource persons in the proceedings of the Committee on Justice of the House of Representatives. These matters were squarely resolved by the Court in its main Decision, as well as in the respective separate opinions of the Justices involved.

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[3] *Barnes v. Reyes, et al.*, 614 Phil. 299, 304 (2009).

Indeed, the Members of the Court's right to inhibit are weighed against their duty to adjudicate the case without fear of repression. Respondent's motion to require the inhibition of Justices Teresita J. Leonardo-De Castro, Lucas P. Bersamin, Diosdado M. Peralta, Francis H. Jardeleza, Samuel R. Martires, and Noel Gimenez Tijam, who all concurred to the main Decision, would open the floodgates to the worst kind of forum shopping, and on its face, would allow respondent to shop for a Member of the Court who she perceives to be more compassionate and friendly to her cause, and is clearly antithetical to the fair administration of justice.

Bordering on the absurd, respondent alleges prejudice based on the footnotes of the main Decision which show that the draft thereof was being prepared as early as March 15, 2018 when respondent has yet to file her Comment. Respondent forgets to mention that the Petition itself was filed on March 5, 2018 where the propriety of the remedy of *quo warranto* was specifically raised. Certainly, there is nothing irregular nor suspicious for the Member-in-Charge, nor for any of the Justices for that matter, to have made a requisite initial determination on the matter of jurisdiction. In professing such argument, respondent imputes fault on the part of the Justices for having been diligent in the performance of their work.

Respondent also considers as irregular the query made by the Member-in-Charge with the JBC Office of the Executive Officer (OEO) headed by Atty. Annaliza S. Ty-Capacite (Atty. Capacite). Respondent points out that the same is not allowed and shows prejudice on the part of the Court.

For respondent's information, the data were gathered pursuant to the Court *En Banc's* Resolution dated March 20, 2018 wherein the Clerk of Court *En Banc* and the JBC, as custodian and repositories of the documents submitted by respondent, were directed to provide the Court with documents pertinent to respondent's application and appointment as an Associate Justice in 2010 and as Chief Justice of the Court in 2012 for the purpose of arriving at a judicious, complete, and efficient resolution of the instant case. In the same manner, the "corroborative evidence"

referred to by respondent simply refers to respondent's acts and representations ascertainable through an examination of the documentary evidence appended by both parties to their respective pleadings as well as their representations during the Oral Argument. Reference to respondent's subsequent acts committed during her incumbency as Chief Justice, on the other hand, are plainly matters of public record and already determined by the House of Representatives as constituting probable cause for impeachment.

II

The Court reaffirms its authority to decide the instant *quo warranto* action. This authority is expressly conferred on the Supreme Court by the Constitution under Section 5, Article VIII which states that:

> **Sec. 5.** The Supreme Court shall have the following powers:
>
> **1. Exercise original jurisdiction** over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, ***quo warranto***, and *habeas corpus*.
>
> x x x x x x x x x
> (Emphasis ours)

Section 5 of Article VIII does not limit the Court's *quo warranto* jurisdiction only to certain public officials or that excludes impeachable officials therefrom. In *Sarmiento v. Mison*,[4] the Court ruled:

> The task of the Court is rendered lighter by the existence of relatively clear provisions in the Constitution. In cases like this, we follow what the Court, speaking through Mr. Justice (later, Chief Justice) Jose Abad Santos stated in *Gold Creek Mining Corp. v. Rodriguez,* that:
>
> > The fundamental principle of constitutional construction is to give effect to the intent of the framers of the organic law and of the people adopting it. **The intention to which force is to**

[4] G.R. No. 79974, December 17, 1987, 156 SCRA 549.

be given is that which is embodied and expressed in the constitutional provisions themselves.[5] (Emphasis ours)

The Constitution defines judicial power as a "duty" to be performed by the courts of justice.[6] Thus, for the Court to repudiate its own jurisdiction over this case would be to abdicate a constitutionally imposed responsibility.

As the Court pointed out in its Decision, this is not the first time the Court took cognizance of a *quo warranto* petition against an impeachable officer. In the consolidated cases of *Estrada v. Macapagal-Arroyo*[7] and *Estrada v. Desierto*,[8] the Court assumed jurisdiction over a *quo warranto* petition that challenged Gloria Macapagal-Arroyo's title to the presidency.

Arguing that the aforesaid cases cannot serve as precedent for the Court to take cognizance of this case, respondent makes it appear that they involved a totally different issue, one that concerned Joseph E. Estrada's immunity from suit, specifically: "Whether conviction in the impeachment proceedings is a condition precedent for the criminal prosecution of petitioner Estrada. In the negative and on the assumption that petitioner is still President, whether he is immune from criminal prosecution."[9]

Respondent's allegation is utterly false and misleading. A cursory reading of the cases will reveal that Estrada's immunity

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[5] *Id.* at 552.

[6] Section 1 of Article VIII states:

Sec. 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the **duty of the courts of justice** to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis ours)

[7] 406 Phil. 1 (2001).

[8] *Supra.*

[9] Respondent's *Ad Cautelam* Motion for Reconsideration, pp. 68-69.

from suit was just one of the issues raised therein. Estrada in fact sought a *quo warranto* inquiry into Macapagal-Arroyo's right to assume the presidency, claiming he was simply a President on leave.

Respondent also asserts that *Estrada* cannot serve as precedent for the Court to decide this case because it was dismissed, and unlike the instant petition, it was filed within the prescribed one (1)-year period under Section 11, Rule 66 of the Rules of Court.[10]

The argument fails to persuade. *Estrada* was dismissed not because the Court had no jurisdiction over the *quo warranto* petition but because Estrada's challenge to Macapagal-Arroyo's presidency had no merit. In ruling upon the merits of Estrada's *quo warranto* petition, the Court has undeniably exercised its jurisdiction under Section 5(1) of Article VIII. Thus, *Estrada* clearly demonstrates that the Court's *quo warranto* jurisdiction extends to impeachable officers.

Furthermore, as will be discussed elsewhere in this Resolution, the filing of the instant petition was not time-barred. The issue of prescription must be addressed in light of the public interest that *quo warranto* is meant to protect.

Accordingly, the Court could, as it did in *Estrada,* assume jurisdiction over the instant *quo warranto* petition against an impeachable officer.

Quo warranto and impeachment are two distinct proceedings, although both may result in the ouster of a public officer. Strictly speaking, *quo warranto* grants the relief of "ouster", while impeachment affords "removal."

A *quo warranto* proceeding is the proper legal remedy to determine a person's right or title to a public office and to oust the holder from its enjoyment.[11] It is the proper action to inquire

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[10] Respondent's *Ad Cautelam* Motion for Reconsideration, p. 69.

[11] *Sen. Defensor Santiago v. Sen. Guingona, Jr.*, 359 Phil. 276, 302 (1998).

into a public officer's eligibility[12] or the validity of his appointment.[13] Under Rule 66 of the Rules of Court, a *quo warranto* proceeding involves a judicial determination of the right to the use or exercise of the office.

Impeachment, on the other hand, is a political process undertaken by the legislature to determine whether the public officer committed any of the impeachable offenses, namely, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.[14] It does not ascertain the officer's eligibility for appointment or election, or challenge the legality of his assumption of office. Conviction for any of the impeachable offenses shall result in the removal of the impeachable official from office.[15]

The OSG's *quo warranto* petition challenged respondent's right and title to the position of Chief Justice. He averred that in failing to regularly disclose her assets, liabilities and net worth as a member of the career service prior to her appointment as an Associate Justice of the Court, respondent could not be said to possess the requirement of proven integrity demanded of every aspiring member of the Judiciary. The OSG thus prayed that respondent's appointment as Chief Justice be declared void.

Clearly, the OSG questioned the respondent's eligibility for appointment as Chief Justice and sought to invalidate such appointment. The OSG's petition, therefore, is one for *quo warranto* over which the Court exercises original jurisdiction.

As the Court previously held, "where the dispute is on the eligibility to perform the duties by the person sought to be ousted or disqualified a *quo warranto* is the proper action."[16]

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[12] *Fortuno v. Judge Palma*, 240 Phil. 656, 664 (1987).

[13] *Nacionalista Party v. De Vera*, 85 Phil. 126, 133 (1949) and *J/Sr. Supt. Engaño v. Court of Appeals*, 526 Phil. 291, 297 (2006).

[14] 1987 CONSTITUTION, Article XI, Section 2.

[15] 1987 CONSTITUTION, Article XI, Sections 2 and 3(7).

[16] *Fortuno v. Judge Palma*, *supra* at 664.

Respondent harps on the supposed intent of the framers of the Constitution for impeachable officers to be removed only through impeachment.[17] However, a circumspect examination of the deliberations of the 1986 Constitutional Commission will reveal that the framers presumed that the impeachable officers had duly qualified for the position. Indeed, the deliberations which respondent herself cited[18] showed that the framers did not contemplate a situation where the impeachable officer was unqualified for appointment or election.

Accordingly, respondent's continued reliance on the Court's pronouncement in *Mayor Lecaroz v. Sandiganbayan*,[19] *Cuenco v. Hon. Fernan*,[20] *In Re Gonzales*,[21] *Jarque v. Desierto*[22] and *Marcoleta v. Borra*[23] (*Lecaroz,* etc.) is misplaced. Not one of these cases concerned the validity of an impeachable officer's appointment. To repeat, *Lecaroz* involved a criminal charge against a mayor before the Sandiganbayan, while the rest were disbarment cases filed against impeachable officers principally for acts done during their tenure in public office. The officers' eligibility or the validity of their appointment was not raised before the Court. The principle laid down in said cases is to the effect that during their incumbency, impeachable officers cannot be criminally prosecuted for an offense that carries with it the penalty of removal, and if they are required to be members of the Philippine Bar to qualify for their positions, they cannot be charged with disbarment. The proscription does not extend to actions assailing the public officer's title or right to the office he or she occupies. The ruling therefore cannot serve as authority to hold that a *quo warranto* action can never be filed against an impeachable officer.

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[17] Respondent's *Ad Cautelam* Motion for Reconsideration, p. 58.

[18] Respondent's *Ad Cautelam* Motion for Reconsideration, pp. 58-61.

[19] 213 Phil. 288 (1984).

[20] 241 Phil. 162 (1988).

[21] 243 Phil. 167 (1988).

[22] *En Banc* Resolution dated December 5, 1995 in A.C. No. 5409.

[23] 601 Phil. 470 (2009).

The Court's *quo warranto* jurisdiction over impeachable officers also finds basis in paragraph 7, Section 4, Article VII of the Constitution which designates it as the sole judge of the qualifications of the President and Vice-President, both of whom are impeachable officers. With this authority, the remedy of *quo warranto* was provided in the rules of the Court sitting as the Presidential Electoral Tribunal (PET).

Respondent, however, argues that *quo warranto* petitions may be filed against the President and Vice-President under the PET Rules "only because the Constitution specifically permits" them under Section 4, Article VII. According to respondent, no counterpart provision exists in the Constitution giving the same authority to the Court over the Chief Justice, the members of the Constitutional Commissions and the Ombudsman. Respondent, thus, asserts that the Constitution made a distinction between elected and appointive impeachable officials, and limited *quo warranto* to elected impeachable officials. For these reasons, respondent concludes that by constitutional design, the Court is denied power to remove any of its members.[24]

The Court is not convinced. The argument, to begin with, acknowledges that the Constitution in fact allows *quo warranto* actions against impeachable officers, albeit respondent limits them to the President and Vice-President. This admission refutes the very position taken by respondent that *all* impeachable officials cannot be sued through *quo warranto* because they belong to a "privileged class" of officers who can be removed only through impeachment.[25] To be sure, *Lecaroz,* etc. did not distinguish between elected and appointed impeachable officers.

Furthermore, that the Constitution does not show a counterpart provision to paragraph 7 of Section 4, Article VII for members of this Court or the Constitutional Commissions does not mean that *quo warranto* cannot extend to non-elected impeachable

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[24] Respondent's *Ad Cautelam* Motion for Reconsideration, pp. 67-68.

[25] Respondent's *Ad Cautelam* Motion for Reconsideration, p. 59.

officers. The authority to hear *quo warranto* petitions against appointive impeachable officers emanates from Section 5(1) of Article VIII which grants *quo warranto* jurisdiction to this Court without qualification as to the class of public officers over whom the same may be exercised.

Respondent argues that Section 5(1) of Article VIII is not a blanket authority, otherwise paragraph 7 of Section 4, Article VII would be "superfluous." Superfluity, however, is not the same as inconsistency. Section 4, Article VII is not repugnant to, and clearly confirms, the Court's *quo warranto* jurisdiction under Section 5(1) of Article VIII. Respondent herself has not alleged any irreconcilability in these provisions.

Indeed, contrary to respondent's claim, Section 4 of Article VII is not meant to limit the Court's *quo warranto* jurisdiction under Article VIII of the Constitution. In fact, We held that "[t]he power wielded by PET is "a derivative of the plenary judicial power allocated to the courts of law, expressly provided in the Constitution."[26] Thus, the authority under Section 4 of Article VII to hear *quo warranto* petitions assailing the qualifications of the President and Vice-President is simply a component of the Court's *quo warranto* jurisdiction under Article VIII. This finds support in the nature of *quo warranto* as a remedy to determine a person's right or title to a public office,[27] which is not confined to claims of ineligibility but extends to other instances or claims of usurpation or unlawful holding of public office as in the cases of *Lota v. CA and Sangalang*,[28] *Moro v. Del Castillo, Jr.*,[29] *Mendoza v. Allas*,[30] *Sen. Defensor Santiago v. Sen. Guingona, Jr.*[31] and *Estrada.* It will be recalled

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[26] *Atty. Macalintal v. Presidential Electoral Tribunal*, 650 Phil. 326, 359 (2010).

[27] *Sen. Defensor Santiago v. Sen. Guingona, Jr.*, *supra* note 11, at 302.

[28] 112 Phil. 619 (1961).

[29] 662 Phil. 331 (2011).

[30] 362 Phil. 238 (1999).

[31] 359 Phil. 276 (1998).

that in *Estrada*, the Court took cognizance of, and ruled upon, a *quo warranto* challenge to a vice-president's assumption of the presidency; the challenge was based, not on ineligibility, but on therein petitioner's claim that he had not resigned and was simply a president on leave. To sustain respondent's argument, therefore, is to unduly curtail the Court's judicial power and to dilute the efficacy of *quo warranto* as a remedy against the "unauthorized arbitrary assumption and exercise of power by one without color of title or who is not entitled by law thereto."[32] It bears to reiterate that:

> While an appointment is an essentially discretionary executive power, it is subject to the limitation that the appointee should possess none of the disqualifications but all the qualifications required by law. **Where the law prescribes certain qualifications for a given office or position, courts may determine whether the appointee has the requisite qualifications, absent which, his right or title thereto may be declared void.**[33] (Citations omitted and emphasis ours)

This Court has the constitutional mandate to exercise jurisdiction over *quo warranto* petitions. And as *Estrada* and the PET Rules show, impeachable officers are not immune to *quo warranto* actions. Thus, a refusal by the Court to take cognizance of this case would not only be a breach of its duty under the Constitution, it would also accord respondent an exemption not given to other impeachable officers. Such privilege finds no justification either in law, as impeachable officers are treated without distinction under the impeachment provisions[34] of the Constitution, or in reason, as the qualifications of the Chief Justice are no less important than the President's or the Vice-President's.

Respondent's insistence that she could not be removed from office except through impeachment is predicated on Section 2, Article XI of the Constitution. It reads:

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[32] *Sen. Defensor Santiago v. Sen. Guingona, Jr., supra* note 11, at 302.

[33] *J/Sr. Supt. Engaño v. Court of Appeals*, *supra* note 13, at 299.

[34] 1987 CONSTITUTION, Article XI, Sections 2 and 3.

Sec. 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, **culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust**. All other public officers and employees may be removed from office as provided by law, but not by impeachment. (Emphasis ours)

By its plain language, however, Section 2 of Article XI does not preclude a *quo warranto* action questioning an impeachable officer's **qualifications** to assume office. These qualifications include age, citizenship and professional experience — matters which are manifestly outside the purview of impeachment under the above-cited provision.

Furthermore, Section 2 of Article XI cannot be read in isolation from Section 5(1) of Article VIII of the Constitution which gives this Court its *quo warranto* jurisdiction, or from Section 4, paragraph 7 of Article VII of the Constitution which designates the Court as the sole judge of the qualifications of the President and Vice-President.

In *Civil Liberties Union v. The Executive Secretary*,[35] the Court held:

It is a well-established rule in constitutional construction that no one provision of the Constitution is to be separated from all the others, to be considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purposes of the instrument. Sections bearing on a particular subject should be considered and interpreted together as to effectuate the whole purpose of the Constitution and one section is not to be allowed to defeat another, if by any reasonable construction, the two can be made to stand together.

In other words, the court must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative, rather than one which may make the words idle and nugatory.[36] (Citations omitted)

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[35] 272 Phil. 147 (1991).

[36] *Id*. at 162.

Section 2 of Article XI provides that the impeachable officers may be removed from office on impeachment for and conviction of culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. Lack of qualifications for appointment or election is evidently not among the stated grounds for impeachment. It is, however, a ground for a *quo warranto* action over which this Court was given original jurisdiction under Section 5(1) of Article VIII. The grant of jurisdiction was not confined to unimpeachable officers. In fact, under Section 4, paragraph 7 of Article VII, this Court was expressly authorized to pass upon the qualifications of the President and Vice-President. Thus, the proscription against the removal of public officers other than by impeachment does not apply to *quo warranto* actions assailing the impeachable officer's eligibility for appointment or election.

This construction allows all three provisions to stand together and to give effect to the clear intent of the Constitution to address not only the impeachable offenses but also the issue of qualifications of public officers, including impeachable officers.

As this Court intoned in its Decision, to take appointments of impeachable officers beyond the reach of judicial review is to cleanse them of any possible defect pertaining to the constitutionally prescribed qualifications which cannot otherwise be raised in an impeachment proceeding.

To illustrate this, the Court cited the requirement that the impeachable officer must be a natural-born citizen of the Philippines. We explained that if it turns out that the impeachable officer is in fact of foreign nationality, respondent's argument will prevent this Court from inquiring into this important qualification that directly affects the officer's ability to protect the interests of the State. Unless convicted of an impeachable offense, the officer will continue in office despite being clearly disqualified from holding it. We stressed that this could not have been the intent of the framers of the Constitution.

Respondent, however, contends that the above-cited defect will actually constitute a ground for impeachment because the appointee's continued exercise of public functions despite

knowledge of his foreign nationality amounts to a culpable violation of the Constitution.

The argument is untenable. Citizenship is a qualification issue which this Court has the authority to resolve. Thus, in *Kilosbayan Foundation v. Exec. Sec. Ermita*,[37] where the appointment of Sandiganbayan Justice Gregory S. Ong (Ong) to this Court was sought to be annulled for the latter's supposed failure to comply with the citizenship requirement under the Constitution, We stated that:

> Third, as to the proper forum for litigating the issue of respondent Ong's qualification for membership of this Court. **This case is a matter of primordial importance involving compliance with a Constitutional mandate. As the body tasked with the determination of the merits of conflicting claims under the Constitution, the Court is the proper forum for resolving the issue, even as the JBC has the initial competence to do so**.[38] (Citation omitted and emphasis ours)

In the subsequent case of *Topacio v. Assoc. Justice Gregory Santos Ong*, *et al*.,[39] Ong's citizenship was raised anew, this time to prevent him from further exercising the office of a Sandiganbayan Associate Justice. The Court held that the challenge was one against Ong's title to the office which must be raised in a *quo warranto* proceeding, thus:

> **While denominated as a petition for *certiorari* and prohibition, the petition partakes of the nature of a *quo warranto* proceeding with respect to Ong, for it effectively seeks to declare null and void his appointment as an Associate Justice of the Sandiganbayan for being unconstitutional**. While the petition professes to be one for *certiorari* and prohibition, petitioner even adverts to a *quo warranto* aspect of the petition.
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> Being a collateral attack on a public officer's title, the present petition for *certiorari* and prohibition must be dismissed.

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[37] 553 Phil. 331 (2007).

[38] *Id*. at 340.

[39] 595 Phil. 491 (2008).

The title to a public office may not be contested except directly, by *quo warranto* proceedings; **and it cannot be assailed collaterally**, even through *mandamus* or a motion to annul or set aside order. In *Nacionalista Party v. De Vera*, the Court ruled that prohibition does not lie to inquire into the validity of the appointment of a public officer.

> x x x [T]he writ of prohibition, even when directed against persons acting as judges or other judicial officers, **cannot be treated as a substitute for *quo warranto* or be rightfully called upon to perform any of the functions of the writ**. If there is a court, judge or officer *de facto*, the title to the office and the right to act cannot be questioned by prohibition. If an intruder takes possession of a judicial office, the person dispossessed cannot obtain relief through a writ of prohibition commanding the alleged intruder to cease from performing judicial acts, since in its very nature prohibition is an **improper remedy by which to determine the title to an office**.[40] (Citations omitted and emphasis ours)

Determining title to the office on the basis of a public officer's qualifications is the function of *quo warranto*. For this reason, impeachment cannot be treated as a substitute for *quo warranto*.

Furthermore, impeachment was designed as a mechanism "to check abuse of power."[41] The grounds for impeachment, including culpable violation of the Constitution, have been described as referring to "serious crimes or misconduct"[42] of the "vicious and malevolent" kind.[43] Citizenship issues are hardly within the ambit of this constitutional standard.

The Constitution must be construed in light of the object sought to be accomplished and the evils sought to be prevented

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[40] *Id*. at 503.

[41] *Chief Justice Corona v. Senate of the Philippines, et al.*, 691 Phil. 156, 170 (2012).

[42] *Id*.

[43] *Gonzales III v. Office of the President of the Philippines, et al.*, 694 Phil. 52, 102 (2012).

or remedied.[44] An interpretation that would cause absurdity is not favored.[45]

It thus bears to reiterate that even the PET Rules expressly provide for the remedy of election protest. Following respondent's theory that an impeachable officer can be removed only through impeachment means that a President or Vice-President against whom an election protest has been filed can demand for the dismissal of the protest on the ground that it can potentially cause his/her removal from office through a mode other than by impeachment. To sustain respondent's position is to render election protests under the PET Rules nugatory. The Constitution could not have intended such absurdity since fraud and irregularities in elections cannot be countenanced, and the will of the people as reflected in their votes must be determined and respected.

The preposterousness of allowing unqualified public officials to continue occupying their positions by making impeachment the sole mode of removing them was likewise aptly discussed by Our esteemed colleague Justice Estela M. Perlas-Bernabe when she stated that qualification should precede authority, *viz*:

> Owing to both the "political" and "offense-based" nature of these grounds, I am thus inclined to believe that impeachment is not the sole mode of "removing" impeachable officials as it be clearly absurd for any of them to remain in office despite their failure to meet the minimum eligibility requirements, which failure does not constitute a ground for impeachment. Sensibly, there should be a remedy to oust all our public officials, no matter how high-ranking they are or criticial their functions may be, upon a determination that they have not actually qualified for election or appointment. While I do recognize the wisdom of insulating impeachable officials from suits that may impede the performance of vital public functions, ultimately, this concern cannot override the basic qualification requirements of public

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[44] *Atty. Macalintal v. Presidential Electoral Tribunal*, *supra* note 26, at 340; *People of the Philippines v. Lacson*, 448 Phil. 317, 386 (2003).

[45] *Southern Cross Cement Corp. v. Cement Manufacturers Association of the Phil.*, 503 Phil. 485, 524 (2005).

office. ***There is no doubt that qualification should precede authority***. Every public office is created and conferred by law. x x x.[46] (Emphasis in the original)

Underlying all constitutional provisions on government service is the principle that public office is a public trust.[47] The people, therefore, have the right to have only qualified individuals appointed to public office. To construe Section 2, Article XI of the Constitution as proscribing a *quo warranto* petition is to deprive the State of a remedy to correct a public wrong arising from defective or void appointments. Equity, however, will not suffer a wrong to be without remedy.[48] It stands to reason, therefore, that *quo warranto* should be available to question the validity of appointments especially of impeachable officers since they occupy the upper echelons of government and are capable of wielding vast power and influence on matters of law and policy.

III

Much noise and hysteria have been made that a sitting Chief Justice can only be removed by impeachment and that *quo warranto* is an improper remedy not sanctioned by the Constitution. The wind of disinformation was further fanned by respondent who claimed that her ouster was orchestrated by the President. This campaign of misinformation attempted to conceal and obfuscate the fact that the main issue in the petition which the Court is tasked to resolve is the qualification of respondent.

In the instant motion, respondent made mention of Senate Resolution No. 738,[49] which urges this Court to review Our

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[46] Separate Opinion of Justice Estela M. Perlas-Bernabe in G.R. No. 237428 dated May 11, 2018, *rollo*, pp. 6578-6579.

[47] 1987 CONSTITUTION, Article XI, Section 1.

[48] *Re: Request of National Committee on Legal Aid to Exempt Legal Aid Clients from Paying Filing, Docket and Other Fees*, A.M. No. 08-11-7-SC, August 28, 2009.

[49] RESOLUTION EXPRESSING THE SENSE OF THE SENATE TO UPHOLD THE CONSTITUTION ON THE MATTER OF REMOVING A CHIEF JUSTICE FROM OFFICE.

May 11, 2018 Decision as it sets a "dangerous precedent that transgresses the exclusive powers of the legislative branch to initiate, try and decide all cases of impeachment." This Resolution was supposedly aimed to express "the sense of the Senate to uphold the Constitution on the matter of removing a Chief Justice from office." We have to remind the respondent, however, that while a majority of the Senators — 14 out of the 23 members — signed the said Resolution, the same has not yet been adopted by the Senate to date. In fact, the Court takes judicial notice that on May 31, 2018, the Senate adjourned its interpellation without any conclusion as to whether the Resolution is adopted.[50] Without such approval, the Senate Resolution amounts to nothing but a mere scrap of paper at present.

The Senate Resolution also appears to have been drafted, signed by some Senators, and interpellated on while respondent's motion for reconsideration is still pending consideration by the Court. While the concerned Members of the Senate insist on non-encroachment of powers, the Senate Resolution itself tends to influence, if not exert undue pressure on, the Court on how it should resolve the pending motion for reconsideration. The importance and high regard for the institution that is the Senate is undisputed. But the Court, in the discharge of its Constitutional duty, is also entitled to the same degree of respect and deference.

At any rate, and with due regard to the Members of the Senate, We emphasize that the judicial determination of actual controversies presented before the courts is within the exclusive domain of the Judiciary. "The separation of powers doctrine is the backbone of our tripartite system of government. It is implicit in the manner that our Constitution lays out in separate and distinct Articles the powers and prerogatives of each co-equal branch of government."[51] Thus, the act of some of the Senators questioning the Court's judicial action is clearly an unwarranted intrusion to the Court's powers and mandate.

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[50] <http://news.abs-cbn.com/news/05/31/18/senate-fails-to-adopt-resolution-challenging-sereno-ouster> (visited on June 1, 2018).

[51] *Padilla, et al. v. Congress of the Phils.*, G.R. No. 231671, July 25, 2017.

To disabuse wandering minds, there is nothing violative or intrusive of the Senate's power to remove impeachable officials in the main Decision. In fact, in the said assailed Decision, We recognized that the Senate has the sole power to try and decide all cases of impeachment. We have extensively discussed therein that the Court merely exercised its Constitutional duty to resolve a legal question referring to respondent's qualification as a Chief Justice of the Supreme Court. We also emphasized that this Court's action never intends to deprive the Congress of its mandate to make a determination on impeachable officials' culpability for acts committed while in office. We even explained that impeachment and *quo warranto* may proceed independently and simultaneously, albeit a ruling of removal or ouster of the respondent in one case will preclude the same ruling in the other due to legal impossibility and mootness.

Quo warranto is not a figment of imagination or invention of this Court. It is a mandate boldly enshrined in the Constitution[52] where the judiciary is conferred original jurisdiction to the exclusion of the other branches of the government. *Quo warranto*, not impeachment, is the constitutional remedy prescribed to adjudicate and resolve questions relating to qualifications, eligibility and entitlement to public office. Those who chose to ignore this fact are Constitutionally blind. US Supreme Court Justice Scalia once said: "If it is in the Constitution, it is there. If it is not in the Constitution, it is not there."[53] There is nothing in Our Constitution that says that impeachable officers are immuned, exempted, or excluded from *quo warranto* proceedings when the very issue to be determined therein is the status of an officer as such. No amount of public indignation can rewrite or deface the Constitution.

IV

The plain issue in the instant case is whether respondent is eligible to occupy the position of Chief Justice. To determine

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[52] 1987 CONSTITUTION, Article VIII, Section 5.

[53] Scalia and Garner, *Reading the Law: The Interpretation of Legal Texts*, pp. 4-6 (2012).

whether or not respondent is eligible, the primordial consideration is whether respondent met the requisite Constitutional requirements for the position. Questions on eligibility therefore present a justiciable issue, which can be resolved by juxtaposing the facts with the Constitution, as well as pertinent laws and jurisprudence. In *Kilosbayan Foundation*,[54] the Court affirmed its jurisdiction to resolve the issue on the qualification for membership of this Court as the body tasked with the determination of the merits of conflicting claims under the Constitution, *even* when the JBC has the initial competence to do so.[55]

True enough, constitutionally committed to the JBC is the principal function of recommending appointees to the Judiciary. The function to recommend appointees carries with it the concomitant duty to screen applicants therefor. The JBC's exercise of its recommendatory function must nevertheless conform with the basic premise that the appointee possesses the non-negotiable qualifications prescribed by the Constitution. While the JBC enjoys a certain leeway in screening aspiring magistrates, such remains to be tightly circumscribed by the Constitutional qualifications for aspiring members of the Judiciary.[56] These Constitutional prerequisites are therefore deemed written into the rules and standards which the JBC may prescribe in the discharge of its primary function. The JBC cannot go beyond or less than what the Constitution prescribes.

The surrender to the JBC of the details as to how these qualifications are to be determined is rendered necessary and in keeping with its recommendatory function which is nevertheless made expressly subject to the Court's exercise of supervision.

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[54] *Supra* note 37.

[55] *Id.* at 340.

[56] *Villanueva v. Judicial and Bar Council*, 757 Phil. 534 (2015).

As an incident of its power of supervision over the JBC, the Court has the authority to insure that the JBC performs its duties under the Constitution and complies with its own rules and standards. Indeed, supervision is an active power and implies the authority to inquire into facts and conditions that renders the power of supervision real and effective.[57] Under its power of supervision, the Court has ample authority to look into the processes leading to respondent's nomination for the position of Chief Justice on the face of the Republic's contention that respondent was ineligible to be a candidate to the position to begin with.

Arguments were raised against the Court's assumption over the *quo warranto* petition on the premise that the determination of the integrity requirement lies solely on the JBC's discretion and thus, a prior nullification of the JBC's act on the ground of grave abuse of discretion through a *certiorari* petition is the proper legal route.

The question of whether or not a nominee possesses the requisite qualifications is determined based on facts and as such, generates no exercise of discretion on the part of the nominating body. Thus, whether a nominee is of the requisite age, is a natural-born citizen, has met the years of law practice, and is of proven competence, integrity, probity, and independence are to be determined based on facts and cannot be made dependent on inference or discretion, much less concessions, which the recommending authority may make or extend. To say that the determination of whether a nominee is of "proven integrity" is a task absolutely contingent upon the discretion of the JBC is to place the integrity requirement on a plateau different from the rest of the Constitutional requirements, when no such distinction is assigned by the Constitution. As well, to treat as discretionary on the part of the JBC the question of whether a nominee is of "proven integrity" is to render the Court impotent to nullify an otherwise unconstitutional nomination unless the Court's jurisdiction is invoked on the ground of grave abuse

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[57] *Planas v. Gil,* 67 Phil. 62, 77 (1939).

of discretion. Such severely limiting course of action would effectively diminish the Court's collegial power of supervision over the JBC.

To re-align the issue in this petition, the Republic charges respondent of unlawfully holding or exercising the position of Chief Justice of the Supreme Court. The contents of the petition pose an attack to respondent's authority to hold or exercise the position. Unmoving is the rule that title to a public office may not be contested except directly, by *quo warranto* proceedings.[58] As it cannot be assailed collaterally, *certiorari* is an infirm remedy for this purpose. It is for this reason that the Court previously denied a *certiorari* and prohibition petition which sought to annul appointment to the Judiciary of an alleged naturalized citizen.[59]

Aguinaldo, et al. v. Aquino, et al.,[60] settles that when it is the *qualification* for the position that is in issue, the proper remedy is *quo warranto* pursuant to *Topacio.*[61] But when it is the act of the appointing power that is placed under scrutiny and not any disqualification on the part of the appointee, a petition for *certiorari* challenging the appointment for being unconstitutional or for having been done in grave abuse of discretion is the apt legal course. In *Aguinaldo*, the Court elucidated:

> The Court recognized in *Jardeleza v. Sereno* that a petition for *certiorari* is a proper remedy to question the act of any branch or instrumentality of the government on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.
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> In opposing the instant Petition for *Certiorari* and Prohibition, the OSG cites Topacio in which the Court declares that title to a

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[58] *Topacio v. Assoc. Justice Gregory Santos Ong, et al.*, *supra* note 39, at 503 citing *Gonzales v. COMELEC, et al.*, 129 Phil. 7, 29 (1967).

[59] *Id.*

[60] G.R. No. 224302, November 29, 2016.

[61] *Supra* note 39.

public office may not be contested except directly, by *quo warranto* proceedings; and it cannot be assailed collaterally, such as by *certiorari* and prohibition.

However, Topacio is not on all fours with the instant case. In Topacio, the writs of *certiorari* and prohibition were sought against Sandiganbayan Associate Justice Gregory S. Ong on the ground that he lacked the qualification of Filipino citizenship for said position. In contrast, the present Petition for *Certiorari* and Prohibition puts under scrutiny, not any disqualification on the part of respondents Musngi and Econg, but the act of President Aquino in appointing respondents Musngi and Econg as Sandiganbayan Associate Justices without regard for the clustering of nominees into six separate shortlists by the JBC, which allegedly violated the Constitution and constituted grave abuse of discretion amounting to lack or excess of jurisdiction. This would not be the first time that the Court, in the exercise of its expanded power of judicial review, takes cognizance of a petition for *certiorari* that challenges a presidential appointment for being unconstitutional or for having been done in grave abuse of discretion. x x x.[62] (Italics and citations omitted.)

A *certiorari* petition also lacks the safeguards installed in a *quo warranto* action specifically designed to promote stability in public office and remove perpetual uncertainty in the title of the person holding the office. For one, a *certiorari* petition thrives on allegation and proof of grave abuse of discretion. In a *quo warranto* action, it is imperative to demonstrate that the respondent have usurped, intruded into or unlawfully held or exercised a public office, position or franchise.

For another, *certiorari* may be filed by any person alleging to have been aggrieved by an act done with grave abuse of discretion. In a *quo warranto* action, it is the Solicitor General or a public prosecutor, when directed by the President or when upon complaint or when he has good reason to believe that the grounds for *quo warranto* can be established by proof, who must commence the action. The only instance when an individual is allowed to commence such action is when he or she claims to be entitled to a public office or position usurped or unlawfully

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[62] *Aguinaldo, et al. v. Aquino, et al.*, *supra*.

held or exercised by another. In such case, it is incumbent upon the private person to present proof of a clear and indubitable right to the office. If *certiorari* is accepted as the proper legal vehicle to assail eligibility to public office then any person, although unable to demonstrate clear and indubitable right to the office, and merely upon claim of grave abuse of discretion, can place title to public office in uncertainty.

Tellingly also, the rules on *quo warranto* do not require that the recommending or appointing authority be impleaded as a necessary party, much less makes the nullification of the act of the recommending authority a condition precedent before the remedy of *quo warranto* can be availed of. The JBC itself did not bother to intervene in the instant petition.

Under Section 6, Rule 66 of the Rules of Court, when the action is against a person for usurping a public office, position or franchise, it is only required that, if there be a person who claims to be entitled thereto, his or her name should be set forth in the petition with an averment of his or her right to the office, position or franchise and that the respondent is unlawfully in possession thereof. All persons claiming to be entitled to the public office, position or franchise may be made parties and their respective rights may be determined in the same *quo warranto* action. The appointing authority, or in this case the recommending authority which is the JBC, is therefore not a necessary party in a *quo warranto* action.

Peculiar also to the instant petition is the surrounding circumstance that an administrative matter directly pertaining to the nomination of respondent is pending before the Court. While the administrative matter aims to determine whether there is culpability or lapses on the part of the JBC members, the factual narrative offered by the latter are all extant on record which the Court can take judicial notice of. Thus, considerations regarding the lack of due process on the part of the JBC present only a superficial resistance to the Court's assumption of jurisdiction over the instant *quo warranto* petition.

In any case, the rules on *quo warranto* vests upon the Court ancillary jurisdiction to render such further judgment as "justice

requires."[63] Indeed, the doctrine of ancillary jurisdiction implies the grant of necessary and usual incidental powers essential to effectuate its jurisdiction and subject to existing laws and constitutional provisions, every regularly constituted court has power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction and for the enforcement of its judgments and mandates.[64] Accordingly, "demands, matters or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.[65]

V

This Court had likewise amply laid down the legal and factual bases for its ruling against the dismissal of the instant petition on the ground of prescription. Our ruling on this matter is anchored upon the very purpose of such prescriptive period as consistently held by this Court for decades and also upon consideration of the unique underlying circumstances in this case which cannot be ignored.

In addition to the catena of cases cited in the assailed Decision, the Court, in *Madrigal v. Prov. Gov. Lecaroz*,[66] exhaustively explained the rationale behind the prescriptive period:

> The unbending jurisprudence in this jurisdiction is to the effect that a petition for *quo warranto* and *mandamus* affecting titles to public office must be filed within one (1) year from the date the petitioner is ousted from his position. x x x The reason behind this

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[63] Section 9, Rule 66 of the Rules of Court.

[64] *The City of Manila, et al. v. Judge Grecia-Cuerdo, et al.,* 726 Phil. 9, 27 (2014).

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

[66] 269 Phil. 20 (1990).

being was expounded in the case of *Unabia v. City Mayor, etc.*, x x x where We said:

"x x x[W]e note that in actions of *quo warranto* involving right to an office, the action must be instituted within the period of one year. This has been the law in the island since 1901, the period having been originally fixed in Section 216 of the Code of Civil Procedure (Act No. 190). **We find this provision to be an expression of policy on the part of the State that *persons claiming a right to an office* of which they are illegally dispossessed should immediately take steps to recover said office and that if they do not do so within a period of one year, they shall be considered as having lost their right thereto by abandonment.** There are weighty reasons of public policy and convenience that demand the adoption of a similar period for persons claiming rights to positions in the civil service. **There must be stability in the service so that public business may [not] be unduly retarded; delays in the statement of the right to positions in the service must be discouraged**. The following considerations as to public officers, by Mr. Justice Bengzon, may well be applicable to employees in the civil service:

> 'Furthermore, **constitutional *rights* may certainly be waived**, and the inaction of the officer for one year could be validly considered as waiver, i.e., a renunciation which no principle of justice may prevent, he being at liberty to resign his position anytime he pleases.
>
> 'And there is good justification for the limitation period; it is not proper that the title to public office should be subjected to continued uncertain[t]y, and the **peoples' interest require that such right should be determined as speedily as practicable**.'

"Further, the **Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay the salaries, one, for the person actually holding the office, although illegally, and another, for one not actually rendering service although entitled to do so.** x x x."[67] (Citations omitted and emphasis ours)

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[67] *Id*. at 25-26.

The long line of cases decided by this Court since the 1900's, which specifically explained the spirit behind the rule providing a prescriptive period for the filing of an action for *quo warranto*, reveals that such limitation can be applied only against private individuals claiming rights to a public office, *not* against the State.

Indeed, there is no proprietary right over a public office. Hence, a claimed right over a public office may be waived. In fact, even Constitutionally-protected rights may be waived. Thus, We have consistently held that the inaction of a person claiming right over a public office to assert the same within the prescriptive period provided by the rules, may be considered a waiver of such right. This is where the difference between a *quo warranto* filed by a private individual as opposed to one filed by the State through the Solicitor General lies. There is no claim of right over a public office where it is the State itself, through the Solicitor General, which files a petition for *quo warranto* to question the eligibility of the person holding the public office. As We have emphasized in the assailed Decision, unlike Constitutionally-protected rights, Constitutionally-required qualifications for a public office can never be waived either deliberately or by mere passage of time. While a private individual may, in proper instances, be deemed to have waived his or her right over title to public office and/or to have acquiesced or consented to the loss of such right, no organized society would allow, much more a prudent court would consider, the State to have waived by mere lapse of time, its right to uphold and ensure compliance with the requirements for such office, fixed by no less than the Constitution, the fundamental law upon which the foundations of a State stand, especially so when the government cannot be faulted for such lapse.

On another point, the one-year prescriptive period was necessary for the government to be immediately informed if any person claims title to an office so that the government may not be faced with the predicament of having to pay two salaries, one for the person actually holding it albeit illegally, and another to the person not rendering service although entitled to do so. It would thus be absurd to require the filing of a petition for

quo warranto within the one-year period for such purpose when it is the State itself which files the same not for the purpose of determining who among two private individuals are entitled to the office. Stated in a different manner, the purpose of the instant petition is not to inform the government that it is facing a predicament of having to pay two salaries; rather, the government, having learned of the predicament that it might be paying an unqualified person, is acting upon it head-on.

Most importantly, urgency to resolve the controversy on the title to a public office to prevent a hiatus or disruption in the delivery of public service is the ultimate consideration in prescribing a limitation on when an action for *quo warranto* may be instituted. However, it is this very same concern that precludes the application of the prescriptive period when it is the State which questions the eligibility of the person holding a public office and not merely the personal interest of a private individual claiming title thereto. Again, as We have stated in the assailed Decision, when the government is the real party in interest and asserts its rights, there can be no defense on the ground of laches or limitation,[68] otherwise, it would be injurious to public interest if this Court will not act upon the case presented before it by the Republic and merely allow the uncertainty and controversy surrounding the Chief Justice position to continue.

Worthy to mention is the fact that this is not the first time that this Court precluded the application of the prescriptive period in filing a petition for *quo warranto*. In *Cristobal v. Melchor*,[69] the Court considered certain exceptional circumstances attending the case, which took it out of the rule on the one-year prescriptive period. Also, in *Agcaoili v. Suguitan*,[70] the Court considered, among others, therein petitioner's good faith and the injustice that he suffered due to his forcible ouster from

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[68] *Republic of the Phils. v. Court of Appeals*, 253 Phil. 698, 713 (1989) citing *Government of the U.S. v. Judge of the First Instance of Pampanga*, 49 Phil. 495, 500 (1965).

[69] 168 Phil. 328 (1977).

[70] 48 Phil. 676 (1929).

office in ruling that he is not bound by the provision on the prescriptive period in filing his action for *quo warranto* to assert his right to the public office. When the Court in several cases exercised liberality in the application of the statute of limitations in favor of private individuals so as not to defeat their personal interests on a public position, is it not but proper, just, reasonable, and more in accord with the spirit of the rule for this Court to decide against the application of the prescriptive period considering the public interest involved? Certainly, it is every citizen's interest to have qualified individuals to hold public office, especially that of the highest position in the Judiciary.

From the foregoing disquisition, it is clear that this Court's ruling on the issue of prescription is not grounded upon provisions of the Civil Code, specifically Article 1108(4)[71] thereof. Instead, the mention thereof was intended merely to convey that if the principle that "prescription does not lie against the State" can be applied with regard to property disputes, what more if the underlying consideration is public interest.

To be clear, this Court is not abolishing the limitation set by the rules in instituting a petition for *quo warranto*. The one-year presciptive period under Section 11, Rule 66 of the Rules of Court still stands. However, for reasons explained above and in the main Decision, this Court made distinctions as to when such prescriptive period applies, to wit: (1) when filed by the State at its own instance, through the Solicitor General,[72] prescription shall not apply. This, of course, does not equate to a blanket authority given to the Solicitor General to indiscriminately file baseless *quo warranto* actions in disregard of the constitutionally-protected rights of individuals; (2) when filed by the Solicitor General or public prosecutor at the request and upon relation of another person, with leave of court,[73]

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[71] Article 1108. Prescription, both acquisitive and extinctive, runs against:

x x x x x x x x x

(4) Juridical persons, except the State and its subdivisions.

[72] Section 2, Rule 66 of the Rules of Court.

[73] Section 3, Rule 66 of the Rules of Court.

prescription shall apply except when established jurisprudential exceptions[74] are present; and (3) when filed by an individual in his or her own name,[75] prescription shall apply, except when established jurisprudential exceptions are present. In fine, Our pronouncement in the assailed Decision as to this matter explained that certain circumstances preclude the absolute and strict application of the prescriptive period provided under the rules in filing a petition for *quo warranto*.

Thus, this Court finds no reason to reverse its ruling that an action for *quo warranto* is imprescriptible if brought by the State at its own instance, as in the instant case.

In any case, and as aptly discussed in the main Decision, the peculiarities of the instant case preclude strict application of the one-year prescriptive period against the State. As observed by Justice Perlas-Bernabe in her Separate Opinion, "x x x if there is one thing that is glaringly apparent from these proceedings, it is actually the lack of respondent's candor and forthrightness in the submission of her SALNs."[76] Respondent's actions prevented the State from discovering her disqualification within the prescriptive period. Most certainly, thus the instant case is one of those proper cases where the one-year prescriptive period set under Section 11, Rule 66 of the Rules of Court should not apply.

VI

Respondent reiterates her argument that her case should be treated similarly as in *Concerned Taxpayer v. Doblada Jr.*[77]

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[74] (1) there was no acquiescence to or inaction on the part of the petitioner, amounting to the abandonment of his right to the position; (2) it was an act of the government through its responsible officials which contributed to the delay in the filing of the action; and (3) the petition was grounded upon the assertion that petitioner's removal from the questioned position was contrary to law. [*Cristobal v. Melchor and Arcala*, 168 Phil. 328 (1977)].

[75] Section 5, Rule 66 of the Rules of Court.

[76] *Rollo*, p. 6584.

[77] 498 Phil. 395 (2005).

As extensively discussed in the main Decision, respondent, unlike Doblada, did not present contrary proof to rebut the Certifications from U.P. HRDO that respondent's SALNs for 1986, 1987, 1988, 1992, 1999, 2000, 2001, 2003, 2004, 2005 and 2006 are not in its possession and from the Ombudsman that based on its records, there is no SALN filed by respondent except that for 1998. Being uncontroverted, these documents suffice to support this Court's conclusion that respondent failed to file her SALNs in accordance with law.

In *Doblada*, the *contrary proof* was in the form of the letter of the head of the personnel of Branch 155 that the SALN for 2000 *exists* and was *duly transmitted* and *received* by the Office of the Court Administrator as the repository agency. In respondent's case, other than her bare allegations attacking the credibility of the aforesaid certifications from U.P. HRDO and the Ombudsman, no supporting proof was presented. It bears to note that these certifications from the aforesaid public agencies enjoy a presumption that official duty has been regularly performed. These certifications suffice as proof of respondent's failure to file her SALN until contradicted or overcome by sufficient evidence. Consequently, absent a countervailing evidence, such disputable presumption becomes conclusive.[78]

As what this Court has stated in its May 11, 2018 Decision, while government employees cannot be required to keep their SALNs for more than 10 years based from the provisions of Section 8, paragraph C(4) of Republic Act No. 6713,[79] the same cannot substitute for respondent's manifest ineligibility at the time of her application. Verily, even her more recent SALNs, such as those in the years of 2002 to 2006, which in the ordinary

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[78] See *Alcantara v. Alcantara,* 558 Phil. 192 (2007).

[79] 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 February 20, 1989.

course of things would have been easier to retrieve, were not presented nor accounted for by respondent.

Respondent attempts to strike a parallelism with Doblada by claiming that she, too, religiously filed her SALNs. The similarity however, ends there. Unlike in *Doblada,* respondent failed to present contrary proof to rebut the evidence of non-filing. If, indeed, she never missed filing her SALNs and the same were merely lost, or missing in the records of the repository agency, this Court sees nothing that would prevent respondent from securing a Certification which would provide a valid or legal reason for the copies' non-production.

VII

Respondent insists that the filing of SALNs bears no relation to the Constitutional qualification of integrity. For her, the measure of integrity should be as what the JBC sets it to be and that in any case, the SALN laws, being *malum prohibitum*, do not concern adherence to moral and ethical principles.

Respondent's argument, however, dangerously disregards that the filing of SALN is not only a requirement under the law, but a positive duty required from every public officer or employee, first and foremost by the Constitution.[80] The SALN laws were passed in aid of the enforcement of the Constitutional duty to submit a declaration under oath of one's assets, liabilities, and net worth. This positive Constitutional duty of filing one's SALN is so sensitive and important that it even shares the same category as the Constitutional duty imposed upon public officers and employees to owe allegiance to the State and the Constitution.[81] As such, offenses against the SALN laws are not ordinary offenses but violations of a duty which every public officer and employee owes to the State and the Constitution. In other words, the violation of SALN laws, by itself, defeats any claim of integrity as it is inherently immoral to violate the will of the legislature and to violate the Constitution.

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[80] 1987 CONSTITUTION, Article XII, Section 17.

[81] 1987 CONSTITUTION, Article XII, Section 18.

Integrity, as what this Court has defined in the assailed Decision, in relation to a judge's qualifications, should not be viewed separately from the institution he or she represents. Integrity contemplates both adherence to the highest moral standards and obedience to laws and legislations. Integrity, at its minimum, entails compliance with the law.

In sum, respondent has not presented any convincing ground that would merit a modification or reversal of Our May 11, 2018 Decision. Respondent, at the time of her application, lacked proven integrity on account of her failure to file a substantial number of SALNs and also, her failure to submit the required SALNs to the JBC during her application for the position. Although deviating from the majority opinion as to the proper remedy, Justice Antonio T. Carpio shares the same finding:

> Since respondent took her oath and assumed her position as Associate Justice of the Supreme Court on 16 August 2010, she was required to file under oath her SALN within thirty (30) days after assumption of office, or until 15 September 2010, and the statements must be reckoned as of her first day of service, pursuant to the relevant provisions on SALN filing.
>
> However, **respondent failed to file a SALN containing sworn statements reckoned as of her first day of service within thirty (30) days after assuming office.** While she allegedly submitted an "entry SALN" on 16 September 2010, it was unsubscribed and the statements of her assets, liabilities and net worth were reckoned as of 31 December 2009, and not as of her first day of service, or as of 16 August 2010. x x x
>
> x x x x x x x x x
>
> The Constitution, law, and rules clearly require that the sworn entry SALN "must be reckoned as of his/her first day of service" and must be filed "within thirty (30) days after assumption of office." Evidently, respondent failed to file under oath a SALN reckoned as of her first day of service, or as of 16 August 2010, within the prescribed period of thirty (30) days after her assumption of office. **In other words, respondent failed to file the required SALN upon her assumption of office,** which is a clear violation of Section 17, Article XI of the Constitution. In light of her previous failure to file her SALNs for several years while she was a UP College of Law Professor,

her failure to file her SALN upon assuming office in 2010 as Associate Justice of this Court constitutes culpable violation of the Constitution, a violation committed while she was already serving as an impeachable office.[82] (Citation omitted and emphasis ours)

Having settled respondent's ineligibility and ouster from the position, the Court reiterates its directive to the JBC to immediately commence the application, nomination and recommendation process for the position of Chief Justice of the Supreme Court.

WHEREFORE, respondent Maria Lourdes P. A. Sereno's *Ad Cautelam* Motion for Reconsideration is **DENIED** with **FINALITY** for lack of merit. No further pleadings shall be entertained. Let entry of judgment be made immediately.

The Court **REITERATES** its order to the Judicial and Bar Council to commence the application and nomination process for the position of the Chief Justice without delay. The ninety-day (90) period[83] for filling the vacancy shall be reckoned from the date of the promulgation of this Resolution.

SO ORDERED.

Bersamin, Martires, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Leonardo-de Castro, Peralta, and *Jardeleza, JJ.,* see separate concurring opinions.

Perlas-Bernabe, J., maintains her separate opinion.

Carpio, Velasco, Jr., del Castillo, Leonen, and *Caguioa, JJ.,* maintain their dissents.

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[82] Dissenting Opinion of Justice Antonio T. Carpio in G.R. No. 237428 dated May 11, 2018, pp. 6401-6404.

[83] 1987 CONSTITUTION, Article VIII, Section 4.

CONCURRING OPINION

LEONARDO-DE CASTRO, *J.*:

On May 11, 2018, the majority of this Court voted to grant the Petition for *Quo Warranto* filed by petitioner Republic of the Philippines, represented by the Office of the Solicitor General (OSG), against respondent Maria Lourdes P. A. Sereno, fundamentally based on the categorical finding of respondent's ineligibility for the position of Chief Justice in view of her failure to submit to the Judicial and Bar Council (JBC) several of her Statements of Assets, Liabilities and Net Worth (SALNs) covered within the required 10-year period, such failure means that her integrity was not established at the time of her application for the said position. The dispositive portion of the Decision, penned by Associate Justice Noel Gimenez Tijam, reads:

> **WHEREFORE**, the Petition for *Quo Warranto* is **GRANTED**. Respondent Maria Lourdes P.A. Sereno is found **DISQUALIFIED** from and is hereby adjudged **GUILTY of UNLAWFULLY HOLDING and EXERCISING** the **OFFICE OF THE CHIEF JUSTICE**. Accordingly, Respondent Maria Lourdes P.A. Sereno is **OUSTED** and **EXCLUDED** therefrom.
>
> The position of the Chief Justice of the Supreme Court is declared vacant and the Judicial and Bar Council is directed to commence the application and nomination process.
>
> This Decision is immediately executory without need of further action from the Court.
>
> Respondent Maria Lourdes P.A. Sereno is ordered to **SHOW CAUSE** within ten (10) days from receipt hereof why she should not be sanctioned for violating the Code of Professional Responsibility and the Code of Judicial Conduct for transgressing the *sub judice* rule and for casting aspersions and ill motives to the Members of the Supreme Court.

I wrote my Concurring Opinion to the aforementioned Decision so I could further explain my vote to deny respondent's motion for my inhibition and to concur with the grant of the said Petition.

Respondent comes again before this Court through the instant *Ad Cautelam* Motion for Reconsideration of the Decision dated May 11, 2018, seeking the following reliefs:

> WHEREFORE, Respondent, the Hon. Chief Justice Maria Lourdes P.A. Sereno, respectfully prays that this Honorable Court:
>
> 1) RECONSIDER the denial of Respondent's *Ad Cautelam* Motions for Inhibition of the Hon. Associate Justices Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Francis H. Jardeleza, Noel G. Tijam, Lucas P. Bersamin, and Samuel R. Martires;
>
> 2) RECONSIDER and SET ASIDE the Decision dated 11 May 2018; and
>
> 3) DISMISS the Petition for *Quo Warranto* dated 2 March 2018 filed by the Office of the Solicitor General.[1]

Once more, I concur in Justice Tijam's Resolution denying respondent's motion for reconsideration, but I am compelled to write a separate Concurring Opinion to address respondent's insistence that I, along with five other Justices, should have recused ourselves from the present case allegedly due to our evident bias and the applicable grounds for our mandatory inhibition.

I reiterate that there is no factual or legal basis for respondent's motion for my inhibition.

May I stress that I testified before the House of Representatives Committee on Justice, not as a complainant, but as a resource person during the committee hearings on the determination of probable cause in Atty. Lorenzo G. Gadon's impeachment complaint against respondent. I attended in deference to the invitation of the Committee on Justice of the House of Representatives, a co-equal branch, only after securing authorization[2] from the Court *en banc* to testify on administrative

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[1] Respondent's *Ad Cautelam* Motion for Reconsideration, p. 203.

[2] The Court Resolution dated November 28, 2017 pertinently states:

> NOW, THEREFORE, the Court *En Banc* hereby authorizes the invited officials and Justices to so appear and testify, if they wish to do so, under the following conditions:

matters and specific adjudication matters subject of the said impeachment complaint.

I have no personal knowledge of the evidentiary fact in dispute in this Petition, which is about respondent's failure to submit to the JBC her SALNs. The said fact remained hidden for a period of about six years until respondent's letter dated July 23, 2012 was revealed by JBC officials during the hearing before the Committee on Justice of the House of Representatives. Moreover, respondent refused to appear and testify personally before the said Committee to shed light on this factual matter. Neither did respondent answer my and our other colleagues' question on whether or not she filed her SALNs as professor of the University of the Philippines (UP). Respondent's consistent reply was that she would answer this question only before the Impeachment Court.

I testified before the House of Representatives Committee on Justice only on matters raised in the impeachment complaint, which were within my personal knowledge and which essentially constituted of respondent's misdeeds or misfeasance as Chief Justice, *viz.*:

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x x x x x x x x x

3. Justice Teresita J. Leonardo-De Castro of this Court may testify on administrative matters, and on adjudicatory matters only in the following cases:

a. G.R. Nos. 206844-45 (*Coalition of Association of Senior Citizens in the Philippines Party List v. Commission on Elections*): Justice Leonardo-De Castro may testify only on the issuance of the Temporary Restraining Order and on the exchange of communications between Chief Justice Sereno and Justice Leonardo-De Castro, but not on the deliberations of the *En Banc* in this case;

b. G.R. No. 224302 (*Hon. Philip Aguinaldo, et al. v. President Benigno S. Aquino III*): Justice Leonardo-De Castro may testify only on the merits of her *ponencia* but not on the deliberations of the *En Banc* in this case;

c. G.R. No. 213181 (*Francis H. Jardeleza v. Chief Justice Maria Lourdes P.A. Sereno*): Justice Leonardo-De Castro may testify only on the merits of her separate concurring opinion, but not on the deliberations of the Court in this case.

(a) Respondent's creation of the Judiciary Decentralized Office (JDO) in the 7th Judicial Region without the knowledge and approval of the Court *en banc* and the falsification of a Court resolution to make it appear that the Court *en banc* ratified the operation of the JDO, under the pretext that she was merely reviving the Regional Court Administration Office (RCAO) in the 7th Judicial Region;

(b) Respondent's falsification and unlawful expansion of the coverage of the Temporary Restraining Order issued in the consolidated Petitions in G.R. Nos. 206844-45 and G.R. No. 206982, *Coalition of Associations of Senior Citizens in the Philippines, Inc. v. Commission on Elections*,[3] in contravention of my recommendation as the Member-in-Charge;

(c) Respondent's false claim in her letter dated May 29, 2014 that several Supreme Court Associate Justices recommended to do away with Section 1, Rule 8 of JBC-009,[4] thus, depriving the Court *en banc* of the opportunity, under said rule, to submit its recommendees to the JBC for the vacant post of Supreme Court Associate Justice vice retired Associate Justice Roberto A. Abad, all apparently in furtherance of respondent's manipulations to block the inclusion of then Solicitor General, now Supreme Court Associate Justice Francis H. Jardeleza, in the shortlist of qualified nominees for the said vacant post; and

(d) The JBC, during respondent's incumbency as Chairperson, clustered the nominees for six simultaneous vacancies in the Sandiganbayan into six separate shortlists in violation of the Constitution; laws, rules, and jurisprudence; and the qualified nominees' rights to due process and equal opportunity to be appointed.

Indeed, my testimony could not be said to have been motivated by prejudice or personal grudge, or to be indicative of bias or

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[3] 714 Phil. 606 (2013).

[4] JBC-009 was promulgated on October 18, 2000. Said rules had been superseded by **JBC No. 2016-01** (the Revised Rules of the Judicial and Bar Council), which took effect on October 24, 2016, without notice to the Supreme Court *en banc*.

partiality. My testimony before the House of Representatives Committee on Justice was objective, factual, and truthful; fully supported by official documents, including Court Decisions and issuances; substantiated by other resource persons who likewise testified before the said Committee; and more importantly, **has remained unrebutted by respondent up to now**. The matters I testified on **were also clearly work-related and not personal**, as when I called the Court *en banc*'s attention when respondent violated Court *en banc* Resolutions, falsified Court Resolution, and misled or lied to us, her colleagues in the Supreme Court, on official matters.

I have vehemently denied in my Concurring Opinion to the main Decision the **blatant lies** about the alleged conversation that I had with respondent upon her appointment as Chief Justice.

In addition, the matters taken up during the hearings before the House of Representatives Committee on Justice concerned respondent's actuations while she held the position of Chief Justice, which might constitute impeachable offenses and did not involve respondent's qualifications for appointment to the post of Supreme Court Chief Justice. While the questioning by the Committee Members during the hearings did reveal respondent's non-submission of her SALNs for the past 10-year period to the JBC, a specific requirement for filling-up the vacant post of Chief Justice vice Chief Justice Renato C. Corona, it was a matter which the said Committee did not act upon. The issue of whether or not respondent is qualified to be Chief Justice is a totally different and separate matter from the grounds adduced in the impeachment complaint, and is appropriately within this Court's jurisdiction, raised via this Petition for *Quo Warranto*.

Furthermore, respondent objects to references to and discussions of the other false entries in her **sworn** Personal Data Sheet (PDS), which no longer involved her SALNs.

To be sure, the past action of a person is a valuable yardstick of his/her character. This is true as regards respondent who advanced in her career in the Judiciary through her lies and deceptions, which were recounted in detail in my Concurring

Opinion, beginning with the false entries in the PDS she submitted when she applied for Supreme Court Associate Justice in 2010, and repeated in the PDS she submitted when she subsequently applied for Supreme Court Chief Justice in 2012.

It bears to point out that in the Resolution dated April 3, 2018 in the case at bar, the Court acted on respondent's *Ad Cautelam* Motion to Set for Oral Argument dated April 2, 2018 and resolved, among other things, to:

> (a) GRANT the subject Motion, not for the purpose cited therein, but for the sole purpose of granting the respondent a final opportunity to **answer specific questions, under oath, needed for the judicious resolution of the instant case**[.] (Emphasis mine.)

The Amended Advisory attached to the Resolution explicitly laid down the conditions and guidelines for the oral arguments, to wit:

> Accordingly, without necessarily giving due course to the petition, the Oral Argument is set on April 10, 2018, 2 p.m., at the Session Hall, Supreme Court, Baguio City. This is subject to the conditions that respondent shall: (a) personally appear and testify under oath and **(b) affirm and verify under oath the truth and veracity of the allegations in the Comment filed by counsels supposedly on her behalf.**
>
> For the orderly proceeding of Oral argument, the parties are required to observe the following guidelines:
>
> x x x x x x x x x
>
> V. **The Members of the Court maintain their privilege to ask any question on any relevant matter or require submission of any document necessary for an enlightened resolution of this case**. (Emphases mine.)

Respondent herself opened the door to questions as to the entries in her PDS[5] as she had attached to her Comment *Ad Cautelam* the nominations and endorsements for the position

[5] Annex "A" of the Petition.

of Chief Justice of "various persons and groups in the legal and evangelical community." Among said attachments were the nominations of respondent by Atty. Fidel Thaddeus I. Borja[6] and Atty. Jordan M. Pizarras and Atty. Janalyn B. Gainza-Tang,[7] who mentioned respondent's credentials as a former lecturer in the University of Western Australia (UWA) and Murdoch University. Hence, it was completely within my authority as a Member of the Court to verify such matter which respondent herself put into the record, during the oral arguments. And, as my questions during the oral arguments exposed, which I discussed in my Concurring Opinion to the Decision of May 11, 2018, that respondent was not being entirely truthful in her PDS when she deliberately omitted the fact that she was a lecturer in the Masters in Business Administration (MBA) program of a Manila-based school, unnamed in her PDS, which happened to have a partnership with UWA and Murdoch University.

I likewise have a legitimate basis for questioning respondent during the oral arguments regarding her entry in her PDS that she served as Deputy Commissioner of the Commission on Human Rights (CHR). CHR officers and employees are undeniably public officers and employees mandated by the Constitution and statutes to file their SALNs. Other than verifying the veracity of respondent's purported title of CHR Deputy Commissioner, I merely intended to inquire if respondent filed her SALN during her tenure with the CHR, thus:

JUSTICE DE CASTRO:

In your PDS, you mentioned that you're a Deputy Commissioner of the Commission on Human Rights. When was that period of time? Because your PDS did not mention the year when you were a Deputy Commissioner of the Commission of Human Rights. What was the period that you served in the CHR?

CHIEF JUSTICE SERENO:

It was a functional title. I don't have the exact details because you did not ask me to prepare for my PDS, allegations on the PDS. At least I didn't see that. So…

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[6] Annex "7" of the Comment *Ad Cautelam*.

[7] Annex "8" of the Comment *Ad Cautelam*.

JUSTICE DE CASTRO:
So, it was not a Position Title because the…

CHIEF JUSTICE SERENO:
It was a functional… No, no, it was a functional…

JUSTICE DE CASTRO:
Excuse me. Let me finish. The PDS has a matrix and the information required of the one accomplishing the PDS stated that you should put there your Position Title. But, so, when you accomplished that form, of the PDS, you mentioned that you were a Deputy Commissioner of the Commission on Human Rights. So the question is, is there such a position in the Commission on Human Rights?

CHIEF JUSTICE SERENO:
If you are going to look at the way the PDS was trying to condense, the Commission on Human rights succeeded the Presidential Committee on Human Rights. I was first hired with the Presidential Committee on Human Rights and given a title of Technical Consultant then a functional title of Deputy Commissioner where I could vote *vice* Abelardo — who was the Commissioner. Then, it morphed into the Commission on Human Rights but the terms of reference that were still to be carried over into that CHR was still to carry that because I was there for a while. I was going to explain this eventually.

JUSTICE DE CASTRO:
So, you're saying …

CHIEF JUSTICE SERENO:
And this is not, I'm sorry, Justice Tess, this is outside already of the petition.

JUSTICE DE CASTRO:
This is, let me…
So, I want to find out, are we going …

JUSTICE DE CASTRO:
This is connected…

CHIEF JUSTICE SERENO:
Is it a global roaming…

JUSTICE DE CASTRO:
No, I asked this…

CHIEF JUSTICE SERENO:
Global roaming event?

JUSTICE DE CASTRO:

No, I asked this because this is connected. I want to know if you occupy a permanent position there…

CHIEF JUSTICE SERENO:

No…

JUSTICE DE CASTRO:

…as Deputy Commissioner. So, I'd like to know whether you submitted your SALN?

CHIEF JUSTICE SERENO:

No, no, it was not permanent.

JUSTICE DE CASTRO:

So, you're now saying there's no such Position Title as Deputy Commissioner?

CHIEF JUSTICE SERENO:

No. There is.

JUSTICE DE CASTRO:

You said it's a functional title?

CHIEF JUSTICE SERENO:

Position slash functional title, they merged.

JUSTICE DE CASTRO:

What is the meaning, but there's, why…

CHIEF JUSTICE SERENO:

Maybe we need to talk to people from the Commission on Human Rights and PCHR, they can explain this in great detail including the organizational birth of PCHR morphing into the CHR and why perfectly, it is perfectly all right to use that functional title.

JUSTICE DE CASTRO:

So you…

CHIEF JUSTICE SERENO:

And the petition is only about my UP, my UP stint not my CHR stint, Justice Tess. I was not prepared, I did not bring my documents, I don't think I should be examined under these conditions.

x x x x x x x x x

JUSTICE DE CASTRO:

And your PDS says that you were a Deputy Commissioner of

the Commission on Human Rights. So, I'd like to know if you're a permanent official of the CHR and if so, whether you filed your SALN and I wanted to know if that was the period you resigned from UP. So, if you… That's why I…

CHIEF JUSTICE SERENO:
No, I was with UP also at the same time.

JUSTICE DE CASTRO:
So, that's why I'm asking…

CHIEF JUSTICE SERENO:
It was a UP SALN…[8] (Emphases mine.)

It was evident that during the oral arguments, respondent was very evasive as to questions concerning entries in her sworn PDS, which falsely stated that she held the **position of Deputy Commissioner of the CHR**, when **the said position did not exist**. Respondent repeatedly asserted that such entries were outside the jurisdiction of the Court, but these were actually factual matters closely related to her claimed qualifications for the posts of Associate Justice and Chief Justice of the Supreme Court. These concerned personal information, if true, would have been easily answered by respondent without need for extensive review or preparation.

Lastly, it is worthy to note that up to this time, respondent has yet to provide any categorical and demonstrably truthful explanation regarding the incomplete and improper submission of her SALNs.

From the outset, the thrust of respondent's argument is that the issues raised in the Petition for *Quo Warranto* and the relief sought therein, *i.e.*, her removal from office, are matters that should be taken cognizance of, not by the Court, but by the Senate sitting as Impeachment Court.

Yet, respondent's assertion that she will address the questions regarding her non-submission of SALNs before the Senate sitting as Impeachment Court, on closer look, is **duplicitous**.

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[8] TSN, April 10, 2018, pp. 161-165.

In her Comment *Ad Cautelam*, respondent claimed that she "**continues to recover and retrieve her missing SALNs and will present them before the Senate sitting as the Impeachment Tribunal**[,]" but in the same breath, said statement is followed by the reservation that her presentation of the SALNs was "***without prejudice* to her legal defenses in light of the fact that her alleged failure to file SALNs before she joined the Supreme Court is not within the scope of the impeachment complaint or the grounds for impeachment provided in the Constitution**."[9] Again, said Comment *Ad Cautelam* stated "x x x with most of the missing SALNs ready to be produced at the Senate Impeachment Trial, **but without prejudice to the Chief Justice's objections based on jurisdiction and relevance.**"[10]

Respondent further insisted in her Memorandum *Ad Cautelam* that "**only the Senate sitting as an Impeachment Tribunal may try and decide the factual issue of whether she filed her SALNs as a U.P. Professor (and only assuming *arguendo* that this matter — which took place before she joined the Supreme Court — may be considered an impeachable offense).**"[11]

It is readily apparent that respondent has taken the position that the Senate sitting as Impeachment Court has no jurisdiction over her failure to file her SALNs, which happened before she was appointed Chief Justice. This is precisely the thrust of this Petition for *Quo Warranto*. The SALN issue lies at the heart of the qualification of integrity required for appointment as Chief Justice. Respondent's omission to file her SALNs was an antecedent fact or a prior factual requirement before she could qualify for appointment as Chief Justice.

The foregoing only reinforces the ruling of the Court that under the particular circumstances of this case, the remedy of *quo warranto* before the Supreme Court is appropriate to

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[9] Respondent's Comment *Ad Cautelam*, p. 60.

[10] *Id.* at 68-69.

[11] Respondent's Memorandum *Ad Cautelam*, p. 25.

challenge respondent's qualifications to be Chief Justice as there can be no void in available remedies so as to hold respondent accountable for the consequences of her actions prior to her invalid appointment and assumption to the position of Chief Justice, *i.e.*, her failure to submit to the JBC her SALNs for the 10-year period before 2012, particularly for 2002, 2003, 2004, 2005, 2006, and August 24, 2010, which were explicitly required for applications for the Chief Justice vacancy in 2012, as well as her deceptive letter dated July 23, 2012 to the JBC to justify her non-submission.

As I pointed out during the Oral Arguments, if respondent succeeds in preventing the Court, and also the Senate, from looking into her SALNs, nobody will ever know whether or not she has properly complied with the constitutionally mandated obligation of the filing of SALNs.[12] Respondent's obvious defense strategy is to avoid revealing the truth about her missing SALNs whether in this Petition for *Quo Warranto* or in the Senate Impeachment Court.

Respondent's crafty defense strategy should not be countenanced.

Considering the foregoing, I vote to **DENY** respondent's *Ad Cautelam* Motion for Reconsideration for utter lack of merit.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

Respondent Hon. Chief Justice Maria Lourdes P. A. Sereno filed an *Ad Cautelam* Motion for Reconsideration, praying for the Court to set aside its May 11, 2018 Decision, which granted the Petition for *Quo Warranto* filed by the Office of the Solicitor General, and to reconsider the denial of her *Ad Cautelam* Motions for Inhibition.

Respondent raised the following grounds in support of her motion for reconsideration:

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[12] TSN, April 10, 2018, p. 158.

A.

The Decision is null and void, rendered in violation of Respondent's fundamental right to due process of law.

A.1. The existence of an impartial tribunal is an indispensable prerequisite of due process.

A.2. The six (6) disqualified Justices ought to have inhibited themselves from hearing and deciding the case. There were compelling grounds to believe that they were not impartial.

A.2.1. The disqualification of Associate Justices De Castro, Peralta, Jardeleza, Tijam, Bersamin and Martires is mandatory, grounded on actual bias and not mere participation in the hearings held by the House Committee on Justice.

A.2.2. The majority failed to refute actual bias on the part of Justices De Castro and Jardeleza, and did not address other grounds for mandatory disqualification present in the cases of Justices De Castro and Peralta.

A.2.3. This Honorable Court has required inhibition of trial court judges for far lesser reasons. Established jurisprudence on the inhibition of judges should be equally applied in this case.

A.3. The majority acted without jurisdiction and in gross violation of Respondent's right to due process when it took cognizance of extraneous matters as "corroborative evidence" of Respondent's supposed lack of integrity.

A.4. The Petition is ultimately based on disputed questions of fact which could not have been validly resolved by the Court without observing the mandatory procedure for reception of evidence under the Rules of Court and the Internal Rules of the Supreme Court.

B.

The Decision is contrary to the Constitution. The Honorable Court is without jurisdiction to oust an impeachable officer via *quo warranto.*

B.1. The indisputable intent of the Constitution is that

impeachable officers, save for the President and Vice President, can be removed from office only by impeachment.

B.1.1. Textually, impeachment is the only method for removal of appointive constitutional officers permitted under the Constitution.

B.1.2. The intent that impeachment be exclusive is shown by the deliberations of the 1986 Constitutional Commission. It is also expressed by the views of the members of that Commission.

B.1.3. Jurisprudence prior to the 11 May 2018 Decision consistently held that impeachment is an exclusive mode for removal from office.

B.1.4. The use of the word "may" does not denote an alternative to impeachment.

B.1.5. Statutes providing for removal of public officers must be strictly construed.

B.1.6. The reasons and public policy behind impeachment as the Constitutionally-mandated mode of removal of Justices of the Supreme Court negate any other mode of removal.

B.1.7. A difficult process deliberately chosen by the Constitution cannot be substituted with an expedient procedure.

B.1.8. Assuming arguendo that Respondent is a *de facto* officer, she can still only be removed by impeachment.

B.2. The Honorable Court should have exercised judicial restraint to avoid the possibility of a constitutional crisis.

B.3. The Republic is guilty of forum-shopping. This Honorable Court ought to have dismissed the Petition and allowed these issues to be resolved by the proper constitutional body: the Congress.

B.4. Respondent did not waive her jurisdictional objections.

C.

The Honorable Court seriously erred in annulling the official act of the Judicial and Bar Council ("JBC") and the President

absent any allegation, much less finding of, grave abuse of discretion. The JBC's and the President's determination of Respondent's integrity is a political question beyond the pale of judicial review.

D.

Assuming the *quo warranto* is initially available, the petition is now time-barred.

E.

Assuming arguendo that this Honorable Court has jurisdiction, the Decision is contrary to law and evidence. The Chief justice was and is a person of proven integrity.

E.1. The Honorable Court erred in ruling that Respondent "chronically failed to file her SALNS."

E.2. This Honorable Court seriously erred when it ignored the JBC's standards and criteria for determining "integrity," and crafter and applied its own definition of that abstract quality.

E.2.1. Applying the JBC's standards, criteria, and guidelines, the Respondent was able to show that she is a person of "proven integrity."

E.2.2. The JBC never considered the filing *per se* of SALNs as a measure of an applicant's integrity. The SALNs were meant to be a tool to uncover the applicant's hidden cash assets, if any.

E.3. The filing *per se* of a SALN neither proves nor negates a person's integrity.

The *Ad Cautelam* Motion for Reconsideration should be denied for lack of merit.

I will first address respondent's arguments why the *Ad Cautelam* Respectful Motion for Inhibition (Of Hon. Associate Justice Diosdado M. Peralta) should not be reconsidered.

Respondent argues that I should inhibit in this case because I had expressed my view under oath that she should have been disqualified from nomination for the position of Chief Justice due to her failure to submit to the JBC her SALNs for the years

that she was employed as a professor at the University of the Philippines (*U.P.*). She points out that my statement that I would have "objected to the selection of the Chief Justice" as her failure to submit her U.P. SALNs was a "very clear deviation from existing rules," suffices to produce in the mind "a firm belief or conviction" that he had already prejudged the case. She contends that it is clear from jurisprudence that prejudgment of an issue could occur even before the case from which a judge is sought to be disqualified has been filed.

Respondent's arguments are a mere rehash of those raised in her *Ad Cautelam Respectful Motion for Inhibition,* which have already been addressed in my Separate Concurring Opinion, in this wise:

> In saying that "*had I been informed of this letter dated July 23, 2012, and a certificate of clearance, I could have immediately objected to the selection of the Chief Justice for voting because this is a very clear deviation from existing rules that if a member of the Judiciary would like ... or ... a candidate would like to apply for Chief Justice, then she or he is mandated to submit the SALNs,"* I merely made a hypothetical statement of fact, which will not necessarily result in the disqualification of respondent from nomination, if it would be proven that she had indeed filed all her SALNs even before she became an Associate Justice in 2010.
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> There is nothing in the statement that manifests bias against respondent *per se* as the same was expressed in view of my function as then Acting *Ex-Officio* Chairperson of the JBC, which is tasked with determining the constitutional and statutory eligibility of applicants for the position of Chief Justice. It would have been but rational and proper for me or anyone else in such position to have objected to the inclusion of any nominee who was not known to have met all the requirements for the subject position. The significance of his responsibility as Acting *Ex-Officio* Chairperson of the JBC gave rise to the imperative to choose the nominee for Chief Justice who was best qualified for the position, *i.e.* one who must be of proven competence, integrity, probity and independence. Be it stressed that when the hypothetical statement was made, there was no petition for *quo warranto* yet, so I cannot be faulted for pre-judging something that is not pending before the Court.

Besides, in my honest view, what is being assailed in this petition for *quo warranto* is respondent's failure to prove her integrity on the ground that she deliberately concealed from the JBC the material fact that she failed to file her SALNs for the years 2000, 2001, 2003, 2004, 2005 and 2006, among others, even before she became an Associate Justice of the Supreme Court in 2010. Thus, whether hypothetical or not, my statement that she should have been disqualified to be nominated as Chief Justice, is not relevant or material to this petition for *quo warranto.*

For one, in connection with her application for Associate Justice in July 2010, what the Office of Recruitment, Selection and Nomination (ORSN) received on July 28, 2010 from respondent was her un-notarized 2006 SALN dated July 2010. However, in a recent letter dated February 2, 2018 addressed to the ORSN, she explained that such SALN was really intended to be her SALN as of July 27, 2010. During the Oral Arguments, respondent further explained that she merely downloaded the SALN form, and forgot to erase the year "2006" printed thereon and that she was not required by the ORSN to submit a subscribed SALN. Assuming that her said SALN is for 2010, it should have been filed only in the following year (2011) as the calendar year 2010 has not yet passed, and her appointment would still be in August 16, 2010. She cannot also claim that said SALN is for 2009 because she was still in private practice that time.

For another, she also failed to file her SALN when she resigned from the University of the Philippines (U.P.) in 2006 in violation of R.A. No. 6713. Accordingly, whatever I testified on during the Congressional Hearings has no bearing on this petition because my concern is her qualification of proven integrity before she even became an Associate Justice in 2010, and not when she applied for Chief Justice in 2012.

Respondent also insists that she raised other mandatory grounds for my inhibition, which were not refuted, such as (1) having personal knowledge of disputed evidentiary facts; (2) having served as material witness in the matter in controversy; and (3) having acted as Acting *Ex-Officio* Chairperson of the JBC for the matter in controversy. She explains that as such *Ex-Officio* Chairperson of the JBC, I would have personal knowledge of disputed evidentiary facts concerning the proceedings; thus, my disqualification is mandated by Rule 5(a), Canon 3 of the New

Code of Judicial Conduct and Rule 3.12(a), Canon 3 of the 1989 Code of Judicial Conduct. She asserts that my explanation to the effect that it was the Office of the Recruitment, Selection and Nomination (*ORSN*) of the JBC which was tasked to determine the completeness of the applicant's documentary requirements including SALNs, is in itself a personal account of what transpired during the selection of nominees for the Chief Justice position in 2012, and thus still covered by Canon 3, Section 5(a) of the New Code of Judicial Conduct. She adds that another ground for my disqualification is Section 1(f), Rule 8 of the Internal Rules of the Supreme Court because I signed the short list of nominees for the position of Chief Justice, which was transmitted to the Office of the President; thus, I acted in an official capacity on the subject matter of this case. According to her, the fact that the validity of my official action is in question, ought to have sufficed for my compulsory disqualification in this case.

Contrary to respondent's view that Rule 5(a),[1] Canon 8 of the New Code of Judicial Conduct, which mandates that the inhibition of a judge who has "actual bias or prejudice against a party" is a compulsory ground for inhibition, the said ground is merely voluntary or discretionary under Rule 137[2] of the

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[1] Section 5. Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide a matter impartially. Such proceedings include, but are not limited to instances where:

(a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings. x x x

[2] Section 1. Disqualification of Judicial Officers. — No Judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity of affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

Rules of Court and Rule 8[3] of the Internal Rules of the Supreme Court, which are the applicable rules governing inhibition in this petition for *quo warranto.*

Respondent's supposed grounds for my mandatory inhibition are also reiterations of matters that have already been passed upon in my Separate Concurring Opinion, thus:

Contrary to respondent's contention, I have no personal knowledge of the disputed facts concerning the proceedings (*e.g.,* the matters considered by the members of the JBC in preparing the shortlist of nominees). As can be gathered from the Minutes of the July 20, 2012 JBC *En Banc* Special Meeting, it is the ORSN and the JBC Execom which was given the duty to determine the completeness of the documentary requirements, including the SALNs, of applicants to judicial positions. Suffice it to state that because of my usual heavy judicial workload, it is inconceivable and impractical for me, as then

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Any judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reason other than those mentioned above.

[3] Section 1. *Grounds for Inhibition.*— A Member of the Court shall inhibit himself of herself from participating in the resolution of the case for any of these or similar reasons:

a) the Member of the Court was the ponente of the decision or participated in the proceedings before the appellate or trial court;

b) the Member of the Court was counsel, partner or member of law firm that is or was the counsel in the case subject of Section 3(c) of this rule;

c) the Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;

d) the Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity, or to an attorney or any member of a law firm who is counsel of record in the case within the fourth degree of consanguinity or affinity;

e) the Member of the Court was executor, administrator, guardian or trustee in the case; and

f) the Member of the Court was an official or is the spouse of an official or former official of the government agency or private agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself of herself for a just or valid reason other than any of those mentioned above.

Acting *Ex Officio* JBC Chairperson, to examine the voluminous dossier of several applicants and determine whether they have complete documentary requirements.

Equally noteworthy is the fact that there are no disputed evidentiary facts concerning the proceedings before Congress or the Court. In the July 24, 2012 Report of ORSN regarding the Documentary Requirements and SALNs of Candidates for the Position of the Chief Justice of the Philippines, then Associate Justice Maria Lourdes P. A. Sereno was noted to have "Complete Requirements" with notation "Letter 7/23/12 — considering her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those file." Despite her employment at the UP College of Law from November 1986 to June 1, 2006, the record of the UP Human Resources Department Office only contains her SALNs filed for 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997 and 2002,[4] but her SALNs for 2000, 2001, 2003, 2004, 2005 and 2006 are not on file,[5] whereas the records of the Central Records Division of the Office of the Ombudsman reveal that no SALN was filed by respondent from 2000 to 2009, except for the SALN for 1998. Respondent neither disputes the foregoing facts nor the authenticity and due execution of the foregoing documents.

Significantly, when I was Acting *Ex-Officio* Chairperson in 2012, I have had no personal knowledge that respondent had not filed her SALNs for 2000, 2001, 2003, 2004, 2005 and 2006. I may have had access to her SALNs for 2009, 2010 and 2011, but it was only during the Congressional Hearings that it was discovered that she failed to file her SALNs for the period between 2000-2006, as borne by the Certifications issued by the Office of the Ombudsman and the U.P. HRDO pursuant to *subpoena duces tecum* issued by the Committee on Justice.

It is likewise important to distinguish the proceedings before the Committee on Justice of the House of Representatives and the *quo warranto* petition pending before the Court. The issue in the petition for *quo warranto* is whether respondent unlawfully holds or exercises a public office in view of the contention of the Solicitor General that her failure to file SALNs, without lawful justification, underscored

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[4] Petitioner's Memorandum, Annex "O".

[5] *Id.*, Annex "B".

her inability to prove her integrity which is a constitutional qualification to become a member of the Supreme Court. In contrast, the issue in the Congressional Hearings where I was invited as a Resource Person was the determination of probable cause to impeach the respondent where her qualifications prior to her appointment as Chief Justice was never an issue nor raised as ground for impeachment.

There is no merit in respondent's claim that I am compulsorily disqualified to act in this case because as then *Ex-Officio* Chairperson of the JBC, I signed the short list of nominees for the position of Chief Justice, and the validity of my official action is purportedly in question. Suffice it to state that there is no dispute in this case as to the validity of my act of transmitting to the Office of the President the short list of nominees. I may have participated in the deliberation of the names included in the short list, but since respondent deliberately concealed from the JBC the material fact that she failed to file her SALNs in 2000, 2001, 2003, 2004, 2005 and 2006, I was denied the opportunity to pass upon her qualification of "proven integrity." As a matter of course, respondent's name would not have been included in the deliberation for the said short list, if only the JBC Executive Committee (*Execom*) and the ORSN had exercised reasonable diligence in the performance of their ministerial duty to ensure the complete documentary requirements of the applicants to the position of Chief Justice.

For all her harping on the mandatory grounds of inhibition, respondent should be well aware of what constitutes a clear case of "conflict of interest" which is a ground for recusal. In the November 17, 2017 deliberations where the JBC *En Banc* voted for the applicants to be shortlisted for the position of Court of Appeals Presiding Justice, respondent should not have allowed another round of voting, but should have sustained the motion of Judge Toribio Ilao, Jr. to re-open the position, considering that only two (2) of the five (5) candidates were voted by the JBC *En Banc* when the Constitution requires that three (3) from five (5) or more qualified candidates be voted upon. Instead, respondent insisted on a re-vote among the three (3) candidates who were not initially voted upon (first in the history of the JBC), to include one applicant in the shortlist of

nominees, who penned a decision reversing the ruling of the trial court, which found that the fees awarded to the lawyers (including respondent) who represented the Philippine Government in a case, were exorbitant and unenforceable for being contrary to public policy. Note that when the second round of voting took place, there was still a pending motion for reconsideration of the said applicant's decision which is favorable to respondent. It may even be said that respondent concealed such conflict of interest from the other JBC *Ex-Officio* members, who could have called for her inhibition as then *Ex-Officio* Chairperson.

In claiming that I am compulsorily disqualified from acting on this petition for *quo warranto*, respondent ignores the crucial distinction between the subject matter of this petition and that of the 2012 deliberations of the JBC *En Banc* when I acted as its *Acting Ex-Officio* Chairperson. Note that the subject matter of this petition for *quo warranto* is her ineligibility to become a member of the Judiciary because she was not a person of "proven integrity" for deliberately concealing from the JBC the fact that she had failed to file her SALNs, whereas the subject matter of the 2012 deliberations of the JBC *En Banc* is the overall qualifications of applicants, including respondent, to become a Chief Justice. Equally noteworthy is the fact that while there is a disputed evidentiary fact in this petition for *quo warranto* as to whether or not respondent had failed to file her SALNs before the Ombudsman Central Records Division or the U.P. Human Resource Department Office (*HRDO*), there was no disputed evidentiary fact during the JBC deliberations with respect to her SALN requirement. Then as now, however, there is no question that she had failed to file her SALNs **before the JBC** for so many years, including those for 2000, 2001, 2003, 2004, 2005 and 2006, but the ORSN erroneously stated in its report dated July 24, 2012 that she had "COMPLETE REQUIREMENTS [-] Letter 7/23/12 — considering that her government records in the academe are more than 15 years old, it is reasonable to consider it infeasible to retrieve all those file."

Respondent further asserts that I was a material witness in the matter in controversy because I testified before the House

Committee on Justice that the JBC should have disqualified her for failure to submit her SALNs for the years when she was a U.P. Professor; hence, disqualified to sit in judgment pursuant to Canon 3, Rule 5(b) of the New Code of Judicial Conduct and Rule 3.12(b), Canon 3 of the 1989 Code of Judicial Conduct. She claims that my opinion before the House Committee on Justice as to her invalid nomination for failure to submit SALNs to the JBC, given about a month before the petition for *quo warranto* was filed, might in some way or another, influence my decision in this case, because I already have personal knowledge of disputed evidentiary facts.

Respondent fails to persuade. A "material witness" is one who can testify about matters having logical connection with the consequential facts, especially if few others, if any, know about those matters.[6] For one, whether or not I will be a material witness in the impeachment proceedings would be for the prosecution panel to eventually decide. For another, as can be clearly gathered from the Minutes of the July 20, 2012 JBC *En Banc* Special Meeting and the transcript of the Congressional Hearings, I cannot be a material witness in the first place, because I have no personal knowledge as to whether there was substantial compliance with the SALN requirement, the determination of which having been expressly delegated to the JBC Execom. Because of my usual heavy judicial workload as an Associate Justice, it was inconceivable and impractical for me, as then Acting *Ex-Officio* JBC Chairperson, to examine the voluminous dossier of several applicants and determine whether they have complete documentary requirements, including SALNs.

To my mind, the material witnesses who could testify whether there was substantial SALN requirement are the members of the JBC Execom and the ORSN. On my part, I could corroborate the matters that transpired during the July 20, 2012 JBC *En Banc* Special Meeting, and the fact that respondent's letter dated July 23, 2012 never reached the JBC *En Banc* before the deadline for the submission of documentary requirements. It is also

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[6] *Black's Law Dictionary*, Eight Edition.

important to stress that when I was Acting *Ex-Officio* Chairperson in 2012, I have had no personal knowledge that respondent had not filed her SALNs for 2000, 2001, 2003, 2004, 2005 and 2006. I may have had access to her SALNs for 2009, 2010 and 2011, but it was only during the Congressional Hearings in 2018 that it was discovered that she failed to file her SALNs for the periods between 2000-2006, as borne by the Certifications issued by the Office of the Ombudsman and the U.P. HRDO pursuant to *subpoena duces tecum* issued by the Committee on Justice.

Even assuming that respondent's name was included in the shortlist of nominees for the position of Chief Justice submitted by the JBC to the Office of the President, there is a difference between determining her qualifications and the violation of the SALN law. Granted that there was a waiver on the part of the JBC with regard to respondent's incomplete SALNs, the fact remains that there were violations of the statutory and constitutional laws for failure to file SALNs, which not only cast doubt on her integrity, but also constitute culpable violation of the Constitution, and violation of R.A. Nos. 6713 and 3019 for as many years that she failed to file her SALNs. Because the said violations were committed even prior to respondent's appointment as Associate Justice of the Supreme Court in 2010, then they are proper subject of *quo warranto* proceedings instead of impeachment.

As to the respondent's right to due process, I have already explained in a Separate Concurring Opinion that my participation in the Congressional Hearings did not violate her right to due process, because it was never shown that I am disqualified on either compulsory or voluntary grounds for inhibition under the Rules of Court and the Internal Rules of the Supreme Court. Respondent's allegations of actual bias and partiality are unsubstantiated, conjectural, and not founded on rational assessment of the factual circumstances on which the motion to inhibit is anchored. When I made the statements before the Congressional Hearings for the determination of probable cause to impeach the respondent Chief Justice, no petition for *quo warranto* was filed yet before the Court, hence, I could not

have pre-judged the case. Once again, the genuine issue in this petition for *quo warranto* is not the eligibility of respondent to be appointed as Chief Justice in 2012, but her qualification of "proven integrity" when she was appointed as an Associate Justice in 2010 despite concealment of her habitual failure to file SALNs. Of utmost importance is the fact that I, like every other member of the Supreme Court, have never let personal reasons and political considerations shroud my judgment and cast doubt in the performance of my sworn duty, my only guide in deciding cases being a clear conscience in rendering justice without fear or favor in accordance with the law and the Constitution.

Jointly addressing the substantive issues in respondent's *Ad Cautelam* Motion for Reconsideration, I restate my position that there is nothing in Section 2, Article XI of the 1987 Constitution that states that Members of the Supreme Court, among other public officers, may be removed from office "only" through impeachment. The provision simply means that only the enumerated high government officials may be removed via impeachment, but it does not follow that they could not be proceeded against in any other manner, if warranted. Otherwise, the constitutional precept that public office is a public trust would be undermined simply because political or other improper consideration may prevent an impeachment proceeding being initiated.

Since Section 2, Article XI of the 1987 Constitution is clear and unambiguous, it is neither necessary nor permissible to resort to extrinsic aids for its interpretation, such as the records of deliberation of the constitutional convention, history or realities existing at the time of the adoption of the Constitution, changes in phraseology, prior laws and judicial decisions, contemporaneous constructions, and consequences of alternative interpretations.[7] It is only when the intent of the framers does not clearly appear in the text of the provision, as when it admits of more than one interpretation, where reliance on such extrinsic

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[7] *Statutory Construction*, Ruben E. Agpalo, p. 439 (2003).

aids may be made.[8] After all, the Constitution is not primarily a lawyer's document, and it does not derive its force from the convention that framed it, but from the people who ratified it.[9]

As a rule, an action against a public officer or employee for his ouster from office — within one year from the date the petitioner is ousted from his position[10] or when the right of the claimant to hold office arises.[11] Exception to the rule is when the petitioner was constantly promised and reassured or reinstatement, in which case laches may not be applied because petitioner is not guilty of inaction, and it was the continued assurance of the government, through its responsible officials, that led petitioner to wait for the government to fulfill its commitment.[12] Thus, I posit that the one-year prescriptive period to file a petition for *quo warranto* should commence from the time of discovery of the cause for the ouster from public office, especially in cases where the ground for disqualification is not apparent or is concealed.

It is not amiss to stress that under American jurisprudence, which has persuasive effect in this jurisdiction, it had been held that the power to impeach executive officers, vested in the legislature, does not affect the jurisdiction of the Supreme Court to try the right to office, since such right to an office is a proper matter of judicial cognizance, and impeachment is not a remedy equivalent to, or intended to take the place of *quo warranto*.[13]

Contrary to respondent's claim that the burden of proof to show unlawful holding or exercise of public office rests on the petitioner in a *quo warranto* proceeding, the general rule under

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[8] *People v. Muñoz*, 252 Phil. 105, 118 (1989).

[9] *People v. Derilo,* 338 Phil. 350, 376 (1997).

[10] *Madrigal v. Lecaroz*, 269 Phil. 20, 24 (1990).

[11] *Unabia v. City Mayor of Cebu*, 99 Phil. 253 (1956).

[12] *Cristobal v. Melchor*, 189 Phil. 658, 1997.

[13] 74 C.J.S. *Quo Warranto* § 15.

American jurisprudence is that the burden of proof is on respondent when the action is brought by the attorney general, to test right to public office. Therefore, it is the respondent, not the petitioner, who bears the burden to prove that she possessed the constitutional qualification of proven integrity when she applied for the position of Associate Justice of the Supreme Court in 2010, despite her failure to comply with the statutory and constitutional requisite of filing SALNs for the years of 2000, 2001, 2003, 2004, 2005 and 2006 while she was in government service, albeit on official leave intermittently.

In sum, the filing of Statement of Assets, Liabilities and Net Worth (*SALN*) is a constitutional and statutory obligation of public officers and employees. Submission of SALN is a pre-requisite of the Judicial and Bar Council for applicants to the Judiciary who come from government service. Its significance in determining the integrity of applicants to the Judiciary came to the fore when former Chief Justice Renato C. Corona was impeached for failure to properly declare assets in his SALNs. Based on the certifications issued by the University of the Philippines Human Resource Department Office and the Office of the Ombudsman Central Records Division, respondent failed to file her SALNs for the years 2000, 2001, 2003, 2004, 2005 and 2006. When respondent deliberately concealed from the JBC the fact that she failed to file her said SALNs while she was a Professor at the University of the Philippines College of Law, she demonstrated that her integrity is dubious and questionable. Therefore, her appointment as an Associate Justice in August 16, 2010 is void *ab initio,* for she lacks the constitutional qualification of "proven integrity" in order to become a member of the Court.

WHEREFORE, I vote to **DENY** respondent's *Ad Cautelam* Motion for Reconsideration for lack of merit.

Respectfully submitted.

SEPARATE OPINION

JARDELEZA, *J.*:

I vote to **DENY** respondent's *Ad Cautelam* Motion for Reconsideration.

Much of the controversy surrounding this case involves the conventional wisdom (one which I myself then thought to be self-evident) that impeachment is the *only* mode of removing a sitting member of the Supreme Court. However, my study into, and consideration of, applicable original understanding, constitutional text and structure, case precedent and historical practice, both American and Philippine, occasioned as it was by this case, has since shown me otherwise.

Last May 11, 2018, a Majority of this Court relied on the special civil action for *quo warranto* to oust a sitting member of the Court, for her failure to meet a constitutional qualification. Lest there be misunderstanding, I emphasize that Our holding was neither an invention nor improvisation of existing remedies cut by this Court out of whole cloth.

On the contrary, as this Concurring Opinion will attempt to show, on the issue of jurisdiction, the majority's conclusion is supported by the following propositions:

1. The American Constitution provides that all civil officers of the United States shall be removed on impeachment.[1] Nevertheless, the controversy of whether impeachment should be the exclusive mode to remove federal judges (including justices of the United States Supreme Court) persists in pertinent scholarly discourses,[2] case law[3] and even practice of state courts[4] on the matter. It would

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[1] U.S. CONSTITUTION, Article II, Section 4.

[2] See Saikrishna Prakash and Steven D. Smith, *How to Remove a Federal Judge*, 116 Yale L. J. 72 (2006).

[3] *Chandler v. Judicial Council of the Tenth Circuit*, 398 U.S. 74 (1970).

[4] See *Commonwealth v. Fowler*, 10 Mass. 290 (1813); see J.F.D., *The Missouri Supreme Judgeship: Conflict between Executive and Judiciary.*

also take a century and a half after the Philadelphia Convention of 1787 before the United States Supreme Court would be confronted with the question. In 1937, the appointment of Justice Hugo L. Black to the American Supreme Court was questioned by a citizen by direct action on the ground that it violated the emoluments clause of the Constitution.[5] In *Ex Parte Levitt,* the United States Supreme Court dismissed the petition on the ground that the petitioner lacked standing, **not** that impeachment is the exclusive mode to unseat a sitting justice of the Court.[6] In 2009, the United States Supreme Court denied *certiorari*[7] and let stand a United States Court of Appeals decision denying standing to a litigant who questioned then President Barack Obama's natural born citizenship.[8]

2. Meanwhile, while we essentially incorporated the text of the impeachment clause of the American Constitution into our 1935 Constitution,[9] this Court, in 1966 and in the context of the doctrine of separation of powers, would stake a grand constitutional principle defining the reach of judicial power respecting contests relating to the qualifications of all public officers. In *Lopez v. Roxas*,[10]

Powers of Constitutional Convention. Quo Warranto, The American Law Register (1852-1891), Vol. 13, No. 12, New Series Volume 4 (Oct., 1865), p. 719.

[5] U.S. CONSTITUTION, Article I, Section b; see *The Ineligibility Clause's Lost History: Presidential Patronage and Congress, 1787-1850*, Harv. L. Rev., Vol. 123, No. 7, May 2010; Paul R. Lieggi, *The Ineligibility Clause; An Historical Approach to Its Interpretation and Application*, 14 J. Marshall L. Rev. p. 819 (1981); Richard David Hofstetter, *Survey of Constitutional Law, Part I: Special Legislation of Ineligibility Clause,* 31 Rutgers L. Rev. p. 388 (1978).

[6] 302 U.S. 633 (1937).

[7] *Berg v. Obama*, 555 U.S. 1126 (2009); *Berg v. Obama*, 555 U.S. 1134 (2009).

[8] *Berg v. Obama*, 586 F.3d 234, 242 (2009).

[9] 1935 CONSTITUTION, Article IX, Section 1.

[10] G.R. No. L-25716, July 28, 1966, 17 SCRA 756.

it would hold that the power to be the judge of contests relating to, among others, the *qualifications* of *all* public officers is a power that belongs *exclusively* to the judicial department. The 1987 Constitution would constitutionalize this deep principle by providing that the Supreme Court, sitting en banc, shall be the sole judge of all contests relating to, among others, the *qualifications* of the President or the Vice-President.[11] It would also not be amiss to note that the 1934 Constitutional Convention, in a marked departure from the process under the American Constitution on the removal of members of Congress,[12] provided for an Electoral Commission for each house of the Congress, the membership of which included three justices of the Supreme Court. This Commission was mandated to be the sole judge of all contests relating to, among others, the *qualifications* of the Members of Congress.[13]

3. In 2011, in *In the matter of the charges of Plagiarism, etc., against Associate Justice Mariano C. Del Castillo (In re Del Castillo)*, twelve Members of the Court asserted the administrative authority to investigate and discipline its Members for official infractions that do not constitute impeachable offenses and mete penalties short of removal.[14]

After careful consideration and analysis of all the foregoing, I am convinced that (and contrary to respondent's claim) judicial integrity can only be preserved if the Supreme Court, in the exercise of its judicial powers, is recognized to be vested with the authority to oust and remove one of their Own, if that sitting Justice is proven to lack a constitutional *qualification*.

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[11] 1987 CONSTITUTION, Article VII, Section 5.

[12] U.S. CONSTITUTION, Article I, Section 5.

[13] 1935 CONSTITUTION, Article VI, Section 11.

[14] A.M. No. 10-7-17-SC, February 8, 2011, 642 SCRA 11, 76 (Concurring Opinion of J. Abad).

I find that the *raison d'etre* for the removal (with the sole or substantial participation of this Court) of the President, the Vice-President, and Members of Congress, all duly-elected high-ranking officials of the two other separate and co-equal Branches of Government, applies with equal, if not more, cogency to the case of a member of the Court whose constitutional *qualification* has been similarly put in issue. Since judicial power is defined to include the exclusive authority of the judicial department to judge contests relating to the *qualifications* of any public officer, to which class a Member of this Court undeniably belongs, perforce the Court has the authority to oust one of its Own when the Court finds that he/she lacks the qualifications required of him/her by the Constitution.

To be sure, impeachment is accurately described as a process fundamentally political in nature,[15] with the French aptly calling it "political justice."[16] So different was it from the judicial process that then Representative Gerald Ford, in furtherance of President Richard M. Nixon's aborted campaign to impeach United States Supreme Court Justice William O. Douglas, would cynically define an impeachable offense as "whatever a majority of the House of Representatives considers it to be at a given moment in history."[17] Conviction by the Senate, he explained, would depend only on "whatever offense or offenses two-thirds of the other body considers… sufficiently serious to require removal of the accused from office."[18]

It is in these lights that I cast my lot with the Majority. For me, it is unnatural, even aberrant, of any Member of this Court to prefer that a case (where his or her legal *qualification* to the office of Justice of this Court is in issue) be decided by way of a political, rather than judicial, process.

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[15] Alexander Hamilton, *The Federalist No. 65.*

[16] Bernas, S.J., *The Constitution of the Republic of the Philippines–A Commentary* (1996), p. 989.

[17] Laurence Tribe and Joshua Matz, *To End A Presidency* (2018), p. 25.

[18] *Id.* at 25-26.

I

Impeachment is an exceptional method of removing public officials lodged with, and exercised by, the Congress with great circumspection.[19] It is fundamentally political in nature,[20] as it involves government and the interplay of the sovereign power in removing unfit public officials vis-à-vis the state's protection of its high-level public officers.[21] From the face of Sections 1 to 3 of Article XI of the 1987 Constitution, it further discernibly appears that the main purpose of the institution of an impeachment proceeding is to exact accountability in the enumerated impeachable public officers.

As it stands now in accordance with our Constitution, in the judicial branch, it is only the Justices of the Supreme Court who are removable via impeachment.[22] In contemplation of the lengthier terms that Supreme Court justices may occupy their positions, impeachment was created as a recourse against an erring judicial officer who would otherwise remain unremoved until retirement:

To guard against the selection or retention of unfit presidents and vice-presidents, the Constitution provides for periodic elections. Frequent and regular elections mean that if the American people are unhappy with the job that these officers are doing, or disapprove of their behavior generally, they may turn them out of office… But what about judges who engage in odious behavior, but who ostensibly hold their offices for life? To provide a means for removing civil

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[19] A more detailed discussion on impeachment is attached as Appendix A.

[20] Alexander Hamilton, *The Federalist No. 65.*

[21] This power was given to the most political of the branches of government because of sound and practical considerations on the nature of impeachment. Originally, the Framers of the American Federal Constitution considered placing the impeachment power with the Federal Judiciary. However, this plan was discarded because the Constitutional Framers felt that the Legislature was the most "fit depositary of this important trust" and it was doubted if the members of the Supreme Court "would possess the degree of credit and authority" to carry out its judgment if it conflicted with Congress' authority.

[22] In the U.S., federal judges are also impeachable officers.

officers who abuse their power in office, the impeachment process was devised as a grave remedy of last resort.[23]

A

The exclusivity of impeachment as a mode of removing a judicial officer, however, is far from settled. My survey of existing scholarly writing on the issue shows that there have been two main opposing views on the dispute. The first view champions the impeachment-only argument, with Hamilton,[24] Story,[25] Kent,[26] Tucker[27] and Kaufman[28] as its leading advocates. In *The Federalist, No. 79*, Alexander Hamilton wrote:

> The precautions for [judges'] responsibility are comprised in the article respecting impeachments. They are liable to be impeached for malconduct by the House of Representatives and tried by the Senate; and, if convicted, may be dismissed from office and disqualified for holding any other. This is the only provision on the point which is consistent with the necessary independence of the judicial character, and is the only one which we find in our own Constitution in respect to our own judges. The want of a provision for removing the judges on account of inability has been a subject of complaint. But all considerate men will be sensible that such a provision would either not be practiced upon or would be more liable to abuse than calculated to answer any good purpose. The mensuration of the faculties of the mind has, I believe, no place in the catalogue of known arts. An attempt to fix the boundary between the regions of ability and inability would much oftener give scope to personal and party attachments

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[23] Emily Field Van Tassel and Paul Finkelman, *Impeachable Offenses–A Documentary History from 1787 to Present*, Congressional Quarterly Inc., 1999, pp. 2-3.

[24] *The Federalist Nos. 78 and 79.*

[25] J. Story, *Commentaries on the Constitution,* §§ 1599-1635 (1833).

[26] J. Kent, *Commentaries on American Law*, XIV (1826).

[27] St. G. Tucker, W. Blackstone, *Commentaries*, 353, 359-60 (App.) (Tucker ed. 1803).

[28] See Irving R. Kaufman, *Chilling Judicial Independence*, in Benjamin N. Cardozo Memorial Lectures Delivered at the Association of the Bar of the City of New York (1996).

and enmities than advance the interests of justice or the public good. The result, except in the case of insanity, must for the most part be arbitrary; and insanity, without any formal or express provision, may be safely pronounced to be a virtual disqualification.[29]

Hamilton's other *Federalist* writings also support a narrow reading of the above passage. In another part of the *Federalist No. 79,* Hamilton observed that judges "if they behave properly, will be secure in their places for life."[30] However, despite several writings expressing the narrower view of mode of removal, the American Constitution's text did not textually embrace Hamilton's position, and his writings ran contradictory to centuries of contrary convention of constitutional textual support.[31]

Irving Kaufman, a hardliner for the impeachment-only view, acknowledged the steady rise in the number of scholars who suggest that impeachment is not the only mode to effect judicial removal.[32] He opined, however, "that the very absence of a removal provision in Article III of the U.S. Constitution indicated that the Framers must have intended that bad behavior be dealt with by impeachment."[33] Kaufman added that if easier procedures for removal are appropriate for the judges in whom the Constitution vested the judicial power of the country, their independence may as well be a "snare" and a "delusion."[34]

Since impeachment and conviction entail, by design, a highly deliberative and cumbersome decision-making process, it has been argued that it would be implausible for the founders to have purposefully chosen a painstaking mechanism for

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[29] *Supra* note 24 at 474.

[30] Saikrishna Prakash and Steven D. Smith, *How to Remove a Federal Judge,* 116 Yale L.J. 72, 120 (2006), citing *The Federalist No. 79.*

[31] *Id.*

[32] Irving R. Kaufman, *Chilling Judicial Independence*, in Benjamin N. Cardozo Memorial Lectures Delivered at the Association of the Bar of the City of New York, p. 1190 (1996).

[33] *Id.* at 1191.

[34] *Id.*

disciplining judicial "Treason, Bribery, or other high Crimes and Misdemeanors," then leave open to Congress or to the President the removal of federal judges on lesser grounds and less exacting means. This exclusivity view was also seen as consistent with Supreme Court decisions on the separation of powers, where it found impeachment to be the sole mechanism through which Congress may participate in decisions to remove executive officers.[35]

On the contrapositive side of the argument are those who contend that impeachment is **not** the exclusive mode of removing a federal judge, keeping open the legal defensibility and compelling logic of judicial modes of removal.

Burke Shartel, as echoed by Raoul Berger and Michael Gerhardt, proffer along this line of reasoning. They rest their case in large measure on the proposition that the Constitution should not be understood to have ruled out a "rational method of improving the administration of justice."[36] The main argument asserts that since there might be transgressions of the "good behavior" standard which do not rise to the level of impeachable offenses, it is not constitutionally inconceivable to have a mechanism for removal apart from impeachment for judges whose conduct are unimpeachable but nonetheless warrant removal.

In his advocacy of *judicial* removal of judges, Shartel stopped short of removal of Supreme Court Justices on the ground that "there is no agency in the judiciary branch to remove the Justices of the Supreme Court." He suggested instead that "perhaps Congress could confer statutory authority on the Supreme Court

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[35] Peter M. Shane, *Who May Discipline or Remove Federal Judges? A Constitutional Analysis*, 209 U. Pa. L. Rev. 142, 209 (1993), citing *Bowsher v. Synar*, 478 U.S. 714, 722-23 (1986) (finding that officers of the United States can be removed "only upon impeachment by the House of Representatives and conviction by the Senate"); *Myers v. United States*, 272 U.S. 52, 114-15, 170 (1926) (quoting with approval President Coolidge's statement that "[t]he dismissal of an officer of the Government ... other than by impeachment, is exclusively an executive function").

[36] Preble Stolz, *Disciplining Federal Judges: Is Impeachment Hopeless*, 57 Cal. L. Rev. 659, p. 660 (1969).

as a whole to remove its own offending members."[37] Shartel's reasoning was further described, thus:

> He contended that the impeachment clause of Article II was a limitation on the power of the Congress to remove judges, and Article III a limitation on the executive power of removal. No constitutional limitation existed on the power of Congress to define "good behavior" in Article III and to provide a mechanism whereby the judiciary could try the fitness of its own members.'" In other words, judicial power to try the fitness of judges was not prohibited, though the executive was deprived of all power, and the legislature limited to impeachment. Slight support for this conclusion can be found in the case law construing Article II with respect to non-judicial civil officers; in that context, it has been held that impeachment is not the sole power of removal, as there might be conduct less than good behavior that is not a high crime or misdemeanor, for example, insanity or senility where the judge's condition is morally blameless.[38]

Berger, for his analysis, argued against the exclusivity of impeachment in this wise:

> Judicial tenure "during good behaviour" was terminated at common law by bad behavior, and since impeachable offenses, that is, "high crimes and misdemeanors" are not identical with all breaches of "good behavior" but merely overlap in the case of serious misconduct, there exist an implied power to remove judges whose "misbehavior" falls short of "high crimes and misdemeanors."
>
> Traditionally, forfeiture upon a breach of a condition subsequent was a judicial function, and a forfeiture of a judicial office therefore falls within Article III "judicial power." Congress may add the forfeiture of a judicial office for misbehavior to the forfeiture jurisdiction or, if necessary, it may under the "necessary and proper" clause provide a new remedy for forfeiture of judicial office, in order to effectuate the implied power to remove a judge whose tenure was terminated by his misbehavior.
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> The argument that the impeachment provisions bar the way [to other modes of removal] sacrifices a necessary power to a canon of

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[37] *Supra* note 35.

[38] Preble Stolz, *Disciplining Federal Judges: Is Impeachment Hopeless*, *supra* at 661.

construction. With Chief Justice Marshall, I should want nothing less than an express prohibition to preclude beneficial exercise of an implied means. Those who would deny to Congress the right to select the means for the termination implicit in the constitutional text — "during good behavior" — have the burden of establishing the preclusion.

In addition, Berger, responding to the strong criticism of a judicial mode of removal of a judge which Kaufman described as one that would "pose an ominous threat to…judicial independence,"[39] and effectively be "a dragnet that would inevitably sweep into its grasp the maverick, the dissenter, the innovator," countered:

> To object to the trial of a judge for misconduct, by his judicial peers drawn from the entire United States is to cast doubt on the fairness of the judicial process. If such a panel cannot be trusted to fairly try a "dissenter" for alleged judicial misconduct, no more can a district judge be trusted to try social rebels. If the process is good enough for the common man in matters of life or death, it is good enough for the trial of a judge's fitness to try others.

Berger further reckoned that, in the actual history of the impeachment power as a tool for disciplining judges who commit misdemeanors, the very tedious design of the process has in fact proven counterproductive, as it took the time of the entire Senate away from legislative duties. It had consistently been resorted to with "extreme reluctance," even in cases of the most reprehensible impropriety.[40] This, in turn, resulted in a scenario where a majority of cases of misconduct went unvisited, finally achieving an end opposite that which the Framers conceivably intended — that impeachment became a "standing invitation for judges to abuse their authority with impunity and without fear of removal." Berger further added that judicious search revealed that other leading legal luminaries on the bench,

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[39] Irving R. Kaufman, *Chilling Judicial Independence*, in Benjamin N. Cardozo Memorial Lectures Delivered at the Association of the Bar of the City of New York, p. 1183.

[40] Raoul Berger, *Chilling Judicial Independence: A Scarecrow,* 64 Cornell L. Rev. 822, 825 (1979).

including Chief Justice Burger,[41] Justice Blackmun,[42] Justice Rehnquist,[43] and Justice Tom Clark,[44] saw proposals for judicial removal of judges as non-threats, and regarded them as constitutional.

B

While these debates have been ongoing since the time American founding fathers decided (in the Philadelphia Convention of 1759) to subject federal judges to removal by impeachment, state courts would in the meantime continue to turn to other devices (specifically, *quo warranto*) to oust erring judges. State legal history and jurisprudence present us with cases, dating back as early as the 1800's, where the fitness of a sitting judge was challenged through the application for a writ of *quo warranto* on allegations of constitutional disqualifications.[45]

In 1833, the Supreme Court of Alabama, in *State Ex. Rel. Attorney Gen. v. Paul,* refused to resolve the question of the right of a judge to hold the office of justice of a newly-created judicial circuit, when his appointment to the same was made by the very legislature of which the judge was a member

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[41] *Id.*, citing *Nomination of Warren E. Burger, of Virginia, to be Chief Justice of the United States: Hearings Before the Senate Comm. On the Judiciary*, 91st Cong., 1st Sess. 11 (1969).

[42] *Id.*, citing *Nomination of Harry A. Blackmun, of Minnesota, to be Associate Justice of the Supreme Court of the United States: Hearings Before the Senate Comm. On the Judiciary,* 91st Cong., 2d Sess. 52 (1970).

[43] *Id.*, citing *The Independence of Federal Judges: Hearings Before the Subcomm. On Separation of Powers of the Senate Comm. On the Judiciary*, 91st Cong., 2d Sess. 330 (1970) (statement of W. Rehnquist, Asst. Attorney General of the United States).

[44] *Id.*, citing Clark, *Judicial Self-Regulation – Its Potential,* 35 L. & Contemp. Probs. 37, 40-41 (1970).

[45] Ernest E. Jr. Clulow; Lester M. Ponder; Harry C. Nail; Garfield O. Anderson, *Constitutional Objections to the Appointment of a Member of a Legislature to Judicial Office: Remedies: Interest of Parties: Authority to Determine the Issue*, 6 Geo. Wash. L. Rev. 46 (1937). A more detailed discussion on *quo warranto* is attached as Appendix B.

immediately prior thereto.[46] In its application for a writ of *quo warranto*, the Attorney General raised, as a constitutional disqualification, the section of the State Constitution which provided "that no senator or representative shall, during the terms which he shall have been elected, be appointed to any civil office of profit, under this State, which shall have been created, or the emoluments of which shall have been increased, during such term; except such offices as may be filled by elections by the people."[47] There, the Court, after deciding that the action for writ of *quo warranto* was a proper proceeding, held that the separation of powers of government left the judiciary powerless to review the act of the legislature in making the appointment.[48]

Seven years later, the same issue was brought before the same State Supreme Court, in the case of *State ex. rel. Attorney Gen. v. Porter.*[49] Although the case became moot due to the resignation of the judge so challenged upon commencement of the proceedings, the court in *Porter* nevertheless took the opportunity to overrule its 1833 decision by upholding its competency to decide the constitutionality of such an appointment. It announced further that "the powers of this court not only authorize, but require it, in a proper case, to determine whether an individual, elected to the bench by the two houses of the General Assembly, possesses the constitutional qualifications for the office."[50] In *Porter*, the court was "entirely satisfied that the respondent was ineligible to the judgeship of the tenth circuit … and should cause a judgment of ouster to be rendered," had the issue not been rendered moot.

At the next crucial point, the case of *Ex Parte Levitt*[51] became most instructive. In October 1937, the appointment of Hugo L.

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[46] *Id*., citing *State Ex. Rel. Attorney Gen. v. Paul,* 5 Stew. & P. 40 (1833).

[47] *Id*., citing the Constitution of Alabama, Article 3, Section 25.

[48] *Id*.

[49] Ernest E. Jr. Clulow, *et al*., *Constitutional Objections to the Appointment of a Member of a Legislature to Judicial Office: Remedies: Interest of Parties: Authority to Determine the Issue*, *supra*; 1 Ala. 688 (1840).

[50] *Id*.

[51] 302 U.S. 633 (1937).

Black to the office of Associate Justice of the United States Supreme Court was similarly challenged, through a direct action to show cause,[52] filed by one Albert Levitt, a citizen and member of the bar. Prior to his appointment, Justice Black served as Senator from Alabama for over a decade, ending in his recommendation and appointment to a seat in the U.S. Supreme Court (succeeding retired Justice Willis Van Devanter) by President Franklin D. Roosevelt. The petition centered on Justice Black's alleged ineligibility due to the prohibition in the Constitution under the emoluments clause.[53] On October 11, 1937, the U.S. Supreme Court dismissed Levitt's action on the ground of lack of sufficient interest in the contested office. Chief Justice Hughes, departing from familiar practice, announced from the Bench the Court's reasons for its action:

> The motion papers disclose no interest upon the part of the petitioner other than that of a citizen and a member of the bar of this court. That is insufficient. It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action, he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action and it is not sufficient that he has merely a general interest common to all members of the public.[54]

It bears stressing what the U.S. Supreme Court did not do in *Levitt*. Despite the received tradition that justices of the American Supreme Court can be removed from office exclusively by impeachment,[55] it did not dismiss Levitt's motion on the ground that impeachment is the exclusive mode of removing a sitting Justice of the Court. This, to me, signified that the U.S. High

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[52] Ernest E. Jr. Clulow, *et al*., *Constitutional Objections to the Appointment of a Member of a Legislature to Judicial Office: Remedies: Interest of Parties: Authority to Determine the Issue*, *supra* note 45, Appendix A.

[53] This clause, found under Article I, Section 6, cl. 2. of the U.S. Constitution, provided that no Senator or Representative, during the time for which he was elected, should be appointed to any civil office of the United States, which was created, or the emoluments of which were increased during the appointee's term.

[54] 303 U.S. 633 (1937).

[55] U.S. CONSTITUTION, Art. II, Section 4.

Court deemed itself proper to entertain a petition to remove a sitting Justice from its very own bench.

Contemporary scholarly commentary on *Ex Parte Levitt*[56] analyzed the various federal remedies available to those who dispute the right to occupy a public office, including *habeas corpus*, injunction, writ of prohibition, writ of *certiorari*, *mandamus* and *quo warranto*.[57] Clulow, et al.'s central argument is: short of finding a proper party, "**[t]he only other remedy which is undoubtedly available is quo warranto**."[58]

As earlier stated, the U.S. Supreme Court, in the 2009 case of *Berg v. Obama*, denied *certiorari* and allowed to stand a United States Court of Appeals decision dismissing a declaratory judgment finding then-Presidential Candidate Obama ineligible under the natural-born clause requirement of the U.S. Constitution.[59] The Court of Appeals held that plaintiff Berg, a lawyer, lacked sufficient standing, holding the door open to a list of parties "… who could have challenged, or could still challenge, Obama's eligibility through various means…"[60]

II

This Part shall discuss the development of our own Constitution's provisions on removal of public officials on issues of qualification.

In 1966, this Court, in *Lopez v. Roxas*,[61] was asked to resolve a petition to prevent the Presidential Electoral Tribunal, created by Republic Act No. 1793 (R.A. No. 1793) and composed of the Chief Justice and the other ten members of the Supreme Court, from hearing and deciding an election contest for the

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[56] Ernest E. Jr. Clulow, *et al., Constitutional Objections to the Appointment of a Member of a Legislature to Judicial Office: Remedies: Interest of Parties: Authority to Determine the Issue, supra* note 45.

[57] *Id*. at 48-57.

[58] *Id*. at 52. Emphasis supplied.

[59] *Berg v. Obama*, 555 U.S. 1126 (2009); *Berg v. Obama*, 555 U.S. 1134 (2009).

[60] *Berg v. Obama*, 586 F.3d 234, 242 (2009).

[61] *Supra* note 10. Emphasis in the original.

position of Vice President of the Republic of the Philippines. In dismissing the petition, We upheld the inherently judicial nature of deciding questions of qualification and said:

> x x x **the power to be the "judge ... of ... contests relating to the election, returns, and qualifications" of any public officer is essentially judicial**. As such — under the very principle of separation of powers invoked by petitioner herein — **it belongs exclusively to the judicial department, except only insofar as the Constitution provides otherwise.** This is precisely the reason why said organic law ordains that "the Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members." In other words, the purpose of this provision was to exclude the power to decide such contests relating to Members of Congress—which by nature is judicial—from the operation of the general grant of judicial power to "the Supreme Court and such inferior courts as may be established by law."[62]

Prior to *Lopez,* however, there had already been textual recognition of the essentially judicial (and concededly, counter-majoritarian) nature of the process for resolving questions of eligibility/qualification of public officers.

As earlier discussed, our 1935 Constitution, for example, created an Electoral Commission to act as the sole judge of all contests relating to the election, returns, and qualifications of members of each house of the Congress.[63] In stark contrast with the process under the U.S. Constitution, which provided that each House of Congress shall be the judge of the election, returns, and qualifications of its own members,[64] our framers provided that such issues shall be decided by a nine person-tribunal, three members of whom shall come from the Supreme Court.[65] Justice

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[62] *Id.*

[63] Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2003), p. 725.

[64] *Id.*

[65] Six of the other Members were to be chosen by the National Assembly, three of whom shall be nominated by the party having the largest number

Laurel, in the landmark case of *Angara v. Electoral Commission*,[66] noted that the Constitutional Convention sought to cure, with a body "endowed with judicial temper," the evil of the "scandalously notorious canvassing of votes by political parties."[67]

The 1973 Constitution would later give the Supreme Court not only original jurisdiction over petitions for *quo warranto*,[68] a grant which the Legislature cannot remove, but also the express power to discipline (and, by a vote of at least eight members, dismiss) judges of inferior courts.[69] The 1986 Constitution would contain a further provision "constitutionalizing" R.A. No. 1793 (and *Lopez*) by expressly empowering the Supreme Court, sitting *en banc*, to be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice President.[70]

In addition to the foregoing, our Constitution, in its three iterations since 1935, would also adopt provisions relating to the qualification requirements for judges, and the vetting process for the confirmation of judicial appointments, all of which bear directly on the question of whether in our jurisdiction the impeachment mode to remove judges has remained exclusive. These include: (1) the addition of the so-called moral provision to the qualifications of members of the judiciary, namely, that they be of proven competence, integrity, probity, and independence;[71] (2) the creation of a Judicial and Bar Council, which is vested with the principal function of recommending

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of votes, and three by the party having the second largest number of votes therein (1935 CONSTITUTION, Article VI, Section 4).

[66] 63 Phil. 170 (1936).

[67] See Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2003), p. 726, citing 63 Phil. 170 (1936).

[68] 1973 CONSTITUTION, Article X, Section 5(1). A more detailed discussion on *Quo Warranto* is attached as Appendix B.

[69] 1973 CONSTITUTION, Article X, Section 7.

[70] 1986 CONSTITUTION, Article VII, Section 4.

[71] Article VIII, Section 7.

to the President appointees to the Judiciary;[72] (3) the requirement, upon assumption of office and as often thereafter as may be required by law, for all public officers and employees to submit a declaration under oath of his assets, liabilities, and net worth (SALN);[73] and, finally, (4) the grant to the Supreme Court of its so-called expanded power of judicial review, which is the duty to determine whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[74]

To my mind, the textual recognition of the essentially judicial nature of questions of qualifications, coupled with the accumulated effect of all of the above changes to the Constitution we have surveyed, have been to create a distinctive Philippine constitutional law on impeachment *and* removal, respecting judges. Unlike the American constitutional provision which seems to maintain impeachment as the exclusive mode of removing judicial officials, the exigencies of our recognized need to exact accountability from public officials in general, and members of the judiciary, in particular, has led us to create a constitutional structure where the existence of the inarguably political power of impeachment against members of this Court does not necessarily preclude/exclude removal by the Court itself of its own members on issues of eligibility for failure to meet constitutionally-set qualifications.

III

Judicial independence, or the independence of the judiciary as an institution from other branches of government,[75] is said to be most crucial in "periods of intolerance."[76] Here, it has

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[72] Article VII, Section 8(1) and (5) and Section 9.

[73] Article XI, Section 17.

[74] Article VIII, Section 1.

[75] Irving R. Kaufman, *Chilling Judicial Independence*, in Benjamin N. Cardozo Memorial Lectures Delivered at the Association of the Bar of the City of New York (1996), p. 1209.

[76] *Id.* at 1211.

been repeatedly alleged that, by giving due course to the Solicitor General's petition for *quo warranto* filed against respondent, the Court may have irreparably compromised its independence for political ends. Not only does this argument have no basis other than the fact that respondent has styled herself as one of the staunchest critics of the present Administration, it also appears to operate on the erroneous premise that judicial independence is incompatible with judicial discipline.[77] On this score, I find

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[77] It is recognized that a number of commentators have asserted arguments demonstrating the exclusivity of impeachment as a political device for judicial discipline, with three factors supposedly mandating that conclusion: (1) the Constitution's failure to authorize expressly any disciplinary procedure other than removal, (2) the ideal of judicial independence embodied in Article III, and (3) the contemporary statements such as the above quoted passages from The Federalist and the Letters of Brutus regarding the exclusivity of impeachment as a removal device.

If followed categorically, however, such an analysis would leave the government with no procedural avenue other than impeachment for disciplining sitting judges guilty of misconduct, and no disciplinary sanctions other than removal and disqualification for punishing such judges. The net effect of this line of thought, among others, is a scenario wherein the Supreme Court's hands are tied, and it relegated to "watch helplessly–for the reason that the power to act is granted solely to Congress under the express terms of the Constitution–as its own Members prostitute its integrity as an institution." (Separate Concurring Opinion of Justice Brion, *In re Del Castillo*, *supra* note 14 at 64-65).

Such an interpretation would also be inconsistent with the accepted standards for removal of a judge, and the fact that removal is not the only price exacted for every incident of judicial misconduct. This contrary understanding eliminates the demonstrated spectrum of possible misconduct, as well as the gradations of sanctions that correspond to them, and further implies that the justice is only either perfect/incapable of misstep or that the Court has to wait for the gravest of transgressions before an erring Justice can be subject to discipline. This would, in turn, inarguably mean that the Framers of the Constitution have conceded the condonation and tolerance of misdemeanors and misconduct of judicial officers that do not tilt the scales in equal weight as those offenses of impeachable gravity.

Viewed from the lens of the doctrine of separation of powers among the three equal branches of government, a state's highest court must necessarily possess the inherent power to all its judges, including those of them on the highest court, for to deny a state's highest court the power to discipline *all* its members would be to deny such a court equality with the other two branches.

Justice Brion's following words in *In re Del Castillo* to be *apropos*:

> x x x Another interest to consider is the need for judicial integrity – a term not expressly mentioned in the Article on the Judiciary (Article VIII), but is a basic concept found in Article XI (on Accountability of Public Officers) of the Constitution. It is important as this constitutional interest underlies the independent and responsible Judiciary that Article VIII establishes and protects. To be exact, it complements judicial independence as integrity and independence affect and support one another; only a Judiciary with integrity can be a truly independent Judiciary. Judicial integrity, too, directly relates to public trust and accountability that the Constitution seeks in the strongest terms. x x x[78]

Conversely, a proscription against the Court disciplining its own members — by virtue of the argument that impeachment (undertaken solely by Congress) is the only administrative disciplinary proceeding available — is arguably *counterintuitive* to the spirit of judicial independence, as it ties the Court's hands from meting out the extreme penalty of removal in the disciplining of its own bench.

These conclusions are likewise buttressed by the argument that forms of discipline that depend on the judiciary for their effectuation do not threaten the separation of powers. The basic idea behind separation of powers is that the three great branches of government must be separate, coordinate and equal, (*Id.,* citing *Humphrey's Ex'r v. United States*, 295 U.S. 602, 629-30 (1934), with each branch free to function without restriction, supervision or interference by the other two branches. (*Id.,* citing Carrigan, *Inherent Powers and Finance,* 7 TRIAL 22 (Nov./Dec. 1971). The separation of powers doctrine implies that each branch of government has inherent power to "keep its own house in order," absent a specific grant of power to another branch, such as the power to impeach. (*Id.,* citing Comment, *The Limitations of Article III on the Proposed Judicial Removal Machinery: S. 1506*, 118 PA. L. REV. 1064, 1067-68 (1970) [hereinafter cited as LIMITATIONS OF ARTICLE III].) It recognizes that each branch of government must have sufficient power to carry out its assigned tasks and that these constitutionally assigned tasks will be performed properly within the governmental branch itself. (*Id.,* citing Traynor, *Who Can Best Judge the Judges,* 53 VA. L. REV. 1266 (1967) [hereinafter cited as Traynor].

[78] Separate Concurring Opinion of Justice Brion, *In re Del Castillo*, *supra* note 14 at 62.

Indeed, while judicial independence and freedom are unquestionably desirable (if not necessary) values, judicial discipline is also equally important to ensure that the conduct of the justice system's individual judges, especially its highest magistrates, is beyond question.[79] The purpose of judicial discipline is, after all, not to punish the erring judge but more to preserve the integrity of the judicial system and safeguard the bench and the public from those who are unfit.[80] Thus, and in concrete terms, our Constitution sets out several disciplinary powers that necessarily capacitate[81] the Court to "keep its own house in order," and thereby preserve the integrity of the judicial system, namely: (1) admission and discipline of members of the Bar,[82] (2) contempt powers,[83] (3) discipline and removal of

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[79] Lisa L. Lewis, *Judicial Discipline, Removal and Retirement,* 1976 Wis. L. Rev. 563, 563 (1976).

[80] Cynthia Gray, *A Study of State Judicial Discipline Sanctions,* Am. Jud. Soc. (2002). See also Robin Cooke, *Empowerment and Accountability: The Quest for Administrative Justice* (1992) 18 Commonwealth Law Bulletin 1326; Lisa L. Lewis, *Judicial Discipline, Removal and Retirement*, Wis. L. Rev. p. 563 (1976), citing *Courts-Judicial Removal-Establishment of Judicial Commission for Removal of Judges Precludes Legislative Investigation of udicial Misconduct,* 84 Harv. L. Rev. pp. 1002-1005 (1971); *Judicial Integrity,* 44 J. Am. Jud. Soc. P. 165 (1961).

[81] This inherent power in administrative discipline is elucidated by Justice Brion in his Separate Concurring Opinion, *In re Del Castillo*, *supra* note 14 at 65 to wit:

> Independent of the grant of supervisory authority and at a more basic level, the Supreme Court cannot be expected to play its role in the constitutional democratic scheme solely on the basis of the Constitution's express grant of powers. Implied in these grants are the inherent powers that every entity endowed with life (even artificial life) and burdened with responsibilities can and must exercise if it is to survive. The Court cannot but have the right to defend itself to ensure that its integrity and that of the Judiciary it oversees are kept intact. This is particularly true when its integrity is attacked or placed at risk by its very own Members — a situation that is not unknown in the history of the Court.

[82] CONSTITUTION, Article VIII, Section 5(5); RULES OF COURT, Rules 138 and 139-B.

[83] RULES OF COURT, Rule 71.

judges of lower courts,[84] and (4) the general power of administrative supervision over *all* courts and the personnel thereof.[85] Moreover, the Internal Rules of the Supreme Court (2010)[86] expressly included, for the first time, "cases involving the discipline of a Member of the Court"[87] as among those matters and cases falling within the purview of the Court *en banc*.[88]

There have been at least three cases of judicial discipline respecting sitting members of the Supreme Court. The most recent one is *In Re: Del Castillo*,[89] which involved charges of plagiarism against a sitting member of the Supreme Court and

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[84] CONSTITUTION, Article VIII, Section 11; RULES OF COURT, Rule 140.

[85] Cynthia Gray, *A Study of State Judicial Discipline Sanctions*, American Judicature Society (2002); available at www.ajs.org/ethics/pdfs/Sanctions.pdf.

[86] A.M. No. 10-4-20-SC, May 4, 2010.

[87] Rule 2, Sec. 3, par. (h), A.M. No. 10-4-20-SC, May 4, 2010.

[88] Elucidating on the procedure, Section 13, Rule 2 of the Court's Internal Rules provides:

Sec. 13. *Ethics Committee.* — In addition to the above, a permanent Committee on Ethics and Ethical Standards shall be established and chaired by the Chief Justice, with following membership:

a) a working Vice-Chair appointed by the Chief Justice;

b) three (3) members chosen among themselves by the *en banc* by secret vote; and

c) a retired Supreme Court Justice chosen by the Chief Justice as a non-voting observer-consultant.

The Vice-Chair, the Members and the Retired Supreme Court Justice shall serve for a term of one (1) year, with the election in the case of elected Members to be held at the call of the Chief Justice.

The Committee shall have the task of preliminarily investigating all complaints involving graft and corruption and violations of ethical standards, including anonymous complaints, filed against Members of the Court, and of submitting findings and recommendations to the *en banc.* All proceedings shall be completely confidential. The Committee shall also monitor and report to the Court the progress of the investigation of similar complaints against Supreme Court officials and employees, and handle the annual update of the Court's ethical rules and standards for submission to the *en banc*. (Emphasis and underscoring supplied).

[89] A.M. No.10-7-17-SC, October 12, 2010, 632 SCRA 607.

confronted the long-held debate over the disciplinary measures that may be taken against a sitting Supreme Court Justice. In her Separate Dissenting Opinion therein, Justice Carpio-Morales noted two other instances, *In re Undated Letter of Biraogo* and Bar Matter No. 979, wherein the Supreme Court conducted disciplinary proceedings against two Justices, both of whom were incumbent members at the time of the proceedings. While the Decisions in these cases meted penalties short of removal (in *In Re Del Castillo*, the Court eventually resolved to dismiss the case for lack of merit), all of them unequivocally signified an acknowledgment on the part of the Court of its power to enforce judicial discipline within its ranks. To me, the underlying principles supporting a recognition of such power on the part of the Court is no different from those that support a finding of a power to inquire into (and decide) issues of its own members with respect to constitutionally-set *qualifications*.

On another note, I disagree with the view of Justice Leonen, as expressed in his Dissent, that vesting in the Court the power to oust one of its Own could result to dissenters being targeted for judicial removal. With respect, for me, this argument proceeds from the erroneous premise that judicial accountability and the power of dissent cancel each other out. As shown by history, judicial discipline and accountability have always held the line to safeguard both institutional and individual judicial independence, and to impute that the freedom of dissent will be negated by the option of judicial removal is a precarious fallacy of unwarranted assumptions.

In converse truth, the very existence of the elbow room for dissent owes itself in large measure to judicial accountability, inasmuch as dissents continuously ensure that no one sitting magistrate may stifle the voice of another who is moved to "show why the judgment of his fellows are worthy of contradiction."[90] Disabusing the Court from the notion that

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[90] *Dissenting Opinions*, University of Pennsylvania Law Review and American Law Register, Volume 1, No. 3, March 1923, p. 206. See also Evan A. Evans, *Dissenting Opinion-Its Use and Abuse,* 3 Mo. L. Rev. (1938), citing *Georgia v. Brailsford*, 2 U.S. 2 Dall. 415, 415 (1793).

judicial unanimity was required for legitimacy, the subsequent and prevailing tradition has since been to allow dissenting opinions to serve many utilities, including: (1) leading the majority opinion to sharpen and polish its initial draft; (2) attracting public attention for legislative change; and (3) giving the Court the farsighted contingency to correct its mistake in case of a future opportunity.[91]

A dissenter has indeed been described as one whose opinion 'speak[s] to the future… his voice… pitched to a key that will carry through the years,"[92] "recording prophecy and shaping history."[93] Most dissents that have become the majority opinion in later years have also proven right by Chief Justice Hughes' elegant definition of the same when he said "a dissent in a court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed."[94]

These celebrated dissents were made possible through the synergized efforts of striving for judicial independence without sacrificing the system's corporate and individual integrity. Judicial accountability provided a court environment conducive for the flourishing of dissents by serving as the constant check for abuse and intimidation. It has made vastly more difficult any given majority of a multi-membered court to gag their colleagues into concession or silence. It has made space for the glorious dissents of Justice Curtis in *Dred Scott*,[95] Justice

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[91] Ruth Bader Ginsburg, *The Role of Dissenting Opinions*, Presentation to the Harvard Club of Washington, D.C., on December 17, 2009, pp. 3, 4, 6.

[92] Bernice B. Donald, *The Intrajudicial Factor in Judicial Independence: Reflections on Collegiality and Dissent in Multi-Member Courts*, available at www.memphis.edu/law/documents/donald/pdf, last accessed on June 6, 2018, citing Benjamin Cordozo, *Law & Literature*, p. 36 (1931).

[93] *Ferguson v. Moore-McCormack Lines*, 352 U.S. 521, 528 (1957).

[94] Randall T. Shepard, *Perspectives: Notable Dissents in State Constitutional Cases-What Can Dissents Teach Us*, 68 Alb. L. Rev. 337 (2005), citing C. Hughes, *The Supreme Court of the Unites States*, 68 (1921).

[95] *Dred Scott v. Sandford,* 60 U.S. 393, 564-633, (1857), Curtis, *J.*, dissenting.

Harlan in *Plessy*,[96] and Justice Jackson in *Korematsu*,[97] to be heard. I find that the claim that the exercise of the general supervision of the Court over its own members would equate to silencing of dissent unduly underestimates the good faith and good sense of the Members of the Court.

Judicial accountability and integrity operatively protect *all* types of dissent, whether self-seeking or sincere, whether truly intuitive of future wisdom or merely self-consciously done for the sake of itself. It safeguards dissents whether borne out of honest convictions or self-perpetuation. What remains to be seen is verifiable empirical proof to substantiate the belief that the dissenting voice has been persecuted in the historical experience of judicial removal; an unease that seems to be more apparent than it is real.[98] There is only therefore a cognitive leap between judicial options for removal and stifling of dissent, as judicial accountability and integrity give dissent a protected platform and a breathing room, a voice that warrants the belief of authenticity.

Conclusion

It is not difficult to concede that the impeachment-only argument is popular, especially if the Constitution is understood as a restricted enumeration of powers.[99] As I stated in the outset, I myself previously thought its premises to be correct. The reality, however, is that, prior to this case, there has been no factual occasion for the examination (or rejection) of the plausibility of the impeachment-only view in the context of an actual case and controversy involving an incumbent Justice of the Supreme

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[96] *Plessy v. Ferguson,* 163 U.S. 537, 552-62 (1896), Harlan, *J.*, dissenting.

[97] *Korematsu v. United States,* 323 U.S. 214, 242-48 (1944), Jackson, *J.*, dissenting.

[98] There appears to be neither historical evidence nor contemporary commentary offered to show any single instance of judicial removal founded on the concerned judge's propensity to dissent.

[99] Saikrishna Prakash and Steven D. Smith, *How to Remove a Federal Judge*, 116 Yale L.J. 72, 135 (2006). Available at: http://digitalcommons.law.yale.edu/ylj/vol116/iss1/2.

Court, where this exclusive view could be tested on all accounts.[100] Thus, while it is not hard to imagine how the impeachment-only argument respecting our country's highest ranking judicial magistrates might be accepted as resolved, this case has forced us to look more closely into its historical, legal, and logical bases. Upon doing so, I am convinced that impeachment is **not** an exclusive mode of removal respecting justices of the Supreme Court, respecting their constitutional *qualifications.*

I am further convinced that this reading gives more life to the Constitution's promise of accountability of public officers, not excluding the Court's own. I thus affirm my non-recusal and concurrence to the analysis of the ponencia and Justice De Castro on why, under the facts, respondent's integrity was not proven on account of her repeated failures to file her SALNs. The Chief Justice of the Supreme Court is the highest fiduciary in the Judicial Branch of the government. The discharge of the fiduciary duties of the Chief Justice, respecting her obligation to file her SALNs, is thus not measured by the standard applicable to Doblado.[101] Rather, in the words of Judge Cardozo, "Not honesty alone, but the punctilio of an honor the most sensitive, is… the standard of behavior."[102]

FOR ALL THE FOREGOING REASONS, I vote to **DENY** respondent's *Ad Cautelam* Motion for Reconsideration.

Impeachment: History and Rationale

Impeachment is an exceptional method of removing public officials lodged with and exercised by the Congress with great circumspection. It is widely considered *sui generis* and characteristically political, with penal and judicial attributes.[1]

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[100] *Id.* at 136.

[101] *Concerned Taxpayer v. Doblada, Jr.*, A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218.

[102] *Meinhard v. Salmon*, 249 NY 458 (1928).

[1] Antonio R. Tupaz and Edsel C.F. Tupaz, *Fundamentals on Impeachment,* (2001), pp. 6-8.

It is an extraordinary means of removal exercised by the legislature over impeachable officials, with the purpose of "ensuring the highest care in their indictment and conviction and the imposition of special penalties in the case of a finding of guilt."[2] The purpose of impeachment is to remove an officer who is no longer fit to occupy the office so held, and shall not extend further, although proper prosecution, trial and punishment according to law are not foreclosed.[3]

The principle that public office is a public trust is the core principle of the impeachment power with its primary objective the removal from office and disqualification of the public officer, who is deemed unfit. This mechanism was installed by the pragmatic consideration that men in public office might fail to discharge their duties in the manner befitting of their posts.[4] As clarified in the deliberations of the Constitutional Commission of 1986 on the impeachment provision:

MR. REGALADO. Just for the record, what would the Committee envision as a betrayal of the public trust which is not otherwise covered by the other terms antecedent thereto?

MR. ROMULO. I think, if I may speak for the Committee and subject to further comments of Commissioner de los Reyes, the concept is that this is a catchall phrase. Really, it refers to his oath of office, in the end that the idea of a public trust is connected with the oath of office of the officer, and if he violates that oath of office, then he has betrayed that trust.

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MR. DE LOS REYES. The reason I proposed this amendment is that during the Regular Batasang Pambansa when there was a move to impeach then President Marcos, there were arguments to the effect that there is no ground for impeachment because there is no proof that President Marcos committed criminal acts which are punishable, or considered penal offenses. And so the term "betrayal of public

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[2] Isagani Cruz, *Philippine Political Law*, (1989 ed.), pp. 313-314.

[3] Section 7, Article XI, 1987 Constitution.

[4] *Supra* note 2.

trust" is a catchall phrase to include all acts which are not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favouritism, etc to the prejudice of public interest and which tend to bring the office into disrepute. That is the purpose, Madam President.[5]

It is also fundamentally political in nature,[6] with the French even calling it "political justice"[7] as it "involves government and the arching interplay of interests — the interest of the sovereign in removing unfit public officials versus the state interest in protecting high-level public officers."[8] From the face of Sections 1-3 of Article XI of the 1987 Constitution, it further discernibly appears that the main purpose of the institution of an impeachment proceeding is to exact accountability in the enumerated public officers.

The impeachment process in the Philippines traces its origins back to the American law on impeachment, which was in turn borrowed from the English parliament practice, thus making the law on impeachment common law in origin.[9] Impeachment began in the late fourteenth century when the Commons found the need to prosecute before the Lords offenders and officers

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[5] *Record of the Constitutional Commission: Proceedings and Debates*, Vol. II, p. 272.

[6] Alexander Hamilton, *The Federalist No. 65.*

[7] Fr. Joaquin Bernas, S.J., *The Constitution of the Republic of the Philippines – A Commentary*, (1986 ed.), p. 989.

[8] This power was given to the most political of the branches of government because of sound and practical considerations on the nature of impeachment. Originally, the Framers of the American Federal Constitution considered placing the impeachment power with the Federal Judiciary. However, this plan was discarded because the Constitutional Framers felt that the Legislature was the most "fit depositary of this important trust' and it was doubted if the members of the Supreme Court "would possess the degree of credit and authority" to carry out its judgment if it conflicted with Congress' authority.

[9] *Supra* note 1 at 4.

of the Crown.[10] The parliament of Great Britain developed the impeachment process to be able to exercise some measure of control over the King and officials who operated under his authority. It sought to prosecute ministers of the King, who with near absolute power would have been untouchable; thereby putting the parliamentary supreme.[11] It was further described as "the most powerful weapon in the political armory, short of civil war,"[12] largely viewed as a means for the ouster of corrupt officers, and was for the English "the chief institution for the preservation of the government."[13] It was also initially not limited to removal from office, but included the imposition of all sorts of punishment, including sentencing people to death.[14] In its English advent, it was an expansive parliamentary tool of criminal prosecution and punishment, meant to be a drastic remedy, "essential but dangerous," to be used only in "imperative cases."[15]

The Founders conceived impeachment chiefly as a "bridle" upon the President and his officers,[16] a heavy "piece of artillery" as to be "unfit for ordinary use."[17] Hamilton further elucidated that impeachment was "designed as a method of national inquest

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[10] Raoul Berger, *Impeachment: The Constitutional Problems, Harvard University Press,* 1973, citing Joseph Borkin, *The Corrupt Judge*, New York, (1962).

[11] The House of Commons did not exercise the right to impeach sparingly. For instance, during the reign of James I (1603-1625) and Charles I (1628-1649), over 100 impeachments were voted by it.

[12] *Supra* note 1 at 4, citing Plucknett, *Presidential Address* reproduced in 3 Transactions, Royal Historical Society, 5th Series, (1952), p. 145.

[13] *Supra* note 1 at 4, citing John Hatsell's *Precedents of Proceedings in the House of Commons*, (1956), p. 63.

[14] Saikrishna Prakash and Steven D. Smith, *How to Remove a Federal Judge,* (2006), 116 Yale L.J. 72, 110 & 136.

[15] Irving Kaufman, *Chilling Judicial Independence*, in Benjamin N. Cardozo Memorial Lecture, p. 1200.

[16] Arthur Bestor, *Impeachment*, (1973), 49 Wash. L. Rev. 255, 258.

[17] *Id.,* citing Viscount James Bryce, *The American Commonwealth*, (1908), p. 233.

into the conduct of public men" and could result in a sentence of doom "to a perpetual ostracism from the esteem and confidence, and honors and emoluments of his country." The impeachment standard appears to be purposively burdensome, designed to limit impeachment to only the gravest kinds of errors of a political nature that is directed against the state.[18] The process was entrusted to the Senate rather than the Supreme Court because the "awful discretion which a court of impeachment must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community, forbids the commitment of the trust to a small number of persons."[19]

When the English parliament practice was borrowed by the American Framers, the latter appropriated impeachment as the political weapon and remedy against executive tyranny. Impeachment was deemed "indispensable" to fend against "the incapacity, negligence or perfidy of the chief Magistrate."

Acts constituting grounds for impeachment

The offenses covered as grounds by impeachment are those that are political in nature. The political offenses, as differentiated from criminal offenses, were described as those that "proceed from the misconduct of public men, or in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated *political,* as they relate chiefly to injuries done immediately to the society itself."[20] According to Justice Joseph Story in his *Commentaries on the Constitution* in 1833:

> The acts covered by impeachment are therefore enlarged in operation, and reaches what are aptly termed political offense, growing out of personal misconduct or gross neglect, or usurpation, or habitual disregard of the public interests, various in their character, and so

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[18] *Supra* note 14 at 135.

[19] J. Hampden Dougherty, *Inherent Limitations upon Impeachment*, (1913-14), 23 Yale L.J. 60, 70.

[20] *Supra* note 6 at 423-424.

indefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty. They must be judged by the habits and rules and principles of diplomacy, or departmental operations and arrangements, of parliament practice, of executive customs, and negotiations, of foreign as well as domestic political movements; and in short, by a great variety of circumstances, as well as those which aggravate as those which extenuate or justify the offensive acts which do not properly belong to the judicial character in the ordinary administration of justice, and are far removed from the reach of municipal jurisprudence.[21]

A similar view was articulated by Judge Lawrence who described impeachment as a proceeding for removal of any officer "who fills his office in a way detrimental to the public interest," which presumes that impeachable offenses cover official acts carried out during incumbency.[22] Impeachable offenses have also been believed to cover (1) criminal offenses, (2) political offenses, and (3) any breach of either type of duty implies an offense which gives rise to an impeachment.[23]

Majority of the debate as to the breadth and scope of impeachable offenses dwell on whether impeachable offenses may cover only acts that are official in character, or also those that are done in personal capacity. With respect to whether acts that may constitute grounds for impeachment are limited to those committed during incumbency in the position from which the official is sought to be impeached, or whether it may extend to acts done prior to assumption into office, a reading of the Constitutional Commission deliberations, as well as historical supportive discussions on the origin of impeachment

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[21] Justice Joseph Story, *Commentaries on the Constitution*, (1905, 5th ed.), §764, p. 559.

[22] Jerome S. Sloan; Ira E. Garr, *Treason, Bribery, or Other High Crimes and Misdemeanors - A Study of Impeachment*, (1974), 47 Temp. L.Q. 413, 414 (citing Lawrence, *The Law of Impeachment*, (1867), 6 Am L. Register (N.S.) 641).

[23] *Id.* at 455.

suggest that the acts constitutive of impeachment grounds are those that are done during incumbency.

Additional historical basis that may support this is the original conception of impeachment of judicial officers, i.e. to terminate their tenure on account of bad behavior, which reasonably implies that the act which must trigger the termination of tenure must necessarily be one committed *during* the tenure sought to be terminated.

Impeachment of Judicial Officers

Americans were originally familiar with three models of judicial accountability to political authority. These were systems by which judges could be removed (1) by the Executive at will,[24] (2) by the Executive upon "address" from the legislature,[25] or (3) by legislative bodies through impeachment. One of the major grievances of the English was the vulnerability of judges to at-will discharge by the Stuart monarchs, which prevailed throughout most of the 17th century.[26]

Regarding impeachment as a mode of removing federal judges, it has been universally considered as an ineffective method of discipline, "illusory"[27] at best, mainly due to the fact that it had been used for political ends. It has likewise been criticized

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[24] Peter M. Shane, *Who May Discipline or Remove Federal Judges? A Constitutional Analysis*, 209 U. Pa. L. Rev., 142, 215.

[25] *Id.*, citing See Joseph H. Smith, *An Independent Judiciary: The Colonial Background,* (1976), 124 U. Pa. L. Rev. 1104, 1113 (describing attempt by the Pennsylvania Assembly in the 17 00s to insist that colonial judges be displaced for misbehavior at the request of the Assembly); *id.* at 1153-55 (describing address under, inter alia, the Bill of Rights of the Massachusetts Constitution of 1780, the Delaware and Maryland Constitutions of 1776, and the South Carolina Constitution of 1778); An address is a concurrent resolution of both houses of the legislature requesting the governor to remove a judge from office.

[26] *The Declaration of Independence,* (U.S. 1776), para. 10 ("He has made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.").

[27] Lisa L. Lewis, *Judicial Discipline, Removal and Retirement,* (1976), 1976 Wis. L. Rev. 563, 564.

as an inadequate device for removal largely due to practical imperfections of the actual process,[28] including the legislators' lack of time or training for the role of a judge in a trial-like proceeding.[29] Legislative removal proceedings were also largely subject to broad publicity which tended to expose the challenged judge to unwarranted conclusions without the benefit of actual parliamentary determination of guilt.[30]

The earliest version of the process as invoked for the removal of judicial officers contemplated offenses that were considered departures from "good behavior"[31] that merited the end of the judge's tenure.[32] It is held that an office held "during good behavior" is terminated by the grantee's misbehavior, through the execution of a rational device for removal.[33] The English practice refrained from referring to "good behavior" as something to be determined by the impeachment process in the courts or before bodies specifically designated as the adjudicators of misbehavior. Instead, the authorities who addressed the issue referred to a judicial process. The English law provided a proceeding to forfeit the office by a writ of *scire facias*.[34]

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[28] *Id*. at 566.

[29] *Id*.

[30] *Id*. at 567.

[31] "Good behavior" is commonly associated with the Act of Settlement (1700) which granted judges tenure *quamdiu se bene gesserint,* that is, for so long as they conduct themselves well, and also provide for termination by the Crown upon the Address of both Houses of Parliament. The origin of "good behavior" long antedates the Act. Judge St. George Tucker, a pioneer commentator on the Constitution, noted in 1803 that "these words in all commissions and grants, public and private, imported an office or estate, for the life of the grantee, determinable only by his death, or breach of good behavior". In the Pennsylvania Ratification Convention, Chief Justice McKean explained that "the judges may continue for life, if they shall so long behave themselves well."

[32] *Supra* note 14 at 116 & 123.

[33] *Id*. at 127.

[34] Burke Shartel, *Federal Judges-Appointment Supervision, and Removal-Some Possibilities Under the Constitution, (1930),* 28 Mich. L. Rev. 870, 891-98 (citing Baron John Comyns, *A Digest of the Laws of England*, 1766).

The function of this writ was explained by Burke Shartel in this wise:

> The English Constitution knew certain *judicial* proceedings for the forfeiture of office. Judges, and other officers, holding good behavior by patent from the King, were removable by *scire facias* in the King's Bench… The causes of forfeiture were misconduct and neglect of duty; and the judgment of ouster, essential to complete the forfeiture, was not difference in substance and effect from a judgment of removal.[35]

This writ was the remedy to repeal a patent in case of forfeiture.[36] Several examples in history also seem to illustrate that judges saw trial by judges as the familiar and preferred remedy over trial before the Parliament.[37] In 1628, Sir John Walter, the Chief baron of the Exchequer, refused to surrender his patent of appointment on the ground that he should not be removed except through a proceeding on *scire facias.*[38] In 1672, Sir John Archer, a Justice of the Common Pleas similarly refused to surrender his patent of appointment without the benefit of *scire facias.*[39] Finally, in 1806, Lord Chancellor Erskine, on whether to resort to trial before the parliament for the removal of Justice Luke Fox of Common Pleas in England, summarized the rationale behind the preference as such: 'Were their Lordships afraid to trust the ordinary tribunals upon this occasion, to let the guilt or innocence of the honorable judge be decided … upon a *scire facias* to repeal the patent by which he held his office?"[40]

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[35] *Id*. (arguing for judicial self-discipline and removal power).

[36] *Id.* This procedure found employment with lesser officials – rising no higher than a Recorder, a lesser judge – and that there is no English case wherein a judge comparable to a federal judge was removed in a judicial proceeding.

[37] Raoul Berger, *Chilling Judicial Independence: A Scarecrow*, (1979), 64 Cornell L. Rev. 822, 831.

[38] *Id*.

[39] *Id*., citing Mc Ilwain, *The Tenure of English Judges,* (1913), Am. Pol. Sci. Rev. pp. 217-221.

[40] *Id*. at 832.

These repeated preferences of trial by fellow judges than by parliament appear to exhibit that English judges historically regarded judicial removal as a "privilege," and not an impairment of their independence.[41]

Quo Warranto

The legal remedy of *quo warranto* is a high prerogative writ[1] that traces its roots in English history and whose origin has long been "obscured by antiquity."[2] Historical records show that the writ was issued as far back as 1198 A.D. during the reign of King Richard I of England, when it was issued against an incumbent of a church, ordering him to show his right to hold the church.[3]

The ancient writ of *quo warranto* was a common law remedy and was considered to be "in the nature of a writ of right for the King, against him who claimed or usurped any office, franchise or liberty, to inquire by what authority he supported his claim in order to determine the right."[4] It was "issued out of chancery and was returnable before the King's Bench at Westminister."[5] Meanwhile, its proceedings were purely civil in nature and a judgment against the respondent simply involved "seizure of the franchise by the Crown or a judgment of ouster against the party who had usurped the franchise."[6] A proceeding for a writ of *quo warranto* was always initiated by the Crown

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[41] *Id*.

[1] Floyd R. Mechem. *Treatise on the Law of Public Offices and Officers*, (1890), p. 304.

[2] Forrest G. Ferris & Forrest Ferris, Jr., *The Law on Extraordinary Legal Remedies*, (1926), p. 126. Citations omitted.

[3] Arthur J. Eddy, *Law of Combinations Embracing Monopolies, Trusts, and Combinations of Labor and Capital; Conspiracy, and Contracts in Restraint of Trade*, (1901), p. 1221.

[4] *Supra* note 1 at 304, citing High Ex. Leg. Rem. § 592.

[5] *Supra* note 2 at 126. Citations omitted.

[6] *Supra* note 3 at 1223.

Attorney or on his relation.[7] A private individual was never allowed to file the suit because a usurpation of a right or franchise of the Crown concerned the Crown alone, and "whether the party so usurping should be ousted or permitted to continue and enjoy the franchise was a matter that rested solely with the King."[8]

Afterward, the ancient writ was gradually abandoned and superseded by the remedy of information in the nature of *quo warranto*, with the latter being employed exclusively as a prerogative remedy to punish a usurper of the franchises or liberties granted by the Crown.[9] Similar to the ancient writ of *quo warranto*, its scope was limited to encroachments upon the royal prerogative.[10]

Subsequently in 1710, the Statute of 9 Anne, c. 20 was passed, which introduced several changes to the procedure to make the practice of *quo warranto* speedier and more effective.[11]

One glaring difference is that the information in the nature of *quo warranto* treated usurpation as a crime.[12] Thus, its nature transformed into a criminal proceeding to ascertain "which of two claimants was entitled to an office and warranted not only a judgment of ouster, but a fine or even imprisonment against the respondent if he was found guilty of usurpation."[13] It also required "the proper officer, by leave of the court, to exhibit an information in the nature of a *quo warranto* at the relation of any person desiring to prosecute the same" against the designated municipal officers."[14]

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[7] *Supra* note 2 at 127. Citations omitted.

[8] *Id*. at 128. Citations omitted.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 127. Citations omitted; see also *Newman v. United States ex. Rel. Frizzell*, 238 U.S. 537, 544 (1915).

[12] *Newman v. United States ex. Rel. Frizzell*, *id*. at 543.

[13] *Id.* at 544.

[14] *Id*.

Another pertinent difference is that it finally provided private individuals a legal remedy to prosecute or question the usurpation of an office or franchise, albeit with the consent of the state. Thus, the informations in the nature of a *quo warranto* resulted in two (2) kinds: 1) an information filed by the attorney-general or solicitor general on behalf of the Crown; and 2) an information filed with permission by the master of the crown office on the relation of some private individual.[15]

During British occupation, the United States of America (US) adopted the information in the nature of *quo warranto*, notwithstanding several differences.[16] In fact, it treated usurpation as a quasi-criminal act, which was adopted in some American states and formed the basis of statutes in others.[17]

In 1884, with the enactment of the Supreme Court of Judicature Act of 1884, or Statute 47 and 48 Vict. Chap. 61, the information in the nature of *quo warranto* shed its nature as a criminal proceeding and became recognized as a civil proceeding.[18]

In 1902, the US Congress followed suit and adopted a District Code for the District of Columbia, which contained a chapter on *quo warranto* which bore similarities with the English model.[19] Under the District Code, the writ was treated as a civil remedy instead of a criminal one and encompassed all persons in the District who exercised any office, civil, or military.[20] It was made available to test the right to exercise a public franchise or to hold an office in a private corporation. The District Code treats usurpation of officers as a public wrong which can be corrected only by proceeding in the name of the government itself. It, however, recognized that there might be instances in which it would be proper to allow such proceedings to be

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[15] *Supra* note 3 at 1233.

[16] *Supra* note 2 at 130, citations omitted; see *supra* note 3 at 1233.

[17] *Newman v. United States ex. Rel. Frizzell*, *supra* note 11 at 544.

[18] *Supra* note 2 at 131. Citations omitted.

[19] *Newman v. United States ex. Rel. Frizzell*, *supra* note 11 at 544.

[20] *Newman v. United States ex. Rel. Frizzell*, *supra* note 11 at 544.

instituted by a third person with the consent of the Attorney General.[21]

Notably, the *quo warranto* is not the only concept that can be traced back to English laws, but its procedure as well.

Sometime in February 1822, the US Supreme Court established Rules of Equity Procedure for the federal courts, pursuant to its authority under the 1792 Process Act.[22] Equity is nothing new. It is a centuries-old system of English jurisprudence in which "judges based decisions on general principles of fairness in situations where rigid application of common-law rules would have brought about injustice." The Rules also specified that "all situations not otherwise provided for were to be governed by the practices of the High Court of Chancery in England." In 1842 and 1912, the US Supreme Court issued new sets of equity rules.[23] From then on, various persons and institutions have lobbied for the creation of a federal code, namely, David Dudley Field and the American Bar Association under the leadership of Thomas Shelton.[24] Sometime in 1922, Chief Justice William Howard Taft addressed the American Bar Association, urging the union of law and equity in the proposed civil procedure.[25]

In 1938, after years of lobbying and drafting, the US Federal Rules of Civil Procedure was finally promulgated pursuant to the Act of June 19, 1934.[26] It merged law and equity into one type of suit known as a "civil action,"[27] as well as formulated an important federal court system which embraced the district

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[21] *Newman v. United States ex. Rel. Frizzell*, *supra* note 11 at 546.

[22] Federal Judicial Center, *Equity Rules*, *available at* https://www.fjc.gov/history/timeline/equity-rules (last accessed June 15, 2018).

[23] *Id*.

[24] James WM. Moore & Joseph Friedman, *A Treatise on the Federal Rules of Civil Procedure*, (1938), pp. 7-8.

[25] *Id*. at 9.

[26] Lawrence Koenigsberger, *An Introduction to the Federal Rules of Civil Procedure*, (1938), p. 1, citing Rule 81 (a)(2); *supra* note 24 at 6.

[27] *Supra* note 22.

courts of the US held in several States and in the District of Columbia.[28] Likewise, it was designed to unify the federal practice in the US and modernize procedure and was primarily based on the Equity Rules of 1912.[29]

Under the Rules, the civil rules apply to *quo warranto* proceedings, but only to appeals and then only to the extent that the practice in such proceedings is not prescribed by Federal Statute.[30] The provisions in the law have not changed much as the present US Federal Rules of Civil Procedure provide:

TITLE XI. GENERAL PROVISIONS

Rule 81. Applicability of the Rules in General; Removed Actions

(A) APPLICABILITY TO PARTICULAR PROCEEDINGS.

(B) Prize Proceedings. These rules do not apply to prize proceedings in admiralty governed by 10 U.S.C. §§ 7651-7681.

(2) Bankruptcy. These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.

(3) Citizenship. These rules apply to proceedings for admission to citizenship to the extent that the practice in those proceedings is not specified in federal statutes and has previously conformed to the practice in civil actions. The provisions of 8 U.S.C. § 1451 for service by publication and for answer apply in proceedings to cancel citizenship certificates.

(4) Special Writs. These rules apply to proceedings for habeas corpus and for *quo warranto* to the extent that the practice in those proceedings:

(A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing Section 2255 Cases; and

(B) has previously conformed to the practice in civil actions.

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[28] *Supra* note 24 at 1.

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

[30] *Supra* note 26 at 6, citing Rule 81 (a)(2).

[31] Emphasis and underscoring supplied.

Presently, it is the state constitutions and statutes that contain particular provisions on jurisdiction over *quo warranto* proceedings.[32] Indeed, the use of this remedy, and the practice and procedure in seeking and applying it, have been regulated by statute in many of the States and in some superseded altogether. However, where the *quo warranto* is still in use, its main features are still the same.[33]

In the US, the *quo warranto* has been effectively used as a means to oust officials who have been found to usurp or not possess rightful title to their office, even those belonging in the judiciary. In *Commonwealth v. Fowler*,[34] it was claimed that an information in the nature of *quo warranto* did not lie against an officer appointed and commissioned by the Executive. After all, it is the Executive that has the exclusive right to appoint officers as well as determine if a vacancy in the office exists and to fill such vacancy. The Supreme Court of Massachusetts, however, did not accept such rationale. It held that the validity of an appointment was judicially obtainable[35] as the remedy of *quo warranto* lies and is available to test the right to a judicial office.[36]

The remedy of *quo warranto* was adopted in the Philippines while the country was under American occupation,[37] with its procedure delineated in the old Code of Civil Procedure. It was primarily used in cases "where a person has no title to the

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[32] See Logan Scott Stafford, *Judicial Coup d' Etat: Mandamus, Quo warranto and the Origin Jurisdiction of the Supreme Court of Arkansas*, (1998), 20 UALR L. J. 891, 892; see also *Newman v. United States ex. Rel. Frizzell*, *supra* note 11.

[33] *Supra* note 1 at 304-305.

[34] 10 Mass. 290 (1813).

[35] *Id*. at 301-302.

[36] J.F.D., *The Missouri Supreme Judgeship: Conflict between Executive and Judiciary. Powers of Constitutional Convention. Quo warranto*, The American Law Register (1852-1891), Vol. 13, No. 12, New Series Volume 4 (October,1865), p. 719, citing *State v. McBride*, 4 Mo. Rep. 303, 1836.

[37] *Alberto v. Nicolas*, 279 U.S. 139 (1929).

office which he pretends to hold and has no right to exercise the functions which he assumes to exercise, or where a corporation acts without being legally incorporated or has offended against some provision of law in such manner as to forfeit its privileges and franchise or has surrendered its corporate rights, privileges, or franchise."[38] Section 197 of the Code of Civil Procedure states the grounds for filing a petition for *quo warranto*:

> Sec. 197. *Usurpation of an Office or Franchise* — A civil action may be brought in the name of the Government of the Philippine Islands:
>
> 1. Against a person who usurps, intrudes into, or unlawfully holds or exercises a public civil office or a franchise within the Philippine Islands, or an office in a corporation created by the authority of the Government of the Philippine Islands;
> 2. Against a public civil officer who does or suffers an act which, by the provisions of law, works a forfeiture of his office;
> 3. Against an association of persons who act as a corporation within the Philippine Islands, without being legally incorporated or without lawful authority so to act.

However, it was not until the 1973 Philippine Constitution that *quo warranto* was clearly stated in the Constitution, *to wit*:

> Sec. 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers, and consuls, and over petitions for certiorari, prohibition, mandamus, ***quo warranto***, and habeas corpus.
>
> (2) Review and revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and decrees of inferior courts in —

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[38] Vicente J. Francisco, *The Revised Rules of Court of the Philippines*, Vol. V, (1970), p. 319.

(a) All cases in which the constitutionality or validity of any treaty, executive agreement, law, ordinance, or executive order or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any inferior court is in issue.

(d) All criminal cases in which the penalty imposed is death or life imprisonment.

(e) All cases in which only an error or question of law is involved.

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At present, the proceeding for *quo warranto* is found in Rule 66 of the 1997 Revised Rules for Civil Procedure.

In allegations made in a *quo warranto* petition, the State or relator, as plaintiffs, must allege several facts, foremost of which is the act of usurpation and possession of defendant, and show that such usurpation and possession are still being illegally usurped by the latter. Even if unnecessary facts are pleaded, right of redress will not be prejudiced as long as the information presents facts sufficient to constitute a cause of action.[39] It must be emphasized that particularity of facts is only considered when the proceeding is filed against a corporation to forfeit its franchise for nonuser or misuser.[40]

On the other hand, defendant, in his Answer, must already plead facts showing his valid title to the office as the State is not bound to show anything. Likewise, it is not sufficient to merely claim that the relator is not entitled to the office, the defendant is still called upon to show by what authority he exercises the functions of the office he holds. Otherwise, the State is entitled to a judgment of ouster.[41] Indeed, the defendant

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[39] *Supra* note 2 at 150. Citations omitted.

[40] *Supra* note 3 at 1277.

[41] John F. Dillon, *Commentaries on the Law of Municipal Corporations*, (1911), p. 2734.

cannot escape the legal consequences for failure to justify his title by reason of the fact that the right or title of the relator may not be sufficient.[42]

Further, the sufficiency of the information is measured by the rules applicable to civil cases. Sufficiency of matters will not be examined when no timely objection is made, the matters are not preserved for consideration, and are considered waived when respondent answers.[43]

Previously, the practice was to reverse the ordinary rule of pleading and charge nothing specifically on behalf of the State. It was respondent's task to prove his right to the franchise or office, otherwise judgment went against him. Today, the practice is to set forth in the information in some detail the facts relied upon to show the intrusion, misuser or nonuser complained of.[44]

Quo warranto proceedings are regarded as civil actions, and as such, the general rules of civil actions are readily applicable. Nonetheless, jurisprudence evinces the fact that some civil law principles are not applied in *quo warranto* proceedings, such as burden of proof and prescription, when the petition is filed by the Attorney General, or in the case of the Philippines, the Solicitor General.

Ordinarily, in civil cases, it is the plaintiff who alleges his right who has the burden of proving his entitlement to such right. In *quo warranto* proceedings, however, the rule is quite different. When the action is brought by the attorney general ex officio to test a person's right to a public office, the burden of proof, in the first instance, falls on respondent whose right to the office is challenged.[45] Moreover, respondent must also

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[42] *Library of Law and Practice*, (1919), p. 41.

[43] *Supra* note 2 at 150-151. Citations omitted.

[44] *Supra* note 3 at 1277.

[45] *Krajicek v. Gale*, 267 Neb. 623, 677 N.W.2d 488, 495 (2004); see *supra* note 2 at 156, citations omitted; see *also* Halbert E. Paine, *Treatise on the Law of Elections to Public Offices, Exhibiting the Rules and Principles Applicable to Contests before Judicial Tribunals and Parliamentary Bodies*, (1888), p. 745.

show that he continuously possesses the qualifications necessary to enjoy his title to the office.[46] The State is not required to establish respondent's qualifications as it is the latter's obligation to make out an indisputable case.[47] Indeed, the entire burden is upon respondent.[48]

The exception to the rule that it is respondent who bears the burden of proof is when the *quo warranto* proceeding was brought on relation of a private individual as claimant, or for a private purpose when authorized by a statute. In such cases, the burden of proof lies on the person asserting his title to the office.[49]

When, however, respondent has made out a prima facie right to the office, as by showing that he was declared duly elected by the proper officers or has received a certificate of election or holds the commission of appointment by the executive to the office in question, the burden of proof shifts.[50]

The principle on burden of proof has consistently been applied in US jurisprudence. A study of US Jurisprudence shows that in *quo warranto* cases filed by the State, the burden of proof is always on defendant to show his right to the title of the office.

In *People ex rel. Finnegan v. Mayworm*,[51] the Supreme Court of Michigan emphasized that the burden of proof falls on defendant to establish his or her right to the office. The facts show that on September 30, 1856, an election was conducted for the position of Houghton County Sheriff. From all the votes cast, John Burns received 369 votes, while petitioner Michael Finnegan received the remaining votes: as Michael Finegan- 271 votes, Michael Finnegan- 175 votes, and Michael Finnigan- 1 vote. The board of canvassers declared Burns duly elected.

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[46] *People ex rel. Finnegan v. Mayworm*, 5 Mich. 146, 148 (1858).

[47] *Supra* note 2 at 126. Citations omitted.

[48] *Supra* note 38 at 357; *supra* note 42 at 42.

[49] *Supra* note 2 at 157. Citations omitted.

[50] *Supra* note 1 at 322.

[51] 5 Mich. 146 (1858).

Petitioner was not given any formal official notice of the result of the election and the decision of the board. Nonetheless, he found out about the results after it was announced. The newly elected Sheriff Burns, meanwhile, never took or filed the oath of office nor did he ever give and deposit the bond as required by law. On December 25, 1856, Burns, after only serving as Sheriff for a short while, resigned. There being no undersheriff, or other person authorized to perform the duties of the office, the county clerk and prosecuting attorney, on said day, appointed defendant Francis Mayworm as acting Sheriff to fill the vacancy left behind by Burns. Mayworm took an oath and deposited the bond required under the law.[52]

Thereafter, Finnegan filed a *quo warranto* petition against Mayworm, asserting that the former is entitled to the office. The Court ruled that by applying the legal doctrine of *idem sonans,* Finnegan was entitled to the office as he was duly elected by the majority of the people.[53] Hence, judgment of ouster must be rendered against Mayworm. Indeed, although Mayworm's appointment appears to have been regular, it is not enough that an officer appointed for a temporary purpose should show a legal appointment. The usurpation charged is a continuing usurpation, one alleged to exist months after the commencement of a new statutory term. The rule is well settled, that "where the state calls upon an individual to show his title to an office, he must show the continued existence of every qualification necessary to the enjoyment of the office. The state is bound to make no showing, and the defendant must make out an undoubted case.[54] It is not sufficient to state the qualifications necessary to the appointment, and rely on the presumption of their continuance. The law makes no such presumption in his favor."[55]

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[52] *Id*. at 147.

[53] *Idem sonans* is a Latin term meaning sounding the same or similar; having the same sound. It is a legal doctrine in which a person's identity is presumed known despite the misspelling of his or her name.

[54] *People ex rel. Finnegan*, 5 Mich. at 148 (1858).

[55] *Id*., citing *State v. Beecher*, 15 Ohio, 723; *People v. Phillips*, 1 Denio, 388; *State v. Harris*, 3 Pike, 570.

Meanwhile, in the more recent case of *Krajicek v. Gale*,[56] petitioner Tim Kracijek was elected to represent subdistrict No. 8 on the board of directors of the Papio Missouri River Natural Resources District (NRD) for a term of four years. At the time of the election, Kracijek lived at 104 Madison St., Omaha, Nebraska, which was located within subdistrict No. 8.[57]

Thereafter, the Douglas County Attorney, on behalf of the State, filed a *quo warranto* petition seeking an order that Krajicek be removed from office as he changed his residence to 7819 South 45th Ave., which is outside the boundaries of subdistrict No. 8. As a result of the change in address, Krajicek had vacated his office pursuant to Neb. Rev. Stat. §32-560 (5) (Reissue 1998) of the Election Act, which required incumbent officers to be a resident of the district where their duties are to be exercised and for which he or she may have been elected.[58]

Krajicek, meanwhile, alleged that he resided at 4505 Jefferson St, which was located within subdistrict No. 8, and that he also owned a house located at 7819 South 45th Ave. The house in Jefferson St., however, was currently being occupied by his aunt and uncle. Likewise, he presented evidence showing that he was registered to vote, received mail, stored personal items, filed tax returns, and registered his vehicle at 4505 Jefferson St. The State, on the other hand, presented evidence that Krajicek and his family were currently living in 7819 South 45th Ave. Likewise, his wife's car registration as well as the couple's tax return indicated their address as 7819 South 45th Ave. The house in 4505 Jefferson St., meanwhile, was built and paid for Kracijek's aunt and uncle and the latter paid for the insurance, utilities, and other related expenses for the upkeep of the house.[59]

The district court ruled in favor of the *quo warranto* petition, finding that Krajicek no longer properly held the office of the

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[56] 677 N.W.2d 490 (2004).

[57] *Id*.

[58] *Id*.

[59] *Id*. at 491.

director of the NRD. On appeal, the appellate court affirmed the lower court's decision, ruling that Krajicek failed to present sufficient evidence that he was a resident of subdistrict No. 8. Indeed, the "burden of proof in the first instance is on the defendant whose right to the office is challenged."[60] "Where the proceeding is brought to try title to a public office, the burden rests on the defendant respondent, as against the state at least, to show a right to the office from which he or she is ought to be ousted."[61]

With regard to the prescription of a *quo warranto* petition, Section 11, Rule 66 of the Revised Rules of Court expressly states that "an action against a public officer or employee for his ouster from office unless the same be commenced within one year after the cause of such ouster, or the right of the petitioner to hold such office or position, arose; nor to authorize an action for damages in accordance with the provisions of the next preceding section unless the same be commenced within one year after the entry of the judgment establishing the petitioner's right to the office in question.

This provision, however, only applies to a petition for *quo warranto* that is initiated by a private person alleging his title to the office as against that of respondent's.

Similar to the principle on burden of proof, prescription in *quo warranto* proceedings are to be construed differently. To shed light on its applicability, one must refer to its origins in US jurisprudence. In a long line of cases, it is well-settled that the "statute of limitations generally does not run against the state or commonwealth in a *quo warranto* proceeding concerning a public right."[62] It has also been held that "a *quo warranto* proceeding by the state was not barred by the statute of limitations

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[60] *Id*. at 495, citing *Stasch v. Weber*, 188 Neb. 710, 711, 199 N.W.2d 391, 393 (1972).

[61] *Id*. at 495, citing 65 Am. Jur.2d *Quo warranto* § 119 at 165 (2001).

[62] *Catlett v. People* (1894) 151 Ill 16, 37 NE 855; *Commonwealth ex rel. Atty. Gen. v. Bala & Byrn Mawr Turnpike Co.* (1893) 153 Pa 47, 25 A 1105.

because it was provided that the limitation should not apply to actions brought in the name of the state."[63]

Since a *quo warranto* proceeding is not simply a civil remedy for the protection of private rights, but rather a matter of public concern, the statute of limitations as to civil actions does not apply to it.[64] Indeed, a *quo warranto* proceeding that intends to remove a public official is considered as a governmental function; hence, no statute of limitations is applicable."[65]

In *People ex rel. Moloney v. Pullman's Palace-Car Co.*,[66] the attorney general filed an information in the nature of a *quo warranto* in the circuit court of Cook county, in the name and on behalf of the people of the State of Illinois, against Pullman's Palace-Car Company.[67]

The information sets out the charter of the defendant, and then alleges 21 acts which are alleged to be usurpations by the defendant of powers not conferred by its charter, and concludes with a prayer for the forfeiture of the charter of the corporation. Some of the allegations contained in the information of the usurpations of power on the part of the defendant, among others, include ownership and control of a large blocks of real property as well as businesses located therein, defendant's receipt of a large income from the rental of such properties with only a small portion of it occupied by the company's employees, and defendant's alleged manipulation and control of the affairs of the Town of Pullman.[68]

The district court ruled that the corporation, at and before the time of the filing of the information, was exercising powers

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[63] *State ex rel. Security Sav. & Trust Co. v. School District No. 9 of Tillamook County* (1934) 148 Or 273, 36 P2d 179.

[64] *McPhail v. People* (1895) 160 Ill 77, 43 NE 382, 52 Am St Rep 306.

[65] *State ex rel. Stovall v. Meneley*, 271 Kan. 355, 22 P.3d 124 (2001).

[66] 64 L.R.A. 366, 175 Ill. 125, 51. N.E. 664 (1898).

[67] *Id*. at 665.

[68] *Id*. at 665-667.

and performing acts not authorized either by the express grant of its charter or any implication of law. Further, the corporation was exercising powers and functions which the general law of the state contemplates shall be possessed and exercised only by municipal authorities of cities or towns as well as public school authorities. Thus, its acts and doings are opposed to good public policy.[69]

The court likewise stated that "demand of the sovereign that usurpations so clearly antagonistic to good public policy shall be restrained can be defeated by any imputation of laches, or upon the ground that acquiescence is to be inferred from the failure to invoke the aid of courts at an early day."[70] It is the general rule that "laches, acquiescence, or unreasonable delay in the performance of duty on the part of the officers of the state, is not imputable to the state when acting in its character as a sovereign."[71] It is also acknowledged that "the state, acting in its character as a sovereign, is not bound by any statute of limitations or technical estoppel."[72]

In the more recent case of *State of Kansas ex. rel. Stovall v. Meneley*,[73] one of the issues raised was the applicability of the statute of limitations on *quo warranto* petitions brought by the Attorney General on behalf of the State. The facts of the case are as follows:

Sometime in November 1996, David R. Meneley was elected a second time as Sheriff of Shawnee County, Kansas. In 1993, he created a special services unit, which, in addition to investigating burglaries, provided manpower for surveillance support for the narcotics unit. Deputy Timothy Oblander was a member of the said unit. Sometime in late 1993 or early 1994,

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[69] *Id*. at 677.

[70] *Id*. at 677.

[71] *Id*. at 676.

[72] *People ex rel. Moloney v. Pullman's Palace-Car Co*, 64 L.R.A. 366, 175 Ill. 125, 51. N.E. at 676.

[73] *State ex rel. Stovall*, 271 Kan. 355, 22 P.3d 124 (2001).

Oblander started consuming small amounts of cocaine and methamphetamine, taking the drugs from the evidence packets used to train his dog. He carried the drugs with him daily. On two (2) occasions, it was discovered that there was a weight discrepancy in the drugs. These discrepancies were supposed to be noted on reports signed by the property room officer and Oblander. Nothing, however, was ever done to resolve the discrepancies. Sometime in late 1994 or early 1995, Oblander began making drug buys on the street. He even occasionally consumed the drugs he purchased. In late July 1994, Officer J.D. Sparkman retrieved a bag of evidence from the drug evidence locker located at the sheriff's office in the basement of the Shawnee County Courthouse. The evidence was from the Caldwell case which involved state and federal drug charges. After weighing the evidence, Sparkman discovered that some of the cocaine evidence was missing. As a result, Caldwell was acquitted.[74]

On November 23, 1999, Oblander confessed to taking the Caldwell drugs to the district attorney. Meneley directed a local health care provider to examine Oblander. Later on, Oblander entered Valley Hope Treatment Center in Atchison, Kansas. The Kansas Bureau of Investigation (KBI) subsequently conducted an investigation. They found out that Meneley knew that Oblander was using drugs and had stolen drugs.[75]

On May 24, 1999, the Attorney General filed a petition for *quo warranto* for the ouster of Meneley on behalf of the State on the ground of willful misconduct in office. The trial judges unanimously found, by clear and convincing evidence, that Meneley committed willful misconduct, as contemplated in K.S.A. 60-1205(1). He knowingly and willfully concealed evidence of Oblander's theft of drug evidence, he falsely testified under oath at an Attorney General's inquisition by denying his knowledge of Oblander's illegal drug use and treatment for drug addiction, and he falsely testified under oath in the Shawnee

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[74] *Id.* at 359-360.

[75] *Id.* at 361.

County District Court by denying that he had any knowledge regarding Oblander's illegal drug use and treatment for drug addiction.[76]

Meneley argued that a *quo warranto* action seeking ouster from office is considered as a "forfeiture." Therefore, a 1-year statute of limitation applies under K.S.A. 60-514. Since several of the alleged acts of misconduct occurred outside the 1-year limitation, the case should have been dismissed. The court, however, ruled otherwise, stating that "K.S.A. 60-521, by negative implication, retains governmental immunity from the statute of limitations for causes of action arising out of a governmental function."[77]

Notably, "governmental functions are those performed for the general public with respect to the common welfare for which no compensation or particular benefit is received. Proprietary functions, on the other hand, are exercised when an enterprise is commercial in character or is usually carried on by private individuals or is for the profit, benefit, or advantage of the governmental unit conducting the activity."[78] Since *quo warranto* proceedings seeking ouster of a public official are considered as a governmental function,[79] no statute of limitations is thus applicable.[80]

It must be pointed out that it is not only the civil law principle on statute of limitations that does not apply in *quo warranto* proceedings initiated by the State. Neither will laches, estoppel,

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[76] *Id*. at 364.

[77] *Id*. at 384, citing *KPERS v. Reimer & Koger Assocs., Inc*., 262 Kan. 635, 659, 941 P.2d 1321 (1997); *State ex rel. Schneider v. McAfee*, 2 Kan. App.2d 274, 275, 578 P.2d 281, rev. denied 225 Kan. 845 (1978).

[78] *State ex rel. Stovall*, 271 Kan. 355, 22 P.3d 124 at 384, citing *State ex rel. Schneider v. McAfee*, 2 Kan. App.2d at 276; see also *International Ass'n of Firefighters v. City of Lawrence*, 14 Kan. App.2d 788, Syl. ¶ 3, 798 P.2d 960 rev. denied, 248 Kan. 996 (1991).

[79] *Id*. at 384, citing *State, ex rel., v. Showalter*, 189 Kan. 562, 569, 370 P.2d 408 (1962).

[80] *Id*. at 385.

or waiver by inaction apply as "inaction by the State may not be subject to waiver by inaction on the theory that the public interest is paramount to the prejudices arising from the passage of time."[81] In applying the doctrine of laches to *quo warranto* proceedings, "no fixed time will be taken as controlling, but the facts in each particular case must govern the court's decision."[82] Indeed, the statute of limitations or technical estoppel does not bind the State, acting in its sovereign capacity because "laches, acquiescence or unreasonable delay in the performance of duty on the part of the officers of the State is not imputable to the State."[83] In view of the fact that the statute of limitation does not run against the State and laches, estoppel, or acquiescence does not apply, the issue on reckoning period or date of discovery is thus rendered moot.

SECOND DIVISION

[A.C. No. 11396. June 20, 2018]

FRANCO B. GONZALES, *complainant, vs.* **ATTY. DANILO B. BAÑARES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; RULES ON NOTARIAL PRACTICE; A NOTARY PUBLIC SHOULD NOT NOTARIZE A

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[81] *Carleton v. Civil Service Com'n of City of Bridgeport*, 10 Conn. App. 209, 522 A.2d 825 (1987).

[82] *State ex rel. Harmis v. Alexander* (1906) 129 Iowa 538, 105 NW 1021; *State ex rel. School Township v. Kinkade* (1922) 192 Iowa 1362, 186 NW 662; *State ex rel. Crain v. Baker* (1937, Mo App) 104 SW2d 726; *State ex rel. Madderson v. Nohle* (1907) 16 ND 168, 112 NW 141, 125 Am St Rep 628.

[83] *Supra* note 3 at 1267.

DOCUMENT UNLESS THE PERSONS WHO SIGNED THE SAME ARE THE VERY SAME PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND TRUTH OF WHAT ARE STATED IN SAID DOCUMENT; RATIONALE.— Well-settled is the rule that notarization is the act that ensures the public that the provisions in the document express the true agreement between the parties. Transgressing the rules on notarial practice sacrifices the integrity of notarized documents. The notary public is the one who assures that the parties appearing in the document are indeed the same parties who executed it. This obviously cannot be achieved if the parties are not physically present before the notary public acknowledging the document since it is highly possible that the terms and conditions favorable to the vendors might not be included in the document submitted by the vendee for notarization. Worse, the possibility of forgery becomes real. It should be noted that a notary public's function should not be trivialized; a notary public must always discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity, and with carefulness and faithfulness. Notaries must at all times inform themselves of the facts they certify to. And most importantly, they should not take part or allow themselves to be part of illegal transactions. The Court cannot over-emphasize that notarization is not an empty, meaningless, routinary act. Notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. x x x Notarization of documents ensures the authenticity and reliability of a document. It converts a private document into a public one, and renders it admissible in court without further proof of its authenticity. Courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. It is not an empty routine; on the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the courts, administrative offices, and the public. Hence, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated in said document. The purpose of this

requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

2. ID.; 2004 RULES ON NOTARIAL PRACTICE; IT IS THE DUTY OF THE NOTARIES PUBLIC TO DEMAND THAT THE DOCUMENT PRESENTED TO THEM FOR NOTARIZATION BE SIGNED IN THEIR PRESENCE.— The 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public. Rule II, Section 1 states: x x x Thus, a document should not be notarized unless the persons who are executing it are the very same ones who are personally appearing before the notary public. The affiants should be present to attest to the truth of the contents of the document and to enable the notary to verify the genuineness of their signature. Notaries public are enjoined from notarizing a fictitious or spurious document. In fact, it is their duty to demand that the document presented to them for notarization be signed in their presence. Their function is, among others, to guard against illegal deeds. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

3. ID.; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); LAWYERS SHOULD ACT AND COMPORT THEMSELVES WITH HONESTY AND INTEGRITY IN A MANNER BEYOND REPROACH, IN ORDER TO PROMOTE THE PUBLIC'S FAITH IN THE LEGAL PROFESSION.— Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. A lawyer, to the best of his ability, is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary to the same. A lawyer's personal deference to the law not only speaks of his character but it also inspires the public to likewise respect and obey the law. Rule 1.01, on the other hand, states the norm of conduct to be observed by all lawyers. Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is unlawful. Unlawful conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element. To be dishonest means the disposition to lie,

> cheat, deceive, defraud, or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness, and straightforwardness, while conduct that is deceitful means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. The Court must reiterate that membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession. To declare that lawyers must at all times uphold and respect the law is to state the obvious, but such statement can never be over-emphasized. Since of all classes and professions, lawyers are most sacredly bound to uphold the law, it is then imperative that they live by the law.

D E C I S I O N

PERALTA, *J.*:

This is an administrative complaint which Franco B. Gonzales filed against Atty. Danilo B. Bañares, for allegedly notarizing a Deed of Absolute Sale in violation of the legal requirements for notarization.

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

Gonzales contended that on September 23, 2010, a Deed of Absolute Sale covering three (3) parcels of land was executed between his mother, Lilia Gonzales, as the seller, and Flordeliza Soriano, as the buyer. Surprisingly, the name and signature of his father, Rodolfo Gonzales, were found in the document despite the fact that he was in Irosin, Sorsogon at the time of the supposed signing of the subject document. Gonzales likewise found out that his own name and signature appeared as witness in the document when he was also not present at the time of said signing. He maintained that Bañares knew of these facts but still proceeded with the notarization of the document.

For his part, Bañares denied the accusations against him. The feigned innocence of Gonzales regarding the subject sale and his absence during its execution were belied and proved untrue by affidavits, one of which was executed by his own mother. He was present during the signing of the deed of sale as an instrumental witness, wrote his name, and affixed his signature in the presence of the contracting parties. Also, Bañares claimed that Rodolfo actually pre-signed the document to manifest his conformity as the seller's husband, but not as co-owner of the property.

On December 14, 2014, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended the suspension of Bañares from his Commission as Notary Public for a period one (1) year.[1] On November 28, 2015, the IBP Board of Governors passed Resolution No. XXII-2015-94,[2] which modified the Investigating Commissioner's findings of fact and recommendation, hence:

RESOLVED to MODIFY the findings of facts and the recommended penalty of suspension of commission as Notary Public for one (1) year by the Investigating Commissioner and impose a stiffer penalty of six (6) months suspension from the practice of law, immediate revocation of commission as Notary Public, and disqualification for two (2) years as Notary Public against Atty. Danilo B. Bañares.

The Court's Ruling

The Court upholds the findings and recommendations of the IBP that Bañares should be held liable for the questioned act.

Well-settled is the rule that notarization is the act that ensures the public that the provisions in the document express the true agreement between the parties. Transgressing the rules on notarial practice sacrifices the integrity of notarized documents. The notary public is the one who assures that the parties appearing

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[1] Report and Recommendation submitted by Commissioner Christian D. Villagonzalo; *rollo*, pp. 89-101.

[2] *Rollo*, pp. 87-88.

in the document are indeed the same parties who executed it. This obviously cannot be achieved if the parties are not physically present before the notary public acknowledging the document since it is highly possible that the terms and conditions favorable to the vendors might not be included in the document submitted by the vendee for notarization. Worse, the possibility of forgery becomes real.[3] It should be noted that a notary public's function should not be trivialized; a notary public must always discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity, and with carefulness and faithfulness. Notaries must at all times inform themselves of the facts they certify to. And most importantly, they should not take part or allow themselves to be part of illegal transactions.[4]

The Court cannot over-emphasize that notarization is not an empty, meaningless, routinary act. Notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.[5]

Here, the evidence on record highly suggest that Rodolfo was not present at the time of the execution of the Deed of Absolute Sale on September 23, 2010. There is no documentary or testimonial evidence that would prove that, together with the parties and the other witnesses to the document, he was present and personally affixed his signature on the deed before Bañares.

Moreover, it is interesting to note that Bañares himself declared that Rodolfo merely "pre-signed" the document "to manifest his conformity as the seller's husband, but not as the co-owner of the property." Such admission is contrary to his certification in the Acknowledgment of the Deed that Rodolfo Gonzales "personally appeared before him on September 23, 2010, known to him and to him known to be the same individual who executed the instrument and acknowledged that the same is his free act

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[3] *Anudon v. Atty. Cefra*, 753 Phil. 421, 430 (2015).

[4] *Sultan v. Atty. Macabanding*, 745 Phil. 12, 20 (2014).

[5] *Almazan, Sr. v. Atty. Suerte-Felipe*, 743 Phil. 131, 136-137 (2014).

and voluntary deed." Rodolfo's absence at the time and place of the execution of the subject deed is made even more manifest by the lack of mention of his presence in the affidavits of the other parties to said deed.

Notarization of documents ensures the authenticity and reliability of a document. It converts a private document into a public one, and renders it admissible in court without further proof of its authenticity. Courts, administrative agencies, and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. It is not an empty routine; on the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the courts, administrative offices, and the public.[6]

Hence, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated in said document. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[7]

The 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public. Rule II, Section 1 states:

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

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

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

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[6] *Coquia v. Atty. Laforteza*, A.C. No. 9364, February 8, 2017.

[7] *Id*.

(c) **represents to the notary public that the signature on the instrument or document was voluntarily affixed by him** for the purposes stated in the instrument or document, **declares that he has executed the instrument or document as his free and voluntary act and deed**, and, **if he acts in a particular representative capacity, that he has the authority to sign in that capacity**.[8]

Rule IV, Section 2(b) further states:

SEC. 2. *Prohibitions*. — x x x

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

(1) is not in the notary's presence personally at the time of the notarization; and

(2) **is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity** as defined by these Rules.[9]

Thus, a document should not be notarized unless the persons who are executing it are the very same ones who are personally appearing before the notary public. The affiants should be present to attest to the truth of the contents of the document and to enable the notary to verify the genuineness of their signature. Notaries public are enjoined from notarizing a fictitious or spurious document. In fact, it is their duty to demand that the document presented to them for notarization be signed in their presence. Their function is, among others, to guard against illegal deeds. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.[10]

Indubitably, the violation of Bañares falls squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility (*CPR*). Canon 1 and Rule 1.01 of the CPR provide:

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[8] Emphasis supplied.

[9] Emphasis supplied.

[10] *Id.*

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

x x x x x x x x x

Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. A lawyer, to the best of his ability, is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary to the same. A lawyer's personal deference to the law not only speaks of his character but it also inspires the public to likewise respect and obey the law. Rule 1.01, on the other hand, states the norm of conduct to be observed by all lawyers. Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is unlawful. Unlawful conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element. To be dishonest means the disposition to lie, cheat, deceive, defraud, or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness, and straightforwardness, while conduct that is deceitful means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.[11]

The Court must reiterate that membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession. To declare that lawyers must at all times uphold and respect the law is to state the obvious, but such statement can never be over-emphasized. Since of all classes and professions, lawyers

[11] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 565-566 (2014).

are most sacredly bound to uphold the law, it is then imperative that they live by the law.[12]

After a review of the records of the case, the Court finds Bañares administratively liable for notarizing the subject deed of sale without Rodolfo personally appearing before him. He cannot avoid responsibility by pointing out that he had a prior meeting with Lilia and Rodolfo, and the latter had already given him his conformity to the sale. He should have just made the necessary arrangements so that all the parties and witnesses would be present at the time of the signing of the deed.

WHEREFORE, IN VIEW OF THE FOREGOING, the Court **SUSPENDS** Atty. Danilo B. Bañares from the practice of law for six (6) months, **REVOKES** his notarial commission, if presently commissioned, and **DISQUALIFIES** him from being commissioned as a notary public for a period of two (2) years, all effective upon receipt of this Decision. The Court further **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be included in the personal records of Atty. Danilo B. Bañares and entered in his file in the Office of the Bar Confidant.

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

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.*, concur.

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[12] *Id.* at 566.

SECOND DIVISION

[A.C. No. 11944. June 20, 2018]
(Formerly CBD No. 12-3463)

BSA TOWER CONDOMINIUM CORPORATION, *complainant, vs.* **ATTY. ALBERTO CELESTINO B. REYES II,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; CONFLICT OF INTERESTS; TEST TO DETERMINE EXISTENCE THEREOF.— Canon 16 and Rule 16.01 of the CPR provide: CANON 1 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION. Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client. Rule 15.03, Canon 15 of the CPR provides: Rule 15.03 — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts. While Rule 21.02, Canon 21 of the CPR states: Rule 21.02 — A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto. In *Aniñon v. Atty. Sabitsana, Jr.*, the Court laid down the tests to determine if a lawyer is guilty of representing conflicting interests between and among his clients. One of these tests is whether the acceptance of a new relation would prevent the full discharge of a lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. Another test is whether a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

2. ID.; ID.; AN ATTORNEY ENJOYS THE LEGAL PRESUMPTION THAT HE IS INNOCENT OF THE CHARGES AGAINST HIM UNTIL THE CONTRARY IS PROVED, AND THAT AS AN OFFICER OF THE COURT,

HE IS PRESUMED TO HAVE PERFORMED HIS DUTIES IN ACCORDANCE WITH HIS OATH.— The Court has consistently held that an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. Burden of proof, on the other hand, is defined in Section 1 of Rule 131 as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

3. ID.; ID.; IN ADMINISTRATIVE PROCEEDINGS, THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IS SUBSTANTIAL EVIDENCE, AND THE COMPLAINANT HAS THE BURDEN OF PROVING BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN HIS COMPLAINT, AS CHARGES BASED ON MERE SUSPICION AND SPECULATION CANNOT BE GIVEN CREDENCE.— In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Likewise, charges based on mere suspicion and speculation cannot be given credence. Besides, the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, it also involves neither a plaintiff nor a prosecutor. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity

of the legal profession and the proper and honest administration of justice by purging the profession of members who, by their misconduct, have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. Here, BSA Tower seriously failed to discharge said burden of proof. The issues which BSA Tower presented in this case had already been submitted for judicial resolution and the courts had ruled in favor of Reyes. Hence, the Court finds that the acts of Reyes are not tantamount to a violation of any of the CPR provisions.

APPEARANCES OF COUNSEL

Rogelio M. Cortez for complainant.
Faustino F. Millare for respondent.

D E C I S I O N

PERALTA, *J.*:

The extant case originated from a disbarment complaint which the complainant BSA Tower Condominium Corporation filed against respondent Atty. Alberto Celestino B. Reyes II.

The pertinent facts of the case are as follows:

Complainant BSA Tower Condominium Corporation alleged that it hired respondent Atty. Alberto Celestino B. Reyes II sometime in November 2005 to settle its real estate tax problems with the City of Makati. Between December 2006 and January 2007, Reyes obtained ₱25 million from BSA Tower, from which he may draw amounts for legitimate expenses in carrying out his official duties. However, out of the said amount, Reyes was only able to account for ₱5 million. This clearly violated Rule 16.01 of the Code of Professional Responsibility (*CPR*).

Also, on June 22, 2011, Reyes entered his appearance as counsel for the plaintiff in Civil Case 09-089 entitled *Marietta K. Ilusorio v. BSA Tower Condominium Corp. and Waldo Flores* before the Makati Regional Trial Court (*RTC*), Branch 62. Said case was an action for reimbursement of the amount of

₱500,000.00 which Ilusorio supposedly gave BSA Tower in advance for the payment of its electric and water bills. Later, Reyes took the witness stand and testified against BSA Tower. He likewise admitted that at the time Ilusorio's purported advances were made, he was BSA Tower's Corporate Secretary. Thus, on October 11, 2011, BSA Tower filed a Motion to Expunge the Testimony against Reyes. It contended that although the subject matter of the civil case involved information which Reyes had acquired by virtue of his former professional relationship with BSA Tower or about which he had been advising the company, he never obtained its written consent or waiver in the matter of him representing Ilusorio in said case. Accordingly, he violated Rules 15.03 and 21.02 of the CPR on conflict of interest.

On the other hand, Reyes denied the charges against him. He explained that when BSA Tower engaged his services, its liability stood at ₱31 million and the land was set to be sold at public auction. Their agreement was that Reyes would be paid 10% of whatever savings BSA Tower would generate through his efforts. Thereafter, BSA Tower's annual realty tax was reduced from ₱5 million to only ₱2 million per year beginning 2007. Reyes asserted that BSA Tower's total savings reached ₱21 million, apart from the amount of ₱25 million when the settlement was forged. However, BSA Tower never paid him his contingent fee. Hence, he filed a complaint with the Makati RTC to collect his fee, and the court later ordered BSA Tower to pay him the amount of ₱1,920,000.00, plus legal interest from January 2007, until fully paid.

As to his appearance as counsel for the plaintiff in Civil Case No. 09-089, Reyes claimed that he had asked BSA Tower's authorized representative if she or the corporation had any objection to his appearance as Ilusorio's counsel. The representative said that she had none. Likewise, when he formally entered his appearance in said civil case, BSA Tower did not object. Yet, it later filed a Motion to Expunge his testimony. The court, however, denied said motion.

On June 13, 2013, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) recommended the dismissal of the disbarment complaint against Reyes, to wit:

> WHEREFORE, in view of the foregoing, it is respectfully recommended that the disbarment complaint filed by complainant BSA Tower Condominium Corporation against respondent Atty. Alberto Celestino B. Reyes II be DISMISSED.
>
> RESPECTFULLY SUBMITTED.[1]

On June 5, 2015, the IBP Board of Governors passed Resolution No. XXI-2015-377,[2] which adopted the aforementioned recommendation, thus:

> *RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," finding the recommendation to be fully supported by the evidence on record and applicable laws. Thus, the case against Respondent is hereby* ***DISMISSED****.*

Unfazed, BSA Tower filed a Motion for Reconsideration. On April 19, 2017, the IBP Board of Governors issued Resolution No. XXII-2017-968,[3] which provides:

> *RESOLVED to DENY the Motion for Reconsideration there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.*

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendation of the IBP that the present disbarment complaint against Reyes must be dismissed.

In administrative proceedings, the burden of proof rests upon the complainant. For the court to exercise its disciplinary powers,

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[1] Report and Recommendation submitted by Commissioner Michael G. Fabunan; *rollo*, pp. 136-142.

[2] *Rollo*, pp. 134-135.

[3] *Id.* at 132-133.

the case against the respondent must be established by convincing and satisfactory proof.[4]

BSA Tower claims that Reyes violated Rules 16.01, 15.03, and 21.02 of the CPR. Canon 16 and Rule 16.01 of the CPR provide:

CANON 1 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

Rule 15.03, Canon 15 of the CPR provides:

Rule 15.03 — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

While Rule 21.02, Canon 21 of the CPR states:

Rule 21.02 — A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

In *Aniñon v. Atty. Sabitsana, Jr.*,[5] the Court laid down the tests to determine if a lawyer is guilty of representing conflicting interests between and among his clients. One of these tests is whether the acceptance of a new relation would prevent the full discharge of a lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. Another test is whether a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.[6]

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[4] *Villatuya v. Atty. Tabalingcos*, 690 Phil. 381, 396 (2012).

[5] 685 Phil. 322, 327 (2012).

[6] *Gimeno v. Atty. Zaide*, 759 Phil. 10, 21 (2015).

On the matter of the alleged failure of Reyes to account for BSA Tower's funds, the Makati RTC, Branch 133 had ruled that BSA Tower is even the one that is liable to pay Reyes the amount of ₱1,920,000.00. With regard to the purported conflict of interest, the Makati RTC, Branch 146 had also ruled in favor of Reyes, saying that there was no conflict of interest in his appearance as counsel of Ilusorio. There was no convincing evidence that would show that, at the time that he was acting as Ilusorio's counsel, Reyes indeed used any confidential information that he had obtained from BSA Tower when he was still the corporation's Corporate Secretary. The dispute between Ilusorio and BSA Tower was contractual in nature such that his new relationship with Ilusorio would not require him to disclose matters obtained during his engagement as the Corporate Secretary or counsel of the corporation. Neither would his acceptance of Ilusorio as a new client prevent the full discharge of his duties as a lawyer or invite suspicion of double-dealing. In other words, the matters being put in issue by BSA Tower in this case had already been submitted for judicial resolution and the courts had decided against it. It seems, therefore, that the instant disbarment case against Reyes is just a mere attempt to bring the courts' rulings for an indirect review through an administrative case, which is an improper remedy. To rule that there is conflict of interest and that there is misappropriation of BSA Tower's funds would, in effect, reverse the rulings of the lower courts.

The Court has consistently held that an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath. Burden of proof, on the other hand, is defined in Section 1 of Rule 131 as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.[7]

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is that amount

[7] *Aba, et al. v. De Guzman, et al.*, 678 Phil. 588, 600 (2011).

of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Likewise, charges based on mere suspicion and speculation cannot be given credence. Besides, the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, it also involves neither a plaintiff nor a prosecutor. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who, by their misconduct, have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[8]

Here, BSA Tower seriously failed to discharge said burden of proof. The issues which BSA Tower presented in this case had already been submitted for judicial resolution and the courts had ruled in favor of Reyes. Hence, the Court finds that the acts of Reyes are not tantamount to a violation of any of the CPR provisions.

WHEREFORE, PREMISES CONSIDERED, the Court **DISMISSES** the instant Complaint against Atty. Alberto Celestino B. Reyes II for utter lack of merit.

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[8] *Reyes v. Atty. Nieva*, A.C. No. 8560, September 6, 2016, 802 SCRA 196, 220.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[A.C. No. 12025. June 20, 2018]

EDMUND BALMACEDA, *complainant, vs.* **ATTY. ROMEO Z. USON,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; AT THE VERY MOMENT A LAWYER AGREES TO BE ENGAGED AS A COUNSEL, HE IS OBLIGED TO HANDLE THE SAME WITH UTMOST DILIGENCE AND COMPETENCE UNTIL THE CONCLUSION OF THE CASE, AND HIS NEGLIGENCE IN CONNECTION THEREWITH SHALL RENDER HIM LIABLE.— It needless to emphasize that at the very moment a lawyer agrees to be engaged as a counsel, he is obliged to handle the same with utmost diligence and competence until the conclusion of the case. He is expected to exert his time and best efforts in order to assist his client in his legal predicament. Neglecting a legal cause renders him accountable under the Code of Professional Responsibility, specifically, under Rule 18.03 thereof, which states: CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE. x x x Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. Further, in *Spouses Jonathan and Ester Lopez vs. Atty. Stnamar E. Limos Lopez vs. Limos*, it was stressed, thus: Once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to

such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable. In the instant case, the respondent reneged on his duty when he failed to file the ejectment case on behalf of the complainant despite full payment of his attorney's fees. His negligence caused his client to lose his cause of action since the prescriptive period of one year to file the ejectment case had already lapsed without him filing the necessary complaint in court.

2. **ID.; ID.; ID.; THE RETURN TO THE CLIENT OF A PORTION OF THE AMOUNT PAID FOR SERVICES NOT RENDERED AND THE CLIENT'S CONSENT TO THE TERMINATION OF THE CASE DO NOT AUTOMATICALLY EXONERATE A LAWYER FROM ADMINISTRATIVE LIABILITY FOR VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** That the respondent eventually returned a *portion* of the money to the complainant and both have signified consent to the termination of the case do not automatically exonerate him from administrative liability. Restitution may have earned him the condonation of his client but, being a member of the Integrated Bar of the Philippines, he is also answerable to the legal profession. Membership in the bar, being imbued with public interest, holds him accountable not only to his client but also to the court, the legal profession and the society at large. He is thus expected to conduct himself according to the stringent standards of morality and competence imposed upon all members of the legal profession. After all, membership in the bar is merely a privilege which may be withdrawn, temporarily or perpetually, from a lawyer who fails to live by the tenets of professional responsibility.

3. **ID.; ID.; ADMINISTRATIVE CHARGES; COMPLAINANT'S DESISTANCE OR WITHDRAWAL OF THE COMPLAINT DOES NOT EXONERATE A LAWYER OR PUT AN END TO THE ADMINISTRATIVE PROCEEDINGS, FOR A CASE OF SUSPENSION OR DISBARMENT MAY PROCEED REGARDLESS OF INTEREST OR LACK OF INTEREST OF THE COMPLAINANT BECAUSE**

DISBARMENT CASES ARE *SUI GENERIS*.— In *Bautista vs. Bernabe*, it was held that the "complainant's desistance or withdrawal of the complaint does not exonerate respondent or put an end to the administrative proceedings. A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant." The reason stems from the fact that "disbarment cases are *sui generis*." In *Bautista*, the Court elucidated, thus: proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorneys alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.

4. ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; THE RELATIONSHIP BETWEEN A LAWYER AND HIS CLIENT IS HIGHLY FIDUCIARY AND PRESCRIBES ON A LAWYER A GREAT FIDELITY AND GOOD FAITH, AND THE HIGHLY FIDUCIARY NATURE OF THIS RELATIONSHIP IMPOSES UPON THE LAWYER THE DUTY TO ACCOUNT FOR THE MONEY OR PROPERTY COLLECTED OR RECEIVED FOR OR FROM HIS CLIENT.— It is also well to remember that in Canon 16 of the Code of Professional Responsibility, it is provided that a lawyer only holds in trust all moneys and properties of his client that may come into his possession. "The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client." In the present case, it was established that the respondent collected his attorney's fees and thereafter neglected the complainant's case. While he offered an excuse for his non-filing of the complaint for ejectment, the same was not an acceptable reason for failing to perform the agreed legal services. Moreover, he failed to promptly return the money he received

as acceptance fees as it took him more than two (2) years, or after the filing of the instant administrative case, to refund the complainant of the amount paid for services not rendered.

5. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; THE MERE FORGIVENESS, DESISTANCE OR ACQUIESCENCE OF THE CLIENT TO THE DISMISSAL OF THE ADMINISTRATIVE PROCEEDINGS WILL NOT *IPSO FACTO* ABSOLVE THE LAWYER FROM LIABILITY BUT BY ESTABLISHING THAT NO MISCONDUCT OR NEGLIGENCE WAS COMMITTED; SIX (6) MONTHS SUSPENSION FROM THE PRACTICE OF LAW IMPOSED UPON THE RESPONDENT FOR VIOLATION OF RULES 18.03 AND 16.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— To be clear, the mere forgiveness, desistance or acquiescence of the client to the dismissal of the administrative proceedings will not *ipso facto* absolve the lawyer from liability but by establishing that no misconduct or negligence was committed. In this case where the respondent admitted to receiving attorney's fees and failing to file a complaint for ejectment even after the lapse of two (2) years, the imposition of an administrative sanction is only proper. In *Solidon vs. Macalalad*, the respondent lawyer was imposed with the penalty of six (6) months suspension for failing to file a petition for registration of title over a certain property after receipt of the acceptance fee of ₱80,000.00. He also failed to promptly return the money he received even after failing to render legal services. x x x In line with prevailing jurisprudence, the Court finds the imposition of the six (6) months of suspension on the respondent warranted under the circumstances.

R E S O L U T I O N

REYES, JR., *J.*:

This is an administrative complaint for disbarment filed by Edmund Balmaceda (complainant) against respondent Atty. Romeo Z. Uson (respondent) for violating Rules 16 and 18 of the Code of Professional Responsibility.

The complainant alleged that sometime in April 2012, he and a certain Carlos Agapito (Agapito) went to the office of

the respondent to seek legal advice, concerning the supposed intrusion or illegal occupation of his brother, Antonio Balmaceda (Antonio), over a property he owned, which he subsequently sold to Agapito. At the conclusion of their meeting, complainant and Agapito were convinced that the filing of an ejectment case is the most appropriate legal measure to take and engaged the services of the respondent as counsel for a fee of ₱75,000.00.[1] The said attorney's fees were paid in full to the respondent as evidenced by a receipt[2] signed by the latter.

Despite the full payment of the attorney's fees, the respondent did not file an ejectment case against Antonio. The complainant visited the respondent several times to follow up on his case but the latter would always tell him he was already working on the same. Two years had lapsed, however, but no ejectment case was ever filed by the respondent. Thus, in February 2014, he sent the respondent a demand letter[3] for the return of the attorney's fees of ₱75,000.00 which he paid him but the latter refused to receive the same. He sent him another demand letter[4] to refund him the amount but still the respondent refused to heed. The unjustified refusal of the respondent to return the amount paid as attorney's fees culminated in the filing of the instant disbarment complaint against him.[5]

In his Verified Answer with Positive and Affirmative Defenses,[6] the respondent denied the pertinent allegations in the complaint. He alleged that upon receipt of the attorney's fees, he immediately sent a demand letter to Antonio, asking him to vacate the subject property. Forthwith, Antonio confronted him about the veracity of the claims stated in the demand letter. Respondent then presented to Antonio the deed of extrajudicial

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[1] *Rollo*, p. 3.

[2] *Id.* at 6.

[3] *Id.* at 7.

[4] *Id.* at 8.

[5] *Id.* at 3.

[6] *Id.* at 14-16.

settlement and waiver of rights in favor of the complainant, as well as the latter's certificate of title over the property, and the deed of absolute sale in favor of Agapito and his wife. Antonio was taken aback upon learning of the documents and told the respondent that they are going to take legal action as they were co-owners of the property and that it is better for him not to meddle into the feud. He immediately informed the complainant of the incident as well as the threat hurled by Antonio to take matters to court He then offered to return the amount of ₱75,000.00 given to him as attorney's fees but the complainant refused to accept the amount and insisted on the filing of the ejectment case. For several times, the complainant went to his office to insist on the filing of the case but he repeatedly told him he can no longer proceed with the same especially that the supposed co-owners of the property expressed the intention to file an action for the annulment of title, deed of extrajudicial settlement and deed of sale against the complainant and Agapito. He offered to return the money paid to him as attorney's fees but the complainant refused and threatened to file an administrative case against him. Not long thereafter, the complainant filed the instant disbarment case. Respondent, however, maintained that he did not violate his oath as a lawyer nor the Code of Professional Responsibility and prayed that the complaint be dismissed.[7]

During the preliminary mandatory conference, the attorney-in-fact of the complainant, Emily Bendero (Bendero) and the respondent manifested that the latter offered to return a portion of the attorney's fees in the amount of ₱50,000.00 and that the former accepted the same as full settlement of the claim. They likewise expressed in writing their mutual desire to terminate the case. Considering, however, that mere settlement among the parties does not automatically result in the dismissal of the complaint, the parties were still ordered to submit their respective verified position papers.[8] Notwithstanding this order, it was only the respondent who submitted his position paper.[9]

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[7] *Id*. at 15.

[8] *Id*. at 46.

[9] *Id*. at 60.

The IBP's Findings

In his Report and Recommendation[10] dated June 28, 2015, IBP Investigating Commissioner Oscar Leo S. Billena of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) found that no substantial evidence was presented to prove the allegations in the complaint and thus recommended the dismissal of the disbarment complaint. The dispositive portion of the report reads as follows:

> WHEREFORE, in light of the foregoing, it is hereby recommended that the herein complaint for disbarment be dismissed.[11]

On October 28, 2015, the Board of Governors of the IBP issued Resolution No. XXII-2015-65,[12] reversing the recommendation of the investigating commissioner, thus:

> *RESOLVED to REVERSE the findings of facts and the recommended dismissal by the investigating Commissioner, adopting the recommendation of the Commission on Bar Discipline imposing a penalty of 6 months suspension against Atty. Romeo Z. Uson pursuant to previous Supreme Court decisions in similar cases.*[13]

On March 3, 2016, the respondent filed a motion for reconsideration[14] but the Board of Governors denied the same in its Resolution No. XXII-2017-1146,[15] disposing as follows:

> *RESOLVED to DENY the Motion for Reconsideration there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.*[16]

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[10] *Id*. at 58-63.

[11] *Id*. at 63.

[12] *Id* at 73.

[13] *Id*. at 73.

[14] *Id*. at 64-66.

[15] *Id*. at 71.

[16] *Id*.

Ruling of this Court

The Court sustains the recommendation of the Board of Governors of the IBP.

It is needless to emphasize that at the very moment a lawyer agrees to be engaged as a counsel, he is obliged to handle the same with utmost diligence and competence until the conclusion of the case. He is expected to exert his time and best efforts in order to assist his client in his legal predicament. Neglecting a legal cause renders him accountable under the Code of Professional Responsibility, specifically, under Rule 18.03 thereof, which states:

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

x x x x x x x x x

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Further, in *Spouses Jonathan and Ester Lopez vs. Atty. Sinamar E. Limos Lopez vs. Limos*,[17] it was stressed, thus:

Once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable.[18]

In the instant case, the respondent reneged on his duty when he failed to file the ejectment case on behalf of the complainant despite full payment of his attorney's fees. His negligence caused his client to lose his cause of action since the prescriptive period

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[17] 780 Phil. 113 (2016).

[18] *Id*. at 120.

of one year to file the ejectment case had already lapsed without him filing the necessary complaint in court.

Respondent, however, claimed that it was an exercise of good judgment on his part not to file the case considering the circumstances surrounding the ownership of the disputed property. He averred that when he sent a demand letter to Antonio and the other occupants of the property, he was informed that the complainant acquired the title through fraudulent means and that they plan to institute a civil action against the complainant.

The respondent's excuse fails to convince.

Before respondent was engaged as counsel, he had a discussion with the complainant about his legal concern and had a good opportunity to examine the documents presented to him by his prospective client. When he agreed to be the counsel of the complainant, it only means that, based on the discussion and documents, he believed that complainant had a cause of action to file an ejectment case. He signified his approval to the filing of the ejectment case when he accepted the case and the corresponding fees thereto as in fact the acknowledgment receipt[19] for the said payment states that it is in full satisfaction of his attorney's fees for the filing of the ejectment case. To state the pertinent portion, *viz.*:

RECEIVED the amount of SEVENTY FIVE THOUSAND (₱75,000.00) PESOS, Philippine Currency, from EDMUND AUSTRIA [BALMACEDA], as and **for full payment of Attorney's Fees in Ejectment Case**, Re: SPS. CARLOS J. AGAPITO and DOLORES CARIÑO AGAPITO VS. ANTONIO AUSTRIA BALMACEDA of Sitio Lecor, Barangay Poblacion Norte, Paniqui, Tarlac.

Paniqui, Tarlac, April 16, 2012. (Emphasis ours)

That the occupants of the property claimed that they also have a right to possess the same and that they intend to bring the matter to court are not compelling reasons to prevent the

[19] *Rollo*, p. 6.

respondent from filing the ejectment case. After all, they are free to pursue legal remedies to protect their own interest. What should have merited respondent's greater consideration is the fact that the complainant is his client and his earlier assessment that he has a cause of action for ejectment. In any case, whoever may have the better title or right to possess the property will depend on the appreciation of the trial court.

Respondent cannot sway this Court by alleging that the occupants, in fact, filed an action for annulment of the complainant's title to the property, even submitting a photocopy of the said complaint to be part of the records of the case. He may have thought this would pass as a convenient excuse to validate his claim that there was a good reason for not filing the case but the circumstances and evidence he submitted only highlighted his negligence. Based on the records, he agreed to the filing of the ejectment case in April 16, 2012, which was the date stated in the receipt of the full payment of his attorney's fees. On the other hand, the complaint for annulment of title was filed by Antonio and his supposed co-heirs only on November 5, 2013, as stamped in the photocopy of the same. At that time, one year had already lapsed and therefore the complainant had already lost his cause of action for ejectment due to the respondent's failure to file the necessary complaint. Had respondent been prompt, the complainant could have established his case in court. Plainly speaking, the respondent cannot justify his negligence by claiming that the occupants pursued their threat to file a case in court. There is simply no connection between his duty as counsel to the complainant with the supposed defendants' threat to retaliate with a separate legal action. This should have even prompted him to be more vigilant in protecting his client's case but, as it was, he slacked and let his client lose his case without the merits thereof being submitted to the fair deliberation and disposal of the court.

In *Nebreja vs. Reonal*,[20] the Court reiterated the strict command for lawyers to diligently and competently protect their client's causes, thus:

[20] 730 Phil. 55 (2014).

This Court has consistently held, in construing this Rule, that the mere failure of the lawyer to perform the obligations due to the client is considered per se a violation. Thus, a lawyer was held to be negligent when he failed to do anything to protect his client's interest after receiving his acceptance fee. In another case, this Court has penalized a lawyer for failing to inform the client of the status of the case, among other matters. In another instance, for failure to take the appropriate actions in connection with his client's case, the lawyer was suspended from the practice of law for a period of six months and was required to render accounting of all the sums he received from his client.[21]

Further, in *Reyes vs. Vitan*,[22] it was held that "the act of receiving money as acceptance fee for legal services in handling complainant's case and subsequently failing to render such services is a clear violation of Canon 18 of the Code of *Professional Responsibility*."[23]

That the respondent eventually returned a *portion* of the money to the complainant and both have signified consent to the termination of the case do not automatically exonerate him from administrative liability. Restitution may have earned him the condonation of his client but, being a member of the Integrated Bar of the Philippines, he is also answerable to the legal profession. Membership in the bar, being imbued with public interest, holds him accountable not only to his client but also to the court, the legal profession and the society at large. He is thus expected to conduct himself according to the stringent standards of morality and competence imposed upon all members of the legal profession. After all, membership in the bar is merely a privilege which may be withdrawn, temporarily or perpetually, from a lawyer who fails to live by the tenets of professional responsibility.

Moreover, in *Bautista vs. Bernabe*,[24] it was held that the "complainant's desistance or withdrawal of the complaint does

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

[22] 496 Phil. 1 (2005).

[23] *Id*. at 4.

[24] 517 Phil. 236, 241 (2006).

not exonerate respondent or put an end to the administrative proceedings. A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant." The reason stems from the fact that "disbarment cases are *sui generis*."[25] In *Bautista*, the Court elucidated, thus:

> A proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorneys alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.[26]

It is also well to remember that in Canon 16 of the Code of Professional Responsibility, it is provided that a lawyer only holds in trust all moneys and properties of his client that may come into his possession. "The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client."[27]

In the present case, it was established that the respondent collected his attorney's fees and thereafter neglected the complainant's case. While he offered an excuse for his non-filing of the complaint for ejectment, the same was not an acceptable reason for failing to perform the agreed legal services. Moreover, he failed to promptly return the money he received as acceptance fees as it took him more than two (2) years, or

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[25] 534 Phil. 471, 482 (2006).

[26] *Supra* note 24, at 241.

[27] *Spouses Jonathan and Ester Lopez v. Atty. Sinamar E. Limos*, *supra* note 17, at 121.

after the filing of the instant administrative case, to refund the complainant of the amount paid for services not rendered.

To be clear, the mere forgiveness, desistance or acquiescence of the client to the dismissal of the administrative proceedings will not *ipso facto* absolve the lawyer from liability but by establishing that no misconduct or negligence was committed. In this case where the respondent admitted to receiving attorney's fees and failing to file a complaint for ejectment even after the lapse of two (2) years, the imposition of an administrative sanction is only proper.

In *Solidon vs. Macalalad*,[28] the respondent lawyer was imposed with the penalty of six (6) months suspension for failing to file a petition for registration of title over a certain property after receipt of the acceptance fee of ₱80,000.00. He also failed to promptly return the money he received even after failing to render legal services. Similarly, in *Pariñas vs. Paguinto*,[29] the Court imposed the same penalty upon the respondent lawyer for violating Rule 18 of the Code of Professional Responsibility when he failed to file an annulment case despite receipt of acceptance fee and filing fees. Also, in *Vda. De Enriquez vs. San Jose*,[30] the erring lawyer was meted the penalty of six (6) months of suspension for failing to file the appropriate civil case after sending a demand letter. Here, the Court declared that "the failure to file a pleading is by itself inexcusable negligence on the part of respondent."[31]

In line with prevailing jurisprudence, the Court finds the imposition of the six (6) months of suspension on the respondent warranted under the circumstances.

WHEREFORE, respondent Atty. Romeo Z. Uson is **GUILTY** of violating Rules 18.03 and 16.01 of the Code of Professional

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[28] 627 Phil. 284 (2010).

[29] 478 Phil. 239 (2004).

[30] 545 Phil. 379 (2007).

[31] *Id*. at 384.

Responsibility. He is hereby **SUSPENDED FOR SIX (6) MONTHS** from the practice of law effective upon receipt of this decision, and is sternly warned that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Bar Confidant, Integrated Bar of the Philippines, the Public Information Office and the **Office of the Court Administrator for circulation to all courts**. Likewise, a Notice of Suspension shall be prominently posted in the Supreme Court website as a notice to the general public.

The respondent, upon receipt of this resolution shall forthwith be suspended from the practice of law and shall formally manifest to this Court that his suspension has started. He shall furnish all courts and quasi-judicial bodies where he has entered his appearance a copy of this manifestation.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Peralta, Perlas-Bernabe, and *Caguioa, JJ*., concur.

SECOND DIVISION

[A.C. No. 12156. June 20, 2018]

PAULINO LIM, *complainant, vs.* **ATTY. SOCRATES R. RIVERA**, *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE DELIBERATE FAILURE TO PAY JUST DEBTS AND THE ISSUANCE OF WORTHLESS CHECKS CONSTITUTE GROSS MISCONDUCT, FOR

WHICH A LAWYER MAY BE SANCTIONED WITH SUSPENSION FROM THE PRACTICE OF LAW.— Time and again, the Court has imposed the penalty of suspension or disbarment for any gross misconduct that a lawyer may have committed, whether it is in his professional or in his private capacity. Good character is an essential qualification for the admission to and continued practice of law. Thus, any wrongdoing, whether professional or non-professional, indicating unfitness for the profession justifies disciplinary action, as in this case. It is undisputed that respondent had obtained a loan from complainant for which he issued a post-dated check that was eventually dishonored and had failed to settle his obligation despite repeated demands. It has been consistently held that "[the] **deliberate failure to pay just debts** and the **issuance of worthless checks** constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing so that the peoples' faith and confidence in the judicial system is ensured. They must at all times faithfully perform their duties to society, to the bar, the courts and to their clients, which **include prompt payment of financial obligations**. They must conduct themselves in a manner that reflects the values and norms of the legal profession as embodied in the Code of Professional Responsibility." Thus, the IBP IC correctly ruled that respondent's act of issuing a worthless check was a violation of Rule 1.01, Canon 1 of the CPR.

2. ID.; ID.; THE LAWYER'S ACT OF ISSUING A WORTHLESS CHECK IN ADDITION TO HIS LACK OF CONCERN OR INTEREST IN THE OUTCOME OF THE ADMINISTRATIVE CASE AGAINST HIM WOULD SHOW THAT THE LAWYER HAS FALLEN SHORT OF THE EXACTING STANDARDS EXPECTED OF HIM AS A VANGUARD OF THE LEGAL PROFESSION; IMPOSABLE PENALTY IN CASE AT BAR.— In *Enriquez v. De Vera*, the Court categorically pronounced that a lawyer's act of issuing a worthless check, punishable under Batas Pambansa Blg. 22, constitutes serious misconduct penalized by suspension from the practice of law for one (1) year, for which no conviction of the criminal charge is even necessary.

Batas Pambansa Blg. 22 was "designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient funds, or with no credit, because the practice is deemed a public nuisance, a crime against public order to be abated." Being a lawyer, respondent was well aware of, or was nonetheless presumed to know, the objectives and coverage of Batas Pambansa Blg. 22. Yet, he knowingly violated the law and thereby "exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order." In addition, respondent's failure to answer the complaint against him and his failure to appear at the scheduled mandatory conference/hearing despite notice are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138, Rules of Court. Respondent should stand foremost in complying with the directives of the IBP Commission on Bar Discipline not only because as a lawyer, he is called upon to obey the legal orders of duly constituted authorities, as well as court orders and processes, but also because the case involved the very foundation of his right to engage in the practice of law. Therefore, his lack of concern or interest in the status or outcome of his administrative case would show how much less he would regard the interest of his clients. Indisputably, respondent has fallen short of the exacting standards expected of him as a vanguard of the legal profession. His transgressions showed him to be unfit for the office and unworthy of the privileges which his license and the law confer to him, for which he must suffer the consequence. x x x Considering, therefore, that the amount of the loan proven by complainant herein is ₱75,000.00, the Court sustains the recommended penalty of one (1)-year suspension from the practice of law. With respect, however, to the return of the amount of ₱75,000.00 which respondent received from complainant, the same cannot be sustained. It is settled that in disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. In *Tria-Samonte v. Obias*, the Court held that its "findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature — meaning, those liabilities which have no intrinsic link to the lawyer's professional engagement — as the same should be threshed out in a proper proceeding of such nature." Thus,

the return of the ₱75,000.00 clearly lies beyond the ambit of this administrative case.

APPEARANCES OF COUNSEL

Marcelino U. Arellano for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an administrative complaint[1] dated March 9, 2015 filed by Paulino Lim (complainant) against respondent Atty. Socrates R. Rivera (respondent), praying that the latter be meted disciplinary sanctions for defrauding the former by issuing a worthless check as guarantee for the payment of respondent's loan.

The Facts

Complainant alleged that he met respondent sometime in June 2014 in the hallway of the Regional Trial Court of Makati City while accompanying his cousin who was then inquiring about the status of a case. The two (2) became acquainted after striking a conversation with each other. The following month, or in July 2014, respondent borrowed from complainant the amount of ₱75,000.00, which the former needed immediately.[2] Complainant did not think twice in lending money to respondent and issuing in his favor BDO Check No. 0356555[3] dated July 3, 2014 for ₱75,000.00, especially since the latter issued a guarantee check (Union Bank Check No. 0003405780[4] dated July 19, 2014) to ensure payment of the loan. Subsequently, respondent made several other loans in the amounts of ₱150,000.00, ₱10,000.00, and another ₱10,000.00, for which he no longer issued any

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

[2] See *id.* at 2.

[3] *Id.* at 6.

[4] *Id.* at 7.

guarantee checks. Complainant claimed to have been taken by respondent's sweet talk and promises of payment considering the millions he expects to receive as contingent fee in one (1) of his cases.[5]

However, when complainant deposited Union Bank Check No. 0003405780, it was dishonored for the reason "Account Closed." Thereafter, respondent would not take or return complainant's calls nor respond to the latter's text messages. He completely avoided complainant.[6] Consequently, complainant's lawyer wrote a demand letter[7] dated October 15, 2014 for the payment of respondent's indebtedness in the aggregate amount of ₱245,000.00, but to no avail. Thus, complainant was constrained to file an administrative case before the Integrated Bar of the Philippines (IBP).[8]

In an Order[9] dated April 17, 2015, the IBP directed respondent to submit his answer to the complaint within a period of fifteen (15) days from receipt of said Order, failing which the case shall be heard *ex parte*.[10] However, respondent filed no answer.[11] Subsequently, a Notice of Mandatory Conference/Hearing[12] scheduled on November 13, 2015 was sent to respondent on October 20, 2015, during which the latter did not appear.[13]

The IBP's Report and Recommendation

In a Report and Recommendation[14] dated November 14, 2016, the IBP Investigating Commissioner (IC) found respondent

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[5] See *id*. at 3.

[6] See *id*.

[7] *Id*. at 8.

[8] See *id*. at 4.

[9] *Id*. at 10.

[10] *Id*.

[11] See Order dated November 13, 2015; *id*. at 14.

[12] Dated October 14, 2015. *Id*. at 11.

[13] *Id*. at 14.

[14] *Id*. at 28-30. Penned by Commissioner Michael G. Fabunan.

administratively liable, and accordingly, recommended that he be meted the penalty of suspension from the practice of law for one (1) year and be ordered to return to complainant the amount of ₱75,000.00 with legal interest reckoned from July 19, 2014.[15] The other loans alleged by complainant were not duly proven.[16]

The IBP IC declared that respondent's act of issuing a worthless check was a violation of Rule 1.01 of the Code of Professional Responsibility (CPR) which requires that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Citing the case of *Foronda v. Alvarez, Jr.*,[17] the IBP IC held that the issuance of a check that was later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on him and hence, constitutes a ground for disciplinary action.[18] The penalty of one (1)-year suspension from the practice of law was based on the case of *Lao v. Medel*,[19] where the Court meted the same penalty for gross misconduct committed by deliberately failing to pay just debts and issuing worthless checks.[20]

In a Resolution[21] dated June 14, 2017, the IBP Board of Governors adopted the aforesaid report and recommendation.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for the issuance of a worthless check in violation of the CPR.

The Court's Ruling

After a judicious perusal of the records showing the existence of the loan obligation incurred by respondent as evidenced by

[15] *Id*. at 30.

[16] See *id*. at 29-30.

[17] 737 Phil. 1 (2014).

[18] See *rollo*, p. 30.

[19] 453 Phil. 115 (2003).

[20] See *rollo*, p. 30.

[21] See Notice of Resolution No. XXII-2017-1215; *id*. at 26-27.

complainant's BDO Check No. 0356555 dated July 3, 2014, as well as Union Bank Check No. 0003405780 dated July 19, 2014 issued by respondent to guarantee the payment of said loan but which was dishonored upon presentment for the reason "Account Closed," the Court concurs with the findings and adopts the recommendation of the IBP Board of Governors, except for the return to complainant of the amount of ₱75,000.00 with legal interest.

Time and again, the Court has imposed the penalty of suspension or disbarment for any gross misconduct that a lawyer may have committed, whether it is in his professional or in his private capacity. Good character is an essential qualification for the admission to and continued practice of law. Thus, any wrongdoing, whether professional or non-professional, indicating unfitness for the profession justifies disciplinary action,[22] as in this case.

It is undisputed that respondent had obtained a loan from complainant for which he issued a post-dated check that was eventually dishonored and had failed to settle his obligation despite repeated demands. It has been consistently held that "[the] **deliberate failure to pay just debts** and the **issuance of worthless checks** constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing so that the peoples' faith and confidence in the judicial system is ensured. They must at all times faithfully perform their duties to society, to the bar, the courts and to their clients, which **include prompt payment of financial obligations**. They must conduct themselves in a manner that reflects the values and norms of the legal profession as embodied in the Code of Professional Responsibility."[23] Thus,

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[22] See *Spouses Victory v. Mercado*, A.C. No. 10580, July 12, 2017.

[23] *Sanchez v. Torres*, 748 Phil.18, 22-23 (2014), citing *Barrientos v. Libiran-Meteoro*, 480 Phil. 661, 671 (2004); emphases supplied.

the IBP IC correctly ruled that respondent's act of issuing a worthless check was a violation of Rule 1.01, Canon 1 of the CPR, which explicitly states:

> 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.

In *Enriquez v. De Vera*,[24] the Court categorically pronounced that a lawyer's act of issuing a worthless check, punishable under Batas Pambansa Blg. 22, constitutes serious misconduct penalized by suspension from the practice of law for one (1) year, for which no conviction of the criminal charge is even necessary. Batas Pambansa Blg. 22 was "designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient funds, or with no credit, because the practice is deemed a public nuisance, a crime against public order to be abated."[25] Being a lawyer, respondent was well aware of, or was nonetheless presumed to know, the objectives and coverage of Batas Pambansa Blg. 22. Yet, he knowingly violated the law and thereby "exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order."[26]

In addition, respondent's failure to answer the complaint against him and his failure to appear at the scheduled mandatory conference/hearing despite notice are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138, Rules of Court.[27] Respondent should stand foremost in complying with the directives of the IBP Commission on Bar Discipline not only because as a lawyer, he is called upon

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[24] 756 Phil. 1 (2015).

[25] *Id*. at 11; citing *Ong v. Delos Santos*, 728 Phil. 332, 338 (2014).

[26] See *id.*

[27] *Sanchez v. Torres*, *supra* note 23, at 23, citing *Ngayan v. Tugade*, 271 Phil. 654, 659 (1991).

to obey the legal orders of duly constituted authorities, as well as court orders and processes, but also because the case involved the very foundation of his right to engage in the practice of law. Therefore, his lack of concern or interest in the status or outcome of his administrative case would show how much less he would regard the interest of his clients.

Indisputably, respondent has fallen short of the exacting standards expected of him as a vanguard of the legal profession. His transgressions showed him to be unfit for the office and unworthy of the privileges which his license and the law confer to him, for which he must suffer the consequence.

The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[28] In the cases of *Lao v. Medel*,[29] *Rangwani v. Dino*,[30] and *Enriquez v. De Vera*,[31] the Court imposed the penalty of one (1)-year suspension from the practice of law for deliberate failure to pay just debts and for the issuance of worthless checks. In *Sanchez v. Torres*,[32] the Court increased the penalty to two (2) years in light of the amount of the loan which was ₱2,200,000.00, and the fact that respondent therein had repeatedly asked for extensions of time to file an answer and a motion for reconsideration, which he nonetheless failed to submit, and had likewise failed to attend the disciplinary hearings set by the IBP. Considering, therefore, that the amount of the loan proven by complainant herein is ₱75,000.00, the Court sustains the recommended penalty of one (1)-year suspension from the practice of law. With respect, however, to the return of the amount of ₱75,000.00 which respondent received from complainant, the same cannot be sustained. It is settled that in disciplinary proceedings against lawyers, the only issue is

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[28] *Spouses Concepcion v. Dela Rosa*, 752 Phil. 485, 496 (2015).

[29] *Supra* note 19.

[30] 486 Phil. 8 (2004).

[31] 756 Phil. 1 (2015).

[32] *Supra* note 23.

whether the officer of the court is still fit to be allowed to continue as a member of the Bar.[33] In *Tria-Samonte v. Obias*,[34] the Court held that its "findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature — meaning, those liabilities which have no intrinsic link to the lawyer's professional engagement — as the same should be threshed out in a proper proceeding of such nature."[35] Thus, the return of the ₱75,000.00 clearly lies beyond the ambit of this administrative case.

WHEREFORE, respondent Atty. Socrates R. Rivera is found **GUILTY** of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility, as well as the Lawyer's Oath, and is hereby **SUSPENDED** from the practice of law for one (1) year to commence immediately from the receipt of this Decision, with a **WARNING** that a repetition of the same or similar offense will warrant a more severe penalty.

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.

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[33] *Spouses Concepcion v. Dela Rosa*, *supra* note 28, at 497.

[34] 719 Phil. 70 (2013).

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

[*] (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, As Amended)

SECOND DIVISION

[A.M. No. 18-04-79-RTC. June 20, 2018]

RE: DROPPING FROM THE ROLLS OF MR. FLORANTE B. SUMANGIL, CLERK III, REGIONAL TRIAL COURT OF PASAY CITY, BRANCH 119.

SYLLABUS

POLITICAL LAW; LAW ON PUBLIC OFFICERS AND EMPLOYEES; 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017 RACCS); THE RULES AUTHORIZES THE DROPPING FROM THE ROLLS OF EMPLOYEES WHO HAVE BEEN CONTINUOUSLY ABSENT WITHOUT OFFICIAL LEAVE FOR AT LEAST THIRTY (30) WORKING DAYS, WITHOUT NEED FOR PRIOR NOTICE; CASE AT BAR.— Section 107(a)(1), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) authorizes the dropping from the rolls of employees who have been continuously absent without official leave for at least thirty (30) working days, without the need for prior notice: x x x Based on the cited provision, Sumangil should be separated from the service or be dropped from the rolls in view of his continued absences since December 2017. Sumangil's prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court, and in this regard, contravened his duty as a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. The Court stresses that a court personnel's conduct is laden with the heavy responsibility of upholding public accountability and maintaining the people's faith in the Judiciary. By failing to report for work since December 2017, Sumangil grossly disregarded and neglected the duties of his office. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service. Nevertheless, as the OCA correctly pointed out, dropping from the rolls is non-disciplinary in nature, and thus, Sumangil's separation from the service shall neither result in the forfeiture of his benefits nor disqualification from reemployment in the government.

RESOLUTION

PERLAS-BERNABE, *J.*:

This administrative matter stemmed from a letter[1] dated February 5, 2018, informing the Court that Mr. Florante B. Sumangil (Sumangil), Clerk III, Regional Trial Court of Pasay City, Branch 119 (RTC), has been on absence without official leave (AWOL) since December 2017.

The Facts

The records of the Employees' Leave Division, Office of Administrative Services (OAS), Office of the Court Administrator (OCA), show that Sumangil has not submitted his Daily Time Record (DTR) since December 27, 2017 up to the present[2] or filed any application for leave.[3] Thus, he has been on AWOL since December 1, 2017.[4]

In a letter[5] dated February 5, 2018, Acting Presiding Judge Bibiano G. Colasito of the RTC forwarded to the OCA the letter-report[6] of Branch Clerk of Court Atty. Maria Bernadette B. Opeda (Atty. Opeda) relative to Sumangil's prolonged absences without leave starting on December 27, 2017. Atty. Opeda reported that she was informed by Sumangil's housemate that the latter left for Mindanao last December 31, 2017. On the other hand, Sumangil's daughter, Dyna Sumangil, told her that none of her relatives had seen her father and that the latter visited his own mother but had not returned. Atty. Opeda also inquired from his friends but no one knew his whereabouts.[7]

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[1] *Rollo,* p. 4.

[2] *Id*. at 1. See also letter dated February 8, 2018 of Branch Clerk of Court Atty. Maria Bernadette B. Opeda addressed to the Chief of the Employees' Leave Division, OAS-OCA; *id*. at 3.

[3] *Id*. at 1.

[4] *Id*.

[5] *Id*. at 4.

[6] *Id*. at 5.

[7] *Id*. at 1 and 5.

To date, Sumangil has yet to submit his DTR or a duly approved application for leave. Accordingly, his salaries and benefits were withheld pursuant to Memorandum WSB No. 2d-2018 dated February 20, 2018.[8]

The OCA informed the Court of its findings based on the records of its different offices that: (*a*) Sumangil is still in the *plantilla* of court personnel, and thus, considered to be in active service; (*b*) he has not filed any application for retirement; (*c*) no administrative case is pending against him; and (*d*) he is not an accountable officer.[9]

In a Report[10] dated April 3, 2018, the OCA recommended that: (*a*) Sumangil's name be dropped from the rolls effective December 1, 2017 for having been absent without official leave; (*b*) his position be declared vacant; and (*c*) he be informed about his separation from the service at his last known address on record at 117 Pasadena, Barangay 70, Zone 9, Pasay City. The OCA added, however, that Sumangil is still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.[11]

The Court's Ruling

The Court agrees with the OCA's recommendations.

Section 107 (a) (1), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS)[12] authorizes the dropping from the rolls of employees who have been continuously absent without official leave for at least thirty (30) working days, without the need for prior notice:

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[8] *Id*. at 1.

[9] *Id*. at 1-2. See also OAS-OCA Employees' Leave Division Certification dated February 23, 2018, signed by Processor-in-Charge Jeffhrey R. Parcon; *id*. at 6.

[10] *Id*. at 1-2. Signed by Deputy Court Administrator and Officer-in-Charge Raul B. Villanueva, Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino, and OCA Chief of Office OAS Caridad A. Pabello.

[11] *Id*. at 2. Pursuant to Section 110, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service.

[12] CSC Resolution No. 1701077 (August 17, 2017).

Rule 20

DROPPING FROM THE ROLLS

Section 107. *Grounds and Procedure for Dropping from the Rolls.* Officers and employees who are absent without approved leave, have unsatisfactory or poor performance, or have shown to be physically or mentally unfit to perform their duties may be dropped from the rolls within thirty (30) days from the time a ground therefor arises subject to the following procedures:

a. Absence Without Approved Leave

1. An official or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days may be dropped from the rolls without prior notice which shall take effect immediately.

   He/she shall, however, have the right to appeal his/her separation within fifteen (15) days from receipt of the notice of separation which must be sent to his/her last known address. (Underscoring supplied)

Based on the cited provision, Sumangil should be separated from the service or be dropped from the rolls in view of his continued absences since December 2017.

Sumangil's prolonged unauthorized absences caused inefficiency in the public service as it disrupted the normal functions of the court,[13] and in this regard, contravened his duty as a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency.[14] The Court stresses that a court personnel's conduct is laden with the heavy responsibility of upholding public accountability and maintaining the people's faith in the Judiciary.[15] By failing to report for work since

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[13] See *Re: Dropping from the Rolls of Quimno,* A.M. No. 17-03-33-MCTC, April 17, 2017.

[14] *Id.*, citing *Re: AWOL of Borja,* 549 Phil. 533, 536 (2007).

[15] See *Re: Dropping from the Rolls of Millare,* A.M. No. 17-11-131-MeTC, February 7, 2018; and *Re: Dropping from the Rolls of Quimno, supra* note 13. See also Unsigned Resolutions of *Re: Absence without official leave (AWOL) of Fajardo,* A.M. No. 2016-15(A)-SC, August 1, 2016; and *Dropping from the Rolls of Bouchard,* A.M. No. 15-11-349-RTC, January 11, 2016.

December 2017, Sumangil grossly disregarded and neglected the duties of his office. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service.[16]

Nevertheless, as the OCA correctly pointed out, dropping from the rolls is non-disciplinary in nature, and thus, Sumangil's separation from the service shall neither result in the forfeiture of his benefits nor disqualification from reemployment in the government.[17]

WHEREFORE, Mr. Florante B. Sumangil, Clerk III of the Regional Trial Court of Pasay City, Branch 119, is hereby **DROPPED** from the rolls effective December 1, 2017 and his position is declared **VACANT.** He is, however, still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.

Let a copy of this Resolution be served upon him at the address appearing in his 201 file pursuant to Section 107 (a) (1), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service.

SO ORDERED.

Carpio,[*] *Senior Associate Justice (Chairperson), Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[16] See *Re: Dropping from the Rolls of Vendiola,* A.M. No. 17-11-272-RTC, January 31, 2018; and *Re: Dropping from the Rolls of Nudo,* A.M. No. 17-08-191-RTC, February 7, 2018. See also Unsigned Resolutions of *Re: Absence without official leave (AWOL) of Fajardo, id.;* and *Dropping from the Rolls of Bouchard, id.*

[17] Section 110, Rule 20 of the 2017 RACCS states:

Section 110. *Dropping from the Rolls; Non-disciplinary in Nature.* This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical or mental disorder is **non-disciplinary in nature and shall not result in the forfeiture of any benefit on the part of the official or employee or in disqualification from reemployment in the government.** (Emphases supplied)

[*] (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, As Amended).

SECOND DIVISION

[G.R. No. 189792. June 20, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **CEBU HOLDINGS, INC.,** *respondent.*

SYLLABUS

1. TAXATION; WITHHOLDING TAXES; REQUISITES FOR CLAIMING A REFUND OF EXCESS CREDITABLE WITHHOLDING TAXES, ENUMERATED.— The requisites for claiming a refund of excess creditable withholding taxes are: (1) the claim for refund was filed within the two-year prescriptive period; (2) the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount of tax withheld therefrom; and (3) the income upon which the taxes were withheld was included in the income tax return of the recipient as part of the gross income.

2. ID.; ID.; ID.; WHEN PRIOR YEAR'S EXCESS CREDITS HAVE ALREADY BEEN FULLY APPLIED AGAINST A TAXABLE YEAR'S INCOME TAX LIABILITY, THE UNSUBSTANTIATED TAX CREDITS OF THAT TAXABLE YEAR CAN NO LONGER BE CARRIED OVER AND APPLIED AGAINST ITS INCOME TAX LIABILITY FOR THE SUCCEEDING TAXABLE YEAR; CASE AT BAR— The ruling of the CTA First Division and the CTA *En Banc* clearly affects respondent's income tax liability for taxable year 2003 precisely because respondent carried over the amount of ₱16,194,108.00 as prior year's excess credits, to which it is not entitled. Respondent is once again trying to evade the adverse effect of the ruling of the CTA First Division that respondent (petitioner therein) failed to substantiate almost all of its claimed prior year's excess credits, especially since respondent already carried over and applied the amount of ₱16,194,108.00 as prior year's excess creditable tax against the income tax due for the succeeding taxable year 2003. To reiterate, the CTA First Division already ruled that respondent (petitioner therein) failed to substantiate its prior year's excess credits of ₱30,150,767.00 except for the amount of ₱288,076.04,

> which can be applied against respondent's income tax liability for taxable year 2002. Thus, since respondent's prior year's excess credits have already been fully applied against its 2002 income tax liability, the ₱16,194,108.00 unsubstantiated tax credits in taxable year 2002 could no longer be carried over and applied against its income tax liability for taxable year 2003. Nevertheless, it is incumbent upon petitioner to issue a final assessment notice and demand letter for the payment of respondent's deficiency tax liability for taxable year 2003. x x x In this case, no pre-assessment notice is required since respondent taxpayer carried over to taxable year 2003 the prior year's excess credits which have already been fully applied against its income tax liability for taxable year 2002.

APPEARANCES OF COUNSEL

Mildo Flor C. Sison and *Elner A. Reyes* for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 29 July 2009 Decision and the 9 October 2009 Resolution of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 478. The CTA *En Banc* affirmed the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division which ordered the issuance of a tax credit certificate in the reduced amount of ₱2,083,878.07[2] representing the excess creditable taxes for taxable year 2002 in favor of respondent Cebu Holdings, Inc. (respondent).

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] The dispositive portion of the Decision dated 10 November 2008 of the CTA First Division erroneously ordered petitioner to issue a tax credit certificate in favor of respondent in the amount of **₱2,083,868.07** instead of ₱**2,083,878.07**, which is the correct amount of "Refundable Excess Tax Credits" as computed by the CTA First Division. The amount stated in the dispositive portion is clearly a typographical error.

The Facts

Respondent is a registered real estate developer. On 15 April 2003, respondent filed with the Bureau of Internal Revenue (BIR) its Income Tax Return (ITR) for the year ending 31 December 2002, which states:

Sales/Revenues/Receipts/Fees	395,529,877
Less:	213,551,009
Cost of Sales/Services	181,978,868
Gross Income from Operation	
Add: Non-Operation and Other Income	9,170,916
Total Gross Income	191,149,784
Less: Deductions	147,535,224
Taxable Income	43,614,560
Tax Rate	32.00%
Income Tax	13,956,659
MCIT	4,377,937
Tax Due	**13,956,659**
Less:	
Prior Year's Excess Credits	33,468,076
Creditable Tax Withheld for the First Three Quarters	12,130,450
Creditable Tax Withheld for Fourth Quarter	6,861,605
Total Tax Credits/Payments	52,460,131
Tax Payable/(Overpayment)-prior year's tax credit	(19,511,417)
Tax Payable/(Overpayment)-current year's tax credit	**(18,992.055)**[3]

Respondent indicated in its ITR that it is opting to be issued a tax credit certificate for the alleged overpayment of ₱18,992,055.00.

Subsequently, respondent filed an amended ITR for taxable year 2002, which states:

Sales/Revenues/Receipts/Fees	395,529,877
Less: Cost of Sales/Services	213,551,009
Gross Income from Operation	181,978,868
Add: Non-Operation and Other Income	9,170,916
Total Gross Income	191,149,784
Less: Deductions	147,535,224
Taxable Income	43,614,560

[3] *Rollo*, p. 49. Emphasis supplied.

Tax Due (32%)	13,956,659
Less: Tax Credits/Payments	
Prior Years' Excess Credits	30,150,767
Creditable Tax Withheld for the First Three Quarters	12,130,450
Creditable Tax Withheld for the Fourth Quarter	6,861,605
Total Creditable Tax Withheld — 2002	18,992,055
Total Tax Credits/Payments	49,142,822
Tax Payable (Overpayment)	(35,186,163)[4]

Respondent likewise indicated in its amended ITR that it is opting to be issued a tax credit certificate for the alleged overpayment of ₱18,992,055.00.

On 4 March 2005, respondent filed with the BIR a written claim for a tax credit certificate in the amount of ₱18,992,055.00. When petitioner failed to act upon respondent's claim, respondent filed a Petition for Review with the CTA First Division on 15 April 2005.

On 6 June 2006, the CTA First Division granted respondent's request for the appointment of an Independent Certified Public Accountant (CPA) under Rule 13 of the Revised Rules of the Court of Tax Appeals. The Court- commissioned Independent CPA filed his Final and Consolidated Report on 3 August 2006.

The report of the Independent CPA states:

Summary of Findings

In summary, based on the procedures performed to verify the accuracy of the amount of overpaid income tax/excess Creditable Withholding Taxes (CWTs) as of the year ended December 31, 2002 amounting to PhP18,992,054.91 and the propriety of the documents supporting the claim for refund or tax credit of the Company on the present case at hand, we present below our findings and observations according to the particular source of creditable taxes, as follows:

Real Estate Sales- PhP 6,067,093.08

A. CWTs supported by original Withholding Tax Remittance Return duly stamped "Received"

[4] Records (CTA First Division), p. 224.

	by the Authorized Agent Bank and were machine validated with its supporting Contract to Sell or Deed of Sale	(Annex 1)	₱5,764,623.06
B.	CWT supported by Certificate Authorizing Registration; no related income declared during the taxable year 2002	(Annex 2)	18,856.25
C.	CWT[s] supported by original Withholding Tax Remittance Return not stamped "Received"; but were Machine Validated by the Authorized Agent Bank	(Annex 3)	141,087.59
D.	CWT[s] supported by original Withholding Tax Remittance Return duly stamped "Received" by Authorized Agent Bank but were not Machine Validated by the Authorized Agent Bank; but supported by BIR-Collections and Reconciliation System	(Annex 4)	142,526.18
TOTAL — CWTs per reviewed certificates			₱6,067,093.08
	Unaccounted Difference – passed due to immateriality		(0.00)
TOTAL — CWTs claimed per December 31, 1998 [sic] Amended ITR			₱6,067,093.08
Real Estate Leasing- Php 12,800,461.83			
E.	CWTs supported by original Certificates of Creditable Tax Withheld at Source	(Annex 5)	₱9,707,369.69
F.	CWTs not supported by Certificates of Creditable Tax Withheld at Source Withholding Tax	(Annex 6)	67,710.10
G.	CWTs filed out of period	(Annex 7)	2,818,260.83
H.	Double Claim	(Annex 8)	213,124.04
TOTAL — CWTs per reviewed certificates			₱12,806,464.66
Unaccounted difference – passed due to immateriality			(6,002.83)
TOTAL — CWTs claimed per December 31, 1998 [sic] Amended ITR			₱12,800,461.83
Other Income- Management Fees - Php 124,500.00			
I.	CWTs supported by original Certificates of Creditable Tax Withheld at Source	(Annex 9)	₱ 124,500.00

TOTAL — CWTs per reviewed certificates	₱ 124,500.00
Unaccounted Difference	(00.00)
TOTAL — CWTs claimed per December 31, 1998 [sic] Amended ITR	₱ 124,500.00[5]

The Ruling of the CTA First Division

The CTA First Division agreed with the findings of the Independent CPA, except for the amount of ₱3,857.33 which the Independent CPA erroneously included as part of the Creditable Withholding Taxes (CWTs) filed out of period in the amount of ₱2,818,260.83. The CTA First Division found that the certificate supporting the creditable tax of ₱3,857.33 shows that the same was withheld in taxable year 2002. Thus, the CTA First Division held that only the amount of ₱2,814,403.50 pertains to "CWTs filed out of period," after deducting the amount of ₱3,857.33 from ₱2,818,260.83.

The CTA First Division further held that out of the total creditable tax withheld of ₱18,992,055.00, only the amount of ₱15,877,961.02 represents respondent's valid claim for taxable year 2002. The CTA First Division disallowed CWTs totaling ₱3,114,093.89:

CWT supported by Certificate Authorizing Registration	₱ 18,856.25
CWTs not supported by Certificate of Creditable Tax Withheld at Source Withholding Tax	67,710.10
CWTs filed out of period	2,814,403.50
Double Claim	213,124.04
Disallowed Creditable Withholding Taxes	**₱3,114,093.89**[6]

The CTA First Division also found a discrepancy in respondent's revenue from sales of real properties in the amount of ₱120,964,737.00 as indicated in its ITR, which is lower by ₱19,999.70 compared to the amount of ₱120,984,736.70 gross sales stated in its withholding tax remittance returns. For failure of respondent to account for the discrepancy in sales of real properties amounting to ₱19,999.70, the CTA First Division disallowed CWTs in the amount of ₱999.99, computed as follows:

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[5] *Rollo*, pp. 215-216. Emphasis in the original.

[6] *Id.* at 115. Emphasis in the original.

Sales of Goods/Properties per income tax return	₱ 120,964,737.00
Less: Sales of Real properties per withholding tax remittance returns	₱ 120,984,736.70
Discrepancy in sales of real properties	₱ 19,999.70
Multiply by : 5% withholding tax rate	0.05
Disallowed Creditable Withholding Taxes	**₱ 999.99**[7]

The CTA First Division also disallowed the ₱124,500.00 CWTs pertaining to management fees amounting to ₱2,490,000.00 for failure of respondent to indicate such amount under "Sales of Services" in its ITR. Although respondent reported a "Miscellaneous" income of ₱4,205,134.00, it failed to submit documents to prove that the ₱2,490,000.00 management fees formed part of its Miscellaneous income of ₱4,205,134.00. The CTA First Division stated:

> Hence, [respondent] complied with the third requisite but only to the extent of ₱15,752,461.03, out of the total claimed creditable withholding taxes of ₱15,877,961.02 with valid proofs of withholding, to wit:.
>
Claimed creditable withholding taxes w/ valid proofs of withholding		₱ 15,877,961.02
Less:	a. Creditable taxes withheld pertaining to the discrepancy in sales of real properties per income tax return and per withholding tax remittance return	999.99
	b. Creditable taxes withheld pertaining to the management fees of ₱2,490,000.00	124,500.00
Claimed creditable taxes withheld pertaining to [respondent's] declared income in its 2002 income tax return		**₱ 15,752,461.03**[8]

The CTA First Division further ruled that respondent failed to substantiate the ₱30,150,757.00[9] prior year's excess credits, except for the amount of ₱288,076.04.

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[7] *Id.* at 117. Emphasis in the original.

[8] *Id.* at 117-118. Emphasis in the original.

[9] The amount stated in the amended ITR representing Prior Year's Excess Credits is ₱30,150,767.00.

In its Decision dated 10 November 2008, the CTA First Division held:

In sum, out of the reported prior year's excess credits of ₱30,150,757.00, only the amount of ₱288,076.04 shall be applied against the income tax liability for taxable year 2002 in the amount of ₱13,956,659.00. The remaining income tax liability of ₱13,668,582.96 shall be offset against the substantiated creditable taxes withheld in taxable year 2002 in the amount of ₱15,752,461.03, leaving a refundable excess tax credits of only ₱2,083,878.07, computed as follows:

Sales/Revenues/Receipts/Fees	₱395,529,877.00
Less: Cost of Sales/Services	213,551,009.00
Gross Income from Operation	₱181,978,868.00
Add: Non-operation & Other Income	9,170,916.00
Total Gross Income	₱191,149,784.00
Less: Deductions	147,535,224.00
Taxable Income	₱ 43,614,560.00
Tax Due (32%)	₱ 13,956,659.00
Less: Prior year's excess credits	288,076.04
Tax Still Due	₱ 13,668,582.96
Less: Substantiated Creditable Taxes Withheld	15,752,461.03
Refundable Excess Tax Credits	**₱ 2,083,878.07**

WHEREFORE, the instant *Petition for Review* is hereby GRANTED. Accordingly, [the Commissioner of Internal Revenue] is hereby ORDERED TO ISSUE TAX CREDIT CERTIFICATE in favor of [Cebu Holdings, Inc.] in the reduced amount [of] ₱2,083,8[7]8.07, representing excess creditable taxes for taxable year 2002.[10]

Petitioner and respondent filed separate Motions for Partial Reconsideration which were both denied by the CTA First Division in a Resolution dated 12 March 2009.[11]

On 26 March 2009, respondent filed an Urgent Motion to Withdraw the Petition for Review in C.T.A. Case No. 7218 on

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[10] *Rollo*, p. 119. Emphasis in the original.

[11] *Id*. at 135-136.

the ground that it shall no longer pursue its claim for a tax credit certificate. Instead, respondent is opting to carry forward the excess creditable income taxes to the succeeding taxable quarters of the succeeding taxable years until the same have been fully utilized. In a Resolution dated 5 May 2009,[12] the CTA First Division denied respondent's motion.

On 16 April 2009, petitioner filed a petition for review before the CTA *En Banc*, assailing the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division.

The Ruling of the CTA *En Banc*

The CTA *En Banc* affirmed the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division. The CTA *En Banc* agreed with the finding of the CTA First Division that respondent is entitled only to ₱2,083,878.07 of tax credit certificate representing excess creditable taxes for taxable year 2002. The CTA *En Banc* further ruled that respondent's claim for refund filed with the BIR on 4 March 2005 and the Petition for Review filed on 15 April 2005 were within the reglementary period.

As regards the unsubstantiated ₱16,194,108.00 prior year's tax credit which was carried over by respondent for taxable year 2003, the CTA *En Banc* held that since the refund claim pertains only to the taxable year 2002, the alleged tax deficiency for taxable year 2003 cannot be offset against the excess creditable taxes covered by the refund claim.

Petitioner filed a Motion for Reconsideration which the CTA *En Banc* denied for lack of merit. Hence, this petition for review.

Petitioner asserts that respondent is not entitled to the ₱2,083,878.07 refund of excess creditable withholding tax for taxable year 2002. Furthermore, petitioner reiterates that respondent is liable for deficiency income tax for taxable year 2003 because respondent erroneously carried over the amount of ₱16,194,108.00 as prior year's excess credits, to which it is not entitled, to the succeeding taxable year 2003.

[12] *Id*. at 137-138.

The Issues

Petitioner raises the following issues:

1. Whether respondent is entitled to a tax credit certificate in the amount of ₱2,083,878.07, representing respondent's excess creditable taxes for taxable year 2002; and
2. Whether respondent is liable for deficiency income tax for taxable year 2003.

The Court's Ruling

The petition is partly meritorious.

The requisites for claiming a refund of excess creditable withholding taxes are: (l) the claim for refund was filed within the two-year prescriptive period; (2) the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount of tax withheld therefrom; and (3) the income upon which the taxes were withheld was included in the income tax return of the recipient as part of the gross income.[13]

Respondent complied with all the requisites, albeit the CTA First Division found some discrepancies with the claimed refund and the amount to which respondent is entitled for refund.

First, respondent filed the claim for refund within the two-year prescriptive period. As found by the CTA First Division and CTA *En Banc*, respondent filed its claim for refund with the BIR on 4 March 2005 and the Petition for Review before the CTA on 15 April 2005, which both fell within the two-year prescriptive period counting from the date respondent filed its ITR on 15 April 2003.

Second, as proof of taxes withheld, respondent submitted the Certificate Authorizing Registration, Withholding Tax

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[13] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, 752 Phil. 375 (2015); *Rep. of the Philippines v. Team (Phils.) Energy Corp*., 750 Phil. 700 (2015); *Commissioner of Internal Revenue v. Team (Phils.) Operations Corp*., 731 Phil. 141 (2014).

Remittance Returns, and Certificates of Creditable Tax Withheld at Source, upon which the Independent CPA based his report.

Third, respondent submitted its amended 2002 ITR to show that the income upon which the taxes were withheld was included in its ITR. However, upon comparison with the Certificates of Creditable Tax Withheld at Source and Withholding Tax Remittance Returns, the CTA First Division and the CTA *En Banc* found certain discrepancies and held that out of the total claimed CWT of ₱15,877,961.02, respondent was only able to provide valid proofs of withholding for the amount of ₱15,752,461.03.

Thus, the CTA First Division correctly held that respondent is entitled to a refundable excess tax credits of ₱2,083,878.07 after deducting the substantiated prior year's excess credits (₱288,076.04) and the substantiated CWT (₱15,752,461.03) from the total tax due (₱13,956,659.00).

However, as pointed out by petitioner, respondent erroneously carried over the amount of ₱16,194,108.00 as prior year's excess credits, to which it is not entitled, to the succeeding taxable year 2003 as shown in respondent's Annual ITR for the year 2003.[14] The fact that respondent carried over the amount of ₱16,194,108.00 as prior year's excess credits to the succeeding taxable year 2003 was even mentioned in the Decision dated 10 November 2008 of the CTA First Division.[15] It should be stressed that the amount of ₱16,194,108.00 is the remaining

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[14] *Rollo*, p. 181. Annex P.

[15] *Id*. at 110-111. On pages 5 and 6 of its Decision, the CTA First Division stated that: "Out of the total tax credits of ₱49,142,822.00, petitioner [Cebu Holdings, Inc.] utilized the amount of ₱13,956,659.00 to answer for its income tax liability for taxable year 2002; leaving an excess tax credits of ₱35,186,163.00, consisting of the creditable taxes withheld for taxable year 2002 in the amount of ₱18,992,055.00 and the remainder of the prior year's excess credits of ₱16,194,108.00 x x x. Out of the income tax overpayment of ₱35,186,163.00, only the amount of ₱16,194,108.00 was carried over as prior year's excess credits to the succeeding taxable year 2003 as shown in petitioner's [Cebu Holdings, Inc.] amended Annual Income Tax Return for taxable year 2003."

portion of the claimed prior year's excess credits in the amount of ₱30,150,767.00 after deducting the ₱13,956,659.00 tax due in respondent's amended ITR for taxable year 2002. **But the CTA First Division categorically ruled that respondent (petitioner therein) failed to substantiate its prior year's excess credits of ₱30,150,767.00 except for the amount of ₱288,076.04, which can be applied against respondent's income tax liability for taxable year 2002.** The CTA First Division stated:

> Petitioner [Cebu Holdings, Inc.] alleges that no amount of the creditable taxes withheld in taxable year 2002 was utilized since its prior year's excess credits of ₱30,150,7[6]7.00 were more than enough to offset its income tax liability for taxable year 2002 in the amount of ₱13,956,659.00.
>
> **However, petitioner failed to substantiate its prior year's excess credits of ₱30,150,7[6]7.00, save for the amount of ₱288,076.04**, computed as follows:
>
> x x x x x x x x x
>
> **In sum, out of the reported prior year's excess credits of ₱30,150,7[6]7.00, only the amount of ₱288,076.04 shall be applied against the income tax liability for taxable year 2002 in the amount of ₱13,956,659.00.** The remaining income tax liability of ₱13,668,582.96 shall be offset against the substantiated creditable taxes withheld in taxable year 2002 in the amount of ₱15,752,461.03, leaving a refundable excess tax credits of only ₱2,083,878.07 x x x.[16] (Emphasis supplied)

Such categorical pronouncement of the CTA First Division affects respondent's claim for excess creditable income taxes which can be carried over to succeeding taxable years. Thus, when the CTA First Division denied respondent's Motion for Partial Reconsideration of the Decision dated 10 November 2008, respondent filed an "Urgent Motion to Withdraw Petition for Review." In its motion, respondent stated that "it shall no longer pursue its claim for tax credit certificate and, instead carry forward the said excess creditable income taxes to the

[16] *Id*. at 118-119.

succeeding taxable quarters of the succeeding taxable years until the same will have been fully utilized."[17] Clearly, respondent filed the motion in order to avoid the adverse effect of the ruling of the CTA First Division that respondent (petitioner therein) failed to substantiate almost all of its claimed prior year's excess credits, especially since respondent already carried over and applied the amount of ₱16,194,108.00 as prior year's excess creditable tax against the income tax due for the succeeding taxable year 2003. The CTA First Division denied for lack of merit respondent's Urgent Motion to Withdraw Petition for Review.

It should be emphasized that respondent no longer appealed the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division to the CTA *En Banc*. Neither did respondent appeal the CTA *En Banc* Decision dated 29 July 2009, which affirmed the 10 November 2008 Decision and the 12 March 2009 Resolution of the CTA First Division.

In the Decision dated 10 November 2008 of the CTA First Division, the substantiated prior year's excess credits have already been fully applied against respondent's income tax liability for taxable year 2002. Thus, respondent no longer has any remaining prior year's excess creditable tax which can be carried over and applied against its income tax due for the succeeding taxable year 2003.

Clearly, respondent erred when it carried over the amount of ₱16,194,108.00 as prior year's excess credits to the succeeding taxable year 2003, resulting in a tax overpayment of ₱7,653,926.00 as shown in its 2003 Amended ITR:

Aggregate Income Tax Due	₱ 25,567,685
Less: Tax Credits/Payments	
Prior Year's Excess Credits	**16,194,108**
Creditable Tax Withheld for the First Three Quarters	6,472,176
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	10,555,327

[17] Records (CTA First Division), pp. 377-378.

Total Tax Credits/Payments	33,221,611
Total Tax Payable/(Overpayment)	**(₱ 7,653,926)**[18]

Considering that respondent's prior year's excess credits have already been fully applied against its 2002 income tax liability, the ₱16,194,108.00 unsubstantiated tax credits in taxable year 2002 could no longer be carried over and applied against its income tax liability for taxable year 2003. Thus, the amount of ₱16,194,108.00 as prior year's excess credits should be deleted, making respondent liable for income tax in the amount of ₱8,540,182.00 for taxable year 2003 as computed below:

Aggregate Income Tax Due	₱ 25,567,685
Less:Tax Credits/Payments	
Prior Year's Excess Credits	**0**
Creditable Tax Withheld for the First Three Quarters	6,472,176
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	10,555,327
Total Tax Credits/Payments	**17,027,503**
Total Tax Payable/(Overpayment)	**₱ 8,540,182**

Respondent argues that the alleged deficiency income tax for taxable year 2003 has no bearing on the case which merely involves a claim for a tax credit certificate for taxable year 2002.

We cannot subscribe to respondent's reasoning. The ruling of the CTA First Division and the CTA *En Banc* clearly affects respondent's income tax liability for taxable year 2003 precisely because respondent carried over the amount of ₱16,194,108.00 as prior year's excess credits, to which it is not entitled. Respondent is once again trying to evade the adverse effect of the ruling of the CTA First Division that respondent (petitioner therein) failed to substantiate almost all of its claimed prior year's excess credits, especially since respondent already carried over and applied the amount of ₱16,194,108.00 as prior year's excess creditable tax against the income tax due for the succeeding taxable year 2003. To reiterate, the CTA First Division already ruled that respondent (petitioner therein) failed

[18] *Rollo*, p. 181, Annex P. Emphasis supplied.

to substantiate its prior year's excess credits of ₱30,150,767.00 except for the amount of ₱288,076.04, which can be applied against respondent's income tax liability for taxable year 2002. Thus, since respondent's prior year's excess credits have already been fully applied against its 2002 income tax liability, the ₱16,194,108.00 unsubstantiated tax credits in taxable year 2002 could no longer be carried over and applied against its income tax liability for taxable year 2003.

Nevertheless, it is incumbent upon petitioner to issue a final assessment notice and demand letter for the payment of respondent's deficiency tax liability for taxable year 2003. Section 228 of the National Internal Revenue Code provides that:

> Section 228. *Protesting Assessment.* — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayers of his findings: *Provided, however*, That a pre-assessment notice shall not be required in the following cases:
>
> (a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or
>
> (b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or
>
> (c) **When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year**; or
>
> (d) When the excise tax due on excisable articles has not been paid; or
>
> (e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non exempt persons.
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable. (Emphasis supplied)

In this case, no pre-assessment notice is required since respondent taxpayer carried over to taxable year 2003 the prior year's excess credits which have already been fully applied against its income tax liability for taxable year 2002.

WHEREFORE, the petition is **PARTIALLY GRANTED**. We **AFFIRM** with **MODIFICATION** the 29 July 2009 Decision and the 9 October 2009 Resolution of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 478. Petitioner Commissioner of Internal Revenue is ordered to: (a) issue a tax credit certificate to respondent Cebu Holdings, Inc. in the amount of **₱2,083,878.07**, representing excess creditable taxes for taxable year 2002; and (b) issue a final assessment notice and demand letter for the payment of respondent's deficiency tax liability in the amount of ₱8,540,182.00 for taxable year 2003.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ*., concur.

SECOND DIVISION

[G.R. No. 190512. June 20, 2018]

D.M. RAGASA ENTERPRISES, INC., *petitioner, vs.* **BANCO DE ORO, INC. (Formerly Equitable PCI Bank, Inc.),** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; OBLIGATIONS ARISING FROM CONTRACTS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES AND SHOULD BE COMPLIED WITH IN GOOD FAITH; CASE AT BAR.— At the outset, it is well to remember that a contract is the law between the parties.Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. The parties are allowed by law to enter into stipulations, clauses, terms and conditions they may deem convenient which bind the parties as long as they are not contrary to law, morals, good customs, public order or public policy. The pertinent provisions of the Lease Contract x x x [a]re clear and show no contravention of law, morals, good customs, public order or public policy. As such, they are valid, and the parties' rights shall be adjudicated according to them, being the primary law between them. When the terms of the contract are clear and leave no doubt as to the intention of the contracting parties, the rule is settled that the literal meaning of its stipulations should control.

2. ID.; ID.; CONTRACT OF LEASE; THE VALIDITY OF A CONTRACT OF LEASE WITH AUTOMATIC TERMINATION CLAUSE, SUSTAINED.— In the present case, there is an express stipulation in item 8(p) of the Lease Contract that "[b]reach or non-compliance of any of the provisions of this Contract, especially non-payment of two consecutive monthly rentals on time, shall mean the termination of this Contract."The validity of an automatic termination clause such as the one quoted above is well-settled. x x x The Court justified the validity of the above automatic termination clause, thus: Certainly, there is nothing wrong if the parties to the lease contract agreed on certain mandatory provisions concerning

their respective rights and obligations, such as the procurement of the insurance and rescission clause. For it is well to recall that contracts are respected as the law between the contracting parties, and may establish such stipulations, clauses, terms and conditions as they may want to include. As long as such agreements are not contrary to law, morals, good customs, public policy or public order they shall have the force of law between them.

3. **ID.; ID.; ID.; ENTITLEMENT TO RENTALS AFTER THE TERMINATION OF THE LEASE PURSUANT TO AN AUTOMATIC RESCISSION CLAUSE IS POSSIBLE IN THE CASE WHERE THE LESSOR INVOKES THE CLAUSE AND THE LESSEE REFUSES TO VACATE THE LEASED PREMISES; NOT APPLICABLE IN CASE AT BAR.—** Pursuant to the automatic termination clause of the Lease Contract, which is in furtherance of the autonomy characteristic of contracts, the Lease Contract was terminated upon its unauthorized pre-termination by the bank on June 30, 2001. Ragasa is, thus, precluded from availing of the second option which is to claim damages by reason of the breach and allow the lease to remain in force. With the lease having been automatically resolved or terminated by agreement of the parties, Ragasa is entitled only to indemnification for damages.To force either party to continue with a contract that is automatically terminated in case of its breach by either party (pursuant to its express provision) is not in furtherance of or sanctioned by the contract. Rather, it is a contravention thereof and it negates the autonomy characteristic of contracts. x x x Entitlement to rentals after the termination of the lease pursuant to an automatic rescission or termination clause is possible in the case where the lessor invokes the clause and the lessee refuses to vacate the leased premises. The lessee will be liable for damages equivalent to the rentals for the duration of its possession from the termination of the lease until he vacates the premises. x x x That is, however, not the situation here. The bank did not continue to possess the Leased Premises after its automatic termination, as it vacated the same on June 30, 2001.

4. **ID.; ID.; PENAL CLAUSE; DEFINED AND CONSTRUED; THREE-FOLD PURPOSE OF A PENAL CLAUSE; ENUMERATED.—** A penal clause is an accessory obligation which the parties attach to a principal obligation for the purpose

of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled.Quite common in lease contracts, this clause functions to strengthen the coercive force of the obligation and to provide, in effect, for what would be the liquidated damages resulting from a breach.A penal clause has a three-fold purpose: (1) a coercive purpose or one of guarantee — this is to urge the debtor to the fulfillment of the main obligation under pain of paying the penalty; (2) to serve as liquidated damages — this is to evaluate in advance the damages that may be occasioned by the non-compliance of the obligation; and (3) a strictly penal purpose — this is to punish the debtor for non-fulfillment of the main obligation.While the first purpose is always present, the second purpose is presumed and the third purpose must be expressly agreed upon. Stated otherwise, the purposes of penalty or penal clause are: (1) *funcion coercitiva o de guarantia* or to insure the performance of the obligation; (2) *funcion liquidatoria* or to liquidate the amount of damages to be awarded to the injured party in case of breach of the principal obligation; and (3) *funcion estrictamente penal* or to punish the obligor in case of breach of the principal obligation, in certain exceptional cases. The second is evidently compensatory and the third is punitive in character, while the first is the general purpose regardless of whether the penalty is compensatory or punitive.

5. ID.; ID.; ID.; PENAL CLAUSE MAY BE EITHER REPARATION, COMPENSATION OR SUBSTITUTE FOR DAMAGES ON ONE HAND, OR AS A PUNISHMENT IN CASE OF BREACH OF THE OBLIGATION, ON THE OTHER; EXPLAINED.— Evidently, the penal clause may be considered either reparation, compensation or substitute for damages, on one hand, or as a punishment in case of breach of the obligation, on the other. When considered as reparation or compensation, the question as to the appropriate amount of damages is resolved once and for all because the stipulated indemnity represents a legitimate estimate made by the contracting parties of the damages caused by the nonfulfillment or breach of the obligation. Proof of actual damages is, consequently, not necessary in order that the stipulated penalty may be demanded. When considered as a punishment, the

question of damages is not yet resolved inasmuch as the right to damages, besides the penalty, still subsists. Thus, if the injured party desires to recover the damages actually suffered by him in addition to the penalty, he must prove such damages.Penal clause may be classified into: (1) according to source: (a) legal (when it is provided by law) and (b) conventional (when it is provided for by stipulation of the parties); (2) according to demandability: (a) subsidiary (when only the penalty may be enforced) and (b) complementary (when both the principal obligation and the penalty may be enforced); and (3) according to purpose: (a) cumulative (when damages may be collected in addition to penalty) and (b) reparatory (when the penalty substitutes indemnity for damages).x x x As defined, liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.The amount of the liquidated damages is purely contractual between the parties; and the courts will intervene only to equitably reduce the liquidated damages, whether intended as an indemnity or a penalty, if they are iniquitous or unconscionable, pursuant to Articles 2227 and 1229 of the Civil Code. Also, proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded.

6. **ID.; ID.; ID.; AS A RULE, WHEN THE OBLIGATION OF A CONTRACT CONTAINS A PENAL CLAUSE, THE PENALTY SHALL SUBSTITUTE THE INDEMNITY FOR DAMAGES AND THE PAYMENT OF INTERESTS IN CASE OF NON-COMPLIANCE WITH OR BREACH OF THE PRINCIPAL OBLIGATION; EXCEPTIONS.—** As to the effect of the penal clause, Article 1226 of the Civil Code x x x From the first paragraph of Article 1226, it is evident that, as a rule, the penalty is fixed by the contracting parties as a compensation or substitute for damages in case of breach of the obligation; and it is, therefore, clear that the penalty in its compensatory aspect is the general rule, while the penalty in its strictly penal aspect is the exception.It is also clear from paragraph 1 of Article 1226 that when an obligation or a contract contains a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance with or breach of the principal obligation. This general rule, however, admits three exceptions, namely: (1) when there is a stipulation to the contrary; (2) when the obligor or

debtor is sued for refusal to pay the agreed penalty; and (3) when the obligor or debtor is guilty of fraud. In these exceptions, it is evident that the purpose of the penalty is to punish since the obligee or creditor can recover from the obligor or debtor not only the penalty, but also the damages or interests resulting from the breach of the principal obligation.

7. ID.; ID.; ID.; REQUISITES FOR THE DEMANDABILITY OF THE PENAL CLAUSE; ENUMERATED.— [T]he Court accordingly rules that the bank is liable for the forfeiture of the deposit and attorney's fees in the amount of ₱15,000.00 and such other damages which Ragasa suffered by reason of the breach of the lease period by the bank. Clearly, the requisites for the demandability of the penal clause are present in this case. These are: (1) that the total non-fulfillment of the obligation or the defective fulfillment is chargeable to the fault of the debtor; and (2) that the penalty may be enforced in accordance with the provisions of law. As to the second requisite, the penalty is demandable when the debtor is in *mora* in regard to obligations that are positive (to give and to do) where demand may be necessary unless it is excused; and with regard to negative obligations, when an act is done contrary to that which is prohibited. In the present case, the bank pre-terminated the Lease Contract which is not expressly allowed therein. For not complying with its Term or period, the bank did an act contrary to what is not allowed in the Lease Contract.

APPEARANCES OF COUNSEL

Tomas Carmelo T. Araneta for petitioner.
BDO Unibank, Inc. Legal Services for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review[1] on *Certiorari* (Petition) under Rule 45 of the Rules of Court (Rules) filed by petitioner D.M. Ragasa Enterprises, Inc., (Ragasa) against

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

respondent Banco de Oro, Inc.,[2] formerly Equitable PCI Bank, Inc. (bank), assailing the Decision[3] dated March 27, 2009 (questioned Decision) and Resolution[4] dated November 25, 2009, both of the Court of Appeals (CA) Special Thirteenth (13th) Division and Former Special Thirteenth Division, respectively, in CA-G.R. CV. No. 88322.

The CA reversed and set aside the rulings in favor of Ragasa of the Regional Trial Court (RTC) of Quezon City, Branch 216, in its Decision dated April 4, 2006[5] and Order dated October 3, 2006[6] (denying the corresponding Motion for Reconsideration) in Civil Case No. Q-02-46341.

The Facts

On January 30, 1998, Ragasa and then Equitable Banking Corporation (Equitable Bank) executed a Contract of Lease[7] (Lease Contract), as lessor and lessee, respectively, over the ground and second floors of a commercial building located at 175 Tomas Morato Avenue corner Scout Castor, Quezon City (subject premises), for a period of five years, commencing on February 1, 1998[8] up to January 31, 2003,[9] with a monthly rental of ₱122,607.00.[10] The pertinent provisions of the Lease Contract state, *viz.*:

2. The TERM of this Lease shall be for a period of five (5) years, commencing on February 1, 1998. x x x

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[2] Banco de Oro, Inc., is the surviving corporation upon the merger of Equitable PCI Bank, Inc. and Banco de Oro, Inc., per the Comment of respondent bank, *id*. at 236-253.

[3] *Id*. at 33-51. Penned by Associate Justice Pampio A. Abarintos with Associate Justices Amelita G. Tolentino and Ramon R. Garcia concurring.

[4] *Id*. at 60-62.

[5] *Id*. at 140-153. Penned by Judge Ofelia Arellano Marquez.

[6] *Id*. at 154.

[7] *Id.* at 63-67.

[8] *Id*. at 63.

[9] *Id*. at 93.

[10] *Id*. at 64.

3. The TENANT shall pay a monthly rental of ONE HUNDRED TWENTY TWO THOUSAND SIX HUNDRED SEVEN (₱122,607) pesos based on ₱463.16 per square meter per month inclusive of Value Added Tax and withholding tax and payable in advance in the first five days of the month, that is 1st to 5th of every month. An annual increase of 10% shall be applied during the term of the lease.

4. The failure to pay two consecutive monthly rentals within the first five (5) days of any month, as stated in No. 3, shall automatically terminate this Contract, without need of any further notice to the TENANT. The LESSOR is hereby authorized, and has the right to show the premises to prospective tenants, and within five (5) days following the last day of the grace period stated in No. 3, the TENANT shall vacate the premises without the need of the usual judicial proceedings, and/or the LESSOR shall padlock the premises until the TENANT settles his obligations. The TENANT agrees to this padlocking as a sign of his good faith in his compliance with No. 3 of this Contract and the LESSOR is not liable or answerable for any damage that the TENANT may incur or suffer due to his non-entrance to the premises, or the LESSOR may confiscate any property found in the premises equivalent to the unpaid rental, penalty, and interests thereto, as guaranty and/or pledge, and can be retrieved anytime upon full payment of his accounts but must not be for more than three (3) months from the date of default [;] otherwise, the confiscated property or properties shall become permanently owned by the LESSOR as partial payment of his unpaid rentals, penalties and interests, and in case of any unpaid balance, the TENANT is still liable.

x x x x x x x x x

7. The parties hereby covenant and agree upon the signing of this Contract of Lease that [the] TENANT shall pay to the LESSOR or his representative, the amount of SEVEN HUNDRED THIRTY FIVE THOUSAND SIX HUNDRED FORTY TWO (₱735,642) pesos, Philippine Currency, ₱367,821 as three months advanced rental, and ₱367,821 as three months deposit, which deposit shall be refunded to the TENANT only upon termination of this Lease, that is, after expiration of the lease, paid occupancy of the said premises, and after vacating the same and also after deducting the unpaid water bills[,] if any, electric bills, extraordinary wear and tear of the premises, losses and breakages of the premises, and other damages sustained by the LESSOR.

8. The TENANT voluntarily binds himself and agrees to the following without any coercion or force by the LESSOR;

x x x x x x x x x

m) The full deposit shall be forfeited in favor of the LESSOR upon non-compliance of the Term of the Contract of Lease by the TENANT, and cannot be applied to Rental;

n) To pay a penalty of 3% of the monthly rental, for every month of delay of payment of the monthly rental, [with] a fraction of the month x x x considered [as] one month;

p) Breach or non-compliance of any of the provisions of this Contract, especially non-payment of two consecutive monthly rentals on time, shall mean the termination of this Contract, and within five (5) days from the date of breach, non-compliance, or default, the TENANT shall vacate the premises quietly and peacefully without need of the required judicial proceedings. If he does not vacate the premises, the TENANT has agreed that the LESSOR has no liability whatsoever due to the padlocking of the same;

x x x x x x x x x

10. In the event that a Court Litigation has been resorted to by the LESSOR or LESSEE, due to non-compliance of any of the foregoing provisions, the aggrieved party shall be paid by the other party, no less than fifteen thousand (₱15,000) pesos, Philippine Currency, for Attorney's fees, and other damages that the honorable court may allow; the cost of litigations shall be born[e] or paid by the party in fault, or in default. All unpaid accounts and obligations of the TENANT shall earn interest or bear interest at the rate of 14% per annum or at the allowable rate of interest from the date of default. The legal suits shall be brought in the town of Quezon City.[11]

Pursuant to the Lease Contract, Equitable Bank paid the amounts of ₱367,821.00 representing three months advance rentals, and ₱367,821.00 representing three months rentals as security deposit.[12]

Meanwhile, Equitable Bank entered into a merger with Philippine Commercial International Bank (PCI Bank) thereby

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

[12] *Id.* at 39.

forming Equitable PCI Bank, Inc.[13] The latter would eventually, pending the present case, merge with Banco de Oro, Inc. to form the respondent bank.[14]

As a result of the merger, the bank closed and joined the branches of its constituent banks which were in close proximity with each other as maintaining said branches would be impractical.[15] One of the branches which had to be closed is the branch located in the subject premises.[16]

For this reason, the bank sent a notice dated May 28, 2001, informing Ragasa that the former was pre-terminating their Lease Contract effective June 30, 2001 (Notice of Pre-termination).[17] Ragasa responded with a demand letter dated June 20, 2001[18] for payment of monthly rentals for the remaining term of the Lease Contract from July 1, 2001 to January 31, 2003 totaling ₱3,146,596.42, inasmuch as there is no express provision in the Lease Contract allowing pre-termination.[19] The bank countered, through a letter dated June 26, 2001,[20] that its only liability for pre-terminating the contract is the forfeiture of its security deposit pursuant to item 8(m) of the Lease Contract.[21] On June 30, 2001, the bank vacated the subject premises without heeding Ragasa's demand for payment.

After sending two more reiterative demand letters,[22] which were both ignored by the bank, Ragasa finally filed on March 11, 2002 with the RTC the Complaint for Collection of Sum of Money (amounting to ₱3,146,596.42 representing the monthly

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[13] *Id*.

[14] *Id*. at 236.

[15] *Id*. at 237.

[16] *Id*. at 39.

[17] *Id*. at 92.

[18] *Id*. at 93.

[19] *Id*.

[20] *Id*. at 134.

[21] *Id*.

[22] One dated July 27, 2001 and another dated February 27, 2002, *id*. at 40.

rentals under the Lease Contract for the period July 1, 2001 to January 31, 2003) and Damages. Ragasa argued that under the Lease Contract, the forfeiture of the bank's security deposit does not exempt it from payment of the rentals for the remaining term of the lease because the bank's act of pre-terminating the contract was a major breach of its terms. Moreover, item 8(m) expressly provides that the security deposit shall not be applied to the rentals.

In its Answer filed on April 26, 2002, the bank argued, in gist, that item 8(m) of the Lease Contract is actually a penalty clause which, in line with Article 1226[23] of the Civil Code, takes the place of damages and interests in case of breach. Hence, for breaching the Lease Contract by pre-terminating the same, the bank is liable to forfeit its security deposit in favor of Ragasa but would not be liable for rentals corresponding to the remaining life of the Contract. Moreover, the bank is not liable for the penalty at the rate of 3% under item 8(n) of the Lease Contract because the bank paid the due rentals up to the time it pre-terminated the same.[24]

Ruling of the RTC

The RTC ruled in Ragasa's favor in a Decision dated April 4, 2006, the dispositive portion of which reads:

> WHEREFORE, the Court finds that plaintiff has established its case against defendant by preponderance of evidence and judgment is hereby rendered ordering defendant Equitable PCI Bank, Inc. to pay plaintiff the following:
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> 1. The amount of Php 3,146,596.42 Philippine Currency, representing the monthly rentals from July 1, 2001 to January 31, 2003;

[23] Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code. (1152a)

[24] *Id.* at 98.

2. A penalty of 3% of the monthly rental for every month of delay;
3. An interest of 14% per annum on the full amount due until fully paid;
4. Attorney's fees in the amount of Php 30,000.00; and
5. Costs of litigation.

Defendant's Counterclaim is dismissed.

SO ORDERED.[25]

The RTC held that the bank may not unilaterally pre-terminate the Lease Contract; hence, it is still liable to pay the rentals for the remaining duration of the said contract. Likewise, in addition to item 8(m) of the Lease Contract providing for the forfeiture of the bank's security deposit, item 8(n), another penalty clause providing for additional 3% of the monthly rental for each month of delay in payment, also applies. Finally, pursuant to Section 10, an interest of 14% per annum on the amount due was awarded.

The bank filed a Motion for Reconsideration which was denied by the RTC in its Order dated October 3, 2006.[26]

On October 23, 2006, the bank filed a Notice of Appeal to the CA, arguing that the Lease Contract was automatically terminated by the act of the bank in pre-terminating the lease or based on the provisions of the Lease Contract, and that upon termination of the lease, the bank has been released from its future contractual obligations including the payment of "future rentals."[27]

Ruling of the CA

In the questioned Decision dated March 27, 2009, the CA granted the bank's appeal and reversed and set aside the RTC's ruling, disposing of the case as follows:

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[25] *Id*. at 153.

[26] *Id*. at 154.

[27] Brief for the Defendant-Appellant dated June 20, 2007, *id*. at 164-166.

WHEREFORE, the appeal is hereby GRANTED. The ruling of the trial court is hereby REVERSED and SET ASIDE. The complaint is dismissed for lack of legal basis.

SO ORDERED.[28]

The CA ruled that the bank's failure to continue the Lease Contract until its expiration constituted a breach of its provision. As such, the Lease Contract was automatically terminated by virtue of item 8(p) thereof providing for its outright termination in case of breach of any of its provisions. Hence, there is no legal basis to hold the bank liable for payment of rentals for the unexpired period of the contract. However, the bank is liable to forfeit its security deposit pursuant to the penalty clause under item 8(m) of the contract. The CA ruled that to allow Ragasa to collect the value of the unexpired term of the lease plus penalty would constitute unjust enrichment.

Ragasa filed a Motion for Reconsideration of the questioned Decision, which the CA denied for lack of merit, in its Resolution dated November 25, 2009.[29]

Refusing to concede, Ragasa filed the present Petition on January 21, 2010 raising four main issues, namely:

Issues

1.) WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN LAW IN GRANTING THE APPEAL OF RESPONDENT BANK AND IN DENYING THE MOTION FOR RECONSIDERATION OF THE PETITIONER WHICH IS CONTRARY TO ARTICLES 1170 AND 1308 OF THE NEW CIVIL CODE[.]

2.) WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN LAW IN RULING THAT THE PENALTY CLAUSE APPLICABLE IN THE CASE IS ITEM NO. 8(m) OF THE CONTRACT, AND NOT ITEM 8(n) OF THE SAME CONTRACT[.]

3.) WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN LAW IN RULING THAT THE SUBJECT CONTRACT HAD BEEN TERMINATED[.]

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[28] *Id.* at 50.

[29] *Id.* at 60-62.

4.) WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED IN LAW IN RULING THAT THE PETITIONER IS GUILTY OF UNJUST ENRICHMENT[.][30]

The fundamental issue that the Court is called upon to resolve is: What is the liability of the bank, if any, for its act of pre-terminating the Lease Contract?

At the outset, it is well to remember that a contract is the law between the parties.[31] Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.[32] The parties are allowed by law[33] to enter into stipulations, clauses, terms and conditions they may deem convenient which bind the parties as long as they are not contrary to law, morals, good customs, public order or public policy.[34]

The pertinent provisions of the Lease Contract are as follows:

2. The TERM of this Lease shall be for a period of five (5) years, commencing on February 1, 1998. x x x

x x x x x x x x x

7. The parties hereby covenant and agree upon the signing of this Contract of Lease that [the] TENANT shall pay to the LESSOR or his representative, the amount of SEVEN HUNDRED THIRTY FIVE THOUSAND SIX HUNDRED FORTY TWO (₱735,642) pesos, Philippine Currency, ₱367,821 as three months advanced rental, and ₱367,821 as three months deposit, which deposit shall be refunded to the TENANT only upon termination of this Lease, that is, after expiration of the lease, paid occupancy of the said premises, and after vacating the same and also after deducting the unpaid water bills[,] if any, electric bills, extraordinary wear and tear of the premises, losses and breakages of the premises, and other damages sustained by the LESSOR.

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

[31] *Morla v. Belmonte*, 678 Phil. 102, 107 (2011).

[32] CIVIL CODE, Art. 1159.

[33] *Id*. at Art. 1306.

[34] *Id*.

8. The TENANT voluntarily binds himself and agrees to the following without any coercion or force by the LESSOR;

x x x x x x x x x

m) The full deposit shall be forfeited in favor of the LESSOR upon non-compliance of the Term of the Contract of Lease by the TENANT, and cannot be applied to Rental;

x x x x x x x x x

p) Breach or non-compliance of any of the provisions of this Contract, especially non-payment of two consecutive monthly rentals on time, shall mean the termination of this Contract, and within five (5) days from the date of breach, non-compliance, or default, the TENANT shall vacate the premises quietly and peacefully without need of the required judicial proceedings. If he does not vacate the premises, the TENANT has agreed that the LESSOR has no liability whatsoever due to the padlocking of the same;

x x x x x x x x x

10. In the event that a Court Litigation has been resorted to by the LESSOR or LESSEE, due to non-compliance of any of the foregoing provisions, the aggrieved party shall be paid by the other party, no less than fifteen thousand (₱15,000) pesos, Philippine Currency, for Attorney's fees, and other damages that the honorable court may allow; the cost of litigations shall be born[e] or paid by the party in fault, or in default. All unpaid accounts and obligations of the TENANT shall earn interest or bear interest at the rate of 14% per annum or at the allowable rate of interest from the date of default. The legal suits shall be brought in the town of Quezon City.[35] (Underscoring supplied)

The foregoing stipulations are clear and show no contravention of law, morals, good customs, public order or public policy. As such, they are valid, and the parties' rights shall be adjudicated according to them, being the primary law between them. When the terms of the contract are clear and leave no doubt as to the intention of the contracting parties, the rule is settled that the literal meaning of its stipulations should control.[36]

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[35] *Rollo*, pp. 63-66.

[36] CIVIL CODE, Art. 1370; See *Heirs of Uy Ek Liong v. Castillo*, 710 Phil. 261, 275-276 (2013).

In the case at bar, there is no question that the bank breached the Lease Contract. When it served upon Ragasa the Notice of Pre-termination effective June 30, 2001 and when it, indeed, vacated the subject premises on said date, the bank, in effect, breached item 2 of the Lease Contract, providing for a five-year term. It must be noted that the Lease Contract does not contain a pre-termination clause.

The Lease Contract has a specific provision in case of non-compliance of its "Term" — "a period of five (5) years, commencing on February 1, 1998," to wit:

> 8. The TENANT voluntarily binds himself and agrees to the following without any coercion or force by the LESSOR;
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> x x x x x x x x x
>
> m) The full deposit shall be forfeited in favor of the LESSOR upon non-compliance of the Term of the Contract of Lease by the TENANT, and cannot be applied to Rental;[37]

The word "term" appears only in three instances, but in three forms, in the five-page Lease Contract. Firstly, "TERM" (a defined word as the letters are all capitalized) is used in item 2, as quoted above, to indicate the five-year period of the lease. Secondly, "Term" is used in item 8(m), as quoted above, and being with a capitalized initial letter it also indicates that it is a defined word. Lastly, it is provided in item 8(g) that the lessee voluntarily binds itself and agrees: "To pay from time to time, during the term of this Lease, all expenses such as salaries, wages, etc., if for business, all charges for telephone if any, and/or any such other services in the Leased Premises."[38]

Given the fact that in item 2 and item 8(g), the words "TERM" and "term" definitely refer to the period of the lease, the word "Term" in item 8(m) should likewise be understood to have the same meaning.

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[37] *Rollo*, pp. 64-65.

[38] *Id.* at 65; underscoring supplied.

The word "Term" could not mean stipulation, provision, condition, covenant or clause as the word "term" can also be understood. In the default clauses of the Lease Contract, *i.e.*, items 8(p) and 10, the word employed is "provisions." It is the word "provisions" which the parties intended to refer to any stipulation, condition, covenant or clause and not the word "term."

Consequently, the correct interpretation of the word "Term" in item 8(m) is that it refers to the period of the lease, and not to any other provision of the Lease Contract.

Article 1170 of the Civil Code mandates that those who, in the performance of their obligations, are guilty of fraud, negligence, or delay, and those who, in any manner, contravene the tenor thereof, are liable for damages.

Thus, having contravened the tenor of the Lease Contract regarding its term or period, the bank should be liable for damages. However, how much in damages should the bank be liable?

Generally, if the lessor or the lessee should not comply with their obligations, the aggrieved party may ask for either the rescission of the contract and indemnification for damages, or only the latter, allowing the contract to remain in force.[39]

In the present case, there is an express stipulation in item 8(p) of the Lease Contract that "[b]reach or non-compliance of any of the provisions of this Contract, especially non-payment of two consecutive monthly rentals on time, shall mean the termination of this Contract."[40]

The validity of an automatic termination clause such as the one quoted above is well-settled.

In *Manila Bay Club Corp. v. Court of Appeals*[41] (*Manila Bay Club Corp.*), the lease period agreed upon was from March

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[39] CIVIL CODE, Art. 1659.

[40] *Rollo*, p. 65.

[41] 315 Phil. 805 (1995).

4, 1988 to March 4, 1998 but was short-lived because the private respondents therein unilaterally terminated the lease with the request that petitioner therein vacate the leased premises and peacefully surrender its possession for the failure, among others, to insure the leased building in violation of paragraph 22 of the lease contract between the parties therein.[42] The private respondents therein invoked the "Special Clause" as found in paragraph 19 of the said lease contract to justify their actions, to wit:

> 19. If the rental herein stipulated or any part thereof at any time, shall be in arrears or unpaid, or if the tenant shall at any time fail or neglect to perform or comply with any of the covenants, conditions, agreements or restrictions stipulated or if the tenant shall become bankrupt or insolvent or shall compound with his creditors, then and in any of such above cases, this lease contract shall become automatically terminated and cancelled and the said premises shall be peacefully vacated by the LESSEE for the LESSOR to hold and enjoy henceforth as if these presents have not been made and it shall be lawful for the LESSOR or any person duly authorized in his behalf, without any formal notice or demand to enter into and upon said leased premises or any part thereof without prejudice on the part of the LESSOR to exercise all rights on the contract of lease and those given by law. And upon such cancellation of the contract, the LESSEE hereby grants the LESSOR the legal right to enter into and take possession of the leased premises as though the term of the leased contract has expired.[43]

The Court justified the validity of the above automatic termination clause, thus:

> Certainly, there is nothing wrong if the parties to the lease contract agreed on certain mandatory provisions concerning their respective rights and obligations, such as the procurement of the insurance and rescission clause. For it is well to recall that contracts are respected as the law between the contracting parties, and may establish such stipulations, clauses, terms and conditions as they may want to include. As long as such agreements are not contrary to law, morals, good

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[42] *Id*. at 811.

[43] *Id*.

customs, public policy or public order they shall have the force of law between them.[44]

In *Riesenbeck v. Spouses Silvino Maceren, Jr. and Patricia Maceren*[45] (*Riesenbeck*), the Court observed:

The Contract of Lease was called off by respondents in virtue of Clauses No. 10[46] and No. 13[47] thereof to which the parties voluntarily bound themselves. In *Manila Bay Club Corp. v. Court of Appeals*,[48] this Court interpreted as requiring mandatory compliance by the parties a provision in a lease contract that failure or neglect to perform or comply with any of the covenants, conditions, agreements or restrictions stipulated *shall result in the automatic termination and cancellation of the lease*.

In accord with this ruling is *Peoples Industrial and Commercial Corp. v. Court of Appeals*[49] where the Court held that there is nothing wrong if the parties to a lease contract agreed on certain mandatory provisions concerning their respective rights and obligations, such as the procurement of insurance and the rescission clause. Thus —

> [I]t is well to recall that contracts are respected as the law between the contracting parties, and they may establish such stipulations, clauses, terms and conditions as they may want to include. As

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[44] *Id*. at 826, citing *Pe v. IAC*, 212-A Phil. 94 (1991).

[45] 516 Phil. 157(2006).

[46] 10. SUB-LEASE – The SUBSTITUTE LESSEE cannot sublease the leased premises to any party without first securing the prior written consent of the LESSOR, otherwise the sublease shall not be respected by the latter;

[47] 13. VIOLATION AND DAMAGES – In case of violation of any terms and conditions contained herein will be a ground for the offended party to terminate the contract even before the end of its term and in case the LESSEE violates the same the LESSOR have the option to terminate the contract without prejudice to his rights to collect whatever rentals due for the remaining years of the contract plus damages.

[48] 315 Phil. 805, 826 (1995).

[49] 346 Phil. 189, 202 (1997), citing *Manila Bay Club Corp. v. Court of Appeals*, 315 Phil. 805, 826 (1995); *See* also *Subic Bay Metropolitan Authority (SBMA) v. Universal International Group of Taiwan (UIG)*, 394 Phil. 691 (2000)*; Heirs of San Andres v. Rodriguez*, 388 Phil. 571, 586 (2000).

long as such agreements are not contrary to law, morals, good customs, public policy or public order they shall have the force of law between them.

The foregoing legal truism finds equal potency in the case at bar. No doubt, the pre-termination was properly resorted to by respondents pursuant to Clause 10 of the Contract of Lease. Indeed, the law on obligations and contracts does not prohibit parties from entering into agreement providing that a violation of the terms of the contract would cause its cancellation even without judicial intervention.[50] This is what petitioner and respondents entered into, a lease contract with a stipulation that the contract is rescinded upon violation of its substantial provisions, which petitioner, does not deny having violated.[51]

Pursuant to the automatic termination clause of the Lease Contract, which is in furtherance of the autonomy characteristic of contracts, the Lease Contract was terminated upon its unauthorized pre-termination by the bank on June 30, 2001. Ragasa is, thus, precluded from availing of the second option which is to claim damages by reason of the breach and allow the lease to remain in force. With the lease having been automatically resolved or terminated by agreement of the parties, Ragasa is entitled only to indemnification for damages.

To force either party to continue with a contract that is automatically terminated in case of its breach by either party (pursuant to its express provision) is not in furtherance of or sanctioned by the contract. Rather, it is a contravention thereof and it negates the autonomy characteristic of contracts.

Is the claim of Ragasa that it is entitled to damages in the amount of ₱3,146,596.42, representing the monthly rentals from July 1, 2001 to January 31, 2003, or the unexpired period of the lease, valid?

Entitlement to rentals after the termination of the lease pursuant to an automatic rescission or termination clause is possible in

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[50] *Pangilinan v. Court of Appeals*, 345 Phil. 93 (1997); *Jison v. Court of Appeals*, 247 Phil. 304 (1988).

[51] *Riesenbeck v. Spouses Maceren*, *supra* note 45 at 170-171.

the case where the lessor invokes the clause and the lessee refuses to vacate the leased premises. The lessee will be liable for damages equivalent to the rentals for the duration of its possession from the termination of the lease until he vacates the premises. This was in effect the ruling of the Court in *Manila Bay Club Corp*. when it affirmed the award of the monthly rental equivalent to ₱250,000.00, which was the valuation of the trial court as affirmed by the CA, *viz.*:

> Petitioner in its third assignment of error assails the ₱250,000.00 monthly rental adjudged against it by the trial court and as affirmed by respondent Court of Appeals, claiming that there was no basis for such finding.
>
> Again, we disagree. In reaching that amount, the trial court took into consideration the following factors: 1) prevailing rates in the vicinity; 2) location of the property; 3) use of the property; 4) inflation rate; and 5) the testimony of private respondent Modesta Sabeniano that she was offered by a Japanese-Filipino investor a monthly rental of ₱400,000.00 for the leased premises then occupied by petitioner.[52] Petitioner for its part should have presented its controverting evidence below to support what it believes to be the fair rental value of the leased building since the burden of proof to show that the rental demanded is unconscionable or exorbitant rests upon the lessee.[53] But petitioner failed to do so. Hence, the valuation by the trial court, as affirmed by respondent Court of Appeals, stands.
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> It is worth stressing at this juncture that the trial court had the authority to fix the reasonable value for the continued use and occupancy of the leased premises after the termination of the lease contract, and that it was not bound by the stipulated rental in the contract of lease since it is equally settled that upon termination or expiration of the contract of lease, the rental stipulated therein may no longer be the reasonable value for the use and occupation of the premises as a result or by reason of the change or rise in values.[54] Moreover, the trial court can take judicial notice of the general increase in rentals of real estate especially of business

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[52] Citation of the *rollo* omitted.

[53] Citing *Shoemart v. CA*, 268 Phil. 195, 204-205 (1990).

[54] Citing *Limcay v. Court of Appeals*, 289 Phil. 429, 437 (1992).

establishments[55] like the leased building owned by private respondents.[56]

That is, however, not the situation here. The bank did not continue to possess the Leased Premises after its automatic termination, as it vacated the same on June 30, 2001.

As explained above, the provision or clause that is applicable in case of non-compliance of the Term or period of the Lease Contract is item 8(m) which mandates that the full deposit of ₱367,821.00 or the equivalent of three months rentals shall be forfeited with the *proviso* that the deposit cannot be applied to rental. This *proviso* as to non-application to rental of the deposit means that the forfeiture is without prejudice to the payment of any unpaid rental at the time of the non-compliance or breach of the Term or period of the Lease Contract. Since the bank had no unpaid rental as of June 30, 2001, the *proviso* finds no application in the present case.

What is the nature of item 8(m) of the Lease Contract: "The full deposit shall be forfeited in favor of the LESSOR upon non-compliance of the Term of the Contract of Lease by the TENANT, and cannot be applied to Rental"?

The Court believes and so holds that item No. 8(m) is a penalty or penal clause.

A penal clause is an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled.[57] Quite common in lease contracts,

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[55] Citing *Commander Realty, Inc. v. Court of Appeals*, 250 Phil. 190, 192 (1988).

[56] *Manila Bay Club Corp. v. Court of Appeals, et al.*, *supra* note 41 at 827-828.

[57] *Pryce Corporation v. Philippine Amusement and Gaming Corporation*, 497 Phil. 490, 508 (2005).

this clause functions to strengthen the coercive force of the obligation and to provide, in effect, for what would be the liquidated damages resulting from a breach.[58]

A penal clause has a three-fold purpose: (1) a coercive purpose or one of guarantee — this is to urge the debtor to the fulfillment of the main obligation under pain of paying the penalty; (2) to serve as liquidated damages — this is to evaluate in advance the damages that may be occasioned by the non-compliance of the obligation; and (3) a strictly penal purpose — this is to punish the debtor for non-fulfillment of the main obligation.[59] While the first purpose is always present, the second purpose is presumed and the third purpose must be expressly agreed upon.[60]

Stated otherwise, the purposes of penalty or penal clause are: (1) *funcion coercitiva o de guarantia* or to insure the performance of the obligation; (2) *funcion liquidatoria* or to liquidate the amount of damages to be awarded to the injured party in case of breach of the principal obligation; and (3) *funcion estrictamente penal* or to punish the obligor in case of breach of the principal obligation, in certain exceptional cases.[61] The second is evidently compensatory and the third is punitive in character, while the first is the general purpose regardless of whether the penalty is compensatory or punitive.[62]

Evidently, the penal clause may be considered either reparation, compensation or substitute for damages, on one hand, or as a punishment in case of breach of the obligation, on the other. When considered as reparation or compensation, the question as to the appropriate amount of damages is resolved once and for all because the stipulated indemnity represents a

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[58] *Id*.

[59] EDUARDO P. CAGUIOA, *COMMENTS AND CASES ON CIVIL LAW, CIVIL CODE OF THE PHILIPPINES*, VOL. IV 284 (Rev. Second Ed., 1983).

[60] *Id*.

[61] DESIDERIO P. JURADO, *COMMENTS AND JURISPRUDENCE ON OBLIGATIONS AND CONTRACTS* 207 (Ninth Rev. Ed., 1987), citing 3 Castan, 7th Ed., pp. 100-101.

[62] JURADO, *supra* note 60 at 207.

legitimate estimate made by the contracting parties of the damages caused by the nonfulfillment or breach of the obligation. Proof of actual damages is, consequently, not necessary in order that the stipulated penalty may be demanded. When considered as a punishment, the question of damages is not yet resolved inasmuch as the right to damages, besides the penalty, still subsists. Thus, if the injured party desires to recover the damages actually suffered by him in addition to the penalty, he must prove such damages.[63]

Penal clause may be classified into: (1) according to source: (a) legal (when it is provided by law) and (b) conventional (when it is provided for by stipulation of the parties); (2) according to demandability: (a) subsidiary (when only the penalty may be enforced) and (b) complementary (when both the principal obligation and the penalty may be enforced); and (3) according to purpose: (a) cumulative (when damages may be collected in addition to penalty) and (b) reparatory (when the penalty substitutes indemnity for damages).[64]

Item 8(m) of the Lease Contract is an accessory obligation or prestation to the principal obligation of lease. It specifies the stipulated amount of liquidated damages — the full deposit — to be awarded to the injured party in case of breach of the Term or period of the principal obligation. Hence, as to source, it is conventional.

As defined, liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.[65] The amount of the liquidated damages is purely contractual between the parties; and the courts will intervene only to equitably reduce the liquidated damages, whether intended as an indemnity or a penalty, if they are iniquitous or unconscionable, pursuant to Articles 2227 and 1229[66] of the Civil Code.

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[63] *Id*. at 208

[64] CAGUIOA, *supra* note 58 at 279.

[65] CIVIL CODE, Art. 2226.

[66] CIVIL CODE, Art. 1229 provides:

The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there

Also, proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded.[67]

Item 8(m) seeks to insure or guarantee the completion of the lease period since its non-compliance shall be met with a penalty. The degree of the coercive effect or impact of the penalty to insure or guarantee the performance of the principal obligation depends largely on the stipulated amount of the liquidated damages. If the amount is substantial, then the compulsion to perform may be greater. The obligor may not, however, be willing to accept a very stiff penalty. As expressed earlier, the amount is purely discretionary on the parties provided that it will pass the test of unconscionability or excessiveness. Since the herein parties have agreed on a specific amount of penalty, ₱367,821.00 or the full deposit, the Court will not even second guess whether it is substantial enough to insure the compliance of the lease period. The Court will simply rule that it is reasonable.

As to the effect of the penal clause, Article 1226 of the Civil Code provides:

> Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.
>
> The penalty may be enforced only when it is demandable in accordance with the provisions of this Code.

From the first paragraph of Article 1226, it is evident that, as a rule, the penalty is fixed by the contracting parties as a compensation or substitute for damages in case of breach of the obligation; and it is, therefore, clear that the penalty in its compensatory aspect is the general rule, while the penalty in its strictly penal aspect is the exception.[68]

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has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

[67] CIVIL CODE, Art. 1228.

[68] JURADO, *supra* note 60 at 208-209.

It is also clear from paragraph 1 of Article 1226 that when an obligation or a contract contains a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance with or breach of the principal obligation. This general rule, however, admits three exceptions, namely: (1) when there is a stipulation to the contrary; (2) when the obligor or debtor is sued for refusal to pay the agreed penalty; and (3) when the obligor or debtor is guilty of fraud. In these exceptions, it is evident that the purpose of the penalty is to punish since the obligee or creditor can recover from the obligor or debtor not only the penalty, but also the damages or interests resulting from the breach of the principal obligation.[69]

Is item 8(m) intended by the parties for a strictly penal purpose or a punishment on the guilty party? If it is, then item 8(m) is both complementary and cumulative. If it is not, then it is subsidiary and reparatory.

As earlier observed, the third purpose of a penal clause, which is strictly penal, must be expressly agreed upon. This is in consonance with the first sentence of Article 1226 — "the penalty shall substitute the indemnity for damages and interests in case of noncompliance, if there is no stipulation to the contrary." Thus, the contract must expressly provide that in addition to the penalty, the guilty party shall be liable for damages or interests resulting from the breach of the principal obligation.

Item 8(m) does not expressly make a reservation for an additional claim for damages and interests occasioned by the breach of the lease period. There is, however, another provision of the Lease Contract that is triggered by a default in item 8(m), to wit:

> 10. In the event that a Court Litigation has been resorted to by the LESSOR or LESSEE, due to non-compliance of any of the foregoing provisions, the aggrieved party shall be paid by the other party, no less than fifteen thousand (₱15,000) pesos, Philippine Currency, for Attorney's fees, and other damages that the honorable

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[69] JURADO, *supra* note 60 at 210-211.

court may allow; the cost of litigations shall be born[e] or paid by the party in fault, or in default. All unpaid accounts and obligations of the TENANT shall earn interest or bear interest at the rate of 14% per annum or at the allowable rate of interest from the date of default. The legal suits shall be brought in the town of Quezon City.[70] (Underscoring supplied)

Being provisions on default, item 8(m) and item 10 must be applied jointly and simultaneously. Thus, aside from the forfeiture of the full deposit, the party at fault or in default is liable, pursuant to item 10 of the Lease Contract, for the payment of attorney's fees in an amount which is not less than ₱15,000.00, other damages that the court may allow, cost of litigation, and 14% interest *per annum* on unpaid accounts and obligations.

Can item 10 pass as the "stipulation to the contrary" or the express agreement required in Article 1226? A careful reading of all the pertinent provisions leads the Court to believe that when item 10 provides that "other damages that the court may allow" are recoverable in case of noncompliance of any provision of the Lease Contract, this only means what it says, that the aggrieved party can be awarded damages in addition to the forfeiture of the deposit that is provided in item 8(m). In fine, item 8(m) and item 10, construed together, form a complementary and cumulative penal clause; and it is a punishment or strictly penal.

From the foregoing, the Court accordingly rules that the bank is liable for the forfeiture of the deposit and attorney's fees in the amount of ₱15,000.00 and such other damages which Ragasa suffered by reason of the breach of the lease period by the bank.

Clearly, the requisites for the demandability of the penal clause are present in this case. These are: (1) that the total non-fulfillment of the obligation or the defective fulfillment is chargeable to the fault of the debtor; and (2) that the penalty may be enforced in accordance with the provisions of law. As to the second requisite, the penalty is demandable when the

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[70] *Rollo*, p. 66.

debtor is in *mora* in regard to obligations that are positive (to give and to do) where demand may be necessary unless it is excused; and with regard to negative obligations, when an act is done contrary to that which is prohibited.[71]

In the present case, the bank pre-terminated the Lease Contract which is not expressly allowed therein. For not complying with its Term or period, the bank did an act contrary to what is not allowed in the Lease Contract.

Additionally, the bank cannot insist on paying only the penalty. This is proscribed under Article 1227, to wit:

> Art. 1227. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced.

There is nothing in the Lease Contract which provides that the bank can exempt itself from the performance of any provision therein, including the Term or period, by simply paying the penalty. Items 8(m) and 10 do not contain any such exemption.

As discussed above, Ragasa cannot insist on the performance of the lease, *i.e.*, for the lease to continue until expiration of its term, because the lease has been automatically terminated when the bank breached it by pre-terminating its terms. Thus, Ragasa is only entitled to damages.

That said, that is, even as items 8(m) and 10 are considered strictly penal or punishment, Ragasa, as the injured party, is nonetheless required to prove the "other damages" that it actually suffered before it can be entitled thereto. However, a review of the records shows that Ragasa presented nothing. Ragasa simply insisted that the bank should be liable for the amount representing the monthly rentals from July 1, 2001 up to January

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[71] CAGUIOA, *supra* note 58 at 280.

31, 2003 or the unexpired term of the Lease Contract, equivalent to ₱3,146,596.42. Ragasa did not adduce any evidence to support its claim that it actually suffered damages of such amount in terms of lost income. In this regard, it must be emphasized that Ragasa could have leased the Leased Premises as early as July 1, 2001 because the bank had completely vacated the same as of June 30, 2001. That Ragasa chose not to lease the Leased Premises and not earn any rental therefrom in the meantime that its complaint for damages against the bank was being litigated was its own decision and doing.

Article 2203 of the Civil Code provides that "[t]he party suffering loss or injury must exercise the diligence of a good father of a family to minimize the damages resulting from the act or omission." Ragasa likewise failed in this respect.

In conclusion, the Court rules that Ragasa is not entitled to the rental for the unexpired period of the Lease Contract, and it is only entitled to the forfeiture of the full deposit pursuant to item 8(m) and ₱15,000.00 as attorney's fees pursuant to item 10.

WHEREFORE, premises considered, the instant petition for review is hereby partly **GRANTED**. The Decision dated March 27, 2009 and the Resolution dated November 25, 2009 of the CA are **AFFIRMED WITH MODIFICATION**, awarding attorney's fees in the amount of ₱15,000.00 in favor of petitioner D.M. Ragasa Enterprises, Inc.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Peralta, Perlas-Bernabe, and *Reyes, Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 194983. June 20, 2018]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **ANTONIO BACANI, RODOLFO BACANI, ROSALIA VDA. DE BAYAUA, JOSE BAYAUA and JOVITA VDA. DE BAYAUA,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CONTRACTS; MORTGAGE; EXTRAJUDICIAL FORECLOSURES OF REAL ESTATE MORTGAGE; THE REDEMPTION PERIOD IS RECKONED FROM THE REGISTRATION OF THE CERTIFICATE OF SALE WITH THE REGISTER OF DEEDS.—** In extrajudicial foreclosures of real estate mortgage, the debtor, his or her successors-in-interest, or any judicial creditor or judgment creditor of said debtor, is granted a period of one (l) year within which to redeem the property. The redemption period is reckoned from the registration of the certificate of sale with the Register of Deeds. When the debtor, or the successors-in-interest as the case may be, fails to redeem the property within the prescribed statutory period, the consolidation of ownership in favor of the purchaser becomes a matter of right. At that point, the purchaser becomes the absolute owner of the property, and may, as a necessary consequence, exercise all the essential attributes of ownership.

2. **ID.; ID.; ID.; ID.; A PRACTICE OR CUSTOM IS GENERALLY NOT A SOURCE OF A LEGALLY DEMANDABLE OR ENFORCEABLE RIGHT; CASE AT BAR.—** x x x [T]he issuance of PNB SEL Circular No. 8-7/89 does not automatically entitle the Spouses Bacani to repurchase the subject property. The circular was an internal memorandum intended for the information of bank employees and personnel. It was addressed to the heads of PNB's offices and branches, to guide them in the disposal and alienation of the bank's acquired assets. **Thus, as an internal bank policy, the Spouses Bacani do not have a legally enforceable right to be prioritized over all other buyers of the subject property.** The Court has recognized in *Pantaleon v. American Express International, Inc*. that a practice or custom is generally not a source of a

legally demandable or enforceable right. Similarly, the Spouses Bacani cannot enforce PNB's internal bank circular, absent any law prioritizing former owners of foreclosed properties in its subsequent sale or disposition. If the Court were to rule otherwise, an absolute owner would be unjustly deprived of the right to freely dispose or alienate the property. Even if the Court considers the bank circular as a binding obligation on the part of PNB to prioritize the former owners of its acquired assets, the circular provides several terms and conditions before former owners are able to repurchase their foreclosed properties.

3. **ID.; ID.; SIMPLE LOAN OR *MUTUUM*; BANK DEPOSITS ARE IN THE NATURE OF A SIMPLE LOAN OR *MUTUUM*, WHICH CREATES A DEBTOR-CREDITOR RELATIONSHIP BETWEEN THE BANK AND THE DEPOSITOR.—** Bank deposits are in the nature of a simple loan or *mutuum*, which must be paid upon demand by the depositor. As such, the deposit of whatever amount to PNB creates a debtor-creditor relationship between the bank and the depositor. PNB, as the recipient of the deposit, is duty-bound to pay or release the amount deposited whenever the depositor so requires. By the very nature of the deposit, PNB could not have assumed that the Spouses Bacani's alleged time deposit account was meant as an option money intended to secure the privilege of buying the subject property within a given period of time, especially since there was no option contract between them. Neither may PNB consider the deposit as a down payment on the price of the subject property because there was no perfected contract of sale. Evidently, as far as PNB was concerned, it cannot use the money in the time deposit to satisfy the purchase price for the subject property, without violating its obligation to return the amount upon the demand of the depositors. **In other words, the time deposit with PNB did not create a contract of sale, or at the very least, an option contract, between PNB and the Spouses Bacani.**

4. **ID.; ID.; FRAUD; ALLEGATION OF FRAUD MUST BE PROVEN BY CLEAR AND CONVINCING EVIDENCE; NOT ESTABLISHED IN CASE AT BAR.—** With respect to the allegation of fraud, it is settled that fraud is never presumed—it must be proven by clear and convincing evidence. In this case, the Spouses Bacani were unable to establish that PNB and Renato committed fraud in the disposition of the subject

property. There was no showing that PNB assured the sale of the subject property to the Spouses Bacani during the auction. As a matter of fact, the Spouses Bacani did not even attend the scheduled auction sale to make an offer on the subject property. The publication of the Invitation to Bid, which included the subject property, was not a binding obligation on the part of PNB. x x x Thus, the fact that the Invitation to Bid was published cannot bind PNB to any offer from any party. PNB merely notified interested parties to submit their proposals for the purchase of the subject property, which PNB may either accept or reject as the absolute owner thereof. In the same manner, the published bidding schedule was not an offer from PNB, notice and acceptance of which would compel the bank to sell the subject property to such party. There being no guarantee that the highest or lowest bid was entitled to purchase the property, the Spouses Bacani cannot rely on the publication of the Invitation to Bid to support their claim of fraud.

APPEARANCES OF COUNSEL

PNB Legal Department for petitioner.
Cesario A. Aggalot for respondents.

D E C I S I O N

REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] filed under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[2] dated September 30, 2010 and Resolution[3] dated January 5, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 82923. In these issuances, the CA affirmed the trial court's decision, which held that petitioner Philippine National Bank (PNB) fraudulently sold the subject property to the prejudice

[1] *Rollo*, pp. 10-27.

[2] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Priscilla J. Baltazar-Padilla and Danton Q. Bueser, concurring; *id*. at 69-86.

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

of Antonio Bacani, Rodaolfo Bacani (Rodolfo), Rosalia Vda. De Bayaua, Jose Bayaua and Jovita Vda. De Bayaua (collectively referred to as the respondents). This resulted in the nullification of the sale and the buyer's certificate of title over the subject property.

Factual Antecedents

Respondent Rodolfo was the registered owner of a parcel of land located in Centro East, Santiago, Isabela, with an area of 618 square meters (subject property), covered by Transfer Certificate of Title (TCT) No. 114296.[4] The other respondents in this case were the occupants of the subject property.[5]

On July 16, 1980, the subject property was used to secure the Php 80,000.00 loan that Rodolfo and his wife, Nellie Bacani (collectively, the Spouses Bacani) obtained from PNB.[6] When the Spouses Bacani failed to pay their loan, PNB extrajudicially foreclosed the subject property on September 9, 1986. 1t was awarded to PNB as the highest bidder, who had a bid amount of Php 148,960.74.[7]

The Spouses Bacani failed to redeem the property. Consequently, on June 6, 1989, Rodolfo's title was cancelled, and in its place, TCT No. T-185028 was issued in the name of PNB.[8]

On November 29, 1989, PNB issued SEL Circular No. 8-7/89, revising its policy on the disposition of acquired assets. Subject to certain conditions, former owners or their heirs, as the case may be, were given priority in the re-acquisition of their foreclosed assets "on negotiated basis without public bidding."[9]

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[4] *Id*. at 71.

[5] *Id*. at 91.

[6] *Id*. at 70, 74, 113.

[7] *Id*. at 70.

[8] *Id*. at 113.

[9] *Id*. at 175-176.

In light of this PNB circular, the Spouses Bacani initiated negotiations with PNB regarding the re-acquisition of their property. Their intention to buy back the subject property was manifested at the earliest through a written offer on August 26, 1991. This was followed by another letter to PNB on November 11, 1991, addressed to Mr. Antonio C. Santos (Mr. Santos), then the Branch Manager of PNB Cauayan Branch.[10]

Initially, the Spouses Bacani's written offer to purchase the subject property was fixed at Php 150,000.00.[11] On November 25, 1991, the Spouses Bacani sent another letter, increasing the offer to Php 220,000.00.[12]

The Spouses Bacani continued to follow-up on their request to repurchase. On April 7, 1992, Mr. Santos advised them to increase their offer because their initial proposal was low. Through a letter sent to PNB on May 25, 1992, the Spouses Bacani accordingly offered to repurchase the subject property for Php 200,000.00 in cash and Php 100,000.00 payable in installments for two years, or an aggregate amount of Php 300,000.00. They also sent letters to PNB on various dates (*i.e.*, July 29, 1992, and December 10, 1992).[13]

PNB later informed the Spouses Bacani in its letter dated December 10, 1992 that the request for repurchase was refused and instead, the subject property would be sold in a public auction.[14] This was followed by another letter dated January 26, 1993, which attached the office memorandum explaining why the Spouses Bacani's offer was refused. It stated that the reason for the rejection was the low offer from the Spouses Bacani, which amounted to less than the fair market value of the subject property and PNB's total claim.[15] At that time, the

[10] *Id*. at 114.

[11] *Id*. at 71, 98, 114.

[12] *Id*. at 99, 114.

[13] *Id*. at 72, 114.

[14] *Id*. at 104-105.

[15] *Id*. at 75, 114, 118-120.

subject property's fair market value was appraised at Php 494,000.00.[16]

Undeterred by this setback, the Spouses Bacani increased their offer to Php 350,000.00 on June 10, 1993. They also continued to communicate with PNB, even after Mr. Santos was succeeded by a new Branch Manager, Mr. Bartolome Pua (Mr. Pua). Their efforts, however, remained unsuccessful.[17]

On January 29, 1996, the Spouses Bacani received a notice from Mr. Pua that the PNB Special Assets Management Department (SAMD) had begun to accept offers for the purchase of various properties, including the subject property. They were provided with a copy of the Invitation to Bid, stating that the public bidding was scheduled on February 8, 1996, at 10:00 a.m., in the office of the PNB SAMD.[18] PNB set the floor bid price to Php 4,000,000.00.[19]

On January 30, 1996, PNB sold the subject property through a negotiated sale to Renato de Leon (Renato), for the price of Php1,500,000.00. Pursuant to this sale, the title of PNB was cancelled, and TCT No. 261643 was issued in the name of Renato. Renato later on filed an ejectment case against the respondents on February 18, 1997, which was favorably granted by the Municipal Trial Court of Santiago City. The respondents were consequently directed to vacate the subject property, and their houses were later on demolished.[20]

On March 19, 1997, the respondents filed a complaint for the annulment of the sale and Renato's title over the subject property, together with a prayer for the payment of damages. The case was docketed as Civil Case No. 35-2365 with the Regional Trial Court of (RTC) of Santiago City.[21] The

[16] *Id*. at 75.

[17] *Id*. at 114.

[18] *Id*. at 115.

[19] *Id*. at 74.

[20] *Id*. at 115.

[21] *Id*. at 112.

respondents alleged that PNB schemed to prevent the Spouses Bacani from buying back the subject property. They also claimed that PNB's refusal to accept their offer, and the subsequent sale of the subject property to Renato despite its earlier scheduled auction sale, were all badges of bad faith on the part of PNB that warrant the annulment of Renato's title and the award of damages in their favor.[22]

PNB refuted the respondents' allegations, stating that the offer of the Spouses Bacani were way below the fair market value of the subject property.[23] It was further alleged that as the registered owner, PNB may dispose of the subject property in accordance with its own terms and conditions.[24]

Ruling of the RTC

After trial, the RTC ruled in favor of the respondents, and found that PNB acted in bad faith by failing to give preference to the Spouses Bacani's offer to purchase the subject property. In its Decision[25] dated March 1, 2004, the RTC held:

> WHEREFORE, in the light of all the foregoing considerations, judgment is hereby rendered in favor of the [respondents] and against the [PNB, Mr. Santos and Renato], as follows:
>
> 1. ORDERING the cancellation of [Renato's] TCT No. T-261643 of the Register of Deeds of Isabela;
>
> 2. ORDERING PNB to convey in favor of [the Spouses Bacani] the land covered by its TCT No. T-185028, upon the payment by said Spouses of the sum of Php217,646.50 representing PNB's total claim against them; and
>
> 3. ORDERING the [PNB, Mr. Santos, and Renato] to pay jointly and solidarily the [respondents]: Php5,000.00 each as actual damages; and Php50,000.00 as attorney's fees and cost.
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> SO ORDERED.[26]

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[22] *Id*. at 93-95.

[23] *Id*. at 107.

[24] *Id*. at 109.

[25] *Id*. at 112-123.

[26] *Id*. at 123.

The trial court found that PNB sold the subject property to Renato on January 30, 1996 through a negotiated sale, despite having notified the Spouses Bacani the day before that the subject property was included in the auction sale. This action on the part of PNB pre-empted the results of the public bidding, which the trial court equated to fraud because the Spouses Bacani supposedly relied on PNB's representation that the subject property would be sold in a public auction.[27] The RTC also did not consider Renato as a purchaser in good faith because the Invitation to Bid was published, which fact should have put him on notice regarding the supposed status of the subject property.[28]

The RTC ruled that PNB failed to observe its own policy granting priority right to the former owners of its acquired assets. The Spouses Bacani should have been allowed to re-acquire the property upon payment of its total loan obligation to PNB in the amount of Php 217,646.50.[29]

PNB appealed to the CA and attributed several errors to the trial court. PNB disagreed that the preference granted to former owners under SEL Circular No. 8-7/89 constitutes a legally demandable right on the part of the Spouses Bacani, which would compel PNB to sell the subject property regardless of the offer of the Spouses Bacani.[30] Again, PNB argued that as the registered owner of the subject property, it has the prerogative to dispose or sell the property in the manner it sees fit. PNB, thus, asserted that the sale to Renato was not fraudulent.[31]

Ruling of the CA

In its Decision[32] dated September 30, 2010, the CA denied PNB's appeal:

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[27] *Id*. at 121.

[28] *Id*. at 121-122.

[29] *Id*. at 122.

[30] *Id*. at 138-142.

[31] *Id*. at 146-152.

[32] *Id*. at 10-27.

WHEREFORE, the trial court's Decision dated March 1, 2004 is affirmed.

SO ORDERED.[33]

The CA affirmed the trial court 's findings that the sale of the subject property to Renato was fraudulent because the Spouses Bacani were unable to exercise their right to buy back their foreclosed property at the scheduled public bidding.[34] The CA also noted that the Spouses Bacani's time deposit in the amount of USD 12,585.27 on October 2, 1992, which was renewed and increased to USD 13,707.22 as of October 23, 2000, was a clear manifestation of the Spouses Bacani 's financial capability and earnest desire to repurchase the subject property.[35] The CA also applied the doctrine on constructive trust as regards Renato's acquisition of title over the subject property, in order to justify its reconveyance to the Spouses Bacani.[36]

PNB, thereafter, moved for the reconsideration of the CA's Decision dated September 30, 2010. Among other things, it alleged that the dollar time deposit account was opened jointly under the names of a certain Pilarita Ruiz and Nellie Bacani. For this reason, the amount deposited in the account should not have been considered by the CA in determining the Spouses Bacani's offer to repurchase the subject property.[37] PNB further maintained that Renato is an innocent purchaser for value because the title over the subject property was already registered with PNB at the time of the sale to Renato.[38]

PNB's motion for reconsideration was denied in the Resolution[39] dated January 5, 2011 of the CA, to wit:

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[33] *Id*. at 85.

[34] *Id*. at 80.

[35] *Id*. at 83.

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

[37] *Id*. at 171.

[38] *Id*. at 171-173.

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

WHEREFORE. the motion for reconsideration is denied for lack of merit.

SO ORDERED.[40]

Following the denial of its motion, PNB appealed to this Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court. PNB claims that the decisions of the RTC and the CA deprived it of its right to freely dispose of the subject property, which was rightfully acquired in a foreclosure sale after the Spouses Bacani defaulted on their loan obligation. It also refutes the CA's holding that the cancellation of Renato's title was justified under the doctrine of constructive trust, there being no fraud or misrepresentation on the part of Renato in acquiring said title over the subject property.[41]

Ruling of the Court

The Court grants the petition. Both the RTC and the CA gravely erred in relying on PNB SEL Circular No. 8-7/89 to nullify the sale of the subject property.

Upon the expiration of the period to redeem, the Spouses Bacani do not have an enforceable right to repurchase the subject property.

In extrajudicial foreclosures of real estate mortgage, the debtor, his or her successors-in-interest, or any judicial creditor or judgment creditor of said debtor, is granted a period of one (l) year within which to redeem the property.[42] The redemption period is reckoned from the registration of the certificate of sale with the Register of Deeds.[43] When the debtor, or the successors-in-interest as the case may be, fails to redeem the

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[40] *Id*. at 89.

[41] *Id*. at 34-64.

[42] *Act No. 3135* (AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES), Section 6.

[43] *Spouses Estanislao, Jr. v. CA*, 414 Phil. 509, 517-518 (2001).

property within the prescribed statutory period, the consolidation of ownership in favor of the purchaser becomes a matter of right. At that point, the purchaser becomes the absolute owner of the property, and may, as a necessary consequence, exercise all the essential attributes of ownership.[44]

The effect of the consolidation of title over a foreclosed property was satisfactorily explained by the Court in *Spouses Marquez v. Spouses Alindog*,[45] as follows:

> **It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title.** The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act no. 3135, as amended. No such bond is required after the redemption period of the property is not redeemed. Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.[46] (Citation omitted and emphasis Ours)

In this case, PNB's certificate of sale was registered on October 10, 1986 and one (1) year lapsed from this date without the Spouses Bacani exercising their right to redeem the subject property.[47] Due to the unfortunate failure of the Spouses Bacani to exercise their redemption right, the title of Rodolfo over the subject property was cancelled and TCT No. T-185028 was issued in the name of PNB.[48] At this point, PNB became the absolute owner of the property and Rodolfo, as well as his wife,

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[44] *Spouses Gallent v. Velasquez*, 784 Phil. 44, 58 (2016).

[45] 725 Phil. 237 (2014).

[46] *Id*. at 248.

[47] *Spouses Estanislao, Jr. v. CA*, *supra* note 43.

[48] *Rollo*, p. 71.

lost all their rights and interests over it.[49] Verily, PNB not only had the right to its possession, but also all the other rights considered as essential attributes of ownership—including the right to dispose or alienate the subject property.[50]

The Court notes that when the Spouses Bacani made its initial offer to repurchase the subject property on August 26, 1991,[51] almost four (4) years passed since the redemption period expired on October 10, 1987. Thus, by the time the parties started negotiating the Spouses Bacani's reacquisition of the subject property, PNB was already the absolute owner. On this point, Article 428 of the Civil Code explicitly states that:

> **ART. 428.** The owner has the right to enjoy and **dispose** of a thing, **without other limitations than those established by law**.
>
> x x x x x x x x x
>
> (Emphases and underscoring Ours)

Clearly, PNB had full discretion as to the terms and conditions relating to the disposition of the subject property. PNB cannot be compelled to sell the subject property to specific persons without its consent. Neither may the courts enjoin nor nullify the alienation of the property on grounds other than those established by law.[52]

The Spouses Bacani, however, anchored their claim on PNB SEL Circular No. 8-7/89, which embodied the bank's policy of giving priority to former owners in the disposition of its acquired assets. **But when the circular was issued on November 29, 1989, the redemption period has expired and the title over the subject property was already consolidated in favor of PNB as its purchaser during the foreclosure sale.** For this reason, any offer on the part of the Spouses Bacani is merely

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[49] *Spouses Edralin v. Philippine Veterans Bank*, 660 Phil. 368, 380 (2011). *Cf. Medida v. CA*, 284-A Phil. 404. 409-410 (1992).

[50] See *Spouses Gallent v. Velasquez*, *supra* note 44.

[51] *Rollo*, p. 114.

[52] See *Tayag v. Lacson, et al.*, 470 Phil. 64, 91-92 (2004).

an offer to *repurchase*, and PNB was not statutorily or contractually bound to accept such offer.

While it was similarly alleged that the Spouses Bacani started negotiating with PNB for the reacquisition of the property as early as 1988, or before the issuance of PNB's certificate of title,[53] it remains undisputed that they failed to redeem the property within the prescribed period for redemption. Consequently, the Spouses Bacani were divested of their rights over the subject property. The subsequent issuance of a final deed of sale to PNB merely confirmed the title that was earlier vested in the bank.[54]

Since it is undisputed that the Spouses Bacani failed to exercise their right of redemption within the prescribed period, the Court cannot uphold. their assertion that PNB's policy of preference should allow them to repurchase the property unconditionally. The Court's ruling in *GE Money Bank, Inc. v. Spouses Dizon*[55] is instructive on this matter:

> The right to redeem of the Spouses Dizon already expired on October 18, 1994. **Thereafter, their offer should aptly be termed as a repurchase, not redemption. The Bank is not bound by the bid price, at the very least, and has the discretion to even set a higher price.** As We explained:
>
> > The right to redeem becomes *functus officio* on the date of its expiry, and its exercise after the period is not really one of redemption but a repurchase. Distinction must be made because redemption is by force of law; the purchaser at public auction is bound to accept redemption. Repurchase, however, of foreclosed property, after redemption period, imposes no such obligation. After expiry, the purchaser may or may not re-sell the property but no law will compel him to do so. **And, he is not bound by the bid price; it is entirely within his discretion**

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[53] *Rollo*, p. 114.

[54] *Spouses Edralin v. Philippine Veterans Bank*, *supra* note 49, citing *Calacala v. Republic of the Philippines*, 502 Phil. 681, 691 (2005).

[55] 756 Phil. 502 (2015).

to set a higher price, for after all, the property already belongs to him as owner.[56] (Emphases Ours)

In any case, the issuance of PNB SEL Circular No. 8-7/89 does not automatically entitle the Spouses Bacani to repurchase the subject property. The circular was an internal memorandum intended for the information of bank employees and personnel. It was addressed to the heads of PNB's offices and branches, to guide them in the disposal and alienation of the bank's acquired assets. **Thus, as an internal bank policy, the Spouses Bacani do not have a legally enforceable right to be prioritized over all other buyers of the subject property.**

The Court has recognized in *Pantaleon v. American Express International, Inc*.[57] that a practice or custom is generally not a source of a legally demandable or enforceable right. Similarly, the Spouses Bacani cannot enforce PNB's internal bank circular, absent any law prioritizing former owners of foreclosed properties in its subsequent sale or disposition. If the Court were to rule otherwise, an absolute owner would be unjustly deprived of the right to freely dispose or alienate the property.

Even if the Court considers the bank circular as a binding obligation on the part of PNB to prioritize the former owners of its acquired assets, the circular provides several terms and conditions before former owners are able to repurchase their foreclosed properties. The circular pertinently states:

For your information and guidance, Board Resolution No. 43 of September 19, 1989 approved an amendment to the present policy on disposition of acquired assets by giving priority to former owners or their heirs to acquire their foreclosed assets on negotiated basis without public bidding, subject to the following conditions.

1. Selling price of assets shall be based on total Bank's claim or fair market value, whichever is higher.

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[56] *Id*. at 507-508. See also *Vda. de Urbano v. Government Service Insurance System*, 419 Phil. 948, 961-962 (2001); *Spouses Natino v. Intermediate Appellate Court, et al*., 274 Phil. 602, 610 (1991).

[57] 643 Phil. 488 (2010).

1.a Bank's claim shall be computed at prime rate in effect on the date of Management recommendation, including penalties, out-of-pocket expenses and attorney's fees;

1.b The maximum market value shall be used as determined by Bank's appraisers in case of properties valued at no more than ₱1 Million and for properties valued at more than ₱1 Million maximum market value as quoted by Bank's appraisers or independent appraisers, whichever is higher;

2. Cash sale shall be preferred;

3. In case of installment sales, the downpayment should at least be 30% and the recommendation of the Bank must be guided by the same prudent consideration as would govern the extension of credit accommodations, such as financial capacity to pay, primary and secondary source of payments, etc.;

4. The property subject of repurchase must be actually occupied as permanent residence and/or intended to be used as residence by the former owner (if owner has been ejected by the Bank);

5. The estimated current market value of the acquired assets does not exceed ₱5,000,000.00;

6. The property is not the subject of any court case involving third parties other than the Bank and the former owners; and

7. The former owners or their heirs shall exercise their right to repurchase their properties within ninety (90) days from receipt of notice from the Bank.

All existing rules, regulations, practices and policies on the sale and disposition of acquired assets not in conflict herein shall remain in full force and effect.[58] (Emphases Ours)

In this case, the Spouses Bacani's initial offer on August 26, 1991 was Php 150,000.00, but the outstanding loan balance was Php 170,670.56.[59] The Spouses Bacani increased their offer to Php 220,000.00, and in 1992, to Php 300,000.00 (Php 200,000.00

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[58] *Rollo*, pp. 175-176.

[59] *Id.* at 53.

in cash and Php 100,000.00 by installment payments). But PNB's total claim was computed at Php 210,708.12 as of April 30, 1991, and Php 217,646.50 as of November 4, 1991.[60] The subject property's fair market value was also appraised at Php 395,520.00 in 1992, and at Php 494,400.00 in 1993.[61]

In view of these undisputed facts, the Spouses Bacani were clearly unable to fulfill the very first condition of PNB SEL Circular No. 8-7/89. The offer was lower than either the total claim of PNB, or the fair market value of the property. PNB duly communicated the rejection of their offer, including the grounds for the rejection, in several letters sent and received by the Spouses Bacani.[62]

In these lights, **the Spouses Bacani cannot insist on repurchasing the subject property without complying with the requirements in the bank circular that the Spouses Bacani themselves repeatedly invoked**. PNB was not obliged to accept the proposal of the Spouses Bacani simply by virtue of their status as former owners, especially since they failed to observe the requirements under the bank circular. PNB was therefore justified in declining these offers to repurchase.

The CA relied on the supposed time deposit account of the Spouses Bacani with PNB, which contained the sum of USD 12,585.27 as of October 2, 1992. The deposit was allegedly renewed and increased to USD 13,707.22 as of October 23, 2000. According to the CA, PNB should have considered this deposit as a manifestation of the Spouses Bacani's willingness and ability to pay for the reacquisition of the subject property.[63]

However, the fact that the Spouses Bacani maintained a time deposit account with PNB does not change the conclusion of this Court.

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[60] *Id*. at 72, 114.

[61] *Id*. at 53, 75.

[62] *Id*. at 75.

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

Bank deposits are in the nature of a simple loan or *mutuum*, which must be paid upon demand by the depositor.[64] As such, the deposit of whatever amount to PNB creates a debtor-creditor relationship between the bank and the depositor. PNB, as the recipient of the deposit, is duty-bound to pay or release the amount deposited whenever the depositor so requires.[65]

By the very nature of the deposit, PNB could not have assumed that the Spouses Bacani's alleged time deposit account was meant as an option money intended to secure the privilege of buying the subject property within a given period of time, especially since there was no option contract between them.[66] Neither may PNB consider the deposit as a down payment on the price of the subject property because there was no perfected contract of sale.

Evidently, as far as PNB was concerned, it cannot use the money in the time deposit to satisfy the purchase price for the subject property, without violating its obligation to return the amount upon the demand of the depositors. **In other words, the time deposit with PNB did not create a contract of sale, or at the very least, an option contract, between PNB and the Spouses Bacani.**

Furthermore, considering that the reacquisition of the subject property involves a contract, there should be a meeting of the minds as to its terms and conditions. When the offer is not accepted by either party, the contract is not perfected and there is no binding juridical relation between the parties.[67] The Spouses Bacani, therefore, cannot demand to repurchase the property, in the absence of PNBs consent to the offer. **At most, the PNB circular grants a privilege to the Spouses Bacani as the former owners, to be given priority in the disposition of the subject property. It does not confer an enforceable and absolute**

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[64] *The Metropolitan Bank and Trust Co. v. Rosales, et al.*, 724 Phil. 66, 68 (2014).

[65] *BPI Family Bank v. Franco*, 563 Phil. 495, 507-508 (2007).

[66] See *Adella Properties, Inc. v. CA*, 310 Phil. 623, 642 (1995).

[67] *Heirs of Fausto C. Ignacio v. Home Bankers Savings and Trust Company, et al.*, 702 Phil. 109, 126 (2013); CIVIL CODE OF THE PHILIPPINES, Article 1318.

right to reacquire the property, to the prejudice of PNB as the absolute owner.

Neither does the publication of the Invitation to Bid constitute a binding obligation on the part of PNB to sell the subject property to the Spouses Bacani.

With respect to the allegation of fraud, it is settled that fraud is never presumed—it must be proven by clear and convincing evidence.[68] In this case, the Spouses Bacani were unable to establish that PNB and Renato committed fraud in the disposition of the subject property. There was no showing that PNB assured the sale of the subject property to the Spouses Bacani during the auction. As a matter of fact, the Spouses Bacani did not even attend the scheduled auction sale to make an offer on the subject property.[69]

The publication of the Invitation to Bid, which included the subject property, was not a binding obligation on the part of PNB. Article 1326 of the Civil Code clearly provides that:

> **ART. 1326.** Advertisements for bidders are **simply invitations** to make proposals, and the advertiser is **not bound** to accept the highest or lowest bidder, unless the contrary appears. (Emphases Ours)

Thus, the fact that the Invitation to Bid was published cannot bind PNB to any offer from any party. PNB merely notified interested parties to submit their proposals for the purchase of the subject property, which PNB may either accept or reject as the absolute owner thereof. In the same manner, the published bidding schedule was not an offer from PNB, notice and acceptance of which would compel the bank to sell the subject property to such party.

There being no guarantee that the highest or lowest bid was entitled to purchase the property, the Spouses Bacani cannot rely on the publication of the Invitation to Bid to support their claim of fraud.

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[68] *Spouses Galang v. Spouses Reyes*, 692 Phil. 652, 664 (2012).

[69] *Rollo*, pp. 148-149.

Ultimately, the Spouses Bacani do not have a cause of action, especially following the consolidation of the subject property's title in favor of PNB. At the time of the sale to Renato, PNB was the absolute owner of the subject property. It had the right to dispose or alienate the property, notwithstanding the intention of the Spouses Bacani to repurchase it. Accordingly, the sale to Renato was valid. The complaint for the annulment of said sale, as well as the annulment of Renato's title over the subject property, must be dismissed.

WHEREFORE, the present petition is **GRANTED**. The Decision dated September 30, 2010 and Resolution dated January 5, 2011 of the Court of Appeals in CA-G.R. CV No. 82923 are **REVERSED** and **SET ASIDE**. The complaint for the annulment of sale and title is **DISMISSED**.

No costs.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *del Castillo,*[*] *Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

THIRD DIVISION

[G.R. No. 195999. June 20, 2018]

LILY S. VILLAMIL, substituted by her heirs RUDY E. VILLAMIL, SOLOMON E. VILLAMIL, TEDDY E. VILLAMIL, JR., DEBORAH E. VILLAMIL, FLORENCE E. VILLAMIL, GENEVIEVE E. VILLAMIL, and MARC ANTHONY E. VILLAMIL, *petitioner, vs.* **SPOUSES JUANITO ERGUIZA and MILA ERGUIZA,** *respondents.*

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[*] Designated as additional Member per Raffle dated January 31, 2011 *vice* Associate Justice Diosdado M. Peralta.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; THREE-DAY NOTICE REQUIREMENT; WHEN THE ADVERSE PARTY HAD BEEN AFFORDED THE OPPORTUNITY TO BE HEARD, AND HAS BEEN INDEED HEARD, THE PURPOSE BEHIND THE THREE-DAY NOTICE REQUIREMENT IS DEEMED SERVED, HENCE REQUIREMENT OF PROCEDURAL DUE PROCESS IS DEEMED SUBSTANTIALLY COMPLIED WITH.—** The general rule is that the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process. "The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein." "A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon." "Being a fatal defect, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency." Nevertheless, the three-day notice requirement is not a hard and fast rule. When the adverse party had been afforded the opportunity to be heard, and has been indeed heard through the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed served. In such case, the requirements of procedural due process are substantially complied with.

2. **CIVIL LAW; CONTRACTS; CONTRACT TO SELL; IN A CONTRACT TO SELL, THE FULFILLMENT OF THE SUSPENSIVE CONDITION WILL NOT AUTOMATICALLY TRANSFER OWNERSHIP TO THE BUYER ALTHOUGH THE PROPERTY MAY HAVE BEEN PREVIOUSLY DELIVERED TO HIM; APPLICATION IN CASE AT BAR.—** A contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the latter upon his fulfillment of the conditions

agreed upon, i.e., the full payment of the purchase price and/or compliance with the other obligations stated in the contract to sell. Given its contingent nature, the failure of the prospective buyer to make full payment and/or abide by his commitments stated in the contract to sell prevents the obligation of the prospective seller to execute the corresponding deed of sale to effect the transfer of ownership to the buyer from arising. A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed. In a contract to sell, the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale. On the other hand, in a conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and the previous delivery of the property has the effect of automatically transferring the seller's ownership or title to the property to the buyer. x x x An examination of the agreement would reveal that the parties entered into a contract to sell the subject property. *First*, petitioner and her siblings who were then co-owners merely promised to sell the subject property, thus, signifying their intention to reserve ownership. *Second*, the execution of a deed of absolute sale was made dependent upon the proper court's approval of the sale of the shares of the minor owners. *Third*, the agreement between the parties was not embodied in a deed of sale. The absence of a formal deed of conveyance is a strong indication that the parties did not intend immediate transfer of ownership. *Fourth*, petitioner retained possession of the certificate of title of the lot. This is an additional indication that the agreement did not transfer to private respondents, either by actual or constructive delivery, ownership of the property. *Finally*, respondent Juanito admitted during trial that they have not finalized the sale in 1972 because there were minor owners such that when they constructed their house thereon, they sought the permission of petitioner.

3. ID.; ID.; ID.; PRINCIPLE OF CONSTRUCTIVE FULFILLMENT; THE TWO REQUISITES FOR THE APPLICATION OF THE PRINCIPLE OF CONSTRUCTIVE

FULFILLMENT OF A SUSPENSIVE CONDITION ARE: (A) THE INTENT OF THE OBLIGOR TO PREVENT THE FULFILLMENT OF THE CONDITION, AND (B) THE ACTUAL PREVENTION OF THE FULFILLMENT; PRESENT IN CASE AT BAR.— [Article 1186 of the Civil Code] refers to the constructive fulfillment of a suspensive condition, whose application calls for two requisites, namely: (a) the intent of the obligor to prevent the fulfillment of the condition, and (b) the actual prevention of the fulfillment. Mere intention of the debtor to prevent the happening of the condition, or to place ineffective obstacles to its compliance, without actually preventing the fulfillment, is insufficient. x x x Here, there is no doubt that petitioner prevented the fulfillment of the suspensive condition. She herself admitted that they did not file any petition to seek approval of the court as regards the sale of the shares of the minor owners. In addition, the other co-owners sold their shares to petitioner such that she was able to consolidate the title in her name. Thus, the condition is deemed constructively fulfilled, as the intent to prevent fulfillment of the condition and actual prevention thereof were definitely present. Consequently, it was incumbent upon the sellers to enter into a contract with respondent-spouses for the purchase of the subject property. Respondent-spouses' obligation to pay the balance of the purchase price arises only when the court's approval of the sale of the minor owners' shares shall have been successfully secured, in accordance with Article 1181 of the New Civil Code. Judicial approval is a condition the operative act of which sets into motion the period of compliance by respondent-spouses of their own obligation, i.e., to pay the balance of the purchase price. Accordingly, an obligation dependent upon a suspensive condition cannot be demanded until after the condition takes place because it is only after the fulfillment of the condition that the obligation arises. Petitioner cannot invoke the non-fulfillment of the condition in the contract to sell when she and her then co-owners themselves are guilty of preventing the fulfillment of such condition. When it has become evident that the condition would no longer be fulfilled, it was incumbent upon petitioner to inform respondent-spouses of such circumstance because the choice whether to waive the condition or continue with the agreement clearly belongs to the latter. Petitioner's claim that respondent-spouses should have known that the condition would no longer be necessary

because the latter knew that the minor owners had already reached the age of majority and that they should have been more proactive in following up the status of the contract to sell, deserves scant consideration. While petitioner may have been right in the aforementioned instances, the same will not negate her obligation to inform respondent-spouses of the non-fulfillment of the condition especially in view of the fact that it was her fault that the condition became irrelevant and unnecessary.

APPEARANCES OF COUNSEL

IBP Legal Aid Office for petitioner.
Ramos Law Office for respondents.

D E C I S I O N

MARTIRES, *J.*:

This is a petition for review on certiorari seeking to reverse and set aside the Decision,[1] dated 29 June 2010, and Resolution,[2] dated 2 February 2011, of the Court of Appeals (*CA*) in CA-G.R. SP No. 109813 which nullified the Decision,[3] dated 2 October 2008, of the Regional Trial Court, Dagupan City, Branch 44 (*RTC*), in Civil Case No. 2007-0014-D, an action for recovery of possession.

THE FACTS

On 6 February 2003, petitioner Lily Villamil (*petitioner*) filed a Complaint[4] for recovery of possession and damages against respondent-spouses Juanito and Mila Erguiza (*respondent-*

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[1] *Rollo*, pp. 35-52; penned by Associate Justice Bienvenido L. Reyes (retired member of this Court) with Associate Justice Estela M. Perlas-Bernabe (now member of this Court) and Associate Justice Elihu A. Ybañez, concurring.

[2] *Id.* at 54-55.

[3] *Id.* at 89-94; penned by Judge Genoveva Coching Maramba.

[4] Records, pp 1-3.

spouses) before the Municipal Trial Court in Cities (*MTCC*) of Dagupan City. The complaint alleges, among others, the following:

x x x x x x x x x

2. Plaintiff is the absolute and exclusive owner of that certain parcel of land more particularly described as follows:

> "A parcel of land (Lot 3371-C) of the subdivision plan (LRC) Psd-111002, being a portion of Lot 3371 Dagupan Cadastre, LRC Cad. Record No. 925, situated in the District of Pantal, City of Dagupan, Island of Luzon, x x x containing an area or one hundred ninety-one (191) square meters, more or less. Covered by Transfer Certificate Title No. 31225 with assessed value of ₱2,290.00 under Tax Declaration No. 221092."

A copy of Transfer Certificate of Title No. 31225 and Tax Declaration No. 221092 are hereto attached and marked as Annexes "A" and "B," respectively;

3. Previously, said parcel of land was covered by Transfer Certificate of Title No. 23988 registered under the names of plaintiff Corazon Villamil, Efren Villamil, Teddy Villamil, Florencio Villamil, Rodrigo Villamil, Nicasio Villamil, John Villamil, Marcelina Villamil and Feliciano Villamil, all related. Copy of Transfer Certificate of title No. 23988 is hereto attached as Annex "C";

4. On 20 September 1972, plaintiff together with her deceased sister, Corazon Villamil, and deceased brother, Teddy Villamil, entered into an agreement with Juanito Erguiza for the purpose of selling the above-described property to the latter subject to the condition that plaintiff and her siblings would file a petition to secure authorization for minor children from the proper courts. Likewise, that in case of failure of the plaintiff and her siblings to obtain said authority, the partial payment made by the defendant Juanito Erguiza shall be applied as rent for twenty (20) years of the premises. A copy of the agreement is hereto attached as Annex "D";

5. During the course of time, TCT No. 23988 was cancelled and TCT No. 30049 was issued by virtue of a quitclaim executed by Corazon Villamil and her children in favor of the plaintiff. Likewise, TCT No. 30049 was cancelled and TCT No. 31125 (Annex "A") was issued by virtue of a Deed of Sale executed by Efren Villamil and Teddy Villamil in favor of the plaintiff. Copies of TCT No. 30049 are hereto attached and marked as Annex "E";

6. Plaintiff has been paying religiously the real estate taxes due on said property;

7. Sometime in 1992 or after the lapse of twenty (20) years and the expiration of the twenty (20) years lease, plaintiff demanded from the defendants to return possession of the property but the latter failed and refused, and still fails (sic) and refuses (sic) to return possession of the property to the damage and prejudice of the plaintiff;

8. The continued occupation by the defendants of the property is by mere tolerance of the plaintiff and has been staying thereon without paying any rent to the plaintiff;

9. On 7 January 2002, plaintiff again demanded from the defendant[s] to return the possession of the property by way of a formal letter dated December 18, 2001 which was received by the defendant[s] on January 11, 2002. Notwithstanding receipt of said letter, defendants just ignored the valid pleas of the plaintiff; Annex "F";

10. A period of thirty (30) [days] had lapsed without the said agreement having been enforced, hence, the defendants have lost whatever rights they have under said agreement;

11. The matter was brought to the Office of the Barangay of Pantal District but no conciliation or settlement was reached between the parties hence, a certification to file action was issued by said office. A copy of the certification is hereto attached as Annex "G";

x x x x x x x x x[5]

The Agreement, which petitioner and respondent-spouses entered into in the sale and purchase of the subject property, states:

KNOW ALL MEN BY THESE PRESENTS:

That we, CORAZON G. VILLAMIL, widow, LILY VILLAMIL, married and TEDDY S. VILLAMIL, married, all of legal ages, Filipinos and residents of Dagupan City, Philippines, for and in consideration of the sum two thousand six hundred fifty seven pesos (₱2,657.00), Philippine currency, to us in hand paid and a receipt of which is hereby acknowledged of JUANITO ERGUIZA, married, of legal age,

[5] *Id.*

Filipino and a resident of Dagupan City, Philippines, BY THESE PRESENTS do hereby promise to sell absolutely unto the said Juanito Erguiza, his heirs or assigns, a parcel of land covered [by] Transfer Certificate of Title No. 23988 of the land records of Dagupan City, identified as Lot No. 2371, under the following terms and conditions:

1. That the total purchase price of the said land is FIVE THOUSAND ONE HUNDRED FIFTY SEVEN PESOS ₱5,157.00. Because of us receiving today the sum of two thousand six hundred and fifty seven pesos (₱2,657.00), there is still a balance of two thousand five hundred pesos (₱2,500.00);

2. That because there is still lacking document or that court approval of the sale of the shares of the minor-owners of parts of this land, the final deed of absolute sale be made and executed upon issuance by the competent court; that the balance of ₱2,500.00 will also be given in this stage of execution of this document;

3. In the event however that the petition for the sale of the shares of the minor-owners of the parts of this land is [disapproved] by the court, the amount of ₱2,657.00 be considered as lease of the land subject matter of this contract for a duration of twenty (20) years.

WITNESS OUR HANDS THIS 29th of September 1972 at Dagupan City, Philippines.[6]

On 26 May 2003, respondent-spouses filed their Answer,[7] which effectively denied the material allegations in petitioner's complaint and by way of special and affirmative defenses, aver that:

x x x x x x x x x

5. That plaintiff has no cause of action.

6. The agreement between the co-heirs of plaintiff and defendants is for the sale on condition of the subject property. A sale even if

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[6] *Id.* at 8.

[7] *Id.* at 27-29.

conditional transfers ownership to the vendees. And before plaintiff could claim any right, there are certain proceedings which must first be complied [with].

Defendants did not violate any of the terms and conditions contained in the agreement to which plaintiff is trying to base her cause of action. It was plaintiff who made sure that the condition contained under the contract to sell will not be complied with. She caused the execution of documents to violate such rights and it was only now that defendants learned of the same;

7. That defendants never received a letter coming from the plaintiff regarding the subject property. As a matter of fact, defendants are trying to enforce the agreement although the conditions contained therein will be left to the sole will of the vendors:

8. That granting arguendo that the plaintiff has the right to damages, such could only be in the form of accrued rentals. x x x[8]

On 14 October 2004, the MTCC dismissed the complaint on the ground that the cause of action thereof was one for the interpretation of the agreement and the determination of the parties' respective rights. It reasoned that such action was incapable of pecuniary estimation and, therefore, jurisdiction lies with the RTC.[9]

On appeal, the RTC reversed the decision of the MTCC on the ground that the cause of action was one for recovery of possession of real property. Considering that the assessed value of the subject property is ₱2,290.00, the MTCC has original and exclusive jurisdiction over the case. Thus, the case was remanded to the MTCC.[10]

The MTCC Ruling

In its decision,[11] dated 15 November 2006, the MTCC ruled in favor of petitioner. It gave credence to petitioner's claim that she communicated to respondent-spouses the fact of

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

[9] *Rollo*, pp. 76-80.

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

[11] *Id*. at 83-88; penned by Acting Presiding Judge Edgardo M. Caldona.

consolidation of ownership in her name. The MTCC held that being an interested party in the collection of the remaining balance, petitioner would naturally have made respondent-spouses aware of the consolidation of ownership over the subject property. It declared that it was unbelievable that respondent-spouses did not exert any effort to inquire from petitioner about the status of their agreement. The MTCC concluded that respondent-spouses had no intention to pay the balance of the purchase price and that they had become lessees of the subject property for twenty (20) years with their down payment being treated as rentals. It ruled that after the lapse of the said period, respondent-spouses were bound to leave the premises. The *fallo* reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of the plaintiff as follows:
>
> 1. Ordering the defendants, their assigns, agents or other persons acting for themselves, to vacate the premises in question and to restore possession thereof to the plaintiff;
>
> 2. Ordering the defendants to pay the plaintiff jointly and severally, the amount of **₱500.00** a month from date of demand which was on December 18, 2001, until they finally vacate the premises, as reasonable compensation for the use and occupation of the same;
>
> 3. Ordering the defendants to pay the plaintiff, jointly and severally, the amount of ₱5,000.00 as attorney's fees and to pay the costs of suit.
>
> SO ORDERED.[12]

Aggrieved, respondent-spouses elevated an appeal to the RTC.

The RTC Ruling

In its decision, the RTC affirmed the ruling of the MTCC. It opined that the condition with respect to judicial approval of the sale had become irrelevant when ownership over the subject property was consolidated in favor of petitioner in 1973; thus, at that time, respondent-spouses were bound to comply with

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[12] *Id*. at 88.

their undertaking to pay the balance of the purchase price which they failed to do. The dispositive portion states:

> WHEREFORE, judgment is hereby rendered **AFFIRMING** the appealed decision with modification deleting the award of attorney's fees.
>
> SO ORDERED.[13]

Unconvinced, respondent-spouses moved for reconsideration. However, in a Resolution,[14] dated 18 May 2009, the RTC denied the motion for lack of notice of hearing.

The CA Ruling

In its decision, the CA reversed and set aside the decision of the RTC. As to the procedural aspect, it observed that despite omission of the name of petitioner's counsel in the notice of hearing, petitioner appeared at the scheduled hearing and even filed her opposition to respondent-spouses' motion for reconsideration. The CA declared that the right of respondent-spouses to appeal should not be curtailed by the mere expediency of holding that there was lack of notice of hearing since the objective of Sections 4, 5, and 7 under Rule 15 of the Rules of Court to allow the adverse party the opportunity to oppose the motion has been clearly met in this case.

With respect to the substantive issue, the appellate court declared that the agreement between the parties was a contract to sell involving the subject property because the vendors reserved ownership and it was subject to a suspensive condition, i.e., submission of the sellers of lacking documents or court approval of the sale of the shares of the minor owners.

The CA did not acquiesce with the trial court's reasoning that respondent-spouses were already notified of the transfer of title in petitioner's name because such alleged notice was not supported by any evidence on record. It lends credence to

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[13] *Id*. at 94.

[14] *Id*. at 102-104.

respondent-spouses' evidence that they came to know of the fact that petitioner was already the registered owner of the subject property when a written demand letter was sent to them by the former on 18 December 2001. The CA opined that respondent-spouses' passive and complacent position in not asserting from the sellers what was incumbent under the subject agreement should not be taken against the former. It stressed that the obligation to secure the necessary documents or approval of the court for the minor children to be represented in the Deed of Absolute Sale, was incumbent upon the sellers.

While the appellate court agreed with the lower courts' disquisition that the court's approval for the minor children to be represented in the sale would no longer be necessary as the ownership and title in the subject property were already consolidated to petitioner, it ruled that the same would not operate like a magic wand to automatically make respondent-spouses perform what was required of them in the subject agreement. On the contrary, the sellers had the positive duty to make known to the buyers that they were ready to comply with what was mandated upon them, which act petitioner failed to prove by any evidence. Thus, the CA concluded that respondent-spouses had more right to possess the subject property pending consummation of the agreement or any outcome thereof. The CA disposed of the case in this wise:

> WHEREFORE, in consideration of the foregoing premises, the instant petition is perforce **GRANTED**. Accordingly, the Decision dated October 02, 2008 and Resolution dated May 18, 2009 are perforce ***reversed and set aside***. Thus, petitioners Erguiza shall remain in actual and peaceful possession of the subject property.
>
> No pronouncement as to costs.
>
> SO ORDERED.[15]

Petitioner moved for reconsideration but the CA denied the same in its 2 February 2011 resolution. Hence, this petition.

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[15] *Id*. at 51.

ISSUES

Petitioner submits the following assignment of errors:

I.

WHETHER OR NOT THE 2 OCTOBER 2008 DECISION OF RTC, BRANCH 44, AFFIRMING THE DECISION OF MTCC, BRANCH 3, DATED 15 NOVEMBER 2006 HAS BECOME FINAL AND EXECUTORY AFTER RESPONDENTS FILED A DEFECTIVE MOTION FOR RECONSIDERATION WHICH DID NOT TOLL THE RUNNING OF THE REGLEMENTARY PERIOD TO FILE A PETITION FOR REVIEW; AND WHETHER THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT GAVE DUE COURSE TO THE PETITION.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT REVERSED THE DECISION OF RTC, BRANCH 44, AFFIRMING THE DECISION OF MTCC, BRANCH 3, WHICH RULED THAT PETITIONER HAD A BETTER RIGHT TO POSSESS THE PROPERTY AFTER PETITIONERS FAILED TO PAY THE BALANCE OF THE PURCHASE PRICE AND THE SECOND CONDITION HAD SET IN, THAT IS, THE DOWN PAYMENT WAS APPLIED AS RENTALS FOR TWENTY (20) YEARS FROM 1972 TO 1992.[16]

Petitioner argues: that the RTC decision has actually become final and executory after respondent-spouses filed a defective motion for reconsideration which did not toll the running of the reglementary period to appeal the decision before the CA; that the motion for reconsideration was a mere scrap of paper as it did not contain notice of the time and place of hearing; that respondent-spouses knew that petitioner was the owner of the subject property because they sought her permission to build their house thereon; and that it is contrary to human experience

[16] *Id*. at 18; petition for review on *certiorari*.

that, being interested persons, respondent-spouses would not inquire about the status of the subject property.[17]

In their Comment,[18] respondent-spouses contend that they complied with the provision of the Rules of Court as regards notice of hearing such that on the day the motion for reconsideration was to be heard, petitioner was present and she even filed her opposition to the motion; that while the notice of hearing was only addressed to the Branch Clerk of Court, petitioner was furnished with a copy of the motion for reconsideration; that petitioner and her siblings did not take steps to fulfil the suspensive condition; that they made an illegal act of transferring the share of the minors in the name of petitioner; that petitioner only informed them of the consolidation of ownership when they received a demand letter on 18 December 2001 and when they were summoned to appear before the office of the Barangay Captain sometime in April 2002; and that if petitioner had the slightest intention of informing them of her ownership of the subject property and for them to pay the remaining balance, she should have done so immediately upon the transfer of the title in her name.

In her Reply,[19] petitioner avers that upon seeing the minor owners reach the age of majority, it would be logical for respondent-spouses to follow up with her and her co-owners since court approval was no longer necessary; that notwithstanding this information, respondent-spouses did not pay the balance of the consideration; and that being an interested party in the collection of the remaining balance, it is more in accord with human experience that she would have informed respondent-spouses about the consolidation of ownership in her name.

THE COURT'S RULING

Petitioner had the opportunity to be heard despite the lack of notice of hearing.

[17] *Id*. at 13-28.

[18] *Id*. at 144-154.

[19] *Id*. at 162-170.

Sections 4 and 5, Rule 15 of the Rules of Court provide that:

> Sec. 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
>
> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
>
> Sec. 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

The general rule is that the three-day notice requirement in motions under Sections 4 and 5 of the Rules of Court is mandatory. It is an integral component of procedural due process.[20] "The purpose of the three-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein."[21]

"A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon."[22] "Being a fatal defect, in cases of motions to reconsider a decision, the running of the period to appeal is not tolled by their filing or pendency."[23]

Nevertheless, the three-day notice requirement is not a hard and fast rule. When the adverse party had been afforded the opportunity to be heard, and has been indeed heard through

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[20] *Jehan Shipping Corporation v. National Food Authority*, 514 Phil. 166, 173 (2005).

[21] *United Pulp and Paper Co. Inc. v. Acropolis Central Guaranty Corporation*, 680 Phil. 64, 79 (2012).

[22] *Pallada v. RTC of Kalibo, Aklan, Br. I*, 364 Phil. 81, 89 (1999).

[23] *Nuñez v. GSIS Family Bank*, 511 Phil. 735, 747-748 (2005).

the pleadings filed in opposition to the motion, the purpose behind the three-day notice requirement is deemed served. In such case, the requirements of procedural due process are substantially complied with. Thus, in *Preysler, Jr. v. Manila Southcoast Development Corporation*,[24] the Court ruled that:

> The three-day notice rule is not absolute. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority. Indeed, Section 6, Rule I of the Rules of Court provides that the Rules should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Rules of procedure are tools designed to facilitate the attainment of justice, and courts must avoid their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice.[25]

Likewise, in *Jehan Shipping Corporation v. National Food Authority*,[26] the Court held that despite the lack of notice of hearing in a motion for reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion. The Court declared:

> This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the notice requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading.
>
> As an integral component of procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a

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[24] 635 Phil. 598 (2010).

[25] *Id*. at 604.

[26] *Supra* note 20.

resolution by the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.

The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based. x x x[27]

A perusal of the records reveals that the trial court gave petitioner ten days within which to comment on private respondents' motion for reconsideration.[28] Petitioner filed its Opposition to the Motion on 7 January 2009, and in fact, filed a Motion for Entry of Judgment.[29] Thus, it cannot be gainsaid that petitioner was not given her day in court as she in fact contested private respondents' motion for reconsideration. While it is true that the name of petitioner's counsel was not indicated in the notice of hearing, nonetheless, she was furnished a copy thereof which she received before the date of the scheduled hearing. The requirement of notice of time and hearing in the pleading filed by a party is necessary only to apprise the other party of the actions of the former.[30] Under the circumstances of the present case, the purpose of a notice of hearing was served. Hence, the Court finds no reversible error committed by the CA in ruling that the motion for reconsideration was not *pro forma*.

Parties entered into a contract to sell

A contract to sell is defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the latter upon his fulfillment of the conditions agreed upon, i.e., the full payment of the purchase price and/or compliance

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

[28] Records, p. 442.

[29] *Id*. at 445-447.

[30] *CMH Agricultural Corp. v. Court of Appeals*, 428 Phil. 610, 621-622 (2002).

with the other obligations stated in the contract to sell. Given its contingent nature, the failure of the prospective buyer to make full payment and/or abide by his commitments stated in the contract to sell prevents the obligation of the prospective seller to execute the corresponding deed of sale to effect the transfer of ownership to the buyer from arising.[31] A contract to sell is akin to a conditional sale where the efficacy or obligatory force of the vendor's obligation to transfer title is subordinated to the happening of a future and uncertain event, so that if the suspensive condition does not take place, the parties would stand as if the conditional obligation had never existed.[32] In a contract to sell, the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him. The prospective seller still has to convey title to the prospective buyer by entering into a contract of absolute sale.[33] On the other hand, in a conditional contract of sale, the fulfillment of the suspensive condition renders the sale absolute and the previous delivery of the property has the effect of automatically transferring the seller's ownership or title to the property to the buyer.[34]

In *Coronel v. Court of Appeals*,[35] the Court declared:

The Civil Code defines a contract of sale, thus:

Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

Sale, by its very nature, is a consensual contract because it is perfected by mere consent. The essential elements of a contract of sale are the following:

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[31] *Ventura, et al. v. Heirs of Spouses Endaya*, 718 Phil. 620, 630 (2013).

[32] *Sps. Serrano and Herrera v. Caguiat*, 545 Phil. 660, 667 (2007).

[33] *Coronel v. CA*, 331 Phil. 294, 310-311 (1996).

[34] *Id*. at 311.

[35] *Id*.

a) Consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price;
b) Determinate subject matter; and
c) Price certain in money or its equivalent.

Under this definition, a Contract *to* Sell may not be considered as a Contract *of* Sale because the first essential element is lacking. In a contract to sell, the prospective seller explicity reserves the transfer of title to the prospective buyer, meaning, the prospective seller does not as yet agree or consent to transfer ownership of the property subject of the contract to sell until the happening of an event, which for present purposes we shall take as the full payment of the purchase price. What the seller agrees or obliges himself to do is to fulfill his promise to sell the subject property when the entire amount of the purchase price is delivered to him. In other words the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, ownership is retained by the prospective seller without further remedies by the prospective buyer. In *Roque vs. Lapuz*, this Court had occasion to rule:

> Hence, We hold that the contract between the petitioner and the respondent was a contract to sell where the ownership or title is retained by the seller and is not to pass until the full payment of the price, such payment being a positive suspensive condition and failure of which is not a breach, casual or serious, but simply an event that prevented the obligation of the vendor to convey title from acquiring binding force.

Stated positively, upon the fulfillment of the suspensive condition which is the full payment of the purchase price, the prospective seller's obligation to sell the subject property by entering into a contract of sale with the prospective buyer becomes demandable as provided in Article 1479 of the Civil Code which states:

> Art. 1479. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.
>
> An accepted unilateral promise to buy or to sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price.[36]

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

In this case, the parties entered into an agreement with the following terms and conditions:

KNOW ALL MEN BY THESE PRESENTS:

That we, CORAZON G. VILLAMIL, widow, LILY VILLAMIL, married and TEDDY S. VILLAMIL, married, all of legal ages, Filipinos and residents of Dagupan City, Philippines, for and in consideration of the sum two thousand six hundred fifty seven pesos (₱2,657.00), Philippine currency, to us in hand paid and a receipt of which is hereby acknowledged of JUANITO ERGUIZA, married, of legal age, Filipino and a resident of Dagupan City, Philippines, BY THESE PRESENTS do hereby **promise to sell absolutely** unto the said Juanito Erguiza, his heirs or assigns, a parcel of land covered [by] Transfer Certificate of Title No. 23988 of the land records of Dagupan City, identified as Lot No. 2371, under the following terms and conditions:

6. That the total purchase price of the said land is FIVE THOUSAND ONE HUNDRED FIFTY SEVEN PESOS ₱5,157.00. Because of us receiving today the sum of two thousand six hundred and fifty seven pesos (₱2,657.00), there is still a balance of two thousand five hundred pesos (₱2,500.00);

7. That because there is still lacking document or that court approval of the sale of the shares of the minor-owners of parts of this land, the final deed of absolute sale be made and executed upon issuance by the competent court; that the balance of ₱2,500.00 will also be given in this stage of execution of this document;

8. In the event however that the petition for the sale of the shares of the minor-owners of the parts of this land is [disapproved] by the court, the amount of ₱2,657.00 be considered as lease of the land subject matter of this contract for a duration of twenty (20) years.

WITNESS OUR HANDS THIS 29th of September 1972 at Dagupan City, Philippines.[37] (emphases supplied)

An examination of the agreement would reveal that the parties entered into a contract to sell the subject property. *First*, petitioner

[37] Records, p. 8.

and her siblings who were then co-owners merely promised to sell the subject property, thus, signifying their intention to reserve ownership. *Second*, the execution of a deed of absolute sale was made dependent upon the proper court's approval of the sale of the shares of the minor owners. *Third*, the agreement between the parties was not embodied in a deed of sale. The absence of a formal deed of conveyance is a strong indication that the parties did not intend immediate transfer of ownership.[38] *Fourth*, petitioner retained possession of the certificate of title of the lot. This is an additional indication that the agreement did not transfer to private respondents, either by actual or constructive delivery, ownership of the property.[39] *Finally*, respondent Juanito admitted during trial that they have not finalized the sale in 1972 because there were minor owners[40] such that when they constructed their house thereon, they sought the permission of petitioner.[41]

Now, the next question to be resolved is whether the suspensive condition, i.e., judicial approval of the sale of the minor owners' shares, upon which the obligation of the sellers to execute a deed of sale depends, is fulfilled.

Principle of constructive fulfillment applies

Article 1186 of the Civil Code reads:

> Article 1186. The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.

This provision refers to the constructive fulfillment of a suspensive condition, whose application calls for two requisites, namely: (a) the intent of the obligor to prevent the fulfillment of the condition, and (b) the actual prevention of the fulfillment. Mere intention of the debtor to prevent the happening of the

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[38] *Chua v. Court of Appeals*, 449 Phil. 25, 42 (2003).

[39] *Id*. at 43.

[40] Records, p. 236.

[41] *Id*. at 247.

condition, or to place ineffective obstacles to its compliance, without actually preventing the fulfillment, is insufficient.[42]

Petitioner and her then co-owners undertook, upon receipt of the down payment from respondent-spouses, the filing of a petition in court, after which they promised the latter to execute the deed of absolute sale whereupon the latter shall, in turn, pay the entire balance of the purchase price. The balance of the consideration shall be paid only upon grant of the court's approval and upon execution of the deed of absolute sale.

Here, there is no doubt that petitioner prevented the fulfillment of the suspensive condition. She herself admitted that they did not file any petition to seek approval of the court as regards the sale of the shares of the minor owners.[43] In addition, the other co-owners sold their shares to petitioner such that she was able to consolidate the title in her name.[44] Thus, the condition is deemed constructively fulfilled, as the intent to prevent fulfillment of the condition and actual prevention thereof were definitely present. Consequently, it was incumbent upon the sellers to enter into a contract with respondent-spouses for the purchase of the subject property.

Respondent-spouses' obligation to pay the balance of the purchase price arises only when the court's approval of the sale of the minor owners' shares shall have been successfully secured, in accordance with Article 1181 of the New Civil Code.[45] Judicial approval is a condition the operative act of which sets into motion the period of compliance by respondent-spouses of their own obligation, i.e., to pay the balance of the purchase price. Accordingly, an obligation dependent upon a suspensive condition cannot be demanded until after the condition takes

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[42] *International Hotel Corporation v. Joaquin, Jr. and Suarez*, 708 Phil. 361, 373 (2013).

[43] Records, p. 258.

[44] *Id*.

[45] Art. 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.

place because it is only after the fulfillment of the condition that the obligation arises.[46] Petitioner cannot invoke the non-fulfillment of the condition in the contract to sell when she and her then co-owners themselves are guilty of preventing the fulfillment of such condition. When it has become evident that the condition would no longer be fulfilled, it was incumbent upon petitioner to inform respondent-spouses of such circumstance because the choice whether to waive the condition or continue with the agreement clearly belongs to the latter. Petitioner's claim that respondent-spouses should have known that the condition would no longer be necessary because the latter knew that the minor owners had already reached the age of majority and that they should have been more proactive in following up the status of the contract to sell, deserves scant consideration. While petitioner may have been right in the aforementioned instances, the same will not negate her obligation to inform respondent-spouses of the non-fulfillment of the condition especially in view of the fact that it was her fault that the condition became irrelevant and unnecessary.

Who has better right of possession?

Inasmuch as petitioner has not yet complied with her obligation to execute a deed of sale after the condition has been deemed fulfilled, respondent-spouses are still entitled to possess the subject property. Petitioner cannot anchor her claim on the supposed conversion of their agreement from a contract to sell into a contract of lease as provided in the third paragraph of the agreement which provides that should the court disapprove the sale of the shares of the minor owners, the down payment would be treated as rentals for twenty (20) years. The agreement, however, could not have been converted into a contract of lease for the simple reason that there was no petition filed before any court seeking the approval of the sale as regards the shares of the minor owners. Hence, the court did not have any occasion to approve much less disapprove the sale of such shares. As a result, there was no reason for the contract to sell to be converted into a contract of lease.

[46] *Catungal, et al. v. Rodriguez*, 661 Phil. 484, 508 (2011).

Respondent-spouses did not become lessees. They remained to be prospective buyers of the subject property who, up to now, are awaiting fulfillment of the obligation of the prospective sellers to execute a deed of sale. Hence, inasmuch as the sellers allowed them to have the subject property in their possession pending the execution of a deed of sale, respondent-spouses are entitled to possession pending the outcome of the contract to sell.

WHEREFORE, the petition is **DENIED**. The Decision, dated 29 June 2010, and Resolution, dated 2 February 2011, of the Court of Appeals in CA-G.R. SP No. 109813 are **AFFIRMED**. The Entry of Judgment in Civil Case No. 2007-0014-D is hereby **LIFTED**.

SO ORDERED.

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

Bersamin, J., on official leave.

SECOND DIVISION

[G.R. No. 200899. June 20, 2018]

HEIRS OF PAZ MACALALAD, namely: MARIETA MACALALAD, ARLENE MACALALAD-ADAY, JIMMY MACALALAD, MA. CRISTINA MACALALAD, NENITA MACALALAD-PAPA, and DANNY MACALALAD, *petitioners, vs.* **RURAL BANK OF POLA, INC. and REGISTER OF DEEDS OF ORIENTAL MINDORO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; PROPERTY; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); A FORGED DEED CAN LEGALLY BE THE ROOT OF A VALID TITLE WHEN AN INNOCENT PURCHASER FOR VALUE INTERVENES; THE DEFINITION OF AN INNOCENT PURCHASER FOR VALUE HAS BEEN EXPANDED TO INCLUDE AN INNOCENT LESSEE, MORTGAGEE, OR OTHER ENCUMBRANCER FOR VALUE.—** [T]his Court reiterates the settled principle that no one can give what one does not have. *Nemo dat quod non habet.* Stated differently, no one can transfer a right to another greater than what he himself has. Applying this principle to the instant case, granting that the deed of sale in favor of the Spouses Pimentel was forged, then, as discussed above, they could not have acquired ownership as well as legal title over the same. Hence, they cannot give the subject property as collateral in the mortgage contract they entered into with respondent bank. However, there is an exception to the rule that a forged deed cannot be the root of a valid title — that is when an innocent purchaser for value intervenes. Indeed, a forged deed can legally be the root of a valid title when an innocent purchaser for value intervenes. A purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claims or interest of some other person in the property. Under Section 32 of Presidential Decree (*P.D.*) 1529, the definition of an innocent purchaser for value has been expanded to include an innocent lessee, mortgagee, or other encumbrancer for value.

2. **ID.; ID.; ID.; THE BURDEN OF PROVING THE STATUS OF A PURCHASER IN GOOD FAITH LIES UPON THE ONE WHO ASSERTS THAT STATUS.—** The settled rule is that the burden of proving the status of a purchaser in good faith lies upon one who asserts that status, and this *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith. A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he or she has notice of the adverse claims and interest of another person in

the same property. The honesty of intention which constitutes good faith implies a freedom from knowledge of circumstances which ought to put a person on inquiry.

3. ID.; ID.; ID.; WHERE THERE IS NOTHING IN THE CERTIFICATE OF TITLE TO INDICATE ANY CLOUD OR VICE IN THE OWNERSHIP OF THE PROPERTY, OR ANY ENCUMBRANCE THEREON, THE PURCHASER IS NOT REQUIRED TO EXPLORE FURTHER THAN WHAT THE TORRENS TITLE UPON ITS FACE INDICATES; EXCEPTION; PRESENT IN CASE AT BAR.— It is, likewise, settled that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property. Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto. However, this rule shall not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious person to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent person to inquire into the status of the title of the property in litigation. Moreover, in the present case, respondent is not an ordinary mortgagee; it is a mortgagee-bank. As such, unlike private individuals, it is expected to exercise greater care and prudence in its dealings, including those involving registered lands. A banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting

aside of the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), promulgated on September 28, 2011 and February 29, 2012, respectively, in CA-G.R. CV No. 90851. The assailed CA Decision affirmed the October 23, 2007 Decision[3] of the Regional Trial Court (*RTC*) of Calapan City, Oriental Mindoro, Branch 40, in Civil Case No. R-03-5244, which dismissed the complaint for declaration of nullity of Transfer Certificate of Title (*TCT*) filed by herein petitioners' predecessor-in-interest against herein respondents.

The factual and procedural antecedents are as follows:

On September 26, 2003, herein petitioners' predecessor-in-interest, Paz Macalalad (*Paz*) filed, with the RTC of Calapan City, a Complaint for "Declaration of Nullity of TCT No. T-117484" alleging that: she is the sole surviving legal heir of one Leopoldo Constantino, Jr. (*Leopoldo*) who died intestate on November 13, 1995 and without any issue; during his lifetime, Leopoldo owned a parcel of land with an area of 42,383 square meters, which is located at Pinagsabangan II, Naujan, Oriental Mindoro and registered under TCT No. RT-124 (T-45233); on July 14, 1998, after the death of Leopoldo, it was made to appear that the latter sold the subject lot to the spouses Remigio and Josephine Pimentel (*Spouses Pimentel*) in whose names a new TCT (No. T-96953) was issued; thereafter, the Spouses Pimentel obtained a loan from herein respondent Rural Bank of Pola, Inc. (*respondent bank*) and gave the subject parcel of land as collateral for the said loan, as evidenced by a contract of mortgage executed by the Spouses Pimentel in favor of respondent bank; respondent bank, acting in bad faith, in utter disregard of its duty to investigate the validity of the title of the Spouses Pimentel and without verifying the location of the lot, accepted the same as collateral for the Spouses Pimentel's loan; subsequently, the Spouses Pimentel failed to pay their loan leading respondent

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[1] Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Antonio L. Villamor and Ramon A. Cruz, concurring; *rollo*, pp. 30-41.

[2] *Rollo*, pp. 42-43.

[3] Penned by Judge Tomas C. Leynes; *id.* at 125-133.

bank to foreclose the mortgage over the subject property where it (respondent bank) emerged as the highest bidder; consequently, respondent bank obtained ownership of the disputed lot; and the TCT in the name of the Spouses Pimentel was cancelled and a new one (TCT No. T-117484) was issued in respondent bank's name. Paz contended that respondent bank be made to suffer the ill effects of its negligent acts by praying that TCT No. T-117484 be cancelled and a new one be issued in the name of Leopoldo, the original owner.

In its Answer, respondent bank denied the material averments in Paz's complaint and claimed, in its affirmative defense, that: it is a mortgagee and purchaser in good faith; and it gave full faith and credit to the duly registered TCT given by the Spouses Pimentel as evidence of their ownership of the mortgaged property. Respondent bank also argued that a title procured through fraud and misrepresentation can still be the source of a completely valid and legal title if the same is in the hands of an innocent purchaser for value.

After the issues were joined, trial on the merits ensued.

Pending resolution of the case, Paz died on December 7, 2006. Hence, herein petitioners were substituted as party-plaintiffs.[4]

On October 23, 2007, the RTC rendered its Decision dismissing petitioners' complaint for lack of merit. The RTC held that, "[a]fter a careful study and evaluation of the evidence adduced by both plaintiff and the defendant bank, it was clearly established that the latter had fully complied with the standard operating procedure in verifying the ownership of the land in question" and that "[t]he defendant bank, as a mortgagee, has a right to rely in good faith on the certificate of title of the mortgagor of the subject property given as security for the loan being applied for by the registered owners, the Spouses Pimentel, hence, the defendant bank is, therefore, considered a mortgagee in good faith."[5]

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[4] See RTC Order dated March 23, 2007, *id.* at 52.

[5] Records, p. 168.

Aggrieved, petitioners filed an appeal with the CA.

On September 28, 2011, the CA promulgated its assailed Decision affirming the Decision of the RTC. The CA echoed the ruling of the RTC by holding that the "appellee bank was not remiss in its duty to conduct an ocular inspection on the subject premises and to investigate as to the validity of the title of the property being given as security" and that by "observing [the] standard practices for banks, defendant-appellee bank exercised due care and diligence in ascertaining the condition of the mortgaged property before entering into a mortgage contract and approving the loan."[6]

Petitioners filed a Motion for Reconsideration,[7] but the CA denied it in its Resolution of February 29, 2012.

Hence, the present petition for review on *certiorari* based on the following issues:

I.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE LEGALITY OF THE DEED OF SALE PURPORTEDLY EXECUTED BETWEEN LEOPOLDO CONSTANTINO, JR. AND SPOUSES PIMENTEL.

II.

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THAT THE RESPONDENT BANK ACTED IN GOOD FAITH AND WAS AN INNOCENT MORTGAGEE FOR VALUE.[8]

In a Resolution[9] dated June 18, 2012, this Court, among others, required respondents to file their Comment to the present petition, but they failed to do so.

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[6] *Rollo*, p. 8.

[7] *Id.* at 134-140.

[8] *Id.* at 15.

[9] *Id.* at 141.

On November 28, 2012, the Court issued another Resolution[10] requiring respondent bank's counsel, Atty. Cesar A. Enriquez (*Atty. Enriquez*) to: (1) show cause why he should not be disciplinarily dealt with or held in contempt for his failure to file the above-required Comment, and; (2) comply with the June 18, 2012 Resolution of this Court.

In his letter,[11] which was posted on February 5, 2013, Atty. Enriquez informed this Court that: his failure to file the required Comment was brought about by his old age and physical ailment; he has directed his client to engage the services of another lawyer; and he is adopting and re-pleading his written memorandum which formed part of the records of this case as his Comment to the petition.

In its Resolution[12] dated April 1, 2013, this Court accepted Atty. Enriquez's explanation and required respondent bank to submit to the Court the name and address of its new counsel and for the said counsel to file the required Comment to the petition.

Subsequently, for failure of respondent bank to submit the name and address of its new counsel, within the period fixed in this Court's Resolution of April 1, 2013, this Court issued another Resolution,[13] dated November 20, 2013, requiring respondent bank's General Manager, Leonor L. Hidalgo (*Hidalgo*), to show cause why she should not be held in contempt for such failure, and to comply with the said Resolution.

In her letter[14] dated January 8, 2014, Hidalgo offered the explanation that: Atty. Enriquez failed to inform her of the necessity of submitting the name and address of their new counsel; she has no intention of disobeying this Court's directive and asks the Court's indulgence and forgiveness; respondent

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[10] *Id*. at 142.

[11] *Id*. at 143.

[12] *Id*. at 146.

[13] *Id*. at 151.

[14] *Id*. at 152.

bank is no longer engaging the services of a new counsel; and they are adopting their memorandum filed with the RTC and the CA to support their position.

In a subsequent Resolution[15] dated March 17, 2014, this Court noted Hidalgo's above letter but, nonetheless, directed her to cause the appearance of respondent bank's new counsel, and the latter to file the required Comment to the present petition.

Despite due notice and directive by this Court in subsequent Resolutions,[16] Hidalgo repeatedly failed to comply leading this Court to impose upon her a fine of ₱1,000.00. The Court continued to direct Hidalgo to cause the appearance of respondent bank's counsel and the latter to file the required Comment to the petition.

In its latest Resolution dated August 16, 2017, this Court again noted Hidalgo's non-compliance with its directives and again required her to show cause why she should not be disciplinarily dealt with or held in contempt for her non-compliance. To date, Hidalgo has yet to comply with the above Resolution.

Thus, so as not to unduly delay the disposition of the present case, the Court resolves to dispense with respondent bank's comment and to proceed with the disposition of the petition on the basis of the pleadings at hand.

In the first issue raised, petitioners contend that the Deed of Sale from which the respondent bank supposedly derived its title to the property is a complete nullity considering that the said Deed, bearing Leopoldo's signature, was executed in favor of the Spouses Pimentel, on July 14, 1998, in spite of the fact that Leopoldo died three years earlier, on November 13, 1995.

As to the second issue, petitioners insist that respondent bank acted in bad faith, when it approved the loan of the Spouses Pimentel as secured by the disputed property, because it

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[15] *Id*. at 154.

[16] See Resolutions dated September 10, 2014, January 21, 2015, July 8, 2015, and April 4, 2016, *id*. at 155, 159, 161, and 168.

(respondent bank) was remiss in its obligation to verify the alleged ownership of the said spouses over the subject property.

The petition lacks merit.

At the outset, this Court notes that the Complaint filed by petitioners had two prayers: *first*, the declaration of nullity of TCT No. T-117484, in the name of respondent bank; and *second*, the re-issuance of the title over the subject property in the name of Leopoldo, who is petitioners' predecessor-in-interest and the original owner of the said property.

Considering that the second prayer requires the cancellation of the title not only of respondent bank but also that of the Spouses Pimentel from whom respondent bank's title was derived, it follows that the Spouses Pimentel are indispensable parties insofar as the second prayer is concerned. However, petitioners never impleaded the Spouses Pimentel in their Complaint.

In relation to the abovementioned second prayer, the necessary implication of the arguments raised by petitioners in the first issue raised in the present petition is that the Spouses Pimentel could not have legally acquired ownership over the subject property because the signature of Leopoldo in the deed of sale executed in their favor was forged. Hence, not being the owners of the disputed lot, they could not have validly mortgaged the same to respondent bank. In turn, respondent cannot subsequently acquire the said property after foreclosure sale.

Unfortunately, the factual issue of whether or not the deed of sale between the Spouses Pimentel and Leopoldo is valid was not resolved neither by the RTC or the CA because petitioners did not implead the Spouses Pimentel in their complaint. Nonetheless, without delving into this issue, this Court reiterates the settled principle that no one can give what one does not have.[17] *Nemo dat quod non habet.* Stated differently, no one can transfer a right to another greater than what he himself has.[18]

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[17] *Rufloe, et al. v. Burgos, et al.*, 597 Phil. 261, 270 (2009).

[18] *Development Bank of the Philippines v. Prudential Bank*, 512 Phil. 267, 278 (2005).

Applying this principle to the instant case, granting that the deed of sale in favor of the Spouses Pimentel was forged, then, as discussed above, they could not have acquired ownership as well as legal title over the same. Hence, they cannot give the subject property as collateral in the mortgage contract they entered into with respondent bank.

However, there is an exception to the rule that a forged deed cannot be the root of a valid title — that is when an innocent purchaser for value intervenes. Indeed, a forged deed can legally be the root of a valid title when an innocent purchaser for value intervenes.[19] A purchaser in good faith and for value is one who buys the property of another without notice that some other person has a right to or interest in such property and pays a full and fair price for the same, at the time of such purchase, or before he has notice of the claims or interest of some other person in the property.[20] Under Section 32 of Presidential Decree (*P.D.*) 1529, the definition of an innocent purchaser for value has been expanded to include an innocent lessee, mortgagee, or other encumbrancer for value.

In the present case, even assuming that the deed of sale between Leopoldo and the Spouses Pimentel was indeed forged, the same may, nonetheless, give rise to a valid title in favor of respondent bank if it is shown that the latter is a mortgagee in good faith. Such good faith will entitle respondent bank to protection such that its mortgage contract with the Spouses Pimentel, as well as respondent bank's consequent purchase of the subject lot, may no longer be nullified. Hence, as correctly pointed out by both the RTC and the CA, the basic issue that needs to be resolved in the instant case is whether or not respondent bank is a mortgagee and a subsequent purchaser of the subject lot in good faith.

At this point, it must be stressed that the issue of whether respondent bank acted in good faith, when it accepted the subject property as collateral in the mortgage contract it entered into

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[19] *Rufloe, et al. v. Burgos, et al.*, *supra* note 17.

[20] *Id*.

with the Spouses Pimentel, is a question of fact, the determination of which is beyond the ambit of this Court's power of review under Rule 45 of the Rules of Court, as amended. Only questions of law may be raised under this Rule as this Court is not a trier of facts.[21] Moreover, where, as in this case, the CA affirms the factual findings of the trial court, such findings generally become conclusive and binding upon this Court.[22] While there are several recognized exceptions to this rule,[23] the Court finds that none of these exceptions applies here.

In any case, in order to put *finis* to the present controversy, this Court as a tribunal of last resort, shall proceed to resolve the basic issue in the present petition on the basis of the records at hand.

The settled rule is that the burden of proving the status of a purchaser in good faith lies upon one who asserts that status, and this *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith.[24] A purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its

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[21] *Civil Service Commission v. Maala,* 504 Phil. 646, 652 (2005).

[22] *Spouses Francisco v. Court of Appeals, et al.*, 449 Phil. 632, 647 (2003).

[23] (1) When the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a 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 CA 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 those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, will justify a different conclusion. (*Manila Electric Company v. South Pacific Plastic Manufacturing Corporation*, 526 Phil. 105, 111-112 (2006).

[24] *Tolentino, et al. v. Sps. Latagan, et al*., 761 Phil. 108, 134 (2015).

fair price before he or she has notice of the adverse claims and interest of another person in the same property.[25] The honesty of intention which constitutes good faith implies a freedom from knowledge of circumstances which ought to put a person on inquiry.[26]

It is, likewise, settled that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property.[27] Where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto.[28]

However, this rule shall not apply when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious person to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent person to inquire into the status of the title of the property in litigation.[29]

Moreover, in the present case, respondent is not an ordinary mortgagee; it is a mortgagee-bank. As such, unlike private individuals, it is expected to exercise greater care and prudence in its dealings, including those involving registered lands.[30] A banking institution is expected to exercise due diligence before

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[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

[29] *Id*.

[30] *Arguelles, et al. v. Malarayat Rural Bank, Inc*., 730 Phil. 226, 237 (2014), citing *Cruz v. Bancom Finance Corporation*, 429 Phil. 225, 239 (2002).

entering into a mortgage contract.[31] The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.[32] Thus, this Court held that:

> x x x where the mortgagee is a bank, it cannot rely merely on the certificate of title offered by the mortgagor in ascertaining the status of mortgaged properties. Since its business is impressed with public interest, the mortgagee-bank is duty-bound to be more cautious even in dealing with registered lands. Indeed, the rule that a person dealing with registered lands can rely solely on the certificate of title does not apply to banks. Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owners thereof. The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.[33]

In this case, the Court finds no cogent reason to depart from the findings of both the RTC and the CA that respondent was able to successfully discharge its burden of proving its status as a mortgagor and subsequent purchaser in good faith and for value. Thus, the Court quotes, with approval, the ruling of the CA which affirms the factual findings of the RTC, to wit:

> As correctly found by the RTC in the instant case, defendant-appellee bank [herein respondent bank] was not remiss in its duty to conduct an ocular inspection on the subject premises and to investigate as to the validity of the title of the property being given as security. As records would show, defendant-appellee bank sent a representative/appraiser (Mr. Ronnie Marcial) to conduct an ocular inspection of the subject property. The said representative/appraiser was able to ascertain the owner thereof, the nature of the subject property, its location and area, its assessed value and its annual yield (See: Report

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[31] *Id*.

[32] *Id*.

[33] *Arguelles, et al. v. Malarayat Rural Bank, Inc.*, *supra* note 30, citing *Ursal v. Court of Appeals*, 509 Phil. 628, 642 (2005).

of Inspection and Credit Investigation, Records, p. 140). Moreover, defendant-appellee bank made a verification from the Office of the Register of Deeds of Oriental Mindoro if the subject property is indeed titled in the name of the mortgagors (Spouses Pimentel) (See: TSN, February 22, 2007, pp. 20-21) x x x .[34]

Petitioners contend that if respondent bank's representative indeed conducted an ocular inspection of the disputed property, he would have readily discovered the presence of their tenant on the said property who could have informed respondent bank of the true ownership thereof. However, this Court finds no sufficient evidence to reverse the findings of both the RTC and the CA that respondent bank indeed sent a representative to inspect the subject lot; and, if such representative indeed found another person in possession of the said property, who lays claim over the same, the representative would have indicated the same in his report because it is the respondent bank which would be at a disadvantage and even ultimately lose if the presence of an adverse possessor was not reported. Nonetheless, there is nothing in the representative's Report of Inspection and Credit Investigation which indicates such presence. Thus, respondent bank is justified in believing that the title of the Spouses Pimentel is neither invalid nor defective.

As a final note, the obstinate failure of respondent bank's General Manager, Leonor L. Hidalgo, to comply with the Court's numerous directives does not escape the attention of this Court. While it is true that the cause of respondent bank, which she represents, was ultimately proven to be meritorious, this fact does not excuse nor justify her repeated failure to follow the orders of this Court. Thus, as a consequence, this Court imposes upon Hidalgo an additional fine of ₱2,000.00 for her non-compliance with the Resolutions of this Court dated April 1, 2013, November 20, 2013, March 17, 2014, and the other Resolutions subsequent thereto.

WHEREFORE, the instant petition for review on *certiorari* is **DENIED**. The Decision and Resolution of the Court of Appeals

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[34] *Rollo*, p. 38.

dated September 28, 2011 and February 29, 2012, respectively, in CA-G.R. CV No. 90851 are **AFFIRMED**.

Respondent bank's General Manager, Leonor L. Hidalgo is **ORDERED to PAY** an additional fine of ₱2,000.00 for her repeated failure to heed the directives of this Court, and is **STERNLY WARNED** that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 204183. June 20, 2018]

BARANGAY TONGONAN, ORMOC CITY, represented by its Punong Barangay, ISAGANI R. BAÑEZ, *petitioner, vs.* **HON. APOLINARIO M. BUAYA, in his capacity as Presiding Judge, Regional Trial Court, Branch 35, Ormoc City, City Government of Ormoc, represented by its mayor, HONORABLE ERIC C. CODILLA, the Municipality of Kananga, Leyte, represented by its Mayor, HONORABLE GIOVANNI M. NAPARI, and PHILIPPINE NATIONAL DEVELOPMENT CORP.[*] (PNOC-EDC), represented by its president MR. PAUL AQUINO,** *respondents.*

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[*] Should be Philippine National Oil Company – Energy Development Corporation.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING; GUIDELINES LAID DOWN BY THE SUPREME COURT WITH RESPECT TO THE NON-COMPLIANCE WITH THE REQUIREMENTS ON OR SUBMISSION OF A DEFECTIVE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING, ENUMERATED.— The Court had laid down guidelines with respect to the non-compliance with the requirements on or submission of a defective Verification and Certification of Non-forum Shopping, as follows: 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and noncompliance with the requirement on or submission of defective certification against forum shopping. 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. **The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.** 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, **unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."** 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule. 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable

or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.

2. ID.; ID.; ID.; ID.; BY JURISPRUDENCE, THE SUPREME COURT ALLOWED THE BELATED FILING OF THE CERTIFICATION OF NON-FORUM SHOPPING ON THE JUSTIFICATION THAT SUCH ACT CONSTITUTES SUBSTANTIAL COMPLIANCE; CASE AT BAR.— By jurisprudence, the Court has likewise allowed the belated filing of the certification on the justification that such act constitutes substantial compliance. In *Mediserv, Inc. v. Court of Appeals, et al*., the Court held that the failure to submit proof of the representative's authority to sign the verification/certification on non-forum shopping on the corporation's behalf was rectified when the required document was subsequently submitted to the CA. As cited in *Mediserv*, the Court in *Uy v. Land Bank of the Philippines*, reinstated a petition on the ground of substantial compliance even though the verification and certification were submitted only after the petition had already been originally dismissed. So too, in *Havtor Management Phils. Inc. v. NLRC*, likewise cited in *Mediserv*, the Court acknowledged substantial compliance when the lacking secretary's certificate was submitted by the petitioners as an attachment to the motion for reconsideration seeking reversal of the original decision dismissing the petition for its earlier failure to submit such requirement. In this case, petitioner submitted the original of the Barangay Council Resolution authorizing the succeeding Punong Barangay Periander R. Bañez to file the amended petition and to sign the certification as an attachment to its motion for reconsideration. In line with the foregoing jurisprudence, We find that this act constitutes substantial compliance. That the Barangay Council Resolution authorized a different representative to file and pursue the petition for annulment and to sign the certification could not be cause for the denial of the motion for reconsideration as such was necessitated by the fact that there was a change in the leadership of the Barangay brought about by the supervening elections while the amended petition was pending resolution. In any case, the Court finds that the ends of substantive justice is better served by the resolution of the issue on whether or not there was a valid compromise concerning the boundary dispute between Ormoc City and the

Municipality of Kananga, rather than dismiss the same on procedural technicality.

APPEARANCES OF COUNSEL

Chu Law Office for petitioner.

Provincial Legal Office, Tacloban City, for Municipality of Kananga, Leyte.

Office of the City Legal Officer, Ormoc City, for respondent City Government of Ormoc City.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Resolution[2] dated November 24, 2011 and Resolution[3] dated September 27, 2012 of the Court of Appeals (CA), Cebu City in CA-G.R. CEB SP No. 02691 which dismissed petitioner's Amended Petition for Declaration of Nullity and/or Annulment of Court Order and Amicable Settlement due to a defective Verification and Certification Against Non-forum Shopping.

The Antecedents

The instant petition has as its factual background a boundary dispute between respondents Ormoc City and the Municipality of Kananga. To settle the controversy, Ormoc City and the Municipality of Kananga entered into an Amicable Settlement dated February 27, 2003, which compromise agreement was subsequently approved by respondent court *a quo*.[4]

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[1] *Rollo*, pp. 17-27, with Annexes.

[2] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Edgardo L. Delos Santos and Gabriel T. Ingles; *Id.* at 28-32.

[3] *Id.* at 33-34.

[4] *Id.* at 55.

Claiming that the Amicable Settlement constitutes an illegal relinquishment of the patrimony of Ormoc City in general and of petitioner in particular which greatly altered its boundaries and reduced its territory by 325 hectares, petitioner lodged a petition before the CA Cebu City seeking to annul the Amicable Settlement as well as the court *a quo's* Order approving the same.[5]

Because of certain procedural defects,[6] the petition for annulment was initially dismissed by the CA Cebu City in its Resolution dated June 18, 2010.[7] However, on petitioner's motion for reconsideration with motion to admit amended petition, the CA Cebu City reinstated the petition, noting that petitioner promptly corrected the procedural infirmities besetting its petition. Accordingly, the CA Cebu City directed the issuance of summons to the respondents.[8] It appears that only respondents Municipality of Kananga and the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) filed their respective answers,[9] while Ormoc City filed its comment joining petitioner and imploring the CA Cebu City to give the latter's amended petition due course.[10]

However, on November 24, 2011, the CA Cebu City issued its presently assailed Resolution[11] dismissing petitioner's amended petition in the following manner:

1. petitioner, a local government unit and juridical entity, failed to submit the original of the Resolution of the *Barangay* Council, which specifically authorized Isagani R. Bañez, the *Punong Barangay*, to sign the Verification and Certification Against Non-Forum Shopping

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

[6] These procedural defects are not extant on record.

[7] *Rollo*, pp. 79-81.

[8] *Id*. at 80.

[9] *Id*. at 20.

[10] *Id*. at 213.

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

and to file the instant Amended Petition in behalf of petitioner. There must be a Resolution of the *Barangay* Council authorizing the person to make the Certification which must be *attached* to the Petition. Withal, the Verification and Certification Against Non-Forum Shopping must be accompanied by a *Barangay* Council's Resolution authorizing Isagani R. Bañez to sign the Certification. Moreover, a Certification not signed by a duly authorized person rendered the instant Petition subject to dismissal[;]

2. there was no competent evidence regarding the identity of petitioner's representative on the attached Verification and Certification Against Non-Forum Shopping, as required by *Section 12, Rule II* of the 2004 Rules on Notarial Practice; and

3. the Verification and Certification Against Non-Forum Shopping was subscribed and sworn to before an Assistant Provincial Prosecutor.

Accordingly, the [amended petition] for Annulment of Judgment dated June 18, 2007 is hereby DISMISSED.

SO ORDERED.[12] (Italics in the original)

Petitioner moved for reconsideration and, in order to rectify the above-identified infirmities, petitioner submitted the original of Barangay Council Resolution No. 50,[13] Series of 2011 dated December 26, 2011 authorizing then incumbent Punong Barangay Periander R. Bañez "to sign and file the [amended petition] and to sign its Certification and Verification of Non-Forum Shopping as well as to submit an original copy of this Resolution to [CA Cebu City]." Petitioner also submitted a Verification and Certification of Non-Forum Shopping subscribed and sworn by Punong Barangay Periander R. Bañez before the Clerk of Court of Regional Trial Court Branch 45.[14] As proof of identity, Punong Barangay Periander R. Bañez submitted his Postal I.D.[15] and his Community Tax Certificate.[16]

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[12] *Id*. at 30-32.

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

[14] *Id*. at 47.

[15] *Id*. at 49.

[16] *Id*. at 48.

The foregoing notwithstanding, the CA Cebu City in its second assailed Resolution denied petitioner's motion for reconsideration. With this denial, petitioner comes before the Court through the instant petition arguing that its amended petition did not suffer from procedural infirmities because it in fact submitted a certified true copy of the Barangay Council Resolution authorizing then Punong Barangay Isagani R. Bañez to file the amended petition; the latter's identity as duly authorized representative was sufficiently established considering that the members of the Barangay Council unanimously approved the Resolution; and that subscription before an Assistant Provincial Prosecutor is allowable.[17]

By way of comment, the Municipality of Kananga stressed that the belated submission of the Certification and Verification of Non-Forum Shopping will not cure the defect in the certification. Ormoc City, on the other hand, having assumed a stance similar to that of petitioner, joins the latter in seeking that the assailed CA Cebu City's Resolutions be reversed in the interest of justice. PNOC, as represented by the Office of the Solicitor General (OSG), on the other hand, was excused from further participating in the instant petition for lack of material interest to the case.

Plainly, the issue to be resolved is whether the identified infirmities merit dismissal of petitioner's amended petition.

The Ruling of the Court

There is merit in the petition.

Petitioner's amended petition seeking to annul what it perceived to be an illegal compromise concerning a boundary dispute between Ormoc City and the Municipality of Kananga was dismissed by the CA Cebu City essentially due to petitioner's failure to submit the original of the Barangay Council Resolution authorizing its representative to file the petition and to sign the requisite Certification and Verification of Non-forum Shopping. The CA Cebu City also deems as defective the

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

submitted Certification and Verification of Non-forum Shopping for lack of proof of identity of the affiant and for having been subscribed before an official allegedly not authorized to administer oath.

The Court is very much aware of the necessity of submitting a petition for annulment of judgment that is verified and of submitting a sworn certification of non-forum shopping as required under Rule 47, Section 4.[18] Nevertheless, the strict interpretation of the procedural requirements, especially when there has been substantial compliance with the rules, does not find application in the instant case.

To begin with, We note that the CA Cebu City itself in its Resolution dated June 18, 2010, had in fact reinstated and gave due course to the amended petition (which was initially dismissed also on procedural defects) and even directed the issuance of summons to the respondents, only to later on regard the very same amended petition as being fatally defective.

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[18] SECTION. 4. *Filing and contents of petition*.— The action shall be commenced by filing a verified petition alleging therein with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.

The petition shall be filed in seven (7) clearly legible copies, together with sufficient copies corresponding to the number of respondents. A certified true copy of the judgment or final order or resolution shall be attached to the original copy of the petition intended for the court and indicated as such by the petitioner.

The petitioner shall also submit together with the petition affidavits of witnesses or documents supporting the cause of action or defense and a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same, and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

Further, the amended petition was in fact accompanied by a certified true copy of the Barangay Resolution authorizing then Punong Barangay Isagani R. Bañez to file the amended petition. Hence, at the time the amended petition was filed, then Punong Barangay Isagani R. Bañez had sufficient authority to file the amended petition.

What is lacking, however, is the authority coming from the Barangay Council for Punong Barangay Isagani R. Bañez to likewise execute the Certification and Verification of Non-forum shopping. Expectedly, when the petitioner is a juridical person, the certification is to be executed by a natural person to whom the power to execute such certification has been validly conferred by the corporate board of directors and/or duly authorized officers and agents. Thus, generally, a petition is dismissible if the certification submitted was unaccompanied by proof of the signatory's authority.[19]

Petitioner attempted to cure this defect by submitting with its motion for reconsideration a new Barangay Council Resolution issued in favor of the succeeding Punong Barangay Periander R. Bañez and a new Certification and Verification of Non-forum Shopping executed by the latter before the Regional Trial Court Branch Clerk of Court with accompanying Postal I.D. as competent proof of identity. The question therefore is whether such belated submission of the Barangay Council Resolution and the Certification and Verification of Non-forum Shopping cured the defect.

The Court had laid down guidelines with respect to the non-compliance with the requirements on or submission of a defective Verification and Certification of Non-forum Shopping, as follows:

1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and noncompliance with the requirement on or submission of defective certification against forum shopping.

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[19] *Shipside Incorporated v. Court of Appeals*, 404 Phil. 981-995 (2001).

2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. **The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.**

3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, **unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf.[20] (Emphasis ours)

By jurisprudence, the Court has likewise allowed the belated filing of the certification on the justification that such act constitutes substantial compliance. In *Mediserv, Inc. v. Court of Appeals, et al.*,[21] the Court held that the failure to submit proof of the representative's authority to sign the verification/

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[20] *Fernandez v. Villegas*, 741 Phil. 689, 697-698 (2014); *Ingles, et al. v. Estrada, et al.*, 708 Phil. 271, 302-303 (2013), citing *Altres, et al. v. Empleo, et al.*, 594 Phil. 246, 261-262 (2008).

[21] 631 Phil. 282 (2010).

certification on non-forum shopping on the corporation's behalf was rectified when the required document was subsequently submitted to the CA. As cited in *Mediserv*, the *Court in Uy v. Land Bank of the Philippines*,[22] reinstated a petition on the ground of substantial compliance even though the verification and certification were submitted only after the petition had already been originally dismissed. So too, in *Havtor Management Phils. Inc. v. NLRC*,[23] likewise cited in *Mediserv*, the Court acknowledged substantial compliance when the lacking secretary's certificate was submitted by the petitioners as an attachment to the motion for reconsideration seeking reversal of the original decision dismissing the petition for its earlier failure to submit such requirement.

In this case, petitioner submitted the original of the Barangay Council Resolution authorizing the succeeding Punong Barangay Periander R. Bañez to file the amended petition and to sign the certification as an attachment to its motion for reconsideration. In line with the foregoing jurisprudence, We find that this act constitutes substantial compliance. That the Barangay Council Resolution authorized a different representative to file and pursue the petition for annulment and to sign the certification could not be cause for the denial of the motion for reconsideration as such was necessitated by the fact that there was a change in the leadership of the Barangay brought about by the supervening elections while the amended petition was pending resolution.

In any case, the Court finds that the ends of substantive justice is better served by the resolution of the issue on whether or not there was a valid compromise concerning the boundary dispute between Ormoc City and the Municipality of Kananga, rather than dismiss the same on procedural technicality.

As the Court in *Fernandez v. Villegas*[24] held:

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[22] 391 Phil. 303 (2000).

[23] 423 Phil. 509, 513 (2001).

[24] *Supra* note 20 at 700.

Similar to the rules on verification, the rules on forum shopping are designed to promote and facilitate the orderly administration of justice; hence, it should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objectives. The requirement of strict compliance with the provisions on certification against forum shopping merely underscores its mandatory nature to the effect that the certification cannot altogether be dispensed with or its requirements completely disregarded. It does not prohibit substantial compliance with the rules under justifiable circumstances, as also in this case.

WHEREFORE, the petition is **GRANTED**. The Resolution dated November 24, 2011 and Resolution dated September 27, 2012 of the Court of Appeals in CA-G.R. CEB SP No. 02691 are **REVERSED** and **SET ASIDE**. The case is **REINSTATED** and **REMANDED** to the Court of Appeals for proper disposition.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 205925. June 20, 2018]

BASES CONVERSION AND DEVELOPMENT AUTHORITY, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; LEGAL FEES; GOVERNMENT EXEMPT; BASES CONVERSION AND

[**] Designated as Acting Member pursuant to Special Order No. 2560 dated May 11, 2018.

DEVELOPMENT AUTHORITY (BCDA) IS A GOVERNMENT INSTRUMENTALITY EXEMPT FROM THE PAYMENT OF DOCKET FEES.— At the crux of the present petition is the issue of whether or not BCDA is a government instrumentality or a government-owned and – controlled corporation (GOCC). If it is an instrumentality, it is exempt from the payment of docket fees. lf it is a GOCC, it is not exempt and as such non-payment thereof would mean that the tax court did not acquire jurisdiction over the case and properly dismissed it for BCDA's failure to settle the fees on time. BCDA is a government instrumentality vested with corporate powers. As such, it is exempt from the payment of docket fees required under Section 21, Rule 141 of the Rules or Court. x x x [A] government instrumentality may be endowed with corporate powers and at the same time retain its classification as a government "instrumentality" for all other purposes.

2. **MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; STOCK CORPORATION; DEFINED AS ONE WHOSE CAPITAL STOCK IS DIVIDED INTO SHARES AND AUTHORIZED TO DISTRIBUTE TO THE HOLDERS OF SUCH SHARES DIVIDENDS; BCDA IS NOT A STOCK CORPORATION, THUS CANNOT QUALIFY AS A GOVERNMENT-OWNED OR CONTROLLED CORPORATION.—** [I]n order to qualify as a GOCC, one must be organized either as a stock or non-stock corporation. Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x.'' [I]t is clear that BCDA has an authorized capital of Php100 Billion, however, it is not divided into shares of stock. BCDA has no voting shares. There is likewise no provision which authorizes the distribution of dividends and allotments of surplus and profits to BCDA's stockholders. Hence, BCDA is not a stock corporation. Section 8 of R.A. No. 7227 provides an enumeration of BCDA's purposes and their corresponding percentage shares in the sales proceeds of BCDA. Section 8 likewise states that after distribution of the proceeds acquired from BCDA's activities, the balance, if any, shall accrue and be remitted to the National Treasury. x x x The National Treasury is not a stockholder of BCDA. Hence, none of the proceeds from BCDA's activities will be allotted to its stockholders.

3. ID.; ID.; ID.; NON-STOCK CORPORATION; BCDA DOES NOT QUALIFY AS ONE BECAUSE IT IS ORGANIZED FOR A SPECIFIC PURPOSE- TO OWN, HOLD AND/OR ADMINISTER THE MILITARY RESERVATIONS IN THE COUNTRY AND IMPLEMENT ITS CONVERSION TO OTHER PRODUCTIVE USES.— BCDA also does not qualify as a non-stock corporation because it is not organized for any of the purposes mentioned under Section 88 of the Corporation Code, to wit: **Sec. 88.** *Purposes*.— Non-stock corporations may be formed or organized tor charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade industry, agricultural and like chambers, or any combination thereof: subject to the special provisions of this Title governing particular classes of non-stock corporations. A cursory reading of Section 4 of R.A. No. 7227 shows that BCDA is organized for a specific purpose — to own, hold and/or administer the military reservations in the country and implement its conversion to other productive uses.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, JR., *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision[2] dated August 29, 2012 and Resolution[3] dated February 12, 2013 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 797, which affirmed the CTA First Division's dismissal of the case filed by herein petitioner Bases Conversion and

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[1] *Rollo*, pp. 3-28.

[2] Penned by Associate Justice Amelia R. Cotangco-Manalastas; *id.* at 33-41.

[3] *Id.* at 43-45.

Development Authority (BCDA) on the ground that the latter failed to pay docket fees as required under Rule 141 of the Rules of Court.

The Facts

The facts, as summarized by the CTA *En Banc*, read as follows:

On October 8, 2010, BCDA filed a petition for review with the CTA in order to preserve its right to pursue its claim for refund of the Creditable Withholding Tax (CWT) in the amount of Php122,079,442.53, which was paid under protest from March 19, 2008 to October 8, 2008. The CWT which BCDA paid under protest was in connection with its sale of the BCDA-allocated units as its share in the Serendra Project pursuant to the Joint Development Agreement with Ayala Land, Inc.[4]

The petition for review was filed with a Request for Exemption from the Payment of Filing Fees in the amount of Php1,209,457.90.[5]

On October 20, 2010, the CTA First Division denied BCDA's Request for Exemption and ordered it to pay the filing fees within five days from notice.[6]

BCDA moved for reconsideration which was denied by the CTA First Division on February 8, 2011. BCDA was once again ordered to pay the filing fees within five days from notice, otherwise, the petition for review will be dismissed.[7]

BCDA filed a petition for review with the CTA *En Banc* on February 25, 2011, which petition was returned and not deemed filed without the payment of the correct legal fees. BCDA once again emphasized its position that it is exempt from the payment of such fees.[8]

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[4] *Id.* at 34.

[5] *Id.*

[6] *Id.*

[7] *Id.* at 35.

[8] *Id.*

On March 28, 2011, the petition before the CTA First Division was dismissed. BCDA attempted to tile its Motion for Reconsideration, however, the Officer-In-Charge of the First Division refused to receive the checks for the payment of the filing fees, and the Motion for Reconsideration. BCDA then filed its Motion for Reconsideration by registered mail.[9]

Subsequently, BCDA filed a manifestation stating the incidents relating to the filing of its Motion for Reconsideration. The CTA First Division, on April 26, 2011, issued its Resolution,[10] the dispositive portion of which states:

> WHEREFORE, finding no reason to deny receipt of the supposed Motion for Reconsideration of the [BCDA] on the dismissal of its Petition for Review, the Executive Clerk of Court III of this Division, Atty. Margarette Y. Guzman, is hereby DIRECTED to allow petitioner BCDA to file the same, or to accept said pleading which was allegedly mailed through registered mail, upon receipt thereof, and to commence the procedure in paying the prescribed docket fees, subject to the caveat herein stated, should petitioner BCDA decide to pursue its case.
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> SO ORDERED.[11]

On May 17, 2011, BCDA moved for reconsideration of the Resolution dated April 26, 2011 and prayed that it be allowed to pay the prescribed docket fees of Php1,209,457.90 without qualification. On June 9, 2011, the CTA First Division denied both motions for reconsideration.[12]

On June 28, 2011, BCDA filed a petition for review with the CTA *En Banc* but the same was dismissed. In its assailed Decision[13] dated August 29, 2012, it adopted and affirmed the findings of the First Division, to wit:

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[9] *Id*.

[10] *Id.*

[11] *Id*.

[12] *Id*.

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

BCDA fails to raise any new and substantial arguments, and no cogent reason exists to warrant a consideration of the Court's Resolution dated March 28, 2011 dismissing its Petition for Review.

It must be emphasized that payment in full of docket fees within the prescribed period is mandatory. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal had been filed. To repeat, in both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.

In this case, due to BCDA's non-payment of the prescribed legal fees within the prescribed period, this Court has not acquired jurisdiction over the case. Consequently, it is as if no appeal was ever filed with this Court.[14]

Undeterred, BCDA filed a Motion[15] for Reconsideration but was likewise denied by the CTA *En Banc* in the assailed Resolution[16] dated February 12, 2013.

Hence, this petition.

The Issues

I.

THE CTA *EN BANC* ERRED IN AFFIRMING THE CTA FIRST DIVISION'S RULING THAT BCDA IS NOT A GOVERNMENT INSTRUMENTALITY, HENCE, NOT EXEMPT FROM PAYMENT OF LEGAL FEES.

II.

THE CTA *EN BANC* ERRED IN AFFIRMING CTA FIRST DIVISION'S RESOLUTION DISMISSING BCDA'S PETITION FOR REVIEW FOR NON-PAYMENT OF THE PRESCRIBED LEGAL FEES WITHIN THE REGLEMENTARY PERIOD.

Ruling of the Court

The petition is impressed with merit.

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

[15] *Id*. at 138-162.

[16] *Id*. at 43-45.

BCDA is a government instrumentality vested with corporate powers. As such, it is exempt from the payment of docket fees.

At the crux of the present petition is the issue of whether or not BCDA is a government instrumentality or a government-owned and — controlled corporation (GOCC). If it is an instrumentality, it is exempt from the payment of docket fees. lf it is a GOCC, it is not exempt and as such non-payment thereof would mean that the tax court did not acquire jurisdiction over the case and properly dismissed it for BCDA's failure to settle the fees on time.

BCDA is a government instrumentality vested with corporate powers. As such, it is exempt from the payment of docket fees required under Section 21, Rule 141 of the Rules or Court, to wit:

RULE 14
LEGAL FEES

SEC. 1. *Payment of fees*. — Upon the filing of the pleading or other application which initiates an action or proceeding, the fees prescribed therefor shall be paid in full.

x x x x x x x x x

SEC. 21. *Government exempt.* — **The Republic of the Philippines, its agencies and instrumentalities, are exempt from paying the legal fees provided in this rule.** Local governments and government-owned or controlled corporations with or without independent charters are not exempt from paying such fees. (Emphasis Ours)

Section 2(10) and (13) of the Introductory Provisions of the Administrative Code of 1987 provides for the definition of a government "instrumentality" and a "GOCC", to wit:

SEC. 2. *General Terms Defined.* x x x x

(10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, **endowed with some if not all corporate powers**, administering special funds, and enjoying operational autonomy, usually through a charter. x x x.

x x x x x x x x x

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) percent of its capital stock: x x x. (Emphasis Ours)

The grant of these corporate powers is likewise stated in Section 3 of Republic Act (R.A.) No. 7227, also known as The Bases Conversion and Development Act of 1992 which provides for BCDA's manner of creation, to wit:

Sec. 3. *Creation of the Bases Conversion and Development Authority*. — There is hereby created a body corporate to be known as the Bases Conversion and Development Authority, which shall have the attribute of perpetual succession and **shall be vested with the powers of a corporation**. (Emphasis Ours)

From the foregoing, it is clear that a government instrumentality may be endowed with corporate powers and at the same time retain its classification as a government "instrumentality" for all other purposes.

In the 2006 case of *Manila International Airport Authority v. CA*,[17] the Court, speaking through Associate Justice Antonio T. Carpio, explained in this wise:

Many government instrumentalities are vested with corporate powers but they do not become stock or non-stock corporations, which is a necessary condition before an agency or instrumentality is deemed a [GOCC]. Examples are the Mactan International Airport Authority, the Philippine Ports Authority, the University of the Philippines and *Bangko Sentral ng Pilipinas*. All these government instrumentalities exercise corporate powers but they are not organized as stock or non-stock corporations as required by Section 2 (13) of the Introductory Provisions of the Administrative Code. These government instrumentalities are sometimes loosely called government corporate entities. However, they are not [GOCCs] in the strict sense as

[17] 528 Phil. 181 (2006).

understood under the Administrative Code, which is the governing law defining the legal relationship or status of government entities.[18]

Moreover, in the 2007 case of *Philippine Fisheries Development Authority v. CA*,[19] the Court reiterated that a government instrumentality retains its classification as such *albeit* having been endowed with some if not all corporate powers. The relevant portion of said decision reads as follows:

> Indeed, the Authority is not a GOCC but an instrumentality of the government. The Authority has a capital stock but it is not divided into shares of stocks. Also, it has no stockholders or voting shares. Hence, it is not a stock corporation. Neither is it a non-stock corporation because it has no members.
>
> The Authority is actually a national government instrumentality which is define as an agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds and enjoying operational autonomy, usually through a charter. When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.[20]

As previously mentioned, in order to qualify as a GOCC, one must be organized either as a stock or non-stock corporation. Section 3[21] of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and x x x authorized to distribute to the holders of such shares dividends x x x."

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[18] *Id.* at 213.

[19] 555 Phil. 661 (2007).

[20] *Id.* at 669-670.

[21] **Sec. 3.** *Classes of corporations.* — Corporations formed or organized under this Code may be stock or non-stock corporations. Corporations which have capital stock divided into shares and are authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held are stock corporations. All other corporations are non-stock corporations.

Section 6 of R.A. No. 7227 provides for BCDA's capitalization, to wit:

> Sec. 6. *Capitalization*. — The Conversion Authority shall have an authorized capital of One hundred billion pesos (₱100,000,000,000.00) which may be fully subscribed by the Republic of the Philippines and shall either be paid up from the proceeds of the sales of its land assets as provided for in Section 8 of this Act or by transferring to the Conversion Authority properties valued in such amount.
>
> An initial operating capital in the amount of seventy million pesos (₱70,000,000.00) is hereby authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated which shall be covered by preferred shares of the Conversion Authority retireable within two (2) years.

Based on the foregoing, it is clear that BCDA has an authorized capital of Php100 Billion, however, it is not divided into shares of stock. BCDA has no voting shares. There is likewise no provision which authorizes the distribution of dividends and allotments of surplus and profits to BCDA's stockholders. Hence, BCDA is not a stock corporation.

Section 8 of R.A. No. 7227 provides an enumeration of BCDA's purposes and their corresponding percentage shares in the sales proceeds of BCDA. Section 8 likewise states that after distribution of the proceeds acquired from BCDA's activities, the balance, if any, shall accrue and be remitted to the National Treasury, to wit:

> **Sec. 8.** *Funding Scheme*.— The capital of the Conversion Authority shall come from the sales proceeds and/or transfers of certain Metro Manila military camps, including all lands covered by Proclamation No. 423, series of 1957, commonly known as Fort Bonifacio and Villamor (Nicholas) Air Base x x x.
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> x 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), Sec. 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. The Conversion Authority shall provide the President a report on any such disposition or plan for disposition within one (1) month from such disposition or preparation of such plan. **The proceeds from any sale**, after deducting all expenses related to the sale, of portions of Metro Manila military camps as authorized under this Act, **shall be used for the following purposes with their corresponding percent shares of proceeds:**

(1) Thirty-two and five-tenths percent (35.5%) — To finance the transfer of the AFP military camps and the construction of new camps, the self-reliance and modernization program of the AFP, the concessional and long-term housing loan assistance and livelihood assistance to AFP officers and enlisted men and their families, and the rehabilitation and expansion of the AFP's medical facilities;

(2) Fifty percent (50%) — To finance the conversion and the commercial uses of the Clark and subic military reservations and their extentions;

(3) Five Percent (5%) — To finance the concessional and long-term housing loan assistance for the homeless of Metro Manila, Olongapo City, Angeles City and other affected municipalities contiguous to the base areas as mandated herein: and

(4) **The balance shall accrue and be remitted to the National Treasury** to be appropriated thereafter by Congress for the sole purpose of financing programs and projects vital for the economic upliftment of the Filipino people. (Emphasis Ours)

The remaining balance, if any, from the proceeds of BCDA's activities shall be remitted to the National Treasury. The National Treasury is not a stockholder of BCDA. Hence, none of the proceeds from BCDA's activities will be allotted to its stockholders.

BCDA also does not qualify as a non-stock corporation because it is not organized for any of the purposes mentioned under Section 88 of the Corporation Code, to wit:

Sec. 88. *Purposes*. — Non-stock corporations may be formed or organized for charitable, religious, educational, professional, cultural,

fraternal, literary, scientific, social, civic service, or similar purposes, like trade industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of non-stock corporations.

A cursory reading of Section 4 of R.A. No. 7227 shows that BCDA is organized for a specific purpose — to own, hold and/or administer the military reservations in the country and implement its conversion to other productive uses, to wit:

Sec. 4. *Purposes of the Conversion Authority.* — The Conversion Authority shall have the following purposes:

(a) **To own, hold and/or administer the military reservations** of John Hay Air Station, Wallace Air Station, O'Donnell Transmitter Station, San Miguel Naval Communications Station. Mt. Sta. Rita Station (Hermosa, Bataan) and those portions of Metro Manila military camps which may be transferred to it by the President:

(b) **To adopt, prepare and implement a comprehensive and detailed development plan** embodying a list of projects including but not limited to those provided in the Legislative-Executive Bases Council (LEBC) framework plan **for the sound and balanced conversion of the Clark and Subic military reservations and their extensions** consistent with ecological and environmental standards, into other productive uses to promote the economic and social development of Central Luzon in particular and the country in general;

(c) **To encourage the active participation of the private sector in transforming the Clark and Subic military reservations and their extensions into other productive uses**;

(d) **To serve as the holding company of subsidiary companies** created pursuant to Section 16 of this Act and to invest in Special Economic Zones declared under Sections 12 and 15 of this Act;

(e) **To manage and operate through private sector companies developmental projects** outside the jurisdiction of subsidiary companies and Special Economic Zones declared by presidential proclamations and established under this Act;

(f) **To establish a mechanism in coordination with the appropriate local government units to effect meaningful consultation regarding the plans, programs and projects within the regions** where such plans, programs and/or project development are part of the conversion

of the Clark and Subic military reservations and their extensions and the surrounding communities as envisioned in this Act; and

(g) **To plan, program and undertake the readjustment, relocation, or resettlement of population within the Clark and Subic military reservations and their extensions** as may be deemed necessary and beneficial by the Conversion Authority, in coordination with the appropriate government agencies and local government units. (Emphases Ours)

From the foregoing, it is clear that BCDA is neither a stock nor a non-stock corporation. BCDA is a government instrumentality vested with corporate powers. Under Section 21,[22] Rule 141 of the Rules of Court, agencies and instrumentalities of the Republic of the Philippines are exempt from paying legal or docket fees. Hence, BCDA is exempt from the payment of docket fees.

WHEREFORE, premises considered, the present petition is **GRANTED**. The Decision dated August 29, 2012 and Resolution dated February 12, 2013 of the CTA *En Banc* are hereby **REVERSED** and **SET ASIDE**.

Let this case be remanded to the Court of Tax Appeals for further proceedings regarding Bases Conversion and Development Authority's claim for refund of the Creditable Withholding Tax (CWT) in the amount of ₱122,079,442.53 which the latter paid under protest from March 19, 2008 to October 8, 2008.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta, Perlas-Bernabe*, and *Caguioa, JJ.,* concur.

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[22] **SEC. 21.** *Government exempt.* — The Republic of the Philippines, its agencies and instrumentalities, are exempt from paying legal fees provided in this rule. Local governments and government-owned or controlled corporations with or without independent charters are not exempt from paying such fees.

SECOND DIVISION

[G.R. No. 212156. June 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERRY AGRAMON,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FINDINGS OF FACT OF THE TRIAL COURTS ARE GENERALLY ACCORDED GREAT WEIGHT; EXCEPTION.— It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result. This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors. 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; REVISED PENAL CODE; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN PRESENT.— There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.

3. ID.; ID.; ID.; ID.; CANNOT BE APPRECIATED SIMPLY BECAUSE THE ATTACK IS SUDDEN AND UNEXPECTED, OR THE FACT THAT A BLADED WEAPON WAS USED

DOES NOT *PER SE* MAKE THE ATTACK TREACHEROUS. — [J]urisprudence has set that treachery cannot be appreciated simply because the attack was sudden and unexpected. There must be proof that the accused intentionally sought the victim for the purpose of killing him or that [the] accused carefully and deliberately planned the killing in a manner that would ensure his safety and success. Also, the fact that a bladed weapon was used did not *per se* make the attack treacherous. And even if it was shown that the attack was intended to kill another, as long as the victim's position was merely accidental, *alevosia* will not qualify the offense.

4. ID.; ID.; ID.; EVIDENT PREMEDITATION; TO BE APPRECIATED, IT IS INDISPENSABLE TO SHOW CONCRETE EVIDENCE ON HOW AND WHEN THE PLAN TO KILL WAS HATCHED OR HOW MUCH TIME HAD ELAPSED BEFORE IT WAS CARRIED OUT.— Time and again, this Court has ruled that mere lapse of time is insufficient to establish evident premeditation. For evident premeditation to be appreciated, it is indispensable to show concrete evidence on how and when the plan to kill was hatched or how much time had elapsed before it was carried out. In this case, evident premeditation was not established because the prosecution's evidence was limited to what transpired at 6:00 in the evening of December 24, 2005, when Gerry came to his brother's house yelling and threatening to kill them all. The prosecution, however, did not present any proof showing when and how Gerry planned and prepared to kill Pelita. Also, the mere fact that the accused was armed at the beginning of the altercation does not unequivocally establish that he earlier devised a deliberate plot to murder the victim. To qualify an offense, the circumstance must not merely be "premeditation" but must be "evident premeditation." Hence, absent a clear and positive proof of the overt act of planning the crime, mere presumptions and inferences thereon, no matter how logical and probable, would not be enough. Evident premeditation cannot be appreciated to qualify the offense in this case.

5. ID.; ID.; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— An accused who pleads self-defense admits to the commission of the crime charged. He has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression

on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. All three, including unlawful aggression, are indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person." Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.

6. ID.; ID.; HOMICIDE; PENALTY AND CASE AT BAR.— Under Article 249 of the Revised Penal Code, Homicide is punishable by *reclusion temporal*; and considering that there are no aggravating nor mitigating circumstances in this case, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years. Thus, the accused-appellant shall 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.

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.*:

On appeal is the Decision[1] dated October 30, 2013 of the Court of Appeals (CA), Special Twentieth Division in CA-G.R. CR-HC No. 00982, which affirmed with modification, the Decision[2] dated December 8, 2008 of the Regional Trial Court (RTC), Branch 13, Carigara, Leyte, in Criminal Case No. 4625.

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[1] CA *rollo*, pp. 72-93. Penned by Associate Justice Carmelita Salandanan-Manahan, with Associate Justices Ramon Paul L. Hernando and Gabriel T. Ingles, concurring.

[2] *Id.* at 27-38. Penned by Presiding Judge Crisostomo L. Garrido.

The Facts

In an Information[3] filed with the RTC, accused-appellant Gerry Agramon (Gerry) was charged with Murder, the accusatory portion of which reads:

> That on or about the 24th day of December, in the Municipality of San Miguel, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and stab one PELITA ABOGANDA, with the use of a short bladed weapon (pisao) which the accused had provided himself for the purpose, thereby inflicting upon the latter the following wounds, to wit:
>
> WOUNDS:
>
> 1. Stab wound anterior chest, 3.0 cm above left nipple, 8.0 cm from midsternal line at the level of the 3rd left intercostal space
> length— 1.7 cm.
> Depth — 6.0 cm
>
> Directed posteriorly perforating ascending aorta
>
> 2. Incised wound elbow left lateral aspect
> Length—5.0 cm
> Depth—3.0 cm
>
> CONCLUSION:
> Cause of death was massive hemmorrage (*sic*) secondary to the stab wound in the chest. Weapon most probably use (*sic*) was a small sharp bladed pointed instrument.
>
> which wound caused the death of said PELITA ABOGANDA.
>
> CONTRARY TO LAW.
>
> Carigara, Leyte, January 20, 2006.[4]

Upon his arraignment, Gerry pleaded not guilty to the charge.[5]

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[3] Records, pp. 1-2.

[4] *Id.* at 1.

[5] CA *rollo*, p. 74.

Thereafter, trial on the merits ensued.[6] The prosecution presented Roger Agramon (Roger), Dr. Federico De Veyra, Jr. (Dr. Federico), the Municipal Health Officer of San Miguel, Leyte, PO2 Jessefesto Quintana and PO1 Niño Gervacio, as witnesses, who testified to the following facts:

On December 24, 2005, at about 6:00 in the evening, Roger, who just came from the farm, was sitting inside his dwelling with Pelita Aboganda (Pelita), his common-law wife, in Brgy. Kinalumsan, San Miguel, Leyte when his brother, Gerry, who appeared to be drunk, came to their dwelling yelling "I will kill you all." Gerry entered the house armed with an unsheathed bladed weapon and delivered a stab thrust against Roger, who was able to hold the weapon with his hand causing him to sustain four (4) wounds.[7] Pelita, Roger's common law wife, who was then two (2) months pregnant, tried to cover Roger in order not to be hit again.[8] Pelita was stabbed by Gerry on her left breast. When Roger was about to run, Gerry stabbed him and the weapon got stuck at his back.[9] Gerry searched for another weapon inside the house and when the former saw the long bolo, he chased Roger who ran towards the barangay hall.[10]

Upon reaching the barangay hall, Roger sought help from the barangay officials who were then celebrating their Christmas party. Gerry arrived at the barangay hall brandishing his weapon and roaming around the area. The barangay officials were not able to pacify him, so they asked help from the police officials of San Miguel, Leyte. When the police arrived, they arrested Gerry.[11]

Pelita died, while Roger was taken to the Eastern Visayas Regional Medical Center for treatment.[12]

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[6] *Id*.

[7] *Id*. at 75.

[8] *Id*. at 28.

[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*.

The postmortem report of Dr. Federico showed that Pelita suffered one (1) stab wound in the chest and one (1) incised wound in the elbow; and died due to the massive hemorrhage secondary to the stab wound in the chest.[13]

Gerry, on the other hand, interposed self-defense.[14] He asserted that on December 24, 2005, in the morning, he was all alone at Sitio Bangon, Brgy. Kinalumsan, San Miguel, Leyte, gathering *tuba* as his primary job. On that day, while he was on his way to work, he was chased by his brother Roger, who was then holding a long bolo. Roger was allegedly mad at him because his three (3) pigs destroyed Roger's plants the previous day. When he saw his brother chasing him, Gerry ran towards the direction of his house and rested there for a while before going back to work.[15]

After work, as Gerry was on his way home at around 6:00 in the evening, Roger accosted him and immediately delivered a hacking blow at him. Gerry was not hit as he was able to jump to a tree. Gerry then stabbed Roger with the scythe he was carrying for work. He tried to stab Roger again, but he was unable to hit him as Roger's wife, Pelita, came to his defense and used her body as a shield to protect Roger. Gerry then stepped back and was not able to go near the victims as his uncle held him and brought him to their residence.[16]

RTC Ruling

In a Decision[17] dated December 8, 2008, the RTC gave full faith and credit to the version of the prosecution and found Gerry guilty beyond reasonable doubt of the crime of Murder. The RTC held that the number and nature of the wounds inflicted upon the victim disproves Gerry's claim of self-defense.[18]

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[13] *Id*. at 76.

[14] *Id*. at 77.

[15] *Id*. at 77-78.

[16] *Id.* at 78.

[17] *Id*. at 27-38.

[18] *Id*. at 34.

The RTC further ruled that the number and location of the wounds of the victims as compared to the unscathed accused was indicative of the treacherous execution of the crime, with the victims having no opportunity to defend themselves. The RTC also declared that evident premeditation was apparent from the fact that the accused was armed with two (2) scythes at the time of the incident and several hours had already lapsed from morning to 6:00 in the evening for him to reflect on his intentions to commit the crime.[19]

The RTC sentenced Gerry to suffer the maximum penalty of *reclusion perpetua* and to pay civil indemnity in the amount of ₱50,000.00 and moral damages in the amount of ₱50,000.00 to the heirs of the victim, Pelita.[20]

CA Ruling

In the assailed Decision,[21] the CA denied the appeal and affirmed with modification the ruling of the RTC.

The CA agreed with the RTC that Gerry failed to prove self-defense because the element of unlawful aggression is explicitly wanting.[22] However, as regards the qualifying circumstances of treachery and evident premeditation, the CA found that only evident premeditation was clearly established.[23] The CA held that treachery cannot be appreciated because the attack on Pelita was not sudden and unexpected as Roger and Pelita were aware of the imminent danger to their lives[24]

The CA found Gerry guilty of Murder and sentenced him to *reclusion perpetua*, without eligibility for parole. The CA further ordered Gerry to pay the heirs of Pelita the amounts of:

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

[20] *Id*. at 38.

[21] *Id*. at 72-93.

[22] *Id*. at 82.

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

[24] *Id*. at 87.

(1) ₱75,000.00 as civil indemnity, (2) ₱50,000.00 as moral damages, (3) ₱30,000.00 as exemplary damages and (4) ₱25,000.00 as temperate damages, plus interest on all damages awarded at the rate of six percent (6%) per annum from date of finality of judgment until fully paid.[25]

Hence, this appeal.[26]

Issue

Whether the CA erred in affirming Gerry's conviction for Murder despite the fact that the prosecution failed to establish his guilt for Murder beyond reasonable doubt.

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.[27] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.[28] 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.[29]

In the instant case, Gerry was charged with Murder, qualified by treachery and evident premeditation. The RTC found that both qualifying circumstances attended the killing of Pelita;

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[25] *Id*. at 92.

[26] *Id*. at 94-95.

[27] *People v. Duran, Jr.*, G.R. No. 215748, November 20, 2017, p. 14.

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

[29] *Ramos v. People*, G.R. Nos. 218466 & 221425, January 23, 2017, 815 SCRA 226, 233.

while the CA found that only the qualifying circumstance of evident premeditation was established.

After a careful review and scrutiny of the records, the Court holds that Gerry can only be convicted of Homicide, not Murder.

Treachery and evident premeditation were not established beyond reasonable doubt.

It is established that qualifying circumstances must be proved with the same quantum of evidence as the crime itself, that is, beyond reasonable doubt.[30] Thus, for Gerry to be convicted of Murder, the prosecution must not only establish that he killed Pelita; it must also prove, beyond reasonable doubt, that the killing of Pelita was attended by treachery or evident premeditation.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[31]

The Court agrees with the CA that the prosecution fell short of proving that Gerry consciously and deliberately adopted means which would ensure that Pelita could not defend herself or seek help. As aptly noted by the CA, Pelita was forewarned of the impending danger to her life.

In this case, the fact that accused-appellant came yelling and threatening his brother Roger and his family prior to the attack shows

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[30] *People v. Biso*, 448 Phil. 591, 601-602 (2003).

[31] *People v. Duran, Jr.*, *supra* note 27, at 11, citing *People v. Dulin*, 762 Phil. 24, 40 (2015).

that there was no treachery, and that the latter were aware of the imminent danger to their lives. Certainly, Roger knew that the fight with his brother/accused-appellant, could lead to greater physical harm. The existence of a struggle before the attack on the victim Pelita clearly shows that she was forewarned of the impending attack, and that she was afforded the opportunity to put up a defense.[32]

The prosecution also did not prove that Gerry intentionally sought Pelita for the purpose of killing her. In fact, Roger, on cross-examination, admitted that after Gerry delivered a stab thrust towards him, Pelita used herself as a shield to protect him from being hit again.[33] Indeed, jurisprudence has set that treachery cannot be appreciated simply because the attack was sudden and unexpected. There must be proof that the accused intentionally sought the victim for the purpose of killing him or that accused carefully and deliberately planned the killing in a manner that would ensure his safety and success.[34] Also, the fact that a bladed weapon was used did not *per se* make the attack treacherous.[35] And even if it was shown that the attack was intended to kill another, as long as the victim's position was merely accidental, *alevosia* will not qualify the offense.[36]

However, with respect to the qualifying circumstance of evident premeditation, the Court cannot agree with the CA. The CA found that evident premeditation attended the killing of Pelita because of the lapse of time from the alleged intercalation between Gerry and Roger in the morning and the time when the criminal act was executed.[37] Time and again, this Court has ruled that mere lapse of time is insufficient to establish evident premeditation.[38] For evident premeditation to be appreciated,

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[32] CA *rollo*, pp. 87-88.

[33] *Id*. at 85.

[34] *People v. Duran, Jr.*, *supra* note 27, at 13.

[35] *People v. Ayupan*, 427 Phil. 200, 220 (2002).

[36] See *Cirera v. People*, 739 Phil. 25, 45 (2014).

[37] CA *rollo*, p. 89.

[38] *People v. Nell*, 341 Phil. 20, 33-34 (1997).

it is indispensable to show concrete evidence on how and when the plan to kill was hatched or how much time had elapsed before it was carried out.[39]

In this case, evident premeditation was not established because the prosecution's evidence was limited to what transpired at 6:00 in the evening of December 24, 2005, when Gerry came to his brother's house yelling and threatening to kill them all. The prosecution, however, did not present any proof showing when and how Gerry planned and prepared to kill Pelita. Also, the mere fact that the accused was armed at the beginning of the altercation does not unequivocally establish that he earlier devised a deliberate plot to murder the victim.[40] To qualify an offense, the circumstance must not merely be "premeditation" but must be "evident premeditation."[41] Hence, absent a clear and positive proof of the overt act of planning the crime, mere presumptions and inferences thereon, no matter how logical and probable, would not be enough.[42] Evident premeditation cannot be appreciated to qualify the offense in this case.

The accused failed to prove self-defense.

An accused who pleads self-defense admits to the commission of the crime charged.[43] He has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[44] All three, including unlawful aggression, are indispensable.

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[39] See *People v. Biso, supra* note 30, at 602.

[40] *Dorado v. People*, 796 Phil. 233, 255 (2016).

[41] *People v. Ordona*, G.R. No. 227863, September 20, 2017, p. 7, citing *People v. Abadies*, 436 Phil. 98, 106 (2002).

[42] *People v. Almendras*, 423 Phil. 1035, 1044-1045 (2001).

[43] *People v. Duran, Jr.*, *supra* note 27, at 5.

[44] *Guevarra v. People*, 726 Phil. 183, 194 (2014).

Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person."[45] Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.[46]

In this case, the Court agrees with the CA that Gerry failed to discharge his burden. As aptly noted by the CA, Gerry's claim of self-defense is highly improbable because no unlawful aggression can be attributed to the victim Pelita, nor to her husband, Roger; and that even if Gerry's narration of events is to be believed, it is difficult to imagine why Gerry was unharmed during the incident, while Pelita died and Roger was taken to the hospital for treatment:

> In the instant case, the first requisite of self-defense is explicitly wanting. Records show no unlawful aggression on the part of the victim Pelita, nor from his husband, Roger Agramon. The unlawful aggression did not originate from the victim or her husband but from accused-appellant himself. It was accused-appellant who went to the house of the victim yelling and threatening to kill all of Roger's family. He immediately veered inside the house, thrusting his weapons, first upon Roger Agramon, and thereafter to the victim Pelita. Hence, no self-defense can be appreciated to justify accused-appellant's acts.
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> x x x x x x x x x
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> The fact that accused-appellant did not sustain any injury or even minor scratches make[s] his invocation of self-defense strikingly suspicious. Also, granting his version of the story was true, it still defies logic why he had to stab Roger twice, and eventually hit the latter's common-law wife, Pelita. If his claim was true, one (1) stab would be enough to defend himself from the alleged and unproven unlawful aggression. He could have just run away after one (1) thrust. In fact, he stabbed Roger once again hitting the latter's wife, the victim in the instant case.[47]

All told, the Court finds the prosecution's evidence sorely lacking to establish self-defense.

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[45] *People v. Dolorido*, 654 Phil. 467, 475 (2011).

[46] *Nacnac v. People*, 685 Phil. 223, 229 (2012).

[47] CA *rollo*, pp. 82-86.

Proper penalty and award of damages.

With the removal of the qualifying circumstances of treachery and evident premeditation, the crime committed is Homicide and not Murder. Under Article 249 of the Revised Penal Code, Homicide is punishable by *reclusion temporal*; and considering that there are no aggravating nor mitigating circumstances in this case, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years.[48] Thus, the accused-appellant shall 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.

Finally, in line with prevailing jurisprudence,[49] the Court modifies the award of civil indemnity, moral damages, and temperate damages to ₱50,000.00 each. Also, considering that no aggravating circumstance was proven in this case, the award of exemplary damages is hereby deleted.[50]

WHEREFORE, in view of the foregoing, the Court **DECLARES** accused-appellant Gerry Agramon **GUILTY** of **HOMICIDE**, for which he is 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. He is further ordered to pay the heirs of Pelita Aboganda the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent

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[48] *People v. Santillan*, G.R. No. 227878, August 9, 2017; *People v. Macaspac*, G.R. No. 198954, February 22, 2017, 818 SCRA 417; *People v. Duran, Jr.*, *supra* note 27.

[49] *People v. Jugueta*, 783 Phil. 806 (2016).

[50] *Id*.

(6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (Chairman), Peralta, Perlas-Bernabe, and *Reyes, Jr., JJ.*, concur.

FIRST DIVISION

[G.R. No. 215111. June 20, 2018]

ABOSTA SHIPMANAGEMENT CORPORATION, PANSTAR SHIPPING CO., LTD., and/or GAUDENCIO MORALES, *petitioners, vs.* **RODEL D. DELOS REYES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; EMPLOYEES' COMPENSATION; TOTAL DISABILITY AND PERMANENT DISABILITY; EMPLOYEES NOT ENTITLED TO TOTAL AND PERMANENT DISABILITY COMPENSATION.— The only question in this case was whether respondent was likewise entitled to total and permanent disability compensation. We rule in the negative. There is total disability when employee is unable "to earn wages in the same kind of work or work of similar nature that he or she was trained for, or accustomed to perform, or any kind of work which a person of his or her mentality and attainments could do." On the other hand, there is permanent disability when the worker is unable "to perform his or her 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 or her body." In this case, respondent was repatriated for medical treatment. Upon the advice of the company-designated physician, respondent

underwent right inginual herniorrhaphy with mesh imposition. Two months after his surgery or within the 120-day period, he was declared fit to work by the company-designated physician.

2. ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SECTION 20 (B) (3) THEREOF; REFERRAL TO A THIRD DOCTOR IS MANDATORY IN CASE OF CONFLICTING MEDICAL ASSESSMENTS; ABSENT THE OPINION OF A THIRD DOCTOR, THE MEDICAL ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN SHALL PREVAIL; CASE AT BAR.— Similarly, in this case, respondent, after consulting with Dr. Orencia, who happened to be the same doctor in *Marlow,* failed to refer the conflicting medical assessments to a third doctor. In fact, after consulting with Dr. Orencia, respondent immediately filed the instant complaint without first notifying petitioners. For this reason alone, the CA should not have given any credence to the Medical Report of Dr. Orencia. The Court has consistently ruled that in case of conflicting medical assessments, referral to a third doctor is mandatory; and that in the absence of a third doctor's opinion, it is the medical assessment of the company-designated physician that should prevail. Moreover, we find it significant to note that medical assessment of the company-designated physician is more reliable considering that it was based on the treatment and medical evaluation done on respondent, which showed that the treatment or surgery undergone by respondent was successful, while Dr. Orencia's medical assessment merely quoted the medical definition of hernia and some studies on the possibility of recurrence of the illness.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Dela Cruz Entero & Associates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

In case of conflicting medical assessments, the assessment of the company-designated physician prevails unless a third party doctor is sought by the parties.[1]

Before us is a Petition for Review on *Certiorari*[2] filed under Rule 45 of the Rules of Court assailing the March 26, 2014 Decision[3] and the October 28, 2014 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP No. 127545.

Factual Antecedents

Petitioner Abosta Shipmanagement Corp. (Abosta) is a duly licensed manning agency while petitioner Panstar Shipping, Co., Ltd. (Panstar) is a foreign principal agency based in Korea.[5] Petitioner Gaudencio Morales, on the other hand, is an officer of petitioner Abosta.[6]

On March 30, 2010, petitioner Abosta employed respondent Rodel D. Delos Reyes as a bosun on board the vessel MV Stellar Daisy for a period of nine months.[7] Before boarding the vessel, respondent underwent a Pre-Employment Medical Examination and was declared fit to work.[8]

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[1] *INC Navigation Co. Philippines, Inc. v. Rosales,* 744 Phil. 774, 786-789 (2014).

[2] *Rollo,* pp. 26-67.

[3] *Id*. at 69-76; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam (now Supreme Court Associate Justice) and Priscilla J. Baltazar-Padilla.

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

[5] *Id*. at 194.

[6] *Id*. at 28.

[7] *Id*. at 29 and 69.

[8] *Id*.

Sometime in July 2010, respondent complained of pain in his groin while performing his duties.[9] He received treatment in Korea and was diagnosed with Inguinal Hernia.[10]

On August 1, 2010, respondent was repatriated and medically examined by the company-designated physician.[11]

On August 23, 2010, upon recommendation of the company-designated physician, respondent underwent right inginual herniorrhaphy with mesh imposition.[12]

On August 25, 2010, respondent was discharged from the hospital and was paid two months sickness allowance.[13]

On September 2, 2010,[14] respondent was declared fit to work by the company-designated physician.[15]

On July 19, 2011, respondent consulted Dr. Li-Ann Lara-Orencia (Dr. Orencia), who found him to be permanently unfit to work and suffering from a Grade 1 disability.[16] In the Medical Certificate,[17] she stated that:

> Assessment: Hernia is an occupational disease that is characterized by a distention revealed after exposure to heavy work (stress hernia). Hernias are attributed, more or less correctly, to a wide variety of jobs. These most frequently incriminated include heavy manual work, including lifting and carrying and moving heavy objects, especially when these jobs are incidental to the main occupation. However, even a slight effort may suffice to produce hernia. Stress hernia or

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[9] *Id*. at 70.

[10] *Id*.

[11] *Id.*

[12] *Id*.

[13] *Id.*

[14] November 4, 2010 per the National Labor Relations Commission, see CA *rollo*, p. 36.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 58.

accidental hernia is the immediate result of a violent effort made while the body is badly positioned; it is a surgical emergency with dramatic symptoms. Studies show that recurrence of the condition is present in about 10% of the cases and avoidance of lifting heavy objects is recommended. This prevents the patient from returning to his former work as Bosun which requires much physical exertion, lifting and carrying heavy loads and other physically stressful tasks. Patient's Hernia is compensable at Grade 1 – total permanent disability.[18]

Thus, on July 20, 2011, respondent filed a Complaint[19] for Disability Benefits, Damages and Attorney's fees.

The Ruling of the Labor Arbiter

On December 29, 2011, the Labor Arbiter rendered a Decision[20] dismissing the complaint for lack of merit. The Labor Arbiter gave more credence to the medical assessment of the company-designated physician as it was based on several months of treatment as against the medical assessment of the independent physician, Dr. Orencia, which was issued almost a year after respondent was repatriated.[21]

The Ruling of the National Labor Relations Commission

Respondent appealed the dismissal of the Complaint.

On June 29, 2012, the National Labor Relations Commission (NLRC) issued a Decision[22] affirming the dismissal of the Complaints since it found no error on the part of the Labor Arbiter in giving credence to the medical assessment of the company-designated physician. It ruled that the assessment of the company-designated physician prevailed considering that

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[18] *Id*.

[19] *Id*. at 24-26.

[20] *Id*. at 27-34; penned by Labor Arbiter Geobel A. Bartolabac.

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

[22] *Id*. at 35-41; penned by Presiding Commissioner Joseph Gerard E. Mabilog and concurred in by Commissioners Isabel G. Panganiban-Ortiguerra and Nieves V. Vivar-De Castro.

respondent failed to seek the opinion of a third doctor as provided in the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC).[23]

Respondent moved for reconsideration but the NLRC denied the same in its August 30, 2012 Resolution.[24]

The Ruling of the Court of Appeals

Unfazed, respondent elevated the matter to the Court of Appeals (CA) *via* a Petition for *Certiorari*[25] under Rule 65 of the Rules of Court.

On March 26, 2014, the CA reversed and set aside the Decision and Resolution of the NLRC. The CA found respondent entitled to total and permanent disability compensation since his illness rendered him unfit to resume his duties as bosun, which requires physical exertion, lifting, and carrying heavy objects.[26] In arriving at such conclusion, the CA gave more credence to the medical assessment of Dr. Orencia that persons with such illness were advised to avoid lifting heavy objects as there was the possibility of the illness recurring.[27] Thus, the CA ordered petitioners Abosta and Panstar to jointly and severally pay respondent total and permanent disability benefits of US$60,000.00 plus ten percent (10%) of the amount as attorney's fees.[28]

Petitioners sought reconsideration but the same was unavailing.

Hence, petitioners filed the instant Petition.

Petitioners' Arguments

Petitioners contend that respondent was not entitled to total and permanent disability benefit as he failed to present any

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

[24] *Id*. at 42-44.

[25] *Id*. at 3-23.

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

[27] *Id*.

[28] *Id*. at 75.

credible medical evidence to prove that he suffered a Grade 1 disability.[29] They insist that the Medical Report of Dr. Orencia was not based on her own diagnosis but on mere studies done on other patients.[30] They likewise point out that Dr. Orencia was not qualified to diagnose respondent as she specialized in Family and Occupational Medicine.[31] Moreover, as between Dr. Orencia and the company-designated physician, the CA should have given more credence to the medical assessment of the latter as under prevailing jurisprudence, medical assessments of the company-designated physician are given more weight and credence considering his/her personal knowledge of the actual medical condition, having closely monitored and treated the seafarer's illness.[32] Thus, the CA should not have doubted the credibility of the fit-to-work assessment of the company-designated physician, and instead, should have relied on the assessment that respondent was fit to work. Petitioners likewise assail the award of attorney's fees for lack of factual basis since there was no evidence that they acted in bad faith.[33]

Respondent's Argument

Respondent, on the other hand, counters that the medical assessment of the company-designated physician was not final and conclusive especially when it was disputed by the medical assessment of an independent physician.[34] He argues that disability should not be understood on its medical significance but on the loss of employment.[35] Moreover, total disability does not require that the employee be absolutely disabled as it simply means the disablement of an employee to pursue his usual work and earn therefrom.[36] Thus, he maintains that his disability was

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[29] *Id*. at 166-170.

[30] *Id.*

[31] *Id*.

[32] *Id*. at 181-186.

[33] *Id*. at 186-188.

[34] *Id*. at 207-209.

[35] *Id*. at 205.

[36] *Id*. at 205-206.

total and permanent because as a result of his illness, he could no longer be rehired as a bosun.[37] As to the award of attorney's fees respondent claims that it was proper as he was compelled to litigate.[38]

Our Ruling

The Petition is meritorious.

It was undisputed that the illness of respondent, Inguinal Hernia, was an occupational disease, and thus, compensable under Section 32-A (14) of the 2000 POEA SEC.[39] In fact, because of his illness, petitioner Abosta paid him two months sickness allowance and shouldered all the medical expenses of his treatment.

The only question in this case was whether respondent was likewise entitled to total and permanent disability compensation.

We rule in the negative.

There is total disability when employee is unable "to earn wages in the same kind of work or work of similar nature that he or she was trained for, or accustomed to perform, or any kind of work which a person of his or her mentality and attainments could do."[40] On the other hand, there is permanent disability when the worker is unable "to perform his or her job for more than 120 days [or 240 days, as the case may be,]

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[37] *Id*. at 205-207.

[38] *Id*. at 212-213.

[39] 14. Hernia. All of the following conditions must be met:

a. The hernia should be of recent origin;

b. Its appearance was accompanied by pain, discoloration and evidence of a tearing of the tissues;

c. The disease was immediately preceded by undue or severe strain arising out of and in the course of employment;

d. A protrusion of mass should appear in the area immediately following the alleged strain.

[40] *Tamin v. Magsaysay Maritime Corporation,* G.R. No. 220608, August 31, 2016, 802 SCRA 111, 125.

regardless of whether or not he loses the use of any part of his or her body."[41]

In this case, respondent was repatriated for medical treatment. Upon the advice of the company-designated physician, respondent underwent right inginual herniorrhaphy with mesh imposition. Two months after his surgery or within the 120-day period, he was declared fit to work by the company-designated physician.

The CA, however, rejected the fit-to-work assessment of the company-designated physician, and instead, declared respondent entitled to total and permanent disability benefits. The CA reasoned that respondent's illness prevented him from pursuing his job as a bosun since, according to Dr. Orencia, there was a possibility that his illness might recur if he resumed his work lifting heavy objects. The CA also said that the failure of petitioners to reemploy respondent as a bosun proved that, contrary to the declaration of the company-designated physician, respondent was not fit to work.

We do not agree.

Section 20 (B)(3) of the 2000 POEA-SEC provides that:

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall it exceed one hundred twenty (120) days.
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> x x x x x x x x x
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> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

In *Marlow Navigation Philippines, Inc. v. Osias,*[42] the Court declared that —

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[41] *Id*. at 124.

[42] 773 Phil. 428 (2015).

Based on the above-cited provision, the referral to a third doctor is mandatory when: (1) there is a valid and timely assessment by the company-designated physician and (2) the appointed doctor of the seafarer refuted such assessment.

In *Carcedo,* the Court held that '[[t]o definitively clarify how a conflict situation should be handled, upon notification that the seafarer disagrees with the company doctor's assessment based on the duly and fully disclosed contrary assessment from the seafarer's own doctor, the seafarer shall then signify his intention to resolve the conflict by the referral of the conflicting assessments to a third doctor whose ruling, under the POEA-SEC, shall be final and binding on the parties. Upon notification, the company carries the burden of initiating the process for the referral to a third doctor commonly agreed between the parties.'

In this case, Osias' doctor of choice, Dr. Orencia, issued a medical certificate which conflicted with the assessment of the company-designated physician. Dr. Orencia opined that the osteoarthritis of Osias prevented him from returning to his work. Osias, however, never signified his intention to resolve the disagreement with petitioners by referring the matter to a third doctor. It is only through the procedure provided by the POEA-SEC, in which he was a party, can he question the timely medical assessment of the company-designated physician and compel petitioners to jointly seek an appropriate third doctor. Absent proper compliance, the final medical report and the certification of the company-designated physician declaring him fit to return to work must be upheld. *Ergo,* he is not entitled to permanent and total disability benefits.[43]

Respondent failed to refer the conflicting medical assessments to a third doctor.

Similarly, in this case, respondent, after consulting with Dr. Orencia, who happened to be the same doctor in *Marlow,* failed to refer the conflicting medical assessments to a third doctor. In fact, after consulting with Dr. Orencia, respondent immediately filed the instant complaint without first notifying petitioners. For this reason alone, the CA should not have given any credence to the Medical Report of Dr. Orencia. The Court has consistently ruled that in case of conflicting medical assessments, referral

[43] *Id*. at 446.

to a third doctor is mandatory; and that in the absence of a third doctor's opinion, it is the medical assessment of the company-designated physician that should prevail.[44]

Moreover, we find it significant to note that medical assessment of the company-designated physician is more reliable considering that it was based on the treatment and medical evaluation done on respondent, which showed that the treatment or surgery undergone by respondent was successful, while Dr. Orencia's medical assessment merely quoted the medical definition of hernia and some studies on the possibility of recurrence of the illness. Under prevailing jurisprudence, "the assessment of the company-designated physician is more credible for having been arrived at after months of medical attendance and diagnosis, compared with the assessment of a private physician done in one day on the basis of an examination or existing medical records."[45]

WHEREFORE, the Petition is hereby **GRANTED**. The assailed March 26, 2014 Decision and the October 28, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 127545 are hereby **REVERSED** and **SET ASIDE**. Respondent's Complaint from Disability Benefits, Damages, and Attorney's fees is **DISMISSED**.

SO ORDERED.

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

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[44] *INC Navigation Co. Philippines, Inc. v. Rosales, supra* note 1.

[45] *Id*. at 789.

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

[**] Designated as additional member per October 18, 2017 raffle vice *J.* Tijam who recused due to prior participation in the Court of Appeals.

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

SECOND DIVISION

[G.R. No. 217781. June 20, 2018]

SAN MIGUEL PURE FOODS COMPANY, INC., *petitioner, vs.* **FOODSPHERE, INC.,** *respondent.*

[G.R. No. 217788. June 20, 2018]

FOODSPHERE, INC., *petitioner, vs.* **SAN MIGUEL PURE FOODS COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; AS A RULE, WHEN THERE IS A CONFLICT BETWEEN THE DISPOSITIVE PORTION OR *FALLO* OF A DECISION AND THE OPINION OF THE COURT CONTAINED IN THE TEXT OR BODY OF THE JUDGMENT, THE FORMER PREVAILS OVER THE LATTER; EXCEPTION; NOT APPLICABLE IN CASE AT BAR.— With respect to G.R. No. 217781, the Court finds no reason to reverse the April 8, 2015 Resolution of the CA insofar as it resolved to delete from the body of its September 24, 2014 Decision the award of exemplary damages. SMPFCI said so itself, when there is a conflict between the dispositive portion or *fallo* of a decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter. This rule rests on the theory that the *fallo* is the final order, while the opinion in the body is merely a statement ordering nothing. Thus, an order of execution is based on the disposition, not on the body, of the Decision. Contrary to SMPFCI's assertion, moreover, the Court finds inapplicable the exception to the foregoing rule which states that the body of the decision will prevail in instances where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion. A cursory perusal of the challenged September 24, 2014 Decision reveals that the mistake lies not in the *fallo* or dispositive portion but in the body thereof. x x x As can be gleaned from [the body of the challenged Septemeber 24, 2014 Decision], the intention of the CA was merely to affirm the

findings of the Director General insofar as the award of damages was concerned. This was shown in its statements such as "Foodsphere was correctly ordered to pay nominal damages," "its failure to properly substantiate the same left the Office of the Director General without any basis to award it," "as for exemplary damages, the award thereof was warranted," and "the award of attorney's fees must likewise be upheld." This was also shown when the CA clearly disposed as follows: "ACCORDINGLY, the petition is DENIED, and the Decision dated September 10, 2013 of the Office of the Director General, AFFIRMED." It can, therefore, be derived, from the wording of the CA Decision, that it merely intended to adopt the resolution of the Director General on the award of damages. Consequently, since nowhere in the affirmed Decision did the Director General award exemplary damages to SMPFCI, for what was awarded was only nominal damages and attorney's fees, it follows then that the CA likewise did not intend on awarding the same to SMPFCI. Thus, what controls herein is the *fallo*.

2. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— Besides, it bears stressing that SMPFCI failed to prove its entitlement to exemplary damages. x x x Thus, the Court has held, time and again, that exemplary damages may be awarded for as long as the following requisites are present: (1) they may be imposed, by way of example, only in addition, among others, to compensatory damages, only after the claimant's right to them has been established, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; (2) the claimant must first establish his right to moral, temperate, liquidated or compensatory damages; and (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner. Here, SMPFCI particularly failed to prove its right to moral, temperate, liquidated or compensatory damages. x x x Thus, in view of such failure to prove its right to compensatory damages, as well as to moral and temperate damages, the CA correctly resolved to delete from the body of its September 24, 2014 Decision the award of exemplary damages.

3. MERCANTILE LAW; INTELLECTUAL PROPERTY CODE; UNFAIR COMPETITION; ESSENTIAL ELEMENTS;

PRESENT IN CASE AT BAR.— [T]he essential elements of an action for unfair competition are: (1) confusing similarity in the general appearance of the goods; and (2) intent to deceive the public and defraud a competitor. The confusing similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods. The intent to deceive and defraud may be inferred from the similarity of the appearance of the goods as offered for sale to the public. Actual fraudulent intent need not be shown. In the instant case, the Court finds no error with the findings of the CA and Director General insofar as the presence of the foregoing elements is concerned. First of all, there exists a substantial and confusing similarity in the packaging of Foodsphere's product with that of SMPFCI, which, as the records reveal, was changed by Foodsphere from a paper box to a paper ham bag that is significantly similar to SMPFCI's paper ham bag. x x x Second of all, Foodsphere's intent to deceive the public, to defraud its competitor, and to ride on the goodwill of SMPFCI's products is evidenced by the fact that not only did Foodsphere switch from its old box packaging to the same paper ham bag packaging as that used by SMPFCI, it also used the same layout design printed on the same.

4. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE GENERALLY ACCORDED RESPECT AND EVEN FINALITY BY THE SUPREME COURT, IF SUCH FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND AFFIRMED BY THE COURT OF APPEALS; CASE AT BAR.—** [I]t is worthy to note that unfair competition is always a question of fact. There is no inflexible rule that can be laid down as to what will constitute the same, each case being, in the measure, a law unto itself. Thus, the question to be determined is whether or not, as a matter of fact, the name or mark used by the defendant has previously come to indicate and designate plaintiff's goods, or, to state it in another way, whether defendant, as a matter of fact, is, by his conduct, passing off defendant's goods as plaintiff's goods or his business as plaintiff's business. As such, the Court is of the opinion that the case records readily supports the findings of fact made by the Director General as to Foodsphere's commission of unfair competition. Settled is the rule that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if

such findings are supported by substantial evidence, as it is presumed that these agencies have the knowledge and expertise over matters under their jurisdiction, more so when these findings are affirmed by the Court of Appeals.

APPEARANCES OF COUNSEL

Bengson Negre Untalan for San Miguel Purefoods Co. Inc.
Gonzales Batiller David Leabres & Reyes for Foodsphere Inc.

D E C I S I O N

PERALTA, *J.*:

Before the Court are the consolidated cases of G.R. No. 217781 and G.R. No. 217788. On the one hand, San Miguel Pure Foods Company, Inc. (*SMPFCI*), in G.R. No. 217781, filed a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, questioning the Resolution[1] dated April 8, 2015 of the Court of Appeals (*CA*), Former Fourteenth Division, in CA-G.R. SP No. 131945, but only insofar as the same resolved to delete from the body of its Decision[2] dated September 24, 2014 the award of exemplary damages. On the other hand, in G.R. No. 217788, Foodsphere, Inc., via a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeks to reverse and set aside the same September 24, 2014 Decision and April 8, 2015 Resolution of the CA declaring it guilty of unfair competition and holding it liable for damages.

The antecedent facts are as follows:

The parties herein are both engaged in the business of the manufacture, sale, and distribution of food products, with

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[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring; *rollo* (G.R. No. 217781), pp. 48-50.

[2] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring; *id.* at 493-516.

SMPFCI owning the trademark "PUREFOODS FIESTA HAM" while Foodsphere, Inc. products (*Foodsphere*) bear the "CDO" brand. On November 4, 2010, SMPFCI filed a Complaint[3] for trademark infringement and unfair competition with prayer for preliminary injunction and temporary restraining order against Foodsphere before the Bureau of Legal Affairs (*BLA*) of the Intellectual Property Office (*IPO*) pursuant to Sections 155 and 168 of Republic Act (*R.A.*) No. 8293, otherwise known as the *Intellectual Property Code* (*IP Code*), for using, in commerce, a colorable imitation of its registered trademark in connection with the sale, offering for sale, and advertising of goods that are confusingly similar to that of its registered trademark.[4]

In its complaint, SMPFCI alleged that its "FIESTA" ham, first introduced in 1980, has been sold in countless supermarkets in the country with an average annual sales of ₱10,791,537.25 and is, therefore, a popular fixture in dining tables during the Christmas season. Its registered "FIESTA" mark has acquired goodwill to mean sumptuous ham of great taste, superior quality, and food safety, and its trade dress "FIESTA" combined with a figure of a partly sliced ham served on a plate with fruits on the side had likewise earned goodwill. Notwithstanding such tremendous goodwill already earned by its mark, SMPFCI continues to invest considerable resources to promote the FIESTA ham, amounting to no less than ₱3,678,407.95.[5]

Sometime in 2006, however, Foodsphere introduced its "PISTA" ham and aggressively promoted it in 2007, claiming the same to be the real premium ham. In 2008, SMPFCI launched its "Dapat ganito ka-espesyal" campaign, utilizing the promotional material showing a picture of a whole meat ham served on a plate with fresh fruits on the side. The ham is being sliced with a knife and the other portion, held in place by a serving fork. But in the same year, Foodsphere launched its "Christmas Ham with Taste" campaign featuring a similar picture.

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[3] *Rollo* (G.R. No. 217788), at 98-132.

[4] *Id.* at 114.

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

Moreover, in 2009, Foodsphere launched its "Make Christmas even more special" campaign, directly copying SMPFCI's "Dapat ganito ka-espesyal" campaign. Also in 2009, Foodsphere introduced its paper ham bag which looked significantly similar to SMPFCI's own paper ham bag and its trade dress and its use of the word "PISTA" in its packages were confusingly similar to SMPFCI's "FIESTA" mark.[6]

Thus, according to SMPFCI, the striking similarities between the marks and products of Foodsphere with those of SMPFCI warrant its claim of trademark infringement on the ground of likelihood of confusion as to origin, and being the owner of "FIESTA," it has the right to prevent Foodsphere from the unauthorized use of a deceptively similar mark. The word "PISTA" in Foodsphere's mark means "fiesta," "feast," or "festival" and connotes the same meaning or commercial impression to the buying public of SMPFCI's "FIESTA" trademark. Moreover, "FIESTA" and "PISTA" are similarly pronounced, have the same number of syllables, share common consonants and vowels, and have the same general appearance in their respective product packages. In addition, the "FIESTA" and "PISTA" marks are used in the same product which are distributed and marketed in the same channels of trade under similar conditions, and even placed in the same freezer and/or displayed in the same section of supermarkets. Foodsphere's use, therefore, of the "PISTA" mark will mislead the public into believing that its goods originated from, or are licensed or sponsored by SMPFCI, or that Foodsphere is associated with SMPFCI, or its affiliate. The use of the "PISTA" trademark would not only result in likelihood of confusion, but in actual confusion.[7]

Apart from trademark infringement, SMPFCI further alleged that Foodsphere is likewise guilty of unfair competition. This is because there is confusing similarity in the general appearance of the goods of the parties and intent on the part of Foodsphere,

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[6] *Rollo* (G.R. No. 217781), p. 495.

[7] *Id*. at 496.

to deceive the public and defraud SMPFCI. According to SMPFCI, there is confusing similarity because the display panel of both products have a picture of a partly sliced ham served on a plate of fruits, while the back panel features other ham varieties offered, both "FIESTA" and "PISTA" are printed in white bold stylized font, and the product packaging for both "FIESTA" and "PISTA" consists of box-typed paper bags made of cardboard materials with cut-out holes on the middle top portion for use as handles and predominantly red in color with a background design of Christmas balls, stars, snowflakes, and ornate scroll. Moreover, Foodsphere's intent to deceive the public is seen from its continued use of the word "PISTA" for its ham products and its adoption of packaging with a strong resemblance of SMPFCI's "FIESTA" ham packaging. For SMPFCI, this is deliberately carried out for the purpose of capitalizing on the valuable goodwill of its trademark and causing not only confusion of goods but also confusion as to the source of the ham product. Consequently, SMPFCI claimed to have failed to realize income of at least ₱27,668,538.38 and ₱899,294.77 per month in estimated actual damages representing foregone income in sales. Thus, it is entitled to actual damages and attorney's fees.[8]

For its part, Foodsphere denied the charges of trademark infringement and countered that the marks "PISTA" and "PUREFOODS FIESTA HAM" are not confusingly similar and are, in fact, visually and aurally distinct from each other. This is because PISTA is always used in conjunction with its house mark "CDO" and that "PUREFOODS FIESTA HAM" bears the housemark "PUREFOODS," rendering confusion impossible. Moreover, Foodsphere maintained that SMPFCI does not have a monopoly on the mark "FIESTA" for the IPO database shows that there are two (2) other registrations for "FIESTA," namely "FIESTA TROPICALE" and "HAPPY FIESTA." Also, there are other products in supermarkets that bear the mark "FIESTA" such as "ARO FIESTA HAM," "ROYAL FIESTA," and "PUREGOLD FIESTA HAM," but SMPFCI has done nothing against those manufacturers, making it guilty of *estoppel in*

[8] *Id*. at 496-497.

pais, and is, therefore, estopped from claiming that the use of other manufacturers of the mark "FIESTA" will result in confusion and/or damage to itself. Even assuming that the marks are confusingly similar, Foodsphere asserted that it is SMPFCI who is guilty of infringement *vis-à-vis* its registered trademark "HOLIDAY," a translation and word bearing the same meaning as "FIESTA." Foodsphere has been using its "HOLIDAY" trademark since 1970 and had registered the same in 1986, while SMPFCI registered its "FIESTA" trademark only in 2007. In fact, Foodsphere noted that it has been using "PISTA" since 2006 which is earlier than SMPFCI's filing for registration of "FIESTA" in 2007. In addition, Foodsphere asseverated that SMPFCI cannot appropriate for itself images of traditional utensils and garnishing of ham in its advertisements. Confusion between the marks, moreover, is rendered impossible because the products are sold in booths manned by different "promodisers." Also, hams are expensive products and their purchasers are well-informed not only as to their features but also as to the manufacturers thereof.[9]

Furthermore, Foodsphere similarly denied the allegation that it is guilty of unfair competition or passing off its product as that of SMPFCI. As mentioned, the "PISTA" and "FIESTA" labels are substantially different in the manner of presentation, carrying their respective house marks. Moreover, its paper ham bags are labeled with their respective house marks and are given to consumers only after purchase, hence, they do not factor in when the choice of ham is being made. Also, Foodsphere claims to have been using the red color for its boxes and it was SMPFCI, by its own admission, that switched colors from green to red in 2009 for its own ham bags.[10]

On July 17, 2012, the BLA, through its Director, rendered its Decision[11] dismissing SMPFCI's complaint for lack of merit. *First,* the BLA held that there could be no trademark infringement

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[9] *Id.* at 498-499.

[10] *Id.* at 500.

[11] *Id.* at 199-224.

because Foodsphere began using the "PISTA" mark in 2006 and even filed a trademark application therefor in the same year, while SMPFCI's application for trademark registration for "FIESTA" was filed and approved only in 2007. SMPFCI, thus, had no cause of action. *Second,* SMPFCI's complaint was filed beyond the four (4)-year prescriptive period prescribed under the Rules and Regulation on Administrative Complaints for Violation of Law Involving Intellectual Property Rights. *Third,* the BLA found the testimonies and surveys adduced in evidence by SMPFCI to be self-serving. *Fourth,* comparing the competing marks would not lead to confusion, much less deception of the public. *Finally,* the BLA ruled that SMPFCI failed to convincingly prove the presence of the elements of unfair competition.[12]

On September 10, 2013, however, the Office of the Director General partially granted SMPFCI's appeal, affirming the BLA's ruling on the absence of trademark infringement but finding Foodsphere liable for unfair competition.[13] The Director General held that one can see the obvious differences in the marks of the parties. SMPFCI's mark is a composite mark where its house mark, namely "PUREFOODS," is clearly indicated and is followed by the phrase "FIESTA HAM" written in stylized font whereas Foodsphere's mark is the word "PISTA" written also in stylized font. Applying the 'Dominancy Test' and the 'Holistic Test' show that Foodsphere cannot be held liable for trademark infringement due to the fact that the marks are not visually or aurally similar and that the glaring differences in the presentation of these marks will prevent any likely confusion, mistake, or deception to the purchasing public. Moreover, "PISTA" was duly registered in the IPO, strengthening the position that "PISTA" is not an infringement of "PUREFOODS FIESTA HAM" for a certificate of registration of a mark is *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's

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[12] *Id.* at 501-502.

[13] *Id.* at 379-397.

exclusive right to use the same.[14] On the other hand, the Director General found Foodsphere to be guilty of unfair competition for it gave its "PISTA" ham the general appearance that would likely influence purchasers to believe that it is similar with SMPFCI's "FIESTA" ham. Moreover, its intention to deceive is inferred from the similarity of the goods as packed and offered for sale. Thus, the Director General ordered Foodsphere to pay nominal damages in the amount of ₱100,000.00 and attorney's fees in the amount of ₱300,000.00 and to cease and desist from using the labels, signs, prints, packages, wrappers, receptacles, and materials used in committing unfair competition, as well as the seizure and disposal thereof.[15]

Both SMPFCI and Foodsphere filed their appeals before the CA via Petitions for Review dated October 8, 2013[16] and October 29, 2013,[17] respectively. SMPFCI sought a reconsideration of the Director General's finding that Foodsphere is not guilty of trademark infringement while Foodsphere faulted said Director General for declaring it guilty of unfair competition.

On March 6, 2014, the CA, Eleventh Division, denied SMPFCI's petition and affirmed the ruling of the Director General on the absence of trademark infringement. According to the appellate court, Foodsphere was merely exercising, in good faith, its right to use its duly registered trademark "PISTA" in the lawful pursuit of its business.[18] Thereafter, in a Decision dated September 24, 2014, the CA Fourteenth Division likewise denied Foodsphere's petition, affirming the Director General's finding that Foodsphere was guilty of unfair competition. The CA held that the elements thereof are present herein. Consequently, it ordered Foodsphere to pay SMPFCI nominal and exemplary damages as well as attorney' fees.[19] In a Resolution

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[14] *Rollo* (G.R. No. 217788), pp. 413-414.

[15] *Rollo* (G.R. No. 217781), p. 503.

[16] *Id.* at 398-426.

[17] *Id.* at 427-456.

[18] *Rollo* (G.R. No. 217788), p. 423.

[19] *Rollo* (G.R. No. 217781), pp. 507-515.

dated April 8, 2015, however, the CA clarified its September 24, 2014 Decision and resolved to delete the award of exemplary damages for SMPFCI never prayed for the same.[20]

In a Resolution[21] dated June 13, 2016, the Court, in G.R. No. 215475, denied SMPFCI's Petition for Review on *Certiorari* for failure to sufficiently show that the CA, in its Decision and Resolution, dated March 6, 2014 and November 13, 2014, respectively, finding that Foodsphere is not liable for trademark infringement, and committed any reversible error in the challenged decision and resolution as to warrant the exercise of the Court's discretionary appellate jurisdiction. The Court also found that the issues raised by SMPFCI are factual in nature.

Meanwhile, on June 8, 2015, both SMPFCI and Foodsphere filed the instant Petitions for Review on *Certiorari* docketed as G.R. No. 217781 and 217788, respectively. In G.R. No. 217781, SMPFCI invoked the following argument:

I.

THE HONORABLE COURT OF APPEALS ERRED IN RESOLVING THAT THE AWARD OF EXEMPLARY DAMAGES BE DELETED FROM THE BODY OF ITS DECISION DATED 24 SEPTEMBER 2014 WHEN SMPFCI'S ENTITLEMENT THERETO IS CLEARLY SUPPORTED NOT ONLY BY PLEADINGS AND EVIDENCE ON RECORD, BUT ALSO BY THE HONORABLE COURT OF APPEALS' OWN RATIOCINATIONS FOUND IN THE BODY OF ITS DECISION.

Conversely, G.R. No. 217788, Foodsphere raised the following argument:

I.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN EXCESS OF OR AMOUNTING TO LACK OF

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[20] *Id.* at 49.

[21] *Rollo* (G.R. No. 217788), p. 609.

JURISDICTION WHEN IT ISSUED THE ASSAILED DECISION AND RESOLUTION BEING NOT IN ACCORDANCE WITH LAW OR WITH APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT DECLARED THAT FOODSPHERE WAS GUILTY OF UNFAIR COMPETITION.

In G.R. No. 217781, SMPFCI clarifies that it assails the April 8, 2015 Resolution of the CA, not on its finding that Foodsphere was guilty of unfair competition, but only insofar as it deleted its award of exemplary damages in its September 24, 2014 Decision. According to SMPFCI, it was a mere mistake that the said Decision failed to state the amount of exemplary damages and that its dispositive portion failed to award said exemplary damages, merely stating that "the petition is DENIED, and the Decision x x x of the Director General is AFFIRMED."[22] SMPFCI asserts that where there is a conflict between the dispositive portion and the body of the decision, the dispositive portion controls. But where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail.[23] Here, when the CA held that "as for exemplary damages, the award thereof was warranted," it is beyond cavil that SMPFCI is entitled thereto.

Moreover, SMPFCI maintains that the CA ruling that it never prayed for exemplary damages in the proceedings, its prayer for damages being limited only to actual damages and attorney's fees, is utterly false for it specifically prayed for the same in several pleadings it filed before the BLA and the Office of the Director General. Even assuming that it indeed failed to pray for exemplary damages, SMPFCI alleges that it was still erroneous for the CA to delete the award of the same. It is well settled that a court may grant relief to a party, even if said party did not pray for it in his pleadings for a prayer for "other remedies just and equitable under the premises" is broad enough to justify the extension of a remedy different from that requested.

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[22] *Rollo* (G.R. No. 217781) p. 21.

[23] *Id.* at 22.

Thus, in view of the foregoing, coupled with the factual circumstances of the case leading to the conclusion that Foodsphere is guilty of unfair competition, SMPFCI essentially prays that the Court: (1) issue a permanent injunction against Foodsphere to prevent it from infringing the rights of SMPFCI by seizing all products violative of SMPFCI's IP rights and by forfeiting all properties used in the infringing acts; (2) order Foodsphere to pay SMPFCI the amount of ₱27,668,538.38, representing lost income of SMPFCI, ₱899,294.77 per month in estimated actual damages, or moderate or temperate damages; (3) order Foodsphere to pay attorney's fees in the amount of ₱300,000.00; and (4) order Foodsphere to pay exemplary damages in the amount of ₱300,000.00.[24]

In G.R. No. 217788, Foodsphere denied the allegations of unfair competition, denying SMPFCI's claim that the confusing similarity between the respective packaging of the parties' products began in 2009 when Foodsphere changed its packaging from a paper box to a paper ham bag, significantly similar to SMPFCI's paper ham bag. According to Foodsphere, while the packages were both in the form of bags, their respective trademarks were boldly printed thereon. Moreover, even prior to SMPFCI's use of the questioned ham bags in 2009, Foodsphere had already been adopting the image of partly-sliced hams laced with fruits and red color on its packages.[25] In addition, Foodsphere alleged that any similarity in the general appearance of the packaging does not, by itself, constitute unfair competition. This is because *first,* packaging is not the exclusive ownership of SMPFCI which does not have a patent or trademark protection therefor. *Second,* the mere fact of being the first user does not bestow vested right to use the packaging to the exclusion of everyone else. *Third,* the circumstance that the manufacturer has printed its name all over the packaging negates fraudulent intent to palm off its goods as another's product. *Fourth,* SMPFCI cannot claim that it has exclusive right or monopoly to use the

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

[25] *Rollo* (G.R. No. 217788), pp. 25-30.

colors red and green in its packaging or the image of partly sliced hams. *Fifth,* similarity in the packaging does not necessarily constitute "confusing" similarity. *Sixth,* the circumstances under which the competing products are sold negates the likelihood of confusion for consumers are more discerning on the Christmas ham they will purchase, which is not any ordinary, low priced product. *Seventh,* SMPFCI failed to prove likelihood of confusion or intent to deceive on the part of Foodsphere. *Finally,* Foodsphere maintained that there was no basis for the CA to award nominal damages and attorney's fees in view of the absence of any violation of SMPFCI's right.[26]

The petitions are devoid of merit.

With respect to G.R. No. 217781, the Court finds no reason to reverse the April 8, 2015 Resolution of the CA insofar as it resolved to delete from the body of its September 24, 2014 Decision the award of exemplary damages. SMPFCI said so itself, when there is a conflict between the dispositive portion or *fallo* of a decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter. This rule rests on the theory that the *fallo* is the final order, while the opinion in the body is merely a statement ordering nothing. Thus, an order of execution is based on the disposition, not on the body, of the Decision.[27] Contrary to SMPFCI's assertion, moreover, the Court finds inapplicable the exception to the foregoing rule which states that the body of the decision will prevail in instances where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion.

A cursory perusal of the challenged September 24, 2014 Decision reveals that the mistake lies not in the *fallo* or dispositive portion but in the body thereof, the pertinent portions of which provide:

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[26] *Id.* at 30-46.

[27] *The Law Firm of Raymundo A. Armovit v. CA, et al.*, 674 Phil. 344, 356 (2011).

> Having been found guilty of unfair competition, Foodsphere was correctly ordered to pay nominal damages of ₱100,000.00. Under Article 2221 of the Civil Code, nominal damages are recoverable in order to vindicate or recognize the rights of the plaintiff which have been violated or invaded by the defendant. x x x
>
> As for SMPFCI's claim for lost profit or unrealized income of more than ₱27 Million, its failure to properly substantiate the same left the Office of the Director General without any basis to award it.
>
> As for exemplary damages, the award thereof was warranted on the strength of In-N-Out Burger, Inc. v. Sehwani, for correction or example for public good, such as the enhancement of the protection accorded to intellectual property and the prevention of similar acts of unfair competition. The award of attorney's fees must likewise be upheld as SMPFCI was compelled to engage the services of counsel to protect its rights.[28]

As can be gleaned from above, the intention of the CA was merely to affirm the findings of the Director General insofar as the award of damages was concerned. This was shown in its statements such as "Foodsphere was correctly ordered to pay nominal damages," "its failure to properly substantiate the same left the Office of the Director General without any basis to award it," "as for exemplary damages, the award thereof was warranted," and "the award of attorney's fees must likewise be upheld." This was also shown when the CA clearly disposed as follows: "ACCORDINGLY, the petition is DENIED, and the Decision dated September 10, 2013 of the Office of the Director General, AFFIRMED."[29] It can, therefore, be derived, from the wording of the CA Decision, that it merely intended to adopt the resolution of the Director General on the award of damages. Consequently, since nowhere in the affirmed Decision did the Director General award exemplary damages to SMPFCI, for what was awarded was only nominal damages and attorney's fees, it follows then that the CA likewise did not intend on awarding the same to SMPFCI. Thus, what controls herein is the *fallo*.

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[28] *Rollo* (G.R. No. 217781), p. 514.

[29] *Id.* at 513-515.

Besides, it bears stressing that SMPFCI failed to prove its entitlement to exemplary damages. Article 2233 of the Civil Code provides that exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated while Article 2234 thereof provides that while the amount of the exemplary damages need not be proven, 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.

Thus, the Court has held, time and again, that exemplary damages may be awarded for as long as the following requisites are present: (1) they may be imposed, by way of example, only in addition, among others, to compensatory damages, only after the claimant's right to them has been established, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; (2) the claimant must first establish his right to moral, temperate, liquidated or compensatory damages; and (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner.[30]

Here, SMPFCI particularly failed to prove its right to moral, temperate, liquidated or compensatory damages. In its complaint, SMPFCI prayed that Foodsphere be ordered to pay ₱27,668,538.38 representing income it would have made if not for the infringement and ₱899,294.77 per month in estimated actual damages, representing foregone income in sales for the continuous use of the "PISTA" mark in connection with the selling, offering for sale and distribution of its ham product during the pendency of the case.[31] But as the Director General aptly found, SMPFCI neither adduced sufficient evidence to prove its claim of foregone income or sales nor presented evidence to show the profit or sales. Thus, in view of such failure to prove its right to compensatory damages, as well as to moral

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[30] *Arco Pulp and Paper Co., Inc. v. Lim,* 737 Phil. 133, 153 (2014); *Mendoza v. Spouses Gomez, et al.,* 736 Phil. 460, 482 (2014).

[31] *Rollo* (G.R. No. 217781), p. 131.

and temperate damages, the CA correctly resolved to delete from the body of its September 24, 2014 Decision the award of exemplary damages.

As regards G.R. No. 217788, the Court likewise affirms the ruling of the CA, which in turn, affirmed the findings of the Director General.

Section 168 of the IP Code provides that:

Section 168. Unfair Competition, Rights, Regulation and Remedies. — 168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such

person is offering the services of another who has identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Sections 156, 157 and 161 shall apply mutatis mutandis. (Sec. 29, R.A. No. 166a)

Time and again, the Court has held that unfair competition consists of the passing off (or palming off) or attempting to pass off upon the public of the goods or business of one person as the goods or business of another with the end and probable effect of deceiving the public. Passing off (or palming off) takes place where the defendant, by imitative devices on the general appearance of the goods, misleads prospective purchasers into buying his merchandise under the impression that they are buying that of his competitors. In other words, the defendant gives his goods the general appearance of the goods of his competitor with the intention of deceiving the public that the goods are those of his competitor.[32] The "true test," therefore, of unfair competition has thus been "whether the acts of the defendant have the intent of deceiving or are calculated to deceive the ordinary buyer making his purchases under the ordinary conditions of the particular trade to which the controversy relates."[33]

Thus, the essential elements of an action for unfair competition are: (1) confusing similarity in the general appearance of the goods; and (2) intent to deceive the public and defraud a competitor. The confusing similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods. The intent to deceive and defraud may be inferred from the similarity of

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[32] *Shang Properties Realty Corporation, et al. v. St. Francis Development Corporation,* 739 Phil. 244, 256 (2014).

[33] *Id*.

the appearance of the goods as offered for sale to the public. Actual fraudulent intent need not be shown.[34]

In the instant case, the Court finds no error with the findings of the CA and Director General insofar as the presence of the foregoing elements is concerned. First of all, there exists a substantial and confusing similarity in the packaging of Foodsphere's product with that of SMPFCI, which, as the records reveal, was changed by Foodsphere from a paper box to a paper ham bag that is significantly similar to SMPFCI's paper ham bag. As duly noted by the Director General and the CA, both packages use paper ham bags as the container for the hams, both paper ham bags use the red color as the main colors, and both have the layout design appearing on the bags consisting of a partly sliced ham and fruits on the front and other ham varieties offered at the back. Thus, Foodsphere's packaging in its entirety, and not merely its "PISTA" mark thereon, renders the general appearance thereof confusingly similar with the packaging of SMPFCI's ham, that would likely influence purchasers to believe that these products are similar, if not the same, as those of SMPFCI.

Second of all, Foodsphere's intent to deceive the public, to defraud its competitor, and to ride on the goodwill of SMPFCI's products is evidenced by the fact that not only did Foodsphere switch from its old box packaging to the same paper ham bag packaging as that used by SMPFCI, it also used the same layout design printed on the same. As the Director General observed, why, of the millions of terms and combinations of letters, designs, and packaging available, Foodsphere had to choose those so closely similar to SMPFCI's if there was no intent to pass off upon the public the ham of SMPFCI as its own with the end and probable effect of deceiving the public.

At this juncture, it is worthy to note that unfair competition is always a question of fact. There is no inflexible rule that can be laid down as to what will constitute the same, each case

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[34] *In-N-Out Burger, Inc. v. Sehwani, Incorporated and/or Benita's Frites, Inc.,* 595 Phil. 1119, 1149 (2008).

being, in the measure, a law unto itself. Thus, the question to be determined is whether or not, as a matter of fact, the name or mark used by the defendant has previously come to indicate and designate plaintiff's goods, or, to state it in another way, whether defendant, as a matter of fact, is, by his conduct, passing off defendant's goods as plaintiff's goods or his business as plaintiff's business.[35] As such, the Court is of the opinion that the case records readily supports the findings of fact made by the Director General as to Foodsphere's commission of unfair competition. Settled is the rule that factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence, as it is presumed that these agencies have the knowledge and expertise over matters under their jurisdiction,[36] more so when these findings are affirmed by the Court of Appeals.[37]

WHEREFORE, premises considered, the instant petitions in G.R. Nos. 217781 and 217788 are **DENIED.** The assailed Decision dated September 24, 2014 and Resolution dated April 8, 2015 of the Court of Appeals in CA-G.R. SP No. 131945 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[35] *Levi Strauss (Phils.), Inc. v. Lim,* 593 Phil. 435, 457 (2008).

[36] *Espiritu, et al. v. Del Rosario,* 745 Phil. 566, 588 (2014).

[37] *Union Bank of the Philippines v. The Honorable Regional Agrarian Reform Officer, et al.,* G.R. No. 200369, March 1, 2017.

SECOND DIVISION

[G.R. No. 217916. June 20, 2018]

ABS-CBN PUBLISHING, INC., *petitioner, vs.* **DIRECTOR OF THE BUREAU OF TRADEMARKS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL NOT A CONSTITUTIONAL RIGHT BUT A MERE STATUTORY PRIVILEGE; PERFECTION OF AN APPEAL WITHIN THE STATUTORY OR REGLEMENTARY PERIOD IS NOT ONLY MANDATORY BUT ALSO JURISDICTIONAL.— In *Bañez vs. Social Security System*, the Court had occasion to reiterate that appeal is not a constitutional right, but a mere statutory privilege. Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it. The rule is that failure to file or perfect an appeal within the reglementary period will make the judgment final and executory by operation of law. Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; failure to do so renders the questioned decision/resolution final and executory, and deprives the appellate court of jurisdiction to alter the decision/resolution, much less to entertain the appeal. In connection herewith, Section 4, Rule 43 of the Rules of Court is clear. The appeal shall be taken within fifteen (15) days from the notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*.

2. ID.; ID.; MOTION FOR RECONSIDERATION; A LITIGANT IS ALLOWED TO FILE ONLY ONE MOTION FOR RECONSIDERATION, SUBJECT TO THE PAYMENT OF THE FULL AMOUNT OF THE DOCKET FEE PRIOR TO THE EXPIRATION OF THE REGLEMENTARY PERIOD; ANOTHER MOTION FOR EXTENSION OF TIME MAY BE GRANTED BUT ONLY FOR THE MOST COMPELLING REASONS; CASE AT BAR.— [A] litigant

is allowed to file only one (1) motion for reconsideration, subject to the payment of the full amount of the docket fee prior to the expiration of the reglementary period. Beyond this, another motion for extension of time may be granted *but only for the most compelling reasons*. x x x In this case, no exceptional circumstance exists. In asking the Court of Appeals for a second extension to file its petition for review, the petitioner merely cited as its excuse the following: (1) heavy pressure of other professional work; and (2) attendance of the lawyers in charge in an international lawyers' conference. x x x Personal obligations and heavy workload do not excuse a lawyer from complying with his obligations particularly in timely filing the pleadings required by the Court.

3. MERCANTILE LAW; REPUBLIC ACT 8293 (INTELLECTUAL PROPERTY CODE); WHEN A MARK CANNOT BE REGISTERED; DOMINANCY TEST; IN USING THE DOMINANCY TEST, FOCUS IS TO BE GIVEN TO THE DOMINANT FEATURES OF THE MARK IN QUESTION. — According to Section 123.1(d) of the Intellectual Property Code of the Philippines (IPC), a mark cannot be registered if it is "identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date," in respect of the following: (i) the same goods or services, or (ii) closely related goods or services, or (iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion. x x x As stated by the Court in the case of *McDonald's Corporation vs. L.C. Big Mak Burger, Inc.*, the "test of dominancy is now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code which defines infringement as the 'colorable imitation of a registered mark x x x or a dominant feature thereof.'" x x x In using this test, focus is to be given to the dominant features of the marks in question.

4. ID.; ID.; ID.; ID.; ID.; IN COMMITTING THE INFRINGING ACT, THE INFRINGER MERELY INTRODUCES NEGLIGIBLE CHANGES IN AN ALREADY REGISTERED MARK, AND THEN BANKS ON THESE SLIGHT DIFFERENCES TO STATE THAT THERE WAS NO IDENTITY OF CONFUSING SIMILARITY, WHICH WOULD RESULT IN INFRINGEMENT; CASE AT BAR.— [I]n committing the infringing act, the infringer merely introduces negligible changes in an already registered mark, and then banks

on these slight differences to state that there was no identity or confusing similarity, which would result in no infringement. This kind of act, which leads to confusion in the eyes of the public, is exactly the evil that the dominancy test refuses to accept. The small deviations from a registered mark are insufficient to remove the applicant mark from the ambit of infringement. In the present case, the dominant feature of the applicant mark is the word "METRO" which is identical, *both visually and aurally*, to the cited marks already registered with the IPO. x x x The findings of Examiner Icban, reviewed first by the Director of the Bureau of Trademarks, and again by the Director General of the IPO, are the result of a judicious study of the case by no less than the government agency duly empowered to examine applications for the registration of marks. These findings deserve great respect from the Court. Absent any strong justification for the reversal thereof — as in this case—the Court shall not reverse and set aside the same. As such, the prior findings remain: the applicant mark, "METRO," is identical to and confusingly similar with the other cited marks already registered. By authority of the Sec. 123.l(d) of the IPC, the applicant mark cannot be registered. The ODG is correct in upholding the Decision of both the Director of the Bureau of Trademarks and Examiner Icban.

5. **ID.; ID.; RULES OF PROCEDURE FOR INTELLECTUAL PROPERTY CASES; SECTION 3, RULE 18 THEREOF PROVIDES FOR THE LEGAL PRESUMPTION THAT THERE IS LIKELIHOOD OF CONFUSION IF AN IDENTICAL MARK IS USED FOR IDENTICAL GOODS; PRESUMPTION ARISES IN CASE AT BAR.—** Section 3, Rule 18 of the Rules of Procedure for Intellectual Property Cases provides for the legal presumption that there is likelihood of confusion if an identical mark is used for identical goods. The provision states: **SEC. 3.** ***Presumption of likelihood of confusion.*** — Likelihood of confusion shall be presumed in case an identical sign or mark is used for identical goods or services. In the present case, the applicant mark is classified under "magazines," which is found in class 16 of the Nice classification. A perusal of the records would reveal, however, that the cited marks "METRO" (word) and "METRO" (logo) are also both classified under magazines. x x x Thus, the presumption arises. Even then, it must be emphasized that absolute certainty of confusion or even actual confusion is not

required to refuse registration. Indeed, it is the mere likelihood of confusion that provides the impetus to accord protection to trademarks already registered with the IPO. The Court cannot emphasize enough that the cited marks "METRO" (word) and "METRO" (logo) are identical with the registrant mark "METRO" both in spelling and in sound. In fact, it is the same exact word. Considering that both marks are used in goods which are classified as magazines, it requires no stretch of imagination that a likelihood of confusion may occur. Again, the Court points to the finding of Examiner Icban which was reviewed and upheld twice: one by the Director of the Bureau of Trademarks and another by the Director General of the IPO.

APPEARANCES OF COUNSEL

Villaraza & Angangco for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, JR., *J.*:

The Case

Challenged before the Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court is the Resolution[1] of the Court of Appeals promulgated on May 20, 2014, which denied ABS-CBN Publishing, Inc.'s (petitioner) "Motion for Extension of Time [To File Petition for Review]." Likewise challenged is the subsequent Resolution[2] of the Court of Appeals promulgated on April 15, 2015, which upheld the earlier Resolution.

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[1] Penned by Associate Justice Michael P. Elbinias, and concurred in by Associate Justices Isaias P. Dicdican and Ricardo R. Rosario; *rollo*, Vol. I, pp. 58-61.

[2] This time penned by Associate Justice Isaias P. Dicdican, and concurred in by Associate Justices Rosmari D. Carandang and Ricardo R. Rosario; *id.* at 63-67.

The Antecedent Facts

In 2004,[3] the petitioner filed with the Intellectual Property Office of the Philippines (IPO) its application for the registration of its trademark "METRO" (applicant mark) under class 16 of the Nice classification, with specific reference to "magazines."[4] The case was assigned to Examiner Arlene M. Icban (Examiner Icban), who, after a judicious examination of the application, refused the applicant mark's registration.

According to Examiner Icban, the applicant mark is identical with three other cited marks, and is therefore unregistrable according to Section 123.1(d) of the Intellectual Property Code of the Philippines (IPC).[5] The cited marks were identified as (1) "Metro" (word) by applicant Metro International S.A. with Application No. 42000002584,[6] (2) "Metro" (logo) also by applicant Metro International S.A. with Application No. 42000002585,[7] and (3) "Inquirer Metro" by applicant Philippine Daily Inquirer, Inc. with Application No. 42000003811.[8]

On August 16, 2005, the petitioner wrote a letter[9] in response to Examiner Icban's assessment, and the latter, through Official Action Paper No. 04, subsequently reiterated her earlier finding which denied the registration of the applicant mark. Eventually, in the "Final Rejection"[10] of the petitioner's application, Examiner Icban "determined that the mark subject of the application cannot be registered because it is identical with the cited marks METRO with Regn. No. 42000002584 ['Metro' (word)] and Regn. No. 42000003811 ['Inquirer Metro']."[11]

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[3] *Rollo*, Vol. I, p. 46.

[4] *Id*. at 10.

[5] Rep. Act No. 8293 (1997), as amended.

[6] *Rollo*, Vol. I, p. 417.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 420-423.

[10] *Id*. at 446.

[11] *Rollo*, Vol. I, p. 446.

The petitioner appealed the assessment of Examiner Icban before the Director of the Bureau of Trademarks of the IPO, who eventually affirmed Examiner Icban's findings. The decision averred that the applicant and cited marks were indeed confusingly similar, so much so that there may not only be a confusion as to the goods but also a confusion as to the source or origin of the goods. The *fallo* of the Bureau Director's decision reads:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DENIED** and the Final Rejection contained in Official Action Paper No. 04, **SUSTAINED**. Serve copies of this Decision to [petitioner] and herein Examiner Arlene M. Icban.
>
> **SO ORDERED.**[12]

Upon the denial of the petitioner's motion for reconsideration, the petitioner appealed to the Office of the Director General (ODG) of the IPO. After the submission of the memoranda from the parties, the ODG, on September 19, 2013, rendered a Decision which upheld Examiner Icban's assessment and the Bureau Director's decision.

According to the ODG; there is no merit in the petitioner's appeal because (1) the applicant and cited marks are identical and confusingly similar,[13] (2) the petitioner's mark was deemed abandoned under the old Trademark Law, and thus, petitioner's prior use of the same did not create a vested right[14] under the IPC,[15] and (3) the applicant mark has not acquired secondary meaning.[16] The *fallo* of the ODG decision reads:

> Wherefore, premises considered, the appeal is hereby **DENIED** and the Decision dated 29 March 2010 and the Order denying the

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[12] *Rollo*, Vol. I, p. 472.

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

[14] *Id*. at 108-109.

[15] Rep. Act No. 8293 (1997), as amended.

[16] *Rollo*, Vol. I, pp. 109-110.

Appellant's Motion for Reconsideration, of the Director of the Bureau of Trademarks, are hereby **SUSTAINED**. The Appellant's Trademark Application No. 4-2004-004507 for METRO is likewise **DENIED**.

Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of the Bureau of Trademarks. Let a copy of this Decision be furnished also the library of the Documentation, Information and Technology Transfer Bureau for its information and records purposes.

SO ORDERED.[17]

The petitioner received a copy of the ODG decision only on October 9, 2013. On the same day, the petitioner filed before the Court of Appeals its "Motion for Extension of Time (To File Petition for Review)" which requested for an extension of fifteen (15) days from October 24, 2013, or until November 8, 2013, to file its petition for review.[18] On October 25, 2013, the petitioner once more filed a motion for extension of time. In the second motion, the petitioner asked the appellate court for another extension of the deadline from November 8, 2013 to November 23, 2013.[19]

Meanwhile, on October 25, 2013, the Court of Appeals issued a Resolution which granted the petitioner's first motion praying for an extension of time to file its petition for review, subject to the "warning against further extension." Thus, the Court of Appeals extended the deadline only until November 8, 2013.[20]

Relying on the appellate court's favorable response to its second motion for extension (which was not acted upon by the Court of Appeals), the petitioner failed to file its petition for review on the deadline set in the Resolution dated October 25, 2013. Instead, the petitioner filed its petition for review only on November 11, 2013—three (3) days after the deadline.[21]

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[17] *Id*. at 110.

[18] *Id.* at 122-126; *rollo*, Vol. II, pp. 624-628.

[19] *Id*. at 127-130, *id*. at 629-632.

[20] *Rollo*, Vol. II, p. 633.

[21] *Rollo*, Vol. I, p. 68.

To justify this delay in filing, the petitioner stated that: (1) it received a copy of the October 25, 2013 Resolution only on November 8, 2013 at 11:30 in the morning; (2) on that same day, this Court, through its Public Information Office, suspended offices in the National Capital Judicial Region in view of Typhoon Yolanda; and (3) November 9 and 10, 2013 fell on a Saturday and Sunday, respectively.[22]

On May 20, 2014, the Court of Appeals rendered the assailed Resolution. It ruled that the petitioner violated its October 25, 2013 Resolution, as well as Section 4, Rule 43 of the Rules of Court, which provides for the period of appeal.[23]

On the basis of the foregoing, and the prevailing jurisprudence, the Court of Appeals consequently denied the petitioner's second motion for extension of time, and dismissed the petition for the petitioner's failure to file its petition for review within the deadline.[24]

On April 15, 2015, the appellate court denied the petitioner's motion for reconsideration.[25]

Hence, this petition.

The Issues

The ground upon which the petitioner prays for the reversal of the ruling of the Court of Appeals is two-fold: first is on procedural law—*whether or not the Court of Appeals erred in dismissing the petition outright for the petitioner's failure to file its petition for review within the time prescribed by the Court of Appeals*; and second is on substantive law—*whether or not the ODG was correct in refusing to register the applicant mark for being identical and confusingly similar with the cited marks already registered with the IPO*.

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

[23] *Id*. at 58-61.

[24] *Id*.

[25] *Id*. at 63-67.

The Court's Ruling

After a careful perusal of the arguments presented and the evidence submitted, the Court finds no merit in the petition.

First, on the procedural issue:

In *Bañez vs. Social Security System*,[26] the Court had occasion to reiterate that appeal is not a constitutional right, but a mere statutory privilege. Hence, parties who seek to avail themselves of it must comply with the statutes or rules allowing it.[27] The rule is that failure to file or perfect an appeal within the reglementary period will make the judgment final and executory by operation of law. Perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; failure to do so renders the questioned decision/resolution final and executory, and deprives the appellate court of jurisdiction to alter the decision/resolution, much less to entertain the appeal.[28]

In connection herewith, Section 4, Rule 43 of the Rules of Court is clear. The appeal shall be taken within fifteen (15) days from the notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*.[29]

More, a litigant is allowed to file only one (1) motion for reconsideration, subject to the payment of the full amount of the docket fee prior to the expiration of the reglementary period. Beyond this, another motion for extension of time may be granted *but only for the most compelling reasons*.[30]

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[26] 739 Phil. 148 (2014).

[27] *Id*. at 154, citing *Calipay v. NLRC*, 640 Phil. 458, 466 (2010).

[28] *Id*., citing *Miel v. Malindog*, 598 Phil. 594, 606 (2009). See also *Sapitan v. JB Line Bicol Express, Inc., Lao Huan Ling/Baritua*, 562 Phil. 817, 831-832 (2007); *Sehwani, Inc. and/or Benita's Frites, Inc. v. IN-N-OUT Burger, Inc.*, 562 Phil. 217, 227 (2007).

[29] Rules of Court (1997), Rule 43, Sec. 4.

[30] *Id.*

Again, in *Bañez*, the Court ruled that filing of an appeal beyond the reglementary period may, under meritorious cases, be excused if the barring of the appeal would be inequitable and unjust in light of certain circumstances therein.[31] While there are instances when the Court has relaxed the governing periods of appeal in order to serve substantial justice, this was done only in exceptional cases.[32]

In this case, no exceptional circumstance exists.

In asking the Court of Appeals for a second extension to file its petition for review, the petitioner merely cited as its excuse the following: (1) heavy pressure of other professional work; and (2) attendance of the lawyers in charge in an international lawyers' conference. It said:

> However, due to the heavy pressure of other equally important professional work coupled with intervening delays and the fact of the necessary attendance of the lawyers in charge of the case in an international lawyer's (sic) conference, the undersigned counsel will need more time to review and finalize petitioner ABS-CBN Publishing, Inc.'s *Petition for Review*.[33]

As the Court has ruled upon in a number of cases, a lawyer has the responsibility of monitoring and keeping track of the period of time left to file pleadings, and to see to it that said pleadings are filed before the lapse of the period.[34] Personal obligations and heavy workload do not excuse a lawyer from complying with his obligations particularly in timely filing the pleadings required by the Court.[35] Indeed, if the failure of the

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[31] *Id*., citing *Philippine National Bank v. Court of Appeals*, 316 Phil. 371, 384 (1995).

[32] *Boardwalk Business Ventures v. Villareal*, 708 Phil. 443, 454-456 (2013).

[33] *Rollo*, p. 630.

[34] *Hernandez v. Agoncillo*, 697 Phil. 459, 469-470 (2012), citing *LTS Philippines Corporation v. Maliwat*, 489 Phil. 230, 235 (2005).

[35] *Iloilo Jar Corporation v. COMGLASCO Corporation Aguila Glass*, G.R. No. 219509, January 18, 2017.

petitioner's counsel to cope with his heavy workload should be considered a valid justification to sidestep the reglementary period, there would be no end to litigations so long as counsel had not been sufficiently diligent or experienced.[36]

Further, the petitioner should not assume that its motion for extension of time would be granted by the appellate court. Otherwise, the Court will be setting a dangerous precedent where all litigants will assume a favorable outcome of a motion which is addressed to the discretion of the courts based on the prevailing circumstances of the case.

To be sure, there is a dearth of jurisprudence that upholds the Court of Appeals' power of discretion in disallowing a second extension of fifteen (15) days. As correctly cited by the appellate court, *Spouses Dycoco vs. Court of Appeals*[37] explains that the Court of Appeals could not be faulted for merely applying the rules, and that a dismissal of a petition in accordance therewith is discretion duly exercised, and not misused or abused.[38]

Based on the foregoing, and for the guidance of both the bench and the bar, the rule as it currently stands is that, in the absence of, or in the event of a party's failure to receive, any resolution from the courts which specifically grants a motion for extension of time to file the necessary pleading, the parties are required to abide by the reglementary period provided for in the Rules of Court. Failure to comply thereto would result to a dismissal or denial of the pleadings for being filed beyond the reglementary period.

In the case at hand, the Court of Appeals was correct in dismissing the petition. The petitioner could not assume that its motion would be granted, especially in light of its flimsy excuse for asking the second extension of time to file its petition for review.

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[36] *Id*.

[37] 715 Phil. 550 (2013).

[38] *Id*. at 563.

On this ground alone, the dismissal of the current petition for review is justifiable. The Court reiterates its warning in the case of *Hernandez vs. Agoncillo*:[39]

> Time and again, this Court has cautioned lawyers to handle only as many cases as they can efficiently handle. The zeal and fidelity demanded of a lawyer to his client's cause require that not only should he be qualified to handle a legal matter, he must also prepare adequately and give appropriate attention to his legal work. Since a client is, as a rule, bound by the acts of his counsel, a lawyer, once he agrees to take a case, should undertake the task with dedication and care. This Court frowns upon a lawyer's practice of repeatedly seeking extensions of time to file pleadings and thereafter simply letting the period lapse without submitting any pleading or even any explanation or manifestation for his omission. **Failure of a lawyer to seasonably file a pleading constitutes inexcusable negligence on his part.**[40] (Emphasis and underscoring supplied)

That said, however, even on the merits, the petition still fails to convince.

Second, on the substantive issue:

According to Section 123.1(d) of the Intellectual Property Code of the Philippines (IPC),[41] a mark cannot be registered if it is "identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date," in respect of the following: (i) the same goods or services, or (ii) closely related goods or services, or (iii) if it nearly resembles such a mark as to be likely to deceive or cause confusion.[42]

To determine whether a mark is to be considered as "identical" or that which is confusingly similar with that of another, the Court has developed two (2) tests: the dominancy and holistic tests. While the Court has time and again ruled that the application

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[39] *Supra*, note 34.

[40] *Id.* at 470-471.

[41] Rep. Act No. 8293 (1997), as amended.

[42] *Id.*, Sec. 123.1(d).

of the tests is on a case to case basis, upon the passage of the IPC, the trend has been to veer away from the usage of the holistic test and to focus more on the usage of the dominancy test. As stated by the Court in the case of *McDonald's Corporation vs. L.C. Big Mak Burger, Inc.*,[43] the "test of dominancy is now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code which defines infringement as the 'colorable imitation of a registered mark x x x or a dominant feature thereof.'"[44] This is rightly so because Sec. 155.1 provides that:

> SECTION 155. Remedies; Infringement. — Any person who shall, without the consent of the owner of the registered mark:
>
> 155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container **or a dominant feature thereof** in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or x x x. (Emphasis and underscoring supplied)

In using this test, focus is to be given to the dominant features of the marks in question. In the 1954 case of *Co Tiong Sa vs. Director of Patents*,[45] the Court, in using the dominancy test, taught that:

> But differences of variations in the details of one trademark and of another are not the legally accepted tests of similarity in trademarks. It has been consistently held that the question of infringement of a trademark is to be determined by the test of dominancy. **Similarity in size, form, and color, while relevant, is not conclusive. If the competing trademark contains the main or essential or dominant features of another, and confusion and deception is likely to result, infringement takes place.**[46] (Emphasis and underscoring supplied)

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[43] 480 Phil. 402 (2004).

[44] *Id*. at 435.

[45] 95 Phil. 1 (1954).

[46] *Id*. at 4.

The Court, in *Skechers, U.S.A., Inc. vs. Inter Pacific Industrial Trading Corp.*,[47] and in once again using the dominancy test, reiterated *Del Monte Corporation vs. Court of Appeals*[48] in saying that "the defendants in cases of infringement do not normally copy but only make colorable changes."[49] The Court emphasized that "the most successful form of copying is to employ enough points of similarity to confuse the public, with enough points of difference to confuse the courts."[50]

In other words, in committing the infringing act, the infringer merely introduces negligible changes in an already registered mark, and then banks on these slight differences to state that there was no identity or confusing similarity, which would result in no infringement. This kind of act, which leads to confusion in the eyes of the public, is exactly the evil that the dominancy test refuses to accept. The small deviations from a registered mark are insufficient to remove the applicant mark from the ambit of infringement.

In the present case, the dominant feature of the applicant mark is the word "METRO" which is identical, *both visually and aurally*, to the cited marks already registered with the IPO. As held by the ODG—and correctly at that —

> x x x **there is no dispute that the subject and cited marks share the same dominant word, "Metro".** (sic) Even if, as the Appellant (petitioner herein) points out, the second cited mark owned by Metro International contains an accompanying device, and the third cited mark contains the terms "Philippine Daily Inquirer", (sic) **the dominant feature of the subject and cited marks is still clearly the word "Metro", (sic) spelled and pronounced in exactly the same way**. The identity between the marks would indubitably result in confusion of origin as well as goods.[51] (Emphasis and underscoring supplied, citations omitted)

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[47] 662 Phil. 11 (2011).

[48] 260 Phil. 435 (1990).

[49] *Id*. at 443.

[50] *Id*.

[51] *Rollo*, Vol. I, p. 108.

Also, greater relevance is to be accorded to the finding of Examiner Icban on the confusing similarity between, if not the total identity of, the applicant and cited marks. Examiner Icban, in reiterating with finality her earlier findings, said that the applicant and cited marks are "*the same in sound, spelling, meaning, overall commercial impression, covers substantially the same goods and flows through the same channel of trade*," which leads to no other conclusion than that "confusion as to the source of origin is likely to occur."[52] This is also the tenor of Examiner Icban's "Final Rejection" of the application, which stated that:

> After an examination of the application, the undersigned IPRS has determined that the mark subject of the application cannot be registered because it is identical with the cited marks METRO with Regn. No. 42000002584 and Regn. No. 42000003811. METRO being dominant word (sic) among the marks causes remarkable similarity in sound, spelling, meaning, connotation, overall commercial impression, covers identical goods and flows through the same channel of trade. **The concurrent use by the parties of the word METRO is likely to cause confusion among purchasers as well as confusion of business or origin hence, registration of this subject application is proscribed under R.A. 8293, Sec. 123.1(d).**[53] (Emphasis and underscoring supplied)

The findings of Examiner Icban, reviewed first by the Director of the Bureau of Trademarks, and again by the Director General of the IPO, are the result of a judicious study of the case by no less than the government agency duly empowered to examine applications for the registration of marks.[54] These findings deserve great respect from the Court. Absent any strong justification for the reversal thereof—as in this case—the Court shall not reverse and set aside the same. As such, the prior findings remain: the applicant mark, "METRO," is identical to and confusingly similar with the other cited marks already

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[52] *Rollo*, Vol. I, p. 31.

[53] *Rollo*, Vol. I, p. 446.

[54] Rep. Act No. 8293 (1997), as amended, Sec. 5(b).

registered. By authority of the Sec. 123.l(d) of the IPC, the applicant mark cannot be registered. The ODG is correct in upholding the Decision of both the Director of the Bureau of Trademarks and Examiner Icban.

This ruling stands despite the specious arguments presented by the petitioner in the current petition.

The petitioner asserts that it has a vested right over the applicant mark because Metro Media Publishers, Inc. (Metro Media), the corporation from which the petitioner acquired the applicant mark, first applied for the registration of the same under the old Trademark Law,[55] and since then, actually used the applicant mark in commerce. The petitioner belabors the point that under the old Trademark law, actual use in commerce is a pre-requisite to the acquisition of ownership over a trademark and a trade name.[56] The petitioner even went on further in asserting that its actual use of the applicant mark enabled it to automatically acquire trademark rights, which should have extended even upon the promulgation of the IPC in 1998.

Two things must be said of this argument.

First, there is no question that the petitioner's predecessor already applied for the registration of the applicant mark "METRO" on November 3, 1994 under Class 16 of the Nice classification. It was docketed as Application No. 4-1994-096162.[57] There is likewise no question that as early as 1989, Metro Media has already used the applicant mark "METRO" in its magazine publication. At that point, Metro Media exercised all the rights conferred by law to a trademark applicant.

Second, however, the petitioner itself admitted in its petition that its application/registration with the IPO under Application No. 4-1994-096162 was already "*deemed abandoned*."[58]

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[55] Rep. Act No. 166 (1947), as amended.

[56] *Rollo*, Vol. I, p. 27.

[57] *Rollo*, Vol. I. p. 10.

[58] *Id*.

While it is quite noticeable that the petitioner failed to discuss the implications of this abandonment, it remains a fact that once a trademark is considered abandoned, the protection accorded by the IPC, or in this case the old Trademark Law, is also withdrawn. The petitioner, in allowing this abandonment, cannot now come before the Court to cry foul if another entity has, in the time that it has abandoned its trademark and in full cognizance of the IPC and the IPO rules, registered its own.

In fact, in *Birkenstock Orthopaedie GMBH and Co. KG. vs. Philippine Shoe Expo Marketing Corporation,*[59] the Court accorded no right at all to a trademark owner whose trademark was abandoned for failure to file the declaration of actual use as required by Sec. 12 of the old Trademark Law.[60] In *Mattel, Inc. vs. Francisco*,[61] the Court rendered a petition as moot and academic because the cited mark has effectively been abandoned for the non-filing of a declaration of actual use, and thus presents no hindrance to the registration of the applicant mark.

Also, as correctly pointed out by the ODG, this abandonment is the very reason why the petitioner lost its rights over its trademark, and that it is also the reason why, after twenty years (20) from the initial application and after actual use of the applicant mark, the petitioner once again came before the IPO to apply for registration. The ODG said:

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[59] 721 Phil. 867 (2013).

[60] Section 12. Duration. — Each certificate of registration shall remain in force for twenty years: Provided, That registrations under the provisions of this Act shall be cancelled by the Director, unless within one year following the fifth, tenth and fifteenth anniversaries of the date of issue of the certificate of registration, the registrant shall file in the Patent Office an affidavit showing that the mark or trade-name is still in use or showing that its non-use is due to special circumstance which excuse such non-use and is not due to any intention to abandon the same, and pay the required fee.

The Director shall notify the registrant who files the above-prescribed affidavits of his acceptance or refusal thereof and, if a refusal, the reasons therefor.

[61] 582 Phil. 492, 499 (2008).

Records show that this is the very situation the [petitioner] finds itself in. **It has acquired no right under the old trademark law since its original application way back 1994 has been deemed abandoned, which is the reason why it filed the current application in 2004 under the new law.** Clearly, then, if [petitioner] has acquired no right under R.A. 166, it possesses no existing right that ought to be preserved by virtue of Section 236 of the IP Code.[62] (Emphasis and underscoring supplied)

Anent the petitioner's argument that "confusion between the marks is highly unlikely,"[63] the petitioner asserts that the applicant mark "METRO" (word) is covered by class 16 of the Nice classification under "magazines," the copies of which are sold in "numerous retail outlets in the Philippines,"[64] whereas the cited mark "METRO" (word) is used in the Philippines only in the internet through its website and does not have any printed circulation.[65]

But like the petitioner's earlier argument, this does not hold water.

Section 3, Rule 18 of the Rules of Procedure for Intellectual Property Cases[66] provides for the legal presumption that there is likelihood of confusion if an identical mark is used for identical goods. The provision states:

SEC. 3. ***Presumption of likelihood of confusion.*** — Likelihood of confusion shall be presumed in case an identical sign or mark is used for identical goods or services.

In the present case, the applicant mark is classified under "magazines," which is found in class 16 of the Nice classification. A perusal of the records would reveal, however, that the cited marks "METRO" (word) and "METRO" (logo) are also both

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[62] *Rollo*, Vol. I, p. 109.

[63] *Id*. at 37.

[64] *Id*. at 40.

[65] *Id*.

[66] A.M. No. 10-3-10-SC (2011).

classified under magazines. In fact, Examiner Icban found that the cited marks were used on the following classification of goods:

> Paper, cardboard and goods made from these materials, not included in other classes; newspapers, **magazines**, printed matter and other printed publications; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastics materials for packaging (not included in other classes); playing cards; printers types; printing blocks.[67] (Emphasis and underscoring supplied)

Thus, the presumption arises.

Even then, it must be emphasized that absolute certainty of confusion or even actual confusion is not required to refuse registration. Indeed, it is the mere likelihood of confusion that provides the impetus to accord protection to trademarks already registered with the IPO. The Court cannot emphasize enough that the cited marks "METRO" (word) and "METRO" (logo) are identical with the registrant mark "METRO" both in spelling and in sound. In fact, it is the same exact word. Considering that both marks are used in goods which are classified as magazines, it requires no stretch of imagination that a likelihood of confusion may occur. Again, the Court points to the finding of Examiner Icban which was reviewed and upheld twice: one by the Director of the Bureau of Trademarks and another by the Director General of the IPO.

As a final point, the petitioner, in the pleadings submitted, manifested that the cited marks are no longer valid. It said that: (1) the cited mark "METRO" (logo) was removed from the IPO register for non-use, citing the IPO online database,[68] (2) the cited mark "INQUIRER METRO," while valid according to the IPO online database, was cancelled according to a certain certification from the Bureau of Trademarks of the IPO; and

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[67] *Rollo*, Vol. I, p. 417.

[68] *Id.* at 38, citing Annex "R" of the petition.

(3) the cited mark "METRO" (word) already expired on June 26, 2016 according to yet another certification from the IPO.

A perusal of the records, however, would reveal that these alleged de-registration and cancellation all allegedly occurred after the ODG has already ruled on the instant case. Considering that the Court is not a trier of facts, the Court could therefore not make a determination of the validity and accuracy of the statements made in the petitioner's manifestation. As such, the Court, through the limited facts extant in the records, could not give weight and credence thereto.

Nonetheless, not all is lost for the petitioner. Should it be true that the cited marks, which were the basis of the IPO in refusing to register the applicant mark, were already de-registered and cancelled, nothing prevents the petitioner from once again applying for the registration of the applicant mark before the IPO.

WHEREFORE, premises considered, the Resolutions of the Court of Appeals dated May 20, 2014 and April 15, 2015, are hereby **AFFIRMED** without prejudice to the petitioner's refiling of its application for the registration of the trademark "METRO" before the Intellectual Property Office.

SO ORDERED.

Peralta (Acting Chairperson), *del Castillo*,[*] *Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

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[*] Designated as additional Member per Raffle dated January 22, 2018.

FIRST DIVISION

[G.R. 218253. June 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EVELYN SEGUIENTE *y* RAMIREZ,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS UNDER SECTION 5, ARTICLE II THEREOF; THE PROSECUTION NEEDS TO PROVE THAT THE TRANSACTION OR SALE ACTUALLY TOOK PLACE, COUPLED WITH THE PRESENTATION IN COURT OF THE SUBSTANCE SEIZED AS EVIDENCE; CASE AT BAR.—** In a prosecution for the illegal sale of drugs under Section 5, Article II of RA 9165, "the prosecution needs to [prove] sufficiently the identity of the buyer, seller, object and consideration; and, the delivery of the thing sold and the payment thereof. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the substance seized as evidence."In the present case, the appellant was positively identified as the seller of the drugs to the poseur-buyer SPO1 Jacinto for a sum of Php100.00. The subject drug which yielded positive for *shabu* per Chemistry Report No. D-094-2006 was identified as the *shabu* sold and delivered to him by SPO1 Jacinto.

2. **ID.; ID.; ILLEGAL POSSESSION OF REGULATED OR PROHIBITED DRUGS UNDER SECTION 11, ARTICLE II THEREOF; ELEMENTS; CASE AT BAR.—** [T]o prove "illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and, (3) the accused freely and consciously possessed the drug." As found by the courts below, all the foregoing elements were proved beyond reasonable doubt. Appellant was caught in possession of *shabu,* a dangerous drug. She

failed to show that she was authorized to possess the same. By her mere possession of the drug, there is already a *prima facie* evidence of knowledge which she failed to rebut.

3. ID.; ID.; PROCEDURE SET FORTH IN SECTION 21 THEREOF TO ENSURE THE IDENTITY AND INTEGRITY OF THE SEIZED DRUGS, NOT FOLLOWED IN CASE AT BAR.— A review of the records indubitably shows that the procedure laid down in RA 9165 was not followed. The Court has already ruled that marking upon immediate confiscation does not exclude the possibility that marking can be at the police station or office of the apprehending team. However, while there was testimony about the marking of the seized substance at the police station, there was no mention that the marking was done in the presence of appellant. x x x Another procedural lapse committed by the arresting team was their non-compliance with the photograph and physical inventory requirements under RA 9165 and its Implementing Rules and Regulations (IRR). Though there was a Certificate of Inventory on record, the fact remains that the prosecution admitted that it was not complete since the only signature appearing thereon was that of the Intelligence Operative (SPO1 Himor). x x x Another crucial deviation from the procedure required by law was the failure to take photographs of the seized items. This fact was admitted by the prosecution during the request for admission by the defense. "The photographs were intended by law as another means to confirm the chain of custody of the dangerous drugs."

4. ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURE MAY BE EXCUSED ON JUSTIFIABLE GROUNDS AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— Indeed, Section 21(a) of the IRR, as amended by RA 10640, provides a saving clause in the procedure outline under Section 21 (1) of RA 9165. However, before this saving clause to apply, the prosecution is bound to recognize the procedural lapses, provide justifiable grounds for its non-compliance and thereafter to establish the preservation of the integrity and evidentiary value of the items seized. In the present case, the prosecution offered no explanation on why the procedure was not followed or whether there was

a justifiable ground for failing to do so. The prosecution did not bother to justify its lapses by conducting re-direct examination or through rebuttal evidence despite the defense raising such matters during the trial. "These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegation of frame-up." As ruled in *People v. Relato,*"[i]t is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt."

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the Decision[1] dated November 28, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01127-MIN affirming the Decision[2] dated June 25, 2012 of the Regional Trial Court (RTC) of Zamboanga City, Branch 13, in Criminal Case Nos. 22565 and 22566, finding Evelyn Seguiente *y* Ramirez (appellant) guilty beyond reasonable doubt of violation of Sections 5 (Illegal Sale of *Shabu)* and 11 (Illegal Possession of *Shabu*), Article II of Republic Act (RA) No. 9165 otherwise known as The Comprehensive Dangerous Drugs Act of 2002.

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[1] CA *rollo,* pp. 70-92; penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Romulo V. Borja and Rafael Antonio M. Santos.

[2] Records, pp. 123-131; penned by Presiding Judge Eric D. Elumba.

Version of the Prosecution

Shortly after noontime on April 17, 2006, SPO1 Samuel Tan Jacinto (SPO1 Jacinto) of the Zamboanga City Mobile Group, Zamboanga City Police Office, received a tip from a confidential informant (CI) that a certain "Lyn" was selling *shabu* on Love Drive, Lower Calarian, Zamboanga City. A team of police officers was formed to conduct a buy-bust operation. The team was composed of SPO1 Jacinto as the poseur-buyer with SPO1 Rammel C. Himor (SPO1 Himor) and PO1 Julmin H. Ismula (PO1 Ismula) as back-ups. SPO1 Jacinto was provided with a Php100 bill marked money with the pre-arranged signal of nodding his head up and down.

Immediately after the briefing, the team together with the CI proceeded to the target area and parked their vehicle in front of a flea market in Lower Calarian. SPO1 Jacinto and the CI proceeded on foot towards Love Drive leaving behind the back-up within viewing distance. SPO1 Jacinto and the CI approached "Lyn" who was standing in front of a house. SPO1 Jacinto was introduced to appellant as a prospective buyer. Appellant asked SPO1 Jacinto how much *shabu* he wanted to buy and the latter replied Php100.00 worth. After SPO1 Jacinto gave the pre-arranged signal, PO1 Ismula arrested appellant. PO1 Ismula then searched appellant and recovered from her the marked money. When frisked, PO1 Ismula found in appellant's possession another sachet of *shabu.* Thereafter, appellant was brought to the Zamboanga City Mobile Office where SPO1 Jacinto marked the sachet of *shabu* with his initials "STJ" while the sachet of *shabu* recovered from appellant's possession was marked by PO1 Ismula with his initials "JHI." After an inventory of the seized items,[3] the latter were turned over to the case investigator PO2 Nedzfar M. Hassan (PO2 Hassan) who also placed his initials on the two sachets. A request[4] for the laboratory examination thereof was prepared and the seized items were brought by PO2 Hassan to the Philippine National Police (PNP)

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[3] Exhibit "I", Folder of Exhibits.

[4] Exhibit "A", *id*.

Crime Laboratory Regional Office 9 where they were received by PO3 Rachel F. Pidor.

The seized suspected sachets of *shabu* were shown positive for Methamphetamine Hydrochloride *(shabu)* weighing 0.0066 gram (sale)[5] and 0.0049 gram (possession)[6] per Chemistry Report No. D-094-2006[7] issued by PSI Melvin Ledesma Manuel, Forensic Chemical Officer of PNP Regional Crime Laboratory 9. Accordingly, appellant was charged in two separate Informations for violation of Sections 5 and 11, Article II of RA 9165 before the RTC, Branch 13, Zamboanga City.

Upon arraignment, appellant pleaded not guilty to the offenses charged.

Version of the Defense

Denying the charges and offering alibi, appellant averred that she was cooking food when she observed a person being chased by five persons. One of them approached appellant and ordered her to go with them. They brought her to Suterville and then to the Zamboanga City Mobile Group Office where she was told to give Php50,000.00 which was reduced to Php10,000.00 for her release. When she could not provide the amount demanded, she was detained at the city jail.

Ruling of the Regional Trial Court

The RTC was convinced that the prosecution clearly showed that the sale of the drugs between appellant and the poseur-buyer did take place and the *shabu* subject thereof was brought and identified in court. Also established was the fact that after appellant was apprehended and frisked, another sachet of *shabu* was found in her possession. The RTC found the chain of custody of the subject drugs was not broken and the integrity of the same was preserved. It rejected appellant's defense of frame-up and denial.

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[5] Exhibit "B", *id*.

[6] Exhibit "C", *id*.

[7] Exhibit "D", *id*.

Accordingly, on June 25, 2012, the RTC rendered its Decision finding appellant guilty beyond reasonable doubt of the crimes charged. Thus:

> WHEREFORE, in the light of the foregoing, this Court finds:
>
> (1) In Criminal Case No. 22565, accused EVELYN SEGUIENTE y RAMIREZ guilty beyond reasonable doubt tor violating Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences [her] to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000) without subsidiary imprisonment in case of insolvency;
>
> (2) In Criminal Case No. 22566, EVELYN SEGUIENTE y RAMIREZ guilty beyond reasonable doubt x x x for violating Section 11, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences [her] to suffer the penalty of 12 YEARS AND 1 DAY TO 16 YEARS OF IMRPISONMENT and pay a fine of THREE HUNDRED THOUSAND PESOS (₱300,000) without subsidiary imprisonment in case of insolvency;
>
> The methamphetamine hydrochlorides used as evidence in these cases are hereby ordered confiscated and the Clerk of Court is directed to turn over the same to the proper authorities for disposition.
>
> SO ORDERED.[8]

Ruling of the Court of Appeals

On appeal, the CA affirmed the RTC Decision. Thus:

> WHEREFORE, the Decision dated 25 June 2012 of Branch 13, Regional Trial Court, Zamboanga City, finding the accused-appellant Evelyn Seguiente y Ramirez guilty of violations of Section 5 and Section 11. Article II of Republic Act No. 9165, is hereby AFFIRMED.
>
> SO ORDERED.[9]

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[8] Records. pp. 130-131.

[9] CA *rollo,* p. 92.

Undeterred, appellant is now before this Court via the present appeal seeking a reversal of her conviction based on the lone assigned error that:

> The court a quo gravely erred in convicting herein accused-appellant despite the failure of the prosecution to prove [her] guilt beyond reasonable doubt.[10]

Our Ruling

The appeal is meritorious.

In a prosecution for the illegal sale of drugs under Section 5, Article II of RA 9165, "the prosecution needs to [prove] sufficiently the identity of the buyer, seller, object and consideration; and, the delivery of the thing sold and the payment thereof. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the substance seized as evidence."[11] In the present case, the appellant was positively identified as seller of the drugs to the poseur-buyer SPO1 Jacinto for a sum of Php100.00. The subject drug which yielded positive for *shabu* per Chemistry Report No. D-094-2006 was identified as the *shabu* sold and delivered to him by SPO1 Jacinto.

On the other hand, to prove "illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and, (3) the accused freely and consciously possessed the drug."[12] As found by the courts below, all the foregoing elements were proved beyond reasonable doubt. Appellant was caught in possession of *shabu,* a dangerous drug. She failed to show that she was authorized to possess the same. By her mere possession of the drug, there is already a *prima facie* evidence of knowledge which she failed to rebut.

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[10] *Id*. at 24.

[11] *People v. Dumlao,* 584 Phil. 732, 738 (2008).

[12] *People v. Eyam,* 699 Phil. 384, 391 (2012).

At the center of appellant's argument is the alleged failure of the prosecution to account for the chain of custody of the seized drugs.

Appellant's main contention is anchored on the non-compliance by the police officers regarding the requirement of RA 9165, *i.e.,* the failure to conduct a physical inventory and taking of the photograph of the seized drugs in his presence and of the persons mentioned in the law.

Appellant questions the procedure done by the police officers, during the post seizure custody and disposition of the confiscated or seized dangerous drugs. According to her, the marking of the items seized was not done in her presence. The physical inventory and taking of photographs was likewise not conducted in her presence and the persons mentioned in the law. The inventory receipt contained only the signature of the Intelligence Operative. The police operatives did not offer any explanation on their non-compliance with these requirements. She argues that these non-compliance made the legitimacy of the alleged buy-bust operation doubtful.

> The procedure set forth in Section 21 of R.A. No. 9165 is intended precisely to ensure the identity and integrity of dangerous drugs seized. This provision requires that upon seizure of illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof.[13]

A review of the records indubitably shows that the procedure laid down in RA 9165 was not followed.

The Court has already ruled that marking upon immediate confiscation does not exclude the possibility that marking

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[13] *People v. Yepes*, 784 Phil. 113, 127 (2016).

can be at the police station or office of the apprehending team.[14] However, while there was testimony about the marking of the seized substance at the police station, there was no mention that the marking was done in the presence of appellant. As ruled in *People v. Salonga,*[15] the marking "must always be done in the presence of the accused or his representative."

Another procedural lapse committed by the arresting team was their non-compliance with the photograph and physical inventory requirements under RA 9165 and its Implementing Rules and Regulations (IRR). Though there was a Certificate of Inventory on record, the fact remains that the prosecution admitted that it was not complete since the only signature appearing thereon was that of the Intelligence Operative (SPO1 Himor).[16] There was no mention whether the inventory was done in the presence of appellant or her representative or counsel, a representative from the media and the Department of Justice and any elected public official. Worse, the arresting officer PO1 Ismula was not even sure if an inventory was indeed made because he did not see the person who signed it Hence, no inventory was prepared, signed and provided to the appellant in the manner required by law.

Another crucial deviation from the procedure required by law was the failure to take photographs of the seized items. This fact was admitted by the prosecution during the request for admission by the defense.[17] "The photographs were intended by law as another means to confirm the chain of custody of the dangerous drugs."[18]

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[14] *People v. Resurreccion,* 618 Phil. 520, 531-532, citing *People v. Gum-Oyen,* 603 Phil. 665 (2009); *People v. Palomares,* 726 Phil. 637, 641 (2014).

[15] 717 Phil. 117, 127 (2013).

[16] TSN, May 7, 2007, p. 15.

[17] *Id*. at 14.

[18] *People v. Zakaria,* 699 Phil. 367, 381 (2012).

Indeed, Section 21(a)[19] of the IRR, as amended by RA 10640,[20] provides a saving clause in the procedure outline under Section 21 (1) of RA 9165. However, before this saving clause to apply, the prosecution is bound to recognize the procedural lapses, provide justifiable grounds for its non-compliance and thereafter to establish the preservation of the integrity and evidentiary value of the items seized.

In the present case, the prosecution offered no explanation on why the procedure was not followed or whether there was a justifiable ground for failing to do so. The prosecution did not bother to justify its lapses by conducting re-direct examination or through rebuttal evidence despite the defense raising such matters during the trial. "These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegation of frame- up."[21] As ruled in

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[19] 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.* — x x x

(a) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

[20] 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.

[21] *People v. Ancheta,* 687 Phil. 569, 582 (2012).

People v. Relato,[22] "[i]t is settled that the State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court. Any gap renders the case for the State less than complete in terms of proving the guilt of the accused beyond reasonable doubt."

WHEREFORE, premises considered, the appeal is **GRANTED**. We **REVERSE and SET ASIDE** the November 28, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01127-MIN. Appellant Evelyn Seguiente *y* Ramirez is hereby **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for another lawful cause.

Let a copy of this Decision be furnished the Superintendent, Correctional Institute for Women-Mindanao Davao Prison & Penal Farm, Dujali, Davao del Norte, for immediate implementation. The Superintendent of the Correctional Institute for Women-Mindanao is **DIRECTED** to report the action taken to this Court, within five days from receipt of this Decision.

SO ORDERED.

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

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[22] 679 Phil. 268, 278 (2012).

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

[**] Designated as additional member vice *J.* Jardeleza who recused due to prior action as Solicitor General.

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

THIRD DIVISION

[G.R. No. 218947. June 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **REY ANGELES *y* NAMIL,** *accused-appellant*.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS UNDER SECTION 5, ARTICLE II THEREOF; ELEMENTS; THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS MUST BE SHOWN TO HAVE BEEN PRESERVED, OTHERWISE, ACQUITTAL OF THE ACCUSED IS PROPER.—** For the successful prosecution of a violation of Section 5, Article II of R.A. No. 9165, the following elements must concur: (a) identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment. In other words, not only must the transaction be proved but the identity of the object, i.e., the prohibited drugs, must likewise be ascertained. There must be a showing that the integrity and evidentiary value of such seized items must have been preserved in that the drugs presented in court as evidence against the accused must be the same as those seized from the culprit. If the integrity of the drugs seized is compromised, the courts are without any other recourse but to acquit the accused.

2. **ID.; ID.; PROCEDURE TO BE OBSERVED BY LAW ENFORCEMENT IN ACCORDANCE WITH SECTION 21 THEREOF; SUBSTANTIAL COMPLIANCE WITH THE PROCEDURE MAY BE ALLOWED PROVIDED THE INTEGRITY OF THE DRUGS SEIZED IS PRESERVED.—** In order to prevent evidence in drugs cases from being contaminated, the following procedure should be observed by law enforcement in accordance with Section 21 of R.A. No. 9165: 1. The apprehending team/officer having custody and control of the drugs shall immediately after seizure and confiscation, physically inventory and photograph; 2. The same must be done in the presence of the accused, or the person/s

from whom the items were recovered, or his representative or counsel; and 3. A representative from the media and the Department of Justice, and any elected public official must likewise be present, who shall also sign the copies of the inventory and receive a copy thereof. Generally, strict compliance with the above-mentioned procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. However, the Court in numerous instances had allowed substantial compliance with the procedure provided that the integrity of the drugs seized is preserved.

3. **ID.; ID.; ID.; ID.; TO WARRANT SUBSTANTIAL COMPLIANCE, THE PROSECUTION MUST IDENTIFY THE LAPSES IN PROCEDURE AND PROVIDE A JUSTIFIABLE GROUND FOR ITS NON-OBSERVANCE; CASE AT BAR.—** Nevertheless, substantial compliance with the procedure is not a panacea which *ipso facto* excuses the lapses committed by police officers in the conduct of anti-drug operations. In *People v. Año*, the Court reminded that before the saving clause under R.A. No. 9165, as amended, becomes operative, the prosecution must identify the lapses in procedure and provide a justifiable ground for its non-observance. x x x [B]efore substantial compliance with the procedure is permitted, not only must the integrity and evidentiary value of the drugs seized be preserved, there must be a justifiable ground for its noncompliance in the first place. The prosecution has a two-fold duty of identifying any lapse in procedure and proving the existence of a sufficient reason why it was not strictly followed. A review of PO2 Saez's testimony shows that the prosecution failed to prove any justifiable ground to deviate from the prescribed procedure.

4. **ID.; ID.; ID.; LINKS IN THE CHAIN OF CUSTODY TO BE ESTABLISHED IN BUY-BUST OPERATIONS; NOT ESTABLISHED IN CASE AT BAR.—** Even assuming that there exist justifiable grounds for the relaxation of the procedures, substantial compliance was still unwarranted because the integrity and evidentiary value of the drugs seized from Angeles were not preserved. In *Mallillin v. People*, the Court explained that the observance of the chain of custody serves to protect the integrity of the evidence used in drug cases.

x x x In *People v. Kamad*, the Court laid out the links in the chain of custody which must be sufficiently established in buy-bust situations: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drugs seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the seized and marked illegal drug from the forensic chemist to the court. The testimony of PO2 Saez, the prosecution's lone witness, sufficiently established the first two links in the chain of custody. x x x Nonetheless, his single testimony miserably fails to establish the remaining links of the chain. x x x Clearly, the third and fourth links in the chain of custody are sorely lacking. x x x The necessary details to prove the preservation of the integrity of the drugs recovered from Angeles remain a mystery. All these are left open to the realm of possibilities such that the evidentiary value of drugs presented in court was unduly prejudiced; considering that it cannot be said with certainty that the drugs were never compromised or tampered with.

5. ID.; ID.; ID.; FOR FAILURE TO PROVE THE INTEGRITY AND IDENTITY OF THE SEIZED DRUG, ACQUITTAL OF THE ACCUSED IS PROPER IN CASE AT BAR.— Taking into account the unjustified deviation from the established procedure, broken links in the chain of custody and the minute amount recovered from Angeles, the Court finds that the integrity of the evidence seized and presented in court has been compromised. Consequently, Angeles should not be convicted for violation of Section 5, Article II of R.A. No. 9165 because the prosecution failed to prove the identity of the object of the crime, i.e., the drugs seized.

6. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES IS NOT CONCLUSIVE AND CANNOT PREVAIL OVER THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT; CASE AT BAR.— [T]he courts *a quo* gave premium on PO2 Saez's testimony and gave full faith and credit on account of the presumption of regularity in the performance of official duties. The CA stressed that

Angeles never presented any evidence to support his allegations that he was framed by the arresting police officers. While it is true that there is a dearth of evidence on record to prove that PO2 Saez was motivated by ill will to testify against Angeles or that the police officers did not perform their duties faithfully, still, the testimony of the prosecution's lone witness proves insufficient to convict Angeles. It must be remembered that such presumption is not conclusive and cannot prevail over the constitutional right of the accused to be presumed innocent or to constitute proof of guilt beyond reasonable doubt. Thus, Angeles' failure to prove a frame-up is immaterial because the prosecution's evidence is still unsatisfactory considering that it did not sufficiently establish the identity of the drugs seized from Angeles. After all, the prosecution must rely on the strength of its evidence and not on the weakness of the defense.

APPEARANCES OF COUNSEL

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 29 August 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 05678, which affirmed the 17 July 2012 Decision[2] of the Regional Trial Court, Branch 70, Pasig City *(RTC)*, in Criminal Case No. 16847-D, finding accused-appellant Rey Angeles *y* Namil *(Angeles)* guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act *(R.A.)* No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo*, pp. 2-10; penned by Associate Justice Sesinando E. Villon, and concurred in by Associate Justices Florito S. Macalino and Pedro B. Corales.

[2] CA *rollo*, pp. 64-68; penned by Presiding Judge Louis P. Acosta.

THE FACTS

In an Information[3] dated 2 September 2009, Angeles was charged with violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the information reads:

> That on or about the 30th day of September, 2009, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there wilfully, unlawfully and knowingly sell to PO2 Alexander A. Saez, a police poseur buyer, one (1) heat sealed transparent plastic sachet containing zero point zero two (0.02) gram of white crystalline substance, which substance was found positive to the test of Methamphetamine Hydrochloride commonly known as "Shabu", a dangerous drug, in violation of the above-cited law.[4]

During his arraignment on 27 October 2009, Angeles, with the assistance of his counsel, pleaded "Not Guilty."[5]

Evidence for the Prosecution

The prosecution presented PO2 Alexander Saez *(PO2 Saez)* as its witness. His testimony sought to establish the following:

On 29 September 2009, a confidential informant *(CI)* informed PO2 Saez and his team leader Police Senior Inspector Jerry Amendalan *(Inspector Amendalan)* that Angeles was selling *shabu*. On the basis of the information, Inspector Amendalan briefed his team and planned a possible buy-bust operation. Therewith, he coordinated with the Philippine Drug Enforcement Agency *(PDEA)* and a Pre-Operation Report was prepared. Thereafter, the CI, together with another police officer, conducted a surveillance which confirmed Angeles' illegal drug activities.[6]

On 30 September 2009, Inspector Amendalan formed a buy-bust team, which included PO2 Saez as the poseur-buyer; they

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[3] Records, pp. 1-2.

[4] *Id.* at 1.

[5] *Id.* at 23.

[6] TSN, dated 11 October 2011, pp. 6-13.

arrived at the target area at around 5:30 P.M. Once there, the CI spotted Angeles about 80 meters away from where the team was positioned. After identifying Angeles, the CI and PO2 Saez approached him while the other team members stayed behind to witness the transaction. The CI introduced PO2 Saez to Angeles as a seaman in search of *shabu*.[7]

After Angeles was convinced of PO2 Saez's purported identity, he agreed to sell him *shabu* and proposed a simultaneous exchange. Angeles handed a sachet of *shabu* to PO2 Saez who, in turn, gave him ₱500.00. When he received the drugs, PO2 Saez lit a cigarette to alert the rest of the team that the transaction had been consummated. Consequently, the buy-bust team approached them but when Angeles sensed their presence. PO2 Saez immediately grabbed him and introduced himself as a police officer.[8]

Once Angeles was arrested, PO2 Saez marked the sachet he received from the accused with his initials and then made an inventory of the evidence on site. Thereafter, Angeles was brought to the station for documentation, investigation, and disposition. There, a request for a laboratory examination was prepared.[9]

Thereafter, PO2 Saez brought the specimen and the request for examination to the Philippine National Police *(PNP)* Crime Laboratory and was attended to by a certain Relos, a receiving clerk. The examination by the forensic chemist yielded the specimen positive for methamphetamine hydrochloride. [10]

Evidence for the Defense

The defense presented Angeles and his neighbour Sumayon Otto *(Otto)* as its witnesses, whose testimonies are as follows:

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[7] *Id*. at 14-18.

[8] *Id*. at 19-21.

[9] *Id*. at 21-26.

[10] *Id*. at 26-27 and 34.

On 30 September 2009 at around 4:30 P.M., Otto was drinking coffee at the cafeteria of Angeles' mother located in front of their house when, suddenly, two vehicles stopped in front. Five (5) men in civilian clothing alighted from the vehicle, one of them identifying themselves as policemen, while the rest stayed inside.[11]

Meanwhile, Angeles had just finished taking a bath when the armed men barged into his house and immediately handcuffed him. As a result, his mother cried and Otto quickly fled. Angeles was thereafter brought to the police station where he was asked to admit that he was selling drugs—he was put in jail due to his refusal to do so. Because he did not admit to the charge, a policeman he later identified as PO2 Saez asked him to pay them ₱300,000.00. Unfortunately, they filed a case against Angeles because he did not have that amount to give them.[12]

The RTC Ruling

In its decision, the RTC convicted Angeles for violating Section 5, Article II of R.A. No. 9165. The trial court opined that testimonies of police officers deserve full faith and credit because of the presumption of regularity in their performance of duty. It expounded that the evidence sufficiently established that Angeles was selling drugs. In addition, the RTC elucidated that the absence of representatives from the Department of Justice *(DOJ)*, the media, and barangay officials was not fatal to the prosecution because it was justified by PO2 Saez. The trial court noted that their presence was not obtained due to the urgency of the situation and the availability of the informant. The dispositive portion reads:

> **WHEREFORE**, in view of the foregoing, the accused REY ANGELES y Namil is hereby found GUILTY beyond reasonable doubt of committing the offense as charged, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (PHP500,000.00).

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[11] TSN, dated 30 April 2012, pp. 3-5.

[12] TSN, dated 27 February 2012, pp. 6-9.

Meanwhile, pursuant to Section 21 of Republic Act 9165, Magella Monashi, Evidence Custodian of the Philippine Drug Enforcement Agency (PDEA) or any of his authorized representative is hereby ordered to take charge and to have custody of the "shabu" subject matter of this case, within seventy-two (72) hours from notice, for proper disposition.

Furnish the PDEA a copy of this Decision for its information and guidance

Costs against the accused.

SO ORDERED.[13]

Aggrieved, Angeles appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed that of the RTC. The appellate court posited that PO2 Saez's lone testimony was enough to warrant a conviction. It elucidated that being the poseur-buyer, he was in the best position to testify on the transaction with Angeles for the sale of illegal drugs. The CA averred that police officers were able to comply with the chain of custody as there was no broken chain from the time the drugs were seized until its presentation in court. The appellate court discussed that the integrity of the evidence is presumed preserved and the accused had the burden to prove that the same was tampered with. Further, the CA dismissed Angeles' allegation of frame-up for the absence of proof and he never made a formal charge against the officers who arrested him. It ruled:

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. The assailed Decision dated July 17, 2012 rendered by the Regional Trial Court (RTC), Branch 70, Pasig City in Criminal Case No. 16847-D is hereby AFFIRMED in toto.

SO ORDERED.[14]

Hence, this appeal.

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[13] CA *rollo*, p. 68.

[14] *Rollo*, pp. 9-10.

ISSUE

WHETHER THE ACCUSED IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTION 5, ARTICLE II OF R.A. NO. 9165.

THE COURT'S RULING

The appeal is meritorious.

Integrity of seized drugs vital in the prosecution of drugs cases

For the successful prosecution of a violation of Section 5, Article II of R.A. No. 9165, the following elements must concur: (a) identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment.[15] In other words, not only must the transaction be proved but the identity of the object, i.e., the prohibited drugs, must likewise be ascertained. There must be a showing that the integrity and evidentiary value of such seized items must have been preserved in that the drugs presented in court as evidence against the accused must be the same as those seized from the culprit.[16] If the integrity of the drugs seized is compromised, the courts are without any other recourse but to acquit the accused.

In order to prevent evidence in drugs cases from being contaminated, the following procedure should be observed by law enforcement in accordance with Section 21 of R.A. No. 9165:

1. The apprehending team/officer having custody and control of the drugs shall immediately after seizure and confiscation, physically inventory and photograph;

2. The same must be done in the presence of the accused, or the person/s from whom the items were recovered, or his representative or counsel; and

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[15] *People v. Almodiel*, 694 Phil. 449, 460 (2012).

[16] *People v. Sorin*, 757 Phil. 360, 368-369 (2015).

3. A representative from the media and the Department of Justice, and any elected public official must likewise be present, who shall also sign the copies of the inventory and receive a copy thereof.

Generally, strict compliance with the above-mentioned procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[17] However, the Court in numerous instances[18] had allowed substantial compliance with the procedure provided that the integrity of the drugs seized is preserved.

Sufficient justification must be proven to warrant substantial compliance.

Nevertheless, substantial compliance with the procedure is not a panacea which *ipso facto* excuses the lapses committed by police officers in the conduct of anti-drug operations. In *People v. Año*,[19] the Court reminded that before the saving clause under R.A. No. 9165, as amended, becomes operative, the prosecution must identify the lapses in procedure and provide a justifiable ground for its non-observance, to wit:

In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved. Also,

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[17] *People v. Pagaduan*, 641 Phil. 432, 444 (2010).

[18] *People v. Cortez*, 611 Phil. 360, 381 (2009); *People v. Dimaano*, 780 Phil. 586, 606 (2016); *Saraum v. People*, 779 Phil. 122, 131 (2016).

[19] G.R. No. 230070, 14 March 2018.

in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as fact, because the Court cannot presume what these grounds are or that they even exist.

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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. (Citations omitted)

In short, before substantial compliance with the procedure is permitted, not only must the integrity and evidentiary value of the drugs seized be preserved, there must be a justifiable ground for its noncompliance in the first place. The prosecution has a two-fold duty of identifying any lapse in procedure and proving the existence of a sufficient reason why it was not strictly followed.

A review of PO2 Saez's testimony shows that the prosecution failed to prove any justifiable ground to deviate from the prescribed procedure, to wit:

Direct Examination

PROSECUTOR JABSON:

Q: By the way, mr. witness who was present during the inventory?
A: The rest of the team, sir and the subject.

Q: How about representatives from the DOJ, barangay and media?
A: None.

Q: How come?
A: Due to the urgency of the operation, sir.

Q: Why do you say that the operation was urgent?
A: The availability of the subject and the confidential informant sir.

Q: What do you mean when you say availability, mr. witness?
A: I mean, the arrest of an accused in selling illegal drugs is

> very covert in nature, sir and availability of the subject and the informant is very necessary for the successful operation of our buy-bust, sir and Barangay Official, media and other requirements of Section 21 is not necessary to be implemented in a drug buy-bust operation only into a search warrant, sir.[20]

While it is true that the prosecution was able to proactively identify the deviation from the prescribed procedure, i.e., lack of representatives from the media and the DOJ, and a barangay official, no sufficient justifiable reason was established. Police must prove that they exerted efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[21]

PO2 Saez merely claims that due to the urgency of the operation they were unable to secure the presence of representatives from the media and the DOJ, and of a barangay official. The Court finds such explanation vague as it was never clarified to what extent was the operation urgent such that there was no time to contact them. The circumstances surrounding the buy-bust operation is ambiguous rendering it difficult to determine whether the decision to no longer contact representatives from the media and the DOJ, and a barangay official was reasonable.

For example, it may be understandable that the said individuals were no longer secure because the suspect was in transit, placing him at a higher risk of escaping or evading arrest. On the other hand, if it was shown through the intelligence gathered by the authorities that the drug pusher operated in a particular area, they would have had sufficient time to plan the buy-bust operation, which includes ensuring that representatives from the media and the DOJ, and a barangay official are present during the same.

Likewise, PO2 Saez testified that it was his belief that the presence of representatives from the media and the DOJ, and

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[20] TSN, dated 11 October 2011, pp. 24-25.

[21] *People v. Crispo*, G.R. No. 230065, 14 March 2018.

of a barangay official was needed only in cases where a search warrant would be served and not during buy-bust operations. His erroneous opinion casts a dark cloud over the reason why there was a deviation from the established procedure because of his position that even if the buy-bust operation was not urgent, there would have been no need for the said representatives and a barangay official to be present.

All links of the chain must be established to prove integrity was preserved.

Even assuming that there exist justifiable grounds for the relaxation of the procedures, substantial compliance was still unwarranted because the integrity and evidentiary value of the drugs seized from Angeles were not preserved. In *Mallillin v. People*,[22] the Court explained that the observance of the chain of custody serves to protect the integrity of the evidence used in drug cases, to wit:

> More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[23]

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**

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[22] 576 Phil. 576 (2008).

[23] *Id*. at 586-587.

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.[24] (Emphasis and underscoring supplied)

In *People v. Kamad*,[25] the Court laid out the links in the chain of custody which must be sufficiently established in buy-bust situations: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drugs seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the seized and marked illegal drug from the forensic chemist to the court.[26]

The testimony of PO2 Saez, the prosecution's lone witness, sufficiently established the first two links in the chain of custody. He clearly narrated how he marked and handled the drugs recovered from Angeles. Further, PO2 Saez explained that from the time of the arrest until they reached the police station for further investigation, he had possession of the seized items. Nonetheless, his single testimony miserably fails to establish the remaining links of the chain.

According to PO2 Saez, he turned over the drugs to the PNP Crime Laboratory and was received by a certain Relos. Curiously, the identity of the person who received it for the PNP Crime Laboratory was never made clear and was identified only as the receiving clerk. After PO2 Saez handed the drugs to the alleged receiving clerk of the PNP Crime Laboratory, no other details were provided except that the test performed by the forensic chemist yielded a positive result for methamphetamine hydrochloride.

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[24] *Id.* at 587.

[25] 624 Phil. 289 (2010).

[26] *Id.* at 304.

Clearly, the third and fourth links in the chain of custody are sorely lacking. PO2 Saez's lone testimony leaves several questions unanswered. What happened to the drugs from the time Relos received it from PO2 Saez until it was eventually transmitted to the forensic chemist for examination? Were there other persons who came into contact with the drugs before the forensic chemist subjected it to examination? Who handed the drugs to the forensic chemist? How did Relos and the forensic chemist handle the drugs? Who ultimately transmitted the drugs seized from Angeles to the trial court to be used as evidence against him? The necessary details to prove the preservation of the integrity of the drugs recovered from Angeles remain a mystery. All these are left open to the realm of possibilities such that the evidentiary value of drugs presented in court was unduly prejudiced; considering that it cannot be said with certainty that the drugs were never compromised or tampered with.

While it is true that the credible and positive testimony of a single prosecution witness is sufficient to warrant a conviction,[27] PO2 Saez's testimony is not enough. In the case at bar, the parties only stipulated the qualifications of the forensic chemist.[28] Such stipulation is severely limited because it does not cover the manner as to how the specimen was handled before and after it came to the possession of the forensic chemist.[29]

What makes the observance of the chain of custody even more crucial to the present case is that the drugs recovered from Angeles were only 0.02 grams. In *People v. Holgado*,[30] the Court cautioned that the minuscule amount of drugs recovered should alert authorities to be more observant of the procedures, to wit:

> Apart from the officers' glaring noncompliance with Section 21, two circumstances are worth underscoring in this case. First, the shabu supposedly seized amounted to five (5) centigrams (0.05 grams).

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[27] *People v. Rivera*, 590 Phil. 894, 907-908 (2008).

[28] Records, pp. 32-33.

[29] *People v. Gatlabayan*, 669 Phil. 240, 258 (2011).

[30] 741 Phil. 78 (2014).

This quantity is so minuscule it amounts only to about 2.5% of the weight of a five centavo coin (1.9 grams) or a one-centavo coin (2.0 grams).

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While the minuscule amount of narcotics seized by itself is not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In Mallillin v. People, this Court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives.[31]

Taking into account the unjustified deviation from the established procedure, broken links in the chain of custody and the minute amount recovered from Angeles, the Court finds that the integrity of the evidence seized and presented in court has been compromised. Consequently, Angeles should not be convicted for violation of Section 5, Article II of R.A. No. 9165 because the prosecution failed to prove the identity of the object of the crime, i.e., the drugs seized.

Finally, the courts *a quo* gave premium on PO2 Saez's testimony and gave full faith and credit on account of the presumption of regularity in the performance of official duties. The CA stressed that Angeles never presented any evidence to support his allegations that he was framed by the arresting police officers. While it is true that there is a dearth of evidence on record to prove that PO2 Saez was motivated by ill will to testify against Angeles or that the police officers did not perform their duties faithfully, still, the testimony of the prosecution's lone witness proves insufficient to convict Angeles.

It must be remembered that such presumption is not conclusive and cannot prevail over the constitutional right of the accused to be presumed innocent or to constitute proof of guilt beyond reasonable doubt.[32] Thus, Angeles' failure to prove a frame-up

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[31] *Id.* at 99.

[32] *People v. Capuno*, 655 Phil. 226, 245 (2011), citing *People v. Sanchez*, 590 Phil. 214, 243 (2008).

is immaterial because the prosecution's evidence is still unsatisfactory considering that it did not sufficiently establish the identity of the drugs seized from Angeles. After all, the prosecution must rely on the strength of its evidence and not on the weakness of the defense.[33]

WHEREFORE, the 29 August 2014 Decision of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 05678 is **REVERSED** and **SET ASIDE**. Accused-appellant Rey Angeles *y* Namil is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 220517. June 20, 2018]

LOLITA ESPIRITU SANTO MENDOZA and SPS. ALEXANDER and ELIZABETH GUTIERREZ, *petitioners, vs.* **SPS. RAMON, SR. and NATIVIDAD PALUGOD,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, THE FACTUAL FINDINGS OF THE COURT OF APPEALS AFFIRMING THOSE OF THE REGIONAL TRIAL COURTS ARE FINAL AND

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[33] *Franco v. People*, 780 Phil. 36, 53 (2016).

CONCLUSIVE AND THEY CANNOT BE REVIEWED BY THE SUPREME COURT WHICH HAS JURISDICTION TO RULE ONLY ON QUESTIONS OF LAW; EXCEPTIONS.— As a rule, the factual findings of the CA affirming those of the RTC are final and conclusive, and they cannot be reviewed by the Court which has jurisdiction to rule only on questions of law in Rule 45 petitions to review. x x x There are, however, recognized exceptions where the Court may review questions of fact. These are: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. CIVIL LAW; CONTRACTS; SALE; THE DEED OF ABSOLUTE SALE (DAS) IS ITSELF THE PROOF THAT THE SALE OF A PROPERTY IS SUPPORTED BY SUFFICIENT CONSIDERATION, THIS IS ANCHORED ON THE DISPUTABLE PRESUMPTION OF CONSIDERATION INHERENT IN EVERY CONTRACT; CASE AT BAR.— As correctly pointed out by petitioner Lolita, the DAS is itself the proof that the sale of the property is supported by sufficient consideration. This is anchored on the disputable presumption of consideration inherent in every contract. Thus, Article 1354 of the Civil Code provides: "Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary." This disputable presumption is reiterated in the Rules of Court (Rules). Section 3, Rule 131 of the Rules x x x In *Mangahas v. Brobio*, the Court explained how the presumption of sufficient

consideration can be overcome, x x x Guided by the above provisions of the Civil Code and the Rules as well as jurisprudence, petitioners stand to benefit from the disputable presumption of consideration with the presentation of the DAS. Indeed, they can rely on the DAS as proof that it has consideration — "**FOR AND IN CONSIDERATION of the sum of FOUR HUNDRED THOUSAND PESOS (₱400,000.00)** Philippine Currency, **receipt of which is hereby acknowledged and confessed**." With the presumption in favor of petitioner Lolita who is the vendee, it became incumbent upon respondents to present preponderant evidence to prove lack of consideration. Respondents' mere assertion that the DAS has no consideration is inadequate.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A WITNESS' CREDIBILITY IS DETERMINED BY THE PROBABILITY OR IMPROBABILITY OF HIS TESTIMONY; APPLICATION IN CASE AT BAR.— Given the significant inconsistencies in the testimony of respondent Natividad, the credibility of her testimony is, to the Court, doubtful. To be sure, a witness' credibility is determined by the probability or improbability of his testimony. As well, the witness' means and opportunity of knowing the facts that he is testifying to are relevant. The improbability of respondent Natividad's assertions is demonstrated by the evidence, both documentary and testimonial, that petitioner Lolita adduced to rebut the same. Put simply, respondent Natividad's observations are those of an outsider because she was not living with her daughter during the period at issue and cannot be relied upon. The RTC and the CA also did not even mention the glaring inconsistencies noted above, which if properly considered, would have seriously affected the outcome of the case.

APPEARANCES OF COUNSEL

Jose Angelito B. Bulao for petitioners.
Edgardo A. Arandia for respondents.

D E C I S I O N

CAGUIOA, *J.:*

Before the Court is a petition for review on *certiorari* (Petition) under Rule 45 of the Rules of Court assailing the Decision[1] dated April 29, 2015 (Decision) of the Court of Appeals[2] (CA) in CA-G.R. CV No. 102904, denying the appeal of petitioners for lack of merit, and the CA[3] Resolution[4] dated September 10, 2015, denying petitioners' motion for reconsideration. The CA Decision affirmed the Decision[5] dated March 14, 2013 in favor of respondents and Order[6] dated May 8, 2014, denying petitioners' motion for reconsideration, of the Regional Trial Court of Bacoor, Cavite, Branch 19 (RTC) in Civil Case No. BCV 2004-217.

The Facts and Antecedent Proceedings

The CA Decision's brief narration of facts and proceedings before the RTC follows:

> [Petitioner] Lolita Espiritu Santo Mendoza (Lolita, for brevity) and Jasminia Palugod (Jasminia, for brevity) were close friends. Lolita was a businesswoman engaged in selling commodities and houses and lots, while Jasminia was then working as a Supervisor in the Philippine Long Distance Telephone Company (PLDT). In 1991, Lolita and Jasminia bought the subject lot [with an area of 120 sq. m.][7] on

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[1] *Rollo*, pp. 86-93. Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Eduardo B. Peralta, Jr. and Victoria Isabel A. Paredes, concurring.

[2] Special Fourth Division.

[3] Special Former Special Fourth Division.

[4] *Rollo*, pp. 103-104. Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes, concurring.

[5] Records, pp. 217-225. Penned by Presiding Judge Matias M. Garcia II.

[6] *Id*. at 267.

[7] CA *rollo*, p. 131.

installment for one (1) year until they decided to pay the balance in full. [The lot is located in Sagana Remville[8] Homes, Habay, Bacoor, Cavite.][9] In 1995, Jasminia became afflicted with breast cancer. Sometime in 1996, Lolita and Jasminia constructed a residential house on the subject lot. Although Lolita has no receipts, she shared in the cost of the construction of the house from her income in the catering business and selling of various products. [Jasminia, based on a certification,[10] was separated from employment on December 30, 1998, and on January 18, 1999, she received her retirement pay[11] in the amount of ₱1,383,773.59.][12] On May 11, 2004, Jasminia executed a *Deed of* [*Absolute*] *Sale* in favor of Lolita, who eventually mortgaged [on November 19, 2004][13] the subject property to [petitioner] Elizabeth Gutierrez as a security for a loan in the amount of Php800,000.00.

On the other hand, [respondents spouses Ramon, Sr. and Natividad Palugod] alleged that their daughter, the late Jasminia, acquired the property located in Sagana Homes, Habay, Bacoor[,] Cavite. Prior to and after the said acquisition of the subject property, Jasminia was living with [petitioner] Lolita, a lesbian. Jasminia was an employee of PLDT who rose to the rank of Traffic Supervisor before her separation from service. [Petitioner] Lolita has no work or means of livelihood of her own and was fully dependent on Jasminia. Unfortunately, Jasminia was afflicted with Stage IV breast cancer with multiple bone metastasis. When she was nearing her death, she told her mother, [respondent] Natividad Palugod, that her house and lot shall go to her brother Ramonito Palugod, but [petitioner] shall be allowed to stay therein. [Jasminia died on September 26, 2004 at the Philippine General Hospital.][14] Meanwhile, Lolita, taking advantage

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[8] Also referred to as "Renville" in some parts of the records.

[9] RTC Decision dated March 14, 2013, records, pp. 217-218.

[10] Exh. "9", *id*. at 192. The Certification dated April 8, 2008 from PLDT states that Jasminia Paloma Palugod, a Traffic Supervisor, was employed on March 2, 1976 and was separated from employment on December 30, 1998 with monthly salary of ₱24,290.00.

[11] Petition, *rollo*, p. 35.

[12] Exh. "8", records, p. 190.

[13] Exh. "2", Real Estate Mortgage, *id*. at 181-182.

[14] Exh. "J", Death Certificate of Jasminia Paloma Palugod, *id*. at 127; testimony of respondent Natividad Palugod, TSN, November 27, 2007, p. 6.

of her relationship with Jasminia, caused the latter to sign a *Deed of Absolute Sale* in her favor. Thereafter, Lolita, aided by her brother Wilfredo Mendoza as witness, entered it for registration with the Office of the Registry of Deeds. Thus, TCT (Torrens [*sic*] Certificate of Title) No. T-308560 in the name of Jasminia was cancelled and TCT No. T-1077041 was issued in the name of Lolita.

[Respondents], upon learning from the Office of the Registry of Deeds that Jasminia's certificate of title has been cancelled, executed an *Affidavit of Adverse Claim* of their right and interest over the property as the only compulsory and legitimate heirs of Jasminia. However, [petitioner] Lolita, knowing fully well of the impending suit, made it appear that she mortgaged the property to [petitioners] Spouses Gutierrez as a security for a loan amounting to Php800,000.00.

Thus, [respondents] filed a complaint for *Declaration of Nullity of the Deed of Absolute Sale* and the *Deed of Real Estate Mortgage* with the RTC of Bacoor[,] Cavite.

On March 14, 2013, the RTC of Bacoor, Cavite, Branch 19, rendered the assailed *Decision* in favor of [respondents]. The RTC declared that there can be no contract unless the following concur: (a) consent; (2) object certain; and (3) cause of the obligation. [Respondents] were able to prove by preponderance of evidence that the *Deed of Sale* involved no actual monetary consideration. [Petitioner] Lolita, in her testimony, admitted that the sale was without monetary consideration. The RTC ruled that the *Deed of Sale* is void for being simulated, hence, the *Deed of Real Estate Mortgage* executed therein by [petitioner] Lolita in favor of [petitioners] Spouses Gutierrez is likewise void, since, in a real estate mortgage, it is essential that the mortgagor be the absolute owner of the property to be mortgaged.

[The dispositive portion of the RTC Decision states:

> WHEREFORE, premises considered, the judgment is hereby rendered in favor of the [respondents] Sps. Ramon, Sr. and Natividad Palugod and against the [petitioners] Lolita Espiritu Santo Mendoza and Sps. Alexander and Elizabeth Gutierrez as follows:
>
> 1. That the Deed of Absolute Sale dated May 11, 2004 purportedly executed by x x x Jasminia Palugod in favor of [petitioner] Lolita Espiritu Santo Mendoza as null and void;

2. That the Deed of Real Estate Mortgage dated November 19, 2004 executed by [petitioner] Lolita Espiritu Santo Mendoza in favor of [petitioners] Spouses Alexander and Elizabeth Gutierrez as null and void;

3. To cancel the Transfer Certificate of Title No. T-1077041 in the name of [petitioner] Lolita Espiritu Santo Mendoza and to reinstate Transfer Certificate of Title No. 308560 in the name of Jasminia P. Palugod;

4. Declaring [respondents] as the lawful owner[s] of the subject property by succession as the only and compulsory heirs of the late Jasminia P. Palugod; and

5. Ordering [petitioners], jointly and severally, to pay [respondents] the amount of Php200,000.00 in attorney's fees.

SO ORDERED.][15]

[Petitioners] filed [a] motion for reconsideration, but the RTC, in the assailed *Order* dated May 8, 2014, denied the same for lack of merit.

Aggrieved, [petitioners] interposed [an] appeal [before the CA].[16]

The CA Ruling

The CA denied petitioners' appeal for lack of merit. The CA ruled that respondents, being the only surviving heirs of Jasminia[17] Paloma Palugod (Jasminia), have the legal personality to question the validity of the deed of sale between Jasminia and petitioner Lolita Espiritu Santo Mendoza (petitioner Lolita).[18] The CA found no cogent reason to deviate from the finding of the RTC that the deed of sale is null and void for being absolutely simulated since it did not involve any actual monetary consideration.[19] The CA likewise agreed with the RTC's finding

[15] Records, pp. 224-225.

[16] *Rollo*, pp. 87-88.

[17] Also spelled as Jasmiña in other parts of the records.

[18] See *rollo*, p. 90.

[19] *Id*.

that the real estate mortgage between petitioner Lolita and petitioners spouses Alexander and Elizabeth Gutierrez is null and void because the mortgagor was not the absolute owner of the mortgaged property.[20] The dispositive portion of the CA Decision reads as follows:

> **WHEREFORE**, the appeal is **DENIED** for lack of merit. The assailed March 14, 2013 *Decision* and May 8, 2014 *Order* of the RTC of Bacoor, Cavite, Branch 19, in Civil Case No. BCV 2004-217, are **AFFIRMED**.
>
> **SO ORDERED**.[21]

Petitioners filed a motion for reconsideration, which was denied by the CA in its Resolution[22] dated September 10, 2015.

Hence, the present Petition. The Court in its Resolution[23] dated January 13, 2016 denied the Petition for failure to sufficiently show any reversible error in the challenged CA Decision and Resolution as to warrant the exercise of the Court's appellate jurisdiction. Petitioners filed a Motion for Reconsideration[24] dated March 28, 2016. Respondents opposed the Motion for Reconsideration and filed an Opposition/Comment[25] dated April 20, 2016. In its Resolution[26] dated October 3, 2016, the Court granted petitioners' Motion for Reconsideration, reinstated the Petition and required respondents to comment on the Petition. Respondents filed their Comment[27] dated February 4, 2017. Petitioners filed a Reply[28] dated July 10, 2017.

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[20] *Id*. at 91.

[21] *Id*. at 92.

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

[23] *Id*. at 107.

[24] *Id*. at 111-115.

[25] *Id*. at 121-122.

[26] *Id*. at 128-129.

[27] *Id*. at 133-139.

[28] *Id*. at 151-155.

Issues

The Petition raises the following issues:

1. Whether the CA erred in not upholding as applicable to the case the legal principle that a written contract is for a valuable consideration despite the utter failure to prove beyond a selective appreciation of the transcript of stenographic notes that there was indeed no consideration;

2. Whether the CA erred in not upholding as applicable to this case the legal principle that inadequacy of monetary consideration does not render a conveyance null and void; and

3. Whether the CA erred when it affirmed the finding of the RTC that petitioners-mortgagees are jointly liable with petitioner-mortgagor despite the lack of evidence against their innocence contrary to the legal principle that innocent parties must not be held liable for damages.[29]

The Court's Ruling

The Petition is meritorious.

While petitioners couch the issues based on erroneous application of certain legal principles — presumption and adequacy of consideration of contracts, they inherently involve a determination of the correctness of the finding by both the CA and the RTC that respondents have established by preponderance of evidence the lack of consideration of the disputed deed of sale. Necessarily, questions of fact must be hurdled in the resolution of the issues raised by petitioners.

As a rule, the factual findings of the CA affirming those of the RTC are final and conclusive, and they cannot be reviewed by the Court which has jurisdiction to rule only on questions of law in Rule 45 petitions to review.[30]

The Court in *Pascual v. Burgos*[31] reiterated that:

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[29] Petition, *id.* at 36.

[30] See RULES OF COURT, Rule 45, Sec. 1.

[31] 776 Phil. 167 (2016).

A question of fact requires this [C]ourt to review the truthfulness or falsity of the allegations of the parties.[32] This review includes assessment of the "probative value of the evidence presented."[33] There is also a question of fact when the issue presented before this [C]ourt is the correctness of the lower courts' appreciation of the evidence presented by the parties.[34]

There are, however, recognized exceptions where the Court may review questions of fact. These are: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record;[35] or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[36]

As will be demonstrated below, the Court's review of the factual findings of the courts below is justified by the fourth,

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[32] *Id*. at 183, citing *Republic v. Ortigas and Company Limited Partnership*, 728 Phil. 277, 287-288 (2014) and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, 665 Phil. 784, 788 (2011).

[33] *Id*., citing *Republic v. Ortigas and Company Limited Partnership*, *id*. at 287.

[34] *Id*.

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

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

tenth and eleventh exceptions — the assailed judgments of the CA and the RTC are based on a misapprehension of facts; the findings of fact of the CA and the RTC, supposedly premised on the absence of evidence, are contradicted by the evidence on record; and the CA as well as the RTC manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

At the heart of the present controversy between respondents spouses Ramon, Sr. (respondent Ramon) and Natividad Palugod (respondent Natividad), the parents of the late Jasminia and her "close friend"[37] petitioner Lolita is the (unilateral) Deed of Absolute Sale[38] (DAS) notarized on May 11, 2004 executed by Jasminia in favor of petitioner Lolita, the validity of which is the central issue in this case. The DAS partly states:

> **I, JASMINIA PALOMA PALUGOD** x x x hereinafter referred to as the **VENDOR, FOR AND IN CONSIDERATION of the sum of FOUR HUNDRED THOUSAND PESOS (₱400,000.00)** Philippine Currency, receipt of which is hereby acknowledged and confessed, have **SOLD, TRANSFERRED**, and **CONVEYED**, absolutely and perpetually to **LOLITA ESPIRITU SANTO MENDOZA** x x x hereinafter referred to as the **VENDEE**, her heirs, successors, and assigns, my **ONE HUNDRED TWENTY (120) SQUARE METERS** lot located at Habay, Bacoor, Cavite, including all improvements found therein x x x.[39]

Both the RTC and the CA declared the DAS void on the ground that it was fictitious or simulated on account of lack of consideration. According to the RTC, petitioner Lolita "admitted that she has no receipts showing the staggered payment of ₱400,000.00 or any agreement made between her and Jasminia

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[37] Petitioner Lolita came to know Jasminia in 1988 and, starting May 26, 1996, they stayed together in Block 3, Lot 10, Narra Street, Sagana Remville Homes, Habay, Bacoor, Cavite. TSN, June 30, 2009, pp. 42 and 46.

[38] Exh. "F" and Exh. "1", records, pp. 10-11 and 179-180. The Deed of Absolute Sale bears the signatures of both the vendor and the vendee.

[39] *Id*. at 10 and 179.

as to the consideration of the subject property."[40] On the other hand, the CA stated that:

> Although, on its face, the *Deed of Sale* appears to be supported by valuable consideration, since it states that Lolita paid the purchase price of Php400,000.00 for the subject property. However, based on the testimony of [petitioner] Lolita, it has been proven that she gave no consideration therefor. Having proven that the price, as reflected in the *Deed of Sale* is simulated, it is beyond doubt that the sale is null and void. Article 1471 of the New Civil Code provides that "If the price is simulated, the sale is void, *x x x*." Thus, [respondents] are the lawful owners of the subject property by intestate succession as the only and compulsory heirs of the late Jasminia.[41]

Both the RTC and the CA relied on the following testimony of petitioner Lolita:

> ATTY. ARANDIA: Also, in the presence of Atty. Bongon [the notary public], did you pay Jasminia the consideration on the Deed of Absolute Sale?
>
> WITNESS: No, sir.
>
> ATTY. ARANDIA: There was none?
>
> WITNESS: Yes, sir.[42]

To the lower courts, the above-quoted testimony of petitioner Lolita, plus the absence of receipts, is the unrebutted proof of the DAS' lack of consideration.

In their motion for reconsideration before the CA and in their Petition, petitioners argue, however, that petitioner Lolita's principal proof that she did purchase the subject property is the DAS itself while the evidence against her by respondents are all verbal averments, which are mere conjectures and even hearsay.[43]

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[40] RTC Decision dated March 14, 2013, records, p. 222.

[41] CA Decision dated April 29, 2015, *rollo*, p. 91.

[42] *Id*.; see also RTC Decision dated March 14, 2013, records, p. 221.

[43] Motion for Reconsideration dated May 29, 2015, *rollo*, p. 18; Petition, *id*. at 37.

While petitioner Lolita concedes that she did not pay the consideration for the purchase of the subject property before Notary Public Atty. Jesus Bongon,[44] she asserts that the payment was made prior to the notarization of the DAS as shown in her testimony taken on February 23, 2010.[45] She likewise argued this point before the CA in petitioners' motion for reconsideration.[46]

The lower courts, as will be explained below, failed to properly consider the foregoing argument and evidence that petitioner Lolita raised and adduced. The outcome of the case would have been different had the lower courts given them the due consideration they deserved.

As correctly pointed out by petitioner Lolita, the DAS is itself the proof that the sale of the property is supported by sufficient consideration. This is anchored on the disputable presumption of consideration inherent in every contract. Thus, Article 1354 of the Civil Code provides: "Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary."

This disputable presumption is reiterated in the Rules of Court (Rules). Section 3, Rule 131 of the Rules provides:

> SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> x x x x x x x x x
>
> (r) That there was a sufficient consideration for a contract[.]

In *Mangahas v. Brobio*,[47] the Court explained how the presumption of sufficient consideration can be overcome, to wit:

---

[44] See Exh. "F" and Exh. "1", records, pp. 10-11 and 179-180.

[45] Petition, *rollo*, p. 37.

[46] Motion for Reconsideration dated May 29, 2015, *rollo*, p. 18.

[47] 648 Phil. 560 (2010).

A contract is presumed to be supported by cause or consideration.[48] The presumption that a contract has sufficient consideration cannot be overthrown by a mere assertion that it has no consideration. To overcome the presumption, the alleged lack of consideration must be shown by preponderance of evidence.[49] The burden to prove lack of consideration rests upon whoever alleges it, which, in the present case, is respondent.[50]

Guided by the above provisions of the Civil Code and the Rules as well as jurisprudence, petitioners stand to benefit from the disputable presumption of consideration with the presentation of the DAS. Indeed, they can rely on the DAS as proof that it has consideration — "**FOR AND IN CONSIDERATION of the sum of FOUR HUNDRED THOUSAND PESOS (₱400,000.00)** Philippine Currency, **receipt of which is hereby acknowledged and confessed**."[51]

With the presumption in favor of petitioner Lolita who is the vendee, it became incumbent upon respondents to present preponderant evidence to prove lack of consideration. Respondents' mere assertion that the DAS has no consideration is inadequate.

Regarding the determination of preponderance of evidence, Section 1, Rule 133 of the Rules provides:

SECTION 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest,

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[48] *Id.* at 570, citing CIVIL CODE OF THE PHILIPPINES, Art. 1354.

[49] *Id.*, citing *Spouses Saguid v. Security Finance, Inc.*, 513 Phil. 369, 384 (2005).

[50] *Id.*

[51] Records, pp. 10 and 179.

and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

The basic rule in civil cases is:

x x x that "the party having the burden of proof must establish his case by a preponderance of evidence."[52] By "preponderance of evidence is meant simply evidence which is of greater weight, or more convincing than that which is offered in opposition to it."[53] x x x

x x x x x x x x x

"Where the evidence on an issue of fact is in equipoise or there is doubt on which side the evidence preponderates[,] the party having the burden of proof fails upon that issue."[54] Therefore, as "neither party was able to make out a case, neither side could establish its cause of action and prevail with the evidence it had. They are thus no better off than before they proceeded to litigate, and, as a consequence thereof, the courts can only leave them as they are. In such cases, courts have no choice but to dismiss the complaints/petitions."[55]

While the RTC ruled that "[respondents] established by a preponderance of evidence that the Deed of Sale dated May 11, 2004 involved no actual monetary consideration, executed by Jasminia in favor of [petitioner] Lolita,"[56] it relied not on the testimony of the lone witness for respondents, respondent Natividad, but on the testimony of petitioner Lolita admitting that "in the presence of the Notary Public, Atty. Bongon, the sale was in fact without consideration"[57] and "she has no receipts

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[52] *Rivera v. CA*, 348 Phil. 734, 742 (1998), citing Rules of Court, Rule 133, Sec. 1.

[53] *Id.*, citing *The New Testament Church of God v. Court of Appeals*, 316 Phil. 330, 333 (1995), further citing *Republic v. Court of Appeals*, 281 Phil. 177, 186 (1991).

[54] *Id.* at 743, citing Francisco, *EVIDENCE* (1994 2nd ed.), p. 555.

[55] *Id.*, citing *Municipality of Candijay, Bohol v. Court of Appeals*, 321 Phil. 922, 926 (1995).

[56] RTC Decision dated March 14, 2013, records, p. 221.

[57] *Id.*

showing the staggered payment of ₱400,000.00 or any agreement made between her and Jasminia as to the consideration of the subject property."[58] Thus, the RTC Decision made no mention of the pertinent testimony of respondent Natividad wherein she controverted the presumption of consideration.

The CA echoed the finding of the RTC and stated: "A perusal of the records of the case reveals that [respondents] were able to establish by a preponderance of evidence that the *Deed of Sale* is absolutely simulated, since, it did not involved (*sic*) any actual monetary consideration."[59] The CA then quoted the testimony of petitioner Lolita where she admitted that the consideration of the DAS was not paid in the presence of Atty. Bongon. The CA, like the RTC, did not advert to the testimonial evidence adduced by respondents through respondent Natividad.

Since preponderance of evidence is the required quantum of proof in this case, the evidence of respondents, who are the plaintiffs before the RTC, must be weighed against the petitioners' evidence, and a determination of which one has superior weight must be made.

As mentioned earlier, respondents relied solely on the testimony of respondent Natividad. A careful reading of the testimony of respondent Natividad, the mother of Jasminia, reveals that respondents' evidence on the lack of consideration of the DAS can be inferred from the following:

> [Atty. Edgardo Arandia, respondents' counsel, to witness respondent Natividad]
>
> ATTY. ARANDIA
> Q Why did you say that they were living as if they were husband and wife?
>
> WITNESS
> A They were living in that house and Lolita Mendoza is a lesbian "tomboy", sir.

---

[58] *Id*. at 222.

[59] CA Decision dated April 29, 2015, *rollo*, p. 90.

ATTY. ARANDIA
Q And who was spending for their everyday living?

WITNESS
A Jasminia, sir.

ATTY. ARANDIA
Q Why? Was (*sic*) Lolita has no income of her own?

WITNESS
A No, sir. She has none.

ATTY. ARANDIA
Q What was the occupation or job of Jasminia at that time?

WITNESS
A My daughter is a Supervisor at the PLDT, sir.

ATTY. ARANDIA
Q You are telling us that Lolita was purely dependent from Jasminia?

WITNESS
A Yes, sir.

x x x x x x x x x

ATTY. ARANDIA
Q What did you talk about?

WITNESS
A She [Jasminia] told me that the house and lot is for Ramonito and she requested not to evict Lolita from the house and I said "yes" we will not asked (*sic*) Lolita to leave the house, sir.[60]

Respondent Natividad further testified as follows:

ATTY. ARANDIA:
Mrs. Palugod, what can you say on this Deed of Absolute Sale marked as Exhibit "F"?

WITNESS:
That's not true because in fact my daughter when she's still alive had been telling me that the said house and lot will be given to her brother Ronnie and we will not ask Lolita Mendoza to vacate or to leave the place, sir.

---

[60] TSN, November 27, 2007, pp. 10-11, 20.

x x x x x x x x x

ATTY. ARANDIA:

Mrs. Palugod, what else did you discover with the Office of the Register of Deeds for the Province of Cavite in connection with this property of Jasmiña in addition to its transfer from the name of your daughter to the name of Lolita?

WITNESS:

We also discovered that the Deed of Sale is not true and that is a fake "gawa-gawa lang po," sir.[61]

In fine, respondent Natividad simply reiterated the allegations in the "Sinumpaang Salaysay ng Paghahabol (Affidavit of Adverse Claim)" dated November 24, 2004 that she and her husband, respondent Ramon, executed, to wit:

Nalagay sa pangalan ni Lolita Espiritu Santo Mendoza ang titulong lupa't-bahay sang-ayon sa isang Deed of Absolute Sale na lumalabas ay binili niya iyon sa aming namayapang anak na si Jasminia sa halagang ₱400,000.00 piso daw;

Wala pong katotohanan ang nasabing bilihan sapagkat iyon ay isang hindi totoo at isang simulated or fictitious na bilihan lamang dahil imposibleng bayaran [ni] Lolita ang anak [namin] dahil sila ay nagsasama bilang mag-asawa (tomboy po si Lolita) at si Lolita ay walang hanap-buhay at umaasa lamang sa aming anak na si Jasminia. Ang katotohanan pa nga, ay na[n]g magkasakit ang aming anak, lahat ng ginagastos sa pagpapagamot sa kanya ay galing sa kanyang mga kapatid na ibinibigay [namin] kay Lolita. Bukod pa doon, bago siya namatay ay ibinilin niya sa amin n[a] huwag paaalisin si Lolita sa bahay kung iyon ay manahin [namin] at hindi kailanman iyon ay ipinagbili sa kanya;

Kung kaya[']t bilang tanging tagapagmana at sa ilalim ng batas ay kami na ang may-ari ng nasabing lupa[']t bahay, ay aming isinasagawa ang sinumpaang salaysay na ito upang patunayang lahat ang nakasaad sa itaas x x x.[62]

---

[61] TSN, April 1, 2008, pp. 20-21, 28-29.

[62] Exh. "E", Affidavit of Adverse Claim of Natividad Paloma Palugod and Ramon Palugod, records, p. 124.

On the other hand, petitioner Lolita disputed the assertion that she has no income and means of livelihood, and presented documents in support thereof, to wit:

[Atty. Lawrence[63] Rubio, petitioners' counsel, to petitioner Lolita]

ATTY. RUBIO:
Miss witness, can you tell us your occupation?

WITNESS:
I am a businesswoman, sir.

ATTY. RUBIO:
Can you tell us what kind of business are you engaged into?

WITNESS:
I am engaged in selling food, catering services. I am also engaged in selling house and lot, sir.

ATTY. RUBIO:
Your (*sic*) are telling us that you are engaged into selling as agent. Do you have any proof to show that you are engaged in such business?

WITNESS:
Yes sir, I have.

ATTY. RUBIO:
What are those documents, madame witness?

WITNESS:
I have documents coming from the offices wherein I was able to sell house and lot and also documents coming from other offices wherein I transacted business catering with them, sir.

ATTY. RUBIO:
Madame witness, I am showing to you Exhibit "3["][64] and "3-A",[65] is this the one that I am (*sic*) referring to?

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[63] Also spelled as Laurence and Luarence in some parts of the TSNs.

[64] Certification from E.B. Loredo Realty Corporation dated January 6, 2005 that Lolita Mendoza had been a sales agent of the said realty corporation from January 2001 up to December 2002, records, p. 183.

[65] Certification from Cesar C. Cruz & Partners Law Offices dated December 22, 2004 that Lolita Mendoza was supplying food consisting of lunch and snacks to the employees of the said law office from 1982 to 1988, *id.* at 184.

WITNESS:
Yes sir.

x x x x x x x x x

ATTY. RUBIO:
When we say occupation, we are talking of income. Can you tell us if you receive any income from this occupation?

WITNESS:
Yes sir.

ATTY. RUBIO:
Can you show us any proof that you had received any income from this business or occupation that you mentioned?

WITNESS:
I have a statement of account, I invested the money with the bank. I also bought a house and lot and I invested money with MMG, sir.

ATTY. RUBIO:
I am showing to you a document previously marked as Exhibit "4".[66] Can you tell us if you are referring to this document that you mentioned?

WITNESS:
Yes sir.

ATTY RUBIO:
How about Exhibits "5"[67] & "6"[68]?

---

[66] Certification from Chinabank, SM City Bacoor Branch dated December 16, 2004 that since 1998 Lolita E. Mendoza maintained accounts with the said bank under TD#168020017540, TD#168020018239, SA#2680029315 & SA#2680873817, *id*. at 185.

[67] Notarized Memorandum of Agreement between MMG International Holdings Co., Ltd. ("Holdings") and Jasminia Palugod &/or Lolita Mendoza (the "Capitalist") dated June 26, 2002 wherein the Capitalist turned over ₱800,000.00 for the Holdings to use as capital for six months at 2.5% monthly compensation, expiring on December 26, 2002, *id*. at 186.

[68] Notarized Memorandum of Agreement between MMG International Holdings Co., Ltd. ("Holdings") and Lolita Mendoza (the "Capitalist") dated June 26, 2002 wherein the Capitalist turned over ₱200,000.00 for the Holdings to use as capital for six months at 2.5% monthly compensation, expiring on December 26, 2002, *id*. at 187.

WITNESS:
Yes sir.

x x x x x x x x x

COURT:
By the way, what are those properties owned by the defendants?

ATTY. RUBIO:
Your honor, these are savings accounts from banks.

COURT:
How many savings accounts does she have?

ATTY. RUBIO:
She has one from China Bank and the Memorandum of Agreement which the witness identified were investments from holdings company which she has invested, your honor.

COURT:
How much was her investments in those companies and what are those companies? She mentioned that she invested with the MMG, is it not? So, how much was she invested (*sic*) with MMG?

WITNESS:
Four Hundred Thousand Pesos (PhP400,000.00) and another Two Hundred Thousand pesos (PhP200,00.00) (*sic*), your honor.

COURT:
What else? Aside from MMG, do you invest your money to other investing company?

WITNESS:
At China Bank, your honor.

COURT:
Was it investment or deposit?

WITNESS:
Deposit, your honor.[69]

The foregoing testimony of petitioner Lolita and the documentary evidence in support thereof show that she had

[69] TSN, June 30, 2009, pp. 5-7, 10-11 and 14-16.

income and the means to pay the consideration stated in the DAS. These documentary evidence — (1) Certification from E.B. Loredo Realty Corporation dated January 6, 2005 that petitioner Lolita had been a sales agent of the said realty corporation from January 2001 up to December 2002 (Exh. "3"); (2) Certification from Cesar C. Cruz & Partners Law Offices dated December 22, 2004 that petitioner Lolita was supplying food consisting of lunch and snacks to the employees of the said law office from 1982 to 1988 (Exh. "3-A"); (3) Certification from Chinabank, SM City Bacoor Branch dated December 16, 2004 that since 1998 petitioner Lolita maintained accounts with the said bank under TD#168020017540, TD#168020018239, SA#2680029315 and SA#2680873817 (Exh. "4"); (4) Notarized Memorandum of Agreement between MMG International Holdings Co., Ltd. (MMG) and Jasminia Palugod &/or Lolita Mendoza (Capitalist) dated June 26, 2002 wherein the Capitalist turned over ₱800,000.00 for MMG to use as capital for six months at 2.5% monthly compensation, expiring on December 26, 2002 (Exh. "5"); and (6) Notarized Memorandum of Agreement between MMG and Lolita Mendoza (Capitalist) dated June 26, 2002 wherein the Capitalist turned over ₱200,000.00 for MMG to use as capital for six months at 2.5% monthly compensation, expiring on December 26, 2002 (Exh. "6") — were all unrebutted by respondents. For their part, both the CA and the RTC totally ignored them.

As to the consideration of the DAS, both the RTC and the CA concluded that since Lolita admitted in her testimony, as quoted earlier, that she did not pay the consideration of the DAS before the notary public, the DAS lacks consideration. However, petitioner Lolita offered the following explanation:

RE-DIRECT-EXAMINATION:

[Atty. Rubio to petitioner Lolita]

ATTY. RUBIO:

> During the hearing last June 30, 2009 you were asked by the counsel or (*sic*) the plaintiff "Did you pay Jasminia for the consideration of the Deed of Absolute Sale? You answered, No, sir." As appearing on the Transcript of Stenographic

Notes of the same date. My question madame witness is, can you clarify why you were not able to pay the consideration?

x x x x x x x x x

ATTY. RUBIO:

My question madame witness is, since you were not able to pay her at that time, when did you pay her?

x x x x x x x x x

WITNESS:

I paid in 2002, sir.

x x x x x x x x x

ATTY. RUBIO:

Madame witness, you answered 2002, can you tell us when the Deed of Absolute Sale was executed?

WITNESS:

May 11, 2004, sir.

ATTY. RUBIO:

You paid Jasminia the consideration of the property before the execution of the Deed of Absolute Sale?

WITNESS:

Yes sir.

ATTY. RUBIO:

Can you tell us the circumstances how you paid Jasminia the consideration of the property subject of this case?

x x x x x x x x x

ATTY. RUBIO:

Can you tell us the manner of payment, madame witness?

x x x x x x x x x

WITNESS:

Whenever Jasminia needs money since she's having her treatment so I gave her the amount of TWENTY THOUSAND PESOS (Php20,000.00) sometimes FORTY THOUSAND PESOS (Php40,000.00) until it reached the amount of TWO HUNDRED THOUSAND PESOS (Php200,000.00), sir.

x x x x x x x x x

ATTY. RUBIO:
You only paid Php200,000.00 that time[.]

WITNESS:
Because that's the only money left with me and the other Php200,000.00 was borrowed by Jasminia from my sister in Australia, sir.

x x x x x x x x x

COURT:
What transpired during the meeting between your sister and Jasminia when you said you were present?

WITNESS:
That my sister will lend money to Jasminia, you honor.

COURT:
Do you know how much money is she going to lend to Jasminia?

WITNESS:
Two Hundred Thousand Pesos (Php200,000.00), your honor.

x x x x x x x x x

ATTY. RUBIO:
After agreeing to let Jasminia borrow money from your sister, what happened next?

WITNESS:
She was given first Fifty thousand Pesos (Php50,000.00), sir.

COURT:
When was that?

WITNESS:
That was also in the year 2002, you honor.

COURT:
Was it during the meeting wherein Jasminia and your sister talked about this loan?

WITNESS:
Yes your honor.

COURT:
So, immediately your sister lend her Php50,000.00?

WITNESS:
Yes your honor.

ATTY. RUBIO:
What about the balance of Php150,000.00?

WITNESS:
When she returned to Australia she's sending money to my mother including the money that Jasmin[ia] is (*sic*) asking, sir.

x x x x x x x x x

COURT:
By the way, when your sister gave Jasminia the amount of Php50,000.00, was there any receipt prepared to show that your sister indeed lend (*sic*) money in the amount of Php50,000.00?

WITNESS:
There's none, your honor.

COURT:
How about the other money that your sister sent to your mother in order to give to Jasminia, were there any receipts?

WITNESS:
None also you honor.

x x x x x x x x x

RE-CROSS EXAMINATION:

[Atty. Arandia to petitioner Lolita]

ATTY. ARANDIA:
Miss. (*sic*) Mendoza, you mentioned that you paid Jasminia Palugod Php200,000.00 in partial payment of the property the subject matter in this case and according to you the payment was on a staggered basis way back in 2002. Now, my question is, do you have receipts showing that you paid Jasminia Php200,000.00 on staggered basis?

WITNESS:
None, sir.[70]

---

[70] TSN, February 23, 2010, pp. 4-9, 13, 23-28 and 33.

From the foregoing, it is evident to the Court that petitioner Lolita's proof of payment of the DAS' consideration was her sworn testimony. Testimony, given under oath, and subjected to cross-examination is proof.[71] Unfortunately, both the CA and the RTC brushed this aside only because the RTC zeroed in on the lack of receipts.

Since the evidence of the parties are mainly testimonial, it behooved the RTC, as well as the CA, to weigh the version of respondents against that of petitioners. The Court is called upon to do the same in order to determine which evidence preponderates.

Before the narrations of respondent Natividad and petitioner Lolita are pitted against each other to determine which one preponderates over the other, the Court notes the glaring inconsistencies in respondent Natividad's testimony:

1. According to respondent Natividad, Jasminia used her retirement pay to buy the lot and constructed the house in Sagana Remville, Habay, Bacoor, Cavite, to wit:

> [Atty. Arandia to respondent Natividad]
>
> ATTY. ARANDIA
> Q Was Jasminia able to retire from PLDT before her death?
>
> WITNESS
> A Yes, sir.
>
> x x x x x x x x x
>
> ATTY ARANDIA
>
> x x x x x x x x x
>
> Q Do you know if Jasminia able (*sic*) to get her retirement benefit from PLDT?
>
> x x x x x x x x x
>
> WITNESS
> A Yes, sir. She was able to receive it.

[71] On the strength of sworn testimony subjected to cross-examination, see generally *A. L. Ammen Transportation Company, Inc. v. Japa,* 124 Phil. 72 (1966).

ATTY. ARANDIA
Q Do you know what Jasminia did on her retirement benefit?

WITNESS
A Yes, sir.

ATTY. ARANDIA
Q What?

WITNESS
A She bought a lot and constructed a house, sir.

ATTY. ARANDIA
Q And that property or lot you are saying now is the same property located in Sagana Remville, Habay, Bacoor, Cavite?

WITNESS
A Yes, sir.[72]

Respondent Natividad's account could not have happened because Jasminia received her retirement pay equivalent to 1,383,773.59 on January 18, 1999 based on the Receipt, Release and Quitclaim (Exh. "8")[73] that Jasminia executed on even date, **which was after the purchase of the subject lot and the construction of the subject house**.

Indeed, petitioner Lolita disputed respondent Natividad's version, to wit:

[Atty. Rubio to petitioner Lolita]

ATTY. RUBIO:
x x x Madame witness, during the hearing dated November 27, 2007, when the plaintiff testified you were present in Court?

WITNESS:
Yes sir.

ATTY. RUBIO:
So, when the witness was asked: *"Do you know what Jasminia did on her retirement benefit?*[*"*] And the witness answered: *"Yes, sir." "What?*[*"*], asked by counsel and the witness

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[72] TSN, November 27, 2007, pp. 12-14.

[73] Records, pp. 190-191.

answered: *"She bought a lot and constructed a house, sir."* Can you tell us, what can you say about this testimony?

WITNESS:
That's not true, sir.

ATTY. RUBIO:
Why?

WITNESS:
Because we bought that lot in 1991 and the house was constructed in February of 1996, sir.[74]

2. According to respondent Natividad, Jasminia's retirement pay was used by Jasminia and petitioner Lolita for their trips to Hong Kong, Norway and Australia, to wit:

[Atty. Arandia to respondent Natividad]

ATTY. ARANDIA
Q Do you know if Jasminia and Lolita went abroad from that retirement benefit?

x x x x x x x x x

WITNESS
A They went to Hong Kong, Australia and Norway, sir.

COURT
Q Why do you know that they went to those places?

WITNESS
A Because we were living in the same house and I was with them when they went to Hong Kong, Your Honor.

COURT
Q So, do you mean to say that you were living with Lolita and Jasminia in their house at Sagana Remville, Habay, Bacoor, Cavite?

WITNESS
A Not me, only the two of them, Your Honor.[75]

---

[74] TSN, June 30, 2009, pp. 28-30.

[75] TSN, November 27, 2007, pp. 15-16.

On the other hand, petitioner Lolita's version is as follows:

ATTY. ARANDIA:
And from this separation benefit which Jasminia received from PLDT you even went wither (*sic*) in Europe, in Hong Kong and in Australia?

WITNESS:
That's not true, sir. At the time we went to Europe and Hong Kong, Jasminia had not yet separated from PLDT and in fact we went together with her mother at the time we went in those places, sir.

COURT:
Do you still recall what year was that when you, Jasminia and together with her mother went to Europe?

WITNESS:
In Europe, that was May, 1997, you honor.

COURT:
How about in Hong Kong?

WITNESS:
In Hong Kong, that was September, 1995, your honor.

COURT:
How about in Australia?

WITNESS:
In Australia, that was in March, 1999, your honor.

COURT:
So, that was after her separation?

WITNESS:
Yes your honor.

ATTY. ARANDIA:
With all these tours and trips with these countries which you mentioned, it was Jasminia who spent for the travel?

WITNESS:
In Hong Kong, it was her mother who paid. In Norway, the three (3) tickets were sent by her brother because we had an invitation to go to Norway so that we will (*sic*) be able to get a Visa.

COURT:
In other words, the expenses came from the brother of Jasminia?

WITNESS:
Yes you honor, but I paid my ticket when we reached Norway.

ATTY. ARANDIA:
And what is the name of the brother of Jasminia in Norway?

WITNESS:
Ramonito Palugod, sir.

ATTY. ARANDIA:
And according to you, you reimbursed the ticket given to you upon arrival in Norway?

WITNESS:
Yes sir, I paid it in dollar.

ATTY. ARANDIA:
To whom did you pay?

WITNESS:
To Ramonito, sir.

ATTY. ARANDIA:
How much did you pay Ramonito?

WITNESS:
One Thousand Dollars ($1,000.00), sir.

ATTY. ARANDIA:
Do you have receipt that you have actually reimbursed Ramonito for that ticket?

WITNESS:
None, sir.[76]

3. According to respondent Natividad, her daughter Jasminia could not possibly travel from Bacoor to Pasay City where the DAS was notarized because she had a brace and her bone is "*napupulbos na*."[77] Her testimony in this aspect is reproduced below:

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[76] TSN, June 30, 2009, pp. 69-74.

[77] TSN, April 1, 2008, p. 25.

ATTY. ARANDIA:

> On the second page of this Exhibit "F" is the acknowledgment portion wherein it is stated here that it was allegedly acknowledged before the Notary Public in Pasay City and this Deed of Absolute Sale appears to have been executed on May 11, 2004. My question is, during the time, May 11, 2004 can Jasmiña travel from Bacoor to Pasay City to acknowledge this Deed of Sale before a Notary Public?

x x x x x x x x x

WITNESS:

> On the said date and time my daughter cannot possibly travel from Bacoor in going to Pasay City because during that time she already had a bone cancer and she had a brace and her bone is "napupulbos na", sir.[78]

To dispute respondent Natividad's account, petitioner Lolita presented Dr. Teresa Sy Ortin (Dr. Ortin), a Radiation Oncologist at Makati Medical Center, who issued a Medical Certificate[79] dated December 20, 2004. Dr. Ortin's testimony follows:

[Atty. Lawrence Rubio to Dr. Ortin]

ATTY. RUBIO:

> Madam witness, can you recall your employment in the year May 11, 2004? Where were you employed at that time?

WITNESS:

> I'm a Radiation Oncologist at Makati Medical Center. I'm a cancer specialist, sir.

x x x x x x x x x

ATTY RUBIO:

> x x x Can you remember a patient by the name of Jasminia Palugod?

WITNESS:

> Yes, sir. I have her records with me.

ATTY. RUBIO:

> Can you tell us what is the nature of her illness?

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[78] *Id*. at 23, 25.

[79] Exh. "7-A", records, p. 189.

WITNESS:

She had breast cancer. I treated her for several times and the last treatment was on April 16, 2004 for which she received treatment for the period April 16 to May 13, 2004, sir.

ATTY. RUBIO:

I have here a Medical Certificate dated December 20, 2004. I am showing to you this document. Can you tell us what is the relation of this document to the one you have mentioned?

WITNESS:

Actually, I have a copy of that on my record and this certifies that she came to us for treatment, in my clinic.

x x x x x x x x x

ATTY. RUBIO:

x x x During that time, madam witness, April 16, 2004 to May 13, 2004, how often does (*sic*) your patient Jasminia Palugod came (*sic*) to Makati Medical Center?

WITNESS:

She was treated daily, because our schedule of radiation therapy is everyday, from 8:00 to 5:00. So, it's a total of eighteen (18) treatments. So, that is over four (4) weeks.

ATTY. RUBIO:

During that time, do you know who was with her?

WITNESS:

I remember as her companion… I don't know her name but I recognize her face.

ATTY. RUBIO:

For the record, your Honor, may I state that the witness is pointing to the defendant Lolita Mendoza as the companion of patient Jasminia Palugod at the time the patient is being assisted at the Makati Medical Center.

COURT:

Noted.[80]

On cross-examination, Dr. Ortin further testified:

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[80] TSN, March 5, 2009, pp. 5-10.

[Atty. Arandia to Dr. Ortin]

ATTY ARANDIA:
How long is the radiation treatment being conducted for each exposure?

WITNESS:
About fifteen (15) minutes, sir.

ATTY. ARANDIA:
After exposing the patient on radiation therapy, what is the effect thereof on her physical condition?

WITNESS:
Radiation therapy is a local treatment, so the side effect should end on where the radiation is directed. For example, there were exposure on the arms, other parts of the body would not have any significant side effect.

ATTY. ARANDIA:
In the case of Ms. Palugod, who was according to you, afflicted with cancer which has metastasized. So what part of her body was subjected to radiation exposure therapy?

WITNESS:
According to the records, it was in the thoraxic spine.

ATTY. ARANDIA:
What would be the effect of that radiation on the patient after exposure?

WITNESS:
The side effect is very minimal. You may feel a little weak but as you can see most of our patients are treated in my clinic as out patient. They don't need to be confined. Most of our patients can walk around and able to do their other duties after treatment.

ATTY. ARANDIA:
Will they feel weakness after the therapy?

WITNESS:
Yes, but not very significant for us to require them to stay in the hospital.

ATTY. ARANDIA:
In the case of Ms. Palugod considering that her cancer has

already metastasized. I will assume that during those times, Ms. Palugod was weak already?

x x x x x x x x x

WITNESS:

I remember she was coming on a wheelchair and her main problem at that time, the reason for the radiation, is that because she was in pain.

ATTY. ARANDIA:

On wheelchair. Meaning to say that she was weak to walk by herself?

WITNESS:

Yes, sir.

ATTY. ARANDIA:

And that her weakness will be aggravated after weeks of radiation therapy?

WITNESS:

Not significantly.

ATTY. ARANDIA:

What do you mean, "not significantly["]?

WITNESS:

It's not going to be extremely weak that you need to confine her because of the problem?

COURT:

What would be the end result of that radiation treatment to a person afflicted by cancer? Would she be cured or would she be strong after each treatment?

WITNESS:

The main problem why she was referred to us was because she was in extreme pain, and radiation is supposed to regress the pain and makes her to feel better.

COURT:

During this treatment, and you said that it was on a daily basis, after being treated for at least fifteen (15) minutes of radiation, what should be the effect to Ms. Palugod?

WITNESS:

After few days of treatment, we expect her to be relieved.…

COURT:
From the pain that she is suffering.

WITNESS:
Yes. Her treatment started on April 16 and on April 30, she claimed that she felt some relief from her back pain.

x x x x x x x x x xx

ATTY. ARANDIA:
x x x Ordinarily, if the patient like Ms. Palugod, who has been suffering from cancer which has metastasized and who was undergoing radiation therapy, would it be natural for that patient like Ms. Palugod to go to a notary public to acknowledge a document?

x x x x x x x x x xx

WITNESS:
I don't think there's problem with that. For patients who are terminally ill, we advise them to take care of things, important decisions that they have to decide on. So, I don't think that should be a problem for patients who are suffering from illness with that concern.

ATTY. ARANDIA:
For all the treatments that you had been undertaken to Ms. Palugod, was she always accompanied by somebody?

WITNESS:
Yes, as far as I can remember.

ATTY. ARANDIA:
So in other words, she cannot come to your office without being assisted by another person?

WITNESS:
Probably, not.

ATTY. ARANDIA:
What do you mean, "probably, not"?

WITNESS:
Because she has a very advance disease, I don't think, anybody would want her to go for treatment by herself, especially because of her disease, it affected her bone, and she was in pain, probably, she would not be able to travel by herself.

ATTY. ARANDIA:

> What about the mental capacity of the witness, in your assessment, how was Ms. Palugod during that time? Was her mental capacity affected by her illness?

x x x x x x x x x x

WITNESS:

> In my clinical assessment, there is no reason to prove that her mental capacity has been affected. If we notice something, the usual is we talk to the patient and we would request additional test, and there is no such evaluation in our record, so I would think that at that time, in our clinical judgment, her disease does not affect her mental capacity or function.[81]

Based on Dr. Ortin's clear, categorical and compelling testimony, Jasminia was not physically incapable of traveling from Bacoor, Cavite to Makati Medical Center and to Pasay City for the acknowledgment of the DAS before the Notary Public and she was not mentally incapacitated to know the import thereof.

Given the significant inconsistencies in the testimony of respondent Natividad, the credibility of her testimony is, to the Court, doubtful. To be sure, a witness' credibility is determined by the probability or improbability of his testimony. As well, the witness' means and opportunity of knowing the facts that he is testifying to are relevant. The improbability of respondent Natividad's assertions is demonstrated by the evidence, both documentary and testimonial, that petitioner Lolita adduced to rebut the same. Put simply, respondent Natividad's observations are those of an outsider because she was not living with her daughter during the period at issue and cannot be relied upon.

The RTC and the CA also did not even mention the glaring inconsistencies noted above, which if properly considered, would have seriously affected the outcome of the case.

In addition, the lower courts **misapprehended** the admission by petitioner Lolita that she did not pay the consideration before

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[81] TSN, March 5, 2009, pp. 15-21, 26-31.

the Notary Public. They excised from their judgments petitioner Lolita's sworn testimony as to how the consideration was paid by her. The portion of petitioner Lolita's testimony that the lower courts quoted in their respective Decisions does not even indubitably show that no consideration had been paid. What petitioner Lolita admitted was that the consideration was not paid "before the Notary Public," and, as correctly pointed out by her, there is no legal requirement that the consideration of a sale be paid in the very presence of the Notary Public before whom the deed of sale is acknowledged.

Given the foregoing, contrary to the findings of the CA and the RTC, which evidently arose from their **misapprehension and non-consideration of relevant facts**, respondents have not discharged their burden of proof to rebut either the presumption of sufficient consideration of the DAS or the evidence of petitioner Lolita. In fine, respondents failed to establish their cause of action by preponderance of evidence.

All told, petitioners' evidence has superior weight. While petitioner Lolita could not present receipts to show her payments to the late Jasminia, her sworn testimony which in certain portions were corroborated by pertinent documents, remains more credible than that of respondent Natividad. Indeed, the lack of receipts may be explained by the "close friendship" between petitioner Lolita and Jasminia. The non-admission by petitioner Lolita of the "husband and wife" relationship that she shared with Jasminia and her being a "lesbian or tomboy," as respondent Natividad claimed, is of no moment. Whatever transpired between her and Jasminia is a private matter, which the Court would not even speculate on. As to the gender identity and sexual preference of petitioner Lolita, that is likewise a private matter.

Even from a pure evaluation of only the parties' testimonial evidence, wherein doubts on the truthfulness of their respective narrations of the relevant facts are perceived and there may be difficulty in determining who between respondent Natividad and petitioner Lolita is the more credible witness and in which side the testimonial evidence preponderates, the evidence of the parties should, at the very least, be held to be in equipoise.

That being the situation, respondents, who have the burden of proof in the present case, fail upon their cause of action. Following *Rivera v. CA*[82] quoted above, as neither party was able to make out a case, neither side having established his/her cause of action, the Court can only leave them where they are and it has no choice but to dismiss the complaint, as the lower courts should have done.

Consequently, the DAS executed by Jasminia in favor of petitioner Lolita over the subject property is valid, the presumption that it has sufficient consideration not having been rebutted. The same holds true regarding the Real Estate Mortgage between petitioner Lolita and petitioners spouses Alexander and Elizabeth Gutierrez.

WHEREFORE, the Petition is hereby **GRANTED**. The Decision of the Court of Appeals dated April 29, 2015 and its Resolution dated September 10, 2015 in CA-G.R. CV No. 102904 as well as the Decision dated March 14, 2013 and Order dated May 8, 2014 of the Regional Trial Court of Bacoor, Cavite, Branch 19 in Civil Case No. BCV 2004-217 are **REVERSED AND SET ASIDE**. The complaint filed in Civil Case No. BCV 2004-217 is **DISMISSED** for lack of cause of action.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Peralta, Perlas-Bernabe, and *Reyes, Jr., JJ.* concur.

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[82] *Supra* note 52, at 743.

SECOND DIVISION

[G.R. No. 224115. June 20, 2018]

MAGSAYSAY MARITIME CORP. / AIR-SEA HOLIDAY GMBH STABLE ORGANIZATION ITALIA/ MARLON R. ROÑO, *petitioners, vs.* **ELMER V. ENANOR,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS; WHENEVER PRACTICABLE, THE SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS MUST BE DONE PERSONALLY IN ORDER TO EXPEDITE ACTION OR RESOLUTION ON THE PLEADING, MOTION OR OTHER PAPER, AND CONVERSELY, TO MINIMIZE DELAYS; RESORT TO SERVICE THROUGH OTHER MODE IS ACCEPTABLE BUT THE PLEADING SERVED OR FILED SHOULD BE ACCOMPANIED BY A WRITTEN EXPLANATION AS TO WHY PERSONAL SERVICE WAS NOT PRACTICABLE.— According to Section 11, Rule 13 of the Rules of Court, the rule is that service and filing of pleadings and other papers must, whenever practicable, be done personally. x x x In the seminal case of *Solar Team Entertainment, Inc. vs. Ricafort,* the Court had occasion to state that Section 11 is mandatory and that the strictest compliance therewith is exacted from both the Bench and the Bar. In justifying this stern standard, the Court averred that preference for personal service and filing "expedite[s] action or resolution on a pleading, motion or other paper; and conversely, minimize[s], if not eliminate[s], delays likely to be incurred if service or filing is done by mail." x x x Nonetheless, this same rule is not so rigid as to exclude any exception from its application. In fact, Section 11 itself provided that whenever it is not practicable to serve and file personally, resort to service through other modes is acceptable. x x x The only condition to the application of this exception is that the pleading served or filed should be accompanied by a written explanation as to why personal service was not practicable.

2. ID.; ID.; ID.; ID.; ID.; THE COURT IS AUTHORIZED TO EXERCISE DISCRETION TO CONSIDER A PLEADING OR PAPER AS NOT FILED IF NO WRITTEN EXPLANATION WAS MADE AS TO WHY PERSONAL SERVICE WAS NOT DONE; CASE AT BAR.— Should a party, however, fail to so attach this written explanation, the same section authorizes the courts to exercise its discretion to consider a pleading or paper as *not* filed. x x x To exercise this discretion, the courts are guided by this Court's pronouncement in *Peñoso vs. Dona,* which reiterated the ruling in *Spouses Ello vs. Court of Appeals.* The Court, in these cases, ruled that an exception to the strict compliance to the rule—in this case, an exception to the non-submission of the written explanation—should take into account the following factors: x x x such discretionary power of the court must be exercised properly and reasonably, taking into account the following factors: (1) "the practicability of personal service;" (2) "the importance of the subject matter of the case or the issues involved therein;" and (3) "the prima *facie merit* of the pleading sought to be expunged for violation of Section 11. It is thus only upon the consideration of these factors—as determined by the courts—that they are authorized to liberally bend the mandatory character of the attachment of the written explanation required by Section 11. x x x While the Court gives due respect to the appellate court's interpretation of the foregoing rules and procedures, the Court herein determines that an outright dismissal of the petitioners' petition for *certiorari* warrants a second consideration, for this case's dismissal based on technicality would work to subvert the proper imposition of justice. To begin with, in their motion for reconsideration, the petitioners explained that the mistaken use of the name Joselito Entrampas instead of the respondent's name, Elmer V. Enanor, resulted from a mere typographical error. The petitioners elaborated that they "inadvertently failed to change the name" because of the "proximity in the drafting of this petition and another Petition for *Certiorari* involving Joselito Entrampas as private respondent." In addition, the petitioners explained that the name Joselito Entrampas "was only mentioned once in the quoted portion of the petition." The Court finds this explanation sufficient to remove the same as basis for an outright dismissal of the case. x x x In this case, the substantial issues raised by the petitioners should have been considered by the appellate

court. The petitioners raised questions of facts, which, if left unresolved, would deny the petitioners a true administration of justice.

3. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; REQUIRES COUNSELS TO OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND ITS OFFICERS, WHICH INCLUDES THE LANGUAGE AND TENOR EMPLOYED IN THE PLEADINGS SUBMITTED BEFORE THE COURTS; CASE AT BAR.— Nonetheless, the Court is taken aback by the petitioners' counsels' cavalier attitude to this mistake that they themselves committed. Rather than sounding repentant for their careless error in their petition for *certiorari,* the tenor of the petitioners' motion for reconsideration to the Court of Appeals Decision sounded arrogant to the point of being offensive. The petitioners' counsels would do well to be reminded—and sternly at that—that the Code of Professional Responsibility requires them to observe and maintain the respect due to the courts and its officers. This includes the language and tenor employed in the pleadings submitted before the courts.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Carrera & Associates Law Office for respondent

D E C I S I O N

REYES, JR., *J.*:

Section 11, Rule 13 of the Rules of Court mandates that pleadings and papers be served and filed personally; in the instances that personal service and filing are not practicable, resort to other modes could be had, but only if the party concerned attaches a written explanation as to why personal service and filing is deemed impracticable. Even then, should the party concerned fail to attach a written explanation in his/her pleadings and papers, the Court, in its discretion, may consider the same as not filed. In the exercise of this authority, and in ruling for the liberal interpretation of the mandatory rule, the Court shall

consider: (1) "the practicability of personal service;" (2) "the importance of the subject matter of the case or the issues involved therein;" and (3) "the prima facie merit of the pleading sought to be expunged for violation of Section 11.

The Case

Challenged before the Court *via* the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the twin Resolutions of the Court of Appeals, dated August 20, 2015[1] and April 11, 2016,[2] in CA-G.R. SP No. 141419. The Resolutions dismissed outright the petitioners' petition for *certiorari* that assailed the Decision[3] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000132015/OFW-(M)-06-07703-14.

The Antecedent Facts

The instant petition arose from the action filed by Elmer V. Enanor (respondent) against Magsaysay Maritime Corp., Air-Sea Holiday GMBH Stable Organization Italia, and Marlon R. Roño (petitioners) for the recovery of disability benefits, medical expenses, and attorney's fees. As borne by the records of the case, the respondent was employed by the petitioners as a utility galley onboard the vessel "AIDADIVA"[4] from his embarkation on August 30, 2013 until his repatriation back to the Philippines sometime in January 2014. The records also revealed that the respondent figured in an incident that occurred in the vessel's kitchen the same month of his repatriation, and which resulted to a fracture of his right ring finger.[5]

After due hearing, the Labor Arbiter (LA) rendered a Decision dated December 15, 2014 in favor of herein petitioners. The

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino, concurring; *rollo,* pp. 41-42.

[2] *Id.* at 44-45.

[3] *Id.* at 129-138.

[4] *Id.* at 129.

[5] *Id.* at 129-130.

LA found that the respondent, after continuous therapy, has already improved and, by June 23, 2014, he was "fit to work as per orthopedic standpoint as he can [close his] fist] without difficulty and his fingers are within functional range."[6]

The dispositive portion of the LA Decision reads:

> **WHEREFORE, premises considered,** judgment is hereby rendered **DISMISSING** the instant complaint for lack of merit. However, for humanitarian consideration, this Office awards financial assistance to complainant in the amount of Fifty Thousand Pesos (₱50,000.00).
>
> All other claims are **DISMISSED** for lack of merit.
>
> **SO ORDERED.**[7]

When the case was elevated to the NLRC, the LA Decision was reversed and set aside in favor of the respondent. The NLRC ruled that "[t]he injury suffered by the [respondent] incapacitate[d] him for more than one hundred twenty (120) days from the time he was medically repatriated and [there were] no report or traces that he was gainfully employed as a seafarer"[8] as of the time of the filing of the complaint before the LA. Thus, the *fallo* of the NLRC Decision reads:

> WHEREFORE, premises considered, the Decision appealed from is hereby **REVERSED AND SET ASIDE.**
>
> Consequently, Petitioners are hereby directed to pay complainant ELMER V. ENANOR permanent disability benefits in the amount of US$60,000 in its peso equivalent at the time of payment plus ten percent (10%) attorney's fees of its monetary award.
>
> SO ORDERED.[9]

This time, the petitioners disagreed with the NLRC Decision, and filed a petition for *certiorari* before the Court of Appeals.

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[6] *Id.* at 136.

[7] *Id.* at 138.

[8] CA *rollo,* p. 45.

[9] *Id.* at 46.

Unfortunately for the petitioners, the Court of Appeals dismissed the petition outright due to substantial defects[10] in the pleading. The appellate court pointed out that: (1) the name of the respondent in the caption of the pleading is different from the name of the respondent in the body thereof; and (2) the petitioners failed to attach an explanation as to why the service of the petition was not made personally, which was a violation of Section 11, Rule 13 of the Rules of Court. The dispositive portion of the Court of Appeals Decision reads:

FOR THESE REASONS, We **DISMISS** and **EXPUNGE** the instant *Petition for Certiorari* from the dockets of active cases.

SO ORDERED.[11]

After the appellate court's denial of the petitioners' motion for reconsideration, the petitioners now come before this Court seeking the reversal of the Court of Appeals Decision.

The Issues

The issues presented by the petitioners include both procedural and substantive aspects: *one,* whether or not the Court of Appeals committed serious reversible error in dismissing outright the petitioners' petition for *certiorari* based on (a) an error on the name of the respondent and (b) a violation of Section 11, Rule 13 of the Rules of Court; and *two,* whether or not the respondent's injury entitles the respondent to disability benefits and attorney's fees.

The Court's Ruling

First, on the procedural issue:

According to Section 11, Rule 13 of the Rules of Court, the rule is that service and filing of pleadings and other papers must, whenever practicable, be done personally. It states:

Section 11. Priorities in modes of service and filing. — Whenever practicable, the service and filing of pleadings and other papers shall

[10] *Rollo,* p. 41.

[11] *Id*. at 42.

be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed. (n)

In the seminal case of *Solar Team Entertainment, Inc. vs. Ricafort,*[12] the Court had occasion to state that Section 11 is mandatory and that the strictest compliance therewith is exacted from both the Bench and the Bar. In justifying this stern standard, the Court averred that preference for personal service and filing "expedite[s] action or resolution on a pleading, motion or other paper; and conversely, minimize[s], if not eliminate[s], delays likely to be incurred if service or filing is done by mail."[13] Thus, the Court explained:

> We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. **Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is mandatory.**[14] (Emphasis and underscoring supplied)

Nonetheless, this same rule is not so rigid as to exclude any exception from its application. In fact, Section 11 itself provided that whenever it is not practicable to serve and file personally, resort to service through other modes is acceptable. In *Solar Team Entertainment,* the Court cited the following examples:

> Here, the proximity between the offices of opposing counsel was established; moreover, that the office of private respondents counsel was ten times farther from the post office than the distance separating the offices of opposing counsel. Of course, proximity would seem to make personal service most practicable, **but exceptions may nonetheless apply.** For instance, where the adverse party or opposing

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[12] 355 Phil. 404 (1998).

[13] *Id*. at 413.

[14] *Id*. at 413-414.

counsel to be served with a pleading seldom reports to office and no employee is regularly present to receive pleadings, or where service is done on the last day of the reglementary period and the office of the adverse party or opposing counsel to be served is closed, for whatever reason.[15] (Emphasis and underscoring supplied)

The only condition to the application of this exception is that the pleading served or filed should be accompanied by a written explanation as to why personal service was not practicable. Should a party, however, fail to so attach this written explanation, the same section authorizes the courts to exercise its discretion to consider a pleading or paper as *not* filed. Thus, the Court said:

If only to underscore the mandatory nature of this innovation to our set of adjective rules requiring personal service whenever practicable, **Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place.** The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause "whenever practicable."[16] (Emphasis and underscoring supplied)

To exercise this discretion, the courts are guided by this Court's pronouncement in *Peñoso vs. Dona,*[17] which reiterated the ruling in *Spouses Ello vs. Court of Appeals.*[18] The Court, in these cases, ruled that an exception to the strict compliance to the rule—in this case, an exception to the non-submission of the written explanation—should take into account the following factors:

x x x such discretionary power of the court must be exercised properly and reasonably, taking into account the following factors: (1) "the practicability of personal service;" (2) "the importance of the subject matter of the case or the issues involved therein;" and

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[15] *Id*. at 414.

[16] *Id*. at 413.

[17] 549 Phil. 39, 45 (2007).

[18] 499 Phil. 398 (2005).

(3) "the prima *facie merit* of the pleading sought to be expunged for violation of Section 11.[19]

It is thus only upon the consideration of these factors—as determined by the courts—that they are authorized to liberally bend the mandatory character of the attachment of the written explanation required by Section 11.

In the present case, the Court of Appeals determined that the petitioners committed several infractions: first, the petitioners committed an error when they named a different person as a respondent in the body of its petition for *certiorari;* second, the petitioners failed to personally serve a copy of their petition for *certiorari* in violation of Section 11, Rule 13 of the Rules of Court; and third, they failed to attach a written explanation to the petition for resorting to a mode of service other than by personal service. Due to this, the Court of Appeals, in the exercise of its discretion, dismissed and expunged the petitioners' petition for *certiorari* from the Court of Appeals' docket of active cases.

While the Court gives due respect to the appellate court's interpretation of the foregoing rules and procedures, the Court herein determines that an outright dismissal of the petitioners' petition for *certiorari* warrants a second consideration, for this case's dismissal based on technicality would work to subvert the proper imposition of justice.

To begin with, in their motion for reconsideration, the petitioners explained that the mistaken use of the name Joselito Entrampas instead of the respondent's name, Elmer V. Enanor, resulted from a mere typographical error. The petitioners elaborated that they "inadvertently failed to change the name"[20] because of the "proximity in the drafting of this petition and another Petition for *Certiorari* involving Joselito Entrampas as private respondent."[21] In addition, the petitioners explained

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[19] *Id.* at 409.

[20] *Rollo,* p. 48.

[21] *Id.*

that the name Joselito Entrampas "was only mentioned once in the quoted portion of the petition."[22]

The Court finds this explanation sufficient to remove the same as basis for an outright dismissal of the case.

Nonetheless, the Court is taken aback by the petitioners' counsels' cavalier attitude to this mistake that they themselves committed. Rather than sounding repentant for their careless error in their petition for *certiorari,* the tenor of the petitioners' motion for reconsideration to the Court of Appeals Decision sounded arrogant to the point of being offensive. The petitioners' counsels would do well to be reminded—and sternly at that—that the Code of Professional Responsibility requires them to observe and maintain the respect due to the courts and its officers. This includes the language and tenor employed in the pleadings submitted before the courts.

Anent the petitioners' failure to append a written explanation to its petition for *certiorari,* the petitioners laid blame to one of its office secretaries who, they said, was in charge of "inserting the other formal elements in the pleadings"[23] and only worked for the petitioners' law firm of record "for a short time."[24] The petitioners explained in their motion for reconsideration of the Court of Appeals decision:

> The failure of the petitioners to include an explanation as to why service of the petition was not made personally was due to simple inadvertence. As has been the practice in the firm, the secretaries are in charge of inserting the other formal elements in the pleadings to be filed after the lawyers draft the body of the pleading. The explanation at the bottom of the pleading is normally included after the signature details of the lawyers, all of which are added to the pleading along with copy furnished details. As the secretary who finalized the petition has only been with the firm for a short time, the explanation was inadvertently not included.[25]

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[22] *Rollo,* p. 47.

[23] *Id*. at 48.

[24] *Id*.

[25] *Rollo,* p. 48.

These explanations, however, could not *by themselves* be justifiable causes for the petitioners to fail compliance with the mandatory requirements set forth in Section 11. Certainly, the inadvertence of an office secretary to append the required papers in a pleading should have been corrected by the lawyers concerned. It is within their responsibility to review the actions of their subordinates, especially in cases where the rules are concerned; for after all, it is the lawyers and not the office secretaries who are well-versed in the Rules of Court, and the lawyers should not entrust unto others what the rules has entrusted unto them to perform. Necessarily, this includes the careful perusal of the pleadings and papers submitted to the courts, including the proper attachment of a written explanation for non-personal filing or service of pleadings and papers.

Nonetheless, while the inadvertence mentioned above could not be a justifiable cause so as to suspend the mandatory application of Section 11, the Court recognizes that "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case,"[26] and that "[t]he law abhors technicalities that impede the cause of justice."[27] Thus, in *Aguam vs. Court of Appeals,*[28] the Court said:

> Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[29]

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[26] *Aguam v. Court of Appeals,* 388 Phil. 587, 593 (2000).

[27] *Id.*

[28] *Id*.

[29] *Id*. at 593-594.

In this case, the substantial issues raised by the petitioners should have been considered by the appellate court. The petitioners raised questions of facts, which, if left unresolved, would deny the petitioners a true administration of justice.

The difference between the decisions of the LA and the NLRC are too substantial to be merely disregarded on the ground of technicality. On one hand, the LA found that the respondent is already "fit to work" and is thus not entitled to the payment of disability benefits and medical expenses. As a result of this finding, the respondent was only awarded a mere ₱50,000.00 based on humanitarian consideration. On the other hand, the NLRC determined that the respondent suffered an injury which would entitle him to full disability benefits in the sum of USD60,000.00.

Indeed, the arguments from both parties which are presented before the Court of Appeals call for a judicious resolution. Considering that the Court is not a trier of facts, and in order to avoid subverting justice, the Court should remand the case back to the Court of Appeals to rule on the merits of the case.

WHEREFORE, premises considered, the instant petition is **PARTLY GRANTED.** The assailed Resolutions of the Court of Appeals are **REVERSED and SET ASIDE.** The Court of Appeals is hereby **DIRECTED** to **REINSTATE** the petition for *certiorari,* docketed as CA-G.R. SP No. 141419, for further proceedings.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 229302. June 20, 2018]

CONSOLIDATED DISTILLERS OF THE FAR EAST, INC., *petitioner, vs.* **ROGEL N. ZARAGOZA**, *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; ILLEGAL DISMISSAL; PAYMENT OF SEPARATION PAY IN LIEU OF REINSTATEMENT; WHEN THERE IS A SUPERVENING EVENT THAT RENDERS REINSTATEMENT IMPOSSIBLE, BACKWAGES IS COMPUTED FROM THE TIME OF DISMISSAL UNTIL FINALITY OF THE DECISION ORDERING SEPARATION PAY; CASE AT BAR.— The Supreme Court held in [*Bani Rural Bank, Inc. v. De Guzman*] that when there is a supervening event that renders reinstatement impossible, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay, x x x The reason for this, as the Court explained in *Bani,* is that "[w]hen there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other." Here, the award of separation pay in lieu of reinstatement, which Condis does not question, was made subsequent to the finality of the Decision in the Illegal Dismissal Case (G.R. No. 196038). Condis cannot therefore evade its liability to Rogel for backwages and separation pay computed until the finality of this Decision which affirms the order granting separation pay.

2. ID.; ID.; ID.; ID.; THE EMPLOYER IS LIABLE FOR BACKWAGES AND SEPARATION PAY ONLY UNTIL THE DATE OF CLOSURE OF THE BUSINESS EVEN IF THIS IS PRIOR TO THE LABOR ARBITER'S DECISION FINDING ILLEGAL DISMISSAL; REQUIREMENTS, NOT

ESTABLISHED IN CASE AT BAR.— In *Olympia Housing*, the Court considered that the employer therein was able to prove in a separate labor case that it had closed its business and followed all statutory requirements arising from the closure of its business, *i.e.*, notice to the Department of Labor and Employment (DOLE), notice to the employees, and financial statements substantiating its claim that it was operating at a loss. Given this, the Court therein ruled that the employer is liable for backwages and separation pay only until the date of the closure of the business of the employer, even if this was prior to the LA's decision finding illegal dismissal, x x x For *Olympia Housing* to apply, the employer must prove the closure of its business in full and complete compliance with all statutory requirements prior to the date of the finality of the award of backwages and separation pay. Here, Condis failed to show that in 2007 it had closed its business and that it had complied with all the statutory requirements for the closure. All it alleged was the execution of the Asset Purchase Agreement and the termination of the Service Agreement with EDI — but this does not mean, nor was it argued to mean, that Condis had closed its business. In fact, Condis failed to submit any document which showed that in 2007, it had notified the DOLE or its employees of the closure of its business and the reason for its closure. It also failed to show that Rogel was affected by this purported closure of its business. There is therefore no basis for it to claim that *Olympia Housing* is authority for its liability to pay backwages and separation pay to only up to 2007.

APPEARANCES OF COUNSEL

Ruel Ulysses De Guzman for petitioner.
Leandro Millano for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Petitioner Consolidated Distillers of the Far East, Inc. (Condis) filed a Petition for Review on *Certiorari*[1] (Petition) under Rule

[1] *Rollo,* pp. 3-34.

45 of the Rules of Court assailing the Decision[2] dated March 17, 2016 and Resolution[3] dated January 10, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 135538. The CA affirmed with modification the Decision[4] dated January 13, 2014 of the National Labor Relations Commission (NLRC), Sixth Division, which declared as null and void the Labor Arbiter (LA)'s Resolution[5] dated August 3, 2013.

Facts

The present case is an offshoot of the petition entitled *Consolidated Distillers of the Far East, Inc. v. Rogel N. Zaragoza* and docketed as G.R. No. 196038 (Illegal Dismissal Case). The First Division of the Court denied the petition in a Resolution[6] dated June 22, 2011, which became final and executory on March 30, 2012.[7]

In G.R. No. 196038, the Court affirmed the CA decision in favor of respondent therein Rogel Zaragoza (Rogel) which had affirmed the NLRC's and LA's findings that Condis had illegally dismissed Rogel, and ordered his reinstatement and payment of his backwages.

After the finality of the resolution of the Court in G.R. No. 196038 on March 30, 2012, Rogel moved for the issuance of an alias writ of execution against Condis for his reinstatement, and the payment of full backwages, accrued salaries and allowances as of December 3, 2012, less the ₱454,986.98 that was already released to him by the LA pending appeal (Execution

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[2] *Id.* at 36-52. Penned by Associate Justice Pedro B. Corales, with Associate Justices Sesinando E. Villon and Rodil V. Zalameda, concurring.

[3] *Id.* at 82-84.

[4] *Id.* at 464-483. Penned by Commissioner Nieves E. Vivar-De Castro, with Presiding Commissioner Joseph Gerard E. Mabilog and Commissioner Isabel G. Panganiban-Ortiguerra, concurring.

[5] *Id.* at 124-130. Penned by Labor Arbiter Jesus Orlando M. Quiñones.

[6] *Id.* at 355.

[7] *Id.* at 357.

Proceedings).[8] Condis opposed the motion and argued that its execution of the Asset Purchase Agreement with Emperador Distillers, Inc. (EDI) was a supervening event that made it impossible to reinstate Rogel to his former position.[9] In a Resolution dated August 3, 2013, the LA ruled in favor of Rogel and directed Condis to pay ₱2,135,256.45 representing the backwages/reinstatement salaries, including allowances, from December 3, 2007, the date of Rogel's illegal dismissal, up to August 3, 2013, the date of the LA resolution.[10]

Condis filed a petition for extraordinary remedy with the NLRC, which granted the petition and declared the LA's Resolution null and void in a Decision dated January 13, 2014.[11] The NLRC ruled that the reinstatement was indeed rendered impossible because of the Asset Purchase Agreement, but that backwages should be computed only until the finality of the Court's Resolution in the Illegal Dismissal Case (*i.e.*, G.R. No. 196038) on March 30, 2012.[12]

Rogel filed a petition for *certiorari* under Rule 65 with the CA. In a Decision dated March 17, 2016, the CA affirmed the NLRC but with modification that the backwages should be computed from the date of illegal dismissal until the finality of the decision of the CA, and separation pay computed from the date of employment until finality of the CA Decision. The dispositive portion states:

WHEREFORE, the instant petition for *certiorari* is hereby **DISMISSED**. The January 13, 2014 Decision and February 28, 2014 Resolution of the National Labor Relations Commission, Sixth Division in LER Case No. 10-280-13 are **AFFIRMED** with **MODIFICATIONS**. As modified, private respondent Consolidated Distillers of the Far East, Inc. is **ORDERED** to pay petitioner Rogel N. Zaragoza the

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[8] *Id*. at 39.

[9] See *id*. at 38 and 39.

[10] *Id*. at 41, 130.

[11] *Id*. at 41, 482.

[12] *Id*. at 42.

following amounts: backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the date he was illegally dismissed until finality of this Decision and separation pay computed from the first day of employment on April 18, 1994 until the finality of this Decision at the rate of one (1) month salary for every year of service.

The sum of ₱454,986.98 previously received by Rogel N. Zaragoza by virtue of the release order of the Labor Arbiter must be deducted from the foregoing awards.

SO ORDERED.[13]

Condis moved for reconsideration but this was denied in the CA's Resolution dated January 10, 2017. Hence, this Petition.

Issues

Condis raises the following issues:

I.

The Honorable Court of Appeals committed reversible error in ruling that Petitioner did not raise new issues in its Partial Motion for Reconsideration.

A. The Honorable Court of Appeals committed reversible error in applying the doctrines laid down in *Bani Rural Bank vs. De Guzman*, to this instant case;

B. The factual findings of the Honorable Court of Appeals are binding to this Honorable Court as illustrated in the case of *Salcedo vs. People*. This being the case, the question of whether or not there exists a supervening event, which prohibited Respondent's reinstatement is already settled. Thus, the Honorable Court of Appeals committed reversible error in reckoning the period of back wages and separation pay until finality of the decision of this case and not until the time, the supervening event and legal impossibility to reinstate arose in this case, in accordance with the latest ruling in *Olympia Housing Inc. Case*; and

C. In awarding Zaragoza backwages and separation pay beyond the occurrence of the supervening event, which gave rise to

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

> the impossibility of reinstatement, the Honorable Court of Appeals committed reversible error by not considering that these would be confiscatory, and would result in unjust enrichment, not to mention that Zaragoza will be placed in a better position *vis a vis* the other employees of CONDIS who were separated as a result of the supervening event, which gave rise to the legal impossibility of reinstatement.
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> II.
>
> The Honorable Court of Appeals committed reversible error in not resolving the issue regarding the award of Zaragoza's allowances, which were based on evidence which were only presented during execution proceedings, and which are clearly *ad hoc* in nature.[14] (Emphasis omitted)

The Court's Ruling

The Petition is partly granted.

Computation of backwages and separation pay

To recall, the Decision in G.R. No. 196038 became final and executory on March 30, 2012. As modified, the Decision awarded backwages and directed Condis to reinstate Rogel. It was only during the Execution Proceedings that the NLRC, in reversing the LA, directed the payment of separation pay in lieu of reinstatement. **Condis does not question the propriety of the award of separation pay in lieu of reinstatement by the NLRC during the Execution Proceedings.** It only takes issue with the NLRC's and CA's computation of the backwages and separation pay.[15] Condis argues that it should only be liable for backwages and separation pay until the year 2007. It claims that the execution of the Asset Purchase Agreement and the termination of the subsequent Service Agreement with EDI was the reason for its failure to reinstate Rogel.[16] It claims that the

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[14] *Id*. at 16-17.

[15] See *id*. at 30-31.

[16] See *id*. at 7.

foregoing were supervening events that made Rogel's position inexistent as of 2007 and that there is no position to which Rogel could be reinstated into.[17] Condis further claims that the CA erred when it applied *Bani Rural Bank, Inc. v. De Guzman*[18] (*Bani*) instead of *Olympia Housing, Inc. v. Lapastora*[19] (*Olympia Housing*).

The Court disagrees.

The Court agrees with the CA that Condis is liable for backwages and separation pay until the finality of the decision awarding separation pay as ruled in *Bani*.

In *Bani*, the decision there finding that the employee was illegally dismissed and directing his reinstatement had also already attained finality. During the execution proceedings, since the employees manifested that they no longer wanted to be reinstated, the LA directed that separation pay be given to them in lieu of reinstatement. On appeal, the NLRC affirmed the payment of separation pay but modified the basis of the computation. This also became final and executory.

The LA then recomputed the award and ruled that backwages should only be paid until the date that the employees manifested that they no longer wanted to be reinstated. The NLRC and the CA, however, both ruled that the backwages should be counted until the finality of the NLRC decision awarding separation pay. The Supreme Court held therein that when there is a supervening event that renders reinstatement impossible, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay,[20] thus:

> x x x when separation pay is ordered after the finality of the decision ordering the reinstatement by reason of a supervening event that makes the award of reinstatement no longer possible (as in the case),

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[17] *Id.* at 18.

[18] 721 Phil. 84 (2013).

[19] 778 Phil. 189 (2016).

[20] *Bani Rural Bank, Inc. v. De Guzman*, *supra* note 18, at 102.

backwages is computed from the time of dismissal until the finality of the decision **ordering separation pay**.[21]

The reason for this, as the Court explained in *Bani,* is that "[w]hen there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay. The finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other."[22]

Here, the award of separation pay in lieu of reinstatement, which Condis does not question, was made subsequent to the finality of the Decision in the Illegal Dismissal Case (G.R. No. 196038). Condis cannot therefore evade its liability to Rogel for backwages and separation pay computed until the finality of this Decision which affirms the order granting separation pay. As the Court further held in *Bani*:

> The above computation of backwages, when separation pay is ordered, has been the Court's consistent ruling. In *Session Delights Ice Cream and Fast Foods v. Court of Appeals (Sixth Division)*, we explained that the finality of the decision becomes the reckoning point because in allowing separation pay, the **final** decision effectively declares that the employment relationship ended so that separation pay and backwages are to be computed up to that point.[23]

Further, Condis cannot find support in *Olympia Housing*, as this case, in fact, holds against its position. In *Olympia Housing*, the Court considered that the employer therein was able to prove in a separate labor case that it had closed its business and followed all statutory requirements arising from the closure of its business, *i.e.*, notice to the Department of Labor and Employment (DOLE),

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[21] *Id.*

[22] *Id.* at 103.

[23] *Id.* at 102.

notice to the employees, and financial statements substantiating its claim that it was operating at a loss. Given this, the Court therein ruled that the employer is liable for backwages and separation pay only until the date of the closure of the business of the employer, even if this was prior to the LA's decision finding illegal dismissal, thus:

> The CA correctly ruled that the principle of *stare decisis* finds no relevance in the present case. To begin with, there is no doctrine of law that is similarly applicable in both the present case and in *Ocampo v. OHI*. While both are illegal dismissal cases, they are based on completely different sets of facts and involved distinct issues. In the instant case, Lapastora cries illegal dismissal after he was arbitrarily placed on a floating status on mere suspicion that he was involved in theft incidents within the company premises without being given the opportunity to explain his side or any formal investigation of his participation. On the other hand, in *Ocampo v. OHI*, the petitioners therein questioned the validity of OHI's closure of business and the eventual termination of all the employees. Thus, the NLRC ruled upon both cases differently.
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> Nonetheless, the Court finds the recognition of the validity of OHI's cessation of business in the Decision dated November 22, 2002 of the NLRC, which was affirmed by the CA and this Court, a supervening event which inevitably alters the judgment award in favor of Lapastora. The NLRC noted that OHI complied with all the statutory requirements, including the filing of a notice of closure with the DOLE and furnishing written notices of termination to all employees effective 30 days from receipt. OHI likewise presented financial statements substantiating its claim that it is operating at a loss and that the closure of business is necessary to avert further losses. The action of the OHI, the NLRC held, is a valid exercise of management prerogative.
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> Thus, while the finding of illegal dismissal in favor of Lapastora subsists, his reinstatement was rendered a legal impossibility with OHI's closure of business. In *Galindez v. Rural Bank of Llanera, Inc.*, the Court noted:
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> > Reinstatement presupposes that the previous position from which one had been removed still exists or there is an unfilled position more or less of similar nature as the one previously occupied by the employee. Admittedly, no such position is

available. Reinstatement therefore becomes a legal impossibility. The law cannot exact compliance with what is impossible.

Considering the impossibility of Lapastora's reinstatement, the payment of separation pay, in lieu thereof, is proper. The amount of separation pay to be given to Lapastora must be computed from March 1995, the time he commenced employment with OHI, until the time when the company ceased operations in October 2000. As a twin relief, Lapastora is likewise entitled to the payment of backwages, computed from the time he was unjustly dismissed, or from February 24, 2000 until October 1, 2000 when his reinstatement was rendered impossible without fault on his part.[24]

For *Olympia Housing* to apply, the employer must prove the closure of its business in full and complete compliance with all statutory requirements prior to the date of the finality of the award of backwages and separation pay.

Here, Condis failed to show that in 2007 it had closed its business and that it had complied with all the statutory requirements for the closure. All it alleged was the execution of the Asset Purchase Agreement and the termination of the Service Agreement with EDI — but this does not mean, nor was it argued to mean, that Condis had closed its business. In fact, Condis failed to submit any document which showed that in 2007, it had notified the DOLE or its employees of the closure of its business and the reason for its closure. It also failed to show that Rogel was affected by this purported closure of its business. There is therefore no basis for it to claim that *Olympia Housing* is authority for its liability to pay backwages and separation pay to only up to 2007.

Allowances not included

As stated above, the LA's Decision awarding backwages became final and executory on March 30, 2012. The dispositive portion of the LA Decision pertaining to backwages reads as follows:

x x x x x x x x x

[24] *Olympia Housing, Inc. v. Lapastora*, *supra* note 19, at 204-206.

b. ordering respondents to pay complainant, jointly and severally, full backwages, computed from the date of his unlawful dismissal up to the time of actual reinstatement, which as of the date of this decision amount to **Php362,692.25**[.][25]

The amount of ₱362,692.25 is broken down as follows:

BACKWAGES: 12/03/07 – 03/03/09 = 15 months	
a. Basic: ₱20,500.00 x 15 months	307,500.00
b. 13th Month Pay: ₱307,500.00/12	25,625.00
c. VL/SL: (15 days VL, 15 days SL per year ₱788.46 x 2.5 days/ month x 15 months)	29,567.25[26]

The LA, however, in its Resolution dated August 3, 2013 granting Rogel's Motion for Issuance of Alias Writ of Execution, added the following amounts which were not in the LA's Decision:

BACKWAGES FROM ILLEGAL SUSPENSION: 11/05/07 – 12/02/07	20,500.00
HOTEL/LODGING ALLOWANCE: 11/05/07 – 8/3/13 – ₱6,779.90 x 69 months	467,813.10
MEAL ALLOWANCE: 11/05/07-8/3/13: ₱4,111.33	283,681.77
MONTHLY INCENTIVE OF ₱2,000.00: 11/05/07 – 08/03/13	138,000.00[27]

The foregoing amounts should not be included in computing Rogel's backwages and separation pay given that the decision of the LA awarding backwages had already become final and executory; thus triggering the rule on immutability of judgment. As the Court held in *Bani*:

As a rule, "a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of

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[25] *Rollo*, p. 140.

[26] *Id.* at 142.

[27] *Id.* at 130.

fact or law and regardless of what court, be it the highest Court of the land, rendered it. Any attempt on the part of the x x x entities charged with the execution of a final judgment to insert, change or add matters not clearly *contemplated* in the dispositive portion violates the rule on immutability of judgments." x x x[28]

From the Decision of the LA that became final and executory on March 30, 2012 (G.R. No. 196038), the computation of the backwages of Rogel is composed of his basic pay, 13th month pay, and monetized vacation and sick leaves. Having attained finality, the LA, during execution proceedings, cannot add the hotel and meal allowances and the monthly incentive to the computation. To be sure, Rogel had an opportunity to present evidence on these during the Illegal Dismissal Case and he should have presented them there. Having failed to do so, he cannot claim, and the LA or even the Court cannot add, these items, which were not contemplated in the dispositive portion of the LA's March 3, 2009 Decision. The CA therefore erred in affirming the LA's computation of backwages and separation pay.

Finally, consistent with the Court's ruling in *Bani*, Condis is likewise liable to pay legal interest at the rate of six percent (6%) *per annum* from the finality of this Decision until full satisfaction. The inclusion of interest is not barred by the principle of immutability of judgment as it is compensatory interest arising from the final judgment.[29]

WHEREFORE, premises considered, the Petition for Review is hereby **PARTLY GRANTED.** The Decision of the Court of Appeals dated March 17, 2016 and Resolution dated January 10, 2017 are hereby **AFFIRMED** with **MODIFICATIONS**. As modified, petitioner Consolidated Distillers of the Far East, Inc. is **ORDERED** to pay respondent Rogel N. Zaragoza the following amounts as computed in the Labor Arbiter's Decision dated March 3, 2009:

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[28] *Bani Rural Bank, Inc. v. De Guzman, supra* note 18, at 97.

[29] *Id.* at 104-105.

(a) backwages from the date he was illegaly dismissed on November 20, 2007 until the finality of this Decision; and

(b) separation pay computed from April 18, 1994, the first day of Rogel's employment, until the finality of this Decision, at the rate of one (1) month salary for every year of service.

The sum of ₱454,986.98 previously received by Rogel N. Zaragoza by virtue of the release order of the Labor Arbiter must be deducted from the foregoing awards.

Further, petitioner Consolidated Distillers of the Far East, Inc. is **ORDERED** to pay respondent Rogel N. Zaragoza legal interest of six percent (6%) *per annum* of the foregoing monetary awards computed from the finality of this Decision until full satisfaction.

The Labor Arbiter is hereby **ORDERED** to make another recomputation according to the above directives.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 229678. June 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HERMINIO VIBAL, JR.** ***y*** **UAYAN @ "PATO," ARNOLD DAVID** ***y*** **CRUZ @ "ANOT," CIPRIANO REFREA, JR.** ***y*** **ALMEDA @ "COBRA," RICARDO H. PINEDA @ "PETER," EDWIN R. BARQUEROS @ "MARVIN," and DANIEL YASON @ "ACE,"** *accused,* **HERMINIO VIBAL, JR.** ***y*** **UAYAN @ "PATO," and ARNOLD DAVID** ***y*** **CRUZ @ "ANOT,"** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; TO SECURE CONVICTION, THE PROSECUTION IS REQUIRED TO PROVE TWO THINGS: THE FACT OF THE CRIME AND THE FACT THAT THE ACCUSED IS THE PERPETRATOR OF THE CRIME; CASE AT BAR.—** Every criminal conviction requires the prosecution to prove two things: (1) the fact of the crime, *i.e.*, the presence of all the elements of the crime for which the accused stands charged, and (2) the fact that the accused is the perpetrator of the crime. When a crime is committed, it is the duty of the prosecution to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established. Apart from showing the existence and commission of a crime, the State has the burden to correctly identify the author of such crime. Both facts must be proved by the State beyond cavil of a doubt on the strength of its evidence and without solace from the weakness of the defense. x x x In the case at bench, the RTC and the CA were one in declaring that the identification of appellants Vibal and David as the gunmen based on the recognition of PO3 Almendras was clear, worthy of credence and has met the requirements of moral certainty. The Court agrees, and finds no cogent reason to disturb this conclusion of the RTC as affirmed by the CA.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; A WITNESS' TESTIMONY IS ENTITLED TO FULL FAITH AND CREDIT, ABSENT ANY EVIDENCE SHOWING ANY REASON OR MOTIVE FOR HIM/HER TO PERJURE; CASE AT BAR.—** This Court fails to discern any improper motive which could have impelled PO3 Almendras to maliciously impute to appellants such serious crimes and hence, his testimony is worthy of evidentiary weight. Further, as an actual victim, PO3 Almendras is naturally interested in vindicating the outrageous wrong done to his person. His natural interest in securing the conviction of the perpetrators would strongly deter him from implicating persons other than the real culprits. Otherwise, the latter could escape with impunity the strong and just arm of the law. Absent any evidence showing any reason or motive for prosecution witness to perjure, the logical conclusion is that no such improper motive exists, and that his testimony is entitled to full faith and credit.

3. CRIMINAL LAW; REVISED PENAL CODE; COMPLEX CRIME OF DIRECT ASSAULT WITH MURDER; CRIME COMMITTED WHEN THE ASSAULT RESULTS IN THE KILLING OF A PERSON IN AUTHORITY OR HIS AGENT.—The courts *a quo* are correct in ruling that appellants are liable for the complex crime of Direct Assault with Murder in Criminal Case Nos. 17646-B and 17647-B. x x x Appellants committed the second form of assault, the elements of which are: 1) that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; 2) the assault was made when the said person was performing his duties or on the occasion of such performance; and 3) the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority. Here, Mayor Arcillas was a duly elected mayor of Sta. Rosa, Laguna and thus, was a person in authority while PO2 Rivera and PO3 Almendras were agents of a person in authority. There is no dispute that all of the three victims were in the performance of their official duties at the time of the shooting incident. Mayor Arcillas was inside the Sta. Rosa City Hall officiating a mass wedding, and thereafter, while he was walking along the hallway from the COA office to his office, he was shot and killed. Victim PO2 Rivera and private complainant PO3 Almendras were likewise performing their duty of protecting and guarding Mayor Arcillas at the time of the shooting incident. Appellants' conduct of attacking the victims inside the Sta. Rosa City Hall clearly showed their criminal intent to assault and injure the agents of the law. When the assault results in the killing of an agent or of a person in authority for that matter, there arises the complex crime of Direct Assault with murder or homicide.

4. ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; ELEMENTS; ESTABLISHED IN CASE AT BAR.— Here, treachery qualified the killing of Mayor Arcillas and PO2 Rivera to murder. Treachery also attended the shooting of PO3 Almendras. There is treachery when the following essential elements are present, *viz.*: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The essence of treachery lies in the suddenness of the attack by an aggressor

on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring the commission of the offense without risk to the offender arising from the defense which the offended party might make. In the case at bench, the shooting was deliberate and without a warning, done in a swift and unexpected manner. Mayor Arcillas, PO2 Rivera and PO3 Almendras were absolutely unaware of the imminent deadly assaults, and were for that reason in no position to defend themselves or to repel their assailants. Vibal and David, who were armed with guns, suddenly appeared in front and at the back of Mayor Arcillas, PO2 Rivera and PO3 Almendras and shot the three victims. The gunshots that came from the front of the victims were fired by Vibal, while those that came from behind them were fired by David. Said manner of attack clearly revealed appellants' deliberate design to thereby ensure the accomplishment of their purpose to kill or injure the three victims without any possibility of their escape or of any retaliation from them.

5. ID.; ID.; CONSPIRACY; WHERE CONSPIRACY IS ADEQUATELY PROVEN, ALL THE CONSPIRATORS ARE LIABLE AS CO-PRINCIPALS REGARDLESS OF THE EXTENT AND CHARACTER OF THEIR PARTICIPATION BECAUSE, IN CONTEMPLATION OF LAW, THE ACT OF ONE IS THE ACT OF ALL.— Conspiracy is very much evident from the actuations of the appellants. They were synchronized in their approach to shoot Mayor Arcillas and his group. The concerted efforts of the appellants were performed with closeness and coordination, indicating a single criminal impulse — to kill the victims. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when these point to a joint purpose and design, concerted action and community of interest. The ascertainment of who among appellants actually hit, killed and/or caused injury to the victims already becomes immaterial. Where conspiracy has been adequately proven, as in the present case, all the conspirators are liable as co-principals regardless of the extent and character of their participation because, in contemplation of law, the act of one is the act of all.

6. ID.; ID.; COMPLEX CRIME OF DIRECT ASSAULT WITH ATTEMPTED MURDER; CRIME COMMITTED WHEN

THE ACCUSED INTENDED TO KILL A PERSON IN AUTHORITY OR HIS AGENT BUT THE VICTIM DID NOT DIE BECAUSE THE WOUNDS SUSTAINED WERE NOT FATAL OR MORTAL; CASE AT BAR.— The Court affirms the conclusion of the CA that the appellants should be held criminally liable for the complex crime of Direct Assault with Attempted Murder in Criminal Case No. 17648-B. It is well-settled that when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wounds but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present. But, if the wounds sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide. Here, the use of firearms and the manner of the commission of the crime by the appellants unmistakably show that they intended to kill PO3 Almendras and that treachery was present. However, no evidence was adduced to show that the nature of gunshot wounds sustained by PO3 Almedras was sufficient to cause the latter's death without timely medical intervention.

7. ID.; ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; ABSENT IN CASE AT BAR.— The Court agrees with the CA that the modifying circumstance of evident premeditation did not attend the commission of the offenses. Here, the records are bereft of any proof, direct or circumstantial, tending to show a plan or preparation to kill by appellants Vibal and David as well as when they meditated and reflected upon their decision to kill or/injure the three victims and the intervening time that elapsed before this plan was carried out. Accordingly, the circumstance of evident premeditation cannot be presumed against appellants. To qualify a killing to murder, the circumstances invoked must be proven as indubitably as the killing itself and cannot be deduced from mere supposition.

8. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; DENIAL; AN INHERENTLY WEAK DEFENSE AND CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION MADE BY PROSECUTION WITNESS.— Appellants simply raise denial, which is inherently

weak and cannot prevail over the positive identification made by prosecution witness PO3 Almendras that they were the gunmen. Moreover, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness, as in this case.

9. ID.; ID.; ID.; ALIBI; IN ORDER FOR THE DEFENSE OF ALIBI TO PROSPER, IT IS NOT ENOUGH TO PROVE THAT THE ACCUSED HAS BEEN SOMEWHERE ELSE DURING THE COMMISSION OF THE CRIME; IT MUST ALSO BE SHOWN THAT IT WOULD HAVE BEEN IMPOSSIBLE FOR HIM TO BE ANYWHERE WITHIN THE VICINITY OF THE CRIME SCENE; CASE AT BAR.—Appellants' defense of alibi is likewise unavailing. In order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene. Appellants miserably failed to discharge this burden. Besides, the prosecution was able to present a photograph taken by prosecution witness Mercedita De Jesus, the official photographer during the solemnization of the mass wedding, prior to the shooting incident which showed appellant Vibal at the background. Said picture proves that Vibal was at the Sta. Rosa City Hall on May 10, 2005 which thus effectively belied his claim that he was at his residence in GMA, Cavite on that day.

10. CRIMINAL LAW; REVISED PENAL CODE; COMPLEX CRIME OF DIRECT ASSAULT WITH MURDER; PENALTY IS *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE.— When the offense is a complex crime, the penalty for which is that for the graver offense, to be imposed in the maximum period. For the complex crime of Direct Assault with Murder in Criminal Case Nos. 17646-B and 17647-B, the graver offense is Murder. Article 248 of the Revised Penal Code (*RPC*) provides for the penalty of *reclusion perpetua* to death for the felony of murder; thus, the imposable penalty should have been death. However, considering that the imposition of death penalty has been prohibited by Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines"; the penalty of *reclusion perpetua* should be imposed upon appellants. In addition, the qualification "without eligibility

for parole" should be affixed to qualify *reclusion perpetua* pursuant to A.M. No. 15-08-02-SC. Thus, the CA has properly imposed upon appellants the penalty of *reclusion perpetua* without eligibility for parole.

11. ID.; ID.; COMPLEX CRIME OF DIRECT ASSAULT WITH ATTEMPTED MURDER; THE PENALTY TO BE IMPOSED ON APPELLANTS SHOULD BE THAT FOR ATTEMPTED MURDER, WHICH IS THE MORE SERIOUS CRIME.— In Criminal Case No. 17648-B for the complex crime of Direct Assault with Attempted Murder, the penalty to be imposed on appellants should be that for Attempted Murder, which is the more serious crime. The penalty for Attempted Murder is two degrees lower than that prescribed for the consummated felony under Article 51 of the RPC. Accordingly, the imposable penalty is *prision mayor.* Applying the Indeterminate Sentence Law, the minimum shall be taken from the penalty next lower in degree, *i.e., prision correccional,* in any of its periods, or anywhere from six (6) months and one (1) day to six (6) years while the maximum penalty should be from ten (10) years and one (1) day to twelve (12) years of *prision mayor*, the maximum period of the imposable penalty. This Court deems it proper to impose on the appellants the indeterminate penalty of four (4) years and two (2) months of *prision correccional,* as minimum, to ten (10) years and one (1) day of *prision mayor,* as maximum.

APPEARANCES OF COUNSEL

Public Attorney's Office plaintiff-appellee.
Office of the Solicitor General for accused-appellants.

D E C I S I O N

PERALTA, *J.*:

Before the Court is an appeal from the Decision[1] dated February 24, 2016 of the Court of Appeals (*CA*) in CA-G.R.

[1] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Jhosep Y. Lopez, concurring; *rollo,* pp. 2-25.

CR-HC No. 06206, which affirmed with modification the Judgment[2] dated February 6, 2013 of the Regional Trial Court, Branch 25, Biñan City, Laguna (*RTC*), finding accused-appellants Herminio Vibal, Jr. y Uayan @ Pato (*Vibal*) and Arnold David y Cruz @ Anot (*David*) guilty beyond reasonable doubt of the two (2) counts of the complex crime of Direct Assault with Murder in Criminal Case Nos. 17646-B and 17647-B, and one (1) count of Direct Assault with Frustrated Murder in Criminal Case No. 17648-B.

The antecedent facts are as follows:

Vibal and David, together with accused Cipriano Refrea, Jr. y Almeda @ Cobra (*Refrea*), Ricardo H. Pineda @ Peter (*Pineda*), Edwin R. Barqueros @ Marvin (*Barqueros*) and Daniel Yason @ Ace (*Yason*) were charged with two (2) counts of the complex crime of Direct Assault with Murder and one (1) count of Direct Assault with Frustrated Murder in an Information dated July 4, 2007 and two Amended Informations dated March 9, 2009, respectively, the accusatory portion of each reads:

Criminal Case No. 17646-B
Complex Crime of Direct Assault with Murder

That on or about the 10th day of May 2005, in the City of Sta. Rosa, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with treachery and evident premeditation and while conveniently being armed with firearms, with intent to kill, did then and there willfully, unlawfully, feloniously attack, assault and shoot Mayor Leon C. Arcillas with the said firearms, knowing fully well that he was a City Mayor of Sta. Rosa City, a person in authority, and while in the performance of his duty as such, thereby inflicting the latter fatal injuries on the head and other parts of his body that caused his instantaneous death to the damage and prejudice of his surviving heirs.

CONTRARY TO LAW.

Criminal Case No. 17647-B
Complex Crime of Direct Assault with Murder

[2] Penned by Judge Teodoro N. Solis; CA *rollo,* pp. 104-119.

That on or about the 10th day of May 2005, in the City of Sta. Rosa, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with treachery and evident premeditation and while conveniently armed with firearms, with intent to kill, did then and there willfully, unlawfully, feloniously attack, assault and shoot Police Officer 2 Erwin B. Rivera with the said firearms, knowing fully well that he was a police officer and an agent of person in authority, and in the performance of his duty as security escort of Mayor Leon C. Arcillas, thereby inflicting him injuries on different parts of his body that caused his instantaneous death to the damage and prejudice of his surviving heirs.

CONTRARY TO LAW.

Criminal Case No. 17648-B
Complex Crime of Direct Assault with Frustrated Murder

That on or about the 10th day of May 2005, in the City of Sta. Rosa, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with treachery and evident premeditation and while conveniently armed with firearms, with intent to kill, did then and there willfully, unlawfully, feloniously attack, assault and shoot Police Officer 3 Wilfredo B. Almendras with the said firearms, knowing fully well that he was a police officer and an agent of person in authority, and in the performance of his duty as security escort of Mayor Leon C. Arcillas, thereby inflicting him injuries on different parts of his body, thus accused performs all the acts of execution which would produce the crime as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the accused, that is by timely medical attendance on said Police Officer 3 Wilfredo B. Almendras to his damage and prejudice.

CONTRARY TO LAW.

When arraigned on May 13, 2009, appellants and accused Refrea, pleaded not guilty to the crimes charged. Accused Yason entered a plea of not guilty to the charges during his arraignment on April 6, 2010. Accused Ricardo Pineda and Edwin Barqueros have not been arraigned yet as they are still at-large. Pre-trial with respect to Vibal, David and Refrea was terminated on October 22, 2009. While pre-trial with respect to Yason was

terminated on June 22, 2010. Thereafter, joint trials on the merits followed.

During trial, Refrea died and as a consequence, he was dropped as one of the accused. Meanwhile, Yason's demurrer to evidence was granted by the RTC which resulted to the dismissal of the criminal cases as against the said accused.

Version of the Prosecution

The Office of the Solicitor General summarized the evidence for the prosecution in this wise:

On May 10, 2005, at around 8:00 o'clock in the morning, PO3 Wilfredo Almendras, together with PO2 Binmaot and PO2 Erwin Rivera, and two (2) other civilian escorts, was with Mayor Leon Arcillas at the 2nd floor of the Municipal City Hall of Sta. Rosa City. The police officers were assigned as security escorts of the Mayor. Mayor Arcillas was then solemnizing marriages. The ceremony ended at around 10:00 o'clock in the morning. The Mayor then proceeded to the Office of the Commission on Audit (COA) located at the same floor. While they were going out of the room where the ceremony was conducted, PO3 Almendras noticed that they were being followed by two (2) young kids. After spending a moment in the COA office, the group then proceeded to the Office of the Mayor. On their way to said Office, gunshots were fired on them. PO3 Almendras was not able to pull out his gun since there was a rapid fire coming from their front and back. He, PO2 Rivera and the Mayor sustained gunshots wounds. The three (3) fell to the ground. While on the floor, PO3 Almendras heard three (3) more gunshots before he felt dizzy. Thereafter, PO3 Almendras and Mayor Arcillas were brought to the hospital.

At that time, SPO1 Victoriano Peria, received a call from an unknown caller reporting that a shooting incident took place inside the Municipal building.

Upon reaching the municipal hall, he saw Mayor Arcillas bloodied and being carried out by several men and was put inside the vehicle. In the second floor, he saw PO2 Erwin Rivera lying near the door already dead, while the other victim PO3 Almendras was brought to the hospital.

The team searched the whole building of the City Hall for possible apprehension of the culprits, but to no avail. Thus, Regional Director

P/Chief Supt. Jesus Versoza created a special investigating task force composed of the NBI, CIDG, Regional Intelligence Unit, SOCO and Laguna Investigation Division to conduct an investigation to ascertain the identity of the assailants.

During the investigation, Cipriano Refrea appeared and told SPO1 Peria that accused-appellants Vibal and David were his companions when the killing transpired. Refrea pointed to them as the gunmen. After knowing from Refrea the identity of accused-appellant Vibal, SPO1 Peria asked his whereabouts. He came to know that accused-appellant Vibal was presently detained at the Trece Martirez. SPO1 Peria, together with the other policemen visited Vibal, and when asked about his participation on the shooting incident, he at first denied his participation, but later on admitted to his participation.

With respect to the identity of accused-appellant David, they came to know that he was detained at GMA, Cavite.

In his investigation, SPO1 Peria was able to ascertain that Vibal, David and Refrea were members of the gang called Royal Blood Gangsta.

Dr. Roy A. Camarillo, the medico-legal officer of the Regional Crime Laboratory at Camp Vicente Lim, Calamba, Laguna, conducted the autopsy of the cadaver[s] of Mayor Arcillas and PO2 Rivera. Based from the medico-legal report, Mayor Arcillas sustained three (3) gunshot wounds, the fatal of which are the 2 gunshots in his head. PO2 Rivera, on the other hand, sustained two (2) gunshot wounds, on the nape and chest, the latter being the fatal one that caused the death of the victim.

PO3 Almendras was examined and found to have fracture at the left forearm and weakness of the right hand.[3]

Version of the Defense

The defense, on the other hand, relates its version of the facts in this manner:

On 10 May 2005 at 10:00 o'clock a.m., accused ARNOLD DAVID was at Tanay, Rizal, where he has been staying since October 2004 as requested by his father because he was accused of murder in a gang war that happened at GMA, Cavite. He was then arrested on 19

[3] *Id*. at 130-132. (Citations omitted)

December 2006 in connection with a case in GMA, Cavite, where he was brought somewhere blindfolded. On 2 January 2007, SPO1 Peria arrived and showed him photographs of the gang, but he denied he was in these. He denied knowing Cipriano Refrea, Jr. prior to his arrest, knowing only the latter at the police station.

Accused HERMINIO VIBAL, JR. likewise denied participation in the incident that happened on 10 May 2005. He claimed that on that date, at 10:30 o'clock a.m., he was at GMA, Cavite, with his family, including his sister, LORELYN CORONEL, and did not leave until afternoon. In February 2006, he was arrested and detained at the Cavite Provincial Jail in relation to prior cases. In December 2006, SPO1 Peria visited him and asked about the death of Reynaldo Cesar, to which Vibal denied. SPO1 Peria later took Vibal's photograph and left. He was visited again by SPO1 Peria and asked if he had any participation in the death of Mayor Arcillas. Again, Vibal denied. SPO1 Peria once again visited Vibal, this time with PO3 Almendras. The latter asked Vibal if he knew him, but Vibal could not answer as he was sick at the time. He was again photographed. In January 2007, he was again visited by SPO1 Peria and PO3 Almendras, who were now with Cipriano Refrea, Jr. and who was asked to point at Vibal. Another photograph was taken of Vibal. Prior to this meeting, Vibal did not know who Refrea was.[4]

The RTC Ruling

In its Decision, dated February 6, 2013, the RTC found Vibal and David guilty of the crimes charged. The dispositive portion of the said decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused HERMINIO U. VIBAL, JR. y UAYAN and ARNOLD DAVID y CRUZ, guilty beyond reasonable doubt of the complex crime of direct assault with murder (2 counts) and direct assault with frustrated murder. Accordingly, they are hereby sentenced to suffer the penalty as follows:

1) In Criminal Case No. 17646-B and 17647-B, reclusion perpetua (two counts). As civil liability, for them to pay jointly the following: 1) ₱75,000.00 as civil liability *ex-delicto* in each case; 2) ₱500,000.00 in moral damages to the heirs of the victims in each case;

[4] *Id.* at 97-98.

2) In Criminal Case No. 17648-B, the indeterminate penalty ranging from 14 years of *reclusion temporal*, as minimum to 17 years 4 months and 1 day of *reclusion temporal*, as maximum. As civil liability, accused are ordered to pay the victim the amount of ₱50,000.00 in moral damages.

On the other hand, the cases against accused Ricardo Pineda and Edwin Barqueros are sent to the archives pending their arrest.

SO ORDERED.[5]

The RTC concluded that all the elements of the offenses charged were satisfactorily proven by the prosecution. It rejected the twin defenses of denial and alibi interposed by appellants in the light of the positive identification of them by prosecution witness PO3 Wilfredo Almendras (*PO3 Almendras*) as the culprits to the dastardly deeds. The RTC added that the manner by which the appellants committed the felonious acts revealed a community of criminal design, and thereby held that conspiracy exists. Lastly, the RTC ruled that evident premeditation and treachery attended the commission of the crimes which qualified the killing of Mayor Leon Arcillas (*Mayor Arcillas*) and PO2 Erwin Rivera (*PO2 Rivera*) to murder.

Not in conformity, Vibal and David appealed the February 6, 2013 RTC Decision before the CA.

The CA Ruling

On February 24, 2016, the CA rendered its assailed Decision upholding the conviction of Vibal and David for two counts of the complex crime of Direct Assault with Murder in Criminal Case Nos. 17646-B and 17647-B but held that the said appellants are criminally liable only for the complex crime of Direct Assault with Attempted Murder in Criminal Case No. 17648-B, the decretal portion of which states:

WHEREFORE, premises considered, the appeal is hereby DENIED. The Judgment dated February 6, 2013 of the Regional Trial Court, Branch 25, Biñan City, Laguna is AFFIRMED with MODIFICATION in that the dispositive portion thereof is to read as follows:

[5] *Id.* at 119.

(1) In Criminal Case No. 17646-B, accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are hereby held GUILTY beyond reasonable doubt for the complex crime of direct assault with murder and are sentenced to suffer the penalty of reclusion perpetua without eligibility for parole. Accused-appellants are ordered to pay the heirs of Mayor Leon Arcillas the following amounts: Seventy-Five Thousand Pesos (₱75,000,00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages;

(2) In Criminal Case No. 17647-B, accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are hereby held GUILTY beyond reasonable doubt for the complex crime of direct assault with murder and are sentenced to suffer the penalty of reclusion perpetua without eligibility for parole. Accused-appellants are ordered to pay the heirs of PO2 Erwin Rivera the following amounts: Seventy Five Thousand Pesos (₱75,000,00) as civil indemnity; Seventy Five Thousand Pesos (₱75,000.00) as moral damages; Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages;

(3) In Criminal Case No. 17648-B, accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are hereby held GUILTY beyond reasonable doubt for the complex crime of direct assault with attempted murder and are sentenced to suffer the penalty of imprisonment from six (6) months and one (1) day of prision correccional to ten (10) years and one (1) day of prision mayor. Accused-appellants are ordered to pay private complainant PO2 Wilfredo B. Almendras Forty Thousand Pesos (₱40,000.00) as moral damages; and Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and

(4) Accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are further ordered to pay interest on all damages awarded at the legal rate of six percent (6%) per annum from date of finality of this judgment.

SO ORDERED.[6]

The appellate court held that the credible testimony of PO3 Almendras is sufficient to sustain the conviction of the appellants for the crimes charged. It likewise debunked appellants' denial and alibi declaring that the same were not satisfactorily established and not at all persuasive when pitted against the positive and convincing identification by PO3 Almendras, who has no ill motive to testify falsely against them. According to the CA, the presence of the aggravating circumstance of evident premeditation was not adequately established by the prosecution. Finally, the CA ruled that the appellants should be held liable only for the complex crime of direct assault with attempted murder in Criminal Case No. 17648-B because the prosecution failed to prove that the gunshot wound inflicted upon PO2 Almendras was fatal.

Undaunted, appellants filed the present appeal and posited the same lone assignment of error they previously raised before the CA, to wit:

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESS' POSITIVE IDENTIFICATION OF THE ACCUSED-APPELLANTS WHEN THE FACTS OF THE CASE SHOW THAT THERE ARE DOUBTS CONCERNING THE ALLEGED POSITIVE IDENTIFICATION.[7]

In the Resolution[8] dated March 29, 2017, the Court directed both parties to submit their supplemental briefs, if they so desire. On May 29, 2017, the accused-appellants filed a Manifestation (In Lieu of Supplemental Brief)[9] averring that they would adopt all their arguments in their Appellant's Brief filed before the CA. On June 27, 2017, the Office of the Solicitor General filed

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[6] *Rollo*, pp. 23-24.

[7] CA, *rollo,* p. 92.

[8] *Rollo,* pp. 34-35.

[9] *Id.* at 36-38.

its Manifestation[10] stating that it will no longer file a supplemental brief as its Appellee's Brief had sufficiently ventilated the issues raised.

Accused-appellants principally contend that the CA gravely erred in its over-reliance on the problematic identification provided by prosecution witness/private complainant PO3 Almendras. They insist that PO3 Almendras could not have properly seen and identify the assailants at the time of the shooting incident because after he was shot, he felt dizzy and lost consciousness. Also, they brand Almendras' identification of them as the culprits to be dubious considering that it was only made more than a year after the incident. Appellants argue that their respective defenses of denial and alibi assume significance because the prosecution failed to establish beyond reasonable doubt the identities of the authors of the crime.

Accordingly, the decisive question that begs an answer from the Court is whether the identification of the culprits by eyewitness PO3 Almendras was reliable and positive enough to support the convictions of the appellants.

The Court's Ruling

After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, the Court finds this appeal to be absolutely without merit.

Every criminal conviction requires the prosecution to prove two things: (1) the fact of the crime, *i.e.*, the presence of all the elements of the crime for which the accused stands charged, and (2) the fact that the accused is the perpetrator of the crime.[11] When a crime is committed, it is the duty of the prosecution to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established.[12] Apart from showing

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[10] *Id.* at 47-49.

[11] *People v. Ayola*, 416 Phil. 861, 871 (2001).

[12] *People v. Sinco*, 406 Phil. 1, 12 (2001).

the existence and commission of a crime, the State has the burden to correctly identify the author of such crime. Both facts must be proved by the State beyond cavil of a doubt on the strength of its evidence and without solace from the weakness of the defense.[13]

Our legal culture demands the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty or even property. As every crime must be established beyond reasonable doubt, it is also paramount to prove, with the same quantum of evidence, the identity of the culprit. It is basic and elementary that there can be no conviction until and unless an accused has been positively identified.

In the case at bench, the RTC and the CA were one in declaring that the identification of appellants Vibal and David as the gunmen based on the recognition of PO3 Almendras was clear, worthy of credence and has met the requirements of moral certainty. The Court agrees, and finds no cogent reason to disturb this conclusion of the RTC as affirmed by the CA.

The cause of the prosecution draws its strength on the positive identification by PO3 Almendras, pinpointing to appellants Vibal and David as the perpetrators of the gruesome killing of Mayor Arcillas and PO2 Rivera and who inflicted gunshot wounds upon him. PO3 Almendras vividly recounted before the RTC the appellants' respective positions and participation in the shooting incident, having been able to witness closely how they committed the crime, more so because the crime happened in the morning when conditions of visibility are very much favorable. He had a close and unobstructed view of the incident and was able to take a good glimpse and recognize the faces of the gunmen as the same two young males he saw earlier in the day following his group. Hailed to the witness stand, PO3 Almendras stuck to the essentials of his story, and without any hesitation, pointed to Vibal and David as the two culprits, which thus eliminated any possibility of mistaken identification.

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[13] *People v. Limpangog*, 444 Phil. 691, 709 (2003).

Jurisprudence recognizes that victims of crime have a penchant for seeing the faces and features of their attackers, and remembering them.[14]

The following testimony of PO3 Almendras shows beyond cavil that he saw the faces of the appellants as the two young males who followed them from the room where Mayor Arcillas solemnized the mass wedding, and who later open fired at them:

Q: What time did the solemnization of the marriages end?
A: At 10:00 o'clock sir.

Q: After the solemnization of marriages did you observe anything unusual?
A: There was sir. When we were going out, I observed that there were 2 young kids (2 bata) following us.

Q: Did you recognize those 2 kids?
A: Yes, sir.[15]

x x x x x x x x x

Q: From the COA office where you stayed for a while, where did you go?
A: We were about to go to the office of the Mayor. (Papunta sa office ni mayor.)

Q: As you were going to the Office of the Mayor was there anything unusual that happened?
A: There was sir.

Q: What was that?
A: Suddenly I heard gunshots.

Q: What happened when you heard gunshots?
A: I was about to pull out my gun but there was a rapid fire so I was not able to draw my gun.

Q: In relation to where you were at that time, where did the gunshots come from?
A: In front and at the back sir.

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[14] *Vergara v. People*, 425 Phil. 124, 133 (2002).

[15] TSN, February 9, 2011, pp. 17-18.

Q: To whom?
A: I was the one who was shot first and the other bodyguard was shot next.

Q: Who was that person?
A: Erwin Rivera sir.

Q: You stated earlier that the shot came in front and behind whom?
A: Because we were walking together at that time and the shot came in front and back.

Q: Together with whom?
A: Mayor Leon C. Arcillas, Erwin Rivera and me sir.

Q: Where was then the Mayor at the time when you heard the gunshots?
A: He was in between me and Erwin Rivera.

Q: What did you notice after hearing the gunshots with respect to the Mayor?
A: "Nagbagsakan na kami." (We three fell down)

x x x x x x x x x

Q: Who fired the shots if you know?
A: The two kids sir, the 2 young male(s).

Q: Who are these 2 kids that fired the shot in relation to the 2 kids you noticed earlier when you were going out of the room where the Mayor solemnized marriages?

A: Arnold David and Herminigildo Vibal.[16]

x x x x x x x x x

Q: If you will see these persons again, will you be able to identify them?
A: Yes, sir.

Q: Would you kindly look inside the court room and tell us if they are present inside the court room?
A: Yes, sir.

Q: Will you kindly point to them?

x x x x x x x x x

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[16] *Id.* at 19-23.

Interpreter

The two accused identified to by the witness, when asked of their names, answered Arnold David and Herminigildo Vibal.[17]

Verily, PO3 Almendras had seen the faces of Vibal and David when they committed the crimes on that fateful morning of May 10, 2005, albeit brief, but enough for him to remember how they look like. Experience dictates that precisely because of the startling acts of violence committed right before their eyes, eyewitnesses can recall with a high degree of reliability the identities of the criminals and how at any given time the crime has been committed by them.[18] It is important to note that PO3 Almendras identified Vibal and David as the gunmen without any presumptions or suggestions from the police or the court at the trial.

This Court fails to discern any improper motive which could have impelled PO3 Almendras to maliciously impute to appellants such serious crimes and hence, his testimony is worthy of evidentiary weight. Further, as an actual victim, PO3 Almendras is naturally interested in vindicating the outrageous wrong done to his person. His natural interest in securing the conviction of the perpetrators would strongly deter him from implicating persons other than the real culprits. Otherwise, the latter could escape with impunity the strong and just arm of the law. Absent any evidence showing any reason or motive for prosecution witness to perjure, the logical conclusion is that no such improper motive exists, and that his testimony is entitled to full faith and credit.[19]

Vibal and David are clutching at straws in insisting that PO3 Almendras' identification of them as the gunmen is improbable and should not have been accorded credence since it was made only after the lapse of more than a year from the time the shooting incident occurred. A perusal of the records would readily disclose

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

[18] *People v. Gallego*, 453 Phil. 825, 855 (2003).

[19] *People v. Lucero*, 659 Phil. 518, 540 (2011).

that no unreasonable delay can be attributed to PO3 Almendras. We quote with approval the observation of the CA on this score:

> Appellants' attempt to discredit the testimony of private complainant by pointing out that there was a delay of one (1) year before he identified appellants as the gunmen is of no moment. As correctly pointed out by the Office of the Solicitor General, private complainant was not in a position to identify who shot him and killed Mayor Leon Arcillas and PO2 Erwin Rivera immediately after the incident. Private complainant was rushed to the hospital because of gunshot wounds and was confined for around a month. Moreover, the investigation took a long time and appellants were not immediately apprehended. Private complainant, however, asserted that he remembers the faces of the shooters and was, in fact, able to identify both appellants when he finally saw them.[20]

Having ascertained that herein appellants are the gunmen, the Court shall now proceed to the determination of their criminal liabilities.

The courts a quo are correct in ruling that appellants are liable for the complex crime of Direct Assault with Murder in Criminal Case Nos. 17646-B and 17647-B. Direct assault, a crime against public order, may be committed in two ways: *first*, by "any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition;" and *second*, by any person or persons who, without a public uprising, "shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance."[21]

Appellants committed the second form of assault, the elements of which are: 1) that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; 2) the assault was made when the said person was

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[20] *Rollo*, p. 18.

[21] Article 148, Revised Penal Code.

performing his duties or on the occasion of such performance; and 3) the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority.[22]

Here, Mayor Arcillas was a duly elected mayor of Sta. Rosa, Laguna and thus, was a person in authority while PO2 Rivera and PO3 Almendras were agents of a person in authority. There is no dispute that all of the three victims were in the performance of their official duties at the time of the shooting incident. Mayor Arcillas was inside the Sta. Rosa City Hall officiating a mass wedding, and thereafter, while he was walking along the hallway from the COA office to his office, he was shot and killed. Victim PO2 Rivera and private complainant PO3 Almendras were likewise performing their duty of protecting and guarding Mayor Arcillas at the time of the shooting incident. Appellants' conduct of attacking the victims inside the Sta. Rosa City Hall clearly showed their criminal intent to assault and injure the agents of the law.

When the assault results in the killing of an agent or of a person in authority for that matter, there arises the complex crime of Direct Assault with murder or homicide.[23] Here, treachery qualified the killing of Mayor Arcillas and PO2 Rivera to murder. Treachery also attended the shooting of PO3 Almendras. There is treachery when the following essential elements are present, *viz.*: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him.[24] The essence of treachery lies in the suddenness of the attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring the commission of the

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[22] *People v. Ex-Mayor Estonilo, Sr., et al.,* 745 Phil. 331, 355 (2014).

[23] *People v. Abalos*, 328 Phil. 24, 36 (1996).

[24] *People v. Villarico, Sr., et al.*, 662 Phil. 399, 422 (2011).

offense without risk to the offender arising from the defense which the offended party might make.[25]

In the case at bench, the shooting was deliberate and without a warning, done in a swift and unexpected manner. Mayor Arcillas, PO2 Rivera and PO3 Almendras were absolutely unaware of the imminent deadly assaults, and were for that reason in no position to defend themselves or to repel their assailants. Vibal and David, who were armed with guns, suddenly appeared in front and at the back of Mayor Arcillas, PO2 Rivera and PO3 Almedras and shot the three victims. The gunshots that came from the front of the victims were fired by Vibal, while those that came from behind them were fired by David.[26] Said manner of attack clearly revealed appellants' deliberate design to thereby ensure the accomplishment of their purpose to kill or injure the three victims without any possibility of their escape or of any retaliation from them.

Conspiracy is very much evident from the actuations of the appellants. They were synchronized in their approach to shoot Mayor Arcillas and his group. The concerted efforts of the appellants were performed with closeness and coordination, indicating a single criminal impulse — to kill the victims. Conspiracy may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when these point to a joint purpose and design, concerted action and community of interest.[27] The ascertainment of who among appellants actually hit, killed and/or caused injury to the victims already becomes immaterial. Where conspiracy has been adequately proven, as in the present case, all the conspirators are liable as co-principals regardless of the extent and character of their participation because, in contemplation of law, the act of one is the act of all.[28]

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[25] *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003.

[26] CA *rollo*, p. 61.

[27] *People v. De la Rosa, Jr.*, 395 Phil. 643, 659 (2000).

[28] *People v. Drew*, 422 Phil. 614, 628 (2001).

The Court affirms the conclusion of the CA that the appellants should be held criminally liable for the complex crime of Direct Assault with Attempted Murder in Criminal Case No. 17648-B. It is well-settled that when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wounds but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Article 249 of the Revised Penal Code are present.[29] But, if the wounds sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide.[30]

Here, the use of firearms and the manner of the commission of the crime by the appellants unmistakably show that they intended to kill PO3 Almendras and that treachery was present. However, no evidence was adduced to show that the nature of gunshot wounds sustained by PO3 Almedras was sufficient to cause the latter's death without timely medical intervention. We note that the attending physician of PO3 Almendras was not called to the witness stand to testify on the gravity or character of the gunshot wounds inflicted on the said victim. Also, no evidence was introduced to prove that PO3 Almendras would have died from his gunshot wounds without timely medical attendance. Where there is nothing in the evidence to show that the wound would be fatal if not medically attended to, the character of the wound is doubtful; hence, the doubt should be resolved in favor of the accused and the crime committed by him may be declared as attempted, not frustrated, murder.[31]

The Court agrees with the CA that the modifying circumstance of evident premeditation did not attend the commission of the offenses. Here, the records are bereft of any proof, direct or circumstantial, tending to show a plan or preparation to kill by

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[29] *People v. Costales,* 424 Phil. 321, 334 (2002).

[30] *People v. Castillo,* 426 Phil. 752, 768 (2002).

[31] *Epifanio v. People*, 552 Phil. 620, 631 (2007).

appellants Vibal and David as well as when they meditated and reflected upon their decision to kill or/injure the three victims and the intervening time that elapsed before this plan was carried out. Accordingly, the circumstance of evident premeditation cannot be presumed against appellants. To qualify a killing to murder, the circumstances invoked must be proven as indubitably as the killing itself and cannot be deduced from mere supposition.[32]

Appellants simply raise denial, which is inherently weak and cannot prevail over the positive identification made by prosecution witness PO3 Almendras that they were the gunmen. Moreover, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness,[33] as in this case. Appellants' defense of alibi is likewise unavailing. In order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene.[34] Appellants miserably failed to discharge this burden. Besides, the prosecution was able to present a photograph taken by prosecution witness Mercedita De Jesus, the official photographer during the solemnization of the mass wedding, prior to the shooting incident which showed appellant Vibal at the background. Said picture proves that Vibal was at the Sta. Rosa City Hall on May 10, 2005 which thus effectively belied his claim that he was at his residence in GMA, Cavite on that day.

When the offense is a complex crime, the penalty for which is that for the graver offense, to be imposed in the maximum period.[35] For the complex crime of Direct Assault with Murder in Criminal Case Nos. 17646-B and 17647-B, the graver offense

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[32] *People v. Baltar, Jr.*, 401 Phil. 1, 14 (2000).

[33] *People v. Calonge*, 637 Phil. 435, 455 (2010).

[34] *People v. Abella*, 624 Phil. 18, 36 (2010).

[35] Article 48, Revised Penal Code.

is Murder. Article 248 of the Revised Penal Code (*RPC*) provides for the penalty of *reclusion perpetua* to death for the felony of murder; thus, the imposable penalty should have been death. However, considering that the imposition of death penalty has been prohibited by Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines"; the penalty of *reclusion perpetua* should be imposed upon appellants. In addition, the qualification "without eligibility for parole" should be affixed to qualify *reclusion perpetua* pursuant to A.M. No. 15-08-02-SC. Thus, the CA has properly imposed upon appellants the penalty of *reclusion perpetua* without eligibility for parole.

In Criminal Case No. 17648-B for the complex crime of Direct Assault with Attempted Murder, the penalty to be imposed on appellants should be that for Attempted Murder, which is the more serious crime. The penalty for Attempted Murder is two degrees lower than that prescribed for the consummated felony under Article 51 of the RPC. Accordingly, the imposable penalty is *prision mayor.* Applying the Indeterminate Sentence Law, the minimum shall be taken from the penalty next lower in degree, *i.e., prision correccional,* in any of its periods, or anywhere from six (6) months and one (1) day to six (6) years while the maximum penalty should be from ten (10) years and one (1) day to twelve (12) years of *prision mayor*, the maximum period of the imposable penalty. This Court deems it proper to impose on the appellants the indeterminate penalty of four (4) years and two (2) months of *prision correccional,* as minimum, to ten (10) years and one (1) day of *prision mayor,* as maximum.

Coming now to the pecuniary liabilities, the Court finds that the award of civil indemnity, moral damages and exemplary damages in Criminal Case Nos. 17646-B and 17647-B should be increased to ₱100,000.00 each, while the award of temperate damages should likewise be increased to ₱50,000.00 being consistent with our pronouncement in *People v. Jugueta*.[36] In Criminal Case No. 17648-B, the Court finds it apt to award civil indemnity, in addition to moral damages and exemplary

[36] 783 Phil. 806 (2016).

damages, the amount of which should all be fixed at ₱50,000.00 each in line with existing jurisprudence.[37] Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this judgment until fully paid.[38]

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals, dated February 24, 2016 in CA-G.R. CR-HC No. 06206 is hereby **AFFIRMED** with **MODIFICATIONS** as follows:

1.) In Criminal Case No. 17646-B, accused-appellants Herminio Vibal, Jr. *y* Uayan @ Pato and Arnold David y Cruz @ Anot are found guilty beyond reasonable doubt of the complex crime of Direct Assault with Murder. Accordingly, each is sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole. Further, they are ordered to pay, jointly and severally, the heirs of Mayor Leon Arcillas the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages and ₱50,000.00 as temperate damages.

2.) In Criminal Case No. 17647-B, accused-appellants Herminio Vibal, Jr. *y* Uayan @ Pato and Arnold David *y* Cruz @ Anot are found guilty beyond reasonable doubt of the complex crime of Direct Assault with Murder. Accordingly, each is sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole. Further, they are ordered to pay, jointly and severally, the heirs of PO2 Erwin Rivera the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages and ₱50,000.00 as temperate damages.

3.) In Criminal Case No. 17648-B, accused-appellants Herminio Vibal, Jr. *y* Uayan @ Pato and Arnold David

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[37] *People v. Jugueta*, *supra*.

[38] *People v. Romobio,* G.R. No. 227705, October 11, 2017.

y Cruz @ Anot are found guilty beyond reasonable doubt of the complex crime of Direct Assault with Attempted Murder. Accordingly, each is sentenced to suffer the penalty of four (4) years and two (2) months of *prision correccional,* as minimum, to ten (10) years and one (1) day of *prision mayor,* as maximum. Further, they are ordered to pay, jointly and severally, the private complainant Wilfredo B. Almendras the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages.

4.) Accused-appellants Herminio Vibal, Jr. y Uayan @ Pato and Arnold David y Cruz @ Anot are also **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the time of finality of this Decision until fully paid, to be imposed on the civil indemnity, moral damages, exemplary damages and temperate damages.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 229787. June 20, 2018]

RICKY ANYAYAHAN *y* TARONAS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN APPEAL OPENS THE ENTIRE CASE FOR REVIEW AND THE COURT IS DUTY-BOUND 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. CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [I]n order to properly secure the conviction of an accused charged with this offense, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. Besides, case law states that the identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.

3. ID.; ID.; SECTION 21, ARTICLE II THEREOF; PROCEDURE WHICH THE POLICE OFFICERS MUST FOLLOW WHEN HANDLING THE SEIZED DRUGS IN ORDER TO PRESERVE THEIR INTEGRITY AND EVIDENTIARY VALUE; CASE AT BAR.— Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph of the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

4. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURE OUTLINED THEREIN MAY ONLY BE EXCUSED UNDER JUSTIFIABLE GROUND, WHICH MUST BE PROVEN AS A FACT, SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— 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. x x x **[N]on-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. x x x In this case, the Court finds that the police officers unjustifiably deviated from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Anyayahan.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Ricky Anyayahan *y* Taronas (Anyayahan) assailing

[1] *Rollo*, pp. 13-34.

the Decision[2] dated November 29, 2016 and the Resolution[3] dated January 27, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38171, which affirmed the Decision[4] dated October 9, 2015 of the Regional Trial Court of Marikina City, Branch 273 (RTC) in Criminal Case Nos. 2013-4119-D-MK and 2013-4120-D-MK finding Anyayahan 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

The instant case stemmed from two (2) Informations[6] filed before the RTC charging Anyayahan of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165, the accusatory portions of which state:

Criminal Case No. 2013-4119-D-MK
(For violation of Section 5, Article II of RA 9165)

That on or about the 9th day of January 2013, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and knowingly sell, deliver and give away without authority from law to SPO1 BADALF V. MONTE of the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG) of the Marikina City, posing as a buyer, one (1) small heat-sealed plastic sachet containing white crystalline substance with marking "RTA-01-09-13 (1)" and recorded net weight of 0.05 gram, which gave positive result to the test for

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[2] *Id*. at 38-60. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring.

[3] *Id*. at 62.

[4] *Id*. at 89-104. Penned by Presiding Judge Romeo Dizon Tagra.

[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] Both dated January 11, 2013. Records, pp. 2 and 6.

Methamphetamine Hydrochloride, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[7]

Criminal Case No. 2013-4120-D-MK
(For violation of Section 11, Article II of RA 9165)

That on or about the 9th day of January 2013, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above--named accused, without being authorized by law, did then and there willfully, knowingly and unlawfully have in his possession, direct custody and control one (1) small heat-sealed transparent plastic sachet with marking "RTA-01-09-13 (2)" and recorded net weight of 0.05 grams, of white crystalline substance, which gave positive result to the test for *Methamphetamine Hydrochloride*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[8]

The prosecution alleged that at around 6:00 in the evening of January 9, 2013, the Station Anti-Illegal Drugs Special Operations Task Group (SAID-SOTG), Philippine National Police (PNP) in Marikina City received a report from a confidential informant that a certain alias "Ricky," later identified as Anyayahan, was selling drugs in his house along Tanguile Street, Barangay Marikina Heights, Marikina City.[9] In response thereto, a buy-bust team was formed with Senior Police Officer (SPO) 1 Arnel Manuel as the team leader and SPO1 Badalf V. Monte (SPO1 Monte) as the designated poseur-buyer, among others. Thereafter, the buy-bust team, accompanied by the informant, proceeded to the target area where they saw Anyayahan. SPO1 Monte and the informant approached Anyayahan, and the informant introduced SPOI Monte as the buyer of *shabu* worth ₱300.00. SPO1 Monte then handed over three (3) marked one hundred-peso (₱100.00) bills as payment, afterwhich, Anyayahan told SPO1 Monte to wait as he entered

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[7] *Id.* at 2.

[8] *Id.* at 6.

[9] *Rollo*, p. 39.

his house.[10] Upon his return, Anyayahan pulled out from his right pocket two (2) small pieces of transparent plastic sachet containing white crystalline substance, and gave one (1) sachet to SPO1 Monte, while he returned the other sachet inside his pocket. After inspecting the contents, SPO1 Monte placed his arm around the shoulders of Anyayahan as he waved his other hand which was the pre-arranged signal. He then introduced himself as a police officer, arrested Anyayahan, and ordered the latter to bring out the contents of his pocket from where the other plastic sachet of suspected *shabu*, together with the buy-bust money, was recovered.[11] Upon confiscation, marking, and photography conducted at the place of arrest, an inventory was prepared[12] which was later on signed by *Kagawad* Ernie Arigue and a media representative named Edwin Moreno. Thereafter, SPO1 Monte brought Anyayahan to the SAID-SOTG, PNP where he gave the items to Police Officer (PO) 1 Rey G. Diola of the Eastern Police District Crime Laboratory Office, who turned over the same for examination to Forensic Chemist Police Senior Inspector (PSI) Margarita M. Libres (PSI Libres).[13] PSI Libres subsequently confirmed[14] that the substance inside the two (2) confiscated plastic sachets, weighing 0.05 gram each, tested positive for *Methamphetamine Hydrochloride* or *shabu*, a dangerous drug.[15]

For his part, Anyayahan denied the charges against him, narrating that at around 7:30 in the evening of the same date, he and his live-in partner, Dina Gonzales (Dina), were walking to a store when they passed by four (4) men, one of whom asked if he was "Ricky." Anyayahan answered "[y]es," and as they were about to cross the street, one of them suddenly grabbed

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[10] *Id*. at 40.

[11] See *id*.

[12] See Inventory of Evidence; records, p. 20.

[13] See *rollo*, pp. 40-41.

[14] See Physical Science Report No. D-005-13E; records, p. 30.

[15] *Rollo*, p. 41.

his collar, introduced themselves as policemen and frisked him. He was thereafter brought to Barangay Tanguile Taas where the said policemen brought out three (3) pieces of ₱100.00 bills and two (2) plastic sachets of *shabu* which were allegedly recovered from him.[16]

The RTC Ruling

In a Decision[17] dated October 9, 2015, the RTC ruled as follows: (*a*) in Criminal Case No. 2013-4119-D-MK, Anyayahan was acquitted for Illegal Sale of Dangerous Drugs and instead, convicted for Illegal Possession of 0.05 gram of *shabu* under Section 11, Article II of RA 9165; (*b*) in Criminal Case No. 2013-4120-D-MK, Anyayahan was found guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165. Accordingly, he was sentenced to suffer for each criminal case the penalty of imprisonment for an indeterminate term of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, eight (8) months, and one (1) day, as maximum, and to pay a fine of ₱300,000.00 without subsidiary imprisonment in case of insolvency.[18]

In acquitting Anyayahan of Illegal Sale of Dangerous Drugs, the RTC held that the prosecution failed to prove the element of consideration under Section 5, Article II of RA 9165, noting that SPO1 Monte was unclear as to when he handed the buy-bust money to Anyayahan. Neither were markings placed thereon, nor did SPO1 Monte remember the serial numbers.[19] Likewise, the prosecution failed to produce the original copy of the said money and merely offered as evidence its photocopy.[20] Notwithstanding these findings, the RTC convicted Anyayahan for Illegal Possession of Dangerous Drugs for both the criminal cases, since all the elements of the said crime were established

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[16] See *id*. at 41-42.

[17] *Id*. at 89-104.

[18] *Id*. at. 103.

[19] See *id*. at 97-99.

[20] *Id*. at 99.

and it was clear that Anyayahan had in his custody two (2) sachets of *shabu* — one used in the alleged sale, and the other recovered from his pocket after arrest.[21]

Furthermore, the RTC declared that the integrity and evidentiary value of the confiscated items were properly preserved, and that there was no break in the chain of custody from the time of their seizure by SPO1 Monte until their turnover to the PNP Crime Laboratory.[22]

Aggrieved, Anyayahan appealed[23] to the CA.

The CA Ruling

In a Decision[24] dated November 29, 2016, the CA affirmed Anyayahan's conviction for the crimes charged in the two (2) criminal cases. It ruled that all the essential elements of Illegal Possession of Dangerous Drugs were duly proven by the prosecution through SPO1 Monte's detailed narration of the incident.[25] In addition, the integrity and evidentiary value of the confiscated drugs were not compromised, as their whereabouts were accounted for.[26] On the other hand, Anyayahan's defense of frame-up remained unsupported and failed to overcome the categorical and positive testimonies of the prosecution's witnesses.[27]

Anyayahan filed a motion for reconsideration,[28] which was however denied by the CA in a Resolution[29] dated January 27, 2017.

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[21] See *id*. at 100.

[22] See *id.* at 101-103.

[23] See Notice of Appeal dated October 23, 2015; CA *rollo*, pp. 36-37.

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

[25] See *id*. at 47-55.

[26] See *id*. at 58.

[27] See *id.*

[28] Dated January 3, 2017. *Id*. at 126-137.

[29] *Id*. at 62.

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Anyayahan's conviction for Illegal Possession of Dangerous Drugs.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[30] "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."[31]

In this case, Anyayahan was charged with the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an accused charged with this offense, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[32]

Besides, case law states that the identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken

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[30] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[31] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521; citation omitted.

[32] *People v. Bio*, 753 Phil. 730, 736 (2015); citation omitted.

chain of custody over the same and account for each link from the moment of seizure up to its presentation in court as evidence of the crime.[33]

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.[34] Under the said section, prior to its amendment by RA 10640,[35]

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[33] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[34] *People v. Sumili*, 753 Phil. 342, 349-350 (2015).

[35] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,"' approved on July 15, 2014, Section 1 of which states:

> Section 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read as follows:
>
> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest

the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph of 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.[36] In the case of *People v. Mendoza*,[37] 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."[38]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section

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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

[36] See Section 21 (1) and (2), Article II of RA 9165.

[37] 736 Phil. 749 (2014).

[38] *Id*. at 764; emphases and underscoring supplied.

21, Article II of RA 9165 may not always be possible.[39] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640[40] — provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[41] 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.[42] In *People v. Almorfe*,[43] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**.[44] Also, in *People v. De Guzman*,[45] 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**.[46]

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[39] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[40] See Section 1 of RA 10640, amending Section 21, Article II of RA 9165.

[41] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[42] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252; citation omitted.

[43] 631 Phil. 51 (2010).

[44] *Id.* at 60.

[45] 630 Phil. 637 (2010).

[46] *Id.* at 649.

In this case, the Court finds that the police officers unjustifiably deviated from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Anyayahan.

Records failed to show that SPO1 Monte conducted the requisite inventory in the presence of an elected official, a media representative, and a DOJ representative. In his testimony during trial, he admitted that it was only after he had finished the Inventory of Evidence[47] that he proceeded to the Barangay Hall and procured the signatures of the barangay official and the media representative, without, however, mentioning the presence of any representative from the DOJ:

[Prosecutor Linda Adame-Conos (Pros. Conos)] Q: Mr. Witness, what point in time did these witnesses Kagawad Ernie Adigue and Edwin Moreno affixed [sic] their signatures?

[SPO1 Monte] A: At the time I finished the Inventory of Evidence SPO1 Manuel Arnel told me at that time no one is available at the Barangay Hall of Marikina Heights because they attended the SOCA at the Marikina Sports Center so they decided to proceed at the Barangay Hall for the barangay officials.

Q: How long a time did you stay at the Barangay Hall **waiting for these officials for them to affix their signatures**?

A: More or less, Ma'am, an hour.

x x x x x x x x x[48]

(Emphasis and underscoring supplied)

Q: Mr. Witness, when you went to the Barangay Hall of Barangay Marikina Heights and waited for the arrival of the barangay officials, who were in possession of the specimen again?

A: It is with me, Ma'am.

Q: After the witnesses affixed their signatures as appearing in the Inventory of Evidence, what happened next, if you remember?

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[47] Records, p. 33.

[48] TSN, February 20, 2014, pp. 34-35.

A: After we presented to the media representative the Inventory of Evidence and after he signed it we immediately brought the arrested person to the Amang Rodriguez Hospital for medical check-up.

x x x x x x x x x[49]

(Underscoring supplied)

In fact, as may be gleaned above, SPO1 Monte had to wait for, more or less, an hour for the barangay officials to arrive from the Marikina Sports Center in order to have them sign the said documents at the Barangay Hall.[50]

Section 21, Article II of RA 9165 requires the apprehending team, after seizure and confiscation, to immediately **conduct a physical inventory and photograph** the same **in the presence** of the accused, representatives from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given copies thereof. The mere production of the inventory, without the necessary personalities **physically witnessing** the proceeding, fails to approximate compliance with the mandatory procedure under the law,[51] as in this case.

Furthermore, the said witnesses were likewise absent during the required photography of the seized drugs. SPO1 Monte himself admitted that photographs were taken at the crime scene and immediately upon the arrival of the police officers (not the barangay official and media representative) at the Barangay Hall:

[Pros. Conos] Q: Mr. Witness, what else were prepared at the crime scene, if you remember?

[SPO1 Monte] A: The photographs of PO2 Bartolome Rosales

Q: Where was it taken, Mr. Witness?

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[49] TSN, February 20, 2014, pp. 37-38.

[50] See TSN, February 20, 2014, p. 34.

[51] See *People v. Dela Rosa*, G.R. No. 230228, December 13, 2017, *Lescano v. People*, G.R. No. 214490, January 13, 2016, 781 SCRA 73, 88.

A: At the place of operation and at the Barangay Hall of Barangay Marikina Heights.[52]

From the foregoing testimony, it can be inferred that these photographs were taken even before the arrival of the barangay officials and the media representative, contrary to the procedure set above.

It is well-settled that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.[53] While non-compliance is allowed, the same ought to be justified. Therefore, it must be shown that earnest efforts were exerted by the police officers involved to comply with the mandated procedure as to convince the Court that the attempt to comply was reasonable under the given Circumstances. Since this was not the case here, the Court is impelled to conclude that there has been an unjustified breach of procedure and hence, the integrity and evidentiary value of the *corpus delicti* had been compromised. Consequently, Anyayahan's acquittal is in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.

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[52] See TSN, February 20, 2014, p. 35.

[53] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. x x x.[54]

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.[55]

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 29, 2016 and the Resolution dated January 27, 2017 of the Court of Appeals in CA-G.R. CR No. 38171 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Ricky Anyayahan *y* Taronas is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Jardeleza*,[*] *Caguioa*, and *Reyes, Jr., JJ.*, concur.

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[54] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

[55] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

[*] Designated Additional Member per Raffle dated June 4, 2018.

SECOND DIVISION

[G.R. No. 230399. June 20, 2018]

DEPARTMENT OF EDUCATION, CULTURE AND SPORTS, (now DEPARTMENT of EDUCATION), represented by its REGIONAL DIRECTOR, TERESITA DOMALANTA, *petitioner, vs.* **HEIRS OF REGINO BANGUILAN, namely: BENIGNA GUMABAY, FILOMENA BANGUILAN, ESTER KUMMER, AIDA BANGUILAN, and ELISA MALLILLIN,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LACHES; THE PRINCIPLE OF LACHES OR "STALE DEMANDS" IS THE FAILURE OR NEGLECT, FOR AN UNREASONABLE AND UNEXPLAINED LENGTH OF TIME, TO DO THAT WHICH BY EXERCISING DUE DILIGENCE COULD OR SHOULD HAVE BEEN DONE EARLIER; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.—The principle of laches or "stale demands" is the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier. It is based on the grounds of public policy in order to maintain peace in the society and equity in order to avoid recognizing a right when to do so would result in a clearly unfair situation. x x x As prescribed in the ruling of *Phil-Air Conditioning Center vs. RCJ Lines*, the following elements must all be present in order to constitute laches: (1) Conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy; (2) Delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) Injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred. In the instant case, a close scrutiny of the records reveals

that petitioner failed to establish the concurrence of the above-mentioned elements for the reason that CNES' possession over the subject property was merely being tolerated by respondents and their predecessor-in-interest.

2. ID.; LAND TITLES AND DEEDS; PROPERTY REGISTRATION DECREE; A TORRENS TITLE OVER A LAND ENTITLES THE PERSON WHOSE NAME APPEARS THEREIN AND THAT OF HIS/HER PREDECESSOR-IN-INTEREST TO POSSESSION THEREOF; POSSESSION BY ANY ONE OTHER THAN THE REGISTERED OWNER OR HIS/HER PREDECESSOR-IN-INTEREST IS PRESUMED TO BE BY MERE TOLERANCE.—In the case of *Heirs of Jose Maligaso vs. Spouses Encinas*, the Court explained that possession over the property by anyone other than the registered owner gives rise to the presumption that said possession is only by mere tolerance. Likewise, when faced with unsubstantiated self-serving claims as opposed to a duly registered Torrens title, the latter must prevail. The Court elucidated on this point, *to wit*: The respondents' title over such area is evidence of their ownership thereof. That a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein and that a person who has a Torrens title over a land is entitled to the possession thereof are fundamental principles observed in this jurisdiction. x x x Notably, petitioner failed to adduce any evidence to substantiate its claim that it acquired the subject property and possessed it in the concept of an owner. Moreover, petitioner was unable to support its claim that the subject land was sold to the municipality of Tuguegarao by Elena Banguilan, Regino's sister. Clearly, petitioner was unable to overturn the presumption that its occupation over the lot was by mere tolerance of the respondents.

3. ID.; OBLIGATIONS AND CONTRACTS; LACHES; INAPPLICABLE TO REGISTERED LAND COVERED BY THE TORRENS SYSTEM BECAUSE A REGISTERED LAND CANNOT BE ACQUIRED BY PRESCRIPTION OR ADVERSE POSSESSION.— Notwithstanding the petitioner's failure to prove the concurrence of all the elements of laches, jurisprudence is also replete with cases which hold that the doctrine of prescription or laches is inapplicable to registered

lands covered by the Torrens System. The Court has consistently held that laches cannot apply to registered land covered by a Torrens Title because under the Property Registration Decree, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession.

4. ID.; ID.; ID.; LACHES CAN ONLY APPLY TO ONE WHOSE POSSESSION OF THE PROPERTY WAS OPEN, CONTINUOUS, EXCLUSIVE, ADVERSE, NOTORIOUS, AND IN THE CONCEPT OF AN OWNER FOR A PROLONGED PERIOD OF TIME; CASE AT BAR.—On the same note, the Court concurs with the CA in its application of the case of *Tuliao* to the herein controversy with regard to the issue of laches. In said case, the Court unequivocally stated that laches can only apply to one whose possession of the property was open, continuous, exclusive, adverse, notorious, and in the concept of an owner for a prolonged period of time. Additionally, physical possession must be coupled with intent to possess as an owner in order for it to be considered as adverse. The Court explained this, *to wit*: As regards the DepEd's defense of laches, it has no merit either. It avers that its possession of the subject land was open, continuous, exclusive, **adverse**, notorious and **in the concept of an owner** for at least thirty-two (32) years already at the time Tuliao filed the complaint. It must be noted, however, that Tuliao's claim that the DepEd's possession of a portion of his land to be used as a passageway for the students was mere tolerance was not refuted. Thus, the same is deemed admitted. This means that the DepEd's possession was not truly adverse.

5. ID.; PROPERTY; RIGHTS OF THE OWNER OF THE LAND ON WHICH ANYTHING HAS BEEN BUILT, SOWN OR PLANTED IN GOOD FAITH; CASE AT BAR.—As correctly ruled by the Court of Appeals, respondents may exercise their rights under Article 448, in relation to Article 546 of the New Civil Code. Said provision provides them with the option of either: (1) appropriating the improvements, after payment of indemnity representing the value of the improvements introduced and the necessary and useful expenses defrayed on the subject lots; or (2) obliging the petitioner to pay the price of the land. However, petitioner cannot be obliged to buy the land if its value is considerably more than that of the improvements and buildings it built. In such a scenario, the petitioner may instead

enter into a lease agreement with respondent heirs and pay them reasonable rent. In case of disagreement, the Court shall fix the terms thereof.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Mac Paul B. Soriano for respondents.

D E C I S I O N

REYES JR., *J.*:

Nature of the Petition

Before the Court is a Petition for Review on *Certiorari*[1] filed by the Department of Education, Culture and Sports, now Department of Education (DepEd) through its Regional Director Teresita Domalanta, assailing the Decision[2] dated February 24, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 100288. The assailed Decision granted the appeal of the heirs of Regino Banguilan (Regino), namely, Benigna Gumabay, Filomena Banguilan, Ester Kummer, Aida Banguilan, and Elisa Mallillin and declared them as the lawful possessors of the contested property.

The Antecedent Facts

On October 24, 2001, the heirs of Regino Banguilan (respondents) instituted a Complaint[3] for recovery of possession against the Department of Education (petitioner) with the Regional Trial Court (RTC) of Tuguegarao City, Cagayan. Respondents claim that as the heirs of Regino, the original registered owner, and by virtue of the Extra-Judicial Settlement

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[1] *Rollo*, pp. 16-39.

[2] Penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Rosmari D. Carandang and Mario V. Lopez; *id*. at 42-54.

[3] *Id*. at 65-69.

and Partition executed by and among themselves upon the latter's death, they are the absolute owners of the subject parcel of land situated in Caritan Norte, Tuguegarao City covered by Original Certificate of Title (OCT) No. 10728.[4] They alleged that sometime before the Second World War, the petitioner, through the officials of Caritan Norte Elementary School (CNES), sought permission from Regino to build temporary structures in the contested land to be used as classrooms for students. Since Regino did not have any immediate need of the land, he consented to the construction of said temporary structures and allowed the conduct of classes in the premises.[5]

Over time, the temporary structures were gradually improved to concrete ones until the permanent building of CNES was established. After Regino's death in 1961, respondents alleged that their predecessors-in-interest demanded from the school officials that they be paid reasonable rent for the use of their property and for the petitioner to purchase the same if it so desired. Respondents claim that the officials of CNES assured them that they would pay reasonable rent for occupying the subject lot and that they would eventually purchase it. However, no purchase or payments were ever made. Respondents now claim that the petitioner's non-adherence to the agreement prejudiced them because they were deprived of the use and enjoyment of the subject property since 1950.[6]

Accordingly, the respondents prayed for the following: (1) to declare the school's possession of the property illegal or unlawful; (2) to order DepEd, its assigns and those acting in its behalf, to vacate the property presently occupied by CNES and to surrender peaceful possession thereof to the respondents; (3) to demand from DepEd for payment of reasonable rent for the use of the property at a rate of ₱500.00 per month since 1950, litigation expense of ₱30,000.00 and ₱50,000.00 as attorney's fees.[7]

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[4] *Id*. at 70-73.

[5] *Id*. at 66.

[6] *Id*.

[7] *Id*. at 67.

In its Answer,[8] the petitioner admitted that sometime before the war, it had established CNES on land located in Caritan Norte, Tuguegarao City and constructed school buildings on the said school site. However, it denied respondents' claim of ownership and demands for payment of reasonable rent since the school's occupation and possession over the property was in the concept of an owner for more than fifty (50) years until 2001.[9]

Furthermore, the petitioner contended that respondents' complaint did not state a cause of action since there was no proof that the lot being claimed by the latter formed part of the school site of CNES. Even assuming but without admitting that there was a cause of action, the petitioner argues that the same had already been barred by prescription and/or laches because they had been occupying and using the subject lot adversely, peacefully, continuously, and in the concept of an owner for more than fifty (50) years without question.[10]

In a Decision[11] dated September 11, 2012, the trial court declared Regino as the undisputed owner of the contested property where CNES was built as evidenced by OCT No. 10728. However, despite recognition of ownership, the trial court was convinced that laches and prescription had already set in, barring respondents from assailing the petitioner's right over subject property. The *fallo* of the decision reads:

> WHEREFORE, premises considered, the Court ORDERS the dismissal of the complaint for lack of merit without prejudice to their filing of an action for payment of just compensation against the Republic of the Philippines.
>
> SO ORDERED.[12]

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[8] *Id*. at 74-80.

[9] *Id*. at 74-76.

[10] *Id*. at 77.

[11] *Id.* at 96-103.

[12] *Id*. at 103.

On appeal to the CA, respondents argued that the court *a quo* erred when it found that they were barred by laches from recovering possession of the subject property. They further contended that the petitioner's possession of the property was by mere tolerance; hence laches could not prevent them from asserting their right of possession over the subject property.[13]

In its Decision[14] dated February 24, 2017, the CA reversed and set aside the decision of the court *a quo* ruling that prescription and laches could not work in favor of petitioner since the subject lot was registered under the Torren's System and because their possession was merely by tolerance. In resolving the issue, the CA applied the principles laid down in the case of *Department of Education vs. Tuliao*,[15] that mere material possession of land cannot be considered as adverse unless such possession is accompanied with intent to possess as an owner.

In keeping with the ruling in *Tuliao*,[16] the CA further ruled that respondents may either appropriate the structures or oblige the defendant to pay for the price of the land or enter into a forced lease. Additionally, the CA awarded attorney's fees and ordered payment of an amount of ₱500.00 per month as reasonable compensation for the occupancy of the property from the time of the filing of the complaint until full delivery of the property with reimbursement of the incurred expenses as enumerated in Article 448 of the New Civil Code or upon payment of the purchase price in case of compulsory sale.[17] In view of the foregoing, it was held that:

WHEREFORE, the appeal is GRANTED. The decision issued by the Regional Trial Court of Tuguegarao City, Cagayan Br. 2 dated

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[13] *Id*. at 45.

[14] *Id*. at 42-54.

[15] 735 Phil. 703, 712 (2014).

[16] *Id*. at 707.

[17] *Rollo*, pp. 50-51.

September 11, 2012 in Civil Case No. 5897 is REVERSED and SET ASIDE. A new decision is entered declaring as follows:

1. Plaintiffs-Appellants Benigna Gumabay, Filomena Banguilan, Ester Kummer, Aida Banguilan and Elisa Mallillin are the lawful possessors of the property registered under the Original Certificate Title No. R.O. 62 (10728);

2. Plaintiffs-Appellants are directed to exercise their option under Article 448 of the New Civil Code of the Philippines whether to appropriate the structures built on the subject property as their own by paying to the defendant-appellee Department of Education, Culture and Sports (now the Department of Education) the amount of the expenses spent for the structures or to oblige the defendant-appellee to pay the price of the land, and said option must be exercised and relayed to this court formally within thirty (30) days from receipt of this decision and a copy of such notice must be furnished to the defendant.

a. If in case the plaintiffs-appellants exercise the option to appropriate the structures built on the lot in suit, the defendant-appellee is hereby directed to submit to this court the amount of the expenses spent for the structures within 15 days from receipt of the notice of the plaintiff of his desired option.

b. If the plaintiffs-appellants decide to oblige the defendant-appellee to pay the price of the land, the current market value of the land including its improvements as determined by the City Assessor's Office shall be the basis for the price thereof.

c. In case the plaintiffs-appellants exercise the option to oblige the defendant-appellee to pay the price of the land but the latter rejects such purchase because the value of the land is considerably more than that of the structures, the parties shall agree upon the terms of a forced lease, and give the court a formal written notice of such agreement and its provisos.

d. If no formal agreement shall be entered into within a reasonable period, the court shall fix the terms of the forced lease.

3. Defendant-appellee is directed to pay the plaintiffs-appellants the amount of five hundred pesos (₱500.00) per month as reasonable compensation for the occupancy of the subject property from the time the complaint was filed until such time the possession of the

property is delivered to the plaintiffs-appellants subject to the reimbursement of the aforesaid expenses in favor of the defendant-appellee or until such time the payment of the purchase price of the lot be made by the defendant appellee in favor of the plaintiffs-appellants in case the latter opts for the compulsory sale of the same;

4. Defendant-appellee is directed to pay the plaintiffs-appellants the amount of ₱20,000.00 as attorney's fees and to pay the costs of the suit.

SO ORDERED.[18]

Aggrieved, DepEd filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court arguing that respondent's right over the subject property, if any, is barred by laches due to their inaction for more than fifty (50) years.

The Issue

The issue before this Court is whether or not the CA erred in ruling that respondent's cause of action against petitioner was not yet barred by laches.[19]

Ruling of the Court

The petition is bereft of merit.

The principle of laches or "stale demands" is the failure or neglect, for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier.[20] It is based on the grounds of public policy in order to maintain peace in the society and equity in order to avoid recognizing a right when to do so would result in a clearly unfair situation.[21]

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[18] *Id*. at 52-54.

[19] *Id*. at 25.

[20] See *Spouses Benatiro, et al. v. Heirs of Evaristo Cuyos*, 582 Phil. 470, 491 (2008).

[21] See *Aznar Brothers Realty Company v. Spouses Jose and Magdalena Ybañez*, 733 Phil. 1, 29 (2014); *Insurance of the Philippine Island Corp. v. Spouses Gregorio*, 658 Phil. 36, 42 (2011).

Nevertheless, the Court has held that there is no fast and hard rule as to what constitutes laches or staleness of demand; the determination of which is addressed to the sound discretion of the court. To conclude a sound judgment, courts are guided that laches, being an equitable doctrine, is controlled by equitable considerations in accordance with the particular circumstances of each case. It cannot be used to defeat justice or perpetrate fraud. Ultimately, pursuant to the principle of equity, courts are not bound strictly by the statute of limitations or the doctrine of laches when to be so, a manifest wrong or injustice would result.[22]

As prescribed in the ruling of *Phil-Air Conditioning Center vs. RCJ Lines*,[23] the following elements must all be present in order to constitute laches:

(1) Conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy;

(2) Delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit;

(3) Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and

(4) Injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.[24]

In the instant case, a close scrutiny of the records reveals that petitioner failed to establish the concurrence of the above-mentioned elements for the reason that CNES' possession over the subject property was merely being tolerated by respondents and their predecessor-in-interest.

Petitioner contends that the government, through CNES, was in possession of the subject property in the concept of an owner

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[22] *Id.* at 42.

[23] *Phil-Air Conditioning Center v. RCJ Lines*, 773 Phil. 352, 369 (2015).

[24] *Id.* at 369.

since the 1940's.[25] However, as found by the court *a quo* and the CA, the subject property was registered in the name of Regino Banguilan under OCT. No. 10728 as early as 1929.[26] The court *a quo* explicitly stated, "In the case at bar, it was undisputed that the property registered under OCT. No. 10728 was owned by Regino Banguilan, which later redounded to his heirs."[27] Therefore, CNES knew from the very beginning that the property was titled in someone else's name and that their possession was not in the concept of an owner.

In the case of *Heirs of Jose Maligaso vs. Spouses Encinas*,[28] the Court explained that possession over the property by anyone other than the registered owner gives rise to the presumption that said possession is only by mere tolerance. Likewise, when faced with unsubstantiated self-serving claims as opposed to a duly registered Torrens title, the latter must prevail. The Court elucidated on this point, *to wit*:

> The respondents' title over such area is evidence of their ownership thereof. That a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein and that a person who has a Torrens title over a land is entitled to the possession thereof are fundamental principles observed in this jurisdiction. **Alternatively put, the respondents' title and that of their predecessors-in-interest give rise to the reasonable presumption that the petitioners have no right over the subject area and that their stay therein was merely tolerated**.[29] (Citations omitted and emphasis supplied)

Notably, petitioner failed to adduce any evidence to substantiate its claim that it acquired the subject property and possessed it in the concept of an owner. Moreover, petitioner was unable to support its claim that the subject land was sold

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[25] *Rollo*, p. 102.

[26] *Id*. at 70-71.

[27] *Id*. at 101.

[28] 688 Phil. 516, 523 (2012).

[29] *Id*.

to the municipality of Tuguegarao by Elena Banguilan, Regino's sister.[30] Clearly, petitioner was unable to overturn the presumption that its occupation over the lot was by mere tolerance of the respondents.

On the other hand, the respondents have proffered the following to prove their claim of ownership over the subject lot: (1) OCT No. 10728 registered under the name of Regino Banguilan;[31] (2) tax declarations covering the subject land in the name of Regino;[32] and (3) a sketch plan of Lot 3950 surveyed in the name of Aida Banguilan, one of the herein respondents.[33] Thus, as between the petitioner's unsubstantiated self-serving claims and respondent's evidence, the latter must prevail. As such, the Court finds no reason to disturb the CA's factual finding that CNES' possession of the subject property was, and continues to be, by mere tolerance of the respondents.

Considering that CNES' possession was merely being tolerated, respondents cannot be said to have delayed in asserting their rights over the subject property. As explained in the recent case of *Department of Education vs. Casibang, et al.*,[34] a registered owner who is merely tolerating another's possession of his land is not required to perform any act in order to recover it. This is because the occupation of the latter is only through the continuing permission of the former. Consequently, once said permission ceases, the party whose possession is merely being tolerated is bound to vacate the subject property. Hence, until the registered owner communicates the cessation of said permission, there is no need to do anything to recover the subject property. Similarly, as aptly pointed out by the court *a quo*, Regino and his successor-in-interests repeatedly asserted their rights over the subject property by demanding from CNES the

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[30] *Rollo*, p. 100.

[31] *Id.* at 70.

[32] *Id.* at 97.

[33] *Id.* at 98.

[34] 779 Phil. 472, 486 (2016).

payment of rentals or for the latter to purchase the same.[35] However, once it became clear that petitioner was not going to pay rent, purchase the lot, or vacate the premises, respondents instituted an action for recovery of possession.[36] There was no prolonged inaction on the part of the respondents which could bar them from prosecuting their claims.

Likewise, since CNES' occupation of Lot No. 3950 was merely being tolerated by Regino and his successors-in-interest, petitioner cannot now claim that they lacked any knowledge or notice that the former would assert their rights over said property. Even assuming arguendo that there was no agreement between CNES and Regino, the school is necessarily bound by an implied promise to vacate the subject property upon the registered owner's demand.[37]

Notwithstanding the petitioner's failure to prove the concurrence of all the elements of laches, jurisprudence is also replete with cases which hold that the doctrine of prescription or laches is inapplicable to registered lands covered by the Torrens System.[38] The Court has consistently held that laches cannot apply to registered land covered by a Torrens Title because under the Property Registration Decree, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. [39]

In *Casibang*,[40] the Court ruled in favor of a registered owner and upheld the indefeasibility and incontrovertibility of a registered title as against the school's possession by mere tolerance. In said case, the registered owner therein allowed

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[35] *Rollo*, p. 109.

[36] *Id*.

[37] *Supra* note 34, at 486.

[38] See *de Leon v. de Leon-Reyes*, 791 SCRA 407, G.R. No. 205711, May 30, 2016; *Supapo, et al. v. Sps. De Jesus, et al.*, 758 Phil. 444, 461 (2015); *Jakosalem, et al. v. Barangan*, 682 Phil. 130, 142 (2012).

[39] See *Jakosalem, et al. v. Barangan*, 682 Phil. 130, 142 (2012).

[40] *Supra* note 34.

the construction and operation of a school on a portion of his property because he had no use of it at the time. However, when his successors-in-interest sought to recover possession of the lot, the DepEd refused alleging that its possession was in the concept of an owner because it had purchased it from the original registered owner. The Court ruled against the DepEd because it failed to produce any competent proof of transfer of ownership. Hence, their possession of the subject property was only by mere tolerance and not in the concept of an owner. The Court held:

> It is undisputed that the subject property is covered by OCT No. O-627, registered in the name of the Juan Cepeda. A fundamental principle in land registration under the Torrens system is that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Thus, the certificate of title becomes the best proof of ownership of a parcel of land.
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> **As registered owners of the lots in question, the respondents have a right to eject any person illegally occupying their property. This right is imprescriptible.** Even if it be supposed that they were aware of the petitioner's occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.
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> **Case law teaches that those who occupy the land of another at the latter's tolerance or permission, without any contract between them, are necessarily bound by an implied promise that the occupants will vacate the property upon demand.**[41] (Citations omitted and emphasis supplied)

On the same note, the Court concurs with the CA in its application of the case of *Tuliao*[42] to the herein controversy with regard to the issue of laches. In said case, the Court unequivocally stated that laches can only apply to one whose

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[41] *Id.* at 484-485.

[42] *Department of Education v. Tuliao*, *supra* note 15.

possession of the property was open, continuous, exclusive, adverse, notorious, and in the concept of an owner for a prolonged period of time. Additionally, physical possession must be coupled with intent to possess as an owner in order for it to be considered as adverse. The Court explained this, *to wit*:

> As regards the DepEd's defense of laches, it has no merit either. It avers that its possession of the subject land was open, continuous, exclusive, **adverse**, notorious and **in the concept of an owner** for at least thirty-two (32) years already at the time Tuliao filed the complaint. It must be noted, however, that Tuliao's claim that the DepEd's possession of a portion of his land to be used as a passageway for the students was mere tolerance was not refuted. Thus, the same is deemed admitted. This means that the DepEd's possession was not truly adverse.
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> **The Court once ruled that mere material possession of the land was not adverse as against the owner and was insufficient to vest title, unless such possession was accompanied by the intent to possess as an owner.**[43] (Citation omitted and emphasis supplied)

As earlier discussed, petitioner, through CNES, was only occupying the subject lot through the permission and mere tolerance of Regino and eventually his successors-in-interest, herein respondents. Therefore, the petitioner's claim that their possession of the subject lot was adverse and in the concept of an owner, must fail.

Being the owners of the subject property, respondents have the right to recover possession from the petitioner because such right is imprescriptible. Even if the Department of Education has been occupying the subject property for a considerable length of time, respondents, as lawful owners, have the right to demand the return of their property at any time as long as the possession was only through mere tolerance.[44] The same precept holds true

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[43] *Id.* at

[44] *Spouses Ocampo v. Heirs of Bernardino U. Dionisio*, 744 Phil. 716, 729-730 (2014).

even if the tolerance resulted from a promise that the possessor will pay for the reasonable value of the land.[45]

As correctly ruled by the Court of Appeals, respondents may exercise their rights under Article 448,[46] in relation to Article 546[47] of the New Civil Code. Said provision provides them with the option of either: (1) appropriating the improvements, after payment of indemnity representing the value of the improvements introduced and the necessary and useful expenses defrayed on the subject lots; or (2) obliging the petitioner to pay the price of the land. However, petitioner cannot be obliged to buy the land if its value is considerably more than that of the improvements and buildings it built. In such a scenario, the petitioner may instead enter into a lease agreement with respondent heirs and pay them reasonable rent. In case of disagreement, the Court shall fix the terms thereof.

Nonetheless, considering that the subject lot is now being used as school premises by the Caritan Norte Elementary School and permanent structures have already been erected thereon,

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[45] *Malonesio v. Jizmundo,* G.R. No. 199239, August 24, 2016, 801 SCRA 339.

[46] Art. 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.

[47] Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

respondent's exercise of their rights under Article 448 and payment of indemnity pursuant to Article 546 would undoubtedly hinder the Department of Education's prerogative of providing basic education to said locality. In consonance with previous rulings by the Court,[48] the petitioner's remedy to address such inconvenience is to file an action for expropriation over said land.

WHEREFORE, given the foregoing disquisition, the Petition for Review on *Certiorari*, dated April 26, 2017 of the Department of Education, represented by its Regional Director, is hereby **DENIED**. Accordingly, the Decision dated February 24, 2017 of the Court of Appeals in CA-G.R. CV No. 100288, reversing and setting aside the Decision dated September 11, 2012 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 2 is hereby **AFFIRMED** *in toto*.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

SECOND DIVISION

[G.R. No. 230717. June 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LULU BATTUNG *y* NARMAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; SECTION 21 OF R.A. NO. 9165 PROVIDES FOR THE

[48] *Department of Education v. Tuliao*, *supra* note 15, at 712.

PROCEDURAL SAFEGUARDS IN THE HANDLING OF SEIZED DRUGS BY THE APPREHENDING OFFICER/ TEAM; ELEMENTS.— In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of *corpus delicti* is essential to a judgment of conviction. Hence, the identity of the dangerous drug must be clearly established. Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officerr/team.

2. **ID.; ID.; ID.; ID.; R.A. 10640, WHICH AMENDED SEC. 21 OF R.A. NO. 9165, NOW, REQUIRES ONLY TWO (2) WITNESSES TO BE PRESENT DURING THE CONDUCT OF THE PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS.—** It is not amiss to state 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.

3. **ID.; ID.; ID.; ID.; ID.; THE ORIGINAL PROVISION OF SECTION 21, ARTICLE II THEREOF, REQUIRES THREE (3) WITNESSES TO BE PRESENT IN THE CONDUCT OF PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED DRUGS INTENDED AS A GUARANTEE AGAINST PLANTING OF EVIDENCE AND FRAME UP; CASE AT BAR.—** [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. 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."

4. ID.; ID.; ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE MANDATED PROCEDURE LAID DOWN IN SECTION 21, ARTICLE II THEREOF MAY BE EXCUSED ON JUSTIFIABLE GROUND, PROVEN AS A FACT, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— 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. An examination of the records showed that the prosecution totally failed to comply with the procedures outlined under Section 21 of R.A. No. 9165. The testimony of PO1 Juaño revealed such non-compliance.

5. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; REGULARITY OF PERFORMANCE OF OFFICIAL DUTY OF POLICE OFFICERS; MAY ONLY ARISE WHEN THERE IS A SHOWING THAT THE APPREHENDING OFFICER/TEAM FOLLOWED THE REQUIREMENTS OF THE LAW.— The presumption of regularity in the performance of duty of the arresting officers as found by the RTC and the CA finds no application in this case. Such presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally-enshrined right to be presumed innocent. In this case, the police officers' failure to observe the chain of custody rule without any explanation negates the presumption. Since a serious doubt was created on the integrity

and the identity of the *corpus delicti*, consequently, there is a failure to establish an element of the crime of illegal sale of dangerous drugs, and so appellant must be acquitted.

6. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JURISDICTION TO DETERMINE SUFFICIENCY OF COMPLIANCE WITH THE RULE ON CHAIN OF CUSTODY IS WITH THE JUDICIARY ONLY.— At this point, it is not amiss for the *ponente* to express his 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, the *ponente* agrees 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.

7. CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); REQUIREMENTS OF MARKING, CONDUCT OF INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS IN THE PRESENCE OF THE WITNESSES ARE POLICE INVESTIGATION PROCEDURES WHICH CALLS FOR ADMINISTRATIVE SANCTIONS IN CASE OF NON-COMPLIANCE; NON-OBSERVANCE THEREOF SHOULD NOT AFFECT THE VALIDITY OF THE SEIZURE OF THE EVIDENCE.— The *ponente* further submits 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**. 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

PERALTA, *J.*:

Before us is an appeal from the Decision[1] dated April 14, 2016 of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 06053 which affirmed the Decision[2] dated September 29, 2008 of the Regional Trial Court (*RTC*) of Manila, Branch 31, in Criminal Case No. 04-232833 finding appellant Lulu Battung *y* Narmar guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 (*R.A. No. 9165*), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

In an Information[3] filed on December 14, 2004, appellant was charged before the RTC with violation of Section 5, Art. II of R.A. No. 9165, the accusatory portion of which reads:

That on or about December 2, 2004, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully unlawfully and knowingly sell One (1) heat-sealed transparent plastic sachet with markings "LB" containing ZERO POINT ZERO TWO TWO (0.022) grams, of white crystalline substance, containing methamphetamine hydrochloride known as "shabu" which is a dangerous drug.

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[1] Penned by Associate Justice Leoncia Real-Dimagiba, concurred in by Associate Justices Ramon R. Garcia and Jhosep Y. Lopez; *rollo*, pp. 2-12.

[2] Per Judge Germano Francisco D. Legaspi, Criminal Case No. 04-232833; CA *rollo*, pp. 36-42.

[3] Records, p. 1.

Contrary to Law.[4]

Appellant, duly assisted by counsel *de oficio*, was arraigned and pleaded not guilty to the charge.[5] Pre-trial and trial thereafter ensued.

The evidence for the prosecution established that at 4:30 in the afternoon of December 2, 2004, a confidential informant (*CI*) went to the Station Anti-Illegal Drugs Special Operation Task Unit (*SAID-SOTU*) of the Western Police District and reported the illegal drug selling activity of appellant along Bambang Street, Tondo, Manila.[6] SPO2 Rolando del Rosario immediately planned a buy bust operation and formed a team composed of himself, PO3 Ricardo Manansala and PO1 Conrado Juaño who would act as the poseur buyer.[7] SPO2 Del Rosario prepared the buy bust money with his initials "RR."[8] After the pre-operation report and coordination with the Philippine Drug Enforcement Agency (*PDEA*), the buy-bust team, together with the CI, proceeded to Bambang Street on board a car and arrived at the target area at 6:25 in the evening.[9] POI Juaño and the CI proceeded towards an alley in Bambang Street, while the other two team members positioned themselves at the sidewalk where they could see the former.[10] A few minutes later, appellant arrived and met with the CI who introduced PO1 Juaño as his friend.[11] Appellant asked PO1 Juaño how much he was buying to which the latter replied, "dos lang."[12] PO1 Juaño handed the two ₱100 bills to appellant who took out from her short pants pocket a

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[4] *Id.*

[5] *Id.* at 13.

[6] TSN, September 29, 2005, pp. 3-4.

[7] *Id.* at 5.

[8] *Id.*

[9] *Id.* at 7.

[10] *Id.* at 8; TSN, January 18, 2007, pp. 5-6.

[11] TSN, January 18, 2007, p. 8.

[12] *Id.*

plastic sachet containing white crystalline substance and gave it to the former.[13] PO1 Juaño then held appellant's hand, introduced himself as a police officer and placed her under arrest, while the other team members rushed towards them.[14]

Appellant was apprised of her constitutional rights and was brought to the police station.[15] PO1 Juaño remained in possession of the item bought from appellant and the buy-bust money from the time of the latter's arrest up to the police station. Upon arrival at the station, PO1 Juaño marked the transparent plastic sachet containing the white crystalline substance with "LB"[16] before turning it over to the investigator, PO2 Elimar Garcia, who prepared the request for laboratory examination and the one who delivered the item to the crime laboratory for chemical analysis.[17] Police Senior Inspector (*PSI*) Elisa G. Reyes, Forensic Chemical Officer of the Manila Police District Crime Laboratory, received the plastic sachet with marking "LB" from PO2 Garcia.[18] She conducted an examination and found the white crystalline substance weighing 0.022 grams positive for methamphetamine hydrochloride or shabu. Her finding was embodied in her Chemistry Report No. D-1793-04.[19] She identified her Report and the plastic sachet with marking "LB" in court. PO1 Juaño[20] and SPO2 Del Rosario[21] identified appellant as the seller of shabu and PO1 Juano likewise identified the plastic sachet with his markings.

Appellant denied the charge and claimed that at 6 o'clock in the evening of December 2, 2004, she was at home cooking

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[13] *Id.* at 8-9.

[14] *Id.* at 9-10.

[15] *Id.* at 10.

[16] *Id.*

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

[18] TSN, March 15, 2006, p. 5.

[19] *Id.* at 4.

[20] TSN, January 18, 2007, pp. 14-15.

[21] TSN, September 29, 2005, p. 12.

dinner when she was told by her daughter that Mercy Sacramento was looking for her.[22] She went outside and was talking with Mercy when six armed men in civilian clothes arrived on board a gray colored car and forced her to get inside the car, leaving Mercy in the street.[23] They asked her of the whereabouts of a certain Ruben to which she replied that she did not know, and she was then brought to the police station and detained unless she would give them ₱50,000.00.[24] She learned the names of the arresting officers when she saw their name plates in their uniforms the following day.[25] She admitted being arrested in 2003 for illegal possession of drugs but was out on bail.

George Sacramento, son of Mercy, corroborated appellant's testimony that she was conversing with Mercy when policemen arrested her and was dragged towards a van; that he too was frisked by the policemen but Mercy intervened in his behalf.[26] Roberto Reyes, a barangay tanod, testified that while he was walking along Bambang Street, he saw several persons with guns dragging appellant and boarded her in their van; that he did not attempt to help appellant as he heard them said "*walang makikialam*"; and that appellant was talking to Mercy when she was taken.[27]

On September 29, 2008, the RTC issued a Decision,[28] the decretal portion of which reads:

WHEREFORE, PREMISES CONSIDERED, the Court finds accused Lulu Battung y Narmar guilty beyond reasonable doubt of violating Section 5 of RA No. 9165 and hereby sentences her to life imprisonment and to pay a fine of five hundred thousand pesos (₱500,000.00).

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[22] TSN, April 2, 2007, p 5.

[23] *Id.* at 5-7.

[24] *Id.* at 7-8.

[25] *Id.* at 9.

[26] TSN, November 7, 2007, pp. 3-6.

[27] TSN, February 13, 2008, pp. 3-6.

[28] Per Judge Germano Francisco D. Legaspi, Criminal Case No. 04-232833; CA *rollo*, pp. 36-42.

The Branch Clerk of Court is hereby directed to turn over the shabu subject matter of this case to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

SO ORDERED.[29]

The RTC found that the prosecution had clearly established the presence of all the elements of the crime of illegal sale of shabu. It ruled that the defense failed to establish that the police officers were motivated by malice and acted beyond its authority; thus, they are presumed to have performed their duties in a regular manner. Appellant's defense of denial and frame up were rejected.

On April 14, 2016, the CA dismissed the appeal and affirmed *in toto* the RTC decision.

The CA echoed the RTC findings that all the elements of illegal sale of shabu were duly proved. It also found that the failure of the arresting officers to comply with Section 21 of R.A. No. 9165 will not render an arrest illegal or the seized items inadmissible in evidence since what is crucial is that the integrity and evidentiary value of the seized items were preserved, which the prosecution had established in this case. The CA also rejected appellant's defense of frame up as there was no showing that there was bad blood between her and the police officers. The inconsistencies referred to by appellant, such as who prepared the pre-operation report, referred to minor details which was not in actuality touching upon the central fact of the crime.

Appellant filed a notice of appeal which was given due course by the CA. We then required the parties to file their respective supplemental briefs, if they so desire. Both parties filed their Manifestations dispensing with the filing of supplemental briefs and adopt the respective briefs they filed with the CA.

Appellant argues that her guilt was not proved beyond reasonable doubt. The presumption of regularity in the performance of duties is inapplicable in this case on account

[29] *Id.* at 42.

of the police officers' failure to observe the proper procedure in preserving the chain of custody as required under Section 21 of R.A. No. 9165.

We find merit in the appeal.

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[30] The existence of *corpus delicti* is essential to a judgment of conviction.[31] Hence, the identity of the dangerous drug must be clearly established.

Section 21 of R.A. No. 9165 provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team, to wit:

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

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the

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[30] *People v. Morales y Midarasa*, 630 Phil. 215, 228 (2010).

[31] *People v. Jaafar*, G.R. No. 219829, January 18, 2017, 815 SCRA 19, 28.

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:[32]

> (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.**[33]

It is not amiss to state that R.A. No. 10640,[34] 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

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[32] *People v. Ramirez*, G.R. No. 225690, January 17, 2018.

[33] Emphasis ours.

[34] "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."[35] 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."[36]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of 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."[37] 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.
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> x x x x x x x x x

[35] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[36] *Id.*

[37] *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.[38]

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

[38] *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."[39]

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.[40] 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.[41] 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.[42]

An examination of the records showed that the prosecution totally failed to comply with the procedures outlined under Section 21 of R.A. No. 9165. The testimony of PO1 Juaño revealed such non-compliance, to wit:

Q. After you captured the specimen from the accused, did you conduct inventory at the scene that time?
A. No sir, only in our office.

Q. No photograph during the time the accused was arrested?
A. None sir.

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[39] *People v. Sagana*, G.R. No. 208471, August 2, 2017.

[40] *People v. Miranda*, *Id.*; *People v. Paz*, G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

[41] *People v. Saragena*, G.R. No. 210677, August 23, 2017.

[42] *Id.*

Q. There were no representatives from the press/media or any from the government that time?
A. None sir.

Q. After you captured the specimen from the accused, you brought it to the station?
You only caused the markings in your police station?
A. Yes sir.[43]

Admittedly, there was no physical inventory of the seized item. Without such inventory, a doubt is created whether the shabu was really taken from appellant. There were also no photographs taken of the inventory in the presence of appellant or his representative or counsel and the required witnesses under Section 21 of R.A. No. 9165, to wit: a representative from the media and the Department of Justice (*DOJ*), and any elected public official. In fact, it was not established at all that the police officers exerted any effort to secure the presence of the required witnesses. The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.[44] The insulating presence of such witnesses would have preserved an unbroken chain of custody.[45] The marking of the seized item by PO1 Juaño at the police station is not sufficient to establish the chain of custody. It has been held that the mere marking of the seized item without the required physical inventory and photographs of the same in the presence of the witnesses mentioned under Section 21 was not enough compliance with the law.[46]

While the last paragraph of Section 21(a) of the IRR of R.A. No. 9165 provides that non-compliance with the requirements of Section 21 will not render void and invalid the seizure and custody of the seized items, it was made clear that this is so

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[43] TSN, January 18, 2007, pp. 26-27.

[44] *People v. Mendoza*, 736 Phil. 749, 761-762 (2014).

[45] *Id*. at 764.

[46] *People v. Garcia*, 599 Phil. 416 (2009).

under justifiable ground and the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. In other words, the procedural lapse must first be acknowledged and adequately explained. We held that the justifiable ground for non-compliance must be proven as a fact as the Court cannot presume what these grounds are or that they even exist.[47] Here, we find nothing on record of any explanation proffered by the prosecution for the procedural lapse.

The prosecution never alleged and proved that the presence of 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 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**[48] **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.**

To stress, while We had made rulings in the past that failure to strictly comply with the statutory safeguards in the conduct

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[47] *People v. De Guzman y Danzil*, 630 Phil. 637, 649 (2010).

[48] 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.

of a buy-bust operation will not render the seized items inadmissible in evidence provided the integrity and the evidentiary value of the seized items have been preserved,[49] We find it imperative for the prosecution to show the courts that the non-compliance with the procedural safeguards provided under Section 21 of R.A. No. 9165 was not consciously ignored. Well-settled is that the procedure in Section 21 of R.A. No. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[50]

Moreover, we held in *People v. Holgado*[51] that considering the miniscule amount of the drug seized, there is a need to be more compliant with the requirements of Section 21 of R.A. No. 9165. Here, only 0.022 grams of shabu were seized from appellant; thus, the exacting standards under the law become more important.

The presumption of regularity in the performance of duty of the arresting officers as found by the RTC and the CA finds no application in this case. Such presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty. And even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally-enshrined right to be presumed innocent.[52] In this case, the police officers' failure to observe the chain of custody rule without any explanation negates the presumption. Since a serious doubt was created on the integrity and the identity of the *corpus delicti*, consequently, there is a failure to establish an element of the crime of illegal sale of dangerous drugs, and so appellant must be acquitted.

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[49] *People v. Salvador, et al*., 726 Phil. 389 (2014); *People v. Imson*, 669 Phil. 262 (2011).

[50] *People v. Geronimo*, G.R. No. 225500, September 11, 2017.

[51] G.R. No. 207992, August 11, 2014, 732 SCRA 554, 556.

[52] *People v. Mendoza*, *supra* note 43, at 770.

At this point, it is not amiss for the *ponente* to express his 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, the *ponente* agrees with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[53] 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.

The *ponente* subscribes 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.

The *ponente* further submits 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.

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[53] G.R. No. 202206, March 5, 2018.

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.

On a final note, the burden of proving the guilt of an accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.[54] For failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from appellant, and to prove as a fact any justifiable reason for non-compliance with Section 21 of R.A. No. 9165 and its IRR, appellant must be acquitted of the crime charged.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 14, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 06053 is hereby **REVERSED** and **SET ASIDE**. Appellant Lulu Battung y Narmar is accordingly **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to immediately cause the release of appellant from detention, unless she is being held for some other lawful cause, and to inform this Court his action hereon within five (5) days from receipt of this Decision.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Perlas-Bernabe, Caguioa*, and *Reyes, Jr., JJ.*, concur.

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[54] *People v. T/Sgt. Angus, Jr.*, 640 Phil. 552, 566 (2010).

SECOND DIVISION

[G.R. No. 230953. June 20, 2018]

GOVERNMENT SERVICE INSURANCE SYSTEM BOARD OF TRUSTEES and CRISTINA V. ASTUDILLO, *petitioners, vs.* **THE HON. COURT OF APPEALS – CEBU CITY and FORMER JUDGE MA. LORNA P. DEMONTEVERDE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED.—** A special civil action for *certiorari*, under Rule 65, is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," under Rule 65, refers to the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.

2. **ID.; ID.; ID.; AS A RULE, *CERTIORARI* CANNOT BE AVAILED OF AS A SUBSTITUTE FOR THE LOST REMEDY OF AN ORDINARY APPEAL, ESPECIALLY IF SUCH LOSS OR LAPSE WAS OCCASIONED BY ONE'S OWN NEGLECT OR ERROR IN THE CHOICE OF REMEDIES; EXCEPTIONS; CASE AT BAR.—** A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file an appeal under Rule 43 of the Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies. x x x Nonetheless, the general rule that an appeal and a *certiorari* are not

interchangeable admits of exceptions. This Court has, before, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly: (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of rules. x x x Demonteverde's claim of public policy as a justification of her inability to comply with the general rule on appeal is unacceptable in the absence of legal and factual bases for its invocation. The assumption of the appellate court that Demonteverde could possibly face *"a grim prospect of a lengthy appeal as it is very likely that the resolution will not happen during her lifetime as she is already seventy-three years old"* is inconsistent with the aforementioned definition of public policy. Demonteverde failed to substantiate through clear and well-established grounds exactly how her case warrants a deviation from the general rule that a writ of *certiorari* will not issue where the remedy of appeal is available to an aggrieved party.

3. ID.; RULES OF PROCEDURE; MUST BE COMPLIED WITH FOR THE ORDERLY ADMINISTRATION OF JUSTICE; RELAXATION THEREOF IS APPLICABLE ONLY IN PROPER CASES AND UNDER JUSTIFIABLE CAUSES AND CIRCUMSTANCES.— It should be emphasized that the 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. While procedural rules may be relaxed in the interest of justice, it is well settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; RETIREMENT BENEFITS GIVEN TO GOVERNMENT EMPLOYEES

ARE PART OF EMOLUMENT TO ENCOURAGE AND RETAIN QUALIFIED EMPLOYEES IN THE GOVERNMENT SERVICE; PREREQUISITES TO BE ENTITLED TO RETIREMENT BENEFITS; CASE AT BAR.— The reason for providing retirement benefits is to compensate service to the government. Retirement benefits to government employees are part of emolument to encourage and retain qualified employees in the government service. These benefits are meant to reward them for giving the best years of their lives in the service of their country. However, the right to retirement benefits accrues only upon certain prerequisites. First, the conditions imposed by the applicable law must be fulfilled. Second, **there must be actual retirement.** Prior to retirement, an employee who has served the requisite number of years, such as Demonteverde, is only eligible for, **but not yet entitled to**, retirement benefits. Retirement means there is a bilateral act of the parties, a voluntary agreement between the employer and the employees whereby the latter after reaching a certain age agrees and/or consents to *sever his or her employment* with the former. Severance of employment is a condition *sine qua non* for the release of retirement benefits. Retirement benefits are not meant to recompense employees who are still in the employ of the government; that is the function of salaries and emoluments. Retirement benefits are in the nature of a reward granted by the State to a government employee who has given the best years of his life to the service of his country. While Demonteverde met the two conditions for entitlement to benefits under R.A. No. 8291 in 2001, *i.e.*, she had rendered at least fifteen (15) years in government service as a regular member, and she turned sixty (60) years of age, she continued to serve the government and did not, at that time, sever her employment with the government. Thus, not having retired from service when she turned 60 on February 22, 2001, she cannot claim that her right to retirement benefits had already accrued then.

5. ID.; ID.; ID.; REPUBLIC ACT NO. 910 AS AMENDED; SERVICE IN ANY OTHER BRANCH OF THE GOVERNMENT IS INCLUDED AS CREDITABLE SERVICE IN THE COMPUTATION OF THE RETIREMENT BENEFITS OF A JUSTICE OR JUDGE; FILING OF SEPARATE RETIREMENT CLAIMS FOR GOVERNMENT SERVICE OUTSIDE OF THE

JUDICIARY AND IN THE JUDICIARY IS UNNECESSARY AND UNWARRANTED.— In fine, this Court finds it proper to emphasize that Demonteverde's filing of separate retirement claims for her government service outside of the Judiciary and in the Judiciary was unnecessary and unwarranted. Apart from the fact that she continued to serve the government as a trial court judge after serving the NEA, the DBP, and the PAO for a total of 32 years, her service in these government agencies is creditable as part of her overall government service for retirement purposes under R.A. No. 910, as amended. x x x Considering the express wordings of R.A. No. 910, which include service "*in any other branch of the Government*" as creditable service in the computation of the retirement benefits of a justice or judge, Demonteverde's years of service as in the NEA, the DBP, and the PAO were already correctly credited by the OCA as part of her government service when it granted her retirement application for her service in the Judiciary from June 30, 1995 until her retirement on February 22, 2011.

APPEARANCES OF COUNSEL

GSIS Legal Services Group for petitioners.
Demonteverde Vinco Tuble & Cabarles for private respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for *certiorari* filed under Rule 65 of the Rules of Court seeking the review and nullification of the Resolutions of the Court of Appeals *(CA)* dated February 17, 2016[1] and February 16, 2017[2] in CA-G.R. SP No. 08362, for allegedly having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

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[1] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Pablito A. Perez, concurring; *rollo,* pp. 27-32.

[2] *Rollo*, pp. 34-36A.

The facts are as follows:

Private respondent, retired Judge Ma. Lorna P. Demonteverde *(Demonteverde)* started her service in the government on July 1, 1963 with the National Electrification Administration *(NEA)* until her resignation on February 15, 1967.[3] She then transferred to the Development Bank of the Philippines *(DBP)* – Bacolod and served until December 31, 1986. On January 29, 1987, she transferred to the Public Attorney's Office *(PAO)* where she served until June 29, 1995. All in all, Demonteverde served in the said government agencies for a total of 32 years, from 1963 to 1995.

On June 30, 1995, Demonteverde joined the Judiciary as Presiding Judge of the Municipal Trial Court in Cities *(MTCC)* of Bacolod City until her retirement on February 22, 2011.

In a letter dated July 28, 1995, Demonteverde requested from the Government Service Insurance System (*GSIS*) a refund of the retirement premiums she paid under Presidential Decree (*P.D.*) No. 1146[4] and Republic Act (*R.A.*) No. 660[5] in excess of the retirement premiums that she should pay under R.A. No. 910, as amended, the law on retirement benefits for Judges and Justices applicable to her when she joined the Judiciary on June 30, 1995.

However, instead of issuing a refund only of the excess of the contributions paid, the GSIS, on August 23, 1995, refunded to Demonteverde the amount of ₱16,836.60 representing her retirement premiums, or her total personal share with interest, under R.A. No. 660.

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[3] *Id.* at 39.

[4] "*Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment Thereof Under Commonwealth Act No. 186, as Amended, and for Other Purposes.*"

[5] "*An Act to Amend Commonweallth Act Numbered One Hundred and Eighty-Six Entitled 'An Act to Create and Establish a Government Service Insurance System, to Provide for its Administration, and to Appropriate the Necessary Funds Therefor,' and to Provide Retirement Insurance for Other Purposes.*"

On February 11, 2011, Demonteverde filed with the Supreme Court her retirement application under R.A. No. 910,[6] as amended, for her service in the Judiciary from June 30, 1995 until her retirement on February 22, 2011.

On March 3, 2011, Demonteverde likewise filed an application with the GSIS for retirement benefits under R.A. No. 8291[7] covering her government service outside of the Judiciary from July 1, 1963 until June 29, 1995.

In a letter dated October 14, 2011, the manager of the GSIS Bacolod informed Demonteverde that the retirement laws covering her service in the government from July 1, 1963 to June 29, 1995 were P.D. No. 1146,[8] R.A. No. 660, and R.A. No. 1616. The GSIS thus returned the application of Demonteverde so that she may choose from the modes of retirement enumerated.

On November 28, 2011, Demonteverde wrote a letter to the GSIS requesting a re-evaluation of her application for retirement under R.A. No. 8291.

Demonteverde's request was referred to the GSIS Committee on Claims *(COC)* for evaluation, and on May 18, 2012, GSIS Bacolod informed her of the COC's issuance of Resolution No. 021-2012 denying her request to retire under R.A. No. 8291. Demonteverde then appealed the COC's Resolution to the GSIS Board of Trustees *(GSIS BOT)*.

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[6] "*An Act to Provide for the Retirement of Justices of the Supreme Court and of the Court of Appeals, for the Enforcement of the Provisions Hereof by the Government Service Insurance System, and to Repeal Commonwealth Act Number Five Hundred and Thirty-Six.*"

[7] "*An Act Amending Presidential Decree 1146 as Amended, Expanding and Increasing the Coverage and Benefits of the Government Service Insurance System, Instituting Reforms Therein and for Other Purposes.*"

[8] "*Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment Thereof Under Commonwealth Act No. 186, as Amended, and for Other Purposes*."

Given the issues raised in Demonteverde's case, the GSIS inquired with both the PAO and the Supreme Court as to whether Demonteverde received gratuity benefits and if her entire government service was covered in her retirement under R.A. No. 910, respectively.

In response to the inquiry, the PAO replied that Demonteverde did not apply for nor receive gratuity benefits from the said agency when she transferred to the Judiciary in 1995.[9]

On the other hand, the Supreme Court, through the Office of the Court Administrator *(OCA)*, advised the GSIS that pursuant to R.A. No. 910, as amended by R.A. No. 9946, and its implementing guidelines, judges who have rendered at least fifteen (15) years of service in the Judiciary or in any branch of the government, or both, and who retired compulsorily upon reaching the age of seventy (70) years, shall, upon retirement, be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary, plus the highest monthly Representation and Transportation Allowance and other allowances which they were receiving on the date of their retirement.[10]

The OCA confirmed that:

> 3. Judge Demonteverde was able to meet the minimum fifteen (15) years government service required to be entitled to full pension benefits under Section 1 of R.A. No. 910, as amended, and thus, her services rendered outside of the Judiciary is no longer needed in the determination/computation of her retirement benefits under R.A. No. 910, as amended.[11]

The OCA likewise clarified that the monetary value of the accrued terminal leave benefits that Demonteverde earned in her government service prior to joining the Judiciary was already included by this Court in the payment of her retirement benefits under R.A. No. 910. The OCA added that this Court will request

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[9] *Rollo,* p. 45.

[10] *Id.*

[11] *Id.*

reimbursement from Demonteverde if the GSIS decides to grant retirement benefits.[12]

In a Decision dated October 10, 2013, the GSIS BOT granted Demonteverde's petition, to wit:

> Wherefore, all the foregoing considered, the Petition is **GRANTED.** The Petitioner is allowed to retire under R.A. No. 8291 for her period of services outside the judiciary from 01 July 1963 to 29 June 1995. The payment of her benefits shall be reckoned from 22 February 2011, the date when her actual separation from service took place.
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> SO ORDERED.[13]

On December 12, 2013, Demonteverde filed a Motion for Execution[14] of the Decision of the GSIS BOT, stating therein that she received a notice of the October 10, 2013 Decision on November 11, 2013; that more than 15 days had elapsed since her receipt of the copy of the decision; and that the same had become final and executory and ripe for implementation.[15] Said Motion for Execution was granted by the GSIS BOT on even date.

However, on January 6, 2014, Demonteverde filed a Motion for Reconsideration (*Partial MR*) and Withdrawal of Motion for Execution[16] of the October 10, 2013 GSIS BOT Decision. She questioned the accrual date of her retirement benefits under R.A No. 8291, arguing that the date of her retirement should be the date when she reached sixty (60) years of age, even when she was still in active government service at that time, and not on February 22, 2011, or the date of her actual retirement from government service. Demonteverde likewise denied receiving a copy of the GSIS BOT Decision, and denied that the later Notice of Decision dated November 19, 2013 contained a copy of the GSIS BOT Decision.

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

[13] *Id.* at 262.

[14] *Id.* at 103.

[15] *Id*. at 231.

[16] *Id*. at 106-116.

In its Resolution No. 12[17] dated February 13, 2014, the GSIS BOT denied Demonteverde's Partial MR and Withdrawal of Motion for Execution, for allegedly having been filed out of time.

Aggrieved, Demonteverde filed before the CA a Petition for *Certiorari*, Mandamus, and Prohibition under Rule 65 dated March 21, 2014, seeking to modify and set aside the October 10, 2013 Decision and Resolution No. 12 dated February 13, 2014 of the GSIS BOT.[18]

In a Resolution[19] dated June 19, 2014, the CA dismissed the said petition, ratiocinating that the course of action taken by Demonteverde was erroneous as the proper mode of appeal from a decision of a quasi-judicial agency such as the GSIS is by filing a verified petition for review with the CA under Rule 43. The appellate court added that a perusal of Demonteverde's petition showed procedural defects, to wit:

a. Petitioner failed to incorporate therein a written explanation why the preferred personal mode of filing the petition under Section 11, Rule 13 of the 1997 Rules of Court was not availed of.

b. Petitioner failed to attach a clearly legible duplicate original or certified true copy of the assailed October 10, 2013 Decision, December 12, 2013 Order and February 13, 2014 Resolution of the GSIS, in violation of Section 3, Rule 46 of the 1997 Rules of Civil Procedure. While petitioner appended to the Petition copy of the assailed October 10, 2013 Decision and February 13, 2014 Resolution of the GSIS they were mere photocopies. The assailed December 12, 2013 Order of the Hearing Officer of the GSIS appears also to be a mere photocopy.

c. Petitioner failed to properly verify the Petition in accordance with A.M. No. 00-2-10-SC amending Section 4, Rule 7 in relation to Section 1, Rule 65 of the 1997 Rules of Civil

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[17] *Id.* at 118-119.

[18] *Id.* at 127-141.

[19] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Jhosep Y. Lopez, concurring; *id.* at 143-147.

Procedure which now requires that a pleading must be verified by an affidavit that the affiant has read the pleading and the allegations therein are true and correct of his personal knowledge or based on authentic records. Petitioner did not to *(sic)* incorporate in the Verification and Certification of Non-Forum Shopping the phrase "or based on authentic records."

d. Petitioner failed to attach copies of all pleadings and documents, which are necessary for a thorough understanding and resolution of the instant Petition, such as, but not limited to, following:

   1. Petitioner's July 28, 1995 letter to the GSIS requesting for a refund of her retirement premiums.
   2. Petitioner's February 11, 2011 and March 3, 2011 applications for claim of retirement benefits field *(sic)* with the GSIS, Bacolod Branch.
   3. The October 14, 2011 letter of the GSIS' Bacolod Branch Manager, Ms. Vilma Fuentes.
   4. Petitioner's November 28, 2011 letter to the GSIS requesting for a re-evaluation of her application for retirement benefits.
   5. Petitioner's Petition filed with the GSIS [C]ommittee on Claims.
   6. The GSIS Committee on Claims' Answer to petitioner's Petition.
   7. The March 26, 2013 letter of the Public Attorney's Office (PAO Chief Administrative Officer. *(sic)*
   8. The July 23, 2013 and September 17, 2013 letters of the Office of the Court Administrator of the Supreme Court.

e. The Notarial Certificate in the Verification and Certification of Non-Forum Shopping and in the Affidavit of Service did not contain the province or city where the notary public was commissioned, the office address of the notary public, in violation of Section 2(c) and (d), Rule VIII of the 2004 Rules on Notarial Practice.[20]

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[20] *Id.* at 144-146.

Upon Demonteverde's motion for reconsideration, the CA, in the assailed February 17, 2016 Resolution, reversed itself and reinstated Demonteverde's Petition. It agreed with Demonteverde that the case may be classified as an exception to the general rule that *certiorari* is not a substitute for a lost appeal under any of the following grounds: where appeal does not constitute a speedy and adequate remedy, and for certain special considerations, such as public welfare or public policy.[21] Thus:

WHEREFORE, the Court resolves to:

1. **GRANT** the Motion for Extension to file Comment and the Second Motion for Extension of Time to File Comment filed by respondent Government Service Insurance System (GSIS).

2. **ADMIT** the Comment and Opposition (To the Motion for Reconsideration of the Resolution dated June 19, 2014) filed by the GSIS.

3. **GRANT** the Motion for Reconsideration of petitioner and **SET ASIDE** the June 19, 2014 Resolution.

4. **REINSTATE** the instant petition and **DIRECT** respondents to **FILE** their **COMMENT** (not a Motion to Dismiss) to the petition within **TEN (10) days** from receipt of this Resolution. Petitioner is given five (5) days from receipt of Comment within which to file a Reply, if petitioner so desires.

SO ORDERED.[22]

GSIS BOT moved for reconsideration and filed an Opposition to the Petition, but the CA, in its February 16, 2017 Resolution, denied the said motion for reconsideration and directed the GSIS BOT to file its comment to Demonteverde's petition.

Hence, this petition for *certiorari*, with the GSIS BOT raising the issue of whether the CA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its February 17, 2016 Resolution reinstating Demonteverde's Petition for *Certiorari*, Prohibition, and Mandamus; and February 16, 2017

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[21] *Id.* at 31.

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

Resolution denying GSIS' Motion for Reconsideration of the February17, 2016 Resolution. It alleges the following issues in support of its petition:

I.

THE ASSAILED GSIS BOT DECISION IS FINAL AND EXECUTORY AND NOT SUBJECT TO ANY MOTION FOR RECONSIDERATION OR APPEAL.

II.

A SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65 IS NOT AN ALTERNATE REMEDY FOR LOST APPEALS UNDER RULE 43 AND THE TWO ACTIONS ARE MUTUALLY EXCLUSIVE.

III.

THE ISSUES RAISED IN FORMER JUDGE DEMONTEVERDE'S PETITION DO NOT AFFECT PUBLIC POLICY.

IV.

THE PETITION FOR *CERTIORARI* IS TAINTED WITH MANY PROCEDURAL INFIRMITIES WHICH ARE FATAL TO THE PETITION.[23]

The main issue for resolution is whether the CA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its Resolution dated February 17, 2016 reinstating Demonteverde's Petition for *Certiorari*, Prohibition and Mandamus; and Resolution dated February 16, 2017 denying GSIS BOT's Motion for Reconsideration of the February 17, 2016 Resolution.

This Court resolves to grant the instant petition.

A special civil action for *certiorari*, under Rule 65, is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[24] A petition

[23] *Id.* at 9-16.

[24] *Beluso v. COMELEC, et al.,* 635 Phil. 436, 442-443 (2010).

for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist.

"Grave abuse of discretion," under Rule 65, refers to the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[25]

Having said this, there is a preliminary need to address the GSIS-BOT's argument that Demonteverde should have filed an appeal under Rule 43 of the Rules of Court instead of filing the *certiorari* suit before the CA.

A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file an appeal under Rule 43 of the Rules of Court.[26] Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.[27] As this Court held in *Butuan Development Corporation v. CA*:[28]

> A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari.* Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the

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[25] *Id.* at 443.

[26] *China Banking Corporation v. Cebu Printing and Packaging Corporation,* 642 Phil. 308, 323 (2010).

[27] *Id.* at 323-324.

[28] G.R. No. 197358. April 5, 2017.

requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.

Nonetheless, the general rule that an appeal and a *certiorari* are not interchangeable admits of exceptions. This Court has, before, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly: (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of rules.[29]

Likewise, in *Department of Education v. Cuanan,*[30] where this Court exercised liberality and considered the petition for *certiorari* filed therein as an appeal, the Court identified exceptions to the general rule. Thus:

> The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. Recourse to a petition for *certiorari* under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.

In the instant case, the CA itself, in its June 19, 2014 Resolution, initially dismissed Demonteverde's special civil action for *certiorari*, reasoning that Demonteverde had the remedy of appeal under Rule 43 of the Rules of Court. Citing the case of *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*,[31] the CA thus said:

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[29] *China Banking Corporation v. Cebu Printing and Packaging Corporation, supra* note 26, at 322, citing *Tagle v. Equitable PCI Bank, et al.*, 575 Phil. 384, 403 (2008).

[30] 594 Phil. 451, 459-460 (2008).

[31] 479 Phil. 768, 782 (2004).

Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefore is grave abuse of discretion.

The CA even categorically ruled that the present circumstances in Demonteverde's case did not warrant the application of the exceptions to the general rule provided by Rule 43,[32] thereafter proceeding to identify the aforementioned procedural defects in the petition.

Yet, when the CA, upon Demonteverde's motion for reconsideration, reversed itself and reinstated the latter's Petition for *Certiorari*, Mandamus, and Prohibition in the assailed February 17, 2016 Resolution, it failed to substantiate its decision to grant the said motion and set aside its June 19, 2014 Resolution. Apart from Demonteverde's bare allegations in her pleadings and her own testimony that her case falls under the exception to the general rule that if appeal is available, *certiorari* is not a remedy, there is nothing on record that would warrant the grant of her motion for reconsideration and the setting aside of the CA's June 19, 2014 Resolution.

A reading of the CA's assailed February 16, 2017 Resolution reveals that Demonteverde's motion for resolution of the CA's June 19, 2014 Resolution was approved hastily. While the CA appears to have ruled on the merits of Demonteverde's motion, its ratiocination merely consists of two paragraphs and it summarily made a conclusion that Demonteverde's case may be classified as an exception to the general rule that *certiorari* is not a substitute for a lost appeal. In doing so, the CA did not clearly and distinctly explain how it reached such conclusion. To wit:

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[32] *Rollo,* p. 144.

In the case of *Andrew James Mcburnie vs. Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc.*, the Supreme Court held that the Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, court will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, should give way to the realities of the situation.

Applying the above-cited jurisprudence in *Andrew James Mcburnie vs. Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc.,* and upon perusal of the arguments contained in the instant Motion for Reconsideration, there is basis to reconsider the dismissal of the instant Petition. The Court agrees with petitioner, that the instant case may be classified as an exception to the general rule that *certiorari* is not a substitute for a lost appeal under any of the following grounds: where appeal does not constitute a speedy and adequate remedy and for certain special considerations as public welfare or public policy. In this case, the filing of a Motion for Reconsideration on the assailed GSIS decision maybe [sic] dispensed with on the same cited grounds of public welfare and the advancement of public policy and in addition, in the broader interests of justice.[33]

"Public policy" has a specific definition in jurisprudence. It has been defined as that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public of against public good.[34] It is the principle under which freedom of contract or private dealing is restricted for the good of the community.[35]

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[33] *Id.* at 31. (Citations omitted).

[34] *Gonzalo v. Tarnate, Jr.,* 724 Phil. 198, 207 (2014), citing *Avon Cosmetics, Incorporated v. Luna,* 540 Phil. 389, 404 (2006).

[35] *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines Incorporated,* G.R. No. 183789, August 24, 2011, citing *Ollendorff v. Abrahamson*, 38 Phil. 585, 590-591 (1918).

Demonteverde's claim of public policy as a justification of her inability to comply with the general rule on appeal is unacceptable in the absence of legal and factual bases for its invocation. The assumption of the appellate court that Demonteverde could possibly face *"a grim prospect of a lengthy appeal as it is very likely that the resolution will not happen during her lifetime as she is already seventy-three years old"* is inconsistent with the aforementioned definition of public policy. Demonteverde failed to substantiate through clear and well-established grounds exactly how her case warrants a deviation from the general rule that a writ of *certiorari* will not issue where the remedy of appeal is available to an aggrieved party.

Moreover, Demonteverde failed to overcome in her petition the presumption of regularity in the performance of official functions of public officers. She failed to present clear and convincing evidence to corroborate her claim that the notice of decision as regards the October 10, 2013 Decision of the GSIS BOT failed to attach a copy of the written decision.[36] As petitioner GSIS BOT pointed out, Demonteverde could not have claimed in her Motion for Execution — which she ultimately attempted to withdraw — that the GSIS BOT October 10, 2013 Decision had attained finality if she indeed had not received a copy of it and read its full text.

In her Motion for Reconsideration[37] of the CA's June 19, 2014 Resolution, Demonteverde claims that the GSIS BOT Decision had not yet attained finality because the GSIS BOT "did not rule on the merits of the petitioner's motion for reconsideration."[38] To wit:

> Petitioner's mode of appeal via Rule 65 of the Rules was guided by the pronouncements of the court in the case of Page-Tenorio vs. Tenorio, G.R. No. 138490, November 24, 2004. Her motion for partial

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[36] *Rollo,* p. 132.

[37] *Id.* at 179-189.

[38] *Id.* at 184.

reconsideration and withdrawal of motion for execution dated 2 January 2014 was denied by respondents **on a dubious technical ground of having been filed out of time**, without resolving on the merits the reckoning period that were never taken up during the proceedings, thus denying her due process. **Petitioner was never given a chance to be heard on the matter.**[39]

While the CA gave credence to this claim and granted Demonteverde's motion, this Court cannot sustain the CA's resolution.

It should be emphasized that the 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.[40] While procedural rules may be relaxed in the interest of justice, it is well settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[41]

Applying this to the instant case, there is nothing dubious about the GSIS BOT's denial of her Partial Motion for Reconsideration and Withdrawal of Motion for Execution on the ground that the said motion was filed out of time. Demonteverde filed her Partial Motion for Reconsideration and Withdrawal of Motion for Execution only on January 6, 2014, fifty-six (56) days after November 11, 2013, which is the date of receipt of the GSIS BOT Decision indicated in her Motion for Execution, and forty-eight (48) days after November 19, 2013, when she officially received a copy of the GSIS BOT

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[39] Emphasis ours.

[40] *Building Care Corp. v. Macaraeg,* 700 Phil. 749, 759 (2012).

[41] *Id.*

Decision. Clearly, Demonteverde had, by then, lost her right to question the Decision of the GSIS BOT through a motion for reconsideration or through any other form of appeal. Thus, the CA should have dismissed her petition outright on the ground of erroneous cause of action as the remedies of appeal and *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative.

This Court likewise rejects Demonteverde's assertion that she was never given a chance to be heard on the matter. On the contrary, the records show that she was given ample opportunity to present her retirement claims and her arguments before the GSIS COC, the GSIS BOT, and the CA. In fact, the GSIS BOT even approved her request to retire under R.A. No. 8291 for her period of services outside the Judiciary from July 1, 1963 to June 29, 1995. The only issue that protracted the instant case is Demonteverde's single-minded insistence that the accrual date of her retirement benefits under R.A. No. 8291 should be the date when she reached sixty (60) years of age, even when she was still in active government service at that time, and not on February 22, 2011, or the date of her actual retirement from government service.

To give merit to this argument would be preposterous.

The reason for providing retirement benefits is to compensate service to the government. Retirement benefits to government employees are part of emolument to encourage and retain qualified employees in the government service. These benefits are meant to reward them for giving the best years of their lives in the service of their country.[42]

However, the right to retirement benefits accrues only upon certain prerequisites. First, the conditions imposed by the applicable law must be fulfilled. Second, **there must be actual retirement.**[43] Prior to retirement, an employee who has served

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[42] *Government Service Insurance System v. Montesclaros,* 478 Phil. 573, 591 (2004).

[43] *Development Bank of the Philippines v. Commission on Audit,* 467 Phil. 62, 90 (2004).

the requisite number of years, such as Demonteverde, is only eligible for, **but not yet entitled to**, retirement benefits.[44] Retirement means there is a bilateral act of the parties, a voluntary agreement between the employer and the employees whereby the latter after reaching a certain age agrees and/or consents to *sever his or her employment* with the former.[45]

Severance of employment is a condition *sine qua non* for the release of retirement benefits. Retirement benefits are not meant to recompense employees who are still in the employ of the government; that is the function of salaries and emoluments. Retirement benefits are in the nature of a reward granted by the State to a government employee who has given the best years of his life to the service of his country."

While Demonteverde met the two conditions for entitlement to benefits under R.A. No. 8291 in 2001, *i.e.*, she had rendered at least fifteen (15) years in government service as a regular member, and she turned sixty (60) years of age, she continued to serve the government and did not, at that time, sever her employment with the government. Thus, not having retired from service when she turned 60 on February 22, 2001, she cannot claim that her right to retirement benefits had already accrued then.

In fine, this Court finds it proper to emphasize that Demonteverde's filing of separate retirement claims for her government service outside of the Judiciary and in the Judiciary was unnecessary and unwarranted. Apart from the fact that she continued to serve the government as a trial court judge after serving the NEA, the DBP, and the PAO for a total of 32 years, her service in these government agencies is creditable as part of her overall government service for retirement purposes under R.A. No. 910, as amended.

Section 1 of R.A. No. 910, as amended by R.A. No. 9946, provides:

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[44] *Id.*

[45] *Id.*

SECTION 1. When a Justice of the Supreme Court, the Court of Appeals, the Sandiganbayan, or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established **who has rendered at least fifteen (15) years service in the Judiciary or in any other branch of the Government, or in both,** (a) retires for having attained the age of seventy years x x x he/she shall receive during the residue of his/her natural life, in the manner hereinafter provided, the salary which plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance which he/she was receiving at the time of his/her retirement x x x

Considering the express wordings of R.A. No. 910, which include service "*in any other branch of the Government*" as creditable service in the computation of the retirement benefits of a justice or judge, Demonteverde's years of service as in the NEA, the DBP, and the PAO were already correctly credited by the OCA as part of her government service when it granted her retirement application for her service in the Judiciary from June 30, 1995 until her retirement on February 22, 2011.

WHEREFORE, in view of the foregoing, the Court **GRANTS** the petition and **NULLIFIES AND SETS ASIDE** the Resolutions dated February17, 2016 and February16, 2017 of the Court of Appeals in CA-G.R. SP No. 08362 for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction; and **DISMISSES** the Petition for *Certiorari*, Mandamus, and Prohibition under Rule 65 dated March 21, 2014 of private respondent Ma. Lorna P. Demonteverde, former Judge of the Municipal Trial Court in Cities, Bacolod City, which sought to set aside the October 10, 2013 Decision and Resolution No. 12 dated February 13, 2014 of the GSIS BOT.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Perlas-Bernabe, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 232299. June 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERTO ANDRADA *y* CAAMPUED,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN A CRIMINAL CASE, AN APPEAL OPENS THE WHOLE RECORDS OF THE CASE FOR REVIEW AND THE APPELLATE COURT IS DUTY-BOUND TO CORRECT, CITE AND APPRECIATE ERRORS THAT MAY BE FOUND IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR NOT.— Settled is the rule that an appeal in a criminal case throws the whole records of the case open for review and it is the duty of the appellate court to correct, cite and appreciate errors that may be found in the appealed judgment whether they are assigned or unassigned. Given the unique nature of an appeal in a criminal case, an examination of the entire records of the case may be explored for the purpose of arriving at a correct conclusion as the law and justice dictate.

2. ID.; EVIDENCE; CREDIBILITY; AS A RULE, FINDINGS OF FACT OF THE TRIAL COURT ARE ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED ON APPEAL, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS; AN EXCEPTION THERETO IS WHEN THE FACTS OF WEIGHT AND SUBSTANCE WITH DIRECT AND MATERIAL BEARING ON THE FINAL OUTCOME OF THE CASE HAVE BEEN OVERLOOKED, MISAPPREHENDED OR MISAPPLIED. — While the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, especially when affirmed by the CA, the same rule admits of exceptions as where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied. The case at bench falls under

this exception and, hence, a departure from the general rule is warranted.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE IDENTITY OF THE DANGEROUS DRUG, THE *CORPUS DELICTI* OF THE OFFENSE, MUST BE ESTABLISHED BEYOND REASONABLE DOUBT.— Jurisprudence consistently pronounces that for a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be duly proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence. The narcotic substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. Further, in *People v. Gatlabayan*, the Court held that it is of paramount importance that the identity of the dangerous drug likewise be established beyond reasonable doubt; it must be proven with exactitude that the substance bought during the buy-bust operation is the same substance offered in evidence before the court. In fine, the illegal drug produced before the court as an exhibit must be the very same substance recovered from the suspect.

4. ID.; ID.; LINKS THAT MUST BE PROVED TO ESTABLISH THE CHAIN OF CUSTODY IN A BUY-BUST OPERATION; NOT SATISFIED IN CASE AT BAR.— There are different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court. In order to prove the identity of the dangerous drug beyond reasonable doubt, the prosecution must be able to account for each link in the chain of custody over the same, from the moment

it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*. It is quite regrettable though that the prosecution in the instant case fell short in satisfying this standard when it opted to present only one witness, PO2 Villanueva. x x x A perusal of the dorsal portion of the Request for Laboratory Examination, however, reveals that a certain PO2 Camaclang — and not PO3 Uypala — delivered such request and presumably, the seized plastic sachet as well. This immediately puts into question how PO2 Camaclang obtained possession of the confiscated narcotic, which was neither explained by the prosecution through its testimonial and documentary evidence, nor sufficiently addressed by the courts *a quo*. No document or testimony was offered to clarify who PO2 Camaclang is and what was his participation in the chain of custody of the seized shabu. The absence of any adequate explanation on this score creates a substantial gap in the chain of custody of the plastic sachet seized from Andrada. In addition, the prosecution was silent as to how the specimen was subsequently received at the crime laboratory. No details were offered as to the identity of the person who received the specimen on behalf of the crime laboratory or if the specimen was directly received by Forensic Chemist PSI Oliver B. Dechitan (*FC Dechitan*) for examination. Lastly, it was not shown how the specimen was handled, preserved and managed before FC Dechitan conducted an examination thereon. The foregoing has undoubtedly compromised the integrity and evidentiary value of the *corpus delicti* of the crime charged.

5. ID.; ID.; SECTION 21, ARTICLE II OF R.A. NO. 9165; REQUIRES THE PRESENCE OF THREE WITNESSES DURING THE CONDUCT OF PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEM/S; NON-OBSERVANCE THEREOF MAY BE EXCUSED WHEN THE PROSECUTION RECOGNIZED THE PROCEDURAL LAPSES, OFFERED JUSTIFIABLE GROUNDS AND ESTABLISHED THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM/S HAD BEEN PRESERVED.— [T]he apprehending officers in the instant case failed to observe Section 21, Article II of R.A. No. 9165 which requires that a representative from the media and the Department of Justice, and any elected public official be present during the conduct of a physical inventory and taking of photograph of the seized item/s, and who shall be required

to sign copies of the inventory and shall each be given a copy thereof. Under the last paragraph of Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. Here, PO2 Villanueva admitted, during his cross-examination, that no *barangay* officer or any member of the media was present during the inventory. He likewise testified that the photographing of the seized item was made by PO3 Uypala, who is not a member of the apprehending team. Despite non-observance, the prosecution did not concede such lapse, and did not even tender any token of justification or plausible explanation for it.

6. ID.; ID.; ID.; ID.; R.A. NO. 10640, WHICH AMENDED SECTION 21 OF R.A. NO. 9165, NOW REQUIRES ONLY TWO (2) WITNESSES TO BE PRESENT DURING THE CONDUCT OF THE PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS.— [I]t is worthy to note that Section 1 of Republic Act No. 10640, which amended Section 21 (1) of R.A. No. 9165, now requires only **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.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION IN THE REGULARITY OF PERFORMANCE OF OFFICIAL DUTY; APPLIES WHEN NOTHING IN THE RECORD SUGGESTS THAT THE LAW ENFORCERS DEVIATED FROM THE STANDARD CONDUCT OF OFFICIAL DUTY REQUIRED BY LAW; CASE AT BAR.— In sustaining the prosecution's case, the RTC and the CA inevitably relied on the evidentiary presumption that official duties had been regularly performed. The courts *a quo* are mistaken. The presumption applies when nothing in

the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. Also, the presumption of regularity in the performance of official duties can be rebutted by contrary proof, being a mere presumption, and more importantly, it is inferior to and could not prevail over the constitutional presumption of innocence. Given the procedural lapse the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, the presumption of regularity in the performance of duties cannot be made.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before the Court is an appeal from the October 24, 2016 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 06921, which affirmed the March 4, 2014 Decision[2] of the Regional Trial Court, Branch 90, Dasmariñas, Cavite (*RTC*), finding accused-appellant Roberto Andrada *y* Caampued (*Andrada*) guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165 (*R.A. No. 9165*), otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The antecedent facts are as follows:

Andrada was indicted for Violation of Section 5, Article II of R.A. No. 9165 in an Information, dated December 27, 2011. The accusatory portion of which reads:

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[1] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Magdangal M. De Leon and Victoria Isabel A. Paredes, concurring; *rollo*, pp. 2-18.

[2] Penned by Judge Perla V. Cabrera-Faller; CA *rollo*, pp. 56-58.

That, on or about the 21st day of December, 2011, in Barangay San Miguel I, Dasmariñas City, Province of Cavite, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and knowingly sell, dispose and hand-over to a poseur-buyer one (1) heat-sealed transparent plastic sachet marked as "RAC" with an aggregate weight of 0.03 gram of METHAMPHETAMINE HYDROCHLORIDE locally known as SHABU, a dangerous drug, as confirmed by Chemistry Report No. D-583-11.

CONTRARY TO LAW.

When arraigned, Andrada pleaded not guilty to the charge. After pre-trial was terminated, trial on the merits followed.

Version of the Prosecution

As summarized by the Office of the Solicitor General, the People's factual version is as follows:

On December 21, 2011, at around 4:15 o'clock in the afternoon at the Dasmariñas Police Station, an information through a confidential informant was received that an alias Botchok was selling shabu in Barangay San Miguel I. Upon receiving this information, P/Supt. Ulysses Gasmen Cruz ordered the conduct of surveillance operations and a pre-operation report was prepared. PO2 Allan Villanueva thereafter went to the house of appellant Botchok. After the surveillance, they went back to the police station. There, they reported to their chief of police, and prepared the marked money as well as the coordination form to PDEA, Regional Office. Thereafter, they set the buy-bust operation wherein PO2 Villanueva will act as the poseur-buyer with the informant and PO2 Ramos and PO2 Sagucio will serve as back-up. They went back to the house of appellant together with the informant. PO2 Villanueva told appellant that he will buy shabu. Appellant asked how much and PO2 Villanueva responded Five Hundred Pesos (₱500.00). PO2 Villanueva handed to him the money and appellant gave to him a small plastic sachet. PO2 Villanueva then introduced himself as a police officer and arrested him. PO2 Ramos and PO2 Sagucio arrived. PO2 Villanueva marked the small plastic sachet with "RAC" pertaining to the initials of appellant. Thereafter, he gave the seized items to PO3 Uypala who brought it to the PNP Crime Laboratory. The seized item turned out positive of

methamphetamine hydrochloride or shabu per Chemistry Report No. D-583-11.[3]

Version of the Defense

The defense, on the other hand, relates Andrada's version of the facts in the following manner:

On December 21, 2011, at around 3:00 o'clock in the afternoon, accused ROBERTO ANDRADA ("Andrada"), a resident of Barangay San Miguel, Dasmariñas City, Cavite was inside his house preparing milk for his child. His live-in partner and his three (3) children were also there. PO2 Sagucio appeared at their door, pointed a gun at him and asked him if he knows a certain "Botchok". When he asked "*Bakit po Sir*", PO2 Sagucio ordered him to lie face down on the ground and told him "*Nagbebenta ka ng shabu*". Andrada denied the allegation against him and asked PO2 Sagucio whether he has a warrant. The latter pointed his gun at him and stated that it is his warrant. While Andrada was on the ground, four (4) other police officers entered his house. PO2 Villanueva took Andrada's wallet and cellphone. Later, one of the policemen took out a shabu. Thereafter, he was brought to the Dasmariñas City police headquarters where the police officers accused him of selling shabu, which he vehemently denied.[4]

The RTC Ruling

After trial, the RTC rendered its Decision, dated March 4, 2014, finding accused-appellant guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads:

WHEREFORE, premises considered, the court finds the accused Roberto Andrada y Caampued guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, and hereby sentences the accused to suffer the penalty of life imprisonment and to pay a fine of Php500,000.00 as provided for in the same provision. The confiscated illegal drug is hereby ordered destroyed.

Costs against the accused.

SO ORDERED.[5]

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[3] *Id.* at 73.

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

[5] *Id.* at 58.

According to the RTC, the evidence adduced by the prosecution warranted the conviction of the appellant for the crime of illegal sale of dangerous drugs. The RTC lent credence on the prosecution evidence which established that Andrada was caught *in flagrante delicto* selling 0.03 gram of shabu at the time he was arrested. It rejected the defense of denial interposed by the appellant because the same was not substantiated by clear and convincing evidence. The RTC ruled that the failure of the arresting officers to strictly observe the procedure laid down in Section 21 of R.A. No. 9165 is of no moment since technical procedure must give way to the need to aptly dispense substantial justice by ridding of incorrigible drugpushers like the accused-appellant.

Not inconformity, Andrada appealed his conviction for illegal sale of dangerous drugs before the CA.

The CA Ruling

On October 24, 2016, the CA rendered its Decision affirming Andrada's conviction, the *fallo* of which states:

> FOR THESE REASONS, the instant appeal is hereby ordered DISMISSED, and the appealed Decision dated 04 March 2014 rendered by Branch 90 of the Regional Trial Court in Dasmariñas, Cavite in Criminal Case N. 9967-12 is AFFIRMED *in toto*.
>
> SO ORDERED.[6]

The appellate court ruled that the elements of illegal sale of dangerous drugs have been adequately proven by the prosecution through the credible testimony of PO2 Allan C. Villanueva (*PO2 Villanueva*), the police officer who acted as the *poseur*-buyer during the buy-bust operation. The CA declared that contrary to appellant's claim, there were no inconsistencies between PO2 Villanueva's testimony before the RTC and the declarations made by the arresting officers in their *Malayang Pagsalaysay ng Pag-Aresto*. It held that the police officers have substantially complied with the required procedure in the handling, custody

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[6] *Rollo*, p. 17.

and control of the seized items and that the integrity of the subject shabu remained intact. Lastly, the CA brushed aside Andrada's defenses of denial and frame-up for being self-serving and unsupported by any plausible proof.

Maintaining his plea for exoneration, Andrada filed the present appeal and posited the same assignment of errors he previously raised before the CA, to wit:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY AND INTEGRITY OF THE ALLEGEDLY SOLD DRUG ITEM.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE INCREDIBLE TESTIMONY OF THE PROSECUTION WITNESS.[7]

In its Resolution[8] dated August 14, 2017, the Court directed both parties to submit their supplemental briefs, if they so desire. On October 23, 2017, the Office of the Solicitor General filed its Manifestation and Motion[9] praying that it be excused from filing a Supplemental Brief as its Appellee's Brief had sufficiently ventilated the issues raised. On November 8, 2017, the accused-appellant filed a Manifestation (*In Lieu of Supplemental Brief*)[10] averring that he would adopt all his arguments in his Appellant's Brief filed before the CA in order to avoid being repetitious.

Andrada insists on his acquittal. Essentially, he asserts that the charge of illegal drug deal is a complete fabrication

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[7] CA *rollo*, p. 43.

[8] *Rollo*, pp. 24-25.

[9] *Id*. at 26-28.

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

contending that no sufficient evidence was adduced by the prosecution to prove that a legitimate buy-bust operation was conducted against him. He argues that the omission of the police operatives to observe the procedure outlined by Section 21 of R.A. No. 9165, particularly on the taking of photograph and physical inventory of the subject narcotic in the presence of the personalities mentioned in said law, creates serious doubt on the existence of such allegedly confiscated drug.

Andrada assails anew the prosecution evidence for its failure to establish the proper chain of custody of the seized shabu which shed uncertainty on its identity and integrity. He contends that his constitutional right to presumption of innocence remains because there is reasonable doubt that calls for his acquittal.

The Court's Ruling

Settled is the rule that an appeal in a criminal case throws the whole records of the case open for review and it is the duty of the appellate court to correct, cite and appreciate errors that may be found in the appealed judgment whether they are assigned or unassigned.[11] Given the unique nature of an appeal in a criminal case, an examination of the entire records of the case may be explored for the purpose of arriving at a correct conclusion as the law and justice dictate.

While the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, especially when affirmed by the CA, the same rule admits of exceptions as where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied.[12] The case at bench falls under this exception and, hence, a departure from the general rule is warranted.

After an assiduous review of the records, the Court finds that the prosecution failed to establish the identity and integrity

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[11] *People v. Kamad*, 624 Phil. 289, 299 (2010).

[12] *People v. Morales*, 630 Phil. 215, 228 (2010).

of the 0.03 gram of shabu allegedly confiscated from Andrada due to broken linkages in the chain of custody which thus militates against the finding of guilt beyond reasonable doubt. Accordingly, the appeal is impressed with merit.

Jurisprudence consistently pronounces that for a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be duly proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[13] Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence. The narcotic substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction.[14] Further, in *People v. Gatlabayan*,[15] the Court held that it is of paramount importance that the identity of the dangerous drug likewise be established beyond reasonable doubt; it must be proven with exactitude that the substance bought during the buy-bust operation is the same substance offered in evidence before the court. In fine, the illegal drug produced before the court as an exhibit must be the very same substance recovered from the suspect.

Narcotic substances are not readily identifiable, as in fact they are subject to scientific analysis to determine their composition and nature, and are prone to tampering, alteration, or substitution either by accident or otherwise[16] which justifies the Court in imposing a more exacting standard before they could be accepted as evidence. This is where the observance of the chain of custody becomes of paramount importance so as to ensure that the identity and the integrity of the shabu

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[13] *People v. Carlit*, G.R. No. 227309, August 16, 2017.

[14] *People v. Frondoz*, 609 Phil. 188, 198 (2009).

[15] 669 Phil. 240, 252 (2011).

[16] *People v. Alcuizar*, 662 Phil. 794, 801 (2011).

allegedly seized from Andrada is duly preserved. In *People v. Salvador*,[17] the Court wrote:

> The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established." "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. Such record of movements and custody of seized item shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.

Since what is involved in the case at bench is all but a single plastic sachet containing 0.03 gram of shabu, the Court deems it proper that the prosecution must show an unbroken chain of custody over the same in view of the warning in *Mallillin v. People*[18] that the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. The requirement for establishing the chain of custody fulfills the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.[19]

There are different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the

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[17] 726 Phil. 389, 405-406 (2014).

[18] 576 Phil. 576, 588 (2008).

[19] *People v. Reyes*, 806 Phil. 513, 532 (2016).

turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[20] In order to prove the identity of the dangerous drug beyond reasonable doubt, the prosecution must be able to account for each link in the chain of custody over the same, from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*.[21] It is quite regrettable though that the prosecution in the instant case fell short in satisfying this standard when it opted to present only one witness, PO2 Villanueva.

Evidence for the prosecution tends to show that the buy-bust operation conducted on December 21, 2011 resulted in Andrada's arrest, as well as in PO2 Villanueva's seizure of one (1) plastic sachet containing white crystalline substance from Andrada. Upon seizure, PO2 Villanueva immediately marked the plastic sachet with "RAC", pertaining to the initials of the appellant, and took custody of the same from the time of such seizure until arrival at the police station. Subsequently, PO2 Villanueva turned it over to the duty investigator, PO3 Renato Uypala (*PO3 Uypala*), who then delivered it to the PNP Crime Laboratory for a confirmatory test on its contents. This is where the chain breaks.

A perusal of the dorsal portion of the Request for Laboratory Examination, however, reveals that a certain PO2 Camaclang — and not PO3 Uypala — delivered such request and presumably, the seized plastic sachet as well. This immediately puts into question how PO2 Camaclang obtained possession of the confiscated narcotic, which was neither explained by the prosecution through its testimonial and documentary evidence, nor sufficiently addressed by the courts *a quo*. No document or testimony was offered to clarify who PO2 Camaclang is and what was his participation in the chain of custody of the seized shabu. The absence of any adequate explanation on this score creates a substantial gap in the chain of custody of the plastic sachet seized from Andrada.

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[20] *Dela Riva v. People*, 769 Phil. 872, 886-887 (2015).

[21] *People v. Sumili*, 753 Phil. 342, 348 (2015).

In addition, the prosecution was silent as to how the specimen was subsequently received at the crime laboratory. No details were offered as to the identity of the person who received the specimen on behalf of the crime laboratory or if the specimen was directly received by Forensic Chemist PSI Oliver B. Dechitan (*FC Dechitan*) for examination. Lastly, it was not shown how the specimen was handled, preserved and managed before FC Dechitan conducted an examination thereon. The foregoing has undoubtedly compromised the integrity and evidentiary value of the *corpus delicti* of the crime charged.

We also note that there are nagging questions of post-examination custody that were left unanswered by the prosecution evidence. Particularly, as to who exercised custody and possession of the specimen after the chemical examination and how it was handled, stored and safeguarded pending its offer as evidence in court. Let it be underscored that the probability of the integrity and identity of the *corpus delicti* being compromised is present in every single time the narcotic substance is being stored or transported, be it from the crime laboratory directly to the court or otherwise. Hence, the prosecution should have presented the custodian officer and anyone else for that matter who may have handled the drug after him. It must be emphasized that the threat of tampering, alteration, or substitution of the *corpus delicti* still exists during the interim time - from when the specimen was placed under the custody of the evidence custodian until the time it was brought to court. The failure of the prosecution to provide details pertaining to the said post-examination custody of the seized item likewise creates a gap in the chain of custody which, in turn, raises reasonable doubt on the authenticity of the *corpus delicti*.[22]

Further, the apprehending officers in the instant case failed to observe Section 21, Article II of R.A. No. 9165 which requires that a representative from the media and the Department of Justice, and any elected public official be present during the

[22] *People v. Coreche*, 612 Phil. 1238, 1252 (2009).

conduct of a physical inventory and taking of photograph of the seized item/s, and who shall be required to sign copies of the inventory and shall each be given a copy thereof. Under the last paragraph of Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.[23]

Here, PO2 Villanueva admitted, during his cross-examination, that no *barangay* officer or any member of the media was present during the inventory. He likewise testified that the photographing of the seized item was made by PO3 Uypala, who is not a member of the apprehending team. Despite non-observance, the prosecution did not concede such lapse, and did not even tender any token of justification or plausible explanation for it.

On this score, *People v. Sipin*[24] is instructive:

> 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

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[23] *People v. Cayas*, 789 Phil. 70, 80 (2016).

[24] G.R. No. 224290, June 11, 2018.

is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

The presence of the representatives from the media and the Department of Justice, and of any elected public official was precisely necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.[25] Simply put, their presence was to ensure against planting of evidence and frame-up. The buy-bust team should have observed this procedure if its members genuinely desired to protect the integrity of their operation. Such omission has attached suspicion to the incrimination of the appellant.

At this point, it is worthy to note that Section 1 of Republic Act No. 10640, which amended Section 21 (1) of R.A. No. 9165, now requires only **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.

It is lamentable that the RTC and even the CA overlooked the significance of the absence of these glaring details in the records of the case but instead focused their deliberations on the warrantless arrest of Andrada in arriving at their respective conclusions. In sustaining the prosecution's case, the RTC and the CA inevitably relied on the evidentiary presumption that official duties had been regularly performed. The courts *a quo* are mistaken.

The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.[26] Also, the presumption of regularity in the performance of official duties can be rebutted by contrary proof, being a mere presumption, and more importantly, it is inferior to and could not prevail over the constitutional presumption of innocence.[27] Given the procedural

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[25] *People v. Mendoza*, 736 Phil. 749, 761-762 (2014).

[26] *People v. Holgado, et al.*, 741 Phil. 78, 96 (2014).

[27] *People v. Magat*, 588 Phil. 395, 407 (2008).

lapse the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, the presumption of regularity in the performance of duties cannot be made.

Viewed in the light of the above disquisitions, the Court finds no further need to discuss and pass upon the merits of Andrada's defense of denial. Well-settled is the rule in criminal law that the conviction of an accused must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense.[28] The accused has no burden to prove his innocence, and the weakness of the defense he interposed is inconsequential. He must be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor.

The unjustified and unexplained gaps in the chain of custody of the 0.03 gram of shabu allegedly seized from Andrada create persistent and serious doubt on the identity and integrity of the said dangerous drug. As such, the guilt of Andrada was not proven beyond reasonable doubt, warranting his acquittal of the crime charged.

WHEREFORE, the appeal is **GRANTED**. The Court of Appeals Decision dated October 24, 2016 in CA-G.R. CR-HC No. 06921 is hereby **REVERSED** and **SET ASIDE**.

Accordingly, accused-appellant Roberto Andrada y Caampued is **ACQUITTED** of the crime of Violation of Section 5, Article II of Republic Act No. 9165, on reasonable doubt. The Director of the Bureau of Corrections is **DIRECTED** to **CAUSE** the **IMMEDIATE RELEASE** of the accused-appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five (5) days from notice.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Perlas-Bernabe, Caguioa*, and *Reyes, Jr., JJ.*, concur.

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[28] *People v. Suan*, 627 Phil. 174, 192-193 (2010).

SECOND DIVISION

[G.R. No. 232666. June 20, 2018]

FIELD INVESTIGATION UNIT-OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, *petitioner, vs.* **RAQUEL A. DE CASTRO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; DEFINED AS AN INTENTIONAL WRONGDOING OR A DELIBERATE VIOLATION OF A RULE OR STANDARD OF BEHAVIOR, ESPECIALLY BY A GOVERNMENT OFFICIAL.— "Misconduct has a legal and uniform definition. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. A misconduct is grave where the elements of corruption, clear intent to violate the law or **flagrant disregard of established rule** are present. Otherwise, a misconduct is only simple." x x x Notably, the appellate court maintained that the mere fact of having pecuniary interest in the subject transactions is already sufficient to make respondent administratively liable for misconduct. The sole issue then that must be resolved is whether or not the respondent's acts constitute simple or grave misconduct.

2. ID.; ID.; ID.; ID.; AN EMPLOYEE'S PROPENSITY TO IGNORE THE RULES AS CLEARLY MANIFESTED BY HIS OR HER ACTIONS CONSTITUTES FRAGRANT DISREGARD OF RULES; DOWNGRADING RESPONDENT'S LIABILITY FROM GRAVE TO SIMPLE MISCONDUCT, NOT PROPER IN CASE AT BAR.— As held in the case of *Imperial, Jr. v. Government Service Insurance System*, an employee's propensity to ignore the rules as clearly manifested by his or her actions constitutes flagrant disregard of rules, x x x In downgrading the respondent's liability from Grave to Simple Misconduct, the CA clearly failed to consider the respondent's *repeated* violation of the law which transpired for four years from 2006 to 2010. That the respondent divulged in her Statement of Assets, Liabilities and Net Worth (SALN) her connection with Pink Enterprises does not absolve her from

liability. She violated an express prohibition by law when she certified the disbursement vouchers knowing fully well that her connection with Pink Enterprises prohibited her from doing so. Given the length of time she has been in government service, she cannot feign ignorance as to the prohibitions imposed by law on government employees. That she stood idly by whilst transactions between Pink Enterprises and the Municipality of Bongabong were consummated on numerous occasions point to no other conclusion but that she had wilfully and knowingly violated the law.

3. **ID.; ID.; ID.; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE); CERTIFICATION AND APPROVAL OF VOUCHERS; THREE PRIMARY CONDITIONS; ABSENT IN CASE AT BAR.—** [T]here are at least three primary conditions or requirements that must be met before local funds can be disbursed. *First*, the local budget officer must certify to the existence of appropriation that has been legally made for the purpose. *Second*, the local accountant must have obligated said appropriation. *Third*, the local treasurer certifies to the availability of funds for the purpose. From the foregoing it is clear that the respondent's certification on the disbursement vouchers is necessary to consummate the subject transaction with the Municipality. Her repeated certification on the disbursement vouchers covering numerous transactions clearly shows flagrant disregard of the law or rules. Simply put, the culpability of the respondent has been clearly established. Her acts coupled with the surrounding circumstances constitute Grave Misconduct.

4. **ID.; ID.; ID.; A PUBLIC SERVANT MUST EXHIBIT AT ALL TIMES THE HIGHEST SENSE OF HONESTY AND INTEGRITY.—** A public servant must exhibit at all times the highest sense of honesty and integrity. The Court, in the case of *Japson v. Civil Service Commission*, ruled in this wise: Prejudice to the service is not only through wrongful disbursement of public funds or loss of public property. Greater damage comes with the public's perception of corruption and incompetence in the government.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Palafox Patriarca Romero & Mendoza for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a Petition for Review[1] under Rule 45 of the Rules of Court, as amended, assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) dated January 20, 2017 and June 20, 2017, respectively, in CA-G.R. SP No. 142285.

The Facts

The facts, as culled from the records, are as follows:

On August 2, 1996, Raquel A. De Castro (respondent) worked as a Municipal Accountant for the Municipality of Bongabong, Oriental Mindoro. Her functions were the following:

a) Installing and maintaining an internal audit system in the Municipality;

b) Preparing and submitting financial statements to the Mayor and the *Sanggunian*;

c) Apprising the *Sanggunian* and other local government officials on the financial condition and operations of the Municipality;

d) Certifying the availability of budgetary allotment to which expenditures and obligations may be properly charged;

e) Reviewing supporting documents before preparation of vouchers to determine completeness of requirements; and

f) Preparing statements of cash advances, liquidation, salaries, allowances, reimbursements and remittances pertaining to the Municipality.[4]

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[1] *Rollo*, pp. 35-52.

[2] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting, concurring; *id*. at 14-21.

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

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

During the respondent's employment, the Municipality of Bongabong transacted with Pink Plate's General Merchandise, Pink Shop Computer Center and Pink Plate's Bistro-all of which were owned by respondent's husband. Moreover, the Municipality of Bongabong transacted with Pink Splash Resort which is registered in the name of respondent's daughter.[5]

Based on records,[6] the following transactions and payments have been made for the years 2006 to 2010:

a) Pink Shop Computer Center

Transaction	Date of Payment	Amount (Php)
Purchase of computer accessories for use in the Office of the Municipal Agriculturist	02/24/06	7,886.10
Repeat order for the refill of HP-Ink for use in tax mapping	03/31/06	8,487.50
Purchase of 1 set computer accessories for use in the Office of the Municipal Assessor	05/02/06	5,335.00
Purchase of ink refill for use in tax mapping	05/12/06	9,166.50
Purchase of 1 unit printer (ML 1610 Series) for use in the Office of the Municipal Engineer	12/18/06	8,730.00
Purchase of computer accessories for use in RHU-North	02/20/07	11,167.85
Purchase of 1 unit Power Supply for use in the Office of the Municipal Mayor	03/26/07	3,395.00

b) Pink Plates General Merchandise

Transaction	Date of Payment	Amount (Php)
Purchase of uniforms for use as uniforms of daycare workers	11/24/08	28,761.60
Purchase of t-shirts with print for use in legislative campaign for good governance	11/05/09	63,590.40
Purchase of medals for distribution to different schools, 2nd level and 1st level (CBPS) at Bongabong	04/07/10	38,112.00

[5] *Id*. at 15.

[6] *Id*. at 71-77.

c) Pink Plates Bistro

Transaction	Date of Payment	Amount (Php)
Purchase of meals for use in Senior Citizen Health Seminar	02/23/06	4,074.00
Hiring of chairs and tables used in Sulyog Festival	03/30/06	14,400.00
Purchase of meals and snacks for use in Early Childhood Care and Development Training for Service Providers	05/02/06	13,399.75
Purchase of meals and snacks for use in the Community Empowerment and Development Program	06/06/06	58,521.60
Purchase of meals for use in launching of Fish Sanctuary	07/04/06	9,600.00
Purchase of meals for use in skills training on buko juice and pie making packaging and labelling	07/07/06	1,396.80
Purchase of meals and snacks for use in skills training on buko juice and pie making packaging and labelling	07/05/06	17,539.20
Purchase of meals and snacks for use in orientation on National Tax Mapping Program	08/01/06	19,824.00
Purchase of meals and snacks for use in Senior Citizen's Federation President's Meeting	08/24/06	3,007.00
Purchase of snacks for use in Senior Citizen's Day Celebration	10/05/06	15,118.08
Purchase of meals and snacks for use in orientation workshop on Responsive and Active Parenting (REAP) and Adolescents Health and Youth Development Program (AHYDP)	10/06/06	14,860.80
Purchase of meals and snacks for use in training workshop on Effective Legislation	10/12/06	33,600.00
Rental of venue for training workshop on Effective Legislation	10/12/06	4,850.00
Purchase of meals and snacks for use in investment forum in coco-based product	12/15/06	12,000.00
Purchase of snacks for use in Senior Citizen's Anniversary	12/15/06	18,004.80

Purchase of meals and snacks for use in rules and regulations about privileges of OSCA members	02/15/07	3,007.00
Purchase of meals and snacks used by E-NGA'S group	05/24/07	21,375.00
Purchase of meals and snacks for use in reconciliation of RPU's in the roll out of E-NGAS by roll-out team	12/27/07	5,092.50

d. Pink Splash Resort

Transaction	Date of Payment	Amount (Php)
Purchase of meals and hotel accommodation for use in the board and lodging of dignitaries and visitors	05/30/08	10,464.00
Purchase of meals and snacks and hotel accommodation for the Doctors Medical Mission	05/30/08	23,616.00
Board and lodging of COA Regional Officers and Staff and the Provincial Auditor Staff dated 3-4 April 2008	06/24/08	12,672.00
Hire of chairs for use in Career Information and Guidance (PESO)	07/18/08	2,910.00
Purchase of meals and snacks and venue for use in ORMILLBO and PHILLBO meeting	08/01/08	14,016.00
Purchase of meals and snacks for DILG, PNP and AFP Regionals Directors Training, re-Brgy. Pulisya Tungo sa Kapayapaan	08/07/08	4,947.00
Hotel accommodation and meals for Regional Cluster Director (COA and Staff) during Brgy. Signing of AAR	08/19/08	8,759.10
Purchase of meals and snacks for use of Oriental Mindoro Accountant's Quarterly Meeting and Annual Awarding of 2007	09/02/08	14,016.00
Hotel accommodation and meals/snacks for use of COA Auditor's Team III during the Semi-Annual Audit of the LGU's transactions	09/08/08	9,544.80

Hotel accommodation (2 persons) used by Napolcom Officers during Annual Inspection of Municipal Police Station	09/08/08	1,164.00
Purchase of meals/snacks and venue for use in monthly meeting of Municipal Vice Mayor's League of Or. Mdo., SB Secretaries, SB Members of Bongabong and all Department Heads and Company on 01 September 2008	09/15/08	21,120.00
Purchase of snacks and meals for use in Career Information and Guidance (PESO)	09/16/08	17,280.00
Purchase of meals and snacks for use in monthly meeting of Provincial Planning and Development Officers (PPDO)	10/22/08	14,016.00
Purchase of meals and snacks for use in the Sanggunian Kabataan Meeting	11/24/08	12,787.20
Air-conditioned room for 6 parts in Physical fitness test conducted by Police Provincial Office on 11 October 2008	12/05/08	1,746.00
Purchase of meals and snacks for use in 3 days Barangay Special Audit on 8-11 October 2008	12/05/08	7,711.50
Purchase of meals and snacks for use in amendment of senior citizens constitution and by-law and updating SC Treasurer's record	12/05/08	21,052.80
Purchase of meals and snacks for use in enhancement of E-NGAS on 30 October to 08 November 2008	12/05/08	15,696.00
Purchase of meals and snacks for use in year-end assessment	12/18/08	116,160.00
Venue in basic training and orientation for the Municipal Coordinating Team (MCT)	12/22/08	6,790.00
Purchase of meals and snacks for use in Medical-Dental Mission (with Makati City Health Officer and Team)	12/22/08	41,040.00
Purchase of meals for use in KALAHI orientation-Barangay Captains of different barangays	04/01/09	6,984.00
Accommodation and meals used by COA Regional Director, COA Auditors and staff for the Annual Inspection and Preparation of AAR	04/01/09	6,208.00

Accommodation and meals used by Makati Band and Makati Councilors for the Sulyog Festival 2009	04/01/09	39,360.00
Meals and accommodations for use of INFRES and DA office during the Inspection of INFRES projects	06/10/09	9,021.00
Purchase of snacks and meals and hotel accommodation for use in training on Performance Management System and Office Performance Evaluation System (PMS-OPES)	07/01/09	38,140.80
Hotel accommodation (air-conditioned) for use in training/workshop on Government Procurement Reform Act (RA 9184) and its Implementing Rules and Regulations	07/06/09	3,492.00
Meals, snacks and room accommodation for trainer's training on Natural Farming Technology	10/05/09	97,344.00
Meals and snacks for use in Nakatatanda: Dangal at Yaman ng Bansa seminar	10/23/09	35,712.00
Rental of monoblock chairs and tables for use in the 82nd Founding Anniversary of Bongabong (1-7 Dec)	12/14/09	7,372.00
Purchase of meals and snacks for use in Brgy. Empowerment Seminar and Training	12/22/09	174,720.00
Snacks and meals/ hotel accommodation for use by the Audit Team and Engas Programmer re: Post Audit of 3rd Quarter Transactions and updating of E-NGAS data base	12/22/09	17,424.00
Hotel accommodations and meals for use by Municipal Council for the Protection of Children Team Building	12/29/09	41,772.00
Purchase of meals for use in Family Juvenile Gender Sensitivity Development Desk (FJGSD) Outreach Program Activities	01/19/10	15,600.00
Meals and snacks for the Rights and Violence Against Women Seminar	04/07/10	21,590.00

Subsequently, the Field Investigation Unit (FIU)-Office of the Deputy Ombudsman for Luzon charged respondent for

Conduct Prejudicial to the Best Interest of the Service and Grave Misconduct on October 1, 2013.[7]

FIU stated that Section 89 of Republic Act (R.A.) No. 7160, otherwise known as The Local Government Code, prohibits local government officials from engaging, directly or indirectly, in any business transaction with the local government unit in which he is an official whereby money is to be paid, directly or indirectly, out of the resources of the local government unit to such person or firm.[8]

In her Counter-Affidavit, the respondent asserted that she neither intervened nor participated directly or indirectly in the process and consummation of the subject transactions. She maintained that her signature appearing on the disbursement vouchers only meant that she had certified that the documents supporting the subject transactions were complete. The respondent also emphasized that the initiative to enter into the subject transactions did not come from her, but from the Bids and Awards Committee (BAC), when it requested the Pink Enterprises and other establishments to submit quotations for the goods and services needed by the Municipality of Bongabong.[9]

In a Decision[10] dated August 11, 2015, the Office of the Deputy Ombudsman for Luzon exonerated the respondent from the charge of Conduct Prejudicial to the Best Interest of the Service but found her guilty of Grave Misconduct, the dispositive portion of which reads as follows:

WHEREFORE, judgment is rendered finding respondent **Raquel A. de Castro *guilty*** of Grave Misconduct and is meted the penalty of **dismissal from the service**, with the accessory penalties of **forfeiture of retirement benefits, perpetual disqualification from holding public office, cancellation of civil service eligibility, and**

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[7] *Id*. at 68.

[8] *Id*.

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

[10] *Id*. at 68-79.

bar from taking civil service examinations, pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17 in relation to Section 25 of Republic Act No. 6770.

In the event that the penalty of dismissal can no longer be enforced due to respondent's separation from the service, the penalty shall be converted into a Fine in an amount equivalent to respondent's salary for one (1) year, payable to the Office of the Ombudsman, and may be deductible from respondent's retirement benefits, accrued leave credits or any receivable from her office.

The Honorable Secretary of the Department of the Interior and Local Government is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, series of 2006, dated 11 April 2006 and to promptly inform his Office of the action taken hereon.

SO RESOLVED.[11]

Undeterred, the respondent filed a Petition for Review with the CA anchored on her claim that she is not guilty of Grave Misconduct.

In a Decision[12] dated January 20, 2017, the CA partially granted the petition and held that the respondent is guilty of Simple Misconduct only there being no substantial evidence to show that any of the elements of corruption, clear intent to violate the law or flagrant disregard of rules is present, *viz.*:

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED** such that [the respondent] is found guilty of **SIMPLE MISCONDUCT** with the penalty of suspension of one (1) month and one (1) day. Considering that [the respondent] has been out of the service for more than the imposed suspension, she should now be **REINSTATED** to her former position.

SO ORDERED.[13]

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[11] *Id*. at 77-78.

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

[13] *Id*. at 20.

FIU filed a Motion for Reconsideration but the same was denied by the CA in a Resolution[14] dated June 20, 2017.

Hence, this petition.

The Issues

WHETHER THE CA ERRED IN DOWNGRADING THE LIABILITY OF THE RESPONDENT FROM GRAVE MISCONDUCT TO SIMPLE MISCONDUCT[15]

Ruling of the Court

The appellate court ruled that there being no substantial evidence proving any of the elements of Grave Misconduct, the respondent should only be held liable for Simple Misconduct.

The Court disagrees.

"Misconduct has a legal and uniform definition. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. A misconduct is grave where the elements of corruption, clear intent to violate the law or **flagrant disregard of established rule** are present. Otherwise, a misconduct is only simple."[16]

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[17]

A careful perusal of the records shows that the respondent, **on more than one occasion**, knowingly certified and approved disbursement vouchers covering transactions between the Municipality of Bongabong and Pink Enterprises. She certified

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

[15] *Id*. at 40.

[16] *Imperial, Jr. v. Government Service Insurance System*, 674 Phil. 286, 296 (2011), citing *Vertudes v. Buenaflor*, 514 Phil. 399, 423-424 (2005).

[17] *Government Service Insurance System (GSIS), et al. v. Mayordomo*, 665 Phil. 131, 144-145 (2011).

the same notwithstanding the fact that she clearly had pecuniary interests, *albeit* indirect, therein. The prohibition laid down in Sections 89 and 341 of R.A. No. 7160 are clear in this regard, to wit:

> **Section 89.** *Prohibited Business and Pecuniary Interest.* —
>
> (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:
>
> 1. Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;
>
> x x x x x x x x x
>
> **Section 341.** *Prohibitions Against Pecuniary Interest.*— Without prejudice to criminal prosecution under applicable laws, any local treasurer, accountant, budget officer, or other accountable local officer having any pecuniary interest, direct or indirect, in any contract, work or other business of the local government unit of which he is an accountable officer shall be administratively liable therefor.

Notably, the appellate court maintained that the mere fact of having pecuniary interest in the subject transactions is already sufficient to make respondent administratively liable for misconduct. The sole issue then that must be resolved is whether or not the respondent's acts constitute simple or grave misconduct.

As held in the case of *Imperial, Jr. v. Government Service Insurance System*,[18] an employee's propensity to ignore the rules as clearly manifested by his or her actions constitutes flagrant disregard of rules, to wit:

> Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated

[18] 674 Phil. 286 (2011).

voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. **The common denominator in these cases was the employees propensity to ignore the rules as clearly manifested by his or her actions.**[19] (Citations omitted and emphasis Ours)

In downgrading the respondent's liability from Grave to Simple Misconduct, the CA clearly failed to consider the respondent's *repeated* violation of the law which transpired for four years from 2006 to 2010. That the respondent divulged in her Statement of Assets, Liabilities and Net Worth (SALN) her connection with Pink Enterprises does not absolve her from liability. She violated an express prohibition by law when she certified the disbursement vouchers knowing fully well that her connection with Pink Enterprises prohibited her from doing so. Given the length of time she has been in government service, she cannot feign ignorance as to the prohibitions imposed by law on government employees. That she stood idly by whilst transactions between Pink Enterprises and the Municipality of Bongabong were consummated on numerous occasions point to no other conclusion but that she had wilfully and knowingly violated the law.

In her Counter-Affidavit, the respondent asserted that she neither intervened nor participated directly or indirectly in the process and consummation of the subject transactions. She maintained that her signature appearing on the disbursement vouchers only meant that she had certified that the documents supporting the subject transactions were complete. The respondent also emphasized that the initiative to enter into the subject transactions did not come from her, but from the BAC, when it requested the Pink Enterprises and other establishments to submit quotations for the goods and services needed by the Municipality of Bongabong.[20]

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[19] *Id*. at 297.

[20] *Rollo*, pp. 15-16.

While the respondent is correct in her claim that the initiative to enter into the subject transactions did not come from her, she is wrong in asserting that she neither intervened nor participated in the consummation of the subject transactions. Chapter IV of R.A. No. 7160, specifically Section 344 thereof, states the basic requirements for disbursement of local funds, to wit:

Section 344. *Certification, and Approval of, Vouchers.* — **No money shall be disbursed unless the local budget officer certifies to the existence of appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of funds for the purpose.** Vouchers and payrolls shall be certified to and approved by the head of the department or office who has administrative control of the fund concerned, as to validity, propriety, and legality of the claim involved. Except in cases of disbursements involving regularly recurring administrative expenses such as payrolls for regular or permanent employees, expenses for light, water, telephone and telegraph services, remittances to government creditor agencies such as GSIS, SSS, LDP, DBP, National Printing Office, Procurement Service of the DBM and others, approval of the disbursement voucher by the local chief executive himself shall be required whenever local funds are disbursed.

In cases of special or trust funds, disbursements shall be approved by the administrator of the fund.

In case of temporary absence or incapacity of the department head or chief of office, the officer next-in-rank shall automatically perform his function and he shall be fully responsible therefor. (Underlining and emphasis ours)

To recapitulate, there are at least three primary conditions or requirements that must be met before local funds can be disbursed. *First*, the local budget officer must certify to the existence of appropriation that has been legally made for the purpose. *Second*, the local accountant must have obligated said appropriation. *Third*, the local treasurer certifies to the availability of funds for the purpose. From the foregoing it is clear that the respondent's certification on the disbursement vouchers is necessary to consummate the subject transaction with the

Municipality. Her repeated certification on the disbursement vouchers covering numerous transactions clearly shows flagrant disregard of the law or rules. Simply put, the culpability of the respondent has been clearly established. Her acts coupled with the surrounding circumstances constitute Grave Misconduct.

Although this Court, in a catena of cases, has mitigated the imposable penalty for humanitarian reasons and have taken into consideration factors such as length of service in the government and good faith, the Court should be cautious in appreciating the same so as not to send the message that the Court is condoning the offense or that it is not serious enough to warrant the penalty of dismissal.

A public servant must exhibit at all times the highest sense of honesty and integrity. The Court, in the case of *Japson v. Civil Service Commission*,[21] ruled in this wise:

> Prejudice to the service is not only through wrongful disbursement of public funds or loss of public property. Greater damage comes with the public's perception of corruption and incompetence in the government.[22]

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated January 20, 2017 and Resolution dated June 20, 2017 of the Court of Appeals in CA-G.R. SP No. 142285, are hereby **REVERSED** and **SET ASIDE**. The Decision dated August 11, 2015 of the Office of the Deputy Ombudsman for Luzon finding respondent Raquel A. De Castro liable for Grave Misconduct is hereby **REINSTATED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta, Perlas-Bernabe*, and *Caguioa, JJ.*, concur.

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[21] 663 Phil. 665 (2011).

[22] *Id.* at 677.

SECOND DIVISION

[G.R. No. 233480. June 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MELANIE B. MERCADER,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN APPEAL OPENS THE ENTIRE CASE FOR REVIEW AND, THUS THE COURT IS DUTY-BOUND 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. **CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** [I]n order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.

3. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [I]n instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his/her conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.

4. ID.; ID.; FOR ANY VIOLATION THEREOF, THE IDENTITY OF THE DANGEROUS DRUG, THE *CORPUS DELICTI* OF THE CRIME, MUST BE ESTABLISHED WITH MORAL CERTAINTY.— Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.

5. ID.; ID.; SECTION 21, ARTICLE II THEREOF; NON-COMPLIANCE WITH THE PROCEDURE OUTLINED THEREIN MAY ONLY BE EXCUSED UNDER JUSTIFIABLE GROUND, WHICH MUST BE PROVEN AS A FACT, SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640 provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 — under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**. x x x 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**. Guided by the foregoing, 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 Mercader. x x x Notably, SPO2 Daño contradictorily testified that PO1 Anos prepared a written inventory which Mercader signed. He likewise stated

that photographs were taken of the items and existed in the file. Despite the seemingly conflicting statements made by the police officers, it remains that nothing on the record shows that the required inventory or photography of the seized items was conducted. Besides, neither of the said documents mentioned by SPO2 Daño were offered in evidence before the trial court. x x x Consequently, the non-compliance with the chain of custody rule under the procedure set forth by law is a sufficient ground to acquit Mercader altogether.

PERALTA, *J., separate concurring opinion*:

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); THREE-WITNESS REQUIREMENT UNDER SECTION 21, ARTICLE II THEREOF; ACQUITTAL OF THE ACCUSED IS PROPER WHEN THERE WAS NO JUSTIFIABLE GROUND PROFERRED BY THE PROSECUTION ON THE NON-OBSERVANCE OF THE THREE-WITNESS REQUIREMENT.—**I concur with the *ponencia* in acquitting accused-appellant Melanie B. Mercader of the charges of illegal sale and illegal possession of dangerous drugs, or violation of Sections 5 and 11, Article II of Republic Act (*R.A.*) No. 9165, respectively. As aptly noted by the *ponencia*, records reveal that the marking of the seized items was not done in the presence of any elected public official, as well as a representative from the Department of Justice (*DOJ*) and the media, and that no justifiable reason was proffered by the prosecution as to the non-observance of Section 21of R.A. No. 9165. Moreover, despite the conflicting statements of the police officers, nothing on the record shows that the required inventory or photographing of the seized items was conducted, and neither of the said documentary evidence was offered in evidence before the trial court.

2. **ID.; ID.; ID.; R.A. NO. 10640, WHICH AMENDED SEC. 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.—** 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.

3. **ID.; ID.; UNDER THE ORIGINAL PROVISION OF SECTION 21, ARTICLE II THEREOF, THREE WITNESSES ARE REQUIRED TO BE PRESENT IN THE CONDUCT OF PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED DRUGS.—**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."

4. **ID.; ID.; NON-COMPLIANCE WITH THE MANDATED PROCEDURE LAID DOWN IN SECTION 21, ARTICLE II THEREOF MAY BE EXCUSED ON JUSTIFIABLE GROUND, PROVEN AS A FACT, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.—**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.

5. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; REGULARITY OF PERFORMANCE OF OFFICIAL DUTY OF POLICE OFFICERS; MAY ONLY ARISE WHEN THERE IS A SHOWING THAT THE APPREHENDING OFFICER/TEAM FOLLOWED THE REQUIREMENTS OF 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.

6. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JURISDICTION TO DETERMINE SUFFICENCY OF COMPLIANCE WITH THE RULE ON CHAIN OF CUSTODY IS WITH THE JUDICIARY ONLY.—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.

7. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); REQUIREMENTS OF MARKING, CONDUCT OF INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS IN THE PRESENCE OF THE WITNESSES ARE POLICE INVESTIGATION PROCEDURES WHICH CALL FOR ADMINISTRATIVE SANCTIONS IN CASE OF NON-COMPLIANCE.— 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.**

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Melanie B. Mercader (Mercader) assailing the Decision[2]

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[1] See Compliance with Notice of Appeal dated March 31, 2017; *rollo*, pp. 16-17.

[2] *Id*. at 2-15. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Stephen C. Cruz and Nina G. Antonio-Valenzuela concurring.

dated March 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08110, which affirmed the Decision[3] dated October 3, 2015 of the Regional Trial Court of Antipolo City, Branch 73 (RTC) in Crim. Case Nos. 03-26511 and 03-26512 finding Mercader guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from two (2) Informations[5] filed before the RTC charging Mercader of the crime of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and II, Article II of RA 9I65, the accusatory portions of which state:

Crim. Case No. 03-26511

That on or about the 8th day of September 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to POI Christopher Anos, who acted as a poseur buyer, One (1) heat sealed transparent plastic sachet containing 0.03 gram of white crystalline substance, for and in the (sic) consideration of the sum of ₱200.00, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave a positive result to the test for *Methamphetamine Hydrochloride*, also known as "*shabu*", a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[6]

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[3] CA *rollo*, pp. 51-60, Penned by Acting Presiding Judge Leili C. Suarez.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Both dated September 10,2003. Records, pp. 1-2 and 21-22.

[6] *Id.* at 1.

Crim. Case No. 03-26512

That on or about the 8th day of September 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been lawfully authorized by law to possess/use any dangerous drugs, did, then and there willfully, unlawfully and feloniously have in her possession, custody and control Two (2) heat sealed transparent plastic sachets containing 0.02 gram and 0.02 gram respectively and/or with total weight of 0.04 gram of white crystalline substance, which after the corresponding laboratory examination conducted thereon by the PNP Crime Laboratory both gave positive results to the test for *Methamphetamine Hydrochloride*, also known as "*shabu*", a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[7]

The prosecution alleged that at around five (5) o'clock in the afternoon of September 8, 2003, the Philippine National Police (PNP) of Marikina City received a report from a confidential informant that Mercader and her husband, alias "*Tisoy*," were selling drugs at their house located in Corazon Compound, Cogeo, Antipolo City. Acting upon this report, a buy-bust team was formed headed by Police Officer 2 Edwin Daño (PO2 Daño), together with Police Officer 1 (PO1) Christopher Anos (PO1 Anos) who was designated as the poseur-buyer, with PO1 Roberto Muega and PO1 Richie Gaerlan as back-ups. After conducting a pre-operation procedure and coordinating with the Philippine Drug Enforcement Agency (PDEA) and the PNP of Antipolo, the buy-bust team together with the confidential informant, proceeded to the target area. As soon as the informant saw Mercader, he approached her, introduced PO1 Anos as a buyer from Marikina, and asked if the latter could purchase *shabu*. Mercader asked how much PO1 Anos wanted and the latter replied "*Dos lang, pang-gamit namin*" as he handed to her the marked money. In turn, Mercader took from her right pocket a plastic sachet of suspected *shabu*. Upon receipt of the same, PO1 Anos tied his shoe lace, which

[7] *Id.* at 21.

was the pre-arranged signal, and the other police officers rushed in to arrest Mercader. At that point, *Tisoy* tried to come near them, but was warned by Mercader to run away. Subsequently, a preventive search was conducted on Mercader which yielded two (2) more plastic sachets of suspected *shabu*. Upon confiscation, PO1 Anos marked the items at the place of arrest with "LBM-CA BUY BUST," "LBM-CA POSS I," and "LBM-CA POSS II." Thereafter, the police officers brought her to the Marikina Police Station where they made a request for laboratory examination of the seized items. After securing the letter-request, PO1 Anos delivered the said items to the PNP Crime Laboratory Service where they were examined by Forensic Chemical Officer-Police Senior Inspector Annalee R. Forro who confirmed that they tested positive for the presence of *methamphetamine hydrochloride*, a dangerous drug.[8]

For her part, Mercader denied the charges against her, claiming that at around seven (7) o'clock in the evening of September 8, 2003, she was on her way home with her two (2) children when a police officer suddenly held her hand and accused her of selling drugs. Despite not finding drugs on her, she was forcibly taken to the police station of Marikina City where the police officers extorted money from her.[9]

The RTC Ruling

In a Decision[10] dated October 3, 2015, the RTC ruled as follows: (*a*) in Crim. Case No. 03-26511, Mercader was found guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165 and, accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (*b*) in Crim. Case No. 03-26512, Mercader was likewise found guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165 and, accordingly, sentenced to suffer the penalty of

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[8] See CA *rollo*, pp. 53-55; and *rollo*, pp. 3-5. See also Physical Science Report No. D-1731-03E dated September 9, 2003; records, p. 9.

[9] See CA *rollo*, pp. 55-56; and *rollo*, pp. 5-6.

[10] CA *rollo*, pp. 51-60.

imprisonment for twelve (12) years and one (1) day to twenty (20) years, and to pay a fine of ₱300,000.00.[11]

The RTC held that the prosecution sufficiently established all the elements of both illegal sale and possession of dangerous drugs, through the testimonies of the police officers, showing that Mercader sold *shabu* to PO1 Anos during the buy-bust operation and had in her possession two (2) more plastic sachets containing the same. On the other hand, the RTC did not give credence to Mercader's defenses of denial and extortion for lack of substance. Moreover, the RTC ruled that the lack of prior surveillance and the failure to offer the marked monies as evidence, do not invalidate the buy-bust operation, since the integrity and evidentiary value of the confiscated items were properly preserved and the chain of custody sufficiently established to convict Mercader.[12]

Aggrieved, Mercader appealed[13] to the CA.

The CA Ruling

In a Decision[14] dated March 17, 2017, the CA affirmed Mercader's conviction for the crimes charged.[15] It ruled that Mercader was validly arrested and that all the elements of the crimes of illegal sale and possession of dangerous drugs were duly proven by the prosecution.[16] Moreover, the CA found that there was an unbroken chain of custody since PO1 Anos had in his possession the subject sachets from the time of their seizure until their turnover to the crime laboratory.[17]

Hence, this appeal.

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

[12] See *id*. at 56-59.

[13] See Notice of Appeal dated February 11, 2016; records, p. 240.

[14] *Rollo*, pp. 2-15.

[15] *Id*. at 15.

[16] See *id*. at 8-12.

[17] See *id*. at 13-15.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Mercader's conviction for illegal sale and illegal possession of dangerous drugs.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[18] "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."[19]

In this case, Mercader was charged with the crimes of illegal sale and illegal possession of dangerous drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[20] Meanwhile, in instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his/her conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[21]

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[18] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[19] *People v. Comboy*, G.R. No. 218399, March 2, 2016,785 SCRA 512, 521.

[20] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[21] *People v. Bio*, 753 Phil. 730, 736 (2015).

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.[22]

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[23] Under the said section, prior to its amendment by RA 10640,[24] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his/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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[25] In the case of *People v. Mendoza*,[26] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs), the evils of switching, 'planting' or contamination of the evidence**

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[22] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[23] *People v. Sumili*, *supra* note 20, at 349-350.

[24] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002," approved on July 15, 2014.

[25] See Section 21 (1) and (2), Article II of RA 9165.

[26] 736 Phil. 749 (2014).

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."[27]

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.[28] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640[29] — provide that the said inventory and photography

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[27] *Id*. at 764; emphases and underscoring supplied.

[28] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[29] Section 1 of RA 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of

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**.[30] 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.[31] In *People v. Almorfe*,[32] the **Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**.[33] Also, in *People v. De Guzman*,[34] 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**.[35]

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the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

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[30] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[31] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[32] 631 Phil. 51 (2010).

[33] *Id*. at 60.

[34] 630 Phil. 637 (2010).

[35] *Id*. at 649.

Guided by the foregoing, 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 Mercader.

First, records reveal that the marking of the seized items was not done in the presence of any elected public official, as well as a representative from the DOJ and the media. Despite the failure to observe this requirement, no justifiable ground was given to explain such lapse. In fact, there is actually no mention of these required witnesses in this case.

Second, no physical inventory, as well as photography, of the seized items were taken. PO1 Anos admitted the lack of inventory when he testified that:

> [Atty. Vilma Mendoza]: But you did not prepare any inventory during that time?
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> [PO1 Anos]: No, Ma'am.
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> Q: You did no take any list of the confiscated items from the suspect?
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> A: No, Ma'am.
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> Q: It was not recorded in the police blotter?
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> A: No, Ma'am.
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> x x x x x x x x x[36]

(Underscoring supplied)

Notably, PO2 Daño contradictorily testified that PO1 Anos prepared a written inventory which Mercader signed. He likewise stated that photographs were taken of the items and existed in the file.[37] Despite the seemingly conflicting statements made by the police officers, it remains that nothing on the record shows that the required inventory or photography of the seized items was conducted. Besides, neither of the said documents

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[36] TSN, September 19, 2007, pp. 10-11.

[37] See TSN, November 24, 2010, pp. 11-12.

mentioned by PO2 Daño were offered in evidence before the trial court.[38]

Case law states that the mere marking of the seized drugs, unsupported by a physical inventory and taking of photographs, and in the absence of the necessary personalities under the law, fails to approximate compliance with the mandatory procedure under Section 21, Article II of RA 9165.[39] It is well-settled that **the procedure in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality**.[40] Compliance under the rule ensures the integrity of the confiscated drug and clearly establishes the *corpus delicti*, failing in which, indicates the absence of an element of the crimes of illegal sale and illegal possession of dangerous drugs.[41] "In both illegal sale and illegal possession of prohibited drugs, conviction cannot be sustained if there is a persistent doubt on the identity of the drug x x x [which] must be established with moral certainty."[42] Consequently, the non-compliance with the chain of custody rule under the procedure set forth by law is a sufficient ground to acquit Mercader altogether.

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

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[38] See CA *rollo*, p. 52.

[39] See *Lescano v. People*, 718 Phil. 460, 476 (2016), citing, *People v. Garcia*, 599 Phil. 416, 429 (2009). See also *People v. Pagaduan*, 641 Phil. 432, 448-449 (2010).

[40] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[41] See *Lescano v. People*, *supra* note 39, at 472.

[42] *Id*., citing *People v. Lorenzo*, 633 Phil. 393, 403 (2010).

against any manner of high-handedness from the authorities, however praiseworthy their intentions.

Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. x x x.[43]

"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 ofthe 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."[44]

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 17, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08110 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Melanie B. Mercader is **ACQUITTED** of the crimes 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, Senior Associate Justice (Chairperson), *Caguioa*, and *Reyes, Jr.*, *JJ.,* concur.

Peralta, J., see separate concurring opinion.

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[43] *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

[44] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

I concur with the *ponencia* in acquitting accused-appellant Melanie B. Mercader of the charges of illegal sale and illegal possession of dangerous drugs, or violation of Sections 5 and 11, Article II of Republic Act (*R.A.*) No. 9165,[1] respectively. As aptly noted by the *ponencia*, records reveal that the marking of the seized items was not done in the presence of any elected public official, as well as a representative from the Department of Justice (*DOJ*) and the media, and that no justifiable reason was proffered by the prosecution as to the non-observance of Section 21[2] of R.A. No. 9165. Moreover, despite the conflicting statements of the police officers, nothing on the record shows that the required inventory or photographing of the seized items was conducted, and neither of the said documentary evidence was offered in evidence before the trial court. Be that as it may, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

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[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;

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 that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence

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[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."*

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.
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> 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

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[5] Senate Journal, Session No. 80, 16th Congress, 1st Regular Session, June 4, 2014, p. 348.

[6] *Id.*

[7] *Id.*

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 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

[8] *Id.* at 349-350.

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.

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**

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[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.*

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

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[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.

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/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

[16] G.R. No. 202206, March 5, 2018.

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. 233702. June 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL GAMBOA *y* FRANCISCO @ "KUYA,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN APPEAL OPENS THE ENTIRE CASE FOR REVIEW AND, THUS THE COURT IS DUTY-BOUND 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. CRIMINAL LAW; REPUBLIC ACT 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— [I]n order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [I]n instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.

4. ID.; ID.; FOR ANY VIOLATION THEREOF, THE IDENTITY OF THE DANGEROUS DRUG, THE *CORPUS DELICTI* OF THE CRIME, MUST BE ESTABLISHED WITH MORAL CERTAINTY.— Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.

5. ID.; ID.; SECTION 21, ARTICLE II THEREOF; NON-COMPLIANCE WITH THE PROCEDURE OUTLINED THEREIN MAY ONLY BE EXCUSED UNDER JUSTIFIABLE GROUND, WHICH MUST BE PROVEN AS A FACT, SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640

— provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**. x x x 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 Gamboa. x x x In this case, despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution. x x x Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Gamboa have been compromised. It is settled that in a prosecution for the sale and possession of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti* failing in which, renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt. Consequently, Gamboa's acquittal is in order.

PERALTA, *J.*, *separate concurring opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); THREE-WITNESS REQUIREMENT UNDER SECTION 21, ARTICLE II THEREOF; ACQUITTAL OF THE ACCUSED IS PROPER WHEN THERE WAS NO JUSTIFIABLE GROUND PROFERRED BY THE PROSECUTION ON THE NON-OBSERVANCE OF THE THREE-WITNESS REQUIREMENT.— I concur with the *ponencia* in acquitting accused-appellant Manuel Gamboa *y* Francisco 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*), respectively. I agree that despite the non-observance of the three-witness requirement under Section 21 of R.A. No. 9165, no justifiable reason was proffered by the prosecution as to why the marking of the seized items immediately upon confiscation at the place of arrest was only done in the presence of appellant and a media representative, without the presence of any elected public official and a representative from the Department of Justice.

2. **ID.; ID.; ID.; R.A. NO. 10640, WHICH AMENDED SEC. 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.—** 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.

3. **ID.; ID.; ID.; SECTION 21 OF R.A. NO. 9165 REQUIRED THREE (3) WITNESSES TO BE PRESENT IN THE CONDUCT OF PHYSICAL INVENTORY AND PHOTOGRAPH OF THE SEIZED DRUGS.—** 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."

4. **ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE MANDATED PROCEDURE LAID DOWN IN SECTION 21 OF R.A. NO. 9165 MAY BE EXCUSED ON JUSTIFIABLE GROUND, PROVEN AS A FACT, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF**

THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— 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.

5. **REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; REGULARITY OF PERFORMANCE OF OFFICIAL DUTY OF POLICE OFFICERS; MAY ONLY ARISE WHEN THERE IS A SHOWING THAT THE APPREHENDING OFFICER/TEAM FOLLOWED THE REQUIREMENTS OF 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.

6. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JURISDICTION TO DETERMINE SUFFICIENCY OF COMPLIANCE WITH THE RULE ON CHAIN OF CUSTODY IS WITH THE JUDICIARY ONLY.—** 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.

7. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); REQUIREMENTS OF MARKING, CONDUCT OF INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS IN THE PRESENCE OF THE WITNESSES ARE POLICE INVESTIGATION PROCEDURES WHICH CALL FOR ADMINISTRATIVE SANCTIONS IN CASE OF NON-COMPLIANCE.— 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**.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Manuel Gamboa *y* Francisco @ "Kuya" (Gamboa) assailing the Decision[2] dated May 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07857, which affirmed the Decision[3] dated October 15, 2015 of the Regional Trial Court of Manila, Branch 2 (RTC) in Crim. Case Nos. 14-303187 and 14-303188 finding Gamboa guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging Gamboa of the crime of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165, the accusatory portions of which state:

Criminal Case No.14-303187

That on or about January 31, 2014, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver, transport or distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale to a police officer/poseur buyer one (1) heat - sealed

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[1] See Notice of Appeal dated June 15, 2017; *rollo*, 18-20.

[2] *Id.* at 2-17. Penned by Associate Justice Stephen C. Cruz with Associate Justices Jose C. Reyes, Jr. and Nina G. Antonio-Valenzuela, concurring.

[3] CA *rollo*, pp. 49-55. Penned by Presiding Judge Sarah Alma M. Lim.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Both dated February 4, 2014. Records, pp. 2-3.

transparent plastic sachet containing ZERO POINT ZERO FOUR ONE (0.041) gram of white crystalline substance containing Methamphetamine Hydrochloride, commonly known as *Shabu* a dangerous drug.

Contrary to law.[6]

Criminal Case No. 14-303188

That on or about January 31, 2014, in the City of Manila, Philippines, the said accused, not having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control (1) heat - sealed transparent plastic sachet containing ZERO POINT ZERO TWO ONE (0.021) gram, of white crystalline substance containing Methamphetamine Hydrochloride, commonly known as *Shabu* a dangerous drug.

Contrary to law.[7]

The prosecution alleged that on January 30, 2014, the chief of Manila Police District (MPD) gave instructions to organize a buy-bust operation against one alias "*Kuya*" who was allegedly engaged in rampant selling of shabu at Moriones St., corner Elena St., Tondo, Manila. In response thereto, a team was formed where PO2 Richard Nieva (PO2 Nieva) was designated as the poseur-buyer, while Senior Police Officer 1[8] Brigido Cardiño and Police Officer 3 Noel R. Benitez (PO3 Benitez) served as back-ups. PO2 Nieva prepared the buy-bust money[9] and after coordinating with the Philippine Drug Enforcement Agency (PDEA), the team, together with the confidential informant, proceeded to the target area the following day. Upon arrival thereat, the informant approached Gamboa and introduced PO2

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[6] *Id.* at 2.

[7] *Id.* at 3.

[8] "Senior Police Officer 3" and "Police Officer 3" in some parts of the records.

[9] The buy-bust money was composed of two (2) pieces of one hundred peso bills, each marked with the letters "RN," representing the initials of poseur-buyer PO2 Nieva. See *rollo*, pp. 4-5.

Nieva as a buyer of *shabu*. The latter asked Gamboa if he could buy ₱200.00 worth of *shabu*, handing as payment the buy-bust money, and in turn, Gamboa gave PO2 Nieva a plastic sachet containing white crystalline substance. Afterwhich, PO2 Nieva removed his bull cap, the pre-arranged signal, prompting the back-up officers to rush towards the scene and arrest Gamboa. Subsequently, a preventive search was conducted on Gamboa, where they recovered another plastic sachet and the buy-bust money. PO2 Nieva immediately marked the two (2) plastic sachets and inventoried the items at the place of arrest in the presence of Gamboa and a media representative named Rene Crisostomo. Photographs of the confiscated items were also taken by PO3 Benitez during the marking and inventory. Thereafter, PO2 Nieva brought Gamboa and the seized drugs to the police station where PO3 Benitez prepared the Request for Laboratory Examination.[10] After securing the letter-request, PO2 Nieva delivered the same to Police Chief Inspector Erickson Calabocal (PCI Calabocal), the forensic chemist at the Philippine National Police (PNP) Crime Laboratory, who later on confirmed after examination that the substance inside the seized items were positive for methamphetamine hydrochloride or *shabu*,[11] a dangerous drug.[12]

For his part, Gamboa denied the allegations against him, claiming that on said day, he was just walking along Pavia Street[13] when three (3) unidentified men arrested him for vagrancy because of his tattoos. He was then brought to the precinct where police officers interrogated him and told him to point to something. When he refused, photographs were taken and he was later on imprisoned.[14]

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[10] Dated January 31, 2014. Records, p. 9.

[11] See Chemistry Report No. D-053-14 dated February 1, 2014; *id*. at 10.

[12] See *rollo*, pp. 4-6. See also CA *rollo*, pp. 51-52.

[13] "Pravia St., Tondo, Manila" in some parts of the records.

[14] See *rollo*, p. 6. See also CA *rollo*, p. 52.

The RTC Ruling

In a Decision[15] dated October 15, 2015, the RTC found Gamboa guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165 and, accordingly, sentenced him as follows: (*a*) in Crim. Case No. 14-303187, to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (*b*) in Crim. Case No. 14-303188, to suffer the penalty of imprisonment for an indeterminate term of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and four (4) months, as maximum, and to pay a fine of ₱300,000.00.[16] It held that the prosecution sufficiently established all the elements of the crimes of Illegal Sale and Possession of Dangerous Drugs and that, there was no break in the chain of custody of the seized drugs given that: (*a*) PO2 Nieva immediately marked and inventoried the seized items at the place of arrest; (*b*) Gamboa, an investigator, and a media representative were present during the said proceedings; (*c*) PO2 Nieva personally turned over the items for examination to PCI Calabocal; and (*d*) PCI Calabocal confirmed that the substance inside the sachets tested positive for *shabu*.[17] In addition, the RTC ruled that while a representative from the Department of Justice (DOJ) and a barangay official were absent during the inventory, the failure to strictly comply with Section 21, Article II of RA 9165 was not fatal since the police officers actually *sought the presence* of a media man to witness the proceedings.[18]

Aggrieved, Gamboa appealed[19] to the CA.

The CA Ruling

In a Decision[20] dated May 31, 2017, the CA affirmed the RTC's ruling,[21] finding all the elements of the crimes charged

[15] CA *rollo*, pp. 49-55.

[16] *Id*. at 55.

[17] See *id*. at 53.

[18] See *id*. at 54-55.

[19] See Notice of Appeal dated October 20, 2015; records, p. 79.

[20] *Rollo*, pp. 2-17.

[21] *Id*. at 16.

present as Gamboa was caught *in flagrante delicto* selling *shabu* and in possession of another sachet containing the same substance.[22] The CA ruled that the integrity and evidentiary value of the seized drugs were duly preserved, considering that the sachets remained in PO2 Nieva's possession from the time of its confiscation until they were transmitted to the PNP Crime Laboratory for examination.[23]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Gamboa's conviction for Illegal Sale and Illegal Possession of Dangerous Drugs.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[24] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[25]

Here, Gamboa was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing

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[22] See *id*. at 8-13.

[23] See *id*. at 14-16.

[24] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[25] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

sold and the payment.[26] Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[27]

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime.[28]

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[29] Under the said section, prior to its amendment by RA 10640,[30] 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

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[26] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[27] *People v. Bio*, 753 Phil. 730, 736 (2015).

[28] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[29] *People v. Sumili*, *supra* note 26, at 349-350.

[30] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002' approved on July 15, 2014.

and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[31] In the case of *People v. Mendoza*,[32] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the [seized drugs), the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of RA No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[33]

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.[34] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 — which is now crystallized into statutory law with the passage of RA 10640[35] — provide that the said inventory and photography

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[31] See Section 21 (1) and (2), Article II of RA 9165.

[32] 736 Phil. 749 (2014).

[33] *Id*. at 764; emphases and underscoring supplied.

[34] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[35] Section 1 of RA 10640 states:

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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**.[36] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[37] In *People v. Almorfe*,[38] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity**

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x"

[36] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[37] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[38] 631 Phil. 51 (2010).

and evidentiary value of the seized evidence had nonetheless been preserved.[39] Also, in *People v. De Guzman*,[40] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**[41]

In this case, the Court finds that the 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 Gamboa.

An examination of the records reveals that while the seized items were properly marked by PO2 Nieva immediately upon confiscation at the place of the arrest and in the presence of Gamboa and a media representative, the same was not done in the presence of any elected public official, as well as a representative from the DOJ. In fact, such lapse was admitted by PO2 Nieva when he stated that:

[Fiscal Maria Cielo Rubie O. Galicia (Fiscal Galicia)]: You make the marking at the place. Were there barangay officials present during the marking of the evidence, Mr. Witness?

[PO2 Nieva]: My other co-policemen went to the barangay office, ma'am.

x x x x x x x x x

Fiscal Galicia: **Were there barangay officials present?**

[PO2 Nieva]: **No, ma'am.**

[Fiscal Galicia]: Why, Mr. Witness?

[PO2 Nieva]: **No one arrived to witness**, ma'am.

x x x x x x x x x

Fiscal Galicia: Who called, Mr. Witness for this barangay official?

[PO2 Nieva]: **We called for the barangay official by the other operatives but no one went to the area**, ma'am.

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[39] *Id*. at 60.

[40] 630 Phil. 637 (2010).

[41] *Id*. at 649.

[Fiscal Galicia]: When you came to the area, what else did you do if any, Mr. Witness?

[PO2 Nieva]: The one who arrived there was the media man Mr. Rene Crisostomo, ma'am.

[Fiscal Galicia]: And what did he do if any in the area?

[PO2 Nieva]: He witnessed the evidences and he signed the form of the seized evidence, ma'am.

x x x x x x x x x[42]
(Emphases and underscoring supplied)

The law requires the presence of an elected public official, as well as representatives from the DOJ or the media to ensure that the chain of custody rule is observed and thus, remove any suspicion of tampering, switching, planting, or contamination of evidence which could considerably affect a case. However, minor deviations may be excused in situations where a justifiable reason for non-compliance is explained. In this case, despite the non- observance of the witness requirement, no plausible explanation was given by the prosecution. In an attempt to justify their actions, PO2 Nieva testified that:

[Fiscal Galicia]: You mentioned earlier that no one came to the area, no one from the barangay came to the area to witness the marking of the evidence. What barangay did you try to call, Mr. Witness?

[PO2 Nieva]: I was not the one who called but it was my companion because I was concentrated with the subject, ma'am.

[Fiscal Galicia]: Why Mr. Witness just call and why not go to the barangay and there marked the evidence?

[PO2 Nieva]: Violating the Section 21 of the Republic Act 9165 that if I transferred the evidences to the barangay not in the crime scene.

[Fiscal Galicia]: But there's no witness at the crime scene to witness the markings, no one in the barangay came?

[PO2 Nieva] Yes, ma'am but the media man arrived.

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[42] TSN, October 23, 2014, pp. 22-23.

x x x x x x x x x[43]
(Underscoring supplied)

It is well to note that the absence of these representatives does not *per se* render the confiscated items inadmissible.[44] However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced.[45] In *People v. Umipang*,[46] the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "[a] sheer statement that representatives were unavailable —without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances — is to be regarded as a flimsy excuse."[47] Verily, mere statements of unavailability, absent actual serious attempts to contact the barangay chairperson, any member of the barangay council, or other elected public official are unacceptable as justified grounds for non-compliance.[48] These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21, Article II of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable.[49]

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

[44] See *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

[45] See *id.* at 1052-1053.

[46] *Id*.

[47] *Id*. at 1053.

[48] See *id*.

[49] See *People v. Crispo*, G.R. No. 230065, March 14, 2018.

Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Gamboa have been compromised. It is settled that in a prosecution for the sale and possession of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti* failing in which, renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt.[50] Consequently, Gamboa's acquittal is in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.
>
> Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. x x x.[51]

"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

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[50] See *People v. Umipang*, *supra* note 44, at 1039-1040; citation omitted.

[51] *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."[52]

WHEREFORE, the appeal is **GRANTED**. The Decision dated May 31, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07857 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Manuel Gamboa *y* Francisco@ "Kuya" is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Caguioa*, 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 Manuel Gamboa *y* Francisco 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]

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[52] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

[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.*"

respectively. I agree that despite the non-observance of the three-witness requirement under Section 21[2] of R.A. No. 9165, no justifiable reason was proffered by the prosecution as to why the marking of the seized items immediately upon confiscation at the place of arrest was only done in the presence of appellant and a media representative, without the presence of any elected public official and a representative from the Department of Justice. 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

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[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.

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 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

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[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.
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> 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.

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[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 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

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[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 the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

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[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.

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.

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

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[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.

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.

THIRD DIVISION

[G.R. No. 234616. June 20, 2018]

PHILIPPINE DEPOSIT INSURANCE CORPORATION, *petitioner, vs.* **MANU GIDWANI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; DEFINED; COURTS ARE PRECLUDED FROM DISTURBING THE FINDINGS OF PUBLIC PROSECUTORS AND THE DEPARTMENT OF JUSTICE ON THE EXISTENCE OR NON-EXISTENCE OF PROBABLE CAUSE, UNLESS SUCH FINDINGS ARE TAINTED WITH GRAVE ABUSE OF DISCRETION; GRAVE ABUSE OF DISCRETION, ABSENT IN CASE AT BAR.— Hornbook doctrine is that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. x x x Grave abuse of discretion had been defined in jurisprudence to mean a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross so 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. x x x In the assailed Decision, the CA held that SOJ Caparas gravely abused his discretion when he superseded the earlier resolutions of the DOJ Task Force and of SOJ Justiniano even though there was no new evidence offered by PDIC to justify the reversal. x x x The Court strongly disagrees with this pronouncement. x x x In resolving the motion for reconsideration lodged with his office and in exercising jurisdiction, SOJ Caparas has the power and discretion to make his own personal assessment of the pleadings and evidence subject of review. He is not bound by the rulings of his predecessors because there is yet to be a final resolution of the issue; the matter is still *pending* before his office after all. To hold otherwise would render the filing of the motion a futile exercise, and the recourse, pointless.

2. ID.; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; GENERALLY CONSIDERED AS THE PLAIN, SPEEDY, AND ADEQUATE REMEDY THAT IS A CONDITION *SINE QUA NON* TO THE FILING OF A PETITION FOR *CERTIORARI*; MAY BE GRANTED ON SPECIFIC GROUNDS EVEN WITHOUT NEW OR ADDITIONAL EVIDENCE.— Jurisprudence teaches, in a litany of cases, that a motion for reconsideration is generally considered as the plain, speedy, and adequate remedy that is a condition *sine qua non* to the filing of a petition for certiorari, within the contemplation of Rule 65, Section 1 of the Rules of Court. But if the judicial or quasi-judicial body would be precluded from overruling its earlier pronouncement on reconsideration, then a motion for reconsideration would be no remedy at all, let alone one that is plain, speedy, and adequate. The treatment of a motion for reconsideration is then not a ministerial function that can only result in the denial thereof. It was therefore plain error on the part of the CA to have ruled that SOJ Caparas virtually had no option but to affirm the findings of the DOJ Task Force and of SOJ Justiniano as to the alleged absence of probable cause to charge respondent. That no new evidence was offered by PDIC on reconsideration is of no moment. x x x [A] motion for reconsideration may be granted if (1) the damages awarded are excessive, (2) the evidence is insufficient to justify the decision or final order, or (3) the decision or final order is contrary to law. The judicial or quasi-judicial body concerned may arrive at any of the three enumerated conclusions even without requiring additional evidence. To be sure, the introduction of newly discovered additional evidence is a ground for new trial or a *de novo* appreciation of the case, but not for the filing of a motion for reconsideration. Judicial proceedings even prohibit the practice of introducing new evidence on reconsideration since it potentially deprives the opposing party of his or her right to due process. While quasi-judicial bodies in administrative proceedings may extend leniency in this regard and allow the admission of evidence offered on reconsideration or on appeal, this is merely permissive and does not translate to a requirement of attaching additional evidence to support motions for reconsideration.

3. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA OR SWINDLING UNDER PARAGRAPH 2 (A) OF ARTICLE 315 THEREOF; ELEMENTS.— Jurisprudence elucidates that

the elements of *estafa* or swindling under paragraph 2 (a) of Article 315 of the RPC are the following: 1. That there must be a false pretense, fraudulent act or fraudulent means; 2. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; 3. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means; 4. That as a result thereof, the offended party suffered damage.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; THE FUNCTION OF THE INVESTIGATING PROSECUTOR IS THE DETERMINATION OF PROBABLE CAUSE, NOT THE GUILT OR INNOCENCE OF THE ACCUSED; PROBABLE CAUSE TO CHARGE RESPONDENT FOR ESTAFA AND MONEY LAUNDERING, ESTABLISHED IN CASE AT BAR.— In the assailed Decision, the CA did not give credence to the allegations of PDIC. It ruled instead that "PDIC failed to prove that [Manu] is the owner of all subject bank accounts or financed the same" and, as such, Manu could not be considered to have committed false pretenses or misrepresentation against PDIC. We disagree. It must be recalled that the criminal case is still in the stage of preliminary investigation. Under Rule 112, Section 1 of the Rules of Court, a preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law. The occasion is not for the full and exhaustive display of the parties since the function of the investigating prosecutor is not to determine the guilt or innocence of an accused. Whether or not there indeed existed an agreement between respondent Manu and the individual depositors is a matter best left ventilated during trial proper, where evidence can be presented and appreciated fully. Suffice it to state for now that the Court herein finds probable cause to charge respondent for estafa and money laundering.

5. MERCANTILE LAW; BANKING LAWS; REPUBLIC ACT NO. 3591, AS AMENDED (PHILIPPINE DEPOSIT

INSURANCE CORPORATION CHARTER); ENTITLEMENT TO A DEPOSIT INSURANCE IS BASED NOT ON THE NUMBER OF BANK ACCOUNTS HELD, BUT ON THE NUMBER OF BENEFICIAL OWNERS; CASE AT BAR.— Under Republic Act No. 3591 (PDIC Charter), as amended, all deposits in a bank maintained in the same right and capacity for a depositor's benefit, either in his name or in the name of others, shall be added together for the purpose of determining the insured deposit amount due to a bona fide depositor, which amount should not exceed the maximum deposit insurance coverage (MDIC) of ₱250,000.00. Thus, the entitlement to a deposit insurance is based *not* on the number of bank accounts held, but on the number of beneficial owners. It is this government policy and ₱250,000.00 threshold that respondent Manu purportedly circumvented by conspiring with the 86 individuals. If not for the fact that the 683 Landbank crossed checks amounting to ₱97,733,690.21 were deposited in the RCBC account of respondent Manu, petitioner would not have gotten wind of this probable concealment of true ownership over the subject bank accounts.

6. ID.; NEGOTIABLE INSTRUMENTS LAW; CHECKS; A CROSSED CHECK IS ONE WHERE TWO PARALLEL LINES ARE DRAWN ACROSS ITS FACE OR ACROSS ITS CORNER; EFFECTS OF CROSSING A CHECK; CASE AT BAR — A crossed check is one where two parallel lines are drawn across its face or across its corner, and carries with it the following effects: (a) the check may not be encashed but only deposited in the bank; **(b) the check may be negotiated only once to the one who has an account with the bank**; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose and he must inquire if he received the check pursuant to this purpose; otherwise, he is not a holder in due course. **In other words, the crossing of a check is a warning that the check should be deposited only in the account of the payee.** Thus, to the mind of the Court, the act of depositing second-endorsed crossed-checks in the name of 86 different payees under a single account is highly irregular if not potentially criminal.

APPEARANCES OF COUNSEL

PDIC Office of the General Counsel for petitioner.
Andres Padernal & Paras Law Office for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

For the Court's consideration is the Petition for Review on Certiorari under Rule 45 of the Rules of Court filed by Philippine Deposit Insurance System (PDIC) and docketed as G.R. No. 234616. The petition assails the January 31, 2017 Decision[1] and October 6, 2017 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 146439. The challenged rulings reversed the finding of probable cause to charge respondent Manu Gidwani (Manu) with estafa through falsification under Art. 315(2)(a) in relation to Art. 172(1) and 171(4) of the Revised Penal Code (RPC), and for money laundering as defined in Section 4(a) of Republic Act No. (RA) 9160, otherwise known as the Anti-Money Laundering Act of 2001 (AMLA).

The Facts

Pursuant to several resolutions of the Monetary Board (MB) of the Bangko Sentral ng Pilipinas (BSP), the following rural banks owned and controlled by the Legacy Group of Companies (Legacy Banks) were ordered closed and thereafter placed under the receivership of petitioner Philippine Deposit Insurance Corporation (PDIC):[3]

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[1] Penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Ricardo R. Rosario and Marie Christine Azcarraga-Jacob.

[2] *Rollo*, p. 80.

[3] *Id.* at 11.

Name of Bank	MB Resolution No.	Date of Closure
Nation Bank, Inc.	1691	12/19/08
Rural Bank of Carmen, Inc.	1695	12/19/08
Dynamic Rural Bank, Inc.	1652	12/16/08
San Pablo Development Bank, Inc.	1653	12/16/08
Bank of East Asia, Inc.	1647	12/12/08
First Interstate Bank, Inc.	1648	12/12/08
Philippine Countryside Rural Bank, Inc.	1649	12/12/08
Rural Bank of San Jose, Inc.	1637	12/11/08
Pilipino Rural Bank, Inc.	1638	12/11/08
Rural Bank of Bais, Inc.	1639	12/11/08
Rural Bank of Paranaque, Inc.	1616	12/09/08
Rural Bank of DARBCI, Inc.	1692	12/19/08
Rural Bank of Polangui, Inc.	353	02/26/10

Respondent Manu, together with his wife Champa Gidwani and eighty-six (86) other individuals, represented themselves to be owners of four hundred seventy-one (471) deposit accounts with the Legacy Banks and filed claims with PDIC. The claims were processed and granted, resulting in the issuance of six hundred eighty-three (683) Landbank of the Philippines (Landbank) checks in favor of the 86 individuals, excluding the spouses Gidwani, in the aggregate amount of ₱98,733,690.21.

Two diagonal lines appeared in each of the Landbank checks, indicating that they were crossed-checks "Payable to the Payee's Account Only." Despite these explicit instructions, the individuals did not deposit the crossed checks in their respective bank accounts. Rather, the face value of all the checks were credited to a single account with Rizal Commercial Banking Corporation (RCBC) – RCBC Account No. 1-419-86822-8, owned by Manu.

PDIC alleges that it only discovered the foregoing circumstance when the checks were cleared and returned to it. This prompted PDIC to conduct an investigation on the true nature of the deposit placements of the 86 individuals. Based on available bank documents, the spouses Gidwani and the 86

individuals maintained a total of 471 deposit accounts aggregating ₱118,187,500 with the different Legacy Banks, and that 142 of these accounts, with the total amount of ₱20,966,439.09, were in the names of helpers and rank-and-file employees of the Gidwani spouses. Thus, they allegedly did not have the financial capacity to deposit the amounts recorded under their names, let alone make the deposits in various Legacy Banks located nationwide. PDIC likewise noted that advance interests on several of the deposits were paid to the Gidwani spouses even though they are not the named owners of the accounts.

It is PDIC's contention, therefore, that the Gidwani spouses and the 86 individuals, with the indispensable cooperation of RCBC, deceived PDIC into issuing the 683 checks with the total face value of ₱98,733,690.21. Petitioner posits that the 86 individuals are not entitled to the proceeds of the deposit insurance since they are not the true owners of the accounts with the Legacy Banks, albeit recorded under their names. Rather, it is the spouses Gidwani who are the true beneficial owners thereof and can only be entitled to a maximum deposit coverage of ₱250,000.00 each pursuant to Sec. 4(g) of the PDIC Charter, as amended. However, with wilful malice and intent to circumvent the law, the Gidwani spouses made it appear that the deposits for which the insurance was paid were owned by 86 distinct individuals when, in truth and in fact, all the deposits were maintained for the sole benefit of the Gidwani spouses.

Pursuant to its mandate to safeguard the deposit insurance fund against illegal schemes and machinations, PDIC, on November 6, 2012, lodged a criminal complaint[4] before the Department of Justice (DOJ) Task Force on Financial Fraud (DOJ Task Force) for estafa through falsification under Art. 315(2)(a) in relation to Art. 172(1) and 171(4) of the Revised Penal Code and for money laundering as defined in Section 4(a) of AMLA against the Gidwani spouses and the 86 other individuals. To summarize, the complaint against the respondents, docketed as I.S. No. XVI-INV-12K-00480, was built on the following circumstances:

[4] *Id.* at 100.

a. 683 crossed-checks "for payees account only," representing deposit insurance aggregating ₱98,733,690.21, were issued to the 86 individuals. Of the amount stated, ₱97,733,690.21 was deposited to an account controlled by the Spouses Manu and Champa Gidwani;

b. The funds used to open the questioned deposit accounts were from a single source;

c. Advance interests on deposits not in the name of the Gidwani spouses were paid to Manu;

d. 55 of the 86 individual respondents used as their mailing addresses either or both the home and business addresses of the principal respondents.[5]

In their counter-affidavits, the Gidwani spouses denied the charges against them, particularly on being owners of the accounts in question.[6] In brief, they claimed that there was no falsification committed by them since what was stated about the 86 individuals being the owners of their respective accounts was true. Manu merely had a fund management agreement with the depositors who got into investing with the Legacy Banks because of him. They sought his help in setting up investment portfolios and in managing them. The funds that were remitted for him to manage were then placed in the different Legacy Banks under their names to prevent co-mingling of funds.[7]

The circumstances brought to fore by the PDIC do not negate the fact of ownership of the other individual depositors, so Manu claimed.[8]

First, he explained that he funded the opening of some of the accounts in the name of the depositors merely for convenience and practicality, and in order to avail of better rates and freebies.

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[5] *Id.* at 611.

[6] *Id.* at 567.

[7] *Id.* at 568.

[8] *Id.* at 568-570.

He also lamented that PDIC left out the fact that the other accounts were funded by respondents themselves.

Second, it was the Legacy Banks themselves that requested that advanced interests for the accounts being managed by Manu as a group to be paid to him, to which set-up the individual depositors agreed for convenience.

Third, the crossed-checks issued by PDIC ended up in his RCBC account because the other respondents did not have other accounts of their own. The payees then requested him to advance the value of their checks in exchange thereof. Manu adds that there was nothing illegal with the arrangement since the checks, although crossed, bore the endorsement of the payees or their duly authorized representatives.

Fourth, the depositors had been using Manu's business and residential address because some of them live abroad and stay at Manu's residence when in the Philippines. This is aside from the fact that it is Manu who was managing their accounts and had to deal with all concerns relating thereto.

Finally, respondent Manu pointed out that PDIC approved and realized the insurance claims not because of any perceived misrepresentation, but because PDIC itself verified that the individual respondents were in fact the owners of the subject bank accounts.

Resolutions of the Department of Justice

On January 14, 2014, the DOJ Task Force promulgated a Resolution[9] dismissing the Complaint in the following manner:

WHEREFORE, on premises considered, the above-entitled complaint is recommended **DISMISSED** for lack of probable cause.

SO RESOLVED.

The DOJ Task Force's rationale in dismissing the complaint is that the voluminous records of the case allegedly do not support the theory that Manu owned all of the accounts in question,

[9] *Id.* at 559.

much less falsified commercial and official documents in claiming insurance deposits. It found that less than half of the accounts in question were funded by Manu through his RCBC account while the rest were funded by the account holders themselves.

PDIC's motion for reconsideration from the January 14, 2014 Resolution was denied through the DOJ Task Force's Resolution[10] dated December 3, 2014. Unperturbed, PDIC interposed a petition for review with the Office of the Secretary of Justice (SOJ).

On September 11, 2015, then Undersecretary of Justice Jose F. Justiniano issued a Resolution (Justiniano Resolution)[11] denying PDIC's appeal thusly:

> WHEREFORE, premises considered, the petition is hereby DENIED.
>
> SO ORDERED.[12]

Based on the Justiniano Resolution, PDIC failed to overcome the presumption of ownership over the subject deposits. On the contrary, the respondents bolstered their position by proffering a practical and plausible set-up, pursuant to an internal fund management agreement, that resulted in Manu's relation with the subject deposits.[13]

Moreover, PDIC allegedly failed to prove that respondents lied in their insurance claims. Respondents could not have worked fraud into the claims without detection under the rigorous claims process. Rather, the fault in the perceived error in payment lies with PDIC for its negligence in processing the claims, in failing to conduct a thorough investigation, and in its failure to detect the red flags earlier on.

On June 3, 2016, then SOJ Emmanuel Caparas, however, overturned the Justianio Resolution through his own ruling

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[10] *Id*. at 609.

[11] *Id*. at 658.

[12] *Id*. at 672.

[13] *Id*. at 663.

granting PDIC's motion for reconsideration (Caparas Resolution).[14] The dispositive portion of the ruling states:

> **WHEREFORE**, the motion for reconsideration is hereby **GRANTED**. The Resolution of this Office dated 11 September 2015, and the Resolutions dated 14 January 2014 and 03 December 2014 of the DOJ-Task Force on Financial Fraud, are hereby **REVERSED** and **SET ASIDE**.
>
> The Prosecutor General is hereby directed to: (1) file separate informations for the complex crime of estafa under Article 315(2)(a) in relation to Articles 172(1) and 171(4) of the Revised Penal Code against each of the respondents pursuant to the attached Annex "A"; (2) file the corresponding informations for violation of Article 183 of the Revised Penal Code against the respondents, except as to respondents RCBC and Andrew Jereza and respondents Manu and Champa Gidwani; (3) file the corresponding informations for violation of Section 4(a) of the Anti-Money Laundering Act of 2001 or R.A. 9160 against the 86 respondents and respondents Spouses Manu and Champa Gidwani, and for violation of Section 4(c) of the Anti-Money Laundering Act against respondent Andrew Jereza; and (4) to report the action taken thereon within ten (10) days from receipt hereof.
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> **SO ORDERED.**[15]

In so ruling, SOJ Caparas ratiocinated that, on the charge of estafa through falsification, the individual depositors committed false pretenses when they made it appear that they were the legitimate owners of the subject bank accounts with the Legacy Banks, which information was used in the processing of the insurance claims with PDIC, even when in truth and in fact, the accounts were owned and controlled by Manu. Had the depositors truthfully divulged to PDIC that the true and beneficial owner of the subject bank accounts was Manu, PDIC would not have been duped into treating the bank accounts individually and separately. It would have only paid the Gidwani Spouses ₱250,000.00, and not ₱98,733,690.21.[16]

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[14] *Id*. at 693.

[15] *Id*. at 701-702.

[16] *Id*. at 698.

SOJ Caparas did not give credence to the defense that there existed a fund management agreement between Manu, on the one hand, and the 86 respondents, on the other. For aside for the self-serving and barren allegation, no other piece of evidence was offered to support the claim. Besides, a fund management agreement, being essentially an investment contract, would have required registration with the Securities and Exchange Commission, so SOJ Caparas ruled.[17]

Aggrieved, several of the respondents filed their respective motions for reconsideration of the Caparas Resolution. Meanwhile, herein respondent Manu immediately elevated the matter to the CA, ascribing grave abuse of discretion on the part of SOJ Caparas in finding probable cause to charge him with estafa and for violation of the AMLA. The case was docketed as CA-G.R. SP No. 149497.

On November 29, 2016, SOJ Vitaliano N. Aguirre granted the motions for reconsideration of several of Manu's co-respondents *a quo,* reinstating the Justiniano Resolution.[18]

Ruling of the Court of Appeals

Through its challenged January 31, 2017 Decision, the CA reversed the Caparas Resolution, thusly:

WHEREFORE, petition is **GRANTED**. The Resolution dated June 3, 2016 of then DOJ Secretary Emmanuel L. Caparas is **ANNULED** and **SET ASIDE.** Resultantly, the DOJ Resolutions dated September 11, 2015, dismissing the Complaint of Philippine Deposit Insurance Corporation is **REINSTATED**.

The Prosecutor General is hereby **DIRECTED** to cause the withdrawal of any Information that might have been filed in court against the petitioner, if any, based on the Resolution dated June 3, 2016.

SO ORDERED.

According to the CA, SOJ Caparas gravely abused his discretion when he reversed and set aside the earlier resolutions

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[17] *Id*. at 698-699.

[18] *Id*. at 800.

of the DOJ Task Force and of SOJ Justiniano even though no new evidence was offered by PDIC to support its allegations against Manu and his co-respondents.

Additionally, the CA held that a review of PDIC's complaint would show that the allegations against Manu were not sufficient to constitute the offense of estafa or money-laundering. PDIC could not be deemed to have been deceived by the Gidwani spouses and the 86 other individuals since the latter are the true owners and depositors of the accounts and monies involved. Their insurance claims were granted after undergoing the tedious verification and investigation process performed by PDIC itself. Based on PDIC's own evaluation then, the individual depositors were indeed the true owners of the accounts.[19]

The CA upheld the presumption that a depositor is presumed to be the owner of funds standing in his name in a bank deposit, and ruled that the circumstances alleged by PDIC do not dovetail with its theory that the subject accounts were owned solely by the spouses Gidwani. For the appellate court, the opening of the accounts, the use of the mailing address, the transmittal of advance interests, and the subsequent deposit of the checks in the RCBC account of the Gidwani spouses are not indications of ownership. Rather, they confirm the defense that an arrangement had been made between the spouses and the individual depositors on the management of the latter's funds.[20] Consequently, the claims filed before the PDIC cannot be deemed as falsified claims.

PDIC moved for reconsideration from this adverse ruling, but the CA affirmed its earlier ruling through its October 6, 2017 Resolution. This brings us to the instant recourse.

The Issues

PDIC's petition is hinged on the following assignment of errors:

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[19] *Id*. at 73.

[20] *Id*. at 76.

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN TAKING COGNIZANCE OF RESPONDENT MANU GIDWANI'S PETITION FOR CERTIORARI UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE TO ASSAIL THE CAPARAS RESOLUTION DESPITE HIS FAILURE TO FILE A MOTION FOR RECONSIDERATION WITH THE DOJ PRIOR TO THE FILING OF THE PETITION FOR CERTIORARI

II.

WHETHER OR NOT THE CAPARAS RESOLUTION BECAME FINAL AND EXECUTORY INSOFAR AS RESPONDENT MANU GIDWANI IS CONCERNED FOR FAILURE TO ASSAIL THE CAPARAS RESOLUTION THROUGH A MOTION FOR RECONSIDERATION

As can be gleaned, PDIC stated purely procedural issues in its petition for review. Nevertheless, the allegations in the petition are sufficient for Us to delve into the issue of whether or not the CA erred in finding that SOJ Caparas acted in grave abuse of discretion in overturning the Justiniano Resolution even though no additional evidence was adduced by PDIC to support its claim.

For his part, respondent Gidwani maintains that the complaint is based on nothing more than PDIC's suspicion that the subject bank accounts were actually owned by him and his spouse; that the presumption that each individual depositor is the owner of the funds under his name in a bank deposit was not refuted by PDIC; that the circumstances surrounding the case confirm the arrangement for fund management between the spouses Gidwani and the individual depositors; that the individual depositors confirmed their ownership over the deposited funds; and that PDIC itself acted on the applications of the individual claimants and effectively ruled on the legitimacy of their claims by approving the same.

The Court's Ruling

The petition is meritorious.

The CA erred in ruling that SOJ Caparas gravely abused

his discretion in reversing the Justiniano Resolution absent additional evidence from PDIC

Hornbook doctrine is that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing criminal informations, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction.[21] As explicated in *Aguilar v. Department of Justice (Aguilar)*:[22]

> [t]he rationale behind the general rule rests on the principle of separation of powers, dictating that the determination of probable cause for the purpose of indicting a suspect is properly an executive function; while the exception hinges on the limiting principle of checks and balances, whereby the judiciary, through a special civil action of certiorari , has been tasked by the present Constitution "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

Grave abuse of discretion had been defined in jurisprudence to mean a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross so 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.[23] The underlying principle behind the courts' power to review a public prosecutor's determination of probable cause is to ensure that the latter acts within the permissible bounds of his authority or does not gravely abuse the same. This manner of judicial review is a constitutionally-enshrined form of check and balance which underpins the very core of our system of government.[24]

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[21] *Aguilar v. Department of Justice*, G.R. No. 197522, September 11, 2013.

[22] *Id*.

[23] *Chua v. People of the Philippines,* G.R. No. 195248, November 22, 2017.

[24] *Aguilar v. Department of Justice*, *supra* note 21.

In the assailed Decision, the CA held that SOJ Caparas gravely abused his discretion when he superseded the earlier resolutions of the DOJ Task Force and of SOJ Justiniano even though there was no new evidence offered by PDIC to justify the reversal. To quote the CA:

> There is nothing new in the evidence revisited, reviewed and reassessed by Secretary Caparas from those initially studied and examined by the investigating panel who have the opportunity to sift first hand these evidence. Considering that the fact finding panel of the DOJ found no prima facie case against the petitioner, a fact affirmed by the DOJ Secretary through Undersecretary Justiniano, great restraint should have been exercised by Secretary Caparas in reversing the findings of the investigating panel during the preliminary investigation. There were no new evidence presented in the motion for reconsideration of PDIC that would compel Secretary Caparas to rule otherwise. It must be stressed that the panel had already determined an independent finding or recommendation that no probable cause exists against the petitioner. In overturning the said findings and recommendations of the [DOJ Task Force], he acted in an arbitrary and despotic manner by reason of passion or personal hostility.
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> x x x x x x x x x
>
> x x x It must be pointed out that the petition for review was already resolved by the DOJ Secretary through Undersecretary Justiniano. In other words, the power of the DOJ Secretary to review, approve, reverse or modify acts and decisions of his subordinate officials or unit had already been performed as in fact, the then Secretary believed on the theory of the petitioner through Undersecretary Justiniano. The question therefore may be asked — after he assumed the position of Acting Secretary of Justice, can Caparas again make a second look on the said complaint and act favourably on PDIC's motion for reconsideration taking into account that what the latter had presented in its motion are the same arguments and theories already threshed out by his predecessor making its motion as a *pro forma* motion? Since a resolution had already been promulgated by the investigating panel and reviewed by the previous Secretary of Justice, the motion for reconsideration has to be denied if only to write finis to this controversy, otherwise it will open gates to endless litigation and probable miscarriage of justice.[25] (words in brackets added)

[25] *Rollo*, pp. 69-70.

The Court strongly disagrees with this pronouncement.

The filing of a motion for reconsideration is not mere formality, but an opportunity for a judicial or quasi-judicial body to correct imputed errors, in fact or in law, in its findings and conclusions.[26] The office of the motion is *precisely* to grant the investigating body, the DOJ in this case, the opening to give a second hard look at the matter at hand, and to determine if its previous ruling is in accord with evidence on record and statute.

In resolving the motion for reconsideration lodged with his office and in exercising jurisdiction, SOJ Caparas has the power and discretion to make his own personal assessment of the pleadings and evidence subject of review. He is not bound by the rulings of his predecessors because there is yet to be a final resolution of the issue; the matter is still *pending* before his office after all. To hold otherwise would render the filing of the motion a futile exercise, and the recourse, pointless.

Jurisprudence teaches, in a litany of cases, that a motion for reconsideration is generally considered as the plain, speedy, and adequate remedy that is a condition *sine qua non* to the filing of a petition for certiorari,[27] within the contemplation of Rule 65, Section 1 of the Rules of Court.[28] But if the judicial or quasi-judicial body would be precluded from overruling its earlier pronouncement on reconsideration, then a motion for reconsideration would be no remedy at all, let alone one that is plain, speedy, and adequate.

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[26] *National Housing Authority v. Court of Appeals*, G.R. No. 144275, July 5, 2001.

[27] *Id.*

[28] Section 1. Petition for *certiorari*. When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of [its or his] jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The treatment of a motion for reconsideration is then not a ministerial function that can only result in the denial thereof. It was therefore plain error on the part of the CA to have ruled that SOJ Caparas virtually had no option but to affirm the findings of the DOJ Task Force and of SOJ Justiniano as to the alleged absence of probable cause to charge respondent.

That no new evidence was offered by PDIC on reconsideration is of no moment. For under Section 13 of Department Circular No. 70 of the DOJ, otherwise known as the 2000 National Prosecutorial Service Rule on Appeal (2000 NPS Rules), the party aggrieved by the ruling of the SOJ during the preliminary investigation may file a motion for reconsideration within a non-extendible period of ten (10) days from notice. Quite conspicuous, however, is that the 2000 NPS Rules does not specify the grounds for filing the said motion. In this regard, the Court refers to the Rules of Court for guidance.

Rule 1, Section 4 of the Rules of Court provides that the rules can be applied in a suppletory character. It means that the provisions in the Rules of Court will be made to apply where there is deficiency or an insufficiency in the applicable rule.[29] Thus, even though the 2000 NPS Rules is lacking in specifics insofar as the grounds for a motion for reconsideration is concerned, Rule 37 of the Rules of Court bridges the breach. Pertinently, Rule 37, Section 1 states:

RULE 37

New Trial or Reconsiderations

Section 1. *Grounds of and period for filing motion for new trial or reconsideration*. — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

[29] *Government Service Insurance System v. Villaviza*, G.R. No. 180291, July 27, 2010.

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the **aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.** (emphasis added)

As can be gleaned, a motion for reconsideration may be granted if (1) the damages awarded are excessive, (2) the evidence is insufficient to justify the decision or final order, or (3) the decision or final order is contrary to law. The judicial or quasi-judicial body concerned may arrive at any of the three enumerated conclusions even without requiring additional evidence. To be sure, the introduction of newly discovered additional evidence is a ground for new trial or a *de novo* appreciation of the case, but not for the filing of a motion for reconsideration. Judicial proceedings even prohibit the practice of introducing new evidence on reconsideration since it potentially deprives the opposing party of his or her right to due process. While quasi-judicial bodies in administrative proceedings may extend leniency in this regard and allow the admission of evidence offered on reconsideration or on appeal,[30] this is merely permissive and does not translate to a requirement of attaching additional evidence to support motions for reconsideration.

The CA erred in ruling that SOJ Caparas gravely abused his discretion in finding probable cause

Proceeding to the crux of the controversy, the Court now resolves whether or not the CA erred in dismissing due to lack of probable cause the criminal complaint for estafa through falsification under Art. 315(2)(a) in relation to Art. 172(1)[31]

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[30] *Scisan v. NLRC*, G.R. No. 176240, October 17, 2008.

[31] **Article 172.** *Falsification by private individual and use of falsified documents.* — x x x

and 171(4)[32] of the RPC, and for money laundering as defined in Section 4(a) of RA 9160. Here, the legal proscriptions purportedly violated by respondent read:

Article 315. *Swindling (estafa).* — x x x

x x x x x x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

x x x x x x x x x

Section 4. *Money Laundering Offense.* — Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:

a. Any person knowing that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.

Jurisprudence elucidates that the elements of *estafa* or swindling under paragraph 2 (a) of Article 315 of the RPC are the following:[33]

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1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; x x x

[32] **Article 171.** *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prision mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

4. Making untruthful statements in a narration of facts.

[33] *Sy v. People of the Philippines,* G.R. No. 183879, April 14, 2010.

1. That there must be a false pretense, fraudulent act or fraudulent means;
2. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;
3. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means;
4. That as a result thereof, the offended party suffered damage.

According to PDIC, the crime charged was committed when the 86 other individuals fraudulently declared that they are the bona fide owners of 471 deposits with the legacy banks; that the purported depositors, in conspiracy with Manu, falsified official documents by making the untruthful statement of ownership in their deposit insurance claims; that PDIC relied on the representations of the claimants when it released to them the deposit insurance proceeds amounting to ₱98,733,690.21, of which ₱97,733,690.21 was deposited to the RCBC account of Manu Gidwani; and that the government suffered damage when PDIC discovered upon investigation that Manu was the sole beneficial owner of the bank accounts.

In the assailed Decision, the CA did not give credence to the allegations of PDIC. It ruled instead that "PDIC failed to prove that [Manu] is the owner of all subject bank accounts or financed the same" and, as such, Manu could not be considered to have committed false pretenses or misrepresentation against PDIC.

We disagree.

It must be recalled that the criminal case is still in the stage of preliminary investigation. Under Rule 112, Section 1 of the Rules of Court, a preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court

of law.[34] The occasion is not for the full and exhaustive display of the parties since the function of the investigating prosecutor is not to determine the guilt or innocence of an accused.

In this case, the PDIC reportedly discovered that there was only one beneficial owner of the 471 bank accounts with the Legacy Banks of the 86 individual depositors — respondent Manu. To illustrate, PDIC reportedly discovered that 142 of these 471 accounts, with the total amount of ₱20,966,439.09, were in the names of helpers and rank-and-file employees of the Gidwani spouses who do not have the financial capacity to deposit the amounts recorded under their names, *viz*:[35]

Respondent	**Occupation**	**No. of Bank Accounts/ Checks Received**	**Insurance Received (Php)**
Julie Alib	Helper	27	3,980,054.55
Erlyn Aragon	Helper	22	3,106,040.63
Lorlyn Arellano	Helper	27	3,891,289.95
Faith Jabagat	Sales Girl at Glory Bazar	6	978,063.16
Kenny Matani	Sales Manager at Glory Bazar	24	3,513,734.40
Lourdes Matani	Sales Girl at Glory Bazar	12	1,812,057.21
Rodin Mixdon	Technician at Glory Bazar	2	250,000.00
Gerline Molines	Sales Girl at Glory Bazar	6	938,803.69
Francisca Talatala	Sales Clerk at Glory Bazar	6	908,242.61
Emily Taleon	Sales Girl at Glory Bazar	10	1,588,152.94
	Total	**142**	**20,966,439.09**

Moreover, the helpers and rank-and-file employees who reside and are employed in Bacolod City maintained bank accounts in Legacy Banks located in different parts of the country:[36]

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[34] *Claridad v. Esteban,* G.R. No. 191567, March 20, 2013.

[35] *Rollo*, p. 17.

[36] *Id*. at 17-19.

Respondent	**Banks**	**Location**
Julie Alib (27 accounts)	Rural Bank of Bais, Inc.	Mandaue City, Cebu
	Rural Bank of DARBCI, Inc.	South Cotabato
	Rural Bank of San Jose, Inc.	San Jose, Batangas
	San Pablo Development Bank, Inc.	San Pablo, Laguna
	Bank of East Asia, Inc.	Minglanilla, Cebu
	Nation Bank, Inc.	Bacolod City, Negros Occidental
	Philippine Countryside Rural Bank, Inc.	Lapu-Lapu City, Cebu
	Pilipino Rural Bank, Inc.	Dumaguete City, Negros Oriental
	Rural Bank of Carmen, Inc.	West Cogon, Cebu
	Rural Bank of Polangui, Inc.	Polangui, Albay
Erlyn Aragon (22 accounts)	Pilipino Rural Bank, Inc.	Bacolod City, Negros Occidental
	Rural Bank of Bais, Inc. (Home Office)	Bais City, Negros Oriental
	Rural Bank of Bais, Inc. (Mandaue)	Mandaue City, Cebu
	Rural Bank of Polangui, Inc.	Polangui, Albay
	Rural Bank of San Jose, Inc.	San Jose, Batangas
	San Pablo Development Bank, Inc.	San Pablo, Laguna
	Nation Bank, Inc.	Bacolod City, Negros Occidental
	Philippine Countryside Rural Bank, Inc.	Lapu-Lapu City, Cebu
	Rural Bank of Carmen, Inc.	West Cogon, Cebu
	Rural Bank of Paranaque, Inc. (Pasig)	Pasig City, Metro Manila
Lorlyn Arellano(27 accounts)	Nation Bank, Inc.	Bacolod City, Negros Occidental
	Rural Bank of Bais, Inc. (Home Office)	Bais City, Negros Oriental
	Rural Bank of Bais, Inc. (Mandaue)	Mandaue City, Cebu
	Rural Bank of Polangui, Inc.	Polangui, Albay
	Rural Bank of San Jose, Inc.	San Jose, Batangas
	San Pablo Development Bank, Inc.	San Pablo, Laguna
	Bank of East Asia, Inc.	Minglanilla, Cebu

	Philippine Countryside Rural Bank, Inc. Pilipino Rural Bank, Inc. Rural Bank of DARBCI, Inc. Rural Bank of Paranaque, Inc. (Pasig)	Lapu-Lapu City, Cebu Dumaguete City, Negros Oriental South Cotabato Pasig City, Metro Manila
Faith Jabagat (2 accounts)	Nation Bank, Inc. Philippine Countryside Rural Bank, Inc.	Bacolod City, Negros Occidental Lapu-Lapu City, Cebu
Kenny Matani(24 accounts)	Nation Bank, Inc. Philippine Countryside Rural Bank, Inc. Rural Bank of Bais, Inc. (Mandaue) Rural Bank of DARBCI, Inc. Rural Bank of Carmen, Inc. Rural Bank of San Jose, Inc. San Pablo Development Bank, Inc. Bank of East Asia, Inc. Rural Bank of Paranaque, Inc. (Pasig)	Bacolod City, Negros Occidental Liloan, Cebu Mandaue City, Cebu South Cotabato West Cogon, Cebu San Jose, Batangas San Pablo, Laguna Minglanilla, Cebu Pasig City, Metro Manila
Lourdes Matani (12 accounts)	Nation Bank, Inc. Philippine Countryside Rural Bank, Inc. Rural Bank of Bais, Inc. (Mandaue) San Pablo Development Bank, Inc. Rural Bank of Paranaque, Inc. (Pasig)	Bacolod City, Negros Occidental Lapu-Lapu City, Cebu Mandaue City, Cebu San Pablo, Laguna Pasig City, Metro Manila
Rodin Mixdon (2 accounts)	Rural Bank of Bais, Inc. (Mandaue)	Mandaue City, Cebu
Gerline Molines (6 accounts)	Nation Bank, Inc. Philippine Countryside Rural Bank, Inc. Rural Bank of Bais, Inc. (Mandaue)	Bacolod City, Negros Occidental Lapu-Lapu City, Cebu Mandaue City, Cebu

Francisca Talatala (6 accounts)	Nation Bank, Inc. Philippine Countryside Rural Bank, Inc. Rural Bank of Bais, Inc. (Mandaue)	Bacolod City, Negros Occidental Lapu-Lapu City, Cebu Mandaue City, Cebu
Emily Taleon (10 accounts)	Nation Bank, Inc. Rural Bank of Bais, Inc. (Home Office) Rural Bank of Bais, Inc. (Mandaue) San Pablo Development Bank, Inc. Philippine Countryside Rural Bank, Inc.	Bacolod City, Negros Occidental Bais City, Negros Oriental Mandaue City, Cebu San Pablo, Laguna Lapu-Lapu City, Cebu

That these individuals reported either respondent Manu's office or business address as their own further arouses serious suspicion on the true ownership of the funds deposited. It gives the impression that they had been used by respondent as dummies, and their purported ownership mere subterfuge, in order to increase the amount of his protected deposit.

Under Republic Act No. 3591 (PDIC Charter), as amended, all deposits in a bank maintained in the same right and capacity for a depositor's benefit, either in his name or in the name of others, shall be added together for the purpose of determining the insured deposit amount due to a bona fide depositor, which amount should not exceed the maximum deposit insurance coverage (MDIC) of ₱250,000.00. Thus, the entitlement to a deposit insurance is based *not* on the number of bank accounts held, but on the number of beneficial owners. It is this government policy and ₱250,000.00 threshold that respondent Manu purportedly circumvented by conspiring with the 86 individuals. If not for the fact that the 683 Landbank crossed checks amounting to ₱97,733,690.21 were deposited in the RCBC account of respondent Manu, petitioner would not have gotten wind of this probable concealment of true ownership over the subject bank accounts.

A crossed check is one where two parallel lines are drawn across its face or across its corner, and carries with it the following effects: (a) the check may not be encashed but only deposited in the bank; **(b) the check may be negotiated only once to the one who has an account with the bank**; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose and he must inquire if he received the check pursuant to this purpose; otherwise, he is not a holder in due course.[37] **In other words, the crossing of a check is a warning that the check should be deposited only in the account of the payee.**[38] Thus, to the mind of the Court, the act of depositing second-endorsed crossed-checks in the name of 86 different payees under a single account is highly irregular if not potentially criminal.

Respondent seeks to exonerate himself from the charges by claiming that PDIC was negligent in processing the insurance claims. This was, in fact, the ruling of the DOJ Task Force — that there was a clear paper trail by which PDIC could have traced and uncovered the status of the subject accounts before releasing the proceeds. The proposition, however, deserves scant consideration. For negligence on the part of the PDIC does not preclude the commission of fraud on the part of the claimants, and could have even made the agency even more susceptible to abuse.

Respondent likewise raised that he and the individual depositors entered into a fund management scheme to facilitate the transactions with the Legacy Banks; he did not deny opening and funding some of the accounts for the individual creditors, and even admitted to receiving advance interests for the subject bank accounts that were meant for the actual depositors. Anent this contention, SOJ Caparas held that the allegation of a fund management scheme is barren and self-serving, and that, in any event, the agreement partakes the nature of an investment contract that ought to have been registered first with the Securities and Exchange Commission before it can be given effect.

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[37] *Go v. Metropolitan Bank and Trust Co.*, G.R. No. 168842, August 11, 2010.

[38] *Go v. Metropolitan Bank and Trust Co.*, G.R. No. 168842, August 11, 2010.

Whether or not there indeed existed an agreement between respondent Manu and the individual depositors is a matter best left ventilated during trial proper, where evidence can be presented and appreciated fully. Suffice it to state for now that the Court herein finds probable cause to charge respondent for estafa and money laundering.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The January 31, 2017 Decision and October 6, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 146439 are hereby **REVERSED** and **SET ASIDE**. The June 3, 2016 Resolution of the Department of Justice, through then Secretary of Justice Emmanuel L. Caparas, in NPS Docket No. XVI-INV-12K-00480 finding probable cause to charge respondent Manu Gidwani for estafa through falsification under Art. 315(2)(a) in relation to Art. 172(1) and 171(4) of the RPC in the amount of ₱97,733,690.21, and for money laundering as defined in Section 4(a) of RA 9160 is hereby **REINSTATED**.

SO ORDERED.

Leonen, Martires, and *Gesmundo, JJ.,* concur.

Bersamin, J., on leave.

THIRD DIVISION

[G.R. No. 235511. June 20, 2018]

METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **JUNNEL'S MARKETING CORPORATION, PURIFICACION DELIZO, and BANK OF COMMERCE**, *respondents.*

[G.R. No. 235565. June 20, 2018]

BANK OF COMMERCE, *petitioner, vs.* **JUNNEL'S MARKETING CORPORATION, PURIFICACION DELIZO, and METROPOLITAN BANK AND TRUST COMPANY,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; CHECKS; RULE ON SEQUENCE OF RECOVERY IN CASES OF UNAUTHORIZED PAYMENT OF CHECKS; APPLICABLE IN CASE AT BAR.—** The instant case involves the *unauthorized payment of valid checks*, *i.e.*, the payment of checks to persons other than the payee named therein or his order. The subject checks herein are considered valid because they are complete and bear genuine signatures. *Bank of America* is the leading jurisprudence that illustrates the respective liabilities of a collecting bank and a drawee bank in cases of unauthorized payment of valid checks. Notably, the facts of *Bank America* are parallel to the facts of the present case. Both *Bank of America* and the present case involved **crossed checks payable to the order of a specified payee** that were **deposited in a collecting bank under an account not belonging to the payee or his indorsee** but which, upon presentment, were subsequently **honored by the drawee bank**. x x x *Bank of America* held that, in cases involving the unauthorized payment of valid checks, **the drawee bank becomes liable to the drawer for the amount of the checks *but* the drawee bank, in turn, can seek reimbursement from the collecting bank**. The rationale of this rule on sequence of recovery lies in the very basis and nature of the liability of a drawee bank and a collecting bank in said cases.

2. **ID.; ID.; ID.; ID.; A DRAWEE BANK IS CONTRACTUALLY OBLIGATED TO FOLLOW THE EXPLICIT INSTRUCTIONS OF ITS DRAWER-CLIENTS WHEN PAYING CHECKS ISSUED BY THEM; WHEN A DRAWEE BANK PAYS A PERSON OTHER THAN THE PAYEE NAMED ON THE CHECK, IT ESSENTIALLY COMMITS A BREACH OF ITS OBLIGATION AND RENDERS THE PAYMENT IT MADE UNAUTHORIZED;**

CASE AT BAR.— Metrobank, as drawee bank, is liable to return to JMC the amount of the subject checks. A drawee bank is contractually obligated to follow the explicit instructions of its drawer-clients when paying checks issued by them. The drawer's instructions—including the designation of the payee or to whom the check should be paid—are reflected on the face and by the terms thereof. When a drawee bank pays a person other than the payee named on the check, it essentially commits a breach of its obligation and renders the payment it made unauthorized. In such cases and under normal circumstances, the drawee bank may be held liable to the drawer for the amount charged against the latter's account. The liability of the drawee bank to the drawer in cases of unauthorized payment of checks has been regarded in jurisprudence to be **strict** by nature. This means that once an unauthorized payment on a check has been made, the resulting liability of the drawee bank to the drawer for such payment attaches *even if* the former had acted merely upon the guarantees of a collecting bank. Indeed, it is only when the *unauthorized payment of a check had been caused or was attended by the fault or negligence of the drawer himself* can the drawee bank be excused, whether wholly or partially, from being held liable to the drawer for the said payment. In the present case, it is apparent that Metrobank had breached JMC's instructions when it paid the value of the subject checks to Bankcom for the benefit of a certain Account No. 0015-32987-7. The payment to Account No. 0015-32987-7 was unauthorized as it was established that the said account does not belong to Jardine or Premiere, the payees of the subject checks, or to their indorsees. In addition, causal or concurring negligence on the part of JMC had not been proven. Under such circumstances, Metrobank is clearly liable to return to JMC the amount of the subject checks.

3. **ID.; ID.; ID.; ID.; WHEN A COLLECTING BANK PRESENTS A CHECK TO THE DRAWEE BANK FOR PAYMENT, THE FORMER THEREBY ASSUMES THE WARRANTIES OF AN INDORSER OF A NEGOTIABLE INSTRUMENT UNDER SECTION 66 OF THE NEGOTIABLE INSTRUMENTS LAW; WARRANTIES OF AN INDORSER; CASE AT BAR.—** A collecting or presenting bank—*i.e.*, the bank that receives a check for deposit and that presents the same to the drawee bank for payment—is an indorser of such check. When a collecting bank presents a check to the drawee

bank for payment, the former thereby assumes the same warranties assumed by an indorser of a negotiable instrument pursuant to Section 66 of the Negotiable Instruments Law. These warranties are: (1) that the instrument is genuine and in all respects what it purports to be; (2) that the indorser has good title to it; (3) that all prior parties had capacity to contract; and (4) that the instrument is, at the time of the indorsement, valid and subsisting. If any of the foregoing warranties turns out to be false, a collecting bank becomes liable to the drawee bank for payments made under such false warranty. Here, it is clear that Bankcom had assumed the warranties of an indorser when it forwarded the subject checks to PCHC for presentment to Metrobank. By such presentment, Bankcom effectively guaranteed to Metrobank that the subject checks had been deposited with it *to an account that has good title to the same*. This guaranty, however, is a complete falsity because the subject checks were, in truth, deposited to an account that neither belongs to the payees of the subject checks nor to their indorsees. Hence, as the subject checks were paid under Bankcom's false guaranty, the latter—as collecting bank—stands liable to return the value of such checks to Metrobank.

4. ID.; BANKING LAWS; PHILIPPINE CLEARING HOUSE CORPORATION (PCHC) RULES AND REGULATIONS; THE STAMPED TRACER/ID BAND OF THE COLLECTING OR REPRESENTING BANK SIGNIFIES THAT THE CHECKS HAD BEEN DEPOSITED WITH IT AND THAT IT INDORSED THE CHECKS AND SENT TO PCHC; CASE AT BAR.— Bankcom's assertion that it should be absolved as the subject checks were allegedly never deposited with it must fail. Such allegation is readily disproved by the fact that the subject checks all contained, at their dorsal side, a stamp bearing Bankcom's tracer/ID band. Under the PCHC Rules and Regulations, the stamped tracer/ID band of Bankcom signifies that the checks had been deposited with it and that Bankcom indorsed the said checks and sent them to PCHC. x x x In the present case, all the subject checks have been transmitted by Bankcom to the PCHC for clearing and presentment to Metrobank. As earlier adverted to, all of the said checks also bear the PCHC machine sprayed tracer/ID band of Bankcom. Such circumstances, pursuant to prevailing banking practices as laid out under the PCHC Rules and Regulations, are enough to fix the liability of Bankcom as an indorser of the

subject checks even *sans* the stamp "*ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED*" and "*NON-NEGOTIABLE*." As the stamping of such guarantees are not required before the warranties of an indorser could attach against Bankcom, we find the latter liable to reimburse Metrobank the value of all the subject checks.

5. MERCANTILE LAW; NEGOTIABLE INSTRUMENTS LAW; CHECKS; RULE ON SEQUENCE OF RECOVERY IN CASES OF UNAUTHORIZED PAYMENT OF CHECKS; COLLECTING BANK CAN SEEK REIMBURSEMENT FROM THE VERY PERSONS WHO CAUSED THE CHECKS TO BE DEPOSITED AND RECEIVED THE UNAUTHORIZED PAYMENTS; CASE AT BAR.— The sequence of recovery in cases of unauthorized payment of checks, however, does not ordinarily stop with the collecting bank. In the event that it is made to reimburse the drawee bank, the collecting bank can seek similar reimbursement from the very persons who caused the checks to be deposited and received the unauthorized payments. Such persons are the ones *ultimately liable* for the unauthorized payments and their liability rests on their absolute lack of valid title to the checks that they were able to encash. Verily, Bankcom ought to have a right of recourse against the persons that caused the anomalous deposit of the subject checks and received payments therefor. Unfortunately—as none of such persons were impleaded in the case before us—no pronouncement as to this matter can be made in favor of Bankcom.

6. ID.; ID.; ID.; DOCTRINE OF COMPARATIVE NEGLIGENCE; DOES NOT APPLY TO THE CASE AT BAR.— A glaring peculiarity in the cases of *Bank of the Philippine Islands* and *Allied Banking Corporation* is that the **drawee bank—which is essentially also the drawer in the scenario—is not only guilty of wrongfully paying a check but also of negligence in issuing such check**. x x x That, however, is clearly not the situation in the case at bench. Here, no negligence similar to that committed by the drawee banks in *Bank of the Philippine Islands* and *Allied Banking Corporation*—whether in type or in magnitude—can be attributed to Metrobank. Metrobank, though guilty of the unauthorized check payments, only acted upon the guarantees deemed made by Bankcom under prevailing banking practices. While

Metrobank's reliance upon the guarantees of Bankcom did not excuse it from being answerable to JMC, such reliance does enable Metrobank to seek reimbursement from Bankcom on the ground of the breach in the latter's warranties as a collecting bank. Under such circumstances, we cannot deny Metrobank's right to seek reimbursement from Bankcom. Hence, given the differences in the factual milieu between this case on one hand and the cases of *Bank of the Philippine Islands* and *Allied Banking Corporation* on the other, we find that the doctrine of comparative negligence cannot be applied so as to apportion the respective liabilities of Metrobank and Bankcom. The liabilities of Metrobank and Bankcom, as already discussed in length, must be governed by the rule on sequential recovery pursuant to *Bank of America*.

7. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERESTS; IMPOSITION OF LEGAL INTERESTS ON THE RESPECTIVE PRINCIPAL LIABILITIES OF THE DRAWEE BANK AND THE COLLECTING BANK, WARRANTED IN CASE AT BAR.— Applying the x x x guidelines [laid down in the case of *Nacar v. Gallery Frames*] to the case at bench, we fix the legal interests due against Metrobank and Bankcom thusly: 1. The liability of Metrobank to JMC consists in returning the amount it charged against JMC's current account. Current accounts, like all bank deposits, are considered under the law as loans. Normally, current accounts are interest-bearing by express contract. However, the actual interest rate, if any, for the current account opened by JMC with Metrobank was not given in evidence. Under these circumstances, we find it proper to subject Metrobank's principal liability to JMC to a legal interest of 6% per annum from 28 January 2002 until full satisfaction. The date 28 January 2002 is the date when JMC filed its complaint with the RTC. 2. The liability of Bankcom to Metrobank, on the other hand, consists in returning the amount it was paid by Metrobank. This stems from a breach by Bankcom of its warranties as a collecting bank. Accordingly, we find it proper to subject Bankcom's principal liability to Metrobank to a legal interest of 6% per annum from 5 March 2003 until full satisfaction. The date 5 March 2003 is the date when Metrobank filed its answer with cross-claim against Bankcom.

APPEARANCES OF COUNSEL

Subido Pagente Certeza Mendoza & Binay for Metrobank.
Rodrigo Berenguer & Guno for Bank of Commerce.
Suzette A. Ner for respondent Junnels's Marketing Corp.

D E C I S I O N

VELASCO, JR., *J.*:

At bench are two appeals[1] assailing the Decision[2] dated 22 March 2017 and Resolution[3] dated 19 October 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 102462. The first appeal was filed by the Metropolitan Bank and Trust Company (Metrobank), while the second by the Bank of Commerce (Bankcom).

The facts are as follows:

Respondent Junnel's Marketing Corporation (JMC) is a domestic corporation engaged in the business of selling wines and liquors. It has a current account with Metrobank[4] from which it draws checks to pay its different suppliers. Among JMC's suppliers are Jardine Wines and Spirits (Jardine) and Premiere Wines (Premiere).

In 2000, during an audit of its financial records,[5] JMC discovered an anomaly involving eleven (11) checks (subject

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[1] Both appeals are made *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

[2] *Rollo* (G.R. No. 235565), pp. 39-52. The decision was penned by Associate Justice Ramon M. Bato, Jr. for the Eleventh Division of the Court of Appeals with Associate Justices Manuel M. Barrios and Renato C. Francisco, concurring.

[3] *Id*. at 54-55. The resolution was penned by Associate Justice Ramon M. Bato, Jr. for the Former Eleventh Division of the Court of Appeals with Associate Justices Manuel M. Barrios and Renato C. Francisco, concurring.

[4] Specifically, Metrobank F.B. Harrison branch.

[5] The idea of an audit was conceived by JMC after it received communication from Jardine requesting for the settlement of an invoice that—per JMC's records—was supposedly covered by a check it (JMC) already issued (See *rollo* [G.R. No. 235565], p. 40).

checks) it had issued to the orders of Jardine and Premiere on various dates between October 1998 to May 1999. As it was, the subject checks had already been charged against JMC's current account but were, for some reason, not covered by any official receipt from Jardine or Premiere. The subject checks, which are all *crossed* checks and amounting to ₱1,481,292.00 in total, are as follows:

Checks Payable to the Order of Jardine:

1. Check No. *3010048953* – issued on 11 October 1998 in the amount of ₱181,440.00
2. Check No. *3010048955* – issued on 24 October 1998 in the amount of ₱195,840.00
3. Check No. *3010069098* – issued on 18 May 1999 in the amount of ₱58,164.56
4. Check No. *3010069099* – issued on 18 May 1999 in the amount of ₱44,651.52
5. Check No. *3010049551* – issued on 25 May 1999 in the amount of ₱103,680.00
6. Check No. *3010049550* – issued on 30 May 1999 in the amount of ₱103,680.00
7. Check No. *3010048954* – issued on 29 December 1998 in the amount of ₱195,840.00

Checks Payable to the Order of Premiere:

1. Check No. *3010049149* – issued on 9 December 1998 in the amount of ₱136,220.00
2. Check No. *3010049148* – issued on 16 December 1998 in the amount of ₱136,220.00
3. Check No. *3010049410* – issued on 18 April 1999 in the amount of ₱189,336.00.
4. Check No. *3010049150* – issued on 27 November 1998 in the amount of ₱136,220.00

Examination of the dorsal portion of the subject checks revealed that all had been deposited with Bankcom, Dau branch, under Account No. 0015-32987-7.[6] Upon inquiring with Jardine and Premiere, however, JMC was able to confirm that neither of the said suppliers owns Bankcom Account No. 0015-32987-7.

Meanwhile, on 30 April 2000, respondent Purificacion Delizo (Delizo), a former accountant of JMC, executed a handwritten letter[7] addressed to one Nelvia Yusi, President of JMC. In the said letter, Delizo confessed that, during her time as an accountant for JMC, she stole several company checks drawn against JMC's current account. She professed that the said checks were never given to the named payees but were forwarded by her to one Lita Bituin (Bituin). Delizo further admitted that she, Bituin and an unknown bank manager colluded to cause the deposit and encashing of the stolen checks and shared in the proceeds thereof.

JMC surmised that the subject checks are among the checks purportedly stolen by Delizo.

On 28 January 2002, JMC filed before the Regional Trial Court (RTC) of Pasay City a complaint for sum of money[8] against Delizo, Bankcom and Metrobank. The complaint was raffled to Branch 115 and was docketed as Civil Case No. 02-0193.

In its complaint, JMC alleged that the wrongful conversion of the subject checks was caused by a combination of the "*tortious and felonious*" scheme of Delizo and the "*negligent and unlawful acts*" of Bankcom and Metrobank, to wit:[9]

1. Delizo, by her own admission, stole the company checks of JMC. Among these checks, as confirmed by JMC's audit, are the subject checks.

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[6] As revealed in the dorsal portion of the checks.

[7] *Rollo* (G.R. No. 235565), p. 61.

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

[9] *Id.*

2. After stealing the subject checks, Delizo and her accomplices, Bituin and an unknown bank manager, caused the subject checks to be deposited in Bankcom, Dau branch, under Account No. 0015-32987-7. Bankcom, on the other hand, negligently accepted the subject checks for deposit under the said account despite the fact that they are *crossed checks* payable to the orders of Jardine and Premiere and neither of them owns the concerned account.

3. Thereafter, Bankcom presented the subject checks for payment to Metrobank which, also in negligence, decided to honor the said checks even though Bankcom Account No. 0015-32987-7 belongs to neither Jardine nor Premiere.

On the basis of the foregoing averments, JMC prayed that Delizo, Bankcom and Metrobank be held solidarily liable in its favor for the amount of the subject checks.

Delizo, Bankcom and Metrobank filed their individual answers denying liability.[10] Incorporated in Metrobank's answer, moreover, is a cross-claim against Bankcom and Delizo wherein Metrobank asks for the right to be reimbursed in the event it is ordered liable in favor of JMC.[11]

On 28 May 2013, the RTC rendered a decision[12] holding both Bankcom and Metrobank liable to JMC—on a 2/3 to 1/3 ratio, respectively—for the amount of subject checks plus interest as well as attorney's fees, *but* absolving Delizo from any liability.[13] The trial court, in the same decision, also dismissed Metrobank's cross-claim against Bankcom. The dispositive portion of the decision reads:[14]

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[10] *Rollo* (G.R. No. 235511), pp. 84-90; 91-95; and 96-100.

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

[12] *Rollo* (G.R. No. 235565), pp. 220-234.

[13] *Id*.

[14] *Id*. at 233-234.

WHEREFORE, judgment is rendered against defendants [Bankcom] and [Metrobank] for the total value of the 11 checks. [Bankcom] and Metrobank are adjudged solidarily liable to pay [JMC] at the ratios of 2/3 and 1/3, respectively:

1. The actual loss of ₱1,481,292 including 6% legal interest from the filing of the complaint;

2. Plus 12% interest on the principal of ₱1,481,292 including 6% interest on the principal, from the date this Decision becomes final and executory;

3. The attorney's fees of 15% of the total of number one and two above;

4. Costs against [Bankcom] and Metrobank.

Metrobank's cross-claim against [Bankcom] is DISMISSED, both being negligent.

SO ORDERED.

The RTC's decision was hinged on the following findings:[15]

1. The subject checks were complete and not forged. They were, however, stolen by *unknown* malefactors and were wrongfully encashed due to the negligence of Bankcom and Metrobank.

2. Delizo's complicity in the acquisition and negotiation of the subject checks was not proven. No direct evidence linking Delizo to the deeds was presented. Moreover, Delizo's supposed handwritten confession must be discredited for being made under duress, intimidation and threat. It was established during trial that Delizo was only forced by Yusi to confess about the missing checks and to execute the handwritten confession. Hence, Delizo must be absolved from any liability.

3. The involvement of Bankcom and Metrobank on the wrongful encashment of the subject checks, however, were clearly established:

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[15] *Id*. at 220-234.

a. Bankcom accepted the subject checks for deposit under Account No. 0015-32987-7, endorsed them and sent them for clearance with the Philippine Clearing House Corporation (PCHC). Bankcom did all these despite the fact that the subject checks were all crossed checks and that Account No. 0015-32987-7 neither belongs to Jardine nor Premiere—the payees named in the subject checks. In this regard, Bankcom was clearly negligent.

b. Metrobank, on the other hand, is also negligent for its failure to scrutinize the subject checks before clearing and honoring them. Had Metrobank done so, it would have noticed that Bankcom's ID band stamped at the back of the subject checks did not contain any initials and are, therefore, defective. In this regard, Metrobank was remiss in its duty to ensure that the subject checks are paid only to the named payees.

In view of the *comparative negligence* of Bankcom and Metrobank, they should be held liable to JMC, on a 2/3 to 1/3 ratio, respectively, for the amount of subject checks plus interest.

Bankcom and Metrobank filed their respective appeals with the CA.

On 22 March 2017, the CA rendered its decision[16] affirming, albeit with modification, the decision of the RTC. The disposition of the decision reads:[17]

WHEREFORE, the Decision dated 28 May 2013 of the [RTC] in Civil Case NO. 02-0193 is AFFIRMED with MODIFICATION in that: (a) the award of attorney's fees is DELETED; and (b) [Bankcom] and [Metrobank] are ordered to pay interest at the rate of 12% per annum on the principal of ₱1,481,292 including 6% interest on the principal, from the date of the Decision (28 May 2013) until June

[16] *Id*. at 39-52.

[17] *Id*. at 52.

2013 and 6% per annum from 1 July 2013 until full satisfaction. The Decision is affirmed in all other respects.

SO ORDERED.

The CA agreed with the RTC that Bankcom and Metrobank should be held liable to JMC, on a 2/3 to 1/3 ratio, respectively, for the amount of subject checks. The appellate court, however, differed with the trial court with respect to the basis of Metrobank's liability. According to the CA, Metrobank's negligence consisted, not in its inability to notice that Bankcom's ID band does not contain any initials, but in its failure to ascertain that only four (4) out of the 11 subject checks were stamped by Bankcom with the express guarantees "*ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED*" and "*NON-NEGOTIABLE*" as required by Section 17 of the PCHC Rules and Regulations.[18]

The CA also sustained the ruling of the RTC anent the absolution of Delizo and the dismissal of Metrobank's cross-claim.

Finally, the CA modified the rate of interest due on the amount of the subject checks that was fixed by the RTC and also deleted the RTC's award of attorney's fees in favor of JMC.[19]

Bankcom and Metrobank filed their motions for reconsideration, but the CA remained steadfast. Hence the present consolidated appeals.

Both Metrobank and Bankcom pray for absolution but they differ in the arguments they raise in support of their prayer:[20]

1. Metrobank posits that it should be absolved because it had exercised absolute diligence in verifying the genuineness of the subject checks. Metrobank argues that the RTC erred in holding it negligent on its failure to ascertain that only four (4) out of the 11 subject checks

[18] *Id*. at 39-52.

[19] *Id*.

[20] See *rollo* (G.R. No. 235511), pp. 10-30; *rollo* (G.R. No. 235565), pp. 10-31.

were stamped with Bankcom's express guarantees. Metrobank claims that while Section 17 of the PCHC Rules and Regulations does require all checks cleared through the PCHC to contain the collecting bank's express guarantees, the same provision precludes it, as a drawee bank, to return any checks presented to it for payment just because the same does not contain such express guarantees "*for as long as there is evidence appearing on the cheque itself that the same had been deposited with the [collecting] [b]ank e.g., PCHC machine sprayed tracer/ID band*." In this regard, Metrobank points out that all the subject checks had been stamped in their dorsal portion with PCHC's tracer ID for Bankcom.

Metrobank submits that, under the circumstances, it should be Bankcom—as the last indorser of the subject checks—that should bear the loss and be held solely liable to JMC.

2. Bankcom, on the other hand, argues that it should be absolved because it was never a party to the wrongful encashment of the subject checks. It claims that Account No. 0015-32987-7 does not exist in its system and, therefore, denies that the subject checks were ever deposited with it.

   Bankcom proffers the view that it is JMC that should bear the loss of the subject checks. Bankcom argues that it was JMC's faulty accounting procedures which led to the subject checks being stolen and misappropriated.

Our Ruling

The consolidated appeals must be denied as neither Metrobank nor Bankcom are entitled to absolution.

Be that as it may, there is a need to modify the decision of the CA and the RTC with respect to the *manner* by which Metrobank and Bankcom are held liable under the circumstances. Instead of holding both Metrobank and Bankcom liable to JMC in accordance with a fixed ratio, we find that the two banks

should have been ordered *sequentially* liable for the entire amount of the subject checks pursuant to the seminal case of *Bank of America v. Associated Citizens Bank*.[21]

Accordingly, we rule: (1) Metrobank liable to return to JMC the entire amount of the subject checks plus interest and (2) Bankcom liable to reimburse Metrobank the same amount plus interest.

The Rule on Sequence of Recovery in Cases of Unauthorized Payment of Checks; The Case of Bank of America

The instant case involves the *unauthorized payment of valid checks*, *i.e.*, the payment of checks to persons other than the payee named therein or his order. The subject checks herein are considered valid because they are complete and bear genuine signatures.

Bank of America is the leading jurisprudence that illustrates the respective liabilities of a collecting bank and a drawee bank in cases of unauthorized payment of valid checks. Notably, the facts of *Bank America* are parallel to the facts of the present case. Both *Bank of America* and the present case involved **crossed checks payable to the order of a specified payee** that were **deposited in a collecting bank under an account not belonging to the payee or his indorsee** but which, upon presentment, were subsequently **honored by the drawee bank**, thus:

1. *Bank of America* involved four (4) crossed checks drawn against the Bank of America (the drawee bank) and made payable to the order of a Miller Offset Press, Inc. (the designated payee). These checks were then deposited to the Associated Citizens Bank (the collecting bank) under a joint bank account of one Ching Uy Seng and a certain Uy Chung Guan Seng (an account that does not belong to the payee or its indorsee). The checks were then presented to the Bank of America, which

[21] G.R. Nos. 141001 & 141018, 21 May 2009.

honored it, resulting to loss on the part of BA Finance Corporation (the drawer.)

2. The instant case involves eleven (11) crossed checks that were drawn against Metrobank (the drawee bank) and made payable to the orders of Jardine and Premiere (the designated payees). These checks were deposited with Bankcom (the collecting bank) under Account No. 0015-32987-7 (an account that does not belong to either payee or their indorsees). The checks were then presented to Metrobank, which honored it, resulting to loss on the part of JMC (the drawer.)

Bank of America held that, in cases involving the unauthorized payment of valid checks, **the drawee bank becomes liable to the drawer for the amount of the checks *but* the drawee bank, in turn, can seek reimbursement from the collecting bank**. The rationale of this rule on sequence of recovery lies in the very basis and nature of the liability of a drawee bank and a collecting bank in said cases. As the recent case of *BDO Unibank v. Lao*[22] explains:

> The liability of the drawee bank is based on its contract with the drawer and its duty to charge to the latter's accounts only those payables authorized by him. A drawee bank is under strict liability to pay the check only to the payee or to the payee's order. When the drawee bank pays a person other than the payee named in the check, it does not comply with the terms of the check and violates its duty to charge the drawer's account only for properly payable items.
>
> On the other hand, the liability of the collecting bank is anchored on its guarantees as the last endorser of the check. Under Section 66 of the Negotiable Instruments Law, an endorser warrants "that the instrument is genuine and in all respects what it purports to be; that he has good title to it; that all prior parties had capacity to contract; and that the instrument is at the time of his endorsement valid and subsisting."
>
> It has been repeatedly held that in check transactions, the collecting bank generally suffers the loss because it has the duty to ascertain

[22] G.R. No. 227005, 19 June 2017.

the genuineness of all prior endorsements considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements. If any of the warranties made by the collecting bank turns out to be false, then the drawee bank may recover from it up to the amount of the check. (Citations omitted).

This rule should have been applied to the case at bench.

Metrobank is Liable to JMC

Metrobank, as drawee bank, is liable to return to JMC the amount of the subject checks.

A drawee bank is contractually obligated to follow the explicit instructions of its drawer-clients when paying checks issued by them.[23] The drawer's instructions—including the designation of the payee or to whom the check should be paid—are reflected on the face and by the terms thereof.[24] When a drawee bank pays a person other than the payee named on the check, it essentially commits a breach of its obligation and renders the payment it made unauthorized.[25] In such cases and under normal circumstances, the drawee bank may be held liable to the drawer for the amount charged against the latter's account.[26]

The liability of the drawee bank to the drawer in cases of unauthorized payment of checks has been regarded in jurisprudence to be **strict** by nature.[27] This means that once an unauthorized payment on a check has been made, the resulting liability of the drawee bank to the drawer for such payment attaches *even if* the former had acted merely upon the guarantees of a collecting

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[23] *Bank of America v. Associated Citizens Bank*, G.R. Nos. 141001 and 141018, 21 May 2009.

[24] *Id*.

[25] *Id*.

[26] *Id*.

[27] See *Bank of America v. Associated Citizens Bank*, G.R. Nos. 141001 and 141018, 21 May 2009 and *Associated Bank v. Court of Appeals*, G.R. Nos. 107382 and 107612, 31 January 1996.

bank.[28] Indeed, it is only when the *unauthorized payment of a check had been caused or was attended by the fault or negligence of the drawer himself* can the drawee bank be excused, whether wholly or partially, from being held liable to the drawer for the said payment.[29]

In the present case, it is apparent that Metrobank had breached JMC's instructions when it paid the value of the subject checks to Bankcom for the benefit of a certain Account No. 0015-32987-7. The payment to Account No. 0015-32987-7 was unauthorized as it was established that the said account does not belong to Jardine or Premiere, the payees of the subject checks, or to their indorsees. In addition, causal or concurring negligence on the part of JMC had not been proven. Under such circumstances, Metrobank is clearly liable to return to JMC the amount of the subject checks.

Metrobank's insistence that it should be absolved for it merely complied with Section 17 of the PCHC Rules and Regulations and thereby only relied upon the concomitant guarantees of Bankcom when it paid the subject checks, cannot stand insofar as JMC is concerned. In *Bank of America*, we rejected a similar argument interposed by a drawee bank (Bank of America) precisely on the ground of the latter's strict liability to its drawer (BA-Finance) *viz*:[30]

Bank of America denies liability for paying the amount of the four checks issued by BA-Finance to Miller, alleging that **it (Bank of America) relied on the stamps made by Associated Bank stating that all prior endorsement and/or lack of endorsement guaranteed, through which Associated Bank** assumed the liability of a general endorser under Section 66 of the Negotiable Instruments Law. Moreover, **Bank of America contends that the proximate cause**

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[28] See *Bank of America v. Associated Citizens Bank*, G.R. Nos. 141001 and 141018, 21 May 2009.

[29] See *Gempesaw v. Court of Appeals*, G.R. No. 92244, 9 February 1993 and *Bank of America v. Philippine Racing Club*, G.R. No. 150228, 30 July 2009.

[30] G.R. Nos. 141001 and 141018, 21 May 2009.

of BA-Finances injury, if any, is the gross negligence of Associated Bank which allowed Ching Uy Seng (Robert Ching) to deposit the four checks issued to Miller in the personal joint bank account of Ching Uy Seng and Uy Chung Guan Seng.

We are not convinced.

The bank on which a check is drawn, known as the drawee bank, is under strict liability, based on the contract between the bank and its customer (drawer), to pay the check only to the payee or the payee's order. x x x.

x x x x x x x x x

In this case, the four checks were drawn by BA-Finance and made payable to the Order of Miller Offset Press, Inc. The checks were also crossed and issued For Payee's Account Only. Clearly, the drawer intended the check for deposit only by Miller Offset Press, Inc. in the latter's bank account. **Thus, when a person other than Miller, i.e., Ching Uy Seng, a.k.a. Robert Ching, presented and deposited the checks in his own personal account (Ching Uy Sengs joint account with Uy Chung Guan Seng), and the drawee bank, Bank of America, paid the value of the checks and charged BA-Finances account therefor, the drawee Bank of America is deemed to have violated the instructions of the drawer, and therefore, is liable for the amount charged to the drawer's account** (Citations omitted. Emphasis supplied).

Accordingly, we find Metrobank liable to return to JMC the amount of the subject checks.

Bankcom is Liable to Metrobank

While Metrobank's reliance upon the guarantees of Bankcom does not excuse it from being liable to JMC, such reliance does enable Metrobank to seek reimbursement from Bankcom—the collecting bank.

A collecting or presenting bank—*i.e.*, the bank that receives a check for deposit and that presents the same to the drawee bank for payment—is an indorser of such check.[31] When a

[31] *Associated Bank v. Court of Appeals*, G.R. Nos. 107382 and 107612, 31 January 1996.

collecting bank presents a check to the drawee bank for payment, the former thereby assumes the same warranties assumed by an indorser of a negotiable instrument pursuant to Section 66 of the Negotiable Instruments Law. These warranties are: (1) that the instrument is genuine and in all respects what it purports to be; (2) that the indorser has good title to it; (3) that all prior parties had capacity to contract; and (4) that the instrument is, at the time of the indorsement, valid and subsisting.[32] If any of the foregoing warranties turns out to be false, a collecting bank becomes liable to the drawee bank for payments made under such false warranty.

Here, it is clear that Bankcom had assumed the warranties of an indorser when it forwarded the subject checks to PCHC for presentment to Metrobank. By such presentment, Bankcom effectively guaranteed to Metrobank that the subject checks had been deposited with it *to an account that has good title to the same*. This guaranty, however, is a complete falsity because the subject checks were, in truth, deposited to an account that neither belongs to the payees of the subject checks nor to their indorsees. Hence, as the subject checks were paid under Bankcom's false guaranty, the latter—as collecting bank—stands liable to return the value of such checks to Metrobank.

Bankcom's assertion that it should be absolved as the subject checks were allegedly never deposited with it must fail. Such allegation is readily disproved by the fact that the subject checks all contained, at their dorsal side, a stamp bearing Bankcom's tracer/ID band.[33] Under the PCHC Rules and Regulations, the stamped tracer/ID band of Bankcom signifies that the checks had been deposited with it and that Bankcom indorsed the said checks and sent them to PCHC.[34] As observed by the RTC:[35]

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[32] Section 66 of the Negotiable Instruments Law.

[33] *Rollo* (G.R. No. 235565), p. 230.

[34] *See* Section 17 of PCHC Rules and Regulations.

[35] *Rollo* (G.R. No. 235565), p. 230.

Record shows that the pieces of evidence presented by [JMC], particularly the 11 subject checks were endorsed and were allowed to be encashed by [Bankcom], as indicated in the dorsal portion of the checks where [PCHC] machine's tracer, or the ID band of [Bankcom] was stamped. And this stamped tracer ID band of [Bankcom] signifies that [Bankcom] certified that the checks were deposited to [Bankcom] and [Bankcom] endorsed these checks and sent them to PCHC.

Neither do we find the liability of Bankcom to be affected by the fact that only four (4) out of the eleven (11) subject checks were actually stamped with the guarantees "*ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED*" and "*NON-NEGOTIABLE*" as required under Section 17 of the PCHC Rules and Regulations. The stamping of such guarantees is not necessary to fix the liability of Bankcom as an indorser for *all* the subject checks.

To begin with, jurisprudence has it that a collecting bank's mere act of presenting a check for payment to the drawee bank is itself an assertion, on the part of the former, that it had done its duty to ascertain the validity of prior indorsements. Hence, in *Banco De Oro v. Equitable Banking Corporation*,[36] we stated:

> Apropos the matter of forgery in endorsements, this Court has presently succinctly emphasized that the collecting bank or last endorser generally suffers the loss because it has the duty to ascertain the genuineness of all prior endorsements **considering that the act of presenting the check for payment to the drawee is an assertion that the party making the presentment has done its duty to ascertain the genuineness of the endorsements**. This is laid down in the case of PNB v. National City Bank. (Citations omitted. Emphasis supplied).

More than such pronouncement, however, Section 17 of the PCHC Rules and Regulations expressly provides that checks "*cleared through the PCHC*" that do not bear the mentioned guarantees shall nonetheless "*be deemed guaranteed by the [collecting bank] as to all prior endorsements and/or lack of*

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[36] G.R. No. 74917, 20 January 1998.

endorsement" such that "*no drawee bank shall return any [check] received by it through clearing by reason only of the absence or lack of such guarantee…as long as there is evidence appearing on the [check] itself that the same had been deposited with the [collecting bank]* x x x." The full provision reads:

> Sec. 17.—Bank Guarantee. All checks cleared through the PCHC shall bear the guarantee affixed thereto by the Presenting Bank/Branch which shall read as follows:
>
> *Cleared thru the Philippine Clearing House Corporation all prior endorsements and/or lack of endorsement guaranteed NAME OF BANK/BRANCH BRSTN (Date of Clearing).*
>
> **Checks to which said guarantee has not been affixed shall, nevertheless, be deemed guaranteed by the Presenting Bank as to all prior endorsement and/or lack of endorsement**.
>
> **No drawee bank shall return any cheque received by it through clearing by reason only of the absence or lack of such guarantee stamped at the back of said cheque, for as long as there is evidence appearing on the cheque itself that the same had been deposited with the Presenting Bank, e.g. PCHC machine sprayed 'tracer/ ID band**." (Emphasis supplied)

In the present case, all the subject checks have been transmitted by Bankcom to the PCHC for clearing and presentment to Metrobank. As earlier adverted to, all of the said checks also bear the PCHC machine sprayed tracer/ID band of Bankcom. Such circumstances, pursuant to prevailing banking practices as laid out under the PCHC Rules and Regulations, are enough to fix the liability of Bankcom as an indorser of the subject checks even *sans* the stamp "*ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED*" and "*NON-NEGOTIABLE*." As the stamping of such guarantees are not required before the warranties of an indorser could attach against Bankcom, we find the latter liable to reimburse Metrobank the value of all the subject checks.

Recourse of Bankcom

The sequence of recovery in cases of unauthorized payment of checks, however, does not ordinarily stop with the collecting bank. In the event that it is made to reimburse the drawee bank,

the collecting bank can seek similar reimbursement from the very persons who caused the checks to be deposited and received the unauthorized payments.[37] Such persons are the ones *ultimately liable* for the unauthorized payments and their liability rests on their absolute lack of valid title to the checks that they were able to encash.

Verily, Bankcom ought to have a right of recourse against the persons that caused the anomalous deposit of the subject checks and received payments therefor. Unfortunately—as none of such persons were impleaded in the case before us—no pronouncement as to this matter can be made in favor of Bankcom.

At this juncture, we express our concurrence to the absolution of Delizo. The RTC and the CA were uniform in their finding that the participation of Delizo—as the supposed thief of the subject checks—had not been established in this case. We reviewed the evidence on hand and saw no cogent reason to deviate from this factual finding.

Doctrine of Comparative Negligence Does Not Apply to the Instant Case

Instead of applying the rule on the sequence of recovery to the case at bench, the RTC and the CA held both Metrobank and Bankcom liable to JMC in accordance with a fixed ratio. In so doing, the RTC and the CA seemingly relied on the doctrine of comparative negligence[38] as applied in the cases of *Bank of the Philippine Islands v. Court of Appeals*[39] and *Allied Banking*

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[37] See *Bank of America v. Associated Citizens Bank*, G.R. Nos. 141001 and 141018, 21 May 2009.

[38] The doctrine of comparative negligence is a legal principle that limits the extent of reparation that may be recovered by a person who is guilty of contributory negligence. nder this doctrine, a person who is guilty of contributory negligence, though allowed to seek recourse against the principal tortfeasor, must nonetheless bear a portion of the losses proportionate to the amount of his negligence. The application of this doctrine is sanctioned in our jurisdiction by the second sentence of Article 2179 of the Civil Code.

[39] G.R. No. 102383, 26 November 1992.

Corporation v. Lio Sim Wan.[40] In both cases, the Court held the drawee bank and collecting bank liable for the wrongful encashment of checks under a 60% and 40% ratio.

It must be emphasized, however, that the factual contexts of *Bank of the Philippine Islands* and *Allied Banking Corporation* are starkly different from the instant case:

1. *Bank of the Philippine Islands* involved **two (2) cashier's checks** issued by the Bank of the Philippine Islands (BPI) in favor of a certain Eligia Fernando (Eligia). The checks are supposed to represent the proceeds of a pre-terminated money market placement of Eligia with BPI. BPI issued the checks upon the mere phone request of a person who introduced herself as Eligia. The checks were subsequently deposited with the China Banking Corporation (CBC) under an account that was opened by a person who identified herself as Eligia. This person thereafter encashed the checks.

   It was later established, however, that Eligia never requested the pre-termination of her money market placement nor opened an account with the CBC. It was an impostor who did so.

2. *Allied Banking Corporation*, on the other hand, involved **a manager's check** issued by the Allied Banking Corporation (ABC) in favor of a certain Lim Sio Wan (Lim). The check is supposed to represent the proceeds of a pre-terminated money market placement of Lim with ABC. ABC issued the checks upon the mere phone request of a person who introduced herself as Lim. The checks, now bearing an indorsement of Lim, were then deposited with the Metrobank under the account of a certain Filipinas Cement Corporation. The checks were eventually encashed.

   It was later established, however, that Lim never requested the pre-termination of his money market placement and that his indorsement in the check was forged.

[40] G.R. No. 133179, 27 March 2008.

A glaring peculiarity in the cases of *Bank of the Philippine Islands* and *Allied Banking Corporation* is that the **drawee bank—which is essentially also the drawer in the scenario—is not only guilty of wrongfully paying a check but also of negligence in issuing such check**. Indeed, this is the very reason why the drawee bank in the two cases were adjudged co-liable with the collecting bank under a fixed ratio and the former was not allowed to claim reimbursement from the latter.[41] The drawee bank cannot claim that its participation in the wrongful payment of a check was merely limited to its reliance on the guarantees of the collecting bank. In other words, the drawee bank was held liable in its own right because it was the one that negligently issued the checks in the first place.

That, however, is clearly not the situation in the case at bench. Here, no negligence similar to that committed by the drawee banks in *Bank of the Philippine Islands* and *Allied Banking Corporation*—whether in type or in magnitude—can be attributed to Metrobank. Metrobank, though guilty of the unauthorized check payments, only acted upon the guarantees deemed made by Bankcom under prevailing banking practices. While Metrobank's reliance upon the guarantees of Bankcom did not excuse it from being answerable to JMC, such reliance does enable Metrobank to seek reimbursement from Bankcom on the ground of the breach in the latter's warranties as a collecting bank. Under such circumstances, we cannot deny Metrobank's right to seek reimbursement from Bankcom.

Hence, given the differences in the factual milieu between this case on one hand and the cases of *Bank of the Philippine Islands* and *Allied Banking Corporation* on the other, we find that the doctrine of comparative negligence cannot be applied so as to apportion the respective liabilities of Metrobank and Bankcom. The liabilities of Metrobank and Bankcom, as already discussed in length, must be governed by the rule on sequential recovery pursuant to *Bank of America*.

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[41] *Id.*

Interests

As a final matter, we also saw it fit to impose legal interest upon the respective principal liabilities of Metrobank and Bankcom.

In *Nacar v. Gallery Frames*,[42] we laid out the following guidelines for the imposition and computation of legal interests:

To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. **When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing**. **Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded**. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. **When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum**. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. **Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially**

[42] G.R. No. 189871, 13 August 2013.

(**Art. 1169, Civil Code**), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit**.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein. (Citations omitted. Emphasis supplied).

Applying the foregoing guidelines to the case at bench, we fix the legal interests due against Metrobank and Bankcom thusly:

1. The liability of Metrobank to JMC consists in returning the amount it charged against JMC's current account. Current accounts, like all bank deposits, are considered under the law as loans.[43] Normally, current accounts are interest-bearing by express contract. However, the actual interest rate, if any, for the current account opened by JMC with Metrobank was not given in evidence.[44]

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[43] Article 1980 of the Civil Code of the Philippines.

[44] Confronted with a similar scenario, the case of *Associated Bank v. Court of Appeals*, G.R. Nos. 107382 and 107612 ruled that the drawee bank should just be subjected to a 6% legal interest. The pertinent portion of the ruling reads:

> The trial court made PNB and Associated Bank liable with legal interest from March 20, 1981, the date of extrajudicial demand made by the Province of Tarlac on PNB. The payments to be made in this case stem from the deposits of the Province of Tarlac in its current account with the PNB. Bank deposits are considered under the law as loans. Central Bank Circular No. 416 prescribes a twelve percent (12%) interest per annum for loans, forebearance of money, goods or

Under these circumstances, we find it proper to subject Metrobank's principal liability to JMC to a legal interest of 6% per annum from 28 January 2002 until full satisfaction.[45] The date 28 January 2002 is the date when JMC filed its complaint with the RTC.

2. The liability of Bankcom to Metrobank, on the other hand, consists in returning the amount it was paid by Metrobank. This stems from a breach by Bankcom of its warranties as a collecting bank.

   Accordingly, we find it proper to subject Bankcom's principal liability to Metrobank to a legal interest of 6% per annum from 5 March 2003 until full satisfaction.[46] The date 5 March 2003 is the date when Metrobank filed its answer with cross-claim against Bankcom.

WHEREFORE, the consolidated appeals are **DENIED**. The Decision dated 22 March 2017 and Resolution dated 19 October 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 102462 are herein **MODIFIED** with respect to the individual liabilities of the Metropolitan Bank and Trust Company and the Bank of Commerce, as follows:

1. The Metropolitan Bank and Trust Company is adjudged liable to pay respondent Junnel's Marketing Corporation the following:

   a. The principal amount of ₱1,481,292.00, *and*

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credits in the absence of express stipulation. Normally, current accounts are likewise interest-bearing, by express contract, thus excluding them from the coverage of CB Circular No. 416. **In this case, however, the actual interest rate, if any, for the current account opened by the Province of Tarlac with PNB was not given in evidence. Hence, the Court deems it wise to affirm the trial court's use of the legal interest rate, or six percent (6%) per annum. The interest rate shall be computed from the date of default, or the date of judicial or extrajudicial demand.** (Emphasis supplied)

[45] See *Associated Bank v. Court of Appeals*, G.R. Nos. 107382 and 107612, 31 January 1996.

[46] See *Associated Bank v. Court of Appeals*, *id*.

b. Interest on the said principal at the rate of 6% per annum from 28 January 2002 until full satisfaction.

2. The Bank of Commerce is adjudged liable to pay the Metropolitan Bank and Trust Company the following:

   a. The principal amount of ₱1,481,292.00, *and*

   b. Interest on the said principal at the rate of 6% per annum from 5 March 2003 until full satisfaction.

Other findings and pronouncements of the Court of Appeals in its Decision dated 22 March 2017 and Resolution dated 19 October 2017 in CA-G.R. CV No. 102462 that are not contrary to this Decision are **AFFIRMED**.

Costs against the Metropolitan Bank and Trust Company and the Bank of Commerce.

SO ORDERED.

Leonen, Martires, and *Gesmundo, JJ.,* concur.

Bersamin, J., on leave.

INDEX

INDEX

ACCOUNTABILITY OF PUBLIC OFFICERS

Statement of Assets, Liabilities, and Net Worth (SALN) — Offenses against the SALN laws are not ordinary offenses but violations of a duty which every public officer and employee owes to the State and the Constitution; integrity, as what this Court has defined in the assailed Decision, in relation to a judge's qualifications, should not be viewed separately from the institution he or she represents; integrity contemplates both adherence to the highest moral standards and obedience to laws and legislations. (Rep. of the Phils. *vs*. Sereno, G.R. No. 237428, June 19, 2018) p. 449

ADMINISTRATIVE CHARGES

Affidavit of desistance — The OCA has taken the right stance in insisting that the present administrative case must proceed notwithstanding complainant's execution of an Affidavit of Desistance; the filing of the said affidavit by the complainant for alleged loss of interest does not *ipso facto* result in the termination of the administrative case nor does it render the case mooted; *Sy v. Binasing,* cited; the Court has an interest in the conduct and behavior of its officials and employees and in ensuring the prompt delivery of justice to the people. (Benong-Linde *vs*. Lomantas, A.M. No. P-18-3842 [Formerly OCA IPI No. 12-3965-P], June 11, 2018) p. 43

ADMINISTRATIVE PROCEEDINGS

Quantum of proof — In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion; hence, respondent Clerk of Court must be exonerated from the administrative charges against her. (Atty. Mahinay *vs*. Hon. Daomilas, Jr., A.M. No. RTJ-18-2527 [Formerly OCA IPI No. 16-4563-RTJ], June 18, 2018) p. 310

— Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion; "corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others"; petitioner committed a serious lapse of judgment sufficient to hold him liable for simple misconduct; penalty. (Melendres *vs*. Ombudsman Gutierrez, G.R. No. 194346, June 18, 2018) p. 329

Substantial evidence — In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion; the complainant has the burden of proving by substantial evidence the allegations in his complaint; the evidentiary threshold of substantial evidence – as opposed to preponderance of evidence – is more in keeping with the primordial purpose of and essential considerations attending this type of cases. (BSA Tower Condominium Corp. *vs*. Atty. Reyes II, A.C. No. 11944 [Formerly CBD No. 12-3463], June 20, 2018) p. 588

AGGRAVATING CIRCUMSTANCES

Evident premeditation — The Court agrees with the CA that the modifying circumstance of evident premeditation did not attend the commission of the offenses; the records are bereft of any proof, direct or circumstantial, tending to show a plan or preparation to kill by appellants as well as when they meditated and reflected upon their decision to kill or/injure the three victims and the intervening time that elapsed before this plan was carried out; accordingly, the circumstance of evident premeditation cannot be presumed against appellants. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

ALIBI

Defense of — Appellants' defense of alibi is unavailing; in order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene; appellants miserably failed to discharge this burden. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

–– In order that alibi might prosper, it is not enough to prove that the accused has been somewhere else during the commission of the crime; it must also be shown that it would have been impossible for him to be anywhere within the vicinity of the crime scene; given the positive identification by the victim of the accused as the culprit, and the lack of physical impossibility for said appellant to be at the scene of the crime at the time of its commission, his defenses of denial and alibi crumble like a sand fortress; his defense of extortion must likewise fail considering that the same was not substantiated by competent and independent evidence. (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

AN ACT TO PROVIDE FOR THE RETIREMENT OF JUSTICES OF THE SUPREME COURT AND OF THE COURT OF APPEALS, FOR THE ENFORCEMENT OF THE PROVISIONS HEREOF BY THE GOVERNMENT SERVICE INSURANCE SYSTEM, AND TO REPEAL COMMONWEALTH ACT NUMBERED FIVE HUNDRED AND THIRTY-SIX (R.A. NO. 910), AS AMENDED

Computation of retirement benefits –– Respondent's filing of separate retirement claims for her government service outside of the Judiciary and in the Judiciary was unnecessary and unwarranted; her service in the government agencies is creditable as part of her overall government service for retirement purposes under R.A. No. 910, as amended, considering the express wordings of R.A. No. 910, which include service *"in any other branch of the Government"* as creditable service in the computation of the retirement benefits of a justice or

judge. (GSIS Board of Trustees *vs*. Court of Appeals, G.R. No. 230953, June 20, 2018) p. 978

AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES (ACT NO. 3135), AS AMENDED

Registration of the certificate of sale — Sec. 6 of Act No. 3135, as amended, provides that a property sold through an extrajudicial sale may be redeemed "at any time within the term of one year from and after the date of the sale"; *Mahinay v. Dura Tire & Rubber Industries Inc.* clarified that "the date of the sale' referred to in Sec. 6 is the date the certificate of sale is registered with the Register of Deeds; this is because the sale of registered land does not 'take effect as a conveyance, or bind the land' until it is registered; the registration of the certificate of sale issued by the sheriff after an extrajudicial sale is a mandatory requirement; effect if the certificate of sale is not registered with the Registry of Deeds; application. (First Sarmiento Property Holdings, Inc. *vs*. Phil. Bank of Communications, G.R. No. 202836, June 19, 2018) p. 400

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. NO. 9208)

Deceit and fraud — *Deceit* is 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; while *fraud* is every kind of deception whether in the form of insidious machinations, manipulations, concealments or misrepresentations, for the purpose of leading another party into error and thus execute a particular act; present in this case. (People *vs*. Nangcas, G.R. No. 218806, June 13, 2018) p. 218

Qualified trafficking in persons — The accused was charged and convicted for qualified trafficking in persons under Sec. 4(a), in relation to Sec. 6(a) and (c), and Sec. 3(a),

(b), and (d) of R.A. No. 9208, which read: Sec. 4. *Acts of Trafficking in Persons*. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts: (a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage; Sec. 6. *Qualified Trafficking in Persons*. – The following are considered as qualified trafficking: (a) When the trafficked person is a child; x x x (c) When the crime is committed by a syndicate, or in large scale; trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another; it is deemed committed in large scale if committed against three (3) or more persons, individually or as a group; pursuant to Section 6 of R.A. No. 9208, the crime committed by the accused was qualified trafficking. (People *vs*. Nangcas, G.R. No. 218806, June 13, 2018) p. 218

—— The Court finds no cogent reason to reverse the accused's conviction for qualified trafficking under R.A. No. 9208; penalty of life imprisonment and a fine of ₱2,000,000.00, applying Sec. 10(c) of R.A. No. 9208. (*Id*.)

Slavery —— Slavery is defined as the extraction of work or services from any person by enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage or deception; illustrated in this case. (People *vs*. Nangcas, G.R. No. 218806, June 13, 2018) p. 218

APPEALS

Appeal in criminal cases —— 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. (People *vs*. Gamboa *y* Francisco @ "Kuya", G.R. No. 233702, June 20, 2018) p. 1055

(People *vs*. Mercader, G.R. No. 233480, June 20, 2018) p. 1031

(Anyayahan *y* Taronas *vs*. People, G.R. No. 229787, June 20, 2018) p. 927

— Settled is the rule that an appeal in a criminal case throws the whole records of the case open for review and it is the duty of the appellate court to correct, cite and appreciate errors that may be found in the appealed judgment whether they are assigned or unassigned; given the unique nature of an appeal in a criminal case, an examination of the entire records of the case may be explored for the purpose of arriving at a correct conclusion as the law and justice dictate. (People *vs*. Andrada *y* Caampued, G.R. No. 232299, June 20, 2018) p. 999

APPEALS

Factual findings of the Court of Appeals — As a rule, the factual findings of the CA affirming those of the RTC are final and conclusive, and they cannot be reviewed by the Court which has jurisdiction to rule only on questions of law in Rule 45 petitions to review; there are recognized exceptions where the Court may review questions of fact: (1) when the factual conclusion is a finding grounded entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) when

the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (Mendoza *vs*. Sps. Palugod, G.R. No. 220517, June 20, 2018) p. 838

Factual findings by the Court of Tax Appeals –– The Court will not lightly set aside the conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority; findings of fact by the CTA, accorded with the highest respect and can only be disturbed on appeal if they are not supported by substantial evidence or there is a showing of gross error or abuse on the part of the CTA. (Commissioner of Internal Revenue *vs*. Bank of the Phil. Islands, G.R. No. 224327, June 11, 2018) p. 97

Factual findings of administrative agencies –– Unfair competition is always a question of fact; thus, the question to be determined is whether or not, as a matter of fact, the name or mark used by the defendant has previously come to indicate and designate plaintiff's goods; factual findings of administrative agencies are generally accorded respect and even finality by this Court, if such findings are supported by substantial evidence, as it is presumed that these agencies have the knowledge and expertise over matters under their jurisdiction, more so when these findings are affirmed by the Court of Appeals. (San Miguel Pure Foods Co., Inc. *vs*. Foodsphere, Inc., G.R. No. 217781, June 20, 2018) p. 771

Factual findings of the Court of Appeals –– As a rule, the factual findings of the CA affirming those of the RTC are final and conclusive, and they cannot be reviewed by the Court which has jurisdiction to rule only on questions of law in Rule 45 petitions to review; there are recognized exceptions where the Court may review questions of fact: (1) when the factual conclusion is a finding grounded

entirely on speculations, surmises and conjectures; (2) when the inference is manifestly mistaken, absurd or impossible; (3) when there is abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the CA went beyond the issues of the case in making its findings, which are further contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those of the trial court; (8) when the conclusions do not cite the specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; (10) when the CA's findings of fact, supposedly premised on the absence of evidence, are contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (Mendoza *vs*. Sps. Palugod, G.R. No. 220517, June 20, 2018) p. 838

Factual findings of the trial court — It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result; this is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors. (People *vs*. Agramon, G.R. No. 212156, June 20, 2018) p. 747

— While the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, especially when affirmed by the CA, the same rule admits of exceptions as where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied; The case at bench falls under this exception and, hence,

a departure from the general rule is warranted. (People *vs*. Andrada *y* Caampued, G.R. No. 232299, June 20, 2018) p. 999

Guiding principles in the review of rape cases — Three (3) principles guide the Court in the review of rape cases: (*a*) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (*b*) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (*c*) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. (People *vs*. Tanglao *y* Egana, G.R. No. 219963, June 13, 2018) p. 253

Petition for review on certiorari to the Supreme Court under Rule 45 — It has been consistently held that a petition for review on *certiorari* under Rule 45 shall only raise questions of law as the Court is not a trier of facts; a factual question would necessitate the reevaluation of the evidence submitted before the trial court; this is allowed in the exceptional circumstance where the judgment is based on a misapprehension of the facts, such as in this case. (Aliling *vs*. People, G.R. No. 230991, June 11, 2018) p. 146

— Rule 45 of the Rules of Court allows for a direct recourse to this Court by appeal from a judgment, final order, or resolution of the Regional Trial Court; thus, there is no question that a petitioner may file a verified petition for review directly with this Court if only questions of law are at issue; however, if both questions of law and of facts are present, the correct remedy is to file a petition for review with the Court of Appeals; in this case, the underlying question for this Court's resolution pertains to jurisdiction; petitioner did not err in filing its appeal

directly with this Court. (First Sarmiento Property Holdings, Inc. *vs*. Phil. Bank of Communications, G.R. No. 202836, June 19, 2018) p. 400

Right to appeal — The right to appeal is not a natural right or a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law; as such, the party seeking relief from the appellate court must strictly comply with the requirements set forth by the rules; in this case, petitioner's failure to abide by the procedural requirements, under the aforesaid circumstances, results in the forfeiture of his right to appeal. (Melendres *vs*. Ombudsman Gutierrez, G.R. No. 194346, June 18, 2018) p. 329

Rule 43 — In *Bañez vs. Social Security System*, the Court had occasion to reiterate that appeal is not a constitutional right, but a mere statutory privilege; failure to file or perfect an appeal within the reglementary period will make the judgment final and executory by operation of law; perfection of an appeal within the statutory or reglementary period is not only mandatory but also jurisdictional; the appeal shall be taken within fifteen (15) days from the notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. (ABS-CBN Publishing, Inc. *vs*. Dir. of the Bureau of Trademarks, G.R. No. 217916, June 20, 2018) p. 791

ATTORNEYS

Administrative case against — In *Enriquez v. De Vera*, the Court categorically pronounced that a lawyer's act of issuing a worthless check, punishable under B.P. Blg. 22, constitutes serious misconduct penalized by suspension from the practice of law for one (1) year, for which no conviction of the criminal charge is even necessary; in addition, respondent's failure to answer the complaint against him and his failure to appear at the scheduled

mandatory conference/hearing despite notice are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Sec. 3, Rule 138, Rules of Court; *Tria-Samonte v. Obias*, cited. (Lim *vs*. Atty. Rivera, A.C. No. 12156, June 20, 2018) p. 609

Attorney-client relationship — A lawyer is forbidden "from representing conflicting interests except by written consent of all concerned given after a full disclosure of the facts; such prohibition is founded on principles of public policy and good taste as the nature of the lawyer-client relations is one of trust and confidence of the highest degree; lawyers are expected not only to keep inviolate the client's confidence, but also to avoid the appearance of impropriety and double-dealing"; reason; the absence of monetary consideration does not exempt lawyers from complying with the prohibition against pursuing cases with conflicting interests; the prohibition attaches from the moment the attorney-client relationship is established and extends even beyond the duration of the professional relationship." (Sps. Yumang *vs*. Atty. Alaestante, A.C. No. 10992, June 19, 2018) p. 378

— Canon 17 of the CPR directs a lawyer to be mindful of the trust and confidence reposed in him; respondent violated his client's trust when he received an amount despite knowing that he could not file the ejectment suit because some of the occupants of complainant's property are his friends; indeed, he was not able to file the case but without informing complainant of his reasons. (Gonzales *vs*. Atty. Santos, A.C. No. 10178, June 19, 2018) p. 370

— Documentary formalism is not an essential element in the employment of an attorney; the contract may be express or implied; to establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession. (Sps. Yumang *vs*. Atty. Alaestante, A.C. No. 10992, June 19, 2018) p. 378

— The relationship between a lawyer and his client is highly fiduciary; it demands great fidelity and good faith on the part of the lawyer; Rule 16.01 of the Code of Professional Responsibility requires lawyers to account for all money and property collected or received for and from their clients; in addition, Rule 16.03 mandates that a lawyer shall deliver the funds and property of his client when due or upon demand; respondent administratively liable for failing to deliver within reasonable time the title to complainant or to her sister, who acted as her representative. (Gonzales *vs*. Atty. Santos, A.C. No. 10178, June 19, 2018) p. 370

Attorney's Oath — On the charge of the alleged violation of the Attorney's Oath, the settled rule is that: The Code of Professional Responsibility does not cease to apply to a lawyer simply because he has joined the government service; by the express provision of Canon 6 thereof, the rules governing the conduct of lawyers "shall apply to lawyers in government service in the discharge of their official tasks"; explained. (Santiago *vs.* Atty. Santiago, A.C. No. 3921, June 11, 2018) p. 1

Code of Professional Responsibility — At the very moment a lawyer agrees to be engaged as a counsel, he is obliged to handle the same with utmost diligence and competence until the conclusion of the case; neglecting a legal cause renders him accountable under the Code of Professional Responsibility, specifically, under Rule 18.03 thereof, which states: CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE; Rule 18.03; *Spouses Jonathan and Ester Lopez vs. Atty. Sinamar E. Limos Lopez vs. Limos*, cited. (Balmaceda *vs*. Atty. Uson, A.C. No. 12025, June 20, 2018) p. 596

— Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes; a lawyer, to the best of his ability, is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary to the same; Rule 1.01, on the other hand, states the norm of

conduct to be observed by all lawyers. (Gonzales *vs*. Atty. Bañares, A.C. No. 11396, June 20, 2018) p. 578

— Canon 7 of the Code of Professional Responsibility provides: A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar; Rule 7.03 of the Code of Professional Responsibility further provides: A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession. (Fabugais *vs.* Atty. Faundo, Jr., A.C. No. 10145, June 11, 2018) p. 19

— Canon 17 of the Code provides that "a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him"; Canon 18 imposes upon a lawyer the duty to serve his client with competence and diligence; Rule 18.03, Canon 18 expressly states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable"; no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client; he has the right to decline employment, subject, however, to Canon 14 of the Code; once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. (United Coconut Planters Bank *vs*. Atty. Noel, A.C. No. 3951, June 19, 2018) p. 354

— In Canon 16 of the Code of Professional Responsibility, it is provided that a lawyer only holds in trust all moneys and properties of his client that may come into his possession; "the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith; the highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client." (Balmaceda *vs*. Atty. Uson, A.C. No. 12025, June 20, 2018) p. 596

— It has been consistently held that "the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law; the IBP Investigating Commissioner correctly ruled that respondent's act of issuing a worthless check was a violation of Rule 1.01, Canon 1 of the CPR. (Lim *vs*. Atty. Rivera, A.C. No. 12156, June 20, 2018) p. 609

— That the respondent eventually returned a *portion* of the money to the complainant and both have signified consent to the termination of the case do not automatically exonerate him from administrative liability; restitution may have earned him the condonation of his client but, being a member of the Integrated Bar of the Philippines, he is also answerable to the legal profession. (Balmaceda *vs*. Atty. Uson, A.C. No. 12025, June 20, 2018) p. 596

— The Court explained the crucial role played by lawyers in the administration of justice in *Salabao v. Villaruel, Jr.*, *viz*.: While it is true that lawyers owe 'entire devotion' to the cause of their clients, it cannot be emphasized enough that their first and primary duty is 'not to the client but to the administration or justice'; Canon 12 of the Code of Professional Responsibility; because a lawyer is an officer of the court called upon to assist in the administration of justice, any act of a lawyer that obstructs, perverts, or impedes the administration of justice constitutes misconduct and justifies disciplinary action against him. (Re: CA-G.R. CV No. 96282 (Sps. Partoza *vs*. Montano) *vs*. Atty. Santamaria, A.C. No. 11173 [Formerly CBD No. 13-3968], June 11, 2018) p. 33

— The sending of the unsealed scurrilous letter by respondent lawyer to the DOJ Secretary, was a violation of Rule 8.01 of the Code of Professional Responsibility, which stipulates that "a lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper"; in that letter, not only did respondent lawyer employ intemperate or unbridled language, he

was also guilty of corner-cutting unprofessionally. (Sps. Yumang *vs.* Atty. Alaestante, A.C. No. 10992, June 19, 2018) p. 378

Conduct of — The petitioners' counsels would do well to be reminded—and sternly at that—that the Code of Professional Responsibility requires them to observe and maintain the respect due to the courts and its officers; this includes the language and tenor employed in the pleadings submitted before the courts. (Magsaysay Maritime Corp. *vs.* Enanor, G.R. No. 224115, June 20, 2018) p. 876

— "There is perhaps no profession after that of the sacred ministry in which a high-toned morality is more imperative than that of the law"; as officers of the court, lawyers must in fact and in truth be of good moral character; they must moreover also be *seen* or *appear* to be of good moral character; and be *seen* or *appear* to – live a life in accordance with the highest moral standards of the community. (Fabugais *vs.* Atty. Faundo, Jr., A.C. No. 10145, June 11, 2018) p. 19

— Unlawful conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element; to be dishonest means the disposition to lie, cheat, deceive, defraud, or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness, and straightforwardness, while conduct that is deceitful means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. (Gonzales *vs.* Atty. Bañares, A.C. No. 11396, June 20, 2018) p. 578

Conflict of interests — Canon 16 and Rule 16.01 of the Code of Professional Responsibility; Rule 15.03, Canon 15; Rule 21.02, Canon 21 of the CPR; in *Aniñon v. Atty. Sabitsana, Jr.*, the Court laid down the tests to determine if a lawyer is guilty of representing conflicting interests between and among his clients; one of these tests is whether the acceptance of a new relation would prevent the full discharge of a lawyer's duty of undivided fidelity

and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty; another test is whether a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment. (BSA Tower Condominium Corp. *vs*. Atty. Reyes II, A.C. No. 11944 [Formerly CBD No. 12-3463], June 20, 2018) p. 588

Disbarment — Before the Court may impose against respondents the severe disciplinary sanction of disbarment, complainant must be able to establish by substantial evidence the malicious and intentional character of the misconduct complained of that evince the moral delinquency of respondents; substantial evidence is the amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion; no sufficient evidence presented in this case. (Santiago *vs.* Atty. Santiago, A.C. No. 3921, June 11, 2018) p. 1

— In *Bautista vs. Bernabe*, it was held that the "complainant's desistance or withdrawal of the complaint does not exonerate respondent or put an end to the administrative proceedings; a case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant"; the reason stems from the fact that "disbarment cases are *sui generis*." (Balmaceda *vs*. Atty. Uson, A.C. No. 12025, June 20, 2018) p. 596

— Sec. 27, Rule 138 of the Rules of Court provides for the grounds for the imposition of the penalty of disbarment; in this case, complainant accused the respondents of deceit, gross misconduct and of violating their Attorney's Oath in issuing the Resolution that allegedly contained false statements and which was arrived at without her being informed of the charges or given the opportunity to present evidence. (Santiago *vs.* Atty. Santiago, A.C. No. 3921, June 11, 2018) p. 1

— The Court held in *Osop v. Fontanilla* that charges meriting disciplinary action against a lawyer generally involve the motives that induced him to commit the act charged

and that, to justify disbarment or suspension, the case against the lawyer must be clear and free from doubt, not only as to the act charged but as to his motive; *Cabas v. Sususco*, cited. (*Id.*)

— The Court is ever mindful that administrative disciplinary proceedings are essentially designed to protect the administration of justice and that this lofty ideal can be attained by requiring that those who are honored by the title "Attorney" and counsel or at law are men and women of undoubted competence, unimpeachable integrity and undiminished professionalism, men and women in whom courts and clients may repose confidence; the power to disbar or suspend members of the bar ought always to be exercised not in a spirit of spite, hostility or vindictiveness, but on the preservative and corrective principle, with a view to safeguarding the purity of the legal profession. (Fabugais *vs.* Atty. Faundo, Jr., A.C. No. 10145, June 11, 2018) p. 19

— This case can proceed in spite of complainant's death and the apparent lack of interest on the part of complainant's heirs; disciplinary proceedings against lawyers are *sui generis* in nature; they are intended and undertaken primarily to look into the conduct or behavior of lawyers, to determine whether they are still fit to exercise the privileges of the legal profession, and to hold them accountable for any misconduct or misbehavior which deviates from the mandated norms and standards of the Code of Professional Responsibility; not chiefly or primarily intended to administer punishment, such proceedings do not call for the active service of prosecutors. (*Id.*)

— This case for disbarment cannot be resorted to as another remedy in order to attack the legality of a Resolution or to nullify its consequences; the only issue that should be determined in this case is whether respondents committed misconduct that put into question their moral character and moral fitness to continue in the practice of law; this

issue had been answered in the negative. (Santiago *vs.* Atty. Santiago, A.C. No. 3921, June 11, 2018) p. 1

Disbarment and discipline of — For the Court to exercise its disciplinary powers, the case against the respondent lawyer must be established by clear, convincing and satisfactory proof; considering the serious consequences of disbarment or suspension of a member of the Bar, the Court has consistently held that a clear preponderant evidence is necessary to justify the imposition of the administrative penalty; the burden of proof in disbarment and suspension proceedings always rests on the shoulders of the complainant. (Gradiola *vs.* Atty. Deles, A.C. No. 10267, June 18, 2018) p. 299

Disbarment or suspension of — Administrative cases are *sui generis;* this Court, acting as the legal profession's sole disciplinary body, is not strictly bound by the technical rules of procedure and evidence. (Sps. Yumang *vs.* Atty. Alaestante, A.C. No. 10992, June 19, 2018) p. 378

— Under Sec. 27, Rule 138 of the Rules of Court, a finding of gross misconduct and willful disobedience of any lawful order of a superior court is sufficient cause for suspension or disbarment; the determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion; penalty of suspension from the practice of law for a period of three (3) years, imposed in this case. (United Coconut Planters Bank *vs.* Atty. Noel, A.C. No. 3951, June 19, 2018) p. 354

Disciplinary proceedings against — As case law elucidates, disciplinary proceedings against lawyers are *sui generis;* neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers; not being intended to inflict punishment, it is in no sense a criminal prosecution; it may be initiated by the Court *motu proprio;* the acts of respondent lawyer are not tantamount to a violation of any of the CPR

provisions. (BSA Tower Condominium Corp. *vs*. Atty. Reyes II, A.C. No. 11944 [Formerly CBD No. 12-3463], June 20, 2018) p. 588

Discipline of — Time and again, the Court has imposed the penalty of suspension or disbarment for any gross misconduct that a lawyer may have committed, whether it is in his professional or in his private capacity; good character is an essential qualification for the admission to and continued practice of law. (Lim *vs*. Atty. Rivera, A.C. No. 12156, June 20, 2018) p. 609

Dismissal of administrative proceedings against — The mere forgiveness, desistance or acquiescence of the client to the dismissal of the administrative proceedings will not *ipso facto* absolve the lawyer from liability but by establishing that no misconduct or negligence was committed; imposition of an administrative sanction is only proper; *Solidon vs. Macalalad*, cited; penalty. (Balmaceda *vs*. Atty. Uson, A.C. No. 12025, June 20, 2018) p. 596

Duties — By his repeated failure, refusal or inability to comply with the CA resolutions, respondent displayed not only reprehensible conduct but showed an utter lack of respect for the CA and its orders; Sec. 20(b), Rule 138 of the Rules of Court states that it "is the duty of an attorney to observe and maintain the respect due to courts of justice and judicial officers"; Canons 1 and 11 of the Code of Professional Responsibility, cited. (Re: CA-G.R. CV No. 96282 (Sps. Partoza *vs*. Montano) *vs*. Atty. Santamaria, A.C. No. 11173 [Formerly CBD No. 13-3968], June 11, 2018) p. 33

— "Lawyers are particularly called upon to obey court orders and processes, and this deference is underscored by the fact that willful disregard thereof may subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well"; in this case, respondent deliberately ignored five CA Resolutions, thereby violating his duty to observe and maintain the respect due the courts; penalty

of suspension for six (6) months, as recommended by the IBP. (*Id*.)

Gross misconduct — Gross misconduct is "any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e*., conduct prejudicial to the rights of the parties or to the right determination of the cause; the motive behind this conduct is generally a premeditated, obstinate or intentional purpose." (Santiago *vs.* Atty. Santiago, A.C. No. 3921, June 11, 2018) p. 1

Immoral conduct — Defined as that conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community; for such conduct to warrant disciplinary action, the same must be "grossly immoral, that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree"; not established in this case. (Fabugais *vs.* Atty. Faundo, Jr., A.C. No. 10145, June 11, 2018) p. 19

Inexcusable negligence — Respondent grossly neglected his duty as counsel to the extreme detriment of his client; he willingly and knowingly allowed the default order to attain finality and he allowed judgment to be rendered against his client on the basis of *ex parte* evidence; he also willingly and knowingly allowed said judgment to become final and executory; he failed to assert any of the defenses and remedies available to his client under the applicable laws. (United Coconut Planters Bank *vs*. Atty. Noel, A.C. No. 3951, June 19, 2018) p. 354

Penalty — Respondent suspended from the practice of law for three years; similar penalty imposed in *Lopez v. Limos* for violations of Rule 1.01 of Canon 1, Canon 11, Rule 12.04 of Canon 12, Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the CPR; return of the amount to complainant is in order. (Gonzales *vs*. Atty. Santos, A.C. No. 10178, June 19, 2018) p. 370

Presumption of innocence from charges — An attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the court, he is presumed to have performed his duties in accordance with his oath; burden of proof is defined in Sec. 1 of Rule 131 as the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. (BSA Tower Condominium Corp. *vs*. Atty. Reyes II, A.C. No. 11944 [Formerly CBD No. 12-3463], June 20, 2018) p. 588

Willful disregard of court processes — Respondent's evident and willful disregard of court processes constitutes further reason to discipline him; he has repeatedly failed to comply with this Court's orders; he failed to file a comment on the administrative complaint despite numerous resolutions of the Court ordering him to do so; he was found guilty of contempt of court and was fined twice as result of his disobedience; undoubtedly, his gross misconduct and willful disobedience have resulted in the extreme and inordinate delay of the instant proceedings; in doing so, he violated Canon 12 of the Code; he also violated Rule 12.03, Canon 12 of the Code. (United Coconut Planters Bank *vs*. Atty. Noel, A.C. No. 3951, June 19, 2018) p. 354

BANKS

Doctrine of comparative negligence — A glaring peculiarity in the cases of *Bank of the Philippine Islands* and *Allied Banking Corporation* is that the drawee bank—which is essentially also the drawer in the scenario—is not only guilty of wrongfully paying a check but also of negligence in issuing such check; given the differences in the factual milieu between this case on one hand and the cases of *Bank of the Philippine Islands* and *Allied Banking Corporation* on the other, the doctrine of comparative negligence cannot be applied; the liabilities of Metrobank and Bankcom must be governed by the rule on sequential

recovery pursuant to *Bank of America*. (Metropolitan Bank and Trust Co. *vs*. Junnel's Marketing Corp., G.R. No. 235511, June 20, 2018) p. 1107

BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA)

Nature — BCDA also does not qualify as a non-stock corporation because it is not organized for any of the purposes mentioned under Sec. 88 of the Corporation Code; Sec. 4 of R.A. No. 7227 shows that BCDA is organized for a specific purpose - to own, hold and/or administer the military reservations in the country and implement its conversion to other productive uses. (Bases Conversion and Dev't. Authority *vs*. Commissioner of Internal Revenue, G.R. No. 205925, June 20, 2018) p. 734

— BCDA is a government instrumentality vested with corporate powers; as such, it is exempt from the payment of docket fees required under Sec. 21, Rule 141 of the Rules or Court; a government instrumentality may be endowed with corporate powers and at the same time retain its classification as a government "instrumentality" for all other purposes. (*Id*.)

— Sec. 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and authorized to distribute to the holders of such shares dividends"; BCDA is not a stock corporation; explained; Sec. 8 of R.A. No. 7227 provides an enumeration of BCDA's purposes and their corresponding percentage shares in the sales proceeds of BCDA. (*Id*.)

CAREER EXECUTIVE SERVICE BOARD (CESB)

Powers — Sec. 29(1), Art. VI of the 1987 Constitution ordains that: "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law"; the only exception is found in Sec. 25(5), Art. VI of the 1987 Constitution; the CESB is definitely not among the officials or agencies authorized to transfer their savings in other items of its appropriation; the CESB, although intended to be an autonomous entity, is administratively attached

to the Civil Service Commission (CSC), and does not wield the power to authorize the augmentation of items of its appropriations from savings in other items of its appropriations. (Career Executive Service Board *vs*. Commission on Audit, G.R. No. 212348, June 19, 2018) p. 433

CERTIORARI

Grave abuse of discretion — Grave abuse of discretion, under Rule 65, refers to the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law; the abuse of discretion must be patent and gross. (GSIS Board of Trustees *vs*. Court of Appeals, G.R. No. 230953, June 20, 2018) p. 978

Petition for — A special civil action for *certiorari*, under Rule 65, is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law; a petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. (GSIS Board of Trustees *vs*. Court of Appeals, G.R. No. 230953, June 20, 2018) p. 978

— A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file an appeal under Rule 43 of the Rules of Court; Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies; the general rule that an appeal and a *certiorari* are not interchangeable admits of exceptions: (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of rules; respondent judge failed to substantiate through clear and well-established

grounds exactly how her case warrants a deviation from the general rule. (*Id*.)

***CERTIORARI* AND PROHIBITION**

Grave abuse of discretion — By *grave abuse of discretion* is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; the abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law; the burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. (Career Executive Service Board *vs*. Commission on Audit, G.R. No. 212348, June 19, 2018) p. 433

CHECKS

Crossed check — A crossed check is one where two parallel lines are drawn across its face or across its corner, and carries with it the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once to the one who has an account with the bank; and (c) the act of crossing the check serves as a warning to the holder that the check has been issued for a definite purpose and he must inquire if he received the check pursuant to this purpose; otherwise, he is not a holder in due course. (Phil. Deposit Insurance Corp. *vs*. Gidwani, G.R. No. 234616, June 20, 2018) p. 1081

Payment of — A drawee bank is contractually obligated to follow the explicit instructions of its drawer-clients when paying checks issued by them; when a drawee bank pays a person other than the payee named on the check, it essentially commits a breach of its obligation and renders the payment it made unauthorized; in such cases and

under normal circumstances, the drawee bank may be held liable to the drawer for the amount charged against the latter's account; the liability of the drawee bank to the drawer in cases of unauthorized payment of checks has been regarded in jurisprudence to be strict by nature; it is only when the unauthorized payment of a check had been caused or was attended by the fault or negligence of the drawer himself can the drawee bank be excused, whether wholly or partially, from being held liable to the drawer for the said payment; application. (Metropolitan Bank and Trust Co. *vs*. Junnel's Marketing Corp., G.R. No. 235511, June 20, 2018) p. 1107

Sequence of recovery of unauthorized payment of checks —— The sequence of recovery in cases of unauthorized payment of checks, however, does not ordinarily stop with the collecting bank; in the event that it is made to reimburse the drawee bank, the collecting bank can seek similar reimbursement from the very persons who caused the checks to be deposited and received the unauthorized payments; such persons are the ones *ultimately liable* for the unauthorized payments and their liability rests on their absolute lack of valid title to the checks that they were able to encash; application. (Metropolitan Bank and Trust Co. *vs*. Junnel's Marketing Corp., G.R. No. 235511, June 20, 2018) p. 1107

—— The subject checks herein are considered valid because they are complete and bear genuine signatures; the facts of *Bank America* are parallel to the facts of the present case; *Bank of America* held that, in cases involving the unauthorized payment of valid checks, the drawee bank becomes liable to the drawer for the amount of the checks *but* the drawee bank, in turn, can seek reimbursement from the collecting bank; rationale of this rule on sequence of recovery. (*Id*.)

Warranties assumed by an indorser —— When a collecting bank presents a check to the drawee bank for payment, the former thereby assumes the same warranties assumed by an indorser of a negotiable instrument pursuant to

Sec. 66 of the Negotiable Instruments Law; these warranties are: (1) that the instrument is genuine and in all respects what it purports to be; (2) that the indorser has good title to it; (3) that all prior parties had capacity to contract; and (4) that the instrument is, at the time of the indorsement, valid and subsisting; if any of the foregoing warranties turns out to be false, a collecting bank becomes liable to the drawee bank for payments made under such false warranty; application. (Metropolitan Bank and Trust Co. *vs*. Junnel's Marketing Corp., G.R. No. 235511, June 20, 2018) p. 1107

CLERKS OF COURT

Functions — The Court finds no merit in the administrative charges of inefficiency and collusion against respondent; as clerk of court, she had no discretion to refuse to receive pleadings and motions even if they are contrary to or prohibited by law as this was a judicial function that belonged to the judge. (Atty. Mahinay *vs*. Hon. Daomilas, Jr., A.M. No. RTJ-18-2527 [Formerly OCA IPI No. 16-4563-RTJ], June 18, 2018) p. 310

COMMISSION ON AUDIT (COA)

Powers — The COA has been vested with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds; it has the power to ascertain whether or not public funds were utilized for the purpose for which they had been intended; being the guardian of public funds, it has been vested by the 1987 Constitution with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations. (Career Executive Service Board *vs*. Commission on Audit, G.R. No. 212348, June 19, 2018) p. 433

COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP) (R.A. NO. 6657)

Just compensation — It was determined in *Dalauta* that the proper prescriptive period to file a petition for judicial determination of just compensation under R.A. No. 6657 is ten (10) years pursuant to Art. 1144 (2) of the Civil Code; considering that payment of just compensation is an obligation created by law, it is only proper that the ten (10)-year period start from the time the landowner receives the notice of coverage under the CARP; in addition, any interruption or delay caused by the government, like proceedings in the DAR, should toll the running of the prescriptive period; in this case, the 10-year prescriptive period began at that moment because respondent knew that its lands would be covered by the CARP; thus, the petition for judicial determination of just compensation before the RTC-SAC, which was even tolled by the proceedings before the PARAD, was squarely and timely filed within the 10-year prescriptive period. (Land Bank of the Phils. *vs*. Herederos De Ciriaco Chunaco Distileria, Inc., G.R. No. 206992, June 11, 2018) p. 53

— It was stated in *Dalauta* that a landowner should withdraw his case with the DAR before filing his petition before the RTC-SAC and manifest the fact of withdrawal by alleging it in the petition itself; failure to do so would be a ground for a motion to suspend judicial proceedings until the administrative proceedings are terminated; here, when the PARAD denied its motion for reconsideration on the preliminary determination of just compensation, petitioner did not anymore appeal before the DARAB; instead, it timely filed a petition for judicial determination of just compensation before the RTC-SAC; thus, the administrative proceedings on the determination of just compensation were terminated; the PARAD cannot enforce its decision because there is still a pending judicial determination of just compensation before the courts; it is only when the said judicial determination attains finality that the award of just compensation may be executed. (*Id*.)

— The valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies; as the taking of property under R.A. No. 6657 is an exercise of the power of eminent domain by the State, the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function, which is vested with the courts and not with administrative agencies; consequently, the Special Agrarian Court can properly take cognizance of any petition for determination of just compensation. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody requirements — Contrary to appellant's contention, there was full compliance with the chain of custody requirement in this case; jurisprudence has consistently stressed that for drug-related cases to prosper, the *corpus delicti* – the drug/s subject of the offense charged – must be duly identified, proved, and presented in court; Sec. 21, Art. II of R.A. No. 9165, as amended by R.A. No. 10640, outlines the required chain of custody of the seized illegal drugs and related items; essential aspects of the chain of custody are: (1) the immediate marking, inventory, and taking of photographs of the recovered items; (2) the examination of the Forensic Chemist attesting that the seized items yielded positive results for the presence of illegal drugs; and (3) the presentation of the same evidence in court; all these requirements were fully complied with here. (People *vs*. De Asis *y* Balquin, G.R. No. 225219, June 11, 2018) p. 110

Chain of custody rule — Case law states that in illegal sale and illegal possession of dangerous drugs, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody

over the same and account for each link in the chain of custody from the moment the drugs are seized up to its presentation in court as evidence of the crime. (People *vs*. Gamboa *y* Francisco @ "Kuya", G.R. No. 233702, June 20, 2018) p. 1055

— Since the *corpus delicti* in dangerous drugs cases constitutes the dangerous drugs itself, proof beyond reasonable doubt that the seized item is the very same object tested to be positive for dangerous drugs and presented in court as evidence is essential in every criminal prosecution under R.A. No. 9165; to this end, the prosecution must establish the unbroken chain of custody of the seized items; 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; explained. (People *vs*. Sipin *y* De Castro, G.R. No. 224290, June 11, 2018) p. 67

— 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; 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. (*Id*.)

Custody and disposition of confiscated dangerous drugs — The failure of the prosecution to establish an unbroken chain of custody was compounded by the police officers' non-compliance with the procedure for the custody and disposition of seized dangerous drugs as set forth in Sec. 21(1), Art. II of R.A. No. 9165; Sec. 21(a), Art. 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; R.A. No. 10640, which amended Sec. 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; however, under the original provision of Sec. 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; purpose. (People *vs*. Sipin *y* De Castro, G.R. No. 224290, June 11, 2018) p. 67

— The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Sec. 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; 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. (*Id*.)

Illegal possession of dangerous drugs — Appellant was also guilty of illegal possession of prohibited drugs because as incident of the buy-bust, four sachets of *shabu* were found in his pocket; such possession was not shown to be authorized by law; and, appellant freely and consciously possessed them in violation of Sec. 11, Art. II, R.A. No. 9165. (People *vs*. De Asis *y* Balquin, G.R. No. 225219, June 11, 2018) p. 110

— In instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (People *vs*. Gamboa *y* Francisco @ "Kuya", G.R. No. 233702, June 20, 2018) p. 1055

— In order to properly secure the conviction of an accused charged with this offense, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug; case law states that the identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. (Anyayahan *y* Taronas *vs*. People, G.R. No. 229787, June 20, 2018) p. 927

— In prosecutions for illegal possession of dangerous drugs, it must be shown that (1) the accused was in possession of an item or an object identified to be a dangerous drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug; the existence of the drug is the very *corpus delicti* of the crime of illegal possession of dangerous drugs and, thus, a condition *sine qua non* for conviction. (People *vs*. Sipin *y* De Castro, G.R. No. 224290, June 11, 2018) p. 67

Illegal posssession of regulated or prohibited drugs under Section 11, Article II — To prove "illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited drug; (2) such possession is not authorized by law; and, (3) the accused freely and consciously

possessed the drug"; all the foregoing elements were proved beyond reasonable doubt. (People *vs*. Seguiente *y* Ramirez, G.R. No. 218253, June 20, 2018) p. 811

Illegal sale and illegal possession of dangerous drugs — In order to properly secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; in instances wherein an accused is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements to warrant his/her conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug; in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. (People *vs*. Mercader, G.R. No. 233480, June 20, 2018) p. 1031

— The burden of proving the guilt of an accused rests on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense; when moral certainty as to culpability hangs in the balance, acquittal on reasonable doubt becomes a matter of right, irrespective of the reputation of the accused who enjoys the right to be presumed innocent until the contrary is shown; for failure of the prosecution to establish beyond reasonable doubt the unbroken chain of custody of the drugs seized from appellant, and to prove as a fact any justifiable reason for non-compliance with Sec. 21 of R.A. No. 9165 and its IRR, appellant must be acquitted of the crimes charged. (People *vs*. Sipin *y* De Castro, G.R. No. 224290, June 11, 2018) p. 67

Illegal sale and illegal possession of shabu — Penalties, indicated. (People *vs*. De Asis *y* Balquin, G.R. No. 225219, June 11, 2018) p. 110

Illegal sale of dangerous drugs — For a successful prosecution of an offense for illegal sale of dangerous drugs, the following essential elements must be proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor; the delivery of the illicit drug to the *poseur*-buyer and the receipt of the marked money by the seller successfully consummate the buy-bust transaction. (People *vs*. Sipin *y* De Castro, G.R. No. 224290, June 11, 2018) p. 67

— In a prosecution for the illegal sale of drugs under Sec. 5, Art. II of R.A. No. 9165, "the prosecution needs to prove sufficiently the identity of the buyer, seller, object and consideration; and, the delivery of the thing sold and the payment thereof; what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the substance seized as evidence"; in this case, the appellant was positively identified as seller of the drugs to the poseur-buyer. (People *vs*. Seguiente *y* Ramirez, G.R. No. 218253, June 20, 2018) p. 811

— In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence; the existence of *corpus delicti* is essential to a judgment of conviction. (People *vs*. Battung *y* Narmar, G.R. No. 230717, June 20, 2018) p. 959

— In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. (People *vs*. Gamboa *y* Francisco @ "Kuya", G.R. No. 233702, June 20, 2018) p. 1055

— It is beyond cavil that appellant was guilty of illegal sale of dangerous drug considering that the following elements

of this crime were fully established: (a) the identity of the seller (appellant) and the buyer; (b) the consideration of the sale (500.00 marked money); and (c) the delivery of the thing sold *(shabu)* and its payment to the seller. (People *vs*. De Asis *y* Balquin, G.R. No. 225219, June 11, 2018) p. 110

— Jurisprudence consistently pronounces that for a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be duly proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor; the narcotic substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction; *People v. Gatlabayan*, cited. (People *vs*. Andrada *y* Caampued, G.R. No. 232299, June 20, 2018) p. 999

Illegal sale of drugs under Section 5, Article II — For the successful prosecution of a violation of Sec. 5, Art. II of R.A. No. 9165, the following elements must concur: (a) identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment; there must be a showing that the integrity and evidentiary value of such seized items must have been preserved in that the drugs presented in court as evidence against the accused must be the same as those seized from the culprit. (People *vs*. Angeles *y* Namil, G.R. No. 218947, June 20, 2018) p. 822

Links in the chain of custody — *Mallillin v. People*, cited; in *People v. Kamad*, the Court laid out the links in the chain of custody which must be sufficiently established in buy-bust situations: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drugs seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and

submission of the seized and marked illegal drug from the forensic chemist to the court; the testimony of the prosecution's lone witness sufficiently established the first two links in the chain of custody but miserably fails to establish the remaining links of the chain. (People *vs*. Angeles *y* Namil, G.R. No. 218947, June 20, 2018) p. 822

—— Taking into account the unjustified deviation from the established procedure, broken links in the chain of custody and the minute amount recovered, the Court finds that the integrity of the evidence seized and presented in court has been compromised; consequently, the accused should not be convicted for violation of Sec. 5, Art. II of R.A. No. 9165. (*Id*.)

—— The links that must be established in the chain of custody in a buy-bust situation, are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turn-over of the illegal drug seized to the investigating officer; (3) the turn-over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turn-over and submission of the illegal drug from the forensic chemist to the court; here, the prosecution failed to establish beyond reasonable doubt the third link in the chain of custody. (People *vs*. Sipin *y* De Castro, G.R. No. 224290, June 11, 2018) p. 67

—— There are different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court; in order to prove the identity of the dangerous drug beyond reasonable doubt, the prosecution must be able to account for each

link in the chain of custody over the same, from the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*; the prosecution in this case fell short in satisfying this standard; explained. (People *vs*. Andrada *y* Caampued, G.R. No. 232299, June 20, 2018) p. 999

Marking, conduct of inventory and taking of photograph of the seized items –– The *ponente* submits 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; however, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, rationale. (People *vs*. Battung *y* Narmar, G.R. No. 230717, June 20, 2018) p. 959

Procedure in Section 21 –– In order to prevent evidence in drugs cases from being contaminated, the following procedure should be observed by law enforcement in accordance with Sec. 21 of R.A. No. 9165: 1. The apprehending team/officer having custody and control of the drugs shall immediately after seizure and confiscation, physically inventory and photograph; 2. The same must be done in the presence of the accused, or the person/s from whom the items were recovered, or his representative or counsel; and 3. A representative from the media and the Department of Justice, and any elected public official must likewise be present, who shall also sign the copies of the inventory and receive a copy thereof; generally, strict compliance with the above-mentioned procedure is required because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise; however, the Court in numerous instances had allowed substantial compliance with the procedure provided that

the integrity of the drugs seized is preserved. (People *vs*. Angeles *y* Namil, G.R. No. 218947, June 20, 2018) p. 822

— Substantial compliance with the procedure is not a panacea which *ipso facto* excuses the lapses committed by police officers in the conduct of anti-drug operations; *People v. Año*, cited; the prosecution has a two-fold duty of identifying any lapse in procedure and proving the existence of a sufficient reason why it was not strictly followed; here, the prosecution failed to prove any justifiable ground to deviate from the prescribed procedure. (*Id*.)

Section 21 — A review of the records indubitably shows that the procedure laid down in R.A. No. 9165 was not followed; the Court has already ruled that marking upon immediate confiscation does not exclude the possibility that marking can be at the police station or office of the apprehending team; however, while there was testimony about the marking of the seized substance at the police station, there was no mention that the marking was done in the presence of appellant; another procedural lapse committed by the arresting team was their non-compliance with the photograph and physical inventory requirements under R.A. No. 9165 and its Implementing Rules and Regulations. (People *vs*. Seguiente *y* Ramirez, G.R. No. 218253, June 20, 2018) p. 811

— Sec. 21(a) of the IRR, as amended by R.A. No. 10640, provides a saving clause in the procedure outline under Sec. 21(1) of R.A. No. 9165; however, before this saving clause to apply, the prosecution is bound to recognize the procedural lapses, provide justifiable grounds for its non-compliance and thereafter to establish the preservation of the integrity and evidentiary value of the items seized; in the present case, the lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti* especially in the face of allegation of frame-up; *People v. Relato*, cited. (*Id*.)

Section 21, Article II — Sec. 21, Art. II of R.A. No. 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value; under the said section, prior to its amendment by R.A. No. 10640, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph of 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, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. (Anyayahan *y* Taronas *vs*. People, G.R. No. 229787, June 20, 2018) p. 927

— The apprehending officers in this case failed to observe Sec. 21, Art. II of R.A. No. 9165 which requires that a representative from the media and the Department of Justice, and any elected public official be present during the conduct of a physical inventory and taking of photograph of the seized item/s, and who shall be required to sign copies of the inventory and shall each be given a copy thereof; under the last paragraph of Sec. 21 (a), Art. II of the Implementing Rules and Regulations of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused; this saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. (People *vs*. Andrada *y* Caampued, G.R. No. 232299, June 20, 2018) p. 999

— The Court clarified that under varied field conditions, strict compliance with the requirements of Sec. 21,

Art. II of R.A. No. 9165 may not always be possible; in fact, the Implementing Rules and Regulations of R.A. No. 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team; *People v. De Guzman*, cited; 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; despite the non-observance of the witness requirement, no plausible explanation was given by the prosecution; it is settled that in a prosecution for the sale and possession of dangerous drugs under R.A. No. 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti* failing in which, renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt. (People *vs*. Gamboa *y* Francisco @ "Kuya", G.R. No. 233702, June 20, 2018) p. 1055

—— The Court clarified that under varied field conditions, strict compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 may not always be possible; the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21, Art. II of R.A. No. 9165 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 this case, the Court finds that the police officers unjustifiably deviated from the prescribed

chain of custody rule, thereby putting into question the integrity and evidentiary value of the items. (Anyayahan *y* Taronas *vs*. People, G.R. No. 229787, June 20, 2018) p. 927

— The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Sec. 21 of R.A. No. 9165, as amended; its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence; strict adherence to Sec. 21 is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence; the prosecution totally failed to comply with the procedures outlined under Sec. 21 of R.A. No. 9165. (People *vs*. Battung *y* Narmar, G.R. No. 230717, June 20, 2018) p. 959

— Under the original provision of Sec. 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 a copy thereof. (*Id*.)

— Under varied field conditions, strict compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 may not always be possible; the Implementing Rules and Regulations of R.A. No. 9165 – which is now crystallized into statutory law with the passage of R.A. No. 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so

long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team; *People v. De Guzman*, cited; the police officers committed unjustified deviations from the prescribed chain of custody rule; there is a sufficient ground to acquit the accused. (People *vs.* Mercader, G.R. No. 233480, June 20, 2018) p. 1031

Three-witness rule –– The prosecution proffered no justifiable reason why the police officers dispensed with the requirements of taking of photograph and conduct of physical inventory of the accused and the seized items in the presence of representatives from the DOJ and the media, and an elected public official, not just at the crime scene but also at the police station; it never alleged and proved that the presence of 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 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 Art. 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) 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. (People *vs.* Sipin *y* De Castro, G.R. No. 224290, June 11, 2018) p. 67

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165), AS AMENDED BY R.A. NO. 10640

Conduct of physical inventory and taking of photograph of the seized items–– R.A. No. 10640, which amended

Sec. 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. (People *vs*. Battung *y* Narmar, G.R. No. 230717, June 20, 2018) p. 959

Witnesses — Sec. 1 of R.A. No, 10640, which amended Sec. 21 (1) of R.A. No. 9165, now requires only 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. (People *vs*. Andrada *y* Caampued, G.R. No. 232299, June 20, 2018) p. 999

CONSPIRACY

Existence of — Conspiracy is very much evident from the actuations of the appellants; The concerted efforts of the appellants were performed with closeness and coordination, indicating a single criminal impulse – to kill the victims; conspiracy may be deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when these point to a joint purpose and design, concerted action and community of interest; where conspiracy has been adequately proven, as in the present case, all the conspirators are liable as co-principals regardless of the extent and character of their participation because, in contemplation of law, the act of one is the act of all. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

— Established in this case; there is conspiracy "when the acts of the accused demonstrate a common design towards the accomplishment of the same unlawful purpose"; since there was conspiracy, the act of one was the act of all making them equally guilty of the crime of rape against the victim. (People *vs*. Cariat, G.R. No. 223565, June 18, 2018) p. 345

CONTRACTS

Contract to sell — Art. 1186 of the Civil Code refers to the constructive fulfillment of a suspensive condition, whose application calls for two requisites, namely: (a) the intent of the obligor to prevent the fulfillment of the condition, and (b) the actual prevention of the fulfillment; here, there is no doubt that petitioner prevented the fulfillment of the suspensive condition; it was incumbent upon the sellers to enter into a contract with respondent-spouses for the purchase of the subject property. (Villamil *vs*. Sps. Erguiza, G.R. No. 195999, June 20, 2018) p. 686

— Defined as a bilateral contract whereby the prospective seller, while expressly reserving the ownership of the subject property despite delivery thereof to the prospective buyer, binds himself to sell the said property exclusively to the latter upon his fulfillment of the conditions agreed upon, *i.e.*, the full payment of the purchase price and/or compliance with the other obligations stated in the contract to sell; the fulfillment of the suspensive condition will not automatically transfer ownership to the buyer although the property may have been previously delivered to him; conditional contract of sale, explained; contract to sell the subject property, illustrated in this case. (*Id*.)

Interpretation of — When the terms of the contract are clear and leave no doubt as to the intention of the contracting parties, the rule is settled that the literal meaning of its stipulations should control. (D.M. Ragasa Enterprises, Inc. *vs*. Banco De Oro, Inc., G.R. No. 190512, June 20, 2018) p. 640

COURT PERSONNEL

Conduct of — In *Judge Yrastorza, Sr. v. Latiza,* the Court ruled — Court employees bear the burden of observing exacting standards of ethics and morality; those who are part of the machinery of dispensing justice, from the lowliest clerk to the presiding judge, must conduct themselves with utmost decorum and propriety to maintain the public's faith and respect for the judiciary; respondent

found guilty of simple misconduct, in displaying improper deportment and reprehensible arrogance by officially meddling in a custody case which had been archived by the court, and in which she was not at all involved in any manner. (Benong-Linde *vs*. Lomantas, A.M. No. P-18-3842 [Formerly OCA IPI No. 12-3965-P], June 11, 2018) p. 43

–– Time and time again, the Court has repeatedly held that the image of a court of justice is mirrored in the conduct, official or otherwise, of its personnel; all court personnel are mandated to adhere to the strictest standards of honesty, integrity, morality, and decency in both their professional and personal conduct; blatantly overlooking the Court's interest in the preservation and promotion of the integrity of the Judiciary, petitioner misappropriated the money that was entrusted to him and made misrepresentations to cover up his misappropriation of the entrusted sum. (Re: Deceitful Conduct of Ignacio S. Del Rosario, Cash Clerk III, FMO-OCA, A.M. No. 2011-05-SC, June 19, 2018) p. 390

COURTS

Jurisdiction –– Jurisdiction is "the power and authority of a court to hear, try and decide a case" brought before it for resolution; courts exercise the powers conferred on them with binding effect if they acquire jurisdiction over: "(a) the cause of action or the subject matter of the case; (b) the thing or the res; (c) the parties; and (d) the remedy"; this power is conferred by law and cannot be acquired through stipulation, agreement between the parties, or implied waiver due to the silence of a party; jurisdiction is conferred by the Constitution, with Congress given the plenary power, for cases not enumerated in Art. VIII, Sec. 5 of the Constitution, to define, prescribe, and apportion the jurisdiction of various courts. (First Sarmiento Property Holdings, Inc. *vs*. Phil. Bank of Communications, G.R. No. 202836, June 19, 2018) p. 400

CRIMINAL PROCEDURE

Requirement for conviction –– Every criminal conviction requires the prosecution to prove two things: (1) the fact of the crime, *i.e*., the presence of all the elements of the crime for which the accused stands charged, and (2) the fact that the accused is the perpetrator of the crime; when a crime is committed, it is the duty of the prosecution to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established; the identification of appellants as the gunmen was clear, worthy of credence and has met the requirements of moral certainty in this case. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

DAMAGES

Award of — Discussed in *People v. Jugueta.* (People *vs*. Cariat, G.R. No. 223565, June 18, 2018) p. 345

Exemplary damages –– The petitioner failed to prove its entitlement to exemplary damages; the Court has held, time and again, that exemplary damages may be awarded for as long as the following requisites are present: (1) they may be imposed, by way of example, only in addition, among others, to compensatory damages, only after the claimant's right to them has been established, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; (2) the claimant must first establish his right to moral, temperate, liquidated or compensatory damages; and (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner. (San Miguel Pure Foods Co., Inc. *vs*. Foodsphere, Inc., G.R. No. 217781, June 20, 2018) p. 771

Liquidated damages –– Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof; the amount of the liquidated damages is purely contractual between the parties; and the courts

will intervene only to equitably reduce the liquidated damages, whether intended as an indemnity or a penalty, if they are iniquitous or unconscionable, pursuant to Arts. 2227 and 1229 of the Civil Code. (D.M. Ragasa Enterprises, Inc. *vs*. Banco De Oro, Inc., G.R. No. 190512, June 20, 2018) p. 640

DENIAL

Defense of — Appellants simply raise denial, which is inherently weak and cannot prevail over the positive identification made by the prosecution witness that they were the gunmen; moreover, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness, as in this case. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

— The accused's denial must be rejected as the same could not prevail over the victim's unwavering testimony and of her positive and firm identification of him as the perpetrator; as negative evidence, it pales in comparison with a positive testimony that asserts the commission of a crime and the identification of the accused as its culprit; the facts in this case do not present any exceptional circumstance warranting a deviation from this established rule. (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

DENIAL AND ALIBI

Defenses of — Positive testimony is generally given more weight than the defenses of denial and alibi which are held to be inherently weak defenses because they can be easily fabricated; however, the defenses of denial and alibi should not be so easily dismissed by the Court as untrue; the same can be said of untruthful accusations, in that they can be as easily concocted; *Lejano v. People,* cited; if found credible, the defenses of denial and alibi may be considered complete and legitimate defenses; the burden of proof does not shift by the mere invocation of said defenses; the presumption of innocence remains

in favor of the accused; alibi, how to prove; physical impossibility, construed. (Aliling *vs*. People, G.R. No. 230991, June 11, 2018) p. 146

—— The twin defenses of denial and alibi are inherently weak, and easily crumble against the positive identification made by a reliable eye witness; significantly, a denial and alibi will not prevail if corroborated *not* by credible witnesses, but by the accused's relatives and friends; this was the important dictum laid by the Court in *People v. Adriano, et al,* and *People v. Las Piñas*. (People *vs*. Abierra, G.R. No. 227504, June 13, 2018) p. 276

DIRECT ASSAULT WITH ATTEMPTED MURDER

Commission of —— It is well-settled that when the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault, and his victim sustained fatal or mortal wounds but did not die because of timely medical assistance, the crime committed is frustrated murder or frustrated homicide depending on whether or not any of the qualifying circumstances under Art. 249 of the Revised Penal Code are present; but, if the wounds sustained by the victim in such a case were not fatal or mortal, then the crime committed is only attempted murder or attempted homicide; application. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

Penalty —— In Criminal Case No. 17648-B for the complex crime of Direct Assault with Attempted Murder, the penalty to be imposed on appellants should be that for Attempted Murder, which is the more serious crime; the penalty for Attempted Murder is two degrees lower than that prescribed for the consummated felony under Article 51 of the RPC; the imposable penalty is *prision mayor*; application of the Indeterminate Sentence Law. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

DIRECT ASSAULT WITH MURDER

Commission of —— The courts *a quo* are correct in ruling that appellants are liable for the complex crime of Direct

Assault with Murder; appellants committed the second form of assault, the elements of which are: 1) that there must be an attack, use of force, or serious intimidation or resistance upon a person in authority or his agent; 2) the assault was made when the said person was performing his duties or on the occasion of such performance; and 3) the accused knew that the victim is a person in authority or his agent, that is, that the accused must have the intention to offend, injure or assault the offended party as a person in authority or an agent of a person in authority. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

Penalty — When the offense is a complex crime, the penalty for which is that for the graver offense, to be imposed in the maximum period; Art. 248 of the Revised Penal Code provides for the penalty of *reclusion perpetua* to death for the felony of murder; thus, the imposable penalty should have been death; considering that the imposition of death penalty has been prohibited by R.A. No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines"; the penalty of *reclusion perpetua* should be imposed upon appellants; the qualification "without eligibility for parole" should be affixed to qualify *reclusion perpetua* pursuant to A.M. No. 15-08-02-SC. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

EMPLOYEES' COMPENSATION

Total and permanent disability — There is total disability when employee is unable "to earn wages in the same kind of work or work of similar nature that he or she was trained for, or accustomed to perform, or any kind of work which a person of his or her mentality and attainments could do"; on the other hand, there is permanent disability when the worker is unable "to perform his or her 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 or her body"; in this case, respondent was repatriated for medical treatment; two

months after his surgery or within the 120-day period, he was declared fit to work by the company-designated physician. (Abosta Shipmanagement Corp. *vs*. Delos Reyes, G.R. No. 215111, June 20, 2018) p. 760

EMPLOYMENT, TERMINATION OF

Closure of business — In *Olympia Housing*, the Court considered that the employer therein was able to prove in a separate labor case that it had closed its business and followed all statutory requirements arising from the closure of its business, *i.e.*, notice to the Department of Labor and Employment (DOLE), notice to the employees, and financial statements substantiating its claim that it was operating at a loss; for *Olympia Housing* to apply, the employer must prove the closure of its business in full and complete compliance with all statutory requirements prior to the date of the finality of the award of backwages and separation pay; no basis in this case. (Consolidated Distillers of the Far East, Inc. *vs*. Zaragoza, G.R. No. 229302, June 20, 2018) p. 888

Illegal dismissal — The Supreme Court held in *Bani Rural Bank, Inc. v. De Guzman* that when there is a supervening event that renders reinstatement impossible, backwages is computed from the time of dismissal until the finality of the decision ordering separation pay; the reason for this, as the Court explained in *Bani,* is that "when there is an order of separation pay (in lieu of reinstatement or when the reinstatement aspect is waived or subsequently ordered in light of a supervening event making the award of reinstatement no longer possible), the employment relationship is terminated only upon the finality of the decision ordering the separation pay; the finality of the decision cuts-off the employment relationship and represents the final settlement of the rights and obligations of the parties against each other"; application. (Consolidated Distillers of the Far East, Inc. *vs*. Zaragoza, G.R. No. 229302, June 20, 2018) p. 888

ESTAFA OR SWINDLING UNDER ARTICLE 315, PARAGRAPH 2 (A)

Elements — The elements of *estafa* or swindling under par. 2 (a) of Art. 315 of the RPC are the following: 1. That there must be a false pretense, fraudulent act or fraudulent means; 2. That such false pretense, fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; 3. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means; and 4. That as a result thereof, the offended party suffered damage. (Phil. Deposit Insurance Corp. *vs*. Gidwani, G.R. No. 234616, June 20, 2018) p. 1081

EVIDENCE

Guilt beyond reasonable doubt — Minor inconsistent statements in a witness' affidavit and in his testimony in court do not necessarily affect his credibility; however, in this case, the detail as to whether the victim had seen the accused with or without a companion is a material detail as it goes into the very execution of the crime; the inconsistency in the statements of the prosecution witnesses on material points significantly erodes the credibility of their testimonies, juxtaposed against the forthright and consistent testimonies of the defense witnesses; the alibi of the accused is given credence; the prosecution failed to overcome the burden of proving the accused's guilt beyond reasonable doubt; acquittal, therefore, is in order. (Aliling *vs*. People, G.R. No. 230991, June 11, 2018) p. 146

Positive identification — Positive identification where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter prevails over a denial which, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law; they cannot be given greater evidentiary value over the

testimony of credible witnesses who testify on affirmative matters; accused-appellant failed to present any proof which would have substantiated his alibi. (People *vs*. Domasig, G.R. No. 217028, June 13, 2018) p. 192

Weight and sufficiency of — In this jurisdiction, no less than proof beyond reasonable doubt is required to support a judgment of conviction; while the law does not require absolute certainty, the evidence presented by the prosecution must produce in the mind of the Court a moral certainty of the accused's guilt; when there is even a scintilla of doubt, the Court must acquit; *People v. Erguiza*, cited. (Aliling *vs*. People, G.R. No. 230991, June 11, 2018) p. 146

EVIDENT PREMEDITATION

Existence of — "The essence of evident premeditation is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent, during the space of time sufficient to arrive at a calm judgment"; the premeditation to kill must be plain and notorious, and thereafter proven by evidence of outward acts showing such intent to kill; accordingly, there can be no evident premeditation when the determination to commit the crime was immediately followed by execution. (People *vs*. Abierra, G.R. No. 227504, June 13, 2018) p. 276

Requisites — In order to establish the existence of evident premeditation, the following requisites must be proven during the trial: (i) the time when the offender determined to commit the crime, (ii) an act manifestly indicating that he clung to his determination, and (iii) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act, and to allow his conscience to overcome the resolution of his will; not proven in the instant case. (People *vs*. Abierra, G.R. No. 227504, June 13, 2018) p. 276

— *People v. Illescas* and *People v. Dadivo,* cited; the Court stressed that one cannot infer that the act of the accused

in temporarily leaving the *situs* of the crime, is in itself an overt act manifesting his determination to stab the victim; hence, evident premeditation cannot be considered in the absence of proof showing how and when the plan to kill was hatched or what time elapsed before it was carried out; in this case, the prosecution failed to establish the fact that the plan to kill the victim was preceded by a deliberate planning, and that there was a lapse of ample and sufficient time to allow the accused's conscience to overcome the determination of his will, if he had so desired, after meditation and reflection. (*Id.*)

EXPANDED JURISDICTION OF THE COURT OF TAX APPEALS (R.A. NO. 9282)

Exclusive appellate jurisdiction — The CTA did not err in its ruling that it has jurisdiction over cases asking for the cancellation and withdrawal of a warrant of distraint and/or levy as provided under Sec. 7 of R.A. No. 9282, thus: Sec. 7 Jurisdiction. – The CTA shall exercise: a. Exclusive appellate jurisdiction to review by appeal, as herein provided: 1. x x x 2. Inaction by the Commissioner of the Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matter arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial. (Commissioner of Internal Revenue *vs*. Bank of the Phil. Islands, G.R. No. 224327, June 11, 2018) p. 97

FRAUD

Allegation of — With respect to the allegation of fraud, it is settled that fraud is never presumed — it must be proven by clear and convincing evidence; not established in this case; discussed. (Phil. Nat'l. Bank *vs*. Bacani, G.R. No. 194983, June 20, 2018) p. 668

HOMICIDE

Civil liability — In line with prevailing jurisprudence, accused-appellant should pay the heirs of the victim civil indemnity amounting to ₱50,000.00 and moral damages in the amount of ₱50,000.00. (People *vs*. Domasig, G.R. No. 217028, June 13, 2018) p. 192

Penalty — The Court downgrades accused-appellant's conviction for the crime of homicide; penalty of imprisonment with an indeterminate period of six (6) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years of *reclusion temporal*, as maximum, with all the concomitant accessory penalties. (People *vs*. Domasig, G.R. No. 217028, June 13, 2018) p. 192

INTEGRATED BAR OF THE PHILIPPINES (IBP) BOARD OF GOVERNORS

Resolution — The case was initiated upon the filing of the complaint for disbarment with this Court and the same was subsequently referred to the IBP for investigation, report, and recommendation in accordance with Sec. 1, Rule 139-B of the Rules of Court; as succinctly stated in *Cojuangco, Jr. v. Palma,* the resolution of the IBP Board of Governors is merely recommendatory; the "power to recommend" includes the power to give "advice, exhortation or indorsement, which is essentially persuasive in character, not binding upon the party to whom it is made"; the "*final action*" on the resolution of the IBP Board of Governors still lies with this Court. (Santiago *vs.* Atty. Santiago, A.C. No. 3921, June 11, 2018) p. 1

INTELLECTUAL PROPERTY CODE (R.A. NO. 8293)

Registration of marks — According to Sec. 123.1(d) of the Intellectual Property Code of the Philippines (IPC), a mark cannot be registered if it is "identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date," in respect of the following: (i) the same goods or services, or (ii) closely related goods or services, or (iii) if it nearly resembles such a mark as to be likely to deceive or cause

confusion; that said, however, even on the merits, the petition still fails to convince. (ABS-CBN Publishing, Inc. *vs*. Dir. of the Bureau of Trademarks, G.R. No. 217916, June 20, 2018) p. 791

— To determine whether a mark is to be considered as "identical" or that which is confusingly similar with that of another, the Court has developed two (2) tests: the dominancy and holistic tests; while the application of the tests is on a case to case basis, upon the passage of the IPC, the trend has been to veer away from the usage of the holistic test and to focus more on the usage of the dominancy test; as stated in the case of *McDonald's Corporation vs. L.C. Big Mak Burger, Inc.*, the "test of dominancy is now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code which defines infringement as the "colorable imitation of a registered mark or a dominant feature thereof'"; in using this test, focus is to be given to the dominant features of the marks in question. (*Id*.)

Infringement — In committing the infringing act, the infringer merely introduces negligible changes in an already registered mark, and then banks on these slight differences to state that there was no identity or confusing similarity, which would result in no infringement; this kind of act, which leads to confusion in the eyes of the public, is exactly the evil that the dominancy test refuses to accept; in the present case, the dominant feature of the applicant mark is the word "METRO" which is identical, *both visually and aurally*, to the cited marks already registered with the IPO; these findings deserve great respect from the Court; by authority of the Sec. 123.l(d) of the IPC, the applicant mark cannot be registered. (ABS-CBN Publishing, Inc. *vs*. Dir. of the Bureau of Trademarks, G.R. No. 217916, June 20, 2018) p. 791

Unfair competition — The essential elements of an action for unfair competition are: (1) confusing similarity in the general appearance of the goods; and (2) intent to deceive the public and defraud a competitor; the confusing

similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods; the intent to deceive and defraud may be inferred from the similarity of the appearance of the goods as offered for sale to the public; here, the Court finds no error with the findings of the CA and Director General insofar as the presence of the foregoing elements is concerned; explained. (San Miguel Pure Foods Co., Inc. *vs*. Foodsphere, Inc., G.R. No. 217781, June 20, 2018) p. 771

INTERESTS

Legal interests — Guidelines laid down in the case of *Nacar v. Gallery Frames,* applied to the case at bench; discussed. (Metropolitan Bank and Trust Co. *vs*. Junnel's Marketing Corp., G.R. No. 235511, June 20, 2018) p. 1107

JUDGES

Conduct of — A judge must at all times remain in full control of the proceedings in his court and strictly observe the interdictions against unreasonable delay in the disposition of cases and pending incidents in order to avoid a miscarriage of justice; the moment he dons the judicial robe, he is bound to strictly adhere to and faithfully comply with his duties delineated under the New Code of Judicial Conduct for the Philippine Judiciary, particularly Sec. 5, Canon 6 which reads: SEC. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness. (Atty. Mahinay *vs*. Hon. Daomilas, Jr., A.M. No. RTJ-18-2527 [Formerly OCA IPI No. 16-4563-RTJ], June 18, 2018) p. 310

Gross ignorance of the law — A judge is allowed reasonable latitude for the operation of his own individual view of the case, his appreciation of facts and his understanding of the applicable law on the matter; in this case, if there is any error committed by respondent Judge, the Court is not inclined to characterize the same as so depraved as to constitute gross ignorance of the law, but may be

tantamount to error of judgment only which cannot be corrected through an administrative proceeding. (Atty. Mahinay *vs*. Hon. Daomilas, Jr., A.M. No. RTJ-18-2527 [Formerly OCA IPI No. 16-4563-RTJ], June 18, 2018) p. 310

— Errors attributed to judges pertaining to the exercise of their adjudicative functions should be assailed in judicial proceedings instead of in an administrative case; a judge cannot be subjected to any liability – civil, criminal or administrative – for any of his official acts, no matter how erroneous as long as he acts in good faith; only judicial errors tainted with fraud, dishonesty and corruption, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned. (*Id*.)

— Gross ignorance of the law is the disregard of basic rules and settled jurisprudence; the Court has ruled that "*not every error or mistake of a judge in the performance of his official duties renders him liable*"; for liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. (*Id*.)

Gross inefficiency — The respondent Judge demonstrated inefficiency in handling the pending incidents in the case, which resulted in undue and inordinate delay in the resolution of the application for a writ of preliminary injunction; the Order was rendered beyond the ninety (90)-day period within which a judge should decide a case or resolve a pending matter, reckoned from the date of the filing of the last pleading, in accordance with Sec. 15, paragraphs (1) and (2), Art. 8 of the 1987 Constitution; the delay of a judge of a lower court in resolving motions and incidents within the reglementary period as prescribed by the Constitution is not excusable

and constitutes gross inefficiency. (Atty. Mahinay *vs*. Hon. Daomilas, Jr., A.M. No. RTJ-18-2527 [Formerly OCA IPI No. 16-4563-RTJ], June 18, 2018) p. 310

Undue delay in rendering an order — Undue Delay in Rendering an Order is classified as a less serious charge under Sec. 9 (1), Rule 140 of the Rules of Court, punishable by suspension from office without salary and other benefits for not less than one (1) month or more than three (3) months, or a fine of more than 10,000.00 but not exceeding 20,000.00; the Court, in a string of cases, has recognized the presence of mitigating circumstances that may temper the penalty for the administrative infraction committed by an erring magistrate, such as physical illness, good faith, first offense, length of service, admission of the offense, or other analogous circumstances; penalty modified; *Angelia v. Judge Grageda,* cited. (Atty. Mahinay *vs*. Hon. Daomilas, Jr., A.M. No. RTJ-18-2527 [Formerly OCA IPI No. 16-4563-RTJ], June 18, 2018) p. 310

JUDGMENTS

Conflict between the dispositive portion or fallo and the text or body — When there is a conflict between the dispositive portion or *fallo* of a decision and the opinion of the court contained in the text or body of the judgment, the former prevails over the latter; this rule rests on the theory that the *fallo* is the final order, while the opinion in the body is merely a statement ordering nothing; thus, an order of execution is based on the disposition, not on the body, of the Decision; the Court finds inapplicable the exception to the foregoing rule which states that the body of the decision will prevail in instances where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion; here, the mistake lies not in the *fallo* or dispositive portion but in the body thereof. (San Miguel Pure Foods Co., Inc. *vs*. Foodsphere, Inc., G.R. No. 217781, June 20, 2018) p. 771

Rendition of — The fact alone that the judge who heard the evidence was not the one who rendered the judgment,

but merely relied on the record of the case, does not render his judgment erroneous or irregular; principle of regular performance of duties of public officers that the transcripts of stenographic notes were thoroughly scrutinized and evaluated by the judge himself; however, there are instances when a different judge might pen the decision because the predecessor judge has retired, died or has been reassigned. (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

— The correctness and efficacy of a decision is not necessarily impaired by the fact that its writer only took over from a colleague who had earlier presided at the trial, unless there is showing of grave abuse of discretion in the factual findings reached by him; the other reason for disregarding the findings of fact of the trial court is when there is a manifest indication that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could have altered the conviction of the accused; no such reasons existent in this case. (*Id*.)

JUDICIAL CLEMENCY

Guidelines in resolving requests for — Judicial clemency is an act of mercy removing any disqualification from the erring official; it is not a privilege or a right that can be availed of at any time; in *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency*, the Court laid down the following guidelines in resolving requests for judicial clemency: 1. There must be proof of remorse and reformation; a subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation; 2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation; 3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself; 4. There must be a showing of promise as well as potential

for public service; 5. There must be other relevant factors and circumstances that may justify clemency. (Re: Deceitful Conduct of Ignacio S. Del Rosario, Cash Clerk III, FMO-OCA, A.M. No. 2011-05-SC, June 19, 2018) p. 390

Plea for — Petitioner took advantage of the trust and confidence ascribed to him as a court employee; judicial clemency is not a privilege or a right that can be availed of at any time; a plea for judicial clemency will not be heeded when to grant such a request would put the good name and integrity of the courts of justice in peril. (Re: Deceitful Conduct of Ignacio S. Del Rosario, Cash Clerk III, FMO-OCA, A.M. No. 2011-05-SC, June 19, 2018) p. 390

JUDICIAL DEPARTMENT

Jurisdiction — The *ponente* agrees 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 she aptly pointed out, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress. (People *vs*. Battung *y* Narmar, G.R. No. 230717, June 20, 2018) p. 959

JUDICIARY REORGANIZATION ACT OF 1980 (B.P. BLG. 129), AS AMENDED BY R.A. NO. 7691

Jurisdictional division between the first and second level courts — In criminal cases, first level courts are granted exclusive original jurisdiction to hear complaints on violations of city or municipal ordinances and offenses punishable with imprisonment not exceeding six (6) years; in contrast, second level courts, with more experienced judges sitting at the helm, are granted exclusive original jurisdiction to preside over all other criminal cases not within the exclusive jurisdiction of any other court, tribunal, or

body; for civil actions and probate proceedings, first level courts have the power to hear cases where the value of personal property, estate, or amount of the demand does not exceed ₱100,000.00 or ₱200,000.00 if in Metro Manila; first level courts also possess the authority to hear civil actions involving title to, possession of, or any interest in real property where the value does not exceed ₱20,000.00 or ₱50,000.00 if the real property is situated in Metro Manila; second level courts then assume jurisdiction when the values involved exceed the threshold amounts reserved for first level courts or when the subject of litigation is incapable of pecuniary estimation; first level courts were also conferred with the power to hear the relatively uncomplicated cases of forcible entry and unlawful detainer, while second level courts are authorized to hear all actions in admiralty and maritime jurisdiction with claims above a certain threshold amount; second level courts are likewise authorized to hear all cases involving the contract of marriage and marital relations, in recognition of the expertise and probity required in deciding issues which traverse the marital sphere. (First Sarmiento Property Holdings, Inc. *vs*. Phil. Bank of Communications, G.R. No. 202836, June 19, 2018) p. 400

JUSTICES

Inhibition of — Mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis; respondent's motion to require the inhibition of the Justices, who all concurred to the main Decision, would open the floodgates to the worst kind of forum shopping, and on its face, would allow respondent to shop for a Member of the Court who she perceives to be more compassionate and friendly to her cause, and is clearly antithetical to the fair administration of justice. (Rep. of the Phils. *vs*. Sereno, G.R. No. 237428, June 19, 2018) p. 449

LACHES

Elements — As prescribed in the ruling of *Phil-Air Conditioning Center vs. RCJ Lines*, the following elements must all

be present in order to constitute laches: (1) Conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy; (2) Delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) Lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) Injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred; not established in this case. (Dept. of Education, Culture and Sports *vs*. Heirs of Regino Banguilan, G.R. No. 230399, June 20, 2018) p. 943

Principle of — Jurisprudence is replete with cases which hold that the doctrine of prescription or laches is inapplicable to registered lands covered by the Torrens System; the Court has consistently held that laches cannot apply to registered land covered by a Torrens Title because under the Property Registration Decree, no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession. (Dept. of Education, Culture and Sports *vs*. Heirs of Regino Banguilan, G.R. No. 230399, June 20, 2018) p. 943

— The Court concurs with the CA in its application of the case of *Tuliao* to the herein controversy with regard to the issue of laches; in said case, the Court unequivocally stated that laches can only apply to one whose possession of the property was open, continuous, exclusive, adverse, notorious, and in the concept of an owner for a prolonged period of time; additionally, physical possession must be coupled with intent to possess as an owner in order for it to be considered as adverse; explained; petitioner's defense of laches has no merit either. (*Id*.)

— The principle of laches or "stale demands" is the failure or neglect, for an unreasonable and unexplained length

of time, to do that which by exercising due diligence could or should have been done earlier; it is based on the grounds of public policy in order to maintain peace in the society and equity in order to avoid recognizing a right when to do so would result in a clearly unfair situation. (*Id.*)

LEASE

Automatic termination clause — In the present case, there is an express stipulation in item 8(p) of the Lease Contract that "breach or non-compliance of any of the provisions of this Contract, especially non-payment of two consecutive monthly rentals on time, shall mean the termination of this Contract"; the Court justified the validity of the above automatic termination clause. (D.M. Ragasa Enterprises, Inc. *vs*. Banco De Oro, Inc., G.R. No. 190512, June 20, 2018) p. 640

— Pursuant to the automatic termination clause of the Lease Contract, which is in furtherance of the autonomy characteristic of contracts, the Lease Contract was terminated upon its unauthorized pre-termination by the bank; petitioner is, thus, precluded from availing of the second option which is to claim damages by reason of the breach and allow the lease to remain in force; petitioner is entitled only to indemnification for damages. (*Id.*)

LOCAL GOVERNMENT CODE (R.A. NO. 7610)

Certification and approval of vouchers — There are at least three primary conditions or requirements that must be met before local funds can be disbursed: *first*, the local budget officer must certify to the existence of appropriation that has been legally made for the purpose; *second*, the local accountant must have obligated said appropriation; *third*, the local treasurer certifies to the availability of funds for the purpose. (Field Investigation Unit-Office of the Deputy Ombudsman for Luzon *vs*. De Castro, G.R. No. 232666, June 20, 2018) p. 1016

MOTION FOR RECONSIDERATION

Filing of — A litigant is allowed to file only one (1) motion for reconsideration, subject to the payment of the full amount of the docket fee prior to the expiration of the reglementary period; beyond this, another motion for extension of time may be granted but only for the most compelling reasons; personal obligations and heavy workload do not excuse a lawyer from complying with his obligations particularly in timely filing the pleadings required by the Court. (ABS-CBN Publishing, Inc. *vs*. Dir. of the Bureau of Trademarks, G.R. No. 217916, June 20, 2018) p. 791

Grant of — Jurisprudence teaches, in a litany of cases, that a motion for reconsideration is generally considered as the plain, speedy, and adequate remedy that is a condition *sine qua non* to the filing of a petition for *certiorari*, within the contemplation of Rule 65, Sec. 1 of the Rules of Court; but if the judicial or quasi-judicial body would be precluded from overruling its earlier pronouncement on reconsideration, then a motion for reconsideration would be no remedy at all, let alone one that is plain, speedy, and adequate; a motion for reconsideration may be granted if (1) the damages awarded are excessive, (2) the evidence is insufficient to justify the decision or final order, or (3) the decision or final order is contrary to law; the judicial or quasi-judicial body concerned may arrive at any of the three enumerated conclusions even without requiring additional evidence; the introduction of newly discovered additional evidence is a ground for new trial or a *de novo* appreciation of the case, but not for the filing of a motion for reconsideration. (Phil. Deposit Insurance Corp. *vs*. Gidwani, G.R. No. 234616, June 20, 2018) p. 1081

MOTIONS

Three-day notice requirement — The general rule is that the three-day notice requirement in motions under Secs. 4 and 5 of the Rules of Court is mandatory; "the purpose of the three-day notice requirement, which was established

not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein"; effect of non-compliance; exceptions. (Villamil *vs*. Sps. Erguiza, G.R. No. 195999, June 20, 2018) p. 686

MURDER

Civil liability of accused-appellant — The Court deems it proper to modify the amount in order to conform to recent jurisprudence; *People v. Jugueta*, cited; amount of moral and exemplary damages, modified. (People *vs*. Cadampog, G.R. No. 218244, June 13, 2018) p. 206

— The prevailing rule is that when the circumstances surrounding the crime call for the imposition of a penalty of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amounts awarded should be 75,000.00 as civil indemnity, 75,000.00 as moral damages and 75,000.00 as exemplary damages, regardless of the number of qualifying aggravating circumstances present; in line with this rule, the CA's award of exemplary damages must be increased to 75,000.00; the amount of temperate damages awarded by the CA should be increased to 50,000.00, in line with the Court's ruling in *People of the Philippines v. Roger Racal @ Rambo*. (People *vs*. Abierra, G.R. No. 227504, June 13, 2018) p. 276

Definition and elements — Murder is defined under Art. 248 of the RPC as the unlawful killing of a person, which is not parricide or infanticide, committed through any of the following qualifying circumstances, to wit: 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity. 2. In consideration of a price, reward or promise. 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by

means of motor vehicles, or with the use of any other means involving great waste and ruin. 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or 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; it is an elementary rule in criminal law that each of the qualifying circumstances must be alleged in the Information, and must be proven as clearly as the crime itself; in the absence of a qualifying circumstance, the crime committed is homicide, and not murder; all the essential elements, present in this case to warrant a conviction for murder. (People *vs*. Abierra, G.R. No. 227504, June 13, 2018) p. 276

Penalty –– Murder is penalized under Art. 248, as amended by R.A. No. 7659, with *reclusion perpetua* to death; considering that, apart from treachery, there are no aggravating circumstances that attended the commission of the offense, the RTC correctly held that the proper imposable penalty is *reclusion perpetua.* (People *vs*. Abierra, G.R. No. 227504, June 13, 2018) p. 276

NATIONAL INTERNAL REVENUE CODE

Protest of assessment –– *Nava v. Commissioner of Internal Revenue*, cited; while an assessment is made when sent within the prescribed period, even if received by the taxpayer after its expiration, this ruling makes it the more imperative that the release, mailing, or sending of the notice be clearly and satisfactorily proved; mere notations made without the taxpayer's intervention, notice, or control, without adequate supporting evidence, cannot suffice; rationale; thus, the failure of petitioner to prove the receipt of the assessment by respondent would necessarily lead to the conclusion that no assessment was issued. (Commissioner of Internal Revenue *vs*. Bank of the Phil. Islands, G.R. No. 224327, June 11, 2018) p. 97

NOTARIES PUBLIC

Duties — The 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public; Rule II, Sec. 1 states: x x x Thus, a document should not be notarized unless the persons who are executing it are the very same ones who are personally appearing before the notary public; notaries public are enjoined from notarizing a fictitious or spurious document; it is their duty to demand that the document presented to them for notarization be signed in their presence; their function is, among others, to guard against illegal deeds. (Gonzales *vs*. Atty. Bañares, A.C. No. 11396, June 20, 2018) p. 578

Notarization — Notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public; notarization of documents ensures the authenticity and reliability of a document; it converts a private document into a public one, and renders it admissible in court without further proof of its authenticity. (Gonzales *vs*. Atty. Bañares, A.C. No. 11396, June 20, 2018) p. 578

OBLIGATIONS AND CONTRACTS

Autonomy of contracts — Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith; the parties are allowed by law to enter into stipulations, clauses, terms and conditions they may deem convenient which bind the parties as long as they are not contrary to law, morals, good customs, public order or public policy; the pertinent provisions of the Lease Contract are valid, and the parties' rights shall be adjudicated according to them. (D.M. Ragasa Enterprises, Inc. *vs*. Banco De Oro, Inc., G.R. No. 190512, June 20, 2018) p. 640

Penal clause — A penal clause is an accessory obligation which the parties attach to a principal obligation for the purpose of insuring the performance thereof by imposing on the debtor a special prestation (generally consisting

in the payment of a sum of money) in case the obligation is not fulfilled or is irregularly or inadequately fulfilled. (D.M. Ragasa Enterprises, Inc. *vs*. Banco De Oro, Inc., G.R. No. 190512, June 20, 2018) p. 640

— From the first paragraph of Art. 1226, it is evident that, as a rule, the penalty is fixed by the contracting parties as a compensation or substitute for damages in case of breach of the obligation; and it is, therefore, clear that the penalty in its compensatory aspect is the general rule; this general rule admits three exceptions, namely: (1) when there is a stipulation to the contrary; (2) when the obligor or debtor is sued for refusal to pay the agreed penalty; and (3) when the obligor or debtor is guilty of fraud; purpose of the penalty. (*Id*.)

— Penal clause may be classified into: (1) according to source: (a) legal (when it is provided by law) and (b) conventional (when it is provided for by stipulation of the parties); (2) according to demandability: (a) subsidiary (when only the penalty may be enforced) and (b) complementary (when both the principal obligation and the penalty may be enforced); and (3) according to purpose: (a) cumulative (when damages may be collected in addition to penalty) and (b) reparatory (when the penalty substitutes indemnity for damages). (*Id*.)

— The penal clause may be considered either reparation, compensation or substitute for damages, on one hand, or as a punishment in case of breach of the obligation, on the other; explained. (*Id*.)

— The requisites for the demandability of the penal clause are present in this case: (1) that the total non-fulfillment of the obligation or the defective fulfillment is chargeable to the fault of the debtor; and (2) that the penalty may be enforced in accordance with the provisions of law; explained. (*Id*.)

— Three-fold purpose: (1) a coercive purpose or one of guarantee – this is to urge the debtor to the fulfillment of the main obligation under pain of paying the penalty;

(2) to serve as liquidated damages – this is to evaluate in advance the damages that may be occasioned by the non-compliance of the obligation; and (3) a strictly penal purpose – this is to punish the debtor for non-fulfillment of the main obligation; stated otherwise, the purposes of penalty or penal clause are: (1) *funcion coercitiva o de guarantia* or to insure the performance of the obligation; (2) *funcion liquidatoria* or to liquidate the amount of damages to be awarded to the injured party in case of breach of the principal obligation; and (3) *funcion estrictamente penal* or to punish the obligor in case of breach of the principal obligation, in certain exceptional cases; explained. (*Id.*)

PHILIPPINE CLEARING HOUSE CORPORATION (PCHC) RULES AND REGULATIONS

Bank guarantee — Under the PCHC Rules and Regulations, the stamped tracer/ID band of Bankcom signifies that the checks had been deposited with it and that Bankcom indorsed the said checks and sent them to PCHC; in the present case, all the subject checks have been transmitted by Bankcom to the PCHC for clearing and presentment to Metrobank; such circumstances, pursuant to prevailing banking practices as laid out under the PCHC Rules and Regulations, are enough to fix the liability of Bankcom as an indorser of the subject checks even *sans* the stamp "*ALL PRIOR ENDORSEMENTS AND/OR LACK OF ENDORSEMENT GUARANTEED*" and "*NON-NEGOTIABLE*"; as the stamping of such guarantees are not required before the warranties of an indorser could attach against Bankcom, the Court finds the latter liable to reimburse Metrobank the value of all the subject checks. (Metropolitan Bank and Trust Co. *vs*. Junnel's Marketing Corp., G.R. No. 235511, June 20, 2018) p. 1107

PHILIPPINE DEPOSIT INSURANCE CORPORATION CHARTER (R.A. NO. 3591, AS AMENDED)

Entitlement to a deposit insurance — Under R.A. No. 3591, as amended, all deposits in a bank maintained in the same right and capacity for a depositor's benefit, either

in his name or in the name of others, shall be added together for the purpose of determining the insured deposit amount due to a bona fide depositor, which amount should not exceed the maximum deposit insurance coverage of 250,000.00; thus, the entitlement to a deposit insurance is based *not* on the number of bank accounts held, but on the number of beneficial owners. (Phil. Deposit Insurance Corp. *vs*. Gidwani, G.R. No. 234616, June 20, 2018) p. 1081

PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Section 20 (B)(3) — Respondent, after consulting with the doctor, who happened to be the same doctor in *Marlow*, failed to refer the conflicting medical assessments to a third doctor; the Court has consistently ruled that in case of conflicting medical assessments, referral to a third doctor is mandatory; and that in the absence of a third doctor's opinion, it is the medical assessment of the company-designated physician that should prevail. (Abosta Shipmanagement Corp. *vs*. Delos Reyes, G.R. No. 215111, June 20, 2018) p. 760

PLEADINGS AND PRACTICE

Service and filing of pleadings and other papers — According to Sec. 11, Rule 13 of the Rules of Court, the rule is that service and filing of pleadings and other papers must, whenever practicable, be done personally; in the seminal case of *Solar Team Entertainment, Inc. vs. Ricafort,* the Court had occasion to state that Section 11 is mandatory and that the strictest compliance therewith is exacted from both the Bench and the Bar; in justifying this stern standard, the Court averred that preference for personal service and filing "expedites action or resolution on a pleading, motion or other paper; and conversely, minimizes, if not eliminates, delays likely to be incurred if service or filing is done by mail"; the only condition to the application of this exception is that the pleading served or filed should be accompanied by a written explanation as to why personal service was not practicable.

(Magsaysay Maritime Corp. *vs*. Enanor, G.R. No. 224115, June 20, 2018) p. 876

— Should a party, however, fail to so attach this written explanation, the same section authorizes the courts to exercise its discretion to consider a pleading or paper as *not* filed; to exercise this discretion, the courts are guided by this Court's pronouncement in *Peñoso vs. Dona,* which reiterated the ruling in *Spouses Ello vs. Court of Appeals;* the Court, in these cases, ruled that an exception to the strict compliance to the rule—in this case, an exception to the non-submission of the written explanation — such discretionary power of the court must be exercised properly and reasonably, taking into account the following factors: (1) "the practicability of personal service;" (2) "the importance of the subject matter of the case or the issues involved therein;" and (3) the prima *facie merit* of the pleading sought to be expunged for violation of Sec. 11; it is thus only upon the consideration of these factors—as determined by the courts—that they are authorized to liberally bend the mandatory character of the attachment of the written explanation required by Sec. 11. (*Id*.)

PRELIMINARY INJUNCTION

Issuance of temporary restraining order — Despite the clear wording of the rules, the Regional Trial Court issued a status *quo ante* order, indefinitely extending the temporary restraining order on the registration of the certificate of sale with the Registry of Deeds; petitioner applied for a writ of preliminary injunction, yet the Regional Trial Court did not conduct any hearing for that purpose and merely directed the parties to observe the status quo ante; *Miriam College Foundation, Inc v. Court of Appeals* explained the difference between preliminary injunction and a restraining order. (First Sarmiento Property Holdings, Inc. *vs*. Phil. Bank of Communications, G.R. No. 202836, June 19, 2018) p. 400

— Rule 58, Sec. 5 of the Rules of Court provides the instances when a temporary restraining order may be issued; it may be issued by a trial court in only two (2) instances:

first, when great or irreparable injury would result to the applicant even before the application for writ of preliminary injunction can be heard; and *second*, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury; the executive judge of a multi-sala court or the presiding judge of a single-sala court may issue a 72-hour temporary restraining order; in both instances, the temporary restraining order may be issued *ex parte;* discussed. (*Id.*)

PRELIMINARY INVESTIGATION

Probable cause ‒‒ Under Rule 112, Sec. 1 of the Rules of Court, a preliminary investigation is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial"; the investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law; the Court finds probable cause to charge respondent for *estafa* and money laundering. (Phil. Deposit Insurance Corp. *vs*. Gidwani, G.R. No. 234616, June 20, 2018) p. 1081

PRESUMPTIONS

Presumption of regular performance of official duty ‒‒ The evidentiary presumption that official duties had been regularly performed applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise; also, the presumption of regularity in the performance of official duties can be rebutted by contrary proof, being a mere presumption, and more importantly, it is inferior to and could not prevail over the constitutional presumption of innocence; application. (People *vs*. Andrada *y* Caampued, G.R. No. 232299, June 20, 2018) p. 999

‒‒ The presumption of regularity in the performance of duty of the arresting officers as found by the RTC and

the CA finds no application in this case; such presumption stands only when no reason exists in the records by which to doubt the regularity of the performance of official duty; and even in that instance the presumption of regularity will not be stronger than the presumption of innocence in favor of the accused; in this case, the police officers' failure to observe the chain of custody rule without any explanation negates the presumption; effect. (People *vs*. Battung *y* Narmar, G.R. No. 230717, June 20, 2018) p. 959

— While it is true that there is a dearth of evidence on record to prove that the police officer was motivated by ill will to testify against the accused or that the police officers did not perform their duties faithfully, still, the testimony of the prosecution's lone witness proves insufficient to convict the accused; such presumption is not conclusive and cannot prevail over the constitutional right of the accused to be presumed innocent or to constitute proof of guilt beyond reasonable doubt; the prosecution must rely on the strength of its evidence and not on the weakness of the defense. (People *vs*. Angeles *y* Namil, G.R. No. 218947, June 20, 2018) p. 822

Presumption of regular performance of official duty and preservation of the integrity of evidence — 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 officers/team followed the requirements of Sec. 21 or when the saving clause found in the IRR is successfully triggered; here, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law. (People *vs*. Sipin *y* De Castro, G.R. No. 224290, June 11, 2018) p. 67

PROPERTY

Rights of the owner of the land — As correctly ruled by the Court of Appeals, respondents may exercise their rights under Art. 448, in relation to Art. 546 of the New Civil Code; said provision provides them with the option of either: (1) appropriating the improvements, after payment of indemnity representing the value of the improvements introduced and the necessary and useful expenses defrayed on the subject lots; or (2) obliging the petitioner to pay the price of the land; however, petitioner cannot be obliged to buy the land if its value is considerably more than that of the improvements and buildings it built; consequence. (Dept. of Education, Culture and Sports *vs*. Heirs of Regino Banguilan, G.R. No. 230399, June 20, 2018) p. 943

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Innocent purchaser for value — This Court reiterates the settled principle that no one can give what one does not have; *Nemo dat quod non habet;* stated differently, no one can transfer a right to another greater than what he himself has; application; however, there is an exception to the rule that a forged deed cannot be the root of a valid title – that is when an innocent purchaser for value intervenes; a purchaser in good faith and for value, defined; under Sec. 32 of P.D. 1529, the definition of an innocent purchaser for value has been expanded to include an innocent lessee, mortgagee, or other encumbrancer for value. (Heirs of Paz Macalalad *vs*. Rural Bank of Pola, Inc., G.R. No. 200899, June 20, 2018) p. 709

Purchaser in good faith — It is settled that every person dealing with registered land may safely rely on the correctness of the certificate of title issued therefor and the law will in no way oblige him to go beyond the certificate to determine the condition of the property; where there is nothing in the certificate of title to indicate any cloud or vice in the ownership of the property, or any encumbrance thereon, the purchaser is not required to explore further than what the Torrens Title upon its

face indicates in quest for any hidden defects or inchoate right that may subsequently defeat his right thereto; when not applicable; in this case, respondent is a mortgagee-bank; as such, unlike private individuals, it is expected to exercise greater care and prudence in its dealings, including those involving registered lands; expounded. (Heirs of Paz Macalalad *vs*. Rural Bank of Pola, Inc., G.R. No. 200899, June 20, 2018) p. 709

–– The settled rule is that the burden of proving the status of a purchaser in good faith lies upon one who asserts that status, and this *onus probandi* cannot be discharged by mere invocation of the legal presumption of good faith; a purchaser in good faith is one who buys property without notice that some other person has a right to or interest in such property and pays its fair price before he or she has notice of the adverse claims and interest of another person in the same property. (*Id*.)

Torrens title –– In the case of *Heirs of Jose Maligaso vs. Spouses Encinas*, the Court explained that possession over the property by anyone other than the registered owner gives rise to the presumption that said possession is only by mere tolerance; likewise, when faced with unsubstantiated self-serving claims as opposed to a duly registered Torrens title, the latter must prevail; the respondents' title and that of their predecessors-in-interest give rise to the reasonable presumption that the petitioners have no right over the subject area and that their stay therein was merely tolerated; petitioner was unable to overturn the presumption that its occupation over the lot was by mere tolerance of the respondents. (Dept. of Education, Culture and Sports *vs*. Heirs of Regino Banguilan, G.R. No. 230399, June 20, 2018) p. 943

PROSECUTION OF OFFENSES

Designation of the offense –– The Court recognizes that the information charged accused-appellant with the crime of robbery with homicide; the established rule, however, is that the nature and character of the crime charged are determined not by the given designation of the specific

crime but by the facts alleged in the information; in this case, all the elements relevant to the killing and the taking of property were properly stated in the information but the specific crime committed should be correctly made; accused-appellant should be held liable only for the crime of homicide. (People *vs*. Domasig, G.R. No. 217028, June 13, 2018) p. 192

Duty of the prosecution — Proving the identity of the accused as the malefactor is the prosecution's primary responsibility; the first duty of the prosecution is not to prove the crime but to prove the identity of the perpetrator, for even if the commission of the crime can be established, there can be no conviction without proof of identity of the culprit beyond reasonable doubt; in this case, the prosecution's evidence on the identity of the offender is clear and unmistakable. (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

Identity of the criminal — The first duty of the prosecution is not to prove the crime but to prove the identity of the criminal; for, even if the commission of the crime is established, there can be no conviction without proof of the identity of the criminal beyond reasonable doubt; the witness positively identified the accused as the perpetrator. (People *vs*. Cadampog, G.R. No. 218244, June 13, 2018) p. 206

PUBLIC OFFICERS AND EMPLOYEES

Conduct — A public servant must exhibit at all times the highest sense of honesty and integrity; the Court, in the case of *Japson v. Civil Service Commission*, ruled in this wise: prejudice to the service is not only through wrongful disbursement of public funds or loss of public property. (Field Investigation Unit-Office of the Deputy Ombudsman for Luzon *vs*. De Castro, G.R. No. 232666, June 20, 2018) p. 1016

Doctrine of good faith — Good faith is properly appreciated in favor of the public officials and employees involved when: (1) the concerned public officials authorize or the

concerned employees receive the disallowed payment upon an honest belief that such authority to cause payment or to receive payment is valid and legal; or (2) there is absence of circumstances that ought to put the concerned public officials or employees upon inquiry as to the validity or legality of the payment; or (3) the document relied upon and signed shows no palpable, or patent, or definite defects; or (4) the concerned public officer's trust and confidence in his subordinates upon whom the duty to ensure the validity or legality of the payment primarily devolves are within the parameters of tolerable judgment and permissible margins of error; or (5) there has been no prior jurisprudence or ruling on the allowance or disallowance of the subject or similar payment. (Career Executive Service Board *vs.* Commission on Audit, G.R. No. 212348, June 19, 2018) p. 433

—— The validity of the disallowance notwithstanding, the Court notes that the CESB's officials who authorized and caused the payment of the CNA benefits to covered officers and employees, and the latter as the recipients of the disallowed payments enjoyed the benefit of good faith and should be absolved from the liability to refund; doctrine of good faith has been consistently followed in many other rulings; *Philippine Economic Zone Authority v. Commission on Audit*, cited. (*Id.*)

Misconduct — As held in the case of *Imperial, Jr. v. Government Service Insurance System*, an employee's propensity to ignore the rules as clearly manifested by his or her actions constitutes flagrant disregard of rules; in downgrading the respondent's liability from Grave to Simple Misconduct, the CA clearly failed to consider the respondent's *repeated* violation of the law which transpired for four years; given the length of time she has been in government service, she cannot feign ignorance as to the prohibitions imposed by law on government employees; that she stood idly by whilst transactions were consummated on numerous occasions point to no other conclusion but that she had wilfully and knowingly violated

the law. (Field Investigation Unit-Office of the Deputy Ombudsman for Luzon *vs*. De Castro, G.R. No. 232666, June 20, 2018) p. 1016

— "Misconduct generally means wrongful, improper or unlawful conduct, motivated by 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." (Melendres *vs*. Ombudsman Gutierrez, G.R. No. 194346, June 18, 2018) p. 329

— Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official; a misconduct is grave where the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are present; otherwise, a misconduct is only simple; the appellate court maintained that the mere fact of having pecuniary interest in the subject transactions is already sufficient to make respondent administratively liable for misconduct. (Field Investigation Unit-Office of the Deputy Ombudsman for Luzon *vs*. De Castro, G.R. No. 232666, June 20, 2018) p. 1016

Retirement benefits — The reason for providing retirement benefits is to compensate service to the government; however, the right to retirement benefits accrues only upon certain prerequisites: first, the conditions imposed by the applicable law must be fulfilled; second, there must be actual retirement; retirement means there is a bilateral act of the parties, a voluntary agreement between the employer and the employees whereby the latter after reaching a certain age agrees and/or consents to sever his or her employment with the former; severance of employment is a condition *sine qua non* for the release of retirement benefits; while respondent met the two conditions for entitlement to benefits under R.A. No. 8291 in 2001, she continued to serve the government

and did not, at that time, sever her employment with the government; thus, she cannot claim that her right to retirement benefits had already accrued then. (GSIS Board of Trustees *vs*. Court of Appeals, G.R. No. 230953, June 20, 2018) p. 978

Simple misconduct — In order to be considered grave misconduct, it must be shown that the acts involve the additional elements of corruption or willful intent to violate the law or disregard of established rules; otherwise, the misconduct is only simple. (Melendres *vs*. Ombudsman Gutierrez, G.R. No. 194346, June 18, 2018) p. 329

PUBLIC PROSECUTORS

Probable cause — Hornbook doctrine is that courts of law are precluded from disturbing the findings of public prosecutors and the DOJ on the existence or non-existence of probable cause for the purpose of filing a criminal information, unless such findings are tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction; grave abuse of discretion had been defined in jurisprudence to mean a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction"; in resolving the motion for reconsideration lodged with his office and in exercising jurisdiction, the Secretary of Justice has the power and discretion to make his own personal assessment of the pleadings and evidence subject of review. (Phil. Deposit Insurance Corp. *vs*. Gidwani, G.R. No. 234616, June 20, 2018) p. 1081

QUO WARRANTO

Action for — The Court reaffirms its authority to decide the instant *quo warranto* action; this authority is expressly conferred on the Supreme Court by the Constitution under Sec. 5, Art. VIII; this Section does not limit the Court's *quo warranto* jurisdiction only to certain public officials or that excludes impeachable officials therefrom; the Constitution defines judicial power as a "duty" to be performed by the courts of justice; consolidated cases of *Estrada v. Macapagal-Arroyo* and *Estrada v. Desierto*,

cited; *Estrada* clearly demonstrates that the Court's *quo warranto* jurisdiction extends to impeachable officers. (Rep. of the Phils. *vs*. Sereno, G.R. No. 237428, June 19, 2018) p. 449

Petition for — As the Court previously held, "where the dispute is on the eligibility to perform the duties by the person sought to be ousted or disqualified a *quo warranto* petition is the proper action"; the Court's *quo warranto* jurisdiction over impeachable officers also finds basis in par. 7, Sec. 4, Art. VII of the Constitution which designates it as the sole judge of the qualifications of the President and Vice-President, both of whom are impeachable officers; with this authority, the remedy of *quo warranto* was provided in the rules of the Court sitting as the Presidential Electoral Tribunal (PET). (Rep. of the Phils. *vs*. Sereno, G.R. No. 237428, June 19, 2018) p. 449

— The authority to hear *quo warranto* petitions against appointive impeachable officers emanates from Sec. 5(1) of Art. VIII which grants *quo warranto* jurisdiction to this Court without qualification as to the class of public officers over whom the same may be exercised; by its plain language, Sec. 2 of Art. XI does not preclude a *quo warranto* action questioning an impeachable officer's qualifications to assume office; these qualifications include age, citizenship and professional experience – matters which are manifestly outside the purview of impeachment under the above-cited provision; the impeachable officers may be removed from office on impeachment for and conviction of culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust; lack of qualifications for appointment or election is evidently not among the stated grounds for impeachment. (*Id.*)

— The rules on *quo warranto* do not require that the recommending or appointing authority be impleaded as a necessary party, much less makes the nullification of the act of the recommending authority a condition precedent before the remedy of *quo warranto* can be

availed of; under Sec. 6, Rule 66 of the Rules of Court, when the action is against a person for usurping a public office, position or franchise, it is only required that, if there be a person who claims to be entitled thereto, his or her name should be set forth in the petition with an averment of his or her right to the office, position or franchise and that the respondent is unlawfully in possession thereof; the appointing authority, or in this case the recommending authority which is the JBC, is therefore not a necessary party in a *quo warranto* action; in any case, the rules on *quo warranto* vests upon the Court ancillary jurisdiction to render such further judgment as "justice requires"; doctrine of ancillary jurisdiction, explained. (*Id.*)

— Unmoving is the rule that title to a public office may not be contested except directly, by *quo warranto* proceedings; as it cannot be assailed collaterally, *certiorari* is an infirm remedy for this purpose; it is for this reason that the Court previously denied a *certiorari* and prohibition petition which sought to annul appointment to the Judiciary of an alleged naturalized citizen; *Aguinaldo, et al. v. Aquino, et al.*; cited. (*Id.*)

Prescriptive period for filing — The Court is not abolishing the limitation set by the rules in instituting a petition for *quo warranto*; the one-year presciptive period under Section 11, Rule 66 of the Rules of Court still stands; however, the Court made distinctions as to when such prescriptive period applies, to wit: (1) when filed by the State at its own instance, through the Solicitor General, prescription shall not apply; this, of course, does not equate to a blanket authority given to the Solicitor General to indiscriminately file baseless *quo warranto* actions in disregard of the constitutionally-protected rights of individuals; (2) when filed by the Solicitor General or public prosecutor at the request and upon relation of another person, with leave of court, prescription shall apply except when established jurisprudential exceptions are present; and (3) when filed by an individual in his or her own name, prescription shall apply, except when

established jurisprudential exceptions are present. (Rep. of the Phils. *vs.* Sereno, G.R. No. 237428, June 19, 2018) p. 449

— The long line of cases decided by this Court since the 1900's, which specifically explained the spirit behind the rule providing a prescriptive period for the filing of an action for *quo warranto*, reveals that such limitation can be applied only against private individuals claiming rights to a public office, *not* against the State; indeed, there is no proprietary right over a public office; this is where the difference between a *quo warranto* filed by a private individual as opposed to one filed by the State through the Solicitor General lies; there is no claim of right over a public office where it is the State itself, through the Solicitor General, which files a petition for *quo warranto* to question the eligibility of the person holding the public office; Art. 1108(4) of the Civil Code, explained. (*Id.*)

***QUO WARRANTO* AND IMPEACHMENT PROCEEDINGS**

Distinctions — *Quo warranto* grants the relief of "ouster" while impeachment affords "removal"; a *quo warranto* proceeding is the proper legal remedy to determine a person's right or title to a public office and to oust the holder from its enjoyment; under Rule 66 of the Rules of Court, a *quo warranto* proceeding involves a judicial determination of the right to the use or exercise of the office; impeachment, on the other hand, is a political process undertaken by the legislature to determine whether the public officer committed any of the impeachable offenses, namely, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust; impeachment cannot be treated as a substitute for *quo warranto*. (Rep. of the Phils. *vs.* Sereno, G.R. No. 237428, June 19, 2018) p. 449

RAPE

Civil liability of accused-appellant — The CA is correct in awarding 75,000.00 each for civil indemnity, moral

damages and exemplary damages being consistent with its pronouncement in *People v. Jugueta.* (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

–– While the Court agrees with the conviction handed out by the courts *a quo*, the appealed decision must be modified to conform to recent jurisprudence; *People v. Jugueta* set the standard for damages to be awarded in certain heinous crimes; in conformity with *Jugueta*, all damages awarded to the victim should be increased accordingly. (People *vs*. Dela Cruz, G.R. No. 219088, June 13, 2018) p. 238

Commission of –– The failure to shout or offer tenacious resistance cannot be construed as a voluntary submission to culprit's desires; failure of the victim to shout for help does not negate rape; it is enough if the prosecution had proven that force or intimidation concurred in the commission of the crime as in this case; besides, physical resistance need not be established in rape when intimidation is exercised upon the victim and the latter submits herself against her will to the rapist's advances because of fear for her life and personal safety; in any event, there is no standard form of behavioral response when one is confronted with a strange or startling or frightful experience; application. (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

–– The precise duration or exact length of time of the commission of rape is not an essential element of the felony; case law shows numerous instances of rape committed under indirect and audacious circumstances because the lust of a lecherous man respects neither time nor place; *People v. Diaz*, cited. (*Id*.)

–– The victim's failure to shout for help or to offer spirited physical resistance cannot be used as basis to damage her credibility; in rape cases, there is no expected uniform reaction from the victim considering that the workings of the human mind placed under emotional stress are unpredictable. (People *vs*. Dela Cruz, G.R. No. 219088, June 13, 2018) p. 238

Elements — For a successful prosecution of rape, the following elements must be proved beyond reasonable doubt, to wit: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished: (a) through the use of force and intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented. (People *vs*. Tanglao *y* Egana, G.R. No. 219963, June 13, 2018) p. 253

— In *People v. Joson*, the Court expounded that the force required in rape varies depending on the circumstances, to wit: The Supreme Court has, time and again, ruled that force or violence that is required in rape cases is relative; when applied, it need not be overpowering or irresistible; that it enables the offender to consummate his purpose is enough; the parties' relative age, size and strength should be taken into account in evaluating the existence of the element of force in the crime of rape; sexual congress with a person who expresses resistance through words or deeds constitutes force; the degree of force he employed becomes immaterial in view of the victim's minority and the fact that her intoxication impaired her physical strength. (People *vs*. Dela Cruz, G.R. No. 219088, June 13, 2018) p. 238

— Rape is essentially sexual intercourse *sans* consent; in her testimony, the victim narrated how the accused defiled her, notwithstanding her refusal to have sex with him; in rape, the victim need not prove resistance because it is not an element of rape and the lack thereof does not render the victim's act voluntary. (*Id*.)

— To secure a conviction for rape under Art. 266-A of the Revised Penal Code, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat, or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under twelve years of age or was demented; sufficiently established in

this case. (People *vs*. Cariat, G.R. No. 223565, June 18, 2018) p. 345

— Under Art. 266-A(1) of the RPC, rape is committed when a man has carnal knowledge of a woman under any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; or (d) when the offended party is under 12 years old or demented, even if none of the above circumstances are present; there is no dispute that the accused had carnal knowledge of the victim. (People *vs*. Dela Cruz, G.R. No. 219088, June 13, 2018) p. 238

Penalty — Whenever the crime of rape is committed with the use of a deadly weapon, the penalty shall be *reclusion perpetua* to death as provided under Art. 266-B of the Revised Penal Code; the prosecution was able to sufficiently allege in the Information and establish during trial that a handgun was used in the commission of rape; the lesser penalty of *reclusion perpetua* is the proper imposable penalty; there is no more need to append the phrase "without eligibility for parole" to the accused's prison term in line with the instructions given by the Court in A.M. No. 15-08-02- SC. (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

REAL ESTATE MORTGAGE

Extrajudicial foreclosures — In extrajudicial foreclosures of real estate mortgage, the debtor, his or her successors-in-interest, or any judicial creditor or judgment creditor of said debtor, is granted a period of one (l) year within which to redeem the property; the redemption period is reckoned from the registration of the certificate of sale with the Register of Deeds; when the debtor, or the successors-in-interest as the case may be, fails to redeem the property within the prescribed statutory period, the consolidation of ownership in favor of the purchaser becomes a matter of right; effect. (Phil. Nat'l. Bank *vs*. Bacani, G.R. No. 194983, June 20, 2018) p. 668

Practice or custom –– The issuance of PNB SEL Circular No. 8-7/89 does not automatically entitle the Spouses to repurchase the subject property; the circular was an internal memorandum intended for the information of bank employees and personnel; thus, as an internal bank policy, the Spouses do not have a legally enforceable right to be prioritized over all other buyers of the subject property; *Pantaleon v. American Express International, Inc*., cited; the Spouses cannot enforce PNB's internal bank circular, absent any law prioritizing former owners of foreclosed properties in its subsequent sale or disposition; discussed. (Phil. Nat'l. Bank *vs*. Bacani, G.R. No. 194983, June 20, 2018) p. 668

REGIONAL TRIAL COURTS (RTC)

Jurisdiction –– Sec. 19(1) of B.P. Blg. 129, as amended, provides Regional Trial Courts with exclusive, original jurisdiction over "all civil actions in which the subject of the litigation is incapable of pecuniary estimation;" *Lapitan v. Scandia* instructed that to determine whether the subject matter of an action is incapable of pecuniary estimation, the nature of the principal action or remedy sought must first be established; *Heirs of Sebe v. Heirs of Sevilla* and *Far East Bank and Trust Company v. Shemberg Marketing Corporation*, cited. (First Sarmiento Property Holdings, Inc. *vs*. Phil. Bank of Communications, G.R. No. 202836, June 19, 2018) p. 400

REGIONAL TRIAL COURT-SPECIAL AGRARIAN COURT (RTC-SAC)

Jurisdiction –– Sec. 57 of R.A. No. 6657 clearly vests on the RTC-SAC the original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners; the DAR has no authority to qualify or undo the RTC-SAC's jurisdiction over the determination of just compensation under R.A. No. 6657; thus, the 15-day reglementary period under Sec. 11, Rule XIII of the DARAB Rules cannot be sustained; the RTC-SAC cannot simply be reduced to an appellate court which reviews administrative decisions of the DAR within a short period

to appeal. (Land Bank of the Phils. *vs*. Herederos De Ciriaco Chunaco Distileria, Inc., G.R. No. 206992, June 11, 2018) p. 53

RIGHTS OF THE ACCUSED

Presumption of innocence — In criminal prosecutions, a person who stands charged of a crime enjoys the presumption of innocence, as enshrined in the Bill of Rights; he is designated as the accused precisely because the allegations against him have to be proven beyond reasonable doubt; due process dictates that an accused is entitled to a fair trial where both the prosecution and defense can present their respective versions of the events, and submit proof thereof; only when the prosecution has established guilt beyond reasonable doubt shall the presumption of innocence be overturned; in this case, the prosecution did not overcome the burden of proof. (Aliling *vs*. People, G.R. No. 230991, June 11, 2018) p. 146

ROBBERY WITH HOMICIDE

Elements — It is necessary that the robbery itself be proven as conclusively as any other essential element of the crime; it must be established that a robbery has actually taken place and that, as a consequence or on the occasion of robbery, a homicide be committed; for robbery to apply, there must be taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or by using force upon things; in this case, the element of taking, as well as the existence of the money alleged to have been lost and stolen by accused-appellant, was not adequately established. (People *vs*. Domasig, G.R. No. 217028, June 13, 2018) p. 192

— Robbery with homicide qualifies when a homicide is committed either by reason or on occasion of the robbery; in charging robbery with homicide, the *onus probandi* is to establish: (a) the taking of personal property with the use of violence or intimidation against a person; (b) the property belongs to another; (c) the taking is

characterized with *animus lucrandi* or with intent to gain; and (d) on the occasion or by reason of the robbery, the crime of homicide, which is used in the generic sense, was committed; the intent to rob must precede the taking of human life, but the killing may occur before, during or after the robbery. (*Id*.)

— What is crucial for a conviction for the crime of robbery with homicide is for the prosecution to firmly establish the offender's intent to take personal property before the killing, regardless of the time when the homicide is actually carried out; here, there was no showing of accused-appellant's intention to commit robbery; where the evidence does not conclusively prove the robbery, the killing of the victim would be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the crime of robbery with homicide. (*Id*.)

RULES OF COURT

Construction of — Though this Court has invariably relaxed the rule on technicalities in order to afford litigants their day in court, liberal application of procedural rules is still the exception; the primordial policy is a faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases, to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed; petitioner's counsel has been negligent in handling the petition; however, in the interest of substantial justice, the Court deems it wise to overlook procedural technicalities in order to rule on the substantive issue put forth in the instant petition. (Melendres *vs*. Ombudsman Gutierrez, G.R. No. 194346, June 18, 2018) p. 329

RULES OF PROCEDURE

Construction of — The 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; while procedural rules may be relaxed in the interest of justice, it is well settled that these are tools designed to facilitate the adjudication of cases. (GSIS Board of Trustees *vs*. Court of Appeals, G.R. No. 230953, June 20, 2018) p. 978

RULES OF PROCEDURE FOR INTELLECTUAL PROPERTY CASES

Section 3, Rule 18 — Sec. 3, Rule 18 of the Rules of Procedure for Intellectual Property Cases provides for the legal presumption that there is likelihood of confusion if an identical mark is used for identical goods. The provision states: SEC. 3. *Presumption of likelihood of confusion.* - Likelihood of confusion shall be presumed in case an identical sign or mark is used for identical goods or services; in this case, the applicant mark is classified under "magazines," which is found in class 16 of the Nice classification; the cited marks "METRO" (word) and "METRO" (logo) are also both classified under magazines; thus, the presumption arises; the Court cannot emphasize enough that the cited marks "METRO" (word) and "METRO" (logo) are identical with the registrant mark "METRO" both in spelling and in sound; considering that both marks are used in goods which are classified as magazines, it requires no stretch of imagination that a likelihood of confusion may occur. (ABS-CBN Publishing, Inc. *vs*. Dir. of the Bureau of Trademarks, G.R. No. 217916, June 20, 2018) p. 791

2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017 RACCS)

Dropping from the rolls — Sec. 107(a)(1), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) authorizes the dropping from the rolls of employees who have been continuously absent without official leave for at least thirty (30) working days, without the need for prior notice; the court personnel should be separated from the service or be dropped from the rolls

in view of his continued absences; dropping from the rolls is non-disciplinary in nature, and thus, his separation from the service shall neither result in the forfeiture of his benefits nor disqualification from reemployment in the government. (Re: Dropping from the Rolls of Mr. Florante B. Sumangil, Clerk III, RTC of Pasay City, Br. 119, A.M. No. 18-04-79-RTC, June 20, 2018) p. 619

2004 RULES ON NOTARIAL PRACTICE

Personal appearance — A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated in said document; purpose. (Gonzales *vs*. Atty. Bañares, A.C. No. 11396, June 20, 2018) p. 578

SALES

Deed of Absolute Sale (DAS) — As correctly pointed out by petitioner, the DAS is itself the proof that the sale of the property is supported by sufficient consideration; this is anchored on the disputable presumption of consideration inherent in every contract; thus, Art. 1354 of the Civil Code provides: "Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary"; this disputable presumption is reiterated in the Rules of Court; Sec. 3, Rule 131 of the Rules; in *Mangahas v. Brobio*, the Court explained how the presumption of sufficient consideration can be overcome; petitioners stand to benefit from the disputable presumption of consideration with the presentation of the DAS; it became incumbent upon respondents to present preponderant evidence to prove lack of consideration. (Mendoza *vs*. Sps. Palugod, G.R. No. 220517, June 20, 2018) p. 838

SIMPLE LOAN OR *MUTUUM*

Bank deposits — Bank deposits are in the nature of a simple loan or *mutuum*, which must be paid upon demand by the depositor; as such, the deposit of whatever amount

to PNB creates a debtor-creditor relationship between the bank and the depositor; PNB, as the recipient of the deposit, is duty-bound to pay or release the amount deposited whenever the depositor so requires. (Phil. Nat'l. Bank *vs*. Bacani, G.R. No. 194983, June 20, 2018) p. 668

STATUTE OF LIMITATIONS

Waiver of — Petitioner cannot implore the doctrine of estoppel just to compensate its failure to follow the proper procedure; as aptly ruled by the CTA: It is well established that issues raised for the first time on appeal are barred by estoppel; *Commissioner of Internal Revenue v. Kudos Metal Corporation*, cited; a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed; applying the said ruling in this case, BPI is not estopped from raising the invalidity of the subject Waivers as the BIR in this case caused the defects thereof; as such, the invalid Waivers did not operate to toll or extend the period of prescription. (Commissioner of Internal Revenue *vs*. Bank of the Phil. Islands, G.R. No. 224327, June 11, 2018) p. 97

STATUTORY RAPE

Civil liability of accused-appellant — Following the Court's decision in *People v. Jugueta*, the Court modifies the award of damages to the victim and thus holds the accused-appellant liable for the following: civil indemnity of ₱100,000.00; moral damages of 100,000.00; and exemplary damages of 100,000.00; the accused-appellant shall further pay interest at six percent (6%) per annum on the civil indemnity and the moral and exemplary damages reckoned from the finality of this decision until full payment. (People *vs*. Tanglao *y* Egana, G.R. No. 219963, June 13, 2018) p. 253

Commission of — The legal teaching consistently upheld by the Court is that "proof of hymenal laceration is not an element of rape; an intact hymen does not negate a finding

that the victim was raped; penetration of the penis by entry into the lips of the vagina, even without laceration of the hymen, is enough to constitute rape, and even the briefest of contact is deemed rape"; the doctor's finding that there was "penetrating trauma" on the victim's genitalia supported her credible testimony that she was raped by the accused-appellant. (People *vs*. Tanglao *y* Egana, G.R. No. 219963, June 13, 2018) p. 253

Elements –– In this case, there was no issue that the accused-appellant was the father of the victim and that she was only 7 years old during the time material to this case, thus, qualifying the rape as one under Art. 266-A(l)(d) of R.A. No. 8353 or statutory rape where the child victim's consent is immaterial because the law presumes that her young age makes her incapable of discerning good from evil; its elements are as follows: (1) the offended party is under 12 years of age and (2) the accused has carnal knowledge of her, regardless of whether there was force, threat or intimidation; whether the victim was deprived of reason or consciousness; or whether it was done through fraud or grave abuse of authority. (People *vs*. Tanglao *y* Egana, G.R. No. 219963, June 13, 2018) p. 253

Penalty –– Under Art. 266-B of R.A. No. 8353, the penalty of death shall be imposed if the victim of the rape is under eighteen (18) years of age and the offender is a parent; however, with the effectivity of R.A. No. 9346, the penalty of *reclusion perpetua* without eligibility for parole, instead of death, shall be imposed. (People *vs*. Tanglao *y* Egana, G.R. No. 219963, June 13, 2018) p. 253

TAXES

Assessment and collection –– It is clear that the right of petitioner to assess respondent has already prescribed and respondent is not liable to pay the deficiency tax assessment; the period of collection has also prescribed; the law imposes a substantive, not merely a formal, requirement; to proceed heedlessly with tax collection without first establishing a valid assessment is evidently violative of the cardinal principle in administrative

investigations; although taxes are the lifeblood of the government, their assessment and collection "should be made in accordance with law as any arbitrariness will negate the very reason for government itself." (Commissioner of Internal Revenue *vs*. Bank of the Phil. Islands, G.R. No. 224327, June 11, 2018) p. 97

TRADEMARKS

Dominancy test — The Court finds that the use of the "CITY CASH WITH GOLDEN LION'S HEAD" mark will not result in the likelihood of confusion in the minds of customers; dominancy test, applied; the only similar feature between respondent's mark and petitioner's collection of marks is the word "CITY" in the former, and the "CITI" prefix found in the latter; this similarity alone is not enough to create a likelihood of confusion. (Citigroup, Inc. *vs*. Citystate Savings Bank, Inc., G.R. No. 205409, June 13, 2018) p. 168

Similarity and likelihood of confusion — Likelihood of confusion must be determined according to the particular circumstances of each case; our jurisprudence has developed two (2) tests: the dominancy test and the holistic test; explained in *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.*: The dominancy test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion and deception, thus constituting infringement; in contrast, the holistic test entails a consideration of the entirety of the marks as applied to the products, including the labels and packaging, in determining confusing similarity. (Citigroup, Inc. *vs*. Citystate Savings Bank, Inc., G.R. No. 205409, June 13, 2018) p. 168

— The similarity between the sounds of "CITI" and "CITY" in a radio advertisement alone neither is sufficient for this Court to conclude that there is a likelihood that a customer would be confused nor can operate to bar respondent from registering its mark; any confusion that may arise from using "CITY CASH" in a radio

advertisement would be the same confusion that might arise from using respondent's own trade name. (*Id.*)

— This Court agrees that the context where respondent's mark is to be used, namely, for its ATM services, which could only be secured at respondent's premises and not in an open market of ATM services, further diminishes the possibility of confusion on the part of prospective customers; this Court quotes with approval the Court of Appeals, which made reference to *Emerald Manufacturing*: Moreover, more credit should be given to the "ordinary purchaser"; cast in this particular controversy, the ordinary purchaser is not the "completely unwary consumer" but is the "ordinarily intelligent buyer" considering the type of product involved; discussed. (*Id.*)

TREACHERY

As a qualifying circumstance — Both the RTC and the CA found that the killing was attended by treachery; there is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend to directly and specially insure the execution of the crime without risk to himself arising from the defense which the offended party might make; murder, committed in this case. (People *vs.* Cadampog, G.R. No. 218244, June 13, 2018) p. 206

— There is treachery or *alevosia* when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make; a frontal attack may be regarded as treacherous when it was so sudden on an unsuspecting, or an unarmed victim, who had no chance to repel the attack or avoid it. (People *vs.* Abierra, G.R. No. 227504, June 13, 2018) p. 276

As an aggravating circumstance — Jurisprudence has set that treachery cannot be appreciated simply because the attack was sudden and unexpected; there must be proof that the accused intentionally sought the victim for the

purpose of killing him or that the accused carefully and deliberately planned the killing in a manner that would ensure his safety and success; the fact that a bladed weapon was used did not *per se* make the attack treacherous; and even if it was shown that the attack was intended to kill another, as long as the victim's position was merely accidental, *alevosia* will not qualify the offense. (People *vs*. Agramon, G.R. No. 212156, June 20, 2018) p. 747

— There is treachery when the following essential elements are present, *viz*.: (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him; the essence of treachery, explained; here, the shooting was deliberate and without a warning, done in a swift and unexpected manner. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

— There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make; to qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant. (People *vs*. Agramon, G.R. No. 212156, June 20, 2018) p. 747

Requisites — In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be proven, namely, (i) "the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (ii) the means, method, or

manner of execution was deliberately or consciously adopted by the offender"; present in the instant case. (People *vs*. Grabador, Jr., G.R. No. 227504, June 13, 2018) p. 276

UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE

Simple misconduct –– A less grave offense punishable by suspension of one month and one day to six months for the first offense and dismissal for the second offense; "simple misconduct is a transgression of some established rule of action;" an unacceptable behavior that transgresses the established rules of conduct for public officers; "any act deviating from the procedure laid down by the Rules is misconduct that warrants disciplinary action"; misconduct may be considered simple if the additional elements of corruption, willful intent to violate the law or to disregard established rules are not present. (Benong-Linde *vs*. Lomantas, A.M. No. P-18-3842 [Formerly OCA IPI No. 12-3965-P], June 11, 2018) p. 43

–– The Court finds reprehensible respondent's acts of meddling or intervening in an otherwise archived custody case and in arrogantly flouting that the success of the said case rested upon the "tip of her ballpen"; such a conceited display of self-importance is a failure of circumspection that calls for disciplinary sanction by this Court; penalty modified in view of a supervening event; the appropriate penalty to be meted out against respondent, in lieu of suspension, is a fine in an amount equivalent to her salary for one month. (*Id*.)

VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING

Belated filing –– By jurisprudence, the Court has allowed the belated filing of the certification on the justification that such act constitutes substantial compliance; *Mediserv, Inc. v. Court of Appeals, et al*. and *Uy v. Land Bank of the Philippines* and *Havtor Management Phils. Inc. v. NLRC*, cited; substantial compliance, observed in this

case. (Brgy. Tongonan, Ormoc City *vs*. Hon. Buaya, G.R. No. 204183, June 20, 2018) p. 723

Guidelines — The Court had laid down guidelines with respect to the non-compliance with the requirements on or submission of a defective Verification and Certification of Non-forum Shopping, as follows: 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and noncompliance with the requirement on or submission of defective certification against forum shopping; 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective; explained; 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct; 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons"; 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case; exception; 6) finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel; if, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf. (Brgy. Tongonan, Ormoc City *vs*. Hon. Buaya, G.R. No. 204183, June 20, 2018) p. 723

WITHHOLDING TAXES

Refund of excess creditable withholding taxes — Since respondent's prior year's excess credits have already been fully applied against its 2002 income tax liability,

the unsubstantiated tax credits in taxable year 2002 could no longer be carried over and applied against its income tax liability for taxable year 2003; nevertheless, it is incumbent upon petitioner to issue a final assessment notice and demand letter for the payment of respondent's deficiency tax liability for taxable year 2003; in this case, no pre-assessment notice is required since respondent taxpayer carried over to taxable year 2003 the prior year's excess credits which have already been fully applied against its income tax liability for taxable year 2002. (Commissioner of Internal Revenue *vs*. Cebu Holdings, Inc., G.R. No. 189792, June 20, 2018) p. 624

—— The requisites for claiming a refund of excess creditable withholding taxes are: (1) the claim for refund was filed within the two-year prescriptive period; (2) the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount of tax withheld therefrom; and (3) the income upon which the taxes were withheld was included in the income tax return of the recipient as part of the gross income. (*Id*.)

WITNESSES

Credibility of —— Absent any evidence that it was tainted with arbitrariness or patent error, the trial court's assessment of a witness' credibility is entitled to great weight, if not conclusive on this Court; "assigning of values to declarations of witnesses is best and most competently performed by the trial judge who has the unique and unmatched opportunity to observe the demeanor of witnesses and assess their credibility"; it is with more reason to uphold the assessment made by the trial court when the CA affirms the same, as in the present case. (People *vs*. Cariat, G.R. No. 223565, June 18, 2018) p. 345

—— Both agents positively identified appellant as the person who sold Agent 0.05 gram of *shabu* during the buy-bust operation; immediately after the sale, the agent recovered from the pocket of appellant the marked money used in the transaction; added to this, there was no showing

that the agents acted with malice in testifying against appellant; hence, their categorical and straightforward statements deserved full weight and consideration. (People *vs*. De Asis *y* Balquin, G.R. No. 225219, June 11, 2018) p. 110

— Given the significant inconsistencies in the testimony of respondent, the credibility of her testimony is, to the Court, doubtful; a witness' credibility is determined by the probability or improbability of his testimony; as well, the witness' means and opportunity of knowing the facts that he is testifying to are relevant; the improbability of respondent's assertions is demonstrated by the evidence, both documentary and testimonial, that petitioner adduced to rebut the same. (Mendoza *vs*. Sps. Palugod, G.R. No. 220517, June 20, 2018) p. 838

— Given the victim's familiarity with the voice and face of the accused being her neighbor and a frequent visitor of his cousin, as well as the illumination provided by the moonlight, eliminated any possibility of mistaken identification; moreover, experience suggests that it is precisely because of the unusual acts of violence committed right before their eyes that witnesses can remember the identities of criminals with a high degree of reliability at any given time; all throughout her testimony, the victim never faltered about the identity of appellant and his commission of the felonious *coitus*. (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

— In rape cases, the conviction of the accused rests heavily on the credibility of the victim; here, the trial court found the victim's testimony to be credible as it was made in a "candid and straightforward manner," "coupled with her occasional crying while relaying her story." (*Id*.)

— It is axiomatic that, as a rule, findings of the trial court as to the credibility of witnesses are not to be disturbed; this is true considering that trial courts are at a more advantageous position to fully scrutinize witnesses; *People v. Sapigao, Jr.*, cited; the victim's testimony was

straightforward and categorical as she never flinched in describing what happened to her and in identifying the accused as the one who did it; while she was testifying, the trial court was able to observe her demeanor and conduct and assess it in its entirety. (People *vs*. Dela Cruz, G.R. No. 219088, June 13, 2018) p. 238

— It is evident that the supposed inconsistencies in the witnesses' testimonies pertained to minor details that, in any case, could not negate the accused's unlawful activity and violation of R.A. No. 9208; moreover, the Court has ruled time and again that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. (People *vs*. Nangcas, G.R. No. 218806, June 13, 2018) p. 218

— Jurisprudence has trenchantly maintained that when the issue of credibility of witnesses is presented before the Court, certain guidelines should be followed; enumerated and discussed; the Court found nothing that would support a conclusion that the findings of the RTC and the CA were arrived at arbitrarily, or that significant facts or circumstances were overlooked, misapprehended or misappreciated that, if properly considered, would have affected the outcome of this case. (People *vs*. Tanglao *y* Egana, G.R. No. 219963, June 13, 2018) p. 253

— The accused failed to show that the prosecution witnesses were prompted by any ill motive to falsely testify or accuse him of so grave a crime as murder; it is unnatural for a victim's relative interested in vindicating the crime to accuse somebody other than the real culprit; concomitantly, the Court adheres to the established rule that, in the absence of any evidence showing reason or motive for witnesses to perjure, their testimony and identification of the assailant should be given full faith and credit. (People *vs*. Cadampog, G.R. No. 218244, June 13, 2018) p. 206

— The credibility of a rape victim is enhanced when, as in the case at bench, she has no motive to testify against the accused or where there is absolutely no evidence which even remotely suggests that she could have been actuated by such motive. (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

— The Court fails to discern any improper motive which could have impelled the witness to maliciously impute to appellants such serious crimes and hence, his testimony is worthy of evidentiary weight; absent any evidence showing any reason or motive for prosecution witness to perjure, the logical conclusion is that no such improper motive exists, and that his testimony is entitled to full faith and credit. (People *vs*. Vibal, Jr. *y* Uayan, G.R. No. 229678, June 20, 2018) p. 900

— The Court has held that "self-contradictions and inconsistencies on a very material and substantial matter seriously erodes the credibility of a witness"; as it further held in *People v. Amon*: For evidence to be believed "must not only proceed from the mouth of a credible witness, but must be credible in itself — such as the common experience and observation of mankind can approve as probable under the circumstances; there is no test of the truth of human testimony, except its conformity to our knowledge, observation and experience; whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance"; in this case, the testimonies of the prosecution witnesses are contradictory on a material point. (Aliling *vs*. People, G.R. No. 230991, June 11, 2018) p. 146

— The victim positively identified the accused-appellant as the one who raped her; clearly applicable in this case is the well-settled rule that the testimony of a rape victim who is of tender age is credible; youth and immaturity are generally badges of truth and sincerity; the child's willingness to undergo the trouble and humiliation of a public trial is an eloquent testament to the truth of her complaint; the same can be said of her brother who,

despite being a minor during the time he took the witness stand, courageously and credibly testified against the accused-appellant. (People *vs*. Tanglao *y* Egana, G.R. No. 219963, June 13, 2018) p. 253

— The victim's urgency in reporting the incident to the authorities strengthens her credibility; she immediately told her aunt about the rape once she got home, who in turn notified her parents; thus, together with her parents, she was able to promptly report the same to the authorities. (People *vs*. Dela Cruz, G.R. No. 219088, June 13, 2018) p. 238

— There is nothing in the records to show that the witness harbored any ill-will against the accused or any of his co-accused; neither did he have any reason to fabricate his testimony; thus, absent any reason or motive for the accused to perjure himself, the logical conclusion is that he was solely impelled to bring justice to his brother's untimely demise. (People *vs*. Abierra, G.R. No. 227504, June 13, 2018) p. 276

— Time and again, the Court has ruled that the testimony of a lone prosecution witness, if credible and positive, can prove the guilt of the accused beyond reasonable doubt. (*Id*.)

— Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court has overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation; rationale. (People *vs*. Cadampog, G.R. No. 218244, June 13, 2018) p. 206

— Visibility is indeed a vital factor in determining whether an eyewitness could have identified the perpetrator of a crime; it is settled that when conditions of visibility are favorable, and when the witness does not appear to be biased, her assertion as to the identity of the malefactor should normally be accepted; in proper situations,

illumination produced by a kerosene or wick lamp, a flashlight, even moonlight or starlight may be considered sufficient to allow identification of persons. (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

—— What makes the case against the accused-appellant stronger were the medical findings on the victim; according to the doctor, the photographs of the victim's genitalia validated that she was sexually abused; the doctor's psychiatric diagnosis of the victim showed she was a victim of sexual abuse who had problems with her primary support group, *i.e.,* her parents; these medico-legal findings bolster the prosecution's testimonial evidence; together, these pieces of evidence produce a moral certainty that the accused-appellant indeed raped the victim. (People *vs*. Tanglao *y* Egana, G.R. No. 219963, June 13, 2018) p. 253

Testimony of —— Considering that there was no showing that the witnesses for the prosecution had ill motives to testify against accused-appellant, their testimonies should be accorded full faith and credence. (People *vs*. Tanglao *y* Egana, G.R. No. 219963, June 13, 2018) p. 253

—— It bears noting that witnesses of startling occurrences react differently depending upon their situation and state of mind; *People v. Bañez, et al.,* cited; in affirming the witness' credibility, the Court explained that: There could be no hard and fast gauge for measuring a person's reaction or behavior when confronted with a startling, not to mention horrifying, occurrence, as in this case; witnesses of startling occurrences react differently depending upon their situation and state of mind, and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience. (People *vs*. Abierra, G.R. No. 227504, June 13, 2018) p. 276

—— When the testimony of a rape victim is consistent with the medical findings, sufficient basis exists to warrant a conclusion that the essential requisite of carnal knowledge has thereby been established; hence, such

testimony of the doctor strengthens even more the claim of rape by the victim against the accused. (People *vs*. Villalobos, G.R. No. 228960, June 11, 2018) p. 123

CITATION

Page

I. LOCAL CASES

A. L. Ammen Transportation Company, Inc. *vs.*
Japa, 124 Phil. 72 (1966) 863
Aba, et al. *vs.* De Guzman, Jr. et al.,
678 Phil. 588, 600-601 (2011) 308, 594
Acuzar *vs.* Jorolan, et al., 631 Phil. 514, 522 (2010) 342
Ad Hoc Committee Report-Judge Tayao,
RTC, Br. 143 Makati, 299 Phil. 774, 782 (1994) 324
Adella Properties, Inc. *vs*. CA, 310 Phil. 623, 642 (1995) 684
Advincula *vs*. Atty. Macabata, 546 Phil. 431, 442 (2007) 28
Agcaoili *vs.* Suguitan, 48 Phil. 676 (1929) 494
Agdeppa *vs.* Honorable Office of the Ombudsman,
734 Phil. 1, 46 (2014) 137
Aguam *vs.* CA, 388 Phil. 587, 593 (2000) 886
Aguilar *vs.* Department of Justice, G.R. No. 197522,
Sept. 11, 2013 1095
Aguinaldo, et al. *vs.* Aquino, et al., G.R. No. 224302,
Nov, 29, 2016 488-489
Alcantara *vs.* Alcantara, 558 Phil. 192 (2007) 497
Ali *vs*. Bubong, 493 Phil. 172, 182 (2005) 16
Allied Banking Corporation *vs*. Lio Sim Wan,
G.R. No. 133179, Mar. 27, 2008 1130
Almazan, Sr. *vs.* Atty. Suerte-Felipe,
743 Phil. 131, 136-137 (2014) 583
Altres, et al. *vs.* Empleo, et al.,
594 Phil. 246, 261-262 (2008) 732
Anacta *vs*. Resurreccion, A.C. No. 9074,
Aug. 14, 2012, 678 SCRA 352, 365-367 377
Ang Tibay *vs.* Court of Industrial Relations,
69 Phil. 635 (1940) 109
Angara *vs.* Electoral Commission,
63 Phil. 170 (1936) 543
Angelia *vs*. Judge Grageda,
656 Phil. 570, 573 (2011) 325, 327
Aniñon *vs*. Atty. Sabitsana, Jr.,
685 Phil. 322, 327 (2012) 593
Anudon *vs.* Cefra, 753 Phil. 421, 430-433 (2015) 41, 583

Page

Arco Pulp and Paper Co., Inc. *vs*. Lim,
737 Phil. 133, 153 (2014) 786
Arguelles, et al. *vs.* Malarayat Rural Bank, Inc.,
730 Phil. 226, 237 (2014) 720-721
Arias *vs.* Sandiganbayan, G.R. No. 81563,
Dec. 19, 1989, 180 SCRA 309 447
Asia United Bank *vs.* Guy, 704 Phil. 463, 470 (2013) 235
Associated Bank *vs.* CA, G.R. Nos. 107382,107612,
Jan. 31, 1996 ..... 1123, 1125, 1134
Avon Cosmetics, Incorporated *vs*. Luna,
540 Phil. 389, 404 (2006) 993
Aznar Brothers Realty Company *vs.* Spouses Jose
and Magdalena Ybañez, 733 Phil. 1, 29 (2014) 951, 959
Banco De Oro *vs.* Equitable Banking Corporation,
G.R. No. 74917, Jan. 20, 1998 1127
Bani Rural Bank, Inc. *vs.* De Guzman,
721 Phil. 84 (2013) 894, 899
Bank of America *vs.* Associated Citizens
Bank, G.R. Nos. 141001, 141018,
May 21, 2009 ..... 1121, 1123-1124, 1129
Bank of America *vs.* Philippine Racing Club,
G.R. No. 150228, July 30 2009 1124
Bank of the Philippine Islands *vs.* CA, G.R. No. 102383,
Nov. 26, 1992 1129
Bankers Association of the Philippines *vs.*
COMELEC, 722 Phil. 92, 100 (2013) 427
Bantolo *vs.* Atty. Castillon, Jr., 514 Phil. 628, 632 (2005) 41
Bañez *vs.* Social Security System, 739 Phil. 148 (2014) 799
Barcelon, Roxas Securities, Inc. *vs.* Commissioner
of Internal Revenue, 529 Phil. 785, 795 (2006) 105
Barnes *vs*. Reyes, et al., 614 Phil. 299, 304 (2009) 468
Barrientos *vs.* Daarol, 291-A Phil. 33, 44 (1993) 29
Barrientos *vs*. Libiran-Meteoro, 480 Phil. 661, 671 (2004) 615
Bautista *vs*. Bernabe, 517 Phil. 236, 241 (2006) 606
Bellosillo *vs.* Board of Governors of the IBP,
520 Phil. 676, 689 (2006) 309
Beluso *vs*. COMELEC, et al.,
635 Phil. 436, 442-443 (2010) 989

Page

Bernardo, Jr. *vs.* Judge Montojo,
648 Phil. 222, 229 (2010) 326
Birkenstock Orthopaedie GMBH and Co. KG. *vs.*
Philippine Shoe Expo Marketing Corporation,
721 Phil. 867, 875-876 (2013) 341, 807
Boardwalk Business Ventures, Inc. *vs.*
Elvira A. Villareal (deceased), et al.,
708 Phil. 443, 445, 454-456 (2013) 339, 800
BPI Family Bank *vs.* Franco,
563 Phil. 495, 507-508 (2007) 684
Building Care Corp./Leopard Security &
Investigation Agency, et al. *vs.* Macaraeg,
700 Phil. 749, 759 (2012) 341, 995
Bunayog *vs.* Tunas, 106 Phil. 715 (1959) 421
Burbe *vs.* Atty. Magulta, 432 Phil. 840, 848 (200) 29
Buted *vs.* Atty. Hernando, 280 Phil. 1, 8 (1991) 388
Butuan Development Corporation *vs.* CA,
G.R. No. 197358, April 5, 2017 990
Cabas *vs.* Sususco, A.C. No. 8677, June 15, 2016,
793 SCRA 309, 315 17
Calacala *vs.* Republic, 502 Phil. 681, 691 (2005) 680
Calipay *vs.* NLRC, 640 Phil. 458, 466 (2010) 799
Campos *vs.* Judge Campos, 681 Phil. 247, 254 (2012) 51
Carpio-Morales *vs.* CA, 772 Phil. 627, 736-738 (2015) 426
Casal *vs.* Commission on Audit, G.R. No. 149633,
Nov. 30, 2006, 509 SCRA 138, 150 446
Castro-Justo *vs.* Atty. Galing, 676 Phil. 139, 144 (2011) 388
Catungal, et al. *vs.* Rodriguez, 661 Phil. 484, 508 (2011) 708
Caunan *vs.* People and Sandiganbayan,
614 Phil. 179, 194 (2009) 167
China Banking Corporation *vs.* Cebu Printing and
Packaging Corporation, 642 Phil. 308, 323 (2010) 990-991
Chua *vs.* CA, 449 Phil. 25, 42 (2003) 706
Chua *vs.* People, G.R. No. 195248, Nov. 22, 2017 195
CIR *vs.* De La Salle University, Inc., G.R. No. 198941,
Nov. 9, 2016, 808 SCRA 156, 192 105
CIR *vs.* Reyes, 516 Phil. 176, 190 (2006) 109
Cirera *vs.* People, 739 Phil. 25, 45 (2014) 756

Page

Cirtek Employees Labor Union-Federation
of Free Workers *vs.* Cirtek Electronics,
Inc., 665 Phil. 784, 788 (2011) 847
Civil Liberties Union *vs.* The Executive Secretary,
272 Phil. 147 (1991) 478
Civil Service Commission *vs.* Almojuela,
707 Phil. 420, 435 (2013) 342
Cortez, 474 Phil. 670 (2004) 52
Maala, 504 Phil. 646, 652 (2005) 719
Claridad *vs.* Esteban, G.R. No. 191567,
Mar. 20, 2013 1102
CMH Agricultural Corp. *vs*. CA,
428 Phil. 610, 621-622 (2002) 702
Co *vs*. Vargas, 676 Phil. 463, 471 (2011) 847
Co Tiong Sa *vs*. Director of Patents, 95 Phil. 1 (1954) 803
Coderias *vs*. Estate of Juan Chioco,
712 Phil. 354, 370 (2013) 65
Coffee Partners, Inc. *vs.* San Francisco Coffee
& Roastery, Inc., 628 Phil. 13 (2010) 185
Cojuangco, Jr. *vs*. Palma, 501 Phil. 1, 10 (2005) 15
Commander Realty, Inc. *vs.* CA,
250 Phil. 190, 192 (1988) 660
Commissioner of Internal Revenue *vs.* Asian
Transmission Corporation, 655 Phil. 186, 196 (2011) 105
Team (Phils.) Operations Corp., 731 Phil. 141 (2014) 633
Toledo Power, Inc., 725 Phil. 66, 82-83 (2014) 105
Concerned Lawyers of Bulacan *vs.*
Villalon-Pornillos, A.M. No. RTJ-09-2183,
Feb. 14, 2017, 817 SCRA 440, 446 400
Concerned Taxpayer *vs.* Doblada, Jr.,
A.M. No. P-99-1342, Sept. 20, 2005,
470 SCRA 218, 498 Phil. 395 (2005) 496, 552
Coquia *vs.* Atty. Laforteza, A.C. No. 9364,
Feb. 8, 2017 584
Corona *vs.* Senate of the Philippines, et al.,
691 Phil. 156, 170 (2012) 481
Coronel *vs*. CA, 331 Phil. 294, 310-311 (1996) 703
Crisostomo *vs*. People, 644 Phil. 53, 65 (2010) 155
Cristobal *vs*. Melchor, 189 Phil. 658, 1997 526

Page

Cristobal *vs.* Melchor, et al., 168 Phil. 328 (1977) 494, 496
Cruz *vs.* Bancom Finance Corporation,
429 Phil 225, 239 (2002) 720
Cuenco *vs.* Hon. Fernan, 241 Phil. 162 (1988) 474
Cuizon *vs.* Atty. Macalino, 477 Phil. 569, 571 (2004) 35
De Jesus *vs.* Commission on Audit, G.R. No. 149154,
June 10, 2003, 403 SCRA 666, 676-677 ..... 445, 447
De Jesus *vs.* Commission on Audit, G.R. No. 156641,
Feb. 5, 2004, 422 SCRA 287 446
De Leon *vs.* de Leon-Reyes, 791 SCRA 407,
G.R. No. 205711, May 30, 2016 955
De Pedro *vs.* Romasan Development Corp.,
748 Phil. 706, 723 (2014) 415
Defensor Santiago *vs.* Sen. Guingona, Jr.,
359 Phil. 276, 302 (1998) 472, 476-477
Del Mar-Schuchman *vs.* Cacatian,
662 Phil. 623, 631 (2011) 324
Del Monte Corporation *vs.* CA, 260 Phil. 435 (1990) 804
Dela Riva *vs.* People, 769 Phil. 872, 886-887 (2015) 1011
Department of Education *vs.* Casibang, et al.,
779 Phil. 472, 486 (2016) 954
Cuanan, 594 Phil. 451, 459-460 (2008) 991
Tuliao, 735 Phil. 703, 712 (2014) 949, 956
Department of Justice *vs.* Mislang,
A.M. No. RTJ-14-2369, July 26, 2016,
798 SCRA 225, 234 322
Development Bank of the Philippines *vs.*
Commission on Audit, 467 Phil. 62, 90 (2004) 996
Prudential Bank, 512 Phil. 267, 278 (2005) 717
Traders Royal Bank, 642 Phil. 547, 556-557 (2010) 847
Dipatuan *vs.* Judge Mangotara, 633 Phil. 67, 76 (2010) 323-324
Doña Adela Export International *vs.*
Trade & Investment Development Corp.,
753 Phil. 596, 610 (2015) 414
Dorado *vs.* People, 796 Phil. 233, 255 (2016) 757
Ducat, Jr. *vs.* Villalon Jr., 392 Phil. 394, 403-404 (2000) 29
Dungog *vs.* CA, 455 Phil. 675, 684-685 (2003) 427
Edaño *vs.* Asdala, 651 Phil. 183, 189 (2010) 324

Page

Emerald Manufacturing Company *vs.*
CA, 321 Phil. 1001 (1995) 178
Engaño *vs.* CA, 526 Phil. 291, 297 (2006) 473, 477
Enriquez *vs.* De Vera, 756 Phil. 1 (2015) 616-617
Epifanio *vs.* People, 552 Phil. 620, 631 (2007) 923
Espino *vs.* People, 713 Phil. 377, 384 (2013) 204
Espiritu, et al. *vs.* Del Rosario, 745 Phil. 566, 588 (2014) 790
Estrada *vs.* Macapagal-Arroyo, 406 Phil. 1 (2001) 471
Eugenio *vs.* Civil Service Commission, G.R. No. 115863,
Mar. 31, 1995, 243 SCRA 196, 204 444
Export Processing Zone Authority *vs.* Dulay,
233 Phil. 313, 326 (1987) 61
Far East Bank and Trust Company *vs.* Shemberg
Marketing Corporation, 540 Phil. 7, 21 (2006) 421, 431
Fedman Development Corporation *vs.*
Agcaoili, 672 Phil. 20 (2011) 423, 432
Fernandez *vs.* Vasquez, 669 Phil. 619, 634-635 (2011) 327
Fernandez *vs.* Villegas, 741 Phil. 689, 697-698 (2014) 732
Figueras, et al. *vs.* Jimenez, 729 Phil. 101, 108 (2014) 369
Figueroa *vs.* People, 580 Phil. 58, 78 (2008) 419
Filoteo *vs.* Calago, 562 Phil. 474, 480 (2007) 328
Floria *vs.* Sunga, 420 Phil. 637, 650 (2001) 399
Foronda *vs.* Alvarez, Jr., 737 Phil. 1 (2014) 614
Fortuno *vs.* Palma, 240 Phil. 656, 664 (1987) 473
Franco *vs.* People, 780 Phil. 36, 53 (2016) 838
Gatchalian Promotions Talents Pools, Inc. *vs.*
Naldoza, 374 Phil. 1, 10-11 (1999) 27
GE Money Bank, Inc. *vs.* Spouses Dizon,
756 Phil. 502 (2015) 680
Gempesaw *vs.* CA, G.R. No. 92244, Feb. 9, 1993 1124
Gimeno *vs.* Zaide, 759 Phil. 10, 21 (2015) 593
Go *vs.* Metropolitan Bank and Trust Co.,
G.R. No. 168842, Aug. 11, 2010 1106
Gonzalez *vs.* Alcaraz, 534 Phil. 471, 482 (2006) 27
Cabucana, Jr., 515 Phil. 296, 304 (2006) 388
COMELEC, et al., 129 Phil. 7, 29 (1967) 488
Serrano, 755 Phil. 513, 527 (2015) 342
Gonzales III *vs.* Office of the President of the
Philippines, et al., 694 Phil. 52, 102 (2012) 481

Page

Gonzalo *vs*. Tarnate, Jr., 724 Phil. 198, 207 (2014) 993
Government of the U.S. *vs.* Judge of the First
Instance of Pampanga, 49 Phil. 495, 500 (1965) 494
Government Service Insurance System *vs.*
Montesclaros, 478 Phil. 573, 591 (2004) 996
Government Service Insurance System *vs*.
Villaviza, G.R. No. 180291, July 27, 2010 1098
Government Service Insurance System (GSIS), et al. *vs.*
Mayordomo, 665 Phil. 131, 144-145, 151 (2011) 52, 1026
Guevarra *vs.* People, 726 Phil. 183, 194 (2014) 757
Havtor Management Phils., Inc. *vs.* NLRC,
423 Phil. 509, 513 (2001) 733
Hebron *vs.* Garcia II, 698 Phil. 615, 622-623 (2012) 324
Heirs of Concha, Sr. *vs*. Spouses Lumocso,
564 Phil. 580, 592-593 (2007) 416
Heirs of Julian Dela Cruz and Leonora Talaro *vs.*
Heirs of Alberto Cruz, 512 Phil. 389 (2005) 419
Heirs of Fausto C. Ignacio *vs.* Home Bankers
Savings and Trust Company, et al.,
702 Phil. 109, 126 (2013) 684
Heirs of Jose Maligaso *vs.* Spouses Encinas,
688 Phil. 516, 523 (2012) 953
Heirs of San Andres *vs.* Rodriguez,
388 Phil. 571, 586 (2000) 657
Heirs of Sebe *vs.* Heirs of Sevilla, 618 Phil. 395 (2009) 420
Heirs of Uy Ek Liong *vs.* Castillo,
710 Phil. 261, 275-276 (2013) 653
Hernandez *vs*. Agoncillo,
697 Phil. 459, 469-470 (2012) 800, 802
Home Guaranty *vs.* R-II Builders, 660 Phil. 517 (2011) 427
Iloilo Jar Corporation *vs.* COMGLASCO Corporation
Aguila Glass, G.R. No. 219509, Jan. 18, 2017 800
Imperial, Jr. *vs.* Government Service Insurance System,
674 Phil. 286 (2011) 1026-1027
In Re Gonzales, 243 Phil. 167 (1988) 474
In Re MacDougall, 3 Phil. 70 (1903) 31
In Re: Del Castillo, A.M. No.10-7-17-SC, Oct. 12, 2010,
632 SCRA 607 548

Page

In Re: Resolution Dated Aug. 14, 2013 of the
Court of Appeals in CA-G.R. CV No. 94656 *vs.*
Atty. Mortel, 791 Phil. 1 (2016) 41
INC Navigation Co. Philippines, Inc. *vs.* Rosales,
744 Phil. 774, 786- 789 (2014) 762, 770
Ingles, et al. *vs.* Estrada, et al.,
708 Phil. 271, 302-303 (2013) 732
In-N-Out Burger, Inc. *vs.* Sehwani, Incorporated
and/or Benitas Frites, Inc., 595 Phil. 1119, 1149 (2008) 789
Insurance of the Philippine Island Corp. *vs.*
Spouses Gregorio, 658 Phil. 36, 42 (2011) 951
International Hotel Corporation *vs*. Joaquin, Jr.
and Suarez, 708 Phil. 361, 373 (2013) 707
Jakosalem, et al. *vs*. Barangan, 682 Phil. 130, 142 (2012) 955
Japson *vs.* Civil Service Commission,
663 Phil. 665 (2011) 1030
Jehan Shipping Corporation *vs.* National
Food Authority, 514 Phil. 166, 173 (2005) 700
Jimenez *vs.* Francisco, 749 Phil. 551, 565-566 (2014) 586
Jison *vs.* CA, 247 Phil. 304 (1988) 658
Joven *vs.* Cruz, 715 Phil. 531, 538 (2013) 309
Kilosbayan Foundation *vs.* Exec. Sec. Ermita,
553 Phil. 331 (2007) 480
La Chemise Lacoste, S.A. *vs*. Fernandez,
214 Phil. 332 (1984) 179
Lahm III *vs.* Mayor, Jr., 682 Phil. 1, 8 (2012) 16
Land Bank of the Philippines *vs*. Dalauta,
G.R. No. 190004, Aug. 8, 2017 62-63
Land Bank of the Philippines *vs.* Spouses
Montalvan, et al., 689 Phil. 641 (2012) 62, 65
Lao *vs.* Medel, 453 Phil. 115 (2003) 614, 617
Lapitan *vs.* Scandia, Inc., et al.,
133 Phil. 526, 528 (1968) 418, 420, 431
Lecaroz *vs*. Sandiganbayan, 213 Phil. 288 (1984) 474
Lejano *vs*. People, 652 Phil. 512 (2010) 155
Lescano *vs.* People, G.R. No. 214490, Jan. 13, 2016,
781 SCRA 73, 88, 718 Phil. 460, 476 (2016) 940, 1046
Levi Strauss (Phils.), Inc. *vs.* Lim,
593 Phil. 435, 457 (2008) 790

Page

Limcay *vs.* CA, 289 Phil. 429, 437 (1992) 659
Lopez *vs.* Limos, A.C. No. 7618, Feb. 2, 2016,
782 SCRA 609, 617 ..... 375, 377
Lopez *vs.* Roxas, G.R. No. L-25716, July 28, 1966,
17 SCRA 756 529
Lota *vs*. CA and Sangalang, 112 Phil. 619 (1961) 476
LTS Philippines Corporation *vs.* Maliwat,
489 Phil. 230, 235 (2005) 800
Lu *vs.* Lu Ym, 585 Phil. 251 (2008) 430
Lumanog, et al. *vs.* People, 644 Phil. 296, 395 (2010) 137
Macahilig *vs*. Heirs of Magalit,
398 Phil. 802, 817 (2000) 415
Macalintal *vs*. Presidential Electoral Tribunal,
650 Phil. 326, 359 (2010) 476, 482
Madrigal *vs.* Prov. Gov. Lecaroz,
269 Phil. 20, 24 (1990) 491, 526
Madrigal Transport, Inc. *vs*. Lapanday
Holdings Corporation, 479 Phil. 768, 782 (2004) 991
Magtibay *vs.* Judge Indar, 695 Phil. 617, 625 (2012) 325
Mallillin *vs.* People, 576 Phil. 576, 588 (2008) 834, 1010
Malonesio *vs*. Jizmundo, G.R. No. 199239,
Aug. 24, 2016, 801 SCRA 339 958
Mangahas *vs.* Brobio, 648 Phil. 560 (2010) 850
Manila Bay Club Corp. *vs.* CA,
315 Phil. 805, 826 (1995) 655, 657
Manila Electric Company *vs.* South Pacific
Plastic Manufacturing Corporation,
526 Phil. 105, 111-112 (2006) 719
Manila International Airport Authority *vs.*
CA, 528 Phil. 181 (2006) 741
Marcoleta *vs*. Borra, 601 Phil. 470 (2009) 474
Marcos II *vs.* CA, 339 Phil. 253, 263 (1997) 109
Marilao Water *vs.* Intermediate Appellate Court,
278 Phil. 444, 452 (1991) 414
Marlow Navigation Philippines, Inc. *vs.* Osias,
773 Phil. 428 (2015) 768
Mattel, Inc. *vs.* Francisco, 582 Phil. 492, 499 (2008) 807
Maylas, Jr. *vs.* Sese, 529 Phil. 594, 597 (2006) 324

Page

McDonalds Corporation *vs*. L.C. Big Mak Burger, Inc., 480 Phil. 402 (2004) 803
Medida *vs*. CA, 284-A Phil. 404, 409-410 (1992) 679
Medina *vs*. People, 724 Phil. 226-234-235 (2014) 216
Mediserv, Inc. *vs.* CA, et al., 631 Phil. 282 (2010) 732
Mendoza *vs*. Allas, 362 Phil. 238 (1999) 476
Mendoza *vs.* Commission on Audit, G.R. No. 195395, Sept. 10, 2013, 705 SCRA 306, 337-339 448
Mendoza *vs.* Spouses Gomez, et al., 736 Phil. 460, 482 (2014) 786
Mendoza *vs.* Villas, 659 Phil. 409, 415-416 (2011) 414
Miclat, Jr. *vs.* People, 672 Phil. 191, 209 (2011) 80
Miel *vs.* Malindog, 598 Phil. 594, 606 (2009) 799
Mira *vs. Vda. de* Erederos, et al., 721 Phil. 513, 527 (2015) 342
Miriam College Foundation, Inc. *vs.* CA, 401 Phil. 431, 447-448 (2000) 425-426
Mirpuri *vs.* CA, 376 Phil. 628 (1999) 180
Molen, Jr. *vs*. Commission on Audit, G.R. No. 150222, Mar. 18, 2005, 453 SCRA 769 446
Morla *vs*. Belmonte, 678 Phil. 102, 107 (2011) 652
Moro *vs*. Del Castillo, Jr., 662 Phil. 331 (2011) 476
Municipality of Candijay, Bohol *vs*. CA, 321 Phil. 922, 926 (1995) 852
Nacar *vs.* Gallery Frames, G.R. No. 189871, Aug. 13, 2013 1132
Nacar *vs.* Gallery Frames, et al., 716 Phil. 267, 280 (2013) 299
Nacionalista Party *vs.* De Vera, 85 Phil. 126, 133 (1949) 473
Nacnac *vs.* People, 685 Phil. 223, 229 (2012) 758
Narag *vs*. Atty. Narag, 353 Phil. 643, 655 (1998) 29
National Housing Authority *vs*. CA, G.R. No. 144275, July 5, 2001 1097
Nava *vs*. Commissioner of Internal Revenue, 121 Phil. 117, 123-124 (1965) 107
Nazareth *vs.* Villar, G.R. No. 188635, Jan. 29, 2013, 689 SCRA 385, 402-405 444

Page

Nebreja *vs*. Reonal, 730 Phil. 55 (2014) 605
Neypes *vs.* CA, 506 Phil. 613 (2005) 59
Ngayan *vs*. Tugade, 271 Phil. 654, 659 (1991) 616
Nuñez *vs*. GSIS Family Bank, 511 Phil. 735,
747-748 (2005) 700
OCA *vs.* Chavez, A.M. No. RTJ-10-2219,
Aug. 1, 2017, p. 4 327
OCA *vs.* Salva, 391 Phil. 13, 22 (2000) 326
Office of the Ombudsman *vs*. PS/SUPT.
Rainier A. Espina, G.R. No. 21350, Mar. 15, 2017 342
Ollendorff *vs*. Abrahamson, 38 Phil. 585, 590-591 (1918) 993
Olympia Housing, Inc. *vs*. Lapastora,
778 Phil. 189 (2016) 894, 897
Ong *vs*. Delos Santos, 728 Phil. 332, 338 (2014) 616
Osop *vs.* Fontanilla, 417 Phil. 724, 730 (2001) 17
Pacana, Jr. *vs*. Atty. Pascual-Lopez, 611 Phil. 399 (2009) 386
Padilla, et al. *vs.* Congress of the Phils.,
G.R. No. 231671, July 25, 2017 484
Pajolino *vs.* Tajala, 636 Phil. 313 (2010) 61
Pallada *vs.* RTC of Kalibo, Aklan, Br. I,
364 Phil. 81, 89 (1999) 700
Pangasinan Electric Cooperative I *vs.* Montemayor,
559 Phil. 438, 445-446 (2007) 31
Pangilinan *vs.* CA, 345 Phil. 93 (1997) 658
Pantaleon *vs.* American Express International, Inc.,
643 Phil. 488 (2010) 81
Pariñas *vs.* Paguinto, 478 Phil. 239 (2004) 608
Pascual *vs.* Burgos, 776 Phil. 167, 182-183 (2016) 155, 846
Pe *vs*. IAC, 212-A Phil. 94 (1991) 657
Peñoso *vs.* Dona, 549 Phil. 39, 45 (2007) 883
People *vs.* Abadies, 436 Phil. 98, 106 (2002) 757
Abalos, 328 Phil. 24, 36 (1996) 921
Abella, 624 Phil. 18, 36 (2010) 144, 924
Abundo, 402 Phil. 616, 636 (2001) 200
Adriano, et al., 764 Phil. 144, 159 (2015) 297
Agcanas, 674 Phil. 626, 632 (2011) 156
Agoncillo, G.R. No. 229100, Nov. 20, 2017 274
Alcuizar, 662 Phil. 794, 801 (2011) 1009
Algarme, 598 Phil. 423, 450 (2009) 203

Page

Almendras, 423 Phil. 1035, 1044-1045 (2001) 757
Almodiel, 694 Phil. 449, 460 (2012) 830
Almorfe, 631 Phil. 51 (2010) 1044, 1068
Amaro, G.R. No. 207517, June 1, 2016 81
Aminnudin, 246 Phil. 424, 434-435 (1988) 942, 1047
Amon, 218 Phil. 355, 361 (1984) 164
Ancheta, 687 Phil. 569, 582 (2012) 820
Angus, Jr., 640 Phil. 552, 566 (2010) 95, 977
Anticamara, 666 Phil. 484, 507-508 (2011) 156
Año, G.R. No. 230070, Mar. 14, 2018 831
Aycardo, G.R. No. 218114, June 5, 2017 275
Ayola, 416 Phil. 861, 871 (2001) 915
Ayupan, 427 Phil. 200, 220 (2002) 756
Baltar, Jr., 401 Phil. 1, 14 (2000) 924
Bañez, et al., 770 Phil. 40 (2015) 296
Barcelona, 382 Phil. 46, 54 (2000) 142
Barrozo, 433 Phil. 231, 247 (2002) 274
Basao, 369 Phil. 1005, 1041 (1999) 295
Beriber, 693 Phil. 629, 640-641 (2012) 199
Besmonte, 735 Phil. 234, 251 (2014) 142
Biñas, 377 Phil. 862, 897 (1999) 141
Bio, 753 Phil. 730, 736 (2015) 935, 1041, 1066
Biso, 448 Phil. 591, 601-602 (2003) 755, 757
Buayaban, 448 Phil. 57, 68 (2003) 138
Bugarin, G.R. No. 224900, Mar. 15, 2017 291-292
Cabalquinto, G.R. No. 167693, Sept. 19, 2006,
502 SCRA 419 ..... 130, 221
Caisip, 352 Phil. 1058, 1065 204
Caliso, 675 Phil. 742, 752 (2011) 214
Calonge, 637 Phil. 435, 455 (2010) 924
Camano, 201 Phil. 268 (1982) 296
Canares, 599 Phil. 60, 76 (2009) 143
Canlas, 423 Phil. 665, 684 (2001) 203
Capuno, 655 Phil. 226, 245 (2011) 837
Carlit, G.R. No. 227309, Aug. 16, 2017 1009
Castillo, 426 Phil. 752, 768 (2002) 923
Cayas, 789 Phil. 70, 80 (2016) 1013
Ceralde, G.R. No. 228894, Aug. 7, 2017 ..... 938, 1044, 1068
Chua, 357 Phil. 907, 921 (1998) 293-294

Page

Cogonon, 331 Phil. 208, 219 (1996) 141
Comboy, G.R. No. 218399, Mar. 2, 2016,
785 SCRA 512, 521 ..... 935, 1041, 1065
Coreche, 612 Phil. 1238, 1252 (2009) 1012
Cortez, 611 Phil. 360, 381 (2009) 831
Costales, 424 Phil. 321, 334 (2002) 923
Crispo, G.R. No. 230065, Mar. 14, 2018 ..... 833, 1071
Dadivo, 434 Phil. 684, 688-689 (2002) 291, 293-295
Dahil, 750 Phil. 212, 225 (2015) 935, 1041, 1065
Dalawis, 772 Phil. 406, 419-420 (2015) 79, 81
De Guzman *y* Danzil,
630 Phil. 637, 649 (2010) 938, 974, 1044, 1069
De la Rosa, Jr., 395 Phil. 643, 659 (2000) 922
Dela Rosa, G.R. No. 230228, Dec. 13, 2017 940
Deniega, G.R. No. 212201, 28 June 2017 272
Derilo, 338 Phil. 350, 376 (1997) 526
Diaz, 711 Phil. 227 (2013) 143
Dimaano, 780 Phil. 586, 606 (2016) 831
Dolorido, 654 Phil. 467, 475 (2011) 758
Domingo, G.R. No. 225743, June 7, 2017 273
Drew, 422 Phil. 614, 628 (2001) 922
Dulin, 762 Phil. 24, 40 (2015) 755
Dumadog, 667 Phil. 664, 669 (2011) 348
Dumlao, 584 Phil. 732, 738 (2008) 817
Duran, Jr., G.R. No. 215748,
Nov. 20, 2017, p. 14 ..... 754, 756-757
Dusohan, 297 Phil. 1020, 1024 (1993) 142
Ejan, G.R. No. 212169, Dec. 13, 2017 121-122
Empuesto, G.R. No. 218245, Jan. 17, 2018 271
Enad, 780 Phil. 346, 358-359 (2016) 81
Erguiza, 592 Phil. 363 (2008) 167
Escote, Jr., G.R. No. 140756, April 4, 2003 922
Espera, 718 Phil. 680, 694 (2013) 140
Estonilo, Sr., et al., 745 Phil. 331, 355 (2014) 921
Eyam, 699 Phil. 384, 391 (2012) 817
Flor, G.R. No. 216017, Jan. 19, 2018 119
Flores, 765 Phil. 535, 541-542 (2015) 81
Francia, G.R. No. 208625, Sept. 6, 2017 266

Page

Frondoz, 609 Phil. 188, 198 (2009) 1009
Gajo, G.R. No. 217026, Jan. 22, 2018 ..... 94, 1053
Garcia, 599 Phil. 416, 429 (2009) 973, 1046
Garrucho *y* Serrano, G.R. No. 220449, July 4, 2016 79
Gatlabayan, 669 Phil. 240, 252, 258 (2011) 836, 1009
Geronimo, G.R. No. 225500, Sept. 11, 2017 975
Go, 457 Phil. 885, 925 (2003) 942, 1047
Goco, G.R. No. 219584, Oct. 17, 2016,
806 SCRA 240, 252 ..... 938, 1044, 1068
Gonzales, 300 Phil. 296, 301 (1994) 296
Gonzales, 76 Phil. 473, 479 (1946) 293
Gum-Oyen, 603 Phil. 665 (2009) 819
Hapa, 413 Phil. 679, 695 (2001) 137
Hidalgo, 768 Phil. 355, 364 (2015) 353
Holgado, G.R. No. 207992, Aug. 11, 2014,
732 SCRA 554, 556, 741 Phil. 78, 96 (2014) 836, 975, 1014
Illescas, 396 Phil. 200 (2000) 294-295
Imson, 669 Phil. 262 (2011) 975
Isla, 699 Phil. 256, 270 (2012) 283, 293
Jaafar, G.R. No. 219829, Jan. 18, 2017,
815 SCRA 19, 28 968
Jalbonian, 713 Phil. 93, 95 (2013) 296
Jastiva, 726 Phil. 607, 634 (2014) 143
Joson, 751 Phil. 450 (2015) 249
Jugueta, 783 Phil. 806 (2016) 145, 252, 275, 353, 759
Kamad, 624 Phil. 289, 299 (2010) 835, 1008
Lab-eo, 424 Phil. 482, 495 (2002) 291
Lacson, 448 Phil. 317, 386 (2003) 482
Las Piñas, 739 Phil. 502 (2014) 297
Licayan, 428 Phil. 332, 344 (2002) 141
Limpangog, 444 Phil. 691, 709 (2003) 916
Lorenzo, 633 Phil. 393, 403 (2010) 1046
Lovedorial, 402 Phil. 446, 461 (2001) 217
Lucena, 728 Phil. 147, 162-163 (2014) 251
Lucero, 659 Phil. 518, 540 (2011) 919
Macapundag, G.R. No. 225965, Mar. 13, 2017 ..... 941, 1046
Macaspac, G.R. No. 198954, Feb. 22, 2017,
818 SCRA 417 ..... 293, 759
Magat, 588 Phil. 395, 407 (2008) 1014

Page

Malibiran, et al., 604 Phil. 556, 581 (2009) 296
Mamangon, G.R. No. 229102, Jan. 29, 2018 ..... 92, 972, 1052
Mamaruncas, 680 Phil. 192, 211 (2012) 237
Mammad, et al., 769 Phil. 782, 790 (2015) 81
Mangune, 689 Phil. 759, 769 (2012) 250
Martinez, 652 Phil 347, 369 (2010) 80
Mendoza, 736 Phil. 749,
761-762 (2014) 937, 973, 1014, 1042, 1067
Miranda, G.R. No. 229671, Jan. 31, 2018 ..... 942, 1047, 1052
Moner *y* Adam, G.R. No. 202206,
Mar. 5, 2018 ..... 94, 976, 1054
Morales *y* Midarasa, 630 Phil. 215, 228 (2010) 968, 1008
Muñoz, 252 Phil. 105, 118 (1989) 526
Narit, 274 Phil. 613, 630 (1991) 295
Nell, 341 Phil. 20, 33-34 (1997) 756
Nogopo, 603 Phil. 722, 743 (2009) 248
Nuyok, 759 Phil. 437, 447 (2015) 353
Obedo, 451 Phil. 529, 538 (2003) 200
Ordona, G.R. No. 227863, Sept. 20, 2017 757
Orias, 636 Phil. 427, 442 (2010) 200
Pagaduan, 641 Phil. 432, 448-449 (2010) 831, 1046
Palanay, G.R. No. 224583, Feb. 1, 2017 ..... 249, 274
Palma, 754 Phil. 371, 378 (2015) 199
Palomares, 726 Phil. 637, 641 (2014) 819
Paz, G.R. No. 229512, Jan. 31, 2018 ..... 92, 972, 1052
Perez, 673 Phil. 373, 379 (2011) 247
Placer, 719 Phil. 268, 280 (2013) 291
Porras, 413 Phil. 563, 587 (2001) 141
Primavera, G.R. No. 223138, July 5, 2017 265
Pundugar, G.R. No. 214779, Feb. 7, 2018 ..... 119, 122
Pusing, 789 Phil. 541, 558-559 (2016) 271
Quebral, 621 Phil. 226, 233 (2009) 80
Quintos, 746 Phil. 809, 828 (2014) 250
Racal @ Rambo, G.R. No. 224886,
Sept. 4, 2017 ..... 283, 293, 298
Ramirez, 409 Phil. 238, 250 (2001) 141
Ramirez, G.R. No. 225690,
Jan. 17, 2018 ..... 89, 94, 969, 1049, 1053
Relato, 679 Phil. 268, 278 (2012) 821

Page

Resurreccion, 618 Phil. 520, 531-532 819
Reyes, 806 Phil. 513, 532 (2016) 1010
Rivera, 590 Phil. 894, 907-908 (2008) 836
Romobio, G.R. No. 227705, Oct. 11, 2017 ..... 145, 926
Rosauro, 754 Phil. 346, 353-354 (2015) 80
Rubillar, G.R. No. 224631, Aug. 23, 2017 266
Sagana, G.R. No. 208471, Aug. 2, 2017 ..... 92, 972, 1052
Salonga, 717 Phil. 117, 127 (2013) 819
Salvador, 726 Phil. 389, 405-406 (2014) 975, 1010
Sanchez, 590 Phil. 214, 234 (2008) 837, 1043, 1067
Sansaet, 426 Phil. 826, 833 (2002) 138
Santillan, G.R. No. 227878, Aug. 9, 2017 759
Sapigao, Jr., G.R. No. 178485, 614 Phil. 589 (2009) 250
Saragena, G.R. No. 210677, Aug. 23, 2017 ..... 92, 972, 1052
Sarmiento, 118 Phil. 266, 271 (1963) 295
Serenas, et al., 636 Phil. 495, 511 (2010) 293
Silvano, G.R. No. 127356, June 29, 1999 142
Sinco, 406 Phil. 1, 12 (2001) 915
Sipin, G.R. No. 224290, June 11, 2018 1013
Sorin, 757 Phil. 360, 368-369 (2015) 830
Suan, 627 Phil. 174, 192-193 (2010) 1015
Sumalinog, Jr., 466 Phil. 637, 650-651 (2004) 144
Sumili, 753 Phil. 342,
348-350 (2015) 936, 1011, 1041-1042, 1066
Talaboc, 326 Phil. 451, 461 (1996) 142
Togahan, 551 Phil. 997, 1011 (2007) 216
Tormis, 595 Phil. 589, 603 (2008) 139
Torres, 743 Phil. 552, 567 (2014) 144
Tuballas, G.R. No. 218572, June 19, 2017 270
Udtohan, G.R. No. 228887, July 2, 2017 270
Umipang, 686 Phil. 1024, 1038, 1052 (2012) 941, 1046, 1071
Villarico, Sr., et al., 662 Phil. 399, 422 (2011) 921
Viterbo, 739 Phil. 593, 601 (2014) 936, 1042, 1066
Yepes, 784 Phil. 113, 127 (2016) 818
Zakaria, 699 Phil. 367, 381 (2012) 819
Peoples Industrial and Commercial Corp. *vs.*
CA, 346 Phil. 189, 202 (1997) 657
Peralta-Labrador *vs.* Bugarin, 505 Phil. 409, 415 (2005) 416

Page

PEZA *vs.* COA, G.R. No. 210903, Oct. 11, 2016, 805 SCRA 618, 645-646 447
Phil-Air Conditioning Center *vs.* RCJ Lines, 773 Phil. 352, 369 (2015) 952
Philippine Economic Zone Authority *vs.* Commission on Audit, G.R. No. 210903, Oct. 11, 2016, 805 SCRA 618, 642 446
Philippine Fisheries Development Authority *vs.* CA, 555 Phil. 661 (2007) 742
Philippine International Trading Corporation *vs.* Commission on Audit, G.R. No. 152688, Nov. 19, 2003, 416 SCRA 245 446
Philippine National Bank *vs.* CA, 316 Phil. 371, 384 (1995) 800
Philippine National Oil Company *vs.* Maglasang, 591 Phil. 534, 544-545 (2008) 847
Pineda *vs.* Pinto, 483 Phil. 243, 252 (2004) 50
Planas *vs.* Gil, 67 Phil. 62, 77 (1939) 487
Power Sector Assets and Liabilities Management Corporation *vs.* Pozzolanic Philippines, Incorporated, G.R. No. 183789, Aug. 24, 2011 993
Preysler, Jr. *vs.* Manila Southcoast Development Corporation, 635 Phil. 598 (2010) 701
Prosecutor Visbal *vs.* Buban, 443 Phil. 705, 708 (2003) 326
Pryce Corporation *vs.* Philippine Amusement and Gaming Corporation, 497 Phil. 490, 508 (2005) 660
Querubin *vs.* Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City, G.R. No. 159299, July 7, 2004, 433 SCRA 769 446
Quimvel *vs.* People, G.R. No. 214497, April 18, 2017 270
Ramos *vs.* People, G.R. Nos. 218466 & 221425, Jan. 23, 2017, 815 SCRA 226, 233 754
Rangwani *vs.* Dino, 486 Phil. 8 (2004) 617
Raut-Raut *vs.* Gaputan, 769 Phil. 590, 597 (2015) 51
Re: AWOL of Borja, 549 Phil. 533, 536 (2007) 622
Re: Dropping from the Rolls of Millare, A.M. No. 17-11-131-MeTC, Feb. 7, 2018 622

Page

Re: Dropping from the Rolls of Nudo,
A.M. No. 17-08-191-RTC, Feb. 7, 2018 623
Re: Dropping from the Rolls of Quimno,
A.M. No. 17-03-33-MCTC, April 17, 2017 622
Re: Dropping from the Rolls of Vendiola,
A.M. No. 17-11-272-RTC, Jan. 31, 2018 623
Re: Failure of Judge Carbonell to Decide Cases
and to Resolve Pending Motions in the RTC,
Br. 27, San Fernando, La Union,
713 Phil. 594, 597-598 (2013) 326
Re: Letter of Judge Augustus C. Diaz,
Metropolitan Trial Court of Quezon City,
Branch 37, Appealing for Judicial Clemency,
560 Phil. 1 (2007) 397-398
Re: Request of National Committee on Legal Aid to
Exempt Legal Aid Clients from Paying Filing,
Docket and Other Fees, A.M. No. 08-11-7-SC,
Aug. 28, 2009 483
Report on the Judicial Audit Conducted in the
MCTC-DAPA, Surigao del Norte,
482 Phil. 712, 725 (2004) 326
Republic *vs.* CA, 253 Phil. 698, 713 (1989) 494
CA, 281 Phil. 177, 186 (1991) 852
Ortigas and Company Limited Partnership,
728 Phil. 277, 287-288 (2014) 847
Spouses Tan, 676 Phil. 337, 351 (2011) 847
Team (Phils.) Energy Corp., 750 Phil. 700 (2015) 633
Reyes *vs.* Nieva, A.C. No. 8560, Sept. 6, 2016,
802 SCRA 196, 220 595
Noblejas, 129 Phil. 256, 261-262 (1967) 422
Vitan, 496 Phil. 1 (2005) 606
Rico *vs*. Atty. Salutan, A.C. No. 9257, Mar. 5, 2018 387
Riesenbeck *vs.* Spouses Silvino Maceren, Jr. and
Patricia Maceren, 516 Phil. 157(2006) 657
Rivera *vs*. CA, 348 Phil. 734, 742 (1998) 852, 875
Rubin *vs.* Corpus-Cabochan, 715 Phil. 318, 334 (2013) 327
Rufloe, et al. *vs*. Burgos, et al.,
597 Phil. 261, 270 (2009) 717-718
Russell *vs.* Vestil, 364 Phil. 392 (1999) 421

Page

Salabao *vs*. Villaruel, Jr., 767 Phil. 548, 553-554 (2015) 40
Salvador *vs*. Limsiaco, Jr., 519 Phil. 683, 687 (2006) 323
Samalio *vs.* CA, 494 Phil. 456, 465-466 (2005) 307
Samson *vs*. Restrivera, 662 Phil. 45, 61 (2011) 51
Sanchez *vs.* Commission on Audit, G.R. No. 127545,
April 23, 2008, 552 SCRA 471, 487-488 440
Sanchez *vs*. Torres, 748 Phil. 18, 22-23 (2014) 615-616
Santiago *vs*. Fojas, 318 Phil. 79, 86-87 (1995) 365
Santos *vs.* Rasalan, 544 Phil. 35, 44 (2007) 51
Sapitan *vs.* JB Line Bicol Express, Inc.,
Lao Huan Ling/Baritua, 562 Phil. 817, 831-832 (2007) 799
Sarabia *vs*. People, 414 Phil. 189, 198 (2001) 167
Saraum *vs*. People, 779 Phil. 122, 131 (2016) 831
Sarmiento *vs.* Mison, G.R. No. 79974, Dec. 17, 1987,
156 SCRA 549 470
Scisan *vs.* NLRC, G.R. No. 176240, Oct. 17, 2008 1099
Sebastian *vs.* Bajar, 559 Phil. 211 (2007) 41, 367
Sehwani, Inc. and/or Benitas Frites, Inc. *vs.*
IN-N-OUT Burger, Inc., 562 Phil. 217, 227 (2007) 799
Seville *vs.* Commission on Audit, 699 Phil. 27, 33 (2012) 344
Shang Properties Realty Corporation, et al. *vs.* St.
Francis Development Corporation,
739 Phil. 244, 256 (2014) 788
Shipside, Incorporated *vs.* CA, 404 Phil. 981-995 (2001) 731
Shoemart *vs.* CA, 268 Phil. 195, 204-205 (1990) 659
Singson *vs.* Commission on Audit, G.R. No. 159355,
Aug. 9, 2010, 627 SCRA 36 446
Singson *vs.* Sawmill, 177 Phil. 575, 588 (1979) 431
Sipin-Nabor *vs.* Atty. Baterina, 412 Phil. 419, 424 (2001) 29
Sistoza *vs.* Desierto, G.R. No. 144784, Sept. 3, 2002,
388 SCRA 307, 316 447-448
Skechers, U.S.A., Inc. *vs.* Inter Pacific Industrial
Trading Corp., 662 Phil. 11 (2011) 804
Social Security System *vs.* Commission on Audit,
G.R. No. 210940, Sept. 6, 2016,
802 SCRA 229, 252-255 447
Solar Team Entertainment, Inc. *vs.* Ricafort,
355 Phil. 404 (1998) 882
Solidon *vs.* Macalalad, 627 Phil. 284 (2010) 608

Page

Soriano *vs.* Dizon, 515 Phil. 635, 647 (2006) 32
Southern Cross Cement Corp. *vs.* Cement Manufacturers Association of the Phil., 503 Phil. 485, 524 (2005) 482
Spouses Atuel *vs*. Spouses Valdez, 451 Phil. 631 (2003) 419
Spouses Benatiro, et al. *vs.* Heirs of Evaristo Cuyos, 582 Phil. 470, 491 (2008) 951
Spouses Chan *vs.* Judge Lantion, 505 Phil. 159, 164 (2005) 324
Spouses Concepcion *vs.* Dela Rosa, 752 Phil. 485, 496 (2015) 617-618
Spouses Dycoco *vs.* CA, 715 Phil. 550 (2013) 801
Spouses Edralin *vs*. Philippine Veterans Bank, 660 Phil. 368, 380 (2011) 679-680
Spouses Ello *vs*. CA, 499 Phil. 398 (2005) 883
Spouses Espejo *vs.* Ito, 612 Phil. 502, 514 (2009) 340
Spouses Estanislao, Jr. *vs*. CA, 414 Phil. 509, 517-518 (2001) 677-678
Spouses Francisco *vs*. CA, et al., 449 Phil. 632, 647 (2003) 719
Spouses Galang *vs.* Spouses Reyes, 692 Phil. 652, 664 (2012) 685
Spouses Gallent *vs*. Velasquez, 784 Phil. 44, 58 (2016) 678
Spouses Huguete *vs*. Spouses Embudo, 453 Phil. 170, 176-177 (2003) 431
Spouses Jonathan and Ester Lopez *vs.* Atty. Sinamar E. Limos Lopez , 780 Phil. 113 (2016) 603, 607
Spouses Marquez *vs*. Spouses Alindog, 725 Phil. 237 (2014) 678
Spouses Natino *vs*. Intermediate Appellate Court, et al., 274 Phil. 602, 610 (1991) 681
Spouses Ocampo *vs.* Heirs of Bernardino U. Dionisio, 744 Phil. 716, 729-730 (2014) 957
Spouses Saguid *vs.* Security Finance, Inc., 513 Phil. 369, 384 (2005) 851
Spouses Serrano and Herrera *vs*. Caguiat, 545 Phil. 660, 667 (2007) 703

Page

Spouses Victory *vs.* Mercado, A.C. No. 10580, July 12, 2017 615
Subic Bay Metropolitan Authority (SBMA) *vs.* Universal International Group of Taiwan (UIG), 394 Phil. 691 (2000) 657
Sultan *vs.* Macabanding, 745 Phil. 12, 20 (2014) 583
Supapo, et al. *vs.* Spouses De Jesus, et al., 758 Phil. 444, 461 (2015) 955
Sy *vs.* Binasing, 563 Phil. 491 (2007) 50
Sy *vs.* People, G.R. No. 183879, April 14, 2010 1100
Tagle *vs.* Equitable PCI Bank, et al., 575 Phil. 384, 403 (2008) 991
Tamin *vs.* Magsaysay Maritime Corporation, G.R. No. 220608, Aug. 31, 2016, 802 SCRA 111, 125 767
Tan *vs.* Antazo, G.R. No. 187208, Feb. 23, 2011, 644 SCRA 337, 342 444
Tapucar *vs.* Tapucar, 355 Phil. 66, 72 (1998) 29
Tayag *vs.* Lacson, et al., 470 Phil. 64, 91-92 (2004) 679
The City of Manila, et al. *vs.* Grecia-Cuerdo, et al., 726 Phil. 9, 27 (2014) 491
The Incorporators of Mindanao Institute, Inc. *vs.* The United Church of Christ in the Philippines, 685 Phil. 21, 32-34 (2012) 427
The Law Firm of Raymundo A. Armovit *vs.* CA, et al., 674 Phil. 344, 356 (2011) 784
The Metropolitan Bank and Trust Co. *vs.* Rosales, et al., 724 Phil. 66, 68 (2014) 684
The New Testament Church of God *vs.* CA, 316 Phil. 330, 333 (1995) 852
Ting-Dumali *vs.* Torres, 471 Phil. 1, 14 (2004) 31
Tolentino, et al. *vs.* Spouses Latagan, et al., 761 Phil. 108, 134 (2015) 719
Tolosa *vs.* Cargo, 253 Phil. 154 (1989) 29
Topacio *vs.* Assoc. Justice Gregory Santos Ong, et al., 595 Phil. 491 (2008) 480, 488
Tria-Samonte *vs.* Obias, 719 Phil. 70 (2013) 618
Tumbaga *vs.* Teoxon, A.C. No. 5573, Nov. 21, 2017 387
Ui *vs.* Atty. Bonifacio, 388 Phil. 691, 706-707 (2000) 28

Page

Unabia *vs*. City Mayor of Cebu, 99 Phil. 253 (1956) 526
Unibank *vs*. Lao, G.R. No. 227005, June 19, 2017 1122
Union Bank of the Philippines *vs.* The Honorable
Regional Agrarian Reform Officer, et al.,
G.R. No. 200369, Mar. 1, 2017 790
United Coconut Planters Bank *vs*. Looyuko,
G.R. No. 156337, Sept. 28, 2007, 534 SCRA 322, 331 444
United Pulp and Paper Co., Inc. *vs.* Acropolis
Central Guaranty Corporation, 680 Phil. 64, 79 (2012) 700
Ursal *vs.* CA, 509 Phil. 628, 642 (2005) 721
Uy *vs.* Land Bank of the Philippines,
391 Phil. 303 (2000) 733
Vda. De Enriquez *vs.* San Jose, 545 Phil. 379 (2007) 608
Vda. De Urbano *vs.* Government Service Insurance
System, 419 Phil. 948, 961-962 (2001) 681
Veloso *vs.* Commission on Audit, G.R. No. 193677,
Sept. 6, 2011, 656 SCRA 767, 782 446-447
Ventura, et al. *vs*. Heirs of Spouses Endaya,
718 Phil. 620, 630 (2013) 701
Vergara *vs.* People, 425 Phil. 124, 133 (2002) 917, 919
Vertudes *vs*. Buenaflor, 514 Phil. 399, 423-424 (2005) 1026
Victorias Milling Co., Inc. *vs*. Intermediate
Appellate Court, 277 Phil. 1, 8 (1991) 414
Villagracia *vs*. Fifth Sharia District Court,
734 Phil. 239 (2014) 416, 419
Villanueva *vs.* Judicial and Bar Council,
757 Phil. 534 (2015) 486
Villatuya *vs.* Tabalingcos, 690 Phil. 381, 396 (2012) 593
Winebrenner & Iñigo Insurance Brokers, Inc. *vs.*
Commissioner of Internal Revenue,
752 Phil. 375 (2015) 633
Yamson *vs.* Castro, G.R. Nos. 194763-64,
July 20, 2016, 797 SCRA 592, 686 344
Yap *vs.* Commission on Audit, G.R. No. 158562,
April 23, 2010, 619 SCRA 154, 167-168 440
Yrastorza, Sr. *vs*. Latiza, 462 Phil. 145, 153 (2003) 50
Zafra, et al. *vs.* People, 686 Phil. 1095, 1109 (2012) 95
Zaguirre *vs.* Castillo, 446 Phil. 861, 869 (2003) 29
Zamora *vs*. CA, 262 Phil. 298, 304 (1990) 415

Page

II. FOREIGN CASES

Alberto *vs*. Nicolas, 279 U.S. 139 (1929) 566
Berg *vs*. Obama, 555 U.S. 1126, 1134 (2009) 529, 541
Berg *vs.* Obama, 586 F.3d 234, 242 (2009) 529, 541
Bowsher *vs.* Synar, 478 U.S. 714, 722-23 (1986) 535
Carleton *vs.* Civil Service Comn of City of Bridgeport,
10 Conn. App. 209, 522 A.2d 825 (1987) 578
Catlett *vs.* People (1894) 151 Ill 16, 37 NE 855 573
Chandler *vs.* Judicial Council of the Tenth Circuit,
398 U.S. 74 (1970) 528
Commonwealth *vs.* Fowler, 10 Mass. 290 (1813) 528, 566
Commonwealth ex rel. Atty. Gen. *vs*.
Bala & Byrn Mawr Turnpike Co. (1893)
153 Pa 47, 25 A 1105 573
Ex Parte Levitt, 302 U.S. 633 (1937) 539
Ferguson *vs*. Moore-McCormack Lines,
352 U.S. 521, 528 (1957) 550
Georgia *vs.* Brailsford, 2 U.S. 2 Dall. 415, 415 (1793) 549
Humphreys Exr *vs.* United States,
295 U.S. 602, 629-30 (1934) 546
International Assn of Firefighters *vs*.
City of Lawrence, 14 Kan. App.2d 788,
Syl. ¶ 3, 798 P.2d 960 rev. denied,
248 Kan. 996 (1991) 577
Korematsu *vs.* United States,
323 U.S. 214, 242-48 (1944) 551
KPERS *vs.* Reimer & Koger Assocs., Inc.,
262 Kan. 635, 659, 941 P.2d 1321 (1997) 577
Krajicek *vs.* Gale, 267 Neb. 623,
677 N.W.2d 488, 495 (2004) 569
Krajicek *vs.* Gale, 677 N.W.2d 490 (2004) 572
McPhail *vs*. People (1895) 160 Ill 77,
43 NE 382, 52 Am St Rep 306 574
Meinhard *vs.* Salmon, 249 NY 458 (1928) 552
Myers *vs*. United States, 272 U.S. 52, 114-15, 170 (1926) 535
Newman *vs.* United States ex. Rel. Frizzell,
238 U.S. 537, 544 (1915) 562-564, 566
People *vs*. Phillips, 1 Denio, 388 571

Page

People ex rel. Finnegan *vs.* Mayworm,
5 Mich. 146, 148 (1858) 570-571
People ex rel. Moloney *vs.* Pullmans
Palace-Car Co., 64 L.R.A. 366, 175 Ill. 125,
51. N.E. 664, 676 (1898) 574-575
Plessy *vs.* Ferguson, 163 U.S. 537, 552-62 (1896) 551
Scott *vs*. Sandford, 60 U.S. 393, 564-633, (1857) 550
Stasch *vs.* Weber, 188 Neb. 710, 711,
199 N.W.2d 391, 393 (1972) 573
State ex rel. Crain *vs*. Baker (1937, Mo App)
104 SW2d 726 578
State ex rel. Harmis *vs*. Alexander (1906)
129 Iowa 538, 105 NW 1021 578
State ex rel. Madderson *vs.* Nohle (1907)
16 ND 168, 112 NW 141, 125 Am St Rep 628 578
State ex rel. Schneider *vs.* McAfee,
2 Kan. App. 2d 274-276, 578 P.2d 281,
rev. denied 225 Kan. 845 (1978) 577
State ex rel. School Township *vs.* Kinkade (1922)
192 Iowa 1362, 186 NW 662 578
State ex rel. Security Sav. & Trust Co. *vs.*
School District No. 9 of Tillamook County (1934)
148 Or 273, 36 P2d 179 574
State ex rel. Stovall *vs.* Meneley,
271 Kan. 355, 22 P.3d 124 (2001) 574-575, 577
State Ex. Rel. Attorney Gen. *vs*. Paul,
5 Stew. & P. 40 (1833) 539
State *vs.* Beecher, 15 Ohio, 723 571
Harris, 3 Pike, 570 571
McBride, 4 Mo. Rep. 303, 1836 566
State, ex rel. *vs.* Showalter, 189 Kan. 562,
569, 370 P.2d 408 (1962) 577

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

1987 Constitution
Art. III, Sec. 14 154
Art. VI, Sec. 25 (5) 443
Sec. 29 (1) 443
Art. VII, Sec. 4 476
Sec. 4, par. 7 ..... 475, 478
Sec. 5 530
Art. VIII, Sec. 1 471
Sec. 2 417
Sec. 4 500
Sec. 5 ..... 416, 470, 485
Sec. 5 (1) 472, 476, 478-479
Sec. 5 (5) 547
Sec. 11 548
Sec. 15, pars. (1), (2) 325
Art. XI, Sec. 1 ..... 532, 554
Sec. 2 ..... 473, 477-479, 483, 525
Sec. 3 ..... 532, 553
Sec. 3(7) 473, 477
Sec. 7 553
Art. XII, Secs. 17-18 498
1986 Constitution
Art. X, Sec. 7 543
1973 Constitution
Art. VII, Sec. 4 543
1935 Constitution
Art. VI, Sec. 4 543
Sec. 11 530
Art. IX, Sec. 1 529

Page

B. STATUTES

Act
Act No. 3135, Sec. 6 ..... 421, 677
Batas Pambansa
B.P. Blg. 22 616
B.P. Blg. 129 417
Sec. 19 (1)-(5) 418
Secs. 20, 32 (1)-(2), 33(1) 417
Sec. 33 (2)-(3) 418
Civil Code, New
Art. 428 679
Art. 448 ..... 949, 958-959
Art. 546 958-959
Art. 1108 (4) 495
Art. 1144 (2) 65-66
Art. 1159 652
Art. 1170 655
Art. 1181 707
Art. 1186 706
Art. 1226 ..... 649, 663
par. 1 664
Art. 1227 666
Art. 1228 663
Art. 1229 662
Art. 1318 684
Art. 1326 685
Art. 1354 851
Art. 1370 653
Art. 1479 704
Art. 1659 655
Art. 1980 1133
Art. 2203 667
Arts. 2226-2227 662
Arts. 2233-2234 786
Code of Civil Procedure
Sec. 197 567
Code of Judicial Conduct (1989)
Canon 3, Rule 3.12 (a) 518

Page

Rule 3.12 (b) 523
Rule 5 (a) 517
Rule 5 (b) 523
Canon 6, Rule 5 326-327
Canon 8, Rule 8(a) 518
Code of Professional Responsibility
Canon 1 40
Rule 1.01 ..... 25-26, 377, 585, 614
Canon 7, Rule 7.03 29
Canon 8, Rule 8.01 389
Canon 9, Rules 9.01-9.02 ..... 301, 305
Canon 10, Rules 10.1-10.02 ..... 301, 305
Canon 11 ..... 41, 377
Canon 12, Rule 12.03 368
Rule 12.04 377
Canon 14 365
Canon 15, Rule 15.03 593
Canon 16 607
Rule 16.01 ..... 375, 377, 590, 593
Rule 16.03 ..... 375, 377
Canon 17 ..... 365, 376
Canon 18, Rule 18.03 365
Canon 21, Rule 21.02 593
Corporation Code
Sec. 3 742
Sec. 88 744
Executive Order
E.O. No. 180 443
Intellectual Property Code
Sec. 123.1 (d) 802, 806
Sec. 138 174
Sec. 168 787
Internal Rules of the Supreme Court
Rule 8 518
National Internal Revenue Code (Tax Code)
Sec. 228 638
Sec. 229 105
Negotiable Instruments Law
Sec. 66 1126

Page

Penal Code, Revised
Art. 48 924
Art. 148 920
Art. 171 (4) 1085, 1087, 1100
Art. 172 (1) 1085, 1087, 1099
Art. 248 ..... 283, 290, 925
Art. 249 759
Art. 266-A 130, 352
Art. 266-A (a) 242, 245
Art. 266-A (1) 247
Art. 266-A (1)(d) 257
Art. 315 (2)(a) 1085, 1099-1100
Presidential Decree
P.D. No. 1 444
P.D. No. 807 11
Sec. 38 12
P.D. No. 1146 982-983
P.D. No. 1529, Sec. 32 718
Republic Act
R.A. No. 166, as amended 806
R.A. No. 296, Sec. 12 ..... 370, 378, 618, 623
R.A. No. 660 982
R.A. No. 910, as amended 982-984, 998
Sec. 1 997
R.A. No. 1793 543
R.A. No. 3019 524
R.A. No. 3591 1105
R.A. No. 6656, Sec. 57 63
R.A. No. 6657 ..... 57, 61-62
Sec. 57 65
R.A. No. 6713 524
R.A. No. 6758, Sec. 12 440-441
R.A. No. 7160, Sec. 89 ..... 1024, 1027
Sec. 341 1027
Sec. 344 1029
R.A. No. 7227, Sec. 3 741
Sec. 4 745
Secs. 6-8 743

Page

R.A. No. 7610 ..... 242, 245, 257
Sec. 29 222
R.A. No. 7659 ..... 290, 298
R.A. No. 7691 417
R.A. No. 8291 ..... 983, 985, 996
R.A. No. 8293, as amended 802
Sec. 2 183
Sec. 5 (b) 805
Secs. 155, 168 775
R.A. No. 8353 ..... 257, 263
Art. 266-A (1)(d) 265
Art. 266-B 275
R.A. No. 8505 ..... 242, 258
R.A. No. 9160, Sec. 4 (a) 1085, 1087, 1100
R.A. No. 9165 ..... 80, 813, 818, 831
Art. II, Sec. 5 ..... 73, 112, 815, 825-826
Sec. 11 ..... 73, 112, 815, 930, 933
Sec. 21 ..... 77, 79, 90, 96, 120
Sec. 21 (1) 88, 820, 937, 1014, 1042
Sec. 21 (2) 937, 1042
Sec. 21 (a) 78, 89, 938, 968, 1044
R.A. No. 9206 440
R.A. No. 9208 ..... 222, 237, 242, 258
Sec. 3 (a) 231
Sec. 3 (f) 236
Sec. 4 234
Sec. 4 (a) 231
Sec. 6 ..... 221, 233
Sec. 6 (a), (c) 231
Sec. 10 (c) 237
R.A. No. 9262 ..... 130, 242
Sec. 44 222
R.A. No. 9282, Sec. 7 104
R.A. No. 9344 ..... 242, 258
R.A. No. 9346 ..... 275, 925
R.A. No. 9946 ..... 984, 997
R.A. No. 10364 233
R.A. No. 10640 ..... 89, 120, 820, 936, 969
Sec. 1 ..... 938, 1043, 1067

Page

Rules of Court, Revised
Rule 1, Sec. 4 1098
Rule 13, Sec. 11 ..... 881, 884
Rule 15, Sec. 4 ..... 320, 696, 700
Sec. 5 ..... 696, 700
Sec. 7 696
Rule 37, Sec. 1 1098
Rule 41, Sec. 2 (c) 413
Rule 43 ..... 337, 339, 990
Sec. 4 798-799
Rule 45 ..... 155, 331, 644, 670, 677
Sec. 1 ..... 413, 846
Rule 58 319
Sec. 5 423
Rule 65 ..... 765, 986, 989
Sec. 1 1097
Rule 66, Secs. 2-3 495
Sec. 5 496
Sec. 6 490
Sec. 9 491
Sec. 11 ..... 472, 495-496
Rule 71 547
Rule 112, Sec. 1 1101
Rule 131, Sec. 3 850
Rule 133, Sec. 1 851-852
Rule 137 518
Rule 138 547
Sec. 3 616
Sec. 20 (b) 40
Sec. 27 ..... 15, 41, 368
Rule 139-B 547
Sec. 1 14
Sec. 12 (c) 27, 39
Rule 140 548
Rule 141 737
Sec. 21 ..... 740, 746
Rules on Civil Procedure, 1997
Rule 44, Sec. 7 35
Rule 45 ..... 100, 625

Page

Rule 66 568
Rules on Criminal Procedure
Rule 124 283
Rules on Notarial Practice, 2004
Rule II, Sec. 1 584
Trademark Law
Sec. 12 807

C. OTHERS

A.M. No. 04-10-11-SC
Sec. 40 222
A.M. No. 10-4-20-SC
Rule 2, Sec. 3, par. (h) 548
Rules of Procedure for Intellectual Property Cases
Rule 18, Sec. 3 808
Rules on Administrative Cases in the Civil Service (2017)
Rule 20, Sec. 107 (a) (1) 621, 623
Sec. 110 623

D. BOOKS

(Local)

R. Agpalo, Legal Ethics, 1997 Ed., p. 156 29
Ruben E. Agpalo, Statutory Construction, p. 439 (2003) 525
Bernas, S.J., The Constitution of the Republic
of the PhilippinesA Commentary (1996), p. 989 531
Bernas, S.J., The 1987 Constitution of the Republic
of the Philippines: A Commentary (2003),
p. 726, citing 63 Phil. 170 (1936) 543
Bernas, S.J., The 1987 Constitution of the Republic
of the Philippines: A Commentary (2003), p. 725 542
Bernas, S.J., The Constitution of the Republic
of the Philippines A Commentary, (1986 Ed.), p. 989 554
Eduardo P. Caguioa, Comments and Case on Civil Law,
Civil Code of the Philippines, Vol. IV 284 (Rev.
Second Ed., 1983) 661
Isagani Cruz, Philippine Political Law, (1989 Ed.),
pp. 313-314 553

Page

Vicente J. Francisco, The Revised Rules of Court of the Philippines, Vol. V, (1970), p. 319 567
Francisco, Evidence (1994 2nd Ed.), p. 555 852
Desiderio P. Jurado, Comments and Jurisprudence on Obligations and Contracts 207 (Ninth Rev. Ed., 1987), citing 3 Castan, 7th Ed., Pp. 100-101 661
Tolentino, Civil Code of the Philippines 475 235

II. FOREIGN AUTHORITIES

A. STATUTES

U.S. Constitution
Art. I, Sec. 5 530
Art. II, Sec. 4 ..... 528, 540

B. BOOKS

Arthur Bestor, Impeachment, (1973), 49 Wash. L. Rev. 255, 258 555
Arthur J. Eddy, Law of Combinations Embracing Monopolies, Trusts, and Combinations of Labor and Capital; Conspiracy, and Contracts in Restraint of Trade, (1901), p. 1221 561
Baron John Comyns, A Digest of the Laws of England, 1766 559
Benjamin Cordozo, Law & Literature, p. 36 (1931) 550
Black s Law Dictionary 6th Edition 28
Blacks Law Dictionary, 8th Edition 523
Viscount James Bryce, The American Commonwealth, (1908), p. 233 555
74 C.J.S. Quo Warranto § 15 526
Clark, Judicial Self-Regulation Its Potential, 35 L. & Contemp. Probs. 37, 40-41 (1970) 538
Forrest G. Ferris & Forrest Ferris, Jr., The Law on Extraordinary Legal Remedies, (1926), p. 126 561
C. Hughes, The Supreme Court of the United States, 68 (1921) 550
J. Kent, Commentaries on American Law, XIV (1826) 533

Page

Lawrence Koenigsberger, An Introduction to the
Federal Rules of Civil Procedure, (1938), p. 1 564
John Hatsells Precedents of Proceedings in the
House of Commons, (1956), p. 63 555
Laurence Tribe and Joshua Matz,
To End A Presidency (2018), p. 25 531
Floyd R. Mechem, Treatise on the Law
of Public Offices and Officers, (1890), p. 304 561
James WM. Moore & Joseph Friedman,
A Treatise on the Federal Rules of Civil
Procedure, (1938), pp. 7-8 564
Scalia and Garner, Reading the Law:
The Interpretation of Legal Texts, pp. 4-6 (2012) 485
St. G. Tucker, W. Blackstone, Commentaries,
353, 359-60 (App.) (Tucker ed. 1803) 533
J. Story, Commentaries on the Constitution,
§§ 1599-1635 (1833) 533
Justice Joseph Story, Commentaries on the Constitution,
(1905, 5th Ed.), §764, p. 559 557