PHILIPPINE REPORTS

VOL. 834

JUNE 25, 2018 TO JULY 2, 2018

VOLUME 834

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 25, 2018 TO JULY 2, 2018

SUPREME COURT
MANILA
2020

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2020

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

FE CRESCENCIA QUIMSON-BABOR
ASSISTANT CHIEF OF OFFICE

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

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

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

LEUWELYN TECSON-LAT
COURT ATTORNEY V

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY V

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY IV

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY IV

LORELEI SANTOS BAUTISTA
COURT ATTORNEY III

SUPREME COURT OF THE PHILIPPINES

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

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

FIRST DIVISION

Chairperson

Hon. Maria Lourdes P.A. Sereno

Members

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

Division Clerk of Court

Atty. Librada C. Buena

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

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

Division Clerk of Court

Atty. Ma. Lourdes C. Perfecto

THIRD DIVISION

Chairperson

Hon. Presbitero J. Velasco, Jr.

Members

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

Division Clerk of Court

Atty. Wilfredo Y. Lapitan

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

Page

Page

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.M. No. P-18-3843. June 25, 2018]
(Formerly OCA IPI No. 16-4612-P)

CONCERNED CITIZENS, *complainants, vs.* **RUTH TANGLAO SUAREZ-HOLGUIN, Utility Worker 1, Office of the Clerk Of Court, Regional Trial Court, Angeles City, Pampanga,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; FAILURE TO SECURE TRAVEL AUTHORITY, ESTABLISHED IN CASE AT BAR; PROPER PENALTY; THIRTY (30) DAYS SUSPENSION WITHOUT PAY, IMPOSED.— [T]he Court finds sufficient ground to discipline her for failing to secure travel authorities for thirteen (13) foreign trips within a span of three (3) years. OCA Circular No. 49-2003 provides that "[j]udges and court personnel who wish to travel abroad must secure a travel authority from the [OCA]" and that those who leave the country without the required travel authority shall be "subject to disciplinary action." The Certificate issued by the Bureau of Immigration on October 7, 2015 shows that Suarez-Holguin went on thirteen (13) trips abroad from June 18, 2010 to September 21, 2013. Meanwhile, the Certificate dated July 29, 2013 issued by the Office of Administrative Services (OAS), OCA, disclosed that from December 22, 1997 up to the present, respondent did not file any application for travel authority, although she submitted applications for leave. Clearly, Suarez-Holguin

violated the directive under OCA Circular No. 49-2003, rendering her administratively liable. On the imposable penalty, the Revised Rules on Administrative Cases in the Civil Service provides that violations of reasonable rules and regulations is a light offense punishable with the penalty of reprimand for the first offense, suspension of one (1) to thirty (30) days for the second offense, and dismissal from the service for the third offense. x x x In the present case, however, while this is the first administrative case of Suarez-Holguin, the case covers thirteen (13) separate incidents all relating to her failure to comply with the OCA's directive within a span of three (3) years. In all these travels, records are bereft of showing any attempt on her part to secure a travel authority for any of her foreign trips. Case law states that unawareness of the circular is not an excuse for non-compliance therewith. In view of the substantial number of times that she failed to comply with the circular, the Court finds it proper to impose a higher penalty of suspension without pay for thirty (30) days.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is an anonymous complaint[1] dated April 23, 2013, filed by purported concerned Citizens informing the Court that Ms. Ruth Tanglao Suarez-Holguin (Suarez-Holguin), Utility Worker 1, Office of the Clerk of Court, Regional Trial Court, Angeles City, Pampanga, committed misconduct, immorality, and violation of Paragraph B (4) of the Office of the Court Administrator (OCA) Circular 49-2003.[2]

The Facts

In the anonymous complaint, it was alleged that Suarez-Holguin committed the following infractions: (*a*) paid someone

[1] *Rollo*, p. 23.

[2] Entitled "GUIDELINES ON REQUESTS FOR TRAVEL ABROAD AND EXTENSIONS FOR TRAVEL/STAY ABROAD" (May 20, 2003). The relevant provision reads:

B. VACATION LEAVE TO BE SPENT ABROAD

Pursuant to the resolution in A.M. No. 99-12-08-SC dated 06 November 2000, all foreign travels of judges and court personnel, regardless of the

else to do her job; (*b*) violated the prescribed dress code; (*c*) traveled abroad without securing a travel authority; (*d*) used official time for personal business, specifically by engaging in money lending, as well as selling imported items to her co-employees; (*e*) immorality by disclosing that she engages in sexual relations with several male foreigners during her travels; and (*f*) used Supreme Court stickers on her public utility vehicles to evade being cited for traffic violations.[3]

In her comment,[4] Suarez-Holguin explained that she failed to perform her duties for a period of time because she underwent two (2) surgeries or laminectomy due to severe back pain, prompting her to seek the assistance of other utility workers to do her job at that time. She denied having violated the prescribed dress code, claiming that she neither altered nor manipulated her uniform in her 19 years of service. She likewise denied using official time for personal business, stating that the items she supposedly sold in the office were either *pasalubong* or those which her co-employees asked her to buy during her travels abroad. She added that the complainants probably thought that she was engaged in money lending scheme because she was tasked, as an officer of the Angeles City Hall of Justice Multi-Purpose Cooperative, to collect payments from the cooperatives' members. Anent the alleged immorality, Suarez-Holguin averred that she traveled abroad only with her husband and denied spending those trips in the company of different men. As regards the use of Supreme Court stickers in her public vehicles, she presented photographs of her two jeepneys showing no such stickers posted on either vehicle. While she admitted that a Supreme Court sticker is posted in her Honda sedan, she clarified

---

number of days, must be with prior permission from the Supreme Court through the Chief Justice and the Chairmen of the Divisions.

x x x x x x x x x

4. Judges and personnel who shall leave the country without travel authority issued by the Office of the Court Administrator shall be subject to disciplinary action." x x x

x x x x x x x x x

[3] See *id*. at 23 and 59-60.

[4] *Id*. at 38-45.

that it is only used for identification purposes in entering and exiting the City Hall premises and not for evading traffic violations.[5]

On her alleged failure to secure travel authority for her trips abroad, she submitted two travel authorities: one dated November 11, 2015 for her trip to Vietnam and another dated July 1, 2016 for her trip to the United States. She was, however, unable to produce the required travel authorities for her other trips abroad.[6]

OCA's Report and Recommendation

In a report[7] dated February 20, 2018, the OCA recommended the dismissal of the charges for immorality and misconduct against her for lack of substantial evidence.[8] However, with respect to her travels without the required travel authority over the course of three years, the OCA recommended that she be found guilty of violating Paragraph B (4) of OCA Circular No. 49-2003 and, accordingly, be reprimanded and sternly warned that any repetition of the same or similar act shall be severely dealt with.[9]

The OCA explained that complainants failed to discharge their burden of proving the allegations in their complaint by substantial evidence, particularly with respect to Suarez-Holguin's supposed neglect of duty, violation of prescribed dress code, use of official time for personal business, immorality, and use of Supreme Court stickers to evade traffic citations. It stressed that pointing out circumstances based on mere conjectures and suppositions is not sufficient to prove accusations. Hence, it did not consider the pictures of Suarez-Holguin clothed in a two-piece bikini as posted in her social

---

[5] See *id*. at 39-43 and 60-61.

[6] *Id*. at 60.

[7] See Administrative Matter for Agenda signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino; *id*. at 59-63.

[8] *Id*. at 63.

[9] *Id*.

media account as evidence of immorality, noting that any interpretation of such pictures absent any other competent evidence will only amount to conjecture and supposition.[10]

Anent her foreign travels, the OCA found that Suarez-Holguin went on thirteen (13) trips abroad from June 18, 2010 to September 21, 2013 but did not file any application for travel authority for any of those trips. Accordingly, she should be sanctioned for violating Paragraph B (4) of OCA Circular 49- 2003.[11] Nevertheless, the OCA pointed out that the absences incurred during those trips were covered by approved leave applications.[12]

The Issue Before the Court

The sole issue before the Court is whether or not Suarez-Holguin should be held administratively liable.

The Court's Ruling

The Court adopts the OCA's findings but modifies the recommended penalty considering the substantial number of infractions.

Settled is the rule that in administrative proceedings, complainants bear the burden of proving the allegations in their complaint by substantial evidence.[13] As found by the OCA in the present case, the record is bereft of any evidence supporting the charges against Suarez-Holguin for neglect of duty, violating the prescribed dress code, using official time for personal business, immorality, and using Supreme Court stickers to evade traffic citations. While complainants attached pictures of respondent posing in a two- piece bikini as posted in social media, such photographs, by themselves, as aptly stated by the OCA, do not constitute evidence of immorality absent any sexual

---

[10] See *id*. at 61-62.

[11] See *id*. at 62-63.

[12] See Memorandum dated July 20, 2016; *id*. at 1-2.

[13] See *Re: Letter of Lucena Ofendo Reyes*, A.M. No. 16-12-03-CA and IPI No. 17-248-CA-J, June 6, 2017. See also *Garong v. Benipayo*, 461 Phil. 627, 643 (2003).

innuendo or depiction of a sexual act. Therefore, the Court dismisses these charges for lack of evidence.

As regards Suarez-Holguin's travels abroad, the Court finds sufficient ground to discipline her for failing to secure travel authorities for thirteen (13) foreign trips within a span of three (3) years.

OCA Circular No. 49-2003 provides that "[j]udges and court personnel who wish to travel abroad must secure a travel authority from the [OCA]" and that those who leave the country without the required travel authority shall be "subject to disciplinary action."[14]

The Certificate[15] issued by the Bureau of Immigration on October 7, 2015 shows that Suarez-Holguin went on thirteen (13) trips abroad from June 18, 2010 to September 21, 2013.[16] Meanwhile, the Certificate[17] dated July 29, 2013 issued by the Office of Administrative Services (OAS), OCA, disclosed that from December 22, 1997 up to the present, respondent did not file any application for travel authority,[18] although she submitted applications for leave.[19] Clearly, Suarez-Holguin violated the directive under OCA Circular No. 49-2003, rendering her administratively liable.

[14] See Paragraph B (1) and (4) of OCA Circular No. 49-2003.

[15] *Rollo*, pp. 19-20. Issued by the Acting Chief of the Certification and Clearance Section of the Bureau of Immigration Feliana Elena A. Ong.

[16] See *id*. at 20. See also *id*. at 1.

[17] *Id*. at 7-10. Signed by Employees' Leave Division, OAS, OCA Officer-in-Charge Ryan U. Lopez.

[18] *Id*. at 10.

[19] See *id*. at 1-2. The OCA summarized her travels as follows:

Date of Departure	**Date of Arrival**	**Reflected as Leave as Absence in OAS-OCA**
6-18-2010 (Friday)	6-26-2010 (Saturday)	With Leave of Absence
9-11-2010 (Saturday)	9-18-2010 (Saturday)	With Leave of Absence
10-2-2010 (Saturday)	10-6-2010 (Wednesday)	With Leave of Absence
11-20-2010 (Saturday)	12-4-2010 (Tuesday)	With Leave of Absence
2-2-2011 (Wednesday)	2-7-2011 (Friday)	With Leave of Absence

On the imposable penalty, the Revised Rules on Administrative Cases in the Civil Service[20] provides that violations of reasonable rules and regulations is a light offense punishable with the penalty of reprimand for the first offense, suspension of one (1) to thirty (30) days for the second offense, and dismissal from the service for the third offense.[21]

In *OAS, OCA v. Calacal*,[22] the Court reprimanded a utility worker for leaving the country without obtaining a travel authority.[23]

In *Leave Division, OAS, OCA v. Heusdens*,[24] a court employee applied for a travel authority but left the country without waiting for the approval of her application. Considering that it was her first offense and she was not informed of the denial of her application within a reasonable time, the Court merely admonished and warned her against repetition of the same or similar act.[25]

In *Del Rosario v. Pascua*,[26] a court employee filed a leave application but failed to indicate her intention to travel abroad,

6-21-2011 (Tuesday)	6-24-2011 (Friday)	With Leave of Absence
11-8-2011 (Friday)	11-13-2011 (Sunday)	With Leave of Absence
3-13-2012 (Monday)	3-18-2012 (Sunday)	With Leave of Absence
7-3-2012 (Tuesday)	7-8-2012 (Sunday)	With Leave of Absence
9-18-2012 (Tuesday)	9-23-2012 (Sunday)	With Leave of Absence
10-14-2012 (Sunday)	11-3-2012 (Saturday)	With Leave of Absence
6-11-2013 (Tuesday)	6-16-2013 (Sunday)	With Leave of Absence
9-21-2013 (Saturday)	9-25-2013 (Wednesday)	With Leave of Absence

[20] Promulgated on November 8, 2011.

[21] See Section 46 (F) (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service.

[22] 619 Phil. 1 (2009).

[23] See *id*. at 2-3.

[24] 678 Phil. 328 (2011).

[25] See *id*. at 335-347.

[26] 683 Phil. 1 (2012).

as well as to secure the required travel authority. The Court imposed a penalty of suspension without pay for three (3) months for her twin infractions of violating the OCA's directive and dishonesty in her leave application.[27]

In the present case, however, while this is the first administrative case of Suarez-Holguin, the case covers thirteen (13) separate incidents all relating to her failure to comply with the OCA's directive within a span of three (3) years. In all these travels, records are bereft of showing any attempt on her part to secure a travel authority for any of her foreign trips.[28] Case law states that unawareness of the circular is not an excuse for non-compliance therewith.[29] In view of the substantial number of times that she failed to comply with the circular, the Court finds it proper to impose a higher penalty of suspension without pay for thirty (30) days.

WHEREFORE, Ms. Ruth Tanglao Suarez-Holguin, Utility Worker 1, Office of the Clerk of Court, Regional Trial Court, Angeles City, Pampanga is found **GUILTY** of violating Paragraph B (4) of OCA Circular No. 49-2003. Accordingly, she is **SUSPENDED** for a period of thirty (30) days without pay and **STERNLY WARNED** that a repetition of the same or similar offense shall be dealt with more severely. The other charges in the complaint against her are **DISMISSED** for lack of evidence.

SO ORDERED.

Carpio[*] *(Chairperson)*, *Peralta, Caguioa*, and *Reyes, Jr., JJ.*, concur.

---

[27] See *id.* at 4-6.

[28] *Cf.* Unsigned Resolution in *OCA v. Cruz*, A.M. No. P-16-3572, December 7, 2016.

[29] *OAS, OCA v. Calacal*, *supra* note 22, at 3.

[*] Senior Associate Justice (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended).

SECOND DIVISION

[A.M. No. RTJ-18-2525. June 25, 2018]
(Formerly OCA IPI No. 15-4435-RTJ)

SAMUEL N. RODRIGUEZ, *complainant, vs.* **HON. OSCAR P. NOEL, JR., Executive Judge/Presiding Judge, Regional Trial Court of General Santos City, Branch 35,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; THERE IS NOTHING IN THE LAW OR RULES THAT PROHIBITS JUDGES FROM ACTING ON THE BAIL APPLICATION SUBMITTED ON A WEEKEND.— Records show that the accused in Misc. Case No. 3957 were arrested and detained at the Criminal Investigation and Detention Unit of General Santos City – within respondent's territorial jurisdiction – on June 26, 2015, a Friday. Among those detained were Basalo and Balansag who were accused of Frustrated Murder. x x x [I]ntending to secure their immediate release from detention before they are charged in court, Basalo and Balansag's representative, Atty. V. Emmanuel C. Fontanilla, went to respondent's house on June 28, 2015, a Sunday, with the petition for bail. After reviewing the same, respondent then ordered the City Prosecutor to comment thereon, with which the latter immediately complied and stated the recommended amount of bail. Since Basalo and Balansag immediately posted the required bail, respondent issued the Order on the same date, directing the temporary release of the accused. Considering that all these incidents occurred on a Sunday (June 28, 2015), when government offices, including the OCC, were expectedly closed and where no pleadings could be filed, the amount paid by the accused as bail, as well as their petition for bail, the City Prosecutor's Comment, and respondent's Temporary Release Order were all turned over for proper filing to and stamp-dated by the OCC on June 29, 2015 – the next working day. In short, while the petition for bail was filed with the OCC only on June 29, 2015, the application for bail and comment thereon by the City Prosecutor had been submitted to and considered by respondent on June 28, 2015 before he issued

the order for the temporary release of the accused. There is nothing in the law or the rules that prevented respondent from acting on the bail application submitted to him on a weekend. Accordingly, respondent acted in accordance with the rules in granting the application for bail.

2. ID.; ID.; GROSS IGNORANCE OF THE LAW; ISSUING AN ORDER EXTENDING A TEMPORARY RESTRAINING ORDER WHICH HAD ALREADY EXPIRED CONSTITUTES GROSS IGNORANCE OF THE LAW; THE COURT IMPOSED ONLY THE PENALTY OF REPRIMAND IN VIEW OF THE FACT THAT IT IS RESPONDENT'S FIRST INFRACTION IN HIS SIXTEEN (16) YEARS OF SERVICE COUPLED WITH THE SATISFACTORY EXPLANATION HE OFFERED.— [T]he Court agrees that respondent extended the TRO beyond the period allowed by Section 5, Rule 58 of the Rules of Court, considering that at the time he issued the order extending the TRO on July 14, 2015, the original 72-hour TRO issued on July 10, 2015 had already expired at 8:01 a.m. of July 13, 2015. Thus, in conducting the summary hearing and issuing the July 14, 2015 Order, respondent in effect revived what would have already been an expired 72-hour TRO and extended the same to a full twenty (20)-day period beyond the Rules' contemplation. The Rules' requirements are very clear, basic, and leave no room for interpretation. Clearly, therefore, respondent erred in failing to comply with these elementary provisions. x x x [R]espondent had been remiss in the issuance of the July 14, 2015 Order extending the TRO and the scrupulous observance of the requisites therefor. Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge[.] x x x The Court, however, observes that this is respondent's first infraction of this nature in his sixteen (16) years of service in the Judiciary. Moreover, the Court is satisfied with his explanation that he had to attend to his duties at the EJOW, thus constraining him to delay by one (1) day the conduct of the summary hearing for the extension of the TRO. Together, these circumstances mitigate respondent's liability. Well-taken, therefore, is the OCA's recommendation that respondent merits only the penalty of reprimand[.]

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is the complaint-affidavit[1] filed by complainant Samuel N. Rodriguez (Rodriguez) against respondent Judge Oscar P. Noel, Jr. (respondent) of the Regional Trial Court of General Santos City, Branch 35 (RTC), for violation of the Rules of Court and the Code of Judicial Conduct, Gross Ignorance of the Law, Grave Abuse of Discretion, and Bias and Partiality, relative to **Misc. Case No. 3957**, entitled "*In the Matter of Determination of Bail, Charles Emmanuel A. Gabato II, Cyrex Basalo, Arjay Balansag, and Exequiel A. Labrador, Jr., Petitioner*," and **Civil Case No. 8588**, entitled "*Golden Dragon International Terminals, Inc. (GDITI), represented by its president, Virgilio S. Ramos, v. Samuel N. Rodriguez*."

The Facts

In the complaint-affidavit, Rodriguez stated that he took over the operations of Golden Dragon International Terminals, Inc. (GDITI) at MAKAR Wharf, General Santos City, after the Writ of Preliminary Mandatory Injunction (As Amended)[2] dated January 8, 2014 issued in relation to Civil Case No. 1043[3] was implemented. GDITI is in the business of receiving and disposing the liquid and solid wastes generated by docking vessels.[4] The previous management, headed by a certain Cirilo Basalo[5] (Basalo), was supposed to cease from handling the operations of GDITI, but when the latter defied the injunctive writ,

---

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

[2] *Id*. at 12-14. Issued by Judge Dorothy P. Montejo-Gonzaga.

[3] Entitled "*Cezar O. Mancao, et al. v. Fidel Cu, et al.,* and *Samuel Rodriguez v. Cirilo C. Basalo, Jr., et al.*," filed before the Regional Trial Court of Nabunturan, Compostela Valley, Branch 3; see *id*. at 12.

[4] See *id*. at 1 and 38.

[5] "Cyrex Basalo" in some parts of the *rollo*.

Rodriguez filed a motion for its re-implementation, which was granted.[6] Consequently, on June 26, 2015, Rodriguez and the court sheriff went to the port to inspect the operations and saw a truck reportedly owned by Basalo transporting solid wastes from the docking vessel. While he was taking pictures of the truck, another vehicle driven by Basalo suddenly came from behind with the intent to sideswipe him. He initially dodged the vehicle but was nonetheless hit when he tried to chase it. While he was on the ground, another vehicle stopped in front of him and a number of armed men stepped out and pointed their guns at him. Fortunately, he was able to run away and hide.[7]

As a result of the incident, Rodriguez filed a complaint[8] for Frustrated Murder on June 29, 2015 against Basalo and his companions.[9] However, on June 28, 2015, a Sunday, respondent issued a Temporary Release Order[10] in favor of Basalo and one of his companions, Arjay J. Balansag (Balansag). Rodriguez argued that while executive judges can act on petitions for bail on Sundays and holidays, a petition for bail must be filed before the court can act on it; here, it was only on June 29, 2015, or the following Monday, that Basalo and his companions actually filed the Petition (Determination of Bail), docketed as Misc. Case No. 3957.[11]

Another, Rodriguez claimed that in Civil Case No. 8588, respondent issued, on July 10, 2015,[12] a 72-hour temporary

---

[6] See *id*. at 1-2 and 38.

[7] See *id*. at 2 and 38-39.

[8] Not attached to the *rollo*.

[9] See *rollo*, p. 3.

[10] Inadvertently captioned as "*Temporary Releasee Order*;" *rollo*, p. 20.

[11] Entitled "*In the Matter of Determination of Bail Charles Emmanuel A. Gabato II, Cyrex L. Basala, Arjay J. Balansag, and Exequiel A. Labrador, Jr.*," filed before the RTC; see *id.* at 21-22. See also *id*. at 3-4 and 39.

[12] See Order dated July 10, 2015; *id*. at 24, including dorsal portion.

restraining order (TRO) enjoining him from causing any act that might cause violence and to maintain the *status quo* in GDITI. A Notice[13] of special raffle was also issued by respondent and was received by Rodriguez's aunt on the same date.[14] To his surprise, however, on July 14, 2015,[15] the 72-hour TRO was extended for another twenty (20) days, or way beyond the 72-hour period. Rodriguez claimed that he was also not furnished a copy of the notice of hearing relative to the extension of the TRO.[16]

Pursuant to the 1st Indorsement[17] dated August 26, 2015 of the Office of the Court Administrator (OCA), respondent filed his comment[18] on December 21, 2015. On the issue of the propriety of the issuance of the June 28, 2015 Temporary Release Order, respondent averred that the accused were, in fact, arrested and detained by the police on June 26, 2015. On the evening of June 28, 2015, which fell on a Sunday, a representative of the accused, together with their lawyer,[19] went to his house bringing with them a petition for bail. After a review of the pleading, he issued an Order[20] dated June 28, 2015 directing the City Prosecutor to file a comment[21] which the latter did[22] on the same day with the recommended amount of bail. The accused accordingly posted bail. Thus, he issued the June 28, 2015 Order at 10:00 p.m., directing the temporary release of

---

[13] *Id*. at 25.

[14] See Sheriffs Return dated July 13, 2015; *id*. at 26-27. See also *id*. at 4.

[15] See Order; *id*. at 28.

[16] See *id*. at 4-8 and 39.

[17] *Id*. at 29.

[18] Dated December 14, 2015; *id*. at 30-32.

[19] A certain "Atty. V. Emmanuel C. Fontanilla," see Comment, *id*. at 31.

[20] Not attached to the *rollo*.

[21] *Rollo*, p. 31.

[22] Sec Comment of City Prosecutor Jose C. Blanza, Jr. dated June 28, 2015 at 9:50 p.m.; *id*. at 33.

the accused, and stating that the required bond had been deposited with him and will be turned over for proper issuance of receipt to the Office of the Clerk of Court (OCC) at the soonest practicable time.[23] This explains why the stamp of the OCC in all the documents was dated June 29, 2015, the following working day.[24]

On the issue of the propriety of the issuance of the 72-hour TRO, respondent claimed that he issued the same on July 10, 2015, a Friday, in his capacity as an Executive Judge. As no raffle could be conducted within that 72-hour period as required by the Rules of Court because it was a weekend, the special raffling was set the following Monday, or on July 13, 2015 with the case eventually being raffled to him. Unfortunately, he could not immediately act on it because he and his staff had to take a 70-minute drive from General Santos City using the Enhanced Justice on Wheels (EJOW) bus to conduct hearings in Malungon, Sarangani Province.[25] Neither could he determine and provide the exact time of their return to the city given the number of hearings scheduled in the EJOW program. Thus, the hearing for the extension of the TRO — for the parties to maintain the *status quo* and refrain from causing any act that might trigger violence - was set the day after, or on July 14, 2015; Rodriguez, however, was not directed to cease and desist from his business operations.[26]

The OCA's Report and Recommendation

In a Memorandum[27] dated January 15, 2018, the OCA recommended that respondent be reprimanded for gross ignorance

---

[23] *Id.* at 34. See also *id*. at 31.

[24] *Id*. at 31.

[25] See copy of Calendar of Cases, July 13, 2015, for Justice on Wheels, Malungon, Sarangani Province, *id*. at 35-37. See also *id*. at 31-32.

[26] *Id*. at 32.

[27] *Id*. at 38-42. Signed by then Assistant Court Administrator (now Deputy Court Administrator) Lilian C. Barribal-Co and Court Administrator Jose Midas P. Marquez.

of the law or procedure and be reminded to be more circumspect in the performance of his duties.

The OCA found respondent guilty of gross ignorance of the law when he issued the assailed orders relative to the TRO. According to the OCA, the TRO was issued on July 10, 2015, Friday, at 8:00 a.m., and expired after 72 hours on July 13, 2015, Monday, at 8:01 a.m.[28] Based on this timeline, the OCA held that respondent, on July 14, 2015, extended the TRO for another twenty (20) days, beyond the period allowed by the Rules. In this regard, the OCA pointed out that under Item No. 9, Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC,[29] gross ignorance of the law or procedure is classified as a serious charge, which, under Section 11 (A) of the same Rules, merits the penalty of either dismissal from service, suspension from office, or a fine. However, considering that this is respondent's first infraction of this nature after his sixteen (16) years of service in the Judiciary and his justifiable explanation for failing to schedule the required summary hearing due to the hectic schedule of the EJOW, the OCA, instead, recommended the penalty of reprimand.[30]

The OCA, however, was silent on the matter of the issuance of the Temporary Release Order in Misc. Case No. 3957.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not respondent should be held administratively liable for violation of the Rules of Court and the Code of Judicial Conduct, Gross Ignorance of the Law, Grave Abuse of Discretion, and Bias and Partiality.

---

[28] *Id*. at 40.

[29] Entitled "RE: PROPOSED AMENDMENT TO RULE 140 OF THE RULES OF COURT RE: DISCIPLINE OF JUSTICES AND JUDGES" (October 1, 2001).

[30] See *rollo*, pp. 40-42.

The Court's Ruling

Preliminarily, the Court notes that the OCA did not make any explicit finding/recommendation on the administrative charge against respondent in connection with the issuance of the Temporary Release Order in Misc. Case No. 3957. This notwithstanding, the Court is not without power and authority to directly act on the matter. Section 6, Article VIII of the 1987 Constitution vests in the Court administrative supervision over all courts and the personnel thereof. Consistent with this authority, the Court has the discretion to directly rule on the administrative charge against respondent relative to Misc. Case No. 3957, even in the absence of prior action from the OCA.

To recount, Rodriguez charges respondent with administrative liability because he issued the June 28, 2015 Temporary Release Order before the petition for bail was filed with the OCC on June 29, 2015.

The argument is untenable. Records show that the accused in Misc. Case No. 3957 were arrested and detained at the Criminal Investigation and Detention Unit of General Santos City — within respondent's territorial jurisdiction-on June 26, 2015, a Friday. Among those detained were Basalo and Balansag who were accused of Frustrated Murder. Frustrated Murder is punishable by *reclusion temporal*, the penalty lower by one degree than that provided for consummated murder.[31] Considering that they are not charged with an offense punishable by death, *reclusion perpetua*, or life imprisonment, Basalo and Balansag were entitled to bail as a matter of right as guaranteed by the Constitution[32] and pursuant to Section 4,[33] Rule 114 of the Rules

---

[31] See Article 250 in relation to Articles 248 and 50 of the Revised Penal Code.

[32] Article III, Section 13 of the Constitution provides:

SECTION 13. **All persons**, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, **shall, before conviction, be bailable** by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required. (Emphases and underscoring supplied)

of Court. Cognizant of the same, and intending to secure their immediate release from detention before they are charged in court,[34] Basalo and Balansag's representative, Atty. V. Emmanuel C. Fontanilla, went to respondent's house on June 28, 2015, a Sunday, with the petition for bail.[35] After reviewing the same, respondent then ordered the City Prosecutor to comment thereon, with which the latter immediately complied and stated the recommended amount of bail. Since Basalo and Balansag immediately posted the required bail, respondent issued the Order on the same date, directing the temporary release of the accused. Considering that all these incidents occurred on a Sunday (June 28, 2015), when government offices, including the OCC, were expectedly closed and where no pleadings could be filed, the amount paid by the accused as bail, as well as their petition for bail, the City Prosecutor's Comment, and respondent's Temporary Release Order were all turned over for proper filing to and stamp-dated by the OCC on June 29, 2015 — the next working day.

In short, while the petition for bail was filed with the OCC only on June 29, 2015, the application for bail and comment thereon by the City Prosecutor had been submitted to and

---

[33] Section 4. *Bail, a matter of right; exception.* — All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment.

[34] Under Section 17 (c), Rule 114 of the Rules of Court, "[a]ny person in custody who is not yet charged in court may apply for bail with any court in the province, city, or municipality where he is held."

[35] Supreme Court Administrative Circular No. 2-99, entitled "STRICT OBSERVANCE OF WORKING HOURS AND DISCIPLINARY ACTION FOR ABSENTEEISM AND TARDINESS" (February 1, 1999) states that "[o]n Saturday afternoons, Sundays and non-working holidays, any Judge may act on bailable offenses conformably with Section 17, Rule 114 of the Rules of Court, as amended.

considered by respondent on June 28, 2015 before he issued the order for the temporary release of the accused. There is nothing in the law or the rules that prevented respondent from acting on the bail application submitted to him on a weekend. Accordingly, respondent acted in accordance with the rules in granting the application for bail.

As regards the 72-hour TRO, the Court agrees with the findings and recommendations of the OCA.

Section 5, Rule 58 of the Rules of Court pertinently states:

Section 5. *Preliminary injunction not granted without notice*; exception. — x x x.

However, 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 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**.

x x x x x x x x x (Emphases supplied)

Based on the above provision, the following are the parameters for the issuance of an *ex-parte* TRO: (1) it is issued only in matters of extreme urgency and the applicant will suffer grave injustice and irreparable injury; (2) it shall be effective for only 72 hours counted from its issuance; (3) within this original 72-hour period, the issuing judge must conduct a summary hearing to determine the propriety of extending the TRO; and (4) in no case shall the total period of the TRO which shall include the original 72 hours exceed twenty (20) days.

In this case, the Court agrees that respondent extended the TRO beyond the period allowed by Section 5, Rule 58 of the Rules of Court, considering that at the time he issued the order extending the TRO on July 14, 2015, the original 72-hour TRO issued on July 10, 2015 had already expired at 8:01 a.m. of July 13, 2015. Thus, in conducting the summary hearing and issuing the July 14, 2015 Order, respondent in effect revived what would have already been an expired 72-hour TRO and extended the same to a full twenty (20)-day period beyond the Rules' contemplation. The Rules' requirements are very clear, basic, and leave no room for interpretation. Clearly, therefore, respondent erred in failing to comply with these elementary provisions.

As a matter of public policy, the acts of a judge in his official capacity are not subject to disciplinary action, even though such acts are erroneous.[36] It does not mean, however, that a judge, given the leeway he is accorded in such cases, should not evince due care in the performance of his adjudicatory prerogatives.[37] As the Court held in *OCA v. Vestil*,[38] citing *De Leon v. Corpuz*:[39]

> The observance of the law, which respondent judge ought to know, is required of every judge. When the law is sufficiently basic, a judge owes it to his office to simply apply it; x x x **failure to consider a basic and elementary rule, a law or principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and the title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority**.

Canon 1 (Rule 1.01) of the Code of Judicial Conduct provides that a judge should be the embodiment of competence, integrity and independence. Canon 3 states that "A judge should perform his official duties honestly and with impartiality and diligence." By his actuations,

---

[36] *Guillermo v. Reyes, Jr.*, 310 Phil. 176, 185 (1995).

[37] *Id.*

[38] 561 Phil. 142 (2007).

[39] 506 Phil. 604, 612 (2005), further citing *Spouses Adriano v. Caoibes, Jr.*, 429 Phil. 59, 66 (2002).

respondent judge has shown his lack of integrity and diligence, thereby blemishing the image of the judiciary.[40]

As already noted, respondent had been remiss in the issuance of the July 14, 2015 Order extending the TRO and the scrupulous observance of the requisites therefor. Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge, which, under Section 11 (A) of the same Rule, warrants any of the following sanctions:

> Section 11. *Sanctions*. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided*, however, that the forfeiture of benefits shall in no case include accrued leave credits;
>
> 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
>
> 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

The Court, however, observes that this is respondent's first infraction of this nature in his sixteen (16) years of service in the Judiciary. Moreover, the Court is satisfied with his explanation that he had to attend to his duties at the EJOW, thus constraining him to delay by one (1) day the conduct of the summary hearing for the extension of the TRO. Together, these circumstances mitigate respondent's liability. Well-taken, therefore, is the OCA's recommendation that respondent merits only the penalty of reprimand, similar to the Court's action in *Guillermo v. Reyes, Jr.*,[41] *Mondejar v. Buban*,[42] and *OCA v. Mendoza*.[43]

---

[40] *Supra* note 38, at 159.

[41] *Supra* note 36.

[42] See 413 Phil. 428 (2001).

[43] See 394 Phil. 603 (2000).

WHEREFORE, Judge Oscar P. Noel, Jr. of the Regional Trial Court of General Santos City, Branch 35 is hereby **REPRIMANDED** with a **STERN WARNING** that a repetition of the same or similar acts in the future shall definitely be dealt with more severely by this Court. He is further reminded to be more circumspect in the performance of his duties.

Let this Resolution be noted in the personal record of respondent judge.

SO ORDERED.

Carpio[*] *(Chairperson)*, *Peralta, Caguioa*, and *Reyes, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 199515. June 25, 2018]

RHODORA ILUMIN RACHO, *a.k.a.* "RHODORA RACHO TANAKA," *petitioner, vs.* **SEIICHI TANAKA, LOCAL CIVIL REGISTRAR OF LAS PIÑAS CITY, and the ADMINISTRATOR AND CIVIL REGISTRAR GENERAL OF THE NATIONAL STATISTICS OFFICE,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; DIVORCE BETWEEN A FOREIGNER AND A FILIPINO MAY BE RECOGNIZED IN THE PHILIPPINES AS LONG AS IT WAS VALIDLY OBTAINED ACCORDING TO THE FOREIGN SPOUSE'S NATIONAL LAW; HOWEVER,

[*] Senior Associate Justice (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as Amended).

BEFORE A FOREIGN DIVORCE DECREE IS RECOGNIZED IN THE PHILIPPINES, A SEPARATE ACTION MUST BE INSTITUTED FOR THAT PURPOSE.— Under Article 26 of the Family Code, a divorce between a foreigner and a Filipino may be recognized in the Philippines as long as it was validly obtained according to the foreign spouse's national law x x x The second paragraph was included to avoid an absurd situation where a Filipino spouse remains married to the foreign spouse even after a validly obtained divorce abroad. The addition of the second paragraph gives the Filipino spouse a substantive right to have the marriage considered as dissolved, and ultimately, to grant him or her the capacity to remarry. Article 26 of the Family Code is applicable only in issues on the validity of remarriage. It cannot be the basis for any other liability, whether civil or criminal, that the Filipino spouse may incur due to remarriage. Mere presentation of the divorce decree before a trial court is insufficient. In *Garcia v. Recio*, this Court established the principle that before a foreign divorce decree is recognized in this jurisdiction, a separate action must be instituted for that purpose. Courts do not take judicial notice of foreign laws and foreign judgments; thus, our laws require that the divorce decree and the national law of the foreign spouse must be pleaded and proved like any other fact before trial courts.

2. REMEDIAL LAW; EVIDENCE; PROOF OF DOCUMENTS; THE ADMISSIBILITY OF OFFICIAL RECORDS THAT ARE KEPT IN A FOREIGN COUNTRY REQUIRES THAT IT MUST BE ACCOMPANIED BY A CERTIFICATE FROM A SECRETARY OF AN EMBASSY OR LEGATION, CONSUL GENERAL, CONSUL, VICE CONSUL, CONSULAR AGENT OR ANY OFFICER OF THE FOREIGN SERVICE OF THE PHILIPPINES STATIONED IN THAT FOREIGN COUNTRY; EXTABLISHED IN CASE AT BAR.— Under Rule 132, Section 24 of the Rules of Court, the admissibility of official records that are kept in a foreign country requires that it must be accompanied by a certificate from a secretary of an embassy or legation, consul general, consul, vice consul, consular agent or any officer of the foreign service of the Philippines stationed in that foreign country: x x x The Certificate of Acceptance of the Report of Divorce was accompanied by an Authentication issued by Consul Bryan Dexter B. Lao of the Embassy of the Philippines in Tokyo,

Japan, certifying that Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan was an official in and for Japan. The Authentication further certified that he was authorized to sign the Certificate of Acceptance of the Report of Divorce and that his signature in it was genuine. Applying Rule 132, Section 24, the Certificate of Acceptance of the Report of Divorce is admissible as evidence of the *fact* of divorce between petitioner and respondent. The Regional Trial Court established that according to the national law of Japan, a divorce by agreement "becomes effective by notification." Considering that the Certificate of Acceptance of the Report of Divorce was duly authenticated, the divorce between petitioner and respondent was validly obtained according to respondent's national law.

3. CIVIL LAW; FAMILY CODE; MARRIAGE; RECENT JURISPRUDENCE HOLDS THAT A FOREIGN DIVORCE MAY BE RECOGNIZED IN THIS JURISDICTION AS LONG AS IT IS VALIDLY OBTAINED, REGARDLESS OF WHO AMONG THE SPOUSES INITIATED THE DIVORCE PROCEEDINGS; THE EFFECT OF THE ABSOLUTE DISSOLUTION OF THE MARITAL TIE IS TO GRANT BOTH PARTIES THE LEGAL CAPACITY TO REMARRY EVEN UNDER THE PHILIPPINE LAWS; CASE AT BAR.— Recent jurisprudence, therefore, holds that a foreign divorce may be recognized in this jurisdiction as long as it is validly obtained, *regardless of who among the spouses initiated the divorce proceedings*. The question in this case, therefore, is not who among the spouses initiated the proceedings but rather if the divorce obtained by petitioner and respondent was valid. The Regional Trial Court found that there were two (2) kinds of divorce in Japan: judicial divorce and divorce by agreement. Petitioner and respondent's divorce was considered as a divorce by agreement, which is a valid divorce according to Japan's national law. x x x Here, the national law of the foreign spouse states that the matrimonial relationship is terminated by divorce. The Certificate of Acceptance of the Report of Divorce does not state any qualifications that would restrict the remarriage of any of the parties. There can be no other interpretation than that the divorce procured by petitioner and respondent is absolute and completely terminates their marital tie. Even under our laws, the effect of the absolute dissolution of the marital tie is to grant both parties the legal capacity to remarry.

APPEARANCES OF COUNSEL

Lorenzo U. Padilla for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

LEONEN, *J.*:

Judicial recognition of a foreign divorce requires that the national law of the foreign spouse and the divorce decree be pleaded and proved as a fact before the Regional Trial Court. The Filipino spouse may be granted the capacity to remarry once our courts find that the foreign divorce was validly obtained by the foreign spouse according to his or her national law, and that the foreign spouse's national law considers the dissolution of the marital relationship to be absolute.

This is a Petition for Review on Certiorari[1] assailing the June 2, 2011 Decision[2] and October 3, 2011 Order[3] of Branch 254, Regional Trial Court, Las Piñas City, which denied Rhodora Ilumin Racho's (Racho) Petition for Judicial Determination and Declaration of Capacity to Marry.[4] The denial was on the ground that a Certificate of Divorce issued by the Japanese Embassy was insufficient to prove the existence of a divorce decree.

Racho and Seiichi Tanaka (Tanaka) were married on April 20, 2001 in Las Piñas City, Metro Manila. They lived together for nine (9) years in Saitama Prefecture, Japan and did not have any children.[5]

---

[1] *Rollo*, pp. 3-31.

[2] *Id*. at 32-37. The Decision, docketed as SP. Proc. No. 10-0032, was penned by Presiding Judge Gloria Butay Aglugub.

[3] *Id*. at 38-39. The Order was penned by Presiding Judge Gloria Butay Aglugub.

[4] *Id*. at 40-48.

[5] *Id*. at 33.

Racho alleged that on December 16, 2009, Tanaka filed for divorce and the divorce was granted. She secured a Divorce Certificate[6] issued by Consul Kenichiro Takayama (Consul Takayama) of the Japanese Consulate in the Philippines and had it authenticated[7] by an authentication officer of the Department of Foreign Affairs.[8]

She filed the Divorce Certificate with the Philippine Consulate General in Tokyo, Japan, where she was informed that by reason of certain administrative changes, she was required to return to the Philippines to report the documents for registration and to file the appropriate case for judicial recognition of divorce.[9]

She tried to have the Divorce Certificate registered with the Civil Registry of Manila but was refused by the City Registrar since there was no court order recognizing it. When she went to the Department of Foreign Affairs to renew her passport, she was likewise told that she needed the proper court order. She was also informed by the National Statistics Office that her divorce could only be annotated in the Certificate of Marriage if there was a court order capacitating her to remarry.[10]

She went to the Japanese Embassy, as advised by her lawyer, and secured a Japanese Law English Version of the Civil Code of Japan, 2000 Edition.[11]

On May 19, 2010, she filed a Petition for Judicial Determination and Declaration of Capacity to Marry[12] with the Regional Trial Court, Las Piñas City.

---

[6] *Id*. at 50.

[7] *Id*. at 51.

[8] *Id.* at 33.

[9] *Id*. at 6.

[10] *Id*. at 33.

[11] *Id*. at 33-34.

[12] *Id*. at 40-48.

On June 2, 2011, Branch 254, Regional Trial Court, Las Piñas City rendered a Decision,[13] finding that Racho failed to prove that Tanaka legally obtained a divorce. It stated that while she was able to prove Tanaka's national law, the Divorce Certificate was not competent evidence since it was not the divorce decree itself.[14]

Racho filed a Motion for Reconsideration,[15] arguing that under Japanese law, a divorce by agreement becomes effective by oral notification, or by a document signed by both parties and by two (2) or more witnesses.[16]

In an Order[17] dated October 3, 2011, the Regional Trial Court denied the Motion, finding that Racho failed to present the notification of divorce and its acceptance.[18]

On December 19, 2011, Racho filed a Petition for Review on Certiorari[19] with this Court. In its January 18, 2012 Resolution, this Court deferred action on her Petition pending her submission of a duly authenticated acceptance certificate of the notification of divorce.[20]

Petitioner initially submitted a Manifestation,[21] stating that a duly-authenticated acceptance certificate was not among the documents presented at the Regional Trial Court because of its unavailability to petitioner during trial. She also pointed out that the Divorce Certificate issued by the Consulate General of the Japanese Embassy was sufficient proof of the fact of

---

[13] *Id*. at 32-37.

[14] *Id.* at 36.

[15] *Id*. at 53-63.

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

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

[18] *Id*. at 39.

[19] *Id*. at 3-31.

[20] *Id*. at 64-65.

[21] *Id*. at 66-72.

divorce.[22] She also manifested that Tanaka had secured a marriage license on the basis of the same Divorce Certificate and had already remarried another Filipino. Nevertheless, she has endeavored to secure the document as directed by this Court.[23]

On March 16, 2012, petitioner submitted her Compliance,[24] attaching a duly authenticated Certificate of Acceptance of the Report of Divorce that she obtained in Japan.[25] The Office of the Solicitor General thereafter submitted its Comment[26] on the Petition, to which petitioner submitted her Reply.[27]

Petitioner argues that under the Civil Code of Japan, a divorce by agreement becomes effective upon notification, whether oral or written, by both parties and by two (2) or more witnesses. She contends that the Divorce Certificate stating "Acceptance Certification of Notification of Divorce issued by the Mayor of Fukaya City, Saitama Pref., Japan on December 16, 2009" is sufficient to prove that she and her husband have divorced by agreement and have already effected notification of the divorce.[28]

She avers further that under Japanese law, the manner of proving a divorce by agreement is by record of its notification and by the fact of its acceptance, both of which were stated in the Divorce Certificate. She maintains that the Divorce Certificate is signed by Consul Takayama, whom the Department of Foreign Affairs certified as duly appointed and qualified to sign the

---

[22] *Id*. at 67.

[23] *Id*. at 69-70.

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

[25] *Id*. at 87-89.

[26] *Id*. at 126-151.

[27] *Id*. at 176-197. All notices to respondent Tanaka were returned unserved (*rollo*, pp. 216-217).

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

document. She also states that the Divorce Certificate has already been filed and recorded with the Civil Registry Office of Manila.[29]

She insists that she is now legally capacitated to marry since Article 728 of the Civil Code of Japan states that a matrimonial relationship is terminated by divorce.[30]

On the other hand, the Office of the Solicitor General posits that the Certificate of Divorce has no probative value since it was not properly authenticated under Rule 132, Section 24[31] of the Rules of Court. However, it states that it has no objection to the admission of the Certificate of Acceptance of the Report of Divorce submitted by petitioner in compliance with this Court's January 18, 2012 Resolution.[32]

It likewise points out that petitioner never mentioned that she and her husband obtained a divorce by agreement and only mentioned it in her motion for reconsideration before the Regional Trial Court. Thus, petitioner failed to prove that she is now capacitated to marry since her divorce was not obtained by the alien spouse. She also failed to point to a specific provision in

---

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

[30] *Id*. at 22, as cited in the Petition:

TERMINATION OF MATRIMONIAL RELATIONSHIP

Article 728. 1. The matrimonial relationship is terminated by divorce.

. . . . . .

[31] RULES OF COURT, Rule 132 Sec. 24 provides:

Section 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

[32] *Rollo*, p. 138.

the Civil Code of Japan that allows persons who obtained a divorce by agreement the capacity to remarry. In any case, a divorce by agreement is not the divorce contemplated in Article 26 of the Family Code.[33]

In rebuttal, petitioner insists that all her evidence, including the Divorce Certificate, was formally offered and held to be admissible as evidence by the Regional Trial Court.[34] She also argues that the Office of the Solicitor General should not have concluded that the law does not contemplate divorce by agreement or consensual divorce since a discriminatory situation will arise if this type of divorce is not recognized.[35]

The issue in this case, initially, was whether or not the Regional Trial Court erred in dismissing the Petition for Declaration of Capacity to Marry for insufficiency of evidence. After the submission of Comment, however, the issue has evolved to whether or not the Certificate of Acceptance of the Report of Divorce is sufficient to prove the fact that a divorce between petitioner Rhodora Ilumin Racho and respondent Seiichi Tanaka was validly obtained by the latter according to his national law.

I

Under Article 26 of the Family Code, a divorce between a foreigner and a Filipino may be recognized in the Philippines as long as it was validly obtained according to the foreign spouse's national law, thus:

> Article 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38.
>
> *Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad*

---

[33] *Id*. at 138-147.

[34] *Id.* at 182-183.

[35] *Id*. at 188.

by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.[36] (Emphasis supplied)

The second paragraph was included to avoid an absurd situation where a Filipino spouse remains married to the foreign spouse even after a validly obtained divorce abroad.[37] The addition of the second paragraph gives the Filipino spouse a substantive right to have the marriage considered as dissolved, and ultimately, to grant him or her the capacity to remarry.[38]

Article 26 of the Family Code is applicable only in issues on the validity of remarriage. It cannot be the basis for any other liability, whether civil or criminal, that the Filipino spouse may incur due to remarriage.

Mere presentation of the divorce decree before a trial court is insufficient.[39] In *Garcia v. Recio*,[40] this Court established the principle that before a foreign divorce decree is recognized in this jurisdiction, a separate action must be instituted for that purpose. Courts do not take judicial notice of foreign laws and foreign judgments; thus, our laws require that the divorce decree *and* the national law of the foreign spouse must be pleaded and proved like any other fact before trial courts.[41] Hence, in *Corpuz v. Sto. Tomas*:[42]

---

[36] As amended by Exec. Order No. 227 (1987).

[37] See *Van Dorn v. Romillo, Jr.*, 223 Phil. 357 (1985) [Per *J*. Melencio-Herrera, First Division] and *Republic v. Orbecido III*, 509 Phil. 108 (2005) [Per *J*. Quisumbing, First Division].

[38] See *Corpuz v. Sto, Tomas*, 642 Phil. 420 (2010) [Per *J*. Brion, Third Division].

[39] See *Garcia v. Recio*, 418 Phil. 723 (2001) [Per *J*. Panganiban, Third Division].

[40] 418 Phil. 723 (2001) [Per *J*. Panganiban, Third Division].

[41] See *Medina v. Koike*, G.R. No. 215723, July 27, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/215723.pdf> 3 [Per *J*. Perlas-Bernabe, First Division].

[42] 642 Phil. 420 (2010) [Per *J*. Brion, Third Division].

The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country." This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself. The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.[43]

II

Respondent's national law was duly admitted by the Regional Trial Court. Petitioner presented "a copy [of] the English Version of the Civil Code of Japan (Exh. "K") translated under the authorization of the Ministry of Justice and the Code of Translation Committee."[44] Article 728(1) of the Civil Code of Japan reads:

Article 728. 1. The matrimonial relationship is terminated by divorce.[45]

To prove the *fact* of divorce, petitioner presented the Divorce Certificate issued by Consul Takayama of Japan on January 18, 2010, which stated in part:

This is to certify that the above statement has been made on the basis of the Acceptance Certification of Notification of Divorce issued by the Mayor of Fukaya City, Saitama Pref., Japan on December 16, 2009.[46]

---

[43] *Id*. at 432-433, *citing* II REMEDIAL LAW, Rules 23-56, 529 (2007); *Republic v. Orbecido III*, 509 Phil. 108 (2005) [Per *J*. Quisumbing, First Division]; *Garcia v. Recio*, 418 Phil. 723 (2001) [Per *J*. Panganiban, Third Division]; and *Bayot v. Court of Appeals*, 591 Phil. 452 (2008) [Per *J*. Velasco, Jr., Second Division].

[44] *Rollo*, p. 36.

[45] *Id*. at 22.

[46] *Id*. at 50.

This Certificate only certified that the divorce decree, or the Acceptance Certification of Notification of Divorce, exists. It is not the divorce decree itself. The Regional Trial Court further clarified:

> [T]he Civil Law of Japan recognizes two (2) types of divorce, namely: (1) judicial divorce and (2) divorce by agreement.
>
> Under the same law, the divorce by agreement becomes effective by notification, orally or in a document signed by both parties and two or more witnesses of full age, in accordance with the provisions of Family Registration Law of Japan.[47]

Thus, while respondent's national law was duly admitted, petitioner failed to present sufficient evidence before the Regional Trial Court that a divorce was validly obtained according to the national law of her foreign spouse. The Regional Trial Court would not have erred in dismissing her Petition.

III

Upon appeal to this Court, however, petitioner submitted a Certificate of Acceptance of the Report of Divorce,[48] certifying that the divorce issued by Susumu Kojima, Mayor of Fukaya City, Saitama Prefecture, has been accepted on December 16, 2009. The seal on the document was authenticated by Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan.[49]

The probative value of the Certificate of Acceptance of the Report of Divorce is a question of fact that would not ordinarily be within this Court's ambit to resolve. Issues in a petition for review on certiorari under Rule 45 of the Rules of Court[50] are limited to questions of law.

---

[47] *Id*. at 39.

[48] *Id*. at 88-89. The original Japanese document and an English translation by Byunko Visa Counseling Office, Tokyo, Japan are attached.

[49] *Id*. at 87.

[50] RULES OF COURT, Rule 45, Sec. 1 provides:

In *Garcia* and *Corpuz*, this Court remanded the cases to the Regional Trial Courts for the reception of evidence and for further proceedings.[51] More recently in *Medina v. Koike*,[52] this Court remanded the case to the Court of Appeals to determine the national law of the foreign spouse:

> Well entrenched is the rule that this Court is not a trier of facts. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect and are in fact binding subject to certain exceptions. In this regard, it is settled that appeals taken from judgments or final orders rendered by RTC in the exercise of its original jurisdiction raising questions of fact or mixed questions of fact and law should be brought to the Court of Appeals (CA) in accordance with Rule 41 of the Rules of Court.
>
> Nonetheless, despite the procedural restrictions on Rule 45 appeals as above-adverted, the Court may refer the case to the CA under paragraph 2, Section 6 of Rule 56 of the Rules of Court, which provides:
>
> SEC. 6. Disposition of improper appeal. — . . .
>
> > An appeal by certiorari taken to the Supreme Court from the Regional Trial Court submitting issues of fact may be referred to the Court of Appeals for decision or appropriate action. The determination of the Supreme Court on whether or not issues of fact are involved shall be final.[53]

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.* (Emphasis supplied)

[51] See also *Amor-Catalan v. Court of Appeals*, 543 Phil. 568 (2007) [Per *J*. Ynares-Santiago, Third Division] and *San Luis v. San Luis*, 543 Phil. 275 (2007) [Per *J*. Ynares-Santiago, Third Division] where this Court remanded the cases to the trial courts to determine the validity of the divorce decrees.

[52] G.R. No. 215723, July 27, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/215723.pdf> [Per *J*. Perlas-Bernabe, First Division].

[53] *Id*. at 5, citing *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation*, 715 Phil. 420, 433-435 (2013) [Per *J*. Perlas-Bernabe, Second Division]; *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil.

The court records, however, are already sufficient to fully resolve the factual issues.[54] Additionally, the Office of the Solicitor General neither posed any objection to the admission of the Certificate of Acceptance of the Report of Divorce[55] nor argued that the Petition presented questions of fact. In the interest of judicial economy and efficiency, this Court shall resolve this case on its merits.

IV

Under Rule 132, Section 24 of the Rules of Court, the admissibility of official records that are kept in a foreign country requires that it must be accompanied by a certificate from a secretary of an embassy or legation, consul general, consul, vice consul, consular agent or any officer of the foreign service of the Philippines stationed in that foreign country:

> Section 24. Proof of official record. — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

The Certificate of Acceptance of the Report of Divorce was accompanied by an Authentication[56] issued by Consul Bryan

760, 766-767 (2013) [Per *J*. Brion, Second Division]; and RULES OF COURT, Rule 56, Sec. 6.

[54] See *Cathay Metal Corporation v. Laguna Metal Multi-purpose Cooperative*, 738 Phil. 37 (2014) [Per *J*. Leonen, Third Division] where this Court resolved the issues of the case despite being factual in nature due to the sufficiency of the court records. In this case, the records of the Regional Trial Court were received by this Court on November 19, 2014 (*rollo*, p. 214).

[55] *Rollo*, p. 138.

[56] *Id*. at 87.

Dexter B. Lao of the Embassy of the Philippines in Tokyo, Japan, certifying that Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan was an official in and for Japan. The Authentication further certified that he was authorized to sign the Certificate of Acceptance of the Report of Divorce and that his signature in it was genuine. Applying Rule 132, Section 24, the Certificate of Acceptance of the Report of Divorce is admissible as evidence of the *fact* of divorce between petitioner and respondent.

The Regional Trial Court established that according to the national law of Japan, a divorce by agreement "becomes effective by notification."[57] Considering that the Certificate of Acceptance of the Report of Divorce was duly authenticated, the divorce between petitioner and respondent was validly obtained according to respondent's national law.

V

The Office of the Solicitor General, however, posits that divorce by agreement is not the divorce contemplated in Article 26 of the Family Code, which provides:

> Article 26. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35 (1), (4), (5) and (6), 36, 37 and 38.
>
> *Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law.*[58] (Emphasis supplied)

Considering that Article 26 states that divorce must be "validly obtained abroad by the alien spouse," the Office of the Solicitor General posits that only the foreign spouse may initiate divorce proceedings.

---

[57] *Id*. at 39.

[58] As amended by Exec. Order No. 227 (1987).

In a study on foreign marriages in 2007 conducted by the Philippine Statistics Authority, it was found that "marriages between Filipino brides and foreign grooms comprised 5,537 or 66.7 percent while those between Filipino grooms and foreign brides numbered 152 or 1.8 percent of the total marriages outside the country."[59] It also found that "[a]bout four in every ten interracial marriages (2,916 or 35.1%) were between Filipino brides and Japanese grooms." Statistics for foreign marriages in 2016 shows that there were 1,129 marriages between Filipino men and foreign women but 8,314 marriages between Filipina women and foreign men.[60] Thus, empirical data demonstrates that Filipino *women* are more likely to enter into mixed marriages than Filipino *men*. Under Philippine laws relating to mixed marriages, Filipino women are twice marginalized.

In this particular instance, it is the Filipina spouse who bears the burden of this narrow interpretation, which may be unconstitutional. Article II, Section 14 of our Constitution provides:

> Section 14. The State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.

This constitutional provision provides a more active application than the passive orientation of Article III, Section 1 of the Constitution does, which simply states that no person shall "be denied the equal protection of the laws." Equal protection, within the context of Article III, Section 1 only provides that any legal burden or benefit that is given to men must also be given to women. It does not require the State to actively pursue "affirmative ways and means to battle the

---

[59] Philippine Statistics Authority, *Foreign Marriages of Filipinos: 2007*, March 11, 2011 <https://psa.gov.ph/old/data/sectordata/sr11566tx.html> (last accessed June 1, 2018).

[60] See Philippine Statistics Authority, *Number of Nationalities of Bride and Groom, Philippines: 2016* <https://psa.gov.ph/sites/default/files/attachments/crd/specialrelease/Table%206.pdf> (last accessed June 1, 2018).

patriarchy—that complex of political, cultural, and economic factors that ensure women's disempowerment."[61]

In 1980, our country became a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).[62] Under Articles 2(f) and 5(a) of the treaty, the Philippines as a state party, is required:

Article 2

. . . . . .

(f) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

. . . . . .

Article 5

. . . . . .

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.]

By enacting the Constitution and signing on the CEDAW, the State has committed to ensure and to promote gender equality.

In 2009, Congress enacted Republic Act No. 9710 or the Magna Carta for Women, which provides that the State "shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations."[63]

---

[61] Concurring Opinion of *J*. Leonen in *Republic v. Manalo*, G.R. No. 221029, April 24, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/221029_leonen.pdf> 2 [Per *J*. Peralta, *En Banc*].

[62] The Philippines became a signatory on July 15, 1980. The treaty was ratified on August 5, 1981.<https://treaties.un.org/Pages/View Details.aspx?src=IND&mtdsg_no=IV-8&chapter=4&clang=_en>.

[63] Rep. Act No. 9710 (2008), Sec. 19.

This necessarily includes the second paragraph of Article 26 of the Family Code. Thus, Article 26 should be interpreted to mean that it is irrelevant for courts to determine if it is the foreign spouse that procures the divorce abroad. Once a divorce decree is issued, the divorce becomes "validly obtained" and capacitates the foreign spouse to marry. The same status should be given to the Filipino spouse.

The national law of Japan does not prohibit the Filipino spouse from initiating or participating in the divorce proceedings. It would be inherently unjust for a Filipino woman to be prohibited by her own national laws from something that a foreign law may allow. Parenthetically, the prohibition on Filipinos from participating in divorce proceedings will not be protecting our own nationals.

The Solicitor General's narrow interpretation of Article 26 disregards any agency on the part of the Filipino spouse. It presumes that the Filipino spouse is incapable of agreeing to the dissolution of the marital bond. It perpetuates the notion that all divorce proceedings are protracted litigations fraught with bitterness and drama. Some marriages can end amicably, without the parties harboring any ill will against each other. The parties could forgo costly court proceedings and opt for, if the national law of the foreign spouse allows it, a more convenient out-of-court divorce process. This ensures amity between the former spouses, a friendly atmosphere for the children and extended families, and less financial burden for the family.

Absolute divorce was prohibited in our jurisdiction only in the mid-20th century. The Philippines had divorce laws in the past. In 1917, Act No. 2710[64] was enacted which allowed a wife to file for divorce in cases of concubinage or a husband to file in cases of adultery.[65]

---

[64] An Act to Establish Divorce (1917).

[65] Section 1. A petition for divorce can only be filed for adultery on the part of the wife or concubinage on the part of the husband committed in any of the forms described in article four hundred and thirty-seven of the Penal Code, cited in *Valdez v. Tuason*, 40 Phil. 943, 948 (1920) [Per *J.* Street, *En Banc*].

Executive Order No. 141, or the New Divorce Law, which was enacted during the Japanese occupation, provided for 11 grounds for divorce, including "intentional or unjustified desertion continuously for at least one year prior to the filing of [a petition for divorce]" and "slander by deed or gross insult by one spouse against the other to such an extent as to make further living together impracticable."[66]

At the end of World War II, Executive Order No. 141 was declared void and Act No. 2710 again took effect.[67] It was only until the enactment of the Civil Code in 1950 that absolute divorce was prohibited in our jurisdiction.

It is unfortunate that legislation from the past appears to be more progressive than current enactments. Our laws should never be intended to put Filipinos at a disadvantage. Considering that the Constitution guarantees fundamental equality, this Court should not tolerate an unfeeling and callous interpretation of laws. To rule that the foreign spouse may remarry, while the Filipino may not, only contributes to the patriarchy. This interpretation encourages unequal partnerships and perpetuates abuse in intimate relationships.[68]

In any case, the Solicitor General's argument has already been resolved in *Republic v. Manalo*,[69] where this Court held:

> Paragraph 2 of Article 26 speaks of "*a divorce . . . validly obtained abroad by the alien spouse capacitating him or her to remarry*." Based on a clear and plain reading of the provision, it only requires that there be a divorce validly obtained abroad. The letter of the law

---

[66] *Baptista v. Castañeda*, 76 Phil. 461, 462 (1946) [Per *J*. Ozaeta, *En Banc*].

[67] *Id*. at 462-463.

[68] See Concurring Opinion of *J*. Leonen, *Republic v. Manalo*, G.R. No. 221029, April 24, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/221029_leonen.pdf> 4 [Per *J*. Peralta, *En Banc*].

[69] G.R. No. 221029, April 24, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/221029.pdf> [Per *J*. Peralta, *En Banc*].

does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding. The Court is bound by the words of the statute; neither can We put words in the mouths of the lawmakers. "The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure."

Assuming, for the sake of argument, that the word "*obtained*" should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act. Laws have ends to achieve, and statutes should be so construed as not to defeat but to carry out such ends and purposes. As held in *League of Cities of the Phils., et al. v. COMELEC, et al.*:

> The legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls its letter.

To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an

alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law.[70] (Emphasis in the original)

Recent jurisprudence, therefore, holds that a foreign divorce may be recognized in this jurisdiction as long as it is validly obtained, *regardless of who among the spouses initiated the divorce proceedings*.

The question in this case, therefore, is not who among the spouses initiated the proceedings but rather if the divorce obtained by petitioner and respondent was valid.

The Regional Trial Court found that there were two (2) kinds of divorce in Japan: judicial divorce and divorce by agreement. Petitioner and respondent's divorce was considered as a divorce by agreement, which is a valid divorce according to Japan's national law.[71]

The Office of the Solicitor General likewise posits that while petitioner was able to prove that the national law of Japan allows absolute divorce, she was unable to "point to a specific provision

---

[70] *Id*. at 11-12, citing *Commissioner of Customs v. Manila Star Ferry, Inc.*, 298 Phil. 79, 86 (1993) [Per *J*. Quiason, First Division]; *Globe-Mackay Cable and Radio Corp. v. NLRC*, 283 Phil. 649, 660 (1992) [Per *J*. Romero, *En Banc*]; *Victoria v. Commission on Elections*, 299 Phil. 263, 268 (1994) [Per *J*. Quiason, *En Banc*]; *Enjay, Inc. v. NLRC*, 315 Phil. 648, 656 (1995) [Per *J*. Quiason, First Division]; *Pioneer Texturizing Corp. v. NLRC*, 345 Phil. 1057, 1073 (1997) [Per *J*. Francisco, *En Banc*]; *National Food Authority v. Masada Security Agency, Inc.*, 493 Phil. 241, 251 (2005) [Per *J*. Ynares-Santiago, First Division]; *Rural Bank of San Miguel, Inc. v. Monetary Board*, 545 Phil. 62, 72 (2007) [Per *J*. Corona, First Division]; *Rep. of the Phils. v. Lacap*, 546 Phil. 87, 100 (2007) [Per *J*. Austria-Martinez, Third Division]; *Phil. Amusement and Gaming Corp. (PAGCOR) v. Phil. Gaming Jurisdiction, Inc. (PEJI), et al.*, 604 Phil. 547, 553 (2009) [Per *J*. Carpio Morales, Second Division]; *Mariano, Jr. v. COMELEC*, 312 Phil. 259, 268 (1995) [Per *J*. Puno, *En Banc*]; *League of Cities of the Phils., et al. v. COMELEC, et al.*, 623 Phil. 531, 564-565 (2009) [Per *J*. Velasco, Jr., *En Banc*]; and *Fujiki v. Marinay*, 712 Phil. 524, 555 (2013) [Per *J*. Carpio, Second Division].

[71] *Rollo*, p. 39.

of the Japan[ese] Civil Code which states that both judicial divorce and divorce by agreement will allow the spouses to remarry."[72]

To prove its argument, the Office of the Solicitor General cites *Republic v. Orbecido III*,[73] where this Court stated:

> [R]espondent must also show that the divorce decree allows his former wife to remarry as specifically required in Article 26. Otherwise, there would be no evidence sufficient to declare that he is capacitated to enter into another marriage.
>
> Nevertheless, we are unanimous in our holding that Paragraph 2 of Article 26 of the Family Code (E.O. No. 209, as amended by E.O. No. 227), should be interpreted to allow a Filipino citizen, who has been divorced by a spouse who had acquired foreign citizenship and remarried, also to remarry. However, considering that in the present petition there is no sufficient evidence submitted and on record, we are unable to declare, based on respondent's bare allegations that his wife, who was naturalized as an American citizen, had obtained a divorce decree and had remarried an American, that respondent is now capacitated to remarry. Such declaration could only be made properly upon respondent's submission of the aforecited evidence in his favor.[74]

The Office of the Solicitor General pointedly ignores that in *Orbecido III*, the respondent in that case neither pleaded and proved that his wife had been naturalized as an American citizen, nor presented any evidence of the national law of his alleged foreign spouse that would allow absolute divorce.

In this case, respondent's nationality was not questioned. The Regional Trial Court duly admitted petitioner's presentation of respondent's national law. Article 728 of the Civil Code of Japan as quoted by the Office of the Solicitor General states:

> Article 728 of the Japan Civil Code reads:

---

[72] *Id*. at 142.

[73] 509 Phil. 108 (2005) [Per *J*. Quisumbing, First Division].

[74] *Id*. at 116-117.

1. The matrimonial relationship is terminated by divorce.

2. The same shall apply also if after the death of either husband or wife, the surviving spouse declares his or her intention to terminate the matrimonial relationship.[75]

The wording of the provision is absolute. The provision contains no other qualifications that could limit either spouse's capacity to remarry.

In *Garcia v. Recio*,[76] this Court reversed the Regional Trial Court's finding of the Filipino spouse's capacity to remarry since the national law of the foreign spouse stated certain conditions before the divorce could be considered absolute:

In its strict legal sense, divorce means the legal dissolution of a lawful union for a cause arising after marriage. But divorces are of different types. The two basic ones are (1) absolute divorce or a *vinculo matrimonii* and (2) limited divorce or a *mensa et thoro*. The first kind terminates the marriage, while the second suspends it and leaves the bond in full force. There is no showing in the case at bar which type of divorce was procured by respondent.

Respondent presented a decree *nisi* or an interlocutory decree — a conditional or provisional judgment of divorce. It is in effect the same as a separation from bed and board, although an absolute divorce may follow after the lapse of the prescribed period during which no reconciliation is effected.

Even after the divorce becomes absolute, the court may under some foreign statutes and practices, still restrict remarriage. Under some other jurisdictions, remarriage may be limited by statute; thus, the guilty party in a divorce which was granted on the ground of adultery may be prohibited from marrying again. The court may allow a remarriage only after proof of good behavior.

On its face, the herein Australian divorce decree contains a restriction that reads:

---

[75] *Rollo*, p. 142.

[76] 418 Phil. 723 (2001) [Per *J*. Panganiban. Third Division].

"1. A party to a marriage who marries again before this decree becomes absolute (unless the other party has died) commits the offence of bigamy."

This quotation bolsters our contention that the divorce obtained by respondent may have been restricted. It did not absolutely establish his legal capacity to remarry according to his national law. Hence, we find no basis for the ruling of the trial court, which erroneously assumed that the Australian divorce *ipso facto* restored respondent's capacity to remarry despite the paucity of evidence on this matter.[77]

Here, the national law of the foreign spouse states that the matrimonial relationship is terminated by divorce. The Certificate of Acceptance of the Report of Divorce does not state any qualifications that would restrict the remarriage of any of the parties. There can be no other interpretation than that the divorce procured by petitioner and respondent is absolute and completely terminates their marital tie.

Even under our laws, the effect of the absolute dissolution of the marital tie is to grant both parties the legal capacity to remarry. Thus, Article 40 of the Family Code provides:

Article 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

Petitioner alleges that respondent has since remarried, the National Statistics Office having found no impediment to the registration of his Marriage Certificate.[78] The validity of respondent's subsequent marriage is irrelevant for the resolution of the issues in this case. The existence of respondent's Marriage Certificate, however, only serves to highlight the absurd situation sought to be prevented in the 1985 case of *Van Dorn v. Romillo, Jr.*:[79]

---

[77] *Id.* at 735-736, *citing* 27A CJS, 15-17, §I, 611-613, §161 and 27A CJS, 625, §162.

[78] See *Rollo*, pp. 69-70.

[79] 223 Phil. 357 (1985) [Per *J.* Melencio-Herrera, First Division].

It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. In this case, the divorce in Nevada released private respondent from the marriage from the standards of American law, under which divorce dissolves the marriage. . . .

. . . . . .

Thus, pursuant to his national law, private respondent is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets. As he is bound by the Decision of his own country's Court, which validly exercised jurisdiction over him, and whose decision he does not repudiate, he is estopped by his own representation before said Court from asserting his right over the alleged conjugal property.

To maintain, as private respondent does, that, under our laws, petitioner has to be considered still married to private respondent and still subject to a wife's obligations under Article 109, et. seq. of the Civil Code cannot be just. Petitioner should not be obliged to live together with, observe respect and fidelity, and render support to private respondent. The latter should not continue to be one of her heirs with possible rights to conjugal property. She should not be discriminated against in her own country if the ends of justice are to be served.[80]

The ruling in *Van Dorn* was eventually codified in the second paragraph of Article 26 of the Family Code through the issuance of Executive Order No. 227 in 1987. The grant of substantive equal rights to the Filipino spouse was broad enough that this Court, in the 1985 case of *Quita v. Court of Appeals*,[81] "hinted,

---

[80] *Id*. at 362-363, citing *Recto vs. Harden*, 100 Phil. 427 (1956) [Per *J*. Concepcion, *En Banc*]; I PARAS, *CIVIL CODE 52* (1971); SALONGA, *PRIVATE INTERNATIONAL LAW 231* (1979).

[81] 360 Phil. 601 (1998) [Per *J*. Bellosillo, Second Division].

by way of *obiter dictum*"[82] that it could be applied to Filipinos who have since been naturalized as foreign citizens.

In *Republic v. Orbecido III*,[83] this Court noted the obiter in *Quita* and stated outright that Filipino citizens who later become naturalized as foreign citizens may validly obtain a divorce from their Filipino spouses:

> Thus, taking into consideration the legislative intent and applying the rule of reason, we hold that Paragraph 2 of Article 26 should be interpreted to include cases involving parties who, at the time of the celebration of the marriage were Filipino citizens, but later on, one of them becomes naturalized as a foreign citizen and obtains a divorce decree. The Filipino spouse should likewise be allowed to remarry as if the other party were a foreigner at the time of the solemnization of the marriage. To rule otherwise would be to sanction absurdity and injustice. Where the interpretation of a statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law. A statute may therefore be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent.[84]

To insist, as the Office of the Solicitor General does, that under our laws, petitioner is still married to respondent despite the latter's newfound companionship with another cannot be just.[85] Justice is better served if she is not discriminated against in her own country.[86] As much as petitioner is free to seek

---

[82] *Republic v. Orbecido III*, 509 Phil. 108, 114 (2005) [Per *J.* Quisumbing, First Division].

[83] 509 Phil. 108 (2005) [Per *J.* Quisumbing, First Division].

[84] *Id.* at 114-115, citing *Lopez & Sons, Inc. v. Court of Tax Appeals*, 100 Phil. 850, 855 (1957) [Per *J.* Montemayor, *En Banc*].

[85] See *Van Dorn v. Romillo, Jr.*, 223 Phil. 357 (1985) [Per *J.* Melencio-Herrera, First Division].

[86] See *Van Dorn v. Romillo, Jr.*, 223 Phil. 357 (1985) [Per *J.* Melencio-Herrera, First Division].

fulfillment in the love and devotion of another, so should she be free to pledge her commitment within the institution of marriage.

WHEREFORE, the Petition is **GRANTED**. The Regional Trial Court June 2, 2011 Decision and October 3, 2011 Order in SP. Proc. No. 10-0032 are **REVERSED** and **SET ASIDE**. By virtue of Article 26, second paragraph of the Family Code and the Certificate of Acceptance of the Report of Divorce dated December 16, 2009, petitioner Rhodora Ilumin Racho is declared capacitated to remarry.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 211876. June 25, 2018]

ASIAN TERMINALS, INC., *petitioner, vs.* **PADOSON STAINLESS STEEL CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; AS AN EXCEPTION, THE SUPREME COURT CAN REVIEW QUESTION OF FACTS WHEN THE INFERENCE DRAWN BY THE APPELLATE COURT FROM THE FACTS IS MANIFESTLY MISTAKEN.— While this Court is not a trier of facts, still when the inference drawn by the CA from the facts is manifestly mistaken, as in the present case, we can, in the interest of justice, review the evidence to allow us to arrive at the correct factual conclusions based on the record.

2. ID.; JURISDICTION; BUREAU OF CUSTOMS (BOC); ONCE THE BUREAU OF CUSTOMS IS ACTUALLY IN POSSESSION OF THE SUBJECT SHIPMENT BY VIRTUE OF A HOLD-ORDER, IT ACQUIRES JURISDICTION OVER THE SAME FOR THE PURPOSE OF ENFORCING CUSTOMS LAW; THE CASE OF *SBMA V. RODRIGUEZ, ET AL.,* NOT APPLICABLE TO CASE AT BAR.— Nowhere in the *SBMA* case did we exclaim that the moment a Hold-Order has been issued, the BOC acquires constructive possession over the subject shipment. On the contrary, what we stated is that once the BOC is *actually* in possession of the subject shipment by virtue of a Hold-Order, it acquires exclusive jurisdiction over the same for the purpose of enforcing the customs laws. In fact, in *SBMA*, it is clear that the BOC's issuance of the Hold-Order was to direct the port officers to hold the delivery of the shipment and to transfer the same to the security warehouse. The BOC, thus, had actual and *not* constructive possession over the subject shipment in said case. Here, the actual possession over Padoson's shipment remained with ATI since they were stored at its premises. Likewise, in the *SBMA* case, We emphasize that the BOC's exclusive jurisdiction over the subject shipment is for the purpose of enforcing customs laws, so as to render effective and efficient the collection of import and export duties due the State. It has nothing to do with the collection by a private company, like ATI in this case, of the storage fees for the services it rendered to its client, Padoson. Further, there is no implication in the *SBMA* case that the BOC's mere issuance of a Hold-Over directed against the subject shipment constitutes constructive possession, which may exculpate the private consignee from its storage fee obligation with the arrastre operator. Accordingly, there is no basis for the CA in holding that the RTC did *not* err in declaring that the subject shipments were deemed placed under BOC's constructive possession by its issuance of a Hold-Order over Padoson's shipment.

3. CIVIL LAW; CONTRACTS; RELATIVITY OF CONTRACTS; CONTRACTS CAN ONLY BIND THE PARTIES WHO ENTERED INTO IT, AND CANNOT FAVOR OR PREJUDICE A THIRD PERSON, EVEN IF HE IS AWARE OF SUCH CONTRACT AND HAS ACTED

WITH KNOWLEDGE THEREOF; CASE AT BAR.— The basic principle of relativity of contracts is that contracts can only bind the parties who entered into it, and cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof. Indeed, "[w]here there is no privity of contract, there is likewise no obligation or liability to speak about." Guided by this doctrine, Padoson, cannot shift the burden of paying the storage fees to BOC since the latter has never been privy to the contract of service between Padoson and ATI. To rule otherwise would create an absurd situation wherein a private party may free itself from liability arising from a contract of service, by merely invoking that the BOC has constructive possession over its shipment by the issuance of a Hold-Order.

4. **REMEDIAL LAW; CIVIL PROCEDURE; INDISPENSABLE PARTIES; ONE WHOSE INTEREST WILL BE AFFECTED BY THE COURT'S ACTION IN THE LITIGATION AND WITHOUT WHOM NO FINAL DETERMINATION OF THE CASE CAN BE HAD; BOC IS NOT AN INDISPENSABLE PARTY IN CASE AT BAR.—** [T]he RTC's pronouncement which was affirmed by the CA, to the effect that the BOC, and not Padoson, should have been held liable for the storage fees had it been impleaded in ATI's complaint, is erroneous. This presupposes that BOC is an indispensable party, which it is not. In the consolidated case of *PNB v. Heirs of Militar*, the Court explained that: An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties' that his legal presence as a party to the proceeding is an absolute necessity. In his absence there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable. x x x In this case, the ultimate relief sought by ATI in its complaint for a sum of money with damages, is the recovery of the storage fees from Padoson, which arose from the contract of service which they have validly entered into. x x x [C]omplete relief can still be afforded to ATI without the presence of the BOC and the case can still be decided on the merits without prejudicing BOC's rights. Thus, the BOC is not an indispensable

party to the complaint for a sum of money filed by ATI against Padoson.

5. ID.; EVIDENCE; EVIDENCE WHICH HAS NOT BEEN ADMITTED CANNOT BE VALIDLY CONSIDERED BY THE COURTS IN ARRIVING AT THEIR JUDGMENTS; CASE AT BAR.— To substantiate its claim that ATI failed to exercise due diligence over the shipments causing them to be in a dismal condition, Padoson presented photographs which were allegedly taken by Ventura. During the trial, however, the RTC observed that the said photographs were not pre-marked as evidence and that the pre-trial orders did not contain a reservation for presentation of additional evidence for Padoson. Consequently, in its September 8, 2011 Order, the RTC disallowed the identification of the unmarked photographs. Padoson moved for a reconsideration of the order, but it was denied. Its subsequent petition for *certiorari* was likewise denied by the CA in its Decision dated July 1, 2013, which became final and executory. Thus, at the time the CA rendered its July 23, 2013 Decision, the RTC had already ruled that the photographs were inadmissible and were not admitted in evidence. Yet, this fact was clearly disregarded by the CA when it promulgated its assailed decision. This runs counter to the "rule that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments."

6. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; THE ESSENCE OF DUE PROCESS IS THE OPPORTUNITY TO BE HEARD, LOGICALLY PRECONDITIONED ON PRIOR NOTICE, BEFORE JUDGMENT IS RENDERED; VIOLATED IN CASE AT BAR.— [I]n support of its allegation of damage to the shipments, Padoson relied on the following documents: Sheriffs Report on Ocular Inspection; Manifestation and Motion dated January 27, 2004; Resolution dated June 25, 2004; Resolution dated April 17, 2006; Sheriffs Partial Return on Execution dated August 8, 2006; and the photographs allegedly taken on January 16, 2004. These documents, however, relate to the Customs case. Notably, ATI was not impleaded and has no participation in the Customs case. As such, it would be unfair that ATI be bound by the RTC's proceedings and findings of fact in the Customs case without giving it the chance to hear

its side. To rule otherwise would deprive ATI of due process. The essence of due process is the opportunity to be heard, logically preconditioned on prior notice, before judgment is rendered. Indeed, "[n]o man shall be affected by any proceeding to which he is a stranger."

7. REMEDIAL LAW; EVIDENCE; AUTHENTICATION AND PROOF OF DOCUMENTS; PHOTOGRAPHS, WHEN PRESENTED IN EVIDENCE, MUST BE IDENTIFIED BY THE PHOTOGRAPHER AS TO ITS PRODUCTION AND HE MUST TESTIFY AS TO THE CIRCUMSTANCES UNDER WHICH THEY WERE PRODUCED; CASE AT BAR.— Anent the photographs on the shipment allegedly taken on January 16, 2004, the same were not properly authenticated and identified. "Indeed, photographs, when presented in evidence, must be identified by the photographer as to its production and he must testify as to the circumstances under which they were produced." "The value of this kind of evidence lies in its being a correct representation or reproduction of the original." However, in this case, Padoson's witness, Ms. Lorenzo simply admitted that she did *not* take the pictures and that the same do not indicate that they pertain to the shipments.

8. CIVIL LAW; OBLIGATIONS AND CONTRACTS; FORBEARANCE OF MONEY, GOODS OR CREDITS; REFERS TO ARRANGEMENTS OTHER THAN LOAN AGREEMENTS, WHERE A PERSON ACQUIESCES TO THE TEMPORARY USE OF HIS MONEY, GOODS OR CREDITS PENDING HAPPENING OF CERTAIN EVENTS OR FULFILLMENT OF CERTAIN CONDITIONS; IN CASE OF BREACH OF THOSE CONDITIONS, THE INTEREST RATE IS THE SAME RATE APPLICABLE TO A LOAN.— "The term 'forbearance,' within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable." "Forbearance of money, goods or credits, should therefore refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions." Consequently, if those conditions are breached, said person is entitled not only

to the return of the principal amount paid, but also to compensation for the use of his money which would be the same rate of legal interest applicable to a loan since the use or deprivation of funds therein is similar to a loan.

9. ID.; ID.; OBLIGATION, NOT CONSTITUTING A LOAN OR FORBEARANCE OF MONEY; SIX PERCENT (6%) INTEREST RATE APPLIES; CASE AT BAR.— This case, x x x does not involve an acquiescence to the temporary use of a party's money but merely a failure to pay the storage fees arising from a valid contract of service entered into between ATI and Padoson. Considering that there is an absence of any stipulation as to interest in the agreement between the parties herein, the matter of interest award arising from the dispute in this case would actually fall under the category of an "obligation, not constituting a loan or forbearance of money" as aforecited. Consequently, this necessitates the imposition of interest at the rate of 6%. The six percent (6%) interest rate shall further be imposed from the finality of the judgment herein until satisfaction thereof, in light of our recent ruling in *Nacar*.

10. ID.; DAMAGES; EXEMPLARY DAMAGES; TO BE ENTITLED TO THE AWARD THEREOF, THE ACT MUST BE ACCOMPANIED BY BAD FAITH OR DONE IN WANTON, FRAUDULENT OR MALEVOLENT MANNER; AWARD THEREOF, NOT WARRANTED IN CASE AT BAR.— Pursuant to Articles 2229 and 2234 of the Civil Code, exemplary damages may be awarded only in addition to moral, temperate, liquidated, or compensatory damages. Since ATI is not entitled to either moral, temperate, liquidated, or compensatory damages, then their claim for exemplary damages is bereft of merit. It has been held that as a requisite for the award of exemplary damages, the act must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner — circumstances which are absent in this case.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for petitioner.
Chavez Miranda Aseoche Law Office for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Asian Terminals, Inc. (ATI) assailing the Decision[2] dated July 23, 2013 and Resolution[3] dated March 26, 2014 of the Court of the Appeals (CA) in CA-G.R. CV No. 99435, which affirmed the Decision[4] dated July 16, 2012 of the Regional Trial Court (RTC) of Manila, Branch 41 in Civil Case No. 06-115638.

Factual Antecedents

Respondent Padoson Stainless Steel Corporation (Padoson) hired ATI to provide arrastre, wharfage and storage services at the South Harbor, Port of Manila. ATI rendered storage services in relation to a shipment, consisting of nine stainless steel coils and 72 hot-rolled steel coils which were imported on October 5, 2001 and October 30, 2001, respectively in favor of Padoson, as consignee. The shipments were stored within ATI's premises until they were discharged on July 29, 2006.[5]

Meanwhile, the shipments became the subject of a Hold-Order[6] issued by the Bureau of Customs (BOC) on September 7, 2001. This was an offshoot of a Customs case filed by the BOC against Padoson due to the latter's tax liability over its own shipments. The Customs case, docketed as Civil Case No. 01-102440, was pending with the RTC of Manila, Branch 173.[7]

---

[1] *Rollo*, pp. 10-36.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo, concurred in by Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles; *id*. at 38-47.

[3] *Id*. at 49-50.

[4] Rendered by Presiding Judge Rosalyn D. Mislos-Loja; *id*. at 51-68.

[5] *Id*. at 39 and 159.

[6] *Id*. at 101.

[7] *Id*. at 39.

For the storage services it rendered, ATI made several demands from Padoson for the payment of arrastre, wharfage and storage services (heretofore referred to as storage fees), in the following amounts: ₱540,474.48 for the nine stainless steel coils which were stored at ATI's premises from October 12, 2001 to July 29, 2006; and ₱8,374,060.80 for the 72 hot-rolled steel coils stored at ATI's premises from November 8, 2001 to July 29, 2006.[8]

The demands, however, went unheeded. Thus, on August 4, 2006, ATI filed a Complaint[9] with the RTC of Manila, Branch 41 for a Sum of Money and Damages with Prayer for the Issuance of Writ of Preliminary Attachment against Padoson, docketed as Civil Case No. 06-115638. ATI ultimately prayed that Padoson be ordered to pay the following amounts: ₱8,914,535.28 plus legal interest, representing the unpaid storage fees; ₱100,000.00 as exemplary damages; and ₱100,000.00 as attorney's fees.

In its Answer with Compulsory Counterclaim with Opposition to Application for Writ of Preliminary Attachment,[10] Padoson claimed among others, that: (1) during the time when the shipments were in ATI's custody and possession, they suffered material and substantial deterioration; (2) ATI failed to exercise the extraordinary diligence required of an arrastre operator and thus it should be held responsible for the damages; (3) the Hold-Order issued by the BOC was merely a leverage to claim Padoson's alleged unpaid duties; (4) relative to the Customs case pending with RTC, Branch 173, Padoson filed a Motion for Ocular Inspection[11] and in the course of the inspection, Sheriff Romeo V. Diaz (Sheriff Diaz) discovered that the shipments were found in an open area and were in a deteriorating state; (5) due to this, Padoson was compelled to file a Manifestation and Motion dated January 27, 2004 praying for the release of

---

[8] *Id*.

[9] *Id*. at 70-75.

[10] *Id*. at 79-99.

[11] *Id*. at 179-181.

the shipments, which was in turn, granted by the RTC on June 25, 2004;[12] (6) on April 17, 2006, the RTC issued a Resolution,[13] granting Padoson's Motion for Issuance of Writ of Execution and accordingly issued the Writ of Execution, allowing Padoson to take possession of the shipment; (7) Sheriff Diaz in his Sheriff's Partial Return on Execution[14] dated August 8, 2006, stated that one of the nine steel coils which were part of the shipments, were missing; and (8) That due to the deterioration of the 72 hot-rolled steel coils, their value depreciated and when Padoson sold the same, he incurred a loss of ₱13.8 Million in lost profits. As to the stainless steel coils, he incurred a total loss of ₱2,992,000.00 corresponding to the value of the one steel coil lost (₱882,000.00) and the lost profits for the sale of the remaining steel coils (₱2,110,000.00).[15]

In its Answer to Compulsory Counterclaim, ATI countered that it exercise due diligence in the storage of the shipments and that the same were withdrawn from its custody in the same condition and quantity as when they they were unloaded from the vessel.[16]

Pre-trial was scheduled on August 12, 2009.[17] Thereafter, trial ensued.

During the trial, Padoson presented a certain Mr. Gregory Ventura (Ventura), who allegedly took pictures of the shipments. The pictures, however, were not pre-marked during the pre-trial. Consequently, the RTC issued an Order[18] dated September 8, 2011, disallowing the marking of the said pictures and Ventura's testimony thereon. To assail the said order, Padoson

---

[12] *Id*. at 182-186.

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

[14] *Id*. at 189-194.

[15] *Id*. at 83-86, and 91.

[16] *Id*. at 54.

[17] *Id*. at 55.

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

filed a Petition for *Certiorari* before the CA but the same was denied in the CA Decision[19] dated July 1, 2013, which became final and executory on July 24, 2013.[20]

ATI called to the witness stand its Cash Billing Supervisor, Mr. Samuel Goutana (Goutana) to explain how ATI computed the amount of storage fees prayed for in its Complaint against Padoson.[21]

On July 16, 2012, the RTC rendered its Decision,[22] dismissing ATI's complaint and Padoson's counterclaim. The RTC held that although the computation of storage fees to be paid by Padoson as prayed for in ATI's complaint to the tune of ₱8,914,535.28 plus legal interest, were "clear and unmistakable" and which Padoson never denied, the liability to pay the same should be borne by the BOC. Relying on the case of *Subic Bay Metropolitan Authority v. Rodriguez, et al*.[23] (SBMA), the RTC reasoned out that by virtue of the Hold-Order over Padoson's shipments, the BOC has acquired constructive possession over the same. Consequently, the BOC should be the one liable to ATI's money claims. The RTC, however, pointed out that since ATI did not implead the BOC in its complaint, the BOC cannot be held to answer for the payment of the storage fees.

ATI appealed the RTC decision, but the same was denied by the CA in its Decision[24] dated July 23, 2013. The CA ruled that the RTC did not err in holding that Padoson's shipments were under the BOC's constructive possession upon its issuance of the Hold-Order. The CA, likewise, ruled that there is substantial evidence to prove that the shipments suffered loss and deterioration or damage while they were stored in ATI's

---

[19] *Id*. at 133-140.

[20] *Id.* at 111-112.

[21] *Id.* at 62.

[22] *Id*. at 51-68.

[23] 633 Phil. 196 (2010).

[24] *Rollo*, pp. 38-47.

premises. But since the BOC had acquired constructive possession over the shipments, the CA ruled that neither ATI could be held liable for damages nor Padoson be held liable for the storage fees. Lastly, the CA pronounced that the RTC was correct in holding that no relief may be given to both ATI and Padoson since the BOC was not impleaded in ATI's complaint.

Aggrieved, ATI filed a Motion for Reconsideration,[25] stating among others, that: (1) the documents attached to Padoson's Answer are inadmissible and insufficient to prove that the shipments were damaged while in ATI's premises; (2) those documents were related to the Customs case in which ATI was not impleaded as a party, and thus, was not given an opportunity to contest them; (3) with respect to the photographs over the shipments allegedly taken on January 16, 2004, the same should be inadmissible for lack of authentication; (4) that Padoson's witness, a certain Mary Jane Lorenzo (Lorenzo), was not competent to testify on the photographs since she admitted that she was not the one who took the photographs and that the same do not indicate that they pertain to Padoson's shipment; (5) Sheriff Dizon's declaration in his Report on Ocular Inspection that the shipments, were "already in a deteriorating condition," were merely conclusory; and (6) Sheriff Dizon who prepared the Partial Return on Execution dated August 8, 2006, was not called to the witness stand to testify on the contents of the said Return.[26]

On March 26, 2014, the CA issued a Resolution[27] denying ATI's motion for reconsideration.

Hence, this petition for review on *certiorari* which submits the following arguments in support thereof:

A. The [CA] erred in ruling that the Subject Shipments were in the constructive possession of the [BOC];[28]

---

[25] *Id*. at 113-129.

[26] *Id*. at 122-124.

[27] *Id.* at 49-50.

[28] *Id*. at 17.

B. The [CA] erred in ruling that Padoson can no longer be held liable to ATI for arrastre, wharfage and storage fees because of said constructive possession[;][29]

C. Padoson failed to establish that the Subject Shipments sustained damage while in ATI's custody[;][30]

D. ATI is entitled to an award of damages[; and][31]

E. The instant case should be decided on its merits. It should not have been dismissed based on the theory of constructive possession proposed by the trial court and adopted by the [CA.][32]

Ruling of the Court

The petition is granted.

Essentially, the issue posed before us is whether or not the CA erred in affirming the RTC decision.

We answer in the affirmative.

While this Court is not a trier of facts, still when the inference drawn by the CA from the facts is manifestly mistaken, as in the present case, we can, in the interest of justice, review the evidence to allow us to arrive at the correct factual conclusions based on the record.[33]

The CA and the RTC misapplied the case of SBMA

In *SBMA*,[34] we dealt with the following issues: (1) which court has the exclusive original jurisdiction over seizure and forfeiture proceedings; and (2) the propriety of the issuance

---

[29] *Id*. at 19.

[30] *Id*. at 22.

[31] *Id*. at 27.

[32] *Id*.

[33] *Spouses Chung v. Ulanday Construction, Inc*., 647 Phil. 1, 12 (2010).

[34] *Supra* note 23.

by the RTC of a Temporary Restraining Order against the BOC. In ruling that it is the BOC, and not the RTC, which has exclusive original jurisdiction over seizure and forfeiture of the subject shipment, this Court explained that:

> The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. Regional trial courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the BOC and to enjoin or otherwise interfere with these proceedings. x x x
>
> x x x [T]he rule is that from the moment imported goods are ***actually*** in the possession or control of the Customs authorities, even if no warrant for seizure or detention had previously been issued by the Collector of Customs in connection with the seizure and forfeiture proceedings, the BOC acquires exclusive jurisdiction over such imported goods for the purpose of enforcing the customs laws, subject to appeal to the Court of Tax Appeals whose decisions are appealable to this Court. x x x.[35] (Citations omitted and emphasis ours)

Nowhere in the *SBMA* case did we exclaim that the moment a Hold-Order has been issued, the BOC acquires constructive possession over the subject shipment. On the contrary, what we stated is that once the BOC is *actually* in possession of the subject shipment by virtue of a Hold-Order, it acquires exclusive jurisdiction over the same for the purpose of enforcing the customs laws. In fact, in *SBMA*, it is clear that the BOC's issuance of the Hold-Order was to direct the port officers to hold the delivery of the shipment and to transfer the same to the security warehouse.[36] The BOC, thus, had actual and *not* constructive possession over the subject shipment in said case. Here, the actual possession over Padoson's shipment remained with ATI since they were stored at its premises.

Likewise, in the *SBMA* case, We emphasize that the BOC's exclusive jurisdiction over the subject shipment is for the purpose of enforcing customs laws, so as to render effective and efficient

---

[35] *Id*. at 210-211.

[36] *Id*. at 202.

the collection of import and export duties due the State.[37] It has nothing to do with the collection by a private company, like ATI in this case, of the storage fees for the services it rendered to its client, Padoson.

Further, there is no implication in the *SBMA* case that the BOC's mere issuance of a Hold-Over directed against the subject shipment constitutes constructive possession, which may exculpate the private consignee from its storage fee obligation with the arrastre operator.

Accordingly, there is no basis for the CA in holding that the RTC did *not* err in declaring that the subject shipments were deemed placed under BOC's constructive possession by its issuance of a Hold-Order over Padoson's shipment.

The alleged constructive possession by virtue of BOC's Hold-Order of Padoson's shipment was not even raised as an issue in this case

The matter concerning the BOC's alleged constructive possession was erroneously considered by the RTC and the CA in their respective decisions. The records show that this matter was neither alleged in Padoson's Answer nor was it raised in the stipulation of facts contained in the RTC's pre-trial Order dated August 12, 2009. Padoson never made an assertion to the effect that it could not be held liable for the storage fees because of the BOC's Hold-Order against its shipment. The disclosure that Padoson's shipments were subject of the BOC's Hold-Order was never raised in relation to Padoson's affirmative defense that it should not pay for the storage fees which arose from its contract of services with ATI.[38] In fact, it was the RTC, through its July 16, 2012 Decision, that brought up the concept of constructive possession by misapplying the *SBMA* case, as explained earlier.

---

[37] *Id*. at 211.

[38] *Id*. at 42.

As held in *LICOMCEN, Inc. v. Engr. Abainza*:[39]

> Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same.[40] (Citation omitted)

As already elucidated, the theory of constructive possession espoused by the RTC and concurred in by the CA cannot be deemed to be impliedly included in the issue raised by ATI in its complaint, since it was not even touched upon in the RTC's pre-trial order.

Padoson, and not BOC, is liable to ATI for the payment of storage fees for the services rendered by ATI

First, granting, without admitting, that the BOC has constructive possession over Padoson's shipment, this does not, in itself release Padoson from its obligation to pay the storage fees due to ATI. It has been established that Padoson engaged ATI to perform arrastre, wharfage and storage services over its shipments from October 12, 2001 and November 8, 2001, until it was discharged from ATI's premises on July 29, 2006. Although Padoson's shipments were the subject of BOC's Hold-Order dated September 7, 2001, the fact remains that it was Padoson, and not BOC, that entered into a contract of service with ATI and consequently was the one who was benefited therefrom.

The basic principle of relativity of contracts is that contracts can only bind the parties who entered into it, and cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof.[41] Indeed, "[w]here there

---

[39] 704 Phil. 166 (2013).

[40] *Id*. at 174.

[41] *Sps. Borromeo v. Hon. Court of Appeals, et al.*, 573 Phil. 400, 412 (2008).

is no privity of contract, there is likewise no obligation or liability to speak about."[42]

Guided by this doctrine, Padoson, cannot shift the burden of paying the storage fees to BOC since the latter has never been privy to the contract of service between Padoson and ATI. To rule otherwise would create an absurd situation wherein a private party may free itself from liability arising from a contract of service, by merely invoking that the BOC has constructive possession over its shipment by the issuance of a Hold-Order.

Second, the BOC's Hold-Order is not in any way related to the contract of service between ATI and Padoson. Rather, it is directed at Padoson's shipment by reason of Padoson's tax liability and which triggered the filing of the Customs Case. The BOC's exclusive jurisdiction over the shipment is solely for the purpose of enforcing customs laws against Padoson's tax delinquency. The BOC's interest over the shipment was limited to discharging its duty to collect Padoson's tax liability. Put a bit differently, the BOC's Hold-Order is extraneous to Padoson's obligation to pay the storage fees in favor of ATI. Even Padoson admitted that the Hold-Order was issued by the BOC merely as a leverage to claim Padoson's alleged unpaid duties.[43] Clearly, Padoson has two monetary obligations, albeit of different characters – one is its liability for storage fees with ATI based on its contract of service, and the other is its tax liability with the BOC which is the subject of the Customs case pending with the RTC.

Third, the RTC's pronouncement which was affirmed by the CA, to the effect that the BOC, and not Padoson, should have been held liable for the storage fees had it been impleaded in ATI's complaint, is erroneous. This presupposes that BOC is an indispensable party, which it is not.

In the consolidated case of *PNB v. Heirs of Militar*,[44] the Court explained that:

---

[42] *Philippine National Bank v. Dee, et al.*, 727 Phil. 473, 480 (2014).

[43] *Rollo*, p. 83.

[44] 504 Phil. 634 (2005).

An indispensable party is one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties' that his legal presence as a party to the proceeding is an absolute necessity. In his absence there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable.

Conversely, a party is not indispensable to the suit if his interest in the controversy or subject matter is distinct and divisible from the interest of the other parties and will not necessarily be prejudiced by a judgment which does complete justice to the parties in court. He is not indispensable if his presence would merely permit complete relief between him and those already parties to the action or will simply avoid multiple litigation.[45] (Citations omitted)

In this case, the ultimate relief sought by ATI in its complaint for a sum of money with damages, is the recovery of the storage fees from Padoson, which arose from the contract of service which they have validly entered into. BOC, as explained earlier, was never privy to this contract. It was Padoson who engaged ATI's storage services. It was Padoson who benefited from ATI's storage services. It was Padoson who subsequently sold the shipments and suffered losses.

Recall too, that ATI was *not* a party to the Customs case filed by BOC against Padoson for the latter's tax delinquency. BOC's interest over the shipment which is the subject matter of the Customs case is merely to collect from Padoson its tax dues; it is separate and distinct from the claim of ATI in its complaint for a sum of money – which is to demand from Padoson the payment of storage fees based on their contract of service. The BOC's Hold-Order did not have the effect of relieving Padoson from its contractual obligation with ATI.

These facts reveal that BOC's interest over the shipments is not inextricably intertwined with ATI's collection suit against Padoson, so as to require its legal presence as a party to the

---

[45] *Id.* at 640-641.

proceeding. In other words, complete relief can still be afforded to ATI without the presence of the BOC and the case can still be decided on the merits without prejudicing BOC's rights. Thus, the BOC is not an indispensable party to the complaint for a sum of money filed by ATI against Padoson.

Padoson failed to prove that its shipment sustained damage while in ATI's custody

To substantiate its claim that ATI failed to exercise due diligence over the shipments causing them to be in a dismal condition, Padoson presented photographs which were allegedly taken by Ventura.

During the trial, however, the RTC observed that the said photographs were not pre-marked as evidence and that the pre-trial orders did not contain a reservation for presentation of additional evidence for Padoson. Consequently, in its September 8, 2011 Order, the RTC disallowed the identification of the unmarked photographs. Padoson moved for a reconsideration of the order, but it was denied. Its subsequent petition for *certiorari* was likewise denied by the CA in its Decision dated July 1, 2013, which became final and executory. Thus, at the time the CA rendered its July 23, 2013 Decision, the RTC had already ruled that the photographs were inadmissible and were not admitted in evidence. Yet, this fact was clearly disregarded by the CA when it promulgated its assailed decision. This runs counter to the "rule that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments."[46]

Likewise, in support of its allegation of damage to the shipments, Padoson relied on the following documents: Sheriffs Report on Ocular Inspection; Manifestation and Motion dated January 27, 2004; Resolution dated June 25, 2004; Resolution dated April 17, 2006; Sheriffs Partial Return on Execution dated August 8, 2006; and the photographs allegedly taken on January

[46] *Dra. Dela Llano v. Biong*, 722 Phil. 743, 758 (2013).

16, 2004. These documents, however, relate to the Customs case. Notably, ATI was not impleaded and has no participation in the Customs case.[47] As such, it would be unfair that ATI be bound by the RTC's proceedings and findings of fact in the Customs case without giving it the chance to hear its side. To rule otherwise would deprive ATI of due process. The essence of due process is the opportunity to be heard, logically preconditioned on prior notice, before judgment is rendered.[48] Indeed, "[n]o man shall be affected by any proceeding to which he is a stranger."[49]

In particular, the sheriffs declaration in the Sheriffs Report on Ocular Inspection that the steel coils which were part of the shipment, were "already in a deteriorating condition," is a mere uncorroborated conclusion for having no evidence to back it up. There is no showing that Sheriff Diaz had personal knowledge of the original condition of the shipment, for him to arrive at the conclusion that it deteriorated while it was docked at ATI's premises.[50] Mere allegation and speculation is not evidence, and is not equivalent to proof.[51]

So too, the Sheriffs Partial Return on Execution is a document solely prepared by the sheriff. Padoson, however, did not present Sheriff Diaz to testify on the contents thereof. Evidently, ATI was not given a chance to cross-examine him to test the truthfulness of the allegations made in the said Return.[52]

Anent the photographs on the shipment allegedly taken on January 16, 2004, the same were not properly authenticated and identified.[53] "Indeed, photographs, when presented in

---

[47] *Rollo*, p. 122.

[48] *Pangilinan v. Balatbat, et al.*, 694 Phil. 605, 618 (2012).

[49] *Orquiola v. Court of Appeals*, 435 Phil. 323, 332 (2002).

[50] *Rollo*, p. 123.

[51] *Navarro v. Clerk of Court Cerezo*, 492 Phil. 19, 22 (2002).

[52] *Rollo*, p. 123.

[53] *Id.*

evidence, must be identified by the photographer as to its production and he must testify as to the circumstances under which they were produced."[54] "The value of this kind of evidence lies in its being a correct representation or reproduction of the original."[55] However, in this case, Padoson's witness, Ms. Lorenzo simply admitted that she did *not* take the pictures and that the same do not indicate that they pertain to the shipments.[56]

Additionally, we have observed from the records that Padoson did not present any evidence on the supposed condition of the shipment at the time they were already discharged from the vessels. As such, there can be no basis for Padoson to claim that its shipments deteriorated while they were in ATI's possession and custody up to the time they were withdrawn from ATI's premises. Thus, Padoson cannot impute negligence upon ATI.

Padoson is liable to pay the amount prayed for in ATI's Complaint

In its complaint, ATI demanded from Padoson to pay the total amount of ₱8,914,535.28 plus legal interest, representing the unpaid storage fees, consisting of the nine stainless steel coils and the 72 hot-rolled steel coils. During the trial, ATI's Cash Billing Supervisor, Goutana testified on the breakdown of the said amount. As to the nine stainless steel coils, Goutana explained, thus:

Q: And for this particular cargo, Mr. witness, comprising of nine (9) stainless steel coils, what was the metric ton of the said shipment?

A: For nine (9) coils, we have 36.725 metric tons, sir.

x x x x x x x x x

---

[54] *People v. Gonzales*, 582 Phil. 412, 421 (2008).

[55] *Sison v. People*, 320 Phil. 112, 131 (1995).

[56] *Rollo*, p. 123.

Q: So how [did] you arrive at the amount of Five Hundred Forty Thousand Four Hundred Seventy Four and Forty Eighty Centavos (₱540,474.48), Mr. [W]itness?

A: Total metric tons 36.725 x 7.50, the rates and the number of days 1,752 plus 12% VAT, so we arrived in the amount of Five Hundred Forty Thousand Four Hundred Seventy Four and Forty Eighty Centavos (₱540,474.48), sir.[57]

With respect to the 72 hot-rolled steel coils, Goutana narrated, thus:

Atty. Braceros:
And how did you come up with this particular total, Mr. Witness?

A: To arrive at this amount of Eight Million Three Hundred Seventy Four Thousand Sixty Pesos and Eighty Centavos (₱8,374,060.80), we have the metric ton – 577.920 metric tons x number of days – 1725 days and the rate is 7.50 plus 12% VAT, sir.[58]

It bears stressing that the computation of the amount ATI sought from Padoson for the latter's payment of storage fees has already been found by the RTC, which in turn was concurred in by the CA, as "clear and unmistakable." In fact, as correctly observed by the RTC, even Padoson, has never denied its obligation with ATI. Thus:

Deduced from the foregoing, **the computation of the amounts sought to be paid** by [ATI] **are clear and unmistakable**. Notably, likewise, **[Padoson] never denied such obligation**, only that, **it turned the table against** [ATI].[59] (Emphasis ours)

Clearly, in order to evade its liability, Padoson merely turned the table against ATI by arguing in the RTC that due to the dismal condition of the shipment, ATI should be held liable. But, as We have explained earlier, Padoson did hot adduce

---

[57] *Id*. at 62.

[58] *Id*. at 64.

[59] *Id*. at 66.

sufficient evidence to prove that ATI was negligent in the storage of the shipment so as to entitle Padoson to recover damages. To put it differently, Padoson's obligation with ATI for the storage fees and its computation thereon has already been settled by the RTC and was no longer raised as an issue by Padoson. Thus, Padoson cannot now renege on its obligation by merely attributing negligence to ATI.

Corollarily, as to the interest rate applicable, we explained in *Nacar v. Gallery Frames, et al.*, that:[60]

> 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 12% *per annum* to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% *per annum*. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

---

[60] 716 Phil. 267 (2013).

> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[61] (Citations omitted and italics in the original)

It should be noted, however, that the new rate of six percent (6%)[62] *per annum* could only be applied prospectively and not retroactively. Consequently, the former rate of twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013, the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest when applicable.[63]

Nonetheless, the need to determine whether the obligation involved in this case is a loan and forbearance of money exists.

"The term 'forbearance,' within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable."[64] "Forbearance of money, goods or credits, should therefore refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions."[65] Consequently, if those conditions are breached, said person is entitled not only to the return of the principal amount paid, but also to compensation for the use of

---

[61] *Id*. at 278-279.

[62] Effective starting on July 1, 2013, pursuant to Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013; *Nacar v. Gallery Frames, et al*., *supra* at 281.

[63] *Federal Builders, Inc. v. Foundation Specialists, Inc*., 742 Phil. 433, 446 (2014).

[64] *S.C. Megaworld Construction and Development Corporation v. Engr. Parada*, 717 Phil. 752, 771 (2013), citing *Sunga-Chan, et al. v. CA, et al*., 578 Phil. 262, 276 (2008).

[65] *Estores v. Sps. Supangan*, 686 Phil. 86, 97 (2012).

his money which would be the same rate of legal interest applicable to a loan since the use or deprivation of funds therein is similar to a loan.[66]

This case, however, does not involve an acquiescence to the temporary use of a party's money but merely a failure to pay the storage fees arising from a valid contract of service entered into between ATI and Padoson.

Considering that there is an absence of any stipulation as to interest in the agreement between the parties herein, the matter of interest award arising from the dispute in this case would actually fall under the category of an "obligation, not constituting a loan or forbearance of money" as aforecited. Consequently, this necessitates the imposition of interest at the rate of 6%. The six percent (6%) interest rate shall further be imposed from the finality of the judgment herein until satisfaction thereof, in light of our recent ruling in *Nacar*.[67]

Thus, guided by aforementioned disquisition, the rate of interest on the amount of ₱8,914,535.28, representing the unpaid storage fees shall be twelve percent (12%) from August 4, 2006, the date when ATI made a judicial demand by filing its complaint against Padoson, to June 30, 2013. From July 1, 2013, the effective date of BSP-MB Circular No. 799, until full satisfaction of the monetary award, the rate of interest shall be six percent (6%).[68]

ATI is not entitled to exemplary damages and attorney's fees

Pursuant to Articles 2229[69] and 2234[70] of the Civil Code, exemplary damages may be awarded only in addition to moral,

---

[66] *Id*.

[67] *Supra* note 60.

[68] *Heirs of Leandro Natividad and Juliana V. Natividad v. Mauricio-Natividad, et al*., 781 Phil. 803, 816 (2016).

[69] Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[70] Article 2234. While the amount of the exemplary damages need not

temperate, liquidated, or compensatory damages. Since ATI is not entitled to either moral, temperate, liquidated, or compensatory damages, then their claim for exemplary damages is bereft of merit. It has been held that as a requisite for the award of exemplary damages, the act must be accompanied by bad faith or done in wanton, fraudulent or malevolent manner[71] — circumstances which are absent in this case.

Finally, considering the absence of any of the circumstances under Article 2208[72] of the Civil Code where attorney's fees may be awarded, the same cannot be granted to ATI.

---

be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. x x x

[71] *Francisco v. Ferrer, Jr.*, 403 Phil. 741, 750 (2001).

[72] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiffs plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

From the foregoing, we hold that the CA erred in affirming the RTC's decision. Accordingly, it is Padoson and not the BOC, that is liable to ATI for the payment of storage fees on the basis of the contract of service between Padoson and ATI.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated July 23, 2013 and Resolution dated March 26, 2014 of the Court of Appeals in CA-G.R. CV No. 99435 are **REVERSED** and **SET ASIDE**. Respondent Padoson Stainless Steel Corporation is **ORDERED** to pay Asian Terminals Inc. the amount of ₱8,914,535.28, plus interest thereon at twelve percent (12%) *per annum*, computed from August 4, 2006 to June 30, 2013, and six percent (6%) *per annum*, from July 1, 2013, until full satisfaction of the judgment award.

SO ORDERED.

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

Leonardo-de Castro,[***] *J.*, on official leave.

FIRST DIVISION

[G.R. No. 223515. June 25, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANCIS TABOY**[1] ***y*** **AQUINO,** *accused-appellant.*

---

[*] Designated as Acting Chairperson per Special Order No. 2562 dated June 20, 2018.

[**] Designated as Acting Member per Special Order No. 2560 dated May 11, 2018.

[***] Designated as Acting Chairperson per Special Order No. 2559 dated May 11, 2018; On official leave.

[1] Tabor in some parts of the records.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF PROHIBITED DRUG; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** [A]s ruled by the courts *a quo,* the elements of illegal sale of prohibited drug were established here, *viz.*: the identity of the seller (accused-appellant) and the buyer (P02 Navero); the consideration therefor (₱500.00 marked money); and, the delivery of the thing sold (subject *shabu*) and its payment made by P02 Navero to accused-appellant. This only proves that in a buy-bust operation like what transpired in this case, "the crime is consummated when the police officer makes an offer to buy that is accepted by the accused, and there is an ensuing exchange between them involving the delivery of the dangerous drugs to the police officer." The Court similarly finds that the prosecution established the *corpus delicti* of the aforesaid sale of drug, and the same was duly presented in court.

2. **ID.; ID.; ILLEGAL USE OF DANGEROUS DRUG; ELEMENTS; PROVEN IN CASE AT BAR.—** [A]ccused-appellant is also guilty of illegal use of dangerous drug as the following elements thereof were proved here: (1) accused-appellant was arrested, particularly for engaging in the sale of *shabu* – an act punishable under Article II of RA 9165; (2) he was subjected to a drug test; and (3) the result of said test yielded positive of methamphetamine.

3. **ID.; ID.; ILLEGAL; POSSESSION OF DRUG PARAPHERNALIA; FOR A CONVICTION THEREFOR TO PROSPER, IT MUST BE SHOWN THAT THE ACCUSED WAS IN POSSESSION OR CONTROL OF ANY EQUIPMENT, PARAPHERNALIA, AND THE LIKE, WHICH WAS FIT OR INTENDED FOR SMOKING, CONSUMING, ADMINISTERING, AMONG OTHER ACTS, DANGEROUS DRUGS INTO THE BODY; AND SUCH POSSESSION WAS NOT AUTHORIZED BY LAW; NOT ESTABLISHED IN CASE AT BAR.—** The Court nonetheless finds that the prosecution failed to prove beyond reasonable doubt that accused-appellant was guilty of illegal possession of drug paraphernalia. For a conviction

> for illegal possession of drug paraphernalia to prosper, it is primordial to show that the accused was in possession or control of any equipment, paraphernalia, and the like, which was fit or intended for smoking, consuming, administering, among other acts, dangerous drugs into the body; and, such possession was not authorized by law. In this case, while the prosecution contended that the buy-bust team found accused-appellant in possession of drug paraphernalia, there were discrepancies in its declaration as regards the actual paraphernalia confiscated from him. x x x Verily, these inconsistencies cast doubt into the identity and integrity of the drug paraphernalia supposedly seized from the accused-appellant. On top of this, the prosecution failed to prove that the buy-bust team complied with the chain of custody requirement anent the subject drug paraphernalia. x x x Indeed, proper marking and turnover of the confiscated drug, drug paraphernalia and the other seized items must be made in order for the accused to be liable under RA 9165, as amended. Here, considering the absence of the first link (marking) in the chain of custody of the seized drug paraphernalia, then the succeeding links as regards the custody of the same have to fail. As such, the charge of illegal possession of drug paraphernalia against accused-appellant has no basis and cannot prosper.

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.*:

On appeal is the March 27, 2015 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR HC No. 06096, which affirmed

---

[*] Acting Chairperson, per Special Order No. 2562 dated June 20, 2018.

[2] CA *rollo,* pp. 122-141; penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Remedios A. Salazar-Fernando and Ramon A. Cruz.

the March 12, 2013 Joint Decision[3] of the Regional Trial Court (RTC) of Camiling, Tarlac,[4] Branch 68 in Criminal Case Nos. 12-01, 12-60, and 12-61. The RTC found accused-appellant Francis Taboy *y* Aquino (accused-appellant) guilty beyond reasonable doubt of violation of Section 5 (sale of dangerous drugs), Section 12 (possession of drug paraphernalia), and Section 15 (use of dangerous drugs), Article II of Republic Act No. 9165 (RA 9165).[5]

Factual Antecedents

Accused-appellant was charged in three separate Informations with illegal sale of *shabu*, illegal possession of drug paraphernalia, and illegal use of prohibited drugs, as follows:

[Criminal Case No. 12-01]

That on or about January 5, 2012 at around 3:45 P.M. at Camiling, Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and feloniously sell one (1) heat-sealed transparent plastic sache[t] containing Methamphetamine Hydrochloride commonly known as 'shabu'[,] a dangerous drug without being authorized by law, weighing 0.051 gram more or less to poseur-buyer POI Jojie S. Navero.

CONTRARY TO LAW.[6]

[Criminal Case No. 12-60]

That on or about January 5, 2012 at around 3:45 P.M. at Camiling, Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and feloniously, have in possession and control drug paraphernali[a] fit or intended for consuming dangerous drugs such as one (1) disposable lighter,

---

[3] Records in Criminal Case No. 12-01, pp. 85-92; penned by Presiding Judge Jose S. Vallo.

[4] In the dispositive portion of the assailed Decision, the CA referred to the Joint Decision of the RTC Caloocan but its discussions all pertained to the March 12, 2013 Joint Decision of the RTC Camiling, Tarlac, Branch 68; CA *rollo,* p. 140.

[5] COMPREHENSIVE DANGEROUS DRUGS ACT of 2002.

[6] Records in Criminal Case No. 12-01, p. 1.

one (1) stainless lighter and one (1) roll of aluminum foil without being authorized by law.

CONTRARY TO LAW.[7]

[Criminal Case No. 12-61]

That on or about January 5, 2012 at around 3:45 P.M. at Camiling, Tarlac, Philippines and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and criminally without being authorized by law, use methamphetamine Hydrochloride, known as shabu[,] a dangerous drug and was found positive for use of said drug after confirmatory test.

CONTRARY TO LAW.[8]

Accused-appellant pleaded "Not Guilty"[9] to these charges against him.

Subsequently, trial on the merits ensued.

Version of the Prosecution

On January 2, 2012, P03 Edgar Esteban (PO3 Esteban), PO2 Nestor Agustin (PO2 Agustin), POl Alexander Juan (POl Juan) and SPOl Librado Calma (SPOl Calma) of the Camiling, Tarlac Police Station, along with their confidential asset/ informant, conducted a surveillance on accused-appellant. Because of the "positive" result of the surveillance,[10] on January 5, 2012, PO2 Jojie Navero (PO2 Navero) of the same station coordinated with the PDEA,[11] and the *Barangay* Officials of Palimbo-Caarosipan,[12] Camiling, Tarlac for the conduct of a buy-bust against accused-appellant.[13]

---

[7] Records in Criminal Case Nos. 12-60; 12-61, p. l.

[8] *ld*. at 2.

[9] Records in Criminal Case Nos. 12-01, pp. 26-27; 12-60; 12-61, pp. 15, 19-A.

[10] TSN, May 17, 2012, p. 4; November 15, 2012, pp. 3-4.

[11] Philippine Drug Enforcement Agency.

[12] Caarosipan-Palimbo in some parts of the records.

[13] TSN, July 10, 2012, p. 4.

At about 1:00 p.m. of even date, the informant arrived at the police station.[14] SPO1 Calma, the Team Leader of said station, briefed his team and designated PO2 Navero as poseur buyer in the buy-bust operation. In turn, Chief of Police Diosdado R. Lagasca (Lagasca) gave PO2 Navero ₱500.00, with his (Lagasca) initials, "DRL." On the other hand, PO3 Esteban, PO2 Agustin, POI Juan, and SPO1 Calma were designated as the arresting officers/back-up police for the operation.[15]

At about 3:45 p.m. of the same day, PO2 Navero and the informant proceeded to the house of accused-appellant on Baltazar St., *Barangay* Caarosipan-Palimbo. The back-up police followed them at a distance of 5 to 10 meters.[16] Upon seeing accused-appellant, PO2 Navero and the informant approached him and had a *kaliwaan* — PO2 Navero simply gave the marked money to accused-appellant, and the latter correspondingly handed a sachet of suspected *shabu* to PO2 Navero.[17] PO2 Navero observed that the informant was familiar to accused-appellant, and consequently, there was no need for any communication when he (PO2 Navero) transacted with him (accused-appellant).[18] Afterwards, PO3 Esteban tried to approach accused-appellant but the latter immediately rode his motorcycle and sped away. The police chased and cornered him near the *Barangay* Hall of Palimbo-Caarosipan.[19]

The police then brought accused-appellant to the *Barangay* Hall.[20] In the presence of accused-appellant, *Barangay* Captain Renato de Mayo[21] (de Mayo) and the other police officers, PO2 Navero itemized the money and drug paraphernalia recovered

---

[14] *Id.*

[15] TSN, May 17, 2012, pp. 2-5.

[16] TSN, May 17, 2012, p. 6; July 10, 2012, p. 5.

[17] TSN, May 17, 2012, pp. 6-7.

[18] TSN, July 10, 2017, pp. 15-16.

[19] TSN, May 17, 2012, pp. 7-8.

[20] *Id.* at 8-9.

[21] TSN, October 2, 2012, p. 2.

from accused-appellant which consisted of an aluminum foil, plastic sachet, and lighter.[22] PO2 Navero also marked the sachet he bought from accused-appellant with "FT/LC," the respective initials of accused-appellant, and the police's Team Leader, SPOI Calma.[23]

The police officers then brought accused-appellant and the recovered items to the police station where they prepared their joint affidavit. At about 6:00 p.m., PO2 Navero and PO3 Esteban brought accused-appellant and the suspected *shabu* seized from him to the Tarlac Provincial Crime Laboratory.[24] They then submitted a request for laboratory examination to POl Carbonel.[25] Meanwhile, PSI Angelito Angel (PSI Angel), the Forensic Chemist of the crime laboratory personally received the specimen which consisted of one heat-sealed transparent plastic sachet containing white crystalline substance with markings "FT/LC" and weighing 0.051 gram.[26]

Upon qualitative examination, the specimen tested positive for methamphetamine hydrochloride. PSI Angel presented said specimen in court and confirmed that it was the same one he received on January 5, 2012.[27] Moreover, the drug test on accused-appellant, under "Chemistry Report No. CDT-004-12 Tarlac,"[28] gave a positive result for the presence of methamphetamine, a dangerous drug.

Version of the Defense

Accused-appellant denied that the police conducted a buy-bust operation against him. He instead narrated the following matters:

---

[22] TSN, July 10, 2012, pp. 10-12, 20-21.

[23] *Id*. at 17.

[24] *Id*. at13-14.

[25] No first name found in the records of the case.

[26] TSN, April 24, 2012, pp. 5-7, 12.

[27] *Id.* at 6-8.

[28] Records in Criminal Case No. 12-60; 12-61, p. 7.

After partaking in a drinking spree on the night of January 4, 2012, accused-appellant slept at the house of his sister Jovy Baguio (Jovy) at Baltazar St., and woke up at about 1:00 p.m. the following day. He left Jovy's house at about 3:00 p.m. and went to the house of his brother, Geronimo. Upon alighting in front of Geronimo's house, POI Juan and another male person approached and poked a gun at him. They took his bag and brought him to Romulo Highway where they forced him to board a car. Accused-appellant was then slapped and hit with a gun by someone whom he recognized as the bodyguard of Mayor Neil T. Agustin (Mayor Agustin) of Camiling, Tarlac.[29]

Accused-appellant was thereafter brought to the police station. The police then found in his bag *shabu,* paraphernalia, foil, plastic, and money. Accused- appellant denied ownership of those items but the Chief of Police told him to admit that he owned them; otherwise, there would be serious consequences. While accused-appellant was still at the station, Mayor Agustin and *Barangay* Captain de Mayo arrived and made him sign a receipt for the confiscated items. Accused-appellant was then brought to Camp Mabulos and a urine sample was taken from him.[30]

Ruling of the Regional Trial Court

On March 12, 2013, the RTC convicted accused-appellant of illegal sale of drugs. It found that the prosecution established the identity of accused-appellant as seller of the subject *shabu* and PO2 Navero as the buyer; the consideration of such sale in the amount of ₱500.00; and the delivery of the illegal drug to PO2 Navero. It also held that there was no evidence that PO2 Navero and his back-up, PO3 Estaban, had any ill motive in testifying against accused-appellant.

The RTC likewise convicted accused-appellant of illegal possession of drug paraphernalia as he was found to be in possession of the same without any necessary license or

---

[29] TSN, January 24, 2013, pp. 3-5; October 2, 2012, p. 4.

[30] *Id.* at 6-9.

prescription. It also convicted accused-appellant of illegal use of dangerous drugs pursuant to Chemistry Report No. CDT-004-12 Tarlac. The dispositive portion of its Decision reads:

> WHEREFORE, accused Francis Tabor y Aquino is found guilty beyond reasonable doubt for violation of Sections 5, 12 and 15, Article 11 of RA 9165 (illegal sale of *shabu,* illegal possession of drug paraphernalia and illegal use of prohibited drug, respectively) and hereby sentences him as follows:
>
> 1). in Criminal Case No. 12-01 for illegal sale of prohibited drugs- the penalty of life imprisonment and a fine of Php500,000.00;
>
> 2). in Criminal Case No. 12-60 for illegal possession of drug paraphernalia - the penalty of six (6) months and one (1) day to four (4) years and a Fine of Php10,000.00.
>
> 3). in Criminal Case No. 12-61 for illegal use of prohibited drug- the penalty of six (6) months drug rehabilitation in a government drug rehabilitation center.
>
> x x x x x x x x x
>
> SO ORDERED.[31]

Ruling of the Court of Appeals

The CA affirmed the RTC Joint Decision.

Like the RTC, it ruled that the elements of illegal sale of dangerous drugs were established, *i.e.,* the identity of the seller (accused-appellant) and buyer (PO2 Navero) of the illegal drug, the consideration for its sale (₱500.00) and its delivery by the seller and payment made by the buyer.

The CA also gave credence to the testimony of PO2 Navero, *viz.*:

> x x x PO2 Navero convincingly testified that the plastic sachet of *shabu* subject of the sale was brought to, and duly identified in the trial court. He positively identified appellant as the one who sold to him one plastic sachet of *shabu* and to whom he gave the boodle money during the entrapment operations. x x x He further identified

[31] Records in Criminal Case No. 12-01, p. 91.

the markings x x x found on the said object to be the initials of appellant and Librado Calma which he placed thereon at the time the appellant was caught and brought to the barangay hall. These clear and positive testimonies of PO2 Navero, corroborated by PO3 Esteban, are sufficient proof that an illegal transaction or sale of *shabu* took place.[32]

The CA also decreed that the lack of communication between PO2 Navero and accused-appellant during the sale transaction was of no moment because prior to the buy-bust, there was already a pre-arranged sale of *shabu* between accused- appellant and the informant. As such, the *kaliwaan* between him and PO2 Navero was facilitated by the presence of the informant, who was familiar to accused-appellant.

The CA added that the search on accused-appellant was proper, as the same was incidental to his lawful arrest which resulted in him having been found in possession of drug paraphernalia.

Moreover, the CA decreed that accused-appellant was guilty of illegal use of prohibited drugs considering that his drug test, which was conducted after his arrest, gave a positive result for methamphetamine, a dangerous drug.

Finally, the CA held that the prosecution established beyond doubt the unbroken chain of custody of the seized drug and drug paraphernalia from accused-appellant. Such being the case, the integrity and evidentiary value of the confiscated items were preserved.

Hence, this appeal.

Issue

Whether the CA correctly affirmed the RTC Decision convicting accused-appellant of all the charges against him.

Our Ruling

The appeal is partly meritorious.

After a close scrutiny of the records of the case, the Court

---

[32] CA *rollo,* pp. 133-134.

rules that the CA properly found accused-appellant guilty of illegal sale and illegal use of prohibited drugs in violation of Sections 5 and 15, Article II of RA 9165. However, accused-appellant must be acquitted of the charge of illegal possession of drug paraphernalia under Section 12, Article II of RA 9165 as his guilt thereof has not been proved beyond reasonable doubt.

First, as ruled by the courts *a quo,* the elements of illegal sale of prohibited drug were established here, *viz.*: the identity of the seller (accused-appellant) and the buyer (PO2 Navero); the consideration therefor (₱500.00 marked money); and, the delivery of the thing sold (subject *shabu)* and its payment made by PO2 Navero to accused-appellant.[33] This only proves that in a buy-bust operation like what transpired in this case, "the crime is consummated when the police officer makes an offer to buy that is accepted by the accused, and there is an ensuing exchange between them involving the delivery of the dangerous drugs to the police officer."[34]

The Court similarly finds that the prosecution established the *corpus delicti* of the aforesaid sale of drug, and the same was duly presented in court. On this, we quote with approval the disquisition of the CA as follows:

> x x x The testimonies of [P]O2 Navero, SPO3 Esteban and PSI Angel [(]Forensic Chemist) clearly reveal that [P]O2 Navero had temporary custody of the seized illegal drug with marking 'FT/LT' the moment it was seized from appellant, whilst in transit to the x x x Barangay Hall of Palimbo Caarosipan, Camiling, Tarlac, up to the Philippine National Police (PNP) Crime Laboratory for examination. Their combined testimonies likewise pointed to PSI Angel as the one who personally received the illegal drug. PSI Angel in turn categorically testified that he received the illegal drug and after examination thereof, which yielded positive result for the presence of *methamphetamine hydrochloride,* he placed and sealed it in a brown envelope by using a masking tape containing the specimen D-003-12 ASA. PSI Angel likewise testified that he sealed the

---

[33] *People v. Cutara,* G.R. No. 224300, June 7, 2017.

[34] *People v. Mon, Jr.,* G.R. No. 227874, June 7, 2017.

envelope, he turned it to their custodian for safekeeping and when he withdrew and retrieve[d] the envelope for presentation to the trial court, the condition of the envelope was the same and the content thereof which consisted [of] the subject plastic sachet of shabu was still inside.[35]

Stated in another way, right after its confiscation and in the vicinity of the *barangay* hall, PO2 Navero immediately marked the seized drug with "FT/LC"—the initials of accused-appellant and of the police's Team Leader; and made an inventory of the confiscated items in the presence of accused-appellant, the police officers, and *Barangay* Captain de Mayo. Subsequently, the Forensic Chemist personally received the suspected *shabu* at the crime laboratory for examination; and later, he testified in court as to the receipt of the specimen, which was found positive of *shabu,* and confirmed that it was the same one presented in court. It cannot thus be denied that the required chain of custody of the seized drug was followed. Without doubt, its evidentiary value was preserved from its confiscation until its presentation in court.[36]

Likewise, accused-appellant failed to establish that the police officers had any ill motive to falsely accuse him of illegal sale of drug. This being so, the Court holds that the presumption that the buy-bust team had regularly performed their duties must prevail.[37]

Given these, the Court holds that accused-appellant is guilty beyond reasonable doubt of illegal sale of *shabu.* And, pursuant to Section 5,[38] Article II of RA 9165, as amended, the RTC, as affirmed by the CA, properly imposed the penalty of life imprisonment and a ₱500,000.00 fine against accused-appellant.

---

[35] CA *rollo,* p. 139.

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

[37] *People v. Cutara, supra* note 33.

[38] Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*—The penalty of life imprisonment

Second, accused-appellant is also guilty of illegal use of dangerous drug as the following elements thereof were proved here: (1) accused-appellant was arrested, particularly for engaging in the sale of *shabu*—an act punishable under Article II of RA 9165; (2) he was subjected to a drug test; and (3) the result of said test yielded positive of methamphetamine.[39] At the same time, we agree with the RTC and the CA that the penalty of six months rehabilitation be imposed against accused-appellant, pursuant to Section 15,[40] Article II of RA 9165.

The Court nonetheless finds that the prosecution failed to prove beyond reasonable doubt that accused-appellant was guilty of illegal possession of drug paraphernalia.

For a conviction for illegal possession of drug paraphernalia to prosper, it is primordial to show that the accused was in possession or control of any equipment, paraphernalia, and the like, which was fit or intended for smoking, consuming, administering, among other acts, dangerous drugs into the body; and, such possession was not authorized by law.[41]

In this case, while the prosecution contended that the buy-bust team found accused-appellant in possession of drug paraphernalia, there were discrepancies in its declaration as regards the actual paraphernalia confiscated from him.

To note, the police's joint affidavit and receipt of confiscated items executed by PO2 Navero listed the following drug paraphernalia allegedly seized from accused-appellant:

---

to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, x x x any dangerous drug x x x.

[39] See *Dela Cruz v. People,* 739 Phil. 578, 585-587 (2014).

[40] Section 15. *Use of Dangerous Drugs.*— A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the frrst offense, subject to the provisions of Article VIII of this Act x x x.

[41] *People v. Arposeple,* G.R. No. 205787, November 22, 2017.

x x x several pieces of transparent plastic for repacking, scissor, 1 disposable lighter, 1 stainless lighter, 1 roll of aluminun foil, 2 sticks for repacking, 1 blue cutter x x x[42]

In contrast, the Information (for illegal possession of drug paraphernalia) enumerated the following drug paraphernalia allegedly seized from accused-appellant:

x x x one (1) disposable lighter, one (1) stainless lighter and one (1) roll of aluminun foil x x x.[43]

Moreover, PO2 Navero mentioned only two aluminum foils, plastic sachet and lighter as drug paraphernalia confiscated from accused-appellant. Thus:

Q: Mr. Jojie Navero, what [were] the drug paraphernalia that you confiscated from the accused?
A: Aluminum foil and plastic sachet.

Q: What else?
A: Lighter, sir.

Q: Why [did] you consider these items as drug paraphernalia at once?
A: Sir, kasi yun yung ginagamit nila sa pagdadrugs.

x x x x x x x x x

Q: So you presumed that it was drug paraphernalia because you were [taught] in your seminars in drug cases that aluminum foil, scissors, lighters are drug paraphernalia.

You are now through.[44]

Verily, these inconsistencies cast doubt into the identity and integrity of the drug paraphernalia supposedly seized from the accused-appellant. On top of this, the prosecution failed to prove that the buy-bust team complied with the chain of custody requirement anent the subject drug paraphernalia.

---

[42] Records in Criminal Case No. 12-60; 61, pp. 4, 12.

[43] *Id*. at 1.

[44] TSN, July 10, 2012, pp. 20-21.

Section 21, Article II of RA 9165, as amended by RA 10640,[45] provides for the chain of custody of the drug/s as well as drug paraphernalia, among other items, seized from an accused, 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 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, x x x 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.
>
> (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, x x x as well as instruments/paraphernalia x x x

---

[45] 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.

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 x x x shall be issued immediately upon the receipt of the subject item/s: *Provided,* That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however,* That a final certification shall be issued immediately upon completion of the said examination and certification.,[46]

In this case, PO2 Navero narrated in detail the marking of the seized illegal drug from accused-appellant. However, he did not at all testify that he marked the paraphernalia confiscated from accused-appellant; his only assertion was that he itemized the objects they found from accused-appellant's bag.[47] At the same time, there was no indication that PO2 Navero properly turned over the alleged paraphernalia to the crime laboratory, as the request for laboratory examination pertained only to the seized drug from accused-appellant.[48]

Indeed, proper marking and turnover of the confiscated drug, drug paraphernalia and the other seized items must be made in order for the accused to be liable under RA 9165, as amended. Here, considering the absence of the first link (marking) in the chain of custody of the seized drug paraphernalia, then the succeeding links as regards the custody of the same have to fail. As such, the charge of illegal possession of drug paraphernalia against accused-appellant has no basis and cannot prosper.[49]

---

[46] Emphases supplied.

[47] TSN, July 10, 2012, p. 10.

[48] *People v. Arposeple, supra* note 41.

[49] *Id.*

WHEREFORE, the appeal is **PARTLY GRANTED.** The assailed March 27, 2015 Decision of the Court of Appeals in CA-G.R. CR HC No. 06096 is **AFFIRMED** with **MODIFICATION** in that accused-appellant Francis Taboy *y* Aquino is **ACQUITTED** of the charge of illegal possession of drug paraphernalia subject of Criminal Case No. 12-60 as his guilt thereof had not been established beyond reasonable doubt.

SO ORDERED.

Peralta,[**] *Tijam,* and *Gesmundo,*[***] *JJ.,* concur.

Leonardo-de Castro, J., on official leave.

FIRST DIVISION

[G.R. No. 223525. June 25, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENEDICTO VEEDOR, JR.** ***y*** **MOLOD** ***a.k.a.*** **"BRIX",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); FOR PROSECUTIONS INVOLVING DANGEROUS DRUGS, THE DANGEROUS DRUG ITSELF IS THE *CORPUS DELICTI* OF THE OFFENSE; THE IDENTITY AND INTEGRITY OF THE SEIZED DRUGS MUST BE PRESERVED TO SUSTAIN OR SECURE A CONVICTION.— For prosecutions involving dangerous drugs,

---

[**] Per November 29, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

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

we have consistently held that "the dangerous drug itself constitutes as the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt." It is therefore fundamental that the identity of the dangerous drug be established beyond reasonable doubt, along with the other elements of the offense/s charged. "Proof beyond reasonable doubt in these cases demands an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place." However, it must be stressed that "the presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs *alone* is insufficient to secure or sustain a conviction under RA 9165." Given the unique characteristics of dangerous drugs which render them *not readily identifiable and easily susceptible to tampering, alteration or substitution*, it is essential to show that the identity and integrity of the seized drugs have been preserved.

2. **ID.; ID.; CHAIN OF CUSTODY REQUIREMENT; THE PROSECUTION'S EVIDENCE MUST INCLUDE TESTIMONY ABOUT EVERY LINK IN THE CHAIN, FROM THE MOMENT THE DANGEROUS DRUG WAS SEIZED TO THE TIME IT IS OFFERED IN COURT AS EVIDENCE.—** To show an *unbroken* chain of custody, the prosecution's evidence must include testimony about **every link** in the chain, from the moment the dangerous drug was seized to the time it is offered in court as evidence. "**It is from the testimony of <u>every witness</u> who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused."**

3. **ID.; ID.; ID.; LINKS TO BE ESTABLISHED IN ORDER TO ENSURE THE PRESERVATION OF THE IDENTITY AND INTEGRITY OF THE SEIZED DANGEROUS DRUGS.—** In *Derilo v. People*, we enumerated the links in the chain of custody that must be established in order to ensure the preservation of the identity and integrity of seized dangerous drugs, *viz.*: Thus, the following links must be established to ensure the preservation of the identity and integrity of the confiscated drug: 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 drug 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 marked illegal drug seized from the forensic chemist to the court.

4. ID.; ID.; ID.; ID.; SERIOUS EVIDENTIARY GAPS IN THE LINKS, ESTABLISHED IN CASE AT BAR; ACQUITTAL OF THE ACCUSED ON THE GROUND OF REASONABLE DOUBT, PROPER.— The first and most *crucial* step in proving an unbroken chain of custody in drug-related prosecutions is the **marking of the seized dangerous drugs** and other related items thereto, as it is "the starting point in the custodial link that succeeding handlers of [said items] will use as a reference point." "Also, the marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence," thus preventing the switching, "planting" or contamination of evidence, whether by accident or otherwise. x x x In this case, we find that the prosecution failed to establish the **first link** in the chain of custody for failure of the NBI agents to *properly* conduct the inventory and marking of the seized items. x x x Finally, we note the serious evidentiary gaps in the **second**, **third** and **fourth** links in the chain of custody over the seized dangerous drugs. Based on the records, the seized evidence was turned over by SI Escurel to the Forensic Chemistry Division of the NBI for a quantitative and qualitative examination on September 2, 2004, at 6:30 p.m. In this regard, the prosecution failed to disclose the identities of: (*a*) the person who had custody of the seized items after they were turned over by SI Escurel; (*b*) the person who turned over the items to Forensic Chemist Aranas; and (*c*) the person who had custody thereof after they were examined by the forensic chemist and before they were presented in court. The totality of these circumstances – the failure to mark the 323 plastic sachets supposedly containing marijuana, the discrepancy in the description of the seized dangerous drugs, and the prosecution's failure to disclose the identities of the persons who had custody of said items after they were turned over by SI Escurel – broke the chain of custody and tainted the integrity of the seized marijuana ultimately presented as evidence before the trial court. Given the prosecution's failure to prove the indispensable element of *corpus delicti*, appellant must necessarily be acquitted on the ground of reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO,[*] *J.*:

Assailed in this appeal is the February 24, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04177 which affirmed the June 23, 2009 Decision[2] of the Regional Trial Court (RTC), Branch 16, Manila, finding appellant Benedicto Veedor, Jr., *y* Molod a.k.a. "Brix" (appellant) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. 9165 (RA 9165), or The Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

Appellant was charged with illegal possession of dangerous drugs under Section 11 Article II of RA 9165 in an Information[3] dated September 7, 2004 which reads:

Criminal Case No. 04-229997

That on or about September 2, 2004, in the City of Manila, Philippines, the said accused, without being 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

[O]ne (1) Duty Free shopping bag containing NINE HUNDRED NINETY[-]SEVEN (997) grams of crushed dried flowering tops of marijuana[; and,] Three Hundred Twenty[-]Three (323) plastic sachets

[*] Acting Chairperson per Special Order No. 2562 dated June 20, 2018.

[1] *Rollo*, pp. 2-12; penned by Associate Justice Ricardo R. Rosario and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a Member of this Court) and Associate Justice Edwin D. Sorongon.

[2] CA *rollo*, pp. 21-28; penned by Presiding Judge Carmelita S. Manahan.

[3] Records, p. 1.

containing a total weight of THREE HUNDRED EIGHTY[-]TWO (382) grams [of] crushed dried flowering tops separately contained in seven (7) plastic bags.

a dangerous drug.

Contrary to law.

During his arraignment on December 9, 2004, appellant entered a plea of not guilty.[4] Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incident is as follows:

On September 2, 2004, at around 9:00 a.m., a team of operatives from the Reaction Arrest and Interdiction Division of the National Bureau of Investigation (NBI), in coordination with the Philippine Drug Enforcement Agency (PDEA),[5] served a search warrant[6] on appellant at the latter's house located along an alley near Patria[7] Street, Balut, Tondo, Manila.[8] The team was composed of Special Investigator (SI) Salvador Arteche, Jr., SI Melvin Escurel (SI Escurel), and Atty. Daniel Daganzo, and several others.[9]

After explaining the nature of the search warrant to appellant,[10] the NBI agents searched the house and found a shopping bag containing suspected marijuana inside a cabinet at the first floor.[11] They also found 323 small plastic sachets of suspected marijuana in seven transparent plastic bags, several empty transparent plastic sachets, an electric sealer and a pair of scissors.[12]

---

[4] *Id.* at 22.

[5] *Id*. at 9.

[6] *Id*. at 11-12; issued by Executive Judge Enrico A. Lanzanas on August 31, 2004.

[7] Patricia in some parts of the records.

[8] CA *rollo*, p. 102.

[9] *Rollo*, p. 3.

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

[11] *Id*. at 102 and 104.

[12] *Id*. at 103.

SI Escurel marked the seized items with his initials and prepared the Inventory of Seized Property.[13] Photographs of the items found in the premises were also taken.[14] The NBI operation was witnessed by ABS-CBN's Jesus Alcantara, Barangay Chairman Nonny Francisco (Brgy. Chairman Francisco), and Barangay Councilor Randy Almalvez.[15]

The NBI agents thereafter brought appellant to their office where they prepared the following documents: (*a*) the request for laboratory examination;[16] (*b*) the Booking Sheet and Arrest Report;[17] (*c*) the Joint Affidavit of Arrest,[18] and (*d*) the Spot Report.[19] On the same day, at 6:30 p.m., SI Escurel turned over the seized items to the Forensic Chemistry Division of the NBI.[20]

On September 3, 2004, Forensic Chemist Mary Ann T. Aranas (Forensic Chemist Aranas) conducted a quantitative and qualitative examination of the subject specimens which yielded the following results:

1. One (1) Duty Free shopping bag containing crushed dried flowering tops suspected to be [marijuana]; Weight = 997 grams;
2. Three hundred twenty[-]three (323) plastic sachets containing crushed dried flowering tops separately contained in seven (7) plastic bags with markings; Total weight = 382 grams
3. One (1) electric sealer marked "MEE-10";
4. Empty plastic bags in a plastic bag marked "MEE-9"; and

---

[13] Records, p. 6. Only a *photocopy* of the Inventory of Seized Property can be found in the records.

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

[15] *Id.* at 102 and 104.

[16] *Id*. at 102.

[17] Records, p. 10.

[18] *Id*. at 4-5.

[19] *Id*. at 13.

[20] See Joint Affidavit of Arrest dated September 3, 2004, *id*. at 4-5.

5. One (1) pair of scissors marked "MEE-11"

Examinations conducted on the above-mentioned specimen/s gave POSITIVE RESULTS for [marijuana] on specimens 1 and 2 only.[21]

Version of the Defense

Appellant raised the defenses of denial and alibi.[22] He narrated that:

x x x [O]n September 1, 2004[,] at about 11:30 in the afternoon, two (2) male persons, Jeric and Jeff with one male whom he does not know arrived in his house and requested him to watch DVD movie entitled 'Hell Boy.' That was the third time the three requested him to do so. They introduced [the other] male person as Booter. He did not finish the movie because he went upstairs to sleep but let them finish the movie. He just reminded them to turn off and unplug the TV set and the DVD player after watching.

At around 11:20 am on September 2, 2004, NBI agents arrested him. Barangay officials came only after his arrest. He denied any knowledge on the one (l) kilo of marijuana. He stated that he does not know the whereabouts of Jeric and Jeff but he trusted them and let them watch DVD at his home even at midnight because these two (2) boys are poor but own the DVDs to be watched [sic].[23]

Ruling of the Regional Trial Court

In its Decision dated June 23, 2009, the RTC found appellant guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165. It held that:

The story concocted by the accused is unbelievable. Accused would like this Court to believe that he went upstairs to sleep and allowed his visitors to finish the movie with the reminder of unplugging the TV set and DVD player after watching. In times like this when crimes are rampant, reason would dictate not to allow strangers inside one's house. The owner of [the] house would not dare to sleep while his

---

[21] *Id*. at 7.

[22] CA *rollo*, p. 27.

[23] *Id.* at 25. See also Appellant's Brief, *id*. at 67.

visitors are still there and nobody would see to it that his door is locked when visitors leave.[24]

The RTC further pointed out that "the search warrant was applied for and against the house owned by the accused."[25] It then emphasized that the "possession necessary for conviction of the offense of [illegal] possession of dangerous drugs may be constructive as well as actual – it is only necessary that the accused must have dominion and control over the contraband."[26]

Accordingly, the RTC sentenced appellant to suffer the penalties of life imprisonment and a fine of ₱1,000,000.00 for violation of Section 11, Article II of RA 9165 in Criminal Case No. 04-229997. It also ordered that the confiscated marijuana with a total weight of 1,379 grams be turned over to the PDEA for proper disposition.[27]

Appellant thereafter appealed the RTC Decision before the CA.

Ruling of the Court of Appeals

In its Decision dated February 24, 2015, the CA affirmed the assailed RTC Decision *in toto*. It found that appellant was unable to discharge his burden of proving the absence of the element of *animus possidendi*, given that the dangerous drugs were found in a cabinet inside appellant's house and he failed to present evidence to show that his possession of said drugs was authorized by law.[28]

The CA further held that:

Contrary to [appellant's] asseveration, [w]e find that the apprehending officers substantially complied with the prescribed

---

[24] *Id.* at 27.

[25] *Id.*

[26] *Id*.

[27] *Id*. at 28.

[28] *Rollo*, p. 6.

procedure. While the photographs taken were not offered and the certificate of inventory was not admitted, [w]e find that the prosecution sufficiently established that the markings on the seized drugs were made by SI Escurel at [appellant's] house in the presence of appellant, a media representative and barangay officials.[29]

Thus, the CA concluded that there was no reason to disturb the ruling of the RTC finding appellant guilty beyond reasonable doubt of the offense charged, as the elements of illegal possession of marijuana had been proven and the integrity of the seized items was shown to have been preserved.[30]

Aggrieved, appellant filed the present appeal.

The Issues

Appellant raises the following issues for the Court's resolution:

First, whether the CA committed an error when it disregarded the testimony of Brgy. Chairman Francisco who categorically stated that the marijuana and other pieces of evidence presented in court were *different* from what he saw when he opened the cabinet in appellant's house; [31]

And *second*, whether the *corpus delicti* of the offense charged was proven beyond reasonable doubt, considering the inconsistency in the description of the dangerous drugs seized – the NBI agents consistently referred to the seized items as 'dried marijuana leaves' while the items actually submitted to the forensic chemist, based on her Certification dated September 3, 2004, and later presented in court were 'crushed dried marijuana flowering tops.'[32]

The Court's Ruling

For prosecutions involving dangerous drugs, we have consistently held that "the dangerous drug itself constitutes as the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable

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

[30] *Id*. at 11.

[31] CA *rollo*, p. 67.

[32] *Id.* at 73.

doubt."[33] It is therefore fundamental that the identity of the dangerous drug be established beyond reasonable doubt,[34] along with the other elements of the offense/s charged. "Proof beyond reasonable doubt in these cases demands an unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place."[35]

However, it must be stressed that "the presentation of evidence establishing the elements of the offenses of illegal sale and possession of dangerous drugs *alone* is insufficient to secure or sustain a conviction under RA 9165."[36] Given the unique characteristics of dangerous drugs which render them *not readily identifiable and easily susceptible to tampering, alteration or substitution*, it is essential to show that the identity and integrity of the seized drugs have been preserved. Thus, we explained in *People v. Denoman*[37] that:

> A successful prosecution for the sale of illegal drugs requires more than the perfunctory presentation of evidence establishing each element of the crime: the identities of the buyer and seller, the transaction or sale of the illegal drug and the existence of the *corpus delicti*. In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti*, must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. **Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise,**

---

[33] *Derilo v. People*, 784 Phil. 679, 686 (2016).

[34] *People v. Bartolini*, 791 Phil. 626, 634 (2016).

[35] *Derilo v. People*, *supra* note 33 at 686.

[36] *People v. De Guzman*, G.R. No. 219955, February 5, 2018.

[37] 612 Phil. 1165 (2009).

the prosecution for possession or for drug pushing under RA No. 9165 fails.[38] (Emphasis supplied)

It is in this context that we highlight the utmost significance of the chain of custody requirement under Section 21, Article II of RA 9165, as amended by Republic Act No. 10640, in drug-related prosecutions.

Section 21 provides the procedural safeguards that the apprehending team should observe in the handling of seized illegal drugs in order to remove all doubts concerning the identity of the *corpus delicti*. "As indicated by their *mandatory terms*, strict compliance with the prescribed procedure is essential and the prosecution must show compliance in every case."[39] The procedure under Section 21, par. 1 is as follows:

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, x x x shall, immediately after seizure and confiscation, conduct a **physical inventory** of the seized items and **photograph** the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, 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

[38] *Id*. at 1175.

[39] *Id*. Italics supplied.

the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis supplied)

To show an *unbroken* chain of custody, the prosecution's evidence must include testimony about **every link** in the chain, from the moment the dangerous drug was seized to the time it is offered in court as evidence.[40] "**It is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.**"[41]

In *Derilo v. People*,[42] we enumerated the links in the chain of custody that must be established in order to ensure the preservation of the identity and integrity of seized dangerous drugs, *viz.*:

> Thus, the following links must be established to ensure the preservation of the identity and integrity of the confiscated drug: 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 drug 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 marked illegal drug seized from the forensic chemist to the court.[43]

The first and most *crucial* step in proving an unbroken chain of custody in drug-related prosecutions is the **marking of the seized dangerous drugs** and other related items thereto, as it is "the starting point in the custodial link that succeeding handlers of [said items] will use as a reference point."[44] "Also, the marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence," thus

---

[40] *Derilo v. People*, *supra* note 33 at 687.

[41] *Id.* Emphasis in the original, underscoring supplied.

[42] *Id.*

[43] *Id.* at 687.

[44] *People v. Bartolini*, *supra* note 34 at 634.

preventing the switching, "planting" or contamination of evidence, whether by accident or otherwise.[45]

As such, we have consistently held that "the failure of the authorities to immediately mark the seized drugs raises reasonable doubt on the authenticity of the *corpus delicti* and suffices to rebut the presumption of regularity in the performance of official duties."[46]

In this case, we find that the prosecution failed to establish the **first link** in the chain of custody for failure of the NBI agents to *properly* conduct the inventory and marking of the seized items.

Per the records, the following items were inventoried and marked by SI Escurel while still at the scene:

DRUG/EVIDENCE SEIZED:

01. One (1) plastic [D]uty [F]ree bag with markings MEE-1 dated 9-02-04 containing approximately [o]ne (1) kilogram of suspected dried marijuana leaves;

02. Seven (7) transparent plastic [bags] containing suspected dried marijuana leaves marked as[:] MEE-2, MEE-3, MEE-4, MEE-5, MEE-6, MEE-7 and MEE-8 dated 9-02-04;

03. One (1) piece electric sealer marked as MEE-10;

04. Undetermined quantity of transparent plastic sachet[s] marked as MEE-9;

05. One (1) pair of scissor[s] marked as MEE-11.[47]

We note, in this regard, the NBI agent's failure to account for and mark the three hundred twenty-three (323) plastic sachets supposedly contained in the seven plastic bags marked as MEE-2 to MEE-8 which, curiously, only surfaced in the Certification[48] dated September 3, 2004 issued by Forensic Chemist Aranas.

---

[45] *Derilo v. People*, *supra* note 33 at 688.

[46] See *People v. Bartolini*, *supra* note 34 at 635. Italics in the original.

[47] See Spot Report dated September 3, 2004, records, p. 13.

[48] *Id*. at 7.

In fact, the **absence of a physical count and marking** of said plastic sachets even prompted the public prosecutor to ask the court for permission to open Exhibits MEE-2 to MEE-8 and *count* the plastic sachets contained therein in open court during the direct testimony of SI Escurel, *viz.*:

> Prosecutor:
>
> We would like to make a stipulation[,] your [h]onor[,] to the defense counsel.
>
> Court:
>
> Okay.
>
> Prosecutor:
>
> A manifestation to the defense counsel that Exhibit[s] "MEE-2" up to "MEE-8" contain[ed] several plastic sachets [of] [m]arijuana.
>
> Court:
>
> **No count? No number?**
>
> Defense:
>
> We will not admit.
>
> Court:
>
> Of course.
>
> Prosecution:
>
> In that case[,] your [h]onor, **may we be allowed to count each plastic contained in each exhibit**[,] your [h]onor.
>
> As to Exhibit MEE-2, may I request that the same be opened.[49]
> (Emphasis supplied)

We consider, too, the inconsistency in the **description** of the seized dangerous drugs in the records – in the Joint Affidavit of Arrest [50] and the Spot Report,[51] the seized drugs were described as 'dried marijuana **leaves**' while the forensic chemist, in her Certification[52] dated September 3, 2004, referred to the same

---

[49] TSN, February 1, 2006, pp. 19-21.

[50] Records, pp. 4-5.

[51] *Id*. at 13.

[52] *Id*. at 7.

as 'crushed dried marijuana **flowering tops**.' Regrettably, this inconsistency was not clarified by the prosecution.

In *People v. Quintana*,[53] we held that the discrepancy in the description of the seized marijuana cast doubt on the accused's guilt, *viz.*:

> And there is the evidence of the marijuana leaves themselves which also casts doubt on the accused-appellant's guilt. The team members claim they seized from Quintana 100 grams of *dried marijuana leaves*, otherwise known as "five finger" marijuana, in a plastic bag wrapped in a newspaper. Yet, according to the certification made by Julieta Flores, the chemist of the National Bureau of Investigation who examined the package allegedly taken from Quintana, its contents were *marijuana flowering tops* weighing only 55.5280 grams. Considering that the examination took place on April 28, 1987, the day following Quintana's arrest, one can only wonder how the 100 grams of marijuana leaves with seeds suddenly *bloomed* overnight and at the same time *dried up* by 45%.[54]

At this juncture, we deem it necessary to strongly emphasize the importance of *accuracy* and *precision* in conducting an inventory of seized dangerous drugs and other related paraphernalia not only to preserve the identity and integrity of the evidence, but also to safeguard the rights of the accused whose life and liberty hang in the balance.

Another significant point to consider is the prosecution's failure to: (*a*) submit the original or the duplicate original copy of the Inventory of Seized Property[55] dated September 2, 2004 which led the court to exclude from evidence the *photocopy* thereof;[56] and (*b*) include the photographs taken of appellant and the seized items in its Formal Offer of Evidence[57] dated September 5, 2007.

---

[53] 256 Phil. 430 (1989).

[54] *Id.* at 435.

[55] Records, p. 6.

[56] See Resolution/Order dated October 5, 2007, *id.* at 102; issued by Judge Carmelita S. Manahan.

[57] *Id.* at 98.

While admittedly, the fault on this matter squarely falls on the part of the public prosecutor and not on the NBI agents, still, this gap in the documentary evidence makes it increasingly difficult to rule that the identity and integrity of the seized dangerous drugs had been preserved. Lest we forget – the purpose of the inventory and photographs is precisely to safeguard and remove any doubts as to the identity of the *corpus delicti*.

We also draw attention to the testimony of Brgy. Chairman Francisco, a prosecution witness, who was present during the NBI operation in appellant's house. The pertinent portion of his testimony is quoted below:

MACP SALANGA:

Q: What did you see when the cabinet was opened?
A: Marijuana[,] sir.

Q: Will you described [sic] that [sic] marijuana which you said you saw?
A: *Parang ganito po, kasi isang paper bag plastic.*

(Witness is referring to one of the evidence on top of the table.)[58]

x x x x x x x x x

Q: What is the plastic bag which you saw?
A: **The plastic bag that I saw is smaller than this bag[,] sir.**

Q: What about the contents? [Did] you [see] the contents?
A: This is the same[,] sir.

Q: How about in the other plastic [bag] colored blue[?] [Did] you see that?
A: I did not see [it,] sir.

Q: How about in this white plastic[,] [did] you [see] that?
A: I did not notice this[,] sir.

Q: Now, attached to the record on page 6, Exhibit E is the inventory of plastic sachet of the seized property... (interrupted)

---

[58] TSN, April 18, 2007, pp. 21-22.

COURT:

To make the transcript to be very pictorial, only the dried marijuana leaves were seen by the witness. The one shown to him on the plastic SM bag contained several sachets, the sealer and the scissors were not seen by him.[59] (Emphasis supplied)

The public prosecutor repeatedly asked the same questions regarding the marijuana that Brgy. Chairman Francisco saw, and at one point, even reminded the latter that he was under oath, but the answer remained the same – that he did not see the contents of an SM plastic bag (which, oddly, was never mentioned in the NBI reports, not even in the photocopy of the Inventory of Seized Property[60] that could be found in the records) supposedly containing several sachets of dried marijuana leaves, a plastic container, and a plastic sealer.[61]

The RTC brushed aside Brgy. Chairman Francisco's testimony on the rationale that the latter was protecting appellant because "[i]ndirectly, [appellant] being branded as [a] "pusher" will have an effect on the barangay and o[n] the barangay chairman's leadership."[62] This conclusion, however, is mere speculation on the part of the trial court.

Finally, we note the serious evidentiary gaps in the **second**, **third** and **fourth** links in the chain of custody over the seized dangerous drugs. Based on the records, the seized evidence was turned over by SI Escurel to the Forensic Chemistry Division of the NBI for a quantitative and qualitative examination on September 2, 2004, at 6:30 p.m.[63] In this regard, the prosecution failed to disclose the identities of: (*a*) the person who had custody of the seized items after they were turned over by SI Escurel; (*b*) the person who turned over the items to Forensic Chemist

---

[59] *Id*. at 24-26.

[60] Records, p. 6.

[61] TSN, April 18, 2007, pp. 28-29.

[62] CA *rollo*, p. 26.

[63] TSN, February 1, 2006, p. 24. See also Certification dated September 3, 2004, records, p. 7.

Aranas; and (*c*) the person who had custody thereof after they were examined by the forensic chemist and before they were presented in court.

The totality of these circumstances – the failure to mark the 323 plastic sachets supposedly containing marijuana, the discrepancy in the description of the seized dangerous drugs, and the prosecution's failure to disclose the identities of the persons who had custody of said items after they were turned over by SI Escurel – broke the chain of custody and tainted the integrity of the seized marijuana ultimately presented as evidence before the trial court. Given the prosecution's failure to prove the indispensable element of *corpus delicti*, appellant must necessarily be acquitted on the ground of reasonable doubt.

WHEREFORE, premises considered, the appeal is **GRANTED**. The February 24, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04177 is **REVERSED** and **SET ASIDE**. Appellant Benedicto Veedor Jr. *y* Molod is hereby **ACQUITTED** of the charge of violation of Section 11, Article II of Republic Act No. 9165, for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED** immediately released from detention unless he is being held for another lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five days from his receipt of this Decision.

SO ORDERED.

Bersamin,[**] *Tijam*, and *Gesmundo*,[***] *JJ.*, concur.

Leonardo-de Castro, J., on official leave.

[**] Per November 29, 2017 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

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

SECOND DIVISION

[G.R. Nos. 224131-32. June 25, 2018]

SM INVESTMENTS CORPORATION, *petitioner, vs.* **MAC GRAPHICS[1] CARRANZ INTERNATIONAL CORP.,** *respondent.*

[G.R. Nos. 224337-38. June 25, 2018]

PRIME METROESTATE, INC., *petitioner, vs.* **MAC GRAPHICS CARRANZ INTERNATIONAL CORP.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; GROUNDS FOR ITS ISSUANCE.— As defined by Section 1, Rule 58 of the Rules of Court, a preliminary injunction is an order granted at any stage of an action or proceeding prior to judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts or require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction. As to the grounds for its issuance, a preliminary injunction may be granted when it is established that: (a) the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

---

[1] Also referred to as "MacGraphics" in other parts of the *rollo*.

2. ID.; ID.; ID.; REQUISITES TO JUSTIFY THE ISSUANCE OF A WRIT OF PRELIMINARY MANDATORY INJUCTION (WPMI).— The Court enumerated the requisites to justify the issuance of a WPMI in *Heirs of Melencio Yu v. Court of Appeals* and explained the ramifications of its issuance, to wit: x x x To justify the issuance of a writ of preliminary mandatory injunction, it must be shown that: (1) the complainant has a clear legal right; (2) such right has been violated and the invasion by the other party is material and substantial; and (3) there is an urgent and permanent necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise since, to be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law. As this Court opined in [*Sps.*] *Dela Rosa v. Heirs of Juan Valdez*: A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the *status quo* between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction. The Court in *Power Sites and Signs, Inc. v. United Neon (a Division of Ever Corporation)* stated that before a court grants injunctive relief, the complainant must demonstrate that: he is entitled to the relief sought, the actual or threatened violation of complainant's rights, the probability of irreparable injury, and the inadequacy of pecuniary compensation as relief.

APPEARANCES OF COUNSEL

Tan Acut Lopez and Pison Law Offices for SM Investments Corp.

Chua Lim and Associates for Mac Graphics Carranz International Corp.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court are petitions[2] for review on *certiorari* (Petitions) under Rule 45 of the Rules of Court assailing the Decision[3] of the Court of Appeals[4] (CA) dated December 22, 2015 in CA-G.R. SP Nos. 132392 and 132412 and the Resolution[5] dated March 31, 2016. The CA Decision denied the petitions for *certiorari* under Rule 65 filed by petitioner SM Investments Corporation (SMIC) and petitioner Prime Metroestate, Inc. (PMI) before the CA while the CA Resolution denied their motions for reconsideration.

Facts and Antecedent Proceedings

On November 24, 2006, respondent Mac Graphics Carranz International Corp. (Mac Graphics), which is engaged in advertising and operation of billboards and other outdoor advertising media, entered into a Contract of Lease[6] (lease contract) with Pilipinas Makro, Inc. (Makro) for exclusive use of the latter's billboard sites located at Makro EDSA Cubao, Quezon City (Makro-Cubao) and Makro Makati City (Makro-Makati) for a period of 20 years.[7]

Among the provisions of the lease contract are:

2. **Term**. This Contract shall be for a period of Twenty (20) years which may be renewed upon the terms and conditions

---

[2] *Rollo* (G.R. Nos. 224131-32), Vol. I, pp. 3-30, excluding Annexes; *rollo* (G.R. Nos. 224337-38), pp. 8-39, excluding Annexes.

[3] *Id*. at 32-52; *id*. at 40-61. Penned by Associate Justice Carmelita Salandanan Manahan, with Associate Justices Japar B. Dimaampao and Franchito N. Diamante concurring.

[4] Eighth (8th) Division.

[5] *Rollo* (G.R. Nos. 224131-32), Vol. I, pp. 54-57; *rollo* (G. R. Nos. 224337-38), pp. 62-65.

[6] *Id*. at 58-67; *id*. at 68-77.

[7] *Id*. at 35; *id*. at 43.

mutually acceptable to both parties. x x x The lease term shall commence, as follows:

a. For Lot 1 (EDSA Cubao) the contract shall commence on 15 January 2007 and end on midnight of 14 January 2027 x x x.

b. For Lot 2 (Makati City) the contract shall commence on 15 January 2007 and end on midnight of 14 January 2027 x x x.

x x x x x x x x x

Should LESSEE fail to obtain the necessary permits and licenses to legally conduct its business in the leased premises on the commencement dates mentioned above, the LESSOR may pre-terminate this Contract immediately, and the security deposits shall be forfeited in favor of LESSOR. x x x

x x x x x x x x x

5. **Licenses and Permits**. Licenses and permits shall be secured by the LESSEE, cost and fees required in the processing shall be shouldered by the **LESSEE**. The **LESSOR** shall however assist the **LESSEE** in securing the following licenses and permits for the operation of the latter's business in the **LEASED PREMISES**:

a. Barangay Permit
b. Business Permit
c. Building Permit/Sign Permit

Payment of the afore-cited licenses and/or permits shall be borne by the **LESSEE**.

x x x x x x x x x

11. **Warranties of the LESSEE.**

x x x x x x x x x

b. That it shall strictly comply with and perform all the terms and conditions of the lease.

x x x x x x x x x

e. Before the actual start of construction of its structures, that it has covered all the improvements built on the Lot

with sufficient "All-Risk" property insurance cover in an amount not lower than Php 15,000,000 for Sucat site, Php 2,000,000 for Cubao site, and 1,000,000 for Makati including third party liability cover in an amount not lower than Php 10,000,000 for each site or per location during the construction phase of said improvements, and subsequently during the entire term of this Contract including the time of actual and total vacation of the leased premises by **LESSEE**. The insurance policies shall only be obtained from reputable insurance companies acceptable to the **LESSOR**. x x x

12. **Rescission**. In the event of default, breach or falsity in any of the warranties, representations and undertakings of the parties and/or in case of any violation of the provisions hereof, the non-defaulting party shall have the option to rescind, terminate, or cancel this lease upon written notice to that effect, or to demand specific performance hereof against the other, with the right to claim for consequent damages in any case.

x x x x x x x x x

14. Pretermination of Lease. This Contract may be pre-terminated:

x x x x x x x x x

c. by either party, if the other party fails to comply with any of its obligations under this Contract (other than as specified in Section 3 [**Rental fee**]) and such breach is not remediable, or if remediable, shall is (sic) unremedied for a period of ninety (90) days after written notice thereof shall have been given by the terminating party to the other party[.][8]

Makro is one of the companies where SMIC, as an incorporator, has substantial interest and such interest existed at the time when Mac Graphics and Makro entered into the lease contract.[9] SMIC owns 10% of the capital stock of Makro while Rappel Holdings, Inc., which is owned by SMIC, owns 50%.[10]

[8] *Id*. at 59-64; *id*. at 69-74.

[9] *Rollo* (G.R. Nos. 224337-38), p. 49.

[10] *Rollo* (G.R. Nos. 224131-32) Vol. I, p. 5.

SMIC alleges that it is a publicly-listed holding company of the SM Group of Companies and while it is not engaged in the business of shopping mall development and management, retail merchandising, financial services, real estate development, and tourism, it has interests in the respective companies belonging to the SM Group of Companies that are engaged therein.[11] It also alleges that it has never operated the properties which Makro used to operate and it does not operate SM Hypermart,[12] which is being operated by an independent corporation.[13]

Makro, which operated the Makro retail stores in the country, was originally a partnership among the SM Group of Companies, SHV Holdings N.V. of the Netherlands, and the Ayala Group of Companies.[14] SMIC was not a party to the lease contract and contended that Makro operated independently and its management was left to its own corporate officers.[15]

Mac Graphics offered the leased billboards for advertising to the public and contracted with Asiawide Refreshments Corp. and Aboveboard Multimedia Services for the use of the billboard sites.[16] Mac Graphics also caused the necessary repair, retrofitting and improvement of the billboard sites to suit the design of its outdoor advertising media.[17]

Mac Graphics and Makro implemented the lease contract at Makro-Cubao and Makro-Makati for almost two years from its effectivity on January 15, 2007.[18] Sometime in 2007, the

---

[11] *Id*.

[12] Also referred to as Hypermarket in some instances.

[13] *Rollo* (G.R. Nos. 224131-32), Vol. I, p. 5.

[14] *Id*.

[15] *Id*. at 5, 8.

[16] *Rollo* (G.R. Nos. 224337-38), p. 43.

[17] *Id*.

[18] *Id*.

majority shareholders of Makro, which included SMIC, increased their ownership of Makro to 60%.[19]

Makro sent a letter[20] dated October 6, 2008 to Mac Graphics terminating the lease contract effective immediately because of the latter's alleged failure to obtain the relevant Metro Manila Development Authority (MMDA) and local government permits and to obtain a comprehensive all-risk property insurance for the sites.[21] Makro averred that the 90 days "remedy period" of the lease contract does not apply because Mac Graphics' violation was not remediable.[22] At any rate, there was no compliance within such 90-day period because the insurance policies were not comprehensive and did not cover the stipulated third party liability, and the third party liability policies were issued in April 2009 or beyond the 90-day period.[23]

Mac Graphics objected to the termination in its letter dated October 22, 2008.[24] SMIC's counsel sent a letter on January 15, 2009 reiterating the termination of the lease contract.[25] Mac Graphics answered in a letter dated January 23, 2009, stating its compliance with the provisions of the lease contract.[26] A meeting among representatives of Mac Graphics, Makro and SMIC was subsequently held.[27]

Makro and SMIC then removed Mac Graphics' billboards and other advertising media installed at Makro-Cubao and Makro-Makati.[28] They also prevented Mac Graphics from entering the

---

[19] *Id*. at 49.

[20] *Id*. at 78.

[21] *Id*. at 44.

[22] *Id*. at 50.

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

[24] *Id*. at 44.

[25] *Id*.

[26] *Id*.

[27] *Id*.

[28] *Id*.

leased premises.[29] Mac Graphics sent a letter dated July 31, 2009 to Makro and SMIC expressing its objection to the unilateral removal or dismantling of the billboards and other advertising media and its demand for Makro to cease from further infringing upon its rights under the lease contract.[30] Mac Graphics' demand went unheeded.[31]

In 2009, a plan was implemented to convert Makro outlets to SM Hypermart outlets.[32]

On November 12, 2009, Mac Graphics filed before the Regional Trial Court, Branch 204[33] (RTC), Muntinlupa City, a Complaint[34] for "Permanent Injunction and Declaration of Subsistence of Contract; Damages with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction" against Makro and SMIC docketed as Civil Case No. 09-124.[35]

SMIC filed its Answer (with Compulsory Counterclaim)[36] and reiterated that since it is not privy or party, successor-in-interest, or assign of the lease contract, then Mac Graphics has no cause of action against it.[37]

Makro filed its Answer with Compulsory Counterclaims[38] dated March 14, 2011. Makro insisted that Mac Graphics has no cause of action against it and the termination of the lease contract was legal.[39]

---

[29] *Id*.

[30] *Id*. at 44-45.

[31] *Id*. at 45.

[32] *Id*. at 49.

[33] *Id*. at 41, 207.

[34] *Id*. at 79-97, excluding Annexes.

[35] *Id*. at 45.

[36] *Id*. at 47.

[37] *Id*. at 49.

[38] *Id*. at 207-225.

[39] *Id*. at 51.

The RTC Ruling

After presentation of evidence, the RTC issued an Order[40] dated April 22, 2013 granting the application for a Writ of Preliminary Mandatory Injunction (WPMI), upon the filing of a ₱5 million bond. The RTC ruled that the evidence presented by Mac Graphics initially showed that there was a breach of the lease contract with respect to the period of its existence,[41] and that the lease contract was pre-terminated by Makro without giving Mac Graphics a chance to remedy any violation that Makro alleged to have been committed by Mac Graphics.[42]

Regarding SMIC's contention that it is not privy to the lease contract, the RTC stated that SMIC, being majority owner of Makro, could influence any major decision of the latter and SMIC even re-named Makro-Cubao and Makro-Makati as SM Hypermart.[43] The RTC ruled that SMIC, although not a party to the lease contract, had received benefits by the decision of Makro to terminate the same, *i.e.*, by the dismantling of the structures/advertisements already placed by Mac Graphics in Makro-Cubao and Makro-Makati, and subsequently substituting them with advertisements of SMIC.[44]

As to damages, the RTC ruled that apart from the profits that Mac Graphics could have realized from its existing and future contracts, the good will or reputation that it had built in the realm of advertisements had been soiled.[45] As such, to the mind of the RTC, the injuries which Mac Graphics might have sustained and would sustain as a result of the act of Makro and SMIC are irreparable and could not be remedied by a simple computation of damages before the main issue of the case could be finally heard.[46]

---

[40] *Id*. at 347-357. Penned by Presiding Judge Juanita T. Guerrero.

[41] *Id*. at 354.

[42] *Id*. at 355.

[43] *Id*. at 354-355.

[44] *Id*. at 355.

[45] *Id.*

[46] *Id*.

The dispositive portion of the said Order states:

WHEREFORE, premises considered, the Application for a Writ of Preliminary Mandatory Injunction filed by plaintiff MACGRAPHICS CARRANZ INTERNATIONAL CORP. (MACGRAPHICS) is hereby GRANTED. Let a Writ of Preliminary Mandatory Injunction be issued against the defendants MAKRO and SMIC, upon filing of bond by MACGRAPHICS in the amount of FIVE MILLION PESOS (Php 5,000,000.00) conditioned upon the payment of damages which defendants may incur as a result of the issuance hereof, should the Writ be adjudged later on as improper.

Accordingly, upon approval of the bond, Defendants PILIPINAS MAKRO INC. (MAKRO) and SM INVESTMENTS CORPORATION (SMIC) and all persons/entities claiming rights under them are hereby directed:

1. To restore plaintiff to the possession of the billboard structures in MAKRO Cubao and MAKRO Makati for its use in accordance with the Contract of Lease dated November 24, 2006 entered into between MAKRO and MACGRAPHICS;

2. To allow plaintiff the unrestrained use of the Billboard structures in MAKRO Cubao and MAKRO Makati referred to in the Contract of Lease of November 24, 2006 subject to the monthly rental payments agreed upon in the said contract. Said rental payments shall become due upon the defendants' turn-over of possession of said structures to the plaintiff; and

3. To cease and desist from doing any act of dispossession of said billboard structures against the plaintiff in MAKRO Cubao and MAKRO Makati; until further orders from this court.

The Sheriff of this court is directed to personally furnish the parties herein named, a copy of this Order at the expense of the plaintiff.

IT IS SO ORDERED.[47]

SMIC filed a motion for reconsideration while Makro filed a motion for reconsideration with motion for substitution of PMI in lieu of Makro, by reason of Makro's change of name.[48]

---

[47] *Id*. at 356-357.

[48] See *id*. at 52.

As of December 14, 2012, Makro amended its corporate name to "Prime MetroEstate, Inc."[49]

The RTC, in its Order[50] dated August 14, 2013, granted the motion for substitution but denied the motions for reconsideration. The dispositive portion of the said Order states:

> WHEREFORE, premises considered, the Motion for Reconsideration of the Order dated 22 April 2013 is hereby DENIED. Prime Metroestate, Inc. (Formerly: Pilipinas Makro, Inc.), is hereby substituted to MAKRO in view of the amendment of the latter's Articles of Incorporation. Let copies of the orders, decision, and other processes of this court addressed to MAKRO be sent instead to Prime Metroestate, Inc. (Formerly: Pilipinas Makro, Inc.).
>
> SO ORDERED.[51]

SMIC and PMI filed their respective Rule 65 Petitions for *Certiorari*[52] with the CA (CA Petitions) alleging grave abuse of discretion. The CA Petitions were later consolidated.

The CA Ruling

The CA denied the CA Petitions and affirmed the RTC Orders[53] granting the WPMI (RTC Orders). The CA stated that the rule is well-entrenched that the issuance of a WPMI rests upon the sound discretion of the trial court.[54] Generous latitude is given to the trial court for the reason that conflicting claims in an application for a provisional writ involves a factual determination,

---

[49] Omnibus Motion for Substitution of Defendant Filipinas Makro and for Reconsideration of the Order dated 22 April 2013, *id.* at 358-376, including Annexes.

[50] *Rollo* (G.R. Nos. 224337-38), p. 377.

[51] *Id*.

[52] *Rollo* (G.R. Nos. 224131-32), Vol. I, pp. 513-538; *rollo* (G.R. Nos. 224337-38), pp. 378-400.

[53] Order granting the WPMI and Order denying the Motion for Reconsideration of the WPMI Order.

[54] *Rollo* (G.R. Nos. 224337-38), p. 57.

which is not a function of the appellate court.[55] The CA found no grave abuse of discretion on the part of the RTC[56] after it concurred with the RTC that based on the evidence presented by Mac Graphics, all the requisites for the issuance of a WPMI have been complied with.[57]

The CA upheld the RTC's finding that Makro pre-terminated its 20-year lease contract with Mac Graphics without giving the latter a chance to rectify or remedy any alleged violation thereof, with the lease contract existing for only about two years.[58] As a result, other clients also terminated their contract with Mac Graphics and apart from losing profits, its goodwill or reputation was soiled.[59] The CA also agreed with the RTC that the injuries which Mac Graphics might have sustained and would sustain could not be remedied by a simple computation of damages before the main issues of the cases could be finally heard; and Mac Graphics would continue to suffer irreparable injury if it would not be restored to the same position it had before the termination of the lease contract by Makro.[60]

The dispositive portion of the CA Decision states:

WHEREFORE, the Petitions are **DENIED**. The April 22, 2013 and August 14, 2013 Orders of the Regional Trial Court, Branch 204, Muntinlupa City are hereby **AFFIRMED**.

SO ORDERED.[61]

SMIC and PMI (formerly Makro) filed their respective motions for reconsideration, which the CA denied in its Resolution dated March 31, 2016, the dispositive portion of which states:

WHEREFORE, the Motions for Reconsideration are **DENIED**.

---

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

[56] *Id*. at 58, 60.

[57] *Id*. at 59.

[58] *Id*.

[59] *Id*.

[60] *Id.*

[61] *Id*. at 60.

SO ORDERED.[62]

Hence, the Petitions of SMIC and PMI. Mac Graphics filed its Comment/Opposition (Re: Petitioner SMI's Petition for Certiorari dated 04 May 2016)[63] and Comment/Opposition (Re: Petitioner PMI's Petition for Review on Certiorari dated 10 June 2016).[64] SMIC filed a Reply[65] to the Comment/ Opposition of Mac Graphics.

Issues

The PMI Petition essentially raises the following issues:

1. Whether the CA erred in affirming the RTC Orders on the ground that the factual determination of conflicting claims in an application for a provisional writ is not the function of appellate courts.

2. Whether the CA erred in granting the injunctive relief despite absence of: (a) a right *in esse* of Mac Graphics that warranted protection; (b) proof of material and substantial violation of Mac Graphics' right; and (c) grave and irreparable damage that Mac Graphics would sustain if no such injunctive writ was issued.

3. Whether the CA erred in granting the injunctive relief despite it being clear that it has become impossible to compel PMI to do the acts subject of the mandatory injunctive writ because the leased properties were sold by PMI to Super Shopping Market, Inc. prior to the rendition of the RTC Order granting the WPMI.[66]

On the other hand, the SMIC Petition raises the following issues:

---

[62] *Id*. at 64.

[63] *Rollo* (G.R. Nos. 224131-32), Vol. II, pp. 723-740, including Annex.

[64] *Rollo* (G.R. Nos. 224337-38), pp. 557-581, excluding Annexes.

[65] *Rollo* (G.R. Nos. 224131-32), Vol. II, pp. 765-778.

[66] *Rollo* (G.R. Nos. 224337-38), pp. 17-18, 34.

1. Whether the CA, by making general conclusions in the challenged Decision without addressing the issues and arguments raised by SMIC, has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision.

2. Whether the CA decided a question of substance in a way not in accord with law or with the applicable decisions of the Court in upholding the RTC's grave abuse of discretion when it issued a mandatory injunction against SMIC despite the following:

a) SMIC's shareholdings in Makro do not justify treating these corporations as one and against whom injunctive relief may be issued jointly.

b) SMIC does not operate SM Hypermart.

c) Mac Graphics has not established any clear and positive right to any injunctive relief against SMIC.[67]

The Court's Ruling

Once more the Court is tasked to determine the propriety of the issuance of a WPMI. The crux of these consolidated Petitions is the propriety of the WPMI issued by the RTC and upheld by the CA.

As defined by Section 1, Rule 58 of the Rules of Court, a preliminary injunction is an order granted at any stage of an action or proceeding prior to judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts or require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.

As to the grounds for its issuance, a preliminary injunction may be granted when it is established that:

(a) the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring

[67] *Rollo* (G.R. Nos. 224131-32), Vol. I, pp. 12-13.

the performance of an act or acts, either for a limited period or perpetually;

(b) the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.[68]

The Court enumerated the requisites to justify the issuance of a WPMI in *Heirs of Melencio Yu v. Court of Appeals*[69] and explained the ramifications of its issuance, to wit:

x x x To justify the issuance of a writ of preliminary mandatory injunction, it must be shown that: (1) the complainant has a clear legal right; (2) such right has been violated and the invasion by the other party is material and substantial; and (3) there is an urgent and permanent necessity for the writ to prevent serious damage.[70] An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise since, to be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law.[71] As this Court opined in [*Sps.*] *Dela Rosa v. Heirs of Juan Valdez*:[72]

---

[68] RULES OF COURT, Rule 58, Sec. 3.

[69] 717 Phil. 284 (2013).

[70] *Id*. at 295, citing *Pelejo v. Court of Appeals*, 203 Phil. 29, 33 (1982) as cited in *Semirara Coal Corporation v. HGL Development Corporation*, 539 Phil. 532, 545 (2006); *Pablo-Gualberto v. Gualberto V*, 500 Phil. 226, 253 (2005); *De la Cruz v. Department of Education, Culture and Sports-Cordillera Administrative Region*, 464 Phil. 1033, 1052 (2004); and *Gateway Electronics Corporation v. Land Bank of the Philippines*, 455 Phil. 196, 210 (2003).

[71] *Id*. at 295-296, citing *Sps. Delos Santos v. Metropolitan Bank and Trust Company*, 698 Phil. 1, 18 (2012) and *Nerwin Industries Corporation v. PNOC-Energy Development Corporation*, 685 Phil. 412, 426 (2012).

[72] 670 Phil. 97 (2011).

> A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the *status quo* between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.[73]

The Court in *Power Sites and Signs, Inc. v. United Neon (a Division of Ever Corporation)*[74] stated that before a court grants injunctive relief, the complainant must demonstrate that: he is entitled to the relief sought, the actual or threatened violation of complainant's rights, the probability of irreparable injury, and the inadequacy of pecuniary compensation as relief.[75] The Court explained:

> A preliminary injunction may be granted only where the plaintiff appears to be clearly entitled to the relief sought[76] and has substantial interest in the right sought to be defended.[77] While the existence of the right need not be conclusively established, it must be clear.[78] The standard is even higher in the case of a preliminary mandatory injunction, which should only be granted—

---

[73] *Heirs of Melencio Yu v. Court of Appeals*, *supra* note 69, at 296, citing *Sps. Dela Rosa v. Heirs of Juan Valdez*, *id*. at 110.

[74] 620 Phil. 205 (2009).

[75] *Id.* at 207, citing *Golding v. Balatbat*, 36 Phil. 941 (1917).

[76] *Id*. at 217, citing RULES OF COURT, Rule 58, Sec. 3; *Buayan Cattle Co., Inc. v. Quintillan*, 213 Phil. 244, 254 (1984) and *Toyota Motor Philippines Corporation v. Court of Appeals*, 290 Phil. 662, 681-682 (1992).

[77] *Id*., citing *Angela Estate, Inc. v. Court of First Instance of Negros Occidental*, 133 Phil. 561, 572 (1968).

[78] *Id*., citing *Developers Group of Companies, Inc. v. Court of Appeals*, 292 Phil. 723, 729 (1993).

> x x x in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to reestablish and maintain a preexisting continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation x x x.[79]

x x x x x x x x x

It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no "irreparable injury" as understood in law. Rather, the damages alleged by the petitioner, namely, "immense loss in profit and possible damage claims from clients" and the cost of the billboard which is "a considerable amount of money"[80] is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in *Social Security Commission v. Bayona*:[81]

> Damages are irreparable within the meaning of the rule relative to the issuance of injunction where **there is no standard by which their amount can be measured with reasonable accuracy**. "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which **produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement**." An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that **its pecuniary value will not fairly recompense the owner of the loss thereof**. (Emphasis supplied)

---

[79] *Id*., citing *Manila Electric Railroad and Light Company v. Del Rosario*, 22 Phil. 433, 437 (1912).

[80] *Id*. at 219; citation omitted.

[81] 115 Phil. 106, 110-111 (1962).

Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages.[82] Thus, a preliminary injunction is not warranted. As previously held in *Golding v. Balatbat*,[83] the writ of injunction—

> should *never* issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.[84]

In the recent case of *AMA Land, Inc. v. Wack Wack Residents' Association, Inc.*,[85] the Court further observed:

> Thus, to be entitled to the injunctive writ, the petitioner must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by the act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[86]

The grant or denial of the injunctive relief rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the conclusive determination by such court; and the exercise of judicial discretion by such court will not be interfered with, except upon a finding of grave abuse of discretion.[87]

---

[82] *Power Sites and Signs, Inc. v. United Neon (a Division of Ever Corporation)*, *supra* note 74, at 219, citing *Ollendorff v. Abrahamson*, 38 Phil. 585 (1918).

[83] *Supra* note 75, at 946.

[84] *Power Sites and Signs, Inc. v. United Neon (a Division of Ever Corporation*, *supra* note 74, at 219-220.

[85] G.R. No. 202342, July 19, 2017.

[86] *Id*. at 5, citing *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, 684 Phil. 283, 292 (2012).

[87] *Id*. at 5-6, citing *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, *id*. at 292-293.

In the issuance of the injunctive writ, grave abuse of discretion implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[88]

x x x x x x x x x

The Court reiterated in *Searth Commodities Corp. v. Court of Appeals*[89] that:

> The prevailing rule is that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. x x x There would in effect be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioners are inceptively bound to prove.[90]

In determining the propriety of the issuance of the WPMI in the instant case and whether the courts below acted with grave abuse of discretion, an inquiry must be made on whether Mac Graphics was able to demonstrate *prima facie* a right *in esse* or one that is clear and unmistakable that the Court must protect via a WPMI.

From the Complaint[91] and the Answer[92] of Makro, the controversy arose as a result of the October 6, 2008 termination letter of Makro based on the following alleged "major violations of the Contract of Lease":[93]

---

[88] *Id*. at 6, citing *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas*, *id*. at 293.

[89] G.R. No. 64220, March 31, 1992, 207 SCRA 622.

[90] *AMA Land, Inc. v. Wack Wack Residents' Association, Inc.*, *supra* note 85, at 11, citing *Searth Commodities Corp. v. Court of Appeals*, *id*. at 629-630.

[91] *Rollo* (G.R. Nos. 224337-38), pp. 79-97.

[92] *Id*. at 207-225.

[93] *Id*. at 123.

x x x operating the billboards without the relevant MMDA and local government permits, in violation of the Contract and MMDA regulations [and] x x x MCIC [Mac Graphics] has not secured a comprehensive all-risk property insurance, including third party liability cover for the billboard sites as required under the Contract. x x x[94]

Mac Graphics responded to the termination letter to the effect that while the lease contract provides that Makro is duty bound to assist Mac Graphics in securing barangay permit, business permit and building permit/sign permit, it was Makro's sole responsibility to obtain the same since the billboard towers are already existing at the stores of Makro.[95] After those permits are obtained, there would be no more need to secure any permit from MMDA nor the local government unit concerned since the billboard structures are standing on private land, which is owned by Makro, the lessor, and not on a public property where MMDA clearance is required.[96] Mac Graphics also stated that if there would be any permit that would be required after the said permits, it would only come from the Department of Public Works and Highways (DPWH) and Makro failed to assist Mac Graphics in securing the DPWH permit which was not one of those stipulated in the lease contract.[97] As to the issue of the comprehensive insurance, Mac Graphics interposed that "the country was plagued with a devastating typhoon *Milenyo*, that caused the destruction of several billboards in the metropolis hence would explain why no insurance company at such time would want to secure such type of property."[98]

Mac Graphics took the position that "such inability to comply to such requirements of the contract [w]as not without justifiable

---

[94] *Id*.

[95] Annex "I" of the Complaint, which is a letter dated October 22, 2008 addressed to Makro and signed by Mac Graphics' counsel; *rollo* (G.R. Nos. 224337-38), pp. 124-125.

[96] *Id*.

[97] *Id*.

[98] *Id*. at 125.

reasons, hence cannot be considered as valid grounds for the pre-termination" of the lease contract, and a period of 90 days after written notice is provided therein to remedy such alleged breach.[99] Thus, Mac Graphics undertook "to secure the necessary permit from DPWH as well as ensure that the necessary comprehensive insurance for [the] leased premises has been obtained" within 90 days from Mac Graphics' receipt of Makro's October 6, 2008 letter.[100]

Mac Graphics reiterated its position in its Complaint and invoked Articles 1266[101] and 1267[102] of the Civil Code to excuse itself from securing the stipulated insurance for the billboards and other outdoor advertising materials since the circumstances brought about by typhoon *Milenyo* had "not only rendered the obligation **so difficult as to be manifestly beyond the contemplation of the parties**, but in fact made it **legally and physically impossible under the circumstances** then prevailing."[103] Mac Graphics likewise invoked the 90-day curing period under the lease contract.[104]

In its Answer, Makro controverted Mac Graphics' allegations and averred that as Mac Graphics itself admitted, none of the stipulated licenses/permits and all-risk insurance coverage was secured prior to, or even on, January 15, 2007,[105] which was imperative for Mac Graphics to secure the same prior to the commencement of the lease, and Makro merely enforced its

---

[99] *Id*. Referring to item 14(c) of the Contract of Lease.

[100] *Id*.

[101] ART. 1266. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible without the fault of the obligor.

[102] ART. 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

[103] Complaint, par. 1.14, *rollo* (G.R. Nos. 224337-38), p. 83.

[104] See *id.*

[105] Makro 's Answer, par. 36, *id*. at 216-217.

option under the lease contract to rescind and terminate the lease by reason thereof.[106] Thus, Makro notified Mac Graphics of the termination of the lease contract and returned to the latter the checks representing the lease payments for the year 2009.[107]

On the 90-day "remedy period" under Section 14(c) of the lease contract, Makro argued that the licenses/permits and insurance stipulations are by their nature not remediable since Mac Graphics did not have them prior to the commencement of the lease.[108] Makro further stated that at any rate, Mac Graphics did not even comply within the 90-day period, and the insurance policies (Annexes "K" to "N" to the Complaint), while issued in October 2008, were not comprehensive and did not cover the stipulated third party liability while the third party policies (Annexes "O" to "R" to the Complaint) were all issued in April 2009 or way beyond the 90-day period.[109]

Makro concluded that Mac Graphics has no cause of action against it and the Complaint should be dismissed in its entirety.[110] As additional defense, it invoked Article 1191[111] of the Civil Code as its legal justification in resolving the lease contract.[112]

---

[106] *Id.*, par. 37, *id*. at 217.

[107] *Id*.

[108] *Id*., par. 40, *id*. at 218.

[109] *Id*., par. 41, *id*.

[110] *Id*., par. 54, *id*. at 221.

[111] ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

[112] Makro's Answer, par. 55, *rollo* (G.R. Nos. 224337-38), p. 221.

On the supposed compliance with the licenses/permits and insurance stipulations, SMIC points out that Mac Graphics secured after the commencement of the lease on January 15, 2007, a purported "DPWH Clearance" dated June 10, 2008 (Exh. "M-1") and a purported insurance policy dated October 23, 2008 to cover the period October 23, 2008 to October 23, 2009 (Exh. "M-6-PI"), which was only for the Makro-Cubao leased property and did not cover the Makati-based property.[113]

Given the respective positions of the parties as enunciated above, both the CA Decision and RTC Orders, while both did not make a categorical finding that Mac Graphics has demonstrated *prima facie* its right to continue enforcing the lease contract despite its pre-termination by PMI, which is clear and unmistakable or *in esse*, they effectively made such a finding with the following pronouncements:

From the CA Decision:

> Here, based on the evidence presented by x x x Mac Graphics, the trial court found that all the requisites for the issuance of a WPMI were present. The trial court found that Makro pre-terminated its twenty (20) year Lease Contract with x x x Mac Graphics without giving the latter a chance to rectify or remedy any alleged violations of such contract. The Lease Contract existed for only about two (2) years. x x x[114]

From the RTC Order dated April 22, 2013:

> A careful evaluation of the evidence presented by the plaintiff [Mac Graphics] initially shows with respect to the period of its existence, a breach in the Contract of Lease executed by MAKRO and MACGRAPHICS. The contract's term of lease was for twenty (20) years which was cut short by the unilateral and immediate termination by MAKRO. x x x
>
> x x x x x x x x x
>
> MACGRAPHICS had shown that the contract of lease was pre-terminated by MAKRO without giving it a chance to rectify or remedy

---

[113] *Rollo* (G.R. Nos. 224131-32), Vol. I, p. 7.

[114] *Rollo* (G.R. Nos. 224337-38), p. 59.

any violations that MAKRO alleged to have been committed by MACGRAPHICS. The contract is shown to have been in existence for a little less than two (2) years of the 20 year term, when MACGRAPHICS pre-terminated it. x x x[115]

In fine, both the RTC and the CA initially determined that the pre-termination by PMI without according Mac Graphics the 90-day "remedy period" to correct the alleged violations by the latter is not justified and, in a way, invalid.

To the Court, a finding of the existence of a clear and unmistakable right in favor of Mac Graphics necessarily presupposes that PMI's pre-termination of the lease contract is not valid. Conversely, a finding that PMI's pre-termination is valid and justified necessarily renders naught whatever rights emanating from the lease contract that Mac Graphics may have.

Indeed, the resolution of whether Mac Graphics has any right arising from the lease contract after its pre-termination by PMI hinges on the validity of such pre-termination. The issue on the existence of right in favor of Mac Graphics is the mirror image, so to speak, of the issue on the validity of PMI's pre-termination of the lease contract, and *vice versa*.

The parties are relentless in their contrary positions on these issues. Mac Graphics admits its non-compliance with the licenses/permits and insurance stipulations in the lease contract, but justifies such breach by invoking the presence of circumstances that rendered it legally and physically impossible to comply therewith and PMI's disregard of the 90-day "remedy period." On PMI's part, the outright pre-termination of the lease contract is justified because Mac Graphics failed to obtain the stipulated licenses/permits and insurance on the commencement date of the lease contract, which is January 15, 2007. Also, the insurance obtained was not compliant and obtained beyond the 90-day "remedy period."

Clearly, PMI has presented a substantial challenge against or contradiction of Mac Graphic's position. A genuine doubt,

---

[115] *Id*. at 354-355.

which is more legal than factual, exists on the validity of PMI's act of pre-termination and the tenability of Mac Graphics' excuse from its non-compliance with the stipulations of the lease contract.

Being more of a legal than factual determination, the lower courts should have been more circumspect before making an "initial" resolution thereof. While the pre-termination of the lease contract and the non-observance of the 90-day "remedy period" are established and undisputed facts, which the lower courts took in consideration in issuing the WPMI, the non-compliance of the licenses/permits and insurance stipulations by Mac Graphics is likewise undisputed, Mac Graphics having duly acknowledged the same in the latter's Complaint and response letter to the termination notice. Yet, the lower courts did not seem to have factored such non-compliance in their determination of whether or not Mac Graphics had a clear and unmistakable right in its favor that would entitle it to a WPMI.

The following pronouncement of the Court in *Sps. Dela Rosa v. Heirs of Juan Valdez*[116] cited in *Heirs of Melencio Yu v. Court of Appeals,*[117] is relevant:

> x x x Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is **doubtful or disputed**, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is **not vitiated by any substantial challenge or contradiction**.[118] (Emphasis and underscoring supplied)

Inasmuch as the right being claimed by Mac Graphics is substantially challenged or contradicted by PMI, a doubt exists

---

[116] *Supra* note 72.

[117] *Supra* note 69.

[118] *Id*. at 296, citing *Sps. Dela Rosa v. Heirs of Juan Valdez*, *supra* note 72, at 110.

whether Mac Graphics is entitled to the final relief sought by it in its Complaint, which is "[to direct and require] Makro and SMI to x x x honor and faithfully comply with the subsisting Contract [of Lease] until its final termination on 14 January 2027 [and] restore [its] lawful possession, use and enjoyment of the leased premises under the Contract [of Lease] x x x."[119]

Given the foregoing, the Court is of the opinion, and so holds, that Mac Graphics has failed to establish *prima facie* a right *in esse* or a clear and unmistakable right, rendering the issuance of the WPMI improper. Given the legal complexity of Mac Graphic's cause of action *vis-à-vis* PMI's defenses, it is unclear at this point whether Mac Graphics can enforce the pre-terminated lease contract as a matter of law. There are simply too many legal and factual sub-issues that need to be threshed out before the pre-termination may be declared valid or invalid.

Also, a finding in favor of the existence of a clear and unmistakable right in favor of Mac Graphics, which the lower courts effectively made, is tantamount to a prejudgment of the legality of PMI's pre-termination of the lease contract. PMI's pre-termination has in effect been declared invalid. The existence of Mac Graphics' right consequently negates the validity of the pre-termination by PMI. How can PMI now convince the RTC that the 90-day "remedy period" is not applicable — the breach by Mac Graphics being non-remediable — given the RTC finding that "MACGRAPHICS had shown that the contract of lease was pre-terminated by MAKRO without giving it a chance to rectify or remedy any violations that MAKRO alleged to have been committed by MACGRAPHICS?"[120] This is precisely the absurd situation that would result if there is a prejudgment of the main case as contemplated in *Searth Commodities Corp. v. Court of Appeals*,[121] where there would be a reversal of the rule on the burden of proof since the

---

[119] *Rollo* (G.R. Nos. 224337-38), p. 94.

[120] *Id*. at 355.

[121] *Supra* note 89.

proposition which Mac Graphics is inceptively bound to prove is already assumed.

Going to the grave and irreparable requirement for the issuance of a WPMI, both the CA and RTC found that the injuries which Mac Graphics might have sustained or would sustain as a result of the act of PMI are irreparable and cannot be remedied by a simple computation of damages. The RTC noted:

> x x x Some clients of the plaintiff have also terminated their contract with MACGRAPHICS. Apart from the profits that MACGRAPHICS could have realized from their existing and future contracts, it had soiled the goodwill or reputation that plaintiff had built in the realm of advertisements. x x x[122]

The CA echoed the words of the RTC, to wit:

> x x x As a result, private respondent's other clients also terminated their contract with the former. Apart from losing profits, private respondent's goodwill or reputation was soiled. x x x[123]

During the hearing on its application for a WPMI, Mac Graphics presented two witnesses, namely: Mastroianni Alcala (Alcala), the Executive Assistant of Mac Graphics, and Lea Bon Ceraos (Ceraos), the purchasing and production officer of Mac Graphics.[124] On the damages that Mac Graphics allegedly suffered, Alcala's testimony is summarized in the RTC Order dated April 22, 2013, as follows:

> x x x MAC GRAPHICS incurred tremendous losses in earnings under its advertising contracts with its clients, including lost business opportunities. The most severe is that the company continuously to suffer gross and irreparable damage to its established business reputation which it has been protecting since 1984.[125] Said loss was

---

[122] *Rollo* (G.R. Nos. 224337-38), p. 355.

[123] *Id.* at 59.

[124] RTC Order dated April 22, 2013, *id*. at 349-354.

[125] Mac Graphics was incorporated on June 2, 1994. Securities and Exchange Commission Certificate of Incorporation and Articles of Incorporation of Mac Graphics Carranz International Corporation; *rollo* (G.R. Nos. 224337-38), pp. 98-109.

evidenced by a report dated 15 August 2009 which [Alcala] prepared and noted by Cecilia Edora.

Relative to this case, [Alcala] prepared the Revenue Opportunity for the Remaining Contract Period dated August 15, 2009. Such document represents the revenue opportunities that MAC GRAPHICS was supposed to get from the sites upon marketing to their clients based on the market rate on the ongoing rates of other billboard sites in the same region. It represents actually the market rate, the rental rate that MAC GRAPHICS would charge to its clients for each site. Aside from the prevailing rates in the same area as basis, they also considered the existing contracts with clients. At present, they have existing contracts with Asiawide and Above World Multimedia Services. He described the MAKRO sites in Cubao and Makati as very marketable due to high traffic count and because of the visibility range that upon marketing the sites the value is based on the number of traffic coming along the area.

MAC GRAPHICS['] yearly revenue has reduced greatly as they have around seven (7) billboards in Metro Manila site and two (2) of them were lost, relative to this case. A great percentage of their revenue was lost considering that they invested in improving the two MAKRO structures but they failed to use them for considerable number of years in accordance with their contract. The problem likewise affected their marketing efforts as some of their clients seemed to begin questioning their credibility.[126]

Ceraos, according to the aforesaid RTC Order, testified as follows:

MAC GRAPHICS spent more or less five (5) million pesos covering the labor and materials used in the MAKRO structures. With respect to labor, MAC GRAPHICS had contracts with labor contractor and the designer. For the materials, she had receipts, purchase orders (POs) and vouchers. x x x

MAC GRAPHICS presented two sets of documents in possession of [Ceraos]. One document was for MAKRO Cubao and the other one for MAKRO Makati. In the folder for MAKRO Cubao was a check voucher number 25745 in the amount of ₱360,000.00 payable to Aromin Sy and Associates respecting the payment made for the

[126] RTC Order dated April 22, 2013, *id*. at 352.

designs for MAKRO Cubao and Makati. x x x Attached to the voucher were four (4) official receipt[s] x x x bearing the letterhead of Aromin Sy and Associates representing their payment. x x x

[Ceraos] presented a summary for the MAKRO Makati where vouchers, receipts and labor contract were attached thereto. MAC GRAPHICS hired EC Daughson Incorporated to drill the ground x x x.[127]

In its Complaint, Mac Graphics claims from PMI and SMIC actual damages in the amount of at least ₱1,000,000.00 because PMI and SMIC "wrongfully prevented [Mac Graphics] from executing its advertising contracts with its various clients, needlessly forcing [it] to provide alternative advertising space for some, at greater expense, while losing the business of others entirely[; and] [w]orse, x x x Makro and [SMIC] have irreversibly tarnished [its] established reputation as a reliable, competent and innovative outdoor advertising and comprehensive media company that it has jealously guarded and maintained since its inception in 1984 x x x."[128]

In the Comment/Opposition[129] of Mac Graphics, it cites *Republic v. Principalia Management and Personnel Consultants, Inc.*[130] (*Principalia*) as authority to support its claim that it has suffered irreparable injury. *Principalia*, however, is not comparable to the instant case because what the Court considered therein as not easily quantifiable nor susceptible of simple mathematical computation is the suspension of the license of the respondent therein, the end result of which would even be the closure of its business and the tarnishing of its reputation, which would make it difficult, if not impossible, for it to regain its existing clientele if the immediate implementation of the suspension of its license continued.[131] Besides, the Court found

---

[127] *Id*. at 353-354.

[128] *Id.* at 88.

[129] *Id*. at 557-581, excluding Annexes.

[130] 521 Phil. 718 (2006).

[131] *Id*. at 730.

in *Principalia* that until the appeal with the Secretary of the Department of Labor and Employment was resolved with finality, the respondent therein has a clear and convincing right to operate as a recruitment agency.[132]

The other case cited by Mac Graphics is *Semirara Coal Corporation v. HGL Development Corporation*[133] (*Semirara*) wherein the Court upheld the issuance of a WPMI in favor of the respondent therein. In *Semirara*, as holder of a pasture lease agreement, the respondent therein had a clear and unmistakable right to the possession of the property for a period of 25 years. The petitioner therein even sought permission from the respondent therein to use the subject property therein in 1999. The Court ruled that the damage to the business standing of the respondent therein was irreparable because no fair and reasonable redress could be had by the respondent therein insofar as the damage to its good will and business reputation is concerned because its failure to operate its cattle-grazing business would be perceived as inability on its part to comply with the demands of its customers and sow doubt in its capacity to continue doing business.[134]

Unlike in *Principalia* and *Semirara*, where the businesses of the respondents therein were threatened with suspension of operation or even closure, the impact of the pre-termination of the lease contract under consideration to Mac Graphics is basically the reduction of its revenues. As testified by Alcala, Mac Graphics has around seven billboards in Metro Manila and two of them (those involved in this case) have been lost, resulting in the great reduction of its yearly revenue.[135] Thus, Mac Graphics' injury, if any, is mainly loss of revenues and as such, the same can be measured with reasonable accuracy, easily

---

[132] *Id*.

[133] *Supra* note 70.

[134] *Id*. at 545-546.

[135] RTC Order dated April 22, 2013, *rollo* (G.R. Nos. 224337-38), p. 352.

quantifiable or susceptible of simple mathematical computation. The pecuniary value of such loss will fairly recompense Mac Graphics for which Mac Graphics has put its initial value at ₱1 million in its Complaint. Also, the presentation of the Revenue Opportunity for the Remaining Contract Period dated August 15, 2009, which represents the alleged revenue opportunities that Mac Graphics was supposed to get from the sites in dispute upon marketing to its clients based on the ongoing market rates of other billboard sites in the same region, bolsters the finding that the damage, if any, that Mac Graphics stood to suffer is reparable.

Consequently, the CA committed grave error for upholding the grant of the WPMI by the RTC in favor of Mac Graphics given the patent absence of a clear and unmistakable right of Mac Graphics and its injury, if any, that is easily quantifiable and reparable. The CA Decision is based on a misapprehension of the facts and the legal ramifications of the pre-termination by PMI based on the alleged non-compliance by Mac Graphics of the licenses/permits and insurance stipulations of the lease contract *vis-à-vis* the defenses interposed by Mac Graphics.

In light of the foregoing, the Court finds that the resolution of the third issue in the PMI Petition and the issues raised in the SMIC Petition that do not deal with the requisites for the issuance of a WPMI is, as it would be, superfluous.

WHEREFORE, the Petitions are hereby **GRANTED**. The Court of Appeals Decision dated December 22, 2015 and, consequently, Resolution dated March 31, 2016 in CA-G.R. SP Nos. 132392 and 132412 are hereby **REVERSED** and **SET ASIDE**. The Regional Trial Court of Muntinlupa City, Branch 204 is **DIRECTED** to hear and decide the case on the merits with dispatch.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 226002. June 25, 2018]

LINO A. FERNANDEZ, JR., *petitioner, vs.* **MANILA ELECTRIC COMPANY (MERALCO),** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION; RULES OF PROCEDURE; MUST BE LIBERALLY APPLIED TO PREVENT INJUSTICE AND GRAVE OR IRREPARABLE DAMAGE OR INJURY TO AN ILLEGALLY DISMISSED EMPLOYEE.— [I]n the present case, the NLRC Rules of Procedure must be liberally applied so as to prevent injustice and grave or irreparable damage or injury to an illegally dismissed employee. The matter should be remanded to the NLRC for determination of the inclusions to, and the computation of, the monetary awards due to Fernandez.

2. ID.; ID.; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT AS A MATTER OF RIGHT; AWARD OF SEPARATION PAY AS AN EXCEPTION, WHEN PROPER; STRAINED RELATIONS MUST BE PROVEN BY SUBSTANTIAL EVIDENCE.— Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement **as a matter of right**. The award of separation pay is a **mere exception** to the rule. It is made an alternative relief in lieu of reinstatement in certain circumstances, like: (a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations

between the employer and employee. Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. Nonetheless, the doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone. It cannot be applied indiscriminately since every labor dispute almost invariably results in "strained relations;" otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement. Strained relations must be demonstrated as a fact. It must be adequately supported by substantial evidence showing that the relationship between the employer and the employee is indeed strained as a necessary consequence of the judicial controversy.

3. ID.; ID.; ID.; ID.; REINSTATEMENT; WHEN WARRANTED; CASE AT BAR.— Reinstatement cannot be barred especially when the employee has not indicated an aversion to returning to work, or does not occupy a position of trust and confidence in, or has no say in the operation of, the employer's business. Here, Fernandez's intent and willingness to be reinstated to his former position is evident as early as July 10, 2008 when he filed his Comment with Motion for Re-computation of Monetary Award. He reiterated this on December 17, 2008 in his Urgent Motion to require MERALCO to reinstate him and on January 21, 2009 in his Comment/Opposition to MERALCO's motion to declare full satisfaction of his monetary awards.

4. ID.; ID.; ID.; ID.; BACKWAGES; SHALL INCLUDE THE WHOLE AMOUNT OF SALARIES, PLUS ALL OTHER BENEFITS AND BONUSES, AND GENERAL INCREASES, TO WHICH THE EMPLOYEE WOULD HAVE BEEN NORMALLY ENTITLED HAD HE NOT BEEN ILLEGALLY DISMISSED; CASE AT BAR.— Backwages shall include the whole amount of salaries, plus

all other benefits and bonuses, and general increases, to which Fernandez would have been normally entitled had he not been illegally dismissed. Unless there is/are valid ground/s for the payment of separation pay in lieu of reinstatement, Fernandez's backwages should be computed from the date when he was illegally dismissed on September 14, 2000, until his retirement in April 2009. It shall be subject to legal interest of 12% *per annum* from September 14, 2000 until June 30, 2013, and then to legal interest of 6% interest *per annum* from July 1, 2013 until full satisfaction.

5. ID.; ID.; ID.; ID.; RECEIPT OF SEPARATION PAY IN LIEU OF REINSTATEMENT DOES NOT PRECLUDE ENTITLEMENT TO RETIREMENT BENEFITS BECAUSE BOTH ARE NOT MUTUALLY EXCLUSIVE; RETIREMENT BENEFIT DISTINGUISHED FROM SEPARATION PAY.— In addition, subject to proof of entitlement, Fernandez must receive the retirement benefits he should have received if he was not illegally dismissed. Even if he receives a separation pay in lieu of reinstatement, he is not precluded to obtain retirement benefits because both are not mutually exclusive: Retirement benefits are a form of reward for an employee's loyalty and service to an employer and are earned under existing laws, CBAs, employment contracts and company policies. On the other hand, separation pay is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment and is recoverable only in instances enumerated under Articles 283 and 284 [now 298 and 299] of the Labor Code or in illegal dismissal cases when reinstatement is not feasible.

6. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; A DECISION THAT HAS BECOME FINAL AND EXECUTORY IS IMMUTABLE AND UNALTERABLE; AWARD OF ATTORNEY'S FEES, NOT PROPER IN CASE AT BAR.— On the issue of attorney's fees, We agree with LA Suarez that Fernandez is not entitled thereto. It is an elementary principle of procedure that the resolution of the court in a given issue, as embodied in the dispositive part of a decision or order, is the controlling factor as to

settlement of rights of the parties. The dispositive portion or the *fallo* is the decisive resolution and is the subject of execution. Therefore, the writ of execution must conform to the judgment to be executed, particularly with that which is ordained or decreed in the dispositive portion of the decision, and adhere strictly to the very essential particulars. In this case, the January 30, 2007 Decision of the CA, which does not grant attorney's fees to Fernandez, already became final and executory on May 26, 2008. As such, it is immutable and unalterable. Generally, it may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of law or fact. In opting not to file a petition before the Supreme Court assailing the CA Decision, Fernandez is deemed to have acquiesced to the entirety of the ruling.

APPEARANCES OF COUNSEL

Leonard Peejay V. Jurado Law Office for petitioner.
Meralco Legal Services Department for respondent.

D E C I S I O N

PERALTA, ***J.*:**

This resolves the petition for review on *certiorari* assailing the December 11, 2015 Decision[1] and July 25, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 138212, which affirmed the Resolutions dated August 29, 2014[3] and October 20, 2014[4] of the National Labor Relations Commission *(NLRC)* denying the Verified Petition filed by petitioner Lino A. Fernandez, Jr. *(Fernandez)* under

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Florito S. Macalino and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 56-71.

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

[3] *Id.* at 76-86.

[4] *Id.* at 88-92.

Rule XII (Extraordinary Remedies) of the 2011 NLRC Rules of Procedure, as amended *(NLRC Rules)*.

Petitioner Fernandez was an employee of respondent Manila Electric Company *(MERALCO)* from October 3, 1978 until his termination on September 14, 2000 for allegedly participating in an illegal strike.[5] As a result, he filed a case for illegal dismissal. Contrary to the conclusion reached by the Labor Arbiter *(LA)* and the NLRC, the CA, in CA-G.R. SP No. 95923, declared that Fernandez was illegally dismissed. The dispositive portion of its January 30, 2007 Decision[6] reads:

> **WHEREFORE,** premises considered, the assailed Decision and Resolution of the National Labor Relations Commission are, hereby, **REVERSED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction and a new one entered finding petitioner Lino A. Fernandez to have been illegally dismissed.**
>
> Petitioner Lino Fernandez is found to have been illegally dismissed. Private respondent Meralco is, hereby, ordered to **REINSTATE** Lino Fernandez to his former position, without loss of seniority rights and other privileges appurtenant thereto, with full backwages from the time of his dismissal until he is actually reinstated, or to pay him separation pay if reinstatement is no longer feasible pursuant to existing jurisprudence on the matter. **No costs.**
>
> SO ORDERED.[7]

The CA ruling was sustained in Our Resolution[8] dated January 16, 2008. With the denial of the motion for reconsideration, the judgment became final and executory on May 26, 2008.[9]

---

[5] *Id.* at 57, 93.

[6] *Id.* at 106-127.

[7] *Id.* at 125-126. (Emphasis in the original)

[8] *Id.* at 94.

[9] *Id.*

During the execution proceedings, both parties filed several motions regarding the inclusions to, and computation of, the monetary awards due to Fernandez. On the bases of which, LA Marie Josephine C. Suarez summarized the issues for resolution as follows:

1. Whether [Fernandez] is entitled to additional backwages despite receipt of ₱3,307,362.05 monetary award covering the period from September 14, 2000 up to June 26, 2008;
2. Whether [Fernandez] is entitled to [₱1,950,525.53] additional backwages consisting, among others, of CBA salary increases, covering the period from September 14, 2000 to June 26, 2008, and whether said computation by Felix Dalisay of the Computation Unit and adopted by LA Borbolla is correct;
3. Whether [Fernandez] is entitled to additional backwages starting January 31, 2009 when [MERALCO] [in its Motion to Declare Full Satisfaction of Fernandez's Monetary Awards Granted by the Court of Appeals and Supreme Court dated January 13, 2009] manifested that it was exercising its option to pay [Fernandez's] separation pay instead of reinstatement; and
4. Whether [Fernandez] should be reinstated.[10]

In the Order[11] dated June 27, 2014, LA Suarez disposed the motions. Thus:

[MERALCO's] Motion to Declare Full Satisfaction of [Fernandez's] Monetary Awards Granted in the Decision of the Court of Appeals and the Supreme Court dated January 13, 2009 is DENIED for lack of merit.

[Fernandez's]: [1] Urgent Motion to Require [MERALCO] to Reinstate [Fernandez] dated December 16, 2008, [2] Motion for Recomputation of Backwages from September 14, 2000 to June 26, 2008 and Computation of 14th & 15th Month Pay and Attorney's Fees dated October 17, 2012, and [3] Manifestation and Urgent Motion dated October 17, 2012 praying that he be allowed to collect

[10] *Id.* at 100.

[11] *Id.* at 93-105.

only ₱490,104.10 out of the ₱2,123,277.80 garnished money per January 25, 2011 Alias Writ of Execution are DENIED for lack of merit.

As to [Fernandez's] Urgent Motion to Release the Money to [Fernandez] dated April 4, 2011 in the sum of ₱2,125,277.00 representing ₱1,614,626.40 separation pay from October 3, 1978 to January 31, 2009, ₱490,104.10 accrued salaries and benefits from June 27, 2008 to January 31, 2009 and ₱20,547.30 execution fee, BANCO DE ORO is ordered to release the garnished ₱2,125,277.00 to the NLRC Cashier, thru Sheriff Manolito Manuel.

[Fernandez] is declared legally separated from employment effective January 31, 2009.

[MERALCO] is further ordered to pay [Fernandez] the sum of PESOS: ONE MILLION NINE HUNDRED FIFTY THOUSAND FIVE HUNDRED TWENTY-FIVE & 53/100 (₱1,950,525.53] representing additional backwages and benefits pursuant to the CBA covering the period from September 14, 2000 to June 26, 2008, as computed by the Computation Unit.

All other claims of the parties are DENIED for lack of merit.

SO ORDERED.[12]

On July 4, 2014, Fernandez received a copy of the June 27, 2014 Order.[13] Prior to the expiration of the 10-day reglementary period, he filed a *Notice of Appeal and Memorandum on Appeal*[14] on July 11, 2014. The appeal was limited to the following:

2.3. a. Findings of the Labor Arbiter that [Fernandez] was deemed separated from employment effective [January 31, 2009] when [MERALCO] manifested in its "Motion to Declare Full Satisfaction of [Fernandez's] Monetary Awards Granted in the Decision of the Court of Appeals and Supreme Court" dated January 13, 2009 that they were

---

[12] *Id.* at 104-105.

[13] *Id.* at 159.

[14] *Id.* at 159-179, 223, 234.

exercising their option to pay [Fernandez] separation pay in lieu of reinstatement.

2.3. b. Findings of the Labor Arbiter that [Fernandez] was not entitled to any retirement pay/benefits.

2.3. c. Findings of the Labor Arbiter that [Fernandez] was not entitled to 14th month pay, 15th month pay, rice and clothing allowance pursuant to the CBA and attorney's fee.[15]

Realizing the procedural defect, Fernandez filed, on July 23, 2014, a *Motion to Treat Remedy Previously Filed As Verified Petition With Motion To Admit Original Copy Of The Assailed Order As Part Thereof*,[16] alleging among others:

3. However, he entitled and treated the same as an Appeal (*i.e.,* Notice of Appeal and Memorandum of Appeal) instead of a Verified Petition.

4. Notably, his remedy was properly verified and certified (against non-forum shopping) and the only technical issue/discrepancy therein is that it was entitled/treated as *"Notice of Appeal and Memorandum of Appeal"* instead of a *"Verified Petition.*"[17]

Despite his submissions, the appeal and motion were merely "NOTED WITHOUT ACTION" in the July 30, 2014 Order of LA Suarez, who opined that these are prohibited pleadings under Section 5 (i) and (j), Rule V of the NLRC Rules.[18] After Fernandez received a copy of the Order on August 14, 2014, he filed a Verified Petition[19] on August 26, 2014.

On August 29, 2014, the NLRC Fifth Division resolved to deny Fernandez's Verified Petition.[20] His motion for reconsideration was denied on October 20, 2014.[21]

[15] *Id.* at 160.

[16] *Id.* at 70, 79, 180-181, 223.

[17] *Id.* at 180.

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

[19] *Id.* at 64, 225-252.

[20] *Id.* at 77-86.

[21] *Id.* at 87-92, 318-326.

Meantime, MERALCO also filed a Verified Petition[22] to assail the June 27, 2014 Order. On July 31, 2014, it was dismissed by the NLRC Fifth Division for insufficiency in form and substance.[23] A motion for reconsideration was filed.[24] On October 31, 2014, the Verified Petition was reinstated, but was denied for lack of merit.[25]

Fernandez elevated the case to the CA *via* a petition for *certiorari*,[26] which was denied for lack of merit. His motion for reconsideration[27] suffered the same fate; hence, this petition.

We grant.

The sole issue in *Velasco v. Matsushita Electric Philippines Corp.*[28] was whether the NLRC, in noting without action petitioner's Notice of Appeal from the Order issued by the LA during the execution proceedings, committed grave abuse of discretion amounting to lack or excess of jurisdiction. There, Velasco filed a Notice of Appeal before the NLRC after the LA denied her Manifestation and Motion claiming that Matsushita had not complied with the judgment in her favor. In ruling for Velasco, this Court held:

> Petitioner is correct in asserting that she is not bereft of reliefs from adverse orders issued by the Labor Arbiter in connection with the execution of the judgment in her favor. However, she failed to avail of the correct remedy.
>
> Rule 5, Section 5 of the 2011 Rules of Procedure of the National Labor Relations Commission explicitly provides that an appeal from an order issued by a Labor Arbiter in the course of execution proceedings is a prohibited pleading.

[22] *Id.* at 253-273.

[23] *Id.* at 275-280.

[24] *Id.* at 327-333.

[25] *Id.* at 367-388.

[26] *Id.* at 389-424.

[27] *Id.* at 451-458.

[28] G.R. No. 220701, June 6, 2016.

> SECTION 5. PROHIBITED PLEADINGS AND MOTIONS. – The following pleadings and motions shall not be allowed and acted upon nor elevated to the Commission:
>
> x x x x x x x x x
>
> i) Appeal from orders issued by the Labor Arbiter in the course of execution proceedings.

This is affirmed by Rule XII, Section 15 of the same Rules:

> SECTION 15. NO APPEAL FROM THE ORDER OR RESOLUTION OF THE LABOR ARBITER ARISING FROM EXECUTION PROCEEDINGS OR OTHER INCIDENTS. – Except by way of a petition filed in accordance with this Rule, no appeal from the order or resolution issued by the Labor Arbiter during the execution proceedings or in relation to incidents other than a decision or disposition of the case on the merits, shall be allowed or acted upon by the Commission.

Rule 12, Section 1 provides that, instead of an appeal, the proper remedy is a verified petition to annul or modify the assailed order or resolution:

> SECTION 1. VERIFIED PETITION. – A party aggrieved by any order or resolution of the Labor Arbiter including those issued during execution proceedings may file a verified petition to annul or modify such order or resolution. The petition may be accompanied by an application for the issuance of a temporary restraining order and/or writ of preliminary or permanent injunction to enjoin the Labor Arbiter, or any person acting under his/her authority, to desist from enforcing said resolution or order.[29]

---

[29] Amended by *En Banc* Resolution No. 07-14, Series of 2014 to read:

SECTION 1. VERIFIED PETITION. – A party aggrieved by any order or resolution of the Labor Arbiter, including a writ of execution and others issued during execution proceedings, may file a verified petition to annul or modify the same. The petition may be accompanied by an application for the issuance of a temporary restraining order and/or writ of preliminary or permanent injunction to enjoin the Labor Arbiter, or any person acting under his/her authority, to desist from enforcing said resolution, order or writ.

Nevertheless, while it was an error for petitioner to seek relief from the National Labor Relations Commission through an appeal, it is in the better interest of justice that petitioner be afforded the opportunity to avail herself of the reliefs that this Court itself, in its November 23, 2009 ruling, found to be due to her.

It is a basic principle that the National Labor Relations Commission is "not bound by strict rules of evidence and of procedure." Between two modes of action – first, one that entails a liberal application of rules but affords full relief to an illegally dismissed employee; and second, one that entails the strict application of procedural rules but the possible loss of reliefs properly due to an illegally dismissed employee – the second must be preferred. Thus, it is more appropriate for the National Labor Relations Commission to have instead considered the appeal filed before it as a petition to modify or annul.

Similarly, in the present case, the NLRC Rules of Procedure must be liberally applied so as to prevent injustice and grave or irreparable damage or injury to an illegally dismissed employee. The matter should be remanded to the NLRC for determination of the inclusions to, and the computation of, the monetary awards due to Fernandez.

Without prejudice to the factual findings of the NLRC and the power of review of the CA, We take note of the following for guidance:

Under the law and prevailing jurisprudence, an illegally dismissed employee is entitled to reinstatement **as a matter of right**.[30] The award of separation pay is a **mere exception** to the rule.[31] It is made an alternative relief in lieu of reinstatement in certain circumstances, like: (a) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (b) reinstatement is inimical to the employer's interest; (c) reinstatement is no longer feasible; (d) reinstatement does not serve the best

---

[30] *Balais, Jr. v. Se'Lon by Aimee,* G.R. No. 196557, June 15, 2016, 793 SCRA 439, 455.

[31] *Holcim Philippines, Inc. v. Obra,* 792 Phil. 595, 609 (2016).

interests of the parties involved; (e) the employer is prejudiced by the workers' continued employment; (f) facts that make execution unjust or inequitable have supervened; or (g) strained relations between the employer and employee.[32]

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[33]

Nonetheless, the doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone.[34] It cannot be applied indiscriminately since every labor dispute almost invariably results in "strained relations;" otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement.[35] Strained relations must be demonstrated as a fact.[36] It must be adequately supported by substantial evidence showing that the relationship between the employer

---

[32] *Ergonomic Systems Philippines, Inc. v. Enaje,* G.R. No. 195163, December 13, 2017.

[33] *Symex Security Services, Inc. v. Rivera, Jr.,* G.R. No. 202613, November 8, 2017; *Claudia's Kitchen, Inc. v. Tanguin,* G.R. No. 221096, June 28, 2017; and *Valenzuela v. Alexandra Mining and Oil Ventures, Inc.,* G.R. No. 222419, October 5, 2016.

[34] *Advan Motor, Inc. v. Veneracion,* G.R. No. 190944, December 13, 2017; *Symex Security Services, Inc. v. Rivera, Jr., supra*; and *Claudia's Kitchen, Inc. v. Tanguin, supra*.

[35] *Holcim Philippines, Inc. v. Obra, supra* note 31, at 608.

[36] *Advan Motor, Inc. v. Veneracion, supra* note 34; *Symex Security Services, Inc. v. Rivera, Jr., supra* note 33; *Claudia's Kitchen, Inc. v. Tanguin, supra* note 33; and *Radar Security & Watchman Agency, Inc. v. Castro,* 774 Phil. 185, 196 (2015).

and the employee is indeed strained as a necessary consequence of the judicial controversy.[37]

As we have held, "[s]trained relations must be demonstrated as a fact. The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone" so as to deprive an illegally dismissed employee of his means of livelihood and deny him reinstatement. Since the application of this doctrine will result in the deprivation of employment despite the absence of just cause, the implementation of the doctrine of strained relationship must be supplemented by the rule that the existence of a strained relationship is for the employer to clearly establish and prove in the manner it is called upon to prove the existence of a just cause; the degree of hostility attendant to a litigation is not, by itself, sufficient proof of the existence of strained relations that would rule out the possibility of reinstatement.[38]

Reinstatement cannot be barred especially when the employee has not indicated an aversion to returning to work, or does not occupy a position of trust and confidence in, or has no say in the operation of, the employer's business.[39]

Here, Fernandez's intent and willingness to be reinstated to his former position is evident as early as July 10, 2008 when he filed his Comment with Motion for Re-computation of Monetary Award.[40] He reiterated this on December 17, 2008 in his Urgent Motion[41] to require MERALCO to reinstate him and on January 21, 2009 in his Comment/Opposition[42] to MERALCO's motion to declare full satisfaction of his monetary awards.

On January 13, 2009, or about three months before Fernandez reached the retirement age of 60 years old in April

[37] *Holcim Philippines, Inc. v. Obra, supra* note 31, at 608-609, and *Radar Security & Watchman Agency, Inc. v. Castro, supra.*

[38] *Advan Motor, Inc. v. Veneracion, supra* note 34. (Citations omitted).

[39] *Holcim Philippines, Inc. v. Obra, supra* note 31.

[40] *Rollo*, pp. 95, 182.

[41] *Id.* at 95, 205-206.

[42] *Id.* at 96, 218-219.

2009, MERALCO filed a Motion to Declare Full Satisfaction of Complainant's Monetary Awards Granted in the Decision of the Court of Appeals and the Supreme Court,[43] stating:

> x x x [The] decision of the Court of Appeals as affirmed by the Supreme Court gave [MERALCO] the options to reinstate [Fernandez] or pay his separation pay if reinstatement is no longer feasible. Reinstatement of [Fernandez] to his former position is not therefore mandatory.
>
> This being the case, [MERALCO] [manifests] that [it is] exercising [its] option to compensate [Fernandez] his separation pay instead of reinstating him to his former position. The filing of the above-entitled case, which dragged for long period of time severed the employee-employer relationship between [Fernandez] and [MERALCO]. Reinstatement therefore is no longer feasible.[44]

MERALCO conveniently claimed that the filing of the case, which had dragged for a long period of time, severed the employee-employer relationship; hence, Fernandez's reinstatement was no longer feasible. Later, it echoed the reasoning of LA Suarez by contending that his alleged participation in the illegal strike definitely tainted the relations of the parties.[45]

The bare allegations of MERALCO, which later on became the basis of a mere presumption on the part of LA Suarez, appear to be without any factual basis. To stress, strained relationship may be invoked only against employees whose positions demand trust and confidence, or whose differences with their employer are of such nature or degree as to preclude reinstatement.[46] Here, the confidential relationship between Fernandez, as a supervisory employee, and MERALCO has not been established. For lack of evidence on record, it appears that his designation as a Leadman[47] was not a sensitive position

---

[43] *Id.* at 95, 207-213.

[44] *Id.* at 210.

[45] *Id.* at 103, 431.

[46] *Advan Motor, Inc. v. Veneracion, supra* note 34.

[47] *Rollo*, pp. 107, 109.

as would require complete trust and confidence, and where personal ill will would foreclose his reinstatement.

Backwages shall include the whole amount of salaries, plus all other benefits and bonuses, and general increases, to which Fernandez would have been normally entitled had he not been illegally dismissed.[48] Unless there is/are valid ground/s for the payment of separation pay in lieu of reinstatement, Fernandez's backwages should be computed from the date when he was illegally dismissed on September 14, 2000, until his retirement in April 2009.[49] It shall be subject to legal interest of 12% *per annum* from September 14, 2000 until June 30, 2013, and then to legal interest of 6% interest *per annum* from July 1, 2013 until full satisfaction.[50]

In addition, subject to proof of entitlement,[51] Fernandez must receive the retirement benefits he should have received if he was not illegally dismissed.[52] Even if he receives a separation pay in lieu of reinstatement, he is not precluded to obtain retirement benefits because both are not mutually exclusive:[53]

Retirement benefits are a form of reward for an employee's loyalty and service to an employer and are earned under existing laws,

---

[48] *Ocean East Agency, Corp., et al. v. Lopez,* 771 Phil. 179, 197 (2015).

[49] See *Laya, Jr. v. Court of Appeals,* G.R. No. 205813, January 10, 2018 and *Saunar v. Ermita,* G.R. No. 186502, December 13, 2017.

[50] *Laya, Jr. v. Court of Appeals, supra*, citing *Nacar v. Gallery Frames, et al.,* 716 Phil. 267 (2013).

[51] Fernandez asserts that since simultaneous receipt of separation pay and retirement benefits is not prohibited in the CBA, his acceptance of separation pay cannot be taken against him with respect to his prayer to receive his retirement benefits. According to him, in the CBA, those who worked more than 18 years are already considered entitled to retirement benefits. He effectively worked as a MERALCO employee for more than 30 years, from 1978 to 2009.

[52] See *Saunar v. Ermita, supra* note 49.

[53] *Laya, Jr. v. Court of Appeals, supra* note 49.

CBAs, employment contracts and company policies. On the other hand, separation pay is that amount which an employee receives at the time of his severance from employment, designed to provide the employee with the wherewithal during the period that he is looking for another employment and is recoverable only in instances enumerated under Articles 283 and 284 [now 298 and 299] of the Labor Code or in illegal dismissal cases when reinstatement is not feasible.[54]

On the issue of attorney's fees, We agree with LA Suarez that Fernandez is not entitled thereto. It is an elementary principle of procedure that the resolution of the court in a given issue, as embodied in the dispositive part of a decision or order, is the controlling factor as to settlement of rights of the parties.[55] The dispositive portion or the *fallo* is the decisive resolution and is the subject of execution.[56] Therefore, the writ of execution must conform to the judgment to be executed, particularly with that which is ordained or decreed in the dispositive portion of the decision, and adhere strictly to the very essential particulars.[57]

In this case, the January 30, 2007 Decision of the CA, which does not grant attorney's fees to Fernandez, already became final and executory on May 26, 2008. As such, it is immutable and unalterable.[58] Generally, it may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of law or fact.[59] In opting not to file a petition before the Supreme Court assailing the CA Decision, Fernandez is

---

[54] *Goodyear Phils., Inc., et al. v. Angus,* 746 Phil. 668, 681 (2014), as cited in *Laya, Jr. v. Court of Appeals, supra* note 49.

[55] *Silliman University v. Fontelo-Paalan,* 552 Phil. 808, 816 (2007).

[56] *Gagui v. Dejero, et al.,* 720 Phil. 475, 487 (2013).

[57] See *Gagui v. Dejero, et al., supra,* and *Buenviaje v. Court of Appeals,* 440 Phil. 84, 94 (2002).

[58] *Silliman University v. Fontelo-Paalan, supra* note 55, at 816; *Buenviaje v. Court of Appeals, supra,* at 93; and *J.D. Legaspi Construction v. NLRC,* 439 Phil. 13, 21 (2002).

[59] *J.D. Legaspi Construction v. NLRC, supra.*

deemed to have acquiesced to the entirety of the ruling. It cannot be convincingly argued that the petition filed by MERALCO also inured to his benefit, for not only are their interests separate and distinct, but they are completely in conflict with each other. Considering that the judgment on the issue of attorney's fees is already final and executory against Fernandez who did not appeal, then MERALCO already acquired a vested right by virtue thereof. Indeed, just as the losing party has the privilege to file an appeal (or petition) within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision.[60]

Finally, as to Fernandez's alleged entitlement to longevity pay, 14th month and 15th month pay, and other benefits and allowances, the same are subject to evidentiary support that must be ascertained and confirmed based on the applicable CBA/s, employment contract, and company policies and practice.

WHEREFORE, the petition is **GRANTED**. The December 11, 2015 Decision and July 25, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 138212, which affirmed the Resolutions dated August 29, 2014 and October 20, 2014 of the National Labor Relations Commission, are **REVERSED AND SET ASIDE**. The appeal filed by petitioner Lino A. Fernandez, Jr. before the NLRC is considered as a Verified Petition assailing the June 27, 2014 Order of Labor Arbiter Marie Josephine C. Suarez. The case is **REMANDED** to the NLRC for it to resolve the petition with reasonable dispatch.

SO ORDERED.

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

---

[60] *Silliman University v. Fontelo-Paalan, supra* note 55, at 818.

EN BANC

[A.C. No. 12011. June 26, 2018]

NICANOR D. TRIOL, *complainant, vs.* **ATTY. DELFIN R. AGCAOILI, JR.,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; NOTARIZATION; CONVERTS A PRIVATE DOCUMENT INTO A PUBLIC DOCUMENT, MAKING IT ADMISSIBLE IN EVIDENCE WITHOUT FURTHER PROOF OF ITS AUTHENTICITY.—** It is settled that "notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined."

2. **ID.; ID.; SECTION 2 (B) RULE IV OF THE 2004 NOTARIAL RULES; A DULY-COMMISSIONED NOTARY PUBLIC CAN PERFORM A NOTARIAL ACT ONLY IF THE SIGNATORY TO THE INSTRUMENT IS IN THE NOTARY'S PRESENCE PERSONALLY AT THE TIME OF THE NOTARIZATION AND PERSONALLY KNOWN TO THE NOTARY PUBLIC OR OTHERWISE IDENTIFIED BY THE NOTARY PUBLIC THROUGH COMPETENT EVIDENCE OF IDENTITY AS DEFINED BY THE NOTARIAL RULES; BREACH THEREOF CONSTITUTES A VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** Section 2 (b), Rule IV of the 2004 Notarial Rules requires a duly-commissioned notary public to perform a notarial act only **if the person involved as signatory to the instrument or document is**: **(*a*) in the notary's presence personally at the time of the notarization**;

and (*b*) personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules. In other words, a notary public is not allowed to notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. 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. Parenthetically, in the realm of legal ethics, a breach of the aforesaid provision of the 2004 Notarial Rules would also constitute a violation of the Code of Professional Responsibility (CPR), considering that an erring lawyer who is found to be remiss in his functions as a notary public is considered to have violated his oath as a lawyer as well. He does not only fail to fulfill his solemn oath of upholding and obeying the law and its legal processes, but he also commits an act of falsehood and engages in an unlawful, dishonest, and deceitful conduct.

3. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 1.01, CANON 1 AND RULE 10.1, CANON 10 THEREOF; VIOLATED WHEN A LAWYER MISREPRESENTED HIMSELF AS A COMMISSIONED NOTARY PUBLIC AT THE TIME OF THE ALLEGED NOTARIZATION; CASE AT BAR.— In the same breath, respondent also violated the provisions of the CPR, particularly Rule 1.01, Canon 1 and Rule 10.01, Canon 10 thereof. By misrepresenting himself as a commissioned notary public at the time of the alleged notarization, he did not only cause damage to those directly affected by it, but he likewise undermined the integrity of the office of a notary public and degraded the function of notarization. In so doing, his conduct falls miserably short of the high standards of morality, honesty, integrity and fair dealing required from lawyers, and it is only but proper that he be sanctioned.

APPEARANCES OF COUNSEL

Lozano & Lozano-Endriano Law Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an administrative complaint[1] dated November 3, 2014 filed by complainant Nicanor D. Triol (complainant) against respondent Atty. Delfin R. Agcaoili, Jr. (respondent) praying for the latter's disbarment.

The Facts

Complainant alleged that he and his sister, Grace D. Triol (Grace), are co-owners of a parcel of land with an area of 408.80 square meters situated in Quezon City and covered by Transfer Certificate of Title No. 129010 (subject land). Sometime in January 2011, complainant decided to sell the subject land to a certain Leonardo P. Caparas (Caparas) but was unable to do so, as he could not obtain the signature of Grace who was already residing in the United States (U.S.) at that time. Subsequently, complainant discovered that a Deed of Absolute Sale[2] dated March 11, 2011 (subject deed) was executed and notarized by respondent supposedly conveying the subject land to Fajardo without the authority of complainant and Grace; neither did they give their consent to the same, as they allegedly did not personally appear before respondent when the subject deed was notarized. Moreover, complainant found out that their purported community tax certificates stated in the subject deed were fake. Accordingly, he filed a disbarment complaint against respondent.[3]

In his defense,[4] respondent disavowed knowledge of the execution and notarization of the subject deed, claiming that he did not know complainant, Grace, and Caparas. He maintained that his signature on the subject deed was forged, since he would never notarize an instrument without the signatory parties

---

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

[2] *Id.* at 5-6.

[3] See *id.* at 1-2. See also *id.* at 89-90.

[4] See Answer dated December 20, 2014; *id.* at 9-11.

personally appearing before him. He likewise asserted that he could not have notarized it, as he was not a commissioned notary public in Quezon City in 2011.[5]

The IBP's Report and Recommendation

In a Report and Recommendation[6] dated August 14, 2015, the IBP Investigating Commissioner recommended the dismissal of the complaint, there being no substantial evidence to show that respondent is guilty of violating Section 1 (b) (7), Rule XI of the 2004 Rules on Notarial Practice (2004 Notarial Rules).[7] The Investigating Commissioner found that respondent was not aware of the execution and notarization of the subject deed, as he was able to establish that the signature affixed on the subject deed was not his by virtue of the specimen signature that he provided in his Answer.[8]

In a Resolution[9] dated April 29, 2016, the IBP Board of Governors reversed the recommendation of the Investigating Commissioner, and accordingly, imposed the penalty of suspension from the practice of law for a period of two (2) years, as well as disqualification from being commissioned as a notary public for the same period. It likewise directed the revocation of his current notarial commission, if any, and ordered the Commission on Bar Discipline Director Ramon S. Esguerra (CIBD Dir. Esguerra) to prepare an extended resolution explaining its action.[10]

In an undated Extended Resolution,[11] CIBD Dir. Esguerra explained the recommendation of the IBP Board of Governors to suspend respondent from the practice of law for a period of two (2) years and to disqualify him from being commissioned

[5] See *id*. at 9-10. See also *id*. at 90, 95-96, and 99.

[6] *Id.* at 89-93. Penned by Commissioner Cecilio A. C. Villanueva.

[7] See *id*. at 93.

[8] See *id*. at 92.

[9] See Notice of Resolution No. XXII-2016-254; *id*. at 85-86.

[10] See *id.* at 85.

[11] *Id*. at 94-101. Penned by CIBD Dir. Esguerra.

as notary public for the same period pursuant to the case of *Tenoso v. Echanez.*[12] CIBD Dir. Esguerra observed that while respondent provided his specimen signature in his Answer, he failed to substantiate its genuineness and authenticity, given that he did not submit a copy of his signature appearing in the records of the Office of the Clerk of Court or any other official document containing the same specimen signature. As such, the probative value of the subject deed containing his notarization, as well as the certifications[13] from the Clerk of Court of the Regional Trial Court (RTC) of Quezon City that he was not a commissioned notary public in 2011 and 2012, stands.[14]

Aggrieved, respondent filed a motion for reconsideration,[15] which was denied in a Resolution[16] dated May 27, 2017.

The Issue Before the Court

The issue for the Court's resolution is whether or not respondent should be held administratively liable.

The Court's Ruling

The Court concurs with the findings of the IBP.

It is settled that "notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined."[17]

---

[12] 709 Phil. 1 (2013).

[13] See Certifications dated November 18, 2014 (*rollo*, p. 23) and April 7, 2015 (*id.* at 42).

[14] See *id.* at 99-100.

[15] Dated March 21, 2017. *Id.* at 74-79.

[16] See Notice of Resolution No. XXII-2017-1138; *id.* at 87-88.

[17] *Vda. de Miller v. Miranda*, 772 Phil. 449, 455 (2015), citing *De Jesus v. Sanchez-Malit*, 738 Phil. 480, 491-492 (2014).

In this light, Section 2 (b), Rule IV of the 2004 Notarial Rules requires a duly-commissioned notary public to perform a notarial act only **if the person involved as signatory to the instrument or document is**: **(*a*) in the notary's presence personally at the time of the notarization**; and (*b*) personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.[18] In other words, a notary public is not allowed to notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. 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.[19]

Parenthetically, in the realm of legal ethics, a breach of the aforesaid provision of the 2004 Notarial Rules would also constitute a violation of the Code of Professional Responsibility (CPR), considering that an erring lawyer who is found to be remiss in his functions as a notary public is considered to have violated his oath as a lawyer as well.[20] He does not only fail to fulfill his solemn oath of upholding and obeying the law and its legal processes, but he also commits an act of falsehood and engages in an unlawful, dishonest, and deceitful conduct.[21]

---

[18] Section 2. *Prohibitions*

x x x x x x 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.

[19] *Fabay v. Resuena*, A.C. No. 8723, January 26, 2016, 782 SCRA 1, 8.

[20] See *id*. at 10-12.

[21] See *De Jesus v. Sanchez-Malit*, *supra* note 17, at 492-492.

Thus, Rule 1.01, Canon 1 and Rule 10.01, Canon 10 of the CPR categorically state:

> 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 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. (Emphases and underscoring supplied)

In this case, records show that respondent indeed violated the 2004 Notarial Rules when he notarized the subject deed without complainant and Grace personally appearing before him, much more without the requisite notarial commission in 2011.[22] Significantly, it was established that both complainant and Grace could not have personally appeared before respondent, since Grace was already residing at the U.S. at the time of the supposed notarization. Furthermore, complainant presented a Certification[23] dated April 7, 2015 issued by the Clerk of Court of the RTC showing that respondent was also not a commissioned notary public for and within Quezon City in 2012. On the other hand, respondent, apart from his bare denials and unsubstantiated defense of forgery, failed to rebut complainant's allegations and evidence. While respondent provided his specimen signature in his Answer to support his defense of forgery, the same nonetheless remained insufficient. As aptly observed by CIBD Dir. Esguerra, respondent did not even submit a copy of his

---

[22] See Certification from the Clerk of Court, RTC of Quezon City; *rollo*, p. 23.

[23] *Id.* at 42.

signature appearing in the records of the Office of the Clerk of Court or any other official document containing the same specimen signature to prove its genuineness and authenticity. Case law states that where a party resorts to bare denials and allegations and fails to submit evidence in support of his defense, the determination that he committed the violation is sustained.[24] Hence, no reasonable conclusion can be had other than the fact that respondent notarized the subject deed in violation of the 2004 Notarial Rules.

In the same breath, respondent also violated the provisions of the CPR, particularly Rule 1.01, Canon 1 and Rule 10.01, Canon 10 thereof. By misrepresenting himself as a commissioned notary public at the time of the alleged notarization, he did not only cause damage to those directly affected by it, but he likewise undermined the integrity of the office of a notary public and degraded the function of notarization.[25] In so doing, his conduct falls miserably short of the high standards of morality, honesty, integrity and fair dealing required from lawyers, and it is only but proper that he be sanctioned.[26]

In a number of cases, the Court has sanctioned a number of lawyers who were remiss in their duties as notaries public. In *Dizon v. Cabucana, Jr.*,[27] *Isenhardt v. Real*,[28] *Bautista v. Bernabe*,[29] and *Gonzales v. Ramos*,[30] respondent notaries were all found guilty of notarizing documents without the presence

---

[24] See *Tenoso v. Echanez*, *supra* note 12, at 5, citing *Leave Division, Office of Administrative Services, Office of the Court Administrator v. Gutierrez III*, 682 Phil. 28, 32 (2012).

[25] See *Baysac v. Aceron-Papa*, A.C. No. 10231, August 10, 2016, 800 SCRA 1, 11-12; *Bartolome v. Basilio*, 771 Phil. 1, 10 (2015); and *Sappayani v. Gasmen*, 768 Phil. 1, 8 (2015).

[26] See *Tenoso v. Echanez*, *supra* note 12, at 6.

[27] 729 Phil. 109 (2014).

[28] 682 Phil. 19 (2012).

[29] 517 Phil. 236 (2006).

[30] 499 Phil. 345 (2005).

of the parties and were thus meted with the penalty of disqualification as notaries public for a period of two (2) years, among others. Moreover, in *Japitana v. Parado* (*Japitana*),[31] *Re: Violation of Rules on Notarial Practice*,[32] and *Tenoso v. Echanez* (*Tenoso*),[33] respondent notaries repeatedly performed notarial acts without the requisite commission and were consequently suspended from the practice of law for a period of two (2) years. However, in *Japitana* and *Re: Violation of Rules on Notarial Practice*, respondent notaries were permanently barred from being commissioned as notaries public, while the respondent notary public in *Tenoso* was disqualified for only a period of two (2) years with a stern warning that a repetition of the same or similar act in the future shall merit a more severe sanction.

Guided by the foregoing pronouncements, the imposition of the penalties of suspension from the practice of law for a period of two (2) years, disqualification from being commissioned as a notary public for the same period, and revocation of the existing commission, if any, against respondent is only just and proper under the circumstances.

WHEREFORE, the Court finds respondent Atty. Delfin R. Agcaoili, Jr. (respondent) **GUILTY** of violating the 2004 Rules on Notarial Practice and the Code of Professional Responsibility. Accordingly, the Court hereby **SUSPENDS** him from the practice of law for a period of two (2) years; **PROHIBITS** him from being commissioned as a notary public for a period of two (2) years; and **REVOKES** his incumbent commission as a notary public, if any. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

The suspension in the practice of law, the prohibition from being commissioned as notary public, and the revocation of

---

[31] A.C. No. 10859, January 26, 2016, 782 SCRA 34.

[32] 751 Phil. 10 (2015).

[33] 709 Phil. 1 (2013).

his notarial commission, if any, shall take effect immediately upon receipt of this Decision by respondent. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Decision 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,[*] *Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Leonen, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

EN BANC

[A.M. No. P-16-3595. June 26, 2018]
(Formerly OCA I.P.I. No. 15-4446-P)

HON. DENNIS PATRICK Z. PEREZ, Presiding Judge, Branch 67, Regional Trial Court, Binangonan, Rizal, *complainant, vs.* **ALMIRA L. ROXAS, Clerk III, Branch 67, Regional Trial Court, Binangonan, Rizal,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL;

[*] Senior Associate Justice (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, As Amended.

THEIR CONDUCT AND BEHAVIOR MUST BE BEYOND REPROACH AND MUST BE CIRCUMSCRIBED WITH THE HEAVY BURDEN OF RESPONSIBILITY.— As the Court pronounced in *Judge Domingo-Regala v. Sultan*, no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the Judiciary. The conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be circumscribed with the heavy burden of responsibility. Public officers must be accountable to the people at all times and serve them with the utmost degree of responsibility and efficiency. Any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the Judiciary, shall not be countenanced. It is the imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.

2. ID.; ID.; ID.; ID.; CODE OF CONDUCT FOR COURT PERSONNEL; SECTION 2 AND SECTION 2 (E), CANON 1 THEREOF, VIOLATED WHEN A COURT EMPLOYEE RECEIVED MONEY FROM BONDSMEN IN RELATION TO ACTIONS OR PROCEEDINGS WITH THE JUDICIARY AND THE PERFORMANCE OF HER OFFICIAL DUTIES; "COMMON PRACTICE" AS A DEFENSE DESERVES CONDEMNATION.— Section 2, Canon I of the Code of Conduct for Court Personnel, provides that "*court personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions*," while Section 2 (e), Canon III states that "*court personnel shall not x x x solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties*." In the instant case, the fact that Roxas received money from bondsmen is beyond dispute as she categorically admitted the same in her Complaint-Affidavit and Comment *albeit* insisting that said receiving of money from bondsmen was a common practice in their office, and that it was not for herself but for the office's common fund. However, in the

recent case of *Cabauatan v. Uvero,* the Court reiterated its condemnation on some court employees' abominable use of "common practice" as a defense. x x x Indeed, it is irrelevant whether the money was not intended to be given to Roxas alone, the fact remains that she received money from bondsmen. The sole act of receiving money from litigants, whatever the reason may be, is antithesis to being a court employee. Roxas' act of collecting or receiving money, no matter how nominal the amount involved, erodes the respect for law and the courts. Roxas should, thus, be held accountable even for mere receiving money from bondsmen, more so, considering that she admitted that she is the one who had direct dealings with them by virtue of her position. It is also apparent that the purpose of giving money is to show gratitude for allowing the bondmen to facilitate the posting of bail in Branch 67.

3. ID.; ID.; ID.; ID.; GRAVE MISCONDUCT; DEFINED AS A SERIOUS TRANSGRESSION OF SOME ESTABLISHED AND DEFINITE RULE OF ACTION THAT TENDS TO THREATEN THE VERY EXISTENCE OF THE SYSTEM OF ADMINISTRATION OF JUSTICE AN OFFICIAL OR EMPLOYEE SERVES.— Clearly, Roxas' condemnable act of receiving money from bondsmen was in relation to actions or proceedings with the Judiciary and the performance of her official duties which, thus, constitute grave misconduct. In *Ramos vs. Limeta*, grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that ***tends to threaten the very existence of the system of administration of justice an official or employee serves***. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules. This Court has already heard various reasons given by court employees for receiving money from party-litigants. Thus, this Court has held that money given voluntarily is not a defense. Alleged good intentions to help party-litigants are self-serving and will not absolve the misconduct committed by court employees. There is no defense in receiving money from party-litigants. The act itself makes court employees guilty of grave misconduct. They must bear the penalty of dismissal.

4. ID.; ID.; ID.; ID.; GRAVE MISCONDUCT IS CLASSIFIED AS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM SERVICE FOR THE FIRST OFFENSE; IMPOSABLE PENALTY IN CASE AT BAR.— As to the proper penalty to be imposed on Roxas, the Court notes that grave misconduct is classified as a grave offense punishable by dismissal from service for the first offense. Corollary thereto, the penalty of dismissal from service carries with it the following administrative disabilities: (a) cancellation of civil service eligibility; (b) forfeiture of retirement and other benefits, except accrued leave credits, if any; and (c) perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution. In this instance, since Roxas had already been dropped from the roll of court employees pursuant to Resolution dated August 11, 2014 in A.M. No. 14-6-192-RTC, the penalty of dismissal from service could no longer be imposed upon her. Nevertheless, such penalty should be enforced in its full course by imposing the aforesaid administrative disabilities upon her.

D E C I S I O N

PER CURIAM:

Before us is the Comment with Counter-Complaint[1] dated March 26, 2014 of Judge Dennis Patrick Z. Perez (*Judge Perez*), then Presiding Judge of Branch 67, Regional Trial Court, Binangonan, Rizal against Almira L. Roxas (*Roxas*), Clerk III, of the same court for grave misconduct, dishonesty, violation of Republic Act No. 3019 and CSC Memorandum Circular 13, s. 2007 on absences without approved leave.

The instant case stemmed from an administrative complaint for oppression and grave abuse of authority docketed as OCA I.P.I. No. 14-4190-RTJ, entitled *Almira Roxas vs. Presiding Judge Dennis Patrick Z. Perez*[2] where Roxas alleged that

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

[2] *Id.* at 62-66.

Judge Perez conspired with Atty. Nadia S. Diumano[3] (*Atty. Diumano*), then Clerk of Court V, to cause her removal from office without due process of law. However, in a Resolution[4] dated June 29, 2015, the Court dismissed said administrative complaint for lack of merit.

The Comment (with Counter-Complaint and Motion) dated March 26, 2014 on the above-mentioned administrative complaint filed by Judge Perez is now the subject matter of the present administrative complaint.

In the said Comment, Judge Perez asserted that Roxas has not been removed from employment. He recalled that at the time Roxas filed the complaint against him, she was still an employee of the court, *albeit* on absence without leave (*AWOL*) since October 14, 2013. Judge Perez explained that although Roxas filed her resignation letter on August 31, 2013, it was indicated therein that her resignation was to take effect only on December 31, 2013. However, without informing him or Atty. Diumano of her reasons, Roxas suddenly stopped coming to work on October 14, 2013. Judge Perez also alleged that on November 13, 2013, Roxas arrived at the office and asked him to sign her leave application and daily time record (*DTR*) for October 2013 but he refused. On the same day, Roxas withdrew her resignation.[5] Thus, in his Letter[6] dated January 9, 2014 to the Office of the Court Administrator (*OCA*), Judge Perez recommended that Roxas be dropped from the rolls and that her position be declared vacant considering that she has been absent for 88 days without approved leave.

Judge Perez further asserted that Roxas actually deserved the administrative complaint filed against her because of her admission of corruption alone before Atty. Diumano and the OCA. He pointed out that Roxas admitted in her complaint that she has been receiving money from bondsmen, to wit:

---

[3] Now a MCTC Judge of Pililla, Rizal.

[4] *Rollo*, pp. 31-32.

[5] *Id.* at 26.

[6] *Id.* at 25.

7. Incidentally, it has been a long practice in the office that we keep a common fund. **One of the sources of the said fund is the little consideration that the bondsman was giving as a token of gratitude for allowing him to facilitate the posting of bail in Branch 67. Everybody in the office knew about it. Sometimes, the bondsman would course the money through me being the one who usually assist in processing the documents required for bail. The bondsman would insist on giving small amounts because according to him it was already part of his commission. Unfortunately, there are times that I commingled those small amounts with my own money.**

8. Sometime in November 2011, Atty. Diumano asked the stenographer if we still have a common fund. The latter answered in the negative because, allegedly, the bondsman was no longer giving money. In reaction, she called the bondsman and squeezed him into admitting that he was occasionally handling money through me. Thus, Atty. Diumano immediately called for a meeting and confronted me about it. **I admitted having occasionally received those small amounts from the bondsman that I inadvertently failed to remit to the common fund.** I promised to return the money, but Atty. Diumano took all my workload for the month of December 2011 and gave to one of her staff. When the processing of the Release Order was transferred to a co-employee, they continued to receive an amount from the bondsman. It was only stopped when Atty. Diumano heard the Presiding Judge confronted a bondsman and asked her if she was giving money to his staff. When the performance rating for the last semester of 2011 came out, she gave me a grade of 21 (Please see Annex "A"). To my mind, this is outrageous because I have been receiving Very Satisfactory ratings before the incident. (Please see Annexes "B" to "G"). Since then, it has been a habit of Atty. Diumano to use the performance rating against her staff whom she doesn't like. In fact, when someone asked Atty. Diumano why her rating keeps on falling she answered that it is her prerogative to give a grade she wants to give;

x x x x x x x x x[7]

Judge Perez also averred that Roxas was consistently given low ratings because of her inefficiency, manifest

[7] *Rollo*, pp. 62-63. (Emphasis ours).

insubordination and grave attitude problems towards her co-workers. He alleged that Roxas has always been tardy and absent in flag-raising ceremonies. He added that Roxas' incompetence adversely affected actual court procedures. Attached to the comment were the performance ratings of Roxas for January 1 to June 30, 2013 and July 1 to December 31, 2013, both reflecting a score of 17 which is equivalent to an unsatisfactory rating.[8]

Given the above-cited circumstances, Judge Perez, thus, prayed that Roxas be dismissed from the service based on her admission of corruption, two (2) consecutive unsatisfactory performance ratings, and for being AWOL.

Meantime, in a Resolution[9] dated August 11, 2014, the Court resolved to drop Almira L. Roxas from the rolls effective October 15, 2013 for being on AWOL. She is, however, still qualified to receive the benefits she may be entitled to under existing laws and may still be reemployed in the government.

On August 25, 2015, the OCA directed Roxas to submit her comment on the charges against her.[10]

In her Comment to the Counter-Complaint[11] dated December 14, 2015, Roxas reiterated her allegations and defenses in her complaint. She insisted anew that it has been a long practice already in their office to keep a common fund where one of the sources of the said fund is the amount that bondsmen give as token of gratitude for allowing them to facilitate the posting of bail. Roxas claimed that Atty. Diumano became suspicious that she was pocketing the money given by the bondsmen, thus, she was given unsatisfactory rating and started giving Judge Perez false information about her. Since then, Roxas averred that Atty. Diumano would use the performance rating against the staff whom she disliked.

---

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

[9] *Id.* at 44-45.

[10] *Id.* at 33.

[11] *Id.* at 55-61.

Roxas asserted that Judge Perez and Atty. Diumano conspired with one another in causing her removal from office without due process of law. Roxas insisted that there was no concrete and convincing evidence that she asked or demanded money from the bondsmen in exchange of any favor. She prepared the documents promptly and expeditiously and no bondsman had ever complained that she did not act accordingly because of lack of consideration. If she ever received any amount from them, it was because the same was voluntarily given as it has become an accepted practice, and that it just so happened that she was the one who had direct dealing with them. She further insisted that if she ever received money from them, it was intended for the office and not for her. Roxas, thus, prayed that the counter-complaint filed by Judge Perez against her be dismissed for lack of factual and legal basis, and that she be reinstated to her previous position, or be transferred to other offices with the same rank and benefits.

In his Reply[12] dated January 7, 2016, Judge Perez averred that Roxas wove again a web of lies in vain attempt to slander him and Atty. Diumano. He alleged that Roxas actually perjured when she stated in her complaint that she was removed from the service when she was actually on AWOL and corrupt. Judge Perez stated that he will no longer dwell on Roxas' comments considering the latter has already been dropped from the roll of employees. He lamented that his main concern was that Roxas incurred four (4) loans with the Supreme Court Savings and Loan Association, Inc. (*SCSLAI*) before she went on AWOL and left her co-makers carrying the burden of paying the same.

Judge Perez added that he requested the OCA to freeze or hold whatever benefits may be left to Roxas and to apply the same as payment of her loans so as to lift the financial burdens she placed on her friends and colleagues. He further manifested that although Roxas was already separated from

[12] *Id.* at 40-43.

the service for being on AWOL, the Resolution[13] dated August 11, 2014 stated that she can still be reemployed in the government, thus, Judge Perez prayed that the instant case be resolved on the merits as to perpetually disqualify Roxas from re-employment in the government.

In her Comment to the Complainant's Reply (with Manifestation)[14] dated February 22, 2016, Roxas reiterated her allegations in her comment. She claimed that she was unjustly branded as corrupt and incompetent. Roxas alleged that Judge Perez was just really bent on removing her from the service, and merely used the said practice of receiving money from bondsmen as a ground to force her to sign the resignation letter.

On September 14, 2016, the OCA recommended that the instant administrative complaint be re-docketed as a regular administrative matter. It found Roxas guilty of gave misconduct and recommended that she be dismissed from service. However, considering that she has been dropped from the rolls effective October 15, 2013 for being AWOL, the OCA instead recommended that Roxas be imposed of the accessory penalties of forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in any government instrumentality, including government-owned and controlled corporation.

We adopt the findings and recommendation of the OCA.

As the Court pronounced in *Judge Domingo-Regala v. Sultan*,[15] no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the Judiciary. The conduct and behavior of everyone connected with an office charged with the dispensation of justice, from the presiding judge to the lowliest clerk, must always be beyond reproach and must be

---

[13] *Supra* note 9.

[14] *Rollo*, pp. 68-71.

[15] 492 Phil. 482, 490-491 (2005).

circumscribed with the heavy burden of responsibility. Public officers must be accountable to the people at all times and serve them with the utmost degree of responsibility and efficiency. Any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the Judiciary, shall not be countenanced. It is the imperative and sacred duty of each and everyone in the court to maintain its good name and standing as a true temple of justice.[16]

Section 2, Canon I of the Code of Conduct for Court Personnel, provides that "*court personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions*," while Section 2 (e), Canon III states that "*court personnel shall not x x x solicit or accept any gift, loan, gratuity, discount, favor, hospitality or service under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties*."

In the instant case, the fact that Roxas received money from bondsmen is beyond dispute as she categorically admitted the same in her Complaint-Affidavit[17] and Comment[18] *albeit* insisting that said receiving of money from bondsmen was a common practice in their office, and that it was not for herself but for the office's common fund.

However, in the recent case of *Cabauatan v. Uvero,*[19] the Court reiterated its condemnation on some court employees' abominable use of "common practice" as a defense, to wit:

But what aggravates the misconduct is that Uvero, in an effort to exonerate himself, asserted that it is "common knowledge and practice" for party-litigants to give gifts as "tokens" of appreciation

---

[16] *Alano v. Sahi*, 745 Phil. 385, 395 (2014).

[17] *Rollo*, pp. 62-63, par. 7.

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

[19] A.M. No. P-15-3329, November 6, 2017.

to government lawyers. Such statement from a court employee deserves condemnation as the Court would never tolerate any whiff of impropriety much less corruption. As court employee, Uvero should know that government employees and officials cannot receive any voluntary monetary considerations from any party in relation to the performance of their duties. It does not matter whether the money was not intended to be given to Uvero directly, or that Prosecutor Cabauatan refused the money, or that Uvero eventually returned the money to Reynancia, the fact remains that he received money from Reynancia, and thereafter, attempted to give said money to Prosecutor Cabauatan who is handling Reynancia's pending case. He should, thus, be held accountable even for mere receiving money from a litigant, more so, when the purpose of receiving money is to facilitate a favorable resolution of a pending case. Clearly, such actuations by Uvero constitute grave misconduct as said actions erode the respect for law and the courts.[20]

Indeed, it is irrelevant whether the money was not intended to be given to Roxas alone, the fact remains that she received money from bondsmen. The sole act of receiving money from litigants, whatever the reason may be, is antithesis to being a court employee.[21] Roxas' act of collecting or receiving money, no matter how nominal the amount involved, erodes the respect for law and the courts.[22] Roxas should, thus, be held accountable even for mere receiving money from bondsmen, more so, considering that she admitted that she is the one who had direct dealings with them by virtue of her position. It is also apparent that the purpose of giving money is to show gratitude for allowing the bondsmen to facilitate the posting of bail in Branch 67.[23] Clearly, Roxas' condemnable act of receiving money from bondsmen was in relation to actions or proceedings with the Judiciary and the performance of her official duties which, thus, constitute grave misconduct.

---

[20] Emphasis ours.

[21] *Villahermosa, Sr. v. Sarcia, et al.,* 726 Phil. 408, 416 (2014).

[22] See *Office of the Court Administrator v. Panganiban*, 583 Phil. 500, 508 (2008).

[23] *Rollo*, pp. 62-63, par. 7.

In *Ramos vs. Limeta*,[24] grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that ***tends to threaten the very existence of the system of administration of justice an official or employee serves***. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules.

This Court has already heard various reasons given by court employees for receiving money from party-litigants. Thus, this Court has held that money given voluntarily is not a defense. Alleged good intentions to help party-litigants are self-serving and will not absolve the misconduct committed by court employees. There is no defense in receiving money from party-litigants. The act itself makes court employees guilty of grave misconduct. They must bear the penalty of dismissal.[25]

Finally, it must be emphasized anew that the Code of Conduct for Court Personnel requires that court personnel avoid conflicts of interest in performing official duties. It mandates that court personnel should not receive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary. The Court has always stressed that all members of the Judiciary should be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals, in order that the integrity and good name of the courts of justice shall be preserved.[26]

Those serving in the Judiciary must carry the heavy burden and duty of preserving public faith in our courts and justice system by maintaining high ethical standards. They must

---

[24] 650 Phil. 243, 248-249 (2010).

[25] *Cabauatan v. Uvero*, *supra* note 19.

[26] *Id*.

stand as "examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law." We do not tolerate any misconduct that tarnishes the Judiciary's integrity.[27]

PENALTY

As to the proper penalty to be imposed on Roxas, the Court notes that grave misconduct is classified as a grave offense punishable by dismissal from service for the first offense.[28] Corollary thereto, the penalty of dismissal from service carries with it the following administrative disabilities: (a) cancellation of civil service eligibility; (b) forfeiture of retirement and other benefits, except accrued leave credits, if any; and (c) perpetual disqualification from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.[29] In this instance, since Roxas had already

---

[27] *Malibago-Santos v. Francisco*, A.M. No. P-16-3459 (Formerly OCA IPI No. 13-4119-P), June 21, 2016, 794 SCRA 161, 176.

[28] See Section 52 (A) (1) and (3), Rule IV of the Revised Uniform Rules on Administrative Cases in Civil Service (RURACCS), which reads:

RULE IV
PENALTIES

Section 52. Classification of Offenses. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

x x x x x x x x x

3. Grave Misconduct
1st Offense — Dismissal

x x x x x x x x x

[29] *OCA v. Ampong,* 735 Phil. 14, 22 (2014). See also Section 58 (a) of the RURACCS, which provides:

Section 58. *Administrative Disabilities Inherent in Certain Penalties.* — a. The penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service, unless otherwise provided in the decision.

been dropped from the roll of court employees pursuant to Resolution[30] dated August 11, 2014 in A.M. No. 14-6-192-RTC, the penalty of dismissal from service could no longer be imposed upon her. Nevertheless, such penalty should be enforced in its full course by imposing the aforesaid administrative disabilities upon her.

WHEREFORE, respondent Almira L. Roxas, former Clerk III, Branch 67, Regional Trial Court of Binangonan, Rizal, is found **GUILTY** of Grave Misconduct and would have been **DISMISSED** from service, had she not been earlier dropped from the rolls of court employees. Accordingly, her retirement and other benefits, except accrued leave credits, are **FORFEITED**, and she is **PERPETUALLY DISQUALIFIED** from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 8502. June 27, 2018]

CHRISTOPHER R. SANTOS, *complainant, vs.* **ATTY. JOSEPH A. ARROJADO,** *respondent.*

---

[30] *Supra* note 9

[*] Senior Associate Justice (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended.)

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; THE PROHIBITION TO PURCHASE PROPERTY AND RIGHTS IN LITIGATION UNDER ARTICLE 1491(5) OF THE CIVIL CODE DOES NOT EXTEND TO RESPONDENT'S IMMEDIATE FAMILIES OR RELATIVES.—** x x x Article 1491(5) of the Civil Code prohibits the purchase by lawyers of any interest in the subject matter of the litigation in which they participated by reason of their profession. Here, however, respondent lawyer was not the purchaser or buyer of the property or rights in litigation. For, in point of fact, it was his son Julius, and not respondent lawyer, who purchased the subject property. Were we to include within the purview of the law the members of the immediate family or relatives of the lawyer laboring under disqualification, we would in effect be amending the law. We apply to this case the old and familiar Latin maxim *expressio unius est exclusion alterius,* which means that the express mention of one person, thing, act, or consequence excludes all others. Stated otherwise, "where the terms are expressly limited to certain matters, it may not, by interpretation or construction, be stretched or extended to other matters." As worded, Article 1491(5) of the Civil Code covers only (1) justices; (2) judges; (3) prosecuting attorneys; (4) clerks of court; (5) other officers and employees connected with the administration of justice; and (6) lawyers. The enumeration cannot be stretched or extended to include relatives of the lawyer – in this case, Julius, son of respondent lawyer.

2. **ID.; ID.; ID.; IN THE ABSENCE OF PROOF THAT RESPONDENT USED HIS SON TO ACQUIRE THE PROPERTY OF HIS CLIENTS, THE CASE MUST BE DISMISSED.—** x x x Article 1491 provides that "[t]he following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another x x x." However, perusal of the records would show that complainant failed to adduce any shred of evidence that Julius acted or mediated on behalf of respondent lawyer, or that respondent lawyer was the ultimate beneficiary of the sale transaction. The mere fact that it was Julius, son of respondent lawyer, who purchased the property, will not support the allegation that respondent lawyer violated Article 1491 (5) of the Civil Code. As aptly noted by the Investigating Commissioner, "[t]here is no evidence to show that respondent

had used his son as a conduit to gain the property in question x x x." In addition, it must be stressed that the "prohibition which rests on considerations of public policy and interests is intended to curtail any undue influence of the lawyer upon his client on account of his fiduciary and confidential relationship with him." Again, we adopt the findings of the Investigating Commissioner that "a scrutiny of complainant's arguments would reveal that he himself [was] even unsure if respondent had indeed taken advantage of his fiduciary relationship with his client, as he safely uses the words "it looks like" or "we believe." Moreover, the Investigating Commissioner aptly observed that there was no 'slightest proof showing that [Julius] was used by respondent to acquire the property of his clients. Affidavits executed by the owners, as well as [Julius] himself showed that respondent did not even actively participate in the negotiations concerning the property." At most, although respondent lawyer's role or participation in the sale in question, if any, might ruffle very sensitive scruples, it is not, however, *per se* prohibited or forbidden by said Article 1491.

APPEARANCES OF COUNSEL

Escobido and Pulgar Law Offices for complainant.

D E C I S I O N

DEL CASTILLO,[*] *J.*:

Where a lawyer's integrity is questioned through a disbarment complaint, this Court, as the ultimate arbiter of such disbarment proceedings, is duty-bound to ascertain the veracity of the charges involved therein. But, when the charges lack merit, the Court will not hesitate to dismiss the case.

In an Affidavit[1] dated December 7, 2009, complainant Christopher R. Santos (Complainant Santos) sought the disbarment of respondent Atty. Joseph A. Arrojado (Atty. Arrojado) for violation

---

[*] Acting Chairperson, per Special Order No. 2562 dated June 20, 2018.

[1] *Rollo,* pp. 1-6.

of Article 1491 of the Civil Code, by acquiring an interest in the land involved in a litigation which he had taken part by reason of the exercise of his profession.

Complainant Santos alleged that he was the defendant in the unlawful detainer case filed by Lilia Rodriguez (Lilia) wherein the respondent lawyer, Atty. Arrojado, was the counsel for Lilia. The case eventually reached the Supreme Court which resolved[2] the same in favor of Atty. Arrojado's client.

Complainant, however, claimed that on August 7, 2009, while the case was pending before the Supreme Court, Lilia sold one of the properties in *litis pendentia* to Atty. Arrojado's son, Julius P. Arrojado (Julius) and that Atty. Arrojado even signed as a witness of that sale. Believing that Atty. Arrojado committed malpractice when he acquired, through his son Julius, an interest in the property subject of the unlawful detainer case in violation of Article 1491 of the Civil Code, complainant instituted the instant complaint.

In his Verified Comment,[3] Atty. Arrojado admitted: (1) that Lilia was a client of the law firm wherein he was a senior partner; (2) that Julius was his son; and (3) that one of the subject properties in the ejectment suit was purchased by his son from Lilia. Atty. Arrojado maintained that he did not violate Article 1491 as he had absolutely no interest in the property purchased by his son; and that the proscription in the said article did not extend to the relatives of the judicial officers mentioned therein. He postulated that, when the sale took place, Julius was already of legal age and discretion, as well as a registered nurse and an established businessman; and that while it was through him (respondent lawyer) that Lilia and Julius met, he did not at all facilitate the transaction. Respondent lawyer also pointed out that complainant failed to cite a specific provision or canon in the Code of Professional Responsibility which he had allegedly transgressed or violated.

---

[2] See SC Resolution dated September 14, 2009 in *Christopher R. Santos v. Lilia B. Rodriguez,* G.R. No. 188910; *id.* at 327.

[3] *Rollo,* pp. 13-29.

Report and Recommendation of the Integrated Bar of the Philippines

In his Report and Recommendation[4] Investigating Commissioner Winston A. Abuyuan of the Integrated Bar of the Philippines – Commission on Bar Philippines (IBP-CBD), recommended the exoneration of Atty. Arrojado.

In recommending the dismissal of the administrative case against respondent lawyer, the Investigating Commissioner opined that:

> Undeniably, [Julius] is the son of [Atty. Arrojado], counsel of the owners of the parcel of land which was leased by [Santos]. The subject property was acquired by [Julius] while the unlawful detainer case was still pending before the Supreme Court.
>
> In an unlawful detainer case, the issue to be resolved is possession and not ownership of the property in question. This is very clear. There is no showing that [Santos] is even claiming ownership of the property in question. In fact, it appears that the issues that remain to be resolved are [Santos'] obligation to pay the rentals due (as lessee) to the owner of the property.
>
> Did [Atty. Arrojado] take advantage of his fiduciary relationship with his clients when his son bought the property in question? We rule in the negative.
>
> There is no evidence to show that [Atty. Arrojado] had used his son as a conduit to gain the property in question considering that [Julius] is a personality separate and distinct from his father, herein respondent. He is quite capable of acquiring property on his own. x x x. Moreover, a scrutiny of complainant's arguments would reveal that he himself is even unsure if respondent had indeed taken advantage of his fiduciary relationship with his client, as he safely uses the words 'it looks like' or 'we believe'. There is no established jurisprudence to the effect that the prohibition applies to immediate family members. In fact, Article 1491(5) is quite clear and explicit, stating in unequivocal terms that the prohibition solely applies to lawyers, with respect to the property and rights to the object in litigation. There is not even the slightest inkling that the prohibition was qualified to extend to any family member.

---

[4] *Id.* at 408-413.

x x x x x x x x x

There is even no proof presented to show that [Atty. Arrojado] had used his fiduciary relationship with his client in order to obtain the property in question. What merely changed was the ownership of the property, and the lease of [Santos] was not in any [manner] affected. In fact, records would reveal that [Julius] was even thinking of allowing [Santos] to continue leasing the property in question but the same was rejected by the latter. As can be seen, no rights of [Santos] were prejudiced by this sale .

x x x x x x x x x

Considering that there is no proof presented by [Santos] to substantiate any of his allegations, we have no other option but to dismiss the charges.[5]

The Board of Governors (BOG) of the IBP, in Resolution No. XX- 2012-359 dated July 21, 2012, adopted the findings of the Investigating Commissioner and his recommendation to dismiss the complaint for lack of merit.[6]

Similarly, in Resolution[7] No. XX-2013-306 dated March 21, 2013, the IBP-BOG denied complainant's motion for reconsideration.

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

Issue

Whether or not the prohibition in Article 1491(5) of the Civil Code against justices, judges, prosecuting attorneys, clerks of court, and other officers and employees connected with the administration of justice, as well as lawyers, from purchasing property and rights which may be the object of any litigation in which they may take part by virtue of their profession, extends to their respective immediate families or relatives.

---

[5] *Id.* at 410-412.

[6] *Id.* at 454.

[7] *Id.* at 453.

Our Ruling

It is complainant's contention that respondent lawyer, as counsel of record in the ejectment case in question, cannot acquire the property subject of litigation, either personally or through his son, without violating the Civil Code and his ethical duties.

The Court does not agree.

For reference, Article 1491(5) of the Civil Code is reproduced below:

> Article 1491. The following persons cannot acquire by purchase, even at a public or judiction, either in person or through the mediation of another.
>
> x x x x x x x x x
>
> (5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon on execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

In *Pena v. Delos Santos,*[8] we held that:

> The rationale advanced for the prohibition in Article 1491(5) is that public policy disallows the transactions in view of the fiduciary relationship involved, *i.e.,* the relation of trust and confidence and the peculiar control exercised by these persons. It is founded on public policy because, by virtue of his office, an attorney may easily take advantage of the credulity and ignorance of his client and unduly enrich himself at the expense of his client. x x x

Undeniably, Article 1491(5) of the Civil Code prohibits the purchase by lawyers of any interest in the subject matter of the litigation in which they participated by reason of their profession. Here, however, respondent lawyer was not the purchaser or

---

[8] G.R. No. 202223, March 2, 2016, 785 SCRA 440, 452.

buyer of the property or rights in litigation. For, in point of fact, it was his son Julius, and not respondent lawyer, who purchased the subject property.

Were we to include within the purview of the law the members of the immediate family or relatives of the lawyer laboring under disqualification, we would in effect be amending the law. We apply to this case the old and familiar Latin maxim *expressio unius est exclusio alterius,* which means that the express mention of one person, thing, act, or consequence excludes all others. Stated otherwise, "where the terms are expressly limited to certain matters, it may not, by interpretation or construction, be stretched or extended to other matters."[9]

As worded, Article 1491(5) of the Civil Code covers only (1) justices; (2) judges; (3) prosecuting attorneys; (4) clerks of court; (5) other officers and employees connected with the administration of justice; and (6) lawyers. The enumeration cannot be stretched or extended to include relatives of the lawyer—in this case, Julius, son of respondent lawyer.

Concededly, Article 1491 provides that "[t]he following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another x x x." However, perusal of the records would show that complainant failed to adduce any shred of evidence that Julius acted or mediated on behalf of respondent lawyer, or that respondent lawyer was the ultimate beneficiary of the sale transaction. The mere fact that it was Julius, son of respondent lawyer, who purchased the property, will not support the allegation that respondent lawyer violated Article 1491(5) of the Civil Code. As aptly noted by the Investigating Commissioner, "[t]here is no evidence to show that respondent had used his son as a conduit to gain the property in question x x x."[10]

In addition, it must be stressed that the "prohibition which rests on considerations of public policy and interests is intended

---

[9] *Zuellig Pharma Corporation v. Sibal,* 714 Phil. 33, 51 (2013).

[10] *Rollo,* p. 410.

to curtail any undue influence of the lawyer upon his client on account of his fiduciary and confidential relationship with him."[11] Again, we adopt the findings of the Investigating Commissioner that "a scrutiny of complainant's arguments would reveal that he himself [was] even unsure if respondent had indeed taken advantage of his fiduciary relationship with his client, as he safely uses the words "it looks like" or "we believe".[12] Moreover, the Investigating Commissioner aptly observed that there was no "slightest proof showing that [Julius] was used by respondent to acquire the property of his clients. Affidavits executed by the owners, as well as [Julius] himself showed that respondent did not even actively participate in the negotiations concerning the property."[13] At most, although respondent lawyer's role or participation in the sale in question, if any, might ruffle very sensitive scruples, it is not, however, *per se* prohibited or forbidden by said Article 1491.

WHEREFORE, the present administrative case is **DISMISSED** for lack of merit.

SO ORDERED.

Jardeleza, Tijam, and *Gesmundo,*[**] *JJ.,* concur.

Leonardo-de Castro, J., on official leave.

---

[11] *Zalamea v. De Guzman, Jr.,* A.C. No.7387, November 7, 2016, 807 SCRA 1, 6-7.

[12] *Id*. at 410.

[13] *Id*. at 411.

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

SECOND DIVISION

[A.C. No. 11326. June 27, 2018]
(Formerly CBD Case No. 14-4305)

PELAGIO VICENCIO SORONGON, JR., *complainant, vs.* **ATTY. RAMON Y. GARGANTOS,**[1] **SR.**, *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE CHARGES; THE COURT CONSIDERS MITIGATING FACTORS, SUCH AS THE RESPONDENT'S ADVANCED AGE, HEALTH, HUMANITARIAN AND EQUITABLE CONSIDERATIONS, AS WELL AS WHETHER THE ACT COMPLAINED OF WAS RESPONDENT'S FIRST INFRACTION, IN DETERMINING OR TEMPERING THE PENALTY TO BE IMPOSED; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS IMPOSED FOR VIOLATION OF CANON 16, RULE 16.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— While we adopt the findings of Commissioner Villamor, we note that this is respondent's first offense, and we shall also take into consideration his advanced age (*i.e.*, he stated that he was already 82 years old in his abovementioned handwritten letter dated November 6, 2014 addressed to Director Solis). We note that, in several cases, the Court, in determining or tempering the penalty to be imposed, has considered mitigating factors, such as the respondent's advanced age, health, humanitarian and equitable considerations, as well as whether the act complained of was respondent's first infraction. In the present case, in view of the respondent's advanced age and the fact that this is his first offense, respondent is hereby suspended from the practice of law for six (6) months and warned that a repetition of the same or similar acts shall be dealt with more severely. Respondent should also return the legal fees paid to him by the complainant in the amount of Two Hundred Thousand Pesos (₱200,000.00), and the documents in respondent's possession which pertain to the case of the complainant.

---

[1] Also spelled as "Gargantus" in some parts of the *rollo*.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is the Affidavit Complaint[2] dated July 1, 2014 filed before the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD) by complainant Pelagio Vicencio Sorongon, Jr. (complainant) against herein respondent Atty. Ramon Y. Gargantos, Sr. (respondent). The complainant, a retired businessman and resident of Davao City, was charged, together with personnel of the Regional Health Office No. XI in Davao City, before the Sandiganbayan for violation of Section 3(e) of Republic Act No. 3019, docketed as Crim. Case Nos. 24483, 24486, and 24488.[3] The complainant engaged respondent's legal services to represent him in the said cases.[4]

Antecedents

The complainant alleged that he gave respondent the amount of Two Hundred Thousand Pesos (₱200,000.00) as full payment of the latter's legal services, which, as allegedly agreed upon, would cover the acceptance fee, appearance fees, and other fees until the resolution of the cases.[5] The complainant also alleged that respondent did not give him a receipt nor did they execute a formal memorandum of agreement (MOA).[6] In addition, complainant narrated that they agreed that if there would be court hearings outside of Quezon City, then complainant would provide respondent's plane ticket, meals, and hotel accommodation.[7] However, should the hearing be at the Sandiganbayan, they would just meet in the court.[8]

---

[2] *Rollo*, pp. 11-14.

[3] *Id*. at 11.

[4] *Id*.

[5] *Id*.

[6] *Id*.

[7] *Id*.

[8] *Id*.

On June 3, 2014, complainant called the respondent regarding the scheduled hearings on June 4 and 5, 2014 at the Sandiganbayan.[9] The respondent instructed the complainant to pick him up at his residence in Quezon City, otherwise he would not attend the hearing.[10] The complainant complied and they attended the hearing at the Sandiganbayan on June 4, 2014.[11] After the hearing and on their way to respondent's residence, he allegedly demanded "pocket money" from the complainant since he would accompany his wife to the United States, otherwise, he would not appear in the hearing the following day and he would no longer serve as complainant's counsel.[12]

The next day, June 5, 2014, the complainant went again to the respondent's residence to pick him up for the hearing.[13] However, the respondent allegedly asked him in a harsh voice, "*O ano? Dala mo ba yong hinihingi ko? Sinabi ko na s[a]yo kahap[o]n kung di mo dala di ako sisipot sa hearing mo at layasan kita.*"[14] When the complainant replied that he did not have the money, the respondent allegedly shouted at him, "*Babaliktarin kita. Sasabihin ko na di mo ako binabayaran at ipakukulong kita. Di mo ako kilala. Umalis [ka na] at baka ano pa ang mangyari s[a]yo. Pagdating mo mamaya sa Sandiganbayan, sabihin at ikwento mo kung ano ang ginawa ko s[a]yo, hindi na ako sisipot ngayong araw at magreresign na ako bilang abogado mo.*"[15]

The complainant alleged that he was traumatized by respondent's acts, and with teary eyes and a cordial voice, he begged respondent not to abandon him.[16] However, instead of

---

[9] *Id*. at 12.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id.*

[14] *Id*.; emphasis omitted.

[15] *Id*.; emphasis omitted.

[16] *Id.*

listening to him, the respondent ordered him to leave.[17] He then politely replied, "*[Sige] po Atty. Alis na po ako. Salamat po.*"[18] During the hearing on that day, the complainant narrated before the Sandiganbayan the acts of respondent, and informed the court that, being a jobless senior citizen, he could not afford to hire a new lawyer to represent him.[19] At 4:35 p.m. of the same day, respondent filed a letter informing the Sandiganbayan of his withdrawal as the complainant's counsel.[20] Thus, in the abovementioned Affidavit Complaint, the complainant prayed for the refund of a portion of the amount paid to respondent in order that he might be able to hire a new counsel.[21]

In an Order[22] dated August 18, 2014, Dominic C.M. Solis, the Director for Bar Discipline (Director Solis), directed the respondent to submit his Answer to the Affidavit Complaint pursuant to Bar Matter No. 1755 (*Re: Rules of Procedure of the Commission on Bar Discipline*), as amended by A.M. No. 11-9-4-SC (*Re: Efficient Use of Paper Rule*).

In a handwritten letter[23] dated November 6, 2014 addressed to Director Solis, the respondent, who stated therein that he is already 82 years old, requested for a copy of the Affidavit Complaint in order to be able to prepare his Answer thereof.

On January 9, 2015, IBP-CBD Commissioner Honesto A. Villamor (Commissioner Villamor) issued a Notice of Mandatory Conference/Hearing[24] to the parties, requiring them to attend the mandatory conference/hearing on March 26, 2015, and to submit their respective briefs at least ten (10) days prior to the hearing.

---

[17] *Id*.

[18] *Id*; emphasis omitted.

[19] *Id*.

[20] *Id.* at 13.

[21] *Id*.

[22] *Id.* at 19.

[23] *Id.* at 23.

[24] *Id.* at 24.

In compliance therewith, the complainant filed his Mandatory Conference Brief[25] dated March 13, 2015, wherein he reiterated the allegations in his Affidavit Complaint, and expressed his unwillingness to enter into an amicable settlement.[26]

In an Order[27] dated March 26, 2015, Commissioner Villamor noted that only the complainant appeared for the mandatory conference, coming all the way from Davao City. His Mandatory Conference Brief was also noted.[28] Moreover, the Order also noted that respondent failed to file his Answer, and thus, he was considered in default and to have waived his right to be present in the mandatory conference.[29] The parties were ordered to file their respective position papers with supporting documentary exhibits and/or judicial affidavit/s of witness/es, if any, within fifteen (15) days from receipt of the said Order.[30] After the lapse of the period for submission of position papers, the case would then be deemed submitted for report and recommendation.[31]

The complainant filed his Position Paper[32] dated May 18, 2015, reiterating the allegations in his Affidavit Complaint and Mandatory Conference Brief. Meanwhile, aside from the abovementioned handwritten letter dated November 6, 2014, the respondent failed to file any pleadings, or to participate in the proceedings before the IBP-CBD.

Report and Recommendation of the CBD

In his Report and Recommendation[33] (*Report*) dated May 29, 2015, Commissioner Villamor found respondent to have

[25] *Id*. at 37-41.

[26] *Id*. at 40.

[27] *Id*. at 45.

[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] *Id.*

[32] *Id*. at 46-51.

[33] *Id*. at 67-71.

violated the Lawyer's Oath and the Code of Professional Responsibility (CPR), particularly Canon 16,[34] Rule 16.01,[35] and thus, recommended that he be suspended from the practice of law for a period of one (1) year and that he should return all documents and money in his possession over and above his lawful and reasonable attorney's fee with a warning that a repetition of the same or similar offense shall be dealt with more severely.[36]

In his *Report*, Commissioner Villamor considered the amount of ₱50,000.00 as reasonable attorney's fee for the time spent and the extent of the services rendered by respondent during the arraignment of the complainant's case, but respondent was to return the remaining amount of ₱150,000.00 to the complainant.[37]

Moreover, Commissioner Villamor found that the respondent abandoned the complainant, and his withdrawal as counsel was without good cause.[38] He also noted that respondent failed, despite demand, to return the documents to the complainant.[39]

Resolution of the Board of Governors of the IBP

On June 20, 2015, the IBP Board of Governors issued Resolution No. XXI-2015-581,[40] adopting and approving the above *Report*, but modified the same by ordering respondent to return the entire amount of Two Hundred Thousand Pesos (₱200,000.00) to the complainant.[41]

---

[34] CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

[35] RULE 16.01. — A lawyer shall account for all money or property collected or received for or from the client.

[36] *Rollo,* p. 71.

[37] *Id.* at 70.

[38] See *id.*

[39] *Id.*

[40] *Id.* at 65-66.

[41] *Id.* at 65.

Court's Ruling

As found by Commissioner Villamor, the respondent allegedly failed to return, despite demand, the complainant's documents after he withdrew as his counsel[42] in violation of Canon 16, Rule 16.01 which provides that a lawyer shall account for and hold in trust the money or property from the client. Moreover, despite respondent's legal services having been allegedly paid in the amount of Two Hundred Thousand Pesos (₱200,000.00), which, as allegedly agreed upon, was to cover the acceptance fee, appearance fees, and other fees until the resolution of the cases, he allegedly abandoned his client when the latter was not able to give him the "pocket money" he had demanded. This is a serious charge which the respondent should have addressed and answered, as well as the other allegations, during the IBP proceedings. However, after requesting for a copy of the Affidavit Complaint in order to be able to prepare his Answer, respondent failed to participate in the IBP proceedings.

While we adopt the findings of Commissioner Villamor, we note that this is respondent's first offense, and we shall also take into consideration his advanced age (*i.e.*, he stated that he was already 82 years old in his abovementioned handwritten letter dated November 6, 2014 addressed to Director Solis). We note that, in several cases,[43] the Court, in determining or tempering the penalty to be imposed, has considered mitigating factors, such as the respondent's advanced age, health, humanitarian and equitable considerations, as well as whether the act complained of was respondent's first infraction. In the present case, in view of the respondent's advanced age and the fact that this is his first offense, respondent is hereby suspended from the practice of law for six (6) months and warned that a repetition of the same or similar acts shall be dealt with more

---

[42] *Id.* at 70.

[43] See *The Office of the Court Administrator v. Egipto, Jr.*, A.M. No. P-05-1938, January 30, 2018, pp. 2-3, citing *Arganosa-Maniego v. Salinas*, 608 Phil. 334, 346-347 & 349 (2009); see also *Tolentino v. Mangapit*, 209 Phil. 607, 611-612 (1983).

severely. Respondent should also return the legal fees paid to him by the complainant in the amount of Two Hundred Thousand Pesos (₱200,000.00), and the documents in respondent's possession which pertain to the case of the complainant.

WHEREFORE, respondent Atty. Ramon Y. Gargantos, Sr., is hereby **SUSPENDED** from the practice of law for six (6) months and warned that a repetition of the same or similar acts will be dealt with more severely. Respondent Atty. Gargantos, Sr. is ordered to **RETURN** to complainant Pelagio Vicencio Sorongon, Jr. the amount of Two Hundred Thousand Pesos (₱200,000.00) within ninety (90) days from the finality of this Decision, including the documents in respondent's possession which pertain to the case of the complainant. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Further, let copies of this Decision be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta, Perlas-Bernabe,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[A.C. No. 12121. June 27, 2018]
(Formerly CBD Case No. 14-4322)

CELESTINO MALECDAN, *complainant, vs.* **ATTY. SIMPSON T. BALDO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; KATARUNGANG PAMBARANGAY LAW (PRESIDENTIAL DECREE P.D. 1508; BARANGAY CONCILIATION PROCEEDINGS; LAWYERS ARE BARRED FROM APPEARING BEFORE THE LUPON; RATIONALE.— The Court agrees with the IBP Board of Governors that the language of P.D. 1508 is mandatory in barring lawyers from appearing before the Lupon. As stated in the case of *Ledesma v. Court of Appeals*, Section 9 of P.D. 1508 mandates personal confrontation of the parties because: "x x x **a personal confrontation between the parties without the intervention of a counsel or representative would generate spontaneity and a favorable disposition to amicable settlement on the part of the disputants**. In other words, the said procedure is deemed conducive to the successful resolution of the dispute at the barangay level." x x x "**To ensure compliance with the requirement of personal confrontation between the parties, and thereby, the effectiveness of the barangay conciliation proceedings as a mode of dispute resolution, the above-quoted provision is couched in mandatory language**. Moreover, pursuant to the familiar maxim in statutory construction dictating that '*expressio unius est exclusio alterius*', the express exceptions made regarding minors and incompetents must be construed as exclusive of all others not mentioned."

2. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; 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 ; RESPONDENT'S APPEARANCE AND PARTICIPATION IN THE PROCEEDINGS BEFORE THE *PUNONG BARANGAY* IS A VIOLATION OF SECTION 9 OF P.D. 1508.— Atty.

Baldo's violation of P.D. 1508 thus falls squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility (CPR), which provides: CANON 1- A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES. Rule 1.01- A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. 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. Here, Atty. Baldo admitted that he appeared and participated in the proceedings before the *Punong Barangay* in violation of Section 9 of P.D. 1508. Atty. Baldo therefore violated Rule 1.01 of the CPR in connection with Section 9 of P.D. 1508 when he appeared as counsel for spouses James and Josephine Baldo in a hearing before the *Punong Barangay*, Barangay Pico, Municipality of La Trinidad in Benguet.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an administrative complaint[1] filed with the Office of the Integrated Bar of the Philippines Baguio-Benguet Chapter (IBP Baguio-Benguet Chapter) by Complainant Celestino Malecdan (Malecdan) against Respondent Atty. Simpson T. Baldo (Atty. Baldo), for the latter's alleged violation of Section 9 of Presidential Decree 1508 (P.D. 1508), otherwise known as the *Katarungang Pambarangay* Law, which prohibits the participation of lawyers in the proceedings before the *Lupon*:

[1] *Rollo*, pp. 6-7.

SEC. 9. Appearance of parties in person.—In all proceedings provided for herein, the parties must appear in person **without the assistance of counsel/representative**, with the exception of minors and incompetents who may be assisted by **their next of kin who are not lawyers.** (Emphasis supplied)

The Factual Antecedents

Malecdan filed a letter of complaint for *Estafa*, Breach of Contract and Damages against spouses James and Josephine Baldo, before the *Lupon* of Barangay Pico in La Trinidad, Benguet.

On August 14, 2014, Atty. Baldo appeared as counsel of spouses Baldo during the hearing on the subject complaint before the *Punong Barangay*.[2]

On August 18, 2014, Malecdan filed a Complaint-Affidavit (Complaint) before the IBP Baguio-Benguet Chapter praying that proper sanctions be imposed on Atty. Baldo for violating Section 9 of P.D. 1508.

On August 20, 2014, the Committee on Ethics of the IBP Baguio-Benguet Chapter furnished Atty. Baldo with a copy of the complaint and set the case for a conciliation conference on September 12, 2014.[3]

On September 15, 2014, the Complaint was endorsed to the Committee on Bar Discipline-IBP (CBD-IBP) by the Committee on Ethics of IBP Baguio-Benguet Chapter after the parties failed to agree on a settlement.[4]

The CBD-IBP thereafter issued an Order[5] dated September 17, 2014, requiring Atty. Baldo to submit a duly verified Answer, within fifteen (15) days from receipt of the order.[6]

---

[2] *Id.* at 8-9.

[3] *Id.* at 3.

[4] *Id.* at 4.

[5] *Id.* at 11.

[6] *Id.*

On January 14, 2015, the CBD-IBP issued a Notice[7] setting the mandatory conference/hearing of the subject complaint on February 18, 2015.[8]

On February 12, 2015, Malecdan filed his Mandatory Conference Brief.[9]

On February 23, 2015, the mandatory conference of the case was re-scheduled to March 24, 2015 after Atty. Baldo failed to attend the same.[10]

In his Answer[11] dated February 27, 2015, Atty. Baldo admitted that he was present during the proceedings before the *Punong Barangay*. He explained that he was permitted by the parties to participate in the said hearing, to wit:

1. The allegation in the complaint is admitted. However, the rest of the truth to the matter is that, **before entering the barangay session hall, respondent asked permission from the officer-in-charge if he will be allowed that before any hearing be conducted, he and the respondent in the said barangay case, his uncle, James Baldo, be allowed to talk to complainant Celestino Malecdan as they may be able to amicably settle the matter on their own, of which the officer in charge granted on the reason that the proceeding was still in the dialogue stage**;

2. Likewise, when he entered inside the barangay session hall where complainant and his companion, Laila Alumno was waiting, **respondent again asked permission from complainant and his companion, Laila Alumno if the latter will allow the former to join them in the dialogue with James Baldo as the parties may amicably settle the case on their own**;

---

[7] *Id.* at 12.

[8] *Id.*

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

[10] *Id.* at 18.

[11] *Id.* at 19-21.

3. Since complainant already knew respondent as they had a previous meeting at the office of complainant's lawyer, Atty. Melissa Quitan-Corpuz concerning the same case against James Baldo, complainant readily permitted and allowed that parties have a dialogue on their own with respondent joining them and without the presence of any barangay officials.[12] (Emphasis supplied)

In an Order[13] dated March 24, 2015, Investigating Commissioner Eduardo R. Robles gave Malecdan a period of fifteen (15) days to file a supplemental complaint where he can incorporate other facts and circumstances which he failed to indicate in his complaint. Atty. Baldo was likewise given a period of fifteen (15) days from his receipt of the supplemental complaint within which to file his supplemental answer should he wish to do so.[14]

On March 31, 2015, Malecdan filed his Verified Supplemental Complaint Affidavit,[15] wherein he insisted that he vehemently objected to the presence of Atty. Baldo during the proceedings before the Punong Barangay, to wit:

2. **Using his influence as a lawyer, Atty. Baldo prevailed upon the Punong Barangay and the Barangay Secretary to let him participate in the barangay proceedings intended for the settlement of our grievance against Spouses Josephine Baldo and James Baldo on August 14, 2014**.

3. He did this over my vehement objections. I told him that he was not supposed to be there but then he insisted. It even got to the point that we were already arguing out loud. **I resented the fact that he was there assisting and representing his clients, the Spouses Baldo while I was not represented by counsel. We were in a situation that Section 9 of Presidential Decree 1508 sought to prevent**.[16] (Emphasis supplied)

---

[12] *Id.* at 19.

[13] *Id* at 28.

[14] *Id*.

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

[16] *Id.* at 29.

After due proceedings, Investigating Commissioner Robles rendered a Report and Recommendation[17] on June 2, 2015, recommending that Atty. Baldo be given a warning. Commissioner Robles found that the language of the *Katarungang Pambarangay* Law is not that definite as to unqualifiedly bar lawyers from appearing before the Lupon, nor is the language that clear on the sanction imposable for such an appearance.[18] Commissioner Robles reasoned that the matter of appearance or non-appearance before the *Lupon* is clearly addressed to a lawyer's taste of propriety:

> x x x. The respondent ought to have known that his attendance thereat would have caused some ruckus. That respondent chose to attend is some measure of his lack of propriety.
>
> Although this Commission cannot legislate good taste or an acute sense of propriety, the Commission can definitely remind the respondent that another act of insensitivity to the rules of good conduct will court administrative sanctions.[19]

The dispositive portion of Commissioner Robles' Report and Recommendation reads as follows:

> UPON THE FOREGOING, it is respectfully recommended that the respondent Atty. Simpson T. Baldo be given a warning.
>
> RESPECTFULLY SUBMITTED.[20]

On June 20, 2015, the IBP Board of Governors passed a Resolution[21] reversing and setting aside the Report and Recommendation of Investigating Commissioner and instead recommended that Atty. Baldo be reprimanded, thus:

> RESOLVED to REVERSE as it is hereby REVERSED and SET ASIDE, the Report and Recommendation of the Investigating

---

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

[18] *Id.* at 39.

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

[20] *Id.* at 40.

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

Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", considering Respondent's appearance as counsel for Spouses James and Josephine Baldo in a Katarungan[g] Pambarangay hearing, Thus, Respondent is hereby **REPRIMANDED**.[22] (Emphasis in the original and italics omitted)

The Court's Ruling

After a judicious examination of the records and submission of the parties, the Court upholds the findings and recommendation of the IBP Board of Governors.

The Court agrees with the IBP Board of Governors that the language of P.D. 1508 is mandatory in barring lawyers from appearing before the Lupon.

As stated in the case of *Ledesma v. Court of Appeals*,[23] Section 9 of P.D. 1508 mandates personal confrontation of the parties because:

"x x x **a personal confrontation between the parties without the intervention of a counsel or representative would generate spontaneity and a favorable disposition to amicable settlement on the part of the disputants**. In other words, the said procedure is deemed conducive to the successful resolution of the dispute at the barangay level."

x x x x x x x x x

"**To ensure compliance with the requirement of personal confrontation between the parties, and thereby, the effectiveness of the barangay conciliation proceedings as a mode of dispute resolution, the above-quoted provision is couched in mandatory language**. Moreover, pursuant to the familiar maxim in statutory construction dictating that '*expressio unius est exclusio alterius*', the express exceptions made regarding minors and incompetents must be construed as exclusive of all others not mentioned."[24] (Emphasis supplied)

---

[22] *Id.* at 37.

[23] 286 Phil. 917 (1992).

[24] *Id.* at 924-925, citing Minister of Justice Opinion No. 135, s. 1981.

Atty. Baldo's violation of P.D. 1508 thus falls squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility (CPR), which provides:

> CANON 1- A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.
>
> Rule 1.01- A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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.[25] 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.[26] 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.[27] Unlawful conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element.[28]

Here, Atty. Baldo admitted that he appeared and participated in the proceedings before the *Punong Barangay* in violation of Section 9 of P.D. 1508. Atty. Baldo therefore violated Rule 1.01 of the CPR in connection with Section 9 of P.D. 1508 when he appeared as counsel for spouses James and Josephine Baldo in a hearing before the *Punong Barangay*, Barangay Pico, Municipality of La Trinidad in Benguet.

All told, the Court finds that the evidence adduced is sufficient to support the allegations against Atty. Baldo.

---

[25] *Maniquiz v. Atty. Emelo*, A.C. No. 8968, September 26, 2017, p. 4.

[26] *Id.*

[27] *Id.*

[28] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 565 (2014).

WHEREFORE, the Court finds Atty. Simpson T. Baldo **LIABLE** for violation of Canon 1 and Rule 1.01 of the Code of Professional Responsibility and he is hereby **REPRIMANDED** with a stern warning that a repetition of the same or similar act would be dealt with more severely.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Peralta, Perlas-Bernabe, and *Reyes, Jr., JJ.,* concur.

FIRST DIVISION

[**A.M. No. P-18-3848**. June 27, 2018]
(Formerly OCA IPI No. 15-4490-P)

VENERANDO C. OLANDRIA, *complainant, vs.* **EUGENIO E. FUENTES, JR., Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Cebu City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFF; FAILURE OR INABILITY OF RESPONDENT TO MAKE AN INVENTORY OF THE PROPERTY ATTACHED, THOUGH COMMITTED THROUGH INADVERTENCE, AMOUNTS TO SIMPLE NEGLECT OF DUTY.— It is significant to note that respondent did admit his failure or inability to "make an inventory of the items removed from the [complainant]'s warehouse and junkyard and to make an inquiry as to where the items [were] stored within 10 days from receipt thereof." However, he justified his non-submission of an inventory by claiming that, as early as January 28, 2014, the parties in Civil Case No. CEB-38633 had already entered into a compromise agreement; and that he was informed by the plaintiff's representative that certain items

were withdrawn from the attached gas stations pursuant to the compromise agreement. Respondent also argued, that when he was ordered by the RTC-Cebu on April 3, 2014 to oversee the withdrawal of items from the attached gas stations, the same was already *fait accompli* as the items had already been withdrawn by the plaintiff. In essence, respondent stated that it would not be possible for him to do so because "the said items were already withdrawn by the plaintiff x x x". He then manifested before the RTC-Cebu that "he could not make a true and accurate inventory of the items withdrawn by the plaintiff from the warehouse and junkyard of the [complainant]." Such inability or failure on the part of respondent, though committed evidently through inadvertence, lack of attention, or carelessness, amounts to simple neglect of duty.

2. ID.; ID.; ID.; ID.; ID.; IN VIEW OF THE PRESENCE OF A MITIGATING CIRCUMSTANCE AND THE FACT THAT RESPONDENT IS ACTUALLY DISCHARGING FRONTLINE FUNCTIONS, THE COURT IMPOSED A FINE EQUIVALENT TO ONE (1) MONTH AND ONE (1) DAY OF HIS SALARY INSTEAD OF SUSPENSION.— x x x [T]his Court notes that the OCA had appreciated in herein respondent's favor one extenuating circumstance, *i.e.* "this is [respondent's] first administrative infraction." Under Section 53(k), Rule 10 of the RRACCS, "first offense" may be considered as a mitigating circumstance. Moreover, Section 54, Rule 10 of the RRACCS provides that "[t]he minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present." Hence, suspension for one month and one day should be the penalty imposed. However, this Court joins the OCA's recommendation that a fine may be imposed on respondent, in lieu of suspension, "so that respondent x x x can continue to discharge his tasks and to avert any undue adverse effect on public service if he were to be suspended" as it has been held in certain cases that suspension would not be practical when respondent's work would be left unattended thereby; hence a fine should instead be imposed so that he can perform the duties of his office. What is more, case law teaches that where a respondent is actually discharging frontline functions as sheriff, then, the penalty of fine may be imposed in lieu of suspension from office. Additionally, Section 52(b), Rule 10 of the RRACCS provides that "[t]he disciplining authority may allow payment of fine in place of suspension x x x [w]hen the respondent is actually discharging frontline functions or those directly dealing with the public and the human resource complement of the office

is insufficient to perform such function," as in this case. In sum, this Court takes the view that the proper amount of fine, which can be imposed upon respondent under the peculiar circumstances attendant to this case, is equivalent to his salary for one month and one day, computed on the basis of his salary at the time the decision becomes final and executory, pursuant to Section 56(d), Rule 10 of the RRACCS.

D E C I S I O N

DEL CASTILLO,[*] *J.*:

The present administrative matter arose from the Complaint-Affidavit[1] filed by Venerando C. Olandria (complainant) against Eugenio E. Fuentes, Jr., Sheriff IV, Office of the Clerk of Court (respondent), Regional Trial Court (RTC) of Cebu City, for grave misconduct, gross dereliction of duty, and gross ignorance of the law relative to his action in the enforcement of a writ of attachment in Civil Case No. CEB-38633, entitled *Pump & Go Power Fuel, Inc. v. Venlei Assets Corp. and Venerando Cimagala Olandria doing business under the name and style of Unified Petroleum Philippines.*

Complainant alleged that he was one of the defendants in a Complaint for a sum of money and the issuance of a writ of attachment filed by Pump & Go Power Fuel, Inc. (plaintiff) before Branch 7, RTC of Cebu City (RTC-Cebu), and thereat docketed as Civil Case No. CEB-38633; that the RTC-Cebu issued a writ of preliminary attachment in said Civil Case No. CEB-38633; that respondent was assigned to enforce said writ; that respondent thereupon attached and took possession of complainant's seven gasoline stations; that plaintiff posted in each attached gas station a private security guard; that plaintiff eventually gained control of the attached gas stations and could enter and/or leave the premises at will; that on several occasions, plaintiff had withdrawn some things from the attached gas stations; that he filed a motion with the RTC-Cebu to appoint

---

[*] Acting Chairperson per Special Order No. 2562 dated June 20, 2018.

[1] *Rollo,* pp. 1-6.

another sheriff since his interest could not be protected by respondent, but the motion was denied; that he filed with RTC-Cebu a motion to require respondent to make an inventory of the attached properties; that on April 3, 2014, the RTC ordered respondent to make an inventory of the attached properties and to state where said attached properties were to be stored; that in response thereto, respondent filed a Manifestation dated October 28, 2014 stating that the attached properties had been withdrawn by the plaintiff in his (respondent's) absence, based on information provided by said plaintiff's representative, hence he could no longer make a true and accurate inventory thereof; that, as an officer of the court, respondent should have retained and kept control of the attached properties, subject to the supervision of the court, in order to protect the interest of both parties equally; and that respondent's acts amounted to gross dereliction of duty, for which respondent should be dismissed from the service.

In its 1st Indorsement[2] dated October 6, 2015, the Office of the Court Administrator (OCA) required respondent to comment on the above-mentioned charges.

In his Comment,[3] respondent asserted that he did not lose control over the attached properties because the security guards posted at the gasoline stations effectively protected and guarded the properties; that it had been the standard operating practice of sheriffs that, in the attachment of properties like gasoline stations, security guards were posted therein because bonded warehouses where attached properties could be placed, were not available anymore; that, in this case, it was impractical to dig out the gasoline tanks and transfer them somewhere else; that it was beyond the physical capability of any sheriff like himself to personally guard all attached properties; that he preferred not to make any comment on the claim that plaintiff's employees could enter and leave the premises of the attached properties, in the absence of any allegation that complainant in fact had suffered any injury or damage as a result thereof;

---

[2] *Id.* at 11.

[3] *Id.* at 13-16.

that even if he had prior knowledge of the alleged activity of plaintiff, he could not have prevented plaintiff from taking out the attached properties because the RTC's Decision on a Compromise Agreement dated January 28, 2014 authorized plaintiff to do so; that, in fact, the said Decision gave plaintiff a period of 30 days from the signing of the Compromise Agreement within which to do so, otherwise, plaintiff would have had to pay the intervenors a monthly rental of ₱40,000.00 for the use and occupation of the gasoline stations in question; and, that after he filed his Manifestation on October 28, 2014, wherein he set forth the reason why he could not render a true and accurate inventory, the RTC in fact did not require him to render an inventory anymore. Respondent concluded his comment with a prayer that the Complaint-Affidavit be dismissed.

The OCA Report and Recommendation

In its Memorandum[4] Report of June 7, 2017, the OCA recommended that respondent be found guilty of simple neglect of duty and ordered to pay a ₱5,000.00 fine, with a stern warning that a repetition of the same or similar offense would warrant the imposition of a more severe penalty.

The OCA found that respondent did not make an inventory of the properties covered by the writ of preliminary attachment; that while plaintiff was authorized to withdraw the equipment from the attached gas stations pursuant to the RTC's Decision of January 28, 2014, it was respondent's duty nonetheless to see to it that the equipment were withdrawn while he was physically present, so that complainant's interests could be protected; that indeed the RTC's Decision based on the compromise agreement clearly made reference to "the nature and amount of the item or items withdrawn and where it or they were stored or moved to";[5] that the said judgment likewise directed that an inventory be made in compliance with the court's Order; that the mere fact that the RTC did not issue a subsequent Order requiring respondent to make an inventory did not excuse respondent at all from making such an inventory; that respondent

[4] *Id*. at 21-25.

[5] *Id*. at 23.

was thus remiss in his duty to keep custody of the attached properties, which constituted simple neglect of duty, classified as a less grave offense and penalized by suspension for one month and one day to six months, for the first offense, and dismissal from the service for the second; that pursuant to the doctrine that this Court is not only a court of law but also a court of equity, and considering moreover that this is respondent's first administrative infraction, the penalty that should be meted out against respondent ought to be tempered with compassion; hence, all things considered, a fine in the amount of ₱5,000.00 was justified under circumstances, so that respondent may continue to discharge his duties, and on the other hand, that any adverse effect on the public service might be avoided.

The Court's Ruling

Rule 57 of the Rules of Court governs the provisional remedy of preliminary attachment; Section 6 of which is pertinent to the instant case, *viz.*:

> SEC. 6. *Sheriffs return*—After enforcing the writ, the sheriff must likewise without delay make a return thereon to the court from which the writ issued, with a full statement of his proceedings under the writ and a complete inventory of the property attached, together with any counter-bond given by the party against whom attachment is issued, and serve copies thereof on the applicant.

Here, it was beyond cavil that, by Order[6] dated April 3, 2014, the RTC- Cebu directed the plaintiff to confirm or comment on the allegation of the complainant that there had been withdrawal of fuel from the attached gas stations done without the presence of respondent. Likewise, by Order dated October 10, 2014, the RTC-Cebu directed respondent "to make an inventory of the items removed from [complainant's] warehouse and junkyard and to make an inquiry as to where the items [were] stored within 10 days."[7]

It is significant to note that respondent did admit his failure or inability to "make an inventory of the items removed from

[6] *Id.* at 7.

[7] See respondent's Manifestation, *id*. at 8.

the [complainant]'s warehouse and junkyard and to make an inquiry as to where the items [were] stored within 10 days from receipt there of."[8] However, he justified his non-submission of an inventory by claiming that, as early as January 28, 2014, the parties in Civil Case No. CEB-38633 had already entered into a compromise agreement; and that he was informed by the plaintiffs representative that certain items were withdrawn from the attached gas stations pursuant to the compromise agreement. Respondent also argued, that when he was ordered by the RTC-Cebu on April 3, 2014 to oversee the withdrawal of items from the attached gas stations, the same was already *fait accompli* as the items had already been withdrawn by the plaintiff.[9] In essence, respondent stated that it would not be possible for him do so because "the said items were already withdrawn by the plaintiff x x x."[10] He then manifested before the RTC-Cebu that "he could not make a true and accurate inventory of the items withdrawn by the plaintiff from the warehouse and junkyard of the [complainant]."[11]

Such inability or failure on the part of respondent, though committed evidently through inadvertence, lack of attention, or carelessness, amounts to simple neglect of duty.

"Simple Neglect of Duty is defined as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference."[12] In *Sabijon v. De Juan,*[13] this Court adopted the OCA's recommendation that therein respondent-sheriff be held guilty of simple neglect of duty, among others, because of his failure to make periodic reports until either full satisfaction of the judgment or the expiration of the writ's effectivity, thus —

---

[8] *Id*. at 18.

[9] *Id.* at 8-9.

[10] *Id*. at 19.

[11] *Id.* at 9.

[12] *Sabijon v. De Juan,* 752 Phil. 110, 118 (2015).

[13] *Id*.

In this case, respondent, as a Sheriff, ought to know that pursuant to Section 9, Rule 39 of the Rules of Court, a judgment debtor, in case he has insufficient cash to pay all or part of the judgment debt, is given the option to choose which among his properties or a part thereof may be levied upon. **Moreover, respondent should have known that under Section 14 of the same Rule, he is required to make a return on the writ of execution and make periodic reports on the execution proceedings until either the full satisfaction of the judgment or the expiration of the writ's effectivity, as well as to furnish the parties copies of such return and periodic reports.**

x x x **Worse, respondent himself admitted that he failed to make a return on the writ and to make periodic reports on the execution process, thus, putting into serious doubt that an auction sale involving the subject truck was actually conducted.** Irrefragably, the OCA correctly concluded that respondent's foregoing acts constitute Grave Abuse of Authority **and Simple Neglect of Duty**."[14] (Emphasis and underscoring supplied)

Conformably with the foregoing disquisition, herein respondent should have submitted the inventory of the attached properties as directed by the trial court; in addition, he should have made updates on the attached properties in his custody while these were awaiting judgment and execution. Furthermore, there is no merit in respondent's claim that he could not make a true and accurate account of plaintiff's withdrawals from the attached properties. Respondent should have made another inventory of the attached properties and compared this second inventory with the first inventory that he had submitted with his return as required under the above-quoted Section 6, Rule 57 of the Rules of Court. The items listed in his first inventory which were no longer in his later inventory should thus appear as the items removed by the plaintiff.

Respondent must be reminded of his general functions and duties as sheriff, to wit:

[a] serves and/or executes all writs and processes of the Courts and other agencies, both local and foreign

---

[14] *Id*. at 118-120.

[b] keeps custody of attached properties or goods;

[c] maintains his own record books on vvrits of execution, vvrits of attachment, writs of replevin, writs of injunction, and all other processes executed by him;

[d] submits periodic reports to the Clerk of Court;

[e] does related tasks and performs other duties that may be assigned by the Executive Judge and/or Clerk of Court.[15]

Clearly, not only was respondent obliged to submit his periodic reports; he was also expected to perform tasks as may be assigned by the judge, such as the directive to submit an inventory to determine the withdrawals made by the plaintiff. Respondent cannot validly argue that the withdrawals made by the plaintiff were proper and in accordance with the compromise agreement entered by the parties; it is for the judge to determine the propriety of the withdrawals. Also, he cannot validly justify his inaction based on the fact that the RTC-Cebu already rendered judgment on Civil Case No. CEB-38633. Respondent himself stated that the RTC-Cebu rendered its judgment on January 28, 2014[16] but the Order directing him to submit an inventory was issued on October 20, 2014.[17] Simply put, respondent had no authority or discretion to decide whether to comply or not, or to declare whether the order had already become moot.

Under Section 50(D)(l), Rule 10 of the 2017 Revised Rules on Administrative Cases in the Civil Service (RRACCS),[18] simple neglect of duty is classified as a less grave offense and is punishable by suspension for one month and one day to six months for the first offense, and dismissal from the service for the second offense.

With reference to the appropriate imposable penalty, this Court notes that the OCA had appreciated in herein respondent's

[15] The 2002 Revised Manual for Clerks of Court, Vol. I, p. 196.

[16] *Rollo,* p. 8.

[17] *Id.*

[18] Civil Service Commission (CSC) Resolution No. 1701077, promulgated on July 3, 2017.

favor one extenuating circumstance, *i.e.* "this is [respondent's] first administrative infraction."[19] Under Section 53(k), Rule 10 of the RRACCS, "first offense" may be considered as a mitigating circumstance. Moreover, Section 54, Rule 10 of the RRACCS provides that "[t]he minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present." Hence, suspension for one month and one day should be the penalty imposed. However, this Court joins the OCA's recommendation that a fine may be imposed on respondent, in lieu of suspension, "so that respondent x x x can continue to discharge his tasks and to avert any undue adverse effect on public service if he were to be suspended"[20] as it has been held in certain cases that suspension would not be practical when respondent's work would be left unattended thereby; hence a fine should instead be imposed so that he can perform the duties of his office.[21] What is more, case law teaches that where a respondent is actually discharging frontline functions as sheriff, then, the penalty of fine may be imposed in lieu of suspension from office.[22] Additionally, Section 52(b), Rule 10 of the RRACCS provides that "[t]he disciplining authority may allow payment of fine in place of suspension x x x [w]hen the respondent is actually discharging frontline functions or those directly dealing with the public and the human resource complement of the office is insufficient to perform such function," as in this case.

In sum, this Court takes the view that the proper amount of fine, which can be imposed upon respondent under the peculiar circumstances attendant to this case, is equivalent to his salary for one month and one day, computed on the basis of his salary at the time the decision becomes final and executory, pursuant to Section 56(d), Rule 10 of the RRACCS.[23]

---

[19] *Rollo,* p. 24.

[20] *Id*. at 24.

[21] *Mariñas v. Florendo,* 598 Phil. 322, 331 (2009).

[22] See *Atty. Cabigao v. Nery,* 719 Phil. 475, 485 (2013).

[23] See also *Daplas v. Department of Finance,* G.R. No. 221153, April 17, 2017.

WHEREFORE, respondent Eugenio E. Fuentes, Jr., Sheriff IV, Office of the Clerk of Court, Regional Trial Court (RTC), Cebu City is hereby found **GUILTY** of Simple Neglect of Duty for which he is meted out a **FINE** equivalent to one (1) month and one (1) day of his salary, computed on the basis of his salary at the time the decision becomes final and executory.

SO ORDERED.

Jardeleza, Tijam, and *Gesmundo,*[**] *JJ.,* concur.

Leonardo-de Castro, J., on official leave.

SECOND DIVISION

[A.M. No. RTJ-16-2460. June 27, 2018]

ATTY. JEROME NORMAN L. TACORDA and LETICIA RODRIGO-DUMDUM, *complainants, vs.* **JUDGE PERLA V. CABRERA-FALLER, Executive Judge, and OPHELIA G. SULUEN, Officer-in-Charge/Legal Researcher II, both of Branch 90, Regional Trial Court, Dasmariñas City, Cavite,** *respondents.*

SYLLABUS

LEGAL ETHICS; JUDGES; FAILURE TO PROMPTLY ACT ON THE MOTION CONSTITUTES GROSS INEFFICIENCY AND DELAY IN THE ADMINISTRATION OF JUSTICE; FINE, IMPOSED.— [W]e find merit in the complaint for gross inefficiency and delay in the administration of justice against Judge Cabrera-Faller when she failed to promptly act on the motion filed by the Spouses Dumdum. x x x Delay in the disposition of cases

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

> amounts to a denial of justice, which brings the court into disrepute, and ultimately erodes public faith and confidence in the Judiciary. Judges are therefore called upon to exercise the utmost diligence and dedication in the performance of their duties. More particularly, trial judges are expected to act with dispatch and dispose of the court's business promptly and to decide cases within the required periods. The main objective of every judge, particularly trial judges, should be to avoid delays, or if it cannot be totally avoided, to hold them to the minimum and to repudiate manifestly dilatory tactics. x x x Judge Cabrera-Faller failed to meet the expectation of promptness and efficiency that is required of a trial court judge. She failed to act on the Motion to Expunged [sic] the Pre-Trial Brief for almost two years, which is a clear delay in the administration of justice. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency which warrants the imposition of administrative sanctions. x x x [T]he delay in resolving the motion was for almost two years. Based on this period of delay, we find that a fine of Twenty Thousand Pesos (₱20,000.00) is appropriate.

R E S O L U T I O N

CARPIO, *J.*:

The Case

Before the Court is a complaint filed by Atty. Jerome Norman L. Tacorda (Atty. Tacorda) and Leticia Rodrigo-Dumdum (Rodrigo-Dumdum) against Presiding Judge Perla V. Cabrera-Faller (Judge Cabrera-Faller) and Ophelia G. Suluen (Suluen), both of Branch 90, Regional Trial Court (RTC), Dasmariñas City, Cavite, for Gross Ignorance of the Law, Gross Inefficiency, Delay in the Administration of Justice, and Impropriety.

The Facts

This complaint[1] stems from Civil Case No. 398810, entitled *Sunny S. Salvilla, Kevin S. Salvilla, and Justin S. Salvilla v. Spouses Edwin Dumdum and Leticia R. Dumdum* (Spouses

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

Dumdum), which was initially pending before Judge Fernando L. Felicen (Judge Felicen), Branch 20, RTC, Imus, Cavite.

On 2 October 2012, Judge Felicen issued an Order requiring the parties to submit their respective pre-trial briefs and setting the pre-trial on 5 February 2013. However, on 16 January 2013, Judge Felicen inhibited himself from the case and the case was raffled to the sala of Judge Cabrera-Faller of Branch 90, RTC, Dasmariñas City, Cavite.

After receipt of the records of the case, Judge Cabrera-Faller set a clarificatory hearing on 19 March 2013, which was, however, rescheduled to 22 May 2013 due to a seminar attended by Judge Cabrera-Faller.

As the last event in the court of origin was for pre-trial, the case was set for pre-trial on 14 and 29 August 2013. However, it was found out that the case had already been referred for mediation, prompting the trial court to suspend the proceedings until receipt of the Mediator's Report. The Mediator's Report was received on 18 September 2013.

Meanwhile, the plaintiffs in the civil case belatedly filed their Pre-Trial Brief on 27 August 2013, which prompted the Spouses Dumdum, through their lawyer Atty. Tacorda, to file a Motion to Expunged [sic] the Pre-Trial Brief Submitted By the Plaintiffs with Manifestation on 3 September 2013.

On 31 July 2015, almost two years after the Motion was filed, Judge Cabrera-Faller denied the motion and set the case for pre-trial conference on 8 October 2015. This, however, was rescheduled to 18 November 2015, because Judge Cabrera-Faller was hospitalized on 8 October 2015.

The delay attendant in resolving the motion prompted Atty. Tacorda and Rodrigo-Dumdum to file this complaint against Judge Cabrera-Faller and Suluen, the Officer-in-Charge (OIC)/ Legal Researcher II, for the latter's failure to call the attention of Judge Cabrera-Faller on the delay.

In a Comment[2] filed by Judge Cabrera-Faller and Suluen, they argue that there was (1) no ignorance of the law as the case was immediately acted upon after receipt of the records; (2) no gross inefficiency as the resetting of the hearings was part of the continuing court events and incidents; and (3) no delay in the administration of justice, as the case was merely transferred to them and had gone through mediation for possible settlement, which unfortunately had failed. Judge Cabrera-Faller and Suluen also allege that the complaint is baseless and illusory, designed to disqualify Judge Cabrera-Faller from the proceedings and other cases of Atty. Tacorda which are pending before her.

In their Reply,[3] complainants aver that the Comment filed by Judge Cabrera-Faller and Suluen is full of self-serving assertions, denials, alibis, and hearsay matters.

The Recommendation of the Office of the Court Administrator

The Office of the Court Administrator (OCA), upon evaluation of the complaint, found that the allegation of gross ignorance of the law against Judge Cabrera-Faller and Suluen was bereft of any evidence. The OCA found that the complaint did not allege any act or demeanor committed by the respondents that would directly constitute impropriety in the performance of their official functions and as private individuals.

On the other hand, the OCA found that Judge Cabrera-Faller was guilty of gross inefficiency and delay in the administration of justice. The OCA held that the fact that the trial judge failed to act from 22 May 2013, when the case was set for pre-trial, to 31 July 2015, when the motion to expunge was denied, was in clear violation of the 1987 Constitution and the Code of Judicial Ethics. The OCA found that the failure of Judge Cabrera-Faller to explain what transpired in 2014 relative to the civil case was an obvious attempt to conceal her gross inefficiency and thus confirmed that Judge Cabrera-Faller had unjustifiably sat on the case.

---

[2] *Id*. at 16-18.

[3] *Id*. at 23-29.

As against Suluen, the OIC/Legal Researcher of Judge Cabrera-Faller, the OCA found that there was no evidence on record to substantiate the charges against her and cleared her of administrative liability. The OCA reasoned that the responsibility to resolve the motion was with the judge and not with the OIC/Legal Researcher.

Finding Judge Cabrera-Faller guilty of gross inefficiency and delay in the administration of justice, the OCA recommended the imposition of a fine in the amount of Twenty Thousand Pesos (₱20,000.00) payable within thirty (30) days from the receipt of notice with a warning that a commission of the same or similar offense shall be dealt with more severity, and the dismissal of the charges against Suluen for lack of merit.[4]

The Ruling of the Court

Upon review of the records, the Court agrees with the findings of the OCA.

First, as to the allegation of gross ignorance of the law, we find that Atty. Tacorda and Rodrigo-Dumdum failed to substantiate the charges against Judge Cabrera-Faller and Suluen.

To be held liable for gross ignorance of the law, it must be shown that the error must be so gross and patent as to produce an inference of bad faith.[5] Moreover, the acts complained of must not only be contrary to existing law and jurisprudence, but should also be motivated by bad faith, fraud, dishonesty, and corruption.[6] In this case, there was no allegation or mention of any bad faith, fraud, dishonesty, and corruption committed by Judge Cabrera-Faller or Suluen. Complainants also failed to allege any gross and patent ignorance of the law which would indicate any bad faith.

Additionally, there are no allegations as to specific acts which would constitute impropriety on the part of Judge Cabrera-Faller or Suluen, either in the course of the performance of their official

[4] *Id.* at 34.

[5] *Ora v. Judge Almajar,* 509 Phil. 595 (2005), citing *Joaquin v. Madrid,* 482 Phil. 795 (2004).

[6] *Monticalbo v. Judge Maraya, Jr.,* 664 Phil. 1 (2011).

functions or as private individuals. Necessarily, the complaint for gross ignorance of the law and impropriety must fail.

However, we find merit in the complaint for gross inefficiency and delay in the administration of justice against Judge Cabrera-Faller when she failed to promptly act on the motion filed by the Spouses Dumdum. On the other hand, as against Suluen, the charges must be dismissed. As correctly pointed out by the OCA, the responsibility of acting and resolving a pending matter or incident before a court rests primarily on the judge, and Suluen, who was merely an OIC/Legal Researcher, could not be held responsible for the delay incurred by the respondent judge. Based on the facts on record, only Judge Cabrera-Faller may be held liable for the delay in the disposition of cases.

Delay in the disposition of cases amounts to a denial of justice, which brings the court into disrepute, and ultimately erodes public faith and confidence in the Judiciary.[7] Judges are therefore called upon to exercise the utmost diligence and dedication in the performance of their duties.[8] More particularly, trial judges are expected to act with dispatch and dispose of the court's business promptly and to decide cases within the required periods. The main objective of every judge, particularly trial judges, should be to avoid delays, or if it cannot be totally avoided, to hold them to the minimum and to repudiate manifestly dilatory tactics.[9]

The Constitution clearly provides that all lower courts should decide or resolve cases or matters within three months from the date of submission.[10] Moreover, Section 5, Canon 6 of the New Code of Judicial Conduct[11] provides:

---

[7] *In Re: Compliance of Judge Maxwel S. Rosete,* 479 Phil. 255 (2004).

[8] *Pantig v. Daing, Jr.,* 478 Phil. 9 (2004), citing *Guintu v. Judge Lucero,* 329 Phil. 704 (1996).

[9] *Office of the Court Administrator v. Judge Hamoy.* 489 Phil. 296 (2005).

[10] Article VIII, Section 15, Constitution.

[11] A.M. No. 03-05-01-SC, 1 June 2004.

Sec. 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and **with reasonable promptness.** (Emphasis supplied)

The Court has, time and again, reminded judges to decide cases promptly and expeditiously under the time-honored principle that justice delayed is justice denied.[12] More specifically, presiding judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts.[13] To repeat, trial court judges, who serve as the frontline officials of the judiciary, are expected to act at all times with efficiency and probity.[14]

In this case, Judge Cabrera-Faller failed to meet the expectation of promptness and efficiency that is required of a trial court judge. She failed to act on the Motion to Expunged [sic] the Pre-Trial Brief for almost two years, which is a clear delay in the administration of justice. Failure to decide cases and other matters within the reglementary period constitutes gross inefficiency which warrants the imposition of administrative sanctions.[15]

Judge Cabrera-Faller failed to offer any satisfactory reason to explain the reason for this delay. The fact that the case was re-raffled to her sala or that the case was referred to mediation is hardly an excuse for her inaction for almost two years. In fact, the Mediator's Report was received on 18 September 2013 but Judge Cabrera-Faller denied the motion of the Spouses Dumdum only on 31 July 2015. This is clearly an unreasonable delay for which Judge Cabrera-Faller should be held administratively liable.

Under Section 9, Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is considered a less serious offense which is punishable by:

---

[12] *Sanchez v. Judge Eduardo,* 413 Phil. 551 (2001).

[13] Supreme Court Administrative Circular No. 1-88, 28 January 1988.

[14] *Angelia v. Judge Grageda,* 656 Phil. 570 (2011).

[15] *Visbal v. Judge Buban,* 443 Phil. 705 (2003).

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or

2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[16]

In this case, the delay in resolving the motion was for almost two years. Based on this period of delay, we find that a fine of Twenty Thousand Pesos (₱20,000.00) is appropriate.

However, we note that Judge Cabrera-Faller has already been dismissed from the service in *Marcos v. Cabrera-Faller*[17] for gross ignorance of the law and for violating Rule 1.01 and Rule 3.01, Canon 3 of the Code of Judicial Conduct. Subsequently, she was found guilty of gross ignorance of the law and gross misconduct constituting violations of the Code of Judicial Conduct in *Office of the Court Administrator v. Cabrera-Faller,*[18] where she was fined in the amount of ₱80,000.00. In the same case, Suluen was found by the Court to have committed simple neglect of duty for which she was suspended for a period of one month and one day with a warning that a repetition of the same or similar acts shall warrant a more severe penalty.[19]

While we find that in this case, Suluen cannot be held liable for the charges against her, the complaint against Judge Cabrera-Faller for unreasonable delay is meritorious. In view of the foregoing, the fine of Twenty Thousand Pesos (₱20,000.00) shall be deducted from whatever amounts may still be due Judge Cabrera-Faller.

WHEREFORE, we find Judge Perla V. Cabrera-Faller of Branch 90, Regional Trial Court, Dasmariñas City, Cavite **GUILTY** of Gross Inefficiency and Delay in the Administration of Justice and impose on her a **FINE** of Twenty Thousand Pesos (₱20,000.00) which shall be deducted from whatever amounts may still be due her.

---

[16] Section 11, Rule 140, Revised Rules of Court.

[17] A.M. No. RTJ-16-2472, 24 January 2017, 815 SCRA 285.

[18] A.M. No. RTJ-11-2301, 16 January 2018.

[19] *Id*.

The charges against Ophelia G. Suluen, Officer-in-Charge/ Legal Researcher II of Branch 90, Regional Trial Court, Dasmariñas City, Cavite are hereby **DISMISSED** for lack of merit.

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 185484. June 27, 2018]

FRANCISCO I. CHAVEZ, *petitioner, vs.* **IMELDA R. MARCOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULE 45 PETITION; LIMITED TO QUESTIONS OF LAW; WHILE PETITIONER CLAIMED THAT THE REGIONAL TRIAL COURT (RTC) JUDGE VIOLATED A WRIT OF INJUNCTION TO CLOAK THE ALLEGED ERROR WITH SOME SEMBLANCE OF BEING A QUESTION OF LAW, HE FAILED, HOWEVER, TO PROVIDE LEGAL BASIS OR COHERENT LEGAL ARGUMENT TO SUPPORT SUCH CLAIM.— A petition for review on certiorari under Rule 45 shall only pertain to questions of law. Further, the Rules of Court mandate that petitions for review distinctly set forth the questions of law raised. x x x Essentially, petitioner takes issue with how the Court of Appeals interpreted the acts of Judge Pampilo and found no manifest partiality, which are clearly not questions of law. He did not even attempt to frame the issues as questions of law. By claiming that Judge Pampilo violated a writ of injunction, petitioner attempts to cloak the second alleged error with some semblance of being a question of law. However,

petitioner does not provide any legal basis or coherent legal argument to support the claim that a writ of injunction was violated, and this claim is totally specious. Although this Court may, in exceptional cases, delve into questions of fact, these exceptions must be alleged, substantiated, and proved by the parties before this Court may evaluate and review facts of the case. Petitioner having failed to establish the basis for this Court to evaluate and review the facts in this case, the petition may be dismissed on this ground.

2. ID.; ID.; THE ASSAILED RTC DECISION ACQUITTING IMELDA MARCOS WAS NOT ISSUED IN VIOLATION OF THE COURT OF APPEALS' WRIT OF INJUNCTION SINCE THAT INJUNCTION HAD ALREADY BEEN DISSOLVED PRIOR TO ISSUANCE OF THE DECISION.— The Regional Trial Court Decision dated May 28, 2007 and promulgated on March 10, 2008 was not issued in violation of the Court of Appeals writ of injunction. When this Regional Trial Court Decision was promulgated, the writ of injunction had already been dissolved. As stated by the Court of Appeals in its November 24, 2008 Resolution, the denial of the petition for certiorari carried with it the dissolution of the writ of injunction.

3. ID.; LEGAL ETHICS; DISQUALIFICATION OF JUDGES; WHETHER OR NOT TO VOLUNTARILY INHIBIT FROM HEARING A CASE IS A MATTER WITHIN THE JUDGE'S DISCRETION; A MOTION TO INHIBIT MUST BE BASED ON JUST AND VALID REASONS.— Whether or not to voluntarily inhibit from hearing a case is a matter within the judge's discretion. Absent clear and convincing evidence to overcome the presumption that the judge will dispense justice in accordance with law and evidence, this Court will not interfere. x x x [S]ince the second paragraph of Rule 137, Section 1 was introduced, this Court has periodically repeated that it shall always presume that a judge will decide on the merits of the case without bias. Allowing a judge to inhibit without concrete proof of personal interest or any showing that his bias stems from an extrajudicial source will open the floodgates to abuse. No concrete proof of Judge Pampilo's personal interest in the case was presented. There was no showing that his bias stems from an extrajudicial source. Not only that, but none of his acts, as shown on the record, was characterized by any error.

Petitioner finds fault in the scheduling of his testimony but fails to show how it was irregular. He characterizes the scheduling as "noose--tightening," for being scheduled on "unreasonably proximate" dates. Far from the scheduling being evidence of partiality, it was aligned with this Court's rules on expeditious disposition of cases and the mandatory continuous trial system.

4. ID.; ID.; ID.; ID.; CIRCUMSTANCES IN THE PRESENT CASE SHOW THAT THERE WAS NOTHING REMARKABLE ABOUT THE JUDGE'S DENIAL OF THE MOTION TO INHIBIT.— There was nothing remarkable about the denial of the Motion to Inhibit. It was not hasty, and whether to deny it orally in court is the prerogative of the judge, who could have decided it as soon as its factual basis had been clearly laid. Further, counsel for the prosecution expressly agreed that the motion be submitted for resolution. Petitioner's claims that Atty. Galit acted as an adversary instead of co-counsel for Prosecutor Yarte are outlandish. The transcript reveals that Atty. Galit was nothing if not courteous to Prosecutor Yarte. Petitioner also avers that Prosecutor Yarte had to walk out of the hearing because of the concerted action taken against him. However, the transcript shows that he asked permission from Judge Pampilo to allow him to pick up his daughter in Makati. This incident was not the first questionable act taken by Prosecutor Yarte as it appears that he chose to attend an event in Boracay instead of the April 11, 2007 hearing, despite the denial of his motion to cancel it. In no way can these actions be attributed to bias on the part of Judge Pampilo. Petitioner Chavez believes that respondent Imelda would not have been acquitted had he been allowed to testify. However, Judge Pampilo did not even have to decide on whether to allow petitioner Chavez to continue his testimony because both parties agreed that his testimony would be terminated during the April 24, 2007 hearing[.] x x x As is apparent from the records, petitioner's testimony was not terminated abruptly by Judge Pampilo. Rather, the termination of his testimony was expressly agreed to by the prosecution, having obtained a stipulation from the defense counsel on the existence of the documents which petitioner was to identify. x x x [P]etitioner would have identified a certification which was not issued by him, but by a certain Peter Cosandey, who, as properly noted by the Regional Trial Court, was not presented in court. Thus, considering that petitioner was not the one who

prepared the certificate, his testimony would have been of little evidentiary value. The claim that his testimony would have saved the prosecution's case is baseless. Finally, petitioner's speculations regarding the strategy employed by respondent Imelda's counsel are wild and baseless. Respondent Imelda's counsel may have filed an Urgent Motion to Lift Temporary Restraining Order Ad Cautelam very quickly, but timeliness alone cannot and should not be viewed with suspicion. Counsel for respondent did not need a direct liaison to manage this, and filing pleadings in a timely manner should not be so out of the ordinary that it suggests misdeeds.

5. ID.; ID.; ID.; ID.; ID.; WHILE THE ALLEGATION THAT THE JUDGE TOLD NEWS REPORTERS THAT HE WAS EXPECTING THE COURT OF APPEALS' TEMPORARY RESTRAINING ORDER TO BE LIFTED WITHIN THE DAY COULD SUGGEST THAT THE JUDGE WAS COORDINATING WITH IMELDA MARCOS' LAWYERS, NO EVIDENCE WAS PRESENTED TO SUPPORT THIS ALLEGATION.— There is one allegation which, if true, might suggest some bias on the part of Judge Pampilo. x x x If it is true that Judge Pampilo told news reporters that he was expecting the Court of Appeals Temporary Restraining Order to be lifted within the day, this could suggest that Judge Pampilo was coordinating with respondent Imelda's lawyers. However, no evidence was presented to support this allegation. Allegation does not substitute proof, so this claim must be rejected.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for petitioner.
Robert A.C. Sison for respondent.

D E C I S I O N

LEONEN, *J.*:

This Court will not require a judge to inhibit himself in the absence of clear and convincing evidence to overcome the presumption that he will dispense justice in accordance with

law and evidence.[1] This Court will also not allow itself to become an instrument to paper over fatal errors done by the petitioner and the prosecution in the lower court.

This is a Petition for Review on Certiorari,[2] assailing the Court of Appeals February 28, 2008 Decision[3] and November 24, 2008 Resolution[4] in CA-G.R. SP No. 98799, dismissing Francisco I. Chavez's (Chavez) Petition for Certiorari[5] and affirming the Regional Trial Court order, which denied the prosecution's motion for inhibition.[6]

This case involves 33 consolidated criminal cases, namely, Criminal Case Nos. 91-101732-39, 91-101879-83, 91-101884-92, and 92-101959-69,[7] filed against Imelda R. Marcos (Imelda), among others, for violations of Section 4 of Central Bank Circular No. 960,[8] in relation to Section 34 of Republic Act

---

[1] See *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, 509 Phil. 339 (2005) [Per *J.* Panganiban, Third Division].

[2] *Rollo*, pp. 12-73.

[3] *Id*. at 180-195. The Decision was penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal of the Eighth Division, Court of Appeals, Manila.

[4] *Id.* at 291-293. The Resolution was penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Jose L. Sabio, Jr. and Myrna Dimaranan Vidal of the Former Eighth Division of the Court of Appeals, Manila.

[5] *Id*. at 74-94.

[6] *Id*. at 95-112.

[7] *Id*. at 235-236.

[8] Central Bank Circ. No. 960, Sec. 4 reads:

Section 4. Foreign exchange retention abroad. — No person shall promote, finance, enter into or participate in any foreign exchange transactions where the foreign exchange involved is paid, retained, delivered or transferred abroad while the corresponding pesos are paid for or are received in the Philippines, except when specifically authorized by the Central bank or otherwise allowed under Central Bank regulations.

No. 265,[9] or the Central Bank Act.[10]

The Information in Criminal Case No. 91-101732 read, in part:

That from 1973 up to December 26, 1985, both dates inclusive, and for sometime thereafter, the above-named accused, in conspiracy with her late husband, then President Ferdinand E. Marcos, while both residing in Malacanang Palace in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, did then and there wilfully, unlawfully and feloniously open and maintain foreign exchange accounts abroad, particularly in Banque de Paris et des Pays-Bas (also known as Banque Paribas) in Geneva, Switzerland, later transferred to another bank known as LOMBARD, ODIER ET CIE also in Geneva, in the names of several establishments organized by their dummy or attorney-in-fact identified as Stephane A. Cattaui, among which were accounts 036-517 J, Establishment BULLSEYE; 037-973 R, Establishment MABARI; 038-150 L, Establishment GLADIATOR: 038-489Z, Establishment VOLUBILIS, 32.529 X, INTERNATIONAL INTELLIGENCE FUND; PRETORIEN created under the name INTELLIGENCE; Establishment GARDENIA; Establishment GLADIATOR; Establishment CESAR; Establishment ESG; account numbers 23-0734H, 22-98SC, 23-285; 3652IN; and 073 043 P in the name of accused who executed a power of attorney in favour of her husband on September 29, 1980 giving the latter the authority to do anything with respect to her accounts; which accounts were reduced to five, namely; 036 517 J; 037-973 R; 038 150 L; 038 489 Z, and 036 521 N which were later on transferred to LOMBARD, ODIER ET CIE for credit to the account COGES 00777 per instruction on May 17, 1984 of the accused's husband and attorney-in-fact to their dummy and duly appointed administrator Stephane Cattaui who also transferred to said Lombard Odier et Cie in order to continue managing for them their hidden accounts, including the investment

---

[9] Rep. Act No. 265, Sec. 34 provides:

Section 34. Proceedings upon violation of laws and regulations. — Whenever any person or entity wilfully violates this Act or any order, instruction, rule or regulation legally issued by the Monetary Board, the person or persons responsible for such violation shall be punished by a fine of not more than twenty thousand pesos and by imprisonment of not more than five years.

[10] *Rollo*, pp. 236-237.

of $15-million in Philippine- issued dollar-denominated treasury notes which was fully paid together with the interests on December 26, 1985 and which payment was remitted to LOMBARD, ODIER ET CIE for the credit of Account COGES 00777 of the accused and her late husband, which act of maintaining said foreign exchange accounts abroad was not permitted under the Central Bank regulations.

CONTRARY TO LAW.[11]

The informations for Criminal Case Nos. 91-101733-39 read similarly, except for the dates of the offense, the name/s of the dummy/ies used, the amounts maintained in the foreign exchange accounts, and the names of the foreign banks where the accounts were allegedly held by the accused.[12]

The Information in Criminal Case No. 91-101888 read, in part:

That from September 1, 1983 up to 1987, both dates inclusive, and for sometime thereafter, both accused, conspiring and confederating with each other and with the late President Ferdinand E. Marcos, all residents of Manila, Philippines, and within the jurisdiction of this Honorable Court, did then and there wilfully, unlawfully and feloniously fail to submit reports in the prescribed form and/or register with the Foreign Exchange Department of the Central Bank within 90 days from October 21, 1983 as required of them being residents habitually/customarily earning, acquiring or receiving foreign exchange from whatever source or from invisibles locally or from abroad, despite the fact they actually earned interests regularly every six (6) months for the first two years and then quarterly thereafter for their investment of $50-million, later reduced to $25-million in December 1985, in Philippine-issued dollar denominated treasury notes with floating rates and in bearer form, in the name of Bank Hofmann, AG, Zurich, Switzerland, for the benefit of Avertina Foundation, their front organization established for economic advancement purposes with secret foreign exchange account Category (Rubric) C.A.R. No. 211 925-02 in Swiss Credit Bank (also known as SKA) in Zurich, Switzerland, which earned, acquired or received for the accused Imelda Romualdez Marcos and her late husband an

---

[11] *Id.* at 237-238.

[12] *Id*. at 238.

interest of $2,267,892 as of December 16, 1985 which was remitted to Bank Hofmann, AG, through Citibank, New York, United States of America, for the credit of said Avertina account on December 19, 1985, aside from the redemption of $25 million (one-half of the original $50-M) as of December 16, 1985 and outwardly remitted from the Philippines in the amounts of $7,495,297.49 and $17,489,062.50 on December 18, 1985 for further investment outside the Philippines without first complying with the Central Bank reporting/registering requirements.

CONTRARY TO LAW.[13]

The Information in Criminal Case No. 91-101879 read, in part:

That from September 21, 1983 up to December 26, 1985, both dates inclusive, and for sometime thereafter, all accused, conspiring and confederating with one another and with the late President Ferdinand E. Marcos, all residing and/or doing business in Manila, Philippines, and within the jurisdiction of this Honorable Court, and assisted by their foreign agent or attorney-in-fact Stephane G. Cattaui, did then and there wilfully, unlawfully and feloniously fail to submit reports in the prescribed form and/or register with the Foreign Exchange Department of the Central Bank within 90 days from October 21, 1983 as required of them being residents habitually/customarily earning, acquiring/receiving foreign exchange from whatever source or from invisibles locally or from abroad, despite the fact that they actually earned interests regularly for their investment of FIFTEEN MILLION ($15-million) DOLLARS, U.S. currency, in Philippine-issued dollar-denominated treasury notes with floating rates and in bearer form, in the name of Banque de Paris et des Pays-Bas (also known as Banque Paribas) in Geneva, Switzerland but which was transferred on May 17, 1984 to Lombard, Odier et Cie, a bank also in Geneva, for the account of COGES 00777 being managed by Mr. Stephane Cattaui for the Marcoses who also arranged the said investment of $15-million through respondents Roberto S. Benedicto and Hector T. Rivera by using the Royal Traders Bank in Manila as the custodian of the said dollar-denominated treasury notes, which earned, acquired or received for the accused Imelda Romualdez Marcos and her late husband an interest of $876,875.00 as of June 15, 1984

[13] *Id.* at 239-240.

which was remitted to Banque Paribas through Chemical Bank in New York, United States of America, for the Credit of said Account COGES 00777 of the Marcoses for further investment outside the Philippines without first complying with the reporting/registering requirements of the Central Bank.

CONTRARY TO LAW.[14]

The other charges in the other informations read substantially the same, save for the dates of the offense, the name/s of the dummy/ies used, the amounts maintained in the foreign exchange accounts, and the names of the foreign banks where the accounts were allegedly held by the accused.[15]

The prosecution's version of facts leading to the filing of the informations was summarized as follows:

In September 1983, the Central Bank of the Philippines issued dollar-denominated treasury notes (dollar t-notes for brevity) in the total amount of $125-million, U.S. currency. $75-million of these notes were purchased by three Swiss banks holding the hidden wealth of then President Ferdinand E. Marcos and his wife Imelda Romualdez Marcos (the Marcoses, for brevity). The purchases were recorded in the Central Bank under the name of the Marcoses' front man, then Ambassador Roberto S. Benedicto.

Of this $75-million, $50-million came from Bank Hofmann, $10-million from the Swiss Bank Corporation (SBC), and $15-million from Banque Paribas. The purchases by Bank Hofmann and SBC were made through accounts owned by foundations called Avertina, Maler I, and Maler II, which were owned by the Marcoses, and which act of opening and maintaining foreign exchange accounts abroad without CB authorization is a violation of Sec. 4 of the CB's Foreign Exchange Restrictions as consolidated in 1983 in CB Circular No. 960.

The purchase by Banque Paribas (later transferred to Lombard, Odier et Cie) was arranged by the Marcoses' attorney-in-fact Stephane Cattaui through Traders Royal Bank (TRB) which acted as custodian

---

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

[15] *Id*. at 241.

of the securities. The contact person at TRB was Hector T. Rivera, vice- president of the bank's Trust Department.

Avertina's $50-million investment earned an interest of $13,623,540.77 from 1983 to 1986; Maler I and Maler II's $10-million investment earned $3,369,479.18 in interest from 1984 to 1987; and Banque Paribas/Lombard Odier et Cie's $15-million investment earned $3,579,479.16 from 1984 to 1985.

Total interest earned by the Marcoses out of the dollar t-notes amounted to $20,572,499.11 from 1984 to 1987. All of these interest [illegible] department in violation of Sec. 10 of CB Circular No. 960.

The transactions came to light only after the so-called EDSA People Power Revolution in February 1986 when documents relating to the Marcoses' Swiss bank accounts and dollar t-note purchases were found in Malacanang Palace after the Marcos family had fled.

The Malacanang documents revealed that the Marcoses maintained a number of Swiss bank accounts, among them:

A. In Banque de Paris et des Pays-Bas (also known as Banque Paribas) in Geneva, Switzerland, later transferred to another bank known as LOMBARD, ODIER ET CIE also in Geneva, in the names of several establishments organized by the Marcoses' attorney-in-fact identified as Stephane A. Cattaui —

1. Account 036-517 J, Establishment BULLSEYE;
2. Account 037-973 R, Establishment MABARI;
3. Account 038-[illegible], Establishment GLADIATOR;
4. Account 038-489 Z, Establishment VOLUBILIS;
5. Account 32.529 X, INTERNATIONAL INTELLIGENCE FUND;
6. Account PRETORIEN created under the name INTELLIGENCE;
7. Establishment GARDENIA;
8. Establishment GLADIATOR;
9. Establishment CESAR;
10. Establishment ESG;
11. Accounts 23-0734H, 22-98SC, 23-285; 3652IN; and 073 043 P in the name of Mrs. Marcos who executed a power of attorney in favour of her husband on September 29, 1980 giving the latter the authority to do anything with respect to her accounts, which accounts were reduced to five, namely;

036 517 J; 037-973 R; 038 150 L; 038 489 Z, and 036 521 N which were later on transferred to LOMBARD, ODIER ET CIE for credit to the account COGES 00777;

B. In Swiss Credit Bank (also known as SKA) in Switzerland in the names of foundations which were organized successively or one after the other by the Marcoses' nominees, fronts, agents or duly appointed administrators —

1. Charis Foundation which was succeeded by Azio Foundation on June 11, 1971, renamed Verso Foundation on August 29, 1978, which was dissolved on June 25, 1981 and the funds transferred to Fides Trust Company in Bank Hofmann, which transferred the same to Vibur Foundation under the account "Reference OSER" on September 10, 1981;

2. Trinidad Foundation, succeeded by Rayby Foundation on June 22, 1973, which was dissolved on March 10, 1981 and whose funds were transferred to Bank Hofmann in favor of Fides Trust Company under account "Reference DIDO" which organized Palmy Foundation;

3. Xandy Foundation, which was renamed Wintrop Foundation on August 29, 1978, whose assets and/or funds were transferred on May 10, 1981 to Fides Trust Company under the account "Reference OMAL" in Bank Hofmann, which effected the transfer of said assets and/or funds to Avertina Foundation;

4. Charis Foundation, which was renamed Scolari Foundation on December 13, 1974 and then renamed Valamo Foundation on August 29, 1978, which was dissolved on June 25, 1981 and its assets and/or funds transferred to Fides Trust Company under the account "Reference OMAL" in Bank Hofmann, which effected the transfer of said assets and/or funds to Spinus Foundation which opened an account with SKA on September 10, 1981, but which also transferred the funds to Avertina Foundation;

C. In Swiss Bank Corporation (SBC) in Geneva, Switzerland: Establishment, later transformed into Maler Foundation, which was organized by the Marcoses' nominees, fronts, agents or duly appointed administrators, among them Jean Louis Sunier —

1. Maler I;

2. Account No. 98929 NY under Maler II;
3. Rosalys Foundation, which was dissolved on December 19, 1985, and its assets and/or funds transferred to Aguamina Corporation's (Panama) Account No. 53300 with SBC.

The newly-installed government of President Corazon Aquino represented by then Solicitor General Sedfrey Ordonez lost no time in filing an application with the Swiss authorities for mutual assistance in the matter of the Marcos dollar deposits in Switzerland.

The request for assistance was eventually granted by Swiss investigating magistrate Peter Cosenday. Cosenday issued a freeze order on all the Swiss banks where the Marcoses and their foundations had accounts, and he further required these banks and the foundations to submit relevant documents and information concerning the accounts.

The Marcoses and the foundations appealed Cosenday's decision. The result of the appeals was that on December 21, 1990, the Federal Supreme Court of Switzerland rendered twin decisions sustaining the position of the Philippine government and giving it a one-year deadline to file the appropriate cases against the Marcoses and their cronies, otherwise the freeze order covering the Marcos bank accounts in Switzerland would be lifted.

The Presidential Commission on Good Government (PCGG) thereupon decided to request the Solicitor General (now Francisco Chavez) to file the appropriate cases against the estate of the late President Marcos, Mrs. Marcos, and other members of their family based on documents already turned over and still to be turned over by the Swiss authorities.[16]

During the trial, the prosecution presented only two (2) witnesses. Its first witness was former Assistant Solicitor General and Presidential Commission on Good Government Commissioner Caesario Del Rosario (Del Rosario). He identified Swiss bank documents and testified that they were personally received by petitioner Chavez before they were referred to him for study, evaluation, and determination of probative value. He also identified several documents signed by the late President Ferdinand Marcos and respondent Imelda. He averred that he

---

[16] *Id.* at 241-248.

assisted in drafting the complaints connected to the recovery of the Marcos' properties.[17]

As its second witness, the prosecution presented petitioner Chavez. He was presented as an expert witness in the field of law, and he corroborated Del Rosario's testimony. He testified on the formation of the task force, of which Del Rosario was a member and which prepared the criminal complaints against the Marcoses and their cronies.[18] However, petitioner's presentation as a witness was hampered by a series of scheduling issues, which resulted in several postponements and absences. Chavez's claim of bias was based largely on his perception of how Regional Trial Court Presiding Judge Silvino T. Pampilo, Jr. (Judge Pampilo) scheduled his testimony, combined with what transpired when he failed to testify on April 24, 2007. Thus, the relevant facts from the record shall be set forth in detail.

On the matter of scheduling, the Regional Trial issued its January 10, 2007 Order, requiring Chavez to appear in court on January 16, 17, 23, 24, 30, 31, and February 6, 7, 13, 14, 20, 21, 27, and 28, 2007 to testify. This Order stated further that the hearings were "intransferrable in character."[19] In his January 11, 2007 letter, Chavez advised the Regional Trial Court that his entire calendar for January and the beginning of February 2007 were full, and requested later dates for his testimony, including February 20, 21, 27, and 28.[20] The Regional Trial Court reconsidered its January 10, 2007 Order and reset Chavez's examination to February 21, 27, and 28, again with the warning that these trial dates were not transferable.[21] On March 6, 2007, a day that was set for the continuation of the direct examination of Chavez, the prosecution moved that the March 6 and 7 hearings

---

[17] *Id*. at 250.

[18] *Id*. at 251.

[19] *Id*. at 118.

[20] *Id*. at 119.

[21] *Id*. at 98.

be moved on the ground that Chavez was unavailable, for he would be attending to his detained clients in Camp Capinpin, Tanay, Riza1.[22] The Regional Trial Court granted this as well with the following warning:

> [I]f the former Solicitor General failed to testify on the next scheduled hearing, all his testimonies will be stricken off the record and the prosecution be directed to formally offer its exhibits.[23]

On March 20, 2007, Prosecutor George H. Yarte, Jr. (Prosecutor Yarte) filed a Motion to Cancel Hearing of April 11, 2007, on the ground that he would be attending the National Prosecutors League of the Philippines' Annual Convention in Boracay Island from April 11 to 13. Thereafter, in a letter dated March 21, 2007, Chavez asked to be excused from attending the April 10, 2007 hearing due to an intransferrable Court Martial setting in Camp Capinpin, Tanay, Rizal,[24] but advised the Regional Trial Court that he would be available to testify on the April 11 and 24, 2007 hearings.[25] Judge Pampilo denied Chavez's request in a letter dated March 22, 2007 and the prosecution's Motion to Cancel the April 11, 2007 hearing.[26] Thereafter, Chavez pleaded that Judge Pampilo reconsider the denial and made a commitment that he would no longer request for further postponements.[27]

Thus, Chavez did not attend the April 10, 2007 hearing. He attended the succeeding hearing on April 11, 2007. However, he was unable to testify as the documents he was supposed to identify were with Prosecutor Yarte, who was attending the prosecutors' annual convention in Boracay.[28]

---

[22] *Id*. at 98-99.

[23] *Id*. at 99.

[24] *Id*. at 99-100.

[25] *Id*. at 120.

[26] *Id*. at 121.

[27] *Id*. at 123.

[28] *Id*. at 434.

Subsequently, Chavez was scheduled to continue his direct testimony on April 24, 2007. However, the prosecution filed a Motion to Inhibit,[29] seeking Judge Pampilo's inhibition, and set it to be heard on April 24, 2007.[30] Reacting to the Motion to Inhibit, Chavez explained in a letter dated April 23, 2007[31] that he would not appear in court on April 24, 2007:

> I would have decided to go to court to continue my direct testimony on April 24, 2007 at 1:00 p.m. were it not for the receipt of this motion to inhibit.
>
> As a witness, I cannot presume that the motion to inhibit, which is set for hearing also on April 24, 2007 at 2:00 p.m., will be outrightly denied by this Honorable Court who would then direct the prosecution to continue with the presentation of its evidence. In line with due process, I proceed along the assumption that at the hearing of the motion to inhibit, Your Honor will give the accused an opportunity to submit their comment thereon, thus necessarily resulting in the cancellation of the April 24, 2007 setting. I say that the cancellation of the April 24, 2007 setting follows as a necessary consequence of the motion to inhibit because such motion raises **a question of first priority** which must be first resolved by Your Honor before further proceedings are undertaken.
>
> . . . . . .
>
> In view of the foregoing considerations, I most respectfully submit that my presence at the April 24, 2007 setting would no longer be necessary. I hasten to reaffirm my commitment to continue my direct testimony once the issue of Your Honor's inhibition shall have been resolved with finality.[32] (Emphasis in the original)

Thus, Chavez did not attend the hearing on April 24, 2007 despite being scheduled for direct examination.[33]

---

[29] *Id*. at 95-112.

[30] *Id*. at 110-111.

[31] *Id*. at 124-125.

[32] *Id*.

[33] *Id*. at 126.

Atty. Napoleon Uy Galit (Atty. Galit), a lawyer from the Presidential Commission on Good Government, appeared before the court with a memorandum from then Secretary of Justice Raul Gonzales, authorizing him to prosecute the consolidated cases. As Chavez took issue with Atty. Galit's appearance, this Court shall quote extensively from the transcript of stenographic notes of the trial on April 24, 2007:

Atty. Galit:

> Good afternoon, your Honor, Attorney Napoleon Uy Galit for the PCGG. Your Honor, just a brief manifestation before the start of the proceedings. A while ago your Honor, before this Honorable Court convened the proceedings, I showed this memorandum to Prosecutor Yarte dated April 17, 2007 signed by Honorable Secretary Raul Gonzales which your Honor the wordings is quite, probably this letter will state for itself, your Honor, and I am showing this to Prosecutor Yarte and for an eventual filing into the records of this Honorable Court. This Memorandum simply designates this humble representation authorizing, your Honor, to prosecute this case even in the presence or without the presence of any public prosecutor.

Court:

> So even without Prosecutor Yarte, you can proceed with the presentation of that memorandum with or without the prosecutor. What can you say prosecutor?

Pros. Yarte:

> Well your Honor, I still have to check with the office. As of now, I cannot confirm or deny the truthfulness or the authenticity of this memorandum.

Court:

> You mean to say you are not familiar with the signature of your boss?

Pros. Yarte:

> I am familiar with the signature of my boss, your Honor, but since this appears to be a xeroxed copy, I cannot yet confirm or deny. In any case your Honor, this representation

will not contradict the wishes of my boss. I will accept the contents of this memorandum your Honor after the manifestation of Atty. Galit.

Court:

Proceed Atty. Galit because I will no longer allow Atty. Yarte to speak for and behalf of the DOJ as well as the PCGG.

Pros. Yarte:

If your Honor please (interrupted)

Court:

Go ahead Atty. Galit.

Atty. Galit:

If your Honor, into the records, I am submitting this April 17, 2007 Memorandum.

Court:

Yes, place it on the record and that you are from DOJ then understood . . .

Atty. Galit:

Without prejudice to the authority given to this humble representation, may I be allowed your Honor that prosecutor Yarte be given the courtesy to speak.

Court:

Go ahead, Atty. Yarte.

Pros. Yarte: Your Honor please, we have a pending Motion to Inhibit and I think it is a matter of preferential . . . that this Motion to Inhibit be first ruled upon by this Honorable Court.

Court: It's ok with me, I can rule it today. Considering that there is already an opposition and/or summary filed by (interrupted)

Pros. Yarte:

Your Honor please, I haven't received a copy of that opposition.

Court:

Can you furnish him a copy of that today?

Atty. Sison:

Yes, your Honor.

Pros. Yarte:

Your Honor please again, I would like that my copy be formally served with the office as an official receipt. In the first place your Honor, this is not a receiving clerk of the office and I suggest that I receive it officially, your Honor.

Court:

There is a proof of service that it was sent in your office.

Pros. Yarte:

Yes, your Honor, I still have to receive it in the office.

Court:

What is your comment Atty. Galit being the lead prosecutor?

Atty. Galit:

Your Honor, I have so much respect to the distinguished public prosecutor but it is of judicial notice that furnishing a copy is not limited to furnishing the copy that the office of any particular counsel. As a matter of fact, that can be very well made at this moment in time if the defense counsel your Honor, has an extra copy, I suggest that he give it to Prosecutor Yarte, your Honor.

Pros. Yarte:

I vehemently object to that, in the first place your Honor, I manifested a while ago that I still have to check on the authenticity of the memorandum your Honor but it seems that this Honorable Court has egged Atty. Galit to proceed and take over my function as the public prosecutor your Honor. I haven't seen or checked with the office whether or not Atty. Galit was sent a copy of this (interrupted)

Court:

Okay, we will have a 10 minutes recess we will call the office of the Secretary. I will ask my clerk of court to call the office of the Secretary to confirm.

(Recess for 10 minutes)

-session resumed-

Clerk of Court:

Your Honor, I have called already the Office of the Secretary and she said that this Memorandum is authentic, your Honor.

Pros. Yarte:

Okay, your Honor.[34]

Having resolved the issue of the authenticity of the Memorandum authorizing Atty. Galit to prosecute the case, the Regional Trial Court proceeded to resolve the other pending incidents:

Court:

There are two (2) pending incidents, one is the oral motion citing for contempt and the other one is a Motion to Inhibit the Honorable Judge as well as the opposition. You can now argue.

Pros. Yarte:

Yes, your Honor, with respect to the first I have filed an explanation yesterday and I have confirmed with the Clerk of Court if they received the copy of the explanation.

Court:

Do you want to counter argue the explanation? Did you give him a copy of that explanation?

Pros. Yarte:

I sent a copy through registry receipt, your Honor, and if he would like your Honor I can give him a copy of the explanation. I have a copy, I have it photocopied.

Atty. Sison:

I don't need, your Honor. I will just submit, your Honor.

---

[34] *Id.* at 127-133.

Court:

Okay, second incident is the Motion to Excuse (interrupted)

Pros. Yarte:

Your Honor please, as stated by the counsel for the accused, he has filed an opposition or comment to the Motion and this representation would humbly request only for a period within which to reply on it and then it will be up to the counsel for the accused whether or not he will Answer to that Reply and we can submit it for resolution. That is my request, your Honor.

Court:

He is already authorized because there is already a Memorandum.

Atty. Galit:

May I say something, your Honor.

Court:

You are no longer authorized by the DOJ to represent.

Pros. Yarte:

With the kind permission of Atty. Galit, your Honor.

Atty. Galit:

Your Honor, may we hear your Honor that position of the (interrupted)

Atty. Sison:

Your Honor, I understand today we have another incident. We have a hearing set today based on the previous order by the Honorable Court for the presentation of the last witness. This is supposed to be the continuation of his direct testimony your Honor and I recall the Order of April 11 that today's hearing is intransferrable and that was said in the presence of the distinguished witness your Honor, the former Solicitor General Frank Chavez.

Court:

Yes, I received a copy of the letter coming from the witness.

You want to read it?

Atty. Sison:

Your Honor, as I gathered from the record that there was no Motion to Reset the hearing set today so I don't think the Court should be bound by the letter of a witness because this is merely a request but the Order dated April 11 was very clear and intransferrable and that in the event the prosecution failed to present the said witness in today's hearing, your Honor, the direct testimony of the said witness be stricken off the record. Now, in so far as the second incident which is a Motion to Inhibit this Honorable Court, I also gathered from the Motion that it was set for hearing today in order to allow the parties, the prosecution especially to err out or to further elaborate the allegations or averment in the said motion your Honor. This representation received only yesterday a copy of the said Motion and in this we managed to prepare an opposition and filed it early this morning your Honor. And in view of that, we are submitting that Motion to Inhibit together with our opposition thereto to the sound discretion of the Honorable Court.

Court:

How about you from the PCGG?

Atty. Galit:

Your Honor, I . . . to Prosecutor Yarte that he confirm the authority designation of this humble representation as authorized by the Honorable Justice Secretary. Now on the first incident with regards to the Motion to cite for indirect contempt the good prosecutor Honorable Prosecutor George H. Yarte, your Honor, my proposition is this, your Honor. I do believe that oral Motion of defense counsel Atty. Roberto Sison may be procedural. The said Motion your Honor, by the express provision of Rule 71 should be filed separately and be properly . . . Indirect contempt proceedings should be filed in [a] separate petition and I have come to the rescue, your Honor, of good prosecutor Yarte in so far concerned. Now on the second incident of the Inhibition, the Motion for Inhibition is part of the proceedings, part of the prosecution of this particular case and this representation having been so authorized by the Justice Secretary, your Honor, I humbly

submit that the same should also be addressed under my control and supervision. Earlier, giving courtesy to Prosecutor Yarte, I requested this Honorable Court that he be allowed to be heard in so far as his position but that suggestion is without prejudice to this humble representation whatever position I may have. Your Honor, in fairness to this Honorable Court, I may not take the stand . . . by the public prosecutor considering the fact that I have read in this Motion the grounds cited thereon . . . Nonetheless your Honor considering the fact that the defense counsel had already filed its opposition, it is this Honorable Court's call now to resolve the same without any further proceedings. And so as your Honor, not to be accused any further of delaying this case, it has been the position of the defense counsel, it is my humble submission that the subject motion for Inhibition be now resolved.

Atty. Sison:

This is something on the issue of citing in contempt of Court. I recall during the previous hearing, your Honor, that I just asked the Court that Prosecutor Yarte be asked to explain why he was absent and it was the witness your Honor who suggested that it was contempt and he asked me if it was direct or indirect and I answered him that it was direct contempt and he said it is wrong. There should be a proper procedure which has to be followed. You are referring to an indirect contempt that is what he said, your Honor and believing and thinking that he was correct although now I realized it is wrong your Honor. I mentioned also indirect contempt but I wasn't . . . that the public prosecutor be cited indirect contempt. I did not say that, your Honor. . . .

Pros. Yarte:

In my case your Honor, I have filed my explanation and I think the matter can now be resolved in respect to the manifestation of Atty. Galit, your Honor. In the terms of Atty. Galit, your Honor, we would like the matter of Motion to Inhibit be resolved with or without the earlier request of this representation that it be given a period within which to reply, your Honor. Again, your Honor, since the Motion to Inhibit was a product and a toil of this representation, your Honor, and was actually based on his personal observations, may I still request that I still be given a period within which

to react on the opposition, your Honor, filed by the defense counsel.

Court:

If you want, you can argue now because according to the lead prosecutor now, Atty. Galit, he moves that the two (2) incidents be submitted for resolution today.

Atty. Sison:

We are willing to argue in open court.

Pros. Yarte:

Your Honor, I cannot argue on it because I haven't read the copy of the opposition.

Atty. Sison:

I can make an oral manifestation, your Honor.

Pros. Yarte:

And besides, your Honor, I think it is wiser for me to read it and think it over rather than just stand here and argue based on what I will hear, your Honor.

Court:

You ask the authorized prosecutor.

. . . . . .

Atty. Galit:

Your Honor, in the continuation of my statement regarding the incident of the Motion for Inhibition, my position is clear on that matter . . . as the designated lead prosecutor in this case, your Honor, it is my proposition that the subject incident be considered submitted for resolution your Honor because the very ground are very simple. The defense counsel was already heard. On the third incident and this is the very important one because probably the Department of Justice is alarmed by the barrage of accusations coming from the defense counsel that this case has been delaying for several years and it is part of the records, your Honor. As a matter of fact, this humble representation brought a letter to Judge del Rosario suggesting that we should always be prepared

> with all the exhibits or fees . . . that we lose this case by technicality and I have written a letter to that duly filed with the legal office, your Honor. Now this is now the pending incident where the Solicitor General Frank Chavez would have to continue his testimony with regards to some other areas not yet testified to. Now Atty. Chavez is not around. Likewise the records your Honor are not brought by Public Prosecutor Yarte, your Honor. So, that is now the dilemma of the Honorable Court. Now the defense counsel is firm on its stand that the prosecution be deemed the right to have waived to complete the testimony of Frank Chavez. To settle the issue, your Honor, in the presence of Judge del Rosario your Honor who has been handling this case and Prosecutor Yarte. There are several documents which the object of the continuation of testimony of Solicitor General Frank Chavez. I have been vocal enough challenging your Honor the defense counsel to just admit the existence of these documents. If he has the nerved to show and admit the same, probably your Honor there is no reason, your Honor, why we cannot proceed with the formal offer of documentary exhibits and I challenge this, your Honor, in this appropriate proceedings to the defense counsel.[35] (Grammatical errors in the original)

Thereafter, the exchange which led to the termination of presentation of evidence for the prosecution commenced, thus:

Atty. Sison:

> May I know what these documents are because if I recall it right, as early as late last year your Honor the said witness would be presented for the purpose of identifying only three (3) documents which are the . . . Affidavit and the newspaper clipping which mentioned his name your Honor. It was an article about him. So I cannot understand why this representation is being asked again to admit on the truthfulness or existence for several documents that agreed upon to be marked and identified in the course of the direct examination of said witness.

Atty. Galit:

> Judge del Rosario is present your Honor, and with that

[35] *Id*. at 133-145.

memorandum he is still designated subject to his physical condition and even in the presence of Public Prosecutor Yarte. The defense counsel is talking of three (3) documents: The two (2) affidavits of Solicitor General Frank Chavez and the subject newspaper clipping. Now if that would be the case, would the defense counsel stipulate the said two (2) affidavits and the newspaper clippings your Honor has existent and the contents of the two (2) affidavits to form part your Honor of the testimony of Solicitor General Frank Chavez.

Court:

Yes, what can you say Attorney?

Atty. Sison:

Your Honor, I think this representation was very clear on that matter if only to dispense with the presence of that witness, we already agreed as early as before last December to the existence of the documents, your Honor and however, unfortunately for this representation, the prosecution insisted in presenting the witness despite the admission that we already made in so far as the existence of these documents.

Court:

What are these two (2) documents?

Atty. Galit:

The two (2) affidavits, your Honor, Supplemental Affidavit and Supplement to the Supplement Affidavit. Three (3) Affidavits, your Honor.

Court:

Another one?

Atty. Galit:

Newspaper clipping.

Court:

So three (3) Affidavits as well as the newspaper clipping?

Atty. Galit:

Yes, your Honor.

. . . . . .

Atty. Galit:

> If the defense counsel would like to stipulate, your Honor, first, my request for stipulation is this. The existence of those documents as I have mentioned. Second, your Honor, the contents of this Affidavit should be considered as part and parcel of the testimony already adduced before this Honorable Court by the said witness Frank Chavez. If defense counsel would stipulate on that.

Atty. Sison:

> Yes, your Honor, but not on the truthfulness of the contents. Only on the existence.

Court:

> You will only stipulate on the existence of the three (3) affidavits as well as the newspaper clipping?

Atty. Sison:

> Two Affidavits, your Honor.

. . . . . .

Pros. Yarte:

> Three (3) affidavits with several annexes.

Atty. Galit:

> The reason why I am doing this is I would like to emphasized [sic] before this Honorable Court that it is only the defense who is much willing to the early disposition of this case. Only the prosecution is so circumstance your Honor that there is a need for the continuance of the testimony of Solicitor General Frank Chavez to further identify those documents. Now if he is not willing, we are willing to proceed with the form[al] offer of exhibits.[36] (Grammatical errors in the original)

At this point, the Regional Trial Court returned to the Issue of the Motion for Inhibition:

---

[36] *Id*. at 145-149.

Court:

> There is a pending oral motion that based on the letter of former Solicitor General Frank Chavez that he requested that he will not attend for today's hearing because the Court first resolves the Motion for Inhibition.

Atty. Sison:

> Yes, your Honor, but I think the witness is too presumptuous that the Motion will not be resolved today. May I say something your Honor in so far as the Motion to Inhibit is concerned because this representation would want to avert further delays in the administration of this case. In lieu of the opposition that this representation filed today, may I be allowed to just withdraw that and make my opposition oral today to give counsel or the public prosecutor to orally argue out also on what I have to say in so far as the Motion to Inhibit is concerned.

Court:

> You mean to say that you will withdraw your written opposition?

Atty. Sison:

> Because the contention of the public prosecutor your Honor is that they will be asking for ten (10) days from receipt of that and there is no telling when they will receive that your Honor and there is also no telling when Frank Chavez will be available again, your Honor, and as shown by the records, he has been asking for resetting not on a weekly basis but on a monthly, your Honor.

Court:

> As prayed for, the written opposition is now withdrawn from the records of this case. You can argue your opposition.

Atty. Sison:

> Your Honor, we would like to oppose the Motion filed by the prosecution as showing the records of this case as early as November or December of 2006, the prosecution was already ready to rest their case and on the last minute they made an effort to defer the filing of the formal offer, your

> Honor, and despite the objection of this representation, the prosecution was granted the request and they were allowed to present their witness Mr. Frank Chavez your Honor and during the course of this hearing, it was agreed by the parties in open Court that the said witness will only be asked to identify two (2) affidavits and a newspaper clipping which he has done already your Honor. And in succeeding hearings . . . over the objection of this representation despite all these objections, the Motion to reset at the instance of the prosecution was granted by this Honorable Court and it should be noted also your Honor that the settings were suggested by the witness. In other words, your Honor, they were done in coordination with the schedule of the witness and in all these instances, the prosecution was granted their request. Now in so far as the allegation giving suspicion on the impartiality of the Honorable Judge when it said that all hearings are intransferrable in . . ., I think it is normal in any jurisdiction in the most courts your Honor because if we will not have that, the case will not come to an end, your Honor. Also your Honor, in so far as the allegation here in this Motion that my client will be running based on the newspaper clipping, your Honor, in the Manila Times dated February 12, 2007, this representation your Honor, obtained from the Commission on Elections a Certification that my client did not file any Certificate of Candidacy for the coming elections, your Honor. So . . . the suspicion of the prosecution that the Motion to Inhibit should be granted because my client is running for public in this jurisdiction, your Honor.

Court:

> Okay, you want to argue the comment/opposition on the Motion to Inhibit?

Pros. Yarte:

> Your Honor, everything has been fully ventilated with that Motion. If your Honor please, I have to fetch my daughter in Makati at 2:30 and it[']s now 2:30. May I be allowed to be excused, your Honor. Atty. Galit is here, I have to go to Makati to fetch my daughter. May I be allowed to be excused?

Atty. Galit:

> It is alright.

Court:

> So what is now the pleasure of the counsels present? You want that the Motion now submitted for resolution?

Atty. Galit:

> Submitted, your Honor.

Court:

> Order. As prayed for by both parties and after consideration of the written motion for inhibition as well as the oral comment/opposition thereto, this Court resolves to deny the same and considering that the Judge has not manifested any partiality or exhibited bias in favor of the accused. Wherefore, the Motion for Inhibition is Denied. So likewise the manifestation and explanation of prosecutor Yarte about the show cause order, this Court is satisfied with the explanation of Prosecutor George Yarte. So ordered.[37] (Grammatical errors in the original)

Having resolved the Motion for Inhibition, the Regional Trial Court continued to the next incident and the issue of Chavez's absence:

Atty. Sison:

> Your Honor, the incident today is supposed to be continuation of direct examination of the witness for the prosecution and I don't see him around your Honor, despite that he should be present for today's hearing.

Court:

> That is why I show you the letter coming from the former Solicitor General the reason behind why he did not attend in today's hearing.

Atty. Sison:

> Yes your Honor, as I said also, the witness is too presumptuous that the Motion to Inhibit will not be resolved immediately

---

[37] *Id*. at 150-154.

your Honor so in view of that, we will move that the testimonial evidence given by the said witness be stricken off the record . . . of the Order of this Honorable Court dated April 11.

Atty. Galit:

Your Honor, it is too much on the part of the defense counsel to move for the striking out of the testimony of the said witness. As I have said, the issues are simple. The witness has already testified and the witness is still very much willing to continue his testimony. Your Honor, to continue testifying on those three (3) affidavits with all those annexes, rather than strike the testimonies of the witness from the records of this case which would amount your Honor to issue of technicality not favor by jurisprudential authorities, I would like to challenge the defense counsel to allow us, your Honor, to have those testimonies stay on the record and . . . on the contents of those three (3) affidavits as well as those annexes at least as to the existence your Honor and allow the prosecution to wind up your Honor their evidence by filing the complete formal offer of exhibits. In that way, your Honor, any technicality will be avoided.

Atty. Sison:

Your Honor, I said that if only to give teeth to the order of the Honorable Court last April 11, in any event, your Honor, this representation has maintained as early as five months ago that he is willing to stipulate your Honor on the existence of the affidavits of Atty. Chavez as well as the existence of the newspaper clippings but not as to the truth and veracity thereof, your Honor.

Atty. Galit:

Including annexes of those three (3) affidavits, I would like to call the attention of this Honorable Court that Prosecutor Sulit is around and now if the position of the defense counsel would be to stipulate on the existence of these documents, then we will be willing enough to wind up our presentation of evidence and submit the formal offer of evidence . . .

Atty. Galit:

The pending Motion to strike out seems to have been

super[s]eded, your Honor, by the defense counsel himself when he entered into stipulation regarding the existence of these documents, your Honor, whom those annexes in the affidavit of Frank Chavez and as a matter of act without waiving the stipulations made by the defense counsel, the Sandigan Prosecutor Wendell Barreras Sulit is showing your Honor to the defense counsel the original of those documents.

Court:

Is that correct Atty. Sison that the testimony of former Solicitor General Frank Chavez remains in the records considering the existence of three (3) affidavits as well as the newspaper clipping and the annexes?

Atty. Sison:

Yes, your Honor. Only as to the existence of these documents, it is subject to our cross examination.

Atty. Galit:

So the affidavit dated October 6, 1999.

Court:

So the testimony of former Solicitor General Frank Chavez is now deemed terminated, correct me if I'm wrong.

Atty. Galit:

Yes, your Honor.

Court:

You want to cross examine the Solicitor General?

Atty. Sison:

I will like to ask for one setting to cross examine him, your Honor and that one said setting I will be presenting my first witness.

Court:

How about formal offer of exhibits?

Atty. Galit:

We will be formally offering our exhibits.

Court:

> Is that correct, is it procedural Prosecutor Sulit that (interrupted)

Prosecutor Sulit:

> At the same time you will cross examine?

Atty. Galit:

> We will file our formal offer of exhibits ten (10) days from today.

Court:

> But you will cross examine the witness Frank Chavez after the cross examination, you will file your formal offer after the cross examination.

Atty. Sison:

> Your Honor, I will not cross examine anymore.

Court:

> Okay[.] Order. Considering the manifestation of both counsels, the testimony of the former Solicitor General Frank Chavez is now deemed terminated and that the defense counsel manifested that he is no longer cross examining the witness. So ordered.[38]

Thereafter, the formal offer of the prosecution was discussed:

Court:

. . . . . .

> Do you want to formally offer orally or in writing?

Atty. Galit:

> I could not do that, your Honor.

Court:

> How many days prosecutor?

---

[38] *Id*. at 155-160.

Pros. Sulit:

> Your Honor, I thought your Honor that I am here for the comparison of the records and I brought with me the authenticated and may I show to the Honorable Court for the Honorable Court's appreciation of the originals of the annexes of Solicitor General Frank Chavez' affidavit of October 9, 1999.

Court:

> I will just delegate my clerk of court.

Pros. Sulit:

> Yes, your Honor, but I would wish that the Honorable Judge himself will go over a sample of the authenticated copies from our consulate in Berne, Switzerland. These documents, your Honor, were released to us by the District Magistrate of Zurich, Peter Consandey, and the process is that: He had these documents authenticated by their own judges and thereafter authenticated by our own Consular [O]fficer Fe Pangilinan Klinger in Berne, Switzerland. And afterwards, these documents were again sent to the Solicitor General Frank Chavez who was then the Solicitor General who initiated these complaints via diplomatic vouch, your Honor, thru Ambassador Aschalon who was then our Ambassador in Switzerland.

Court:

> Okay, noted.

Pros. Sulit:

> The marked of authentications are all there, your Honor.

Atty. Galit:

> May we put on the records, your Honor, that the Honorable Court was handed by Prosecutor Wendell, an original of the said document.

Court:

> Okay.

Pros. Sulit:

> Your Honor, we have several of those documents all made attachments to the affidavit of former Solicitor General Frank Chavez which I believe he has testified already and identified in the course of his direct testimony in your previous trial. We are now in the process of comparing these documents your Honor, in the presence of the defense counsel.

Court:

> Can you make a manifestation whether or not faithful reproduction of the original?

Pros. Sulit:

> Yes, your Honor, we are now in exhibit "G".

Court:

> So what is your manifestation Atty. Sison?

Atty. Sison:

> Well in so far as exhibits "A-F" and submarkings are concerned, your Honor, they appear to be faithful reproduction of the documents identified by the witness.

. . . . . .

Atty. Sison:

> Exhibit "I" and "H" earlier identified by the witness are faithful reproduction of the original kept by Prosecutor Sulit, however, your Honor I would like to make an additional manifestation that the translations attached to the originals are unofficial borne by the very documents, your Honor which I quote unofficial translation by M. R. Aguinaldo.

Pros. Sulit:

> May I be allowed to speak, your Honor.

Court:

> Yes, go ahead.

Pros. Sulit:

> As explained to me by Atty. Chavez, at the time that they were crafting these complaints against the Marcoses, there were documents in the foreign languages like French, German

and Swiss documents that need to be translated into English and they form a task force Umungos and I think two (2) of the ladies or maybe four (4) of them came from the Department of Foreign Affairs and they were the Official translators and so they did the unofficial although it is called there unofficial translations, we made it included them to form part of the record for our clearer understanding of the foreign document.

Court:

I will note your manifestation Prosecutor Sulit.

Atty. Sison:

Can we make an understanding with the prosecution your Honor that the translators are the translators designated by the prosecution alone?

Pros. Sulit:

By the Department of Justice. Judge del Rosario is here, he would know your Honor, because he was part of the Task Force Umungos.

Court:

Department of Justice or Department of Foreign Affairs?

Judge del Rosario:

Department of Foreign Affairs.

Atty. Sison:

Without the participation of the accused, your Honor.

Court:

I will note your manifestation.

Atty. Sison:

Thank you, your Honor. The document identified as exhibit "J" by the witness in his Affidavit is a faithful reproduction of the original which is with Prosecutor Sulit and I make the same manifestation in so far as the translation is concerned that it was done in the instance of the prosecution, your Honor, without the participation of the accused.

Atty. Sulit:

I think there is no translation here, your Honor. This is an original document. Your Honor, this was signed by Martin Grossman in English language this time.

Atty. Sison:

Yes, your Honor, I stand corrected your Honor but I would like to manifest that this Certificate of Authenticity marked as exhibit "J- 2" is also a photocopy.

Atty. Sulit:

A photocopy certified true by the Presidential Commission on Good Government, this is a certified true copy and duplicate photocopy are faithful reproduction of the documents on file with the PCGG under the custodian Lourdes Magno your Honor.

Atty. Sison:

Without indicating that this was derived out of an original copy that is kept with the PCGG.

Court:

I will note both manifestations. Next exhibit.

Atty. Sison:

I would like to manifest, your Honor, that these documents identified by the witness marked as exhibit "K-Q" are faithful reproduction of the photocopies brought along by Prosecutor Sulit. In other words, your Honor, these documents are also photocopied, your Honor.

Atty. Galit:

This are certified true copy by the PCGG office, your Honor.

Atty. Sison:

Yes, your Honor, but I don't think the witness was ever presented.

Court:

Anyway, I will note both manifestations made by Prosecutor Sulit, Atty. Galit and Atty. Sison.

Atty. Galit:

> Your Honor, we hereby manifest that the custodian of subject document in the person of Lourdes Magno will be available in these coming days to present the original of these documents from which source the said documents were certified.

Court:

> Okay, noted.

Atty. Sison:

> Is counsel telling this representation that they have the original of exhibit "Q-6"?

Pros. Sulit:

> I saw them, your Honor, only that they cannot give that to me and I don't know why. They kept it in their files.

Court:

> The originals are with the PCGG?

Pros. Sulit:

> Yes, your Honor. I think those documents were sent to them directly, I don't know how but they are not willing to . . . with the original but I saw the original.

Atty. Galit:

> These documents were only marked as certified true copy of the original from the PCGG.

Atty. Sison:

> Anyway, I would like to manifest that I think the parties should not lost track of the fact that this is a case of dollar salting your Honor. (off the record)[39] (Grammatical errors in the original)

The parties then proceeded to the comparison of the exhibits intended to prove the existence of the foundations, the names of which were used to create the bank accounts:

---

[39] *Id.* at 161-170.

Atty. Sulit:

We are now going to the documents that will prove the existence of the foundations, Trinidad, Palmy, Maler, Rayby and any other documents.

Court:

Next exhibit?

Atty. Sison:

Exhibit "R". The documents presented by the prosecution except that exhibit "R" is concerned, the best document is a certified true copy correct photocopy of the document on file which does not say if it is original or not.

Pros. Sulit:

How about the other documents, do you want me to bring it?

Court:

So no more?

Pros. Sulit:

No, there is another your Honor. The original copies, compliance dated February 16, 2001 and the attached First Supplemental Affidavit of Francisco Chavez dated February 15, 2001.

Atty. Sison:

We admit the existence of that already, your Honor.

Pros. Sulit:

How about the second supplemental affidavit on the Trinidad foundation dated February 16, 2001?

Atty. Sison:

The existence again, your Honor.

Pros. Sulit:

And how about the attached documents which were also certified Xerox copy of the PCGG under the same person Ma. Lourdes Magno.

Atty. Sison:

May we browse to the original of these documents.

Pros. Sulit:

Okay.

Atty. Sison:

The records will tell out they are certified Xerox copies. I don't know what that means by the records custodian of the PCGG.

Atty. Galit:

Your Honor these are being certified Xerox copy as indicated in the subject document.

Court:

I will note both manifestations.

Pros. Sulit:

Statement of Account of Trinidad Foundation and they are all certified Xerox copy on the one filed at the PCGG. They were sent to the PCGG.

Judge del Rosario:

Yes, statement of accounts of Marcoses.

Pros. Sulit:

We are willing to stipulate that the existence of the annexes of the supplemental affidavit of the witnesses, your Honor, existence as contained part of the annexes of the supplemental affidavit.

Atty. Galit:

Your Honor, we would like to put it on record that the document bears the stamped of Certified Xerox copy and under the name of Ma. Lourdes Magno of the PCGG, your Honor.

Court:

Noted.

Pros. Sulit:

And there are document number. This document were given serial numbers from Switzerland.

Atty. Galit:

Trinidad Foundation 010101.

Pros. Sulit:

Those are the control number when they were sent to the Philippines.

Atty. Galit:

Second supplemental affidavit of February 16, 2001.

Pros. Sulit:

We stipulate that they do exist as part of the annex of the second supplemental affidavit of Frank Chavez.

Court:

Noted. So how many days you will formally offer your exhibits?

Atty. Galit:

Considering your Honor the predicament that the records are still with the DOJ, the original 10 days is allocated to the prosecution may we ask that we be given additional five (5) days to make a total of fifteen (15) days.

Court:

No objection?

Atty. Sison:

We leave it to the sound discretion of the Honorable Court.

Court:

Fifteen days from today to formally offer your exhibits. How many days to file your comment? You want it orally or written?

Atty. Sison:

> I will just ask for two (2) days to file your written comment/ opposition.

Atty. Galit:

> I undertake to furnish the defense counsel on a personal basis.

Court:

> I will now set the case for initial presentation of defense evidence. Can you set it on several dates?

Atty. Galit:

> Yes, your Honor.[40] (Grammatical errors in the original)

After the April 24, 2007 hearing, Chavez filed a Petition for Certiorari, Prohibition, and Mandamus[41] dated May 3, 2007 with the Court of Appeals, docketed as C.A.-G.R. No. 98799, praying that the Court of Appeals declare null and void Judge Pampilo's order in open court denying the motion to inhibit. Chavez also asked that the Court of Appeals issue a temporary restraining order or a writ of preliminary injunction, *ex-parte*, and that it enjoin Judge Pampilo from further proceeding with, hearing, and deciding the criminal cases against Imelda. Finally, he prayed that Judge Pampilo be mandated to inhibit himself in the criminal cases against Imelda.[42]

In its May 22, 2007 Resolution, the Court of Appeals granted the prayer for the issuance of a writ of preliminary injunction.[43]

The Court of Appeals resolved the petition in its February 28, 2008 Decision[44] and denied Chavez's petition for certiorari, on the basis that Judge Pampilo's alleged bias was not sufficiently

---

[40] *Id*. at 170-176.

[41] *Id*. at 74-94.

[42] *Id*. at 92.

[43] *Id*. at 181.

[44] *Id*. at 180-195.

substantiated. It found that none of the grounds for mandatory inhibition of Judge Pampilo was present in this case. Further, there was insufficient showing of bias to substantiate Chavez's claim of bias on the part of Judge Pampilo. The Court of Appeals found that the prosecution's own acts delayed its presentation of evidence and that the prosecution had been granted a six (6)-month extension to complete its presentation of evidence. Thus, the Court of Appeals ratiocinated that there was no undue haste on the part of Judge Pampilo when he ordered that the prosecution rest its case. It further found that the claims of prejudice against Prosecutor Yarte were likewise unsubstantiated.[45]

The dispositive portion of the Court of Appeals February 28, 2008 Decision read:

> WHEREFORE, in view of the foregoing, the petition for certiorari is hereby DISMISSED.[46]

Thus, on March 10, 2008,[47] the Regional Trial Court rendered its May 28, 2007 Decision, acquitting accused Imelda and Hector T. Rivera on the ground of reasonable doubt.

It found the prosecution evidence wanting and did not mince words in describing the various failures of the prosecution.

It noted that only two (2) witnesses were presented and that the prosecution's evidence was based on hearsay.[48] It found that the prosecution's case was anchored on documents secured from the Swiss authorities, but that the only witness presented to identify the documents was former Assistant Solicitor General and Presidential Commission on Good Government Commissioner Del Rosario.[49] It quoted the transcript of

---

[45] *Id*. at 191-193.

[46] *Id*. at 194.

[47] *See rollo*, p. 197, footnote 3.

[48] *Id*. at 253.

[49] *Id*. at 250.

stenographic notes to illustrate that Del Rosario had no personal knowledge about the documents which he testified on:

Atty. Sison:

Q: Now, Mr. Witness the documents that you attached in your main affidavit and supplemental affidavits may I know where you obtained these documents all of them Mr. Witness?

A: Well, I obtained them from the PCGG and the OSG . . .

Q: Did you come to know where the PCGG or the OSG derived these documents?

A: It came from Switzerland all these documents, Swiss bank documents.

Q: So in other words Mr. Witness all of the documents which you identified in the proceedings in this case were derived from Switzerland?

A: Yes, sir.

Q: There is not any document that you identified that was derived from any other source Mr. Witness?

A: Yes, sir . . .[50] (Grammatical errors in the original)

The Regional Trial Court faulted the prosecution's reliance on hearsay testimony. It held:

To give weight to hearsay testimony gravely violates the constitutional right of the accused to meet the witnesses face-to-face and to subject the source of the information to the rigid test of cross-examination, which is the only effective means to test their truthfulness, memory, and intelligence.

Furthermore, the prosecution in this case presented as evidence voluminous documents purporting to be authentic records of the Marcos accounts in Swiss banks yet not one of the bank officers who had personal knowledge of said accounts was ever presented in Court to identify the documents and attest to the veracity of their contents. Even assuming that the said bank officers could not possibly make the trip to the Philippines, there was no reason why their testimonies could not have been taken in Switzerland by deposition.

[50] *Id.* at 254.

Del Rosario himself admitted during the course of his testimony in these cases that he was authorized to take depositions of witnesses, and again the Court quotes from the stenographic notes . . .

"ACSP Mariano

Q: Judge, you stated in your previous statement that you are now special counsel or legal consultant of PCGG. What are your main functions as such special counsel or legal consultant?

(Del Rosario)

A: My special function as consultant of PCGG, I am tasked to assist in the prosecution of all criminal cases against Mrs. Imelda Marcos all in the Regional Trial Court and in the Sandiganbayan and I am also tasked to take depositions of witnesses, rather evaluate additional evidence for the purpose of effectively prosecuting these cases against Mrs. Marcos . . .

During the course of the trial in these cases, Del Rosario revealed that he had been to Switzerland in connection with his investigation of these cases, and that sometimes he went alone and at other times he went with Solicitor General Chavez, which this Court takes to mean that he (Del Rosario) had been to Switzerland many times. Yet he never bothered to communicate with, let alone take depositions, of the bank officers who could have identified the Swiss bank documents presented by the prosecution as evidence in these cases.

Even assuming that Del Rosario was too busy with his investigative functions that he simply did not have time to take depositions, there were other persons available in Switzerland who could have legally taken such depositions if only Solicitor General Chavez, or any of his agents like Del Rosario had the foresight and the good sense to request it.[51]

The Regional Trial Court named several witnesses that the prosecution should have presented:

1. Peter Cosandey, the magistrate who examined the bank documents;

---

[51] *Id*. at 260-262.

2. Dr. Theo Bertheau of Zurich, who, according to Del Rosario, was instructed by the Marcoses to arrange for a lawyer in Liechtenstein to create Azio Foundation;

3. The alleged Marcos trustees in Switzerland: Mr. C. Walter Fessler, Cusnach Souviron, Jr., Mr. Ernest Scheller, and Dr. Helmuth Merlin;

4. Martin Grossman who signed the Certificate of Authentication of Business Records[.][52]

The Regional Trial Court noted that the prosecution repeatedly asked Del Rosario to identify signatures that he was not competent to identify:

> Many times during the course of the trial in these cases, the prosecution asked Del Rosario to identify signatures of persons whose handwriting he was not competent to testify on and despite his own admission that he was not a handwriting expert. And again, the Court quotes from its own stenographic records. (TSN, June 10, 2003, page 17-19):
>
> "(State prosecutor)
>
> Q: Now on page 2 of this Exh. "X-Common" appears a legible signature of Imelda Romualdez Marcos. In the course of your investigation, were you able to determine the person who affixed that signature?
>
> (Del Rosario)
>
> A: Yes, your honor, I found out after investigation that this contract really signed by Imelda Romualdez Marcos, this belongs to her, this contract opening of account in Swiss Credit Bank . . .
>
> Q: Do you know who this Imelda Marcos referred to in that document?
>
> Atty. Parungao: Excuse me, your honor, may we be allowed to see the document first? Your honor, may I just manifest that the signature has no print or any indication that the signature belongs to a certain person. It is just a signature which if read,

[52] *Id.* at 263.

reads Imelda Romualdez Marcos but there is no indication whose signature this is.

Court: No printed name.

Atty. Parungao: Yes, your honor."

And in another instance . .

"SP Carretas

Q: Now on the lower right hand margin of page 2 of Exhibit "W-Common" appear a signature below the printed word the Depositor. In the course of your investigation, were you able to identify or know the signature affixed in this document below the printed words the Depositor?

A: The very usual and familiar signature of the late President Ferdinand E. Marcos.

SP Carretas: May I request that the signature of Ferdinand E. Marcos appearing on the lower right hand margin of page 2 of Exhibit W-Common be marked as Exhibit "W-2."

Court: Mark it.

SP Carretas

Q: And on the lower left hand margin of page 2 of the same exhibit appears a signature below the printed words Swiss Credit Bank. Were you able to find out in the course of your investigation the person who affixed this signature?

A: I do not know the name of the person who affixed the signature but this could be the authorized representative of Swiss Credit Bank.

Q: Why do you say so?

A: Because it appear below the words Swiss Credit Bank and it is a contract, sir."

Similar exchanges between the state prosecutor and star witness Del Rosario were repeated many times during the course of the trial with respect to the signatures of the late President Marcos and Mrs. Marcos. But the most absurd of all was when on cross-examination, Del Rosario could not identify the signature of Martin Grossman, the person who issued the Certificate of Authenticity of the Swiss

bank documents used by the prosecution in these cases, to wit (TSN, Oct. 10, 2006):

> "Q: Now Mr. Witness in this Certificate of Authenticity of Business Records, appears a signature above the printed name Martin Grossman. Do you recognize that signature?
>
> A: I am not familiar with the signature, sir.
>
> Q: You are not familiar. So in other words, you do not know if this is the signature of Mr. Martin Grossman, whose printed name appears below that?
>
> A: Yes, but I rely on the Certification . . ."[53]

The Regional Trial Court also noted that the documents presented were photocopies and that the prosecution had not established any basis for presenting them instead of the original documents.[54]

Thus, the Regional Trial Court found that the prosecution failed to present competent proof of the alleged offense and of the conspiracy among the accused. Regarding the prosecution's attempt to establish the conspiracy, the Regional Trial Court held:

> The prosecution merely presented documentary evidence that Roberto S. Benedicto invested in the Philippine-issued dollar-denominated treasury notes. It did not say that Mr. Benedicto did the transaction for herein accused. He did it for himself alone. In fact, under the Compromise Agreement executed in November 1990 between the government and Mr. Benedicto, there was no mention about the above alleged investments of Mr. Benedicto in behalf of herein accused. Otherwise, Mr. Benedicto would have made his being the alleged dummy a part of the Compromise Agreement.
>
> Furthermore, neither did the prosecution submit any documentary proof that the three Swiss banks from where the alleged dollar remittances emanated, namely, Bank Hofmann, SBC and Banque Paribas, held the dollar notes for accused Marcos . . .

---

[53] *Id*. at 263-266.

[54] *Id*. at 267-270.

The Court is cognizant of the fact that the government has expended untold time, effort and money in the prosecution of these cases, but the accused has the Constitutional presumption of innocence. The prosecution in these cases failed to discharge the burden of proof required in criminal cases. This court cannot in all conscience convict the accused on the basis of mere hearsay and on the basis of documents which were not authenticated and proved in the proper manner.[55]

The dispositive portion of the Regional Trial Court Decision read:

WHEREFORE, foregoing premises considered and pursuant to applicable jurisprudence and law on the matter, the accused IMELDA ROMUALDEZ MARCOS and HECTOR T. RIVERA are hereby ACQUITTED on the ground of reasonable doubt.[56]

Chavez filed a Motion for Reconsideration[57] of the Court of Appeals February 28, 2008 Decision. As the Regional Trial Court Decision was promulgated soon thereafter, on March 10, 2008,[58] and within Chavez's period for filing a motion for reconsideration with the Court of Appeals, Chavez included in his motion a prayer for nullification of the Regional Trial Court's judgment of acquittal.

In support of this prayer, Chavez argued that the acquittal was in violation of the Court of Appeals injunction, pointing out that the injunction dated July 20, 2007 stated that it would subsist "pending final resolution of the present petition or unless a contrary order is hereafter issued by this Court."[59] He insisted that his case before the Court of Appeals was still pending final resolution because of his motion for reconsideration and that there had been no order dissolving the injunction.[60]

---

[55] *Id*. at 273-275.

[56] *Id*. at 276.

[57] *Id*. at 196-234.

[58] *Id*. at 197.

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

[60] *Id*. at 198.

In its November 24, 2008 Resolution, the Court of Appeals denied the Motion for Reconsideration and the prayer for nullification of the Regional Trial Court March 10, 2008 Decision. It held that the prayer for nullification was improper considering that it was not covered in the original petition for certiorari. It also noted that the assailed Regional Trial Court Decision was rendered after the Court of Appeals had already denied the petition for certiorari. The dissolution of the writ of injunction was deemed carried with the dismissal of the petition for certiorari.[61]

Thus, Chavez filed this Petition for Review on Certiorari before this Court. After Imelda filed her Comment[62] and Chavez filed his Reply,[63] this Court gave due course to the petition.[64] Chavez filed his Memorandum,[65] and Imelda, after seeking four (4) extensions of time to file,[66] finally filed her Memorandum[67] by mail on January 4, 2010. On October 3, 2016, this Court required the parties to move in the premises and to inform this Court of pertinent developments which may be of help in the disposition of this case, or which may have rendered it moot and academic.[68] On November 18, 2016, counsel for petitioner informed this Court that petitioner Chavez passed away on September 11, 2013.[69] Thereafter, counsel for petitioner filed a Motion for Resolution[70] arguing that petitioner's action survives his death as it involves an issue not personal to him, namely,

---

[61] *Id*. at 292.

[62] *Id*. at 352-373.

[63] *Id*. at 379-399.

[64] *Id*. at 400.

[65] *Id.* at 413-475.

[66] *Id*. at 500.

[67] *Id*. at 504-538.

[68] *Id*. at 554.

[69] *Id*. at 564.

[70] *Id*. at 555-563.

the national coffers, and that his death does not render the remedies prayed for moot and academic, or impossible.[71]

Petitioner claims that the Court of Appeals should have appreciated Judge Pampilo's demeanor and over-eagerness to decide the case as evidence of grave abuse of discretion.[72] He characterized Judge Pampilo's scheduling of the prosecution's witness as a "noose-tightening tactic."[73] He claimed that due to the unreasonableness of the schedule for his testimonies, it was inevitable that the prosecution would have to request for adjustments, and thereafter accept any resetting with the warning that its presentation of evidence would be deemed terminated.[74] Judge Pampilo made it impossible for petitioner or for Department of Justice State Prosecutor Yarte to appear at the hearing dates set by the court.[75] By orally denying the Motion to Inhibit on April 24, 2007, Judge Pampilo essentially forced the prosecution to present its evidence on the very same day, or end its presentation of evidence.[76] Petitioner also claims that Judge Pampilo, Atty. Galit, and Atty. Robert Sison (Atty. Sison) all acted with a common objective of railroading the cases. He insists that this common objective is evident from what transpired on April 24, 2007.[77] In particular, petitioner points out the fact that Judge Pampilo interpreted the Department of Justice Memorandum dated April 17, 2007 as designating Atty. Galit as the lead prosecutor and refused to allow Prosecutor Yarte to argue as the lead prosecutor. This is despite the fact that the Department of Justice Memorandum did not designate Atty. Galit as the lead prosecutor or exclude Prosecutor Yarte from

---

[71] *Id*. at 558-559.

[72] *Id*. at 426.

[73] *Id*. at 427-428.

[74] *Id*. at 428.

[75] *Id*. at 430.

[76] *Id*. at 433.

[77] *Id*. at 437.

arguing before the court. Petitioner alleges that the Department of Justice Memorandum stated:

> [A] directive is hereby made authorizing and/or designating PCGG Special Counsel, Atty. Napoleon Uy Galit with or without the presence of any public prosecutors to prosecute the above-referred cases . . .[78]

Petitioner maintains that it was revealing that Judge Pampilo swept aside the arguments of Prosecutor Yarte.[79] He also faulted Judge Pampilo for orally deciding the Motion to Inhibit,[80] averring that it was hastily done.[81] He believes that Atty. Galit acted as if he were Prosecutor Yarte's adversary instead of a fellow prosecutor[82] and that because of this concerted action among Judge Pampilo, Atty. Sison, and Atty. Galit, Prosecutor Yarte had to walk out of the hearing.[83]

Petitioner asserts that the commonality of purpose was also shown by the risky procedure resorted to by Atty. Sison, who, in one hearing, waived his written opposition to the Motion to Inhibit, the cross-examination of petitioner, and the presentation of evidence:

> 17. Also, the conduct of counsel for Imelda Marcos provides yet another glimpse into a sort of "commonality of purpose" shared by Judge Pampilo and Imelda Marcos. When Prosecutor Yarte insisted on his right to file a reply to Atty. Sison's opposition to the *Motion to Inhibit*, the latter conveniently withdrew his written opposition. When Judge Pampilo realized that he could not proceed with the presentation of evidence for the accused without first requiring the prosecution to submit its formal offer of evidence, Atty. Sison, who had earlier sought a single setting for petitioner's cross-examination and the presentation of Imelda Marcos' evidence, suddenly relinquished his intention to cross-examine the petitioner. Then, later, when it

---

[78] *Id*. at 438, footnote 30.

[79] *Id*. at 438-439.

[80] *Id*. at 441.

[81] *Id*. at 443.

[82] *Id*. at 441.

[83] *Id*. at 442.

was already time for him to present evidence for the accused (Imelda Marcos), Atty. Sison merely bracketed and marked a solitary statement in the testimony of Atty. Cesario del Rosario and then waived further presentation of evidence. He resorted to this risky procedure instead of being more cautious by filing a *Demurrer to Evidence*.[84]

Petitioner also assails the circumstances surrounding the promulgation of Judge Pampilo's decision. He suggests that there must have been a direct liaison between Judge Pampilo and Atty. Sison, because without one, under the circumstances, respondent Imelda would not have been able to file an Urgent Motion to Lift Temporary Restraining Order Ad Cautelam in time for the original scheduled promulgation to proceed.[85] Further, he alleges that Judge Pampilo told reporters that promulgation would proceed on May 23, 2007 despite the issuance of the Temporary Restraining Order because respondent Imelda was working on having the Temporary Restraining Order lifted:

25. . . . On 23 May 2007, Judge Pampilo went to court ready to promulgate his decision despite the fact that he was already served with the trial court's TRO in the afternoon of 22 May 2007. When Judge Pampilo was approached by news reporters if the promulgation would push through, Judge Pampilo answered in the affirmative since Imelda Marcos is supposedly working out a way to have the TRO lifted, obviously referring to Imelda Marcos' *Motion to Lift TRO* dated 23 May 2007. When no order from the Court of Appeals came, Judge Pampilo asked the reporters to come back by 2:00 p.m. of that same day, since according to him, by that time, Imelda Marcos might be able to secure the lifting of the TRO. Having failed in his expectations, Judge Pampilo rescheduled the promulgation of judgment to 30 May 2007 as may be gleaned from page 43 of his *Decision*. He just would not give up in his attempts to grant Imelda Marcos an early acquittal despite orders from the Court of Appeals. How can such a conduct be explained?

26. Then, finally, as mentioned earlier, Judge Pampilo did not even await final resolution of the instant case when he promulgated

---

[84] *Id.* at 445-446.

[85] *Id.* at 447-449.

on 10 March 2008 his judgment of acquittal. Again, consistent with the Rules of Court, it must be stressed that petitioner was permitted to file—and had in fact filed — his *Motion for Reconsideration* of the Court of Appeals' 28 February 2008 *Decision*. Therefore, the 28 February 2008 *Decision* is not yet final. As such, the writ of preliminary injunction issued by the Court of Appeals is still effective because the Court of Appeals' 20 July 2007 *Resolution* clearly states that the writ of preliminary injunction shall subsist "pending final resolution of the present petition or unless a contrary order is hereafter issued by this Court." Judge Pampilo's apparent fervor to exculpate Imelda Marcos even in violation of the Court of Appeals' injunction is only consistent with something glaringly obvious from the very beginning: his bias and partiality.[86]

Petitioner further argues that Judge Pampilo acted with grave abuse of discretion for promulgating his decision in violation of a subsisting injunction,[87] and for abruptly terminating petitioner's testimony.[88] He insists that his testimony would have been sufficient to render admissible the documents which Judge Pampilo found inadmissible as evidence.[89]

Respondent Imelda argues that the petition should be dismissed for raising questions of fact. Further, the undisputed facts on record constitute sufficient justification for Judge Pampilo's decision to terminate the prosecution's presentation of evidence.[90]

This Court resolves the following issues:

First, whether or not the petition should be dismissed for raising questions of fact;

Second, whether or not the Regional Trial Court May 28, 2007 Decision acquitting respondent Imelda R. Marcos was issued in violation of a subsisting injunction; and

---

[86] *Id.* at 451-452.

[87] *Id*. at 458-460.

[88] *Id*. at 462.

[89] *Id*. at 462-463.

[90] *Id*. at 517.

Finally, whether or not the records show that Judge Silvino T. Pampilo, Jr. acted with bias in favor of respondent Imelda R. Marcos.

This Court denies the Petition.

I

A petition for review on certiorari under Rule 45 shall only pertain to questions of law. Further, the Rules of Court mandate that petitions for review distinctly set forth the questions of law raised.[91]

This petition for review on certiorari attributes the following errors to the Court of Appeals:

> a. The Court of Appeals committed reversible error by refusing to consider Judge Pampilo's demeanor and over-eagerness to decide the criminal cases against Imelda Marcos—intended to culminate in a judgment of acquittal — as clear evidence of grave abuse of discretion warranting the issuance of a Writ of Certiorari.
>
> b. The Court of Appeals committed reversible error by refusing to consider Judge Pampilo's flagrant violation of a subsisting writ of preliminary injunction and, ultimately, the prosecution's constitutional right to due process.[92]

Essentially, petitioner takes issue with how the Court of Appeals interpreted the acts of Judge Pampilo and found no manifest partiality, which are clearly not questions of law. He did not even attempt to frame the issues as questions of law. By claiming that Judge Pampilo violated a writ of injunction, petitioner attempts to cloak the second alleged error with some semblance of being a question of law. However, petitioner does not provide any legal basis or coherent legal argument to support the claim that a writ of injunction was violated, and this claim is totally specious.

Although this Court may, in exceptional cases, delve into questions of fact, these exceptions must be alleged, substantiated,

---

[91] RULES OF COURT, Rule 45, Sec. 1.

[92] *Rollo*, pp. 424-425.

and proved by the parties before this Court may evaluate and review facts of the case.[93] Petitioner having failed to establish the basis for this Court to evaluate and review the facts in this case, the petition may be dismissed on this ground.

II

The Regional Trial Court Decision dated May 28, 2007 and promulgated on March 10, 2008 was not issued in violation of the Court of Appeals writ of injunction. When this Regional Trial Court Decision was promulgated, the writ of injunction had already been dissolved.

As stated by the Court of Appeals in its November 24, 2008 Resolution, the denial of the petition for certiorari carried with it the dissolution of the writ of injunction.[94]

Petitioner makes much ado of the fact that the text of the injunction stated that it subsisted "pending final resolution" of the petition, ignoring the rest of the text which provided that it would be dissolved if a contrary order was issued by the Court of Appeals.[95] Indeed, the Court of Appeals, in its November 24, 2008 Resolution, resolved this issue, stating:

> [I]t should also be considered that at the time of the rendition of the said RTC decision, the Decision of this Court denying the petition for certiorari had already been issued. Although the said Decision itself did not expressly provide for the dissolution of the writ of injunction the same is deemed carried with the dismissal of the petition for certiorari.[96]

In other words, the Court of Appeals' decision denying the petition for certiorari carried with it a contrary order dissolving the injunction. Petitioner fails to address this point and does not show how it is an error of law. Thus, the argument that a

---

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

[94] *Rollo*, p. 292.

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

[96] *Id.* at 292.

subsisting injunction was violated is clearly frivolous, if not misleading, and intended only to make it appear as though the petition has some semblance of basis.

III

Whether or not to voluntarily inhibit from hearing a case is a matter within the judge's discretion. Absent clear and convincing evidence to overcome the presumption that the judge will dispense justice in accordance with law and evidence, this Court will not interfere.[97]

On the inhibition of judges, Rule 137 of the Rules of Court provides:

> Section 1. *Disqualification of judges.* — 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 or 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.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The import of Rule 137, Section 1 of the Rules of Court was explained in *Pimentel v. Salanga*:[98]

> Thus, the genesis of the provision (paragraph 2, Section 1, Rule 137), not to say the letter thereof, clearly illumines the course of construction we should take. The exercise of *sound discretion* — mentioned in the rule—has reference exclusively to a situation where a judge *disqualifies* himself, not when he goes forward with the case.

---

[97] *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, 509 Phil. 339 (2005) [Per *J.* Panganiban, Third Division].

[98] 128 Phil. 176 (1967) [Per *J.* Sanchez, *En Banc*].

For, the permissive authority given a judge in the second paragraph of Section 1, Rule 137, is only in the matter of disqualification, not otherwise. Better stated yet, when a judge does not inhibit himself, and he is not legally disqualified by the first paragraph of Section 1, Rule 137, the rule remains as it has been—he has to continue with the case.

So it is, that the state of the law, with respect to the situation before us, is unaffected by the amendment (paragraph 2 of Section I, Rule 137) introduced in the 1964 Rules. And it is this: A judge cannot be disqualified by a litigant or his lawyer for grounds other than those specified in the first paragraph of Section I, Rule 137.

This is not to say that all avenues of relief are closed to a party properly aggrieved. If a litigant is denied a fair and impartial trial, induced by the judge's bias or prejudice, we will not hesitate to order a new trial, if necessary, in the interest of justice. Such was the view taken by this Court in *Dais vs. Torres*, 57 Phil. 897, 902-904. In that case, we found that the filing of charges by a party against a judge generated "resentment" on the judge's part that led to his "bias or prejudice which is reflected in the decision," We there discoursed on the "principle of impartiality, disinterestedness, and fairness on the part of the judge" which "is as old as the history of court." We followed this with the pronouncement that, upon the circumstances obtaining, we did not feel assured that the trial judge's findings were not influenced by bias or prejudice. Accordingly, we set aside the judgment and directed a new trial.

Efforts to attain fair, just and impartial trial and decision, have a natural and alluring appeal. But, we are not licensed to indulge in unjustified assumptions, or make a speculative approach to this ideal. It ill behooves this Court to tar and feather a judge as biased or prejudiced, simply because counsel for a party litigant happens to complain against him. As applied here, respondent judge has not as yet crossed the line that divides partiality and impartiality. He has not thus far stepped to one side of the fulcrum. No act or conduct of his would show arbitrariness or prejudice. Therefore, we are not to assume what respondent judge, not otherwise legally disqualified, will do in a case before him. We have had occasion to rule in a criminal case that a charge made before trial that a party "will not be given a fair, impartial and just hearing" is "premature." Prejudice is not to be presumed. Especially if weighed against a judge's legal obligation under his oath to administer justice, "without respect to

person and do equal right to the poor and the rich." To disqualify or not to disqualify himself then, as far as respondent judge is concerned, *is a matter of conscience*.

All the foregoing notwithstanding, this should be a good occasion as any to draw attention of all judges to appropriate guidelines in a situation where their capacity to try and decide a case fairly and judiciously comes to the force by way of challenge from any one of the parties. A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He should, therefore, exercise great care and caution before making up his mind to act in or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decision to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substances to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.[99] (Emphasis in the original)

Thus, since the second paragraph of Rule 137, Section 1 was introduced, this Court has periodically repeated that it shall always presume that a judge will decide on the merits of the case without bias. Allowing a judge to inhibit without concrete proof of personal interest or any showing that his bias stems from an extrajudicial source will open the floodgates to abuse.[100]

---

[99] *Id*. at 181-184.

[100] See *Gochan v. Gochan*, 446 Phil. 433 (2003) [Per *J*. Panganiban, Third Division].

No concrete proof of Judge Pampilo's personal interest in the case was presented. There was no showing that his bias stems from an extrajudicial source. Not only that, but none of his acts, as shown on the record, was characterized by any error.

Petitioner finds fault in the scheduling of his testimony but fails to show how it was irregular. He characterizes the scheduling as "noose-tightening," for being scheduled on "unreasonably proximate" dates.[101] Far from the scheduling being evidence of partiality, it was aligned with this Court's rules on expeditious disposition of cases and the mandatory continuous trial system.

Supreme Court Administrative Circular No. 3-90 requires all trial courts to adopt the mandatory continuous trial system pursuant to Administrative Circular No. 4 and Circular No. 1-89. On trials for civil and criminal cases, Supreme Court Circular No. 1-89 provides, in part:

II. TRIAL (Civil, Criminal)

. . . . . .

4. The issuance and services of *subpoenas* shall be done in accordance with Administrative Circular No. 4 dated September 22, 1988.

5. A strict policy on postponements shall be observed.

6. The judge shall conduct the trial with utmost dispatch, with judicious exercise of the court's power to control the trial to avoid delay.

7. The trial shall be terminated within ninety (90) days from initial hearing. Appropriate disciplinary sanctions may be imposed on the judge and the lawyers for failure to comply with this requirement due to causes attributable to them.

8. Each party is bound to complete the presentation of his evidence within the trial dates assigned to him. After the lapse of said dates, the party is deemed to have completed his evidence presentation. However, upon verified motion based on serious reasons, the judge

---

[101] *Rollo*, pp. 427-428.

may allow a party additional trial dates in the afternoon; provided that said extension will not go beyond the three-month limit computed from the first trial date.

Thus, the dates provided for petitioner's testimony were in accordance with the rules and guidelines issued by this Court.

Petitioner also claims that Judge Pampilo could have accommodated the prosecution's requests for postponement, but he did not. However, Judge Pampilo's reluctance in sanctioning further delays and in denying motions to postpone hearings was also in accordance with the rules on the expeditious resolution of cases. This Court cannot assume bias or arbitrariness based on the denial of requests of postponement.[102]

There was nothing remarkable about the denial of the Motion to Inhibit. It was not hasty, and whether to deny it orally in court is the prerogative of the judge, who could have decided it as soon as its factual basis had been clearly laid.[103] Further, counsel for the prosecution expressly agreed that the motion be submitted for resolution.[104]

Petitioner's claims that Atty. Galit acted as an adversary instead of co-counsel for Prosecutor Yarte are outlandish. The transcript reveals that Atty. Galit was nothing if not courteous to Prosecutor Yarte. Petitioner also avers that Prosecutor Yarte had to walk out of the hearing because of the concerted action taken against him.[105] However, the transcript shows that he asked permission from Judge Pampilo to allow him to pick up his daughter in Makati.[106] This incident was not the first questionable act taken by Prosecutor Yarte as it appears that he chose to attend an event in Boracay instead of the April 11, 2007 hearing,

---

[102] See *Gochan v. Gochan*, 446 Phil. 433 (2003) [Per *J.* Panganiban, Third Division].

[103] *Kilosbayan Foundation v. Janolo, Jr.*, 640 Phil. 33 (2010) [Per *J.* Carpio Morales, *En Banc*].

[104] *Rollo*, pp. 150-154.

[105] *Id.* at 442.

[106] *Id*. at 150-154.

despite the denial of his motion to cancel it. In no way can these actions be attributed to bias on the part of Judge Pampilo.

Petitioner Chavez believes that respondent Imelda would not have been acquitted had he been allowed to testify. However, Judge Pampilo did not even have to decide on whether to allow petitioner Chavez to continue his testimony because both parties agreed that his testimony would be terminated during the April 24, 2007 hearing:

Atty. Sison:

> Your Honor, the incident today is supposed to be continuation of direct examination of the witness for the prosecution and I don't see him around your Honor, despite that he should be present for today's hearing.

Court:

> That is why I show you the letter coming from the former Solicitor General the reason behind why he did not attend in today's hearing.

Atty. Sison:

> Yes your Honor, as I said also, the witness is too presumptuous that the Motion to Inhibit will not be resolved immediately your Honor so in view of that, we will move that the testimonial evidence given by the said witness be stricken off the record . . . of the Order of this Honorable Court dated April 11.

Atty. Galit:

> Your Honor, it is too much on the part of the defense counsel to move for the striking out of the testimony of the said witness. As I have said, the issues are simple. The witness has already testified and the witness is still very much willing to continue his testimony. Your Honor, to continue testifying on those three (3) affidavits with all those annexes, rather than strike the testimonies of the witness from the records of this case which would amount your Honor to issue of technicality not favor by jurisprudential authorities, I would

like to challenge the defense counsel to allow us, your Honor, to have those testimonies stay on the record and . . . on the contents of those three (3) affidavits as well as those annexes at least as to the existence your Honor and allow the prosecution to wind up your Honor their evidence by filing the complete formal offer of exhibits. In that way, your Honor, any technicality will be avoided.

Atty. Sison:

Your Honor, I said that if only to give teeth to the order of the Honorable Court last April 11, in any event, your Honor, this representation has maintained as early as five months ago that he is willing to stipulate your Honor on the existence of the affidavits of Atty. Chavez as well as the existence of the newspaper clippings but not as to the truth and veracity thereof, your Honor.

Atty. Galit:

Including annexes of those three (3) affidavits, I would like to call the attention of this Honorable Court that Prosecutor Sulit is around and now if the position of the defense counsel would be to stipulate on the existence of these documents, then we will be willing enough to wind up our presentation of evidence and submit the formal offer of evidence . . .

Atty. Galit:

The pending Motion to strike out seems to have been super[s]eded, your Honor, by the defense counsel himself when he entered into stipulation regarding the existence of these documents, your Honor, whom those annexes in the affidavit of Frank Chavez and as a matter of fact without waiving the stipulations made by the defense counsel, the Sandigan Prosecutor Wendell Barreras Sulit is showing your Honor to the defense counsel the original of those documents.

Court:

Is that correct Atty. Sison that the testimony of former Solicitor General Frank Chavez remains in the records considering the existence of three (3) affidavits as well as the newspaper clipping and the annexes?

Atty. Sison:

> Yes, your Honor. Only as to the existence of these documents, it is subject to our cross examination.

Atty. Galit:

> So the affidavit dated October 6, 1999.

Court:

> So the testimony of former Solicitor General Frank Chavez is now deemed terminated, correct me if I'm wrong.

Atty. Galit:

> Yes, your Honor.

. . . . . .

Court:

> But you will cross examine the witness Frank Chavez after the cross examination, you will file your formal offer after the cross examination.

Atty. Sison:

> Your Honor, I will not cross examine anymore.

Court:

> Okay[.] Order. Considering the manifestation of both counsels, the testimony of the former Solicitor General Frank Chavez is now deemed terminated and that the defense counsel manifested that he is no longer cross examining the witness. So ordered.[107]

As is apparent from the records, petitioner's testimony was not terminated abruptly by Judge Pampilo. Rather, the termination of his testimony was expressly agreed to by the prosecution, having obtained a stipulation from the defense counsel on the existence of the documents which petitioner was to identify.

Petitioner's claim that respondent Imelda would not have been acquitted had petitioner been allowed to continue his

---

[107] *Id*. at 155-160.

testimony is not only wildly speculative, but it is also devoid of basis. What he would have identified was a Certification of Swiss banking documents, addressed to petitioner in his capacity as Solicitor General of the Philippines, stating, in part:

> There is no disposition in any of the criminal proceedings applicable in Switzerland providing for the certification of banking documents. If a witness or a bank submits Xerox copies to a criminal authority, these documents become automatically and without any certification conclusive evidence.
>
> In legal assistance proceedings, the acts of investigation are performed according to the applicable law of the requested State, in casu of Switzerland. In international legal assistance proceedings, the requesting State usually recognizes the evidence collected according to the dispositions of the law of the requested State.
>
> Art. 92 of the Federal Law on international legal assistance in criminal matters of March 20, 1981 (EIMP) indicates that all the acts of investigation performed by the authorities of a foreign State according to its law have the same value in the proceeding as the corresponding Swiss acts of investigation.
>
> We know that especially in Anglo-Saxon law countries there are very strict rules concerning the formal constitution of conclusive evidence. Art. 65 litt. b EIMP therefore provides that in order to permit the formal admission of other evidence (especially of documents) the express desiderata of the requesting authority must be considered. In the Treaty between the Confederation of Switzerland and the United States of American mutual legal assistance in criminal matters of May 25, 1973 the certification of documents is specifically provided for. Practically, this certification is in the form of two certificates. Through the "Certificate of Authenticity of Business Records", the holder of the documents certifies their authenticity; the competent examining magistrate issues the "Certificate of the Swiss Authority executing Request for Documents" to attest that he checked himself the documents and is convinced that they are "genuine, authenticated and certified true copies". The American Courts admit without further formalities Swiss banking documents so certified.

> Concerning the documents of Swiss Credit Bank collected in Zurich, I gave you during your visit of August 13, 1991 two such certificates for each document which authenticated the banking documents. To my knowledge, the examining magistrate of Geneva, Vladimir Sternberger, also prepared similar certificates. In my opinion, these Swiss certificates of the genuine character of the documents are sufficient to present the evidence obtained in Switzerland in the Philippine Courts. A further certification of each of the several thousand documents is therefore neither necessary nor proportionate.[108]

Petitioner claims that his testimony would controvert Judge Pampilo's conclusion that the bank documents are private documents, and that they were, thus, inadmissible as hearsay.[109] However, he failed to lay the legal basis to justify the conclusion that his testimony would have established that the bank records are public documents. In *People v. Patamama*:[110]

> Also of little evidentiary value is the PAGASA certification presented by the defense respecting the rising and setting of the moon on the night in question; and this, because it is clearly hearsay, having been prepared and signed by a certain Carmelito Calimbas, allegedly the Officer in Charge of the Astronomy Research and Development Section of PAGASA. Calimbas was not presented in court for identification and to show that he was technically qualified to make and issue such certification. The rules of evidence properly exclude the testimony of witnesses demonstrably incompetent, as well as evidence that can not be tested by cross-examination.[111] (Citations omitted)

In this case, petitioner would have identified a certification which was not issued by him, but by a certain Peter Cosandey, who, as properly noted by the Regional Trial Court, was not presented in court. Thus, considering that petitioner was not the one who prepared the certificate, his testimony would have

---

[108] *Id.* at 278-279.

[109] *Id*. at 464-465.

[110] 321 Phil. 193 (1995) [Per *C.J.* Narvasa, Second Division].

[111] *Id*. at 204.

been of little evidentiary value. The claim that his testimony would have saved the prosecution's case is baseless.

Finally, petitioner's speculations regarding the strategy employed by respondent Imelda's counsel are wild and baseless. Respondent Imelda's counsel may have filed an Urgent Motion to Lift Temporary Restraining Order Ad Cautelam very quickly, but timeliness alone cannot and should not be viewed with suspicion. Counsel for respondent did not need a direct liaison to manage this, and filing pleadings in a timely manner should not be so out of the ordinary that it suggests misdeeds.

There is one allegation which, if true, might suggest some bias on the part of Judge Pampilo. In particular, petitioner alleges that Judge Pampilo told news reporters that the promulgation would proceed despite the subsisting Court of Appeals Temporary Restraining Order because respondent Imelda was working on lifting said injunction:

> 25. Petitioner also submits that he made manifestations before the Court of Appeals during the 25 July 2007 hearing, which manifestations were not denied by counsel for Imelda Marcos. On ***23 May 2007***, Judge Pampilo went to court ready to promulgate his decision despite the fact that ***he was already served with the trial court's TRO in the afternoon of 22 May 2007***. When Judge Pampilo was approached by news reporters if the promulgation would push through, Judge Pampilo answered in the affirmative since Imelda Marcos is supposedly working out a way to have the TRO lifted, obviously referring to Imelda Marcos' ***Motion to Lift TRO*** dated 23 May 2007. When no order from the Court of Appeals came, Judge Pampilo asked the reporters to come back by 2:00 p.m. of that same day, since according to him, by that time, Imelda Marcos might be able to secure the lifting of the TRO. Having failed in his expectations, Judge Pampilo rescheduled the promulgation of judgment to 30 May 2007 as may be gleaned from page 43 of his *Decision*. He just would not give up in his attempts to grant Imelda Marcos an early acquittal despite orders from the Court of Appeals. How can such a conduct be explained?[112] (Emphasis in the original)

---

[112] *Rollo*, pp. 451-452.

If it is true that Judge Pampilo told news reporters that he was expecting the Court of Appeals Temporary Restraining Order to be lifted within the day, this could suggest that Judge Pampilo was coordinating with respondent Imelda's lawyers. However, no evidence was presented to support this allegation. Allegation does not substitute proof, so this claim must be rejected.

This petition arose from what appears to have been such an important case for the government, which involves accountability for millions of pesos spirited away by respondent, filed in the lower court. Yet, it appears that the government's resolve to prosecute has been lackadaisical, to say the least. The prosecution and their witness appear to have requested several postponements on grounds which, to this Court, do not outweigh the grave public interest suggested by the various Informations filed against respondent.

The lower court's liberality in granting the various continuances does not seem to have been met by the presentation of evidence with a depth and quality that would have shown the diligence and seriousness of the prosecution.

Prosecutors for the government should always remember that their work does not end with public announcements relating to the filing of informations against those who have committed nefarious raids on our public coffers. Their work is to professionally present the evidence marshalled through painstaking and fastidious investigation. Prosecutors should avoid the soundbite that will land them the headlines in all forms of media. Instead, they should do their work and attain justice and reparations for our people wronged by selfish conniving politicians who do not deserve their public offices.

Apathetic prosecution allows impunity. It is difficult as enough as it is to discover wrongdoing, protect key witnesses, preserve the evidence, and guard against the machinations of powerful and moneyed individuals. Prosecutors must not only be courageous but must also show their dedication to public interest through their competence. Otherwise, the system will invite suspicion that there had been unholy collusion.

Fatal errors that should have been avoided by veteran litigators, such as a habit of postponements and a lack of preparation, cannot be papered over by a labyrinth of appeals that reaches this Court. That is a fool's strategy that will only contribute to increasing the dockets of this Court, thereby denying time and resources from deserving petitioners.

The prosecution could have done better in this case. Sadly, it failed.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals February 28, 2008 Decision and November 24, 2008 Resolution in CA-G.R. SP No. 98799 are hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 192934. June 27, 2018]

SECURITY BANK CORPORATION, *petitioner, vs.* **SPOUSES RODRIGO and ERLINDA MERCADO,** *respondents.*

[G.R. No. 197010. June 27, 2018]

SPOUSES RODRIGO and ERLINDA MERCADO, *petitioners, vs.* **SECURITY BANK AND TRUST COMPANY,** *respondent.*

SYLLABUS

1. **CIVIL LAW; ACT NO. 3135; FORECLOSURE SALES OF THE SUBJECT PROPERTIES ARE VOID FOR NON-COMPLIANCE WITH THE PUBLICATION REQUIREMENT OF THE NOTICE OF SALE.—** We have time and again underscored the importance of the notice of sale and its publication. Publication of the notice is required "to give the x x x foreclosure sale a reasonably wide publicity such that those interested might attend the public sale." It gives as much advertising to the sale as possible in order to secure bidders and prevent a sacrifice of the property. x x x Failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect which invalidates the sale. This jurisdictional requirement may not be waived by the parties; to allow them to do so would convert the required public sale into a private sale. Thus, the statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with, and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.

2. **ID.; ID.; ID.; NOTICE OF SALE CONTAINING INCORRECT DATA COULD BRING ABOUT CONFUSION TO PROSPECTIVE BIDDERS AND SUBSEQUENT PUBLICATION OF SINGLE ERRATUM DOES NOT CURE SUCH DEFECT; AN ERRATUM IS CONSIDERED A NEW NOTICE THAT IS SUBJECT TO THE SAME PUBLICATION REQUIREMENT.—** [W]hat is apparent is that Security Bank published incorrect data in the notice that could bring about confusion to prospective bidders. In fact, their subsequent publication of an erratum is recognition that the error is significant enough to bring about confusion as to the identity, location, and size of the properties. The publication of a single erratum, however, does not cure the defect. As correctly pointed out by the RTC, "[t]he act of making only one corrective publication in the publication requirement, instead of three (3) corrections is a fatal omission committed by the mortgagee bank." To reiterate, the published notices that contain fatal errors are nullities. Thus, the erratum is considered as a new notice that is subject to the publication requirement for once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city where the property is located. Here, however, it was published only once.

3. ID.; CIVIL CODE; CONTRACTS; PRINCIPLE OF MUTUALITY OF CONTRACTS, EXPLAINED; STIPULATIONS AS TO THE PAYMENT OF INTEREST ARE SUBJECT TO MUTUALITY OF CONTRACTS PRINCIPLE.— The principle of mutuality of contracts is found in Article 1308 of the New Civil Code, which states that contracts must bind both contracting parties, and its validity or compliance cannot be left to the will of one of them. The binding effect of any agreement between parties to a contract is premised on two settled principles: (1) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. As such, any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Likewise, any stipulation regarding the validity or compliance of the contract that is potestative or is left solely to the will of one of the parties is invalid. This holds true not only as to the original terms of the contract but also to its modifications. Consequently, any change in a contract must be made with the consent of the contracting parties, and must be mutually agreed upon. Otherwise, it has no binding effect. Stipulations as to the payment of interest are subject to the principle of mutuality of contracts. As a principal condition and an important component in contracts of loan, interest rates are only allowed if agreed upon by express stipulation of the parties, and only when reduced into writing. Any change to it must be mutually agreed upon, or it produces no binding effect[.]

4. ID.; ID.; ID.; THE INTEREST PROVISIONS IN THE SUBJECT REVOLVING CREDIT LINE AGREEMENT VIOLATE THE PRINCIPLE OF MUTUALITY OF CONTRACTS.— In [*Silos v. Philippine National Bank*], we found that the method of fixing interest rates is based solely on the will of the bank. The method is "one-sided, indeterminate, and [based on] subjective criteria such as profitability, cost of money, bank costs, etc. x x x." It is "arbitrary for there is no fixed standard or margin above or below these considerations." More, it is worded in such a way that the borrower shall agree to whatever interest rate the bank fixes. Hence, the element of consent from or agreement by the borrower is completely lacking. Here, the spouses Mercado supposedly: (1) agreed to pay an

annual interest based on a "floating rate of interest;" (2) to be determined solely by Security Bank; (3) on the basis of Security Bank's own prevailing lending rate; (4) which shall not exceed the total monthly prevailing rate as computed by Security Bank; and (5) without need of additional confirmation to the interests stipulated as computed by Security Bank. x x x The RTC and CA were correct in holding that the interest provisions in the revolving credit line agreement and its addendum violate the principle of mutuality of contracts. *First*, the authority to change the interest rate was given to Security Bank alone as the lender, without need of the written assent of the spouses Mercado. x x x *Second*, the interest rate to be imposed is determined solely by Security Bank for lack of a stated, valid reference rate. The reference rate of "Security Bank's prevailing lending rate" is not pegged on a market-based reference rate as required by the BSP. x x x [T]he stipulated interest rate based on "Security Bank's prevailing lending rate" is not synonymous with "prevailing market rate." For one, Security Bank is still the one who determines its own prevailing lending rate. More, the argument that Security Bank is guided by other facts (or external factors such as Singapore Rate, London Rate, Inter-Bank Rate) in determining its prevailing monthly rate fails because these reference rates are not contained in writing as required by law and the BSP.

5. ID.; ID.; ID.; STIPULATIONS ON FLOATING RATE OF INTEREST AND ESCALATION CLAUSES, DISTINGUISHED.— [S]tipulations on floating rate of interest differ from escalation clauses. Escalation clauses are stipulations which allow for the increase (as well as the mandatory decrease) of the original fixed interest rate. Meanwhile, floating rates of interest refer to the variable interest rate stated on a market-based reference rate agreed upon by the parties. The former refers to the method by which fixed rates may be increased, while the latter pertains to the interest rate itself that is not fixed. Nevertheless, both are contractual provisions that entail adjustment of interest rates subject to the principle of mutuality of contracts. Thus, while the cited cases involve escalation clauses, the principles they lay down on mutuality equally apply to floating interest rate clauses.

APPEARANCES OF COUNSEL

Lariba Perez Mangrobang Miralles Dumbrique Avila & Fulgencio for Security Bank Corp.

De Castro & Cagampang-de Castro Law Firm for Sps. Mercado.

D E C I S I O N

JARDELEZA, *J.*:

These are consolidated petitions[1] seeking to nullify the Court of Appeals' (CA) July 19, 2010 Decision[2] and May 2, 2011 Resolution[3] in CA-G.R. CV No. 90031. The CA modified the February 26, 2007 Decision,[4] as amended by the June 19, 2007 Amendatory Order[5] (Amended Decision), of Branch 84, Regional Trial Court (RTC), Batangas City in the consolidated cases of Civil Case No. 5808 and LRC Case No. N-1685. The RTC nullified the extrajudicial foreclosure sales over petitioners-spouses Rodrigo and Erlinda Mercado's (spouses Mercado) properties, and the interest rates imposed by petitioner Security Bank Corporation (Security Bank).

On September 13, 1996, Security Bank granted spouses Mercado a revolving credit line in the amount of ₱1,000,000.00.[6]

---

[1] Petition for review on *certiorari* filed by Security Bank Corporation (formerly known as Security Bank and Trust Company), *rollo* (G.R. No. 192934), pp. 24-46; and petition for review on *certiorari* filed by the spouses Rodrigo and Erlinda Mercado, *rollo* (G.R. No. 197010), pp. 9- 22. We resolved to consolidate these petitions in our Resolution dated January 18, 2012, see *rollo* (G.R. No. 192934), p. 183.

[2] *Rollo* (G.R. No. 192934), pp. 9-22; penned by Associate Justice Isaias Dicdican, with Associate Justices Stephen C. Cruz and Danton Q. Bueser concurring.

[3] *Rollo* (G.R. No. 197010), pp. 49-50.

[4] *Rollo* (G.R. No. 192934), pp. 64-78; penned by Presiding Judge Paterno V. Tac-an.

[5] *Id.* at 79-82.

[6] *Id.* at 51, 94.

The terms and conditions of the revolving credit line agreement included the following stipulations:

> 7. Interest on Availments – I hereby agree to pay Security Bank interest on outstanding Availments at a per annum rate determined from time to time, by Security Bank and advised through my Statement of Account every month. I hereby agree that the basis for the determination of the interest rate by Security Bank on my outstanding Availments will be Security Bank's prevailing lending rate at the date of availment. I understand that the interest on each availment will be computed daily from date of availment until paid.
>
> x x x x x x x x x
>
> 17. Late Payment Charges – If my account is delinquent, I agree to pay Security Bank the payment penalty of 2% per month computed on the amount due and unpaid or in excess of my Credit Limit.[7]

On the other hand, the addendum to the revolving credit line agreement further provided that:

> I hereby agree to pay Security Bank Corporation (SBC) interest on outstanding availments based on annual rate computed and billed monthly by SBC on the basis of its prevailing monthly rate. It is understood that the annual rate shall in no case exceed the total monthly prevailing rate as computed by SBC. I hereby give my continuing consent without need of additional confirmation to the interests stipulated as computed by SBC. The interests shall be due on the first day of every month after date of availment. x x x[8]

To secure the credit line, the spouses Mercado executed a Real Estate Mortgage[9] in favor of Security Bank on July 3, 1996 over their properties covered by Transfer Certificate of Title (TCT) No. T-103519 (located in Lipa City, Batangas), and TCT No. T-89822 (located in San Jose, Batangas).[10] On September 13, 1996, the spouses Mercado executed another

---

[7] *Id.* at 94.

[8] *Id.* at 52; Records (Civil Case No. 5808), Vol. I, p. 26.

[9] *Rollo* (G.R. No. 192934), pp. 95-98.

[10] *Id.* at 51, 99-101.

Real Estate Mortgage[11] in favor of Security Bank this time over their properties located in Batangas City, Batangas covered by TCT Nos. T-33150, T-34288, and T-34289 to secure an additional amount of ₱7,000,000.00 under the same revolving credit agreement.

Subsequently, the spouses Mercado defaulted in their payment under the revolving credit line agreement. Security Bank requested the spouses Mercado to update their account, and sent a final demand letter on March 31, 1999.[12] Thereafter, it filed a petition for extrajudicial foreclosure pursuant to Act No. 3135,[13] as amended, with the Office of the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Lipa City with respect to the parcel of land situated in Lipa City. Security Bank likewise filed a similar petition with the Office of the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Batangas City with respect to the parcels of land located in San Jose, Batangas and Batangas City.[14]

The respective notices of the foreclosure sales of the properties were published in newspapers of general circulation once a week for three consecutive weeks as required by Act No. 3135, as amended. However, the publication of the notices of the foreclosure of the properties in Batangas City and San Jose, Batangas contained errors with respect to their technical description. Security Bank caused the publication of an erratum in a newspaper to correct these errors. The corrections consist of the following: (1) TCT No. 33150 – "Lot 952-C-1" to "Lot 952-C-1-**B**;" and (2) TCT No. 89822 – "Lot 1931 Cadm- 164-D" to "Lot 1931 Cadm **4**64-D." The erratum was published only once, and did not correct the lack of indication of location in both cases.[15]

---

[11] *Id.* at 102-105.

[12] *Id.* at 66; Records (Civil Case No. 5808), Vol. 1, p. 38.

[13] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages (1924).

[14] *Rollo* (G.R. No. 192934), p. 52.

[15] *Id.* at 53, 73.

On October 19, 1999, the foreclosure sale of the parcel of land in Lipa City, Batangas was held wherein Security Bank was adjudged as the winning bidder. The Certificate of Sale[16] over it was issued on November 3, 1999. A similar foreclosure sale was conducted over the parcels of land in Batangas City and San Jose, Batangas where Security Bank was likewise adjudged as the winning bidder. The Certificate of Sale[17] over these properties was issued on October 29, 1999. Both Certificates of Sale were registered, respectively, with the Registry of Deeds of Lipa City on November 11, 1999 and the Registry of Deeds of Batangas City on November 17, 1999.[18]

On September 18, 2000, the spouses Mercado offered to redeem the foreclosed properties for ₱10,000,000.00. However, Security Bank allegedly refused the offer and made a counter-offer in the amount of ₱15,000,000.00.[19]

On November 8, 2000, the spouses Mercado filed a complaint for annulment of foreclosure sale, damages, injunction, specific performance, and accounting with application for temporary restraining order and/or preliminary injunction[20] with the RTC of Batangas City, docketed as Civil Case No. 5808 and eventually assigned to Branch 84.[21] In the complaint, the spouses Mercado averred that: (1) the parcel of land in San Jose, Batangas should not have been foreclosed together with the properties in Batangas City because they are covered by separate real estate mortgages; (2) the requirements of posting and publication of the notice under Act No. 3135, as amended, were not complied with; (3) Security Bank acted arbitrarily in disallowing the redemption of the foreclosed properties for ₱10,000,000.00; (4) the total price for all of the parcels of land only amounted to ₱4,723,620.00;

---

[16] *Id.* at 114-115.

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

[18] *Id.* at 53.

[19] *Id.*

[20] Records (Civil Case No. 5808), Vol. I, pp. 1-11.

[21] *Rollo* (G.R. No. 192934), pp. 28-29.

and (5) the interests and the penalties imposed by Security Bank on their obligations were iniquitous and unconscionable.[22]

Meanwhile, Security Bank, after having consolidated its titles to the foreclosed parcels of land, filed an *ex-parte* petition for issuance of a writ of possession[23] over the parcels of land located in Batangas City and San Jose, Batangas with the RTC of Batangas City on June 9, 2005. The case was docketed as LRC Case No. N-1685 and subsequently raffled to Branch 84 where Civil Case No. 5808 was pending.[24]

Thereafter, the two cases were consolidated before Branch 84 of the RTC of Batangas City.

In its February 26, 2007 Decision,[25] the RTC declared that: (1) the foreclosure sales of the five parcels of land void; (2) the interest rates contained in the revolving credit line agreement void for being potestative or solely based on the will of Security Bank; and (3) the sum of ₱8,000,000.00 as the true and correct obligation of the spouses Mercado to Security Bank.[26]

---

[22] Records (Civil Case No. 5803), Vol. I, pp. 6-8.

[23] Records (LRC Case No. N-1685), pp. 1-5.

[24] *Rollo* (G.R. No 192934), p, 54.

[25] *Supra* note 4.

[26] *Rollo* (G.R. No. 192934), pp. 77-78. The full dispositive portion of which states:

WHEREFORE, Judgment is hereby rendered in favor of [spouses Mercado] and against [Security Bank];

1. Declaring as void the Foreclosure Sales concerning the following real properties:

1. TCT No. T-103519 - Lipa City
2. TCT No. T 89822 - San Jose, Batangas
3. TCT No. 33150 - Batangas City
4. TCT No. T- 34289 - Batangas City
5. TCT No. 34288 - Batangas City

2. [D]eclaring the interest rates contained in the addendum of the real property mortgagors/promissory notes as void as well as the interest and penalties computed and charged against [spouses Mercado] and declaring

The RTC declared the foreclosure sales void because "[t]he act of making only one corrective publication x x x is a fatal omission committed by the mortgagee bank."[27] It also found merit in the spouses Mercado's contention that the parcel of land in San Jose, Batangas and the three parcels of land in Batangas City should not be lumped together in a single foreclosure sale. Not only does it make the redemption onerous, it further violates Sections 1 and 5 of Act No. 3135 which do not envision and permit a single sale of more than one real estate mortgage separately constituted. The notice of sale itself is also defective because the act of making only one corrective publication is fatal.[28]

The RTC also ruled that the stipulation as to the interest rate on the availments under the revolving credit line agreement "where the fixing of the interest rate is the sole prerogative of the creditor/mortgagee, belongs to the class of potestative condition which is null and void under [Article] 1308 of the New Civil [C]ode."[29] It also violates Central Bank Circular No. 1191 which requires the interest rate for each re-pricing period to be subject to a mutual agreement between the borrower and bank. As such, no interest has been expressly stipulated in writing as required under Article 1956 of the New Civil Code.[30] The

---

the sum of eight million (₱8,000,000.00) pesos as the true and correct obligation of [spouses Mercado] to [Security Bank] which shall be the basis of payment to the bank and which amount may be deposited by way of consignation should the bank refuse to accept it. Such consignation with prior and subsequent notice to the Bank shall automatically extinguish the ₱8,000,000.00 loan if seasonably made.

3. [O]rdering the payment of attorney's fees of ₱50,000.00.

4. [M]aking the injunction permanent against the enforcement of the real estate mortgages and the foreclosure sales xxx[.]

5. Cost of suit.

[27] *Id.* at 74.

[28] *Id.* at 74-76.

[29] *Id.* at 74.

[30] *Id.* at 75.

RTC ruled that since the spouses Mercado offered to pay the higher amount of ₱10,000,000.00 and the bank unjustifiably refused to accept it, no interest shall be due and demandable after the offer.[31]

Security Bank moved for reconsideration of the RTCs Decision, claiming that the trial court: (1) does not have jurisdiction over the parcels of land in Lipa City, Batangas; and (2) erred in limiting the obligation to only ₱8,000,000.00.[32]

The RTC modified its Decision in an Amendatory Order[33] dated June 19, 2007 where it declared that: (1) only the foreclosure sales of the parcels of land in Batangas City and San Jose, Batangas are void as it has no jurisdiction over the properties in Lipa City, Batangas; (2) the obligation of the spouses Mercado is ₱7,500,000.00, after deducting ₱500,000.00 from the principal loan of ₱1,000,000.00; and (3) as "cost of money," the obligation shall bear the interest at the rate of 6% from the time of date of the Amendatory Order until fully paid.[34]

---

[31] *Id.* at 77.

[32] Records (Civil Case No. 5808), Vol. II, pp. 83-101.

[33] *Supra* note 5.

[34] *Rollo* (G.R. No. 192934), pp. 81-82. The dispositive portion of which provides:

WHEREFORE, judgment is rendered in favor of [spouses Mercado] and against [Security Bank]:

1. Declaring as void the foreclosure sale concerning the following real properties: [] 1.) TCT No. T-89822- San Jose; Batangas; 2.) TCT No. 33150- Batangas City; 3.) TCT No. T-34289- Batangas City; 4.) TCT No. 34288- Batangas City[];

x x x x x x x x x

3. [D]eclaring the sum of Php 7,500,000 00 as the principal obligation of the said [spouses Mercado] instead of Php 15,000,000.00 as demanded [by Security Bank] to which is being added from the date of this Amended Decision the rate of cost of money of 6% per annum, or ½ percent per month until fully paid:

4. [D]enying the petition for issuance of writ of possession;

x x x x x x x x x

The CA, on appeal, affirmed with modifications the RTC Amended Decision. It agreed that the error in the technical description of the property rendered the notice of foreclosure sale defective. Security Bank's subsequent single publication of an erratum will not cure the defective notice; it is as if no valid publication of the notice of the foreclosure sale was made.[35] The CA also concluded that the provisos giving Security Bank the sole discretion to determine the annual interest rate is violative of the principle of mutuality of contracts because there is no reference rate from which to peg the annual interest rate to be imposed.[36]

The CA, however, disagreed with the trial court's findings as to the amount of the outstanding obligation, the imposition of interest, and the penalty. As to the principal amount of the obligation and the legal interest, it noted that the liability of the spouses Mercado from Security Bank is ₱7,516,880.00 or the principal obligation of ₱8,000,000.00 less the amount of ₱483,120.00 for which the Lipa City property has been sold.[37] It also modified the legal interest rate imposed from 6% to 12% from the date of extrajudicial demand, *i.e.*, March 31, 1999.[38] Lastly, it imposed the stipulated 2% monthly penalty under the revolving credit line agreement.[39] Thus:

WHEREFORE, in view of the foregoing premises, the instant appeal is hereby **PARTIALLY GRANTED**. Accordingly, the assailed Decision dated February 26, 2007 and the Amendatory Order dated June 19, 2007 are hereby **MODIFIED**. [Spouses Mercado] are hereby ordered to pay [Security Bank] the sum of Seven Million Five Hundred Sixteen Thousand Eight Hundred Eighty Pesos (₱7,516,880.00) with

---

6. [M]aking the injunction permanent against the enforcement of the real estate mortgages and against the foreclosure sales in respect to the above-named properties[.]

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

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

[37] *Id.* at 61.

[38] *Id.*; Records (Civil Case No. 5808), Vol. I, p. 38.

[39] *Rollo* (G.R. 192934), p. 62.

interest at the rate of twelve percent (12%) *per annum* from March 30, 1999, the date of extrajudicial demand, until fully paid. [Spouses Mercado] are further ordered to pay the stipulated penalty of two percent (2%) per month on the amount due in favor of Security Bank. The award of attorney's fees in favor of [spouses Mercado] is hereby deleted for lack of merit. All other dispositions of the trial court are hereby **AFFIRMED**.[40]

Hence, these consolidated petitions.

Security Bank argues that the CA erred in declaring: (1) the foreclosure sale invalid; and (2) the provisions on interest rate violative of the principle of mutuality of contracts. *First*, the foreclosure sale is valid because Security Bank complied with the publication requirements of Act No. 3135, as amended. The mistake in the original notice is inconsequential or minor since it only pertains to a letter and number in the technical description without actually affecting the actual size, location, and/or description or title number of the property.[41] It invokes Office of the Court Administrator (OCA) Circular No. 14[42] issued on May 29, 1984 governing the format of sale which allegedly does not require that the complete technical description of the property be published.[43] *Second*, Security Bank insists that the provision on the interest rate observed the principle of mutuality of contracts. Absolute discretion on its part is wanting because a ceiling on the maximum applicable rate is found in the addendum. It is the market forces that dictate and establish the rate of interest to be applied and takes into account various factors such as but not limited to, Singapore Rate, London Rate, Inter-Bank Rate which serve as reference rates. This is acceptable, as held in *Polotan, Sr. v. Court of Appeals* (*Eleventh Division*).[44]

---

[40] *Id.* at 62-63.

[41] *Id.* at 35.

[42] Revision and/or Modification of the Notice of Sale of Extra-Judicial Foreclosure.

[43] *Rollo* (G.R. No. 192934), p. 37.

[44] G.R. No. 119379, September 25, 1998, 296 SCRA 247.

Further, the spouses Mercado are bound by the rate because they were aware of, and had freely and voluntarily assented to it.[45]

The spouses Mercado on the other hand, claim that the CA erred in imposing interest and penalty from the date of extrajudicial demand until finality of the Decision. Under the doctrine of operative facts laid down in *Spouses Caraig v. Alday*[46] and *Andal v. Philippine National Bank*,[47] the interest and penalty were considered paid by the auction sale.[48] As such, interest should only run from the finality of this Decision. They also assert that they should be excused from paying the penalty because of economic crises, and their lack of bad faith in this case.[49]

Initially, we denied the spouses Mercado's petition (G.R. No. 197010) in our Resolution[50] dated July 27, 2011. Upon the spouses Mercado's motion for reconsideration,[51] we reinstated the petition on April 18, 2012.[52]

The following issues are presented for this Court's resolution:

I. Whether the foreclosure sales of the parcels of land in Batangas City and San Jose, Batangas are valid.

II. Whether the provisions on interest rate in the revolving credit line agreement and its addendum are void for being violative of the principle of mutuality of contracts.

III. Whether interest and penalty are due and demandable from date of auction sale until finality of the judgment

---

[45] *Rollo* (G.R. No. 192934), pp. 40-43.

[46] CA-G.R. CV No. 76029, May 31, 2007.

[47] G.R. No. 194201, November 27, 2013, 711 SCRA 15.

[48] *Rollo* (G.R. No. 197010); pp. 59-60.

[49] *Id.* at 17-19.

[50] *Id.* at 52.

[51] *Id.* at 59-63.

[52] *Id.* at 68.

declaring the foreclosure void under the doctrine of operative facts.

We deny the petitions.

I

The foreclosure sales of the properties in Batangas City and San Jose, Batangas are void for non-compliance with the publication requirement of the notice of sale.

Act No. 3135, as amended, provides for the statutory requirements for a valid extrajudicial foreclosure sale. Among the requisites is a valid notice of sale. Section 3, as amended, requires that when the value of the property reaches a threshold, the notice of sale must be published once a week for at least three consecutive weeks in a newspaper of general circulation:

> Sec. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and **if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city**. (Emphasis supplied.)

We have time and again underscored the importance of the notice of sale and its publication. Publication of the notice is required "to give the x x x foreclosure sale a reasonably wide publicity such that those interested might attend the public sale."[53] It gives as much advertising to the sale as possible in order to secure bidders and prevent a sacrifice of the property. We reiterated this in *Caubang v. Crisologo*[54] where we said:

> The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the

---

[53] *Philippine National Bank v. Maraya, Jr.*, G.R. No. 164104, September 11, 2009, 599 SCRA 394, 400.

[54] G.R. No. 174581, February 4, 2015, 749 SCRA 563.

time, place, and terms of the sale. Notices are given to secure bidders and prevent a sacrifice of the property. Therefore, statutory provisions governing publication of notice of mortgage foreclosure sales must be strictly complied with and slight deviations therefrom will invalidate the notice and render the sale, at the very least, voidable. Certainly, the statutory requirements of posting and publication are mandated and imbued with public policy considerations. Failure to advertise a mortgage foreclosure sale in compliance with the statutory requirements constitutes a jurisdictional defect, and any substantial error in a notice of sale will render the notice insufficient and will consequently vitiate the sale.[55] (Citation omitted.)

Failure to advertise a mortgage foreclosure sale in compliance with statutory requirements constitutes a jurisdictional defect which invalidates the sale.[56] This jurisdictional requirement may not be waived by the parties; to allow them to do so would convert the required public sale into a private sale.[57] Thus, the statutory provisions governing publication of notice of mortgage foreclosure sale must be strictly complied with and that even slight deviations therefrom will invalidate the notice and render the sale at least voidable.[58]

To demonstrate the strictness of the rule, we have invalidated foreclosure sales for lighter reasons. In one case,[59] we declared a foreclosure sale void for failing to comply with the requirement that the notice shall be published once a week for at least three consecutive weeks. There, although the notice was published three times, the second publication of the notice was done on the first day of the third week, and not within the period for the second week.[60]

---

[55] *Id.* at 568.

[56] *Tambunting v. Court of Appeals*, G.R. No. L-48278, November 8, 1988, 167 SCRA 16, 23-24.

[57] *Philippine National Bank v. Maraya, Jr., supra* note 53.

[58] *Tambunting v. Court of Appeals, supra* at 23. Citation omitted.

[59] *Philippine National Bank v. Court of Appeals*, G.R. No. 98382, May 17, 1993, 222 SCRA 134.

[60] *Id.* at 140-143.

Nevertheless, the validity of a notice of sale is not affected by immaterial errors.[61] Only a substantial error or omission in a notice of sale will render the notice insufficient and vitiate the sale.[62] An error is substantial if it will deter or mislead bidders, depreciate the value of the property or prevent it from bringing a fair price.[63]

In this case, the errors in the notice consist of: (1) TCT No. T-33150—"Lot 952-C-1" which should be "Lot 952-C-1-**B**;" (2) TCT No. T-89822—"Lot 1931, Cadm- 164-D" which should be "Lot 1931 Cadm **4**64-D;"[64] and (3) the omission of the location.[65] While the errors seem inconsequential, they in fact constitute data important to prospective bidders when they decide whether to acquire any of the lots announced to be auctioned. First, the published notice misidentified the identity of the properties. Since the lot numbers are misstated, the notice effectively identified lots other than the ones sought to be sold. Second, the published notice omitted the exact locations of the properties. As a result, prospective buyers are left completely unaware of the type of neighborhood and conforming areas they may consider buying into. With the properties misidentified and their locations omitted, the properties' sizes and ultimately, the determination of their probable market prices, are consequently compromised. The errors are of such nature that they will significantly affect the public's decision on whether to participate in the public auction. We find that the errors can deter or mislead bidders, depreciate the value of the properties or prevent the process from fetching a fair price.

---

[61] *K-Phil., Inc. v. Metropolitan Bank & Trust Company*, G.R. No. 167500, October 17, 2008, 569 SCRA 459, 466.

[62] *Tambunting v. Court of Appeals, supra* note 56.

[63] *K-Phil., Inc. v. Metropolitan Bank and Trust Company, supra* note 61 at 465-466.

[64] See TCT No. T-33150, *rollo* (G.R. No. 192934), p. 106; see also TCT No. T-89822, *id.* at 100.

[65] *Id.* at 73.

Our ruling finds support in *San Jose v. Court of Appeals*[66] where we nullified a foreclosure sale on the ground that the notice did not contain the correct number of the TCT of the property to be sold. We rejected the contention of the mortgagee-creditor that prospective bidders may still rely on the technical description because it was accurate. We held that the notice must contain the correct title number and technical description of the property to be sold:

> The Notice of Sheriff[']s Sale, in this case, did not state the correct number of the transfer certificate of title of the property to be sold. This is a substantial and fatal error which resulted in invalidating the *entire* Notice. That the correct technical description appeared on the Notice does not constitute substantial compliance with the statutory requirements. The purpose of the publication of the Notice of Sheriff[']s Sale is to inform all interested parties of the date, time and place of the foreclosure sale of the real property subject thereof. Logically, this not only requires that the correct date, time and place of the foreclosure sale appear in the notice but also that any and all interested parties be able to determine that what is about to be sold at the foreclosure sale is the real property in which they have an interest.
>
> The Court is not unaware of the fact that the majority of the population do not have the necessary knowledge to be able to understand the technical descriptions in certificates of title. It is to be noted and stressed that the Notice is not meant only for individuals with the training to understand technical descriptions of property but also for the layman with an interest in the property to be sold, who normally relies on the number of the certificate of title. To hold that the publication of the correct technical description, with an incorrect title number, of the property to be sold constitutes substantial compliance would certainly defeat the purpose of the Notice. This is not to say that a correct statement of the title number but with an incorrect technical description in the notice of sale constitutes a valid notice of sale. **The Notice of Sheriff[']s Sale, to be valid, must contain the *correct* title number and the *correct* technical description of the property to be sold.**[67] (Emphasis supplied.)

---

[66] G.R. No. 106953, August 19, 1993, 225 SCRA 450.

[67] *Id.* at 454.

We do not agree with Security Bank's reliance on OCA Circular No. 14 (s. 1984). While it is true that the circular does not require the full technical description of the properties, it still requires the inclusion of the salient portions such as the lot number of the property and its boundaries.[68] In any case, what is apparent is that Security Bank published incorrect data in the notice that could bring about confusion to prospective bidders. In fact, their subsequent publication of an erratum is recognition that the error is significant enough to bring about confusion as to the identity, location, and size of the properties.

The publication of a single erratum, however, does not cure the defect. As correctly pointed out by the RTC, "[t]he act of making only one corrective publication in the publication requirement, instead of three (3) corrections is a fatal omission committed by the mortgagee bank."[69] To reiterate, the published notices that contain fatal errors are nullities. Thus, the erratum is considered as a new notice that is subject to the publication requirement for once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city where the property is located. Here, however, it was published only once.

While there are cases where we upheld foreclosure sales on the ground that the mortgagor-debtor's act of redeeming the property amounts to estoppel, we cannot apply this equitable principle here. For one, Security Bank never raised the issue in its pleadings. Defenses and objections that are not pleaded in the answer or motion to dismiss are deemed waived.[70] Second, estoppel is a mere principle in equity. We cannot grant estoppel for the reason that Security Bank itself denies that the spouses

---

[68] The relevant portion of OCA Circular No. 14 provides:

NOTICE OF EXTRA-JUDICIAL SALE
x x x x x x x x x
TRANSFER CERTIFICATE OF TITLE NO. _____
A parcel of land _____ situated in _____ containing an area _____, more or less, _____ x x x.

[69] *Rollo* (G.R. No. 192934), p. 74.

[70] RULES OF COURT, Rule 9, Sec. 1.

Mercado offered to redeem the Batangas properties.[71] Thus, the element of reliance is absent.

II

The interest rate provisions in the parties' agreement violate the principle of mutuality of contracts.

a.

The principle of mutuality of contracts is found in Article 1308 of the New Civil Code, which states that contracts must bind both contracting parties, and its validity or compliance cannot be left to the will of one of them. The binding effect of any agreement between parties to a contract is premised on two settled principles: (I) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality.[72] As such, any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Likewise, any stipulation regarding the validity or compliance of the contract that is potestative or is left solely to the will of one of the parties is invalid.[73] This holds true not only as to the original terms of the contract but also to its modifications. Consequently, any change in a contract must be made with the consent of the contracting parties, and must be mutually agreed upon. Otherwise, it has no binding effect.[74]

Stipulations as to the payment of interest are subject to the principle of mutuality of contracts. As a principal condition and an important component in contracts of loan,[75] interest rates

---

[71] *Rollo* (G.R. No. 192934), p. 71.

[72] *Almeda v. Court of Appeals*, G.R. No. 113412, April 17, 1996, 256 SCRA 292, 299-300.

[73] *Id.*

[74] *Silos v. Philippine National Bank*, G.R. No. 181045, July 2, 2014, 728 SCRA 617, 646.

[75] *Id.* at 660.

are only allowed if agreed upon by express stipulation of the parties, and only when reduced into writing.[76] Any change to it must be mutually agreed upon, or it produces no binding effect:

> Basic is the rule that there can be no contract in its true sense without the mutual assent of the parties. If this consent is absent on the part of one who contracts, the act has no more efficacy than if it had been done under duress or by a person of unsound mind. Similarly, contract changes must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, the interest rate is undeniably always a vital component, for it can make or break a capital venture. Thus, any change must be mutually agreed upon, otherwise, it produces no binding effect.[77] (Citation omitted.)

Thus, in several cases, we declared void stipulations that allowed for the unilateral modification of interest rates. In *Philippine National Bank v. Court of Appeals*,[78] we disallowed the creditor-bank from increasing the stipulated interest rate at will for being violative of the principle of mutuality of contracts. We said:

> Besides violating P.D. 116, the unilateral action of the PNB in increasing the interest rate on the private respondent's loan, violated the mutuality of contracts ordained in Article 1308 of the Civil Code:
>
> > "ART. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them."
>
> In order that obligations arising from contracts may have the force of law between the parties, there must be *mutuality* between the parties

---

[76] Article 1956 of the New Civil Code provides that: "[n]o interest shall be due unless it has been expressly stipulated in writing."

See also *Prisma Construction & Development Corporation v. Menchavez*, G.R. No. 160545, March 9, 2010, 614 SCRA 590, 598.

[77] *Philippine Savings Bank v. Castillo*, G.R. No. 193178, May 30, 2011, 649 SCRA 527, 537.

[78] G.R. No. 88880, April 30, 1991, 196 SCRA 536.

based on their essential equality. A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties, is void (Garcia vs. Rita Legarda, Inc., 21 SCRA 555). Hence, even assuming that the ₱1.8 million loan agreement between the PNB and the private respondent gave the PNB a license (although in fact there was none) to increase the interest rate at will during the term of the loan, that license would have been null and void for being violative of the principle of mutuality essential in contracts. It would have invested the loan agreement with the character of a contract of adhesion, where the parties do not bargain on equal footing, the weaker party's (the debtor) participation being reduced to the alternative "to take it or leave it" (Qua vs. Law Union & Rock Insurance Co., 95 Phil. 85). Such a contract is a veritable trap for the weaker party whom the courts of justice must protect against abuse and imposition.[79] (Italics in the original.)

The same treatment is given to stipulations that give one party the unbridled discretion, without the conformity of the other, to increase the rate of interest notwithstanding the inclusion of a similar discretion to decrease it. In *Philippine Savings Bank v. Castillo*[80] we declared void a stipulation[81] that allows for both an increase or decrease of the interest rate, without subjecting the modification to the mutual agreement of the parties:

Escalation clauses are generally valid and do not contravene public policy. They are common in credit agreements as means of maintaining fiscal stability and retaining the value of money on long-term contracts. To prevent any one-sidedness that these clauses may cause, we have held in *Banco Filipino Savings and Mortgage Bank v. Judge Navarro* that there should be a corresponding de-escalation clause that would

---

[79] *Id.* at 544-545.

[80] *Supra.*

[81] *Id.* at 529. The clause therein provided:

The rate of interest and/or bank charges herein stipulated, during the terms of this promissory note, its extensions, renewals or other modifications, may be increased, decreased or otherwise changed from time to time within the rate of interest and charges allowed under present or future law(s) and/or government regulation(s) as the PHILIPPINE SAVINGS BANK may prescribe for its debtors.

authorize a reduction in the interest rates corresponding to downward changes made by law or by the Monetary Board. As can be gleaned from the parties' loan agreement, a de-escalation clause is provided, by virtue of which, petitioner had lowered its interest rates.

Nevertheless, the validity of the escalation clause did not give petitioner the unbridled right to unilaterally adjust interest rates. The adjustment should have still been subjected to the mutual agreement of the contracting parties. In light of the absence of consent on the part of respondents to the modifications in the interest rates, the adjusted rates cannot bind them notwithstanding the inclusion of a de- escalation clause in the loan agreement.[82] (Underscoring supplied; citation omitted.)

We reiterated this in *Juico v. China Banking Corporation*,[83] where we held that the lack of written notice and written consent of the borrowers made the interest proviso a one-sided imposition that does not have the force of law between the parties:

This notwithstanding, we hold that the escalation clause is still void because it grants respondent the power to impose an increased rate of interest without a written notice to petitioners and their written consent. Respondent's monthly telephone calls to petitioners advising them of the prevailing interest rates would not suffice. A detailed billing statement based on the new imposed interest with corresponding computation of the total debt should have been provided by the respondent to enable petitioners to make an informed decision. An appropriate form must also be signed by the petitioners to indicate their conformity to the new rates. Compliance with these requisites is essential to preserve the mutuality of contracts. For indeed, one-sided impositions do not have the force of law between the parties, because such impositions are not based on the parties' essential equality.[84] (Citation omitted.)

In the case of *Silos v. Philippine National Bank*,[85] we invalidated the following provisions:

---

[82] *Id.* at 537.

[83] G.R. No. 187678, April 10, 2013, 695 SCRA 520.

[84] *Id.* at 539.

[85] *Supra* note 74.

1.03. Interest. (a) The Loan shall be subject to interest at the rate of 19.5% *per annum*. Interest shall be payable in advance every one hundred twenty days at the rate prevailing at the time of the renewal.

(b) The Borrower agrees that the Bank may modify the interest rate in the Loan depending on whatever policy the Bank may adopt in the future, including without limitation, the shifting from the floating interest rate system to the fixed interest rate system, or vice versa. Where the Bank has imposed on the Loan interest at a rate *per annum*, which is equal to the Bank's spread over the current floating interest rate, the Borrower hereby agrees that the Bank may, without need of notice to the Borrower, increase or decrease its spread over the floating interest rate at any time depending on whatever policy it may adopt in the future.[86] (Emphasis and citation omitted, italics supplied.)

In *Silos*, an amendment to the above credit agreement was made:

1.03. Interest on Line Availments. (a) The Borrowers agree to pay interest on each Availment from date of each Availment up to but not including the date of full payment thereof at the rate *per annum* which is determined by the Bank to be prime rate plus applicable spread in effect as of the date of each Availment.[87] (Emphasis and citation omitted.)

In that case, we found that the method of fixing interest rates is based solely on the will of the bank. The method is "one-sided, indeterminate, and [based on] subjective criteria such as profitability, cost of money, bank costs, etc. x x x."[88] It is "arbitrary for there is no fixed standard or margin above or below these considerations."[89] More, it is worded in such a way that the borrower shall agree to whatever interest rate the bank fixes. Hence, the element of consent from or agreement by the borrower is completely lacking.

Here, the spouses Mercado supposedly: (1) agreed to pay an annual interest based on a "floating rate of interest;" (2) to be

[86] *Id.* at 623.

[87] *Id.* at 624.

[88] *Id.* at 659.

[89] *Id.*

determined solely by Security Bank; (3) on the basis of Security Bank's own prevailing lending rate; (4) which shall not exceed the total monthly prevailing rate as computed by Security Bank; and (5) without need of additional confirmation to the interests stipulated as computed by Security Bank.

Notably, stipulations on floating rate of interest differ from escalation clauses. Escalation clauses are stipulations which allow for the increase (as well as the mandatory decrease) of the original fixed interest rate.[90] Meanwhile, floating rates of interest refer to the variable interest rate stated on a market-based reference rate agreed upon by the parties.[91] The former refers to the method by which fixed rates may be increased, while the latter pertains to the interest rate itself that is not fixed. Nevertheless, both are contractual provisions that entail adjustment of interest rates subject to the principle of mutuality of contracts. Thus, while the cited cases involve escalation clauses, the principles they lay down on mutuality equally apply to floating interest rate clauses.

The *Bangko Sentral ng Pilipinas (BSP)* Manual of Regulations for Banks (MORB) allows banks and borrowers to agree on a floating rate of interest, provided that it must be based on market-based reference rates:

> § X305.3 Floating rates of interest. **The rate of interest on a floating rate loan during each interest period shall be stated on the basis of Manila Reference Rates (MRRs), T-Bill Rates or other market based reference rates plus a margin as may be agreed upon by the parties.**
>
> The MRRs for various interest periods shall be determined and announced by the Bangko Sentral every week and shall be based on the weighted average of the interest rates paid during the immediately preceding week by the ten (10) KBs with the highest combined levels of outstanding deposit substitutes and time deposits, on promissory notes issued and time deposits received by such banks, of ₱100,000 and over per transaction account, with maturities corresponding to

---

[90] Manual of Regulations for Banks, Vol. 1, § X305.2.

[91] Manual of Regulations for Banks, Vol. 1, § X305.3.

the interest periods tor which such MRRs are being determined. Such rates and the composition of the sample KBs shall be reviewed and determined at the beginning of every calendar semester on the basis of the banks' combined levels of outstanding deposit substitutes and time deposits as of 31 May or 30 November, as the case may be.

The rate of interest on floating rate loans existing and outstanding as of 23 December 1995 shall continue to be determined on the basis of the MRRs obtained in accordance with the provisions of the rules existing as of 01 January 1989: *Provided, however*, That the parties to such existing floating rate loan agreements are not precluded from amending or modifying their loan agreements by adopting a floating rate of interest determined on the basis of the TBR or other market based reference rates.

Where the loan agreement provides for a floating interest rate, the interest period, which shall be such period of time for which the rate of interest is fixed, shall be such period as may be agreed upon by the parties.

For the purpose of computing the MRRs, banks shall accomplish the report forms, RS Form 2D and Form 2E (BSP 5-17-34A).[92] (Emphasis and underscoring supplied.)

This BSP requirement is consistent with the principle that the determination of interest rates cannot be left solely to the will of one party. It further emphasizes that the reference rate must be stated in writing, and must be agreed upon by the parties.

b.

Security Bank argues that the subject provisions on the interest rate observed the principle of mutuality of contracts. It claims that there is a ceiling on the maximum applicable rate, and it is the market forces that dictate and establish the rate of interest.

We disagree.

The RTC and CA were correct in holding that the interest provisions in the revolving credit line agreement and its addendum violate the principle of mutuality of contracts.

---

[92] Manual of Regulation for Banks, Vol. 1, § X365.3; See also BSP Circular No. 99, December 23, 1995.

First, the authority to change the interest rate was given to Security Bank alone as the lender, without need of the written assent of the spouses Mercado. This unbridled discretion given to Security Bank is evidenced by the clause "I hereby give my continuing consent without need of additional confirmation to the interests stipulated as computed by [Security Bank]."[93] The lopsidedness of the imposition of interest rates is further highlighted by the lack of a breakdown of the interest rates imposed by Security Bank in its statement of account[94] accompanying its demand letter.

Second, the interest rate to be imposed is determined solely by Security Bank for lack of a stated, valid reference rate. The reference rate of "Security Bank's prevailing lending rate" is not pegged on a market-based reference rate as required by the BSP. In this regard, we do not agree with the CA that this case is similar with *Polotan, Sr. v. Court of Appeals (Eleventh Division)*.[95] There, we declared that escalation clauses are not basically wrong or legally objectionable *as long as they are not solely potestative but based on reasonable and valid grounds*. We held that the interest rate based on the "prevailing market rate" is valid because it cannot be said to be dependent solely on the will of the bank as it is also dependent on the prevailing market rates. The fluctuation in the market rates is beyond the control of the bank.[96] Here, however, the stipulated interest rate based on "Security Bank's prevailing lending rate" is not synonymous with "prevailing market rate." For one, Security Bank is still the one who determines its own prevailing lending rate. More, the argument that Security Bank is guided by other facts (or external factors such as Singapore Rate, London Rate, Inter-Bank Rate) in determining its prevailing monthly rate fails because these reference rates are not contained in writing as required by law and the BSP. Thus, we find that the interest stipulations here are akin to the ones invalidated in *Silos* and in *Philippine Savings Bank* for being potestative.

---

[93] Records (Civil Case No. 5808), Vol. I, p. 26.

[94] *Id.* at 40.

[95] *Supra* note 44.

[96] *Id.* at 258.

In striking out these provisions, both in the original and the addendum, we note that there are no other stipulations in writing from which we can base an imposition of interest. Unlike in cases involving escalation clauses that allowed us to impose the original rate of interest, we cannot do the same here as there is none. Nevertheless, while we find that no stipulated interest rate may be imposed on the obligation, legal interest may still be imposed on the outstanding loan. *Eastern Shipping Lines, Inc. v. Court of Appeals*[97] and *Nacar v. Gallery Frames*[98] provide that in the absence of a stipulated interest, a loan obligation shall earn legal interest from the time of default, *i.e.*, from judicial or extrajudicial demand.[99]

III

In *Andal v. Philippine National Bank*,[100] the case cited by the spouses Mercado, we declared the mortgagor-debtors therein liable to pay interest at the rate equal to the legal interest rate from the time they defaulted in payment until their loan is fully paid. We also said that default, for purposes of determining when interest shall run, is to be counted from the time of the finality of decision determining the rate of interest. Spouses Mercado claim that following *Andal*, they, too, could not be deemed to have been in default from the time of the extrajudicial demand on March 31, 1991. They claim anew that since the validity of the interest rates is still being determined in this petition, interest should be imposed only after finality of this Decision.

They err. *Andal* is not squarely applicable to this case. In that case, there was a finding by both the trial court and the CA that no default can be declared because of the arbitrary, illegal, and unconscionable interest rates and penalty charges unilaterally imposed by the bank. There, the debtors questioned *the period of default in relation to the interest imposed* as it was an issue necessary for the determination of the validity of

---

[97] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[98] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

[99] *Id.* at 457-458.

[100] *Supra* note 47.

the foreclosure sales therein. In contrast, here, the spouses Mercado never denied that they defaulted in the payment of the principal obligation. They did not assert, from their complaint or up to their petition before this Court, that they would not have been in default were it not for the bank's imposition of the interest rates. Theories raised for the first time cannot be entertained in appeal.

Moreover, for purposes of computing when legal interest shall run, it is enough that the debtor be in default on the principal obligation. To be considered in default under the revolving credit line agreement, the borrower need not be in default for the whole amount, but for any amount due.[101] The spouses Mercado never challenged Security Bank's claim that they defaulted as to the payment of the principal obligation of ₱8,000,000.00. Thus, we find they have defaulted to this amount at the time Security Bank made an extrajudicial demand on March 31, 1999.

We also find no merit in their argument that penalty charges should not be imposed. While we see no legal basis to strike

---

[101] See *Rollo* (G.R. No. 192934), p. 94. The revolving credit line enumerates the following as events of default:

14. Default — I shall be considered in default in the event that:

a) I am in default in any of these terms and conditions and/or I or the mortgagor am/is in default under the terms and conditions of the Mortgage,

b) my outstanding Availments exceed my Credit Limit,

c) I default in payment of any amount due hereunder,

d) I am in default in any of the terms and conditions of any contracts/ evidence of indebtedness and related documents with Security Bank, or I am or the mortgagor is in default under the terms and conditions of any Mortgage which may now be existing or may subsequently be granted to me by Security Bank,

e) I violate terms and conditions of any contract with any bank or other persons, corporations, entities, for the payment of borrowed money, or any other events of defaults in such contracts,

f) Any creditor tries by legal process to attach or levy on my money or any property with Security Bank,

g) I apply for voluntary or involuntary relief under the bankruptcy or insolvency laws,

down the penalty stipulation, however, we reduce the penalty of 2% per month or 24% *per annum* for being iniquitous and unconscionable as allowed under Article 1229[102] of the Civil Code.

In *MCMP Construction Corp. v. Monark Equipment Corp.*,[103] we declared the rate of 36% *per annum* unconscionable and reduced it to 6% *per annum*. We thus similarly reduce the penalty here from 24% *per annum* to 6% *per annum* from the time of default, *i.e.*, extrajudicial demand.

We also modify the amount of the outstanding obligation of the spouses Mercado to Security Bank. To recall, the foreclosure sale over the parcel of land in Lipa City is not affected by the annulment proceedings. We thus find that the proceeds of the foreclosure sale over the parcel of land in Lipa City in the amount of ₱483,120.00 should be applied to the principal obligation of ₱8,000,000.00 plus interest and penalty from extrajudicial demand (March 31, 1999) until date of foreclosure sale (October 19, 1999).[104] The resulting deficiency shall earn legal interest at the rate of 12% from the filing of Security Bank's answer with counterclaim[105] on January 5, 2001 until June 30, 2013, and shall earn legal interest at the present rate of 6% from July 1, 2013 until finality of judgment.[106] Thus, the outstanding obligation of the spouses Mercado should be computed as follows:

---

h) Security Bank believes on reasonable ground that it was induced by fraudulent misrepresentation on my part to grant me the MML. (Emphasis supplied.)

[102] Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

[103] G.R. No. 201001, November 10, 2014, 739 SCRA 432, 443.

[104] See *Juico v. China Banking Corporation, supra* note 83 at 541.

[105] Records (Civil Case No. 5808), Vol. I, pp. 89-106.

[106] *Nacar v. Gallery Frames, supra* note 98.

Principal	₱8,000,000.00
Interest at 12% *per annum* ₱8,000,000.00 x 0.12 x (203 days/365 days)[107]	533,917.81
Penalty at 6% *per annum* ₱8,000,000.00 x 0.06 x (203 days/365 days)	266,958.90
	₱8,800,876.71
Less: Bid price for Lipa City property	483,120.00
TOTAL DEFICIENCY	₱8,317,756.71

WHEREFORE, the petitions are **DENIED**. Accordingly, the Court of Appeals' Decision dated July 19, 2010 and the Amendatory Order dated June 19, 2007 are hereby **MODIFIED**. Spouses Rodrigo and Erlinda Mercado are hereby ordered to pay Security Bank Corporation the sum of ₱8,317,756.71 representing the amount of deficiency, inclusive of interest and penalty. Said amount shall earn legal interest of 12% *per annum* from January 5, 2001 until June 30, 2013, and shall earn the legal interest of 6% *per annum* from July 1, 2013 until finality of this Decision. The total amount shall thereafter earn interest at the rate of 6% *per annum* from the finality of judgment until its full satisfaction.

No costs.

SO ORDERED.

Del Castillo[*] *(Acting Chairperson)*, *Tijam*, and *Gesmundo,*[**] *JJ*., concur.

Leonardo-de Castro, J., on official leave.

---

[107] This is the computed number of days from March 31, 1999, the date of extrajudicial demand, until October 19, 1999, the date of the foreclosure sale.

[*] Designated as Acting Chairperson of the First Division per Special Order No. 2562 dated June 20, 2018.

[**] Designated as Acting Member of the First Division per Special Order No. 2560 dated May 11, 2018.

THIRD DIVISION

[G.R. No. 194455. June 27, 2018]

SPOUSES AVELINA RIVERA-NOLASCO and EDUARDO A. NOLASCO, *petitioners, vs.* **RURAL BANK OF PANDI, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2003 DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) RULES OF PROCEDURE; THE AVERMENTS OF THE SUBJECT COMPLAINT SUFFICIENTLY CONVEY JURISDICTION UNTO THE PROVINCIAL AGRARIAN REFORM ADJUDICATOR (PARAD).— These averments and prayers amount to an issue cognizable by the DARAB and its adjudicators. In fine, petitioner spouses assert that they are tenants of agricultural land and pray that their tenancy be respected by respondent bank. What results is an agrarian dispute, a controversy over which the PARAD has jurisdiction. To recall, an agrarian dispute is any controversy relating to, among others, tenancy over lands devoted to agriculture. Here, the controversy raised squarely falls under that class of cases described under Paragraph 1.1, Section 1, Rule II of the 2003 DARAB Rules of Procedure. In this regard, we note that the specific elements of tenancy are sufficiently averred in the subject complaint, these being: *first*, that the parties are the landowner and the tenant or agricultural lessee; *second*, that the subject matter of the relationship is an agricultural land; *third*, that there is consent between the parties to the relationship; *fourth*, that the purpose of the relationship is to bring about agricultural production; *fifth*, that there is personal cultivation on the part of the tenant or agricultural lessee; and *sixth*, that the harvest is shared between the landowner and the tenant or agricultural lessee. Averments corresponding to each of these elements are easily seen, demonstrable in the face of the subject complaint.

2. ID.; ID.; ID.; JURISDICTION OF THE PARAD CANNOT BE AFFECTED BY THE DEFENSES SET UP BY RESPONDENT.— With respect to the certifications respondent

bank secured from the MARO and the CARPO, ostensibly proving that the subject property was not tenanted or covered by agrarian reform, these documents are irrelevant to the task at hand. We reiterate, the determination of whether a tribunal has subject matter jurisdiction in a case is not affected by the defenses set up in an answer or motion to dismiss. In any case, it bears reiterating that certifications of municipal reform officers as to the presence or absence of a tenancy relationship are merely provisional; in one case we even ruled that they do not bind the courts. Given the averments of the subject complaint, we rule that the PARAD already obtained a jurisdictional foothold in this Case. As an incidence, it could take on all the issues of the case, including the defenses raised by respondent bank; petitioner spouses are allowed to present their case in full, which must then be decided on the merits.

3. ID.; ID.; ID.; OUTRIGHT DISMISSAL OF THE CASE IS NOT PROPER WHERE THERE ARE FACTUAL MATTERS IN DISPUTE REQUIRING THE PRESENTATION AND APPRECIATION OF EVIDENCE.— [T]he question of whether the particulars of the arrangement between Avelina and her siblings preponderate to an agricultural leasehold relationship or to a co-ownership should form part of an administrative inquiry, in order to properly address the larger question of whether an agricultural leasehold relationship among co-owners may co-exist in their civil co-ownership. It is in view of these questions that we deem the dismissal under review to have been premature. In *Ingjug-Tiro v. Casals*, we held that a summary or outright dismissal of an action is not proper where there are factual matters in dispute that require presentation and appreciation of evidence. We so rule in this case.

4. ID.; ID.; ID.; THE ASSAILED RULING RISKS GRANTING IMPRIMATUR TO AN EXTRAJUDICIAL EVICTION OF AN AGRICULTURAL TENANT; CO-OWNERSHIP IS NOT A RECOGNIZED MODE OF EXTINGUISHING TENANCY RELATIONSHIP.— On the postulate that petitioner spouses are agricultural tenants, or at the least allowed to proceed with their suit to be recognized as agricultural tenants, we observe that respondent bank had evicted petitioner spouses extrajudicially. But the law sets that the burden of proving the existence of a lawful cause for ejectment of an agricultural

tenant rests on respondent bank. Co-ownership, however, does not appear to be one of the legislated causes for the lawful ejectment of an agricultural tenant; certainly, it is presently not a recognized mode of extinguishing such relationship. In fine, absent administrative findings on the particularities of Avelina's tillage, this Court cannot ascribe to the view that the averment of co-ownership should disallow petitioner spouses from pressing on their suit to be recognized as agricultural tenants. To reiterate, absent the conduct by the PARAD of the proceedings in DARAB Case No. R-03-02-5792`08 and the resolution of said case on the merits, the assailed CA ruling risks judicially approving the summary and extrajudicial eviction of agricultural tenants. Parenthetically, the Court is also mindful of the dangers of reifying as doctrine a practice where unscrupulous landowners would offer their tenants co-ownership of a portion of their agricultural land in order to terminate the latter's tenancy rights. Given the material averments in the subject complaint, the PARAD had already gained a jurisdictional foothold in DARAB Case No. R-03-02-5792`08, and should have been allowed to exercise the agency expertise in resolving the issues and problems presented.

APPEARANCES OF COUNSEL

Venustiano S. Roxas & Associates Law Office for petitioners.
Renan B. Castillo Law Office for respondent.

D E C I S I O N

MARTIRES, *J.*:

Before the Court is a petition for review on certiorari,[1] under Rule 45 of the Rules of Court, assailing the Decision, dated 25 June 2010,[2] and the Resolution, dated 26 October 2010,[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 105288, through

[1] *Rollo,* pp. 9-28.

[2] *Id*. at 33-48.

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

which the appellate court[4] reversed and set aside three issuances of the Office of the Provincial Agrarian Reform Adjudicator (*PARAD*) in DARAB Case No. R-03-02-5792`08, namely: the Order, dated 20 June 2008; the Resolution, dated 15 July 2008; and the Order, dated 11 August 2008. In fine, the CA ruled that the Department of Agrarian Reform Adjudication Board (*DARAB*) had no jurisdiction over the Complaint filed in DARAB Case No. R-03-02-5792`08.

We required the parties to submit their Comment[5] and Reply.[6] They complied.[7]

THE FACTS

On 23 February 1995, the spouses Reynaldo and Primitiva Rivera *(the spouses Rivera)* obtained a Two Hundred Thousand Peso loan from the Rural Bank of Pandi, Inc. *(respondent bank)*. The loan was secured with a mortgage over a parcel of land measuring 18,101 square meters, located at Barangay Bunsuran II, Municipality of Pandi, Province of Bulacan, and registered in the spouses' names under Transfer Certificate of Title *(TCT)* No. T-304255.[8]

The spouses Rivera failed to pay their loan, prompting respondent bank to extrajudicially foreclose the mortgage.[9] At the resultant auction sale, the bank was declared the highest bidder for the property. When Primitiva (Reynaldo had by then died) failed to exercise the right of redemption,[10] respondent bank filed an *Affidavit of Consolidation* with the Register of Deeds. TCT No. T-304255 was then cancelled and a new

---

[4] The First Division, then composed of Presiding Justice Andres B. Reyes, Jr., *Chairperson*, Associate Justice Isaias Dicdican, who penned said issuances, and Associate Justice Stephen C. Cruz.

[5] *Rollo,* p. 227.

[6] *Id*. at 424.

[7] *Id*. at 422 and 442.

[8] *Id*. at 34.

[9] Pursuant to the provisions of Act 3135, as amended by Act 4118.

[10] *Rollo*, p. 54.

certificate of title, TCT No. T-512737 (M), was issued in respondent bank's name.[11]

The spouses now solely represented by Primitiva, refused to vacate the property, prompting the bank to seek relief from the Regional Trial Court in Malolos City *(RTC)*.[12] On 14 January 2008, said court issued a writ of possession in favor of the bank, directing its sheriff to eject the spouses. The next month, by virtue of the writ, the bank was placed in possession of the property.[13]

The Case before the DARAB

On 10 April 2008, herein petitioners, the spouses Avelina Rivera-Nolasco and Eduardo Nolasco *(petitioner spouses)*, filed a Complaint[14] before the DARAB denominated as "For: Maintenance and Peaceful Possession of Landholding and Damages with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction" and docketed as DARAB Case No. R-03-02-5792`08. Petitioner spouses alleged, in the main, that they were tenants of the subject property.

The spouses narrated that the property was part of a larger landholding, spanning 36,000 square meters, which was then owned by the Sarmiento Family of Meycauayan, Bulacan. The land was tenanted by Ireneo Rivera, the father of petitioner Avelina Rivera-Nolasco *(Avelina)*.

When Ireneo died in 1974, Reynaldo Rivera, the eldest of his children, continued Ireneo's tenancy with the assistance of his siblings. In 1981, Reynaldo became financially distressed[15] and sold his tenancy rights to Avelina for ₱50,000.00. From then on, Avelina became the Sarmiento Family's sole agricultural tenant of the landholding.

---

[11] *Id.* at 34.

[12] *Id.*, Branch 14.

[13] *Id.* at 34-35.

[14] *Id.* at 52-59.

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

In 1986, the Sarmiento Family sold half of the landholding to a certain Boy Salazar; as disturbance compensation, the family transferred the remaining half, about 18,101 square meters, to Ireneo's heirs, his children, who then agreed that the land be registered solely in the name of Reynaldo, in deference to his being the eldest. The siblings acknowledged that they were co-owners of the land, and that they would partition it in the future. TCT No. T-304255 was thus issued in Spouses Rivera's name. The siblings further agreed that Avelina was to continue as their sole and exclusive tenant; every year, she was to give her siblings a portion of the harvest corresponding to their respective one-eighth (1/8th) undivided shares in the property.[16]

As earlier narrated, on 23 February 1995, Spouses Rivera mortgaged the property to respondent bank. Petitioner spouses claim that this was without their and the other siblings' prior knowledge.[17] After the RTC issued the aforementioned writ of possession, the bank had the entire property fenced and forthwith denied Avelina entry. She and her workers were thus prevented from tending to their palay crop which by April 2008, was ready for harvest.[18] Avelina's counsel[19] wrote respondent bank, requesting that she be allowed entry so she may conduct the necessary harvest. The bank verbally responded that it would agree, on the condition that Avelina and her husband renounce their tenancy rights over the property.[20] Thereafter, petitioner spouses filed the subject complaint.

Conversely, respondent bank filed an Answer (with Motion to Dismiss) *(Answer)*,[21] contending that the DARAB had no jurisdiction over the complaint as petitioner spouses were not tenants at the property. The bank claimed that in 1999, the

---

[16] *Id*. at 53.

[17] *Id*. at 54.

[18] *Id*. at 55.

[19] Atty. Venustiano S. Roxas.

[20] *Rollo*, p. 56.

[21] *Id*. at 96-108.

Municipal Agrarian Reform Officer[22] had certified[23] that the property was neither tenanted nor covered by the Operation Land Transfer of the agrarian reform program; in 2007, the Chief Agrarian Reform Program Officer[24] at Baliuag, Bulacan, issued a similar certification.[25] The bank further argued that even if it were to be assumed that the spouses had planted the *palay* on the property, they were not entitled to its harvest or to indemnification for its loss as they had not been planters in good faith. Finally, the bank insisted that it had been a mortgagee in good faith, and that it had acquired possession of the property pursuant to an order of the RTC. The bank insisted that the DARAB respect this order.

The Ruling of the PARAD

Acting pursuant to his delegated jurisdiction,[26] Joseph Noel C. Longeoan,[27] the Provincial Agrarian Reform Adjudicator *(PARAD)* tasked to resolve the Answer, found the motion to dismiss to be of no merit. He maintained the jurisdiction of his office to resolve the complaint. The PARAD's 20 June 2008 order pertinently reads:[28]

x x x x x x x x x

Without delving into the merits of the case, a judicious examination of the complaint will tell us that the relief being prayed for calls for the application of agrarian reform laws. As such, this Forum is clothed with the power and authority to hear and decide the issue or issues raised in the case at bar without encroaching into the issues already passed upon by the Regional Trial Court.

---

[22] *Id*. at 99, Juan Saldevar, Department of Agrarian Reform, Region III, Pandi, Bulacan.

[23] Certification dated 22 January 1999.

[24] *Rollo*, p. 99, Oscar M. Trinidad, Department of Agrarian Reform, Baliuag, Bulacan.

[25] *Id.* Certification dated 20 September 2007.

[26] As provided for under the DARAB Rules of Procedure, cf. *Soriano v. Bravo,* 653 Phil. 72, 87-90 (2010).

[27] *Rollo*, p. 118.

[28] *Id*. at 117-118.

In the case of *TCMC, Inc. v. CA*, 316 SCRA 502, the Supreme Court said:

"Jurisdiction of the court over the subject matter is determined by the allegations of the complaint, hence, the court's jurisdiction cannot be made to depend upon the defenses set up in the answer or motion to dismiss."

WHEREFORE, in light of the foregoing premises, the instant motion is hereby DENIED for lack of merit.

SO ORDERED.

Respondent bank moved for reconsideration. Pending its resolution of this motion, however, the PARAD approved the application for preliminary injunction and ordered respondent bank to accord petitioner spouses with the peaceful possession of subject property during the pendency of DARAB Case No. R-03-02-5792`08.[29] In response, respondent bank filed a second motion, a *Motion to Quash Writ of Injunction*, which petitioner spouses duly opposed.

On 11 August 2008,[30] the PARAD issued an Order denying the two aforementioned motions; on even date, he issued the *Writ of Preliminary Injunction*.[31]

The Case before the CA

Through a petition for certiorari,[32] under Rule 65 of the Rules of Court, respondent bank sought relief from the CA, contending that the PARAD had committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying respondent bank's motion to dismiss despite lack of jurisdiction over the complaint.[33]

---

[29] *Rollo*, pp. 123-132, Resolution dated 15 July 2008.

[30] *Id.* at 133-135.

[31] *Id.* at 136-137.

[32] *Id.* at 152-178, dated 15 September 2008.

[33] *Id.* at 42-43.

The Ruling of the CA

As previously noted, the petition before the CA was granted. To conclude that the DARAB had no jurisdiction over the subject complaint, the appellate court zeroed in on petitioner spouses' averment, made in the same complaint, that they were co-owners of the property. "Ownership," the court *a quo* aphorized, "is the antithesis of tenancy." We quote the appellate court's pertinent discussion of this decisive point, so that the decision under review may speak for itself:[34]

> In their complaint, the private respondents alleged, among others, that they became owners of the subject land, together with Reynaldo Rivera, the registered owner, and the other Rivera siblings when the Sarmiento Family, the original owners of the land, transferred the ownership of the land to them as disturbance compensation. They further claimed that the land was only registered in trust in the name of Reynaldo Rivera for convenience and in deference to his being the eldest of the Rivera siblings and that the mortgage of the subject property, which eventually led to its foreclosure by the petitioner bank, was without the knowledge and consent of the other owners, the private respondents and the other Rivera children. Private respondents' contention that they are co-owners of the subject property and, at the same time, tenants of the same defies logic. Tenancy is established precisely when a landowner institutes a tenant to work on his property under the terms and conditions of their tenurial arrangement. The private respondents cannot anomalously insist to be both tenants and owners of the subject land. Ownership is antithesis of tenancy.
>
> Co-ownership is a manifestation of the private ownership which, instead of being exercised by the owner in an exclusive manner over the things subject to it, is exercised by two or more owners and the undivided thing or right to which it refers is one and the same. It is not a real right distinct from ownership but is a mere form or manifestation of ownership.[35] Co-owners are therefore owners of an undivided thing.[36]

---

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

[35] *Pasong Bayabas Farmers v. DARAB*, 473 Phil. 64-99 (2004); citing *Almuete v. Andres*, 421 Phil. 522-532 (2001).

[36] *Rollo,* p. 46.

On the other hand, tenants are defined as persons who—in themselves and with the aid available from within their immediate farm households—cultivate the land belonging to or possessed by another, with the latter's consent, for purposes of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or money or both under the leasehold tenancy system.[37]

Based on the foregoing discussion, the allegations in the complaint filed by the private respondents before the PARAD shows that the parties in the present case have no tenurial, leasehold, or any other agrarian relationship that could bring their controversy within the ambit of agrarian reform laws and within the jurisdiction of the DARAB. The private respondents cannot thereafter force a tenancy relationship between them and the successive owners of the land.

All told, the PARAD clearly committed a jurisdictional infraction when he took cognizance of the private respondents' complaint. The allegations of the complaint failed to show that the private respondents are agricultural tenants of the land and that the instant case involves an agrarian dispute cognizable by the DARAB. To reiterate, the jurisdiction of the DARAB is limited to agrarian disputes or controversies and other matters or incidents involving the implementation of the Comprehensive Agrarian Program (CARP) under Rep. Act No. 6657, Rep. Act No. 3844 and other agrarian laws. An allegation that an agricultural tenant tilled the land in question does not make the case an agrarian dispute. All the indispensable elements of a tenancy relationship must be alleged in the complaint. The private respondents' allegation that they are co-owners of the subject land clearly removes the present case from the DARAB's jurisdiction.

With regard to the other issues raised by the petitioner bank, we see no need to resolve the same in view of our finding that the DARAB did not have jurisdiction over the subject matter of the present case.

WHEREFORE, in view of the foregoing premises, the petition filed in this case is hereby **GRANTED**. The assailed Order dated June 20, 2008, Resolution dated July 15, 2008 and Order dated August 11, 2008 of the Provincial Agrarian Reform Adjudicator (PARAD) Joseph Noel C. Longboan in DARAB Case No. R-03-02-5792-08 are hereby **REVERSED and SET ASIDE**.

---

[37] *Bautista v. Mag-isa Vda. De Villena*, 481 Phil. 591, 601 (2004).

SO ORDERED.

Petitioner spouses filed a motion for reconsideration,[38] but it was denied; hence, the present petition before this Court.

The Petition for Review

The petition at bar imputes abuse of discretion on the part of the CA, ostensibly stemming from serious, reversible error committed with the following acts: *first,* in failing to appreciate the "substantial and peculiar circumstances" of the case which, if properly considered, would justify a different conclusion; *second*, in delimiting the meaning and applicability of the term "agrarian dispute" within the four corners of the traditional definition of a tenancy relationship; *third*, in failing to rule with equity, considering that petitioner spouses had lived on the subject property for twenty-nine years.

ISSUE

WHETHER THE CA REVERSIBLY ERRED IN RULING THAT THE PARAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN TAKING JURISDICTION OVER THE COMPLAINT IN DARAB CASE NO. R-03-02-5792`08.

Two Questions

Such issue pivots on two questions. The first is whether the complaint had sufficient averments as to confer subject matter jurisdiction unto the DARAB. The second is capable of several articulations. It is whether petitioner spouses' averment of co-ownership of the land subject of the complaint sufficiently negates their claim of tenancy thereon, such that, as a matter of course, the PARAD cannot be conferred with jurisdiction in DARAB Case No. R-03-02-5792`08. Another articulation is whether the averment of co-ownership is sufficient reason for the complaint's dismissal, such that, consequently, petitioner spouses can no longer obtain the reliefs they seek.

---

[38] *Rollo*, pp. 207-219 dated 22 July 2010.

OUR RULING

The CA ruling is set aside.

The material averments of the subject complaint sufficiently convey jurisdiction unto the PARAD.

We resolve the first question in the affirmative. In so ruling, we turn to the rules on jurisdiction reiterated in *Heirs of Julian dela Cruz and Leonora Talara v. Heirs of Alberto Cruz.*[39] It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency such as the DARAB and the PARAD, 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.[40] Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action. Nor can it be acquired through or waived by any act or omission of the parties.[41] Indeed, the jurisdiction of the court or tribunal is not affected by the defenses or theories set up by the defendant or respondent in his answer or motion to dismiss.

At the time the subject complaint was filed,[42] the 2003 DARAB Rules of Procedure[43] governed the proceedings of the board and its adjudicators. Section 1, Rule II of said Rules provides, among others:[44]

---

[39] 512 Phil. 389-407 (2005); citing *Soriano v. Bravo*, 653 Phil. 72-96 (2010).

[40] *Soriano v. Bravo*, 653 Phil. 72, 89-90 (2010).

[41] *Id.* at 90.

[42] *Rollo*, pp. 52-59, see note 14 at p. 55 of Complaint dated 10 April 2008.

[43] Adopted on 17 January 2003.

[44] Section 1, Rule II of the 2003 DARAB Rules of Procedure, reads:

RULE II

JURISDICTION OF THE BOARD AND THE ADJUDICATORS

SECTION 1. Primary and Exclusive Original Jurisdiction. The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

RULE II

JURISDICTION OF THE BOARD AND THE ADJUDICATORS

SECTION 1. Primary and Exclusive Original Jurisdiction. The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

1.1 The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, and use of all agricultural lands covered by R.A. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), as amended, and other related agrarian laws;

1.2 The preliminary administrative determination of reasonable and just compensation of lands acquired under Presidential Decree (PD) No. 27 and the Comprehensive Agrarian Reform Program (CARP);

1.3 The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or Land Bank of the Philippines (LBP);

1.4 Those cases involving the ejectment and dispossession of tenants and/or leaseholders;

1.5 Those cases involving the sale, alienation, pre-emption, and redemption of agricultural lands under the coverage of the CARL or other agrarian laws;

1.6 Those involving the correction, partition, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

1.7 Those cases involving the review of leasehold rentals;

1.8 Those cases involving the collection of amortizations on payments for lands awarded under PD No. 27, as amended, RA No. 3844, as amended, and R.A. No. 6657, as amended, and other related laws, decrees, orders, instructions, rules, and regulations, as well as payment for residential, commercial, and industrial lots within the settlement and resettlement areas under the administration and disposition of the DAR;

1.9 Those cases involving the annulment or rescission of lease contracts and deeds of sale, and the cancellation or amendment of titles pertaining to agricultural lands under the administration and disposition of the DAR and LBP; as well as EPs issued under PD 266, Homestead patents, Free Patents,

1.1 The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, and use of all agricultural lands covered by R.A. No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), as amended, and other related agrarian laws; x x x x

x x x x x x x x x

We go now to the subject complaint to assess, without delving into its merits, its allegations and the reliefs. Do these pleas dovetail with the subject matter jurisdiction of the administrative board of its chosen refuge? The complaint pertinently pleads:

x x x x x x x x x

COMPLAINT

PLAINTIFFS, through counsel, to this Honorable Board, most respectfully state:

x x x x x x x x x

3. That the parcel of Riceland of 18,101 square meters located at Bunsuran III, Pandi, Bulacan, which is the subject of this case was originally part of a bigger parcel of Riceland of about 36,000 square meters, more or less, which was owned

---

and miscellaneous sales patents to settlers in settlement and resettlement areas under the administration and disposition of the DAR;

1.10 Those cases involving boundary disputes over lands under the administration and disposition of the DAR and the LBP, which are transferred, distributed, and/or sold to tenant-beneficiaries and are covered by deeds of sale, patents, and certificates of title;

1.11 Those cases involving the determination of title to agricultural lands where this issue is raised in an agrarian dispute by any of the parties or a third person in connection with the possession thereof for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries and effecting the ouster of the interloper or intruder in one and the same proceeding; and

1.12 Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under Section 12 of PD No. 946 except those cases falling under the proper courts or other quasi-judicial bodies; and

1.13 Such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR.

by the Sarmiento Family of Meycauayan, Bulacan but tilled and tenanted by Ireneo Rivera (deceased father of plaintiff Avelina Rivera-Nolasco.)

4. That when said Ireneo Rivera died on October 12, 1974, Reynaldo Rivera being the eldest of Ireneo's eight (8) children (including herein Avelina Rivera who was then still single) continued as tenant of the aforementioned landholding of the Sarmiento Family, but with the assistance of his other siblings.

5. That in 1981 Reynaldo Rivera and his wife Primitiva became financially distressed and/or bankrupt and in order to raise funds and pay their unpaid matured loans with the defendant Bank, the said couple sold/transferred all their tenancy rights over the said landholding for ₱50,000.00 to herein plaintiff Avelina Rivera-Nolasco.

6. That as a result thereof, plaintiff Avelina Rivera-Nolasco became the sole and exclusive agricultural tenant starting 1981 of the said landholding of 36,000 square meters of the Sarmiento Family with the valuable assistance of her husband Eduardo Nolasco.

7. That in 1986 the Sarmiento Family sold the one-half (1/2) portion of the tenanted landholding of 36,000 square meters to a certain Boy Salazar of Balagtas, Bulacan. In consideration of, and as disturbance compensation of the late Ireneo Rivera and later of the plaintiff Avelina Rivera-Nolasco, the portion of 18,101 square meters was ceded and transferred by the Sarmiento Family to the Rivera children. However, by mutual agreement of all the Rivera children and with the prior knowledge of their respective spouses, the said 18,101 square meters was placed and registered only in trust under the name of Reynaldo Rivera for convenience and in deference to his being the eldest of the eight (8) Rivera children. Hence, TCT No. T-304255 was issued on August 27, 1986 in the name of Spouses Reynaldo Rivera and Primitiva Rivera, copy of which is attached as Annex "A" hereof with the corresponding Tax Declaration as Annex "A-1" hereof.

8. However, under the aforesaid agreement the 18,101 square meters as considered a co-ownership of the eight (8) Rivera children subject to their future partition at the appropriate

time while plaintiff Avelina Rivera-Nolasco continued as the sole and exclusive tenant thereof but giving every year to her other siblings a portion of the harvest which pertains to their respective 1/8 undivided shares in the property.

9. That since 1981, Reynaldo Rivera and/or his wife ceased to have any participation in the cultivation of the subject landholding of 18,101 square meters. Since then, however, plaintiff Avelina-Rivera-Nolasco has continuously and publicly taken possession and cultivation of said landholding with the assistance of her husband as its sole and exclusive tenant and even paying to the National Irrigation Administration the irrigation fees for said landholding as evidenced by the attached copy of the NIA official receipts from 1983 to 2008 marked as Annexes "B" to "Z" and "AA" to "JJ," inclusive, hereof.

10. That plaintiff Avelina-Rivera-Nolasco is likewise duly recognized by the Department of Agrarian Reform and duly registered therein as the tenant-tiller of the subject landholding as evidenced by the Certification of MARO Juan J. Salvador of Pandi and Balagtas, Bulacan dated April 4, 2000, copy of which is attached as Annex "KK" hereof. She is likewise known and recognized publicly as the sole and legitimate tenant of the said landholding as evidenced by the following:

    a) Certification by the Irrigators' association dated September 24, 1999 (Annex "LL" hereof);

    b) Certification by Barangay Captain Carlito Concepcion of Bunsuran III, Pandi, Bulacan dated September 1, 1999 (annex "MM" hereof);

    c) Certificate of BARC Chairman Alvino Anastacio of Bunsuran III, Pandi, Bulacan dated September 1, 1999 (Annex "NN" hereof);

    d) Joint Affidavit of four (4) boundary owners/farmers dated March 25, 2000 (Annex "OO" hereof);

    e) Joint Affidavit of Barangay Captain Carlito Concepcion and BARC Chairman Albino Anastacio, of Bunsuran III, Pandi, Bulacan dated March 25, 2000 (Annex "PP" hereof).

x x x x x x x x x

14. That over the objections of the herein plaintiff, the defendant Bank caused the fencing of the entire landholding with concrete posts and barbed wire. As a result thereof, plaintiff was prevented from entering the property and to perform the usual care of her palay crop especially so that the defendant Bank has engaged the services of the local Barangay Officials and Barangay Tanod to watch the property and prevent any entry thereto. In fact, the defendant Bank also refused/denied the written request of the plaintiff's counsel, Atty. Venustiano S. Roxas, dated March 3, 2008 to allow entry into the property by the plaintiffs and their farm workers to continue attending to the standing palay crop and avoid its destruction. Two (2) copies of photograph taken on February 2, 2008 and the letter dated March 3, 2008 are hereto attached as Annexes "RR," "SS," and "TT" hereof.

15. That when the present palay crop on the subject landholding was already fully ripe and ready for harvesting within the first week of April 2008, plaintiff Avelina Rivera-Nolasco, through her counsel Atty. Venustiano S. Roxas, sent a formal letter to the defendant Bank dated April 1, 2008 requesting that plaintiff Avelina Rivera-Nolasco be permitted to enter the subject landholding and to undertake the necessary harvesting with the use of her rice thresher and vehicle with a promise to restore to its original position any portion of the fence that would be temporarily opened for that purpose. Copy of said letter is attached as Annex "UU" hereof. In response to said letter the defendant Bank verbally agreed to grant the plaintiff's request provided that the plaintiffs would renounce in writing any tenancy rights over the property.

16. That in a clear and patent abuse of rights over the subject landholding and despite the earlier written statement of plaintiff Avelina Rivera-Nolasco that "she is only concerned with her own rights over said property as its lawful tiller-tenant," the herein defendant Bank failed and refused, and still fails and refuses to at least accompany the plaintiffs or to issue or give any written authorization to the plaintiffs to enter the landholding and harvest the standing palay crop thereon. With such unjustified and repeated refusal of the

defendant Bank and considering that the landholding is under the watchful eyes of the local Barangay officials and Barangay Tanods of Bunsuran III, Pandi, bulacan who were so engaged by the defendant Bank to guard the property, plaintiffs were discouraged/ prevented from harvesting the subject palay crop for fear of being molested, harassed, or even charged criminally for such offenses as Theft, Trespass or Malicious Mischief. As a result thereof, subject palay crop is in extreme danger of being damaged/destroyed for which plaintiffs will suffer actual losses of approximately ₱80,000.00. Copy of two (2) photographs of the palay crops taken on April 7, 2008 are attached as Annexes "VV" and "WW" hereof.

17. That the aforesaid actuations of the defendant Bank violate the rights of plaintiff Avelina Rivera-Nolasco as the sole and legitimate tenant of the subject landholding and are designed to ultimately eject or remove her as such tenant of the subject landholding. x x x x

x x x x x x x x x

22. That defendant Bank is doing, threatens, or is about to do, or is procuring or suffering to be done, some acts in violation of the rights of the plaintiffs respecting the subject of the action.

x x x x x x x x x

Following these allegations, the complaint seeks these reliefs:

WHEREFORE, premises considered, it is most respectfully prayed:

1. That upon the filing of this complaint, a Temporary Restraining Order be immediately issued ex parte directing the defendant Bank or any of its officers and employees and/ or all persons acting for or in its behalf to desist from stopping, obstructing, molesting, or otherwise harassing the herein plaintiffs and all other persons acting for or in their behalf in entering into the subject landholding, harvesting the present palay crop thereon, cultivating or tilling said landholding or otherwise performing any act or acts as tenant thereof.

2. That after proper hearing, a writ of preliminary injunction be issued directing the defendant Bank, its officers and employees and any or all persons acting for or in their behalf

to desist from stopping, molesting, obstructing, harassing or otherwise ejecting or removing the herein plaintiffs from the subject landholding as tenant thereof during the pendency of this case.

3. That after trial, judgment be issued as follows:

   (A) Declaring or making the injunction permanent.

   (B) Declaring and maintaining the herein plaintiff Avelina Rivera-Nolasco as the sole and lawful tenant of the subject landholding.

   (C) Ordering the defendant Bank to pay to the plaintiffs the following:

      1. Actual damages of approximately ₱80,000.00 representing the peso value of the lost, damaged or destroyed palay crop currently planted on subject landholding.

      2. Attorney's fees of ₱50,000.00 plus appearance fees of ₱2,500.00 per hearing and other litigation expenses of at least ₱20,000.00.

      3. Moral damages of ₱200,000.00.

      4. Exemplary damages of ₱50,000.00.

PLAINTIFFS also pray for such other reliefs as may be just and equitable under the premises.[45]

x x x x x x x x x

These averments and prayers amount to an issue cognizable by the DARAB and its adjudicators. In fine, petitioner spouses assert that they are tenants of agricultural land and pray that their tenancy be respected by respondent bank. What results is an agrarian dispute, a controversy over which the PARAD has jurisdiction. To recall, an agrarian dispute is any controversy relating to, among others, tenancy over lands devoted to agriculture.[46] Here, the controversy raised squarely falls under

[45] *Rollo*, pp. 52-59.

[46] *Mendoza v. Germino*, 650 Phil. 74, 82 (2010); citing *Isidro v. Court of Appeals*, 298-A Phil. 481, 490 (1993).

that class of cases described under Paragraph 1.1, Section 1, Rule II of the 2003 DARAB Rules of Procedure.

In this regard, we note that the specific elements of tenancy are sufficiently averred in the subject complaint, these being: *first,* that the parties are the landowner and the tenant or agricultural lessee; *second*, that the subject matter of the relationship is an agricultural land; *third,* that there is consent between the parties to the relationship; *fourth,* that the purpose of the relationship is to bring about agricultural production; *fifth*, that there is personal cultivation on the part of the tenant or agricultural lessee; and *sixth,* that the harvest is shared between the landowner and the tenant or agricultural lessee.[47] Averments corresponding to each of these elements are easily seen, demonstrable in the face of the subject complaint.

True, it cannot be said that respondent bank and petitioner spouses had directly consented to an agricultural leasehold relationship given that, per the subject narration, such pertinent consent had been formed between Avelina and her siblings. All the same, in *Bautista, et al. v. Vda de Villena*, the Court observed:

> x x x. [J]urisdiction does not require the continuance of the relationship of landlord and tenant—at the time of the dispute. The same may have arisen, and oftentimes arises, precisely from the previous termination of such relationship. If the same existed immediately, or shortly, before the controversy and the subject matter thereof is whether or not said relationship has been lawfully terminated; or if the dispute otherwise springs or originates from the relationship of landlord and tenant, the litigation is (then) cognizable only by the [DARAB].[48]

With respect to the certifications respondent bank secured from the MARO and the CARPO, ostensibly proving that the subject property was not tenanted or covered by agrarian reform,

---

[47] *Bumagat v. Arribay*, 735 Phil. 595, 607 (2014).

[48] 481 Phil. 591, 607 (2004); citing *David v. Rivera*, 464 Phil. 1006, 1017 (2004), *Latag v. Banog*, 122 Phil. 1188, 1194, (1966), and *Basilio v. De Guzman*, 105 Phil. 1276-1277 (1959).

these documents are irrelevant to the task at hand. We reiterate, the determination of whether a tribunal has subject matter jurisdiction in a case is not affected by the defenses set up in an answer or motion to dismiss. In any case, it bears reiterating that certifications of municipal reform officers as to the presence or absence of a tenancy relationship are merely provisional; in one case we even ruled that they do not bind the courts.[49]

Given the averments of the subject complaint, we rule that the PARAD already obtained a jurisdictional foothold in this Case. As an incidence, it could take on all the issues of the case, including the defenses raised by respondent bank; petitioner spouses are allowed to present their case in full, which must then be decided on the merits.

We proceed to the second inquiry. Which may be articulated in several ways. From yet another standpoint, the question is whether the averment of co-ownership in the complaint should be reason enough to thwart the jurisdiction already conferred unto the PARAD by the complaint's other material averment, such that petitioner spouses can no longer seek recognition as tenants of the subject property, endowed with the appurtenant rights of agricultural tenants. The appellate court opined that such averment was enough, the main reason being that ownership was antithetical to tenancy.

The Court, however, is unable to affirm the overarching application of such a view in this case for several reasons, chiefly: *first*, the ownership in this case, a co-ownership at that, remains an unconfirmed claim; and *second*, as the dismissal of the subject complaint had effectively prevented petitioner spouses from fully presenting their case, the assailed ruling risks summarily ejecting agricultural tenants. Absent administrative findings on the particularities of Avelina's claimed tillage, we believe that such risk should not be taken.

---

[49] *Bautista, et al. v. Vda de Villena*, 481 Phil. 591, 606 (2004); citing *Nisnisan v. Court of Appeals*, 355 Phil. 605, 612 (1998), *Oarde v. Court of Appeals*, 345 Phil. 457, 469 (1997), and *Cuaño v. Court of Appeals*, 307 Phil. 128, 146 (1994).

Outright dismissal of an action is not proper where there are factual matters in dispute requiring the presentation and appreciation of evidence.

The present petition poses no factual questions, as is ideal in cases filed under Rule 45. This is certainly due in no small part to the dismissal of petitioner spouses' complaint at the PARAD level. Consequently, the parties' respective factual claims did not go through the wringer of administrative fact-checking, and so there is a paucity of adjudicated facts in this case, which gives rise to certain musings.

We recall that the subject agricultural land was registered solely in the name of spouses Reynaldo and Primitiva Rivera, per TCT No. T-304255. We are also aware that said spouses were not impleaded in DARAB Case No. R-03-02-5792`08. While such non-impleadment may have been par for the course, considering the nature of the action filed with the PARAD and also because ownership of the land had by then transferred to respondent bank, a question arises nevertheless. Do the spouses Rivera not dispute petitioner spouses' claim of co-ownership? Avelina says the co-ownership arose from a mere verbal agreement. Are the spouses Rivera even aware of such a claim? More to the point, is the co-ownership true?

As far as TCT No. T-304255 is concerned, the owners of the subject land prior to its acquisition by respondent bank were its registered owners Reynaldo Rivera and his wife, not Reynaldo and his siblings. Parenthetically, we are mindful of previous cases wherein this Court stated that the Torrens titles were conclusive evidence with respect to the ownership of the land described therein.[50] If we are to abide by the recitals of TCT No. T-304255 and ascribe sole ownership to the spouses Rivera, where does that leave Avelina? Avelina narrates years of tillage of the land, beginning in 1974. Would this not also indicate that she was the spouses Rivera's tenant? If Avelina were not

---

[50] *Sampaco v. Lantud*, 669 Phil. 304, 316 (2011).

a co-owner with the rest of her siblings, then, at the very least, should she not be considered as the tenant of her sibling Reynaldo? Accordingly, would not such tenancy subsist even after the land's ownership was transferred to respondent bank?

The questions continue if we are to accept without a doubt the truthfulness of the asserted co-ownership. What were the particularities of Avelina's harvest-sharing and/or profit-sharing agreement with her siblings? Avelina claims that as the only sibling tilling the property, her annual obligation was to give her co-owners a portion of the harvest corresponding to their respective 1/8th undivided share in the property. How much have the harvests that Avelina kept for herself changed when ownership of the property transferred from the Sarmiento Family to the Rivera family? In other words, how has Avelina's share changed from her tenancy to co-ownership?

The numerous questions surrounding the averred co-ownership are worth pondering. The averment was the appellate court's sole basis for dismissing the subject complaint. Incidentally, respondent bank did not even include said basis as part of its defenses before the PARAD. Certainly, the question of whether the particulars of the arrangement between Avelina and her siblings preponderate to an agricultural leasehold relationship or to a co-ownership should form part of an administrative inquiry, in order to properly address the larger question of whether an agricultural leasehold relationship among co-owners may co-exist in their civil co-ownership. It is in view of these questions that we deem the dismissal under review to have been premature. In *Ingjug-Tiro v. Casals,*[51] *we* held that a summary or outright dismissal of an action is not proper where there are factual matters in dispute that require presentation and appreciation of evidence. We so rule in this case.

The theory on the co-existence of agricultural tenancy and co-ownership merits a closer look.

---

[51] 415 Phil. 665, 674 (2001).

In this case, we are presently ill persuaded that co-ownership *ipso facto*, or at the very least the mere averment thereof, should be enough to thwart a co-owner's suit for recognition as tenant. While the appellate court's aphorism on the mutual exclusivity between land ownership and tenancy may hold true when the ownership involved is reposed in a single entity, should the same be deemed as automatically true for co-ownerships, as well?

Petitioner spouses plead a likely narrative and argument on this point:

> Clearly, the Court of Appeals grossly ignored the fact that the former landowner (Sarmiento Family) gave the 18,101 square meters to the eight (8) Rivera children by way of Disturbance Compensation in recognition of the long years of tenancy relationship between the Sarmiento Family and the deceased Ireneo Rivera; that since Renaldo [*sic*] Rivera is the eldest among the eight (8) siblings, and some of them were then still minors, they all agreed that the title for 18,101 square meters (TCT No. T-304255) would be placed only in the name of Reynaldo Rivera but only "intrust" and subject to its future partition by the eight (8) co-owners at the appropriate time; that as a result thereof, Petitioner Avelina Rivera-Nolasco, therefore, became the co-owner of the 1/8 undivided portion of the 18,101 square meters and at the same time the sole tiller and tenant of the entire 7/8 undivided portions of her seven (7) siblings to whom Avelina regularly gave the latter's rental as Landowner or Lessor from the annual palay harvest.
>
> That kind of "temporary arrangement" as to the "ownership" or "tillage" of a piece of real property which is owned in common by several brothers and sisters is a common practice in the rural areas especially if some of the co-owners are still minors (as in the instant case) or the co-owners are financially incapable to subdivide the whole parcel and have a separate titling for the share of each and every co-owner. It is neither illegal nor immoral.[52]

Without prejudice to the eventual findings of the administrative agency concerned, we deem petitioner spouses' proposition to be within the realm of possibility. It is thus worthy of examination

---

[52] *Rollo*, pp. 18-19.

by the DARAB and its adjudicators, which has the expertise to undertake such an examination. We so rule in line with the doctrine of primary jurisdiction, *viz:*

> In *San Miguel Properties, Inc. v. Perez,* we explained the reasons why Congress, in its judgment, may choose to grant primary jurisdiction over matters within the erstwhile jurisdiction of the courts, to an agency:
>
> The doctrine of *primary jurisdiction* has been increasingly called into play on matters demanding the special competence of administrative agencies even if such matters are at the same time within the jurisdiction of the courts. A case that requires for its determination the expertise, specialized skills, and knowledge of some administrative board or commission because it involves technical matters or intricate questions of fact, relief must first be obtained in an appropriate administrative proceeding before a remedy will be supplied by the courts although the matter comes within the jurisdiction of the courts. The application of the doctrine does not call for the dismissal of the case in the court but only for its suspension until after the matters within the competence of the administrative body are threshed out and determined.[53]

The assailed ruling risks granting imprimatur to an extrajudicial eviction of agricultural tenants.

To recall, what prompted the filing of the subject complaint were the acts of respondent bank in preventing petitioner spouses and their workers from entering the subject property and from tending to their alleged agricultural harvest thereon. If we set the agricultural tenancy of petitioner spouses as a basic postulate, then these acts essentially amount to their eviction from the land. Subsequently, the dismissal of the subject complaint before the PARAD lent judicial imprimatur to a summary extrajudicial eviction of agricultural tenants.

The law, however, has set careful parameters before an agricultural tenant may be ejected. In *Natividad vs. Mariano*,[54]

---

[53] 717 Phil. 244, 262-263 (2013).

[54] *Natividad v. Mariano,* 710 Phil. 57, 73 (2013).

the Court put a spotlight on how the law set these careful parameters:

> Section 7 of R.A. No. 3844 ordains that once the tenancy relationship is established, a tenant or agricultural lessee is entitled to security of tenure. Section 36 of R.A. No. 3844 strengthens this right by providing that the agricultural lessee has the right to continue the enjoyment and possession of the landholding and shall not be disturbed in such possession except only upon court authority in a final and executory judgment, after due notice and hearing, and only for the specifically enumerated causes. The subsequent R.A. No. 6657 further reiterates, under its Section 6, that the security of tenure previously acquired shall be respected. Finally, in order to protect this right, Section 37 of R.A. No. 3844 rests the burden of proving the existence of a lawful cause for the ejectment of the agricultural lessee on the agricultural lessor.

The specifically enumerated causes for terminating a leasehold relationship mentioned in *Natividad* are set in Sections 8, 28, and 36 of Republic Act (*R.A.*) No. 3844,[55] to wit:[56]

> SEC. 8. Extinguishment of Agricultural Leasehold Relation.—The agricultural leasehold relation established under this Code shall be extinguished by:
>
> (1) Abandonment of the landholding without the knowledge of the agricultural lessor;
>
> (2) Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or
>
> (3) Absence of the persons under Section Nine to succeed to the lessee, in the event of death or permanent incapacity of the lessee. x x x x
>
> SEC. 28. Termination of Leasehold by Agricultural Lessee During Agricultural Year.—The agricultural lessee may terminate the leasehold during the agricultural year for any of the following causes:

[55] An act to ordain the Agricultural Land Reform Code and to institute land reform in the Philippines including abolition of tenancy and channeling of capital into industry, provide for the necessary implementing agencies, appropriate funds therefor and for other purposes.

[56] *Verde v. Macapagal*, 571 Phil. 251, 259 (2008).

(1) Cruel, inhuman or offensive treatment of the agricultural lessee or any member of his immediate farm household by the agricultural lessor or his representative with the knowledge and consent of the lessor;

(2) Noncompliance on the part of the agricultural lessor with any of the obligations imposed upon him by the provisions of this Code or by his contract with the agricultural lessee;

(3) Compulsion of the agricultural lessee or any member of his immediate farm household by the agricultural lessor to do any work or render any service not in any way connected with farm work or even without compulsion if no compensation is paid;

(4) Commission of a crime by the agricultural lessor or his representative against the agricultural lessee or any member of his immediate farm household; or

(5) Voluntary surrender due to circumstances more advantageous to him and his family.

x x x x x x x x x

SEC. 36. Possession of Landholding; Exceptions.—Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site or other useful non-agricultural purposes: Provided, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor, is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: Provided, further, That should the landholder not cultivate the land himself for three years or

fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossessions;

(2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or force majeure;

(3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;

(4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;

(5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;

(6) The agricultural lessee does not pay the lease rental when it falls due; Provided, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five per centum as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

(7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.

In the 1993 case of *Bernas v. CA and Deita*, the Court held that the grounds for the ejectment of an agricultural leasehold lessee are an exclusive enumeration; no other grounds could justify the termination of an agricultural leasehold.[57]

On the postulate that petitioner spouses are agricultural tenants, or at the least allowed to proceed with their suit to be recognized as agricultural tenants, we observe that respondent bank had

[57] 296-A Phil. 90, 111 (1993); *Sta. Ana v. Sps. Carpo,* 593 Phil. 108, 130 (2008).

evicted petitioner spouses extrajudicially. But the law sets that the burden of proving the existence of a lawful cause for ejectment of an agricultural tenant rests on respondent bank. Co-ownership, however, does not appear to be one of the legislated causes for the lawful ejectment of an agricultural tenant; certainly, it is presently not a recognized mode of extinguishing such relationship.

In fine, absent administrative findings on the particularities of Avelina's tillage, this Court cannot ascribe to the view that the averment of co-ownership should disallow petitioner spouses from pressing on their suit to be recognized as agricultural tenants. To reiterate, absent the conduct by the PARAD of the proceedings in DARAB Case No. R-03-02-5792-08 and the resolution of said case on the merits, the assailed CA ruling risks judicially approving the summary and extrajudicial eviction of agricultural tenants. Parenthetically, the Court is also mindful of the dangers of reifying as doctrine a practice where unscrupulous landowners would offer their tenants co-ownership of a portion of their agricultural land in order to terminate the latter's tenancy rights. Given the material averments in the subject complaint, the PARAD had already gained a jurisdictional foothold in DARAB Case No. R-03-02-5792-08, and should have been allowed to exercise the agency expertise in resolving the issues and problems presented.

We recall our ruling in *Bernas v. CA and Deita*:[58]

> The Court must, in our view, keep in mind the policy of the State embodied in the fundamental law and in several special statutes, of promoting economic and social stability in the countryside by vesting the actual tillers and cultivators of the soil, with rights to the continued use and enjoyment of their landholdings **until they are validly dispossessed in accordance with law**.
>
> At this stage in the country's land reform program, the agricultural lessee's right to security of tenure must be "firmed-up" and **not negated by inferences from facts not clearly established in the record nor litigated in the courts below**.

[58] *Id.* at 106.

Hand in hand with diffusion of ownership over agricultural lands, it is sound public policy to encourage and endorse a diffusion of agricultural land use in favor of the actual tillers and cultivators of the soil.

It is one effective way in the development of a strong and independent middle-class in society.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision, dated 25 June 2010, and the Resolution, dated 26 October 2010, of the Court of Appeals in CA-G.R. SP No. 105288 are hereby **SET ASIDE**. The Office of the Provincial Agrarian Reform Adjudicator is **DIRECTED** to proceed with DARAB Case No. R-03-02-5792-08.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 196015. June 27, 2018]

RURAL BANK OF MABITAC, LAGUNA, INC., represented by MRS. MARIA CECILIA S. TANAEL, *petitioner, vs.* **MELANIE M. CANICON and MERLITA L. ESPELETA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL FROM THE DISMISSAL OF A CRIMINAL ACTION MAY BE UNDERTAKEN ONLY BY THE STATE THROUGH THE SOLICITOR GENERAL; PRIVATE OFFENDED PARTY MAY ONLY APPEAL AS TO THE CIVIL ASPECT

OF THE CASE.— The OSG has the sole authority to represent the State in appeals of criminal cases before the Supreme Court and the CA. The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant. The interest of the private complainant or the private offended party is limited only to the civil liability. In the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution. Thus, when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the Solicitor General. The private offended party or complainant may not take such appeal; but may only do so as to the *civil* aspect of the case.

2. ID.; ID.; ID.; THE PRIVATE COMPLAINANT HAS THE LEGAL PERSONALITY TO FILE A PETITION FOR *CERTIORARI* UNDER RULE 65 AGAINST THE DISMISSAL OF A CRIMINAL CASE; PRINCIPLE, APPLIED.— [W]e have recognized instances where a private complainant would have standing to file a petition for *certiorari* under Rule 65 against the dismissal of a criminal case. In *Dee v. Court of Appeals*, we affirmed the CA's decision granting *certiorari* to a private complainant against a trial court's order dismissing the criminal case for *estafa* upon recommendation of the Secretary of Justice. x x x In this case, the amended information dropped Espeleta as an accused after arraignment. As she is no longer included therein, the proceeding for the charge for *estafa* against her was effectively terminated. Notably though, the nature of the offense charged, *i.e., estafa*, immediately connotes civil liability and damages for which the accused may be held liable for in case of conviction, or even acquittal based on reasonable doubt. The dismissal forecloses the right of petitioner to the civil action deemed instituted in the criminal case against Espeleta because petitioner neither reserved the right to file the same nor filed a case ahead of the criminal case. As argued by petitioner, it has the standing to pursue the remedy of a petition for *certiorari* before the CA. Similar to the case of *Dee*, petitioner alleges that the October 23, 2007 Order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction. We thus uphold petitioner's legal personality to file the petition.

3. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHT OF THE ACCUSED AGAINST DOUBLE JEOPARDY; ELEMENTS FOR DOUBLE JEOPARDY TO ATTACH.— Double jeopardy attaches when the following elements concur: (1) a valid information sufficient in form and substance to sustain a conviction of the crime charged; (2) a court of competent jurisdiction; (3) the accused has been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent. The absence of any of the requisites hinders the attachment of the first jeopardy.

4. ID.; ID.; ID.; ID.; DOUBLE JEOPARDY DID NOT ATTACH IN CASE AT BAR IN VIEW OF THE ACCUSED'S EXPRESS CONSENT WHEN HER COUNSEL FAILED TO OBJECT TO THE AMENDMENT OF THE INFORMATION.— As a rule, where the dismissal was granted upon motion of the accused, jeopardy will not attach. In this case, Espeleta's filing of the urgent motion for reinvestigation did not amount to her express consent. We have held before that the mere filing of a motion for reinvestigation cannot be equated to the accused's express consent. However, we still find that Espeleta gave her express consent when her counsel did not object to the amendment of the information. As we have held in *People v. Pilpa*, the dismissal of the case without any objection on the part of the accused is equivalent to the accused's express consent to its termination, which would bar a claim for violation of the right against double jeopardy[.]

5. ID.; ID.; ID.; ID.; THE FIRST JEOPARDY LIKEWISE DID NOT ATTACH WHERE IT WAS PROMPTED BY THE ACCUSED'S MOTION; EXCEPTIONS THERETO ARE NEITHER APPLICABLE NOR RAISED IN THIS CASE.— Likewise, when the October 23, 2007 Order reinstated the September 17, 2003 Order, the first jeopardy did not attach because it was prompted by Espeleta's motion for reconsideration of the November 15, 2006 Resolution. The rule that the dismissal is not final if it is made upon accused's motion, of course, admits of exceptions such as: (1) where the dismissal is based on a demurrer to evidence filed by the accused after the prosecution has rested, which has the effect of a judgment on the merits and operates as an acquittal; and (2) where the dismissal is made, also on motion of the accused, because of the denial of

his right to a speedy trial which is in effect a failure to prosecute. However, the foregoing are neither applicable nor raised in this case. Considering that the first jeopardy did not attach when the case was previously dismissed as to Espeleta, this petition will not expose Espeleta to double jeopardy.

6. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION, WHEN REQUIRED; THE PUBLIC PROSECUTOR DIRECTS AND CONTROLS THE CONDUCT OF PRELIMINARY INVESTIGATION; ONCE INFORMATION IS FILED IN COURT, THE EXERCISE OF DISCRETION OF THE PROSECUTION IS SUBJECT TO THE DISPOSAL OF THE COURT.— A preliminary investigation is required before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months, and one day without regard to fine. The conduct of this preliminary investigation pertains to the public prosecutor, who directs and controls the prosecution of all criminal actions commenced by a complaint or information. This investigation terminates with the determination by the public prosecutor of the absence or presence of probable cause. In case of the latter, an information is filed with the proper court. A public prosecutor's determination of probable cause for the purpose of filing an information in court is essentially an executive function. The right to prosecute vests the prosecutor with a wide range of discretion—of what and whom to charge—which depends on a wide range of factors which are best appreciated by prosecutors. It generally lies beyond the pale of judicial scrutiny. The prosecution's discretion is not boundless or infinite, however. The determination of probable cause must not be tainted with grave abuse of discretion as when the public prosecutor arbitrarily disregards the jurisprudential parameters of probable cause. In addition to this, the standing principle is that once an information is filed in court, any remedial measure must be addressed to the sound discretion of the court. Once an information is filed in court, all actions including the exercise of the discretion of the prosecution are subject to the disposal of the court. This includes reinvestigation of the case, the dropping of the accused from the information, or even dismissal of the action as to the accused. In the landmark case of *Crespo v. Mogul*, we emphasized that

once an information has been filed in court, the court is the best and sole judge on how to dispose of the criminal case[.]

7. ID.; ID.; ID.; GRANTING A MOTION TO AMEND INFORMATION WITHOUT MAKING AN INDEPENDENT DETERMINATION OF THE MERITS OF SUCH MOTION OR WITHOUT INDEPENDENT EXAMINATION OF THE FACTS AND EVIDENCE IN DETERMINING PROBABLE CAUSE AGAINST THE ACCUSED CONSTITUTES GRAVE ABUSE OF DISCRETION; EFFECTS.— [T]he October 23, 2007 Order was issued with grave abuse of discretion because the RTC did not make an independent determination or assessment of the merits of the motion to amend information. In the September 17, 2003 Order, the court granted, without any reason or explanation[.] x x x Likewise, the October 23, 2007 Order also did not indicate that Judge Baybay, in reinstating the September 17, 2003 Order, made his own examination of the facts and evidence in determining probable cause against Espeleta. As earlier stated, once the information is filed with the court, the disposition of the case is subject to the discretion of the trial court. In turn, this judicial discretion is subject to the judicial requirement that the trial court must make its own evaluation of the case. This, the trial court failed to do. The consequence of the above conclusion is the setting aside of the October 23, 2007 Order and reinstatement of the November 15, 2006 Resolution and the original information. We, again, emphasize that this will not place Espeleta in double jeopardy because as we concluded earlier, no jeopardy attached during the previous dismissals of the criminal case against her.

APPEARANCES OF COUNSEL

Federico A. Bellosillo, Jr. for petitioner.

Arrojado Arrojado Diaz and Associates for respondent M. Espeleta.

Public Attorney's Office for respondent M. Canicon.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Rural Bank of Mabitac, Laguna, Inc., (petitioner), seeking to nullify the Court of Appeals' (CA) September 29, 2010 Decision[2] and March 4, 2011 Resolution[3] in CA-G.R. SP No. 104984 (collectively, Assailed Decision). The CA, in its Assailed Decision, denied petitioner's petition for *certiorari* under Rule 65 against the October 23, 2007 Order[4] of Branch 31 of the Regional Trial Court (RTC) of San Pedro, Laguna which set aside its November 15, 2006 Resolution,[5] and reinstated its September 17, 2003 Order[6] in Criminal Case No. 12508-B.

Petitioner filed a criminal complaint for *estafa* under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, in relation to economic sabotage, against its employees Rica W. Aguilar (Aguilar), Melanie M. Canicon (Canicon), and Merlita L. Espeleta (Espeleta). Prosecutor Alfredo P. Juarez, Jr. (Prosecutor Juarez) conducted a preliminary investigation, where Espeleta and Canicon submitted their counter-affidavits. Prosecutor Juarez found probable cause against the three employees and recommended the filing of an information for *estafa*.[7]

On April 24, 2003, an information[8] for *estafa* in relation to Presidential Decree No. 1689[9] was filed against Aguilar, Canicon,

---

[1] *Rollo*, pp. 13-33.

[2] *Id.* at 35-48. Penned by Associate Justice Stephen C. Cruz, and concurred in by Associate Justices Isaias P. Dicdican and Samuel H. Gaerlan.

[3] *Id.* at 49-52.

[4] *Id.* at 76-82. Rendered by Assisting Presiding Judge Rommel O. Baybay.

[5] *Id.* at 70-72. Rendered by Acting Presiding Judge Zenaida G. Laguilles.

[6] *Id.* at 69. Issued by Judge Stella Cabuco-Andres.

[7] The complaint was docketed as I.S. No. 03-51. CA *rollo*, pp. 40-42.

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

[9] Increasing the Penalty for Certain Forms of Swindling or *Estafa* (1980).

and Espeleta before the RTC of Biñan, Laguna, which was later transferred to the RTC of San Pedro, Laguna. The case was docketed as Criminal Case No. 12508-B. Subsequently, the RTC, through Judge Stella Cabuco-Andres (Judge Cabuco-Andres), issued a warrant for the arrest of all three accused. Only Espeleta and Canicon were arrested, while Aguilar remains at large.[10]

On June 12, 2003, Espeleta filed an urgent motion for reinvestigation[11] before the RTC. She claimed that the preliminary investigation was conducted hastily, thereby denying her the chance to present her evidence. Petitioner opposed the motion. Without resolving the urgent motion for reinvestigation, the RTC arraigned both Espeleta and Canicon on June 30, 2003. Both accused entered a plea of not guilty to the offense charged.[12]

Meanwhile, Assistant Provincial Prosecutor Melchorito M. E. Lomarda (Prosecutor Lomarda) conducted a reinvestigation. In a Report[13] dated July 28, 2003 (Lomarda Report) approved by the Provincial Prosecutor, Prosecutor Lomarda recommended the dismissal of the case against Espeleta and the filing of an amended information. On August 4, 2003, the Office of the Provincial Prosecutor filed a motion for leave to amend the information[14] with attached amended information.[15] The amended information dropped Espeleta from the list of those originally charged, and recommended bail for all the remaining accused.[16]

The RTC, through Judge Cabuco-Andres, issued the September 17, 2003 Order[17] granting the provincial prosecutor's motion and admitted the amended information. Petitioner sought reconsideration of the September 17, 2003 Order.

---

[10] *Rollo*, pp. 36-37.

[11] CA *rollo*, pp. 46-54.

[12] *Rollo*, p. 37.

[13] CA *rollo*, pp. 65-68.

[14] *Id.* at 62.

[15] *Id.* at 63.

[16] *Rollo*, pp. 37-38.

[17] *Supra* note 6.

Meanwhile, the Office of the Provincial Prosecutor of San Pedro, Laguna, through Prosecutor Lomarda, denied petitioner's motion for reconsideration of the Lomarda Report on September 26, 2003.[18]

The RTC, this time through Judge Zenaida G. Laguilles (Judge Laguilles), issued the November 15, 2006 Resolution[19] which recalled and set aside the September 17, 2003 Order issued by Judge Cabuco-Andres. Judge Laguilles ruled that a procedural misstep was committed when Prosecutor Lomarda conducted the reinvestigation without prior leave of court. The seeming acquiescence of former Presiding Judge Cabuco-Andres (in admitting the amended information) will not cure the procedural infirmity committed. As such, the reinvestigation conducted without judicial imprimatur is a nullity and created no vested right.[20]

Espeleta and Canicon filed their respective motions for reconsideration (with supplemental motion for Espeleta) of the November 15, 2006 Resolution, which petitioner opposed.[21]

---

[18] CA *rollo*, p. 75. The Order stated:

Considering that branch 31, Regional Trial Court has already acquired jurisdiction over the accused this Office therefore cannot give due course to the MOTION for Reconsideration filed by Complainant, Rural Bank of Mabitac, Laguna, Inc. through counsel to our Resolution, excluding accused Merlita L. Espeleta from the Information for Insufficiency of evidence.

SO ORDERED.

[19] *Supra* note 5. The dispositive portion of the November 15, 2006 Resolution reads:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby GRANTED. The Order dated September 17, 2003 is recalled and set aside. Accused Espeleta is reinstated as a co-accused in this case and the necessary Warrant of Arrest against her is hereto issued. Set this case for continuation of the proceedings on November 17, 2006 as previously scheduled.

SO ORDERED[.]

[20] *Rollo*, pp. 39, 72.

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

In its October 23, 2007 Order,[22] the RTC, through Judge Rommel O. Baybay (Judge Baybay), granted private respondents' motion for reconsideration. It set aside the November 15, 2006 Resolution and reinstated the September 17, 2003 Order. The RTC held that the public prosecutor has the sole discretion to decide whether to indict a person. More, it found that reinstating the charge against Espeleta would violate her right against double jeopardy:

> In any event, the fact remains that an Urgent Motion for Reinvestigation was seasonably filed and there was an Opposition thereto. While no written order was issued granting the said motion, neither also was there any order denying it. Thus, when the public prosecutor proceeded with the reinvestigation and, thereafter, filed the Amended Information, accompanied by a Motion for Leave to Amend Information and to Admit Amended Information, the Court, in granting the motion and admitting the Amended Information is deemed to have ratified the reinvestigation conducted. In other words, by granting the public prosecution leave to amend the Information and admitting the Amended Information, the Court, in effect, recognized the validity of the reinvestigation as if it were conducted with judicial *imprimatur*.
>
> x x x x x x x x x
>
> [T]he matter of deciding whether or not to indict a person criminally charged or to proceed with the criminal action already commenced against him rests solely on the government prosecutor. This is so because in criminal cases, the real offended party is the State, the interest of the private complainant, whose role is merely to testify as a witness for the prosecution, being limited to the civil liability.
>
> Moreover, the Court sustains the argument of accused Espeleta that her reinstatement as a co-accused in this case as a result of the setting aside of the Order admitting the Amended Information which excluded her from the charge would violate her constitutional right against double jeopardy. This contention of hers finds support in the analogous case of People vs. Vergara. The High Court's pronouncements therein, which accused Espeleta quoted in her present motion, are squarely applicable to the case at bar.[23] (Citations omitted.)

---

[22] *Supra* note 4.

[23] *Rollo*, pp. 79-81.

A motion for reconsideration was filed by petitioner, but the same was denied in an Order dated April 21, 2008.[24] Thus, it filed a petition for *certiorari* under Rule 65 with the CA, attributing grave abuse of discretion on the part of the RTC.

The CA denied *certiorari*. It ruled that the petition suffered from a fatal procedural infirmity because a private prosecutor cannot prosecute the criminal aspect of a criminal case. The determination of probable cause as to warrant a criminal prosecution rests solely at the discretion of the public prosecutor.[25] The CA also said that "when [the trial court] admitted the amended information which dropped Espeleta among those to be charged, it effectively dismissed the case against the latter."[26] The judgment of the prosecutor to drop Espeleta, and the RTC's acquiescence to this judgment by admitting the amended information, cannot be considered as grave abuse of discretion on the part of the trial court; "[t]he criminal prosecution will always remain under the absolute control of the public prosecutor, and his judgment cannot be substituted by the opinion of the private prosecutor [or] by the court."[27]

Petitioner insists that the CA erred in not finding that the RTC committed grave abuse of discretion in issuing the October 23, 2007 Order. *First,* its right to due process was violated (1) when the public prosecutor conducted a reinvestigation, and (2) when the RTC allowed the amendment of the information. The public prosecutor loses the sole discretion to determine the existence of probable cause when an information is filed in court. Hence, the prosecutor's office cannot conduct a reinvestigation without prior leave and approval by the court; the determination of probable cause is now at the sole discretion of the court. More, petitioner was not notified when the

---

[24] *Id.* at 41.

[25] *Id.* at 43.

[26] *Id.* at 44-45.

[27] *Id.* at 46.

prosecutor's office conducted reinvestigation. Neither was petitioner notified when Prosecutor Lomarda filed a motion for leave to amend information and to admit amended information, in violation of the rules.[28] According to petitioner, due process requires that it be notified by the trial court at all stages of the proceedings as it is a "party" who may be affected by the orders issued and/or judgment rendered therein.[29] *Second*, petitioner also argues that the RTC (through Judge Cabuco-Andres) did not exercise the discretion required by law. Judge Cabuco-Andres merely approved the position taken by Prosecutor Lomarda without assessing the evidence on record. Such is not a valid and proper exercise of judicial discretion.[30] *Finally*, petitioner alleges that as private prosecutor, it has *locus standi* in filing the necessary pleadings in Criminal Case No. 12508-B. Since it did not file a separate civil action or reserve its right to file the same, petitioner claims that as the party injured by the crime, it had the right to be heard on a motion that was derogatory to its interest in the civil aspect of the case. It also alleges that it could not secure Prosecutor Lomarda's conformity because petitioner filed a criminal case against him.[31]

In her comment,[32] Canicon notes that petitioner does not question the merits of the Lomarda Report but merely attacks it on technicalities. She further alleges that petitioner does not have *locus standi*. The true complainant who would be prejudiced is the State or the People of the Philippines, not petitioner. The error in not procuring the conformity of the public prosecutor in filing the petition before the CA, and in this case, is further aggravated by the failure to notify or inform the Office of the Solicitor General (OSG).[33] Espeleta adopts Canicon's arguments

---

[28] *Id.* at 21-23.

[29] *Id.* at 25.

[30] *Id.* at 26.

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

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

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

and adds that her inclusion as respondent in this petition is a violation of her right against double jeopardy since the September 17, 2003 Order had validly dismissed the criminal offense against her after her arraignment.[34]

The issues presented are:

I. Whether petitioner has standing to file the petition without the conformity of the OSG.

II. Whether the present petition, which seeks the reinstatement of the original information, places Espeleta in double jeopardy.

III. Whether the CA erred in not finding grave abuse of discretion on the RTC in issuing the October 23, 2007 Order that reinstated the September 17, 2003 Order:

   a. Whether petitioner was deprived of due process when the RTC admitted the amended information based on the reinvestigation, despite the alleged lack of notice to the petitioner of the reinvestigation and the motion.

   b. Whether the trial court made its own independent evaluation of the evidence when it admitted the amended information dropping Espeleta as accused.

We grant the petition.

I

The OSG has the sole authority to represent the State in appeals of criminal cases before the Supreme Court and the CA.[35] The rationale behind this rule is that in a criminal case, the party affected by the dismissal of the criminal action is the State and not the private complainant.[36] The interest of the private complainant or the private offended party is limited only to the civil liability.[37] In the prosecution of the offense, the

---

[34] *Id.* at 88, 90-91.

[35] ADMINISTRATIVE CODE (1987), Book IV, Title III, Chapter 12, Sec. 35(1).

[36] See *People v. Piccio*, G.R. No. 193681, August 6, 2014, 732 SCRA 254, 261-262.

[37] *People v. Santiago*, G.R. No. 80778, June 20, 1989, 174 SCRA 143, 152.

complainant's role is limited to that of a witness for the prosecution. Thus, when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the Solicitor General. The private offended party or complainant may not take such appeal; but may only do so as to the *civil* aspect of the case.[38]

Nevertheless, we have recognized instances where a private complainant would have standing to file a petition for *certiorari* under Rule 65 against the dismissal of a criminal case. In *Dee v. Court of Appeals*,[39] we affirmed the CA's decision granting *certiorari* to a private complainant against a trial court's order dismissing the criminal case for *estafa* upon recommendation of the Secretary of Justice. We reiterated this in *Perez v. Hagonoy Rural Bank, Inc*.[40] where we said:

> *Second*. The private respondent, as private complainant, had legal personality to assail the dismissal of the criminal case against the petitioner on the ground that the order of dismissal was issued with grave abuse of discretion amounting to lack or excess of jurisdiction.
>
> In the case of *Dela Rosa v. Court of Appeals*, we held that:
>
> "In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. **The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action of the respondent court on jurisdictional grounds.** In so doing, the complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in (the) name of the said complainant."

---

[38] *Id.*

[39] G.R. No. 111153, November 21, 1994, 238 SCRA 254.

[40] G.R. No. 126210, March 9, 2000, 327 SCRA 588.

Thus, while it is only the Solicitor General that may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State in criminal proceedings pending in the Supreme Court and the Court of Appeals, the private offended party retains the right to bring a special civil action for certiorari in his own name in criminal proceedings before the courts of law.

Furthermore, our ruling in the case of *Dee v. Court of Appeals* allowing the private offended party to file a special civil action for *certiorari* to assail the order of the trial judge granting the motion to dismiss upon the directive of the Secretary of Justice is apropos. We held therein that although the correct procedure would have been to appeal the recommendation of the Secretary of Justice to the Office of the President, the said remedy was unavailable to the private offended party as the penalty involved was neither reclusion perpetua nor death. Hence, as no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law was available to the private offended party, filing of the petition for certiorari under Rule 65 of the Rules of Court was proper.[41] (Emphasis supplied; italics and citations omitted.)

Thus, in cases where the dismissal of the criminal case is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, the aggrieved parties are both the State and the private complainant. This right of the private complainant is anchored on his interest on the civil aspect of the case that is deemed instituted in the criminal case.

In this case, the amended information dropped Espeleta as an accused after arraignment. As she is no longer included therein, the proceeding for the charge for *estafa* against her was effectively terminated.[42] Notably though, the nature of the offense charged, *i.e., estafa*, immediately connotes civil liability and damages for which the accused may be held liable for in case of conviction, or even acquittal based on reasonable doubt.[43]

---

[41] *Id.* at 600-602.

[42] See RULES OF COURT, Rule 117, Sec. 7 and *Tan, Jr. v. Sandiganbayan (Third Division)*, G.R. No. 128764, July 10, 1998, 292 SCRA 452, 456, 460. See also *Baltazar v. Ibarra*, G.R. No. 177583, February 27, 2009, 580 SCRA 369, 377-378, 382.

[43] REVISED PENAL CODE, Art. 315. See *Dy v. People*, G.R. No. 189081, August 10, 2016, 800 SCRA 39, 46-47.

The dismissal forecloses the right of petitioner to the civil action deemed instituted in the criminal case against Espeleta because petitioner neither reserved the right to file the same nor filed a case ahead of the criminal case. As argued by petitioner, it has the standing to pursue the remedy of a petition for *certiorari* before the CA. Similar to the case of *Dee*, petitioner alleges that the October 23, 2007 Order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction. We thus uphold petitioner's legal personality to file the petition.

Notably, the records show that the OSG, in its manifestation and motion[44] before the CA, prayed that it be excused from filing a memorandum. The OSG is of the view that the presiding judge and the Office of the Provincial Prosecutor, being nominal parties, need not file their own separate memoranda. Private respondents, being the real parties interested in upholding the questioned rulings, have the personality to appear in their behalf and in behalf of public respondents pursuant to Section 5, Rule 65 of the Rules of Court. Accordingly, this lack of opposition from the OSG against the petition tacitly recognizes that petitioner, as private complainant, has the personality to bring the issue before the CA.

II

a.

We first identify the standard of review we apply to the CA's Assailed Decision. The case before the CA is not a *certiorari* proceeding against the determination of probable cause by the prosecutor. It is, rather, against the order reinstating a previous order granting the amendment of the information. In reviewing a Rule 45 petition before us involving a CA decision made under Rule 65, we do not examine the decision on the basis of whether the RTC's October 23, 2007 Order and September 17, 2003 Order are legally correct. Our review is limited to whether the CA correctly determined the presence or absence of grave abuse of discretion on the part of the RTC. As we explained in *Hao v. People*:[45]

---

[44] CA *rollo*, pp. 218-222.

[45] G.R. No. 183345, September 17, 2014, 735 SCRA 312.

We note that the present petition questions the CA's decision and resolution on the petition for *certiorari* the petitioners filed with that court. At the CA, the petitioners imputed grave abuse of discretion against the trial court for the denial of their twin motions to defer arraignment and to lift warrant of arrest.

This situation is similar to the procedural issue we addressed in the case of *Montoya v. Transmed Manila Corporation* where we faced the question of how to review a Rule 45 petition before us, a CA decision made under Rule 65. We clarified in this cited case the kind of review that this Court should undertake given the distinctions between the two remedies. In Rule 45, we consider the correctness of the decision made by an inferior court. In contrast, a Rule 65 review focuses on jurisdictional errors.

As in *Montoya*, we need to scrutinize the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it. Thus, we need to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion on the part of the trial court and not on the basis of whether the trial court's denial of petitioners' motions was strictly legally correct. In question form, the question to ask is: did the CA correctly determine whether the trial court committed grave abuse of discretion in denying petitioners' motions to defer arraignment and lift warrant of arrest?[46] (Citations omitted.)

As such, our review is limited to the issue brought before the CA— whether the RTC committed grave abuse of discretion in reinstating the September 17, 2003 Order.

b.

We recognize, nevertheless, that in addressing the issue above, the petition essentially questions the dismissal of the case against Espeleta and seeks reinstatement of the November 15, 2006 Resolution. This, in turn, results in the revival of the original information and reinclusion of Espeleta as an accused. Thus, before proceeding, we first determine whether the present petition will place Espeleta in double jeopardy.

---

[46] *Id.* at 321.

The 1987 Constitution and its predecessors guarantee the right of the accused against double jeopardy.[47] Section 7, Rule 117 of the Rules of Court strictly adheres to the constitutional proscription against double jeopardy and provides for the requisites in order for double jeopardy to attach:

> Sec. 7. *Former conviction or acquittal; double jeopardy*. –When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

Double jeopardy attaches when the following elements concur: (1) a valid information sufficient in form and substance to sustain a conviction of the crime charged; (2) a court of competent jurisdiction; (3) the accused has been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent.[48] The absence of any of the requisites hinders the attachment of the first jeopardy.

The first to third elements are non-issues in this petition. There is no dispute that the original information is valid and was filed with the RTC of San Pedro, Laguna, a court of competent jurisdiction. Espeleta was arraigned under this original information. The contentious element in this case is the fourth one, *i.e.*, whether the dismissal was with express consent of Espeleta. To recall, Espeleta was dropped as an accused when the RTC, in its September 17, 2003 Order, allowed the

---

[47] CONSTITUTION, Art. III, Sec. 21; CONSTITUTION (1973), Art. IV, Sec. 22; and CONSTITUTION (1935), Art. III, Sec. 20.

[48] See *Tiu v. Court of Appeals*, G. R. No. 162370, April 21, 2009, 586 SCRA 118, 126.

amendment of the original information after reinvestigation of the public prosecutor. After she was reinstated as an accused by virtue of the RTC's November 15, 2006 Resolution, Espeleta filed a motion for reconsideration. This resulted in the issuance of the October 23, 2007 Order which, for the second time, dropped her as an accused. As such, there is a need to examine whether in both instances of dismissal, jeopardy had attached.

As a rule, where the dismissal was granted upon motion of the accused, jeopardy will not attach. In this case, Espeleta's filing of the urgent motion for reinvestigation did not amount to her express consent. We have held before that the mere filing of a motion for reinvestigation cannot be equated to the accused's express consent.[49] However, we still find that Espeleta gave her express consent when her counsel did not object to the amendment of the information.[50] As we have held in *People v. Pilpa*,[51] the dismissal of the case without any objection on the part of the accused is equivalent to the accused's express consent to its termination, which would bar a claim for violation of the right against double jeopardy:

> We hold that the oral manifestation at the hearing made by the counsel of the accused that he had no objection to the dismissal of the case was equivalent to a declaration of conformity to its dismissal or to an express consent to its termination within the meaning of Section 9 of Rule 117. He could not thereafter revoke that conformity since the court had already acted upon it by dismissing the case. He was bound by his counsel's assent to the dismissal (People vs. Romero, 89 Phil. 672; People vs. Obsania, L-24447, June 29, 1968, 23 SCRA 1249, 1269-70).
>
> In Pendatum vs. Aragon, 93 Phil. 798, 800 the prosecution filed a motion for the provisional dismissal of the complaints for physical injuries and slander against Aida F. Pendatum. At the bottom of that motion, her lawyer wrote the words: "No objection". The court granted the motion.

---

[49] *People v. Vergara*, G.R. Nos. 101557-58, April 28, 1993, 221 SCRA 560, 567.

[50] *Rollo*, p. 69.

[51] G.R. No. L-30250, September 22, 1977, 79 SCRA 81.

Later, the cases were revived. The accused contended that the revival of the cases would place her in double jeopardy. That contention was rejected because the provisional dismissal did not place the accused in jeopardy. There was no jeopardy in such dismissal because the words "No objection" conveyed the idea of full concurrence with the dismissal and was equivalent to saying "I agree."[52]

Likewise, when the October 23, 2007 Order reinstated the September 17, 2003 Order, the first jeopardy did not attach because it was prompted by Espeleta's motion for reconsideration of the November 15, 2006 Resolution.

The rule that the dismissal is not final if it is made upon accused's motion, of course, admits of exceptions such as: (1) where the dismissal is based on a demurrer to evidence filed by the accused after the prosecution has rested, which has the effect of a judgment on the merits and operates as an acquittal; and (2) where the dismissal is made, also on motion of the accused, because of the denial of his right to a speedy trial which is in effect a failure to prosecute.[53] However, the foregoing are neither applicable nor raised in this case.

Considering that the first jeopardy did not attach when the case was previously dismissed as to Espeleta, this petition will not expose Espeleta to double jeopardy. We thus proceed with disposing of the third issue.

III

a.

A preliminary investigation is required before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four years, two months, and one day without regard to fine.[54] The conduct of this preliminary investigation pertains to the public prosecutor, who directs and

---

[52] *Id.* at 86.

[53] *Bangayan, Jr. v. Bangayan*, G.R. No. 172777, October 19, 2011, 659 SCRA 590, 600-601.

[54] RULES OF COURT, Rule 112, Sec. 1.

controls the prosecution of all criminal actions commenced by a complaint or information.[55] This investigation terminates with the determination by the public prosecutor of the absence or presence of probable cause. In case of the latter, an information is filed with the proper court.

A public prosecutor's determination of probable cause for the purpose of filing an information in court is essentially an executive function.[56] The right to prosecute vests the prosecutor with a wide range of discretion—of what and whom to charge—which depends on a wide range of factors which are best appreciated by prosecutors.[57] It generally lies beyond the pale of judicial scrutiny.[58] The prosecution's discretion is not boundless or infinite, however. The determination of probable cause must not be tainted with grave abuse of discretion as when the public prosecutor arbitrarily disregards the jurisprudential parameters of probable cause.[59] In addition to this, the standing principle is that once an information is filed in court, any remedial measure must be addressed to the sound discretion of the court.[60]

Once an information is filed in court, all actions including the exercise of the discretion of the prosecution are subject to the disposal of the court. This includes reinvestigation of the case, the dropping of the accused from the information, or even dismissal of the action as to the accused. In the landmark case of *Crespo v. Mogul*,[61] we emphasized that once an information

---

[55] *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 597.

[56] *Aguilar v. Department of Justice*, G.R. No. 197522, September 11, 2013, 705 SCRA 629, 638.

[57] *Leviste v. Alameda, supra* at 598.

[58] *Aguilar v. Department of Justice, supra.*

[59] *Id.* at 639.

[60] *Crespo v. Mogul*, G.R. No. 53373, June 30, 1987, 151 SCRA 462, 471.

[61] *Supra*.

has been filed in court, the court is the best and sole judge on how to dispose of the criminal case:

> Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.
>
> x x x x x x x x x
>
> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as [to] its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court [which] has the option to grant or deny the same. It does not matter if this is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation or upon instructions of the Secretary of Justice who reviewed the records of the investigation.[62]

We applied this rule in the case of *Martinez v. Court of Appeals*.[63] In that case, we held that the trial court must make its own independent assessment of the case and not merely blindly accept the conclusions of the executive department:

> Secondly, the dismissal was based merely on the findings of the Acting Secretary of Justice that no libel was committed. The trial judge did not make an independent evaluation or assessment of the merits of the case. Reliance was placed solely on the conclusion of the prosecution that "there is no sufficient evidence against the said accused to sustain the allegation in the information" and on the supposed lack of objection to the motion to dismiss, this last premise

---

[62] *Id.* at 470-471.

[63] G.R. No. 112387, October 13, 1994, 237 SCRA 575.

being, however, questionable, the prosecution having failed, as observed, to give private complainant a copy of the motion to dismiss.

In other words, the grant of the motion to dismiss was based upon considerations other than the judge's own personal individual conviction that there was no case against the accused. Whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this. The trial judge must himself be convinced that there was indeed no sufficient evidence against the accused, and this conclusion can be arrived at only after an assessment of the evidence in the possession of the prosecution. What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency.

As aptly observed by the Office of the Solicitor General, in failing to make an independent finding of the merits of the case and merely anchoring the dismissal on the revised position of the prosecution, the trial judge relinquished the discretion he was duty bound to exercise. In effect, it was the prosecution, through the Department of Justice which decided what to do and not the court which was reduced to a mere rubber stamp in violation of the ruling in *Crespo v. Mogul*.[64] (Citation omitted.)

Further, in *Mosquera v. Panganiban*,[65] the Metropolitan Trial Court (MeTC) merely allowed the withdrawal of the information without making its own individual assessment of the case. We held that the court did not make the required exercise of discretion in acting on the motion to withdraw information:

Indeed, the MeTC must have realized that it had surrendered its exclusive prerogative regarding the withdrawal of informations by accepting public prosecutor's say-so that the prosecution had no basis to prosecute petitioner. Its order of October 13, 1994 was based mainly on its notion that "the motion of the Trial Fiscal should be accorded weight and significance as it was premised on the findings [of the Department of Justice] that the filing of the information in question has no legal basis."

---

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

[65] G.R. No. 121180, July 1996, 258 SCRA 473.

This certainly was not the exercise of discretion. As we said in *Martinez*, "whether to approve or disapprove the stand taken by the prosecution is not the exercise of discretion required in cases like this [under the *Mogul* ruling] ... What was imperatively required was the trial judge's own assessment of such evidence, it not being sufficient for the valid and proper exercise of judicial discretion merely to accept the prosecution's word for its supposed insufficiency."

Unfortunately, just as in allowing the withdrawal of the information by the public prosecutor, the MeTC did not make an independent evaluation of the evidence, neither did it do so in granting the private prosecutor's motion for reconsideration. In its order dated December 29, 1994, the MeTC simply stated that it was reinstating the case against petitioner because "[a]fter carefully weighing the arguments of the parties in support of their respective claims, the Court believes that the weight of the evidence and the jurisprudence on the matter which is now presented for resolution heavily leaned in favor of complainant's contention" and that after a case has already been "forwarded, raffled, and assigned to a particular branch, the Public Prosecutor loses control over the case." **The order contains no evaluation of the parties' evidence for the purpose of determining whether there was probable cause to proceed against petitioner. The statement that the "weight of evidence . . . lean[s] heavily in favor of complainant's [Jalandoni's] contention" is nothing but the statement of a conclusion.**

Nor could the MeTC rest its judgment solely on its authority under the Mogul doctrine to have the last word on whether an information should be withdrawn. The question in this case is not so much whether the MeTC has the authority to grant or not to grant the public prosecutor's motion to withdraw the information—it does—but whether in the exercise of that discretion or authority it acted justly and fairly. In this case, the MeTC did not have good reason stated in its order for the reinstatement of the information against petitioner, just as it did not have good reason for granting the withdrawal of the information.

The matter should therefore be remanded to the MeTC so that it can make an independent evaluation of the evidence of the prosecution and on that basis decide whether to grant or not to grant the withdrawal of the information against petitioner.[66] (Emphasis supplied; citations omitted.)

---

[66] *Id.* at 481-482.

We concluded that the trial court's abdication of its exclusive prerogative in deference to the prosecution's conclusion was considered grave abuse of discretion. This was apparent from the court order itself, which contains no evaluation of the evidence. We remanded the case to the trial court for it to make an independent evaluation of the evidence of the prosecution.

b.

In this case, we need not discuss the validity of the reinvestigation or the amendment of the information. The petition before the CA does not concern the propriety or the merit of the reinvestigation. Also, an amendment is allowed even after arraignment for as long as it is beneficial to the accused, as in this case.[67]

We rule squarely on petitioner's claim that the RTC did not make its own evaluation of the records and evidence in the case when it allowed the amendment of the information.

Petitioner argues that upon filing of the information before the court, the prosecution relinquishes its full control of the case to the discretion of the trial court. Thus, where the prosecution seeks an amendment of the information, the RTC must make its own independent assessment of the merits of the motion based on an evaluation of the evidence. This, according to petitioner, it failed to do.

We agree with petitioner.

Here, the October 23, 2007 Order was issued with grave abuse of discretion because the RTC did not make an independent determination or assessment of the merits of the motion to amend information. In the September 17, 2003 Order, the court granted, without any reason or explanation, the motion in the following tenor:

ORDER

The Motion for Leave to Amend Information and to Admit Amended Information filed by the prosecution is hereby granted **without**

[67] *People v. Janairo*, G.R. No. 129254, July 22, 1999, 311 SCRA 58, 67.

objection on the part of Atty. Jose de Leon, Jr., counsel for accused Canicon, and **Atty. Joseph Arrojado, counsel for accused Espeleta**, and the Amended Information attached thereto is hereby admitted.

As manifested by Atty. Jose de Leon, Jr. that he is waiving the pre-trial in this case with respect to accused Canicon which is now deemed to have been terminated, the continuation of the hearing for the initial presentation of evidence for the prosecution is hereby set on November 3, 2003 at 8:30 a.m. Subpoena all government witnesses.

SO ORDERED.[68]

Likewise, the October 23, 2007 Order also did not indicate that Judge Baybay, in reinstating the September 17, 2003 Order, made his own examination of the facts and evidence in determining probable cause against Espeleta.[69] As earlier stated, once the information is filed with the court, the disposition of the case is subject to the discretion of the trial court. In turn, this judicial discretion is subject to the judicial requirement that the trial court must make its own evaluation of the case. This, the trial court failed to do.

The consequence of the above conclusion is the setting aside of the October 23, 2007 Order and reinstatement of the November 15, 2006 Resolution and the original information. We, again, emphasize that this will not place Espeleta in double jeopardy because as we concluded earlier, no jeopardy attached during the previous dismissals of the criminal case against her.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated September 29, 2010 and its Resolution dated March 4, 2011 are **SET ASIDE**, and the Resolution dated November 15, 2006 of Branch 31 of the Regional Trial Court of San Pedro, Laguna is **REINSTATED**. The Branch 31 of the Regional Trial Court of San Pedro, Laguna is **ORDERED** within 10 days from receipt of this Decision to **RESOLVE** the public prosecutor's motion for leave to amend the information and to admit amended information dated July

---

[68] *Rollo*, p. 69.

[69] *Id.* at 76-82.

29, 2003 in Criminal Case No. 12508-B, stating in its order clearly the reason or reasons for its resolution, after due consideration of the evidence of the parties. No costs.

SO ORDERED.

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

Leonardo-de Castro, J., on official leave.

THIRD DIVISION

[G.R. No. 196681. June 27, 2018]

CITY OF MANILA and OFFICE OF THE CITY TREASURER OF MANILA, *petitioners, vs.* **COSMOS BOTTLING CORPORATION,** *respondent.*

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 1125, AS AMENDED BY R.A. 9282 AND R.A. NO. 9503, AND REVISED RULES OF THE COURT OF TAX APPEALS (CTA); FILING OF A MOTION FOR RECONSIDERATION OR NEW TRIAL BEFORE THE CTA DIVISION IS AN INDISPENSABLE REQUIREMENT FOR FILING AN APPEAL BEFORE THE CTA *EN BANC*.— The CTA En Banc was correct in interpreting Section 18 of R.A. No. 1125, as amended by R.A. 9282 and R.A. No. 9503, x x x as requiring a prior motion for reconsideration or new trial before the same division of the CTA that rendered the assailed decision before filing a petition

---

[*] Designated as Acting Chairperson of the First Division per Special Order No. 2562 dated June 20, 2018.

[**] Designated as Acting Member of the First Division per Special Order No. 2560 dated May 11, 2018.

for review with the CTA En Banc. Failure to file such motion for reconsideration or new trial is cause for dismissal of the appeal before the CTA En Banc. x x x Clear it is from [Section 1, Rule 8 of the CTA Rules] that the filing of a motion for reconsideration or new trial is mandatory – not merely directory – as indicated by the word "must."

2. ID.; LOCAL TAXATION; ORDINANCE NOS. 7988 AND 8011 OF THE CITY OF MANILA HAVE BEEN DECLARED NULL AND VOID, HENCE, INVALID BASES FOR THE IMPOSITION OF BUSINESS TAXES.— At the time the CTA Division rendered the assailed decision, the cases of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila (2006)*, *The City of Manila v. Coca-Cola Bottlers, Inc. (2009)* and *City of Manila v. Coca-Cola Bottlers, Inc. (2010)* had already settled the matter concerning the validity of Ordinance Nos. 7988 and 8011. The said cases clarified that Ordinance Nos. 7988 and 8011, which amended Ordinance No. 7794, were null and void for failure to comply with the required publication for three (3) consecutive days and thus cannot be the basis for the collection of business taxes. It is not disputed that Cosmos was assessed with the tax on manufacturers under Section 14 and the tax on other businesses under Section 21 of Ordinance No. 7988, as amended by Ordinance No. 8011. Consistent with the settled jurisprudence above, the taxes assessed in this case, insofar as they are based on such void ordinances, must perforce be nullified.

3. ID.; ID.; THE COLLECTION OF TAXES UNDER BOTH SECTIONS 14 AND 21 OF THE REVENUE CODE OF MANILA CONSTITUTES DOUBLE TAXATION; RULING IN *THE CITY OF MANILA V. COCA-COLA BOTTLERS, INC.*, APPLIED.— While the City of Manila could impose against Cosmos a manufacturer's tax under Section 14 of Ordinance No. 7794, or the Revenue Code of Manila, it cannot at the same time impose the tax under Section 21 of the same code; otherwise, an obnoxious double taxation would set in. The petitioners erroneously argue that double taxation is wanting for the reason that the tax imposed under Section 21 is imposed on a different object and of a different nature as that in Section 14. The argument is not novel. In *The City of Manila v. Coca-Cola Bottlers, Inc*. (*2009*), the Court explained – [T]here is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794,

since these are being imposed: (1) on the same subject matter — the privilege of doing business in the City of Manila; (2) for the same purpose — to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority — petitioner City of Manila; (4) within the same taxing jurisdiction — within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods — per calendar year; and (6) of the same kind or character — a local business tax imposed on gross sales or receipts of the business. x x x ***[W]hen a municipality or city has already imposed a business tax on manufacturers***, etc. of liquors, distilled spirits, wines, and any other article of commerce, ***pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, etc. to a business tax under Section 143(h)*** of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are "not otherwise specified in preceding paragraphs." In the same way, ***businesses such as respondent's, already subject to a local business tax under Section 14*** of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], ***can no longer be made liable for local business tax under Section 21*** of the same Tax Ordinance [which is based on Section 143(h) of the LGC]. In reality, Cosmos, being a manufacturer of beverages, is similarly situated with Coca-Cola Bottlers, Inc. in the cited cases, with the difference only in the taxable periods of assessment. Thus, given that Cosmos is already paying taxes under Section 14 (just like Coca-Cola), it is not totally misplaced to consider the additional imposition of a tax under Section 21 as constituting double taxation, therefore excessive, warranting its refund to Cosmos as the CTA Division has correctly ordered.

4. ID.; ID.; THE COMPUTATION OF LOCAL BUSINESS TAX IS BASED ON GROSS SALES OR RECEIPTS OF THE PRECEDING CALENDAR YEAR.— Consistent with [Section 143(a) of the LGC], an assessment for business tax under Section 14 of Ordinance No. 7794 for the taxable year 2007 should be computed based on the taxpayer's gross sales or receipts of the ***preceding calendar year*** 2006. In this case, however, the petitioners based the computation of manufacturer's tax on Cosmos' gross sales for the calendar year 2005. The CTA Division was therefore correct in adjusting the computation of

the business tax on the basis of Cosmos' gross sales in 2006 which amount, incidentally, was lower than Cosmos' gross sales in 2005. The business tax paid corresponding to the difference is consequently refundable to Cosmos.

5. ID.; ID.; A TAXPAYER WHO HAD PROTESTED AND PAID AN ASSESSMENT MAY LATER ON INSTITUTE AN ACTION FOR REFUND; SECTIONS 195 AND 196 OF THE LOCAL GOVERNMENT CODE (LGC) ARE BOTH ADMINISTRATIVE REMEDIES THAT THE TAXPAYER SHOULD FIRST EXHAUST BEFORE BRINGING THE APPROPRIATE ACTION IN COURT.— [A] taxpayer who had protested ***and*** paid an assessment is not precluded from later on instituting an action for refund or credit. The taxpayers' remedies of protesting an assessment and refund of taxes are stated in Sections 195 and 196 of the LGC, x x x The first provides the procedure for contesting an assessment issued by the local treasurer; whereas, the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.

6. ID.; ID.; ID.; ID.; PROCEDURE FOR CONTESTING AN ASSESSMENT PURSUANT TO SECTION 195, EXPLAINED.— [T]he application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the

protest or inaction by the local treasurer, the taxpayer may *appeal* with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.

7. ID.; ID.; ID.; ID.; PROCEDURE AND REQUIREMENT FOR TAX REFUND OR CREDIT UNDER SECTION 196, DISCUSSED.— Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action. Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended **inaction** by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription. Additionally, Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be **erroneous or illegal**. Thus, under such circumstance, ***the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC***.

8. ID.; ID.; ID.; ID.; A TAXPAYER PROTESTING AN ASSESSMENT HAS THE ALTERNATIVE REMEDIES — EITHER APPEAL THE ASSESSMENT IN COURT OR PAY THE TAX AND THEN SEEK A REFUND; PERIODS AND REQUIREMENTS THAT MUST BE COMPLIED FOR

THESE REMEDIES TO PROSPER, ELABORATED.— [A] taxpayer facing an assessment may protest it and alternatively: (*1*) appeal the assessment in court, or (*2*) pay the tax and thereafter seek a refund. Such procedure may find jurisprudential mooring in *San Juan v. Castro* wherein the Court described for the first and only time the alternative remedies for a taxpayer protesting an assessment – either appeal the assessment before the court of competent jurisdiction, or pay the tax and then seek a refund. x x x Where an assessment is to be protested or disputed, the taxpayer may proceed (*a*) without payment, or (*b*) with payment of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; **otherwise, the assessment becomes conclusive and unappealable**. (*a*) Where no payment is made, the taxpayer's procedural remedy is governed strictly by **Section 195**. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment. (*b*) Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (**Section 195**, LGC) and at the same time seeking a refund of the taxes. In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer. The same implication should ensue even if the taxpayer were to style his suit in court as an action for refund or recovery of erroneously paid or illegally collected tax as pursued under **Section 196** of the LGC. In such a suit for refund, the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily **assailing the validity or correctness of the assessment** he had administratively protested. It must be understood, however, that in such latter case, the suit for refund is conditioned on the prior filing of a written claim for refund

or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer. Where the taxpayer had paid the assessment, it can be expected that in the same letter-protest, he would also pray that the taxes paid should be refunded to him. As previously mentioned, there is really no particular form or style necessary for the protest of an assessment or claim of refund of taxes. What is material is the substance of the letter submitted to the local treasurer. Equally important is the institution of the judicial action for refund **within thirty (30) days from the denial of or inaction on the letter-protest or claim**, not any time later, even if within two (2) years from the date of payment (as expressly stated in Section 196). Notice that the filing of such judicial claim for refund after questioning the assessment is within the two-year prescriptive period specified in Section 196. Note too that the filing date of such judicial action necessarily falls on the beginning portion of the two-year period from the date of payment. Even though the suit is seemingly grounded on Section 196, **the taxpayer could not avail of the full extent of the two-year period within which to initiate the action in court**.

9. ID.; ID.; ID.; ID.; TWO CONDITIONS THAT MUST BE SATISFIED TO SUCCESSFULLY PROSECUTE AN ACTION FOR TAX REFUND; RESPONDENT IS JUSTIFIED IN ASKING FOR THE REFUND OF THE ASSAILED TAXES IN CASE AT BAR.— [T]here are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax. x x x Under the circumstances, it is evident that Cosmos was fully justified in asking for the refund of the assailed taxes after protesting the same before the local treasurer. Consistent with the discussion in the premises, Cosmos may resort to, as it actually did, the alternative procedure of seeking a refund after timely protesting *and* paying the assessment. Considering that Cosmos initiated the judicial claim

for refund within 30 days from receipt of the denial of its protest, it stands to reason that the assessment which was validly protested had not yet attained finality.

APPEARANCES OF COUNSEL

Office of the City Legal Officer, Manila for petitioners.
A.M. Sison, Jr. & Associates for respondent.

D E C I S I O N

MARTIRES, *J.*:

The filing of a motion for reconsideration or new trial to question the decision of a division of the Court of Tax Appeals *(CTA)* is mandatory. An appeal brought directly to the CTA En Banc is dismissible for lack of jurisdiction.

In local taxation, an assessment for deficiency taxes made by the local government unit may be protested before the local treasurer without necessity of payment under protest. But if payment is made simultaneous with or following a protest against an assessment, the taxpayer may subsequently maintain an action in court, whether as an appeal from assessment or a claim for refund, so long as it is initiated within thirty (30) days from either decision or inaction of the local treasurer on the protest.

THE CASE

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the 16 February 2011[1] and 20 April 2011[2] Resolutions of the CTA En Banc. The 16 February 2011 Resolution dismissed the petition for review of the petitioners for failure to file a motion for reconsideration or new trial before

---

[1] *Rollo*, pp. 29-36; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas.

[2] *Id*. at 38-41.

the CTA Third Division *(CTA Division)*; while the 20 April 2011 Resolution denied the motion for reconsideration of the first assailed resolution. The CTA Division's 9 November 2010 Decision[3] ruled in favor of respondent Cosmos Bottling Corporation *(Cosmos)* by partially granting its appeal from the decision of the Regional Trial Court, Branch 49, Manila *(RTC),* in Civil Case No. 01-116881 entitled *Cosmos Bottling Corporation v. City of Manila and Liberty Toledo (City Treasurer of Manila)*.

THE FACTS

Antecedents

The CTA Division, narrates the antecedents as follows:

> For the first quarter of 2007, the City of Manila assessed [Cosmos] local business taxes and regulatory fees in the total amount of ₱1,226,781.05, as contained in the Statement of Account dated January 15, 2007. [Cosmos] protested the assessment through a letter dated January 18, 2007, arguing that Tax Ordinance Nos. 7988 and 8011, amending the Revenue Code of Manila (RCM), have been declared null and void. [Cosmos] also argued that the collection of local business tax under Section 21 of the RCM in addition to Section 14 of the same code constitutes double taxation.
>
> [Cosmos] also tendered payment of only ₱131,994.23 which they posit is the correct computation of their local business tax for the first quarter of 2007. This payment was refused by the City Treasurer. [Cosmos] also received a letter from the City Treasurer denying their protest, stating as follows:
>
> > In view thereof, this Office, much to our regret, has to deny your protest and that any action taken thereon will be sub-judice. Rest assured, however, that once we receive a final ruling on the matter, we will act in accordance therewith.
>
> [Cosmos] was thus constrained to pay the assessment of ₱1,226,781.05 as evidenced by Official Receipt No. BAJ-005340 dated February 13, 2007. On March 1, 2007, [Cosmos] filed a claim

---

[3] *Id*. at 43-51; penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justice Lovell R. Bautista.

for refund of ₱1,094,786.82 with the Office of the City Treasurer raising the same grounds as discussed in their protest.

On March 8, 2007, [Cosmos] filed its complaint with the RTC of Manila praying for the refund or issuance of a tax credit certificate in the amount of ₱1,094,786.82. The RTC in its decision ruled in favor of [Cosmos] but denied the claim for refund. The dispositive portion of the assailed Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered enjoining the respondent Treasurer of the City of Manila to refrain henceforth from imposing tax under Section 21 of the Revenue Code of Manila if it had already imposed tax on manufacturers under Section 14 of the same Code. As to the prayer in the petition for refund, the same is denied.

[Cosmos'] motion for partial reconsideration was also denied, hence, [the] Petition for Review [before the CTA].[4]

The petition for review was raffled to the CTA Division and docketed as CTA A.C. No. 60.

The Ruling of the CTA Division

The CTA Division essentially ruled that the collection by the City Treasurer of Manila of local business tax under both Section 21 and Section 14 of the Revenue Code of Manila constituted double taxation.[5] It also ruled that the City Treasurer cannot validly assess local business tax based on the increased rates under Tax Ordinance Nos. 7988 and 8011 after the same have been declared null and void.[6] Finally, the court held that Cosmos Bottling Corporation's *(Cosmos)* local business tax liability for the calendar year 2007 shall be computed based on the gross sales or receipts for the year 2006.[7]

The dispositive portion of the decision of the CTA Division reads:

---

[4] *Id.* at 44-45.

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

[6] *Id*. at 47.

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

WHEREFORE, finding merit in the instant Petition for Review, the same is hereby granted. The assailed Decision dated April 14, 2009 of the Regional Trial Court of Manila, Branch 49 in Civil Case No. 07-116881 is hereby PARTIALLY REVERSED. Accordingly, respondent is ENJOINED from imposing the business tax under Section 21 of the Revenue Code of Manila if it had already imposed tax on manufacturers under Section 14 of the same Code. Respondent, furthermore, is ORDERED to REFUND or to issue a TAX CREDIT CERTIFICATE to petitioner the amount of ₱1,094,786.82, representing excess business taxes collected for the first quarter of year 2007.[8]

Instead of filing a motion for reconsideration or new trial, the petitioners directly filed with the CTA En Banc a petition for review[9] praying that the decision of the CTA Division be reversed or set aside.

The Ruling of the CTA En Banc

In its Resolution of 16 February 2011, the CTA En Banc ruled that the direct resort to it without a prior motion for reconsideration or new trial before the CTA Division violated Section 18 of Republic Act *(R.A.)* No. 1125,[10] as amended by R.A. No. 9282 and R.A. No. 9503, and Section 1, Rule 8 of the Revised Rules of the CTA *(CTA Rules)*.[11]

---

[8] *Id.* at 50.

[9] The petitioners previously filed a Motion for Extension of Time to File a Petition for Review, *id*. at 29.

[10] Section 18. *Appeal to the Court of Tax Appeals En Banc.* — No civil proceeding involving matters arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of this Act.

A party adversely affected by a resolution of a Division of the CTA on motion for reconsideration or new trial, may file a petition for review with the CTA *en banc.* (underlining supplied)

[11] Section 1. *Review of cases in the Court en banc.* – In cases falling under the exclusive appellate jurisdiction of the Court *en banc,* the petition for review of a decision or resolution of the Court in Division must be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (underscoring supplied)

The petitioners sought reconsideration, but their motion was denied by the CTA En Banc. Hence, the appeal before this Court.

The Present Petition for Review

The petitioners assigned the following errors allegedly committed by the CTA En Banc:

1. The Honorable CTA En Banc erred in not reconsidering its Order dismissing the case on procedural grounds.
2. The 3rd Division of the CTA committed reversible error when it ruled in favor of respondent Cosmos despite its failure to appeal the assessment within 30 days from receipt of the denial by the City Treasurer.
3. The 3rd Division of the CTA committed grave error when it failed to consider that the assessment subject of this case has already become final and executory and no longer appealable.
4. The 3rd Division of the CTA gravely erred in granting Cosmos' claim despite erroneously filing the instant case under the provision of Section 196 of the LGC.[12]

On the first ground, the petitioners essentially invoke excusable mistake on the part of their handling lawyer in asking the Court to resolve the case on the merits. They argue that the Court had on many occasions set aside the rules of procedure in order to afford substantial justice.

On the second, third, and fourth grounds, the petitioners claim that Cosmos' remedy was one of protest against assessment as demonstrated by its letter dated 18 January 2007. Being so, Cosmos' adopted remedy should be governed by Section 195 of the Local Government Code *(LGC)*. Pursuant to such provision, Cosmos had only thirty (30) days from receipt of denial of the protest within which to file an appeal before a court of competent jurisdiction. However, Cosmos failed to comply with the period of appeal, conveniently shifting its theory

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

from tax protest to tax refund under Section 196 of the LGC when it later on filed a "claim for refund/tax credit of illegally/erroneously paid taxes" on 1 March 2007. The petitioners, thus, argue that Cosmos had already lost its right to appeal and is already precluded from questioning the denial of its protest.

In its comment,[13] Cosmos counters that the rules should not be lightly disregarded by harping on substantial justice and the policy of liberal construction. It also insists that it is not Section 195 of the LGC that is applicable to it but Section 196 of the same code.

ISSUES

Whether the CTA En Banc correctly dismissed the petition for review before it for failure of the petitioners to file a motion for reconsideration or new trial with the CTA Division.

Whether a taxpayer who had initially protested and paid the assessment may shift its remedy to one of refund.

OUR RULING

We rule for Cosmos.

I.

The filing of a motion for reconsideration or new trial before the CTA Division is an indispensable requirement for filing an appeal before the CTA En Banc.

The CTA En Banc was correct in interpreting Section 18 of R.A. No. 1125, as amended by R.A. 9282 and R.A. No. 9503, which states –

Section 18. *Appeal to the Court of Tax Appeals En Banc.* – No civil proceeding involving matter arising under the National Internal Revenue Code, the Tariff and Customs Code or the Local Government Code shall be maintained, except as herein provided, until and unless

[13] *Id*. at 55-59.

an appeal has been previously filed with the CTA and disposed of this Act.

A party adversely affected by a resolution of a Division of the CTA on motion for reconsideration or new trial, may file a petition for review with the CTA *en banc.* (underlining supplied)

as requiring a prior motion for reconsideration or new trial before the same division of the CTA that rendered the assailed decision before filing a petition for review with the CTA En Banc. Failure to file such motion for reconsideration or new trial is cause for dismissal of the appeal before the CTA En Banc.

Corollarily, Section 1, Rule 8 of the CTA Rules provides:

Section 1. *Review of cases in the Court en banc.* — In cases falling under the exclusive appellate jurisdiction of the Court en banc, the petition for review of a decision or resolution of the Court in Division **must** be preceded by the filing of a timely motion for reconsideration or new trial with the Division. (emphasis supplied)

Clear it is from the cited rule that the filing of a motion for reconsideration or new trial is mandatory – not merely directory – as indicated by the word "must."

Thus, in *Asiatrust Development Bank, Inc. v. Commissioner of Internal Revenue (Asiatrust),*[14] we declared that a timely motion for reconsideration or new trial must first be filed with the CTA Division that issued the assailed decision or resolution in order for the CTA En Banc to take cognizance of an appeal via a petition for review. Failure to do so is a ground for the dismissal of the appeal as the word "must" indicates that the filing of a prior motion is mandatory, and not merely directory.[15] In *Commissioner of Customs v. Marina Sales, Inc. (Marina Sales),*[16] which was cited in *Asiatrust,* we held:

The rules are clear. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive

---

[14] G.R. Nos. 201530 & 201680-81, 19 April 2017.

[15] *Id.*

[16] 650 Phil. 143 (2010).

appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division. Procedural rules are not to be trifled with or be excused simply because their noncompliance may have resulted in prejudicing a party's substantive rights. Rules are meant to be followed. They may be relaxed only for very exigent and persuasive reasons to relieve a litigant of an injustice not commensurate to his careless non-observance of the prescribed rules.[17] (citations omitted)

The rules are to be relaxed only in the interest of justice and to benefit the deserving.[18]

We cannot lend to the petitioners the benefit of liberal application of the rules. As in *Marina Sales,* the rules may be relaxed when to do so would afford a litigant substantial justice. After a cursory examination of the records of the case, we find that the petitioners, as determined by the CTA Division, erroneously assessed and collected from Cosmos local business taxes for the first quarter of 2007; thus, a refund is warranted.

The ruling of the CTA Division is anchored on the following findings:

(1) the assessment against Cosmos was based on Ordinance Nos. 7988 and 8011 (Revenue Code of Manila);

(2) the assessment against Cosmos included taxes imposed under Section 21, in addition to Section 14, of the Revenue Code of Manila; and

(3) the local taxes collected from Cosmos for the first quarter of 2007 was based on its gross receipts in 2005.

We cannot help but sustain the ruling of the CTA Division that the City of Manila cannot validly assess local business taxes under Ordinance Nos. 7988 and 8011 because they are void and of no legal effect; the collection of local business taxes under Section 21 in addition to Section 14 of the Revenue

---

[17] *Id*. at 152.

[18] *Magsino v. De Ocampo,* 741 Phil. 394, 410 (2014).

Code of Manila constitutes double taxation; and the 2007 local business tax assessed against Cosmos should be computed based on the latter's gross receipts in 2006.

1. Ordinance Nos. 7988 and 8011 have been declared null and void, hence, invalid bases for the imposition of business taxes.

At the time the CTA Division rendered the assailed decision, the cases of *Coca-Cola Bottlers Philippines, Inc. v. City of Manila (2006)*,[19] *The City of Manila v. Coca-Cola Bottlers, Inc. (2009)*[20] and *City of Manila v. Coca-Cola Bottlers, Inc. (2010)*[21] had already settled the matter concerning the validity of Ordinance Nos. 7988 and 8011. The said cases clarified that Ordinance Nos. 7988 and 8011, which amended Ordinance No. 7794, were null and void for failure to comply with the required publication for three (3) consecutive days and thus cannot be the basis for the collection of business taxes.

It is not disputed that Cosmos was assessed with the tax on manufacturers under Section 14 and the tax on other businesses under Section 21 of Ordinance No. 7988, as amended by Ordinance No. 8011. Consistent with the settled jurisprudence above, the taxes assessed in this case, insofar as they are based on such void ordinances, must perforce be nullified. Thus, what remains enforceable is the old Ordinance No. 7794. Accordingly, the business tax assessable against Cosmos should be based on the rates provided by this Ordinance.

2. The collection of taxes under both Sections 14 and 21 of the Revenue Code of Manila constitutes double taxation.

While the City of Manila could impose against Cosmos a manufacturer's tax under Section 14 of Ordinance No. 7794,

---

[19] 526 Phil. 249 (2006).

[20] 612 Phil. 609 (2009).

[21] G.R. No. 167283, 10 February 2010.

or the Revenue Code of Manila, it cannot at the same time impose the tax under Section 21 of the same code; otherwise, an obnoxious double taxation would set in. The petitioners erroneously argue that double taxation is wanting for the reason that the tax imposed under Section 21 is imposed on a different object and of a different nature as that in Section 14. The argument is not novel. In *The City of Manila v. Coca-Cola Bottlers, Inc. (2009),*[22] the Court explained –

> [T]here is indeed double taxation if respondent is subjected to the taxes under both Sections 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter — the privilege of doing business in the City of Manila; (2) for the same purpose — to make persons conducting business within the City of Manila contribute to city revenues; (3) by the same taxing authority — petitioner City of Manila; (4) within the same taxing jurisdiction — within the territorial jurisdiction of the City of Manila; (5) for the same taxing periods — per calendar year; and (6) of the same kind or character — a local business tax imposed on gross sales or receipts of the business.
>
> The distinction petitioners attempt to make between the taxes under Sections 14 and 21 of Tax Ordinance No. 7794 is specious. The Court revisits Section 143 of the LGC, the very source of the power of municipalities and cities to impose a local business tax, and to which any local business tax imposed by petitioner City of Manila must conform. It is apparent from a perusal thereof that ***when a municipality or city has already imposed a business tax on manufacturers***, etc. of liquors, distilled spirits, wines, and any other article of commerce, ***pursuant to Section 143(a) of the LGC, said municipality or city may no longer subject the same manufacturers, etc. to a business tax under Section 143(h)*** of the same Code. Section 143(h) may be imposed only on businesses that are subject to excise tax, VAT, or percentage tax under the NIRC, and that are "not otherwise specified in preceding paragraphs." In the same way, ***businesses such as respondent's, already subject to a local business tax under Section 14*** of Tax Ordinance No. 7794 [which is based on Section 143(a) of the LGC], ***can no longer be made liable for local business tax under***

---

[22] *The City of Manila v. Coca-Cola Bottlers, Inc., supra* note 17.

Section 21 of the same Tax Ordinance [which is based on Section 143(h) of the LGC].[23] (emphases supplied)

In reality, Cosmos, being a manufacturer of beverages,[24] is similarly situated with Coca-Cola Bottlers, Inc. in the cited cases, with the difference only in the taxable periods of assessment. Thus, given that Cosmos is already paying taxes under Section 14 (just like Coca-Cola), it is not totally misplaced to consider the additional imposition of a tax under Section 21 as constituting double taxation, therefore excessive, warranting its refund to Cosmos as the CTA Division has correctly ordered.

Computation of Business Tax Under Section 14

We consider next the proper basis for the computation of the business tax under Section 14 that is imposable against Cosmos.

3. The computation of local business tax is based on gross sales or receipts of the preceding calendar year.

It is undisputed that Section 14 of the Revenue Code of Manila is derived from Section 143(a) of the LGC which provides:

Section 143. *Tax on Business*. – The municipality may impose taxes on the following businesses:

(a) On ***manufacturers***, assemblers, repackers, processors, brewers, distillers, rectifiers, and compounders x x x in accordance with the following schedule: With gross sales or receipts for the ***preceding calendar year*** in the amount of:

x x x x x x x x x (emphasis supplied)

Consistent with the above provision, an assessment for business tax under Section 14 of Ordinance No. 7794 for the taxable year 2007 should be computed based on the taxpayer's gross sales or receipts of the ***preceding calendar year*** 2006.

---

[23] *Id*. at 632-633.

[24] *Rollo,* pp. 86-87, 90 and 126-127.

In this case, however, the petitioners based the computation of manufacturer's tax on Cosmos' gross sales for the calendar year 2005. The CTA Division was therefore correct in adjusting the computation of the business tax on the basis of Cosmos' gross sales in 2006 which amount, incidentally, was lower than Cosmos' gross sales in 2005. The business tax paid corresponding to the difference is consequently refundable to Cosmos.

II.

A taxpayer who had protested and paid an assessment may later on institute an action for refund.

The petitioners submit that the assessment against Cosmos became final and executory when the latter effectively abandoned its protest and instead sued in court for the refund of the assessed taxes and charges.

We cannot agree mainly for two reasons.

First, even a cursory glance at the complaint filed by Cosmos would readily reveal that the action is not just for the refund of its paid taxes but also one assailing the assessment in question. Cosmos captioned its petition before the RTC as *"For: The Revision of Statement of Account (**Preliminary Assessment**) and For Refund or Credit of Local Business Tax Erroneously/ Illegally Collected."*[25] The allegations in said complaint[26] likewise confirm that Cosmos did not agree with the assessment prepared by Liberty M. Toledo *(Toledo)* who was the City Treasurer of the City of Manila at the time. In asking the court to refund the assessed taxes it had paid, Cosmos essentially alleged that the basis of the payment, which is the assessment issued by Toledo, is erroneous or illegal.

---

[25] *Id*. at 89.

[26] *Id*. at 90-93; paragraphs 5 to 10 of the complaint.

It is, thus, totally misplaced to consider Cosmos as having abandoned its protest against the assessment. By seasonably instituting the petition before the RTC, the assessment had not attained finality.

Second, a taxpayer who had protested ***and*** paid an assessment is not precluded from later on instituting an action for refund or credit.

The taxpayers' remedies of protesting an assessment and refund of taxes are stated in Sections 195 and 196 of the LGC, to wit:

Section 195. *Protest of Assessment*. – When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

Section 196. *Claim for Refund of Tax Credit*. – No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

The first provides the procedure for contesting an assessment issued by the local treasurer; whereas, the second provides the procedure for the recovery of an erroneously paid or illegally

collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.

Obviously, the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may *appeal*[27] with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.

On the other hand, Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from

---

[27] In *Yamane v. BA Lepanto Condominium Corporation,* 510 Phil. 750, 763-764 (2005), the Court explained that even though Section 195 utilized the term 'appeal', the law did not vest appellate jurisdiction on the regional trial courts over the denial by the local treasurer of a tax protest. The Court described the court's jurisdiction in this instance as original in character, *viz:*

"[S]ignificantly, the Local Government Code, or any other statute for that matter, does not expressly confer appellate jurisdiction on the part of regional trial courts from the denial of a tax protest by a local treasurer. On the other hand, Section 22 of B.P. 129 expressly delineates the appellate jurisdiction of the Regional Trial Courts, confining as it does said appellate

him. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.

Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended **inaction** by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.

Additionally, Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be **erroneous or illegal**. Thus, under such circumstance, ***the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC***.

Clearly, when a taxpayer is assessed a deficiency local tax, fee or charge, he may protest it under Section 195 even without making payment of such assessed tax, fee or charge. This is because the law on local government taxation, save in the case

---

jurisdiction to cases decided by Metropolitan, Municipal, and Municipal Circuit Trial Courts. Unlike in the case of the Court of Appeals, B.P. 129 does not confer appellate jurisdiction on Regional Trial Courts over rulings made by non-judicial entities."

of real property tax,[28] does not expressly require *"payment under protest"* as a procedure prior to instituting the appropriate proceeding in court. This implies that the success of a judicial action questioning the validity or correctness of the assessment is not necessarily hinged on the previous payment of the tax under protest.

Needless to say, there is nothing to prevent the taxpayer from paying the tax under protest or simultaneous to a protest. There are compelling reasons why a taxpayer would prefer to pay while maintaining a protest against the assessment. For instance, a taxpayer who is engaged in business would be hard-pressed to secure a business permit unless he pays an assessment for business tax and/or regulatory fees. Also, a taxpayer may pay the assessment in order to avoid further penalties, or save his properties from levy and distraint proceedings.

The foregoing clearly shows that a taxpayer facing an assessment may protest it and alternatively: *(1)* appeal the assessment in court, or *(2)* pay the tax and thereafter seek a refund.[29] Such procedure may find jurisprudential mooring in *San Juan v. Castro*[30] wherein the Court described for the first and only time the alternative remedies for a taxpayer protesting an assessment – either appeal the assessment before the court of competent jurisdiction, or pay the tax and then seek a refund.[31] The Court, however, did not elucidate on the relation of the second mentioned alternative option, i.e.,

---

[28] Section 252 of the LGC requires payment under protest of an assessment for real property tax, to wit:

Section 252. *Payment Under Protest.*— (a) No protest shall be entertained unless the taxpaper first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

[29] See *San Juan v. Castro,* 565 Phil. 810, 816-817 (2007) citing Ernesto D. Acosta and Jose C. Vitug, *Tax Law and Jurisprudence*, 2nd edition. Rex Book Store: Manila, Philippines, 2000, pp. 463-464.

[30] *Id*. at 817.

[31] *Id*.; the pertinent text of the decision in *San Juan v. Castro* reads:

pay the tax and then seek a refund, to the remedy stated in Section 196.

As this has a direct bearing on the arguments raised in the petition, we thus clarify.

Where an assessment is to be protested or disputed, the taxpayer may proceed *(a)* without payment, or *(b)* with payment[32] of the assessed tax, fee or charge. Whether there is payment of the assessed tax or not, it is clear that the protest in writing must be made within sixty (60) days from receipt of the notice of assessment; otherwise, the assessment shall become final and conclusive. Additionally, the subsequent court action must be initiated within thirty (30) days from denial or inaction by the local treasurer; **otherwise, the assessment becomes conclusive and unappealable**.

(a) Where no payment is made, the taxpayer's procedural remedy is governed strictly by **Section 195**. That is, in case of whole or partial denial of the protest, or inaction by the local treasurer, the taxpayer's only recourse is to *appeal* the assessment with the court of competent jurisdiction. The appeal before the court does not seek a refund but only questions the validity or correctness of the assessment.

(b) Where payment was made, the taxpayer may thereafter maintain an action in court questioning the validity and correctness of the assessment (**Section 195**, LGC) and at the same time seeking a refund of the taxes. In truth, it would be illogical for the taxpayer to only seek a reversal of the assessment without praying for the refund of taxes. Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer.

"That petitioner protested in writing against the assessment of tax due and the basis thereof is on record as in fact it was on that account that respondent sent him the above-quoted July 15, 2005 letter which operated as a denial of petitioner's written protest.

Petitioner should thus have, following the earlier above-quoted Section 195 of the Local Government Code, either appealed the assessment before the court of competent jurisdiction or paid the tax and then sought a refund." (citations omitted)

[32] Whether payment was made before, on, or after the date of filing the formal protest.

The same implication should ensue even if the taxpayer were to style his suit in court as an action for refund or recovery of erroneously paid or illegally collected tax as pursued under **Section 196** of the LGC. In such a suit for refund, the taxpayer cannot successfully prosecute his theory of erroneous payment or illegal collection of taxes without necessarily **assailing the validity or correctness of the assessment** he had administratively protested.

It must be understood, however, that in such latter case, the suit for refund is conditioned on the prior filing of a written claim for refund or credit with the local treasurer. In this instance, what may be considered as the administrative claim for refund is the letter-protest submitted to the treasurer. Where the taxpayer had paid the assessment, it can be expected that in the same letter-protest, he would also pray that the taxes paid should be refunded to him.[33] As previously mentioned, there is really no particular form or style necessary for the protest of an assessment or claim of refund of taxes. What is material is the substance of the letter submitted to the local treasurer.

Equally important is the institution of the judicial action for refund **within thirty (30) days from the denial of or inaction on the letter-protest or claim**, not any time later, even if within two (2) years from the date of payment (as expressly stated in Section 196). Notice that the filing of such judicial claim for refund after questioning the assessment is within the two-year prescriptive period specified in Section 196. Note too that the filing date of such judicial action necessarily falls on the beginning portion of the two-year period from the date of payment. Even though the suit is seemingly grounded on Section 196**, the taxpayer could not avail of the full extent of the two-year period within which to initiate the action in court**.

The reason is obvious. This is because an assessment was made, and if not appealed in court within thirty (30) days from decision or inaction on the protest, it becomes conclusive and unappealable.

---

[33] Where protest against assessment was first made, then later payment of the assessed tax, substantial justice or procedural economy, at the very least, demands that the prior letter-protest be treated as having the same effect and import as a written claim for refund for purposes of satisfying the requirement of exhaustion of administrative remedies.

Even if the action in court is one of claim for refund, the taxpayer cannot escape assailing the assessment, invalidity or incorrectness, the very foundation of his theory that the taxes were paid erroneously or otherwise collected from him illegally. Perforce, the subsequent judicial action, after the local treasurer's decision or inaction, must be initiated within thirty (30) days later. It cannot be anytime thereafter because the lapse of 30 days from decision or inaction results in the assessment becoming conclusive and unappealable. In short, the scenario wherein the administrative claim for refund falls on the early stage of the two-year period but the judicial claim on the last day or late stage of such two-year period does not apply in this specific instance where an assessment is issued.

To stress, where an assessment is issued, the taxpayer cannot choose to pay the assessment and thereafter seek a refund ***at any time*** within the full period of two years from the date of payment as Section 196 may suggest. If refund is pursued, the taxpayer must administratively question the validity or correctness of the assessment in the 'letter-claim for refund' *within 60 days from receipt of the notice of assessment,* and thereafter bring suit in court *within 30 days from either decision or inaction* by the local treasurer.

Simply put, there are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment. *One,* pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund. *Two,* bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax.

In this case, after Cosmos received the assessment of Toledo on 15 January 2007, it forthwith protested such assessment through a letter dated 18 January 2007.[34] Constrained to pay the assessed taxes and charges, Cosmos subsequently wrote the Office of the City Treasurer another letter asking for the refund and reiterating the grounds raised in the previous submitted protest

[34] *Rollo*, p. 44.

letter.[35] In the meantime, Cosmos received on 6 February 2007 the letter of Toledo denying its protest.[36] Thus, on 8 March 2007, or exactly thirty (30) days from its receipt of the denial, Cosmos brought the action before the RTC of Manila.

Under the circumstances, it is evident that Cosmos was fully justified in asking for the refund of the assailed taxes after protesting the same before the local treasurer. Consistent with the discussion in the premises, Cosmos may resort to, as it actually did, the alternative procedure of seeking a refund after timely protesting *and* paying the assessment. Considering that Cosmos initiated the judicial claim for refund within 30 days from receipt of the denial of its protest, it stands to reason that the assessment which was validly protested had not yet attained finality.

To reiterate, Cosmos, after it had protested and paid the assessed tax, is permitted by law to seek a refund having fully satisfied the twin conditions for prosecuting an action for refund before the court.

Consequently, the CTA did not commit a reversible error when it allowed the refund in favor of Cosmos.

WHEREFORE, the petition is **DENIED** for lack of merit. The 16 February 2011 and 20 April 2011 Resolutions of the Court of Tax Appeals En Banc in C.T.A. E.B. No. 702 are hereby **AFFIRMED**.

The 9 November 2010 Decision of the Court of Tax Appeals Third Division in C.T.A. AC No. 60 is likewise **AFFIRMED.**

SO ORDERED.

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

---

[35] *Id*. at 44-45.

[36] The Complaint alleged 6 February 2007 as the date Cosmos received Toledo's letter denying the protest. The petitioners failed to controvert this allegation. Thus, the RTC proceeded to render its decision operating under the premise that Cosmos seasonably filed the action on 8 March 2007, or within the 30-day period to appeal. The CTA Division likewise affirmed such finding of the lower court in its decision in C.T.A. AC No. 60.

THIRD DIVISION

[G.R. No. 199455. June 27, 2018]

FEDERAL EXPRESS CORPORATION, *petitioner, vs.* **LUWALHATI R. ANTONINO and ELIZA BETTINA RICASA ANTONINO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; COMMON CARRIERS; AIR WAYBILL; STIPULATION IN THE AIR WAYBILL REQUIRING THE FILING OF A FORMAL CLAIM WITHIN A SPECIFIED PERIOD IS VALID; CONDITION PRECEDENT BEFORE THE CLAIM FOR DAMAGES AGAINST THE CARRIER FOR FAILURE TO DELIVER THE GOODS MAY PROSPER; WHERE THE SHIPPER'S INABILITY TO EXPEDIENTLY FILE A FORMAL CLAIM CAN BE ATTRIBUTED TO THE COMMON CARRIER, SHIPPER IS DEEMED TO HAVE SUBSTANTIALLY COMPLIED THEREWITH.— A provision in a contract of carriage requiring the filing of a formal claim within a specified period is a valid stipulation. Jurisprudence maintains that compliance with this provision is a legitimate condition precedent to an action for damages arising from loss of the shipment[.] x x x For their claim to prosper, respondents must, thus, surpass two (2) hurdles: first, the filing of their formal claim within 45 days; and second, the subsequent filing of the action within two (2) years. There is no dispute on respondents' compliance with the second period as their Complaint was filed on April 5, 2004. In appraising respondents' compliance with the first condition, this Court is guided by settled standards in jurisprudence. In *Philippine Airlines, Inc. v. Court of Appeals,* Philippine Airlines alleged that shipper Gilda Mejia (Mejia) failed to file a formal claim within the period stated in the Air Waybill. This Court ruled that there was substantial compliance with the period because of the zealous efforts demonstrated by Mejia in following up her claim. These efforts coupled with Philippine Airlines' "tossing around the claim and leaving it unresolved for an indefinite period of time" led this Court to deem the requisite period satisfied. This is pursuant to Article

1186 of the New Civil Code which provides that "[t]he condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment"[.] x x x Here, the Court of Appeals detailed the efforts made by respondent Luwalhati and consignee Sison. It also noted petitioner's ambiguous and evasive responses, nonchalant handling of respondents' concerns, and how these bogged down respondents' actions and impaired their compliance with the required 45-day period[.] x x x Petitioner has been unable to persuasively refute Luwalhati's recollection of the efforts that she and Sison exerted, and of the responses it gave them. It instead insists that the 45-day period stated in its Air Waybill is sacrosanct. This Court is unable to bring itself to sustaining petitioner's appeal to a convenient reprieve. It is one with the Regional Trial Court and the Court of Appeals in stressing that respondents' inability to expediently file a formal claim can only be attributed to petitioner hampering its fulfillment. Thus, respondents must be deemed to have substantially complied with the requisite 45-day period for filing a formal claim.

2. ID.; ID.; ID.; RESPONSIBILITY OF THE COMMON CARRIER TO EXERCISE EXTRAORDINARY DILIGENCE, EXPLAINED; PRESUMPTION OF NEGLIGENCE ON THE PART OF THE CARRIER ARISES UPON FAILURE TO DELIVER; EXCEPTIONS, ENUMERATED.— "Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights." Consistent with the mandate of extraordinary diligence, the Civil Code stipulates that in case of loss or damage to goods, common carriers are presumed to be negligent or at fault, except in the following instances: (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity; (2) Act of the public enemy in war, whether international or civil; (3) Act or omission of the shipper or owner of the goods; (4)The character of the goods or defects in the packing or in the containers; (5) Order or act of competent public authority. In all other cases, common carriers must prove that they exercised extraordinary diligence in the performance of their duties, if they are to be absolved of liability. The responsibility of common carriers to exercise extraordinary diligence lasts from the time the goods are unconditionally placed in their possession until

they are delivered "to the consignee, or to the person who has a right to receive them." Thus, part of the extraordinary responsibility of common carriers is the duty to ensure that shipments are received by none but "the person who has a right to receive them." Common carriers must ascertain the identity of the recipient. Failing to deliver shipment to the designated recipient amounts to a failure to deliver. The shipment shall then be considered lost, and liability for this loss ensues.

3. ID.; ID.; ID.; ID.; THAT THE PACKAGE WAS NOT RECEIVED BY THE DESIGNATED CONSIGNEE BUT ANOTHER PERSON WHO WAS NOT EVEN PROPERLY IDENTIFIED LEADS TO A REASONABLE CONCLUSION THAT THE COMMON CARRIER FAILED TO EXERCISE EXTRAORDINARY DILIGENCE AND THAT THE PACKAGE WAS NOT DELIVERED.— Petitioner is unable to prove that it exercised extraordinary diligence in ensuring delivery of the package to its designated consignee. It claims to have made a delivery but it even admits that it was not to the designated consignee. It asserts instead that it was authorized to release the package without the signature of the designated recipient and that the neighbor of the consignee, one identified only as "LGAA 385507," received it. This fails to impress. The assertion that receipt was made by "LGAA 385507" amounts to little, if any, value in proving petitioner's successful discharge of its duty. "LGAA 385507" is nothing but an alphanumeric code that outside of petitioner's personnel and internal systems signifies nothing. This code does not represent a definite, readily identifiable person, contrary to how commonly accepted identifiers, such as numbers attached to official, public, or professional identifications like social security numbers and professional license numbers, function. Reliance on this code is tantamount to reliance on nothing more than petitioner's bare, self-serving allegations. Certainly, this cannot satisfy the requisite of extraordinary diligence consummated through delivery to none but "the person who has a right to receive" the package. Given the circumstances in this case, the more reasonable conclusion is that the package was not delivered. The package shipped by respondents should then be considered lost, thereby engendering the liability of a common carrier for this loss.

4. ID.; ID.; ID.; SHIPPING CHECKS DID NOT CONSTITUTE VIOLATION OF THE TERMS OF THE AIR WAYBILL

AS TO EXEMPT COMMON CARRIER FROM LIABILITY; CHECKS CANNOT BE INCLUDED IN THE PHRASE PROHIBITING "*TRANSPORTATION OF MONEY*."— The prohibition [in the Air Waybill] has a singular object: money. What follows the phrase "transportation of *money*" is a phrase enclosed in parentheses, and commencing with the words "including but not limited to." The additional phrase, enclosed as it is in parentheses, is not the object of the prohibition, but merely a postscript to the word "money." Moreover, its introductory words "including but not limited to" signify that the items that follow are illustrative examples; they are not qualifiers that are integral to or inseverable from "money." Despite the utterance of the enclosed phrase, the singular prohibition remains: money. Money is "what is generally acceptable in exchange for goods." It can take many forms, most commonly as coins and banknotes. Despite its myriad forms, its key element is its general acceptability. Laws usually define what can be considered as a generally acceptable medium of exchange. x x x It is settled in jurisprudence that checks, being only negotiable instruments, are only substitutes for money and are not legal tender; more so when the check has a named payee and is not payable to bearer. x x x The Air Waybill's prohibition mentions "negotiable instruments" only in the course of making an example. Thus, they are not prohibited items themselves. Moreover, the illustrative example does not even pertain to negotiable instruments *per se* but to "negotiable instruments *equivalent to cash*."

5. ID.; ID.; ID.; ID.; CHECKS WITH A SPECIFIED PAYEE, AS IN THIS CASE, ARE NOT "*NEGOTIABLE INSTRUMENTS EQUIVALENT TO CASH.*"— The checks involved here are payable to specific payees, Maxwell-Kates, Inc. and the New York County Department of Finance. Thus, they are *order instruments*. They are not payable to their bearer, i.e., *bearer instruments*. x x x There is no question that checks, whether payable to order or to bearer, so long as they comply with the requirements under Section 1 of the Negotiable Instruments Law, are negotiable instruments. The more relevant consideration is whether checks with a specified payee are *negotiable instruments equivalent to cash*, as contemplated in the example added to the Air Waybill's prohibition. This Court thinks not. An order instrument, which has to be endorsed by

the payee before it may be negotiated, cannot be a negotiable instrument equivalent to cash. It is worth emphasizing that the instruments given as further examples under the Air Waybill must be endorsed to be considered equivalent to cash[.]

6. ID.; ID.; ID.; THE SUBJECT AIR WAYBILL IS A CONTRACT OF ADHESION, IT MUST BE CONSTRUED STRICTLY AGAINST THE PARTY WHO PREPARED IT; HENCE, THE PROHIBITION AGAINST TRANSPORTING MONEY MUST BE CONSTRUED AGAINST PETITIONER AND LIBERALLY FOR RESPONDENTS.— The contract between petitioner and respondents is a contract of adhesion; it was prepared solely by petitioner for respondents to conform to. Although not automatically void, any ambiguity in a contract of adhesion is construed strictly against the party that prepared it. Accordingly, the prohibition against transporting money must be restrictively construed against petitioner and liberally for respondents. Viewed through this lens, with greater reason should respondents be exculpated from liability for shipping documents or instruments, which are reasonably understood as not being money, and for being unable to declare them as such.

APPEARANCES OF COUNSEL

Quisumbing Torres Law Office for petitioner.
Alentajan Law Office for respondents.

D E C I S I O N

LEONEN, *J.*:

The duty of common carriers to observe extraordinary diligence in shipping goods does not terminate until delivery to the consignee or to the specific person authorized to receive the shipped goods. Failure to deliver to the person authorized to receive the goods is tantamount to loss of the goods, thereby engendering the common carrier's liability for loss. Ambiguities in contracts of carriage, which are contracts of adhesion, must be interpreted against the common carrier that prepared these contracts.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed Court of Appeals August 31, 2011 Decision[2] and November 21, 2011 Resolution[3] in CA-G.R. CV No. 91216 be reversed and set aside and that Luwalhati R. Antonino (Luwalhati) and Eliza Bettina Ricasa Antonino (Eliza) be held liable on Federal Express Corporation's (FedEx) counterclaim.

The assailed Court of Appeals August 31, 2011 Decision denied the appeal filed by FedEx and affirmed the May 8, 2008 Decision[4] of Branch 217, Regional Trial Court, Quezon City, awarding moral and exemplary damages, and attorney's fees to Luwalhati and Eliza.[5] In its assailed November 21, 2011 Resolution, the Court of Appeals denied FedEx's Motion for Reconsideration.[6]

Eliza was the owner of Unit 22-A (the Unit) in Allegro Condominium, located at 62 West 62nd St., New York, United States.[7] In November 2003, monthly common charges on the Unit became due. These charges were for the period of July 2003 to November 2003, and were for a total amount of US$9,742.81.[8]

On December 15, 2003, Luwalhati and Eliza were in the Philippines. As the monthly common charges on the Unit had

---

[1] *Rollo,* pp. 10–54.

[2] *Id*. at 56–70. The Decision was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Ricardo R. Rosario of the Special Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 72–73. The Resolution was penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Ricardo R. Rosario of the Former Special Fourth Division, Court of Appeals, Manila.

[4] *Id*. at 203–209. The Decision, docketed as Civil Case No. Q-04-52325, was penned by Pair Judge Hilario L. Laqui.

[5] Id. at 69.

[6] *Id*. at 73.

[7] *Id*. at 118 and 203.

[8] *Id*. at 256.

become due, they decided to send several Citibank checks to Veronica Z. Sison (Sison), who was based in New York. Citibank checks allegedly amounting to US$17,726.18 for the payment of monthly charges and US$11,619.35 for the payment of real estate taxes were sent by Luwalhati through FedEx with Account No. x2546-4948-1 and Tracking No. 8442 4588 4268. The package was addressed to Sison who was tasked to deliver the checks payable to Maxwell-Kates, Inc. and to the New York County Department of Finance. Sison allegedly did not receive the package, resulting in the non-payment of Luwalhati and Eliza's obligations and the foreclosure of the Unit.[9]

Upon learning that the checks were sent on December 15, 2003, Sison contacted FedEx on February 9, 2004 to inquire about the non-delivery. She was informed that the package was delivered to her neighbor but there was no signed receipt.[10]

On March 14, 2004, Luwalhati and Eliza, through their counsel, sent a demand letter to FedEx for payment of damages due to the non-delivery of the package, but FedEx refused to heed their demand.[11] Hence, on April 5, 2004, they filed their Complaint[12] for damages.

FedEx claimed that Luwalhati and Eliza "ha[d] no cause of action against it because [they] failed to comply with a condition precedent, that of filing a written notice of claim within the 45 calendar days from the acceptance of the shipment."[13] It added that it was absolved of liability as Luwalhati and Eliza shipped prohibited items and misdeclared these items as "documents."[14] It pointed to conditions under its Air Waybill prohibiting the "transportation of money (including but not limited to coins or

---

[9] *Id.* at 203.

[10] *Id.* at 256.

[11] *Id.* at 203.

[12] *Id.* at 74–81.

[13] *Id.* at 58.

[14] *Id.*

negotiable instruments equivalent to cash such as endorsed stocks and bonds)."[15]

In its May 8, 2008 Decision,[16] the Regional Trial Court ruled for Luwalhati and Eliza, awarding them moral and exemplary damages, and attorney's fees. [17]

The Regional Trial Court found that Luwalhati failed to accurately declare the contents of the package as "checks."[18] However, it ruled that a check is not legal tender or a "negotiable instrument equivalent to cash," as prohibited by the Air Waybill.[19] It explained that common carriers are presumed to be at fault whenever goods are lost.[20] Luwalhati testified on the non-delivery of the package. FedEx, on the other hand, claimed that the shipment was released without the signature of the actual recipient, as authorized by the shipper or recipient. However, it failed to show that this authorization was made; thus, it was still liable for the loss of the package.[21]

On non-compliance with a condition precedent, it ruled that under the Air Waybill, the prescriptive period for filing an action was "within two (2) years from the date of delivery of the shipment or from the date on which the shipment should have been delivered."[22] Luwalhati and Eliza's demand letter made on March 11, 2004 was within the two (2)-year period sanctioned by the Air Waybill.[23] The trial court also noted that they were given a "run-around" by FedEx employees, and thus, were deemed to have complied with the filing of the formal claim.[24]

---

[15] *Id*. at 282.

[16] *Id*. at 203-209.

[17] *Id*. at 209.

[18] *Id*. at 204.

[19] *Id*. at 205.

[20] *Id*.

[21] *Id*. at 206.

[22] *Id*. at 207.

[23] *Id*.

[24] *Id*. at 207–208.

The dispositive portion of the Regional Trial Court May 8, 2008 Decision read:

> WHEREFORE, judgment is hereby rendered in favor of plaintiffs Luwalhati R. Antonino and Eliza Bettina Ricasa Antonino ordering the following:
>
> 1) The amount of ₱200,000.00 by way of moral damages;
>
> 2) The amount of ₱100,000.00 by way of exemplary damages; and
>
> [3]) The amount of ₱150,000.00 as and for attorney's fees.
>
> Costs against defendant.
>
> The counterclaim is ordered dismissed.
>
> SO ORDERED.[25]

In its assailed August 31, 2011 Decision,[26] the Court of Appeals affirmed the ruling of the Regional Trial Court.[27] According to it, by accepting the package despite its supposed defect, FedEx was deemed to have acquiesced to the transaction. Thus, it must deliver the package in good condition and could not subsequently deny liability for loss.[28] The Court of Appeals sustained the Regional Trial Court's conclusion that checks are not legal tender, and thus, not covered by the Air Waybill's prohibition.[29] It further noted that an Air Waybill is a contract of adhesion and should be construed against the party that drafted it.[30]

The dispositive portion of the Court of Appeals August 31, 2011 Decision read:

> WHEREFORE, premises considered, the present appeal is hereby DENIED. The assailed May 08, 2008 Decision of the Regional Trial

---

[25] *Id*. at 209.

[26] *Id*. at 56-70.

[27] *Id*. at 69.

[28] *Id*. at 60.

[29] *Id*. at 61.

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

Court, Branch 217, Quezon City in Civil Case No. Q-04-52325 is AFFIRMED. Costs against the herein appellant.

SO ORDERED.[31]

Following the Court of Appeals' denial[32] of its Motion for Reconsideration, FedEx filed the present Petition.

For resolution of this Court is the sole issue of whether or not petitioner Federal Express Corporation may be held liable for damages on account of its failure to deliver the checks shipped by respondents Luwalhati R. Antonino and Eliza Bettina Ricasa Antonino to the consignee Veronica Sison.

I

Petitioner disclaims liability because of respondents' failure to comply with a condition precedent, that is, the filing of a written notice of a claim for non-delivery or misdelivery within 45 days from acceptance of the shipment.[33] The Regional Trial Court found the condition precedent to have been substantially complied with and attributed respondents' non-compliance to FedEx for giving them a run-around.[34] This Court affirms this finding.

A provision in a contract of carriage requiring the filing of a formal claim within a specified period is a valid stipulation. Jurisprudence maintains that compliance with this provision is a legitimate condition precedent to an action for damages arising from loss of the shipment:

> More particularly, where the contract of shipment contains a reasonable requirement of giving notice of loss of or injury to the goods, the giving of such notice is a condition precedent to the action for loss or injury or the right to enforce the carrier's liability. Such requirement is not an empty formalism. The fundamental reason or purpose of such a stipulation is not to relieve the carrier from just

[31] *Id*. at 69.

[32] *Id*. at 73.

[33] *Id*. at 289-290.

[34] *Id.* at 207-208.

liability, but reasonably to inform it that the shipment has been damaged and that it is charged with liability therefor, and to give it an opportunity to examine the nature and extent of the injury. This protects the carrier by affording it an opportunity to make an investigation of a claim while the matter is fresh and easily investigated so as to safeguard itself from false and fraudulent claims.[35] (Citation omitted)

Petitioner's Air Waybill stipulates the following on filing of claims:

> Claims for Loss, Damage, or Delay. All claims must be made in writing and within strict time limits. See any applicable tariff, our service guide or our standard conditions for carriage for details.
>
> The right to damages against us shall be extinguished unless an action is brought within two (2) years from the date of delivery of the shipment or from the date on which the shipment should have been delivered.
>
> Within forty-five (45) days after notification of the claim, it must be documented by sending to us [all the] relevant information about it.[36]

For their claim to prosper, respondents must, thus, surpass two (2) hurdles: first, the filing of their formal claim within 45 days; and second, the subsequent filing of the action within two (2) years.

There is no dispute on respondents' compliance with the second period as their Complaint was filed on April 5, 2004.[37]

In appraising respondents' compliance with the first condition, this Court is guided by settled standards in jurisprudence.

In *Philippine Airlines, Inc. v. Court of Appeals*,[38] Philippine Airlines alleged that shipper Gilda Mejia (Mejia) failed to file

---

[35] *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.,* 287 Phil. 212, 226-227 (1992) [Per *J.* Regalado, Second Division].

[36] *Rollo,* pp. 206-207.

[37] *Id.* at 74.

[38] *Philippine Airlines, Inc. v. Court of Appeals*, 325 Phil. 303 (1996) [Per. *J.* Regalado, Second Division].

a formal claim within the period stated in the Air Waybill.[39] This Court ruled that there was substantial compliance with the period because of the zealous efforts demonstrated by Mejia in following up her claim.[40] These efforts coupled with Philippine Airlines' "tossing around the claim and leaving it unresolved for an indefinite period of time" led this Court to deem the requisite period satisfied.[41] This is pursuant to Article 1186 of the New Civil Code which provides that "[t]he condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment":[42]

> Considering the abovementioned incidents and private respondent Mejia's own zealous efforts in following up the claim, it was clearly not her fault that the letter of demand for damages could only be filed, after months of exasperating follow-up of the claim, on August 13, 1990. If there was any failure at all to file the formal claim within the prescriptive period contemplated in the air waybill, this was largely because of PAL's own doing, the consequences of which cannot, in all fairness, be attributed to private respondent.
>
> Even if the claim for damages was conditioned on the timely filing of a formal claim, under Article 1186 of the Civil Code that condition was deemed fulfilled, considering that the collective action of PAL's personnel in tossing around the claim and leaving it unresolved for an indefinite period of time was tantamount to "voluntarily preventing its fulfillment." On grounds of equity, the filing of the baggage freight claim, which sufficiently informed PAL of the damage sustained by private respondent's cargo, constituted substantial compliance with the requirement in the contract for the filing of a formal claim.[43] (Citations omitted)

Here, the Court of Appeals detailed the efforts made by respondent Luwalhati and consignee Sison. It also noted

---

[39] *Id.* at 310.

[40] *Id.* at 328.

[41] *Id.*

[42] CIVIL CODE, Art. 1186.

[43] *Philippine Airlines, Inc. v. Court of Appeals*, 325 Phil. 303, 328 (1996) [Per. *J.* Regalado, Second Division].

petitioner's ambiguous and evasive responses, nonchalant handling of respondents' concerns, and how these bogged down respondents' actions and impaired their compliance with the required 45-day period:

> Anent the issues concerning lack of cause of action and their so-called "run-around" matter, We uphold the lower court's finding that the herein appellees complied with the requirement for the immediate filing of a formal claim for damages as required in the Air Waybill or, at least, We find that there was substantial compliance therewith. Luwalhati testified that the addressee, Veronica Z. Sison promptly traced the whereabouts of the said package, but to no avail. Her testimony narrated what happened thereafter, thus:
>
> ". . .
>
> "COURT: All right. She was informed that it was lost. What steps did you take to find out or to recover back this package?
>
> "ATTY. ALENTAJAN:
> "Q What did you do to Fedex?
> ". . .
>
> "WITNESS: First, I asked the secretary here to call Fedex Manila and they said, the record show that it was sent to New York, Your Honor.
>
> ". . .
> "ATTY. ALENTAJAN:
> "Q After calling Fedex, what did Fedex do?
>
> "A None, sir. They washed their hands because according to them it is New York because they have sent it. Their records show that New York received it, Sir.
>
> "Q New York Fedex?
>
> "A Yes, Sir.
>
> "Q Now what else did you do after that?
>
> "A And then I asked my friend Mrs. Veronica Sison to trace it, Sir.
>
> ". . .

"Q What did she report to you?

"A She reported to me that first, she checked with the Fedex and the first answer was they were going to trace it. The second answer was that, it was delivered to the lady, her neighbor and the neighbor completely denied it and as they show a signature that is not my signature, so the next time she called again, another person answered. She called to say that the neighbor did not receive and the person on the other line I think she got his name, said that, it is because it is December and we usually do that just leave it and then they cut the line and so I asked my friend to issue a sworn statement in the form of affidavit and have it notarized in the Philippine Embassy or Consulate, Sir That is what she did.

"Q On your part here in the Philippines after doing that, after instructing Veronica Sison, what else did you do because of this violation?

"A I think the next step was to issue a demand letter because any way I do not want to go to Court, it is so hard, Sir."

The foregoing event show Luwalhati's own ardent campaign in following up the claim. To the Court's mind, it is beyond her control why the demand letter for damages was only sent subsequent to her infuriating follow-ups regarding the whereabouts of the said package. We can surmise that if there was any omission at all to file the said claim within the prescriptive period provided for under the Air Waybill it was mostly due to herein appellant's own behavior, the outcome thereof cannot, by any chance, be imputed to the herein appellees.[44] (Grammatical errors in the original)

Petitioner has been unable to persuasively refute Luwalhati's recollection of the efforts that she and Sison exerted, and of the responses it gave them. It instead insists that the 45-day period stated in its Air Waybill is sacrosanct. This Court is unable to bring itself to sustaining petitioner's appeal to a convenient reprieve. It is one with the Regional Trial Court and the Court of Appeals in stressing that respondents' inability to expediently file a formal claim can only be attributed to

[44] *Rollo*, pp. 62–64.

petitioner hampering its fulfillment. Thus, respondents must be deemed to have substantially complied with the requisite 45-day period for filing a formal claim.

II

The Civil Code mandates common carriers to observe extraordinary diligence in caring for the goods they are transporting:

> Article 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

"Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights."[45] Consistent with the mandate of extraordinary diligence, the Civil Code stipulates that in case of loss or damage to goods, common carriers are presumed to be negligent or at fault,[46] except in the following instances:

(1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
(2) Act of the public enemy in war, whether international or civil;
(3) Act or omission of the shipper or owner of the goods;
(4) The character of the goods or defects in the packing or in the containers;
(5) Order or act of competent public authority.[47]

---

[45] *Loadstar Shipping Co., Inc. v. Malayan Insurance Co., Inc.,* G.R. No. 185565, April 26, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/april2017/185565.pdf>4 [Per *J.* Reyes, Special Third Division].

[46] CIVIL CODE, Art. 1735.

[47] CIVIL CODE, Art. 1734.

In all other cases, common carriers must prove that they exercised extraordinary diligence in the performance of their duties, if they are to be absolved of liability.[48]

The responsibility of common carriers to exercise extraordinary diligence lasts from the time the goods are unconditionally placed in their possession until they are delivered "to the consignee, or to the person who has a right to receive them."[49] Thus, part of the extraordinary responsibility of common carriers is the duty to ensure that shipments are received by none but "the person who has a right to receive them."[50] Common carriers must ascertain the identity of the recipient. Failing to deliver shipment to the designated recipient amounts to a failure to deliver. The shipment shall then be considered lost, and liability for this loss ensues.

Petitioner is unable to prove that it exercised extraordinary diligence in ensuring delivery of the package to its designated consignee. It claims to have made a delivery but it even admits that it was not to the designated consignee. It asserts instead that it was authorized to release the package without the signature of the designated recipient and that the neighbor of the consignee, one identified only as "LGAA 385507," received it.[51] This fails to impress.

The assertion that receipt was made by "LGAA 385507" amounts to little, if any, value in proving petitioner's successful discharge of its duty. "LGAA 385507" is nothing but an alphanumeric code that outside of petitioner's personnel and internal systems signifies nothing. This code does not represent a definite, readily identifiable person, contrary to how commonly accepted identifiers, such as numbers attached to official, public, or professional identifications like social security numbers and professional license numbers, function. Reliance on this code

---

[48] CIVIL CODE, Art. 1735.

[49] CIVIL CODE, Art. 1736.

[50] CIVIL CODE, Art. 1736.

[51] *Rollo,* p. 66.

is tantamount to reliance on nothing more than petitioner's bare, self-serving allegations. Certainly, this cannot satisfy the requisite of extraordinary diligence consummated through delivery to none but "the person who has a right to receive"[52] the package.

Given the circumstances in this case, the more reasonable conclusion is that the package was not delivered. The package shipped by respondents should then be considered lost, thereby engendering the liability of a common carrier for this loss.

Petitioner cannot but be liable for this loss. It failed to ensure that the package was delivered to the named consignee. It admitted to delivering to a mere neighbor. Even as it claimed this, it failed to identify that neighbor.

III

Petitioner further asserts that respondents violated the terms of the Air Waybill by shipping checks. It adds that this violation exempts it from liability.[53]

This is untenable.

Petitioner's International Air Waybill states:

> **Items Not Acceptable for Transportation.** We do not accept transportation of money (including but not limited to coins or negotiable instruments equivalent to cash such as endorsed stocks and bonds). We exclude all liability for shipments of such items accepted by mistake. Other items may be accepted for carriage only to limited destinations or under restricted conditions. We reserve the right to reject packages based upon these limitations or for reasons of safety or security. You may consult our Service Guide, Standard Conditions of Carriage, or any applicable tariff for specific details.[54] (Emphasis in the original)

The prohibition has a singular object: money. What follows the phrase "transportation of *money*" is a phrase enclosed in

---

[52] CIVIL CODE, Art. 1736.

[53] *Rollo,* p. 284.

[54] *Id.* at 282.

parentheses, and commencing with the words "including but not limited to." The additional phrase, enclosed as it is in parentheses, is not the object of the prohibition, but merely a postscript to the word "money." Moreover, its introductory words "including but not limited to" signify that the items that follow are illustrative examples; they are not qualifiers that are integral to or inseverable from "money." Despite the utterance of the enclosed phrase, the singular prohibition remains: money.

Money is "what is generally acceptable in exchange for goods."[55] It can take many forms, most commonly as coins and banknotes. Despite its myriad forms, its key element is its general acceptability.[56] Laws usually define what can be considered as a generally acceptable medium of exchange.[57] In the Philippines, Republic Act No. 7653, otherwise known as The New Central Bank Act, defines "legal tender" as follows:

> All notes and coins issued by the *Bangko Sentral* shall be fully guaranteed by the Government of the Republic of the Philippines and shall be legal tender in the Philippines for all debts, both public and private: *Provided, however,* That, unless otherwise fixed by the Monetary Board, coins shall be legal tender in amounts not exceeding Fifty pesos (₱50.00) for denominations of Twenty-five centavos and above, and in amounts not exceeding Twenty pesos (₱20.00) for denominations of Ten centavos or less.[58]

It is settled in jurisprudence that checks, being only negotiable instruments, are only substitutes for money and are not legal tender; more so when the check has a named payee and is not payable to bearer. In *Philippine Airlines, Inc. v. Court of Appeals*,[59] this Court ruled that the payment of a check to the sheriff did not satisfy the judgment debt as checks are not considered legal tender. This has been maintained in other

---

[55] Irving Fisher, *The Purchasing Power of Money: Its Determination and Relation to Credit Interest and Crises* 8 (2007).

[56] *Id.*

[57] *Id.*

[58] Rep. Act No. 7653 (1993), Sec. 52.

[59] 260 Phil. 606 (1990) [Per. *J.* Gutierrez Jr., *En Banc*].

cases decided by this Court. *In Cebu International Finance Corporation v. Court of Appeals*,[60] this Court held that the debts paid in a money market transaction through the use of a check is not a valid tender of payment as a check is not legal tender in the Philippines. Further, in *Bank of the Philippine Islands v. Court of Appeals*,[61] this Court held that "a check, whether a manager's check or ordinary check, is not legal tender."[62]

The Air Waybill's prohibition mentions "negotiable instruments" only in the course of making an example. Thus, they are not prohibited items themselves. Moreover, the illustrative example does not even pertain to negotiable instruments *per se* but to "negotiable instruments *equivalent to cash.*"[63]

The checks involved here are payable to specific payees, Maxwell-Kates, Inc. and the New York County Department of Finance.[64] Thus, they are *order instruments*. They are not payable to their bearer, i.e., *bearer instruments*. Order instruments differ from bearer instruments in their manner of negotiation:

> Under Section 30 of the [Negotiable Instruments Law], an order instrument requires an indorsement from the payee or holder before it may be validly negotiated. A bearer instrument, on the other hand, does not require an indorsement to be validly negotiated.[65]

There is no question that checks, whether payable to order or to bearer, so long as they comply with the requirements under Section 1 of the Negotiable Instruments Law, are negotiable

---

[60] 374 Phil. 844 (1999) [Per *J.* Quisumbing, Second Division].

[61] 383 Phil. 538 (2000) [Per *J.* Ynares-Santiago, First Division].

[62] *Id.* at 553.

[63] *Rollo,* p. 282.

[64] *Id.* at 203.

[65] *Philippine National Bank v. Spouses Rodriguez,* 588 Phil. 196, 210 (2008) [Per *J.* Reyes, Third Division).

instruments.[66] The more relevant consideration is whether checks with a specified payee are *negotiable instruments equivalent to cash*, as contemplated in the example added to the Air Waybill's prohibition.

This Court thinks not. An order instrument, which has to be endorsed by the payee before it may be negotiated,[67] cannot be a negotiable instrument equivalent to cash. It is worth emphasizing that the instruments given as further examples under the Air Waybill must be endorsed to be considered equivalent to cash:[68]

> **Items Not Acceptable for Transportation**. We do not accept transportation of money (including but not limited to coins or negotiable instruments equivalent to cash such as *endorsed stocks and bonds*). . . . (Emphasis in the original)[69]

What this Court's protracted discussion reveals is that petitioner's Air Waybill lends itself to a great deal of confusion. The clarity of its terms leaves much to be desired. This lack of clarity can only militate against petitioner's cause.

The contract between petitioner and respondents is a contract of adhesion; it was prepared solely by petitioner for respondents

---

[66] Section 1. Form of negotiable instruments. — An instrument to be negotiable must conform to the following requirements:

(a) It must be in writing and signed by the maker or drawer;

(b) Must contain an unconditional promise or order to pay a sum certain in money;

(c) Must be payable on demand, or at a fixed or determinable future time;

(d) Must be payable to order or to bearer; and

(e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

[67] See *Philippine National Bank v. Spouses Rodriguez,* 588 Phil. 196 (2008) [Per *J.* Reyes, Third Division].

[68] *Rollo,* p. 282.

[69] *Id.*

to conform to.[70] Although not automatically void, any ambiguity in a contract of adhesion is construed strictly against the party that prepared it.[71] Accordingly, the prohibition against transporting money must be restrictively construed against petitioner and liberally for respondents. Viewed through this lens, with greater reason should respondents be exculpated from liability for shipping documents or instruments, which are reasonably understood as not being money, and for being unable to declare them as such.

Ultimately, in shipping checks, respondents were not violating petitioner's Air Waybill. From this, it follows that they committed no breach of warranty that would absolve petitioner of liability.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The assailed August 31, 2011 Decision and November 21, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 91216 are **AFFIRMED**.

SO ORDERED.

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

---

[70] *Radio Communications of the Philippines, Inc. v. Verchez,* 516 Phil. 725, 742 (2006) [Per *J.* Carpio Morales, Third Division] citing *Philippine Commercial International Bank v. Court of Appeals*, 325 Phil. 588-600 (1996) [Per *J.* Francisco, Third Division].

"A contract of adhesion is defined as one in which one of the parties imposes a ready-made form of contract, which the other party may accept or reject, but which the latter cannot modify. One party prepares the stipulation in the contract, while the other party merely affixes his signature or his 'adhesion' thereto, giving no room for negotiation and depriving the latter of the opportunity to bargain on equal footing."

[71] *Id.*

THIRD DIVISION

[G.R. No. 199930. June 27, 2018]

MELITA O. DEL ROSARIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6713 *VIS-À-VIS* ACT NO. 3326; THREE DEADLINES FOR THE SUBMISSION OF THE SWORN STATEMENT OF ASSETS, LIABILITIES AND NET WORTH (SALN); PRESCRIPTIVE PERIOD FOR THE VIOLATION OF THE REQUIREMENT UNDER R.A. 6713 IS GOVERNED BY ACT NO. 3326.—** Section 8 of R.A. No. 6713 mandates the submission of the sworn SALNs by all public officials and employees, stating therein all the assets, liabilities, net worth and financial and business interests of their spouses, and of their unmarried children under 18 years of age living in their households. Paragraph (A) of Section 8 sets three deadlines for the submission of the sworn SALNs, specifically: (a) within 30 days from the assumption of office by the officials or employees; (b) on or before April 30 of every year thereafter; and (c) within 30 days after the separation from the service of the officials or employees. R.A. No. 6713 does not expressly state the prescriptive period for the violation of its requirement for the SALNs. Hence, Act No. 3326 – the law that governs the prescriptive periods for offenses defined and punished under special laws that do not set their own prescriptive periods – is controlling.

2. **ID.; ID.; ID.; PRESCRIPTIVE PERIOD OF THE OFFENSE OF NON-FILING OF SALN; TWO MODES OF DETERMINING THE RECKONING POINT WHEN PRESCRIPTION OF THE OFFENSE RUNS; PRESCRIPTION SHALL RUN FROM THE DAY OF THE COMMISSION OF THE VIOLATION OF THE LAW - IS THE GENERAL RULE AND THE SECOND MODE IS THE EXCEPTION THERETO, WHICH IS KNOWN AS THE DISCOVERY RULE.—** Under Section 2 [of Act No. 3326],

there are two modes of determining the reckoning point when prescription of an offense runs. The first, to the effect that prescription shall "run from the day of the commission of the violation of the law," is the general rule. We have declared in this regard that the fact that any aggrieved person entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises does not prevent the running of the prescriptive period. The second mode is an exception to the first, and is otherwise known as the discovery rule. Under the rulings in the Behest Loans Cases, the discovery rule, which is also known as the blameless ignorance doctrine, stipulates that: x x x the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action.

3. ID.; ID.; ID.; ID.; WHETHER THE GENERAL RULE OR THE EXCEPTION THAT SHOULD APPLY IN A PARTICULAR CASE DEPENDS ON THE AVAILABILITY OR THE SUPPRESSION OF THE INFORMATION RELATIVE TO THE CRIME SHOULD FIRST BE ASCERTAINED; WHEN THERE ARE REASONABLE MEANS TO BE AWARE OF THE COMMISSION OF THE OFFENSE, THE DISCOVERY RULE SHOULD NOT BE APPLIED.— The guidelines summarized in *Presidential Commission on Good Government v. Carpio Morales* already settled how to determine the proper reckoning points for the period of prescription. Whether it is the general rule or the exception that should apply in a particular case depends on the availability or the suppression of information relative to the crime should first be ascertained. If the information, data, or records from which the crime is based could be plainly discovered or were readily available to the public, as in the case of the petitioner herein, the general rule should apply, and prescription should be held to run from the commission of the crime; otherwise, the discovery rule is applied. Secondly, when there are reasonable means to be aware of the commission of the offense, the discovery rule should not be applied. To prosecute an offender for an offense not prosecuted on account of the lapses on the part of the Government and the officials responsible

for the prosecution thereof or burdened with the duty of making sure that the laws are observed would have the effect of condoning their indolence and inaction.

4. ID.; ID.; ID.; ID.; THE EIGHT-YEAR PRESCRIPTIVE PERIOD SHALL BE RECKONED FROM THE MOMENT OF THE COMMISSION OF THE OFFENSE IN CASE AT BAR; THE OFFENSE OF NON-FILING OF SALN IS NOT SUSCEPTIBLE OF CONCEALMENT AND THE OMBUDSMAN OR THE CIVIL SERVICE COMMISSION SHOULD HAVE KNOWN OF ANY OMISSION/ VIOLATION ON THE DUE DATES OF THE FILING OF THE SALN.— We fully concur with the observations of the RTC to the effect that the offenses charged against the petitioner were not susceptible of concealment. As such, the offenses could have been known within the eight-year period starting from the moment of their commission. Indeed, the Office of the Ombudsman or the CSC, the two agencies of the Government invested with the primary responsibility of monitoring the compliance with R.A. No. 6713, should have known of her omissions during the period of prescription. x x x The CSC and the Office of the Ombudsman both issued memorandum circulars in 1994 and 1995 to announce guidelines or procedures relative to the filing of the SALNs pursuant to R.A. No. 6713. Ombudsman Memorandum Circular No. 95-13 (*Guidelines/ Procedures on the Filing of Statements of Assets, Liabilities and Networth and Disclosures of Business Interests and Financial Connections with the Office of the Ombudsman Required under Section 8, Republic Act No. 6713*) publicized that the Office of the Ombudsman would create a task force that would maintain a computerized database of all public officials and employees required to file SALNs, and that such task force would monitor full compliance with the law. The circular further provided that: "*The administrative/personnel division shall likewise prepare a report indicating therein the list of officials and employees who failed to submit their respective statements of assets, liabilities and net worth and disclosures of business interests and financial connections*." Considering that the memorandum circulars took effect prior to the commission of the violations by the petitioner, it would be unwarranted to hold that the Office of the Ombudsman could not have known of her omissions on the due dates themselves

of the filing of the SALNs. What we need to stress is that the prescriptive period under Act No. 3326 was long enough for the Office of the Ombudsman and the CSC to investigate and identify the public officials and employees who did not observe the requirement for the submission or filing of the verified SALNs – information that was readily available to the public.

APPEARANCES OF COUNSEL

Adarlo Caoile and Associates Law Offices for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

To be resolved is whether or not the eight-year prescriptive period for the offense the petitioner committed in violation of Republic Act No. 6713 (*Code of Conduct and Ethical Standards for Public Officials and Employees*) should be reckoned from the filing of the detailed sworn statement of assets, liabilities and net worth (SALN), or from the discovery of the non-filing thereof.

It is notable that the informations filed against the petitioner alleged her violation of R.A. No. 6713 for having "fail[ed] to file her detailed sworn SALN for the year 1990/1991, which the law requires to be filed on or before the 30th of April following the close of every calendar year." Based on the allegations of the informations, the eight-year prescriptive period under Act No. 3326 (*An Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription shall Begin*) was applicable in view of the silence of R.A. No. 6713 on the prescriptive period for a violation thereof.

Although R.A. No. 3019 (*Anti-Graft and Corrupt Practices Act*) and R.A. No 6713 both punish the failure to file the SALN, we need to clarify that the 15-year prescriptive period explicitly provided in Section 11 of R.A. No. 3019 was not relevant. The

violation of Section 7[1] of R.A. No. 3019 – which requires the "*filing or submission of SALN, after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of a public officer's term of office, or upon his resignation or separation from office*" – was not alleged in the information.

R.A. No. 6713 – enacted in 1989 – was a much later law than R.A. No. 3019, which was adopted on August 17, 1960. As the mandatory requirement for the filing of SALNs currently exists, therefore, the public official or employee should file and submit the SALN "*on or before April 30, of every year*" as required by R.A. No. 6713 instead of filing the same "*within the month of January of every other year*" pursuant to R.A. No. 3019. Verily, R.A. No. 6713 – by reflecting who are required to file the SALN, who are exempt from the requirement, when should the SALN be filed, and what should be included and disclosed in the SALN – embodies the latest legislative word on transparency and public accountability of public officers and employees.

The Case

The petitioner seeks the review and reversal of the adverse decision promulgated on August 16, 2011,[2] whereby the Sandiganbayan set aside the ruling of the Regional Trial Court (RTC), Branch 32, in Manila upholding the orders issued on

[1] Section 7. Statement of assets and liabilities. — Every public officer, within thirty days after assuming office, and within the month of January of every year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or Chief of an independent office, with the Office of the President, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year; Provided, That public officers assuming office less than two months before the end of the calendar year, may file their first statement, on the following month of January.

[2] *Rollo*, pp. 9-18; penned by Associate Justice Alex L. Quiroz, with the concurrence of Associate Justice Samuel R. Martires (now a Member of the Court) and Associate Justice Francisco H. Villaruz, Jr.

September 18, 2009[3] and April 23, 2010[4] by the Metropolitan Trial Court (MeTC), Branch 21, in Manila granting her motion to quash the informations charging her with violations of Section 8 of R.A. No. 6713 for the non-filing of her SALNs for the years 1990 and 1991.

Antecedents

On October 28, 2004, the General Investigation Bureau-A of the Office of the Ombudsman brought a complaint charging the petitioner with the violation of Section 8 of R.A. No. 6713; dishonesty; grave misconduct; and conduct prejudicial to the best interest of the service for her failure to file her SALNs for the years 1990 and 1991.

On March 11, 2008, the Office of the Ombudsman criminally charged the petitioner in the MeTC with two violations,[5] the informations therefor being docketed as Criminal Case No. 444354 and Criminal Case No. 444355, to wit:

Criminal Case No. 444354

That sometime in the year of 1991, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused public officer Melita O. Del Rosario, being a government employee holding the position of Chief of Valuation and Classification Division-Office of the Commissioner (VCD-OCOM), Bureau of Customs, Port Area, Manila, did then and there, willfully, unlawfully and criminally fail to file her detailed sworn Statement of Assets, Liabilities and Net worth (SALN) for the year 1990 which the law requires to be filed on or before the thirtieth (30th) day of April following the close of every calendar year.

Contrary to Law.[6]

Criminal Case No. 444355

That sometime in the year of 1992, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named

---

[3] *Id*. at 109-112; penned by Presiding Judge Danilo A. Buemio.

[4] *Id*. at 119-122.

[5] *Id*. at 10.

[6] *Id*.

accused public officer Melita O. Del Rosario, being a government employee holding the position of Chief of Valuation and Classification Division-Office of the Commissioner (VCD-OCOM), Bureau of Customs, Port Area, Manila, did then and there, willfully, unlawfully and criminally fail to file her detailed sworn Statement of Assets, Liabilities and Networth (SALN) for the year 1991 which the law requires to be filed on or before the thirtieth (30th) day of April following the close of every calendar year.

Contrary to law.[7]

On November 19, 2008, the petitioner filed a *Motion to Quash* in Criminal Case No. 444354 and Criminal Case No. 444355 on the ground of prescription of the offenses.[8]

On September 18, 2009,[9] the MeTC granted the *Motion to Quash*.

The State moved for the reconsideration of the quashal of the informations,[10] but the MeTC affirmed the quashal on April 23, 2010.[11]

The State appealed to the RTC praying that the quashal be annulled and set aside.[12]

In its decision dated October 6, 2010,[13] the RTC upheld the assailed orders of the MeTC.[14]

Undeterred, the State elevated the decision of the RTC to the Sandiganbayan, arguing that the RTC had erred in ruling that the eight-year prescriptive period for violation of Section 8 of R.A. No. 6713 commenced to run on the day of the commission of the violations, not from the discovery of the offenses.[15]

---

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

[8] *Id*. at pp. 95-96; and 97-98.

[9] *Id.* at 109-112.

[10] *Id*. at 113-118.

[11] *Id*. at 119-122.

[12] *Id*. at 125-134.

[13] *Id*. at 140-147; penned by Presiding Judge Thelma Bunyi-Medina.

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

[15] *Id.* at 12.

On August 16, 2011, the Sandiganbayan promulgated its assailed decision overturning the RTC,[16] and disposing thusly:

> **WHEREFORE**, in view of the foregoing, the decision of the Regional Trial Court of Manila, Branch 32 denying the appeal of herein petitioner in Criminal Case Nos. 10-276311-12 and entitled *People of the Philippines versus Melita O. del Rosario*, promulgated on October 6, 2010, is **REVERSED.** The Metropolitan Trial Court of Manila, Branch 21 is also **ORDERED** to proceed with the trial of Criminal Case Nos. 444354-55.
>
> **SO ORDERED.**[17]

The Sandiganbayan pointed out that "it would be difficult for the Ombudsman to know of such omission on the part of the public official or employee on the date of filing itself;" that in *Benedicto v. Abad Santos, Jr.*[18] and *People v. Monteiro,*[19] in which the employers had not registered their employees with the Social Security System (SSS), it was ruled that the period of prescription began from the discovery of the violations; that it would be dangerous to maintain otherwise inasmuch as the successful concealment of the offenses during the prescriptive period would be the very means by which the offenders would escape punishment;[20] and that reckoning the prescriptive period from the date of the commission of the offenses would defeat the purpose for which R.A. No. 6713 was enacted, which was to temper or regulate "the harsh compelling realities of public service with its ever-present temptation to heed the call of greed and avarice."[21]

Dissatisfied by the adverse outcome, the petitioner now comes to the Court to assail the adverse decision of the Sandiganbayan.

---

[16] *Id.* at 9-18.

[17] *Id.* at 17.

[18] G.R. No. 74689, March 21, 1990, 183 SCRA 434.

[19] G.R. No. L-49454, December 21, 1990, 192 SCRA 548.

[20] *Rollo,* p. 16.

[21] *Id*.

Issue

Did the period of prescription of the offenses charged against the petitioner start to run on the date of their discovery instead of on the date of their commission?[22]

Ruling of the Court

The appeal has merit.

In applying the discovery rule, the Sandiganbayan relied on the rulings handed down in the so-called Behest Loans Cases,[23] whereby the prescriptive period was reckoned from the date of discovery of the offenses. The Sandiganbayan explained that it would be difficult for the Office of the Ombudsman to know on the required dates of filing of the failure to file the SALNs on the part of the erring public officials or employees; and that to suggest that the Civil Service Commission (CSC), the Office of the Ombudsman and any other concerned agency should come up with a tracking system to ferret out the violators of R.A. No. 6713 on the dates of the filing of the SALNs would not only be burdensome, but highly impossible.

The Sandiganbayan erred in applying the discovery rule to the petitioner's cases.

Section 8 of R.A. No. 6713 mandates the submission of the sworn SALNs by all public officials and employees, stating therein all the assets, liabilities, net worth and financial and business interests of their spouses, and of their unmarried children under 18 years of age living in their households. Paragraph (A) of Section 8 sets three deadlines for the submission of the sworn SALNs, specifically*:* (a) within 30 days from the assumption of office by the officials or employees; (b) on or

---

[22] *Id*. at 36.

[23] *Presidential Ad Hoc Committee on Behest Loans v. Tabasondra*, G.R. No. 133756, July 4, 2008, 557 SCRA 31; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman*, G.R. No. 135350, March 3, 2006, 484 SCRA 16; *Presidential Commission on Good Government v. Desierto,* G.R. No. 135119, October 21, 2004, 441 SCRA 106; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 130817, August 22, 2001, 363 SCRA 489.

before April 30 of every year thereafter; and (c) within 30 days after the separation from the service of the officials or employees.

R.A. No. 6713 does not expressly state the prescriptive period for the violation of its requirement for the SALNs. Hence, Act No. 3326 – the law that governs the prescriptive periods for offenses defined and punished under special laws that do not set their own prescriptive periods[24] – is controlling. Section 1 of Act No. 3326 provides:

> Section 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; **(c) after eight years for those punished by imprisonment for two years or more, but less than six years;** and (d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months.

The complaint charging the petitioner with the violations was filed only on October 28, 2004, or 13 years after the April 30, 1991 deadline for the submission of the SALN for 1990, and 12 years after the April 30, 1992 deadline for the submission of the SALN for 1991. With the offenses charged against the petitioner having already prescribed after eight years in accordance with Section 1 of Act No. 3326, the informations filed against the petitioner were validly quashed.

The relevant legal provision on the reckoning of the period of prescription is Section 2 of Act No. 3326, to wit:

> Section 2. Prescription of violation penalized by special law shall begin to run from the day of the commission of the violation of the law, and if the violation be not known at the time from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

---

[24] *Panaguiton, Jr. v. Department of Justice*, G.R. No. 167571, November 25, 2008, 571 SCRA 549, 558.

Under Section 2, there are two modes of determining the reckoning point when prescription of an offense runs. The first, to the effect that prescription shall "run from the day of the commission of the violation of the law," is the general rule. We have declared in this regard that the fact that any aggrieved person entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises does not prevent the running of the prescriptive period.[25] The second mode is an exception to the first, and is otherwise known as the discovery rule.

Under the rulings in the Behest Loans Cases,[26] the discovery rule, which is also known as the blameless ignorance doctrine, stipulates that:

> x x x the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, the courts would decline to apply the statute of limitations where the plaintiff does not know or has no reasonable means of knowing the existence of a cause of action.[27]

The application of the discovery rule was amply discussed in the 2014 ruling in *Presidential Commission on Good Government (PCGG) v. Carpio Morales*,[28] which cited a number of rulings involving violations of R.A. No. 3019. The Court said therein:

> In the 1999 and 2011 cases of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, the Court, in said separate instances, reversed the ruling of the Ombudsman that the prescriptive period therein began to run at the time the behest loans were transacted and instead, it should be counted from the date of the discovery thereof.
>
> In the 1999 case, **We recognized the impossibility for the State, the aggrieved party, to have known the violation** of RA 3019 at

[25] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 135715, April 13, 2011, 648 SCRA 586, 596.

[26] *Supra*, note 23.

[27] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, *supra*, note 25.

[28] G.R. No. 206357, November 12, 2014, 571 SCRA 368, 378-379.

the time the questioned transactions were made **in view of the fact that the public officials concerned connived or conspired with the "beneficiaries of the loans."** There, We agreed with the contention of the Presidential *Ad Hoc* Fact-Finding Committee that the prescriptive period should be computed from the discovery of the commission thereof and not from the day of such commission. x x x

Similarly, in the 2011 *Desierto* case, **We ruled that the "blameless ignorance" doctrine applies considering that the plaintiff therein had no reasonable means of knowing the existence of a cause of action**. In this particular instance, We pinned the running of the prescriptive period to the completion by the Presidential *Ad Hoc* Fact-Finding Committee of an exhaustive investigation on the loans. We elucidated that the first mode under Section 2 of Act No. 3326 would not apply since during the Marcos regime, no person would have dared to question the legality of these transactions.

Prior to the 2011 *Desierto* case came Our 2006 Resolution in *Romualdez v. Marcelo,* which involved a violation of Section 7 of RA 3019. In resolving the issue of whether or not the offenses charged in the said cases have already prescribed, We applied the same principle enunciated in *Duque* and ruled that the prescriptive period for the offenses therein committed began to run from the discovery thereof on the day former Solicitor General Francisco I. Chavez filed the complaint with the PCGG.

This was reiterated in *Disini v. Sandiganbayan* where We counted the running of the prescriptive period in said case from the date of discovery of the violation after the PCGG's exhaustive investigation despite the highly publicized and well-known nature of the Philippine Nuclear Power Plant Project therein involved, **recognizing the fact that the discovery of the crime necessitated the prior exhaustive investigation and completion** thereof by the PCGG.

In *Republic v. Cojuangco*, Jr., however, We held that not all violations of RA 3019 require the application of the second mode for computing the prescription of the offense. There, this Court held that the second element for the second mode to apply, i.e., that the action could not have been instituted during the prescriptive period because of martial law, is absent. **This is so since information about the questioned investment therein was not suppressed from the discerning eye of the public nor has the Office of the Solicitor General made any allegation to that effect.** This Court likewise faulted therein petitioner for having remained dormant during the

remainder of the period of prescription despite knowing of the investment for a sufficiently long period of time.

An evaluation of the foregoing jurisprudence on the matter reveals the following guidelines in the determination of the reckoning point for the period of prescription of violations of RA 3019, viz.:

1. As a general rule, prescription begins to run from the date of the commission of the offense.

2. If the date of the commission of the violation is not known, it shall be counted form the date of discovery thereof.

3. In determining whether it is the general rule or the exception that should apply in a particular case, the availability or suppression of the information relative to the crime should first be determined.

If the necessary information, data, or records based on which the crime could be discovered is readily available to the public, the general rule applies. Prescription shall, therefore, run from the date of the commission of the crime.

Otherwise, should martial law prevent the filing thereof or should information about the violation be suppressed, possibly through connivance, then the exception applies and the period of prescription shall be reckoned from the date of discovery thereof. (Bold underscoring supplied for emphasis)[29]

Conformably with the foregoing, we cannot apply the discovery rule or the blameless ignorance doctrine to the criminal charges against the petitioner herein.

First of all, the Sandiganbayan unjustifiably relied on the rulings in *Benedicto v. Abad Santos, Jr.*[30] and *People v. Monteiro.*[31] In *Benedicto v. Abad Santos, Jr.*, where the information was filed 10 years after the SSS discovered the violation, the Court ruled therein that the crime charged already prescribed pursuant to Act No. 3326. In *People v. Monteiro*, there was a finding of a successful concealment of the offense

---

[29] *Id*. at 378-381.

[30] *Supra* note 18.

[31] *Supra* note 19.

during the period fixed for its prescription. But the facts and circumstances obtaining therein are not on all fours with those herein simply because the petitioner neither concealed her omissions nor conspired with others to conceal them. Also of significance is that Section 8[32] of R.A. No. 6713 has stipulated the accessibility of the SALNs to the public for copying or inspection at reasonable hours. Under the circumstances, the State had no reason not to be presumed to know of her omissions during the eight-year period of prescription set in Act No. 3326.

The Sandiganbayan's reliance on *Presidential Ad Hoc Fact-Finding Committee v. Desierto*[33] was misplaced. Therein, the concealment and supposed connivance and conspiracy among the concerned public officials were emphatically mentioned as factors for applying in the reckoning of the period of prescription the second mode instead of the general rule. The Court further noted that prior to the ouster of President Marcos through the February 1986 EDSA Revolution, the Government as the aggrieved party could not have known of the violations when the questioned transactions were made; and that no person would have dared to assail the legality of the transactions at that time.

The guidelines summarized in *Presidential Commission on Good Government v. Carpio Morales*[34] already settled how to determine the proper reckoning points for the period of prescription. Whether it is the general rule or the exception

---

[32] Section 8 (C) Accessibility of documents. —

(1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.

(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

[33] *Supra* note 25.

[34] *Supra* note 28.

that should apply in a particular case depends on the availability or the suppression of information relative to the crime should first be ascertained. If the information, data, or records from which the crime is based could be plainly discovered or were readily available to the public, as in the case of the petitioner herein, the general rule should apply, and prescription should be held to run from the commission of the crime; otherwise, the discovery rule is applied.

Secondly, when there are reasonable means to be aware of the commission of the offense, the discovery rule should not be applied. To prosecute an offender for an offense not prosecuted on account of the lapses on the part of the Government and the officials responsible for the prosecution thereof or burdened with the duty of making sure that the laws are observed would have the effect of condoning their indolence and inaction.

We fully concur with the observations of the RTC to the effect that the offenses charged against the petitioner were not susceptible of concealment. As such, the offenses could have been known within the eight-year period starting from the moment of their commission. Indeed, the Office of the Ombudsman or the CSC, the two agencies of the Government invested with the primary responsibility of monitoring the compliance with R.A. No. 6713, should have known of her omissions during the period of prescription.

Thirdly, the Sandiganbayan's opinion that it would be burdensome and highly impossible for the CSC, the Office of the Ombudsman and any other concerned agency of the Government to come up with a tracking system to ferret out the violators of R.A. No. 6713 on or about the time of the filing of the SALNs is devoid of persuasion and merit.

The CSC and the Office of the Ombudsman both issued memorandum circulars in 1994 and 1995 to announce guidelines or procedures relative to the filing of the SALNs pursuant to R.A. No. 6713. Ombudsman Memorandum Circular No. 95-13 (*Guidelines/Procedures on the Filing of Statements of Assets, Liabilities and Networth and Disclosures of Business Interests and Financial Connections with the Office of the Ombudsman Required under Section 8, Republic Act No. 6713*) publicized

that the Office of the Ombudsman would create a task force that would maintain a computerized database of all public officials and employees required to file SALNs, and that such task force would monitor full compliance with the law. The circular further provided that: "*The administrative/personnel division shall likewise prepare a report indicating therein the list of officials and employees who failed to submit their respective statements of assets, liabilities and net worth and disclosures of business interests and financial connections*."

Considering that the memorandum circulars took effect prior to the commission of the violations by the petitioner, it would be unwarranted to hold that the Office of the Ombudsman could not have known of her omissions on the due dates themselves of the filing of the SALNs. What we need to stress is that the prescriptive period under Act No. 3326 was long enough for the Office of the Ombudsman and the CSC to investigate and identify the public officials and employees who did not observe the requirement for the submission or filing of the verified SALNs – information that was readily available to the public.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision rendered on August 16, 2011 by the Sandiganbayan; and **AFFIRMS** the decision rendered on October 6, 2010 by the Regional Trial Court, Branch 32, in Manila upholding the quashal of the informations filed in Criminal Case No. 10-276311 and Criminal Case No. 10-276312.

SO ORDERED.

Velasco, Jr. (Chairperson), *Leonen, Jardeleza,*[*] and *Gesmundo, JJ.,* concur.

---

[*] In lieu of Associate Justice Samuel R. Martires, who participated in the Sandiganbayan, per the raffle of May 16, 2018.

THIRD DIVISION

[G.R. No. 202408. June 27, 2018]

FAROUK B. ABUBAKAR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 202409. June 27, 2018]

ULAMA S. BARAGUIR *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 202412. June 27, 2018]

DATUKAN M. GUIANI, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; AS A RULE, PARTIES ARE BOUND BY THE ACTS, OMISSIONS, AND MISTAKES OF THEIR COUNSEL; AN EXCEPTION IS WHEN THE GROSS AND INEXCUSABLE NEGLIGENCE OF COUNSEL DEPRIVES THE LATTER'S CLIENT OF HIS OR HER DAY IN COURT.— Lawyers act on behalf of their clients with binding effect. This is the necessary consequence of the fiduciary relationship created between a lawyer and a client. Once engaged, a counsel holds "the implied authority to do all acts which are necessary or, at least, incidental to the prosecution and management of the suit." The acts of counsel are deemed acts of the client. Thus, as a rule, parties are bound by the acts, omissions, and mistakes of their counsel. To adopt a contrary principle may lead to unnecessary delays, indefinite court proceedings, and possibly no end to litigation for all that a defeated party would do is to claim that his or her counsel acted negligently. An exception to this is when the gross and inexcusable negligence of counsel deprives the latter's client of his or her day in court. The allegation of gross and inexcusable negligence, however, must be substantiated. In determining whether the case falls under the exception, courts

should always be guided by the principle that parties must be "given the fullest opportunity to establish the merits of [their] action or defense."

2. ID.; ID.; ID.; ID.; WHEN THE STRICT APPLICATION OF THE RULE MAY LEAD TO A MANIFEST MISCARRIAGE OF JUSTICE, APPROPRIATE RELIEF MAY BE ACCORDED TO A DEFENDANT WHO HAS SHOWN A MERITORIOUS DEFENSE AND HAS SATISFIED THE COURT THAT ACQUITTAL WOULD FOLLOW AFTER THE INTRODUCTION OF THE OMITTED EVIDENCE; CASE AT BAR.— Liberality has been applied in criminal cases but under exceptional circumstances. Given that a person's liberty is at stake in a criminal case, *Umali* concedes that the strict application of the general rule may lead to a manifest miscarriage of justice. Thus, appropriate relief may be accorded to a defendant who has shown a meritorious defense and who has satisfied the court that acquittal would follow after the introduction of omitted evidence: x x x Given this standard, this Court holds that petitioners Abubakar and Baraguir are not entitled to a new trial. First, they failed to convince this Court that they have a meritorious defense and that the evidence they seek to introduce would probably lead to their acquittal. The present case does not involve the same factual circumstances in *De Guzman* or in *Callangan* where the accused were absolutely denied the opportunity to present evidence due to the actuations of their counsels. In those cases, it was just and reasonable for this Court to take a much more liberal stance considering that there was a denial of due process. The same kind of liberality, however, cannot be applied here. Petitioners Abubakar and Baraguir, through counsel, presented their evidence and made out their case before the Sandiganbayan. Based on *Umali* and *Abrajano*, it is incumbent upon them to present a meritorious defense and to convince this Court that the evidence omitted by their former counsel would probably alter the results of the case. They cannot simply allege that they were deprived of due process or that their defense was not fully threshed out during trial. Petitioners Abubakar and Baraguir failed to discharge this burden. x x x Second, petitioners Abubakar and Baraguir's former counsel was not grossly negligent. Their former counsel may have failed to present other pieces of evidence in addition to what their co-accused had presented. He may have also failed

to incorporate other arguments in the record of the case. However, these cannot be considered as grossly negligent acts.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; GENERALLY ADDRESSED TO THE SOUND DISCRETION OF THE PROSECUTOR; PROSECUTION OF ONE PERSON TO THE EXCLUSION OF OTHERS WHO MAY BE JUST AS GUILTY DOES NOT AUTOMATICALLY ENTAIL A VIOLATION OF THE EQUAL PROTECTION CLAUSE; THERE MUST BE A SHOWING OF DISCRIMINATORY INTENT THROUGH EXTRINSIC EVIDENCE.— The prosecution of offenses is generally addressed to the sound discretion of the fiscal. A claim of "selective prosecution" may only prosper if there is extrinsic evidence of "clear showing of intentional discrimination." The prosecution of one person to the exclusion of others who may be just as guilty does not automatically entail a violation of the equal protection clause. Selective prosecution is a concept that is foreign to this jurisdiction. It originated from *United States v. Armstrong*, a 1996 case decided by the United States Supreme Court. A case for selective prosecution arises when a prosecutor charges defendants based on "constitutionally prohibited standards such as race, religion or other arbitrary classification." Essentially, a selective prosecution claim rests upon an alleged violation of the equal protection clause. Although "selective prosecution" has not been formally adopted in this jurisdiction, there are cases that have been decided by this Court recognizing the possibility of defendants being unduly discriminated against through the prosecutorial process. The burden lies on the defendant to show discriminatory intent through extrinsic evidence.

4. CRIMINAL LAW; REPUBLIC ACT 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION OF SECTION 3 (E); ELEMENTS.— A conviction under this provision requires the concurrence of the following elements: 1. The accused must be a public officer discharging administrative, judicial or official functions; 2. He [or she] must have acted with manifest partiality, evident bad faith or [gross] inexcusable negligence; 3. That his [or her] action caused any undue injury to any party, including the government, or giving

any private party unwarranted benefits, advantage or preference in the discharge of his functions.

5. ID.; ID.; ID.; ID.; TWO (2) PUNISHABLE ACTS UNDER THE THIRD ELEMENTS; CASE AT BAR.— The third element refers to two (2) separate acts that qualify as a violation of Section 3(e) of Republic Act No. 3019. An accused may be charged with the commission of either or both. An accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. Thus, in a situation where the government could have been defrauded, the law would be inapplicable, there being no actual loss or damage sustained. In *Pecho v. Sandiganbayan*, this Court was faced with the issue of whether the attempted or frustrated stages of the offense defined in Section 3(e) of Republic Act No. 3019 are punishable. The accused and his co-conspirators' plan to defraud the government was prevented through the timely intervention of customs officials. In holding that Section 3(e) of Republic Act No. 3019 only covers consummated acts, this Court reasoned among others that: [T]he third requisite of Section 3(e), viz., "causing undue injury to any party, including the government," could only mean actual injury or damage which must be established by evidence. x x x The loss or damage need not be proven with actual certainty. However, there must be "some reasonable basis by which the court can measure it." Aside from this, the loss or damage must be substantial. It must be "more than necessary, excessive, improper or illegal." The second punishable act under Section 3(e) of Republic Act No. 3019 is the giving of unwarranted benefits, advantage, or preference to a private party. This does not require actual damage as it is sufficient that the accused has given "unjustified favor or benefit to another."

6. POLITICAL LAW; STATUTES; PRESIDENTIAL DECREE 1594; A PUBLIC CONTRACT SHALL BE AWARDED TO THE LOWEST PREQUALIFIED BIDDER; ACTS OF IDENTIFYING CERTAIN CONTRACTORS AHEAD OF THE SCHEDULED PUBLIC BIDDING AND OF ALLOWING THE ADVANCED DEPLOYMENT OF THEIR EQUIPMENT THROUGH THE ISSUANCE OF CERTIFICATES OF MOBILIZATION ARE GLARING IRREGULARITIES IN THE BIDDING PROCEDURE;

CASE AT BAR.— This Court finds that petitioners Baraguir and Guiani gave unwarranted benefits and advantage to several contractors by allowing them to deploy their equipment ahead of the scheduled public bidding. As a matter of policy, public contracts are awarded through competitive public bidding. The purpose of this process is two (2)-fold. First, it protects public interest by giving the public the "best possible advantages thru open competition." x x x Second, competitive public bidding avoids "suspicion of favoritism and anomalies in the execution of public contracts." These important public policy considerations demand the strict observance of procedural rules relating to the bidding process. Under Presidential Decree No. 1594, a public contract shall be awarded to the lowest prequalified bidder. The bid must comply with the terms and conditions stated in the call to bid and must be the most advantageous to the government. After the evaluation of the bids, the winning bidder shall be given a Notice of Award. The concerned government office or agency and the successful bidder will then execute the contract, which shall be forwarded to the head of the concerned government office or agency for approval. The contract's approval signifies its perfection and it is at this time when the successful bidder may be allowed to commence work upon receipt of a Notice to Proceed. Petitioners Baraguir and Guiani insist that the prosecution failed to establish their intent to favor some contractors in the bidding process. Petitioner Guiani claims that the certificates of mobilization, on which the prosecution heavily relies, prove nothing. x x x The acts of identifying certain contractors ahead of the scheduled public bidding and of allowing the advanced deployment of their equipment through the issuance of certificates of mobilization are glaring irregularities in the bidding procedure that engender suspicion of favoritism and partiality towards the seven (7) contractors. These irregularities create a reasonable, if not conclusive, presumption that the concerned public officials had no intention of complying with the rules on public bidding and that the results were already predetermined.

7. CRIMINAL LAW; REVISED PENAL CODE; CRIMINAL LIABILITY; DOCTRINE LAID DOWN IN *ARIAS VS. SANDIGANBAYAN* DOES NOT APPLY TO EXONERATE PETITIONERS FROM CRIMINAL LIABILITY; THE DOCTRINE IS SUBJECT TO QUALIFICATION THAT

THE PUBLIC OFFICIAL HAS NO FOREKNOWLEDGE OF ANY FACTS OR CIRCUMSTANCES THAT WOULD PROMPT HIM OR HER TO INVESTIGATE OR EXERCISE A GREATER DEGREE OF CARE.— This Court's ruling in *Arias v. Sandiganbayan* cannot exonerate petitioners from criminal liability. *Arias* laid down the doctrine that heads of offices may, in good faith, rely to a certain extent on the acts of their subordinates "who prepare bids, purchase supplies, or enter into negotiations." This is based upon the recognition that heads of offices cannot be expected to examine every single document relative to government transactions: x x x The application of the doctrine is subject to the qualification that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care. In a number of cases, this Court refused to apply the *Arias* doctrine considering that there were circumstances that should have prompted the government official to inquire further. In the present case, the *Arias* doctrine cannot exonerate petitioners Abubakar, Baraguir, or Guiani from criminal liability. There were circumstances that should have prompted them to make further inquiries on the transactions subject of this case.

APPEARANCES OF COUNSEL

Bantao Ismael Salom Law Offices for Datukan M. Guiani.

A.H. Labay Law Firm for Ulama S. Baraguir and Farouk Abubakar.

Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The rules on competitive public bidding and those concerning the disbursement of public funds are imbued with public interest. Government officials whose work relates to these matters are expected to exercise greater responsibility in ensuring compliance with the pertinent rules and regulations. The doctrine allowing heads of offices to rely in good faith on the acts of their

subordinates is inapplicable in a situation where there are circumstances that should have prompted the government officials to make further inquiries.

For this Court's resolution are three (3) consolidated Petitions for Review on Certiorari[1] concerning alleged anomalies in the implementation of infrastructure projects within the Autonomous Region of Muslim Mindanao (ARMM). The Petitions, separately docketed as G.R. Nos. 202408,[2] 202409,[3] and 202412,[4] question the Sandiganbayan's December 8, 2011 Decision[5] and June 19, 2012 Resolution[6] in Criminal Case Nos. 24963-24983. The assailed judgments declared Farouk B. Abubakar (Abubakar) guilty beyond reasonable doubt of 10 counts of violation of Section 3(e) of Republic Act No. 3019, and Ulama S. Baraguir (Baraguir) and Datukan M. Guiani (Guiani) guilty beyond reasonable doubt of 17 counts of violation of Section 3(e) of Republic Act No. 3019.[7]

Abubakar, Baraguir, and Guiani were public officials of the Department of Public Works and Highways in ARMM (DPWH-ARMM) when the offenses were allegedly committed. Abubakar held the position of Director III, Administrative, Finance Management Service. Baraguir was the Director of the Bureau of Construction, Materials and Equipment, and a member of the Pre-Qualification Bids and Awards Committee, while Guiani was the DPWH-ARMM Regional Secretary.[8]

---

[1] The Petitions were filed under Rule 45 of the Rules of Court.

[2] *Rollo* (G.R. No. 202408), pp. 11-84.

[3] *Rollo* (G.R. No. 202409), pp. 11-84.

[4] *Rollo* (G.R. No. 202412), pp. 3-12.

[5] *Rollo* (G.R. No. 202408), pp. 85-146. The Decision was penned by Associate Justice Efren N. De La Cruz and concurred in by Associate Justices Rodolfo R. Ponferrada and Rafael R. Lagos of the First Division, Sandiganbayan, Quezon City.

[6] *Id*. at 147-165. The Resolution was penned by Associate Justice Efren N. De La Cruz and concurred in by Associate Justices Rodolfo A. Ponferrada and Rafael R. Lagos of the First Division, Sandiganbayan, Quezon City.

[7] *Rollo* (G.R. No. 202412) at 69-72.

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

Guiani v. Sandiganbayan[9] is the procedural antecedent of this case.

After the creation of ARMM, the national government earmarked ₱615,000,000.00 for the implementation of regional and provincial infrastructure projects. In 1991, the funds were transferred to the Office of the ARMM Regional Governor. Later, a portion of the funds was then transferred to DPWH-ARMM.[10]

During the incumbency of then President Fidel V. Ramos (President Ramos), the Office of the President received reports of irregularities attending the implementation of the DPWH-ARMM infrastructure projects. The Commission on Audit was directed to conduct an investigation.[11]

Acting upon then President Ramos' instruction, the Commission on Audit created a special audit team headed by Heidi L. Mendoza (Mendoza) to look into the implementation of four (4) road concreting projects, namely: (1) the Cotabato-Lanao Road, Sections 1-13; (2) the Awang-Nuro Road; (3) the Highway Linek-Kusiong Road; and (4) the Highway Simuay Seashore Road.[12] Physical inspections were conducted on October 15, 1992 to validate the existence of the projects and the extent of their development.[13]

The audit team made the following findings:[14]

First, an overpayment amounting to ₱17,684,000.00 was incurred on nine (9) road sections. The audit team discovered the existence of bloated accomplishment reports that allowed contractors to prematurely claim on their progress billings.[15]

---

[9] 435 Phil. 467 (2002) [Per *J*. Ynares-Santiago, *En Banc*].

[10] *Rollo* (G.R. No. 202412), pp. 41-42.

[11] *Id*. at 42.

[12] *Id*. at 42-43.

[13] *Rollo* (G.R. No. 202408), p. 22.

[14] *Id*. at 241-267, Report of the COA-Special Audit Team.

[15] *Id*. at 248-254.

Second, advance payments totaling ₱14,400,000.00 were given to nine (9) contractors for the procurement of aggregate sub-base course in violation of Section 88(l) of Presidential Decree No. 1445.[16]

Third, public bidding for the Cotabato-Lanao Road Project was done without a detailed engineering survey.[17] The bidding was reportedly conducted on January 14, 1992. However, the engineering survey was only completed sometime in August 1992. The audit team also observed bidding irregularities in the Awang-Nuro Road Project and in six (6) road sections of the Cotabato-Lanao Road Project. Public bidding for the two (2) projects was reportedly conducted on January 14, 1992 but records disclose that the contractors already mobilized their equipment as early as January 4 to 7, 1992.[18]

Lastly, the engineering survey for the centerline relocation and profiling of the Cotabato-Lanao Road, which cost ₱200,000.00, appeared to be unnecessary due to the existence of a previous engineering survey. Furthermore, advance payment was given to the contractor in excess of the limit provided under the implementing rules and regulations of Presidential Decree No. 1594.[19]

Based on the report submitted by the Commission on Audit, the Office of the Ombudsman conducted a preliminary

---

[16] *Id.* at 254-260.

[17] Pres. Decree No. 1594 (1978), Sec. 2 provides:

Section 2. *Detailed Engineering*. — No bidding and/or award of contract for a construction project shall be made unless the detailed engineering investigations, surveys, and designs for the project have been sufficiently carried out in accordance with the standards and specifications to be established under the rules and regulations to be promulgated pursuant to Section 12 of this Decree so as to minimize quantity and cost overruns and underruns, change orders and extra work orders, and unless the detailed engineering documents have been approved by the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be.

[18] *Rollo* (G.R. No. 202408), pp. 260-262.

[19] *Id.* at 262-266.

investigation and found probable cause to indict the regional officials of DPWH-ARMM for violation of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. On July 31, 1998, 21 separate Informations were filed against Abubakar, Baraguir, Guiani, and other officials of DPWH-ARMM. The consolidated cases were docketed as Criminal Case Nos. 24963-24983.[20]

Charged in Criminal Case Nos. 24963 to 24969 were Guiani, Baraguir, and several other DPWH-ARMM officials for allegedly awarding projects to contractors without the required public bidding.[21]

Abubakar, Guiani, Baraguir, and two (2) employees of DPWH-ARMM were charged in Criminal Case No. 24970 for allegedly awarding excessive mobilization fees to Arce Engineering Services.[22]

Guiani was charged in Criminal Case No. 24971 for entering into an unnecessary contract with Arce Engineering Services for the conduct of another detailed engineering survey.[23]

Abubakar, Baraguir, Guiani, and two (2) other officials of DPWH-ARMM were charged in Criminal Case Nos. 24972, 24975 to 24980, and 24982 to 24983 for allegedly advancing ₱14,400,000.00 to several contractors for sub-base aggregates.[24]

Lastly, Abubakar, Baraguir, Guiani, and several other DPWH-ARMM officials were charged in Criminal Case Nos. 24973, 24974, and 24981 for allegedly causing overpayment on several projects due to bloated accomplishment reports.[25]

---

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

[21] *Rollo* (G.R. No. 202412), pp. 14-18.

[22] *Id*. at 18.

[23] *Id*. at 19.

[24] *Id*. at 19-25.

[25] *Id*. at 25-27.

All the Informations charged the accused with conspiracy except for Criminal Case No. 24971.[26]

Upon arraignment, Abubakar, Baraguir, Guiani, and some of their co-accused entered a plea of not guilty. Seven (7) of their co-accused remained at large while one (1) died prior to the scheduled arraignment.[27]

During trial, the prosecution presented Leodivina A. De Leon (De Leon) and Mendoza to testify on the findings of the Commission on Audit.[28]

De Leon testified on the alleged irregularities attending the bidding procedure. She explained that some contractors were allowed to mobilize their equipment even before the conduct of the bidding and the perfection of the contracts for six (6) road sections of the Cotabato-Lanao Road and the Awang-Nuro Road Projects.[29]

Mendoza testified on the alleged irregular payment scheme for the procurement of sub-base aggregates. She stated that the concerned DPWH-ARMM officials made it appear that they were requesting for the pre-payment of cement. However, the disbursement vouchers indicate that the payment was made for the procurement of sub-base aggregates. The words "sub-base aggregates" were superimposed on the disbursement vouchers.[30]

After the prosecution rested its case, several of the accused filed their respective Motions for Leave to file Demurrer to Evidence. These Motions were denied by the Sandiganbayan in its March 18, 2008 Resolution. The defense then proceeded to the presentation of its evidence.[31]

---

[26] *Id*. at 14-27.

[27] *Id*. at 27.

[28] *Id*. at 29.

[29] *Id.* at 31.

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

[31] *Id*. at 34-35.

Presented as witnesses for the defense were some of the accused: (1) Nelfa M. Suasin (Suasin), an accountant of DPWH-ARMM; (2) Guialoson A. Mamogkat (Mamogkat), the DPWH-ARMM Director for Operations; (3) Taungan S. Masandag (Masandag), the DPWH-ARMM Regional Assistant Secretary and the designated Chair of the Pre-Qualification Bids and Awards Committee; (4) Abubakar; and (5) Baraguir. Commission on Audit's Records Custodian Nenita V. Rama was also presented as a defense witness.[32]

Suasin testified that she consulted her superiors, particularly Abubakar, Baraguir, and Guiani, regarding the 30% mobilization fees awarded to Arce Engineering Services. They explained to her that the mobilization fee was increased as no other surveyor was willing to undertake the work due to the peace and order situation in the area. Suasin raised the same defense on the ₱14,400,000.00 advance payment. She claimed that she signed the disbursement vouchers after seeking approval from her superiors. She also testified that the item typewritten on the disbursement vouchers was "cement" and not "sub-base aggregates."[33]

Mamogkat testified that DPWH-ARMM had to re-survey some areas of the Cotabato-Lanao Road Project because they could no longer locate the reference points marked in the original survey. He denied the charge that some contractors were overpaid, and attributed the discrepancy between the audit team's report and DPWH-ARMM's report on several factors. He pointed out, among others, that the physical inspection conducted by the DPWH-ARMM team was more extensive compared to the audit team's one (1)-day inspection.[34]

Masandag insisted that the Pre-Qualification Bids and Awards Committee followed the bidding procedure laid down in Presidential Decree No. 1594. He denied knowledge and

---

[32] *Id*. at 35-41.

[33] *Id.* at 35-36.

[34] *Id*. at 36-38.

participation on the alleged early mobilization of contractors, and claimed that it was the Regional Secretary who authorized the issuance of the certificates of mobilization.[35]

Abubakar claimed that he was only implicated due to the presence of his signature in the disbursement vouchers. He asserted that he examined the supporting documents and the certifications made by the technical experts before affixing his signature.[36]

Last to testify for the defense was Baraguir. He claimed that some contractors took the risk of mobilizing their equipment before the conduct of public bidding on the expectation that the winning bidders would sub-lease their equipment. He also testified that construction immediately began on some projects after the engineering survey to fast track the implementation of the projects.[37]

On December 8, 2011, the Sandiganbayan rendered judgment[38] finding Guiani, Baraguir, and Masandag guilty beyond reasonable doubt of seven (7) counts of violation of Section 3(e) of Republic Act No. 3019 in Criminal Case Nos. 24963 to 24969.[39]

The Sandiganbayan held that Guiani, Baraguir, and Masandag conspired with each other and gave unwarranted benefits, preference, and advantage to seven (7) contractors by allowing them to deploy their equipment before the scheduled public bidding. Records show that the public bidding for the Cotabato-Lanao Road and Awang-Nuro Road Projects was conducted after the issuance of the certificates of mobilization:[40]

---

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

[36] *Id*. at 40.

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

[38] *Id.* at 13-73.

[39] *Id*. at 45-52.

[40] *Id*. at 46-52.

Project	Contractor	Date of Certification	Date of Bidding	Date of Contract
Awang-Nuro Road	HMB Construction and Supply	Jan. 7, 1992	Jan. 14, 1992	Jan. 16, 1992
Cotabato-Lanao Road Section 8	Kutawato Construction	Jan. 5, 1992	[Jan. 14, 1992]	[Jan. 16, 1992]
[Cotabato-Lanao Road] Section 7	Al Mohandiz Construction	Jan. 5, 1992	[Jan. 14, 1992]	[Jan. 16, 1992]
[Cotabato-Lanao Road] Section 2	JM Construction	Jan. 7, 1992	[Jan. 14, 1992]	[Jan. 16, 1992]
[Cotabato-Lanao Road] Section 5	PMA Construction	Jan. 6, 1992	[Jan. 14, 1992]	Jan. 20, 1992
[Cotabato-Lanao Road] Section 3	Al-Aziz-Engineering	Jan. 4, 1992	[Jan. 14, 1992]	Jan. 8, 1992
[Cotabato-Lanao Road] Section 1	MGL Construction	Jan. 5, 1992	[Jan. 14, 1992]	Jan. 15, 1992[41]

According to the Sandiganbayan, HMB Construction and Supply, Kutawato Construction, Al Mohandiz Construction, JM Construction, PMA Construction, Al-Aziz-Engineering, and MGL Construction were already identified as contractors for the abovementioned projects even before the scheduled public bidding. For instance, the certification issued to HMB Construction and Supply stated:

C E R T I F I C A T I O N

THIS IS TO CERTIFY that HMB CONSTRUCTION AND SUPPLY, **Contractor for the construction of AWANG-NURO,**

[41] *Id.* at 47.

UPI ROAD, had already mobilized a minimum number of equipments (sic) necessary for the implementation of the said project.

This certification is being issued to HMB CONSTRUCTION AND SUPPLY in connection with his legal claim under P.D. 1594 as stated for the payment of fifteen (15) percent mobilization fee.

Issued this 7th day of January, 1992.[42] (Emphasis in the original)

Similar certifications were issued to Kutawato Construction, Al Mohandiz Construction, JM Construction, PMA Construction, Al-Aziz- Engineering, and MGL Construction.[43]

The Sandiganbayan rejected the defense's justification regarding the early mobilization of these contractors, and underscored that no contractor would risk mobilizing its equipment without any assurance that the projects would be awarded to it. Although a public bidding was actually conducted, the Sandiganbayan believed that it was done as a mere formality.[44]

Accused Guiani, Mamogkat, Abubakar, Baraguir, and Suasin were found guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act No. 3019 for causing the disbursement of 30% of the mobilization fees or advance payment to Arce Engineering Services.[45]

Accused Guiani was acquitted in Criminal Case No. 24971 for his alleged act of entering into a second detailed engineering survey. The Sandiganbayan held that the second survey was indispensable because the reference points in the original survey could no longer be found. The prosecution failed to prove that accused Guiani exhibited manifest partiality, evident bad faith, or gross inexcusable negligence in hiring Arce Engineering Services.[46]

---

[42] *Id*.

[43] *Id.* In some parts of the Sandiganbayan Decision, Al Mohandiz Construction was also referred as "Al-Mohandis Construction," PMA Construction as "P.M.A. Engineering Construction," and MGL Construction as "M.G.L. Construction."

[44] *Id*. at 48-51.

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

[46] *Id.* at 55-59.

The Sandiganbayan convicted accused Guiani, Mamogkat, Abubakar, Baraguir, and Suasin of nine (9) counts of violation of Section 3(e) of Republic Act No. 3019 for facilitating the advance payment for the procurement of sub-base aggregates.[47]It characterized the ₱14,400,000.00 disbursement as an advance payment and not as pre-payment for construction materials. First, the disbursement was given directly to the contractor and not to the suppliers. Second, there were no written requests from the contractors who wished to avail of the pre-payment facility. Third, under Department Order No. 42 of the Department of Public Works and Highways, only cement, reinforcing steel bars, and asphalt may be procured under a pre-payment scheme.[48] Thus, the ₱14,400,000.00 disbursement could not be considered as pre-payment for construction materials.

The Sandiganbayan concluded that the disbursement was an advance payment and declared it illegal because there were no documents to prove that the items were actually delivered. It cited Section 88(1) of Presidential Decree No. 1445 as legal basis.[49]

Guiani, Baraguir, Abubakar, and Mamogkat were acquitted in Criminal Case Nos. 24973, 24974, and 24981 for allegedly causing the overpayment on several projects due to bloated accomplishment reports. The Sandiganbayan gave more credence to DPWH-ARMM's accomplishment report over the audit team's report. First, the standards used by each team varied. Second, DPWH-ARMM's inspection was more extensive.[50]

---

[47] *Id*. at 70.

[48] *Id*. at 59-64.

[49] *Id*. Pres. Decree No. 1445 (1978), Sec. 88(l) provides:

Section 88. *Prohibition Against Advance Payment on Government Contracts*. — (1) Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

[50] *Id*. at 64-69.

The dispositive portion of the Sandiganbayan's December 8, 2011 Decision stated:

WHEREFORE, IN LIGHT OF ALL THE FOREGOING, the Court hereby renders judgment as follows:

1. In Criminal Cases No. 24963, No. 24964, No. 24965, No. 24966, No. 24967, No. 24968 and No. 24969, the Court finds accused DATUKAN M. GUIANI, TAUNGAN S. MASANDAG and ULAMA S. BARAGUIR **GUILTY** beyond reasonable doubt of seven (7) counts of violation of Sec. 3(e) of R.A. 3019, and pursuant to Section 9 thereof, are hereby sentenced to suffer **for each count** the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum, up to ten (10) years as maximum, with perpetual disqualification from public office.

2. In Criminal Case No. 24970, the Court finds accused DATUKAN M. GUIANI, GUIALOSON A. MAMOGKAT, FAROUK B. ABUBAKAR, ULAMA S. BARAGUIR AND NELFA M. SUASIN **GUILTY** beyond reasonable doubt of violating Sec. 3 (e) of RA 3019, and hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum, up to ten (10) years as maximum, with perpetual disqualification from public office.

3. In Criminal Case No. 24971, for failure of the prosecution to prove his guilt beyond reasonable doubt, accused DATUKAN M. GUIANI is hereby **ACQUITTED** of the offense of violation of Sec. 3 (e) of RA 3019.

Considering that the act or omission from which the civil liability might arise did not exist, no civil liability may be assessed against the accused.

The hold departure order issued against him by reason of this case is hereby LIFTED and SET ASIDE, and his bond ordered RELEASED.

4. In Criminal Cases No. 24972, No. 24975, No. 24976, No. 24977, No. 24978, No. 24979, No. 24980, No. 24982 and No. 24983, the Court finds accused DATUKAN M. GUIANI, GUIALOSON A. MAMOGKAT, FAROUK B. ABUBAKAR, ULAMA S. BARAGUIR and NELFA M. SUASIN **GUILTY** beyond reasonable doubt of nine (9) counts of violation of Sec. 3 (e) of RA 3019 and, pursuant to

Section 9 thereof, are hereby sentenced to suffer **for each count** the indeterminate penalty of imprisonment of six (6) years and one (1) month as minimum, up to ten (10) years as maximum, with perpetual disqualification from public office.

5. In Criminal Case No. 24973, for failure of the prosecution to prove their guilt beyond reasonable doubt, accused DATUKAN M. GUIANI, ULAMA S. BARAGUIR, FAROUK B. ABUBAKAR, GUIALOSON A. MAMOGKAT, NASSER G. SINARIMBO, MANGONDAYA A. MADID and SALIK ALI are hereby **ACQUITTED** of the offense of violation of Sec. 3 (e) of RA 3019.

Considering that the act or omission from which the civil liability might arise did not exist, no civil liability may be assessed against the accused.

The hold departure order issued against them by reason of this case is hereby LIFTED and SET ASIDE, and their bonds ordered RELEASED.

6. In Criminal Case No. 24974, for failure of the prosecution to prove their guilt beyond reasonable doubt, accused DATUKAN M. GUIANI, TAUNGAN S. MASANDAG, ULAMA S. BARAGUIR, FAROUK B. ABUBAKAR, GUIALOSON A. MAMOGKAT, MANGONDAYA A. MADID, SALIK ALI, NASSER G. SINARIMBO, EMRAN B. BUISAN, BEVERLY GRACE D. VILLAR and ROMMEL A. GALINDO are hereby **ACQUITTED** of the offense of violation of Sec. 3 (e) of RA 3019.

Considering that the act or omission from which the civil liability might arise did not exist, no civil liability may be assessed against the accused.

The hold departure order issued against them by reason of this case is hereby LIFTED and SET ASIDE, and their bonds ordered RELEASED.

7. In Criminal Case No. 24981, for failure of the prosecution to prove their guilt beyond reasonable doubt, accused DATUKAN M. GUIANI, FAROUK B. ABUBAKAR, ULAMA S. BARAGUIR, GUIALOSON A. MAMOGKAT, BAHAMA A. ANDAR, PENDATUN JAUHALI, EMRAN B. BUISAN, NAZER P. EBUS and RONEL C. QUESADA are hereby **ACQUITTED** of the offense of violation of Sec. 3 (e) RA 3019.

Considering that the act or omission from which the civil liability might arise did not exist, no civil liability may be assessed against the accused.

The hold departure order issued against them by reason of this case is hereby LIFTED and SET ASIDE, and their bonds ordered RELEASED.

. . . . . .

SO ORDERED.[51] (Emphasis in the original)

Abubakar and Baraguir filed their respective motions for new trial and reconsideration on separate dates. They anchored their prayer for new trial on the alleged incompetence of their former counsel. Guiani, Suasin, and Mamogkat also moved for reconsideration.[52] In their motions, accused Guiani and Baraguir invoked the application of the *Arias*[53] doctrine.[54]

On June 19, 2012, the Sandiganbayan rendered a Resolution[55] denying the motions for new trial and reconsideration for lack of merit.[56]

Abubakar, Baraguir, and Guiani filed their respective Petitions for Review before this Court questioning the December 8, 2011 Decision and June 19, 2012 Resolution of the Sandiganbayan. The petitions were consolidated on January 21, 2013.[57]

Respondents the Honorable Sandiganbayan, the People of the Philippines, and the Office of the Special Prosecutor filed, through the Office of the Special Prosecutor, their consolidated

---

[51] *Id*. at 69-72.

[52] *Rollo* (G.R. No. 202408), pp. 147-151.

[53] *Arias v. Sandiganbayan*, 259 Phil. 794 (1989) [Per *J*. Gutierrez, Jr., *En Banc*].

[54] *Rollo* (G.R. No. 202408), pp. 150-152.

[55] *Id*. at 147-165.

[56] *Id*. at 164-165.

[57] *Id.* at 539-540.

Comment,[58] to which petitioners Abubakar and Baraguir filed their respective Replies.[59] Due to petitioner Guiani's repeated failure to submit the required reply, this Court dispensed with its filing.

Petitioners Abubakar and Baraguir maintain that they are entitled to a new trial due to their former counsel's incompetence and negligence. They claim that aside from simply adopting the evidence submitted by their co-accused, their former counsel also failed to present and to formally offer relevant evidence that would exonerate them from liability. Petitioners Abubakar and Baraguir believe that they were deprived of the opportunity to fully present their case[60] and to claim that the following documents should have been presented before the Sandiganbayan:

(1) Original copies of the assailed disbursement vouchers proving that the entries were for cement and not for sub-base aggregates;[61]

(2) The testimony of handwriting experts who would confirm their defense;[62]

(3) Written requests of contractors who wished to avail of the pre-payment scheme for the procurement of cement to prove compliance with DPWH Department Order No. 42;[63]

(4) Original copy of the February 17, 1992 DPWH Memorandum issued by the former DPWH Regional Secretary requiring petitioners Abubakar and Baraguir to sign Box 3 of the disbursement vouchers;[64]

(5) The Personnel Data Files of petitioners Abubakar and Baraguir, the Contract of Services of petitioner Abubakar,

[58] *Id*. at 559-587.

[59] *Id*. at 603-649; *rollo* (G.R. No. 202409) pp. 585-634.

[60] *Rollo* (G.R. No. 202408), pp. 34-49; *rollo* (G.R. No. 202409), pp. 29-45.

[61] *Rollo* (G.R. No. 202408), p. 46; *rollo* (G.R. No. 202409), p. 40.

[62] *Id*.

[63] *Id*.

[64] *Id*.

and the Appointment of petitioner Baraguir to prove that their employment was temporary or contractual in nature, and to prove that their duties did not require "the exercise of judgment or discretion";[65] and

(6) The Department of Trade and Industry Certification on the scarcity of cement to prove that pre-payment was necessary.[66]

Petitioner Abubakar adds that copies of several disbursement vouchers should have been presented to prove that his signatures were unnecessary.[67] These disbursement vouchers,[68] which do not bear his name or signature, should have been formally offered in Criminal Case Nos. 24972, 24979, 24980, 24982, and 24983.[69]

Petitioner Baraguir believes that other documents should have been formally offered, including:

[a] The invitation to bid to prove that the projects were published for public bidding;

[b] The actual bids to prove that an actual bidding took place;

[c] The Notices of Award issued by the Regional Secretary to prove that the projects were awarded to the lowest bidders;

[d] The Notices to Commence issued by the Regional Secretary to prove that the winning contractor cannot start the project yet until the latter has received the same.[70]

On the other hand, respondents, through the Office of the Special Prosecutor, assert that petitioners Abubakar and Baraguir are not entitled to a new trial. As a rule, clients are bound by the acts of their counsel. Mistakes committed due to a counsel's

---

[65] *Rollo* (G.R. No. 202408), p. 47; *rollo* (G.R. No. 202409), pp. 40-41.

[66] *Rollo* (G.R. No. 202408), p. 47; *rollo* (G.R. No. 202409), p. 41.

[67] *Rollo* (G.R. No. 202408), p. 46.

[68] *Id*. at 472-476.

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

[70] *Rollo* (G.R. No. 202409), pp. 31-32.

incompetence or inexperience cannot justify the grant of a new trial. Otherwise, there would be no end to litigation.[71]

Aside from this, petitioners Abubakar and Baraguir assert that their right to equal protection was violated due to "selective prosecution." Only a handful of DPWH-ARMM officials were charged of violation of Republic Act No. 3019. Several employees who allegedly participated in the preparation of project documents were not indicted.[72]

Respondents counter that petitioners' claim of selective prosecution will not prosper as there is no proof of "clear showing of intentional discrimination" against them.[73]

With regard to the alleged early mobilization of contractors prior to the scheduled public bidding, petitioner Baraguir asserts that he has neither favored nor given any unwarranted benefit to any contractor. He asserts that the risk-taking strategy of some contractors in choosing to mobilize their equipment ahead of public bidding is beyond the control of the Pre-Qualification Bids and Awards Committee. Furthermore, he did not prepare the certificates of mobilization.[74] Petitioner Guiani also denies giving unwarranted benefits to certain parties.[75] He claims that the certificates of mobilization, on which the prosecution heavily relies, prove nothing.[76]

Further, petitioner Abubakar argues that the Contract for Survey Work executed by petitioner Guiani and a certain Engineer Ricardo Arce served as the basis for the advance payment given to Arce Engineering Services. The Contract for Survey Work explicitly stated that Arce Engineering Services

---

[71] *Rollo* (G.R. No. 202412), pp. 144-147.

[72] *Rollo* (G.R. No. 202408), pp. 49-52; *rollo* (G.R. No. 202409) pp. 45-48.

[73] *Rollo* (G.R. No. 202408), pp. 148-150 and 153.

[74] *Rollo* (G.R. No. 202409), pp. 58-64.

[75] *Rollo* (G.R. No. 202412), p. 6.

[76] *Id*. at 93-96, Motion for Reconsideration with Formal Entry of Appearance dated December 22, 2011.

would immediately be entitled to 30% of the contract price upon the contract's execution. Thus, he had no other choice but to approve the disbursement. Furthermore, he claims that petitioner Guiani's acquittal in Criminal Case No. 24971 should be considered in his favor.[77] Petitioner Baraguir raises a similar defense. He argues that he relied in good faith on the contract entered into by petitioner Guiani with Arce Engineering Services.[78]

Petitioners Abubakar and Baraguir add that they are entitled to the justifying circumstance under Article 11(6) of the Revised Penal Code for relying on the Contract for Survey Work.[79]

As to the ₱14,400,000.00 disbursement for sub-base aggregates, petitioner Abubakar argues that his signatures on the disbursement vouchers have no bearing and were affixed on them as a formality pursuant to DPWH-ARMM Memorandum[80] dated February 17, 1992.[81] Petitioner Baraguir, on the other hand, insists that "cement" was indicated on the disbursement vouchers and that there were no traces of alterations or superimpositions at the time he affixed his signature.[82]

Throughout their pleadings, petitioners invoke good faith as a defense. They claim that they relied on the representations and assurances of their subordinates who were more versed on technical matters.[83] Petitioner Guiani, in particular, asserts that the Sandiganbayan should have applied the *Arias* doctrine in this case. He should not have been penalized for relying on the

---

[77] *Rollo* (G.R. No. 202408), pp. 68-70.

[78] *Rollo* (G.R. No. 202409), pp. 66-69.

[79] *Rollo* (G.R. No. 202408), pp. 63-67; *rollo* (G.R. No. 202409), pp. 69-72.

[80] *Rollo* (G.R. No. 202408), pp. 524-525.

[81] *Id*. at 52-63.

[82] *Rollo* (G.R. No. 202409), pp. 48-57.

[83] *Rollo* (G.R. No. 202408), pp. 52-63; *rollo* (G.R. No. 202409), pp. 48-57; *rollo* (G.R. No. 202412), pp. 6 and 99-101.

acts of his subordinates, which he presumed were done in accordance with law.[84]

Respondents disagree and claim that the *Arias* doctrine is inapplicable. They assert that petitioners cannot claim good faith as they were fully aware of the bidding irregularities. The evidence presented by the prosecution show that certificates of mobilization were issued prior to the conduct of actual public bidding. Further, petitioners cannot claim good faith in allowing Arce Engineering Services to claim 30% as advance payment considering that they knew of the 15% limitation.[85]

Meanwhile, petitioners Abubakar and Baraguir assert that the government did not suffer undue injury considering that the projects in dispute have already been completed. They argue that undue injury, in the context of Republic Act No. 3019, has been equated by this Court with the civil law concept of actual damages. They believe that the prosecution failed to substantiate the actual injury sustained by the government.[86]

Respondents, on the other hand, argue that a violation of Section 3(e) of Republic Act No. 3019 may be committed in two (2) ways, namely: by causing any undue injury to a party, or by giving unwarranted benefits, advantage, or preference to any party.[87]

This case presents the following issues for this Court's resolution:

First, whether or not petitioners Farouk B. Abubakar and Ulama S. Baraguir are entitled to a new trial for the alleged incompetence of their former counsel;

Second, whether or not the right of petitioners Farouk B. Abubakar and Ulama S. Baraguir to the equal protection of the laws was violated due to "selective prosecution";

---

[84] *Rollo* (G.R. No. 202412), pp. 6 and 96-101.

[85] *Id*. at 152-159.

[86] *Rollo* (G.R. No. 202408), pp. 72-74; *rollo* (G.R. No. 202409), pp. 72-74.

[87] *Rollo* (G.R. No. 202412), pp. 150-151.

Third, whether or not the prosecution was able to establish petitioners Farouk B. Abubakar, Ulama S. Baraguir, and Datukan M. Guiani 's guilt beyond reasonable doubt for violation of Section 3(e) of Republic Act No. 3019; and

Finally, whether or not petitioners Farouk B. Abubakar, Ulama S. Baraguir, and Datukan M. Guiani should be exonerated from criminal liability based on the *Arias* doctrine.

I

Lawyers act on behalf of their clients with binding effect.[88] This is the necessary consequence of the fiduciary relationship created between a lawyer and a client. Once engaged, a counsel holds "the implied authority to do all acts which are necessary or, at least, incidental to the prosecution and management of the suit."[89] The acts of counsel are deemed acts of the client.

Thus, as a rule, parties are bound by the acts, omissions, and mistakes of their counsel.[90] To adopt a contrary principle may lead to unnecessary delays, indefinite court proceedings, and possibly no end to litigation for all that a defeated party would do is to claim that his or her counsel acted negligently.[91] An exception to this is when the gross and inexcusable negligence of counsel deprives the latter's client of his or her day in court. The allegation of gross and inexcusable negligence, however, must be substantiated.[92] In determining whether the case falls under the exception, courts should always be guided by the

---

[88] *Aguila v. Court of First Instance of Batangas*, 243 Phil. 505, 509 (1988) [Per *J*. Cruz, First Division].

[89] *Juani v. Alarcon*, 532 Phil. 585, 603 (2006) [Per *J*. Chico-Nazario, First Division].

[90] *Villa Rhecar Bus v. De la Cruz*, 241 Phil. 14, 18 (1988) [Per *J*. Gancayo, First Division].

[91] *Juani v. Alarcon*, 532 Phil. 585, 603-604 (2006) [Per *J*. Chico-Nazario, First Division].

[92] *Legarda v. Court of Appeals*, 272-A Phil. 394, 402-404 (1991) [Per *J*. Gancayco, First Division].

principle that parties must be "given the fullest opportunity to establish the merits of [their] action or defense."[93]

The general rule on the binding effect of counsel's acts and omissions has been applied with respect to applications for a new trial. In *U.S. v. Umali*:[94]

> In criminal as well as in civil cases, it has frequently been held that the fact that blunders and mistakes may have been made in the conduct of the proceedings in the trial court, as a result of the ignorance, inexperience, or incompetence of counsel, does not furnish a ground for a new trial.
>
> . . . . . .
>
> So it has been held that *mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy, materiality, or immateriality of certain evidence, the proper defense, or the burden of proof are not proper grounds for a new trial*; and in general the client is bound by the action of his counsel in the conduct of his case, and can not be heard to complain that the result of the litigation might have been different had counsel proceeded differently.[95] (Emphasis supplied, citations omitted)

Liberality has been applied in criminal cases but under exceptional circumstances. Given that a person's liberty is at stake in a criminal case, *Umali* concedes that the strict application of the general rule may lead to a manifest miscarriage of justice.[96] Thus, appropriate relief may be accorded to a defendant who has shown a meritorious defense and who has satisfied the court that acquittal would follow after the introduction of omitted evidence:

---

[93] *Dela Cruz v. Sison*, 508 Phil. 36, 44 (2005) [Per *J*. Austria-Martinez, Second Division] citing *Government Service Insurance System v. Bengson Commercial Buildings, Inc.*, 426 Phil. 111 (2002) [Per *C.J*. Davide, *En Banc*].

[94] 15 Phil. 33 (1910) [Per *J.* Carson, *En Banc*].

[95] *Id*. at 35.

[96] *Id*. at 36.

It must be admitted, however, that courts of last resort have occasionally relaxed the strict application of this rule in criminal cases, where the defendants, having otherwise a good case, were able to satisfy the court that acquittal would in all probability have followed the introduction of certain testimony, which was not submitted at the trial under improper or injudicious advice of incompetent counsel.[97]

In *De Guzman v. Sandiganbayan*,[98] the accused was convicted based solely on the testimony of the prosecution's witness. The accused was unable to present any evidence due to his counsel's insistence in filing a demurrer to evidence despite the Sandiganbayan's denial of the motion for leave to file it.[99] This was considered by this Court as gross negligence:

Petitioner's present dilemma is certainly not something reducible to pesos and centavos. No less than his liberty is at stake here. And he is just about to lose it simply because his former lawyers pursued a carelessly contrived procedural strategy of insisting on what has already become an imprudent remedy, as aforediscussed, which thus forbade petitioner from offering his evidence all the while available for presentation before the Sandiganbayan. Under the circumstances, higher interests of justice and equity demand that petitioner be not penalized for the costly importunings of his previous lawyers based on the same principles why this Court had, on many occasions where it granted new trial, excused parties from the negligence or mistakes of counsel. To cling to the general rule in this case is only to condone rather than rectify a serious injustice to petitioners whose only fault was to repose his faith and entrust his innocence to his previous lawyers. Consequently, the receipts and other documents constituting his evidence which he failed to present in the Sandiganbayan are entitled to be appreciated, however, by that forum and not this Court, for the general rule is that we are not triers of facts. Without prejudging the result of such appreciation, petitioner's documentary evidences *prima facie* appear strong when reckoned with the lone prosecution witness Angeles' testimony, indicating that official training programs

---

[97] *Id*.

[98] 326 Phil. 182 (1996) [Per *J*. Francisco, *En Banc*].

[99] *Id*. at 185.

were indeed actually conducted and that the ₱200,000.00 cash advance he received were spent entirely for those programs.[100] (Citation omitted)

Similarly, in *Callangan v. People of the Philippines*,[101] the accused was unable to present any evidence. This Court, in granting new trial, characterized the "chronic inaction of [the accused's] counsel on important incidents and stages of the criminal proceedings" as a denial of due process:[102]

> The omissions of petitioner's counsel amounted to an abandonment or total disregard of her case. They show conscious indifference to or utter disregard of the possible repercussions to his client. Thus, the chronic inaction of petitioner's counsel on important incidents and stages of the criminal proceedings constituted gross negligence.
>
> The RTC itself found that petitioner never had the chance to present her defense because of the nonfeasance (malfeasance, even) of her counsel. It also concluded that, effectively, she was without counsel. Considering these findings, to deprive petitioner of her liberty without affording her the right to be assisted by counsel is to deny her due process.[103]

In one occasion, this Court allowed the presentation of additional evidence even if the accused initially adduced evidence during trial. This level of liberality, however, is conditioned upon a finding that the introduction of omitted evidence would probably alter the result of the case.

In *Abrajano v. Court of Appeals*,[104] this Court remanded the case to the trial court for the conduct of new trial to allow the accused to present additional evidence. The same standard in *Umali* was applied:

> Nevertheless, courts of last resort have occasionally relaxed the strict application of the rule that the acts of counsel bind the client

---

[100] *Id*. at 189-190.

[101] 526 Phil. 239 (2006) [Per *J*. Corona, Second Division].

[102] *Id*. at 245.

[103] *Id*.

[104] 397 Phil. 76 (2000) [Per *J*. Kapunan, First Division].

in criminal cases, where the defendants, having otherwise a good case were able to satisfy the Court that acquittal would in all probability have followed the introduction of certain testimonies, which were not submitted at the trial under improper or injudicious advi[c]e of incompetent counsel. While conceding that these cases are extremely rare, the Court, in *United States v. Umali*, allowed for the relaxation of the rule. Where there are very exceptional circumstances, and where a review of the whole record taken together with the evidence improvidently omitted would clearly justify the conclusion that the omission had resulted in the conviction of one innocent of the crime charged, a new trial may be granted.

. . . . . .

In the case at bar, the circumstance that petitioner allegedly used the name "Carmen" in her first marriage instead of Carmelita, together with the affidavits she submitted, particularly those of Mrs. Priscila Alimagno, supposedly a witness to Carmen's marriage to Mauro Espinosa, and petitioner's sister Jocelyn Gilbuena, who attested that Carmen is indeed their half-sister, would in our mind probably alter the result of this case. A new trial is therefore necessary if justice is to be served.[105] (Citations omitted)

Given this standard, this Court holds that petitioners Abubakar and Baraguir are not entitled to a new trial.

First, they failed to convince this Court that they have a meritorious defense and that the evidence they seek to introduce would probably lead to their acquittal.

The present case does not involve the same factual circumstances in *De Guzman* or in *Callangan* where the accused were absolutely denied the opportunity to present evidence due to the actuations of their counsels. In those cases, it was just and reasonable for this Court to take a much more liberal stance considering that there was a denial of due process. The same kind of liberality, however, cannot be applied here. Petitioners Abubakar and Baraguir, through counsel, presented their evidence and made out their case before the Sandiganbayan. Based on *Umali* and *Abrajano*, it is incumbent upon them to present a

---

[105] *Id*. at 92-96.

meritorious defense and to convince this Court that the evidence omitted by their former counsel would probably alter the results of the case. They cannot simply allege that they were deprived of due process or that their defense was not fully threshed out during trial.

Petitioners Abubakar and Baraguir failed to discharge this burden.

Petitioners seek to introduce as evidence their personnel data files, contracts of service, and appointment papers to prove that they were engaged in a temporary capacity. These documents would certainly not alter the results of the case. Regardless of the nature of their employment, petitioners are required to abide by the rules and regulations on public bidding and disbursement of public funds.

Testimony of handwriting experts, original copies of disbursement vouchers, and written requests of contractors who wished to avail of the pre-payment scheme under DPWH Department Order No. 42 would probably not change the finding on the irregularities pertaining to the ₱14,400,000.00 disbursement for sub-base aggregates.

The disbursement vouchers[106] that petitioner Abubakar seeks to introduce would not exonerate him from liability in Criminal Case Nos. 24972, 24979, 24980, 24982, and 24983, where the disbursement vouchers are not relevant. The disbursement vouchers relate to the payment of the balance of mobilization fees to contractors. The criminal cases cited by Abubakar, on the other hand, pertain to the alleged advance payment for sub-base aggregates.

Likewise, the evidence cited by petitioner Baraguir would not affect the result of the case against him. There is no reason to introduce pieces of evidence to prove the publication of the invitation to bid and the conduct of actual bidding. The occurrence of these events was not disputed by the parties. Meanwhile, the Notices of Award and Notices to Commence, even if admitted,

---

[106] *Rollo* (G.R. No. 202408), pp. 472-476.

would not change the finding that certain contractors deployed their equipment ahead of public bidding. The pieces of evidence that petitioner Baraguir ought to have presented are those tending to prove that the contractors only mobilized after they won the bidding. This would have destroyed the prosecution's theory and the basis for the criminal charge.[107]

Second, petitioners Abubakar and Baraguir's former counsel was not grossly negligent. Their former counsel may have failed to present other pieces of evidence in addition to what their co-accused had presented. He may have also failed to incorporate other arguments in the record of the case. However, these cannot be considered as grossly negligent acts.

Assessments regarding the materiality or relevancy of evidence, competency of witnesses, and procedural technique generally fall within the expertise and control of counsel.[108] This Court has held that for a claim of gross negligence to prosper, "nothing short of clear abandonment of the client's cause must be shown."[109]

Litigants cannot always be assured that their expectations regarding their counsel's competence would be met. In *Ong Lay Hin v. Court of Appeals*:[110]

> The state does not guarantee to the client that they will receive the kind of service that they expect. Through this court, we set the standard on competence and integrity through the application requirements and our disciplinary powers. Whether counsel discharges his or her role to the satisfaction of the client is a matter that will ideally be necessarily monitored but, at present, is too impractical.
>
> Besides, finding good counsel is also the responsibility of the client especially when he or she can afford to do so. Upholding client

---

[107] *Rollo* (G.R. No. 202412), p. 50.

[108] See *U.S. v. Umali*, 15 Phil. 33, 36-37 (1910) [Per *J*. Carson, *En Banc*].

[109] *Estate of Macadangdang v. Gaviola*, 599 Phil. 708, 715 (2009) [Per *J*. Carpio, First Division] citing *Spouses Que v. Court of Appeals*, 504 Phil. 616 (2005) [Per *J*. Carpio, First Division].

[110] 752 Phil. 15 (2015) [Per *J*. Leonen, Second Division].

autonomy in these choices is infinitely a better policy choice than assuming that the state is omniscient. Some degree of error must, therefore, be borne by the client who does have the capacity to make choices.

This is one of the bases of the doctrine that the error of counsel visits the client. This court will cease to perform its social functions if it provides succor to all who are not satisfied with the services of their counsel.[111]

Furthermore, in *Aguila v. Court of First Instance of Batangas*:[112]

Persons are allowed to practice law only after they shall have passed the bar examinations, which merely determine if they have the minimum requirements to engage in the exercise of the legal profession. This is no guaranty, of course, that they will discharge their duties with full fidelity to their clients or with unfailing mastery or at least appreciation of the law. The law, to be fair, is not really all that simple; there are parts that are rather complicated and may challenge the skills of many lawyers. By and large, however, the practice of the law should not present much difficulty unless by some unfortunate quirk of fate, the lawyer has been allowed to enter the bar despite his lack of preparation, or, while familiar with the intricacies of his calling, is nevertheless neglectful of his duties and does not pay proper attention to his work.[113]

II

The prosecution of offenses is generally addressed to the sound discretion of the fiscal. A claim of "selective prosecution"[114] may only prosper if there is extrinsic evidence of "clear showing of intentional discrimination."[115] The prosecution of one person to the exclusion of others who may

---

[111] *Id*. at 24.

[112] 243 Phil. 505 (1988) [Per *J*. Cruz, First Division].

[113] *Id*. at 509.

[114] *Rollo* (G.R. No. 202408), p. 49; *rollo* (G.R. No. 202409), p. 46.

[115] *Rollo* (G.R. No. 202408), p. 153.

be just as guilty does not automatically entail a violation of the equal protection clause.

Selective prosecution is a concept that is foreign to this jurisdiction. It originated from *United States v. Armstrong*,[116] a 1996 case decided by the United States Supreme Court.[117] A case for selective prosecution arises when a prosecutor charges defendants based on "constitutionally prohibited standards such as race, religion or other arbitrary classification."[118] Essentially, a selective prosecution claim rests upon an alleged violation of the equal protection clause.[119]

Although "selective prosecution" has not been formally adopted in this jurisdiction, there are cases that have been decided by this Court recognizing the possibility of defendants being unduly discriminated against through the prosecutorial process. The burden lies on the defendant to show discriminatory intent through extrinsic evidence.

In *People v. Dela Piedra*,[120] the accused was charged and convicted of large-scale illegal recruitment.[121] Among the arguments she raised in her appeal was the violation of the equal protection clause as she was the only person who was charged. She pointed out that a certain Jasmine Alejandro (Alejandro), the person who handed out application forms, was not indicted. She concluded that the prosecution discriminated against her based on "regional origins." She was a Cebuana while Alejandro was a Zamboangueña.[122]

---

[116] 517 U.S. 456 (1996).

[117] See *J.* Carpio Dissenting Opinion in *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil. 374 (2010) [Per *J.* Mendoza, *En Banc*].

[118] Melissa L. Jampol, *Goodbye to the Defense of Selective Prosecution*, 87 J. Crim. L. & Criminology 932 (1996-1997) available at <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=6926&context=jclc> last visited May 15, 2018.

[119] *Id*.

[120] 403 Phil. 31 (2001) [Per *J.* Kapunan, First Division).

[121] *Id*. at 36.

[122] *Id*. at 53.

In rejecting the accused's argument, this Court held that the prosecution of one person to the exclusion of others who may be just as guilty does not automatically entail a violation of the equal protection clause.[123] There must be a showing of discriminatory intent or "clear and intentional discrimination," which can only be established through extrinsic evidence. In *Dela Piedra*:

> Where the official action purports to be in conformity to the statutory classification, an erroneous or mistaken performance of the statutory duty. although a violation of the statute, is not *without more* a denial of the equal protection of the laws. The unlawful administration by officers of a statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of *intentional* or *purposeful* discrimination. This may appear on the face of the action taken with respect to a particular class or person, or it may only be shown by extrinsic evidence showing a discriminatory *design* over another not to be inferred from the action itself. *But a discriminatory purpose is not presumed, there must be a showing of "clear and intentional discrimination."* Appellant has failed to show that, in charging appellant in court, that there was a "clear and intentional discrimination" on the part of the prosecuting officials.

The discretion of who to prosecute depends on the prosecution's sound assessment whether the evidence before it can justify a reasonable belief that a person has committed an offense. The presumption is that the prosecuting officers regularly performed their duties, and this presumption can be overcome only by proof to the contrary, not by mere speculation. Indeed, appellant has not presented any evidence to overcome this presumption. The mere allegation that appellant, a Cebuana, was charged with the commission of a crime, while a Zamboangueña, the guilty party in appellant's eyes, was not, is insufficient to support a conclusion that the prosecution officers denied appellant equal protection of the laws.

There is also common sense practicality in sustaining appellant's prosecution.

> While all persons accused of crime are to be treated on a basis of equality before the law, it does not follow that they

[123] *Id*. at 54.

> are to be protected in the commission of crime. It would be unconscionable, for instance, to excuse a defendant guilty of murder because others have murdered with impunity. The remedy for unequal enforcement of the law in such instances does not lie in the exoneration of the guilty at the expense of society . . . Protection of the law will be extended to all persons equally in the pursuit of their lawful occupations, but no person has the right to demand protection of the law in the commission of a crime.
>
> Likewise,
>
> > [i]f the failure of prosecutors to enforce the criminal laws as to some persons should be converted into a defense for others charged with crime, the result would be that the trial of the district attorney for nonfeasance would become an issue in the trial of many persons charged with heinous crimes and the enforcement of law would suffer a complete breakdown.[124] (Emphasis in the original, citations omitted)

The principle established in *Dela Piedra* was reiterated and applied in *People v. Dumlao*:[125]

> A discriminatory purpose is never presumed. It must be remembered that it was not solely respondent who was charged, but also five of the seven board members. If, indeed, there were discrimination, respondent Dumlao alone could have been charged. But this was not the case. Further, the fact that the dismissal of the case against his co-accused Canlas and Clave was not appealed is not sufficient to cry discrimination. This is likewise true for the non-inclusion of the two government officials who signed the Lease-Purchase Agreement and the other two board members. Mere speculation, unsupported by convincing evidence, cannot establish discrimination on the part of the prosecution and the denial to respondent of the equal protection of the laws.[126]

The reason for the requirement of "clear and intentional discrimination" lies in the discretion given to fiscals in the

---

[124] *Id*. at 54-56.

[125] 599 Phil. 565 (2009) [Per *J*. Chico-Nazario, Third Division].

[126] *Id*. at 587, citing *People v. Dela Piedra*, 403 Phil. 31 (2001) [Per *J*. Kapunan, First Division].

prosecution of offenses. In *People v. Pineda*,[127] this Court held that the choice of who to prosecute is addressed to the sound discretion of the investigating prosecutor. He or she may not be compelled to charge persons when the evidence is insufficient to establish probable cause:

> A prosecuting attorney, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up the averments thereof, or that the evidence at hand points to a different conclusion. This is not to discount the possibility of the commission of abuses on the part of the prosecutor. But we must have to recognize that a prosecuting attorney should not be unduly compelled to work against his conviction. In case of doubt, we should give him the benefit thereof. A contrary rule may result in our court being unnecessarily swamped with unmeritorious cases. Worse still, a criminal suspect's right to due process — the sporting idea of fair play — may be transgressed.[128]

In *Alberto v. De la Cruz*,[129] this Court said:

> Although this power and prerogative of the Fiscal, to determine whether or not the evidence at hand is sufficient to form a reasonable belief that a person committed an offense, is not absolute and subject to judicial review, it would be embarrassing for the prosecuting attorney to be compelled to prosecute a case when he is in no position to do so, because in his opinion, he does not have the necessary evidence to secure a conviction, or he is not convinced of the merits of the case. The better procedure would be to appeal the Fiscal's decision to the Ministry of Justice and/or ask for a special prosecutor.[130] (Citation omitted)

Petitioners failed to establish discriminatory intent on the part of the Ombudsman in choosing not to indict other alleged participants to the anomalous transactions. Their contention that several other public officials were not criminally charged,

---

[127] 127 Phil. 150 (1967) [Per *J.* Sanchez, *En Banc*].

[128] *Id.* at 156-157.

[129] 187 Phil. 274 (1980) [Per *J.* Concepcion, Jr., Second Division].

[130] *Id.* at 278.

by itself, does not amount to a violation of petitioners Abubakar and Baraguir's right to equal protection of laws. The evidence against the others may have been insufficient to establish probable cause. There may have been no evidence at all. At this point, all this Court could do is speculate. In the absence of extrinsic evidence establishing discriminatory intent, a claim of selective prosecution cannot prosper.

III

Section 3(e) of Republic Act No. 3019 punishes a public officer who causes "any undue injury to any party, including the Government" or gives "any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence."

A conviction under this provision requires the concurrence of the following elements:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He [or she] must have acted with manifest partiality, evident bad faith or [gross] inexcusable negligence;
3. That his [or her] action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[131]

The second element provides the modalities by which a violation of Section 3(e) of Republic Act No. 3019 may be committed. "Manifest partiality," "evident bad faith," or "gross inexcusable negligence" are not separate offenses,[132] and proof

---

[131] *Jacinto v. Sandiganbayan*, 258-A Phil. 20, 26 (1989) [Per *J.* Gancayco, *En Banc*].

[132] *Gallego v. Sandiganbayan*, 201 Phil. 379, 383 (1982) [Per *J.* Relova, *En Banc*].

of the existence of any of these three (3) "in connection with the prohibited acts . . . is enough to convict."[133]

These terms were defined in *Uriarte v. People*:[134]

> There is "**manifest partiality**" when there is a clear, notorious or plain inclination or predilection to favor one side or person rather than another. "**Evident bad faith**" connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "**Gross inexcusable negligence**" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.[135] (Emphasis in the original, citations omitted)

The third element refers to two (2) separate acts that qualify as a violation of Section 3(e) of Republic Act No. 3019. An accused may be charged with the commission of either or both.

An accused is said to have caused undue injury to the government or any party when the latter sustains actual loss or damage, which must exist as a fact and cannot be based on speculations or conjectures. Thus, in a situation where the government could have been defrauded, the law would be inapplicable, there being no actual loss or damage sustained.[136]

In *Pecho v. Sandiganbayan*,[137] this Court was faced with the issue of whether the attempted or frustrated stages of the offense defined in Section 3(e) of Republic Act No. 3019 are punishable.

---

[133] *Sison v. People*, 628 Phil. 573, 583 (2010) [Per *J*. Corona, Third Division].

[134] 540 Phil. 477 (2006) [Per *J*. Callejo, Sr., First Division].

[135] *Id*. at 494-495.

[136] *Pecho v. Sandiganbayan*, 308 Phil. 120 (1994) [Per *J*. Davide, Jr., *En Banc*].

[137] 308 Phil. 120 (1994) [Per *J*. Davide, Jr., *En Banc*].

The accused and his co-conspirators' plan to defraud the government was prevented through the timely intervention of customs officials.[138] In holding that Section 3(e) of Republic Act No. 3019 only covers consummated acts, this Court reasoned among others that:

> [T]he third requisite of Section 3(e), viz., "causing undue injury to any party, including the government," could only mean actual injury or damage which must be established by evidence. [T]he word *causing* is the present participle of the word *cause*. As a verb, the latter means "to be the cause or occasion of; to effect as an agent; to bring about; to bring into existence; to make to induce; to compel." The word *undue* means "more than necessary; not proper; illegal." And the word *injury* means "any wrong or damage done to another, either in his person, rights, reputation or property. The invasion of any legally protected interest of another." Taken together, proof of actual injury or damage is required.
>
> . . . . . .
>
> No actual injury or damage having been caused to the Government due to the timely 100% examination of the shipment and the subsequent issuance of a hold order and a warrant of seizure and detention, the petitioner must, perforce, be acquitted of the violation of Section 3 (e) of R.A. No. 3019.[139] (Citations omitted)

The loss or damage need not be proven with actual certainty. However, there must be "some reasonable basis by which the court can measure it."[140] Aside from this, the loss or damage must be substantial.[141] It must be "more than necessary, excessive, improper or illegal."[142]

---

[138] *Id*. at 131.

[139] *Id*. at 140-141.

[140] *Soriano v. Marcelo*, 597 Phil. 308, 319 (2009) [Per *J*. Austria-Martinez, Third Division].

[141] *Jacinto v. Sandiganbayan*, 258-A Phil. 20, 27 (1989) [Per *J*. Gancayco, *En Banc*]; *Fuentes v. People*, G.R. No. 186421, April 17, 2017 [Per *J*. Perlas-Bernabe, First Division].

[142] *Jacinto v. Sandiganbayan*, 258-A Phil. 20, 27 (1989) [Per *J*. Gancayco, *En Banc*].

The second punishable act under Section 3(e) of Republic Act No. 3019 is the giving of unwarranted benefits, advantage, or preference to a private party. This does not require actual damage as it is sufficient that the accused has given "unjustified favor or benefit to another."[143]

The terms "unwarranted benefits, advantage or preference" were defined in *Uriarte*:[144]

> [*U*]*nwarranted* means lacking adequate or official support; unjustified; unauthorized; or without justification or adequate reasons. *Advantage* means a more favorable or improved position or condition; benefit or gain of any kind; benefit from course of action. *Preference* signifies priority or higher evaluation or desirability; choice or estimation above another.[145] (Emphasis in the original, citation omitted)

III.A

This Court finds that petitioners Baraguir and Guiani gave unwarranted benefits and advantage to several contractors by allowing them to deploy their equipment ahead of the scheduled public bidding.

As a matter of policy, public contracts are awarded through competitive public bidding. The purpose of this process is two (2)-fold.

First, it protects public interest by giving the public the "best possible advantages thru open competition."[146] Open and fair competition among bidders is seen as a mechanism by which the public may obtain the best terms on a given contract. Participating bidders offer competing proposals, which are evaluated by the appropriate authority "to determine the bid most favorable to the government."[147]

---

[143] *Sison v. People*, 628 Phil. 573, 585 (2010) [Per *J*. Corona, Third Division].

[144] 540 Phil. 477 (2006) [Per *J*. Callejo, Sr., First Division].

[145] *Id*. at 497.

[146] *Danville Maritime, Inc. v. Commission on Audit*, 256 Phil. 1092, 1103 (1989) [Per *J*. Gancayco, *En Banc*].

[147] *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, 465 Phil. 545, 569 (2004) [Per *J*. Puno, *En Banc*].

Second, competitive public bidding avoids "suspicion of favoritism and anomalies in the execution of public contracts."[148]

These important public policy considerations demand the strict observance of procedural rules relating to the bidding process.[149]

Under Presidential Decree No. 1594, a public contract shall be awarded to the lowest prequalified bidder. The bid must comply with the terms and conditions stated in the call to bid and must be the most advantageous to the government.[150] After the evaluation of the bids, the winning bidder shall be given a Notice of Award. The concerned government office or agency and the successful bidder will then execute the contract, which shall be forwarded to the head of the concerned government office or agency for approval. The contract's approval signifies its perfection and it is at this time when the successful bidder may be allowed to commence work upon receipt of a Notice to Proceed.[151]

Petitioners Baraguir and Guiani insist that the prosecution failed to establish their intent to favor some contractors in the

---

[148] *Danville Maritime, Inc. v. Commission on Audit*, 256 Phil. 1092, 1103 (1989) [Per *J*. Gancayco, *En Banc*].

[149] *Republic v. Capulong*, 276 Phil. 136, 152-153 (1991) [Per *J*. Medialdea, *En Banc*].

[150] Pres. Decree No. 1594 (1978), Sec. 5 provides:

Section 5. Award and Contract. — The contract may be awarded to the lowest prequalified bidder whose bid as evaluated complies with all the terms and conditions in the call for bid and is the most advantageous to the Government.

To guarantee the faithful performance of the contractor, he shall, prior to the award, post a performance bond, in an amount to be established in accordance with the rules and regulations to be promulgated under Section 12 of this Decree.

All awards and contracts duly executed in accordance with the provisions of this Decree shall be subject to the approval of the Minister of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be.

[151] Pres. Decree No. 1594 (1978), Implementing Rules and Regulations.

bidding process. Petitioner Guiani claims that the certificates of mobilization, on which the prosecution heavily relies, prove nothing.

Their arguments are unmeritorious.

The certificates of mobilization, which were issued at least one (1) week before the date of public bidding, categorically identified HMB Construction and Supply, Kutawato Construction, Al Mohandiz Construction, JM Construction, PMA Construction, Al-Aziz-Engineering, and MGL Construction as contractors for some portions of the Awang-Nuro Road and Cotabato-Lanao Road Projects.

The acts of identifying certain contractors ahead of the scheduled public bidding and of allowing the advanced deployment of their equipment through the issuance of certificates of mobilization are glaring irregularities in the bidding procedure that engender suspicion of favoritism and partiality towards the seven (7) contractors. These irregularities create a reasonable, if not conclusive, presumption that the concerned public officials had no intention of complying with the rules on public bidding and that the results were already predetermined.

Although petitioner Baraguir concedes that contractors can only commence work after they receive a notice to proceed, he justifies the irregularity on an alleged "risk-taking strategy' employed by some contractors.[152]

This appears to be a flimsy excuse. There is no justifiable reason why contractors should be allowed to deploy their equipment in advance considering that it would defeat the very purpose of competitive public bidding. Benefits derived from this practice, if any, would certainly not redound to the government.

Aside from this, the alleged purpose of the contractors in mobilizing their equipment ahead of public bidding is speculative. Prospective contractors are required to possess the technical

---

[152] *Rollo* (G.R. No. 202409), p. 60.

capability to execute the implementation of a given project. Section 3(b) of Presidential Decree No. 1594 lists as a condition for all bidders the "[a]vailability and commitment of the contractor's equipment to be used for the subject project."[153] The Pre-Qualification Bids and Awards Committee is mandated under the implementing rules and regulations to look into the "suitability of [the contractor's] available construction equipment" in assessing technical capability.[154]

The screening process ensures that bidders have the necessary equipment and personnel to carry out the implementation of a particular government project. In this regard, it may not even be possible for a winning bidder to lease equipment from another contractor after it has won because technical capability is evaluated before the submission of the bids. Assuming that prospective bidders would be permitted to sublease their equipment from other entities, the sublease agreement should already be finalized prior to the conduct of public bidding.

Clearly, petitioners Baraguir and Guiani gave seven (7) contractors unwarranted benefits and advantage through manifest partiality. Petitioner Baraguir also gave unwarranted benefits

---

[153] Pres. Decree No. 1594 (1978), Sec. 3(b) provides:

Section 3. Prequalification of Prospective Contractors. — A prospective contractor may be prequalified to offer his bid or tender for a construction project only if he meets the following requirements.

. . . . . .

b. Technical Requirements. — The prospective contractor must meet the following technical requirements to be established in accordance with the rules and regulations to be promulgated pursuant to Section 12 of this Decree, to enable him to satisfactorily prosecute the subject project:

1. Competence and experience of the contractor in managing projects similar to the subject project.

2. Competence and experience of the contractor's key personnel to be assigned to the subject project.

3. Availability and commitment of the contractor's equipment to be used for the subject project.

[154] Pres. Decree No. 1594 (1978), Implementing Rules and Regulations.

and advantage to the contractors through gross inexcusable negligence. Admittedly, he failed to check the dates on the certificates of mobilization when they were presented to him for his signature.[155]

III.B

Petitioners Abubakar and Baraguir assert that they should benefit from the judgment of acquittal in Criminal Case No. 24971. The judgment in Criminal Case No. 24971 should likewise apply in Criminal Case No. 24970.[156]

Concededly, Criminal Case Nos. 24970 and 24971 are similar in that they are founded upon the same contract, particularly the Contract for Survey Work.[157] However, the charges are different. Petitioner Guiani was charged in Criminal Case No. 24971 for allegedly entering into an unnecessary engineering survey contract with Arce Engineering Services. He was acquitted upon a finding that the engineering survey was indispensable for the project's implementation. On the other hand, in Criminal Case No. 24970, petitioners Abubakar, Baraguir, and Guiani were charged for causing the payment of excessive mobilization fees to Arce Engineering Services. Therefore, the acquittal of petitioner Guiani in Criminal Case No. 24971 would have no effect on Criminal Case No. 24970.

The implementing rules and regulations of Presidential Decree No. 1594 allow contractors to obtain advance payment from the government during the contract's implementation stage. Before a disbursement can be made, the contractor must submit a written request and furnish an irrevocable standby letter of credit or a guarantee payment bond. The rules limit the amount of advance payment to 15% of the total contract price.[158]

---

[155] *Rollo* (G.R. No. 202409), p. 61.

[156] *Rollo* (G.R. No. 202408), p. 69; *rollo* (G.R. No. 202409), p. 68.

[157] *Rollo* (G.R. No. 202408), p. 68.

[158] Presidential Decree No. 1594 (1978), Implementing Rules and Regulations, Sec. CI 4 provides, in part:

A provision in a contract stipulating for a higher percentage of advance payment is invalid. In *J.C. Lopez & Associates, Inc. v. Commission on Audit*,[159] this Court struck down a contractual provision authorizing the payment of ₱18,000,000.00 to a contractor as mobilization cost. The amount, which was 26% of the total contract price, exceeded the prescribed limitation for advance payment under the implementing rules and regulations of Presidential Decree No. 1594. This Court held that although parties may stipulate on such terms and conditions that they deem convenient, these stipulations should not be contrary to law. The justification given by the petitioner in that case for the stipulated mobilization cost was brushed aside.[160]

In this case, the Contract for Survey Work entered into by petitioner Guiani with Arce Engineering Services stated, in part:

> 4. As compensation for the services to be rendered by the SURVEYOR to the CLIENT, the CLIENT hereby agrees to pay the SURVEYOR the sum of TWO HUNDRED THOUSAND PESOS (₱200,000.00), with the following as Mode of Payment;
>
> 4.1. Thirty percent of the Contract Cost or ₱60,000.00 upon signing of this CONTRACT, with the SURVEYOR posting a Surety Bond of equal amount[.][161]

CI 4 ADVANCE PAYMENT

1. The Government shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount equal to fifteen percent (15%) of the total contract price, to be made in lump sum or at the most two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents.

2. The advance payment shall be made only upon the submission to and acceptance by the Government of an irrevocable standby letter of credit of equivalent value from a commercial bank or a guarantee payment bond, callable on demand, issued by a surety or insurance company duly licensed by the Office of the Insurance Commissioner and confirmed by the implementing agency.

[159] 416 Phil. 884 (2001) [Per *J.* Buena, *En Banc*].

[160] *Id.* at 900-901.

[161] *Rollo* (G.R. No. 202408), pp. 68-69.

Section 4 of the Contract for Survey Work gave Arce Engineering Services the right to secure 30% of the contract cost as advance payment or mobilization fee upon the contract's execution. This is clearly contrary to the implementing rules and regulations of Presidential Decree No. 1594 on advance payment.

Petitioner Guiani cannot shift the blame to his subordinates because he entered into the contract with Arce Engineering Services as Regional Secretary. In consenting to the 30% advance payment, petitioner Guiani, through evident bad faith, gave unwarranted benefits to Arce Engineering Services. Bad faith, as contemplated under Section 3(e) of Republic Act No. 3019, connotes "not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing."[162]

Petitioners impute the increased mobilization fee to the risks that Arce Engineering Services might encounter in the area to be surveyed.

As pointed out by the Commission on Audit, risks during the actual survey, if any, could have been covered by the total contract cost.[163] If Arce Engineering Services foresaw security and safety issues in the area, these could have been factored into the contract price. There is no justifiable reason for the government to award additional mobilization fees to Arce Engineering Services.

Petitioners Abubakar and Baraguir, in allowing the disbursement, gave unwarranted benefits to Arce Engineering Services through evident bad faith. They cannot seek refuge in the argument that they relied in good faith on what was stated in the Contract for Survey Work because the illegality was patent on the face of the contract. The disbursement should not have been allowed for being contrary to the provisions of Presidential Decree No. 1594. Furthermore, they are not entitled to the

---

[162] *Uriarte v. People of the Philippines*, 540 Phil. 477, 494 (2006) [Per J. Callejo, Sr., First Division].

[163] *Rollo* (G.R. No. 202408), p. 265.

justifying circumstance of "any person who acts in obedience to an order issued by a superior" under Article 11(6) of the Revised Penal Code as the order issued by the superior must be for a lawful purpose.[164] In this case, the contractual provision allowing Arce Engineering Services to claim 30% of the contract price as mobilization fees is clearly unlawful.

III.C

Section 88(1) of Presidential Decree No. 1445[165] prohibits advance payments on undelivered supplies and on services that have not yet been rendered. It states:

> CHAPTER 4
>
> Application of Appropriated Funds
>
> . . . . . .
>
> Section 88. Prohibition Against Advance Payment on Government Contracts. — (1) Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

An exception to the prohibition on advance payment under Presidential Decree No. 1445 is Memorandum Order No. 341, which allows government agencies that implement government infrastructure projects to procure cement, reinforcing steel bars, and asphalt on a pre-payment basis.

The February 18, 1991 Guidelines[166] issued by the Department of Public Works and Highways require contractors who wish

---

[164] *Ambil, Jr. v. Sandiganbayan*, 669 Phil. 32 (2011) [Per *J.* Villarama, Jr., First Division].

[165] Pres. Decree No. 1445 (1978), Government Auditing Code of the Philippines.

[166] *Rollo* (G.R. No. 202408), p. 254.

to avail of the pre-payment facility to submit a written request addressed to the head of the implementing government agency with the following requirements:

(a) the quantities of materials for which pre-payment is desired which should not exceed the project requirements per balance of work as of the filing date of the request;

(b) the unit cost of the materials and the corresponding total cost of quantities applied for;

(c) the name of the Supplier to which payment shall be made;

(d) [the] Contract Agreement between Contractor and Supplier indicating the quantities of materials covered by the purchase agreement, their unit cost and corresponding cost, mode/timing of deliveries to the project site and terms of payment; [and]

(e) the manner of recouping the amount prepaid, the recovery period of which shall not exceed the date when the project shall have been 80% complete[.][167]

The contractor must also furnish a surety bond as guarantee.[168]

The head of the implementing agency, on the other hand, is required to process the request and may make the necessary modifications based on the following:

(a) [the] quantities requested for pre-payment are the actual requirements of the project per balance of work therein;

(b) the total amounts pre-paid shall be fully recovered not later than the time when 80% of the project shall have been completed;

(c) recouping the pre-paid amount during the scheduled recovery period will not strain the cash flow of the contractor which is detrimental to his operations and successful completion of the project. The cash flow shall consider remaining deductions due to retainage and recoupement of the 15% advance payment.[169]

---

[167] *Rollo* (G.R. No. 202412), pp. 60-61.

[168] *Id.* at 61.

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

In the present case, petitioners insist that the ₱14,400,000.00 advance payment was lawful because it was actually pre-payment for cement under Memorandum Order No. 341. Petitioners posit that the disbursement vouchers might have been altered to reflect "sub-base aggregates."

The issue on the alleged forgery was never addressed by the Sandiganbayan in its December 8, 2011 Decision. There was also no express finding during the Commission on Audit's investigation as to who allegedly altered the disbursement vouchers. Nevertheless, the Sandiganbayan observed that the official receipts issued by the contractors indicated that the payment pertained to the purchase of sub-base aggregates.[170] DPWH-ARMM issued numerous checks[171] for which receipts were issued.[172] If petitioners' claims were true, then they should have at least questioned what was stated in the official receipts and requested for the rectification of the discrepancy. Thus, there is reason to believe that the ₱14,400,000.00 was paid in advance for the procurement of sub-base aggregates.

Considering that sub-base aggregates are excluded from the list of construction materials allowed to be procured under a pre-payment scheme, the rules on advance payment under Presidential Decree No. 1445 should apply. For an advance payment to be lawful, the materials or supplies should have been delivered in accordance with the contract and should have been duly inspected and accepted. If there is no delivery, prior approval of the President is required.[173]

The Sandiganbayan found that the procurement of sub-base aggregates was not supported by any purchase orders. There were also no receipts to evidence delivery of the materials on-

---

[170] *Rollo* (G.R. No. 202412), p. 62.

[171] *Rollo* (G.R. No. 202408), p. 256.

[172] *Rollo* (G.R. No. 202412), p. 62.

[173] Pres. Decree No. 1445 (1978), Sec. 88(l).

site.[174] Thus, the disbursement should not have been approved by petitioners due to the absence of appropriate supporting documents. Undue benefit was given to contractors when they were allowed to claim advance payments totaling ₱14,400,000.00 for undelivered materials. These contractors had no right to receive them under Section 88(1) of Presidential Decree No. 1445.

IV

This Court's ruling in *Arias v. Sandiganbayan*[175] cannot exonerate petitioners from criminal liability.

Arias laid down the doctrine that heads of offices may, in good faith, rely to a certain extent on the acts of their subordinates "who prepare bids, purchase supplies, or enter into negotiations."[176] This is based upon the recognition that heads of offices cannot be expected to examine every single document relative to government transactions:

> We would be setting a bad precedent if a head of office plagued by all too common problems — dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence — is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.
>
> There appears to be no question from the records that [the] documents used in the negotiated sale were falsified. A key tax declaration had a typewritten number instead of being machine numbered. The registration stampmark was antedated and the land [was] reclassified as residential instead of ricefield. But were the petitioners guilty of conspiracy in the falsification and the subsequent charge of causing undue injury and damage to the Government?
>
> We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons.

---

[174] *Rollo* (G.R. No. 202412), p. 62.

[175] 259 Phil. 794 (1989) [Per *J*. Gutierrez, Jr., *En Banc*].

[176] *Id*. at 801.

It is doubtful if any auditor for a fairly sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. *All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise personally look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail.* Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.[177] (Emphasis supplied)

The application of the doctrine is subject to the qualification that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care.[178] In a number of cases, this Court refused to apply the *Arias* doctrine considering that there were circumstances that should have prompted the government official to inquire further.[179]

In the present case, the *Arias* doctrine cannot exonerate petitioners Abubakar, Baraguir, or Guiani from criminal liability. There were circumstances that should have prompted them to make further inquiries on the transactions subject of this case.

In Criminal Case Nos. 24963-24969 on the early mobilization of contractors, the irregularity was already apparent on the face of the certificates of mobilization, which bore dates earlier than

---

[177] *Id*. at 801-802.

[178] *Id*. at 801.

[179] *Escara v. People*, 501 Phil. 532 (2005) [Per *J*. Ynares-Santiago, First Division]; *Alfonso v. Office of the President*, 548 Phil. 615 (2007) [Per *J*. Carpio Morales, Second Division]; *Cesa v. Office of the Ombudsman*, 576 Phil. 345 (2008) [Per *J*. Quisumbing, *En Banc*]; *Office of the Ombudsman v. Espina*, G.R. No. 213500, March 15, 2017 [*Per Curiam*, First Division].

the scheduled public bidding. This should have already roused suspicion from petitioners Baraguir and Guiani, who were the last signatories and final approving authorities.

The same can be said for Criminal Case No. 24970. The Contract of Survey Work, which was used as the primary supporting document for the disbursement of the 30% mobilization fee to Arce Engineering Services, contained a patently illegal stipulation. Petitioner Guiani cannot blame his subordinates and claim that he acted in good faith considering that he entered into the contract with Arce Engineering Services.

Petitioners should have also made further inquiries regarding the ₱14,400,000.00 advance payment for sub-aggregates. There were no appropriate documents such as purchase orders and delivery receipts to support this disbursement.

The rules on public bidding and on public funds disbursement are imbued with public interest. The positions and functions of petitioners Abubakar, Baraguir, and Guiani impose upon them a greater responsibility in ensuring that rules on these matters are complied with. They are expected to exercise a greater degree of diligence.

WHEREFORE, the Consolidated Petitions are **DENIED**. The assailed December 8, 2011 Decision and June 19, 2012 Resolution of the Sandiganbayan in Criminal Case Nos. 24963 to 24969, Criminal Case No. 24970, and Criminal Case Nos. 24972 to 24983 are **AFFIRMED**. Petitioner Farouk B. Abubakar is found **GUILTY** beyond reasonable doubt of ten (10) counts of violation of Section 3(e) of Republic Act No. 3019. Petitioners Ulama S. Baraguir and Datukan M. Guiani are found **GUILTY** beyond reasonable doubt of seventeen (17) counts of violation of Section 3(e) of Republic Act No. 3019.

SO ORDERED.

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

---

* Designated additional member per Raffle dated June 20, 2018.

SECOND DIVISION

[G.R. Nos. 203797-98. June 27, 2018]

CARMENCITA O. REYES, *petitioner, vs.* **SANDIGANBAYAN (FIRST DIVISION), OFFICE OF THE SPECIAL PROSECUTOR, OFFICE of the OMBUDSMAN, and the PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NATURE AND SCOPE.—** [I]t bears to stress that a *certiorari* proceeding is limited in scope and narrow in character. The special civil action for *certiorari* lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.

2. **ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, NOT A CASE OF; NO GRAVE ABUSE OF DISCRETION COMMITTED BY THE SANDIGANBAYAN WHEN IT DENIED PETITIONER'S URGENT OMNIBUS MOTION FOR DETERMINATION OF PROBABLE CAUSE; THE DOCUMENTS PRESENTED ARE ENOUGH TO ENGENDER A WELL-FOUNDED BELIEF THAT THE CRIME CHARGED MAY HAVE BEEN COMMITTED AND PETITIONER'S ASSERTION THEREIN ARE MATTERS OF DEFENSE WHICH SHOULD BE VENTILATED DURING THE TRIAL.—** After a careful and thorough review of the facts and the issue at hand, as well as the law and jurisprudence pertinent thereto, this Court finds that the First Division of the Sandiganbayan did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner's Urgent Omnibus Motion/s (For Judicial Determination of Probable Cause). x x x [I]t is shown that the letter request and purchase request are enough to engender a well-founded belief that the crime charged may have been committed by Reyes and that any assertion by Reyes that negates the complication of the documents are matters of

defense. Besides, the Requisition and Issue Slip dated May 5, 2004, as alluded to by the Ombudsman, would show that petitioner Reyes had categorically mentioned the brand name "TORNADO" Brush Chipper/Shredder, which was the brand claimed to be exclusively distributed by LCV Design and Fabrication Corporation. On this score, said connections can also establish probable cause which the Sandiganbayan may disprove during the trial. Under these circumstances, We concur with the Sandiganbayan as it aptly found, thus: A judicious reading of the arguments propounded by the accused-movants reveal that they are matters of defense which should be ventilated during the trial proper.

3. ID.; ID.; ID.; ID.; THE SANDIGANBAYAN DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN IT DENIED PETITIONER'S ASSERTION THAT NO PROBABLE CAUSE EXISTS FOR BOTH CASES SINCE THE OMBUDSMAN CONDUCTED ITS OWN INVESTIGATION APART FROM REFERRING TO THE SENATE BLUE RIBBON COMMITTEE REPORT.— It must be emphasized that the Ombudsman itself conducted its own preliminary investigation in this case. It was during this investigation that the Ombudsman, faced with the facts and circumstances extant herein, was led to believe that (1) a crime has been committed; and (2) there is probable cause that Reyes was guilty thereof. That the Ombudsman referred to the Senate Blue Ribbon Committee Report as additional basis for its findings does nothing to refute the validity of the preliminary investigation, the evidence gathered therein, or the conclusion of the Ombudsman after that investigation. Thus, We once more find favor in the Resolution of the Sandiganbayan, *viz*: The Court finds no grave abuse of discretion on the part of the Office of the Ombudsman when it found probable cause to file the Information against the accused in these cases. x x x On the basis of these findings, the Sandiganbayan cannot be said to have committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied Reyes's assertion that no probable cause exists for both cases.

APPEARANCES OF COUNSEL

Diosdado M. Dela Cruz for petitioner.

D E C I S I O N

REYES, JR., *J.*:

This is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court with Prayer for Preliminary Injunction and/or Temporary Restraining Order, seeking to set aside the Resolutions dated February 29, 2012[2] and August 13, 2012[3] of the First (1st) Division of the Sandiganbayan in Case Nos. SB-11-CRM-0089 to 0101 and SB-11-CRM-0111 to 0113. The said Resolution dated February 29, 2012 denied petitioner's Urgent Omnibus Motion dated July 19, 2011,[4] while the Resolution dated August 13, 2012[5] denied the Motion for Reconsideration thereof.

THE ANTECEDENTS

This case stemmed from the investigation of various transactions of the famous ₱728,000,000.00 fertilizer fund allegedly involving public officers from the Department of Agriculture (DA) and others.

On July 9, 2008, the Task Force Abono, Field Investigation Office (FIO) of the Office of the Ombudsman filed a Complaint[6] with the Office of the Ombudsman against some persons which included petitioner Carmencita O. Reyes (Reyes).

Reyes was charged for alleged violation of Article 220 (Illegal Use of Public Funds or Property, commonly known as Technical Malversation) of Act 3135, otherwise known as the "Revised Penal Code of the Philippines" (RPC); and Section 3(e) and

---

[1] *Rollo*, pp. 3-28.

[2] Penned by Chairperson/Associate Justice Efren N. De la Cruz with Associate Justices Rodolfo A. Ponferrada and Rafael R. Lagos; *id.* at 33-72.

[3] *Id.* at 74-86.

[4] *Id.* at 440-445.

[5] *Id.* at 74-86.

[6] *Id.* at 98-109.

(g) of Republic Act (R.A.) No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act." Thereafter, Reyes then filed a consolidated counter affidavit[7] upon which Task Force Abono filed its Reply[8] on November 26, 2008.

Based on the said Complaint, the Ombudsman filed two (2) Informations against Reyes, one for violation of Section 3(e) of R.A. No. 3019[9] docketed as Criminal Case No. SB-11-CRM-0100; and the other for violation of Article 220 of the RPC[10] docketed as Criminal Case No. SB-11-CRM-0113, both of which were allegedly committed during the incumbency of Reyes as Provincial Governor of Marinduque. The Informations were consolidated into one case with the First (1st) Division of the Sandiganbayan (Sandiganbayan). The accusatory portion of the said Informations read as follows:

Criminal Case No. SB-11-CRM-0100

That on or about the period covering 30 April to 08 December 2004, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the accused CARMENCITA O. REYES, a high ranking official being then the Governor of the Province of Marinduque, DENNIS B. ARAULLO, a high ranking official being a Regional Executive Director with Salary Grade 28, RODOLFO M. GUIEB, MARIE PAZ JASMINE M. CABUCOL, RAYMUNDO E. BRAGANZA, GROVER L. DINO, DORY A. IRANZO, ABELARDO BRAGAS, FELIX RAMOS, OFELIA MONTILLA and GREGORIO SANGALANG; all of the Department of Agriculture Regional Field Unit IV (DA-RFU IV), while in the performance of their official functions and committing the offense in relation to their office, taking advantage of their official positions, conspiring, confederating and mutually helping one another, acting with manifest partiality and evident bad faith or through gross inexcusable negligence, at the very least, did then and there willfully, unlawfully and criminally cause undue injury

---

[7] *Id*. at 305-308.

[8] *Id*. at 309-316.

[9] *Id*. at 89-92.

[10] *Id*. at 93-97.

to the government, through the issuance of Bids and Awards Committee (BAC) Resolution No. 290, dated 30 April 2004, upon the order of accused REYES as evidenced by her letter and purchase requests dated 30 April 2004 and 03 May 2004, respectively, which requests have induced the accused DA-RFU IV employees to transact with LCV Design and Fabrication Corporation (LCV), with accused REMUS C. VILLANUEVA as president, in whose favor the purchase order and payment for one (1) unit Shredding Machine, one (1) unit Hammermill/Shifter, one (1) unit Pelletizer and one (1) unit Tornado Brush Chipper/Shredder as listed under Purchase Order No. 119-04, dated 05 May 2004, duly signed by accused MARIE PAZ JASMINE M. CABUCOL, amounting to Five Million Pesos (Php5,000,000.00), Philippine currency, charged against the Farm Input Fund for the Ginintuang Masaganang Ani Program of the DA as covered by SARO No. E-04-00164, has been awarded by accused BAC Members ABELARDO BRAGAS, FELIX RAMOS, OFELIA MONTILLA and GREGORIO SANGGALANG, without the conduct of a public bidding, thereby resorting to Direct Contracting, thus, giving said corporation unwarranted benefit, preference or advantage, knowing fully well that at the time of procurement, the patent application of said corporation for the equipment purchased has not yet been approved as evidenced by a notation "*Subject to the condition that the patent will be approved by the Bureau of Patent. Patent of the ff: 12) Shredding Machine 2) Hammermill 3) Pelletizer 4) Brush Chipper"* appearing on Disbursement Voucher Nos. 2004-07-2941 dated 30 July 2004, and 2004-12-6056 dated 08 December 2004, duly signed by accused DENNIS B. ARAULLO, RODOLFO M. GUIEB and RAYMUNDO E. BRAGANZA, hence, said corporation cannot as yet then be considered as the exclusive distributor of the equipment purchased and public bidding should have been conducted, aside from the fact that the purchase of said equipment was not in accordance with the purpose for which said funds as covered by SARO No. E-04-00164 has been appropriated, to the damage and prejudice of the government in the amount of Five Million Pesos (Php5,000,000.00), Philippine currency, covered by check nos. 270843-CL dated 30 July 2004 as signed by accused DORY A. IRANZO and DENNIS B. ARAULLO and 274415-CL dated 08 December 2004 as signed by accused GROVER L. DINO and DENNIS B. ARAULLO.

CONTRARY TO LAW.[11]

---

[11] *Id*. at 89-90.

Criminal Case No. SB-11-CRM-0113

That from the period covering 30 April to 08 December 2004, or for some time prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused CARMENCITA O. REYES, a high ranking public officer being then the Governor and now the Representative of the Province of Marinduque, DENNIS B. ARAULLO, also a high ranking public officer being the Regional Executive Director (Salary Grade 28), Department of Agriculture-Regional Field Unit No. IV, RODOLFO M. GUIEB, MARIE PAZ JASMINE M. CABUCOL, RAYMUNDO E. BRAGANZA, GROVER L. DINO, DORY A IRANZO, ABELARDO BRAGAS, FELIX RAMOS, OFELIA MONTILLA and GREGORIO SANGALANG, all employees of the Department of Agriculture Regional Field Unit IV (DA-RFU IV), being the OIC-Regional Executive Director (Salary Grade 26), Chief Accountant (Salary Grade 15), Regional Accountant (Salary Grade 18), Cashier I, Cashier IV-B (Salary Grade 14), members of the Bids and Awards Committee-CALABARZON, respectively, and as such is responsible/accountable for the ₱5,000,000.00 which they received from DA-Central Office by reason of their office, which amount is part of the ₱728 Million Fertilizer Fund released by the Department of Budget and Management to the Department of Agriculture under SARO No. E-04-00164 dated February 3, 2004 and allocated by Republic Act No. 8435, otherwise known as the "*Agricultural and Fisheries Modernization Act (AFMA)* for the purchase of fertilizer by the identified beneficiaries/proponent in different regions of the country in line with the "*Ginintuang Masaganang Ani Program*" of the Department of Agriculture, while in the performance of their official functions and committing the offense in relation to their office, taking advantage of their official positions, conspiring, confederating and mutually helping one another, either by awarding the transaction to LCV Design and Fabrication Corporation through Bids and Awards Committee Resolution No. 290, dated 30 April 2004, signing, certifying, or approving, Purchase Request 119-04, dated 05 May 2004, Disbursement Voucher Nos. 2004-07-2941, dated 30 July 2004, and 2004-12-6056, dated 08 December 2004, and Check Nos. 270843-CL, dated 30 July 2004, or accepting the items delivered by LCV Design and Fabrication Corporation, did then and there willfully, unlawfully and feloniously allow/cause the diversion/conversion of the said ₱5,000,000.00 fertilizer fund for the purpose for which it was intended, i.e. purchase of fertilizer, by purchasing, upon request/

inducement of accused Reyes and in fact she received, one (1) unit Shredding Machine, one unit (1) unit Hammermill/Shifter, one (1) unit Pelletizer and one (1) unit Tornado Brush Chipper/Shredder from LCV Design and Fabrication Corporation, without the benefit of public bidding and knowing fully well that the equipment purchase was not in accordance with the purpose for which the fund was appropriated under Republic Act No. 8435, to the damage and prejudice of the government in the aforementioned amount.

CONTRARY TO LAW.[12]

On July 19, 2011, Reyes filed an Urgent Omnibus Motion (For Judicial Determination of Probable Cause; and Deferment of Arraignment set for 28 July 2011)[13] in the anti-graft case, and another Urgent Omnibus Motion (For Judicial Determination of Probable Cause; and Deferment of/Holding in Abeyance the Arraignment) on September 12, 2011[14] in the technical malversation case.

The Office of the Special Prosecutor (OSP) filed a Consolidated Opposition/Comment dated August 18, 2011[15] and an Opposition/Comment dated October 5, 2011[16] upon which Reyes filed her Consolidated Reply.[17]

In a Resolution dated February 29, 2012,[18] the Sandiganbayan resolved the said Urgent Omnibus Motions denying both motions. The said Resolution dated February 12, 2012 disposed thus:

WHEREFORE, in the light of all the foregoing, the Court hereby resolves as follows:

x x x x x x x x x

---

[12] *Id*. at 94-95.

[13] *Id*. at 440-445.

[14] *Id*. at 447-453.

[15] *Id*. at 454-479.

[16] *Id*. at 480-500.

[17] *Id*. at 501-508.

[18] *Id*. at 33-72.

7. To **FIND THAT PROBABLE CAUSE EXISTS** to issue warrant of arrest against accused Reyes [herein Petitioner] in Crim. Cases No. SB-11-CRM-0100 and No. SB-11-CRM-0113; x x x.

However, considering that the accused had already posted their bail bonds, the Court will no longer issue a warrant of arrest against them.

x x x x x x x x x

SO ORDERED."[19]

On March 29, 2012, Reyes filed a Motion for Reconsideration[20] of the said Resolution dated February 29, 2012. However, it was denied in a Resolution dated August 13, 2012.

Hence, this petition.

Issues

Reyes submits the following issues for Our Resolution:

1. Does the evidence, relied on by the Ombudsman, justify the conclusion that there is probable cause to charge the petitioner for the violation of Section 3 (e) of R.A. No. 3019, as amended?
2. Does the evidence, relied on by the Ombudsman, justify the conclusion that there is probable cause to charge the petitioner for the Illegal Use of Public Funds/ Technical Malversation under Article 220 of the RPC?
3. Did the respondent court commit grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the assertion of the petitioner that no probable cause exists for either case?
4. Is the petitioner entitled to injunctive relief?[21]

---

[19] *Id*. at 69, 71-72.

[20] *Id*. at 509.

[21] *Id*. at 11.

In the petition, Reyes argues that there is no probable cause to charge her for the violation of Section 3(e) of R.A. No. 3019.[22] She claims that among the elements to hold a person criminally liable under Sec. 3(e) of R.A. No. 3019, no other element is present in this case except that she was a public officer.[23] She explains that the primary evidence as per Information, *i.e.* the letter request[24] and the purchase request,[25] merely show the letter is simply a request and the purchase request shows on its face that it was the DA officials who made the same. Reyes likewise claims that no real evidence of conspiracy was found or established by the evidence.[26]

Moreover, Reyes argues that there is no probable cause to charge her under Article 220 of the RPC.[27] She claims that she is not the administrator of the funds in question with whom it remains.[28]She further claims that nothing of inducement is stated in the letter request.[29] She concluded in accordance with Article 220 of the RPC, it is already clear that not all the elements of the crime charged are met.[30]

Reyes further argues that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied her assertion that no probable cause exists for either case. Reyes assails the Sandigabayan's reliance on the Senate Blue Ribbon Committee Report being not part of the record of the case and considers it hearsay, as well as the finding that the "arguments propounded by the accused-movants reveal that they are matters of defense."[31]

---

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

[23] *Id*. at 13.

[24] *Id*. at 87.

[25] *Id*. at 520.

[26] *Id*. at 18.

[27] *Id*. at 19.

[28] *Id*. at 22.

[29] *Id*. at 22.

[30] *Id*. at 22.

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

Ruling of this Court

The petition is without merit.

At the outset, it bears to stress that a *certiorari* proceeding is limited in scope and narrow in character. The special civil action for *certiorari* lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion. *Certiorari* will issue only to correct errors of jurisdiction, not errors of procedure or mistakes in the findings or conclusions of the lower court.[32]

After a careful and thorough review of the facts and the issue at hand, as well as the law and jurisprudence pertinent thereto, this Court finds that the First Division of the Sandiganbayan did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner's Urgent Omnibus Motion/s (For Judicial Determination of Probable Cause).

As to the first two issues, Reyes contends that the letter request and purchase request are incomplete to show that the elements are present for charges of violation of Section 3(e) of R.A. No. 3019 and Article 220 of the RPC, further claiming no evidence to show conspiracy.

We are not persuaded.

In this case, Reyes's contentions are matters of defense that should be resolved in a trial.

As public respondent correctly contends:

> At first glance and on its face, petitioner Reyes' request had the appearance of being regular. But after a careful analysis, her request was actually inducing and/or even ordering the DA to procure the subject equipments from the LCV as the latter, according to petitioner Reyes, was "*the inventor, manufacturer and exclusive distributor*" thereof. Indeed, petitioner Reyes' mere mention in her letter of the name "LCV" as the alleged "*inventor; manufacturer and exclusive distributor*" of the equipment could be considered as a strong indication that she seriously wanted DA to procure the equipments with LCV.

---

[32] *Civil Service Commission v. Asensi*, 477 Phil. 401, 405 (2004).

As a matter of fact, in the Purchase Request dated May 3, 2004, and the Requisition and Issue Slip dated May 5, 2004, petitioner Reyes had categorically mentioned the brand name "TORNADO" Brush Chipper/ Shredder, which was the brand claimed to be exclusively distributed by LCV. Moreover, no less than her co-respondents in the case, the DA FRFU-IV employees, in their *Joint-Counter-Affidavit*, openly alleged that the proponents, petitioner Reyes included, had a direct hand in the purchase of the equipments, *viz*:

11.) With respect to paragraph 13, it must be pointed out that the four (4) proponents (Congressmen Nanette Daza, Federico Sandoval, and Oscar Gozos, and Governor Carmencita Reyes) not only had direct hand in the questioned transactions but much more than that. They were not only ordinary proponents or endorsers of the farm implements in question, but they actually initiated the transactions in question as borne out by their respective letters to Respondent Dennis B. Araullo, then the Regional Executive Director of the DA RFU No. IV The four (4) elective public officials concerned categorically and unmistakably manifested in their respective letters the extent of their participation and the fact their sole determination of the specifications (and even the supplier) of the items purchased, purpose and justification why the various farm implements or machines were purchased for their constituencies, ...[33]

From the foregoing, it is shown that the letter request and purchase request are enough to engender a well-founded belief that the crime charged may have been committed by Reyes and that any assertion by Reyes that negates the complication of the documents are matters of defense. Besides, the Requisition and Issue Slip[34] dated May 5, 2004, as alluded to by the Ombudsman, would show that petitioner Reyes had categorically mentioned the brand name "TORNADO" Brush Chipper/ Shredder, which was the brand claimed to be exclusively distributed by LCV Design and Fabrication Corporation. On this score, said connections can also establish probable cause which the Sandiganbayan may disprove during the trial. Under these circumstances, We concur with the Sandiganbayan as it aptly found, thus:

---

[33] *Id*. at 559-560.

[34] *Id*. at 572.

A judicious reading of the arguments propounded by the accused-movants reveal that they are matters of defense which should be ventilated during the trial proper. Indubitably, whether or not undue injury was caused or unwarranted benefits, advantage or preference was extended to any party when direct contracting was resorted to instead of public bidding in the acquisition of the subject equipment from LCV in the case of DA RFU IV, and whether or not said supplier was indeed its exclusive distributor of the equipment which could be considered as farm inputs/farm implements to fall under the category provided under the GMA program, and which in effect would help settle the issue if there was illegal use of public funds or not, are matters of defense which are not relevant considerations during the initial stage of the proceedings.[35]

As to the third issue, Reyes contends that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied her assertion that no probable cause exists for both cases. In addition to her previous contentions, Reyes assails the Sandigabayan's reliance on the Senate Blue Ribbon Committee Report being not part of the record of the case and considers it hearsay. She considers such as highly irregular and improper for the Sandiganbayan to have used the findings of such report as bases for upholding the existence of probable cause.[36]

Reyes's contention is misplaced.

It must be emphasized that the Ombudsman itself conducted its own preliminary investigation in this case. It was during this investigation that the Ombudsman, faced with the facts and circumstances extant herein, was led to believe that (1) a crime has been committed; and (2) there is probable cause that Reyes was guilty thereof. That the Ombudsman referred to the Senate Blue Ribbon Committee Report as additional basis for its findings does nothing to refute the validity of the preliminary investigation, the evidence gathered therein, or the conclusion of the Ombudsman after that investigation.

---

[35] *Rollo*, p. 66.

[36] *Id*. at 25.

Thus, We once more find favor in the Resolution of the Sandiganbayan, *viz*:

> The Court finds no grave abuse of discretion on the part of the Office of the Ombudsman when it found probable cause to file the Information against the accused in these cases. x x x It is noteworthy that aside from its own exhaustive investigation, the Office of the Ombudsman also referred to the Senate Blue Ribbon Committee Report to supplement its findings of probable cause, on the basis of which the investigating prosecutors were able to determine that an offense had probably been committed and that the accused probably perpetrated it.[37]

On the basis of these findings, the Sandiganbayan cannot be said to have committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied Reyes's assertion that no probable cause exists for both cases.

In a petition for *certiorari,* the public respondent acts without jurisdiction if it does not have the legal power to determine the case; there is excess of jurisdiction where the respondent, being clothed with the power to determine the case, oversteps its authority as determined by law. There is grave abuse of discretion where the public respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment as to be said to be equivalent to lack of jurisdiction. Mere abuse of discretion is not enough.[38] Here, there is none.

WHEREFORE, the Petition is **DENIED**. The Resolutions dated February 29, 2012 and August 13, 2012 of the First (1st) Division of the Sandiganbayan in Case Nos. SB-11-CRM-0089 to 0101, and SB-11-CRM-0111 to 0113 insofar as the petitioner in this case is concerned, are **AFFIRMED**.

SO ORDERED.

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

---

[37] *Rollo*, pp. 65-66.

[38] 475 Phil. 568, 576 (2004).

SECOND DIVISION

[G.R. No. 213273. June 27, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONARDO B. SIEGA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS.— An accused, who pleads self-defense, has the burden of proving, with 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. Of these three, unlawful aggression is most important and indispensable.

2. ID.;ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; DEFINED AND CONSTRUED.— 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. x x x Unlawful aggression is predicated on an actual, sudden, unexpected or imminent danger — not merely a threatening or intimidating action. Bitoy's supposed act of holding a weapon from his waist does not pose any actual, sudden or imminent danger to the life and limb of Siega. In fact, in *People v. Escarlos*, the Court ruled that the mere drawing of a knife by the victim does not constitute unlawful aggression as the peril sought to be avoided by the accused is uncertain, premature and speculative:

3. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THE SUDDEN AND UNEXPECTED ATTACK AGAINST AN UNARMED AND UNSUSPECTING VICTIM, WHO HAS NO CHANCE OF DEFENDING HIMSELF; ESTABLISHED IN CASE AT BAR.— On the matter of treachery as a qualifying circumstance of Murder, the courts *a quo* correctly ruled that treachery attended

> the killing of Bitoy. The essence of treachery is the sudden and unexpected attack against an unarmed and unsuspecting victim, who has no chance of defending himself. Here, a credible eyewitness testified that Siega, armed with a bolo, stabbed Bitoy on the chest several times, while the latter was merely conversing with Alingasa. That the attack was frontal does not rule out the existence of treachery; because it was so sudden and unexpected that Bitoy, unarmed and had no chance to defend himself, was felled down by Siega's repeated hacking blows.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

CAGUIOA, *J.*:

On appeal is the Amended Decision[1] dated November 20, 2013 of the Court of Appeals (CA), Special Former Nineteenth Division, Cebu City, in CA-G.R. CR HC No. 01003, modifying the Decision[2] dated July 27, 2012 of the CA Nineteenth Division in the same case. The July 27, 2012 Decision of the CA affirmed with modification the Decision[3] of the Regional Trial Court (RTC), Branch 39, Sogod, Southern Leyte, in Criminal Case No. R-478, finding accused-appellant Leonardo B. Siega (Siega) guilty beyond reasonable doubt of the crime of Murder.

The Facts

Siega was charged with the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code (RPC),

---

[1] CA *rollo*, pp. 115-120. Penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Edgardo L. Delos Santos and Ramon Paul L. Hernando concurring.

[2] *Id*. at 84-96. Penned by Associate Justice Pamela Ann Abella Maxino with Associate Justices Edgardo L. Delos Santos and Zenaida T. Galapate-Laguilles concurring.

[3] *Id*. at 24-34. Penned by Executive Judge Rolando L. Gonzalez.

as amended, under an Information dated January 25, 2006, the accusatory portion of which reads:

> That on the 16th day of October, 2005 at around 4:30 o'clock in the afternoon, more or less, at Sitio Lubong Sapa, Barangay Kahupian, Municipality of Sogod, Province of Southern Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, evident premeditation and treachery, did then and there willfully, unlawfully and feloniously attack, assault, stab and hack one Pacenciano Bitoy with the use of a sharp pointed bolo locally known as sundang which the accused had provided himself for the purpose, thereby causing the instantaneous death of the said Pacenciano Bitoy, to the damage and prejudice of his heirs and of social order.
>
> CONTRARY TO LAW.[4]

Siega pleaded not guilty to the crime charged and alleged the defense of the justifying circumstance of self-defense.[5]

In the course of the reverse trial, Siega averred that:

On October 16, 2005, at around 4:00 p.m., Siega was about to enter his house when he heard a sound coming from the feeder road facing his residence.[6] When Siega turned to the source of the noise, he saw Pacenciano Bitoy (Bitoy), rushing towards him and shouting at him to get out of his house so that they could end their grudge against each other.[7] As Bitoy was nearing him, Siega saw the former attempting to draw the bolo that was wrapped on his waist.[8] Scared by Bitoy's actions, Siega immediately grabbed unto the bolo that was then beside him and hacked Bitoy.[9] Siega inflicted several injuries on Bitoy,

---

[4] *Id.* at 85.

[5] *Id.*

[6] *Id.* at 85-86.

[7] *Id.* at 86.

[8] *Id.*

[9] *Id.*

before the latter retreated and ran away.[10] Siega then went inside his house, changed his clothes and surrendered to the authorities.[11]

The defense also presented Emiliano Gildore (Gildore), who testified on direct examination that, at the time of the incident, he was at the back of the house of Siega, checking the piglets being raised by the latter, when he heard someone utter the following words in vernacular, "*gawas diha kay atong tiwason atong dumot*" which means "go out so that we can finish our previous grudges."[12] Gildore glanced and saw Bitoy, armed with a sharp pointed bolo, facing Siega.[13] When Bitoy allegedly got hold of the handle of his bolo, Siega was able to stab him first, hitting the victim at the center of his breast.[14] Upon seeing the stabbing, Gildore ran away and did not report the incident to the police.[15]

On cross-examination, Gildore averred that Siega's uncle, Pepe Siega, who is his friend asked him to testify for the accused.[16]

On the other hand, the prosecution, through the testimonies of Melicio Alingasa (Alingasa) and Dr. Lodivico C. Mosot (Dr. Mosot), alleged that:

At about 4:30 p.m. of October 16, 2005, Bitoy and his friend Alingasa were walking along the feeder road of Sitio Lubong Sapa on their way home to Sitio Jagna. As they were nearing the Purok Center of Sitio Lubong Sapa, just near the house of Siega, the latter armed with a bolo suddenly approached them and asked "*kinsay mopalag*" or who would dare challenge me.[17]

---

[10] *Id*.

[11] *Id*.

[12] *Id*. at 26.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 29.

[16] *Id*. at 26.

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

Bitoy replied that no one would dare challenge him.[18] Seemingly satisfied with Bitoy's response, Siega walked towards the direction of the Purok Center; while Bitoy and Alingasa continued to walk towards Sitio Jagna.[19] Bitoy then intimated to Alingasa that it was a good thing that he had nothing on Siega then.[20] Suddenly, Siega turned back, asked Bitoy whether he was the tough guy of Jagna, and stabbed the latter with a long bolo on the left part of his chest.[21] Surprised by the incident, Bitoy tried to flee but Siega ran after him and continued his assault.[22] Alingasa saw Siega continue to hack Bitoy even if the latter was already lying on the ground.[23] Alingasa ran away and proceeded to the direction of Sitio Jagna. He hurried to the wife of Bitoy and told her the fate that befell her husband.[24]

Due to the severity of his wounds, Bitoy died that afternoon.[25]

The postmortem report of Dr. Mosot showed that Bitoy sustained three (3) hack wounds on his face, which caused his right eyeball to pop out; two (2) hack wounds on his forearms; and three (3) deep penetrating stab wounds on his chest cavity,[26] which could have caused his immediate death due to hemorrhage or massive bleeding and loss of blood.[27]

RTC Ruling

In its Decision[28] dated January 22, 2009, the RTC found Siega guilty beyond reasonable doubt of the crime of Murder and

---

[18] *Id*. at 87.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 88.

[26] *Id*.

[27] *Id*. at 30.

[28] *Id.* at 24-34.

sentenced him to suffer the penalty of *reclusion perpetua* and indemnify the heirs of the victim in the amount of ₱50,000.00 and to pay the costs.[29] According to the RTC, Siega failed to prove the element of unlawful aggression. Siega's claim that Bitoy tried to draw a weapon from his waist was belied by the fact that no such weapon was recovered from the victim or at the scene of the incident; and Alingasa's credible testimony verified that Bitoy was not carrying any weapon at the time of the incident.[30]

The RTC also found the testimony of Gildore unbelievable and unreliable, being a biased witness.[31] According to the RTC, Gildore was incoherent and inconsistent during his testimony in open court that the defense counsel had to ask leading questions to get him back on track.[32] The RTC, on the other hand, found the testimony of Alingasa credible, straightforward, positive and direct to the point.[33]

Moreover, the RTC found that the killing of Bitoy was attended by treachery because, as testified by Alingasa, Siega suddenly stabbed Bitoy, who was unsuspecting and unarmed.[34] However, the RTC did not appreciate the qualifying circumstance of evident premeditation because there was no proof on how Siega planned and prepared in the killing of Bitoy and on the lapse of time for Siega to reflect and cling to his determination to execute the crime.[35]

The RTC, on the other hand, appreciated the mitigating circumstance of voluntary surrender and imposed the lower penalty of *reclusion perpetua*.[36]

---

[29] *Id*. at 34.

[30] *Id*. at 32.

[31] *Id*. at 33.

[32] *Id*.

[33] *Id*.

[34] *Id*.

[35] *Id*. at 34.

[36] *Id*.

CA Ruling

In a Decision[37] dated July 27, 2012, the CA affirmed, with modifications on the civil damages, the ruling of the RTC. The CA held that the RTC did not err in convicting Siega for the crime of Murder as there was failure of the defense to sufficiently prove self-defense and it was positively proven by the prosecution that the killing of Bitoy was attended by treachery.[38] The CA ruled that there was no unlawful aggression on the part of Bitoy and that the numerous inflicted wounds on the victim belie any claim of self-defense but illuminate the determined effort of Siega to kill the victim.[39] The CA further ruled that Siega's act of getting close to the weaponless victim, asking him a question and swiftly and unexpectedly hacking him is nothing short of treachery, as it ensured the commission of the crime without any risk to himself.[40]

Accordingly, the CA found Siega guilty of Murder and sentenced him to suffer the penalty of *reclusion perpetua*, without eligibility for parole.[41] The CA further ordered Siega to pay the heirs of the victim the following: 1) ₱75,000.00 as civil indemnity; 2) ₱50,000.00 as moral damages; and 3) ₱30,000.00 as moral damages, all of which is subject to six percent (6%) interest per annum from the finality of the decision until full payment.[42]

The State, through the Office of the Solicitor General (OSG), moved for a partial reconsideration as to the award of damages claiming that temperate damages should also be awarded to the heirs of the victim in view of the funeral and sundry expenses incurred by his heirs.[43]

---

[37] *Id*. at 84-96.

[38] *Id*. at 94.

[39] *Id*. at 91-92.

[40] *Id*. at 94.

[41] *Id*. at 96.

[42] *Id*.

[43] *Id*. at 116.

In the assailed Amended Decision,[44] the CA granted the State's motion and modified the *fallo* of its July 27, 2012 Decision as follows:

> IN LIGHT OF ALL THE FOREGOING, the Court hereby AFFIRMS with MODIFICATION the assailed Decision dated January 22, 2009 of the Regional Trial Court, Branch 39, Sogod, Southern Leyte, in Criminal Case No. R-478. The accused-appellant Leonardo B. Siega is found GUILTY of the crime of Murder and is hereby sentenced to suffer the penalty of reclusion perpetua without eligibility of parole. He is further ordered to pay the heirs of Pacenciano Bitoy the amount of Php 75,000.00 as civil indemnity, Php 50,000.00 as moral damages and Php 25,000.00 as temperate damages in lieu of actual damages. Exemplary damages is also awarded in the amount of Php 30,000.00. Interest at the rate of six percent (6%) per annum on the civil indemnity, moral, temperate and exemplary damages from the finality of this decision until fully paid shall likewise be paid by accused-appellant to the heirs of Pacenciano Bitoy.[45]

Hence, this appeal.[46]

Issue

The issue to be resolved in this case is whether or not the CA erred in upholding Siega's conviction for the crime of Murder.

The Court's Ruling

The appeal lacks merit.

An accused, who pleads self-defense, has the burden of proving, with 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.[47] Of these three, unlawful aggression

---

[44] *Id*. at 115-120.

[45] *Id*. at 119.

[46] *Id.* at 121-123.

[47] *Guevarra v. People*, 726 Phil. 183, 194 (2014).

is most important and indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person."[48] Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.[49]

In this case, records disclose that Siega failed to establish unlawful aggression on the part of the victim, Bitoy. Thus, his claim of self-defense must necessarily fail.

In his version of the incident, Siega claimed that Bitoy came rushing to his house armed with a bolo.[50] When Bitoy attempted to draw his weapon, Siega picked up a sharp pointed bolo and stabbed Bitoy several times.[51] However, as duly pointed out by the RTC and CA, Siega's account of events is belied by the straightforward and credible testimony of Alingasa that Bitoy did not carry any weapon at that time.[52] This was corroborated by the fact that no weapon was recovered from the victim.

Moreover, even if the Court were to believe Siega's version of the events, still, no unlawful aggression can be deduced, because there was clearly no imminent danger on the person of Siega as would justify his killing of Bitoy.[53] Unlawful aggression is predicated on an actual, sudden, unexpected or imminent danger — not merely a threatening or intimidating action.[54] Bitoy's supposed act of holding a weapon from his waist does not pose any actual, sudden or imminent danger to the life and limb of Siega. In fact, in *People v. Escarlos*,[55] the Court ruled

---

[48] *People v. Dolorido*, 654 Phil. 467, 475 (2011).

[49] *Nacnac v. People,* 685 Phil. 223, 229 (2012).

[50] TSN, February 12, 2008, p. 66.

[51] *Id*. at 67.

[52] TSN, April 1, 2008, p. 95.

[53] See *People v. Raytos*, G.R. No. 225623, June 7, 2017, 827 SCRA 133, 145.

[54] *Id.* at 145.

[55] 457 Phil. 580 (2003).

that the mere drawing of a knife by the victim does not constitute unlawful aggression as the peril sought to be avoided by the accused is uncertain, premature and speculative:

> The contentions of appellant are untenable. While the victim may be said to have initiated the confrontation, we do not subscribe to the view that the former was subjected to an unlawful aggression within the legal meaning of the phrase.
>
> The alleged assault did not come as a surprise, as it was preceded by a heated exchange of words between the two parties who had a history of animosity. Moreover, **the alleged drawing of a knife by the victim could not have placed the life of appellant in imminent danger. The former might have done it only to threaten or intimidate the latter.**
>
> Unlawful aggression presupposes actual, sudden, unexpected or imminent danger — not merely threatening and intimidating action. **Uncertain, premature and speculative was the assertion of appellant that the victim was about to stab him, when the latter had merely drawn out his knife. There is aggression, only when the one attacked faces real and immediate threat to one's life.** The peril sought to be avoided must be imminent and actual, not just speculative.[56] (Emphasis supplied)

On the matter of treachery as a qualifying circumstance of Murder, the courts *a quo* correctly ruled that treachery attended the killing of Bitoy.

The essence of treachery is the sudden and unexpected attack against an unarmed and unsuspecting victim, who has no chance of defending himself.[57] Here, a credible eyewitness testified that Siega, armed with a bolo, stabbed Bitoy on the chest several times, while the latter was merely conversing with Alingasa.[58] That the attack was frontal does not rule out the existence of treachery;[59] because it was so sudden and unexpected that Bitoy,

---

[56] *Id*. at 596.

[57] See *People v. Bugarin*, G.R. No. 224900, March 15, 2017, 820 SCRA 603.

[58] TSN, April 1, 2008, pp. 85-87.

[59] See *People v. Perez*, 404 Phil. 380 (2001).

unarmed and had no chance to defend himself, was felled down by Siega's repeated hacking blows.[60]

Proceeding from the foregoing, the Court finds no reason to overturn the concurring findings of the RTC and the CA with respect to the qualifying circumstance of treachery.

Finally, in view of the Court's ruling in *People v. Jugueta*,[61] the damages awarded in the questioned Amended Decision are hereby modified, increasing the civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each. The temperate damages are likewise increased to ₱50,000.00.

WHEREFORE, the appeal is **DISMISSED**. The Amended Decision dated November 20, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 01003 finding accused-appellant Leonardo B. Siega **GUILTY** beyond reasonable doubt of the crime of Murder, defined and penalized under Article 248 of the Revised Penal Code, as amended, is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordered to pay the heirs of Pacenciano Bitoy the following amounts: (a) ₱75,000.00 as civil indemnity; (b) ₱75,000.00 as moral damages; (c) ₱75,000.00 as exemplary damages; and (d) ₱50,000.00 as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Resolution until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta, Perlas-Bernabe,* and *Reyes, Jr., JJ.*, concur.

---

[60] Exhibit "B", Sworn Statement of Melicio S. Alingasa taken by PO3 Raul C. Luterte PNP, Investigator of Sogod, Municipal Police Station, Sogod, Southern Leyte on October 18, 2005 at around 1:00 o'clock in the afternoon in the presence of SPOII Warlito A. Cardinez PNP, records, pp. 8-9.

[61] 783 Phil. 806 (2016).

THIRD DIVISION

[G.R. No. 213918. June 27, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EVANGELINE ABELLA *y* SEDEGO and MAE ANN SENDIONG,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, PRESENT; EACH OF THE ACCUSED-APPELLANTS PERFORMED AN OVERT ACT IN FURTHERANCE OF COMPLICITY.— In Criminal Case No. 19359, the accused-appellants were charged with violation of Sec. 5, Art. II of R.A. No. 9165 which has the following elements: (a) the identity of the buyer and the seller, the object of the sale, and its consideration; and (b) the delivery of the thing sold and the payment therefor. In Criminal Case No. 19381, Sendiong was charged with violation of Sec. 11, Art. II of R.A. No. 9165, the elements of which are as follows: (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 Criminal Case No. 19359, the prosecution was able to prove that it was Tubio who bought from the accused-appellants one transparent heat-sealed sachet which, when subjected to laboratory examination, was found to contain methamphetamine hydrochloride. By statutory definition, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. From the established facts, it was clear that each of the accused-appellants performed an overt act in pursuance or furtherance of the complicity, i.e., both accused-appellants transacted with Tubio; Abella received the money from Tubio and handed it to Sendiong; and Sendiong handed the heat-sealed transparent sachet to Abella who in turn gave it to Tubio.

2. ID.; ID.; ID.; THE PROOF THAT ACCUSED-APPELLANTS WERE ENGAGED IN ILLEGAL TRADE OF SELLING

SHABU WAS ONLY FORTIFIED BY THE BUY-BUST OPERATION, WHICH HAS BEEN HELD AS A FORM OF ENTRAPMENT USED TO APPREHEND DRUG PEDDLERS.— The records unmistakably prove that Tubio merely convinced the accused-appellants that he would be buying shabu but never told them that he would be buying it from them. Apparently, the criminal intent or design to sell shabu originated in the mind of the accused-appellants because they voluntarily and knowingly transacted with Tubio to sell him a sachet of shabu at the price of ₱300.00. This conclusion is supported by the synchronized acts of the accused-appellants in receiving the payment and in handing the shabu to the poseur-buyer. Moreover, the fact that Sendiong already had in her possession two heat-sealed transparent sachets containing shabu confirmed the probability that in actuality both of them were engaged in selling shabu. In fact, during the verification operation on 18 January 2009, PO2 Corsame and Tubio were able to witness the accused-appellants openly selling shabu. Obviously, the buy-bust team merely facilitated the apprehension of the criminals by employing ploys and schemes. The proof that the accused-appellants were engaged in the illegal trade of selling shabu was only fortified by the buy-bust operation which, in a series of cases, has been held as a form of entrapment used to apprehend drug peddlers.

3. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS, ESTABLISHED IN CASE AT BAR.—** In Criminal Case No. 19381, the facts revealed that after the sale transaction, was consummated the buy-bust team approached the accused-appellants to search and arrest them. The buy-bust team were unanimous in their testimony that it was SPO1 Germodo who seized from Sendiong a key holder which yielded a heat-sealed transparent sachet and which, upon laboratory examination, was found to contain methamphetamine hydrochloride. Sendiong was not able to show, either during the arrest or when called to the witness stand, that she was authorized by law to possess the prohibited drug.

4. **REMEDIAL LAW; EVIDENCE; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES BECAME CONCLUSIVE WHEN THE ACCUSED-APPELLANT FAILED TO REFUTE IT.—** [T]he Court is

cognizant of the presumption of regularity in the performance of duties of public officers. The presumption is that unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit. In these cases, the presumption became conclusive when the accused-appellants failed to refute it.

5. ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS, ACCORDED RESPECT.— It is noteworthy that both the RTC and the CA found the testimony of the prosecution witnesses credible. Hence, the well-settled rule that finds its significance in these cases is that the findings of the trial court which are factual in nature and involve the credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary, and unsupported conclusions are made from such findings. This rule finds even more stringent application where the findings are sustained by the CA.

6. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); CHAIN OF CUSTODY RULE; FOUR LINKS THAT MUST BE ESTABLISHED BY THE PROSECUTION.— The legal teaching consistently upheld in our jurisprudence is that, as a general rule, there are four links in the chain of custody of the confiscated item that must be established by the prosecution, *viz*: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

7. ID.; ID.; ID.; ID.; MARKING OF THE EVIDENCE, EXPLAINED.— Marking is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have been seized. It is the starting point in the custodial link. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence

from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, planting, or contamination of evidence.

8. ID.; ID.; ID.; THERE WAS AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED ITEMS IN THIS CASE.— In these cases, immediately after the transaction was consummated, the buy-bust team proceeded to the place where the sale transaction took place. After PO2 Corsame received the sachet from Tubio, he placed on it the marking 'EM-BB' 1-19-09. From the key holder of Sendiong, SPO1 Germodo was able to retrieve a sachet which he forthwith gave to PO2 Corsame, who in turn marked it "MS-P" 1-19-09. PO2 Corsame did not break the seal when he placed the markings on the sachets in the presence of the accused-appellants. It was also at the scene of the crime that PO2 Corsame, in compliance with Sec. 21 of R.A. No. 9165, personally conducted an inventory of the items seized which was witnessed by Astillero and Merced, as DOJ and elected official representatives, respectively. The receipt was signed by the accused-appellants, Astillero, Merced, PO2 Corsame, SI Tagle, and SPO1 Germodo. Likewise, SPO1 Germodo took pictures while Astillero and Merced were signing the receipt in the presence of the accused-appellants. Fabillar, the media representative, came to the PDEA office and affixed his signature on the receipt in the presence of the accused-appellants. PO2 Corsame was in possession of the sachets from the time these were seized up to the time that he arrived at the PDEA office. At the PDEA office, PO2 Corsame prepared the request for the laboratory examination of the seized items. At 4:00 P.M. that same day, PO2 Corsame turned over the request and the seized items to the PNP laboratory, thru PCI Llena. It was also on that same day that PCI Llena released her report finding that the seized items contained shabu. On 30 January 2009, PCI Llena turned over the seized items to the RTC thru its branch clerk of court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

Accused-appellants Evangeline Abella y Sedego *(Abella)* and Mae Ann Sendiong *(Sendiong)* assail through this appeal the 17 June 2014 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CR-HC No. 01412 affirming *in toto* the 28 October 2011 Joint Judgment[2] of the Regional Trial Court *(RTC)*, Branch 30, Dumaguete City, in Criminal Case Nos. 19359 and 19381.

THE FACTS

The accused-appellants were charged with violation of Section *(Sec.)* 5, Article *(Art.)* II of Republic Act *(R.A.)* No. 9165[3] in an amended Information[4] docketed as Criminal Case No. 19359, *viz*:

That on or about the 19th day of January, 2009, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually aiding one another not being then authorized by law, did then and there wilfully, unlawfully, and feloniously sell and deliver to a poseur-buyer, one (1) heat-sealed transparent plastic sachet containing an approximate weight of 0.01 gram of Methamphetamine Hydrochloride, commonly called "shabu," a dangerous drug.

Contrary to Sec. 5, Art. II of R.A. No. 9165.[5]

---

[1] *Rollo*, pp. 4-23; penned by Associate Justice Marie Christine Azcarraga-Jacob, and concurred in by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.

[2] Records, pp. 260-277; penned by Judge Rafael Crescencio C. Tan, Jr.

[3] 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" dated 7 June 2002.

[4] The Information was amended to reflect the identity of "Jane Doe" as Mae Anne Sendiong.

[5] Records, p. 68.

In Criminal Case No. 19381, Sendiong was charged with violation of Sec. 11, Art. II of R.A. No. 9165, *viz*:

> That on or about the 19th day of January, 2009, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there wilfully, unlawfully, and feloniously possess one (1) heat-sealed plastic sachet containing 0.01 gram of Methamphetamine Hydrochloride, a dangerous drug.
>
> Contrary to Sec. 11, Art. II of R.A. No. 9165.[6]

When arraigned, the accused-appellants pleaded not guilty in Criminal Case No. 19351.[7] The same plea was entered by Sendiong when she was arraigned in Criminal Case No. 19381.[8] Thereafter, a joint trial ensued.

To prove its charges, the prosecution presented the following: Police Chief Inspector Josephine S. Llena *(PCI Llena)*; Police Officer 2 Glenn Corsame *(PO2 Corsame)*; Senior Police Officer 1 Allen June Germodo *(SPO1 Germodo)*; SPO2 Douglas Ferrer *(SPO2 Ferrer)*; Special Investigator III Nicanor Ernesto Tagle *(SI Tagle)*; and poseur-buyer Urseevi Tubio *(Tubio)*.

Ramonito Astellero *(Astellero)*,[9] Rodolfo Merced *(Merced)*;[10] and Juditho Fabillar *(Fabillar)*;[11] an employee of the Department of Justice *(DOJ)*, Dumaguete City; the barangay captain of Barangay 2, Upper Luke Wright, Dumaguete City *(Upper Luke Wright)*; and a media practitioner, were no longer put on the witness stand after the parties agreed that their testimonies would be as follows: that they signed[12] as witnesses the inventory/

---

[6] *Id*. at 74.

[7] *Id*. at 62, 70.

[8] *Id*. at 116.

[9] *Id*. at 200.

[10] *Id*. at 228.

[11] *Id*.

[12] *Id*. at 14; Exh. "E".

receipt of drugs and other property seized *(receipt)* in the presence of the accused-appellants on 19 January 2009; that except for Fabillar[13] who signed the receipt at the Philippine Drug Enforcement Agency *(PDEA)* office, both Astellero[14] and Merced[15] affixed their signature on the receipt at the place where the accused-appellants were arrested; and that their photographs[16] were taken as they were signing the receipt.

The accused-appellants took the witness stand to fortify their respective defenses.

The Version of the Prosecution

On 18 January 2009, SPO1 Manuel Sanchez *(SPO1 Sanchez)*, the PDEA team leader of Dumaguete City, received information from a confidential informant that the accused-appellants were engaged in selling dangerous drugs at Upper Luke Wright. Upon receipt of the information, a surveillance with the confidential informant was conducted which confirmed that the accused-appellants were indeed engaged in selling dangerous drugs.[17]

On 19 January 2009 at around 11:00 A.M., SPO1 Sanchez, SPO2 Ferrer, SPO1 Germodo, SI Tagle, PO2 Corsame, the confidential informant, and other voluntary informants planned an entrapment. It was agreed that Tubio, a PDEA asset, would act as the poseur-buyer while the rest of the team, who would position themselves at a distance near enough to see the whole transaction, would act as back-up. Tubio would remove his cap as the pre-arranged signal that the transaction had been consummated. SPO1 Germodo affixed his signature beside the Bangko Sentral ng Pilipinas logo on one ₱100.00 bill[18] and

---

[13] *Id.*; Exh. "E-5".

[14] *Id.*; Exh. "E-1".

[15] *Id.*; Exh. "E-6".

[16] *Id.* at 193; Exhs. "F-1", to "F-4".

[17] TSN, 30 May 2011, pp. 5-6.

[18] Records, p. 23; Exh. "H-1".

one ₱200.00 bill[19] which would be used as marked money during the entrapment.[20]

After the planning at the PDEA office, Tubio proceeded to Upper Luke Wright where he met the accused-appellants while the buy-bust team members were positioned about seven meters away. Tubio convinced the accused-appellants that he wanted to buy shabu. When Abella agreed to sell, Tubio handed her the buy-bust money which she gave to Sendiong. At this point, Sendiong gave a heat-sealed transparent sachet *(sachet)* to Abella who handed it to Tubio. The transaction consummated, Tubio took off his cap moving the team to effect the arrest of the accused-appellants. SPO1 Germodo informed the accused-appellants of their rights. After Tubio handed the sachet to PO2 Corsame, he immediately left the place in order to avoid revealing his cover as PDEA asset.[21]

PO2 Corsame marked "EM-BB" 1-19-09 on the sachet[22] handed him by Tubio. The letters "EM" stood for Evangeline and Mae Ann; the letters "BB" for buy-bust; and "1-19-09" for the date of the incident. SPO2 Ferrer confiscated the marked money from Abella. SPO1 Germodo arrested Sendiong and confiscated from her a swiss knife key holder[23] which, when opened, revealed a sachet. SPO1 Germodo handed the sachet to PO2 Corsame who marked "MS-P" 1-19-09, the letters "MS" standing for the name of Sendiong; the letter "P" indicating that it was seized while in the possession of Sendiong; and "1-19-09" for the date of the incident. PO2 Corsame conducted an inventory[24] of the items seized at the place where the arrest was effected and in the presence of the accused-appellants, Astillero, and Merced. SPO1 Germodo took pictures[25] during

---

[19] *Id.*, Exh. "H-2".

[20] TSN, 30 May 2011, pp. 7-9; TSN, 9 August 2011, pp. 5-6.

[21] TSN, 9 August 2011, pp. 6-9; TSN, 30 May 2011, p. 17.

[22] Exh. "D"; (Criminal Case No. 19359).

[23] Exh. "D"; (Criminal Case No. 19381).

[24] Records, p. 14; Exh. "E".

[25] *Id.* at 26; Exhs. "F-1" to "F-3".

the inventory. PO2 Corsame took possession of the seized items from the inventory to the PDEA office.[26]

SPO1 Germodo took a picture[27] of Fabillar while he signed the receipt at the PDEA office in the presence of the accused-appellants, and thereafter entered the buy-bust operation report in the PDEA logbook.[28] A joint affidavit of arrest[29] was executed by PO2 Corsame, SPO1 Germodo, and SPO2 Ferrer.

On the same day at 4:00 P.M., PO2 Corsame submitted to the PDEA crime laboratory *(laboratory)* of Negros Oriental the request[30] for the examination of the two sachets marked "EM-BB" 01-19-09 and "MS-P" 01-19-09 and the drug testing of the accused-appellants. The request and the items for examination were received by PCI Llena, a forensic chemist, who, after the examination, found each of the sachets to contain 0.01 gram of methamphetamine hydrochloride;[31] while the urine sample of Abella[32] was positive for methamphetamine and that of Sendiong[33] positive for methamphetamine and THC-metabolites, both dangerous drugs.[34]

After the examination, PCI Llena personally resealed the two sachets and affixed the markings "A D-004-09" and "B-1 D-004-09" for "EM-BB" 1-19-09 and "MS-P" 1-19-09, respectively. Thereafter, she kept the seized items inside a steel cabinet in the evidence room to which only she had access. She delivered the seized items to the RTC on 30 January 2009.[35]

---

[26] TSN, 30 May 2011, pp. 12-19; TSN, 13 June 2011, pp. 14-15.

[27] Records, p. 193; Exh. "F-4".

[28] *Id*. at 30; Exh. "C".

[29] *Id*. at 8-9; Exh. "G".

[30] *Id*. at 32; Exh. "A".

[31] *Id*. at 33; Exh. "B".

[32] *Id*. at 34; Exh. "J".

[33] *Id*. at 35; Exh. "I".

[34] TSN, 20 April 2011, pp. 4-8.

[35] *Id*. at 8-11.

The Version of the Defense

According to Abella, she was at the house of Bebie Quizon *(Quizon)* at Upper Luke Wright on 19 January 2009, at about 2:00 P.M., doing her work as a laundry woman. A person, whom she later came to know was the poseur-buyer, stopped in front of the house looking for somebody and calling out the name "Yenyen." As she was about to go out, the poseur-buyer entered Quizon's house and told her not to move. When she refused as the poseur-buyer was forcing her out of the house he waved his cap and a vehicle arrived with several people alighting from it. When Quizon still refused to leave the house, PO2 Corsame entered the house, handcuffed her, and forced her to go out.[36]

Once outside, somebody interviewed Quizon while a policewoman searched her body. Although nothing was found on her, an inventory of drugs which she had not seen before was conducted. She was not informed of her constitutional rights. Also arrested at that time was Sendiong, whom she had not met.[37]

Sendiong testified that on 19 January 2009 at about 2:00 P.M., she was at Upper Luke Wright to borrow money from an aunt for the medication of her daughter who had meningitis. As she was waiting for her aunt, she saw people running in her direction and who then arrested her for allegedly being a drug dealer. Two policewomen frisked her but they found nothing. She told them that she did not know anything about the items seized and that she did not have any idea what they were talking about.[38]

The Ruling of the RTC

The RTC held that the prosecution had successfully proven all the elements necessary for the conviction of the accused-appellants. Moreover, the seized items had been properly

---

[36] TSN, 5 September 2011, pp. 3-6, and 9.

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

[38] TSN, 5 October 2011, pp. 3-6.

examined and were found to contain methamphetamine hydrochloride.[39]

On the one hand, the RTC found the defense of the accused-appellants inherently weak as compared to the credible testimonies of the prosecution witnesses. It upheld the presumption that the buy-bust team had regularly performed their duties in view of their consistent and straightforward narration of what transpired on 19 January 2009. In addition, the poseur-buyer testified and described in detail how the transaction took place, a testimony which only a trustworthy witness could have narrated with clarity and realism.[40]

With these findings, the RTC resolved the cases as follows:

WHEREFORE, in the light of the foregoing, the Court hereby renders judgment as follows:

1. In Criminal Case No. 19359, the accused Evangeline Abella y Sedego and Mae Ann Sendiong are hereby found GUILTY beyond reasonable doubt of the offense of illegal sale of 0.01 gram of shabu in violation of Sec. 5, Art. II of R.A. No. 9165 and are hereby sentenced each to suffer the penalty of life imprisonment and each to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).

The one (1) heat-sealed transparent plastic sachet containing 0.01 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

2. In Criminal Case No. 19381, the accused Mae Ann Sendiong is hereby found GUILTY beyond reasonable doubt of the offense of illegal possession of 0.01 gram of shabu in violation of Sec. 11, Art. II of R.A. No. 9165 and is hereby sentenced to suffer an indeterminate penalty of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum term and to pay a fine of Four Hundred Thousand Pesos (₱400,000.00).

The one (1) heat-sealed transparent plastic sachet containing 0.01 gram of shabu is hereby confiscated and forfeited in favor of the government and to be disposed of in accordance with law.

---

[39] Records, pp. 265-271.

[40] *Id.* at 272-273.

In the service of sentence, the accused Evangeline Abella y Sedego and Mae Ann Sendiong shall be credited with the full time during which they have undergone preventive imprisonment, provided they agree voluntarily in writing to abide by the same disciplinary rules imposed on convicted prisoners.[41]

Believing that the RTC erred in its decision, the accused-appellants appealed to the CA.

The Ruling of the CA

The CA found no merit in the appeal. It held that the elements of the crimes charged had been established beyond moral certainty. On the contention that what took place on 19 January 2009 was instigation, the CA ruled that the arrest of the accused-appellants was the result of a legitimate entrapment which fact can be verified by the credible testimonies of the prosecution witnesses. The CA sustained the RTC's assessment on the credibility of the witnesses and found no indicium of ill motive or of any distorted sense of duty on the part of the buy-bust team.[42]

The CA disposed the appeal of the accused-appellants as follows:

WHEREFORE, premises considered, the instant Appeal is **DENIED.**

Accordingly, the *28 October 2011 Joint Judgment* of the Regional Trial Court, Branch 30, Dumaguete City in *Criminal Case Nos. 19359 and 19381,* respectively, finding accused-appellants Evangeline Abella y Sedego and Mae Ann Sendiong guilty beyond reasonable doubt for the crime of illegal selling of 0.01 gram of shabu and accused-appellant Mae Ann Sendiong guilty beyond reasonable doubt for the crime of unlawful possession of 0.01 gram of shabu, is **AFFIRMED *IN TOTO*.**[43]

---

[41] *Id*. at 276.

[42] *Rollo*, pp. 12-14.

[43] *Id*. at 22.

ISSUES

Abella raised the following issues in her appeal:

I.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY.[44]

On the one hand, Sendiong raised this sole issue in her brief, to wit:

> The lower court erred in not holding that the irreconcilable conflict between the testimony of the PDEA asset Urseevi Tubio that he was the poseur-buyer and the testimony of the aforenamed police officers that it was the confidential agent who acted as poseur-buyer, and not Tubio, is fatal to the prosecution's burden of establishing the guilt of accused-appellant Mae Ann Sendiong by proof beyond reasonable doubt.[45]

OUR RULING

There is no merit in the appeal of the accused-appellants.

The elements of the crimes charged against the accused-appellants were established beyond reasonable doubt by the prosecution.

Foremost, it must be stressed that accruing jurisprudence dictate that an appeal in criminal cases opens the entire case

---

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

[45] *Id*. at 122.

for review; 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.[46] 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.[47]

In Criminal Case No. 19359, the accused-appellants were charged with violation of Sec. 5,[48] Art. II of R.A. No. 9165 which has the following elements: (a) the identity of the buyer and the seller, the object of the sale, and its consideration; and (b) the delivery of the thing sold and the payment therefor.[49] In Criminal Case No. 19381, Sendiong was charged with violation of Sec. 11,[50] Art. II of R.A. No. 9165, the elements of which

---

[46] *People v. Crispo,* G.R. No. 230065, 14 March 2018.

[47] *People v. Año*, G.R. No. 230070, 14 March 2018.

[48] Sec. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x x x x x x x

[49] *People v. Arposeple*, G.R. No. 205787, 22 November 2017.

[50] Sec. 11. *Possession of Dangerous Drugs.* – x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, *marijuana* resin or *marijuana* resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of *marijuana*.

are as follows: (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.[51]

In Criminal Case No. 19359, the prosecution was able to prove that it was Tubio who bought from the accused-appellants one transparent heat-sealed sachet which, when subjected to laboratory examination, was found to contain methamphetamine hydrochloride.

By statutory definition, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[52] From the established facts, it was clear that each of the accused-appellants performed an overt act in pursuance or furtherance of the complicity, i.e., both accused-appellants transacted with Tubio; Abella received the money from Tubio and handed it to Sendiong; and Sendiong handed the heat-sealed transparent sachet to Abella who in turn gave it to Tubio.

Abella averred that in all appearances, the police officers may have conducted a buy-bust operation but which, upon a closer look at the facts, revealed an instance of instigation. She claimed that by Tubio's testimony, he convinced the accused-appellants of his intent to buy shabu.[53]

The Court is not persuaded.

For a better understanding of the difference between instigation and entrapment, the following jurisprudence is reiterated:

> x x x Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him. On the other hand, entrapment is the employment of ways and means in order to trap or capture a lawbreaker. Instigation presupposes that the criminal intent to commit an offense originated from the inducer

---

[51] *People v. Lumaya*, G.R. No. 231983, 7 March 2018.

[52] *People v. Sandiganbayan*, 556 Phil. 596, 610 (2007).

[53] CA *rollo*, pp. 50-51.

and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer. In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes. In instigation, the law enforcers act as active co-principals. Instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction.

To determine whether there is instigation or entrapment, we held in *People v. Doria* that the conduct of the apprehending officers and the predisposition of the accused to commit the crime must be examined:

> [I]n buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost[s]. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[54]

The records unmistakably prove that Tubio merely convinced the accused-appellants that he would be buying shabu[55] but

---

[54] *People v. Mendoza*, G.R. No. 220759, 24 July 2017 citing *People v. Dansico*, 659 Phil. 216, 225-226 (2011).

[55] TSN, 9 August 2011, p. 7.

never told them that he would be buying it from them. Apparently, the criminal intent or design to sell shabu originated in the mind of the accused-appellants because they voluntarily and knowingly transacted with Tubio to sell him a sachet of shabu at the price of ₱300.00. This conclusion is supported by the synchronized acts of the accused-appellants in receiving the payment and in handing the shabu to the poseur-buyer. Moreover, the fact that Sendiong already had in her possession two heat-sealed transparent sachets containing shabu confirmed the probability that in actuality both of them were engaged in selling shabu. In fact, during the verification operation on 18 January 2009, PO2 Corsame and Tubio were able to witness the accused-appellants openly selling shabu. Obviously, the buy-bust team merely facilitated the apprehension of the criminals by employing ploys and schemes. The proof that the accused-appellants were engaged in the illegal trade of selling shabu was only fortified by the buy-bust operation which, in a series of cases, has been held as a form of entrapment used to apprehend drug peddlers.[56]

Abella finds fault that no police officer stood beside Tubio during the sale transaction.[57]

The fact is underscored that Tubio testified on what had actually transpired when he bought shabu from the accused-appellants. Notwithstanding that not one of the members of the buy-bust team was beside Tubio during the transaction, the record will confirm that the members were just seven meters away from him and the accused-appellants, thus, were able to witness the transaction. To stress, Tubio's narration before the RTC coincides with that of the buy-bust team. Additionally, the presence of a police officer beside the poseur-buyer is neither an element of Sec. 5, Art. II of R.A. No. 9165 nor a requirement to secure the conviction of the accused-appellants. More importantly, Sec. 5, Art. II of R.A. No. 9165 does not even prescribe that the poseur-buyer should be a police officer.

---

[56] *People v. Dumagay*, G.R. No. 216753, 7 February 2018.

[57] CA *rollo*, p. 55.

Accused-appellants claimed that there were material inconsistencies in the testimonies of the police officers with that of Tubio. They pointed out that according to the police officers, the poseur-buyer was the same person as the confidential informant. In contrast, Tubio testified that he was neither the confidential informant nor was present during the surveillance but was only shown the pictures of the accused-appellants during the briefing.[58]

Notwithstanding the inadvertent use by the police officers of the terms "confidential informant" and "poseur-buyer" when they took the witness stand, a review, however, of their respective testimonies easily disproves the claim of the accused-appellants.

Tubio, who had acted as poseur-buyer on several PDEA operations, admitted that, on 19 January 2009, he attended the briefing at the PDEA office relative to the buy-bust operation on the accused-appellants. Because the confidential informant was afraid to act as the poseur-buyer, Tubio was designated to act as the buyer and was shown pictures of the accused-appellants so he could identify them.[59]

According to SPO1 Germodo, the agreed plan was that another person, and not the confidential informant, would act as the poseur-buyer, *viz*:

> Q. And what was the agreed plan?
> A. The agreed plan, Sir, is that the **others will act as the poseur-buyer**, and we were supposed to pass through the bridge and our civilian informant will be riding on the motorcycle and pass through the Upper Luke Wright.[60] (emphasis supplied)

PO2 Corsame testified that the pre-operation briefing held on 19 January 2009 was attended not only by SPO1 Sanchez,

---

[58] *Id*. at 56 and 123-126.

[59] TSN, 9 August 2011, pp. 4-5 and 23.

[60] TSN, 13 June 2011, p. 32.

the buy-bust team, and the confidential informant, but also by other informant volunteers. Notably, PO2 Corsame likewise inadvertently referred to the informant volunteer as the civilian informant, *viz*:

> Q. Where did you plan the entrapment?
> A. At the PDEA office, sir.
>
> Q. And who were present at the pre-operation briefing?
> A. Present, sir, were the team leader SPO1 Manuel Sanchez, Douglas Ferrer, Allen June Germodo, I myself, the informant, **and the other informant volunteers, sir.**[61]
>
> x x x x x x x x x
>
> Q. Okay, and what about the confidential informant, did he also arrive at the target area?
> A. Yes, sir, as I have said earlier, sir, almost simultaneously we arrived at the area.
>
> Q. The target area, I am referring to the place that you are describing that is through the upholstery shop towards the dike and towards the interior of that particular area, am I correct?
> A. The backup team, sir, but **the informant volunteers,** ah, the civilian informant immediately went down because there was another way, sir, going to, directly to the target area, sir.[62] (emphases supplied)

Abella asserted that because she and Sendiong did not know Tubio, they could not have trusted him when he allegedly bought the shabu from them.[63]

The catena of cases brought before this Court will confirm that in most instances the poseur-buyer and the sellers of dangerous drugs would hardly know each other; yet, the absence of such acquaintance was never a reason for them not to proceed with their sale transaction. The accused-appellants, courage to

---

[61] TSN, 30 May 2011, p. 7.

[62] *Id*. at 10.

[63] CA *rollo*, p. 57.

sell shabu even to those they do not know bespeaks of their boldness to violate the law. This truth was easily confirmed by the surveillance operation held a day before the buy-bust operation where the accused-appellants were found to be engaged in selling drugs at Upper Luke Wright.

In Criminal Case No. 19381, the facts revealed that after the sale transaction, was consummated the buy-bust team approached the accused-appellants to search and arrest them. The buy-bust team were unanimous in their testimony that it was SPO1 Germodo who seized from Sendiong a key holder which yielded a heat-sealed transparent sachet and which, upon laboratory examination, was found to contain methamphetamine hydrochloride. Sendiong was not able to show, either during the arrest or when called to the witness stand, that she was authorized by law to possess the prohibited drug.

The Court finds no compelling reason to doubt the truth of the straightforward and plausible testimony of the prosecution witnesses who were consistent with each other on significant and material details. Indeed, a review of the prosecution witnesses' respective testimonies would prove that they never wavered despite the gruelling cross-examination by the defense. In addition, the Court is cognizant of the presumption of regularity in the performance of duties of public officers.[64] The presumption is that unless there is clear and convincing evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit.[65] In these cases, the presumption became conclusive when the accused-appellants failed to refute it.

It is noteworthy that both the RTC and the CA found the testimony of the prosecution witnesses credible. Hence, the well-settled rule that finds its significance in these cases is that the findings of the trial court which are factual in nature and

---

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

[65] *People v. Cabiles*, G.R. No. 220758, 7 June 2017.

involve the credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts or speculative, arbitrary, and unsupported conclusions are made from such findings.[66] This rule finds even more stringent application where the findings are sustained by the CA.[67]

There was an unbroken chain of custody of the seized items.

Equally important as proving the above elements of the crimes charged, is the need to ascertain the identity of the prohibited drug considering that in all prosecutions for violations of R.A No. 9165, the corpus delicti is the dangerous drug itself. The corpus delicti is established by proof that the identity and integrity of the subject matter of the sale, i.e., the prohibited or regulated drug, has been preserved; hence, the prosecution must show beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused.[68] The prosecution must be able to account for each link in the chain of custody over the dangerous drug from the moment of seizure up to its presentation in court as evidence of the corpus delicti.[69] The justification for this declaration is elucidated as follows:

> Narcotic substances are not readily identifiable. To determine their composition and nature, they must undergo scientific testing and analysis. Narcotic substances are also highly susceptible to alteration, tampering, or contamination. It is imperative, therefore, that the drugs allegedly seized from the accused are the very same objects tested in the laboratory and offered in court as evidence. The chain of custody, as a method of authentication, ensures that unnecessary doubts involving the identity of seized drugs are removed.[70]

---

[66] *Belmonte v. People,* G.R. No. 224143, 28 June 2017.

[67] *People v. Flor,* G.R. No. 216017, 19 January 2018 citing *People v. Perondo*, 754 Phil. 205, 217 (2015).

[68] *People v. Calvelo*, G.R. No. 223526, 6 December 2017.

[69] *Belmonte v. People*, *supra* note 66.

[70] *People v. Arposeple*, *supra* note 49 citing *People v. Jaafar*, G.R. No. 219829, 18 January 2017.

The rigorous requirement as to the chain of custody of seized drugs and paraphernalia was given life in the provisions of R.A. No. 9165, viz:

> SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. —The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> 1. The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;
>
> 2. Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
>
> 3. A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours.

The Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 specifies the proper procedure to be followed in Sec. 2l(a) of the Act, *viz*:

a. The apprehending office/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

On the one hand, the Dangerous Drugs Board *(DDB)* – the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control tasked to develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy[71] – has expressly defined chain of custody involving dangerous drugs and other substances in the following terms in Sec. l(b) of DDB Regulation No. 1, Series of 2002,[72] to wit:

b. "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in

---

[71] R.A. No. 9165, Section 77.

[72] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals, and Laboratory Equipment pursuant to Section 21, Article II of the IRR of R.A. No. 9165 in relation to Section 8l(b), Article IX of R.A. No. 9165.

the course of safekeeping and use in court as evidence, and the final disposition.[73] (emphasis omitted)

The legal teaching consistently upheld in our jurisprudence is that, as a general rule, there are four links in the chain of custody of the confiscated item that must be established by the prosecution, *viz*: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[74]

Marking is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have been seized. It is the starting point in the custodial link.[75] The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, obviating switching, planting, or contamination of evidence.[76]

In these cases, immediately after the transaction was consummated, the buy-bust team proceeded to the place where the sale transaction took place. After PO2 Corsame received the sachet from Tubio, he placed on it the marking 'EM-BB' 1-19-09. From the key holder of Sendiong, SPO1 Germodo was able to retrieve a sachet which he forthwith gave to PO2 Corsame, who in turn marked it "MS-P" 1-19-09. PO2 Corsame did not break the seal when he placed the markings on the sachets in the presence of the accused-appellants.[77]

---

[73] *People v. Gonzales*, 708 Phil. 121, 129-130 (2013).

[74] *People v. Alboka*, G.R. No. 212195, 21 February 2018.

[75] *People v. Gayoso*, G.R. No. 206590, 27 March 2017.

[76] *People v. Ismael*, G.R. No. 208093, 20 February 2017 citing *People v. Coreche*, 612 Phil. 1238, 1244 (2009).

[77] TSN, 30 May 2011, pp. 11-16.

It was also at the scene of the crime that PO2 Corsame, in compliance with Sec. 21 of R.A. No. 9165, personally conducted an inventory of the items seized which was witnessed by Astillero and Merced, as DOJ and elected official representatives, respectively.[78] The receipt was signed by the accused-appellants, Astillero,[79] Merced,[80] PO2 Corsame,[81] SI Tagle,[82] and SPO1 Germodo.[83] Likewise, SPO1 Germodo took pictures[84] while Astillero and Merced were signing the receipt in the presence of the accused-appellants. Fabillar, the media representative, came to the PDEA office and affixed his signature on the receipt in the presence of the accused-appellants.[85] PO2 Corsame was in possession of the sachets from the time these were seized up to the time that he arrived at the PDEA office.[86]

At the PDEA office, PO2 Corsame prepared the request[87] for the laboratory examination of the seized items. At 4:00 P.M. that same day, PO2 Corsame[88] turned over the request and the seized items to the PNP laboratory, thru PCI Llena.[89] It was also on that same day that PCI Llena released her report[90] finding that the seized items contained shabu.[91] On 30 January 2009,

---

[78] *Id*. at 17-19.

[79] Records, p. 14; Exh. "E-1".

[80] *Id*.; Exh. "E-6".

[81] *Id*.; Exh. "E-2".

[82] *Id*.; Exh. "E-3".

[83] *Id*.; Exh. "E-4".

[84] *Id*. at 193; Exhs. "F," "F-1", "F-2", and "F-3".

[85] TSN, 30 May 2011, pp. 20-21.

[86] *Id*. at 20.

[87] Records, p. 32; Exh. "A".

[88] *Id*.; Exh. "A-1-b".

[89] *Id*.; Exh. "A-1-a".

[90] *Id*. at 33; Exh. "B".

[91] TSN, 30 May 2011, pp. 20-22.

PCI Llena turned over the seized items to the RTC thru its branch clerk of court.[92]

Notwithstanding the unbroken chain in the custody of the seized items, Abella cited *People v. Habana*,[93] seeking to make an issue on PCI Llena's use of masking tape to reseal the sachets after the examination instead of adhesive tape.[94]

It must be emphasized that the use of adhesive tape in order to maintain the integrity of the seized item is but one of the several means of preserving the identity and integrity of the confiscated items. Surely, the Court will neither limit to the use of adhesive tape nor to proscribe the resort by the concerned officials to any other means to effectively ensure the identity and integrity of the seized item.

In these cases PCI Llena testified that in order for her to conduct an examination on the contents of the sachets, she personally broke their seal. After the examination, she resealed the sachets with masking tape and placed the markings "A D-004-09" and "B-1 D-004-09" on the items earlier marked as "EM-BB" 1-19-09 and "MS-P" 1-19-09, respectively. To further guard the integrity of the seized items, she locked them inside a steel cabinet in the evidence room of which only she had access; and, for purposes of the trial of these cases, personally had the items received by the branch clerk of court. Unmistakably, several measures were undertaken in these cases to preserve the identity and integrity of the sachets seized during the buy-bust operation.

In stark contrast, in *Habana*[95] where the accused-appellant was acquitted by the Court, the prosecution failed to present evidence on how the sachets of shabu were transferred from the investigator on duty to the laboratory technician, and on the manner by which they were kept prior to their being adduced

---

[92] TSN, 20 April 2011, pp. 10-11.

[93] 628 Phil. 334 (2010).

[94] CA *rollo*, pp. 55-56.

[95] *Supra* note 93.

in evidence at the trial, thus, compromising the integrity and identity of the confiscated items.

Finally, considering that the penalties imposed upon the accused-appellants by the RTC, and sustained by the CA, were in accordance with R.A. No. 9165, the same are hereby affirmed.

WHEREFORE, the appeal is **DISMISSED**. The 17 June 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01412 is hereby **AFFIRMED** in toto.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 218330 June 27, 2018]

HEIRS OF MARCELIANO N. OLORVIDA, JR., represented by his wife, NECITA D. OLORVIDA, *petitioner, vs.* **BSM CREW SERVICE CENTRE PHILIPPINES, INC., and/or BERNHARD SCHULTE SHIP MANAGEMENT (CYPRUS) LTD. and/or NARCISSUS L. DURAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; DEATH BENEFITS; THE FIRST REQUIREMENT FOR CLAIMING DEATH BENEFITS IS TO PROVE THAT THE SEAFARER'S DEATH WAS WORK-RELATED; HOW TO ESTABLISH THAT SEAFARER'S DEATH WAS WORK-

RELATED.— The first requirement for claiming death benefits is to prove that the seafarer's death was work-related. This is accomplished by establishing that: (a) the cause of death was *reasonably connected* to the seafarer's work; or (b) the illness, which caused the seafarer's death, is an *occupational disease* as defined in Section 32-A of the 2000 POEA-SEC; or (c) the working conditions *aggravated* or *exposed* the seafarer to the disease, which caused his/her death.

2. ID.; ID.; ID.; ID.; RESPONDENTS OVERCAME THE PRESUMPTION THAT THE SEAFARER'S LUNG CANCER WAS WORK-RELATED; THE LUNG CANCER WAS CAUSED BY SEAFARER'S SMOKING HABITS AND NOT BY HIS EMPLOYMENT.— [I]t is undisputed that Marceliano died of "Brain Herniation" as a result of his lung cancer. Lung cancer, however, is not one of the occupational diseases listed in Section 32-A of the 2000 POEA-SEC. Verily, there is a disputable presumption that the lung cancer of Marceliano was work-related. The burden is then shifted to the respondents, as the employers, to overcome this presumption by substantial evidence. x x x Remarkably, in the clinical abstract prepared by the Philippine General Hospital (PGH) at the time of Marceliano's admission to the hospital on May 26, 2010, it was established that Marceliano was a heavy smoker prior to being diagnosed with lung cancer. This was corroborated by a later clinical abstract, when Marceliano was again admitted on January 9, 2011. This clinical abstract narrated Marceliano's personal/social history as follows: "**37 pack-year smoker, [who] stopped 5 years ago; (+)alcoholic beverage drinker**." By virtue of these pieces of evidence, the respondents overcame the presumption that the lung cancer of Marceliano was work-related. Furthermore, the documentary evidence of the petitioner failed to establish a reasonable connection between Marceliano's work as a motorman and his lung cancer. The medical records specifically identified the intensity of Marceliano's previous smoking habits in relation to his diagnosis. His work as a motorman—the alleged exposure to dangerous substances and exhaust—was not even mentioned as a contributing factor to his illness that caused his death. Thus, the CA correctly found that there is dearth of evidence showing the reasonable connection between the cause of Marceliano's death and his employment.

The lung cancer of Marceliano was caused by his own smoking habits and not by his employment as a seafarer.

3. ID.; ID.; ID.; THE SECOND REQUIREMENT FOR CLAIMING DEATH BENEFITS IS TO SHOW THAT SEAFARER DIED DURING THE TERM OF HIS CONTRACT; EXCEPTION THERETO, NOT PRESENT; WHEN SEAFARER DIED MORE THAN TWO (2) YEARS AFTER THE END OF HIS EMPLOYMENT, THE COURT CANNOT GRANT THE HEIRS' CLAIM FOR DEATH BENEFITS.— The second requirement for successfully claiming death benefits on behalf of the deceased seafarer is proof that the seafarer died during the term of his contract. As an exception to this rule, the heirs of a deceased seafarer may still receive the death benefits when the seafarer was medically repatriated on account of work-related injury or illness. In this case, the death of Marceliano occurred way beyond the termination of his employment. His last employment contract with the respondents was for a period of eight (8) months, which started on January 7, 2009 and ended on November 11, 2009. He unfortunately died on January 17, 2012, or more than two (2) years after the end of his employment. For this reason, the Court cannot grant the petitioner's claim for death benefits. Neither is the exception applicable to the present case. When Marceliano returned to the Philippines, it was because his contract of employment has expired. He was not medically repatriated to the Philippines. As a matter of fact, he served the full term of his employment provided in the contract. While the petitioner alleged that Marceliano has repeatedly complained to his wife Necita and to the captain regarding his deteriorating health on board the sea vessel, there are no records to support this claim. All of the documentary evidence submitted by the petitioner are medical documents, which are dated *after* Marceliano returned to the Philippines—or, more precisely, after his employment ended on November 11, 2009. Hence, there is no basis for the petitioner's claim for death benefits.

APPEARANCES OF COUNSEL

R. Go Law Office for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

REYES, JR., *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking the review of the Decision[2] dated January 13, 2015 and the Resolution[3] dated May 18, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 133479. In these assailed issuances, the CA reversed the Decision[4] dated October 21, 2013 of the National Labor Relations Commission (NLRC) ordering BSM Crew Service Centre Philippines, Inc. (BSM Crew), its President, Narcissus L. Duran (Duran), and its foreign principal, Bernhard Schulte Ship Management (Cyprus) Limited (Bernhard Schulte) (collectively referred to as the respondents) to jointly and severally pay death benefits to the Heirs of Marceliano N. Olorvida, Jr. (petitioner). The NLRC, in turn, reversed the ruling of the Labor Arbiter (LA) dismissing the petitioner's claim for death benefits.[5]

Factual Antecedents

On October 4, 2012, the petitioner filed a complaint for death benefits against a local manning agency, respondent BSM Crew, its President, Duran, and its foreign principal, Bernhard Schulte.[6]

The petitioner claimed that the respondents employed Marceliano N. Olorvida, Jr. (Marceliano) as a seafarer from November 20, 2003 to November 11, 2009. During this period, Marceliano was assigned as a motorman on board various vessels,

---

[1] *Rollo*, pp. 28-75.

[2] Penned by Associate Justice Florito S. Macalino, with Associate Justices Mariflor P. Punzalan Castillo and Pedro B. Corales concurring; *id*. at 80-94.

[3] *Id*. at 96-98.

[4] *Id*. at 288-300.

[5] *Id*. at 243-253.

[6] *Id*. at 99-100.

except from October 19, 2006 to May 29, 2007 when he worked as a wiper. [7]

His most recent employment contract was executed on December 8, 2008. Marceliano was hired as a motorman on board the vessel Cosco Vancouver, for a period of eight (8) months starting on January 7, 2009 until November 11, 2009.[8] Marceliano underwent a pre-employment medical examination, after which he was declared fit to work.[9]

Supposedly because of the stressful work conditions, the petitioner alleged that Marceliano suffered from severe coughing, chest pains, and shortness of breath. He allegedly relayed his health conditions to his wife, Necita D. Olorvida (Necita), and the captain of Cosco Vancouver. However, the captain, according to the petitioner, merely advised Marceliano to rest and take cough medicines.[10]

The petitioner further purported that when Marceliano's contract of employment expired on November 11, 2009, he returned to the Philippines and reported his deteriorating health condition to BSM Crew immediately. Allegedly, Marceliano was not referred to a company-designated physician, which constrained him to seek medical attention at his own expense on January 22, 2010.[11]

After numerous medical examinations, Marceliano was diagnosed with "Lung Adenocarcinoma Stage IV" (otherwise known as lung cancer) and "Brain Metastasis."[12] He later died on January 17, 2012 due to "Brain Herniation" secondary to "Brain Metastases."[13] His heirs claimed death benefits from

---

[7] *Id*. at 102-103, 122.

[8] *Id*. at 103, 123, 220.

[9] *Id*. at 81, 244, 289

[10] *Id*. at 104.

[11] *Id*. at 132.

[12] *Id*. at 105-106, 132-167.

[13] *Id*. at 178.

the respondents, arguing that the cause of Marceliano's death was a work-related illness. In particular, the petitioner alleged that his work as a motorman exposed him to harmful substances that eventually caused his lung cancer.[14] Their complaint also included a prayer for the payment of damages and attorney's fees.[15]

The respondents, for their part, argued that the claim for death benefits is unmeritorious, primarily because Marceliano died after the term of his employment.[16] They further posited that Marceliano's diagnosis was not a work-related illness, and he failed to comply with the mandatory reporting requirement.[17]

Ruling of the LA

The parties failed to arrive at an amicable settlement.[18] Thus, the LA rendered a Decision[19] dated July 2, 2013, which dismissed the petitioner's claim for lack of merit:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the complaint for lack of merit.
>
> Other claims are hereby also dismissed for lack of merit.
>
> SO ORDERED.[20]

The LA ruled that the governing regulation at the time Marceliano and the respondents executed the employment contract was the 2000 Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC).[21]

---

[14] *Id*. at 108-114.

[15] *Id*. at 99-100, 114-116.

[16] *Id*. at 204-206.

[17] *Id*. at 206-211.

[18] *Id*. at 243.

[19] Rendered by LA Jonalyn M. Gutierrez; *id*. at 253.

[20] *Id*. at 253.

[21] POEA Memorandum Circular No. 9, series of 2000, re: Amended Standard Terms and Conditions Governing the Employment of Filipino

As such, it is deemed written into the contract and the parties were bound to comply with its provisions. This includes the requirement provided under Section 20-B of the 2000 POEA-SEC, mandating the company-designated physician to medically examine the seafarer within three (3) days from repatriation. Marceliano's failure to comply with this requirement was considered fatal to the claim for death benefits.[22]

The LA further found that the petitioner was unable to substantiate their claim that Marceliano's medical condition was immediately reported to the respondents. Furthermore, since it was undisputed that Marceliano was a smoker, the LA ruled that his illness was not work-related.[23]

Aggrieved, the petitioner filed a Memorandum of Appeal with the NLRC on August 1, 2013. They argued that the medical findings of the company-designated physician is not part of the requirement for the grant of death benefits.[24] They also insisted that the illness of Marceliano is work-related, which Marceliano had acquired as a consequence of his constant exposure to toxic fumes during his employment as a motorman.[25] The petitioner also insisted that a claim for death benefits is allowed even after the termination of the employment contract, as long as it was established that the illness was acquired during the term of employment.[26]

Ruling of the NLRC

The NLRC reversed the LA's findings in its Decision[27] dated October 21, 2013 and ruled favorably for the petitioner:

Seafarers on Board Ocean-Going Vessels (hereinafter, "2000 POEA-SEC" for brevity). *N.B.* This was later amended by POEA Memorandum Circular No. 10, series of 2010, re: Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships.

[22] *Rollo*, pp. 249-250.

[23] *Id*. at 251-252.

[24] *Id*. at 261-270.

[25] *Id.* at 272-278.

[26] *Id.* at 278-279.

[27] *Id*. at 288-300.

WHEREFORE, premises considered, the Decision of the [LA] dated July 2, 2013 is **REVERSED** and **SET ASIDE** and a new one entered ordering [the respondents], jointly and severally to pay [the petitioner] the following: **US$65,000.00** representing death benefits, additional benefits for her minor children and burial expenses in Philippine currency at the prevailing rate of exchange at the time of payment; **Php216,728.98**, as reimbursement for Medical/Hospital Expenses; and attorney's fees equivalent to ten percent (10%) of the total monetary award.

All other claims are denied.

SO ORDERED.[28] (Emphases and underscoring in the original)

According to the NLRC, the mandatory reporting requirement is not the sole obligation of the seafarer. It is a reciprocal obligation that likewise requires the employer to conduct a meaningful and timely examination of the seafarer.[29] Without evidence that the employee blatantly refused to present himself for post-employment medical examination, there is no basis to deny outright the claim for death benefits.[30] The NLRC also ruled that Marceliano's work as a motorman was the proximate cause of his lung cancer, because he was constantly exposed to the fumes and chemicals in the engine room of the sea vessel.[31]

The respondents moved for the reconsideration of the NLRC's decision.[32] The NLRC, however, denied this motion in its Resolution[33] dated November 19, 2013, *viz.*:

WHEREFORE, the instant Motion for Reconsideration should be, as it is hereby DENIED for lack of merit. The decision dated October 21, 2013 STANDS undisturbed.

No further motion of similar nature shall be entertained.

---

[28] *Id*. at 299.

[29] *Id*. at 293-294.

[30] *Id*. at 294-295.

[31] *Id*. at 297-299.

[32] *Id.* at 301-316.

[33] *Id*. at 320-322.

SO ORDERED.[34]

On February 12, 2014, the NLRC issued an Entry of Judgment stating that its Resolution dated November 19, 2013 became final and executory on January 28, 2014.[35]

Due to the unfavorable ruling of the NLRC, the respondents filed a petition for *certiorari* with the CA, with a prayer for the issuance of an injunctive writ.[36] The respondents argued that since the petitioner admitted that Marceliano was a 37-pack year smoker, the NLRC gravely abused its discretion in ruling that his lung cancer was a work-related illness.[37] They also disagreed with the NLRC's decision as to the mandatory nature of the reporting requirement.[38]

Ruling of the CA

In a Decision[39] dated January 13, 2015, the CA granted the respondents' petition for *certiorari* and reinstated the Decision dated July 2, 2013 of the LA, thus:

WHEREFORE, based on the foregoing, the petition is GRANTED. The 21 October 2013 Decision and the 19 November 2013 Resolution of the NLRC in NLRC NCR OFW Case No. (M) 10-14992-12 [NLRC LAC (OFW-M) No. 08-000749-13] are REVERSED and SET ASIDE. The July 2, 2013 Decision of the [LA] dismissing the complaint for lack of merit is REINSTATED.

SO ORDERED.[40]

The CA's Decision dated January 13, 2015 agreed with the earlier ruling of the LA that the illness of Marceliano was not work-connected. According to the CA, it was undisputed that Marceliano was a 37-pack year smoker, who stopped smoking

---

[34] *Id*. at 321.

[35] *Id*. at 323.

[36] *Id*. at 324-339.

[37] *Id*. at 330-331.

[38] *Id*. at 332-334.

[39] *Id*. at 80-94.

[40] *Id*. at 93.

only in 2006, or five (5) years prior to his medical examination. And, since there was no evidence that Marceliano reported his supposed symptoms to the respondents during the period of his employment, the CA rejected the argument that his lung cancer was caused by his prior occupation as a motorman.[41]

The petitioner filed a motion for reconsideration from this decision, which the CA denied in its Resolution[42] dated May 18, 2015:

WHEREFORE, based on the foregoing, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.[43]

Following this adverse ruling, the petitioner came to this Court *via* a Rule 45 petition, attributing grave errors on the part of the CA for reversing the decision of the NLRC. The petitioner again argues that Marceliano acquired lung cancer because his work as a motorman constantly exposed him to harmful chemicals in the vessel's engine room for prolonged periods of time.[44] Furthermore, they add that the employment of Marceliano aggravated his health condition, which then developed to lung cancer.[45]

Finally, according to the petitioner, the positive assertion that Marceliano submitted himself for medical examination upon repatriation, cannot be overcome by the respondents through simple denial.[46] Aside from the argument that the post-employment medical examination is not required to successfully claim disability or death benefits, the petitioner also posits that Marceliano was constrained to seek medical help at his own

---

[41] *Id*. at 89-90.

[42] *Id*. at 96-98.

[43] *ld*. at 97.

[44] *Id*. at 42-46, 51-56.

[45] *Id*. at 46-49.

[46] *Id*. at 58-65.

expense precisely because the respondents did not provide him with assistance.[47]

The Court is thus faced with resolving the issue on whether the CA committed a reversible error in dismissing the petitioner's claim for death benefits.

Ruling of the Court

The Court denies the petition for utter lack of merit.

The claim for death benefits was correctly denied for failure to establish that the cause of death was work-related.

The employment of seafarers is governed not only by the terms and conditions of their employment contract, but also by the relevant regulations of the POEA, more specifically referred to as the "Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-board Ocean-Going Ships." The provisions of these rules are deemed integrated into every employment contract, which employers are bound to observe as the minimum requirements for the employment of Filipino seafarers.[48]

In this particular case, the applicable rule at the time the respondents employed Marceliano was the 2000 POEA-SEC. Section 20(A) of the 2000 POEA-SEC sets down the guidelines for obtaining compensation in cases of a seafarer's death, *viz.*:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR DEATH

1. In case of **work-related death** of the seafarer, **during the term of his contract**[,] the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount

---

[47] *Id.* at 65-70.

[48] *Canuel, et al. v. Magsaysay Maritime Corporation, et al.*, 745 Phil. 252, 261 (2014).

> of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment. (Emphasis Ours)

This provision thus placed the burden on the seafarer's heirs to establish that: (a) the seafarer's death was work-related; and (b) the death occurred during the term of employment.[49] These are proven by substantial evidence,[50] or such level of relevant evidence that a reasonable mind might accept as sufficient to support a conclusion.[51]

The cause of Marceliano's death is not work-related.

The first requirement for claiming death benefits is to prove that the seafarer's death was work-related. This is accomplished by establishing that: (a) the cause of death was *reasonably connected* to the seafarer's work; or (b) the illness, which caused the seafarer's death, is an *occupational disease* as defined in Section 32-A of the 2000 POEA-SEC; or (c) the working conditions *aggravated* or *exposed* the seafarer to the disease, which caused his/her death.[52]

Here, it is undisputed that Marceliano died of "Brain Herniation" as a result of his lung cancer. Lung cancer, however, is not one of the occupational diseases listed in Section 32-A of the 2000 POEA-SEC. Verily, there is a disputable presumption that the lung cancer of Marceliano was work-related.[53] The burden

---

[49] *Id*. at 262.

[50] *Agile Maritime Resources, Inc., et al. v. Siador*, 744 Phil. 693, 715-716 (2014).

[51] *Sea Power Shipping Enterprises, Inc., et al. v. Salazar*, 716 Phil. 693, 705 (2013).

[52] *Yap v. Rover Maritime Services Corporation, et al*., 741 Phil. 222, 234 (2014).

[53] 2000 POEA-SEC, Section 20(8)(4), which reads:

"Those illnesses not listed in Section 32 of this Contract are disputably presumed as work related."

is then shifted to the respondents, as the employers, to overcome this presumption by substantial evidence. The Court's ruling in *Magsaysay Maritime Services, et al. v. Laurel*[54] is instructive on this matter:

> Anent the issue as to who has the burden to prove entitlement to disability benefits, the petitioners argue that the burden is placed upon Laurel to prove his claim that his illness was work-related and compensable. Their posture does not persuade the Court.
>
> True, hyperthyroidism is not listed as an occupational disease under Section 32-A of the 2000 POEA-SEC. **Nonetheless, Section 20 (B), paragraph (4) of the said POEA-SEC states that "those illnesses not listed in Section 32 of this Contract are disputably presumed as work-related." The said provision explicitly establishes a presumption of compensability although disputable by substantial evidence.** The presumption operates in favor of Laurel as the burden rests upon the employer to overcome the statutory presumption. **Hence, unless contrary evidence is presented by the seafarer's employer/s, this disputable presumption stands.** In the case at bench, other than the alleged declaration of the attending physician that Laurel's illness was not work-related, the petitioners failed to discharge their burden. In fact, they even conceded that hyperthyroidism may be caused by environmental factor.[55] (Emphases Ours)

Remarkably, in the clinical abstract prepared by the Philippine General Hospital (PGH) at the time of Marceliano's admission to the hospital on May 26, 2010, it was established that Marceliano was a heavy smoker prior to being diagnosed with lung cancer.[56] This was corroborated by a later clinical abstract, when Marceliano was again admitted on January 9, 2011. This clinical abstract narrated Marceliano's personal/social history as follows: "**37 pack-year smoker, [who] stopped 5 years ago; (+)alcoholic beverage drinker**."[57]

---

[54] 707 Phil. 210 (2013).

[55] *Id*. at 227-228.

[56] *Rollo*, p. 141.

[57] *Id*. at 149.

By virtue of these pieces of evidence, the respondents overcame the presumption that the lung cancer of Marceliano was work-related. Furthermore, the documentary evidence of the petitioner failed to establish a reasonable connection between Marceliano's work as a motorman and his lung cancer. The medical records specifically identified the intensity of Marceliano's previous smoking habits in relation to his diagnosis. His work as a motorman—the alleged exposure to dangerous substances and exhaust—was not even mentioned as a contributing factor to his illness that caused his death.

Thus, the CA correctly found that there is dearth of evidence showing the reasonable connection between the cause of Marceliano's death and his employment.[58] The lung cancer of Marceliano was caused by his own smoking habits and not by his employment as a seafarer.

The death of Marceliano occurred outside the term of his employment.

The second requirement for successfully claiming death benefits on behalf of the deceased seafarer is proof that the seafarer died during the term of his contract. As an exception to this rule, the heirs of a deceased seafarer may still receive the death benefits when the seafarer was medically repatriated on account of work-related injury or illness.[59]

In this case, the death of Marceliano occurred way beyond the termination of his employment. His last employment contract with the respondents was for a period of eight (8) months, which started on January 7, 2009 and ended on November 11, 2009.[60] He unfortunately died on January 17, 2012,[61] or more than two

---

[58] *Id*. at 89-90.

[59] *Canuel, et al. v. Magsaysay Maritime Corporation, et al*., *supra* note 48, at 266.

[60] *Rollo*, pp. 103, 123, 220.

[61] *Id*. at 178.

(2) years after the end of his employment. For this reason, the Court cannot grant the petitioner's claim for death benefits.[62]

Neither is the exception applicable to the present case.[63] When Marceliano returned to the Philippines, it was because his contract of employment has expired. He was not medically repatriated to the Philippines. As a matter of fact, he served the full term of his employment provided in the contract.

While the petitioner alleged that Marceliano has repeatedly complained to his wife Necita and to the captain regarding his deteriorating health on board the sea vessel, there are no records to support this claim. All of the documentary evidence submitted by the petitioner are medical documents, which are dated *after* Marceliano returned to the Philippines—or, more precisely, after his employment ended on November 11, 2009. Hence, there is no basis for the petitioner's claim for death benefits. As the Court aptly held in *Balba, et al. v. Tiwala Human Resources, Inc., et al.*:[64]

> In the present case, it is undisputed that Rogelio succumbed to cancer on July 4, 2000 or almost ten (10) months after the expiration of his contract and almost nine (9) months after his repatriation. Thus, on the basis of Section 20(A) and the above-cited jurisprudence explaining the provision, Rogelio's beneficiaries, the petitioners, are precluded from receiving death benefits.
>
> x x x x x x x x x
>
> **In the instant case, Rogelio was repatriated not because of any illness but because his contract of employment expired. There is likewise no proof that he contracted his illness during the term of his employment or that his working conditions increased the risk of contracting the illness which caused his death.**[65] (Emphasis Ours)

---

[62] *Yap v. Rover Maritime Services Corporation, et al.*, *supra* note 52, at 228.

[63] *Cf. Canuel v. Magsaysay Maritime Corporation*, *supra* note 48, at 266.

[64] 784 Phil. 501 (2016).

[65] *Id.* at 510-511.

Significantly, the Court has, in the past, taken judicial notice that the main cause of lung cancer is the use of tobacco through smoking cigarettes.[66] Taken together with the medical records of Marceliano, the Court finds no causal connection between Marceliano's employment and his lung cancer. The evidence is inadequate to support the petitioner's claim for death benefits. As such, the Court cannot simply assume that the working conditions of Marceliano made him susceptible to lung cancer.

It is indeed a policy to interpret labor contracts liberally in favor of the employee. Nonetheless, the Court cannot disregard the lack of evidence to support the petitioner's claim. Courts cannot make factual findings based on surmises and conjectures.[67] Ultimately, the Court is still required to resolve cases in accordance with the applicable law and extant jurisprudence, *vis-à-vis* the proven facts of the case.[68]

There being no ground to grant the claim for death benefits, it is unnecessary to discuss the other issues raised in this case.

WHEREFORE, premises considered, the present petition is **DENIED** for lack of merit. The Decision dated January 13, 2015 and Resolution dated May 18, 2015 of the Court of Appeals in CA-G.R. SP No. 133479 are **AFFIRMED**. No costs.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta, Perlas-Bernab*e, and *Caguioa, JJ*., concur.

---

[66] *Ortega v. CA, et al.*, 576 Phil. 601, 607 (2008).

[67] *Sea Power Shipping Enterprises, Inc., et al. v. Salazar*, 716 Phil. 693, 705 (2013).

[68] *Klaveness Maritime Agency, Inc., et al. v. Beneficiaries of the late Second Officer Anthony S. Allas*, 566 Phil. 579, 589-590 (2008).

THIRD DIVISION

[G.R. No. 219670. June 27, 2018]

J.V. LAGON REALTY CORP., represented by NENITA L. LAGON in her capacity as President, *petitioner, vs.* **HEIRS OF LEOCADIA VDA. DE TERRE, namely: PURIFICACION T. BANSILOY, EMILY T. CAMARAO, and DOMINADOR A. TERRE, as represented by DIONISIA T. CORTEZ,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT (R.A.) NO. 3844, AS AMENDED BY R.A. NO. 6389; TENANCY RELATIONSHIP; ESSENTIAL ELEMENTS; AN INDIVIDUAL'S STATUS AS A *DE JURE* TENANT MUST BE ESTABLISHED TO BE ENTITLED TO SECURITY OF TENURE.— There is a tenancy relationship if the following essential elements concur: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between landowner and tenant or agricultural lessee. All of the above requisites are indispensable in order to create or establish tenancy relationship between the parties. The absence of at least one requisite does not make the alleged tenant a *de facto* one, for the simple reason that unless an individual has established one's status as a *de jure* tenant, he is not entitled to security of tenure guaranteed by agricultural tenancy laws.

2. ID.; ID.; ID.; TENANCY RELATIONSHIP, NOT ESTABLISHED IN THIS CASE; MUNICIPAL AGRARIAN REFORM OFFICER'S (MARO) AFFIDAVIT AND MAYOR'S CERTIFICATION DO NOT PROVE TENANCY.— The evidence on record, however, is bereft of any affirmative and positive showing that tenancy was maintained on the land throughout the three decades leading to J.V. Lagon's

acquisition in 1988. Before Leocadia's claims against J.V. Lagon can prosper, it must first be established that the latter acquired land which was tenanted. On this premise, the scope of judicial inquiry inexorably backtracks to Gonzales' epoch. Were there agricultural tenants on the land during Gonzales' ownership? The answer could have easily been supplied by none other than Gonzales himself who was in the best position to attest on the status of the land acquired by J.V. Lagon. A testimony or an affidavit from Gonzales would have served to substantiate Leocadia's allegation that she had been a tenant on the land prior to J.V. Lagon's entry. Unfortunately, the record only contains an affidavit from Pedral, a person whose ownership of the land is, borrowing Justice Leonen's term, "*thrice-removed*" from J.V. Lagon. Being the party alleging the existence of tenancy relationship, Leocadia carried the burden of proving her allegation. With only Pedral's affidavit as proof, the Court is unable to agree with the DARAB and the CA that tenancy was established by substantial evidence. x x x While tenancy presupposes physical presence of a tiller on the land, the MARO's affidavit and the mayor's certification fall short in proving that Leocadia's presence served the purpose of agricultural production and harvest sharing. Again, it cannot be overemphasized that in order for a tenancy to arise, it is essential that all its indispensable elements must be present. All told, the evidence on record is inadequate to arrive at a conclusion that Leocadia was a *de jure* tenant entitled to security of tenure. The requisites for the existence of a tenancy relationship are explicit in the law, and these elements cannot be done away with by conjectures.

3. ID.; ID.; ID.; ABSENCE OF HARVEST SHARING BELIES THE CLAIM OF TENANCY RELATIONSHIP.— The DARAB and the CA committed reversible error when they failed to notice that not a single receipt or any other credible evidence was adduced to show sharing of harvest in the context of tenancy. The record only contains the allegation that there is a 1/3-2/3 system of harvest sharing with Pedral, and 70-30 for Abis and Gonzales. Substantial evidence necessary to establish the fact of sharing cannot be satisfied by a mere scintilla of evidence; there must be concrete evidence on record adequate to prove the element of sharing. x x x [T]he record is likewise devoid of testimony from either Pedral, Abis or Gonzales acknowledging the fact that they received a share in the harvest of a tenant. In

the absence of receipts or any concrete evidence from which it can be inferred that Leocadia transmitted the landowner's share of her produce, the Court is constrained to declare that not all elements of tenancy relationship are present.

LEONEN, *J.*, *dissenting opinion*:

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT (R.A.) NO. 3844, AS AMENDED BY R.A. NO. 6389; AGRICULTURAL LEASEHOLD RELATION, EXPLAINED; RIGHTS OF AGRICULTURAL LESSOR AND LESSEE, DISCUSSED.— In an agricultural leasehold relation, the agricultural lessor, who is either the owner, civil law lessee, usufructuary, or legal possessor, lets or grants to another, called the agricultural lessee, the cultivation and use of his land for a price certain in money or in produce or both. The definition and elements of a leasehold relation are almost the same as those of share tenancy. However, unlike the latter, an agricultural leasehold relation is not extinguished either by the mere expiration of the term or period of the leasehold contract or by the sale, alienation, or transfer of legal possession of the land. x x x Based on Section 10 [of Republic Act No. 3844], the agricultural lessor is, thus, not prohibited from disposing of his or her property should he or she wishes to do so. What happens is that "the purchaser or transferee . . . shall be subrogated to the rights and substituted to the obligations of the agricultural lessor." For his or her part, the agricultural lessee shall have either the right to pre-empt the sale and purchase the property under reasonable terms and conditions or the right to redeem the property from the transferee should the property have been sold without his or her knowledge.

2. ID.; ID.; ID.; ID.; RIGHTS OF THE AGRICULTURAL LESSEE THAT REMAIN TO BE AVAILABLE; SINCE ONLY SECTIONS 35 AND 53 OF R.A. 3844 WERE REPEALED BY THE PRESENT AGRARIAN LAWS, THE REST OF THE PROVISIONS OF R.A. 3844 STILL HAS SUPPLETORY APPLICATION.— Section 36 [of Republic Act No. 3844, as amended by Republic Act No. 6389], in item 1, provides that an agricultural lessee may be ejected should the landholding be converted for uses for other non-agricultural classifications, i.e., residential, commercial, or industrial.

However, the agricultural lessee must be paid disturbance compensation equivalent to five (5) times the average of the gross harvests on his landholding during the last five (5) preceding calendar years. These rights under Republic Act No. 3844—to pre-empt the sale of the landholding, to redeem the landholding sold without his or her knowledge, and to be paid disturbance compensation should the land be converted for non-agricultural purposes—remain available to the agricultural lessee. Of the provisions of Republic Act No. 3844, only Section 35 was repealed by the present legislation governing agrarian relations, the Comprehensive Agrarian Reform Law. Add Section 53 of Republic Act No. 3844, which was repealed by Republic Act No. 9700 that amended the Comprehensive Agrarian Reform Law. In effect, the rest of the provisions of Republic Act No. 3844, as amended, still has suppletory application.

3. ID.; ID.; ID.; FINDINGS OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD ON THE EXISTENCE OF TENANCY RELATIONS, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS AS IN THIS CASE, SHOULD BE ACCORDED GREAT RESPECT AND FINALITY.— The affidavit of the original landowner, Pedral, states that he instituted the Spouses Terre as tenants in 1952 with a 70-30 sharing of the harvests. I agree with the Department of Agrarian Reform Adjudication Board that this statement proves that a tenancy relation between Pedral and the Spouses Terre was established in 1952. The findings of the Department of Agrarian Reform Adjudication Board on the existence of tenancy relations, especially if affirmed by the Court of Appeals as in this case, should be accorded great respect and should not be disturbed.

4. ID.; ID.; ID.; ID.; SALE OF THE LANDHOLDING DOES NOT EXTINGUISH THE AGRICULTURAL LEASEHOLD RELATION; TENANT'S RIGHT TO THE POSSESSION OF THE LANDHOLDING CONTINUES UNTIL EJECTED PURSUANT TO A FINAL AND EXECUTORY JUDGMENT OF THE COURT.— It is wrong to state that Pedral's declaration "may be accorded probative value only during the interim period within which he was the owner of the land." With the establishment of a share tenancy relation in 1952, which share tenancy was converted to an agricultural leasehold pursuant to

Republic Act No. 6389, the agricultural leasehold relation continued despite the subsequent transfers of ownership over the landholding. To reiterate: the sale of the landholding does not extinguish the agricultural leasehold relation. The thrice-removed transfers of the landholding from Pedral down to J.V. Lagon did not extinguish the agricultural leasehold relation. This is the essence of security of tenure over a landholding. Tenancy is a real right, and the tenant's right to the possession of the landholding continues until he or she is ejected pursuant to a final and executory judgment of the court.

5. **ID.; ID.; ID.; RECLASSIFICATION AND CONVERSION OF LAND, DISTINGUISHED; MERE RECLASSIFICATION OF THE LAND DOES NOT AUTOMATICALLY ALLOW A LANDOWNER TO CHANGE ITS USE AND THUS CAUSE THE EJECTMENT OF THE TENANTS; IN THE ABSENCE OF A FINAL AND EXECUTORY ORDER OF THE COURT EXTINGUISHING THE AGRICULTURAL LEASEHOLD, THE LEASEHOLD RELATION STILL SUBSISTS IN CASE AT BAR.—** Presented as evidence was a certified photocopy of the Urban Land Use Plan from the Office of the City Planning and Development Coordinator to prove that the landholding is now *classified* as commercial. However, as explained in *Ludo & Luym Development Corporation v. Barreto*, reclassification and conversion are different. With reclassification, the land remains agricultural but is "utilized for non-agricultural uses such as residential, industrial or commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion." On the other hand, with conversion, the current use of the agricultural land is changed into some other use as approved by the Department of Agrarian Reform. Thus, "a mere reclassification of agricultural land does not automatically allow a landowner to change its use and thus cause the ejectment of the tenants." Here, there is no evidence that the current use of the landholding for purposes other than agricultural was approved by the Department of Agrarian Reform. Even assuming that the landholding was legally converted, Section 36(1) of Republic Act No. 3844, as amended, requires that the tenants be ejected by a final and executory order of the court before the agricultural leasehold is considered extinguished. The agricultural leasehold relation, therefore, subsists.

6. ID.; ID.; ID.; THE ONE HUNDRED EIGHTY (180)-DAY PRESCRIPTIVE PERIOD WITHIN WHICH AN AGRICULTURAL LESSEE MAY REDEEM THE LANDHOLDING SHALL COMMENCE TO RUN ONLY FROM SERVICE OF THE WRITTEN NOTICE; ACTUAL KNOWLEDGE OF THE SALE CANNOT SERVE AS NOTICE.— To prevent Vda. de Terre from redeeming the landholding, J.V. Lagon contended that her cause of action had already prescribed. The defense of prescription, however, is untenable because under Section 12, "the right of the redemption ... may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale." No written notice was ever furnished to Vda. de Terre; hence, the 180-day prescriptive period has not even commenced to run. The actual knowledge of the sale in 1988 cannot serve as notice from which the prescriptive period shall commence to run for the simple reason that it is not in *written* form as the law requires.

7. ID.; ID.; ID.; PAYMENT OF DISTURBANCE COMPENSATION MAY BE FILED WITHIN THREE YEARS FROM EJECTMENT; FILING OF THE COMPLAINT BEFORE THE BARANGAY AGRARIAN REFORM COMMITTEE TOLLED THE RUNNING OF THE SAID PERIOD.— As for the payment of disturbance compensation, Vda. de Terre allegedly learned of J.V. Lagon's non-agricultural use of the landholding in 1989. She filed her complaint before the Barangay Agrarian Reform Committee in 1991, two (2) years after she was effectively ejected from the landholding. Submission for mediation at the barangay level as required under the 1989 Department of Agrarian Reform Adjudication Board (DARAB) Revised Rules of Procedure was a condition precedent that had to be complied with before the filing of a complaint before the DARAB. The filing of the complaint before the Barangay Agrarian Reform Committee, therefore, tolled the running of the three (3)-year prescriptive period under Section 38 of Republic Act No. 3844. The complaint for payment of disturbance compensation was not barred by the statute of limitations.

APPEARANCES OF COUNSEL

Rico & Associates for petitioner.
Yap Bansiloy & Sanchez Law Offices for respondents.

D E C I S I O N

MARTIRES, *J.*:

The existence of a tenancy relationship cannot be presumed, and claims that one is a tenant do not automatically give rise to security of tenure.[1]

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to reverse and set aside the 23 March 2015 Decision[2] and 29 July 2015 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP No. 05331-MIN. The assailed issuances affirmed *in toto* the 13 April 2012 Decision[4] of the Department of Agrarian Reform Adjudication Board *(DARAB)* in DARAB Case No. 14553.

THE FACTS

The case stemmed from a complaint for illegal ejectment, payment of disturbance compensation, and damages filed by Leocadia Vda. De Terre *(Leocadia)* against petitioner J.V. Lagon Realty Corporation *(J.V. Lagon)* before the Provincial Adjudicator *(PARAD)*, docketed as DARAB Case No. R-1205-0001-97.

It was alleged in the complaint that sometime in 1952, Antonio Pedral *(Pedral)* instituted Leocadia and her spouse, Delfin Terre *(the spouses Terre)*,[5] to work as share tenants over his 5-hectare agricultural landholding known as Lot 587 located at Tacurong,

---

[1] *Landicho v. Sia*, 596 Phil. 658, 677 (2009).

[2] *Rollo*, pp. 30-40.

[3] *Id.* at 41-47.

[4] *Id.* at 90-99; penned by DARAB member Jim G. Coleto.

[5] Collectively referred to as "Spouses Terre."

Sultan Kudarat. Three (3) years later, Pedral sold the land to Jose Abis *(Abis)* who, in turn, sold the same to Augusto Gonzales *(Gonzales)* in 1958.

During the said transfers of ownership, the spouses Terre were allegedly retained as tenants of the entire 5-hectare landholding. In the 1960s, Gonzales reduced their tillage to 2.5 hectares, and the other half of the land was given to Landislao Bedua and Antonillo Silla to till. On their 2.5 hectares, the Spouses Terre constructed a house and that of their daughter's.

In 1988, the spouses Terre were surprised when they were informed that J.V. Lagon had already bought the entire 5-hectare land from the heirs of Gonzales. Later on, J.V. Lagon constructed a scale house within the 2.5 hectare land tilled by the spouses Terre. In 1989, J.V. Lagon warned the spouses to stop cultivating the land because the whole lot was to be developed for commercial or industrial use. In that same year, Delfin died, purportedly due to mental anguish over the turn of events. In 1990, J.V. Lagon filled the eastern portion of the land with earth and boulders.

On 7 May 1991, Leocadia filed a complaint before the Barangay Agrarian Reform Committee *(BARC)*. The following day, on 8 May 1991, a complaint was also lodged before the Municipal Agrarian Reform Officer *(MARO)*. No appropriate action, however, was taken on the said complaints until the dispute was eventually brought before the PARAD on 19 June 1997.[6]

Leocadia claimed that the works done by J.V. Lagon were tantamount to conversion of the land for non-agricultural purposes. Also, Leocadia averred that she was not duly notified in writing about the sale between Gonzales and J.V. Lagon. Thus, her 180-day right of redemption pursuant to Section 12 of Republic Act *(R.A.)* No. 3844, as amended by R.A. No. 6389,[7]

---

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

[7] Code of Agrarian Reforms of the Philippines.

Sec. 12. Lessee's right of Redemption. — In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter

did not commence. Accordingly, it was prayed that she be allowed to exercise her right of redemption over the land, the expenses thereof to be shouldered by the Land Bank of the Philippines.

In her bid to prove the existence of tenancy, Leocadia relied, *inter alia*, on the following documents: (a) 23 April 1997 Certification issued by Geronimo P. Arzagon, Municipal Mayor of Tacurong, Sultan Kudarat, certifying that the spouses Terre were actual tenants of the land;[8] (b) Pedral's affidavit dated 4 July 1987, confirming his consent for the spouses Terre to be his agricultural tenants at a 70-30 sharing of harvest in their favor;[9] (c) affidavit dated 28 July 1997, executed by MARO Perfecto Bergonia, Jr. stating that Terre, a tenant, filed a complaint on 7 July 1991, concerning her illegal ejectment.[10]

On the other hand, J.V. Lagon countered that Leocadia had no cause of action simply because there was no tenancy to speak of. J.V. Lagon asseverated that Lot 587 had ceased to be agricultural and was already classified as commercial, the same having been utilized as the site of the Rural Bank of Tacurong. Also, at the time the landholding was purchased from Gonzales in 1988, no tenant was found cultivating the land.

Further, J.V. Lagon argued that there was a dearth of evidence to prove the allegation of tenancy, in that it was not even established as to whom Leocadia had paid rentals to. In the same vein, it raised the affirmative defense of prescription,

---

shall have the right to redeem the same at a reasonable price and consideration: Provided, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of the redemption under this Section may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption. The redemption price shall be the reasonable price of the land at the time of the sale.

x x x x x x x x x

[8] *Rollo*, pp. 35, 55.

[9] *Id.*

[10] *Id.* at 55.

contending that the complaint was filed more than three (3) years after the cause of action accrued in 1988.

The PARAD Ruling

In its 3 April 2002 decision,[11] the PARAD ruled in favor of J.V. Lagon. It opined that Leocadia's complaint was already barred by prescription and laches, as the cause of action accrued in 1988 when J.V. Lagon constructed a scale house in the allegedly tenanted area. Also, the PARAD ruled that the filing of the complaint with the MARO in 1991 did not toll the running of the prescriptive period because it was the DARAB that had jurisdiction over agrarian disputes.

With respect to the issue on redemption, the PARAD observed that as vendee, J.V. Lagon failed to give Leocadia a written notice of the sale. Nevertheless, it resolved to deny the claim for redemption on the finding that Leocadia had actual knowledge of the sale as early as 1988 when she confronted J.V. Lagon about the scale house.

Anent the question of whether there was tenancy, the PARAD held that Leocadia failed to establish her status as a *de jure* tenant. It found scant evidentiary value on the documents she presented. In so ruling, the PARAD pointed out that Pedral, as former owner, could attest to the condition of the land only from 1947 to 1955 when he was still the owner thereof, and not after he had already sold the property. Moreover, the PARAD was of the view that certifications issued by administrative agencies or officers as regards tenancy relations are merely provisional in nature.

Finally, the PARAD was convinced that the disputed real property was not an agricultural land. It noted that the Rural Bank of Tacurong was situated at the heart of the subject landholding; and that per photocopy of the Urban Land Use Plan as certified by the Office of the City Planning and Development Coordinator, the said land was already classified as commercial.[12] The dispositive portion reads:

---

[11] *Id*. at 49-77; penned by Adjudicator Henry M. Gelacio.

[12] *Id*. at 74.

WHEREFORE, PREMISES CONSIDERED, judgement is hereby rendered:

1. Declaring the herein complaint filed on June 17, 1991 barred by prescription;
2. Complainant's claim for disturbance compensation is denied for lack of merit;
3. Complainant's right to redeem the property is also denied for lack of merit; and,
4. Other claims are likewise denied for lack of merit.

No costs.

SO ORDERED.

Aggrieved, Leocadia filed an appeal before the DARAB.

The DARAB Ruling

In its 13 April 2012 decision, the DARAB reversed and set aside the PARAD's ruling. It held that Leocadia's action was not barred by prescription because the filing of the complaint with the BARC on 7 May 1991 tolled the running of the prescriptive period.

In contrast to the PARAD's analysis, the DARAB found probative value on the documents Leocadia presented. It concluded that tenancy existed, as evinced by the fact that Leocadia's house was erected inside the subject landholding; and such fact was attested to by the affidavits of the former MARO Perfecto Bergonia and of Mayor Geronimo P. Arzagon of Tacurong City.[13]

Similarly, the DARAB opined that Pedral's affidavit declaring that he installed the Spouses Terre as share tenants sufficiently proved the existence of tenancy relationship. Citing Section 10 of R.A. No. 3844,[14] it held that tenancy is attached to the

---

[13] *Id.* at 96.

[14] Section 10. Agricultural Leasehold Relation Not Extinguished by Expiration of Period, *etc.* — The agricultural leasehold relation under this Code shall not be extinguished by mere expiration of the term or period in

land regardless of whoever may have become the owner thereof. Thus, Leocadia's status as a tenant was not extinguished by the successive transfers of ownership from Pedral to Abis, and then to Gonzales, and finally to J.V. Lagon, as the latter assumed the rights and obligations of the preceding transferors.

The DARAB further ruled that Leocadia was entitled to redeem the land from J.V. Lagon. It cited Section 12 of R.A. No. 3844, as amended by R.A. No. 6389[15] which provides that the right of redemption may be exercised within 180 days from notice in writing which shall be served by the vendee on all lessees affected and on the DAR upon registration of the sale. In view of the PARAD's finding that J.V. Lagon failed to give notice in writing of the sale, the DARAB declared that Leocadia's right of redemption did not prescribe, a written notice of the sale being an indispensable requirement of the law.

Lastly, Leocadia's prayer for disturbance compensation was granted. The DARAB ratiocinated that J.V. Lagon merely alleged that the land was no longer agricultural; and that J.V. Lagon failed to support its allegation as no tax declarations, DAR certification or city zoning certification were shown to prove the land's classification as commercial. The decretal portion reads:

WHEREFORE, premises considered, the appealed decision dated April 3, 2002 and Resolution dated December 13, 2002 are hereby **REVERSED** and **SET ASIDE** and a new judgment rendered:

1. Declaring herein complainant a *bona fide* tenant over the lot in suit entitled to security of tenure;

2. Upholding complainant's right of redemption and for this purpose, the Land Bank of the Philippines, thru its Regional branch or office concerned is directed to finance her right of redemption;

---

a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.

[15] *Supra* note 7.

3. In case the land in suit had already been lawfully converted to commercial use, complainant is entitled to payment of disturbance compensation pursuant to Section 36, par. 1 of RA 6389.

No pronouncement as to claims and counterclaims for insufficient evidence.

Dissatisfied, J.V. Lagon filed a Rule 43 petition for review before the CA. Meanwhile, on 18 October 2013, Leocadia died, prompting her heirs to file a manifestation with motion for substitution[16] before the CA.

The CA Ruling

In the assailed 23 March 2015 decision, the CA affirmed *in toto* the DARAB's ruling. It held that Leocadia was able to establish that she was the tenant of the subject landholding. Such tenancy commenced in 1952 when Pedral, the original owner, installed her and Delfin as share tenants. The appellate court espoused a similar view that the documents Leocadia presented substantiated her claim of tenancy.

Considering that there was tenancy between Pedral and Leocadia, the CA decreed that there was subrogation of rights to Abis, then to Gonzales, and finally to J.V. Lagon, as landowners. The tenancy relationship was not terminated by changes of ownership pursuant to Section 10 of R.A. No. 3844.[17] Likewise, the CA sustained the DARAB's finding that, as a tenant, Leocadia was entitled to redeem the land consequent to the lack of written notice of the sale. The *fallo* reads:

WHEREFORE, the appeal is DENIED. The Decision dated April 13, 2012 and the Resolution dated September 13, 2012 of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 14553 declaring Leocadia Vda. De Terre as bona fide tenant under Republic Act No. 3844 is AFFIRMED IN TOTO.

x x x x x x x x x

---

[16] *Rollo*, pp. 193-198.

[17] *Supra* note 14.

SO ORDERED.[18]

In the assailed 29 July 2015 Resolution, the CA resolved to deny J.V. Lagon's motion for reconsideration, and to grant the motion for substitution filed by the heirs of Leocadia.[19]

The Present Petition

J.V. Lagon submits in this petition for review on certiorari, that the subject landholding is no longer agricultural; that Leocadia's cause of action has already prescribed; and that she has no right to redeem the property nor to receive disturbance compensation. Stripped to its core, the petition before the Court posits the kernel argument that there is no tenancy relation between J.V. Lagon and Leocadia.

In their comment, the heirs of Leocadia contend that there is no need to adduce evidence to prove Leocadia's status as a *bona fide* tenant because tenancy is attached to the land irrespective of whoever becomes its subsequent owner. Taking cue from the DARAB's findings, they maintain that the filing of the complaint with the BARC on 7 May 1991 tolled the running of the prescriptive period. As a final point, the heirs of Leocadia assert that she is entitled to redeem the landholding because the law speaks of written notice of the sale and not actual or personal knowledge thereof.

The pleadings and the arguments proffered beckon the Court to examine a singular point of law on which all the matters raised are inevitably hinged.

ISSUE

WHETHER OR NOT THERE IS A TENANCY RELATIONSHIP BETWEEN J.V. LAGON REALTY AND LEOCADIA.

THE COURT'S RULING

The petition is impressed with merit.

---

[18] *Rollo*, p. 39.

[19] *Id*. at 47.

There is a tenancy relationship if the following essential elements concur: 1) the parties are the landowner and the tenant or agricultural lessee; 2) the subject matter of the relationship is an agricultural land; 3) there is consent between the parties to the relationship; 4) the purpose of the relationship is to bring about agricultural production; 5) there is personal cultivation on the part of the tenant or agricultural lessee; and 6) the harvest is shared between landowner and tenant or agricultural lessee.[20]

All of the above requisites are indispensable in order to create or establish tenancy relationship between the parties. The absence of at least one requisite does not make the alleged tenant a *de facto* one, for the simple reason that unless an individual has established one's status as a *de jure* tenant, he is not entitled to security of tenure guaranteed by agricultural tenancy laws.[21]

The *onus* rests on Leocadia to prove her affirmative allegation of tenancy.[22] It is elementary that one who makes an affirmative allegation of an issue has the burden of proving the same; and in the case of the plaintiff in a civil case, the burden of proof never parts. The same rule applies in proceedings before the administrative tribunals. In fact, if the complainant, upon whom rests the burden of proving his cause of action, fails to show in a satisfactory manner the facts upon which he bases his claim, the respondent is under no obligation to prove his exception or defense.[23]

To recapitulate, Leocadia presented the following documents to prove the existence of tenancy: (a) 23 April 1997 certification issued by Geronimo P. Arzagon, Municipal Mayor of Tacurong, Sultan Kudarat, that the Spouses Terre were actual tenants of the land; (b) Pedral's affidavit dated 4 July 1987 confirming

---

[20] *Nicorp Management and Development Corp. v. De Leon*, 585 Phil. 598, 605 (2008).

[21] *Ludo and Luym Development Corporation v. Barreto*, 508 Phil. 385, 396-397 (2005).

[22] *Soliman v. Pasudeco*, 607 Phil. 209, 224 (2009).

[23] *Id*.

his consent for the Spouses Terre to be his agricultural tenants at a 70-30 sharing of harvest in their favor; (c) affidavit dated 28 July 1997, executed by MARO Perfecto Bergonia, Jr. stating that Terre, a tenant, filed a complaint on 7 July 1991, concerning her illegal ejectment.

The issue of tenancy, whether a person is an agricultural tenant or not, is generally a question of fact. To be precise, however, the existence of a tenancy relationship is a legal conclusion based on facts presented corresponding to the statutory elements of tenancy.[24] Both the DARAB and the CA appreciated the aforementioned pieces of evidence as sufficient to prove Leocadia's *de jure* status as a tenant in the subject landholding.

This is untenable.

Accordingly, it is crucial to go through the evidence and documents on record in order to arrive at a proper resolution of the case.

Pedral's affidavit does not prove that there is tenancy between Leocadia and J.V. Lagon.

It is a basic rule in evidence that a witness can testify only on the facts that are of his own personal knowledge; that is, those which are derived from his own perception.[25] Therefore, even if the Court were to take hook, line, and sinker Pedral's declaration that he installed Leocadia and Delfin as tenants, such declaration may be accorded probative value only during the interim period within which he was the owner of the land. The logic behind is simple, *i.e.*, Pedral ceased to have any personal knowledge as to the status and condition of the land after he had sold the same to Abis. Put differently, absence of personal knowledge rendered Pedral an incompetent witness to testify

---

[24] *Monico Ligtas v. People*, 766 Phil. 750, 775 (2015).

[25] *People v. Restituto Manhuyod, Jr.*, 352 Phil. 866, 880 (1998).

on the existence of tenancy from the moment the land was passed on to Abis and his subsequent transferees.

To recall, the land was involved in three transfers over the course of 33 years, to wit: Pedral to Abis, Abis to Gonzales, and finally from Gonzales to J.V. Lagon. This series of transfers shows that Pedral was not J.V. Lagon's immediate predecessor-in-interest. When J.V. Lagon became the absolute owner of the land, it was subrogated to the rights and obligations of Gonzales, not Pedral's. Gonzales was the person privy to the sale that brought forth J.V. Lagon's ownership. In short, title to the land was derived from Gonzales. This being the case, the DARAB and the CA erred when they relied upon Pedral's affidavit to support the conclusion that J.V. Lagon acquired a tenanted land. Whether or not the land was tenanted at the time of J.V. Lagon's entry is a matter already beyond the competence of Pedral to testify on.

Leocadia anchors her claim against J.V. Lagon on Section 10 of the Agricultural Land Reform Code which, in essence, states that the existence of an agricultural leasehold relationship is not terminated by changes in ownership in case of sale or transfer of legal possession.[26] The fundamental theory of her case parlays the notion that she was an agricultural lessee during the period of Abis' and Gonzales' respective ownership of the land spanning from 1955-1988; such that at the time J.V. Lagon came into possession, there was a subsisting tenancy which the latter assumed by operation of law.

The evidence on record, however, is bereft of any affirmative and positive showing that tenancy was maintained on the land throughout the three decades leading to J.V. Lagon's acquisition in 1988. Before Leocadia's claims against J.V. Lagon can prosper, it must first be established that the latter acquired land which was tenanted. On this premise, the scope of judicial inquiry inexorably backtracks to Gonzales' epoch. Were there agricultural tenants on the land during Gonzales' ownership?

---

[26] *Planters Development Bank v. Francisco Garcia,* 513 Phil. 294, 307 (2005).

The answer could have easily been supplied by none other than Gonzales himself who was in the best position to attest on the status of the land acquired by J.V. Lagon. A testimony or an affidavit from Gonzales would have served to substantiate Leocadia's allegation that she had been a tenant on the land prior to J.V. Lagon's entry. Unfortunately, the record only contains an affidavit from Pedral, a person whose ownership of the land is, borrowing Justice Leonen's term, "*thrice-removed*" from J.V. Lagon.

Being the party alleging the existence of tenancy relationship, Leocadia carried the burden of proving her allegation. With only Pedral's affidavit as proof, the Court is unable to agree with the DARAB and the CA that tenancy was established by substantial evidence. As explained above, Pedral's affidavit leaves much to be desired, and it is inadequate basis to support a conclusion that Leocadia remained as a tenant on the land throughout the three decades preceding J.V. Lagon's ownership. Agricultural tenancy is not presumed.[27] It is a matter of jurisprudence that tenancy is not purely a factual relationship dependent on what the alleged tenant does upon the land.[28] More importantly, it is a legal relationship the existence of which must be proven by the quantum of evidence required by law.

Absence of harvest sharing belies claim of tenancy relationship.

In *Landicho v. Sia*,[29] the Court declared that independent evidence, such as receipts, must be presented to show that there was a sharing of the harvest between the landowner and the tenant. *Bejasa v. CA*[30] similarly held that to prove sharing of harvests, a receipt or any other evidence must be presented, as self-serving statements are deemed inadequate. Proof must always

---

[27] *Caluzor v. Llanillo*, 762 Phil. 353, 368 (2015).

[28] *Berenguer, Jr. v. CA*, 247 Phil. 398, 405 (1988).

[29] *Supra* note 1 at 679.

[30] 390 Phil. 499, 508 (2000).

be adduced.[31] In another case, the Court ruled against the existence of tenancy for failure of the alleged tenant to substantiate the element of sharing of harvest, *viz*:

> Here, there was no evidence presented to show sharing of harvest in the context of a tenancy relationship between Vicente and the respondents. The only evidence submitted to establish the purported sharing of harvests were the allegations of Vicente which, as discussed above, were self-serving and have no evidentiary value. Moreover, petitioner's allegations of continued possession and cultivation do not support his cause. It is settled that mere occupation or cultivation of an agricultural land does not automatically convert a tiller or farm worker into an agricultural tenant recognized under agrarian laws. It is essential that, together with the other requisites of tenancy relationship, the agricultural tenant must prove that he transmitted the landowner's share of the harvest.[32]

The DARAB and the CA committed reversible error when they failed to notice that not a single receipt or any other credible evidence was adduced to show sharing of harvest in the context of tenancy. The record only contains the allegation that there is a 1/3-2/3 system of harvest sharing with Pedral, and 70-30 for Abis and Gonzales.[33] Substantial evidence necessary to establish the fact of sharing cannot be satisfied by a mere scintilla of evidence; there must be concrete evidence on record adequate to prove the element of sharing.[34] As reiterated in *VHJ Construction v. CA*,[35]

> In *Berenguer, Jr. v. Court of Appeals*, we ruled that the respondents' self-serving statements regarding tenancy relations could not establish the claimed relationship. The fact alone of working on another's landholding does not raise a presumption of the existence of agricultural tenancy. There must be substantial evidence on record adequate enough to prove the element of sharing.

---

[31] *Heirs of Nicolas Jugalbot v. CA*, 547 Phil. 113, 125 (2007).

[32] *Vicente Adriano v. Alice Tanco,* 637 Phil. 218, 228-229 (2010).

[33] *Rollo*, p. 307.

[34] *Soliman v. Pasudeco*, *supra* note 22 at 223-224.

[35] 480 Phil. 28, 36-37 (2004).

x x x x x x x x x

To prove such sharing of harvests, a receipt or any other evidence must be presented. Self-serving statements are deemed inadequate; competent proof must be adduced.

Further to the lack of receipts, the record is likewise devoid of testimony from either Pedral, Abis or Gonzales acknowledging the fact that they received a share in the harvest of a tenant. In the absence of receipts or any concrete evidence from which it can be inferred that Leocadia transmitted the landowner's share of her produce, the Court is constrained to declare that not all elements of tenancy relationship are present.

The MARO's affidavit and the municipal mayor's certification do not prove tenancy.

It is well-entrenched in our jurisprudence that certifications of administrative agencies and officers declaring the existence of a tenancy relation are merely provisional. They are persuasive but not binding on the courts, which must make their own findings.[36] As held in *Soliman v. PASUDECO (Soliman)*:[37]

The certifications attesting to petitioners' alleged status as *de jure* tenants are insufficient. In a given locality, the certification issued by the Secretary of Agrarian Reform or an authorized representative, like the MARO or the BARC, concerning the presence or the absence of a tenancy relationship between the contending parties, is considered merely preliminary or provisional, hence, such certification does not bind the judiciary.

The ruling in *Soliman* was echoed in the later case of *Automat Realty v. Spouses Dela Cruz*,[38] *viz*:

This court has held that a MARO certification concerning the presence or the absence of a tenancy relationship between the contending parties, is considered merely preliminary or provisional, hence, such certification does not bind the judiciary.

---

[36] *Oarde v. CA*, 345 Phil. 457, 469 (1997).

[37] *Supra* note 22.

[38] 744 Phil. 731, 744 (2014).

Several elements must be present before the courts can conclude that a tenancy relationship exists. MARO certifications are limited to factual determinations such as the presence of actual tillers. It cannot make legal conclusions on the existence of a tenancy agreement.

The Court's pronouncement in the foregoing cases applies with equal force to the certification issued by the municipal mayor of Tacurong. Like the MARO's affidavit, the municipal mayor's certification deserves scant consideration simply because the mayor is not the proper authority[39] vested with the power to determine the existence of tenancy. Besides, the MARO and the mayor merely affirmed the fact that Leocadia lived in a hut erected on the subject landholding.[40] If we subscribe to the DARAB's fallacy, then anyone who squats on an agricultural land or constructs a hut with the consent of the owner becomes a tenant. It bears to stress that mere occupation or cultivation of an agricultural land does not automatically convert a tiller or farmworker into an agricultural tenant recognized under agrarian laws.[41]

While tenancy presupposes physical presence of a tiller on the land, the MARO's affidavit and the mayor's certification fall short in proving that Leocadia's presence served the purpose of agricultural production and harvest sharing. Again, it cannot be overemphasized that in order for a tenancy to arise, it is essential that all its indispensable elements must be present.[42]

All told, the evidence on record is inadequate to arrive at a conclusion that Leocadia was a *de jure* tenant entitled to security of tenure. The requisites for the existence of a tenancy relationship are explicit in the law, and these elements cannot be done away with by conjectures.[43]

---

[39] *Esquivel v. Atty. Reyes*, 457 Phil. 509, 518 (2003).

[40] *Rollo*, p. 96, DARAB decision.

[41] *De Jesus v. Moldex Realty*, 563 Phil. 625, 630 (2007).

[42] *Jopson v. Mendez*, 723 Phil. 580, 588 (2013).

[43] *Soliman v. PASUDECO*, *supra* note 22 at 227.

As a final word, the Court sees no more reason to belabor the other points raised by the parties, particularly on the right of redemption and entitlement to disturbance compensation. It is the juridical tie of tenancy relationship that breathes life to these kindred rights provided for by our agricultural laws. There being no tenancy relationship, the issues raised on these points have thus become moot and academic.

WHEREFORE, the petition is **GRANTED**. The assailed 23 March 2015 Decision and 29 July 2015 Resolution of the CA in CA-G.R. SP No. 05331-MIN are hereby **VACATED** and **SET ASIDE**, and a new one is entered **DISMISSING** the complaint against petitioner J.V. Lagon Realty Corporation.

SO ORDERED.

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

Leonen, J., dissents, see dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

As found by the Department of Agrarian Reform Adjudication Board and affirmed by the Court of Appeals, the deceased Leocadia Vda. de Terre (Vda. de Terre) sufficiently established her status as *de jure* tenant of the landholding sold to J.V. Lagon Realty Corp. (J.V. Lagon). There was no showing that the leasehold relation was extinguished under any of the grounds provided by law; hence, Vda. de Terre enjoyed security of tenure on the land, this notwithstanding the successive transfers of the property. Even assuming that the landholding was legally converted for commercial purposes, there was also no allegation that a court of competent jurisdiction has ordered in a final and executory judgment the ejection of Vda. de Terre as tenant. The agricultural leasehold relation, thus, subsists and the heirs of Vda. de Terre may still redeem the landholding from J.V. Lagon or should be paid disturbance compensation.

I

Tenancy as a system of landholding began during the Spanish period. Before the Spanish arrived, land was owned in common

by barangay inhabitants, who then had equal access to the land and equally shared in the fruits of its production.[1] This regime was replaced when the Spanish introduced the concept of private property. They began purchasing communal lands from the heads of the barangays and had these properties registered in their names for purposes of ownership.[2] As for the uninhabited lands, royal decrees were issued and these tracts of land were all declared owned by the Spanish crown.[3]

These tracts of land were awarded either to friars, Spanish military personnel, or caretakers called encomenderos.[4] Natives were not allowed to own land and for them to get a share of the crops, they were required to pay tribute to the encomenderos to till the land under the encomenderos' supervision.[5]

From the small-scale food production in the encomienda, the hacienda system was evolved to serve the international market. Spanish colonies such as the Philippines became exporters of agricultural raw products, including plant and animal products.[6] Natives were still prohibited from owning land, but the larger demand for products meant that more natives were displaced from their homes. Families of natives became slaves, either as *aliping namamahay* or *aliping sagigilid*, pushed into forced labor to survive.[7]

The encomienda and hacienda systems were the colonial equivalents of share tenancy, the relationship where two persons

---

[1] R.P. Barte, *LAW ON AGRARIAN REFORM* 6–7 (2003). *See also* FAQs on Agrarian History 3 (2013), downloadable from <www.dar.gov.ph/downloads/category/82-faqs?download=837:faqs-on-ar-history> (Last accessed on June 25, 2018).

[2] *Id.* at 7.

[3] *Id.*

[4] FAQs on Agrarian History 4–5 (2013), downloadable from<www.dar.gov.ph/downloads/category/82-faqs?download=837:faqs-on-ar-history> (Last accessed on April 13, 2018).

[5] *Id.* at 5. *See also* R.P. Barte, *Law on Agrarian Reform* 7 (2003).

[6] *Id.*

[7] R.P. Barte, *Law on Agrarian Reform* 7 (2003).

agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing to any one or several of the items of production, the tenant cultivating the land personally with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant.[8]

Agricultural share tenancy was then abolished by Republic Act No. 3844,[9] which declared that system contrary to public policy.[10] The amendatory law to Republic Act No. 3844, Republic Act No. 6389,[11] automatically converted all agricultural share tenancy relations in the country to agricultural leasehold and revolutionized the meaning of security of tenure of landholding.[12]

In an agricultural leasehold relation, the agricultural lessor, who is either the owner, civil law lessee, usufructuary, or legal possessor, lets or grants to another, called the agricultural lessee, the cultivation and use of his land for a price certain in money or in produce or both. The definition and elements of a leasehold relation are almost the same as those of share tenancy.[13] However, unlike the latter, an agricultural leasehold relation is not extinguished either by the mere expiration of the term or period of the leasehold contract or by the sale, alienation, or transfer of legal possession of the land. Section 10 of Republic Act No. 3844 provides:

Section 10. *Agricultural Leasehold Relation Not Extinguished By Expiration of Period, etc.* — The agricultural leasehold relation under

---

[8] Rep. Act No. 3844, Sec. 166(25).

[9] Otherwise known as the Agricultural Land Reform Code.

[10] Rep. Act No. 3844, Sec. 4.

[11] Renamed Rep. Act No. 3844 as the Code of Agrarian Reforms of the Philippines.

[12] Rep. Act No. 6389, Sec. 1, amending Rep. Act No. 3844, Sec. 4.

[13] See *Cuaño v. Court of Appeals,* 307 Phil. 128, 141 (1994) [Per *J.* Feliciano, Third Division].

this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.

Based on Section 10, the agricultural lessor is, thus, not prohibited from disposing of his or her property should he or she wishes to do so. What happens is that "the purchaser or transferee . . . shall be subrogated to the rights and substituted to the obligations of the agricultural lessor." For his or her part, the agricultural lessee shall have either the right to pre-empt the sale and purchase the property under reasonable terms and conditions[14] or the right to redeem the property from the transferee should the property have been sold without his or her knowledge. Section 12 of Republic Act No. 3844, as amended by Republic Act No. 6389, provides:

---

[14] Republic Act No. 3844, Sec. 11, as amended by Republic Act No. 6389, provides: Section 11. *Lessee's Right of Pre-emption*. — In case the agricultural lessor decides to sell the landholding, the agricultural lessee shall have the preferential right to buy the same under reasonable terms and conditions: *Provided*, That the entire landholding offered for sale must be pre-empted by the Department of Agrarian Reform upon petition of the lessee or any of them: *Provided, further*, That where there are two or more agricultural lessees, each shall be entitled to said preferential right only to the extent of the area actually cultivated by him. The right of pre-emption under this Section may be exercised within one hundred eighty days from notice in writing, which shall be served by the owner on all lessees affected and the Department of Agrarian Reform.

If the agricultural lessee agrees with the terms and conditions of the sale, he must give notice in writing to the agricultural lessor of his intention to exercise his right of pre-emption within the balance of one hundred eighty day's period still available to him, but in any case not less than thirty days. He must either tender payment of, or present a certificate from the land bank that it shall make payment pursuant to section eighty of this Code on, the price of the landholding to the agricultural lessor. If the latter refuses to accept such tender or presentment, he may consign it with the court.

Any dispute as to the reasonableness of the terms and conditions may be brought by the lessee or by the Department of Agrarian Reform to the proper Court of Agrarian Relations which shall decide the same within sixty days from the date of the filing thereof: *Provided*, That upon finality of the decision

Section 12. *Lessee's Right of Redemption.* — In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same at a reasonable price and consideration: *Provided*, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. The right of the redemption under this Section may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption. The redemption price shall be the reasonable price of the land at the time of the sale.

Upon the filing of the corresponding petition or request with the department or corresponding case in court by the agricultural lessee or lessees, the said period of one hundred and eighty days shall cease to run.

Any petition or request for redemption shall be resolved within sixty days from the filing thereof; otherwise, the said period shall start to run again.

The grounds for extinguishing the agricultural leasehold relation are provided in Section 8 of Republic Act No. 3844, thus:

Section 8. *Extinguishment of Agricultural Leasehold Relation.* — The agricultural leasehold relation established under this Code shall be extinguished by:

(1) Abandonment of the landholding without the knowledge of the agricultural lessor;

---

of the Court of Agrarian Relations, the Land Bank shall pay to the agricultural lessor the price fixed by the court within one hundred twenty days: *Provided, further*, That in case the Land Bank fails to pay within that period, the principal shall earn an interest equivalent to the prime bank rate existing at the time.

Upon the filing of the corresponding petition or request with the department or corresponding case in court by the agricultural lessee or lessees, the said period of one hundred and eighty days shall cease to run.

Any petition or request for pre-emption shall be resolved within sixty days from the filing thereof; otherwise, the said period shall start to run again.

(2) Voluntary surrender of the landholding by the agricultural lessee, written notice of which shall be served three months in advance; or

(3) Absence of the persons under Section nine to succeed to the lessee, in the event of death or permanent incapacity of the lessee.

Apart from the grounds in Section 8, the leasehold relation may be terminated by the agricultural lessee under Section 28 of Republic Act No. 3844:

Section 28. *Termination of Leasehold by Agricultural Lessee During Agricultural Year*. — The agricultural lessee may terminate the leasehold during the agricultural year for any of the following causes:

(1) Cruel, inhuman or offensive, treatment of the agricultural lessee or any member of his immediate farm household by the agricultural lessor or his representative with the knowledge and consent of the lessor;

(2) Non-compliance on the part of the agricultural lessor with any of the obligations imposed upon him by the provisions of this Code or by his contract with the agricultural lessee;

(3) Compulsion of the agricultural lessee or any member of his immediate farm household by the agricultural lessor to do any work or render any service not in any way connected with farm work or even without compulsion if no compensation is paid;

(4) Commission of a crime by the agricultural lessor or his representative against the agricultural lessee or any member of his immediate farm household; or

(5) Voluntary surrender due to circumstances more advantageous to him and his family.

Lastly, the agricultural lessee may be ejected from the landholding, thus, extinguishing the leasehold relation, but only upon a final and executory judgment of a competent court. Section 36 of Republic Act No. 3844, as amended by Republic Act No. 6389, states:

Section 36. *Possession of Landholding; Exceptions.* — Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(1) The landholding is declared by the department head upon recommendation of the National Planning Commission to be suited for residential, commercial, industrial or some other urban purposes: *Provided*, That the agricultural lessee shall be entitled to disturbance compensation equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years;

(2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or *force majeure*;

(3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;

(4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;

(5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;

(6) The agricultural lessee does not pay the lease rental when it falls due: *Provided*, That if the non-payment of the rental shall be due to crop failure to the extent of seventy-five *per centum* as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

(7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.

The same Section 36, in item 1, provides that an agricultural lessee may be ejected should the landholding be converted for

uses for other non-agricultural classifications, i.e., residential, commercial, or industrial. However, the agricultural lessee must be paid disturbance compensation equivalent to five (5) times the average of the gross harvests on his landholding during the last five (5) preceding calendar years.

These rights under Republic Act No. 3844—to pre-empt the sale of the landholding, to redeem the landholding sold without his or her knowledge, and to be paid disturbance compensation should the land be converted for non-agricultural purposes—remain available to the agricultural lessee. Of the provisions of Republic Act No. 3844, only Section 35 was repealed by the present legislation governing agrarian relations, the Comprehensive Agrarian Reform Law.[15] Add Section 53 of Republic Act No. 3844, which was repealed by Republic Act No. 9700 that amended the Comprehensive Agrarian Reform Law.[16] In effect, the rest of the provisions of Republic Act No. 3844, as amended, still has suppletory application.[17]

II

The *ponencia* held that Vda. de Terre failed to prove her contention that she was a *de jure* tenant of the land sold to J.V. Lagon. In so holding, the *ponencia* first enumerated the jurisprudentially[18] established elements of a tenancy relationship—the parties are the landowner and the tenant or agricultural lessee; the subject matter of the relationship is an agricultural land; there is consent between the parties to the relationship; the purpose of the relationship is to bring about agricultural production; there is personal cultivation on the part of the tenant or agricultural lessee; and the harvest is shared between landowner and tenant or agricultural lessee—then said that the elements of consent and sharing of harvests were not proven in this case.[19]

---

[15] Rep. Act No. 6657, Sec. 76.

[16] Rep. Act No. 9700, Sec. 32.

[17] Rep. Act No. 6657, Sec. 75.

[18] *Nicorp Management and Development Corp. v. De Leon,* 585 Phil. 598, 605 (2008), *cited by the Ponencia*, p. 8.

[19] *Ponencia*, p. 10.

Specifically, the *ponencia* said that the affidavit of the original agricultural lessor, Antonio Pedral (Pedral), admitting that he instituted Vda. de Terre and her spouse, Delfin, as tenants in 1952 and agreed to a 70-30 sharing does not prove that tenancy existed between Vda. de Terre and J.V. Lagon.[20] The *ponencia*'s reason is that the affidavit "may be accorded probative value only during the interim period within which [Pedral] was the owner of the land"[21] and cannot account for the years subsequent to Pedral's sale of the land. In the words of the *ponencia*:

> It is a basic rule in evidence that a witness can testify only on the facts that are of his own knowledge; that is, those which are derived from his own perception. Therefore, even if the Court were to take hook, line, and sinker Pedral's declaration that he installed Leocadia and Delfin as tenants, such declaration may be accorded probative value only during the interim period within which he was the owner of the land. The logic behind is simple, i.e., Pedral ceased to have any personal knowledge as to the status and condition of the land after he had sold the same to Abis. Put differently, absence of personal knowledge rendered Pedral an incompetent witness to testify on the existence of tenancy from the moment the land was passed to Abis and his subsequent transferees.[22] (Citation omitted)

I disagree.

Section 7 of Republic Act No. 3844 is clear:

> Section 7. Tenure of Agricultural Leasehold Relation. — The agricultural leasehold relation once established shall confer upon the agricultural lessee the right to *continue working on the landholding until such leasehold relation is extinguished*. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes herein provided. (Emphasis supplied)

Categorical is Section 10 of Republic Act No. 3844, which states that "the agricultural leasehold relation . . . *shall not be extinguished . . . by the sale. . . of the landholding*. In case the

---

[20] *Id.* at 9.

[21] *Id.*

[22] *Id.*

agricultural lessor sells . . . the landholding, the purchaser . . . shall be subrogated to the rights and substituted to the obligations of the agricultural lessor."

The affidavit of the original landowner, Pedral, states that he instituted the Spouses Terre as tenants in 1952 with a 70-30 sharing of the harvests.[23] I agree with the Department of Agrarian Reform Adjudication Board that this statement proves that a tenancy relation between Pedral and the Spouses Terre was established in 1952. The findings of the Department of Agrarian Reform Adjudication Board on the existence of tenancy relations, especially if affirmed by the Court of Appeals as in this case, should be accorded great respect and should not be disturbed.[24]

The *ponencia* implies that the consent to the tenancy relation should come from the subsequent transferee, J.V. Lagon. This interpretation is contrary to Section 10 of Republic Act No. 3844. The subrogation by the transferee of the obligations of the agricultural lessor is not by his or her consent but by *operation of law*.

It is wrong to state that Pedral's declaration "may be accorded probative value only during the interim period within which he was the owner of the land."[25] With the establishment of a share tenancy relation in 1952, which share tenancy was converted to an agricultural leasehold pursuant to Republic Act No. 6389, the agricultural leasehold relation continued despite the subsequent transfers of ownership over the landholding. To reiterate: the sale of the landholding does not extinguish the agricultural leasehold relation. The thrice-removed transfers of the landholding from Pedral down to J.V. Lagon did not extinguish the agricultural leasehold relation. This is the essence of security of tenure over a landholding. Tenancy is a real right, and the tenant's right to the possession of the landholding

---

[23] *Id.* at 11.

[24] See *Ludo and Luym Development Corporation v. Barreto,* 508 Phil. 385, 396 (2005) [Per *J.* Chico-Nazario, Second Division].

[25] *Ponencia*, p. 9.

continues until he or she is ejected pursuant to a final and executory judgment of the court.

With Vda. de Terre having presented substantial evidence that tenancy was established in 1952, the burden of evidence shifted to J.V. Lagon to prove that the tenancy, converted to agricultural leasehold, was extinguished under any of the causes provided by law.

Unfortunately for J.V. Lagon, it miserably failed to discharge this burden.

Presented as evidence was a certified photocopy of the Urban Land Use Plan from the Office of the City Planning and Development Coordinator to prove that the landholding is now *classified* as commercial.[26] However, as explained in *Ludo & Luym Development Corporation v. Barreto*,[27] reclassification and conversion are different. With reclassification, the land remains agricultural but is "utilized for non-agricultural uses such as residential, industrial or commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion."[28] On the other hand, with conversion, the current use of the agricultural land is changed into some other use as approved by the Department of Agrarian Reform.[29] Thus, "a mere reclassification of agricultural land does not automatically allow a landowner to change its use and thus cause the ejectment of the tenants."[30]

Here, there is no evidence that the current use of the landholding for purposes other than agricultural was approved by the Department of Agrarian Reform. Even assuming that the landholding was legally converted, Section 36(1) of Republic Act No. 3844, as amended, requires that the tenants be ejected by a final and executory order of the court before the agricultural

---

[26] *Ponencia*, p. 4.

[27] 508 Phil. 385 (2005) [Per *J.* Chico-Nazario, Second Division].

[28] *Id.* at 401.

[29] *Id.*

[30] *Id.*

leasehold is considered extinguished. The agricultural leasehold relation, therefore, subsists.

To prevent Vda. de Terre from redeeming the landholding, J.V. Lagon contended that her cause of action had already prescribed. The defense of prescription, however, is untenable because under Section 12, "the right of the redemption . . . may be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale." No written notice was ever furnished to Vda. de Terre; hence, the 180-day prescriptive period has not even commenced to run. The actual knowledge of the sale in 1988 cannot serve as notice from which the prescriptive period shall commence to run for the simple reason that it is not in *written* form as the law requires.

As for the payment of disturbance compensation, Vda. de Terre allegedly learned of J.V. Lagon's non-agricultural use of the landholding in 1989.[31] She filed her complaint before the Barangay Agrarian Reform Committee in 1991, two (2) years after she was effectively ejected from the landholding.[32] Submission for mediation at the barangay level as required under the 1989 Department of Agrarian Reform Adjudication Board (DARAB) Revised Rules of Procedure was a condition precedent that had to be complied with before the filing of a complaint before the DARAB.[33] The filing of the complaint before the Barangay Agrarian Reform Committee, therefore, tolled the running of the three (3)-year prescriptive period under Section 38 of Republic Act No. 3844.[34] The complaint for payment of

---

[31] *Ponencia*, p. 4.

[32] *Id.*

[33] 1989 DARAB RULES OF PROCEDURE, Rule III, Secs. 1 and 3.

[34] Rep. Act No. 3844, Sec. 38 provides:

Section 38. *Statute of Limitations*. — An action to enforce any cause of action under this Code shall be barred if not commenced within three years after such cause of action accrued.

disturbance compensation was not barred by the statute of limitations.[35]

In sum, Vda. de Terre more than substantially proved her status as *de jure* tenant of the landholding sold to J.V. Lagon. She enjoyed security of tenure beginning in 1952, and there being no showing that the agricultural leasehold relation was extinguished under any of the causes provided by law, the agricultural leasehold relation subsists, even after the successive transfers of the property. Vda. de Terre's death is not even an impediment because her death bound her legal heirs who have succeeded her as agricultural lessee with concomitant right to redeem the landholding or to be paid disturbance compensation had the land been legally converted for commercial use.[36]

ACCORDINGLY, I vote to **DENY** the Petition for Review on Certiorari and **AFFIRM** the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 05331-MIN.

---

[35] *Cf. Landicho v. Sia*, 596 Phil. 658, 682 (2009) [Per *C.J.* Puno, Second Division].

[36] Rep. Act No. 3844, Sec. 9 provides:

Section 9. *Agricultural Leasehold Relation Not Extinguished by Death or Incapacity of the Parties.*— In case of death or permanent incapacity of the agricultural lessee to work his landholding, the leasehold shall continue between the agricultural lessor and the person who can cultivate the landholding personally, chosen by the agricultural lessor within one month from such death or permanent incapacity, from among the following: (a) the surviving spouse; (b) the eldest direct descendant by consanguinity; or (c) the next eldest descendant or descendants in the order of their age: *Provided*, That in case the death or permanent incapacity of the agricultural lessee occurs during the agricultural year, such choice shall be exercised at the end of that agricultural year: *Provided, further*, That in the event the agricultural lessor fails to exercise his choice within the periods herein provided, the priority shall be in accordance with the order herein established.

In case of death or permanent incapacity of the agricultural lessor, the leasehold shall bind his legal heirs.

THIRD DIVISION

[G.R. No. 220141. June 27, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARNULFO BALENTONG BERINGUIL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DRUGS; PROOF THAT THE TRANSACTION ACTUALLY TOOK PLACE, COUPLED WITH THE PRESENTATION OF THE *CORPUS DELICTI,* IS NECESSARY; FACTUAL FINDINGS OF THE LOWER COURTS, CONFIRMED.— In the prosecution of illegal sale of drugs, what is material is proof that the transaction actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. In the present case, we confirm the lower court findings that the prosecution clearly showed that the sale for one (1) brick of cocaine actually took place and that the authorities seized it; which thereafter passed through the proper custodial chain until it was identified and submitted to the court as evidence. Significantly, the present appeal raises only minor inconsistencies too trivial for us to disturb the findings and conclusions of the lower courts.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES ON MINOR DETAILS DO NOT IMPAIR THEIR CREDIBILITY.— It is a settled rule that discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not actually touching upon the central fact of the crime, or the basic aspects of "the who, the how, and the when" of the crime committed, do not impair their credibility because they are but natural and even enhance their truthfulness as they wipe out any suspicion of a counseled or rehearsed testimony; and minor contradictions among witnesses are to be expected in view of differences of impressions, vantage points, memory, and other relevant factors.

3. ID.; ID.; IN VIEW OF THE DEFENSE'S FAILURE TO QUESTION THE INTEGRITY OF THE EVIDENCE, THE PRESUMPTION OF REGULARITY IN THE HANDLING OF THE EXHIBITS BY THE BUY-BUST TEAM AND THE PRESUMPTION THAT THEY PROPERLY DISCHARGED THEIR DUTIES SHOULD APPLY.— We note in this regard that at no time during the trial did the defense question the integrity of the evidence: by questioning either the chain of custody or the evidence of bad faith or ill will on the part of the police, or by proof that the evidence had been tampered with. Under these circumstances, the presumption of regularity in the handling of the exhibits by the buy-bust team and the presumption that they had properly discharged their duties should apply. As the record shows, the integrity of the adduced evidence has never been tainted, so that it should retain its full evidentiary value.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

We resolve in this appeal the challenge to the 27 February 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 01624. The CA affirmed the 11 March 2013 Decision[2] of the Regional Trial Court *(RTC)*, Branch 3, Guiuan, Eastern Samar, in Criminal Case No. 2404, finding accused-appellant Arnulfo Balentong Beringuil *(Beringuil)* guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165, imposing on him the penalty of life imprisonment and a fine of ₱500,000.00.

---

[1] *Rollo*, pp. 4-21, penned by Associate Justice Marie Christine Azcarraga-Jacob, and concurred in by Associate Justices Edgardo L. Delos Santos and Ma. Luisa C. Quijano-Padilla.

[2] CA *rollo*, pp. 37-49, penned by Judge Rolando M. Lacdo-o.

THE FACTS

The prosecution charged Beringuil before the RTC for the illegal sale of one (1) brick of cocaine, a dangerous drug, weighing 993.00 grams. The information reads:

> That on or about the 8th day of February 2010 at about 9:00 o'clock in the evening at the Salcedo Public Market, Salcedo, Eastern Samar, Philippines, within the jurisdiction of this Honorable Court, the aforementioned accused who acted without the necessary permit or authority whatsoever, did then and there wilfully, unlawfully and criminally sell, deliver and dispense one (1) brick of cocaine weighing 993.00 grams, a dangerous drug.
>
> CONTRARY TO LAW.[3]

Beringuil pleaded not guilty during his arraignment.

The Evidence for the Prosecution

The evidence for the prosecution shows that Beringuil was caught in a buy-bust operation conducted by PDEA, Region VIII agents on 8 February 2010. At about 9:00 P.M. at the Salcedo Public Market, Salcedo, Eastern Samar, Intelligence Officer 1 Germiniano Laus, Jr. *(IO1 Laus)* and a confidential informant were waiting for Beringuil whom they knew was looking for a buyer of cocaine worth ₱20,000.00. Not long after they arrived, a certain Sammy Macajeto *(Sammy)* arrived on a motorcycle and approached IO1 Laus and the confidential informant. Sammy then told IO1 Laus to give him the ₱20,000.00 but the latter refused because he wanted to give the money to Beringuil himself. Sammy left and returned with Beringuil who then invited IO1 Laus and the confidential informant to a dimly lit area. There, Beringuil showed IO1 Laus the brick of cocaine wrapped in manila paper with a Coca-Cola sticker. In turn, IO1 Laus gave him the boodle money which Beringuil put inside his right pocket. At this moment, IO1 Laus took off his hat as the prearranged signal that the sale had already been consummated.

When the backup team arrived, Beringuil was arrested and the boodle money was recovered from him. Meanwhile, IO1

---

[3] Records, p. 1.

Laus took possession of the bag containing the brick of cocaine. During the commotion, however, Sammy was able to escape.

Considering that the crime scene was poorly lit and surrounded by people, the team brought Beringuil and the confiscated items to the police station at Salcedo about five hundred (500) meters away.

During the inventory, IO1 Laus marked the confiscated drug with "ABB-1" in the presence of Beringuil and an elected barangay official. Another team member took pictures of the inventory proceedings. Although Beringuil did not sign the certificate of inventory, the elected barangay official signed as a witness.

After the incident was recorded in the blotter of the police station, the buy-bust team brought Beringuil to the PDEA Regional Office at Palo, Leyte. IO1 Laus kept the confiscated items in his possession on their way to their office. Upon arrival, a final inventory was done, this time in the presence of representatives from the media and the DOJ.

Thereafter, IO1 Laus, accompanied by two (2) other members of the buy-bust team, personally turned over the confiscated drugs and the request for the chemical analysis of its contents. The chemistry report revealed that the examined item tested positive for cocaine, a dangerous drug.

The Version of the Defense

In his defense, Beringuil denied the charges against him and claimed that the whole incident was a frame-up. He said that he went to the public market because a certain Melvin Fabe *(Melvin)* requested that he bring his personal belongings and carpentry tools with him. When he alighted from the motorcycle, Beringuil handed the bag to Melvin; at the same time, four (4) men approached and asked if he was Nonoy Beringuil. After he answered "yes," the men pinned his arms behind his back and made him get in a white van.

Beringuil insisted that there was no transfer of money whatsoever and that he did not have any drugs on him at that

time. When he was shown the brick of cocaine at the police station, Beringuil denied the allegations that it was taken from him.

The RTC Ruling

The RTC found Beringuil guilty beyond reasonable doubt of the illegal sale of dangerous drugs. It was convinced that all the elements for the crime were present, even the existence of the *corpus delicti* or the drug itself, because all the testimonies of the prosecution witnesses were consistent with the rest of the evidence. The RTC also held that even if the buy-bust team did not strictly observe the guidelines for proper custody and disposition of dangerous drugs, they were able to preserve the identity and integrity of the confiscated drugs. Lastly, the RTC did not give much credence to Beringuil's defenses as they were inherently weak and uncorroborated.

The CA Ruling

In the assailed CA decision, the appellate court affirmed the decision of the RTC *in toto*. The CA did not see any cogent reason to depart from the findings of the trial court as to the preservation of the evidentiary value of the confiscated drug from Beringuil. As regards the other elements of illegal sale, the CA affirmed the findings of the trial court with respect to the credibility of the prosecution witnesses. The CA considered the inconsistencies raised by Beringuil and saw beyond them because the totality of the prosecution's evidence effectively pointed to Beringuil's conviction.

OUR RULING

After due consideration, we agree with the conclusions and the penalty imposed by the lower courts, and resolve to deny the appeal for lack of merit.

In the prosecution of illegal sale of drugs, what is material is proof that the transaction actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. In the present case, we confirm the lower court findings that the prosecution clearly showed that the sale for one (1) brick of cocaine actually took place and that the authorities seized it;

which thereafter passed through the proper custodial chain until it was identified and submitted to the court as evidence. Significantly, the present appeal raises only minor inconsistencies too trivial for us to disturb the findings and conclusions of the lower courts.

Beringuil said that there were inconsistencies as to: (1) the time of arrival at the area of operation, (2) where the buy-bust team met the informant, and (3) who communicated with him, to wit:

> There are material inconsistencies in the testimonies of the prosecution witnesses. While PO Geminiano Laus, Jr. said that they arrived in the area of operation at around 6:30 in the evening of February 8, 2010, IO2 Jelou Anthony Paca said that they arrived at around 8:00 in the evening of that day.
>
> While PO Geminiano Laus, Jr. said that the team only met with the confidential informant in the area of operation in the Salcedo Public Market on that day, IO2 Jelou Anthony Paca disclosed that the confidential informant was present as early as when the team conducted the briefing for the buy-bust in their office in Palo, Leyte.
>
> While PO Geminiano Laus, Jr. claimed to have no involvement between the communication of the confidential informant and the accused over the sale transaction to take place on that day, IO2 Jelou Anthony Paca said it was PO Geminiano Laus, Jr., as the poseur-buyer, who communicated with the accused for the sale transaction.[4]

It is a settled rule that discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not actually touching upon the central fact of the crime,[5] or the basic aspects of "the who, the how, and the when" of the crime committed,[6] do not impair their credibility because they are but natural and even enhance their truthfulness as they wipe out any suspicion of a counseled or rehearsed testimony;[7] and minor contradictions among witnesses are to be expected in

---

[4] CA *rollo*, p. 31.

[5] *People v. Magno*, 357 Phil. 439, 448 (1998).

[6] *People v. Baludda*, 376 Phil. 614, 625 (1999).

[7] *People v. Morico*, 316 Phil. 270, 275 (1995).

view of differences of impressions, vantage points, memory, and other relevant factors.[8]

As for the evidentiary value of the confiscated item, Beringuil contends that the specimen examined was allegedly not the same item that was confiscated from him because a witness testified that other than the Coca-Cola sticker, no other markings were found on the suspected brick of cocaine. On this matter, after reviewing the records, we agree with the CA when it said that the witnesses' testimony was made under a mistaken understanding of the question asked. However, based on the documentary evidence, the confiscated item was already marked with "ABB-1" at the Salcedo Police Station. This was supported by all the other documentary evidence as well as by the testimony of IO1 Laus.

We note in this regard that at no time during the trial did the defense question the integrity of the evidence: by questioning either the chain of custody or the evidence of bad faith or ill will on the part of the police, or by proof that the evidence had been tampered with. Under these circumstances, the presumption of regularity in the handling of the exhibits by the buy-bust team and the presumption that they had properly discharged their duties should apply.[9] As the record shows, the integrity of the adduced evidence has never been tainted, so that it should retain its full evidentiary value.

WHEREFORE, in the light of the foregoing, we **DENY** the appeal and **AFFIRM** the 27 February 2015 Decision of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 01624 *in toto*.

SO ORDERED.

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

---

[8] *People v. Utinas*, 309 Phil. 334, 342 (1994); *People v. Santos*, 306 Phil. 705, 711 (1994).

[9] *People v. Domado*, 635 Phil. 74, 91 (2010); citing *People v. Miranda*, 560 Phil. 795, 810 (2007).

THIRD DIVISION

[G.R. No. 222497. June 27, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PEDRO RUPAL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC) AS AMENDED BY REPUBLIC ACT (R.A.) NO. 8353; RAPE; WHERE RAPE WAS ALLEGED TO HAVE BEEN COMMITTED BY FORCE, THREAT OR INTIMIDATION, IT IS IMPERATIVE FOR THE PROSECUTION TO ESTABLISH THAT THE ELEMENT OF VOLUNTARINESS ON THE PART OF THE VICTIM IS ABSOLUTELY WANTING.— For a charge of rape under Art. 266-A(1) of Republic Act (*R.A.*) No. 8353 to prosper, it must be proved that: (1) the offender had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. The gravamen of rape under Art. 266-A (1) is carnal knowledge of "a woman against her will or without her consent." In this case where it was alleged to have been committed by force, threat or intimidation, "it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause."

2. ID.; ID.; ID.; DEGREE OF FORCE AND INTIMIDATION NECESSARY TO CONSUMMATE RAPE, SUFFICIENTLY ESTABLISHED.— "Force, as an element of rape, must be sufficient to consummate the purposes which the accused had in mind. On the other hand, intimidation must produce fear that if the victim does not yield to the bestial demands of the accused, something would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident." In this case, AAA was able to credibly narrate that it was through force that accused-appellant was able to

carry out his evil desire by dragging her from the shed to the coconut plantation and there pushing her to the ground to abuse her. In the same vein, the circumstance of intimidation was demonstrated by accused-appellant's threat that he would kill her mother and her siblings once she revealed to BBB what he did to her.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF MINOR VICTIM GIVEN WEIGHT AND CREDIT DESPITE INCONSISTENCIES ON MINOR AND COLLATERAL MATTERS.—** [I]nconsistencies on minor details and collateral matters do not affect the substance, truth, or weight of the victim's testimonies. Even granting that there were inconsistencies in AAA's claim as to the number of times accused-appellant had carnal knowledge of her, jurisprudence instructs that "when the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity." Courts generally give leeway to minor witnesses when relating traumatic incidents of the past.

4. **ID.; ID.; ID.; VICTIM'S TESTIMONY AS CORROBORATED BY PHYSICIAN'S FINDINGS PRODUCE A MORAL CERTAINTY THAT THE ACCUSED INDEED RAPED THE VICTIM.—** AAA's testimony that she was raped finds support in Dr. Auza's medical findings that the lacerations in AAA's vaginal opening could have been caused by the forcible entry of a hard object, possibly a male genitalia, and that her hymen was no longer intact. It is emphasized that when a rape victim's allegation is corroborated by a physician's finding of penetration, "there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge." Such 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. The "[p]hysical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses." Moreover, a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give

out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.

5. ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT AND FINALITY; THREE GUIDING PRINCIPLES IN REVIEWING RAPE CASES, REITERATED.— The legal teaching trenchantly maintained in our jurisprudence is that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case. x x x It must be stressed that the Court had conscientiously observed in this case the three principles that had consistently guided it in reviewing rape cases, *viz*: (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; but found nothing to depart from the ruling of the trial court that AAA's testimony was credible and straightforward, especially that this was sustained by the CA. "In rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis." On the one hand, records will confirm that the accused-appellant miserably failed to show in his appeal that the RTC and the CA overlooked a material fact that would have changed the outcome of the case or misunderstood a circumstance of consequence in their evaluation of AAA's credibility.

6. ID.; ID.; DEFENSES OF DENIAL AND ALIBI OF THE ACCUSED-APPELLANT WERE WEAK.— Nothing is more settled in criminal law jurisprudence than that alibi and denial cannot prevail over the positive and categorical testimony and identification of the complainant. For the defense of alibi to

prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission. On the one hand, denial is an inherently weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness.

7. CRIMINAL LAW; RPC AS AMENDED BY R.A. NO. 8353; RAPE; PENALTY AND CIVIL LIABILITY.— Under Art. 266-B of R.A. No. 8353, the penalty of *reclusion perpetua* shall be imposed upon the accused who has carnal knowledge of a woman through force, threat or intimidation. Following the Court's pronouncement in *People v. Jugueta*, the accused-appellant shall likewise be liable to pay AAA the following: civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00, with interest at the rate of 6% per annum reckoned from the finality of this decision until full payment.

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.*:

Through this appeal, accused-appellant Pedro Rupal assails the 14 July 2015 Decision[1] of the Court of Appeals *(CA)*, Twentieth Division, in CA-G.R. CR HC No. 01742 affirming, with modification as to the award of damages, the 5 September 2012 Decision[2] of the Regional Trial Court *(RTC)*, [redacted]

[1] CA *rollo*, pp. 82-96. Penned by Associate Justice Jhosep Y. Lopez and concurred in by Associate Justices Pamela Ann Abella Maxino and Germano Francisco D. Legaspi.

[2] Records, pp. 117-127. Penned by Judge Marivic Trabajo Daray.

[redacted] Bohol, finding him guilty of Rape as defined and penalized under Article (*Art.*) 266-A of the Revised Penal Code *(RPC)*.

THE FACTS

The accused-appellant was charged with Rape in an information[3] docketed as Crim. Case No. 06-1748, the accusatory portion of which reads:

> That on or about the 15th day of December 2005, in the Municipality of ZZZ, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, acting as Family Court, the above-named accused with lewd designs, grab AAA, a minor, she being born on November 27, 1992, while she was about to walk away from the accused, did then and there wilfully, unlawfully, and feloniously drag the victim towards a nearby coconut plantation and with the use of force, threat, and intimidation and thereafter said accused inserted his erect penis into the vagina of said AAA, thus, the accused succeeded in having carnal knowledge with the said victim without her consent and against her will, to the damage and prejudice of the said offended party.

Acts committed contrary to the provisions of Article 335[4] of the

---

[3] *Id.* p.2.

[4] Article 335. *When and how rape is committed.* — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by *reclusion perpetua*.

Whenever the crime of rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall be death.

When rape is attempted or frustrated and a homicide is committed by reason or on the occasion thereof, the penalty shall be likewise death.

Revised Penal Code as amended by R.A. No. 7659[5] and R.A. No. 8353.[6]

When arraigned, accused-appellant pleaded not guilty[7] thus, trial proceeded with the prosecution presenting AAA,[8] BBB who is the mother of AAA, and Dr. Analita N. Auza.

To prove his defense, the accused-appellant took the witness stand.

The Version of the Prosecution

At around 7:00 a.m. on 15 December 2005, AAA, a thirteen-year-old high school student, was at her school preparing decorations for her school's Christmas party when her classmate told her that somebody was looking for her at the waiting shed. When she went there, AAA saw accused-appellant who told her that her mother sent her ₱100.00 for her exchange gift but

---

When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death. (As amended by R.A. 2632, approved June 18, 1960, and R.A. 4111, approved June 20, 1964).

[5] Entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, as Amended, Other Special Penal Laws, and for other Purposes."

[6] 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. 3185, as Amended, Otherwise Known as the Revised Penal Code, and for other Purposes" and dated 30 September 1997.

[7] Records, p. 27.

[8] The true name of the victim had been replaced with fictitious initials in conformity to 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. 8508 *("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").*

that she needed to have the hundred-peso bill changed because he used the ₱50.00 for his fare. AAA got the money but because she still had classes, the accused-appellant had to return later to get the ₱50.00.[9]

At about 1:00 p.m., accused-appellant returned to the waiting shed. AAA was handing him the ₱50.00, he pulled the handle of her bag, detaching it. Accused-appellant then pulled her towards the coconut plantation, pushed her to the ground, removed her underwear, raised her skirt, and mounted her. While AAA was crying, accused-appellant inserted his penis into her vagina and then made a push-and-pull movement, kissed her lips, and touched her breasts. After having carnal knowledge of AAA, accused-appellant told her not to tell BBB what happened, otherwise he would kill BBB and her siblings. Afraid that accused-appellant would make good his threat, AAA did not tell her mother what happened to her.[10]

In the afternoon of 2 January 2006, accused-appellant chased AAA as she alighted from a jeep on her way home to CCC, BBB's sister, with whom AAA was then staying as CCC's house was nearer her school. AAA ran when she noticed that accused-appellant was behind her and stopped only when she saw him take another direction. When the bystanders who saw accused-appellant chase AAA told CCC about it she, together with a barangay tanod, proceeded to BBB's house and informed her what accused-appellant had done.[11]

When BBB arrived at CCC's house, she inquired from AAA if she was raped. Because AAA refused to answer, the barangay tanod advised BBB to submit AAA to a medical examination. AAA agreed but requested that the examination be done the following day as it was already late. At around 11:00 p.m., AAA confided to BBB that she was raped twice by accused-appellant; once, when she was nine years old and the second,

---

[9] TSN, 27 October 2006, pp. 5-8.

[10] *Id.* pp. 8-14; TSN, 3 December 2009, p. 6.

[11] TSN, 27 October 2006, pp. 16-17; TSN, 3 December 2016, pp. 13-16; TSN, 15 July 2010, pp. 9-10.

on 15 December 2005. AAA admitted that she never told her about it as she was afraid of his threat that he would kill her and AAA's siblings.[12]

On 4 January 2006, AAA[13] and BBB[14] went to the police station to submit their statements regarding the 15 December 2005 incident. In her statement, AAA narrated that accused-appellant started raping her since she was nine years old and that these had taken place more than ten times. [15]

On 9 January 2006, AAA was physically examined by Dr. Auza, the municipal health officer. AAA told Dr. Auza that she was raped several times since she was nine years old. Dr. Auza arrived at the following findings and remarks after a perineal examination of AAA:

Findings:	Nulliparous, scanty pubic hair. Presence of healed lacerated wound at 2, 7 and 11 o'clock sites of the vaginal opening.
Remarks:	Hymen not intact Vaginal penetration is evident.[16]

In her analysis, Dr. Auza remarked that the laceration at the vaginal opening could have been caused by the forcible entry of a hard object, possibly, a male genitalia.[17]

The Version of the Defense

Accused-appellant is the husband of DDD, BBB's sister; thus, AAA calls him "manong." Sometime in 2005, DDD confirmed to accused-appellant that she had quarrelled with BBB when BBB called her daughter a prostitute. Accused-appellant was ashamed that BBB and DDD were quarrelling despite being siblings.[18]

---

[12] TSN, 15 July 2010, pp. 10-18.

[13] Records, p. 8, Exh. "A".

[14] *Id.* p. 9.

[15] TSN, 3 December 2009, pp. 4-8.

[16] Records, p. 10, Exh. "B".

[17] TSN, 25 October 2011, p. 5.

[18] TSN, 24 January 2012, pp. 4-5, 9-10.

One morning until 3:00 p.m. on 15 December 2005, the accused-appellant and his two children cleaned the garden outside their house, which was just across the house of AAA. Accused-appellant rested thereafter inside the house and, at about 4:00 p.m., fetched water from the barangay deepwell. After he was done, he stayed home until he went to sleep.[19]

Alleging he did not commit any offense, accused-appellant did not execute any counter-affidavit when arrested in 2006 by the police.[20]

The Ruling of the RTC

The RTC held that AAA's testimony was straightforward and believable, coming from a child who had neither reason to tell a lie nor motive to falsely charge accused-appellant. While the RTC took note of the fact that there were only the medical certificate and the testimony of the physician to corroborate AAA's testimony, these, however, did not weaken the case since she was able to sufficiently prove that accused-appellant raped her on 15 December 2005. The RTC stressed that jurisprudence provides that great weight is given to the testimony of a child who was a rape victim.[21]

On the one hand, the RTC found weak accused-appellant's defense of denial compared to AAA's positive testimony. Moreover, accused-appellant's alibi was not only unbelievable but was also uncorroborated.[22]

Finding that the elements of Art. 266-A of the RPC was successfully proven by the prosecution, the RTC rendered its decision the decretal portion of which reads as follows:

> WHEREFORE, considering the foregoing, the court hereby finds accused Pedro Rupal GUILTY beyond reasonable doubt for the crime of Rape. In accordance with the penalty set forth under Article 266-

---

[19] *Id*. pp. 5-8; TSN, 8 March 2012, pp. 10-11.

[20] TSN, 24 January 2012, pp. 10-11.

[21] Records, pp. 125-126.

[22] *Id*. p. 126.

A of the Revised Penal Code, this court hereby sentences him to suffer the penalty of RECLUSION PERPETUA. He is likewise sentenced to pay civil indemnity to the victim AAA in the amount of FIFTY THOUSAND PESOS (₱50,000.00), Philippine Currency.

As it appears on record that the accused is under detention at the BJMP, [redacted], Bohol, said accused shall be credited with the full period of his detention subject to an assessment by the jail warden on his demeanour while in said detention center.

SO ORDERED.[23]

Believing that the RTC erred in its decision, accused-appellant appealed to the CA.

The Ruling of the CA

The CA found no merit in the appeal. The CA sustained the RTC's evaluation as to AAA's credibility since the trial judge had the advantage of examining the real and testimonial evidence before it as well as the demeanor of the witnesses. The CA ruled that AAA positively, candidly, and categorically narrated the gruesome and terrifying ordeal she experienced in the hands of accused-appellant.[24]

The CA did not find merit in accused-appellant's contention that there was inconsistency between AAA's testimony that she was raped by him since she was nine years old until she turned thirteen, with that of BBB who claimed that AAA admitted to her that she was raped only twice. The CA ruled that AAA's young and fragile mind, and with the accused-appellant's threat still existing, made her disclose that she was raped only twice. With the ongoing trial and knowing that she and her family could no longer be harmed by accused-appellant, she had the courage to reveal that the sexual assaults took place even before she was nine years old. Additionally, the CA held that the filing of only one criminal charge against accused-appellant does not in any way belie that she was raped by accused-appellant on 15 December 2005.[25]

---

[23] *Id.* p. 127.

[24] CA *rollo*, pp. 88-89.

[25] *Id.* p. 91.

Finding that all the elements of rape had been established by the prosecution, the CA affirmed the RTC decision convicting accused-appellant but modified the award of damages, *viz*:

WHEREFORE, the foregoing premises considered, the appeal is **DENIED**. The assailed *Decision* dated September 5, 2012 of the Regional Trial Court of [redacted], Bohol, is **AFFIRMED with MODIFICATION.** Accused-appellant is ordered to pay AAA the following:

1. PhP75,000.00 as civil indemnity;
2. PhP75,000.00 as moral damages;
3. PhP30,000.00 as exemplary damages.

All damages awarded shall earn interest at the rate of six percent (6%) per annum from finality of this judgment until fully paid.

SO ORDERED.[26]

ISSUES

I.

THE COURT A QUO GRAVELY ERRED IN GIVING MUCH WEIGHT AND CREDENCE TO THE INCONSISTENT, HIGHLY INCREDIBLE, AND IMPROBABLE TESTIMONY OF THE PRIVATE COMPLAINANT.

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

OUR RULING

The appeal is without merit.

The elements of rape were proven by the prosecution.

For a charge of rape under Art. 266-A(1)[27] of Republic Act (*R.A.*) No. 8353 to prosper, it must be proved that: (1) the offender

---

[26] CA *rollo*, pp. 95-96.

[27] Article 266-A. Rape: *When And How Committed.* — Rape is committed:

had carnal knowledge of a woman, and (2) he accomplished such act through force or intimidation, or when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.[28] The gravamen of rape under Art. 266-A (1) is carnal knowledge of "a woman against her will or without her consent."[29] In this case where it was alleged to have been committed by force, threat or intimidation, "it is imperative for the prosecution to establish that the element of voluntariness on the part of the victim be absolutely lacking. The prosecution must prove that force or intimidation was actually employed by accused upon his victim to achieve his end. Failure to do so is fatal to its cause."[30]

Convincingly, AAA narrated that accused-appellant had carnal knowledge of her, against her will, on 15 December 2005, *viz*:

Q. Now, when you returned the ₱50.00 extra amount to Pedro Rupal, what happened next?
A. He pulled me.

Q. Who pulled you?
A. Pedro Rupal.

Q. What happened when he pulled you?
A. The handle of my bag was severed.

x x x x x x x x x

Q. And what happened after the handle of your bag was severed because it was pulled by Pedro?

---

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.

[28] *People v. Empuesto,* G.R. No. 218246, 17 January 2018.

[29] *People v. Corpuz*, G.R. No. 208013, 3 July 2017.

[30] *People v. Tionloc*, G.R. No. 212193, 15 February 2017.

A. He pulled me towards the coconut plantation.

Q. And what happened next?
A. He pushed me.

Q. So what happened to you when he pushed you?
A. I fell down and he held me.

Q. After he held you what happened next?
A. He abused me.

Q. When you said he abused you, what did he do at that time?
A. He made a push and pull movement on me.

Q. What was the position of both of you when he made that push and pull movement?
A. He was on top of me.

Q. Were you lying down or standing up?
A. Lying down.

Q. Where did you lie down?
A. In the bushes.

Q. At that time when Pedro made a push and pull movement on you on that position, were you wearing still your dress?
A. Yes, my dress was still on but I have no panty anymore.

Q. What were the clothes you were wearing at that time, was it a whole dress or a blouse and skirt?
A. I was wearing the school uniform, a blouse and a skirt.

Q. Now, what was the position of your skirt at that time when Pedro made a push and pull movement on you while you were in that position – he was on top of you and you were lying on the ground?
A. It was raised.

Q. When he made that push and pull movement, did you feel a pain on any part of your body?
A. Yes.

Q. Which part of your body felt pain?
A. My vagina.

Q. Why is it that you felt pain in your vagina?
A. Because it seems something was pushed in my vagina.

Q. Did you know what was that something that was being pushed in your vagina?
A. Yes.

Q. What was that something that was pushed towards your vagina?
A. His penis.

x x x x x x x x x

Q. You said earlier that when the accused made a push and pull movement on you in that position you have no more panty and your skirt was raised, why, what happened to your panty, where was your panty?
A. Maybe it was pulled by him.

Q. And who raised your skirt?
A. Pedro.

Q. Could you give us an estimate of the duration of time when Pedro made that push and pull movement on you while you were on that position, as to how many minutes or seconds?
A. I think for five (5) minutes.

x x x x x x x x x

Q. Aside from making a push and pull movement of his penis on your vagina at that time, AAA, what else did Pedro do on you at that time?
A. He kissed me.

Q. Where did he kiss you?
A. My lips.

Q. Aside from kissing your lips what else did he do to you?
A. He touched my breasts.

x x x x x x x x x

Q. What did Pedro tell you after that?
A. I must not tell my mother.

Q. Why, what if you tell your mother?
A. That according to him he is going to kill my mother and my brothers.[31]

---

[31] TSN, 27 October 2006, pp. 8-14.

Accused-appellant denigrates AAA's testimony as against human experience saying, albeit he was not armed when he allegedly dragged her to the coconut plantation, she only cried instead of physically resisting him or shouting for help. Moreover, he claimed that it was not shown that he threatened AAA from the waiting shed until the alleged rape was consummated.[32]

In any rape case, the law does not impose a burden on the rape victim to prove resistance because it is not an element of rape.[33] That AAA did not offer any resistance to accused-appellant or did not shout for help does not find that she voluntarily submitted to his hideous acts considering that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested.[34] It is important to state the enlightened teaching that the workings of the human mind placed under emotional stress are unpredictable, and people react differently: some may shout, others may faint, and still others may be shocked into insensibility even if there may be a few who may openly welcome the intrusion.[35]

The absence of any threat to AAA from accused-appellant at the waiting shed does not disprove the fact that he had carnal knowledge of her. It will be noted that pursuant to Art. 266-A of the RPC, rape is committed when a man has carnal knowledge of a woman either through force, or threat, or intimidation, among other circumstances. Thus, proof that the offense was committed either through any of the three means, i.e., force, threat, or intimidation, will suffice to warrant a conviction as long as this is satisfactorily proven by the prosecution.

"Force, as an element of rape, must be sufficient to consummate the purposes which the accused had in mind. On the other hand, intimidation must produce fear that if the victim does not yield to the bestial demands of the accused, something

---

[32] CA *rollo*, p. 32.

[33] *People v. Palanay*, G.R. No. 224583, 1 February 2017.

[34] *People v. Descartin*, G.R. No. 215195, 7 June 2017.

[35] *People v. Empuesto*, *supra* note 28.

would happen to her at that moment or even thereafter as when she is threatened with death if she reports the incident."[36] In this case, AAA was able to credibly narrate that it was through force that accused-appellant was able to carry out his evil desire by dragging her from the shed to the coconut plantation and there pushing her to the ground to abuse her. In the same vein, the circumstance of intimidation was demonstrated by accused-appellant's threat that he would kill her mother and her siblings once she revealed to BBB what he did to her.

Accused-appellant fustigates the alleged disturbing and contradicting claims of AAA that she was repeatedly raped by him since she was nine years old until she reached thirteen, yet, she had intimated to BBB that she was raped only twice.[37]

Noteworthily, whether AAA was raped twice or for several more times by accused-appellant is immaterial to this case considering that this is neither an issue nor a material element for the successful prosecution of the offense of rape. Notwithstanding this, the Court is convinced by the CA's findings on the alleged inconsistency as to the number of times AAA had been raped by accused-appellant, viz:

> x x x It is eminently probable that at the time AAA was confronted by her mother on January 2, 2006, she was in state of disarray and confusion. She was possibly perplexed on what to do and on what to say to her mother as she was afraid that the accused-appellant might carry out his prior threats to kill her mother and siblings. Such threats, gravely intimidating and instilling tremendous fear in her young and fragile mind, probably caused AAA to disclose to her mother that she was raped only twice. However, during the trial proper, knowing that she and her family could no longer be harmed by the accused-appellant, took courage and narrated that the sexual assaults occurred even before when she was only nine years of age.[38]

Apparently, that same degree of courage manifested by AAA before the trial court when she claimed that she was raped several

---

[36] *People v. Tionloc*, *supra* note 30.

[37] CA *rollo*, p. 33.

[38] *Id.*, p. 91.

times by accused-appellant was previously exhibited before the police station when she filed her complaint against him, viz:

x x x x x x x x x

Q. Why are you here before the office of Trinidad police station x x x?
A. I am here to file a formal complaint against PEDRO RUPAL, [redacted] for raping me.

Q. When and where did this happen?
A, The last incident was on December 15, 2005 at 1:00 in the afternoon more or less at the barangay YYY, ZZZ, Bohol particularly at the coconut plantation.

Q. How many times did this incident happen?
A. More than ten times.

Q. Can you please narrate the incident?
A. When I was 9 years old, he (Pedro Rupal) raped me at the kitchen of our neighbor and uttered some threatening words saying that he would kill my mother, brothers, and sisters if I reveal or report what he did to me. So I decided not to report to anybody about the incident. That the evil desire of my uncle was repeated more than ten times but the last incident happened on December 15, 2005 in the morning the same date at barangay YYY, ZZZ, Bohol where I am studying.[39]

Likewise, feeling that she was already safe and protected by the authorities, AAA thereafter confided to Dr. Auza that she was raped several times starting when she was nine years old.[40]

To stress, inconsistencies on minor details and collateral matters do not affect the substance, truth, or weight of the victim's testimonies.[41] Even granting that there were inconsistencies in AAA's claim as to the number of times accused-appellant had carnal knowledge of her, jurisprudence instructs that "when

---

[39] Records, p. 8, Exh. "A."

[40] *Id*., pp. 8-9, Exhs. "A" & "B".

[41] *People v. Entrampas*, G.R. No. 212161, 29 March 2017.

the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity."[42] Courts generally give leeway to minor witnesses when relating traumatic incidents of the past.[43]

Accused-appellant futilely asserts that what further taints AAA's credibility was that, despite her claim that he had carnal knowledge of her for several times, only one case of rape was filed against him.[44]

Accused-appellant failed to consider that the established rule is that it is the task of the prosecutor, and not the victim, to file a criminal case before the court. Moreover, the fact that there was only one case filed against accused-appellant cannot translate to a finding that he did not have carnal knowledge of AAA on 15 December 2005, especially considering that the evidence on record firmly established the elements of the offense as proven by the prosecution.

Significantly, AAA's testimony that she was raped finds support in Dr. Auza's medical findings that the lacerations in AAA's vaginal opening could have been caused by the forcible entry of a hard object, possibly a male genitalia, and that her hymen was no longer intact.[45] It is emphasized that when a rape victim's allegation is corroborated by a physician's finding of penetration, "there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge."[46] Such medico-legal findings bolster the prosecution's testimonial evidence. Together, these pieces of evidence produce a moral

---

[42] *People v. Descartin*, *supra* note 34.

[43] *People v. Divinagracia*, G.R. No. 207765, 26 July 2017.

[44] CA *rollo*, p. 33.

[45] TSN, 25 October 2011, p. 5.

[46] *People v. Divinagracia*, *supra* note 43.

certainty that the accused-appellant indeed raped the victim.[47] The "[p]hysical evidence is evidence of the highest order. It speaks more eloquently than a hundred witnesses."[48] Moreover, a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction.[49]

The legal teaching trenchantly maintained in our jurisprudence is that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are accorded finality, unless the records show facts or circumstances of material weight and substance that the lower court overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case.[50] The Court explained the reason for this teaching as follows:

> x x x The trial judge has the advantage of observing the witness' deportment and manner of testifying. x x x The trial judge, therefore, can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[51]

It must be stressed that the Court had conscientiously observed in this case the three principles that had consistently guided it in reviewing rape cases, *viz*: (a) an accusation of rape can be made with facility, and while the accusation is difficult to prove,

---

[47] *People v. Deniega*, G.R. No. 212201, 28 June 2017.

[48] *People v. Francica*, G.R. No. 208625, 6 September 2017.

[49] *People v. Pacayra*, G.R. No. 216987, 5 June 2017.

[50] *People v. Gaa,* G.R. No. 212934, 7 June 2017.

[51] *People v. Bauit*, G.R. No. 223102, 14 February 2018.

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; but found nothing to depart from the ruling of the trial court that AAA's testimony was credible and straightforward, especially that this was sustained by the CA. "In rape cases, the credibility of the victim is almost always the single most important issue. If the testimony of the victim passes the test of credibility, which means it is credible, natural, convincing and consistent with human nature and the normal course of things, the accused may be convicted solely on that basis."[52] On the one hand, records will confirm that the accused-appellant miserably failed to show in his appeal that the RTC and the CA overlooked a material fact that would have changed the outcome of the case or misunderstood a circumstance of consequence in their evaluation of AAA's credibility.

The defenses of denial and alibi of the accused-appellant were weak.

To extricate himself from liability, accused-appellant proffers the defense that during the time material to the case he was fetching water from the well and that thereafter he stayed home.

Nothing is more settled in criminal law jurisprudence than that alibi and· denial cannot prevail over the positive and categorical testimony and identification of the complainant.[53] For the defense of alibi to prosper, the accused must prove that he was somewhere else when the offense was committed and that he was so far away that it was not possible for him to have been physically present at the place of the crime or at its immediate vicinity at the time of its commission.[54] On the one

[52] *People v. Empuesto*, *supra* note 28.

[53] *People v. Descartin*, *supra* note 34.

[54] *People v. Palanay*, *supra* note 33.

hand, denial is an inherently weak defense and constitutes self-serving negative evidence, which cannot be accorded greater evidentiary weight than the positive declaration by a credible witness.[55]

The Court takes note of the fact that, notwithstanding the grave charge against accused-appellant, not one of his children took the witness stand to fortify his defense that he was at home the whole day of 15 December 2005. Likewise, despite accused-appellant's claim that there were several people who saw him fetching water from the well in the afternoon of that day,[56] not one of them testified to reinforce his claim. Clearly, petitioner's alibi easily crumbled in the absence of any evidence to prove that it was improbable for him to be at the scene of the crime.

In his hopeless effort to prove the implausibility that he had carnal knowledge of AAA, he asserts that he saw her only after 15 December 2005.[57] AAA was the niece of accused-appellant, she being the daughter of his wife's sister.[58] Additionally, accused-appellant admitted that he had been residing in Bohol since 1975 and that his nearest neighbor was AAA's family.[59] More significant is accused-appellant's acknowledgement that his daughter and AAA were classmates and friends, and they went to school and back to their respective homes together.[60] These facts, confirmed by accused-appellant, himself, compellingly demolish his incredible assertion that he could not have committed the offense charged because he saw AAA only after 15 December 2005.

Accused-appellant's averment that the instant case was filed against him because of the conflict between his wife and BBB[61] likewise fails to convince.

---

[55] *People v. Udtohan*, G.R. No. 228887, 2 August 2017.

[56] TSN, 8 March 2012, pp. 10-11.

[57] *Id.*, pp. 14-15.

[58] *Id.*, p. 2.

[59] *Id.*

[60] *Id.*, p. 15.

[61] *Id.*, p. 8.

It was incredible that BBB would allow AAA to report to the authorities, submit to medical examination, and undergo a humiliating public trial anchored on an allegedly trumped-up charge if her sole purpose was to get even with her sister. The Court takes note of the fact that based on the testimony of the accused-appellant, it was BBB who started the alleged feud with DDD when BBB called DDD's daughter a prostitute. Since BBB had already offended the accused-appellant's family, it was incredible that she would be on the offensive again by making it appear that accused-appellant had carnal knowledge of AAA. For sure, what convinces the Court of the speciousness of the alleged conflict between BBB and her sister was AAA's credible narration of the horrid details on what happened on 15 December 2005, which she could have not known due to her tender age. Simply put, these details were known to AAA because these were the truth. Finding significance here is the jurisprudence that alleged motives of family feuds, resentment or revenge are not uncommon defenses, and have never swayed the Court from lending full credence to the testimony of a complainant who remains steadfast throughout direct and cross-examinations, especially a minor, as in this case.[62]

The penalty and the award of damages

Under Art. 266-B of R.A. No. 8353, the penalty of *reclusion perpetua* shall be imposed upon the accused who has carnal knowledge of a woman through force, threat or intimidation.

Following the Court's pronouncement in *People v. Jugueta*,[63] the accused-appellant shall likewise be liable to pay AAA the following: civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00, with interest at the rate of 6% per annum reckoned from the finality of this decision until full payment.

WHEREFORE, the appeal is **DISMISSED**. Accused-appellant Pedro Rupal is hereby found **GUILTY** of Rape under

[62] *People v. Pacayra*, *supra* note 49.

[63] 783 Phil. 806, 849 (2016).

Art. 266-A of R.A. No. 8353 and is sentenced to suffer the penalty of *reclusion perpetua.* He shall be held liable to pay AAA civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00, 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.

THIRD DIVISION

[G.R. No. 222645. June 27, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL DELIMA, ALLAN DELIMA, JOHN DOE, PAUL DOE and PETER DOE,** *accused*, **MICHAEL DELIMA and ALLAN DELIMA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES OVER INSIGNIFICANT MATTERS DO NOT DISCREDIT THE WITNESS.— [T]he apparent inconsistency merely refers to insignificant matters as it only pertained to the sequence of how the events unfolded. Accused-appellants earnestly try to refute Jose's credibility on the ground that it is contrary to his affidavit and Anthony's testimony. Nevertheless, the assailed inconsistency is simply whether Jose called Anthony before or after Ramel was stabbed. It does not discount the fact that Jose's testimony categorically identified accused-appellants as those responsible for Ramel's death and clearly narrated their respective participation. His

testimony shows consistency on material points, i.e., the elements of the crime and the identity of the perpetrators[.]

2. ID.; ID.; POSITIVE IDENTIFICATION OF A WITNESS TRUMPS ACCUSED'S DENIAL AND ALIBI.— In view of Jose's identification of accused-appellants as Ramel's killers, their defenses of denial and alibi have no leg to stand on. It is axiomatic that the denial and alibi cannot prevail over positive identification. Further, in *Escalante v. People*, the Court explained that the alibi must show that it was physically impossible for the accused to be at the crime scene[.] x x x Accused-appellants claim that they were in their house sleeping at the time Ramel was stabbed. It is noteworthy that they were Anthony's neighbors and that the crime scene was merely 8 meters away from Anthony's home. Obviously, it was physically possible for them to be at the crime scene considering its proximity to their house. From such short distance, they could have easily left their house and proceeded to the crime scene. x x x [A]ccused-appellants' alibi should not be given weight and credence because of inconsistencies in their story. x x x These incongruities cast doubt on the veracity of their allegations.

3. ID.; ID.; CONSPIRACY; ESSENCE THEREOF IS UNITY OF ACTION AND PURPOSE; CONSPIRACY, ESTABLISHED BY OVERT ACTS IN CASE AT BAR.— There is an implied conspiracy if two or more persons aim their acts towards the accomplishment of the same unlawful subject, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment and may be inferred though no actual meeting among them to concert means is proved. The essence of conspiracy is unity of action and purpose. As early as the initial assault against Ramel, it is readily apparent that Allan and Michael's concerted action was towards the common purpose of hurting Ramel after they ganged up on him together with three other unidentified malefactors. Then, accused-appellants were mutually motivated by the desire to kill Ramel after Allan stabbed Ramel while Michael held the latter by the legs. Their concerted actions cannot be brushed aside as separate and distinct because Michael continued to hold the victim while Allan stabbed him several times.

4. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS TO BE APPRECIATED, NOT PRESENT IN THIS CASE.— For evident premeditation to be appreciated as a qualifying circumstance, the following elements must be present: (a) a previous decision by the accused to commit the crime; (b) overt act or acts indicating that the accused clung to one's determination; and (c) lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of one's acts. In this case, nothing in the records establishes the above-mentioned elements. In fact, it is worth emphasizing that neither the RTC nor the CA discussed the presence of the said qualifying circumstance. Consequently, evident premeditation cannot qualify the crime to murder.

5. ID.; ID.; ID.; TREACHERY; REQUISITES TO BE APPRECIATED; VICTIM'S DEFENSELESS STATE ALONE DOES NOT SUFFICE, IT MUST ALSO BE SHOWN THAT THE ACCUSED DELIBERATELY AND CONSCIOUSLY EMPLOYED THE MEANS AND METHOD OF ATTACK.— [T]here is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The requisites for treachery to be appreciated are: (a) at the time of the attack, the victim was not in a position to defend; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed. Here, it is unquestionable that Ramel was in no position to defend himself when Allan stabbed him. He was previously mauled by five persons and at the time of the stabbing, Michael was holding him by his legs. Ramel's weakened state and restricted movement rendered him unable to parry the lethal blows Allan inflicted on him. Nevertheless, Ramel's defenseless state alone does not suffice to appreciate the existence of treachery. After all, not only must the victim be shown defenseless, but it must also be shown that the accused deliberately and consciously employed the means and method of attack.

6. ID.; ID.; HOMICIDE; IN THE ABSENCE OF ANY QUALIFYING CIRCUMSTANCES, ACCUSED SHOULD

BE FOUND GUILTY ONLY OF HOMICIDE; PENALTY AND CIVIL LIABILITY.— In view of the absence of the qualifying circumstance of treachery and evident premeditation, Allan and Michael should be found guilty only of homicide x x x and sentenced to suffer an indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period, as maximum. Further, they are ordered to pay the heirs of Ramel Mercedes Congreso ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages, plus interest on all the damages awarded at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

This is an appeal from the 18 September 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CEB CR-HC No. 01820, which affirmed the 22 October 2013 Decision[2] of the Regional Trial Court, Branch 58, Cebu City *(RTC)*, in Criminal Case No. CBU-88328 finding accused-appellants Michael Delima *(Michael)* and Allan Delima *(Allan)* guilty beyond reasonable doubt of the crime of murder.

THE FACTS

In an Information[3] dated 26 February 2010, Michael and Allan, together with their co-accused, were charged with murder for

[1] *Rollo*, pp. 4-13; penned by Associate Justice Germano Francisco D. Legaspi and concurred in by Associate Justices Pamela Ann Abella Maxino and Jhosep Y. Lopez.

[2] CA *rollo*, pp. 34-41; penned by Presiding Judge Ma. Lynna P. Adviento.

[3] Records, pp. 1-2.

the death of Ramel Mercedes Congreso *(Ramel)*. The accusatory portion of the information reads:

> That on or about the 14th day of June 2009, at about 4:00 a.m., more or less, at Burgos St., Poblacion, Talisay City, Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating with together and mutually helping one another, armed with a bladed and pointed weapon, with deliberate intent, with intent to kill, and with treachery and evident premeditation, did then and there attack, assault and stab one RAMEL MERCEDES CONGRESO, with the use of said bladed and pointed weapon, hitting the latter on different parts of his body, and as a consequence of said stab wounds, RAMEL MERCEDES CONGRESO died instantaneously.

During their arraignment on 25 May 2010, Allan and Michael entered a plea of "Not Guilty."[4]

Version of the Prosecution

The prosecution presented Ramel's mother Josefina Congreso *(Josefina)*, Jose Gajudo, Jr. *(Jose)*, and Anthony Nator *(Anthony)* as its witnesses. Their combined testimonies sought to establish the following:

On 13 June 2009, Anthony invited Jose to his home to celebrate the barangay fiesta.[5] At around 4:00 A.M. the following day, Jose decided to go home. As he came out from Anthony's house, he saw five individuals ganging up on Ramel — the scuffle was around eight meters from Anthony's house. When they saw him, three of the five assailants scampered away while the two left continued to beat Ramel, whom they stabbed while they held and pulled him back by his pants. Scared of what he saw, Jose rushed back inside Anthony's house.[6]

Anthony was surprised that Jose was back because he had already asked permission to go home. When he asked why, Jose told him about the stabbing incident and asked Anthony

---

[4] *Id*. at 34.

[5] TSN, 28 September 2010, p. 6.

[6] TSN, 14 September 2010, pp. 3-5.

to accompany him to where it happened.[7] There, Jose pointed to the two persons whom he saw holding and stabbing Ramel and asked Anthony who they were.[8] Anthony said Allan was the one Jose saw stab Ramel while Michael held the victim by his pants; and that after the incident, he saw Michael and Allan just walk away from the crime scene.[9]

On 16 June 2009, Josefina's sister-in-law called her to say to her that her son Ramel had died from a stabbing incident. She travelled to Cebu and viewed Ramel's remains at the funeral parlor where she noticed that her son had several stab wounds on various parts of his body.[10]

Version of the Defense

The defense presented Michael, Allan, and their father Francisco Delima *(Francisco)* as witnesses. In their combined testimonies, they narrated:

On 13 June 2009, Michael, who was with a certain Lito, went to a disco at Poblacion, Talisay City. Meanwhile, his brother Allan was at home drinking with Francisco, in celebration of the barangay fiesta, and slept after their drinking session. On 14 June 2009, at around 1:00 A.M., Francisco fetched Michael from the disco and they went home. Once home, Michael slept and woke up at around 6:30 A.M. the next morning, when both he and Allan learned of the stabbing incident.[11]

The RTC Ruling

In its 22 October 2013 decision, the RTC found Michael and Allan guilty of murder for the stabbing of Ramel. The trial court noted that Jose, who neither knew Ramel nor Michael and Allan, positively identified Allan as the one who stabbed

---

[7] TSN, 28 September 2010, pp. 3-4.

[8] *Id.* at 4.

[9] TSN, 14 September 2010, pp. 5 and 9.

[10] TSN, 17 August 2010, pp. 3-4.

[11] TSN, 31 January 2012, pp. 3-4; TSN, 22 January 2013, pp. 3-4.

Ramel while Michael held the victim by his pants. It disregarded the arguments of accused-appellants that Anthony had a grudge against them on account of their conflicting testimonies, and that Anthony only named them after Jose had asked for their names. The RTC also explained that their defenses of denial and alibi had no leg to stand on because their testimonies did not match. Further, the trial court expounded that Michael and Allan conspired with each other to kill Ramel. The dispositive portion reads:

> ACCORDINGLY, judgment is hereby rendered finding both accused Michael Delima and Allan Delima GUILTY of the crime of murder and sentencing them to suffer the penalty of reclusion perpetua. They are also ordered to pay, jointly and severally, the heirs of Ramil [sic] Mercedes Congreso, the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages.
>
> The full preventive detention shall be credited in the service of their sentence.
>
> SO ORDERED.[12]

Aggrieved, accused-appellants appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed that of the RTC. The appellate court ruled that the perceived inconsistencies in the testimonies of the prosecution witnesses pertained to minor details which, in fact, strengthened their credibility because they tended to prove that their testimonies were not rehearsed. It also explained that inconsistences in the sworn affidavit and in the testimony of the witness do not discredit the witness' credibility because affidavits are generally incomplete. The CA found that Michael and Allan conspired to kill Ramel as evidenced by their concerted actions of stabbing him while he was being held by his pants; and that treachery attended the killing because Ramel was helpless when the fatal blow was inflicted. The dispositive portion reads:

---

[12] CA *rollo*, p. 40.

WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated October 22, 2013 of Branch 58 of the Regional Trial Court (RTC) of Cebu City in Criminal Case No. CBU-88328 finding accused-appellants guilty beyond reasonable doubt of the crime of murder is AFFIRMED.

SO ORDERED.[13]

Aggrieved, accused-appellants appealed before the Court raising:

ISSUE

I

WHETHER ACCUSED-APPELLANTS ARE GUILTY BEYOND REASONABLE DOUBT OF SERIOUS ILLEGAL DETENTION.

THE COURT'S RULING

The appeal is partly meritorious.

It must be remembered that an appeal in criminal cases throws the case wide open such that the Court is not limited to the assigned errors of the parties and may settle other issues relevant to the case. The appeal grants the appellate court full jurisdiction over the case enabling it to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[14]

Inconsistencies over trivial matters do not discredit the witness.

Accused-appellants contest the credibility of Jose because of perceived inconsistencies. They highlight that based on his affidavit and Anthony's testimony, Jose saw them stabbing Ramel before he went back to Anthony's house; but, in his testimony, he claimed that he went inside immediately when he saw five

---

[13] *Rollo*, p. 12.

[14] *People v. Ramos*, G.R. No. 221425, 23 January 2017, 815 SCRA 226, 233.

persons ganging up on the victim. It must be remembered that in order for inconsistencies in a witness' testimony to warrant acquittal, the same must refer to significant facts vital to the guilt or innocence of the accused or must have something to do with the elements of the crime.[15] In *Avelino v. People*, the Court explained why minor inconsistencies over trivial matters do not discredit a witness, to wit:

> Given the natural frailties of the human mind and its incapacity to assimilate all material details of a given incident, slight inconsistencies and variances in the declarations of a witness hardly weaken their probative value. It is well-settled that immaterial and insignificant details do not discredit a testimony on the very material and significant point bearing on the very act of accused-appellants. **As long as the testimonies of the witnesses corroborate one another on material points, minor inconsistencies therein cannot destroy their credibility**. Inconsistencies on minor details do not undermine the integrity of a prosecution witness. (emphasis supplied)

Here, the apparent inconsistency merely refers to insignificant matters as it only pertained to the sequence of how the events unfolded. Accused-appellants earnestly try to refute Jose's credibility on the ground that it is contrary to his affidavit and Anthony's testimony. Nevertheless, the assailed inconsistency is simply whether Jose called Anthony before or after Ramel was stabbed. It does not discount the fact that Jose's testimony categorically identified accused-appellants as those responsible for Ramel's death and clearly narrated their respective participation. His testimony shows consistency on material points, i.e., the elements of the crime and the identity of the perpetrators, *viz*:

FISCAL MACION

Q: While you were in that place at around 4:00 o'clock in the morning, do you remember having witnessed any unusual incident?

A: Yes.

Q: What was that incident?

---

[15] *People v. Mahinay*, 462 Phil. 53, 70 (2003).

A: As I came from the house of my friend when I was about to go home when I went out there were people fighting.

Q: How many people where (sic) fighting?
A: As I saw at the side there were six (6) people including the person they were beating up.

Q: How many people were beating up that person you were referring to Mr. Witness?
A: As I first saw it there were five (5).

Q: You are saying Mr. Witness that it was a case of five (5) persons against one (1)?
A: Yes.

x x x x x x x x x

Q: Earlier Mr. Witness you mentioned of five persons were beating up this lone person, what did these five persons actually do to that lone person?
A: They were ganging up on him some were pushing and some were pulling him.

Q: After seeing these persons one stabbing the said person and the other one holding the back portion of the pants, what did you do next?
A: I was in shock when I saw the incident and it was my friend Anthony Nator that said it was Michael and Allan and they are crazy.

Q: Your friend Anthony Nator was referring to the two persons whom you saw the other one stabbing and the other one holding the pants, is that correct?
A: Yes.

Q: Who was actually stabbing the victim Mr. Witness?
A: What I saw and what Sator (sic) told me it was Allan who stabbed the victim.

Q: How about Michael?
A: He was the one pulling the pants.

Q: If this Michael and Allan present (sic) inside this court room can you please point them out to us?
A: Those two persons sitting sir. (Witness pointing to the two

persons who when asked answered by the names of Michael Delima and Allan Delima).[16]

Accused-appellants also challenge the credibility of the prosecution witnesses on account that Anthony had a grudge against them, and that as his friend, Jose could have been easily convinced to testify against them. As correctly observed by the courts *a quo*, accused-appellants' allegations of ill will on the part of Anthony is specious considering that they offered conflicting versions: Michael claimed that Anthony held a grudge against them because he had a fistfight with his son while Allan alleged that it was he who fought Anthony's son. More importantly, Anthony's purported grudge is not fatal to the prosecution since he merely provided the names to Jose, who was the one who identified accused-appellants as Ramel's attackers.

Further, the Court finds hollow accused-appellants' claim that Anthony could have easily influenced his friend Jose to testify against them because it is purely conjecture. Surely, such unsubstantiated allegations devoid of any proof do not deserve even the faintest merit.

Positive identification trumps denial and alibi.

In view of Jose's identification of accused-appellants as Ramel's killers, their defenses of denial and alibi have no leg to stand on. It is axiomatic that the denial and alibi cannot prevail over positive identification.[17] Further, in *Escalante v. People*,[18] the Court explained that the alibi must show that it was physically impossible for the accused to be at the crime scene, to wit:

However, for the defense of alibi to prosper, the accused must prove (a) that she was present at another place at the time of the

---

[16] TSN, 14 September 2010, pp. 3-5.

[17] *People v. Agcanas*, 674 Phil. 626, 632 (2011).

[18] G.R. No. 218970, 28 June 2017, citing *People v. Ramos*, 715 Phil. 193, 206 (2013).

perpetration of the crime, and (b) that it was physically impossible for her to be at the scene of the crime during its commission. Physical impossibility refers to the distance and the facility of access between the crime scene and the location of the accused when the crime was committed. She must demonstrate that she was so far away and could not have been physically present at the crime scene and its immediate vicinity when the crime was committed.

Accused-appellants claim that they were in their house sleeping at the time Ramel was stabbed. It is noteworthy that they were Anthony's neighbors and that the crime scene was merely 8 meters away from Anthony's home. Obviously, it was physically possible for them to be at the crime scene considering its proximity to their house. From such short distance, they could have easily left their house and proceeded to the crime scene.

In addition, disinterested witnesses must corroborate the defense of alibi, otherwise, it is fatal to the accused.[19] In the case at bar, the only person who could corroborate accused-appellants' alibi was Francisco. He could not be the disinterested witness required by jurisprudence because he is their father. Relatives can hardly be categorized as disinterested witnesses.[20]

Further, accused-appellants' alibi should not be given weight and credence because of inconsistencies in their story. *First*, Michael testified that Allan was not at home because he lived in a separate house, but according to Allan's testimony, Michael shared a home with him together with their sister and parents.[21] *Second*, Allan claimed that he was at home drinking with Francisco but the latter narrated that he fetched Allan from Landmark.[22] These incongruities cast doubt on the veracity of their allegations.

Conspiracy established by overt acts

---

[19] *People v. Dadao*, 725 Phil. 298, 312 (2014).

[20] *People v. Basallo*, 702 Phil. 548, 575-576 (2013).

[21] TSN, 31 January 2012, p. 7; TSN, 22 January 2013, p. 3.

[22] TSN, 22 January 2013, p. 3; TSN, 11 June 2013, p. 4.

Accused-appellants argue that conspiracy was not proven because their actions do not establish that they were motivated by a common desire. They assail that Allan stabbing and Michael holding Ramel were two separate and distinct actions insufficient to prove conspiracy. There is an implied conspiracy if two or more persons aim their acts towards the accomplishment of the same unlawful subject, each doing a part so that their combined acts, though apparently independent, are in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment and may be inferred though no actual meeting among them to concert means is proved.[23] The essence of conspiracy is unity of action and purpose.[24]

As early as the initial assault against Ramel, it is readily apparent that Allan and Michael's concerted action was towards the common purpose of hurting Ramel after they ganged up on him together with three other unidentified malefactors. Then, accused-appellants were mutually motivated by the desire to kill Ramel after Allan stabbed Ramel while Michael held the latter by the legs. Their concerted actions cannot be brushed aside as separate and distinct because Michael continued to hold the victim while Allan stabbed him several times.

In addition, accused-appellants err in relying on *People v. Pugay*[25] because unlike the said case, prior to their attack on Ramel, animosity existed between them and the victim. Immediately prior to the stabbing incident, they already ganged up on the deceased and beat him up. Thus, it is evident that accused-appellants truly wanted to inflict bodily harm on Ramel, ultimately leading to his stabbing. Their desire to hurt Ramel progressed to a desire to kill him.

Killing tantamount to murder only when qualifying circumstances are present

---

[23] *People v. de Leon*, 608 Phil. 701, 718-719 (2009).

[24] *Quidet v. People*, 632 Phil. 1, 11 (2010).

[25] 249 Phil. 406 (1988).

Finally, accused-appellants argue that even if they are found responsible for Ramel's death, they could not be found guilty of murder because there was no proof of the qualifying circumstances of treachery and evident premeditation.

For evident premeditation to be appreciated as a qualifying circumstance, the following elements must be present: (a) a previous decision by the accused to commit the crime; (b) overt act or acts indicating that the accused clung to one's determination; and (c) lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of one's acts.[26] In this case, nothing in the records establishes the above-mentioned elements. In fact, it is worth emphasizing that neither the RTC nor the CA discussed the presence of the said qualifying circumstance. Consequently, evident premeditation cannot qualify the crime to murder.

On the other hand, there is treachery when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[27] The requisites for treachery to be appreciated are: (a) at the time of the attack, the victim was not in a position to defend; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed.[28]

Here, it is unquestionable that Ramel was in no position to defend himself when Allan stabbed him. He was previously mauled by five persons and at the time of the stabbing, Michael was holding him by his legs. Ramel's weakened state and restricted movement rendered him unable to parry the lethal blows Allan inflicted on him. Nevertheless, Ramel's defenseless state alone does not suffice to appreciate the existence of

---

[26] *People v. Isla*, 699 Phil. 256, 270 (2012).

[27] Article 14(16) of the Revised Penal Code.

[28] *People v. Dolorido*, 654 Phil. 467, 476-477 (2011).

treachery. After all, not only must the victim be shown defenseless, but it must also be shown that the accused deliberately and consciously employed the means and method of attack.

In *People v. De Leon*,[29] the Court explained that the commencement of the attack is crucial in determining the presence of treachery, to wit:

> Inevitably, where treachery is alleged, the manner of attack must be proven. **Without any particulars as to the manner in which the aggression commenced or how the act that resulted in the victim's death unfolded, treachery cannot be appreciated**. It is not sufficient that the victim was unarmed and that the means employed by the malefactor brought about the desired result. The prosecution must prove that appellant deliberately and consciously adopted such means, method or manner of attack as would deprive the victim of an opportunity for self-defense or retaliation.
>
> **In the case at bar, the prosecution's principal witness testified that he had actually witnessed the stabbing, but not the commencement of the attack**. In fact, he himself declared that the commotion had begun outside the establishment he was in.
>
> **Where, as in this case, there is no proof of the circumstances surrounding the manner in which the aggression commenced, appellant should be given the benefit of the doubt and treachery cannot be considered**.[30] (emphases supplied)

Similarly, when Jose came out of Anthony's house, Allan and Michael, together with the other unknown assailants, were already assaulting Ramel. The aggression continued until ultimately Allan stabbed Ramel. Jose never saw how the commotion commenced. As a result, there is doubt whether accused-appellants consciously and deliberately adopted the means employed to kill Ramel. It is doctrinal that all doubts must be resolved in favor of the accused.[31] Consequently, treachery could not be appreciated as a qualifying circumstance.

---

[29] 428 Phil. 556 (2002).

[30] *Id.* at 581-582.

[31] *People v. Villalba*, 746 Phil. 270, 285 (2014), citing *People v. Gerolaga*, 331 Phil. 441, 446 (1996).

In view of the absence of the qualifying circumstance of treachery and evident premeditation, Allan and Michael should be found guilty only of homicide for Ramel's killing.

Under the Revised Penal Code *(RPC)*,[32] homicide is punishable by *reclusion temporal*. When neither aggravating nor mitigating circumstances are present, the penalty prescribed by law shall be imposed in its medium period.[33] On the other hand, the Indeterminate Sentence Law[34] provides that courts shall sentence the accused to an indeterminate sentence, the maximum term of which shall be that, in view of the attending circumstances, could be properly imposed under the rules of the RPC; and the minimum of which shall be within the range of the penalty next lower to that prescribed by the RPC for the offense.

In the case at bar, there are no aggravating circumstances against accused-appellants or mitigating circumstances in their favor.

WHEREFORE, the appeal is **PARTIALLY GRANTED**. Accused-appellants Michael and Allan Delima are found **GUILTY** of **HOMICIDE** and sentenced to suffer an indeterminate penalty of ten (10) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* in its medium period, as maximum. Further, they are ordered to pay the heirs of Ramel Mercedes Congreso ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as temperate damages, plus interest on all the damages awarded at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.

SO ORDERED.

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

---

[32] Article 249.

[33] Article 64(1) of the Revised Penal Code.

[34] Section 1 of Act No. 4103, as amended.

THIRD DIVISION

[G.R. No. 223566. June 27, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUNIE (or DIONEY) SALVADOR, SR.** ***y*** **MASAYANG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXEMPTING CIRCUMSTANCES; INSANITY; NATURE AND ELEMENTS FOR THE DEFENSE OF INSANITY TO PROSPER.— Insanity exists when there is a complete deprivation of intelligence while committing the act, i.e., when the accused is deprived of reason, he acts without the least discernment because there is a complete absence of power to discern, or there is total deprivation of freedom of the will. The legal teaching consistently maintained in our jurisprudence is that the plea of insanity is in the nature of confession and avoidance. Hence, if the accused is found to be sane at the time he perpetrated the offense, a judgment of conviction is inevitable because he had already admitted that he committed the offense. x x x He who invokes insanity as a defense has the burden of proving its existence; thus, for accused-appellant's defense of insanity to prosper, two (2) elements must concur: (1) that defendant's insanity constitutes a complete deprivation of intelligence, reason, or discernment; and (2) that such insanity existed at the time of, or immediately preceding, the commission of the crime.

2. ID.; ID.; ID.; ID.; ACCUSED-APPELLANT FAILED TO PROVE HIS DEFENSE OF INSANITY; THAT THE ACCUSED FAILED TO REMEMBER WHAT HAD HAPPENED NEITHER QUALIFIES HIM AS INSANE NOR NEGATES THE TRUTH THAT HE WAS FULLY AWARE THAT HE HAD KILLED HIS VICTIM.— [A]n inquiry into the mental state of an accused should relate to the period immediately before or at the very moment the felony is committed. Thus, the diagnosis on accused-appellant long after the 11 February 2011 incident, even if this was testified to by a doctor, may not be relied upon to prove accused-appellant's

mental condition at the time of his commission of the offenses. In the same vein, accused-appellant's testimony did not help to fortify his defense of insanity. While accused-appellant denied having any memory of what transpired on 11 February 2011, and claimed that he was merely informed of what had happened that day, he admitted nonetheless that he knew who his victims were, and that it was because of the pain that he felt whenever he remembered what happened that made him intentionally erase the incident from his mind. x x x For purposes of exemption from criminal liability, mere behavioral oddities cannot support a finding of insanity unless the totality of such behavior indubitably shows a total absence of reason, discernment, or free will at the time the crime was committed. In the Philippines, the courts have established a clearer and more stringent criterion for insanity to be exempting as it is required that there must be a complete deprivation of intelligence in committing the act, i.e., the accused is deprived of reason; he acted without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of the will. Accused-appellant's claim that he allegedly failed to remember what had happened on 11 February 2011, neither qualifies him as insane nor negates the truth that he was fully aware that he had killed his victims. For sure, accused-appellant's statement right after he surrendered to Salaysay–"lf I want to kill a lot of people, I could but I only killed my family"– persuasively disproves his claim of not knowingly or voluntarily killing his victims.

3. ID.; ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ELEMENTS; PRESENT IN THIS CASE.— The Court notes that the RTC and the CA failed to appreciate the mitigating circumstance of accused-appellant's voluntary surrender, the elements of which are as follows: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary. Without the elements of voluntary surrender, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance. x x x Accused-appellant voluntarily went with Salaysay to the barangay hall and thereafter to the police station. Clearly, the voluntary surrender of accused-appellant was

spontaneous and with the intent to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture. Hence, it is only proper that this mitigating circumstance be appreciated in imposing the correct penalties upon accused-appellant.

4. ID.; ID.; PARRICIDE; KILLING A TWO YEAR-OLD SON QUALIFIES THE CRIME AS PARRICIDE; PENALTY AND CIVIL LIABILITY.— It is not disputed that Dioney, Jr. was the two year-old son of accused--appellant; thus, qualifying the crime committed by accused-appellant as parricide as defined and penalized under Art. 246 of the RPC, *viz*: Art. 246. Parricide. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death. Applying Art. 63 of the RPC, with one mitigating circumstance of accused-appellant's voluntary surrender and there being no aggravating circumstance, the lesser penalty of *reclusion perpetua* should be imposed. Pursuant to the jurisprudence laid down in *People v. Jugueta*, accused-appellant shall be held liable to pay the heirs of Dioney, Jr. the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00; with interest at the rate of 6% per annum reckoned from the finality of this decision until full payment.

5. ID.; ID.; MURDER; ELEMENTS; KILLINGS OF MINOR CHILDREN CONSTITUTE MURDER; PENALTY AND CIVIL LIABILITY.— Settled is the rule that minor children, by reason of their tender years, cannot be expected to put up a defense. When an adult person attacks a child, treachery exists. On the one hand, jurisprudence dictates that the elements of murder are as follows: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248; and (d) that the killing is not parricide or infanticide. Considering that the killing of Rosana, Mariz, and Jannes was attended by the qualifying circumstance of treachery, accused-appellant's conviction for murder in these cases should be sustained. Taking into account the mitigating circumstance of voluntary surrender and following Art. 63 of the RPC, the penalty of *reclusion*

perpetua shall be imposed upon accused-appellant for each of Crim. Case Nos. 17629, 17631, and 17632. In addition, accused-appellant shall be held liable in Crim. Case Nos. 17629, 17631, and 17632 to the heirs of Rosana B. Realo, Mariz R. Masayang, and Jannes R. Masayang, respectively, for the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00. Accused-appellant shall pay interest for the civil indemnity and the moral, exemplary, and temperate damages at the rate of 6% per annum reckoned from the finality of this decision until full payment.

6. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; CONCEPT AND ELEMENTS TO BE APPRECIATED.— Treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. *Alevosia* is characterized by a deliberate, sudden, and unexpected assault from behind, without warning and without giving the victim a chance to defend himself or repel the assault and without risk to the assailant. For treachery to be appreciated two elements must be alleged and proved, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, methods or forms of execution must be shown to be deliberated upon or consciously adopted by the offender. Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder. Additionally, in murder or homicide, the offender must have the intent to kill. The evidence to prove intent to kill may consist of, inter alia, the means used; the nature, location, and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim.

7. ID.; ID.; ID.; ID.; PRESENCE OF TREACHERY ESTABLISHED IN CASE AT BAR; APPELLANT IS GUILTY OF MURDER; PENALTY AND CIVIL LIABILITY.— On the first element, the legal teaching consistently upheld by the Court is that the essence of treachery

is when the attack comes without 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. Relative to the second element, jurisprudence imparts that there must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success since unexpectedness of the attack does not always equate to treachery. The means adopted must have been a result of a determination to ensure success in committing the crime. Joy testified that on 11 February 2011, she saw accused-appellant chase Miraflor out of the house, and thereafter stabbed her and hacked her in the nape using a bolo. There was no doubt that the intent of accused-appellant was to kill Miraflor, which fact was firmly established by her certificate of death reflecting that her cause of death was the "hacked wound, neck area, (R) dorsal area." Obviously too, the means adopted by the accused-appellant in suddenly attacking Miraflor from behind using a bolo ensured his killing her. The presence of treachery is thus established, finding accused-appellant guilty of murder. Taking into consideration the mitigating circumstance of voluntary surrender and following Art. 63 of the RPC, the penalty of *reclusion perpetua* shall be imposed upon accused-appellant. x x x [A]ccused-appellant shall be liable to the heirs of Miraflor B. Realo for the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00; with interest at the rate of 6% per annum from the finality of this decision until full payment.

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.*:

Accused-appellant Junie *(or Dioney)* Salvador, Sr., *y* Masayang assails through this appeal the 27 January 2016

Decision[1] of the Court of Appeals *(CA),* Twenty-Third Division, in CA-G.R. CR-HC No. 01195-MIN affirming, with modification as to the award of damages, the 12 July 2013 Joint Decision[2] of the Regional Trial Court *(RTC),* Branch 2, Tagum City, Davao del Norte, in Criminal *(Crim.)* Case Nos. 17628, 17629, 17630, 17631, and 17632.

THE FACTS

Accused-appellant was charged with five counts of murder under the following Informations:

Crim. Case No. 17628

That on or about February 11, 2011, in the Municipality of Kapalong, Province of Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, armed with bolos, did then and there willfully, unlawfully, and feloniously attack, assault, and hack Junie M. Salvador, Jr., his son, a two year old minor, which caused his death, and further causing actual, moral, and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[3]

Crim. Case No. 17629

That on or about February 11, 2011, in the Municipality of Kapalong, Province of Davao del Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault, and hack one Rossana B. Realo, a twelve (12) year old minor, daughter of his live-in partner, thereby inflicting upon her wounds which caused her death, and further causing actual, moral, and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[4]

---

[1] *CA rollo*, pp. 70-81; penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos.

[2] Records, pp. 141-147. Penned by Judge Ma. Susana T. Baua.

[3] Records (Criminal Case No. 17628), p. 3.

[4] Records (Criminal Case No. 17629), p. 1.

Crim. Case No. 17630

That on or about February 11, 2011, in the Municipality of Kapalong, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault, and hack one Miraflor B. Realo, his live-in partner, thereby inflicting upon her wounds which caused her death, and further causing actual, moral, and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[5]

Crim. Case No. 17631

That on or about February 11, 2011, in the Municipality of Kapalong, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault, and hack one Mariz R. Masayang, a three (3) year old minor, his niece, thereby inflicting upon her wounds which caused her death, and further causing actual, moral, and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[6]

Crim. Case No. 17632

That on or about February 11, 2011, in the Municipality of Kapalong, Province of Davao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with bolos, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully, and feloniously attack, assault, and hack one Jonessa R. Masayang, a one (1) year and two months old minor, his niece, thereby inflicting upon her wounds which caused her death, and further causing actual, moral, and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.[7]

---

[5] Records (Criminal Case No. 17630), p. 1.

[6] Records (Criminal Case No. 17631), p. 1

[7] Records (Criminal Case No. 17631), p. 1.

To prove its cases against accused-appellant, Joy Masayang *(Joy),* Melissa Masayang *(Melissa),* Felixchito Salaysay *(Felixchito),* Santos Masayang *(Santos),* and Police Officer I *(POI)* Kim Aguspina *(Aguspina)* took the witness stand.

For the defense, Dr. Reagan[8] Joseph Villanueva *(Dr. Villanueva)* and accused-appellant testified.

Version of the Prosecution

On 11 February 2011, at around 6:00 a.m., accused-appellant and his live-in partner Miraflor Realo *(Miraflor),* together with Miraflor's daughter Melissa, and Melissa's husband Santos, were walking on their way to the barangay hall to attend the *Pamilya Pantawid* program (*program*). Accused-appellant, who appeared then to be very sweet to Miraflor, was happily cracking jokes. When they reached the hall, accused-appellant told Miraflor and Melissa that he would go home already since his name did not appear in the program's list.[9]

At about 11:30 a.m., while still at the barangay hall, Melissa told Santos to go home so he could feed their children, Mariz and Jannes.[10] When Santos did not find his children at home, he went out looking for them at his neighbors' houses when he saw on the street accused-appellant with blood on his arms and shirt and a bolo in his hand. Santos asked accused-appellant what happened but he did not reply. Santos immediately went back to the barangay hall and told Melissa that the children were not at home and that he saw accused-appellant gone wild. Santos went back home to look for their children while Melissa told Miraflor what Santos told her.[11]

---

[8] Also referred to as "Regan" in the records. The name "Reagan" appears in the medical certificate; records, p. 127.

[9] TSN, 8 November 2012, pp. 21-22.

[10] Referred to as "Jonessa" in the information in Crim. Case No. 17632. The name "Jannes" appears in the certificate of death and the certification of the *Punong Barangay*; records, pp. 63 and 68.

[11] TSN, 15 November 2012, pp. 16-18 and 22; TSN, 8 November 2012, p. 23.

That same morning, Joy was on her way to the house of Miraflor to look for Mariz and Jannes when she saw accused-appellant chasing Miraflor in the street. Joy was about two-arm-lengths away from Miraflor when accused-appellant, using a bolo, hacked Miraflor four times in the back and in the nape. Joy was about to ask help from the barangay when she saw accused-appellant drag Miraflor towards their house by pulling her hair.[12]

When informed of what happened, Kagawad Salaysay and two soldiers immediately proceeded to the house of accused-appellant, and there saw him holding two bolos while Miraflor lay on the floor. When Salaysay told accused-appellant to surrender, he voluntarily did so, saying, "I will surrender Cons," and "If I want to kill a lot of people, I could but I only killed my family"; and then handed his bolos to Salaysay's companion. It was only when the policemen entered accused-appellant's house that the bodies of the four dead children, namely: Mariz; Jannes; Rosana,[13] Miraflor's daughter; and Dioney, Jr.,[14] Miraflor's son with accused-appellant, were discovered.[15]

At the Kapalong, Davao del Norte police station, PO1 Aguspina asked accused-appellant about his personal circumstances to which he was responsive.[16]

Version of the Defense

Dr. Villanueva, who has a special training in psychiatry at the Southern Philippines Medical Center, stated that he had the chance to review Dr. Giola Fe Dinglasan's *(Dr. Dinglasan)* records on accused-appellant. Dr. Dinglasan saw accused-appellant on 6 June 2012 or sixteen months after the 11 February

---

[12] TSN, 8 November 2012, pp. 4-7.

[13] Referred to as "Rosanna" in the information in Crim. Case No. 17629. The name "Rosana" appears in the certificate of death and the certificate of live birth; records, pp. 61 and 65.

[14] Also referred to as "Junie, Jr." in the records.

[15] TSN, 8 November 2012, pp. 7-9.

[16] TSN, 20 December 2012, p. 4.

2011 incident. Initially, accused-appellant was given medicine for depression and later for psychosis. According to Dr. Villanueva, it was possible for accused-appellant to have a relapse if he was not given his medicines; thus, Dr. Villanueva suggested that accused-appellant undergo regular check-up and that he be given proper medication.[17]

Accused-appellant testified that he remembers who his victims were but he does not recall that he killed them; the incident that took place before their death; or where he was on 11 February 2011. It was only his sister who informed him of the death of his family members and relatives. He had a happy relationship with Miraflor and was very close to Dioney, Jr. He stopped taking prohibited drugs when he started living-in with Miraflor, and gave up smoking when he was already in prison. He claimed that he had never been confined in a mental hospital either before the incident or after he was incarcerated.[18]

The Ruling of the RTC

The RTC held that there was no question that accused-appellant was the author of the gruesome killings of Miraflor and the four children and that the only issue was whether accused-appellant was fully aware of the wrongness of his acts to hold him liable.[19]

The RTC ruled that accused-appellant failed to establish by clear and convincing evidence that he was suffering from insanity or loss or absence of reason before and after he killed his victims. It found that the killing of Dioney, Jr. brings the case of accused-appellant within the ambit of Art. 246 of the RPC since Dioney was his son. Moreover, it held that the hacking by accused-appellant of Miraflor, Rosana, Mariz, and Jannes was attended by the qualifying circumstance of treachery. The RTC held that minors Rosana, Mariz, and Jannes could not have suspected

---

[17] TSN, 7 February 2013, pp. 5-7 and 9-11.

[18] TSN, 13 February 2013, pp. 4-14.

[19] Records, p. 144.

the attack much less defended themselves when they were attacked as confirmed by wounds on their back, torso, and skull.[20]

The dispositive portion of the RTC joint decision reads:

> **WHEREFORE**, premises considered, accused **JUNIE SALVADOR y MASAYANG** is hereby found **GUILTY** as charged for each of the deaths of Miraflor Realo, Rosana Realo, Dioney Salvador, Jr., Mariz Masayang, and Jannes Masayang, and is hereby sentenced to suffer the penalty of reclusion perpetua for each of the said deaths.
>
> The said accused is likewise ordered to pay each of the heirs of the aforesaid deceased the sum of ₱50,000.00 each for their wrongful deaths and the sum of ₱50,000.00 as moral damages.
>
> SO ORDERED.[21]

Believing that the RTC erred in its decision, accused-appellant appealed to the CA.

The Ruling of the CA

The CA found no merit in the appeal. It held that the only issue for resolution in these cases was whether accused-appellant was mentally insane at the time he killed the victims which, thus, would have exempted him from liability for the crimes he committed. It ruled that accused-appellant's defense of insanity failed considering that no evidence was presented to prove that he was struck with schizoaffective disorder *(disorder)* immediately prior to or during the time that he hacked his victims to death. It found that the evidence on record showed that accused-appellant was diagnosed with the disorder more than a year after the hacking incident and that the arguments he advanced to prove his defense was speculative and inconclusive. It declared that the penalty imposed by the RTC in each of the criminal cases was correct, albeit there was a need to modify the award of damages to conform to jurisprudence.[22]

---

[20] *Id.* at 145-146.

[21] *Id.* at 147.

[22] *CA rollo*, pp. 75-80.

The CA resolved the appeal as follows:

WHEREFORE, foregoing premises considered, this ordinary appeal is DISMISSED for lack of merit. The 12 July 2013 Joint Decision of the Regional Trial Court, Branch 2, Tagum City, Davao del Norte, in Crim. Case Nos. 17628, 17629, 17630, 17631, and 17632 convicting JUNIE SALVADOR, SR. for Parricide and Multiple Murder is AFFIRMED with MODIFICATIONS:

Accused-appellant is ordered to pay the following amounts to the heirs of the deceased:

1) Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity;
2) Fifty-Thousand Pesos (₱50,000.00) as moral damages;
3) Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages;
4) Thirty Thousand Pesos (₱30,000.00) as exemplary damages; and
5) Legal interest of six percent (6%) per annum from the date of the finality of this judgment.[23]

ISSUES

I.

THE COURT A QUO ERRED IN NOT GIVING PROBATIVE WEIGHT TO THE TESTIMONY OF AND PSYCHIATRIC EVALUATION BY DR. REAGAN JOSEPH VILLANUEVA FINDING ACCUSED-APPELLANT TO BE SUFFERING FROM SCHIZOAFFECTIVE DISORDER**;**

II.

THE COURT A QUO ERRED IN CONVICTING ACCUSED-APPELLANT OF THE OFFENSES CHARGED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[24]

OUR RULING

The appeal is without merit.

---

[23] *Id*. at 80-81.

[24] *Id.* at 19.

Accused-appellant failed to prove his defense of insanity.

It is not disputed that it was accused-appellant who killed Dioney, Jr., Rosana, Miraflor, Mariz, and Jannes; and that the only crux of the controversy in these cases is whether accused-appellant, at the time of the commission of the offenses, was insane and, thus, is exempted from criminal liability.

Jurisprudence dictates that every individual is presumed to have acted with a complete grasp of one's mental faculties.[25] "It is improper to assume the contrary, i.e., that acts were done unconsciously, for the moral and legal presumption is that every person is presumed to be of sound mind, or that freedom and intelligence constitute the normal condition of a person. Thus, the presumption under Article (*Art.*) 800 of the Civil Code is that everyone is sane."[26]

On the one hand, insanity as an exempting circumstance is provided for in Art. 12, paragraph (*par.*) 1 of the Revised Penal Code (*RPC*):

> Article 12. *Circumstances which exempt from criminal liability.* — The following are exempt from criminal liability:
>
> 1. An imbecile or an insane person, unless the latter has acted during a lucid interval.
>
> When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.

Insanity exists when there is a complete deprivation of intelligence while committing the act, i.e., when the accused is deprived of reason, he acts without the least discernment because there is a complete absence of power to discern, or there is total deprivation of freedom of the will.[27] The legal teaching

---

[25] *People v. Belonio*, 473 Phil. 637, 653 (2004).

[26] *People v. Opuran*, 469 Phil. 698, 711 (2004).

[27] *People v. Domingo,* 599 Phil. 589, 606 (2009).

consistently maintained in our jurisprudence is that the plea of insanity is in the nature of confession and avoidance.[28] Hence, if the accused is found to be sane at the time he perpetrated the offense, a judgment of conviction is inevitable because he had already admitted that he committed the offense. Insanity, as an exempting circumstance that had been explained by the Court, is as follows:

> In all civilized nations, an act done by a person in a state of insanity cannot be punished as an offense. The insanity defense is rooted on the basic moral assumption of criminal law. Man is naturally endowed with the faculties of understanding and free will. The consent of the will is that which renders human actions laudable or culpable. Hence, where there is a defect of the understanding, there can be no free act of the will. An insane accused is not morally blameworthy and should not be legally punished. No purpose of criminal law is served by punishing an insane accused because by reason of his mental state, he would have no control over his behavior and cannot be deterred from similar behavior in the future.
>
> x x x x x x x x x
>
> In the Philippines, the courts have established a more stringent criterion for insanity to be exempting as it is required that there must be a complete deprivation of intelligence in committing the act, i.e., the accused is deprived of reason; he acted without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of the will. Mere abnormality of the mental faculties will not exclude imputability.
>
> The issue of insanity is a question of fact for insanity is a condition of the mind, not susceptible [to] the usual means of proof as no man can know what is going on in the mind of another, the state or condition of a person's mind can only be measured and judged by his behavior. Establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted with the accused, by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused, or by a witness who is qualified as an expert, such as a psychiatrist. The testimony or proof of the accused's insanity must

[28] *People v. Roa*, G.R. No. 225599, 22 March 2017.

relate to the time preceding or coetaneous with the commission of the offense with which he is charged. (citations omitted)[29]

He who invokes insanity as a defense has the burden of proving its existence;[30] thus, for accused-appellant's defense of insanity to prosper, two (2) elements must concur: (1) that defendant's insanity constitutes a complete deprivation of intelligence, reason, or discernment; and (2) that such insanity existed at the time of, or immediately preceding, the commission of the crime.[31]

Accused-appellant insists that, as testified to by Dr. Villanueva, he was suffering from the disorder which impaired his mental condition that deprived him of reason at the time of the incident.[32]

The Court is not persuaded.

The Court takes note of the fact that based on Dr. Dinglasan's certification,[33] she first evaluated and examined accused-appellant only on 22 March 2011, or more than a month from the 11 February 2011 incident. The records of these cases however, are bereft of any showing as to Dr. Dinglasan's diagnosis of accused-appellant on 22 March 2011; hence, it cannot be validly asserted that as of that day, or even earlier than that date, accused-appellant already had the disorder. Additionally, the certification merely evinces that it was on 6 June 2012 that Dr. Dinglasan diagnosed accused-appellant to be suffering from the disorder.

Dr. Villanueva personally examined accused-appellant on 27 September 2012,[34] or one (1) year and seven (7) months from the incident, and found him to be suffering from the disorder. However, no documentary proof was presented by the defense to show how Dr. Villanueva was able to arrive at his diagnosis.

---

[29] *Id.*

[30] *People v. Belonio*, *supra* note 25 at 653.

[31] *People v. Pantoja*, G.R. No. 223114, 29 November 2017.

[32] *CA rollo*, pp. 24-26.

[33] Records, p. 131; Exh. "1".

[34] *Id.* at 127.

Indeed, the records only show a single medical certificate from Dr. Villanueva indicating that accused-appellant was diagnosed with the disorder on 27 September 2012. Moreover, a review of Dr. Villanueva's testimony will confirm that he never stated how he arrived at his diagnosis of accused-appellant. The probability that there was but this single instance on 27 September 2012 that Dr. Villanueva attended to accused-appellant was easily confirmed by his testimony before the RTC which basically dwelt on his giving opinion as to what a person with the disorder would normally do; or whether the disorder would cause a person to be violent; or whether a person with the disorder would know what he was doing; but not as to his specific observations with regard to accused-appellant's condition.[35] The defense never even tried to propound questions to Dr. Villanueva that would elicit certain and categorical answers relative to accused-appellant's demeanor or disposition in relation to the disorder he was suffering from.

Notably, it cannot be ascertained even with Dr. Villanueva's testimony that accused-appellant's disorder existed at the time of or immediately preceding the commission of the crime. Dr. Villanueva candidly admitted that Dr. Dinglasan's diagnosis that accused-appellant was suffering from the disorder was based on the latter's observation reckoned from accused-appellant's consultation sixteen (16) months after the 11 February 2011 incident and his last consultation, *viz:*

> Q. The medical certificate which I showed to you a while ago was dated June 6, 2012 and the incident happened February 11, 2011. More or less sixteen months before. Tell us doctor, is it probable that the accused at that time of the incident had been suffering a condition worse than schizoaffective disorder?
>
> A. The incident happened a year prior to the patient being seen by a psychiatrist, so the diagnosis given by Dr. Dinglasan was based on her observation from the first consultation up to the last consultation. **So we do not exactly say when the condition started** so that is why an informant, preferably a

[35] TSN, 7 February 2013, pp. 8-9.

> relative [is needed], so that we can go back into history years before.[36] (emphasis supplied)

Likewise noted, Dr. Villanueva cannot state for sure that when accused-appellant committed the crimes he was suffering from any mental illness. It is even significant that Dr. Villanueva admitted it was possible that accused-appellant's present condition was triggered by the massacre that he committed and not because he already had the disorder at the time he killed his victims.[37]

To stress, an inquiry into the mental state of an accused should relate to the period immediately before or at the very moment the felony is committed.[38] Thus, the diagnosis on accused-appellant long after the 11 February 2011 incident, even if this was testified to by a doctor, may not be relied upon to prove accused-appellant's mental condition at the time of his commission of the offenses.

In the same vein, accused-appellant's testimony did not help to fortify his defense of insanity. While accused-appellant denied having any memory of what transpired on 11 February 2011, and claimed that he was merely informed of what had happened that day, he admitted nonetheless that he knew who his victims were, and that it was because of the pain that he felt whenever he remembered what happened that made him intentionally erase the incident from his mind.[39] Put differently, by his own admission, accused-appellant purposely put out of his mind what he had done to his victims on 11 February 2011; not because he did not know what he did that day but because he grieved whenever he thought about it.

For purposes of exemption from criminal liability, mere behavioral oddities cannot support a finding of insanity unless the totality of such behavior indubitably shows a total absence

---

[36] *Id.* at 9.

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

[38] *People v. Racal*, G.R. No. 224886, 4 September 2017.

[39] TSN, 13 February 2013, pp. 6, and 10-12.

of reason, discernment, or free will at the time the crime was committed.[40] In the Philippines, the courts have established a clearer and more stringent criterion for insanity to be exempting as it is required that there must be a complete deprivation of intelligence in committing the act, i.e., the accused is deprived of reason; he acted without the least discernment because there is a complete absence of the power to discern, or that there is a total deprivation of the will.[41] Accused-appellant's claim that he allegedly failed to remember what had happened on 11 February 2011, neither qualifies him as insane nor negates the truth that he was fully aware that he had killed his victims. For sure, accused-appellant's statement right after he surrendered to Salaysay–"If I want to kill a lot of people, I could but I only killed my family"[42]– persuasively disproves his claim of not knowingly or voluntarily killing his victims.

The crimes committed by accused-appellant and their corresponding penalties

Foremost, the Court is mindful that jurisprudence instructs it to rigidly review the records of these cases since the appeal confers upon it full jurisdiction over the cases, *viz*:

> At the outset, it must be stressed that in criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[43]

In view of this legal teaching, the Court has meticulously examined the records of this case and found that there were

---

[40] *People v. Pantoja*, *supra* note 31.

[41] *People v. Racal*, *supra* note 38.

[42] TSN, 8 November 2012, p. 8.

[43] *Ramos v. People*, G.R. No. 218466, 23 January 2017, 815 SCRA 266, 233.

substantial facts that both the RTC and the CA had overlooked and which, if considered, may affect the outcome of these cases.

The Court notes that the RTC and the CA failed to appreciate the mitigating circumstance of accused-appellant's voluntary surrender, the elements of which are as follows: (1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary.[44] Without the elements of voluntary surrender, and where the clear reasons for the supposed surrender are the inevitability of arrest and the need to ensure his safety, the surrender is not spontaneous and, therefore, cannot be characterized as "voluntary surrender" to serve as a mitigating circumstance.[45]

Salaysay stated that on 11 February 2011, two persons reported to the barangay hall that a person had gone wild. Salaysay and two soldiers proceeded to the scene of the crime and there saw accused-appellant holding two bolos. When asked to surrender, accused-appellant calmly approached Salaysay and said, "I will surrender Cons," and thereafter gave his bolos to Salaysay's companion. Accused-appellant voluntarily went with Salaysay to the barangay hall and thereafter to the police station.[46] Clearly, the voluntary surrender of accused-appellant was spontaneous and with the intent to give himself up and submit himself to the authorities either because he acknowledges his guilt or he wishes to save the authorities the trouble and expense that may be incurred for his search and capture.[47] Hence, it is only proper that this mitigating circumstance be appreciated in imposing the correct penalties upon accused-appellant.

a) Crim. Case No. 17628

It is not disputed that Dioney, Jr. was the two year-old son of accused-appellant; thus, qualifying the crime committed by

---

[44] *People v. Placer*, 719 Phil. 268, 281-282 (2013).

[45] *Belbis, Jr. v People*, 698 Phil. 706, 724 (2012).

[46] TSN, 15 November 2012, pp. 4-5, 7 and 9.

[47] *Id.*

accused-appellant as parricide as defined and penalized under Art. 246 of the RPC, *viz*:

> Art. 246. Parricide. - Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of reclusion perpetua to death.

Applying Art. 63[48] of the RPC, with one mitigating circumstance of accused-appellant's voluntary surrender and there being no aggravating circumstance, the lesser penalty of *reclusion perpetua* should be imposed.

Pursuant to the jurisprudence laid down in *People v. Jugueta*,[49] accused-appellant shall be held liable to pay the heirs of Dioney, Jr. the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00; with interest at the rate of 6% per annum reckoned from the finality of this decision until full payment.

b) Crim. Case Nos. 17629, 17631, and 17632

In Crim. Case Nos. 17629, 17631, and 17632, accused-appellant was charged for the killing of Rosana, Mariz, and Jannes with ages twelve (12) years and three (3) months, three (3) years and two (2) months, and (one) 1 year and (two) 2 months, respectively, at the time of the incident.

---

[48] Art. 63. *Rules for the application of indivisible penalties.* – In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x x x x x x

3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

x x x x x x x x x

[49] 783 Phil. 806 (2016).

Settled is the rule that minor children, by reason of their tender years, cannot be expected to put up a defense. When an adult person attacks a child, treachery exists.[50] On the one hand, jurisprudence dictates that the elements of murder[51] are as follows: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248; and (d) that the killing is not parricide or infanticide.[52] Considering that the killing of Rosana, Mariz, and Jannes was attended by the qualifying circumstance of treachery, accused-appellant's conviction for murder in these cases should be sustained.

Taking into account the mitigating circumstance of voluntary surrender and following Art. 63 of the RPC, the penalty of *reclusion perpetua* shall be imposed upon accused-appellant for each of Crim. Case Nos. 17629, 17631, and 17632.

In addition, accused-appellant shall be held liable in Crim. Case Nos. 17629, 17631, and 17632 to the heirs of Rosana B. Realo, Mariz R. Masayang, and Jannes R. Masayang, respectively, for the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00. Accused-appellant shall pay interest for the civil indemnity and the moral, exemplary, and temperate damages at the rate of 6% per annum reckoned from the finality of this decision until full payment.

---

[50] *Id.* at 819.

[51] Art. 248. Murder. – Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

x x x x x x x x x

(as amended by R.A. No. 7659 entitled "An Act to Impose the Death Penalty on Certain Heinous Crimes, amending for that Purpose the Revised Penal Laws, as amended, Other Special Penal Laws, and for Other Purposes").

[52] *People v. Kalipayan*, G.R. No. 229829, 22 January 2018.

c) Crim. Case No. 17630

In this case, accused-appellant was charged with murder for the killing of Miraflor, his live-in partner. The information provides that the killing of Miraflor was attended by the qualifying circumstances of treachery and evident premeditation.

Treachery is present when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[53] *Alevosia* is characterized by a deliberate, sudden, and unexpected assault from behind, without warning and without giving the victim a chance to defend himself or repel the assault and without risk to the assailant.[54]

For treachery to be appreciated two elements must be alleged and proved, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, methods or forms of execution must be shown to be deliberated upon or consciously adopted by the offender.[55] Treachery, whenever alleged in the information and competently and clearly proved, qualifies the killing and raises it to the category of murder.[56]

Additionally, in murder or homicide, the offender must have the intent to kill.[57] The evidence to prove intent to kill may consist of, inter alia, the means used; the nature, location, and number of wounds sustained by the victim; and the conduct of the malefactors before, at the time of, or immediately after the killing of the victim.[58]

---

[53] *People v. Sibbu*, G.R. No. 214757, 29 March 2017.

[54] *People v. Raytos*, G.R. No. 225623, 7 June 2017.

[55] *People v. Dasmariñas*, G.R. No. 203986, 4 October 2017.

[56] *People v. Macaspac*, G.R. No. 198954, 22 February 2017.

[57] *Cirera v. People,* 739 Phil. 25, 39 (2014).

[58] *Escamilla v. People*, 705 Phil. 188, 196-197 (2013).

On the first element, the legal teaching consistently upheld by the Court is that the essence of treachery is when the attack comes without 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.[59] Relative to the second element, jurisprudence imparts that there must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success[60] since unexpectedness of the attack does not always equate to treachery.[61] The means adopted must have been a result of a determination to ensure success in committing the crime.[62]

Joy testified that on 11 February 2011, she saw accused-appellant chase Miraflor out of the house, and thereafter stabbed her and hacked her in the nape using a bolo.[63] There was no doubt that the intent of accused-appellant was to kill Miraflor, which fact was firmly established by her certificate of death reflecting that her cause of death was the "hacked wound, neck area, (R) dorsal area."[64] Obviously too, the means adopted by the accused-appellant in suddenly attacking Miraflor from behind using a bolo ensured his killing her. The presence of treachery is thus established, finding accused-appellant guilty of murder.

Taking into consideration the mitigating circumstance of voluntary surrender and following Art. 63 of the RPC, the penalty of *reclusion perpetua* shall be imposed upon accused-appellant.

In all these cases, following *Jugueta,*[65] accused-appellant shall be liable to the heirs of Miraflor B. Realo for the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of

---

[59] *People v. Bugarin*, G.R. No. 224900, 15 March 2017.

[60] *People v. Oloverio*, 756 Phil. 435, 449 (2015).

[61] *Cirera v. People*, *supra* note 57 at 28.

[62] *Id.* at 45.

[63] TSN, 8 November 2012, p. 5.

[64] Records, p. 100.

[65] *Supra* note 49.

₱50,000.00; with interest at the rate of 6% per annum from the finality of this decision until full payment.

WHEREFORE, the appeal is **DISMISSED**. Accordingly, judgment is rendered as follows:

In Crim. Case No. 17628, accused-appellant JUNIE (or DIONEY) SALVADOR, SR. *y* MASAYANG is hereby found **GUILTY** beyond reasonable doubt of the crime of Parricide as defined and penalized under Art. 246 of the RPC and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is ordered to pay the heirs of Junie (or Dioney) Salvador, Jr. the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00, and shall pay interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until their full payment.

In Crim. Case Nos. 17629, 17630, 17631, and 17632, accused-appellant JUNIE (or DIONEY) SALVADOR, SR. *y* MASAYANG is hereby found **GUILTY** beyond reasonable doubt of the crime of Murder as defined and penalized pursuant to Art. 248 of the RPC and is sentenced to suffer, in each of these cases, the penalty of imprisonment of *reclusion perpetua* without eligibility for parole. He is ordered to pay in each of these cases the heirs of Rosana B. Realo, Miraflor B. Realo, Mariz R. Masayang, and Jannes R. Masayang, respectively, the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00, with interest at the rate of six percent (6%) per annum reckoned from the finality of this decision until their full payment.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 224626. June 27, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **YYY,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT OF THE TRIAL COURT, GIVEN WEIGHT AND CREDIT.—** It is axiomatic that the trial court's assessment of the credibility of witnesses, the probative weight of their testimonies and conclusions drawn therefrom are accorded the highest respect by appellate courts considering that their revisory power and authority are generally limited to the bare and cold records of the case. x x x After an assiduous review of the records, the Court finds no reason to depart from the assessment by the trial court of AAA's testimony. She was straightforward and categorical in narrating YYY's dastardly deeds and never wavered in identifying him as her abuser.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS, SUFFICIENTLY ESTABLISHED BY VICTIM'S TESTIMONY ALONE.—** AAA's testimony alone sufficed in establishing the elements of rape: (1) accused had carnal knowledge of the victim; and (2) it was accomplished (a) through the use of force or intimidation; (b) when the victim is deprived of reason or otherwise unconscious; or (c) when the victim is under 12 years of age or is demented.

3. **ID.; ID.; ID.; PRESENCE OF ACTUAL FORCE OR INTIMIDATION IS IMMATERIAL ON ACCOUNT OF ACCUSED'S RELATIONSHIP WITH THE VICTIM AND THE LATTER'S AGE AT THE TIME OF THE SEXUAL ENCOUNTER.—** [T]he gravamen of statutory rape is carnal knowledge with a woman below 12 years old; and it is unnecessary that force and intimidation be proven because the law presumes that the victim, on account of his or her tender age, does not have a will of his or her own. In all the rape incidents, AAA had yet to reach 12 years of age. Clearly, this feeble attempt at exoneration deserves scant consideration because even if YYY did not employ force and intimidation in those three instances, he would

still be guilty of rape. In the present case, the presence of actual force or intimidation is rendered immaterial on account of YYY's relationship with AAA and her age at the time of the alleged sexual encounters.

4. ID.; ID.; ID.; CIVIL LIABILITY; AWARD OF DAMAGES, INCREASED.— While the Court agrees with the courts *a quo* as regards the guilt of YYY in all three charges, there is a need to modify the damages awarded to conform to recent jurisprudence. In *People v. Jugueta,* the Court set the standard of 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 11 November 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06195, which affirmed with modification the 23 April 2012 Consolidated Judgment[2] of the Regional Trial Court, Benguet *(RTC),* in Criminal Case Nos. 2K-CR-3865 to 2K-CR-3867, finding accused-appellant YYY[3] guilty beyond reasonable doubt of three (3) counts of Rape.

THE FACTS

[1] *Rollo*, pp. 2-28; penned by Associate Justice Carmelita Salandanan Manahan, and concurred in by Associate Justices Japar B. Dimaampao and Franchito N. Diamante.

[2] CA *rollo*, pp. 88-98; penned by Presiding Judge Francis A. Buliyat, Sr.

[3] The complete names and personal circumstances of the victim's family members or relatives, who may be mentioned in the court's decision or

In three separate Informations all dated 25 August 2000, YYY was charged with rape under Article 335[4] of the Revised Penal Code committed against AAA,[5] his half-sister. The accusatory portion of the informations read:

Crim. Case No. 2K-CR-3865

That on or about the 26th day of March 1994, at [XXX], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one AAA, a minor, being ten (10) years of age, against her will and consent, to her damage and prejudice.[6]

Crim. Case No. 2K-CR-3866

That on or about the 17th day of June 1993, at [XXX], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one AAA, a minor, being nine (9) years of age, against her will and consent, to her damage and prejudice.[7]

Crim. Case No. 2K-CR-3867

---

resolution have been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances).

[4] All acts were committed prior to Republic Act No. 8353.

[5] The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/ Personal Circumstances). The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 (Special Protection of Children Against Abuse, Exploitation and Discrimination Act); R.A. No. 8505 (Rape Victim Assistance and Protection Act of 1998); R.A. No. 9208 (Anti-Trafficking in Persons Act of 2003); R.A. No. 9262 (Anti-Violence Against Women and Their Children Act of 2004); and R.A. No. 9344 (Juvenile Justice and Welfare Act of 2006).

[6] Records (Criminal Case No. 2K-CR-3865), pp. 1-2.

[7] Records (Criminal Case No. 2K-CR-3866), pp. 1-2.

That on or about the 11th day of September 1993, at [XXX], Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation, did then and there wilfully, unlawfully and feloniously have carnal knowledge with one AAA, a minor, being nine (9) years of age, against her will and consent, to her damage and prejudice.[8]

During his arraignment on 3 September 2001, YYY, with the assistance of his counsel, pleaded "Not Guilty" to all three charges.[9]

Version of the Prosecution

On 17 June 1993, AAA was at her home in XXX, Benguet, with her parents and siblings, including YYY. Around 12:00 noon, YYY, who was at their other house, called for AAA and asked her to massage his back. As she was massaging him, he went behind her and began to undress her. Then he forced her to lie down and removed her pants and underwear. He placed himself on top of her and inserted his penis into her vagina. AAA could not push him away or shout for help because YYY forced himself on her and placed a handkerchief in her mouth. During the ordeal, she was crying as her body ached. After more than 30 minutes of carnal knowledge, YYY threatened AAA not to tell anyone or he would kill her. After getting dressed, he went outside the house and left her crying.[10]

In the afternoon of 11 September 1993, AAA was sleeping in their house when she felt someone approach and carry her. When she opened her eyes, she saw it was YYY who laid her on top of a carton pile. He undressed AAA and then started kissing her before inserting his penis into her vagina. AAA tried to push him away but she could not get out of his embrace. YYY thereafter put on his clothes while AAA ran crying to her father in the garden. She, however, did not explain why she was crying for fear that YYY would make good his threat

---

[8] Records (Criminal Case No. 2K-CR-3867), pp. 1-2.

[9] *Id.* at 17.

[10] *Rollo*, pp. 5-6.

to kill her.[11]

On 26 March 1994, AAA was at home sleeping beside her sibling when YYY came beside her and proceeded to undress her. She tried to wake up her sibling but YYY pulled her to the corner and angrily told her to remain still. There, he kissed her and inserted his penis into her vagina. After he was done ravishing her, YYY uttered the same threat to kill her and her sibling if she told anyone. AAA went back to sleep after the incident. Out of fear, she did not tell anyone about the abuses. [12]

In 2000, AAA decided to file a case against YYY after she discovered that he was also raping her younger sister. The medical examination conducted on AAA revealed that she had shallow healed lacerations at 3 o'clock position and deep healed lacerations at the 6 o'clock position in her hymen; it meant that a blunt object had been inserted into her vagina.[13]

Version of the Defense

On 18 December 1999, YYY was at Dalawa, Alilem, Ilocos Sur, when someone informed him that his siblings, together with his half-sister AAA, were having a picnic by the river. After work, he went to the river and there saw his siblings with their cousin and five other male companions. YYY scolded them for having a picnic until night time without visiting their grandfather first. One of his siblings then threw stones at him and then mauled him. The group then left and YYY followed AAA, who ran towards the opposite direction.[14]

YYY was able to catch up with AAA and asked her what they were doing. Suddenly, AAA's male companions arrived and beat him up and even hit him in the head with a stone. YYY tried to escape by boarding a passing vehicle, but he was pulled away and was again mauled. On 18 January 2000, he went to the office of the Barangay Captain of Dalawa, Alilem,

---

[11] *Id.* at 6.

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

[13] *Id.* at 7.

[14] *Id.*

Ilocos Sur, to file a complaint. However, YYY's complaint was abandoned after it was discovered that AAA had filed a case for rape against him.[15]

The RTC Ruling

In its 23 April 2012 consolidated judgment, the RTC found YYY guilty of three (3) counts of rape defined and penalized under Article 335 of the RPC because all the incidents occurred prior to the passage of Republic Act No. 8353. The trial court noted that AAA positively identified YYY as her abuser and had categorically and clearly narrated how he had forced himself upon her. It disregarded YYY's defense of denial and alibi in view of AAA's positive identification of him. The RTC also found without merit his allegations that AAA's accusations were motivated by a desire to exact revenge against him. It expounded that family feuds have not prevented the Court from giving, if proper, full credence to the testimony of minor complainants who remained consistent throughout their direct and cross-examinations. The RTC also posited that the delay in filing the rape cases against YYY can be attributed to the threats he made against AAA. The dispositive portion reads:

> WHEREFORE, this court finds accused YYY GUILTY BEYOND REASONABLE DOUBT for THREE (3) COUNTS OF RAPE and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA for each case. He is likewise ordered to pay private complainant, AAA, PhP75,000.00 as moral damages, PhP75,000.00 as civil indemnity and another PhP25,000.00 as exemplary damages for each case. The awards for civil indemnity and damages are without subsidiary penalties in case of insolvency.
>
> Let a Warrant of Arrest be issued immediately against convict YYY for the service of his sentence.
>
> Furnish a copy of this Consolidated Judgment to the Office of the Provincial Prosecutor of Benguet; the private complainant; the accused and his counsel.
>
> SO ORDERED.[16]

---

[15] *Id*. at 7-8.

Aggrieved, YYY appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed with modification the RTC decision. The appellate court agreed that AAA's narration was clear, spontaneous, and straightforward. As such, it noted that her testimony established all the elements of rape under Article 335 of the RPC. The CA dismissed YYY's argument that AAA's testimony was suspicious and incredible because it was perfect down to the minute details. The appellate court agreed that YYY is guilty only of simple rape because the qualifying circumstance of relationship was not alleged in the informations filed against him. However, the CA modified the damages awarded to conform to the jurisprudence prevalent at that time. It ruled:

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. The Consolidated Judgment of the Regional Trial Court (RTC) of [XXX], Benguet, in Criminal Case Nos. 2K-CR-3865, 2K-CR-3866, and Criminal Case No. 2K-CR-3867 is AFFIRMED with the following MODIFICATIONS:

> The accused-appellant [YYY] is hereby convicted of three counts of simple rape as defined under Article 335 of the Revised Penal Code and is sentenced to suffer the penalty of reclusion perpetua for each count of simple rape. He is ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.
>
> The amount of damages awarded are subject to interest at the legal rate of 6% per annum, to be reckoned from date of finality of this Decision until fully paid.
>
> SO ORDERED.[17]

Hence, this appeal raising the following:

ISSUES

---

[16] CA *rollo*, p. 98.

[17] *Rollo*, pp. 27-28.

I.

WHETHER THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE BASED ON THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT; AND

II.

WHETHER THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME OF RAPE DESPITE THE FACT THAT THERE IS NO EVIDENCE THAT WOULD CORROBORATE COMPLAINANT'S CLAIMS.[18]

THE COURT'S RULING

The appeal has no merit.

Essentially, YYY's attempt at exoneration rests heavily on his challenge of AAA's credibility as a witness. He argues that the medical findings do not necessarily support her claims that she was raped on three separate dates. As such, YYY surmises the trial court should have been more circumspect in assessing AAA's testimony. He bewails that a deeper scrutiny of AAA's testimony becomes more imperative considering that it appears to be perfect, raising the possibility that she was rehearsed. YYY highlights that the incident occurred almost nine (9) years prior to her testimony in court. Finally, he believes that AAA's actions are contrary to human experience and negate her allegations that there was force and intimidation during the rape incidents.

The Court finds YYY's arguments devoid of value.

A medico-legal report is not indispensable in rape cases as it is merely corroborative in nature.[19]Thus, even without it, an accused may still be convicted on the sole basis of the testimony of the victim.[20]As such, the credibility of the witness should be assessed independently regardless of the presence or absence of a medico-legal report. Trial courts are expected to scrutinize

[18] CA *rollo*, p. 77.

[19] *People v. Opong*, 577 Phil. 571, 593 (2008).

[20] *People v. Escoton*, 625 Phil. 74, 87 (2010).

the victim's testimony with great caution,[21] with or without a medico-legal report to corroborate the same.

In the present case, YYY does not point to any inconsistency in AAA's testimony to discredit her. Rather, he perceives that her testimony was immaculate, such that it was in all likelihood rehearsed.

It is axiomatic that the trial court's assessment of the credibility of witnesses, the probative weight of their testimonies and conclusions drawn therefrom are accorded the highest respect by appellate courts considering that their revisory power and authority are generally limited to the bare and cold records of the case.[22] In *People v. Rivera*,[23] the Court reminded why the assessment of trial courts as to the credibility of witnesses is given great weight and finality, to wit:

> Time and again, we have held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality, unless there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the result of the case. The trial court judge enjoys the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath"—all of which are useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. **Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witness while testifying and detect if they are lying**.[24] (emphasis supplied)

---

[21] *People v. Daganta*, 370 Phil. 751, 759 (1999).

[22] *People v. Soriano*, G.R. No. 216063, 5 June 2017.

[23] 717 Phil. 380 (2013), citing *People v. Belga*, 402 Phil. 734, 742-743 (2001).

After an assiduous review of the records, the Court finds no reason to depart from the assessment by the trial court of AAA's testimony. She was straightforward and categorical in narrating YYY's dastardly deeds and never wavered in identifying him as her abuser.

In fact, YYY does not see any material inconsistency in her testimony but discredits the same on account of it being a perfect retelling of the incidents — making it likely that the testimony was rehearsed. He argues that since immaterial inconsistencies are a badge of truth as it shows that the testimony was not rehearsed, then testimonies that are perfect in all aspects are suspect of having been prepared or memorized.

It would be challenging for the Court to determine whether AAA's testimony was rehearsed because it relied only on the cold, blank pages of the transcripts. The transcripts recite nothing more but the words uttered by witnesses in open court, devoid of emotion which could give valuable insight to the motivations or possible biases of witnesses in testifying. As such, the trial court is best situated to determine whether AAA was coached because it could analyze her testimony in a more complete context taking into account her body language and other non-verbal cues that could have manifested that she was less than truthful. Since no material facts which could alter the results of the case have been overlooked, the Court adopts the assessment of the trial court.

In addition, YYY finds it unbelievable that AAA could still recall the details even if she only testified nine (9) years after the last rape incident. Nevertheless, it is not farfetched that AAA could remember events that transpired on those fateful dates. After all, it is especially traumatic for a child of tender age to have been defiled by her own flesh and blood. Surely, it could have been possible that the details of the harrowing event were painfully etched in the recesses of her mind.

AAA's testimony alone sufficed in establishing the elements of rape: (1) accused had carnal knowledge of the victim; and

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

(2) it was accomplished (a) through the use of force or intimidation; (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.[25]

On three different occasions, YYY forcibly had sexual intercourse with AAA. *First*, he forced AAA to lie down and even inserted a handkerchief in AAA's mouth while he defiled her. *Second*, YYY carried AAA, who was awakened from her sleep, and laid on top of a carton pile where she was ravished. *Finally*, he isolated AAA in a corner where he molested her. In each of the instances she was violated, she would try to escape but he would overpower her. YYY even threatened her that he would kill AAA and her siblings if she would tell anyone about it.

YYY dismisses AAA's testimony and assails that her failure to cry for help during and after the alleged rape incidents belies the presence of force and intimidation because during those times other family members were around. AAA could not be faulted for not crying for help because he had threatened to kill her if she told someone about it. In fact, in the second incident, she ran to her father crying but ultimately decided not to tell him due to YYY's threats. In addition to the third incident, AAA tried to wake up her sibling but YYY pulled her to a corner and instructed her to keep still. More importantly, lest it be forgotten, AAA was only nine years old during the first and second rape and ten years old during the last one.

Even assuming that the prosecution failed to prove force and intimidation, this still could not favor YYY. In incestuous rape of a minor, it is not necessary that actual force or intimidation be employed.[26] YYY is AAA's older half-brother. In addition, the gravamen of statutory rape is carnal knowledge with a woman below 12 years old; and it is unnecessary that force and intimidation be proven because the law presumes that the victim, on account of his or her tender age, does not have a will of his or her own.[27] In all the rape incidents, AAA had yet to reach

---

[25] *People v. Perez*, 673 Phil. 373, 379 (2011).

[26] *People v. Ortega*, 680 Phil. 285, 297 (2012).

12 years of age.

Clearly, this feeble attempt at exoneration deserves scant consideration because even if YYY did not employ force and intimidation in those three instances, he would still be guilty of rape. In the present case, the presence of actual force or intimidation is rendered immaterial on account of YYY's relationship with AAA and her age at the time of the alleged sexual encounters.

While the Court agrees with the courts *a quo* as regards the guilt of YYY in all three charges, there is a need to modify the damages awarded to conform to recent jurisprudence.

In *People v. Jugueta,*[28] the Court set the standard of 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.

WHEREFORE, the 11 November 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06195 is **AFFIRMED with MODIFICATION**. Accused-appellant YYY is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for each count of rape. All damages awarded are subject to interest at the rate of six percent (6%) per annum computed from the finality of this judgment until fully paid.

SO ORDERED.

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

---

[27] *People v. Lopez,* 617 Phil. 733, 744-745 (2009).

[28] 783 Phil. 806 (2012).

SECOND DIVISION

[G.R. No. 231884. June 27, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHELLE PARBA-RURAL and MAY ALMOHAN-DAZA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC); KIDNAPPING FOR RANSOM; ELEMENTS; NO SPECIFIC FORM OF RANSOM IS REQUIRED AS LONG AS THE RANSOM IS INTENDED AS A BARGAINING CHIP IN EXCHANGE FOR THE VICTIM'S FREEDOM.— In prosecuting a case involving the crime of kidnapping for ransom, the following elements must be established: (i) the accused was a private person; (ii) he kidnapped or detained, or in any manner deprived another of his or her liberty; (iii) the kidnapping or detention was illegal; and (iv) the victim was kidnapped or detained for ransom. Ransom means money, price or consideration paid or demanded for the redemption of a captured person that will release him from captivity. No specific form of ransom is required to consummate the felony of kidnapping for ransom as long as the ransom is intended as a bargaining chip in exchange for the victim's freedom. The amount of, and purpose for, the ransom is immaterial.

2. ID.; ID.; ID.; ELEMENTS OF KIDNAPPING FOR RANSOM, PROVEN BEYOND REASONABLE DOUBT.— In this case, the prosecution was able to prove beyond reasonable doubt the existence of the above-mentioned elements. In her testimony, Nenita, a private person, narrated how she was deprived of her liberty from the time she was forcibly taken by the appellants and their companions for the purpose of extorting money and jewelry from her until she relented to their demands[.]

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT OF THE CREDIBILITY OF A WITNESS, GIVEN GREAT WEIGHT.— The question of credibility of witnesses is primarily for the trial court to determine. For this reason, its observations

and conclusions are accorded great respect on appeal. This rule is variously stated thus: The trial court's assessment of the credibility of a witness is entitled to great weight. It is conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered. Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, or that the judge acted arbitrarily, his assessment of the credibility of witnesses deserves high respect by appellate courts.

4. ID.; ID.; ID.; SLIGHT CONTRADICTIONS IN THE TESTIMONIES OF THE WITNESSES EVEN STRENGTHEN THEIR CREDIBILITY.— Anent the claim of inconsistencies, what really prevails is the consistency of the testimonies of the witnesses in relating the principal occurrence and positive identification of the appellants. Slight contradictions in fact even serve to strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed. They are, thus, safeguards against memorized perjury.

5. ID.; ID.; DEFENSE OF DENIAL; CANNOT PREVAIL OVER POSITIVE AND CATEGORICAL TESTIMONIES OF WITNESSES.— As to appellants' denial, such cannot be accorded more weight than the positive identification of them by the witnesses. It must always be remembered that between positive and categorical testimony which has a ring of truth to it on the one hand, and a bare denial on the other, the former generally prevails. Also, the absurdity of appellants' claim that they were merely acting as good Samaritans in accompanying Nenita to the bank has not been unnoticed by the CA and the RTC[.]

6. CRIMINAL LAW; RPC; KIDNAPPING FOR RANSOM; CIVIL LIABILITY; AMOUNT OF DAMAGES AWARDED, INCREASED.— There is, however, a need to modify the amounts of damages awarded pursuant to prevailing jurisprudence. The amount of damages are increased to ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages. There is also a need to award the victim the amount of ₱100,000.00 as civil indemnity. In our jurisdiction, civil indemnity is awarded to the offended party as a kind of monetary

restitution or compensation to the victim for the damage or infraction that was done to the latter by the accused, which in a sense only covers the civil aspect. Interest is also imposed on all damages awarded at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is to resolve the appeal of accused-appellants Michelle Parba-Rural and May Almohan-Daza (*appellants*) that seeks to reverse and set aside the Decision[1] dated October 5, 2016 of the Court of Appeals (*CA*) in CA-G.R. CR H.C. No. 05789, affirming the Decision[2] dated July 31, 2012 of the Regional Trial Court (*RTC*), Branch 223, Quezon City finding the same appellants guilty beyond reasonable doubt of the crime of kidnapping for ransom.

The facts follow.

Around 9 o'clock in the morning of December 28, 2007, Nenita Marquez (*Nenita*) was about to cross Commonwealth Avenue from Fairview Market to Mercury Drug Store when she was forcibly abducted by appellants and boarded in a Ford Fiera van. There were six (6) of them inside the vehicle, three (3) men and three (3) women. They were inside the same vehicle for two (2) hours. The said persons repeatedly demanded from Nenita that she give them jewelry and money in exchange for

---

[1] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Rodil V. Zalameda and Samuel H. Gaerlan; *rollo,* pp. 2-15.

[2] Penned by Judge Tita Marilyn Payoyo-Villordon; CA *rollo,* pp. 53-62.

her freedom. They also told her to cooperate or otherwise, they will hurt her and her family. Thereafter, they asked her to alight from the vehicle together with the appellants and the other woman companion. Nenita and the three (3) women hailed a taxi and upon boarding, the latter asked Nenita where her house was located. When they reached Nenita's house, the three (3) women reminded her not to tell anyone what was happening. Nenita and the three (3) women proceeded to the former's room wherein she took her pieces of jewelry amounting to ₱3,000,000.00. Afterwards, Nenita and the three (3) women boarded the same taxi cab and went outside the subdivision where the Ford Fiera van was parked. Nenita was then forced to give up all her pieces of jewelry to one of her captors. After the captors asked Nenita where her bank was located, the latter was brought to the Philippine National Bank (*PNB*) near the Bureau of Internal Revenue (*BIR*) in Quezon City where Nenita has a time deposit in the amount of ₱400,000.00. The appellants accompanied Nenita to the bank in order to withdraw the entire amount in the latter's time deposit. Nenita told the account officer of the bank, Mel Alvin Moreno, to immediately pre-terminate her time deposit account and release her money. While waiting for the approval of the pre-termination, Nenita saw her driver, her daughter and two (2) police officers enter the bank which prompted her to seek for help. The appellants were then arrested.

Consequently, an Information was filed against appellants charging them with the crime of kidnapping for ransom, thus:

> That on or about the 28th day of December, 2007, in Quezon City, Philippines, the said accused, conspiring and confederating with other persons, whose true identities, whereabouts and other personal circumstances of which have not yet been ascertained, and mutually helping one another and for the purpose of obtaining valuable items such as jewelries in the amount of ₱3,000,000.00 Philippine Currency, from one NENITA MACALOS-MARQUEZ, did then and there willfully, unlawfully and feloniously kidnap and carry away in a motor vehicle, detained and threaten her that something will happen to her and her family if the desired said valuable items worth Php3,000,000.00 could not be given, to the damage and prejudice of the said NENITA MACALOS-MARQUEZ.

CONTRARY TO LAW.[3]

The prosecution presented the testimonies of Nenita, Ana, Nenita's daughter, PO3 Perez, one of the police officers who responded to Ana's report and Mel Alvin Moreno, account officer at the PNB, BIR Branch.

Appellants, in their testimonies, denied committing the crime charged against them. According to them, on December 28, 2007, around 9 o'clock in the morning, they were in the highway in front of the Fairview Wet Market when Nenita approached them and asked for help because she felt weak and dizzy. The appellants, taking pity on her, hailed a taxi cab for Nenita and accompanied the latter to her house in Quezon City. While inside the house, Nenita introduced the appellants to Ana, Nenita's daughter. Thereafter, Nenita told appellants to wait in the living room while she takes a rest. Afterwards, Nenita asked appellants to accompany her somewhere. They then left the house and proceeded to PNB, BIR Branch. While in the bank, the appellants sat at the waiting area, while Nenita made her transaction. Shortly, a man went inside the bank and asked Nenita what she was doing there. Later on, the same man went outside the bank and when he returned, he was accompanied by two policemen and Ana. It was then that the policemen approached the appellants and forcibly took them to the police station.

The RTC, in its Decision dated July 31, 2012, found the appellants guilty beyond reasonable doubt of the crime of kidnapping for ransom, thus:

> Wherefore, premises considered, the Court finds the accused Michelle Parba-Rural and May Almohal Daza GUILTY of the crime of Kidnapping. They are sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and are ordered to pay the private complainant jointly and solidarily the amounts of two hundred thousand pesos (₱200,000.00) as moral damages and one hundred thousand (₱100,000.00) as exemplary damages.
>
> SO ORDERED.[4]

[3] Records, pp. 1-2.

[4] CA *rollo,* pp. 6-7.

According to the RTC, the prosecution was able to prove all the elements of kidnapping for ransom. Thus, appellants elevated the case to the CA.

The CA, in its Decision dated October 5, 2016, affirmed the decision of the RTC with the following dispositive portion:

> WHEREFORE, in light of all the foregoing, the July 31, 2012 decision of the RTC, Branch 223, Quezon City in Criminal Case No. Q-08-150324 is AFFIRMED.
>
> SO ORDERED.[5]

Hence, the present appeal after the appellants' motion for reconsideration had been denied by the CA.

In their Brief, appellants assigned the following errors:

> I. THE COURT *A QUO* ERRED IN FINDING ACCUSED-APPELLANTS GUILTY OF KIDNAPPING DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT; [AND]
>
> II. ASSUMING *ARGUENDO* THAT ACCUSED-APPELLANTS MAY BE HELD CRIMINALLY LIABLE, THE MORAL DAMAGES AWARDED TO THE PRIVATE COMPLAINANT SHOULD BE MODIFIED TO CONFORM WITH PREVAILING JURISPRUDENCE.[6]

According to the appellants, Nenita's testimony is tainted with substantial inconsistencies and, thus, should not be given evidentiary weight and credence. They also claim that Nenita's account of the incident was incredible and grossly inconsistent with human experience.

The appeal is unmeritorious.

Under Article 267 of the Revised Penal Code, as amended by Republic Act (*R.A.*) No. 7659, thus:

---

[5] *Rollo,* p. 15.

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

Article 267. Kidnapping and serious illegal detention. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

In prosecuting a case involving the crime of kidnapping for ransom, the following elements must be established: (i) the accused was a private person; (ii) he kidnapped or detained, or in any manner deprived another of his or her liberty; (iii) the kidnapping or detention was illegal; and (iv) the victim was kidnapped or detained for ransom.[7] Ransom means money, price or consideration paid or demanded for the redemption of a captured person that will release him from captivity.[8] No specific form of ransom is required to consummate the felony of kidnapping for ransom as long as the ransom is intended as a bargaining chip in exchange for the victim's freedom.[9] The amount of, and purpose for, the ransom is immaterial.[10]

---

[7] *People v. Gregorio, et al.,* G.R. No. 194235, June 8, 2016, 792 SCRA 469, 488, citing *People v. Lugnasin*, G.R. No. 208404, February 24, 2016, 785 SCRA 120, 131.

[8] *People v. Jatulan*, 550 Phil. 342, 356 (2007).

[9] *Id.*

[10] *People v. Mamantak*, 582 Phil. 294, 306 (2008).

In this case, the prosecution was able to prove beyond reasonable doubt the existence of the above-mentioned elements. In her testimony, Nenita, a private person, narrated how she was deprived of her liberty from the time she was forcibly taken by the appellants and their companions for the purpose of extorting money and jewelry from her until she relented to their demands, thus:

ATTY. LEGASPI

Q: Now, Ms. Witness, you said that you were forcibly taken inside the vehicle. Will you tell us what particular [vehicle] is this? What type of vehicle?

A: I think it was a Ford Fiera.

Q: And while inside the vehicle, what, if any, did these persons tell you?
A: They told me that I should go with them, sir.

Q: And aside from that, what else did they tell you?
A: If you are not going to come with us, something bad will happen to you.

Q: And what was your reaction?
A: I was so afraid because of the threat they gave me that they will bodily harm me.

Q: And while on board the said vehicle, where were you taken, Ms. Witness?
A: They squeezed me inside the vehicle, sir.

Q: And in what place were you taken, Ms. Witness?
A: The vehicle was going towards Regalado Street.

x x x x x x x x x

Q: And at that point when the said vehicle had reached Regalado Avenue, what, if any, did these persons do to you?
A: When they were threatening me, they told me that there's only one thing that we want from you, your jewelry and your money and then we will set you free.

Q: And after being told or having demanded that you give them your jewelries and you give them your jewelries and you give them a certain amount of money, what, if any, did you do after that?

A: They said that they will set me free if I'm going to give them what they're asking which is (sic) money and my jewelries.

Q: And upon hearing the said demand, what, if any, did you do?
A: I was so afraid since I boarded their vehicle. They persistently threatened me.

Q: And what happened after that, Mr. Witness?
A: They told me that if I should give them the money and the jewelries that they were asking and if I will be able to deliver said items, they will set me free and that will be the only time that I will be set free.[11]

Appellants argue that Nenita's testimony is incredible and inconsistent, however, a close reading of her testimony shows otherwise. She was able to positively identify the individuals who abducted her, as well as the manner in which she was abducted. There was nothing inconsistent in her testimony. In fact, it was well detailed and was corroborated by other witnesses. As aptly found by the CA:

> Ana, as noted by the trial court, clearly saw accused-appellants when they [accompanied] her to their house. Believing that they were officemates of her mother, she left them at their living room while she returned to her chore. Mel, bank officer at PNB, also positively identified accused-appellants in open court as the ones who closely guarded Nenita while attempting to withdraw money from the bank. It is quite suspicious that accused-appellants who are strangers were right beside Nenita while she was going to preterminate her time deposit. As concluded by the trial court, their presence at such close proximity to Nenita only means that they are waiting for the withdrawal of the amount of Php400,000.00 and right then and there take it from her.
>
> The prosecution witnesses' testimonies agree on the essential facts and substantially corroborate a consistent and coherent whole. No less than four witnesses positively identified the accused-appellants as the persons who abducted Nenita, accompanied her to her house and thereafter proceeded to PNB near the BIR in Quezon City. Such

---

[11] TSN, April 28, 2008, pp. 14-21.

unwavering identification of the accused-appellants convince us that accused-appellants are indeed guilty.[12]

The question of credibility of witnesses is primarily for the trial court to determine.[13] For this reason, its observations and conclusions are accorded great respect on appeal.[14] This rule is variously stated thus: The trial court's assessment of the credibility of a witness is entitled to great weight. It is conclusive and binding unless shown to be tainted with arbitrariness or unless, through oversight, some fact or circumstance of weight and influence has not been considered.[15] Absent any showing that the trial judge overlooked, misunderstood, or misapplied some facts or circumstances of weight which would affect the result of the case, or that the judge acted arbitrarily, his assessment of the credibility of witnesses deserves high respect by appellate courts.[16]

Anent the claim of inconsistencies, what really prevails is the consistency of the testimonies of the witnesses in relating the principal occurrence and positive identification of the appellants. Slight contradictions in fact even serve to strengthen the credibility of the witnesses and prove that their testimonies are not rehearsed.[17] They are, thus, safeguards against memorized perjury.[18]

As to appellants' denial, such cannot be accorded more weight than the positive identification of them by the witnesses. It must always be remembered that between positive and categorical testimony which has a ring of truth to it on the one hand, and

---

[12] *Rollo,* p. 12.

[13] *People v. Montanir,* 662 Phil. 535, 551 (2011) citing *People v. Mercado*, 400 Phil. 37, 71 (2000) and *People v. Dianos*, 357 Phil. 871, 884 (1998).

[14] *Id*., citing *People v. Manuel*, 358 Phil. 664, 673 (1998).

[15] *Id*., citing *People v. Lozano*, 357 Phil. 397, 411 (1998).

[16] *Id*., citing *People v. Abangin*, 358 Phil. 303, 313 (1998).

[17] *People v. Mercado*, 400 Phil. 37, 73-74 (2000).

[18] *People v. Pirame*, 384 Phil. 286, 298 (2000).

a bare denial on the other, the former generally prevails.[19] Also, the absurdity of appellants' claim that they were merely acting as good Samaritans in accompanying Nenita to the bank has not been unnoticed by the CA and the RTC, thus:

> x x x To repeat, accused-appellants' defense that they were just being good Samaritans to Nenita is absurd and distrustful. Though it may be understandable for one to seek assistance from strangers if one is feeling weak or dizzy, it is so unlikely for a person to ask a complete stranger to accompany you to the bank. As aptly stated by the trial court, it is unacceptable for a person to ask a complete stranger to accompany her inside her house, wait for her to rest and then accompany her to the bank. More so, it is dumbfounding that Nenita would prefer the two accused-appellants to accompany her to a bank instead of her own daughter to terminate her account and then withdraw such a huge amount of money of Php400,000.00. x x x[20]

There is, however, a need to modify the amounts of damages awarded pursuant to prevailing jurisprudence.[21] The amount of damages are increased to ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages. There is also a need to award the victim the amount of ₱100,000.00 as civil indemnity. In our jurisdiction, civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction that was done to the latter by the accused, which in a sense only covers the civil aspect.[22] Interest is also imposed on all damages awarded at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.[23]

WHEREFORE, the appeal of Michelle Parba-Rural and May Almohan-Daza is **DISMISSED,** for lack of merit and the Decision

---

[19] *People v. Waggay*, 291-A Phil. 786, 794 (1993); *People v. Andasa*, 283 Phil. 579, 585 (1992).

[20] *Rollo*, pp. 13-14.

[21] *People v. Jugueta*, 783 Phil. 806 (2016).

[22] *Id.*

[23] *Id.*

dated October 5, 2016 of the Court of Appeals, affirming the Decision dated July 31, 2012 of the Regional Trial Court, Branch 223, Quezon City in Criminal Case No. Q-08-150324 convicting appellants of kidnapping for ransom, as defined in and penalized under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, and imposing the penalty of *reclusion perpetua* without eligibility for parole is **AFFIRMED** with **MODIFICATION** that appellants are **ORDERED** to **PAY** the private complainant, jointly and solidarily, the amounts of ₱100,000.00, as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages in accordance with *People v. Jugueta*,[24] with the appellants paying an interest of six percent (6%) *per annum* on all damages awarded from the date of finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 234533. June 27, 2018]

SPOUSES JULIETA B. CARLOS and FERNANDO P. CARLOS, *petitioners, vs.* **JUAN CRUZ TOLENTINO,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE *VIS-À-VIS* FAMILY CODE; THE PROPERTY RELATIONS BETWEEN SPOUSES WHO

[24] *Supra* note 21.

HAVE BEEN MARRIED BEFORE THE EFFECTIVITY OF THE FAMILY CODE IS GOVERNED BY THE REGIME OF CONJUGAL PARTNERSHIP OF GAINS; SUCH REGIME IS TERMINATED UPON THE DEATH OF EITHER OF THE SPOUSES.— Juan and Mercedes appear to have been married before the effectivity of the Family Code on August 3, 1988. There being no indication that they have adopted a different property regime, the presumption is that their property relations is governed by the regime of conjugal partnership of gains. x x x Likewise, the Family Code contains terms governing conjugal partnership of gains that supersede the terms of the conjugal partnership of gains under the Civil Code. x x x Since the subject property was acquired on March 17, 1967 during the marriage of Juan and Mercedes, it formed part of their conjugal partnership. It follows then that Juan and Mercedes are the absolute owners of their undivided one-half interest, respectively, over the subject property. Meanwhile, as in any other property relations between husband and wife, the conjugal partnership is terminated upon the death of either of the spouses. In respondent Juan's Comment filed before the Court, the Verification which he executed on February 9, 2018 states that he is already a widower. Hence, the Court takes due notice of the fact of Mercedes' death which inevitably results in the dissolution of the conjugal partnership.

2. ID.; ID.; ID.; CONGRUENCE OF THE WILLS OF THE SPOUSES IS ESSENTIAL FOR THE VALID DISPOSITION OF CONJUGAL PROPERTY; WHERE ONLY THE WIFE HAD GIVEN HER CONSENT TO THE DONATION AND THE HUSBAND'S SIGNATURE IS FOUND TO HAVE BEEN FORGED, THE DEED OF DONATION IS VALID ONLY WITH RESPECT TO THE WIFE'S DISPOSITION OF HER ONE-HALF UNDIVIDED PORTION; EFFECTS.— [W]hile it has been settled that the congruence of the wills of the spouses is essential for the valid disposition of conjugal property, it cannot be ignored that Mercedes' consent to the disposition of her one-half interest in the subject property remained undisputed. It is apparent that Mercedes, during her lifetime, relinquished all her rights thereon in favor of her grandson, Kristoff. Furthermore, Mercedes' knowledge of and acquiescence to the subsequent sale of the subject property to Spouses Carlos is evidenced by her signature appearing in the

MOA dated April 12, 2011 and the Deed of Absolute Sale dated September 12, 2011. We are also mindful of the fact that Spouses Carlos had already paid a valuable consideration in the amount of Two Million Three Hundred Thousand Pesos (₱2,300,000.00) for the subject property before Juan's adverse claim was annotated on Kristoff's title. The said purchase and acquisition for valuable consideration deserves a certain degree of legal protection. Given the foregoing, the Court is disinclined to rule that the Deed of Donation is wholly void *ab initio* and that the Spouses Carlos should be totally stripped of their right over the subject property. In consonance with justice and equity, We deem it proper to uphold the validity of the Deed of Donation dated February 15, 2011 but only to the extent of Mercedes' one-half share in the subject property. And rightly so, because why invalidate Mercedes' disposition of her one-half portion of the conjugal property that will eventually be her share after the termination of the conjugal partnership? It will practically be absurd, especially in the instant case, since the conjugal partnership had already been terminated upon Mercedes' death. Accordingly, the right of Kristoff, as donee, is limited only to the one-half undivided portion that Mercedes owned. The Deed of Donation insofar as it covered the remaining one-half undivided portion of the subject property is null and void, Juan not having consented to the donation of his undivided half. Upon the foregoing perspective, Spouses Carlos' right, as vendees in the subsequent sale of the subject property, is confined only to the one-half undivided portion thereof. The other undivided half still belongs to Juan. As owners *pro indiviso* of a portion of the lot in question, either Spouses Carlos or Juan may ask for the partition of the lot and their property rights shall be limited to the portion which may be allotted to them in the division upon the termination of the co-ownership. This disposition is in line with the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so—*quando res non valet ut ago, valeat quantum valere potest*.

APPEARANCES OF COUNSEL

P.C. Aliermo Law Office for petitioners.
Capili Endona Law Office for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the April 5, 2017 Decision[1] and the September 27, 2017 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 106430. The challenged rulings reversed and set aside the October 16, 2015 Decision[3] and the December 9, 2015 Order[4] of the Regional Trial Court (RTC) of Quezon City, Branch 87 which dismissed respondent's complaint for annulment of title against the petitioners.

The Facts

The instant case arose from a complaint for annulment of title with damages filed by respondent Juan Cruz Tolentino (Juan) against his wife, Mercedes Tolentino (Mercedes), his grandson, Kristoff M. Tolentino (Kristoff), herein petitioners Spouses Julieta B. Carlos (Julieta) and Fernando P. Carlos (Spouses Carlos), and the Register of Deeds of Quezon City.

The subject matter of the action is a parcel of land with an area of 1,000 square meters and all the improvements thereon located in Novaliches,[5] Quezon City, covered by Transfer Certificate of Title (TCT) No. RT-90746 (116229) issued on

---

[1] Penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Elihu A. Ybañez and Carmelita Salandanan Manahan; *Annex A* of the Petition.

[2] *Annex B* of the Petition.

[3] Penned by Judge Aurora A. Hernandez-Calledo; *Annex N* of the Petition.

[4] *Annex O* of the Petition.

[5] The parties state that the subject property is located in Mindanao Avenue, Quezon City. However, the RTC found that the Tax Declaration covering the subject property states that it is located in Novaliches, Greater Lagro, Quezon City. TCT No. RT-90746 (116229) also states that the subject property is located in Novaliches, Quezon City.

March 17, 1967 and registered in the name of Juan C. Tolentino, married to Mercedes Tolentino (the subject property).[6]

Without Juan's knowledge and consent, Mercedes and Kristoff, who were then residing in the subject property, allegedly forged a Deed of Donation[7] dated February 15, 2011, thereby making it appear that Juan and Mercedes donated the subject property to Kristoff. Thus, by virtue of the alleged forged Deed of Donation, Kristoff caused the cancellation of TCT No. RT-90764 (116229), and in lieu thereof, TCT No. 004-2011003320[8] was issued in his name on March 9, 2011.[9]

In April 2011, Kristoff offered the sale of the subject property to Julieta's brother, Felix Bacal (Felix), who is also the administrator of the lot owned by Julieta which is adjacent to the subject property. When Felix informed Julieta of the availability of the subject property, Spouses Carlos then asked him to negotiate for its purchase with Kristoff. Kristoff and Felix then arranged for the ocular inspection of the subject property. Thereafter, Kristoff surrendered to Felix copies of the title and tax declaration covering the said property.[10]

After a series of negotiations, Kristoff and Julieta executed a Memorandum of Agreement[11] (MOA) dated April 12, 2011 stating that Kristoff is selling the subject property to Julieta in the amount of Two Million Three Hundred Thousand Pesos (₱2,300,000.00), payable in two (2) installments. On May 28, 2011, Julieta made the first payment in the amount of Two Million Pesos (₱2,000,000.00)[12] while the second payment in

---

[6] At page 1 of the RTC Decision.

[7] *Annex I* of the Petition.

[8] *Annex C* of the Petition.

[9] CA Decision, p. 2.

[10] RTC Decision, p. 3.

[11] *Annex D* of the Petition.

[12] As evidenced by the Acknowledgment Receipt dated May 28, 2011; *Annex E* of the Petition.

the amount of Three Hundred Thousand Pesos (₱300,000.00) was made on June 30, 2011.[13] On the same day, a Deed of Absolute Sale[14] was executed between Kristoff and Julieta.

Upon learning of the foregoing events, Juan executed an Affidavit of Adverse Claim which was annotated on TCT No. 004-2011003320 on July 15, 2011, to wit:

NOTICE OF ADVERSE CLAIM : EXECUTED UNDER OATH BY JUAN C. TOLENTINO, CLAIMING FOR THE RIGHTS, INTEREST AND PARTICIPATION OVER THE PROPERTY, STATING AMONG OTHERS THAT HE DISCOVERED ON JULY 14, 2011 THAT SAID PARCEL OF LAND HAS BEEN DONATED TO KRISTOFF M. TOLENTINO BY VIRTUE OF A DEED OF DONATION PU[R]PORTEDLY EXECUTED BY JUAN C. TOLENTINO & MERCEDES SERRANO ON FEB. 15, 2011. THAT AS A RESULT OF THE FORGED DEED OF DONATION, HIS TITLE WAS CANCELLED. THAT HE DECLARE THAT HE HAVE NOT SIGNED ANY DEED OF DONATION IN FAVOR OF SAID KRISTOFF M. TOLENTINO. NEITHER DID HE SELL, TRANSFER NOR WAIVE HIS RIGHTS OF OWNERSHIP OVER THE SAID PROPERTY. OTHER CONDITIONS SET FORTH IN DOC. NO. 253, PAGE NO. 52, BOOK NO. V, SERIES OF 2011 OF NOTARY PUBLIC OF QC, MANNY GRAGASIN. DATE INSTRUMENT – JUNE 15, 2011[15]

Juan also filed a criminal complaint for Falsification of Public Document before the Office of the City Prosecutor of Quezon City against Kristoff.[16] A Resolution for the filing of Information for Falsification of Public Document against Kristoff was then issued on January 10, 2012. Accordingly, an Information dated February 15, 2012 was filed against him.[17]

---

[13] As evidenced by the Acknowledgment Receipt dated June 30, 2011; *Annex F* of the Petition.

[14] *Annex G* of the Petition.

[15] *Annex C* of the Petition.

[16] CA Decision, p. 5.

[17] *Id.* at 6.

Meanwhile, Kristoff and Julieta executed another Deed of Absolute Sale[18] dated September 12, 2011 over the subject property and, by virtue thereof, the Register of Deeds of Quezon City cancelled TCT No. 004-2011003320 and issued TCT No. 004-2011013502[19] on December 5, 2011 in favor of Spouses Carlos. The affidavit of adverse claim executed by Juan was duly carried over to the title of Spouses Carlos.

On February 23, 2012, Juan filed a complaint for annulment of title with damages against Mercedes, Kristoff, Spouses Carlos, and the Register of Deeds of Quezon City before the RTC of Quezon City. The case was raffled to Branch 87 and docketed as Civil Case No. Q-12-70832.

RTC Ruling

In its October 16, 2015 Decision, the RTC found that Juan's signature in the Deed of Donation dated February 15, 2011 was a forgery.[20] Despite such finding, however, it dismissed Juan's complaint.

The RTC found that at the time Spouses Carlos fully paid the agreed price in the MOA on June 30, 2011, which culminated in the execution of the Deed of Absolute Sale on even date, Kristoff was the registered owner of the subject property covered by TCT No. 004-2011003320. Further, when the MOA and the Deed of Absolute Sale dated June 30, 2011 were executed, nothing was annotated on the said title to indicate the adverse claim of Juan or any other person. It was only on July 15, 2011 when Juan's adverse claim was annotated on Kristoff's title.[21]

The fact that a second Deed of Absolute Sale dated September 12, 2011 was executed is immaterial since the actual sale of the subject property took place on June 30, 2011 when Spouses Carlos fully paid the purchase price. Thus, relying on the face

---

[18] *Annex J* of the Petition.

[19] *Annex K* of the Petition.

[20] RTC Decision, pp. 15-16.

[21] *Id*. at 18.

of Kristoff's title without any knowledge of irregularity in the issuance thereof and having paid a fair and full price of the subject property before they could be charged with knowledge of Juan's adverse claim, the RTC upheld Spouses Carlos' right over the subject property. The dispositive portion of the October 16, 2015 Decision states:

> WHEREFORE, viewed in the light of the foregoing, the instant complaint for Annulment of Title and Damages against the defendant spouses Fernando and Julieta Carlos is hereby DISMISSED for failure of the plaintiff to prove his cause of action. This is without prejudice, however to any appropriate remedy the plaintiff may take against Kristoff Tolentino and Mercedes Tolentino.
>
> The defendant spouses' counterclaim is DISMISSED for lack of merit.
>
> SO ORDERED.[22]

Juan moved for reconsideration of the said decision but was denied by the RTC in its December 9, 2015 Order. Thus, he interposed an appeal before the CA.

CA Ruling

On appeal, the CA found that Spouses Carlos were negligent in not taking the necessary steps to determine the status of the subject property prior to their purchase thereof. It stressed that Julieta failed to examine Kristoff's title and other documents before the sale as she merely relied on her brother, Felix.[23] Accordingly, the CA ruled that Juan has a better right over the subject property. The *fallo* of the April 5, 2017 Decision reads:

> **WHEREFORE**, the appeal is **GRANTED**. The appealed Decision of the RTC of Quezon City dated October 16, 2015 is hereby **REVERSED** and **SET ASIDE**. Accordingly, plaintiff-appellant Juan Cruz Tolentino is recognized to have a better right over the subject property. The Register of Deeds of Quezon City is **ORDERED** to reinstate TCT No. RT-90746 (116229) in the name of Juan Cruz

---

[22] *Id*. at 20.

[23] CA Decision, p. 14.

Tolentino and to cancel TCT No. 004-2011013502 in the names of Spouses Julieta and Fernando Carlos, and the latter to surrender possession of the subject property to Juan Cruz Tolentino.

SO ORDERED.[24]

Spouses Carlos then filed a motion for reconsideration but the same was denied by the CA in its September 27, 2017 Resolution.

Hence, the instant petition.

The Issue

Spouses Carlos anchor their plea for the reversal of the assailed Decision on the following grounds:[25]

> The Court of Appeals acted injudiciously, and with grievous abuse of discretion in the appreciation of facts and in disregard of jurisprudence, when it granted respondent's appeal, and thereby arbitrarily and despotically ratiocinated that -
>
> I. Petitioners are not buyers in good faith of the litigated real property, but who are otherwise devoid of notice let alone knowledge of any flaw or infirmity in the title of the person selling the property at the time of purchase.
>
> II. Petitioners are not purchasers in good faith, on the basis of the Memorandum of Agreement dated April 12, 2011 and the Deed of Absolute Sale dated June 30, 2011.
>
> III. Respondent Juan Cruz Tolentino was the previous registered owner of the land in dispute, thereby acting on oblivion to the fact that the real property is essentially conjugal in nature.
>
> IV. In failing to rule and rationalize that at least one-half of the subject real property should belong to petitioners.
>
> V. The litigated property must be awarded and returned in favour of respondent Juan Cruz Tolentino in its entirety.

At bottom, the crux of the controversy is who, between Juan and Spouses Carlos, has the better right to claim ownership over the subject property.

---

[24] *Id*. at 17.

[25] Petition, p. 7.

The Court's Ruling

The present controversy necessitates an inquiry into the facts. While, as a general rule, factual issues are not within the province of this Court, nonetheless, in light of the conflicting factual findings of the two courts below, an examination of the facts obtaining in this case is in order.[26]

Juan and Mercedes appear to have been married before the effectivity of the Family Code on August 3, 1988. There being no indication that they have adopted a different property regime, the presumption is that their property relations is governed by the regime of conjugal partnership of gains.[27] Article 119 of the Civil Code thus provides:

> Article 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife.

Likewise, the Family Code contains terms governing conjugal partnership of gains that supersede the terms of the conjugal partnership of gains under the Civil Code. Article 105 of the Family Code states:

> Article 105. In case the future spouses agree in the marriage settlements that the regime of conjugal partnership of gains shall govern their property relations during marriage, the provisions in this Chapter shall be of supplementary application.

---

[26] *Rufloe v. Burgos*, G.R. No. 143573, January 30, 2009 and *Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr.*, G.R. No. 146548, December 18, 2009.

[27] Article 119 of the Civil Code states: The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community or conjugal partnership of gains as established in this Code, shall govern the property relations between husband and wife.

The provisions of this Chapter shall also apply to conjugal partnerships of gains already established between spouses before the effectivity of this Code, without prejudice to vested rights already acquired in accordance with the Civil Code or other laws, as provided in Article 256.

Since the subject property was acquired on March 17, 1967[28] during the marriage of Juan and Mercedes, it formed part of their conjugal partnership.[29] It follows then that Juan and Mercedes are the absolute owners of their undivided one-half interest, respectively, over the subject property.

Meanwhile, as in any other property relations between husband and wife, the conjugal partnership is terminated upon the death of either of the spouses.[30] In respondent Juan's Comment filed before the Court, the Verification which he executed on February 9, 2018 states that he is already a widower. Hence, the Court takes due notice of the fact of Mercedes' death which inevitably results in the dissolution of the conjugal partnership.

In retrospect, as absolute owners of the subject property then covered by TCT No. RT-90746 (116229), Juan and Mercedes may validly exercise rights of ownership by executing deeds which transfer title thereto such as, in this case, the Deed of Donation dated February 15, 2011 in favor of their grandson, Kristoff.

With regard to Juan's consent to the afore-stated donation, the RTC, however, found that such was lacking since his signature therein was forged. Notably, the CA did not overturn such finding, and in fact, no longer touched upon the issue of forgery. On

---

[28] TCT No. RT-90746 (116229) was issued on March 17, 1967.

[29] Article 160 of the Civil Code states: All property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife.

[30] Article 126 of the Family Code provides: The conjugal partnership terminates:

(1) Upon the death of either spouse;

x x x x x x x x x

the other hand, it must be pointed out that the signature of Mercedes in the Deed of Donation was never contested and is, therefore, deemed admitted.

In *Arrogante v. Deliarte*,[31] We ruled that a deed of sale of the subject lot therein executed by the Deliarte siblings in favor of their brother, respondent Beethoven Deliarte (Beethoven), was void for being a conveyance of future inheritance. Nonetheless, the provisions in the written agreement and the Deliarte siblings' signature thereon are equivalent to an express waiver of all their rights and interests. Thus, the Court upheld the quieting of title in favor of respondent Beethoven after finding that the deed of sale, albeit void, evidenced the consent and acquiescence of each Deliarte sibling to said transaction.

In the present case, while it has been settled that the congruence of the wills of the spouses is essential for the valid disposition of conjugal property,[32] it cannot be ignored that Mercedes' consent to the disposition of her one-half interest in the subject property remained undisputed. It is apparent that Mercedes, during her lifetime, relinquished all her rights thereon in favor of her grandson, Kristoff.

Furthermore, Mercedes' knowledge of and acquiescence to the subsequent sale of the subject property to Spouses Carlos is evidenced by her signature appearing in the MOA[33] dated April 12, 2011 and the Deed of Absolute Sale[34] dated September 12, 2011. We are also mindful of the fact that Spouses Carlos had already paid a valuable consideration in the amount of Two Million Three Hundred Thousand Pesos (₱2,300,000.00) for the subject property before Juan's adverse claim was annotated on Kristoff's title. The said purchase and acquisition for valuable consideration deserves a certain degree of legal protection.

---

[31] G.R. No. 152132, July 24, 2007.

[32] *Abalos v. Macatangay, Jr.*, G.R. No. 155043, September 30, 2004.

[33] *Annex D* of the Petition.

[34] *Annex J* of the Petition.

Given the foregoing, the Court is disinclined to rule that the Deed of Donation is wholly void *ab initio* and that the Spouses Carlos should be totally stripped of their right over the subject property. In consonance with justice and equity, We deem it proper to uphold the validity of the Deed of Donation dated February 15, 2011 but only to the extent of Mercedes' one-half share in the subject property. And rightly so, because why invalidate Mercedes' disposition of her one-half portion of the conjugal property that will eventually be her share after the termination of the conjugal partnership? It will practically be absurd, especially in the instant case, since the conjugal partnership had already been terminated upon Mercedes' death.

Accordingly, the right of Kristoff, as donee, is limited only to the one-half undivided portion that Mercedes owned. The Deed of Donation insofar as it covered the remaining one-half undivided portion of the subject property is null and void, Juan not having consented to the donation of his undivided half.

Upon the foregoing perspective, Spouses Carlos' right, as vendees in the subsequent sale of the subject property, is confined only to the one-half undivided portion thereof. The other undivided half still belongs to Juan. As owners *pro indiviso* of a portion of the lot in question, either Spouses Carlos or Juan may ask for the partition of the lot and their property rights shall be limited to the portion which may be allotted to them in the division upon the termination of the co-ownership.[35] This disposition is in line with the well-established principle that the binding force of a contract must be recognized as far as it is legally possible to do so—*quando res non valet ut ago, valeat quantum valere potest*.[36]

---

[35] Article 493 of the Civil Code states:

Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

[36] When a thing is of no effect as I do it, it shall have effect as far as

Lastly, as a matter of fairness and in line with the principle that no person should unjustly enrich himself at the expense of another,[37] Kristoff should be liable to reimburse Spouses Carlos of the amount corresponding to one-half of the purchase price of the subject property.

WHEREFORE, in view of the foregoing, the petition is **PARTIALLY GRANTED**. The donation and subsequent sale of the subject property is declared **NULL** and **VOID** with respect to the undivided 1/2 portion owned by Juan Cruz Tolentino, but **VALID** with respect to the other undivided 1/2 portion belonging to Mercedes Tolentino. Accordingly, petitioners Spouses Carlos and respondent Juan Cruz Tolentino are hereby declared as co-owners of the subject property. The Register of Deeds of Quezon City is ordered to cancel TCT No. 004-2011013502 and to issue a new transfer certificate of title in the names of Julieta B. Carlos, married to Fernando P. Carlos, and Juan Cruz Tolentino on a 50-50 undivided interest in the lot.

We order Kristoff M. Tolentino to pay Spouses Carlos the amount of One Million One Hundred Fifty Thousand Pesos (₱1,150,000.00) corresponding to one-half of the amount paid by Spouses Carlos for the subject property, with legal interest at the rate of 6% computed from the finality of this Decision.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

(or in whatever way) it can; cited in *Metropolitan Bank and Trust Co. v. Pascual*, G.R. No. 163744, February 29, 2008.

[37] CIVIL CODE, Art. 22; *Hulst v. PR Builders, Inc.*, G.R. No. 156364, September 3, 2007, 532 SCRA 74, 96; *Advanced Foundation Construction Systems Corporation v. New World Properties and Ventures, Inc.*, G.R. No. 143154, June 21, 2006, 491 SCRA 557, 578; *Reyes v. Lim, et al.*, G.R. No. 134241, August 11, 2003.

THIRD DIVISION

[G.R. No. 237487. June 27, 2018]

ALDRINE B. ILUSTRICIMO, *petitioner, vs.* **NYK-FIL SHIP MANAGEMENT, INC./INTERNATIONAL CRUISE SERVICES, LTD. and/ or JOSEPHINE J. FRANCISCO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY BENEFITS; ELEMENTS FOR SEAFARER'S DISABILITY TO BE COMPENSABLE; NATURE AND CONCEPT OF THE ILLNESS TO BE COMPENSABLE, EXPLAINED.— For disability to be compensable under Section 20(A) of the 2010 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. The same provision defines a work-related illness is "any sickness as a result of an occupational disease listed under Section 32-A of [the] Contract with the conditions set therein satisfied." Meanwhile, illnesses not mentioned under Section 32 of the POEA-SEC are disputably presumed as work-related. Notwithstanding the presumption of work-relatedness of an illness under Section 20(A)(4), the seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease. Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer. It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.

2. ID.; ID.; ID.; ELEMENTS, PRESENT; "CANCER OF THE URINARY BLADDER" IS CONSIDERED AS WORK–RELATED IN CASE AT BAR.— [I]t is undisputed that

petitioner suffered an illness while on board the M/V Crystal Serenity. What needs to be determined is whether petitioner's illness is work-related, and, therefore, compensable. According to the VA, petitioner suffered from "cancer of the urinary bladder" due to the malignant tumors found in his urinary bladder. The VA then considered the illness as work-related based on Section 32 of POEA-SEC. The VA added that even if petitioner's illness is not among those specifically mentioned in Section 32, the same is deemed work-related since the risk factors for the illness include occupational exposure to aromatic amines as stated on the company doctors' medical certification. x x x We are inclined to agree with the findings of the VA. x x x No less than respondents' doctor diagnosed the petitioner with bladder cancer and opined that his occupation exposed him to elements that increased his risk of contracting the illness. As found by the VA, petitioner was employed by the respondents for 21 years. It is, therefore, not implausible to conclude that petitioner's work may have caused, contributed, or at least aggravated his illness. Given the company doctors' conclusion and the afore-stated facts, the burden on the part of petitioner to prove the causality of his illness and occupation had been eliminated.

3. ID.; ID.; ID.; ID.; UPON BEING NOTIFIED OF PETITIONER'S INTENTION TO DISPUTE THE COMPANY DOCTOR'S FINDINGS, THE BURDEN TO REFER THE CASE TO A THIRD DOCTOR HAS SHIFTED TO THE RESPONDENT; CONSEQUENTLY, PETITIONER CANNOT BE FAULTED FOR NON-REFERRAL AND THE COMPANY-DESIGNATED DOCTOR'S ASSESSMENT IS NOT BINDING.— [R]espondents do not deny receiving petitioner's October 16, 2015 letter despite their insistence that he failed to activate the third doctor provision. In fact, respondents repeatedly insisted that the letter was not meant to dispute the company-designated doctor's assessment, but rather to inform them that petitioner needed continued medical assistance. On the assumption that petitioner indeed "belatedly" informed respondents of the opinion of his second doctor and his intent to refer his case to a third doctor, the fact remains that they have been notified of such intent. In *Formerly INC Shipmanagement Incorporated v. Rosales*, We reiterated Our earlier pronouncement in *Bahia*

Shipping Services, Inc. v. Constantino that when the seafarer challenges the company doctor's assessment through the assessment made by his own doctor, the seafarer shall so signify and *the company thereafter carries the burden of activating the third doctor provision*[.] x x x The POEA-SEC does not require a specific period within which the parties may seek the opinion of a third doctor, and they may do so even during the mandatory conference before the labor tribunals. Accordingly, upon being notified of petitioner's intent to dispute the company doctors' findings, whether prior or during the mandatory conference, the burden to refer the case to a third doctor has shifted to the respondents. This, they failed to do so, and petitioner cannot be faulted for the non-referral. Consequently, the company-designated doctors' assessment is not binding.

4. ID.; ID.; ID.; ID.; IN DETERMINING WHETHER A DISABILITY IS TOTAL OR PARTIAL, WHAT IS CRUCIAL IS WHETHER THE EMPLOYEE WHO SUFFERED FROM DISABILITY COULD STILL PERFORM HIS WORK NOTWITHSTANDING THE DISABILITY HE MET; PETITIONER IS ENTITLED TO TOTAL AND PERMANENT DISABILITY BENEFITS.— In determining whether a disability is total or partial, what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the disability he met. A permanent partial disability, on the other hand, presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained. Petitioner cannot be expected to resume sea duties if the risk of contracting his illness is associated with his previous occupation as Quarter Master. Indeed, records do not show that he was re-employed by respondent NYK or by any other manning agency from the time of his repatriation until the filing of the instant petition. Moreover, the recurrence of mass in petitioner's bladder, the requirement by both the company doctor and his personal doctor that he undergo repeat cystoscopy to monitor polyp growth, his subsequent operation to remove the growing polyps in his bladder even after the lapse of the 240-day period for treatment and despite the final disability grading given, all sufficiently

show that his disability is total and permanent. Petitioner's disability being permanent and total, he is entitled to 100% compensation in the amount of US$95,949.00 as stipulated in par. 20.9 of the parties' CBA and as adjudged by the VA.

APPEARANCES OF COUNSEL

A.M. Burigsay & Associates Law Office for petitioner.
Nolasco & Associates Law Offices for respondents.

D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

This petition for review under Rule 45 of the Rules of Court seeks to reverse and set aside the September 27, 2017 Decision[1] and February 15, 2018 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 149491 entitled "*NYK-Fil Ship Management, Inc./International Cruise Services Ltd., Josephine J. Francisco v. Aldrine B. Ilustricimo*." The assailed rulings modified the amount of disability benefits awarded by the Panel of Voluntary Arbitrators[3] (VA) of the National Mediation and Conciliation Board (NCMB) to petitioner Aldrine B. Ilustricimo in its October 25, 2016 Decision.[4]

Factual Antecedents

Petitioner was engaged by respondent International Cruise Services Ltd., through respondent NYK-Fil Ship Management, Inc. (NYK), as a Quarter Master on board its vessels from

---

[1] Penned by Associate Justice Ma. Luisa Quijano-Padilla, with the concurrence of Associate Justices Jane Aurora C. Lantion and Rodil V. Zalameda; *rollo*, pp. 21-33.

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

[3] Composed of MVA Edgar Recina, Romeo Cruz, Jr., and Leonardo Saulog.

[4] *Rollo*, pp. 37-47.

1993 to 2014. His last employment with the respondents was on board the vessel *MV Crystal Serenity* last April 2014. Prior to his embarkation, petitioner underwent a routine Pre-Employment Medical Examination and was declared physically fit to work.

In November 2014, while *MV Crystal Serenity* was on its way to Florida, USA, petitioner started experiencing gross hematuria, or blood in his urine. He reported the matter to his superiors and was given antibiotics for suspected urinary tract infection. Due to his medical condition, petitioner was brought to a hospital in Key West, Florida, where he was subjected to a CT Scan. The results revealed the presence of three polypoid masses in his bladder. Petitioner was medically repatriated on November 22, 2014 and immediately referred to the company-accredited hospital for treatment. Dr. Nicomedes Cruz (Dr. Cruz), the company-designated doctor, diagnosed him with "urothelial carcinoma of the urinary bladder, low grade" or "bladder cancer."[5]

After undergoing a series of chemotherapy sessions and operations, petitioner's attending doctors assessed him with an *interim* disability rating of Grade 7 in a report[6] dated March 6, 2015. In the same report, Dr. Cruz noted that risk factors for petitioner's illness include "occupational exposure to aromatic amines and cigarette smoking." Despite the interim disability grading given, the company doctor noted, in a report[7] dated June 23, 2015, that petitioner still complains of "on and off hypogastric pain." He was then advised to undergo repeat cystoscopy. On June 30, 2015,[8] Dr. Cruz issued petitioner with a final assessment of Grade 7 disability-moderate residuals or disorder of the intra-abdominal organ.

---

[5] As stated in the Medical Abstract/Discharge Summary; *id*. at 133.

[6] *Id*. at 163.

[7] *Id*. at 164.

[8] *Id*. at 165.

In September 2015, petitioner underwent another operation using his own funds.[9] This prompted him to secure the opinion of another physician, Dr. Richard Combe, who diagnosed him with bladder mass and declared him unfit to work due to his need to undergo instillation chemotherapy and cystoscopy every three months, thus:[10]

> Remarks/Recommendations: Pt. is being scheduled for instillation chemotherapy [&] cystoscopy every 3 months hence unfit to work

Thereafter, petitioner, thru counsel, sent respondents a letter[11] dated October 16, 2015, claiming total and permanent disability benefits. Petitioner further declared in the said letter his willingness to undergo another examination to prove the extent of his disability being claimed, thus:

> Dear MS FRANCISCO:
>
> This pertains to the disability case of the above-named seafarer who was medically repatriated due to medical reasons-Urotherial Carcinoma of the Urinary Bladder. He underwent series of chemotherapy. However, despite such medical treatment, he remains incapacitated until today.
>
> He consulted an independent medical expert and was found to be still suffering from the said permanent disability and declared seafarer is already totally UNFIT to resume his work as a seaman. A copy of the Second Medical Report is hereto attached and marked as ANNEX A as well as the records of his surgical operation last October 6, 2015.
>
> As a result thereof, the seafarer is claiming total and permanent disability benefits in accordance with the law and his CBA. He is willing to undergo another test/examination to confirm his present disability which has incapacitated him from resuming his work as a seaman. Please be guided accordingly.

---

[9] *Id*. at 139, based on the Record of Operation dated October 6, 2015.

[10] *Id*. at 138.

[11] *Id*. at 140.

For the Firm:

(SIGNED)
ATTY. ARNOLD M. BURIGSAY
Counsel for Seafarer

Notwithstanding petitioner's communication, respondents failed to respond, prompting him to file a complaint for total and permanent disability before the NCMB.

Ruling of the VA

On October 25, 2016, the VA issued a Decision in favor of the petitioner and, accordingly, ordered respondents to pay him total and permanent disability benefits in the amount of USD95,949.00. The dispositive portion of the judgment states:

> WHEREFORE, premises considered, respondents are hereby ordered to pay herein complainant the sum equivalent to Grade 1 disability benefits for ratings under the Collective Bargaining Agreement in the amount of NINETY FIVE THOUSAND NINE HUNDRED FORTY NINE US DOLLARS (USD95,949.00).
>
> All other claims are DENIED and dismissed for lack of merit under the law, jurisprudence and equity.
>
> SO ORDERED.

Aggrieved, respondents elevated the case *via* a petition for review before the CA.

Ruling of the CA

The CA granted the petition in the assailed Decision and adjudged respondents liable only for partial permanent disability benefits under the parties' Collective Bargaining Agreement amounting to USD40,106.98, thus:

> WHEREFORE, premises considered, the petition is GRANTED. The October 25, 2016 Decision of the Panel of Arbitrators of the National Conciliation Mediation Board (NCMB) in MVA-026-RCMB-NCR-176-05-11-2015 is REVERSED and SET ASIDE. Petitioners NYK-FIL SHIP MANAGEMENT INC./

INTERNATIONAL CRUISE SERVICES, LTD. And JOSEPHINE J. FRANCISCO are ORDERED to JOINLY AND SEVERALLY pay respondent Aldrine B. Ilusticimo the amount of FORTY THOUSAND ONE HUNDRED SIX DOLLARS AND NINETY-EIGHT CENTS (US$40,106.98) or its equivalent amount in Philippine currency at the exchange rate prevailing during the time of payment.

The award shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until full payment.

SO ORDERED.

According to the CA, while petitioner claims to have secured the opinion of a second doctor, no such medical certification from the adverted personal doctor is extant in the records of the case, and that only a copy of the October 16, 2015 letter-request from petitioner's counsel seeking total and permanent disability benefits from the respondents was submitted. The CA likewise agreed with the respondents' postulation that, even on the assumption that petitioner had indeed secured the opinion of a second doctor, petitioner failed to seek the opinion of a third doctor as mandated under the 2010 Philippine Overseas Employment Agency – Standard Employment Contract (POEA-SEC). Thus, without the second doctor's certification and the non-referral of the case to a third doctor, the CA ruled that petitioner's disability benefits must be based on the final disability assessment made by the company-designated doctor.

Petitioner moved for, but was denied, reconsideration by the CA. Hence, this petition.

Petitioner claims that the CA's reliance on the Grade 7 disability rating given by the company-designated doctor is based on the flawed finding that he failed to secure the opinion of a second doctor. He likewise faults the respondents for the non-referral of the case to a third doctor as required under Section 20(A)(3) of the POEA-SEC since the latter ignored his request to undergo another medical examination to prove the extent of the disability being claimed.

Respondents, for their part, insist that petitioner's illness is not compensable since it is not listed as an occupational disease under Section 32 of the POEA-SEC. Assuming that petitioner's condition is disputably presumed to be work-related, the burden lies upon him to prove that his work contributed/aggravated his illness, a burden which, according to the respondents, he failed to discharge. And even if petitioner's illness is compensable, respondents maintain that the disability rating of Grade 7 given by its doctor should prevail in view of his failure to prove that he sought a second medical opinion and to seek for the opinion of a third doctor, as provided for in the POEA-SEC.

Issue

The sole issue for the consideration of the Court is whether or not the CA erred in ruling that petitioner is not entitled to total and permanent disability benefits.

Our Ruling

We grant the petition.

Petitioner's illness is work-related

For disability to be compensable under Section 20(A) of the 2010 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[12] The same provision defines a work-related illness is "any sickness as a result of an occupational disease listed under Section 32-A of [the] Contract with the conditions set therein satisfied." Meanwhile, illnesses not mentioned under Section 32 of the POEA-SEC are disputably presumed as work-related.[13] Notwithstanding the presumption of work-relatedness of an illness under Section 20(A)(4), the seafarer must still prove by substantial

---

[12] *De Leon v. Maunlad Trans, Inc., et al.*, G.R. No. 215293, February 8, 2017. (citations omitted)

[13] Sec. 20A(4) of the POEA-SEC.

evidence that his work conditions caused or, at least, increased the risk of contracting the disease.[14]

Settled is the rule that for illness to be compensable, it is not necessary that the nature of the employment be the sole and only reason for the illness suffered by the seafarer.[15] It is sufficient that there is a reasonable linkage between the disease suffered by the employee and his work to lead a rational mind to conclude that his work may have contributed to the establishment or, at the very least, aggravation of any pre-existing condition he might have had.[16]

In the present case, it is undisputed that petitioner suffered an illness while on board the M/V Crystal Serenity. What needs to be determined is whether petitioner's illness is work-related, and, therefore, compensable.

According to the VA, petitioner suffered from "cancer of the urinary bladder" due to the malignant tumors found in his urinary bladder.[17] The VA then considered the illness as work-related based on Section 32[18] of POEA-SEC. The VA added that even if petitioner's illness is not among those specifically mentioned in Section 32, the same is deemed work-related since the risk factors for the illness include occupational exposure to aromatic amines as stated on the company doctors' medical certification.

The CA, meanwhile, concluded that petitioner failed to discharge the burden of proving the causality of his illness and his work with the respondents. Coupled with the

---

[14] *Philippine Transmarine Carriers, Inc. v. Aligway*, G.R. No. 201793, September 16, 2015, 770 SCRA 609.

[15] *Grieg Philippines, Inc. et al. v. Gonzales*, G.R. No. 228296, July 26, 2017.

[16] *Magsaysay Maritime Services v. Laurel,* 707 Phil. 210 (2013), citations omitted.

[17] Page of the VA's decision.

[18] Under the sub-paragraph on "kidney" and more specifically under "residuals or disorder of the intra-abdominal organ."

petitioner's failure to seek the opinion of a third doctor, the appellate court gave more weight and credence to the Grade 7 final disability rating given by the respondents' doctors.

As a rule, the Court does not review questions of fact, but only questions of law, in an appeal by *certiorari* under Rule 45 of the Rules of Court.[19] It is not to reexamine and assess the evidence on record, whether testimonial and documentary.[20] Nevertheless, this rule admits of certain exceptions,[21] such as when the findings of fact of the lower courts or tribunals are conflicting, as in the instant case.

We are inclined to agree with the findings of the VA.

The Medical Abstract/Discharge Summary[22] dated January 23, 2015 contains the following entries:

> Discharge Impression or Diagnosis:
> **BLADDER CANCER**
> s/p TUR-BT (2014)
> s/p INTRAVESICAL CHEMOTHERAPY (1ST SESSION, 01/22/15)
> (Emphasis supplied)

While the medical report dated March 6, 2015 issued by respondents' doctor states:

1. The prognosis is fair.
2. The plan of further management, estimated length and cost of further treatment will depend on the result of the recommended cystoscopy and bladder tumor check.
3. The **risk factors are occupational exposure to aromatic amines and cigarette smoking**.
4. The interim disability grading under the POEA schedule

---

[19] *Cavite Apparel, Incorporated v. Marquez*, G.R. No. 172044, February 6, 2013, 690 SCRA 48.

[20] *Litonjua v. Eternit Corporation*, G.R. No. 144805, June 8, 2006, 490 SCRA 204.

[21] *Valencia v. Classique Vinyl Products Corporation*, G.R. No. 206390, January 30, 2017, citing *Pascual v. Burgos*, G.R. No. 171722, January 11, 2016, 778 SCRA 189.

[22] *Rollo*, p. 130.

> of disabilities is Grade 7 – moderate residuals or disorder of the intrabdominal organ.[23] (Emphasis supplied)

No less than respondents' doctor diagnosed the petitioner with bladder cancer and opined that his occupation exposed him to elements that increased his risk of contracting the illness. As found by the VA, petitioner was employed by the respondents for 21 years. It is, therefore, not implausible to conclude that petitioner's work may have caused, contributed, or at least aggravated his illness. Given the company doctors' conclusion and the afore-stated facts, the burden on the part of petitioner to prove the causality of his illness and occupation had been eliminated.

Moreover, it is worthy to note that respondents themselves did not dispute petitioner's entitlement to disability benefits. They only dispute that his disability is total and permanent. In their position paper before the VA, respondents averred:

> Respondents emphasize that this is not a case of respondents totally denying without legal basis complainant's entitlement to disability compensation. On the other hand, respondents are *merely upholding the law between the parties – the PSEC* – in arguing that complainant is only entitled to Grade 7 disability compensation based on the assessment of the company-designated physician. Hence, complainant's condition cannot be considered under all probabilities under the PSEC as assessable beyond what has been given by the company-designated doctor.
>
> Therefore, from the cold facts of this case, complainant is only entitled to disability compensation equivalent to Grade 7 disability assessment. x x x (Italics and underscoring in the original)

From the foregoing, what respondents assail is the amount of disability benefits due to the petitioner, and not his entitlement thereto. Hence, to the mind of this Court, there is no real issue with respect to the work-relatedness and compensability of petitioner's illness.

---

[23] *Id*. at 163.

No breach of petitioner's duties under the POEA-SEC

Anent the matter of compliance with the third-doctor referral procedure in the POEA-SEC, Section 20(A)(3) of the contract provides that if a doctor appointed by the seafarer disagrees with the assessment of the company-designated doctor, a third doctor may be agreed jointly between the employer and the seafarer, and the third doctor's decision shall be final and binding on both parties:

SECTION 20. COMPENSATION AND BENEFITS

COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

3. x x x x x x x x x

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

This referral to a third doctor has been held by the Court to be a mandatory procedure as a consequence of the provision in the POEA-SEC that the company-designated doctor's assessment should prevail in case of non-observance of the third doctor referral provision in the contract. Stated otherwise, the company can insist on its disability rating even against the contrary opinion by another doctor, unless the seafarer expresses his disagreement by asking for a referral to a third doctor who shall make his or her determination and whose decision shall be final and binding on the parties.[24]

According to the respondents, petitioner's second medical opinion only came to their knowledge during one of the scheduled mandatory conferences before the VA.[25] Citing

[24] *Silagan v. Southfield Agencies, Inc., et al.*, G.R. No. 202808, August 24, 2016, citing *Formerly INC Shipmanagement, Incorporated v. Rosales*, G.R. No. 195832, October 1, 2014, 737 SCRA 438.

[25] *Rollo*, p. 147.

Philippine Hammonia Ship Agency, Inc. v. Dumadag (Hammonia),[26] *Silagan v. Southfield Agencies, Inc.*,[27] and *TSM Shipping Phils., Inc. v. Patiño*,[28] they argue that petitioner's failure to communicate his separate medical certification prior to the filing of the complaint not only constitutes a breach of his contractual obligations under the POEA-SEC, but also renders the complaint premature and is a ground for the dismissal of his claim for disability benefits.

Respondents' reliance on the above-stated cases is misplaced. In *Hammonia*, the seafarer-claimant utterly disregarded the third-doctor provision and filed a claim for permanent total disability benefits right after securing the opinion of four doctors of his choosing. It is against this factual backdrop that We declared that the seafarer-claimant's filing of the complaint without having consulted a third doctor constitutes a breach of his duty under the POEA-SEC. In the same vein, the seafarer-claimants in *Silagan* and *TSM Shipping* never informed their employers of their intent to consult a third doctor after consulting a second doctor.

In stark contrast, respondents do not deny receiving petitioner's October 16, 2015 letter despite their insistence that he failed to activate the third doctor provision. In fact, respondents repeatedly insisted that the letter was not meant to dispute the company-designated doctor's assessment, but rather to inform them that petitioner needed continued medical assistance. On the assumption that petitioner indeed "belatedly" informed respondents of the opinion of his second doctor and his intent to refer his case to a third doctor, the fact remains that they have been notified of such intent. In *Formerly INC Shipmanagement Incorporated v. Rosales*,[29] We reiterated Our earlier pronouncement in *Bahia Shipping*

---

[26] G.R. 194362, June 26, 2013, 700 SCRA 530.

[27] *Supra* note 24.

[28] G.R. No. 210289, March 20, 2017.

[29] G.R. No. 195832, October 1, 2014, 737 SCRA 438.

Services, Inc. v. Constantino[30] that when the seafarer challenges the company doctor's assessment through the assessment made by his own doctor, the seafarer shall so signify and *the company thereafter carries the burden of activating the third doctor provision*:

> x x x Constantino bears the burden of positive action to prove that his doctor's findings are correct, **as well as the burden to notify the company that a contrary finding had been made by his own physician**. **Upon such notification, the company must itself respond by setting into motion the process of choosing a third doctor** who, as the POEA-SEC provides, can rule with finality on the disputed medical situation. (Emphasis supplied)

The POEA-SEC does not require a specific period within which the parties may seek the opinion of a third doctor, and they may do so even during the mandatory conference before the labor tribunals. Accordingly, upon being notified of petitioner's intent to dispute the company doctors' findings, whether prior or during the mandatory conference, the burden to refer the case to a third doctor has shifted to the respondents. This, they failed to do so, and petitioner cannot be faulted for the non-referral. Consequently, the company-designated doctors' assessment is not binding.

Petitioner is entitled to total and permanent disability benefits

In any event, the rule that the company-designated physician's findings shall prevail in case of non-referral of the case to a third doctor is not a hard and fast rule.[31] It has been previously held that labor tribunals and the courts are not bound by the medical findings of the company-designated physician and that the inherent merits of its medical findings will be weighed and duly considered.[32]

---

[30] G.R. No. 180343, July 9, 2014.

[31] *Nonay v. Bahia Shipping Services, Inc.*, G.R. No. 206758, February 17, 2016, 784 SCRA 292.

[32] *Maersk Filipinas Crewing, Inc. v. Mesina*, G.R. No. 200837, 697 SCRA 601.

The June 30, 2015 final report of the company doctor reads:

1. The patient has reached maximum medical cure.
2. The final disability grading under the POEA schedule of disabilities is Grade 7 – moderate residuals or disorder of the intraabdominal organ.

Despite the foregoing assessment, the VA disagrees that petitioner merely suffers from a moderate disorder of intraabdominal organ and with the final disability grading given. The VA said:

> Having said the above, this Panel is also of the opinion that this type of disorder in the internal organ is not simply moderate but is of a ***serious*** nature. Thus, the grade 7 rating under the list of occupation disease does not seem to fully describe the gravity of the cancer suffered by herein complainant. It is thus submitted that the occupational disease should be that of a serious nature or that which is considered of a "***severe residual of impairment of intra-abdominal organ which requires regular aid and attendance that will [disable] worker to seek any gainful employment***" which is equivalent to a Grade 1 rating. The Panel finds it hard to accept the submission of respondents that herein seafarer's cancer is but a mere "***moderate residual of disorder of the intra-abdominal organs secondary to trauma resulting to impairment of nutrition, moderate tenderness, nausea, vomiting, constipation or diarrhea***." x x x (Emphasis in the original)

The VA noted that petitioner's illness is serious in nature considering the company doctors' requirement for him to undergo periodic cystoscopy despite having undergone chemotherapy and surgery. It further observed that petitioner was never declared "cancer-free" and "fit to work" by his attending physicians and his illness persisted despite the final disability grade of 7 given. For the VA, this means that petitioner could no longer return to the seafaring profession and is, thus, permanently and totally disabled.

We concur with the VA's conclusion.

In keeping with the avowed policy of the State to give maximum aid and full protection to labor, the Court has applied

the Labor Code concept of disability to Filipino seafarers.[33] Thus, We have held that the notion of disability is intimately related to the worker's capacity to earn, and what is compensated is not his injury or illness but his inability to work resulting in the impairment of his earning capacity. Hence, disability should be understood less on its medical significance but more on the loss of earning capacity.[34]

In *Hanseatic Shipping Philippines Inc. v. Ballon*,[35] We defined total disability as "the disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work which a person of his mentality and attainments could do." In determining whether a disability is total or partial, what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the disability he met.[36] A permanent partial disability, on the other hand, presupposes a seafarer's fitness to resume sea duties before the end of the 120/240-day medical treatment period despite the injuries sustained and works on the premise that such partial injuries did not disable a seafarer to earn wages in the same kind of work or similar nature for which he was trained.[37]

Petitioner cannot be expected to resume sea duties if the risk of contracting his illness is associated with his previous occupation as Quarter Master. Indeed, records do not show that he was re-employed by respondent NYK or by any other manning agency from the time of his repatriation until the

---

[33] *Quitoriano v. Jebsens Maritimes, Inc.*, G.R. No. 179868, January 21, 2010, 610 SCRA 529.

[34] *Id*., citing *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, G.R. No. 168753, July 9, 2008, 557 SCRA 438.

[35] *Hanseatic Shipping Philippines, Inc. v. Ballon,* G.R. No. 212764, September 9, 2015.

[36] *Fil-Star Maritime Corporation v. Rosete*, 677 Phil. 262 (2011).

[37] *Sunit v. OSM Maritime Services, Inc.*, G.R. No. 223035, February 27, 2017. (citations omitted)

filing of the instant petition. Moreover, the recurrence of mass in petitioner's bladder, the requirement by both the company doctor and his personal doctor that he undergo repeat cystoscopy to monitor polyp growth, his subsequent operation to remove the growing polyps in his bladder even after the lapse of the 240-day period for treatment and despite the final disability grading given, all sufficiently show that his disability is total and permanent.

Petitioner's disability being permanent and total, he is entitled to 100% compensation in the amount of US$95,949.00 as stipulated in par. 20.9 of the parties' CBA and as adjudged by the VA.

WHEREFORE, the petition is **GRANTED**. The September 27, 2017 Decision and February 15, 2018 Resolution of the Court of Appeals in CA-G.R. SP No. 149491 are hereby **REVERSED** and **SET ASIDE**. The October 25, 2016 Decision of the Panel of Voluntary Arbitrators of the National Mediation and Conciliation Board is hereby **REINSTATED**. Respondents are ordered to jointly and severally pay petitioner Aldrine B. Ilustricimo the amount of US$95,949.00 or its equivalent amount in Philippine currency at the time of payment, representing total and permanent disability benefits.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.,* concur.

SECOND DIVISION

[A.C. No. 12012. July 2, 2018]

GERONIMO J. JIMENO, JR., *complainant, vs.* **ATTY. FLORDELIZA M. JIMENO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; PROHIBITION AGAINST ANY FORM OF MISCONDUCT AND DUTY TO IMPRESS UPON THE CLIENT COMPLIANCE WITH THE PERTINENT LAWS; VIOLATED WHEN LAWYER VOLUNTARILY SIGNED THE SUBJECT DEED OF SALE DESPITE THE PATENT IRREGULARITIES IN ITS EXECUTION.— [R]espondent's acts in relation to the subject SPA and the subject deed constitute blatant transgressions of her duties as a lawyer, as ordained by Rule 1.01 of Canon 1 of the CPR, which engraves an overriding prohibition against ***any*** form of misconduct. Additionally, the Court finds that respondent fell short of her duty to **impress upon her client compliance with the pertinent laws** in relation to the subject transaction. In this case, while seemingly aware of the demise of Perla that rendered the Malindang property a co-owned property of Geronimo Sr. and the Jimeno children, instead of advising the latter to settle the estate of Perla to enable the proper registration of the property in their names preliminary to the sale to Aquino, she voluntarily signed the subject deed, as attorney-in-fact of Geronimo Sr., despite the patent irregularities in its execution. x x x As a lawyer, she cannot invoke good faith and good intentions as justifications to excuse her from discharging her **obligation to be truthful and honest in her professional actions** since her duty and responsibility in that regard **are clear and unambiguous**. x x x [Thus,] respondent is found guilty of violating the Lawyer's Oath, Rule 1.01 of Canon 1, Rule 15.07 of Canon 15, and Rule 19.01 of Canon 19 of the CPR by allowing herself to become a party to the subject deed which contained falsehood and/or inaccuracies.

2. ID.; LAWYERS; DISBARMENT OR SUSPENSION; GROUNDS; MALPRACTICE AND GROSS MISCONDUCT

COMMITTED IN CASE AT BAR WARRANT SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS.— Under Section 27, Rule 138 of the Rules of Court, a member of the Bar may be disbarred or suspended for any of the following grounds: (1) deceit; (2) **malpractice or other gross misconduct in office**; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the Lawyer's Oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court. Verily, the act of respondent in affixing her signature on a deed of sale containing falsehood and/or inaccuracies constitutes malpractice and gross misconduct in her office as attorney. x x x In view of the antecedents in this case, the Court finds it appropriate to sustain the recommended suspension from the practice of law for six (6) months.

APPEARANCES OF COUNSEL

Del Prado Diaz & Associates Law Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This case stemmed from a Complaint[1] dated July 10, 2012 filed by complainant Geronimo J. Jimeno, Jr. (complainant) before the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD), seeking the suspension/disbarment of respondent Arty. Flordeliza M. Jimeno (respondent) for alleged: (*a*) unlawful, dishonest, immoral, and deceitful conduct, specifically, by falsifying a public document, in violation of Rule 1.01, Canon 1 of the Code of Professional Responsibility (CPR); and (*b*) violation of her duty to preserve her client's confidences in violation of Rule 21.01, Canon 21 of the CPR.

[1] *Rollo*, p. 2.

The Facts

Complainant claimed to have discovered that respondent, who is his cousin, sold the property of his parents, the late Spouses Geronimo P. Jimeno, Sr. (Geronimo Sr.) and Perla de Jesus Jimeno (Perla; collectively, Spouses Jimeno) located at Brgy. Gintong Silahis, San Jose, Quezon City (Malindang property) covered by Transfer Certificate of Title (TCT) No. RT-52411,[2] through a Deed of Absolute Sale[3] dated September 8, 2005 (subject deed) executed by respondent as attorney-in-fact of Geronimo Sr.[4] He claimed that the subject deed was falsified considering that: (*a*) the same bore the signature of Perla who had already passed away on May 19, 2004,[5] or more than a year prior to the execution thereof; (*b*) Geronimo Sr. was erroneously described as married to Perla, when he was already a widower at the time; (*c*) Geronimo Sr. was made to appear as the absolute and registered owner in fee simple of the property when the same is co-owned by him and his ten (10) children (Jimeno children); and (*d*) Geronimo Sr.'s residence and postal address was stated as "421 (formerly 137) Mayon Street, Quezon City," when the same should have been "10451 Bridgeport Road, Richmond, British Columbia" as indicated in the Special Power of Attorney[6] dated July 9, 2004 (subject SPA) he executed, authorizing respondent to administer and sell his real properties in the Philippines.[7] Complainant likewise alleged that respondent mentioned "so many unnecessary and un-called for matters like [his] father having allegedly (*sic*) illegitimate children" when his lawyer requested for copies of the titles and other documents respecting the properties covered by the SPA, in violation of her duty to keep in confidence

---

[2] *Id*. at 14-17.

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

[4] See *id*. at 4.

[5] See Certificate of Death of Perla; *id*. at 12.

[6] *Id*. at 24-25.

[7] See *id*.

whatever informations were revealed to her by the late Geronimo Sr. in the course of their professional relationship (lawyer-client privilege).[8]

In her defense,[9] respondent claimed that: (*a*) she was not the one who prepared or caused the preparation of the subject deed and that all the necessary documents for the sale of the Malindang property, including the subject SPA and the Deed of Waiver of Rights and Interests[10] dated July 4, 2005 executed by the Jimeno children in their parents' favor (collectively, documents of sale), were merely transmitted by her cousin and respondent's sister, Lourdes Jimeno-Yaptinchay (Lourdes), from Canada; (*b*) the sale of the Malindang property was with the consent of all the Jimeno children, including complainant; and (*c*) she merely signed the subject deed in good faith before endorsing the same to the buyer, Melencio G. Aquino, Jr. (Aquino), for disposition.[11] Respondent further claimed that the contents of her email dated April 24, 2012 to complainant's lawyer are "privileged communication" which are relevant to the subject of inquiry, and they did not arise from the confidences and secrets of the late Geronimo Sr. She challenged complainant's invocation of Canon 21, contending that the matter is personal to a client, and is intransmissible in character.[12]

The Report and Recommendation of the IBP-CBD

In a Report and Recommendation[13] dated June 14, 2013, the IBP-CBD Investigating Commissioner observed that while the sale of the Malindang property appeared to be a unanimous decision of the Jimeno children, and the documents of sale which were all prepared in Canada were merely sent to respondent in

---

[8] See *id*. at 11.

[9] See Answer dated September 14, 2012; *id*. at 45-57.

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

[11] See *id*. at 50-52.

[12] See *id*. at 54-55.

[13] *Id.* at 270-276. Penned by Commissioner Jose Alfonso M. Gomos.

the Philippines, she allowed herself to become a party to a document which contained falsehood and/or inaccuracies in violation of her duties as a lawyer, namely: (*a*) to refrain from doing or consenting to any falsehood; (*b*) to employ only fair and honest means to attain the lawful objectives of his client; and (*c*) to refrain from allowing his client to dictate the procedure in handling the case.[14] Accordingly, he recommended that respondent be reprimanded for her acts,[15] which was adopted and approved by the IBP Board of Governors (Board) in Resolution No. XXI-2014-678[16] dated September 28, 2014.

Dissatisfied, complainant filed a motion for reconsideration[17] dated May 1, 2015. The motion was granted by the Board in Resolution No. XXII-2016-278[18] dated April 29, 2016, increasing the imposed penalty to suspension from the practice of law for a period of six (6) months. The same Resolution likewise directed IBP-CBD Director Ramon S. Esguerra (Director Esguerra) to prepare an extended resolution to explain the Board's action.[19]

Director Esguerra thereafter submitted an Extended Resolution[20] holding that respondent's dishonest acts in relation to the subject SPA and the subject deed constitute blatant transgressions of her duties as a lawyer under Rule 1.01 of the CPR. He noted that respondent never denied knowledge of Perla's demise and her own description of her close relationship with the complainant's family bolsters such knowledge. However, instead of advising Geronimo Sr. and the Jimeno children to execute an extrajudicial settlement of the estate of Perla to enable the proper registration of the Malindang property in their names preliminary to the sale to Aquino, she voluntarily signed the

---

[14] See *id*. at 62.

[15] *Id.* at 276.

[16] *Id*. at 269.

[17] *Id*. at 277-284.

[18] *Id*. at 303-304.

[19] *Id.*

[20] *Id*. at 305-312. Penned by Director Esguerra.

subject deed despite the patent irregularities in its execution. He also rejected her reliance on the purported assurances made by complainant's siblings, holding that her oath as a lawyer mandates her to be cautious of the consequences of her action and enjoins her to refrain from any act or omission which might lessen the trust and confidence reposed by the public in the fidelity, honesty, and integrity of the legal profession.[21]

Aggrieved, respondent moved for reconsideration,[22] which was denied by the Board in Resolution No. XXII-2017-1135[23] dated May 27, 2017.

Pursuant to Rule 139-B of the Rules of Court, the records of the case were transmitted to this Court.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for the acts complained of.

The Court's Ruling

The Court adopts and approves the findings of the IBP, as the same were duly substantiated by the records.

Fundamental is the rule that in his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy. These expectations, though high and demanding, are the professional and ethical burdens of every member of the Philippine Bar, for they have been given full expression in the Lawyer's Oath that every lawyer of this country has taken upon admission as a *bona fide* member of the Law Profession,[24] thus:

I,_____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its

---

[21] See *id*. at 309-311.

[22] See Motion for Reconsideration dated March 2, 2017; *id*. at 313-319.

[23] *Id*. at 335-336.

[24] *Spouses Umaguing v. De Vera*, 753 Phil. 11, 18 (2014).

Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; **I will do no falsehood, nor consent to the doing of any** in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same. I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.[25] (Emphasis supplied)

The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also to **refrain from doing any falsehood in *or* out of court** or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law, as well as be an exemplar worthy of emulation by others.[26]

In line with the letter and spirit of the Lawyer's Oath, the Court has adopted and instituted the Code of Professional Responsibility[27] (CPR) to govern every lawyer's relationship with his profession, the courts, the society, and his clients.[28]

Pertinent to this case are Rule 1.01 of Canon 1, Rule 15.07 of Canon 15, and Rule 19.01 of Canon 19, which provide:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and *promote respect for law and legal processes*.

Rule 1.01 — A lawyer shall not engage in unlawful, *dishonest*, immoral or deceitful conduct.

x x x x x x x x x

CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

---

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

[26] *Id*. at 19.

[27] Promulgated on June 21, 1988.

[28] See *Apolinar-Petilo v. Maramot*, A.C. No. 9067, January 31, 2018.

x x x x x x x x x

Rule 15.07 — A lawyer shall impress upon his client *compliance with the laws* and the principles of fairness.

x x x x x x x x x

CANON 19 — A lawyer shall represent his client with zeal *within the bounds of the law*.

Rule 19.01 — A lawyer shall *employ only fair and honest means* to attain the lawful objectives of his client x x x. (Italics supplied)

After a judicious examination of the records, the Court finds itself in complete agreement with Director Esguerra's finding that respondent's acts in relation to the subject SPA and the subject deed constitute blatant transgressions of her duties as a lawyer, as ordained by Rule 1.01 of Canon 1 of the CPR, which engraves an overriding prohibition against ***any*** form of misconduct.[29] Additionally, the Court finds that respondent fell short of her duty to **impress upon her client compliance with the pertinent laws** in relation to the subject transaction. In this case, while seemingly aware of the demise of Perla that rendered the Malindang property a co-owned property of Geronimo Sr. and the Jimeno children, instead of advising the latter to settle the estate of Perla to enable the proper registration of the property in their names preliminary to the sale to Aquino, she voluntarily signed the subject deed, as attorney-in-fact of Geronimo Sr., despite the patent irregularities in its execution. These irregularities are: (*a*) the fact that it bore the signature of Perla, who was already deceased; (*b*) the erroneous description of Geronimo Sr. as married to Perla despite the latter's demise and as being the absolute owner in fee simple of the Malindang property which is a co-owned property; and (*c*) the erroneous statement of Geronimo Sr.'s residence and postal address.

That respondent had no hand in the preparation of the documents of sale is of no moment because **as a lawyer, she is expected to respect and abide by the laws and the legal processes**.[30] To say that lawyers must at all times uphold and

---

[29] See *Yupangco-Nakpil v. Uy*, 743 Phil. 138, 143 (2014).

[30] See *Maniquiz v. Emelo*, A.C. No. 8968, September 26, 2017.

respect the law is to state the obvious, but such statement can never be overemphasized. Considering that, of all classes and professions, lawyers are most sacredly bound to uphold the law, **it is imperative that they live by the law**.[31]

As a lawyer, respondent is fully aware of the requisites for the legality of a voluntary conveyance of property, particularly, the scope of the rights, interests, and participation of the parties/signatories to the deed of sale, and the consequent transfer of title to the properties involved, yet, she chose to disregard the patent irregularities in the subject deed and voluntarily affixed her signature thereon. Notably, respondent did not specifically admit nor deny knowledge of the demise of Perla, but her claim of such strong ties to complainant's family bolsters knowledge thereof.[32] Besides, her awareness of Perla's demise even prior to the affixture of her signature on the subject deed may be sufficiently inferred from her averments, among others, that: (*a*) when Perla got sickly sometime in the *early part of 2004*, Lourdes began giving her a *series of phone calls* regarding the disposition of Spouses Jimeno's real properties;[33] and (*b*) she was never remiss in her duty to inform the Jimeno children, through Lourdes and Teresita Jimeno-Roan, about the *legal repercussions and legal complications of pushing through and continuing with the negotiations with the prospective buyers* of the Malindang property,[34] which admittedly continued even after the demise of Perla.[35] However, despite being aware that something was amiss with the documents of sale, respondent allowed herself to become a party to the subject deed which contained falsehood and/or inaccuracies in violation of her duties as a lawyer.

---

[31] *Jimenez v. Francisco*, 749 Phil. 551, 566 (2014).

[32] See *Valin v. Ruiz*, A.C. No. 10564, November 7, 2017.

[33] See *rollo*, p. 49.

[34] See paragraph 8 of respondent's Rejoinder (To Complainant's Reply dated 10 October 2012) dated October 29, 2012; *id*. at 182.

[35] See paragraph 9; *id*.

Respondent's claims that she acted in good faith,[36] and that she relied on the assurance of full responsibility from the ten (10) Jimeno children[37] cannot relieve her of administrative liability. As a lawyer, she cannot invoke good faith and good intentions as justifications to excuse her from discharging her **obligation to be truthful and honest in her professional actions** since her duty and responsibility in that regard **are clear and unambiguous**.[38]

Thus, despite complainant's admission that he "agreed in principle for the sale of the properties of their parents in the Philippines to generate funds for their support and medical attention x x x,"[39] the Court cannot turn a blind eye on respondent's act of permitting untruthful statements to be embodied in public documents which she herself signed. To allow this highly irregular practice for the specious reason that lawyers are constrained to obey their clients' wishes, even if for laudable purposes, would effectively sanction wrongdoing and falsity which would undermine the role of lawyers as officers of the court.

Time and again, the Court has reminded lawyers that their support for the cause of their clients should never be attained at the expense of truth and justice. While a lawyer owes absolute fidelity to the cause of his client, full devotion to his genuine interest, and warm zeal in the maintenance and defense of his rights, as well as the exertion of his utmost learning and ability, he must do so only within the bounds of the law. It is worthy to emphasize that the lawyer's fidelity to his client must not be pursued at the expense of truth and justice, and must be held within the bounds of reason and common sense.[40] Respondent's responsibility to protect and advance the interests of her client

---

[36] See *id.* at 52 and 254.

[37] *Id*. at 50.

[38] See *Apolinar-Petilo v. Maramot*, *supra* note 28.

[39] See *rollo*, p. 227.

[40] *Jimenez v. Francisco*, *supra* note 31, at 567-568.

does not warrant a course of action not in accordance with the pertinent laws and legal processes.

All told, respondent is found guilty of violating the Lawyer's Oath, Rule 1.01 of Canon 1, Rule 15.07 of Canon 15, and Rule 19.01 of Canon 19 of the CPR by allowing herself to become a party to the subject deed which contained falsehood and/or inaccuracies.

On the other hand, the Court finds no merit in the charge of violation of the rule[41] on lawyer-client privilege[42] for lack of proper substantiation.

---

[41] As ordained under Canon 21 of the CPR, which provides:

CANON 21 — A lawyer shall preserve the confidences and secrets of his client even after the attorney-client relation is terminated.

[42] In *Mercado v. Vitriolo* (498 Phil. 49 [2005]), the Court elucidated on the factors essential to establish the existence of the said privilege, *viz.*:

"In fine, the factors are as follows:

(1) There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication.

Matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines the employment. The reason for this is to make the prospective client free to discuss whatever he wishes with the lawyer without fear that what he tells the lawyer will be divulged or used against him, and for the lawyer to be equally free to obtain information from the prospective client.

x x x x x x x x x

(2) The client made the communication in confidence.

The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential.

A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given.

x x x x x x x x x

(3) The legal advice must be sought from the attorney in his professional capacity.

Under Section 27, Rule 138 of the Rules of Court, a member of the Bar may be disbarred or suspended for any of the following grounds: (1) deceit; (2) **malpractice or other gross misconduct in office**; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the Lawyer's Oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court.[43]

Verily, the act of respondent in affixing her signature on a deed of sale containing falsehood and/or inaccuracies constitutes malpractice and gross misconduct in her office as attorney. Case law provides that in similar instances where lawyers committed falsehood or knowingly allowed the commission of falsehood by their clients, the Court imposed upon them the penalty of suspension from the practice of law. In *Jimenez v. Francisco*,[44] a lawyer was suspended from the practice of law for six (6) months for permitting untruthful statements to be embodied in public documents. Similarly, in *Bongalonta v. Castillo*[45] the same penalty was imposed on a lawyer who committed falsehood in violation of the Lawyer's Oath and of the CPR. In view of the antecedents in this case, the Court finds it appropriate to sustain the recommended suspension from the practice of law for six (6) months.

The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice.

If the client seeks an accounting service, or business or personal assistance, and not legal advice, the privilege does not attach to a communication disclosed for such purpose." (*Id.* at 58-60.)

[43] *Jimenez v. Francisco*, *supra* note 31, at 575.

[44] *Id*.

[45] 310 Phil. 320 (1995).

As a final word, the Court echoes its unwavering exhortation in *Samonte v. Abellana*:[46]

> **Disciplinary proceedings against lawyers are designed to ensure that whoever is granted the privilege to practice law in this country should remain faithful to the Lawyer's Oath.** Only thereby can lawyers preserve their fitness to remain as members of the Law Profession. Any resort to falsehood or deception x x x evinces an unworthiness to continue enjoying the privilege to practice law and highlights the unfitness to remain a member of the Law Profession. It deserves for the guilty lawyer stern disciplinary sanctions.[47] (Emphasis supplied)

WHEREFORE, respondent Atty. Flordeliza M. Jimeno (respondent) is found **GUILTY** of violating the Lawyer's Oath, Rule 1.01 of Canon 1, Rule 15.07 of Canon 15, and Rule 19.01 of Canon 19 of the Code of Professional Responsibility. Accordingly, she is **SUSPENDED** for six (6) months from the practice of law, with a **STERN WARNING** that any repetition of the same or similar acts will be punished more severely.

Respondent's suspension from the practice of law shall take effect immediately upon her receipt of this Decision. She is **DIRECTED** to immediately file a Manifestation to the Court that her suspension has started, copy furnished all courts and quasi-judicial bodies where she has entered her appearance as counsel.

Let copies of this Decision 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.

---

[46] 736 Phil. 718 (2014).

[47] *Id.* at 733.

[*] (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, As Amended.)

SECOND DIVISION

[A.C. No. 12062. July 2, 2018]

HEIR OF HERMINIGILDO[*] A. UNITE, represented by his sole heir, FLORENTINO S. UNITE, *complainant, vs.* **ATTY. RAYMUND P. GUZMAN**, *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; THE NOTARIAL RULES REQUIRE THE PRESENCE OF THE SIGNATORY TO THE DOCUMENT WHO IS IDENTIFIABLE TO THE NOTARY PUBLIC.— [T]he act of notarization is impressed with public interest. Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credence. As such, a notary public must observe with utmost care the basic requirements in the performance of his duties in order to preserve the confidence of the public in the integrity of the notarial system. In this light, the Court has ruled that notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions. Under Section 2(b) (1) and (2), Rule IV of the Notarial Rules, a notary public should not notarize a document unless the signatory to the document is "in the notary's presence personally at the time of the notarization," and is "***personally known to the notary public or otherwise identified by the notary public through competent evidence of identity***."

2. ID.; ID.; ID.; COMPETENT EVIDENCE OF IDENTITY; COMMUNITY TAX CERTIFICATE, NOT INCLUDED.— Section 12, Rule II of the same rules, as amended by the February 19, 2008 *En Banc* Resolution in A.M. No. 02-8-13-SC, defines "competent evidence of identity." thus: Section 12. *Competent Evidence of Identity*. – The phrase "competent evidence of identity" refers to the identification of an individual based on: a. At least **one current identification document issued by an official agency bearing the photograph and signature of the**

[*] "Hermenegildo" or "Hermingildo" in some parts of the *rollo*.

individual; x x x In this case, respondent, as duly found by the IBP-IC, clearly failed to faithfully observe his duties as a notary public when he failed to confirm the identity of Torrices through the competent evidence of identity required by the Notarial Rules. This fact is clear from the Deed itself which shows that Torrices presented only his CTC when he appeared before respondent. Jurisprudence provides that a community tax certificate or *cedula* is no longer considered as a valid and competent evidence of identity not only because it is not included in the list of competent evidence of identity under the Rules; more importantly, it does not bear the photograph and signature of the person appearing before notaries public which the Rules deem as the more appropriate and competent means by which they can ascertain the person's identity.

3. ID.; ID.; ID.; ID.; IF THE NOTARY PUBLIC PERSONALLY KNOWS THE AFFIANT AS AN EXCUSE FROM PRESENTING A COMPETENT EVIDENCE OF IDENTITY; "PERSONALLY KNOWN" MUST BE INDICATED IN THE ACKNOWLEDGMENT PORTION OF THE DEED.— Under Section 2(b), Rule IV of the Notarial Rules, a notary public may be excused from requiring the presentation of competent evidence of identity of the signatory before him only if such signatory is ***personally known*** to him. In this case, the acknowledgment portion of the Deed does not state that Torrices is **personally known** to respondent, as the Rules require; rather, it simply states that Torrices is **known to me** (respondent), x x x [I]t should be clarified that the phrase "personally known" contemplates the notary public's personal knowledge of the signatory's personal circumstances independent and irrespective of any representations made by the signatory immediately before and/or during the time of the notarization. It entails awareness, understanding, or knowledge of the signatory's identity and circumstances gained through firsthand observation or experience which therefore serve as guarantee of the signatory's identity and thus eliminate the need for the verification process of documentary identification.

4. ID.; ID.; RESPONDENT'S FAILURE TO PROPERLY PERFORM HIS DUTY AS A NOTARY PUBLIC MADE HIM LIABLE FOR NEGLIGENCE NOT ONLY AS A NOTARY PUBLIC BUT ALSO AS A LAWYER.— [A]s a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or

omission which might erode the trust and confidence reposed by the public in the integrity of the legal profession. By notarizing the subject Deed, he engaged in an unlawful, dishonest, immoral, or deceitful conduct which makes him liable as well for violation of the CPR, particularly Rule 1.01, Canon 1 thereof x x x [R]espondent's failure to properly perform his duty as a notary public resulted not only in damage to those directly affected by the notarized document, but also in undermining the integrity of the office of a notary public and in degrading the function of notarization. He should thus be held liable for such negligence not only as a notary public but also as a lawyer. Consistent with jurisprudence, he should be meted out with the modified penalty of immediate revocation of his notarial commission, if any, disqualification from being commissioned as a notary public for a period of two (2) years, and suspension from the practice of law for a period of six (6) months.

APPEARANCES OF COUNSEL

Leovillo C. Agustin Law Office for complainant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from a Petition for Disbarment[1] filed on December 9, 2014 by Florentino S. Unite (complainant), as the sole heir of Herminigildo A. Unite (Herminigildo), before the Integrated Bar of the Philippines (IBP), against respondent Atty. Raymund P. Guzman (respondent) for violation of Rule 10.01 of the Code of Professional Responsibility (CPR), his oath as a lawyer, and the 2004 Rules on Notarial Practice (Notarial Rules).[2]

The Facts

In his Petition for Disbarment, complainant alleged that on December 19, 2012, respondent notarized a Deed of Self

[1] Dated December 3, 2014. *Rollo,* pp. 2-8.

[2] A.M. No. 02-8-13-SC (August 1, 2004).

Adjudication with Sale and/with Deed of Absolute Sale[3] (Deed) executed by Jose Unite Torrices (Torrices), claiming to be the sole heir of Herminigildo, in favor of one Francisco U. Tamayo (Tamayo), covering a parcel of land located in Ballesteros, Cagayan and covered by a title[4] under Herminigildo's name. According to complainant, the Deed was executed with only Torrices's community tax certificate (CTC) as evidence of identity.[5] Complainant asserted that he is the only surviving heir of his father, Herminigildo, as Torrices is his cousin. As a result of respondent's acts, the Deed was recorded in the Registry of Deeds,which caused the cancellation of his father's title and the issuance of a new one in the name of Tamayo.[6] Complainant added that on October 20, 2014, he filed a complaint for the annulment of the Deed and Tamayo's title, with liquidation/accounting and damages before the Regional Trial Court of Ballesteros, Cagayan, Branch 33, docketed as Civil Case No. 33-471-2014.[7] In support of his Petition, complainant attached copies of the Deed, Certificate of Death of Herminigildo,[8] his birth certificate,[9] the marriage contract of his parents,[10] Tamayo's Transfer Certificate of Title,[11] and the Complaint[12] in Civil Case No. 33-471-2014 with its annexes.[13]

In his Answer,[14] respondent denied the charges against him and claimed that he complied with the requirements of the

---

[3] *Rollo*, p. 93.

[4] *Id*. at 105-107.

[5] See Deed; *id*. at 93. See also *id*. at 4.

[6] See *id*. at 4 and 7.

[7] *Id*. at 7.

[8] *Id*. at 12.

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

[10] *Id.* at 15.

[11] *Id*. at 17-18.

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

[13] *Id*. at 28-62.

[14] Dated January 15, 2015. *Id*. at 68-70.

Notarial Rules. Particularly, he verified the identity of the parties to the Deed from their current government identification documents with pictures and CTCs.[15] He further inquired from the parties, especially from Torrices, their capacity to execute the Deed.

In reply[16] to respondent's Answer, complainant pointed out, among others, that: (*a*) a CTC is no longer considered a competent evidence of identification as it does not bear the photograph and signature of the individual;[17] (*b*) the other documents presented by Torrices as proof of being the sole heir did not cure the absence of the required competent evidence of identity;[18] (*c*) and the pendency of Civil Case No. 33-471-2014 does not bar the instant administrative action.[19]

The IBP's Report and Recommendation

In a Report and Recommendation[20] dated April 21, 2015, the IBP Investigating Commissioner (IBP-IC) found respondent administratively liable for violation of the Notarial Rules. The IBP-IC held that respondent failed to confirm the identity of the parties to the Deed through the presentation of competent evidence of identity as required by the Notarial Rules, pointing out, in this regard, that a CTC is not one of the enumerated evidence of identity under the Rules.[21] Accordingly, the IBP-IC recommended that respondent be suspended from the practice of law for a period of six (6) months and be disqualified from being commissioned as a notary public for a period of one (1) year.[22]

---

[15] See *id*. at 68-69.

[16] Dated February 4, 2015. *Id*. at 73-78.

[17] See *id*. at 74-75.

[18] *Id*. at 75.

[19] *Id.*

[20] *Id*. at 156-157. Signed by Commissioner Arsenio P. Adriano.

[21] See *id*. at 157.

[22] *Id*.

In a Resolution[23] dated June 20, 2015, the IBP Board of Governors adopted the above-findings but reduced the recommended penalty imposed on respondent to reprimand, "considering that [r]espondent personally knows the affiant and the [CTC] then will suffice."

Dissatisfied, complainant moved for reconsideration,[24] which the IBP Board of Governors denied in a Resolution[25] dated April 20, 2017.

The Issue Before the Court

The issue for the Court's resolution is whether or not the IBP correctly found respondent liable for violation of the Notarial Rules.

The Court's Ruling

The Court affirms the findings and adopts the recommendations of the IBP with modifications.

Time and again, the Court has emphasized that the act of notarization is impressed with public interest. Notarization converts a private document to a public document, making it admissible in evidence without further proof of its authenticity.[26]A notarial document is, by law, entitled to full faith and credence.[27]As such, a notary public must observe with utmost care the basic requirements in the performance of his duties in order to preserve the confidence of the public in the integrity of the notarial system.[28]In this light, the Court has

---

[23] See Notice of Resolution in Resolution No. XXI-2015-554 issued by National Secretary Nasser A. Marohomsalic; *id*. at 155, including dorsal portion.

[24] See complainant's motion for reconsideration dated January 11, 2016; *id*. at 158-164.

[25] See Notice of Resolution in Resolution No. XXII-2017-1286 issued by National Secretary Patricia-Ann T. Prodigalidad; *id.* at 189-190.

[26] *Gaddi v. Velasco*, 742 Phil. 810, 815 (2014).

[27] *Id*.

[28] See *Bartolome v. Basilio*, 771 Phil. 1, 5 (2015).

ruled that notaries must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.[29]

Under Section 2(b) (1) and (2), Rule IV of the Notarial Rules, a notary public should not notarize a document unless the signatory to the document is "in the notary's presence personally at the time of the notarization," and is "***personally known to the notary public or otherwise identified by the notary public through competent evidence of identity***."[30] Section 12, Rule II of the same rules, as amended by the February 19, 2008 *En Banc* Resolution in A.M. No. 02-8-13-SC, defines "competent evidence of identity" thus:

> Section 12. *Competent Evidence of Identity*. – The phrase "competent evidence of identity" refers to the identification of an individual based on:
>
> (a) At least **one current identification document issued by an official agency bearing the photograph and signature of the individual**; such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or
>
> (b) The oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the

---

[29] *Id*. at 9. See also *Sultan v. Macabanding*, 745 Phil. 12, 20 (2014).

[30] Emphasis supplied. Under Section 1(b) (8), Rule XI of the Notarial Rules, the notary public's failure to identify the principal on the basis of personal knowledge or competent evidence is ground for administrative sanctions.

> individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification. (Emphasis supplied)

In this case, respondent, as duly found by the IBP-IC, clearly failed to faithfully observe his duties as a notary public when he failed to confirm the identity of Torrices through the competent evidence of identity required by the Notarial Rules.This fact is clear from the Deed itself which shows that Torrices presented only his CTC when he appeared before respondent. Jurisprudence[31] provides that a community tax certificate or *cedula* is no longer considered as a valid and competent evidence of identity not only because it is not included in the list of competent evidence of identity under the Rules; more importantly, it does not bear the photograph and signature of the person appearing before notaries public which the Rules deem as the more appropriate and competent means by which they can ascertain the person's identity.

While respondent argues that, apart from the CTC, he required all the parties to the Deed to present at least two (2)current government identification documents and conducted further interviews to ascertain their capacity and personality to enter into the transactions, the Deed itself, however, belies this contention.Had respondent indeed required – and had the parties presented – current government identification documents at the time of the Deed's notarization, respondent should have reflected these facts on the Deed's acknowledgement portion in the same manner that the Deed reflected Torrices' CTC.By notarizing the Deed notwithstanding the absence of the competent evidence of identity required by the Notarial Rules, respondent undoubtedly failed to properly perform his duty as a notary public.

In this regard, the Court disagrees with the IBP Board of Governor's finding that respondent personally knows the affiant,

---

[31] See *Baysac v. Aceron-Papa*, A.C. No. 10231, August 10, 2016, 800 SCRA 1; and *Agbulos v. Viray*, 704 Phil. 1 (2013).

hence, the CTC suffices. Under Section 2(b), Rule IV of the Notarial Rules quoted above, a notary public may be excused from requiring the presentation of competent evidence of identity of the signatory before him only if such signatory is ***personally known*** to him. In this case, the acknowledgment portion of the Deed does not state that Torrices is **personally known** to respondent, as the Rules require; rather, it simply states that Torrices is **known to me** (respondent), thus:

> "Personally came and appeared before me on this ___ day of _____ at [sic] Tuguegarao City, Cagayan, Jose U. Torrices with his CTC No. appearing below his signature **known to me** and to me known to be the same person who executed the foregoing instrument and who acknowledged to that the same is her [sic] free act and voluntary deed."[32] (Emphasis and underscoring supplied)

In other words, nowhere in the Deed did respondent declare that Torrices is personally known to him so as to excuse the presentation of any of the enumerated competent evidence of identity. Moreover, it should be clarified that the phrase "personally known" contemplates the notary public's personal knowledge of the signatory's personal circumstances independent and irrespective of any representations made by the signatory immediately before and/or during the time of the notarization.[33] It entails awareness, understanding, or knowledge of the signatory's identity and circumstances gained through firsthand observation or experience which therefore serve as guarantee of the signatory's identity and thus eliminate the need for the verification process of documentary identification. In this case, if indeed respondent personally knows Torrices, as the IBP Board of Governors surmised, there would have been no need for respondent, as he asserted in his Answer, to require the

---

[32] *Rollo,* p. 93.

[33] See *Jandoquile v. Revilla, Jr.*, 708 Phil. 337 (2013). *Black's Law Dictionary* defines "personal" as "[o]f or affecting a person" or "[o]f or constituting personal property"; while "personal knowledge" as "[k]nowledge gained through firsthand observation or experience, as distinguished from a belief on what someone else has said" (see *Black's Law Dictionary*, Eight Edition, pp. 1179 and 888, respectively).

parties to present at least two (2) current government identification documents and conduct further interviews to ascertain their capacity and personality to execute the Deed.

Lastly, as a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might erode the trust and confidence reposed by the public in the integrity of the legal profession.[34] By notarizing the subject Deed, he engaged in an unlawful, dishonest, immoral, or deceitful conduct which makes him liable as well for violation of the CPR, particularly Rule 1.01, Canon 1 thereof which provides:

> CANON 1 –A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.
>
> Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

As herein discussed, respondent's failure to properly perform his duty as a notary public resulted not only in damage to those directly affected by the notarized document, but also in undermining the integrity of the office of a notary public and in degrading the function of notarization.[35]He should thus be held liable for such negligence not only as a notary public but also as a lawyer. Consistent with jurisprudence,[36] he should be meted out with the modified penalty of immediate revocation of his notarial commission, if any, disqualification from being commissioned as a notary public for a period of two (2) years, and suspension from the practice of law for a period of six (6) months.

---

[34] See *Sappayani v. Gasmen*, 768 Phil. 1, 8-9 (2015).

[35] *Baysac v. Aceron-Papa*, *supr*a note 31, at 11-12; *Bartolome v. Basilio*, *supra* note 28, at 10; and *Sappayani v. Gasmen*, *id*. at 8.

[36] See Unsigned Resolution of *Agotilla v. Valencia*, A.C. No. 9267, September 6, 2017; *Yumul-Espina v. Tabaquero*, A.C. No. 11238, September 21, 2016, 803 SCRA 571; and *Bon v. Ziga*, 473 Phil. 148 (2004).

WHEREFORE, the Court hereby finds respondent Atty. Raymund P. Guzman **GUILTY** of violation of the 2004 Rules on Notarial Practice and of the Code of Professional Responsibility. Accordingly, the Court hereby: **SUSPENDS** him from the practice of law for a period of six (6) months; **REVOKES** his incumbent commission as a notary public, if any; and **PROHIBITS** him from being commissioned as a notary public for a period of two (2) years. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

The suspension in the practice of law, revocation of notarial commission, and disqualification from being commissioned as a notary public shall take effect immediately upon receipt of this Resolution by respondent. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished 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[**] *(Chairperson)*, *del Castillo,*[***] *Caguioa,* and *Reyes, Jr., JJ.,* concur.

[**] Senior Associate Justice (Per Section 12, Republic Act No. 296, the Judiciary Act of 1948, as Amended).

[***]Designated Additional member per Raffle dated July 2, 2018.

FIRST DIVISION

[G.R. No. 203217. July 2, 2018]

JOSE L. DIAZ, *petitioner, vs.* **THE OFFICE OF THE OMBUDSMAN,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF THE OFFICE OF THE OMBUDSMAN SUPPORTED BY SUBSTANTIAL EVIDENCE, CONCLUSIVE.—** The factual findings of the Office of the Ombudsman are generally accorded great weight and respect, if not finality, by the courts because of their special knowledge and expertise over matters falling under their jurisdiction. When supported by substantial evidence, their findings of fact are deemed conclusive. More than a mere scintilla of evidence, substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. The requirement is satisfied where there is reasonable ground to believe that the respondent is guilty of the act or omission complained of, even if the evidence might not be overwhelming.

2. **ID.; ID.; PUBLIC DOCUMENTS; CONSIDERATIONS FOR THEIR TRUSTWORTHINESS AND FOR THE VALUE GIVEN TO THE ENTRIES.—** [The Supplies Ledger Cards (SLC),] [b]eing public documents, are *prima facie* proof of their contents. As the CA noted, this Court, in *Tecson v. Commission On Elections*, held: The trustworthiness of public documents and the value given to the entries made therein could be grounded on (1) the sense of official duty in the preparation of the statement made, (2) the penalty which is usually affixed to a breach of that duty, (3) the routine and disinterested origin of most such statements, and (4) the publicity of record which makes more likely the prior exposure of such errors as might have occurred. Absent evidence to the contrary, the SLC are presumed to have been regularly prepared by accountable officers who enjoy the legal presumption of regularity in the performance of their functions.

3. POLITICAL LAW; ADMINISTRATIVE LAW; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (URACCS); DISHONESTY IN CASE AT BAR; PENALTY OF DISMISSAL CANNOT BE MITIGATED BY THE LENGTH OF GOVERNMENT SERVICE.— In the case of *Balasbas v. Monayao*, the Court explained: Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness. As the evidence shows, the questioned gasoline withdrawals by petitioner were made through deception. He made it appear that gasoline thus withdrawn was used for a government vehicle despite the fact that said vehicle was already declared "unserviceable." Notwithstanding the fact that he was already receiving transportation allowance, he was also able to obtain fuel, purchased with government funds, for his personal vehicle, which clearly indicates a disposition to defraud. Thus, the finding of guilt against petitioner, for the administrative offense of dishonesty under Section 52 (A) (l), Rule IV of the URACCS, must stand. Section 52 (A)(l), Rule IV of the URACCS supports the penalty of dismissal imposed on the petitioner. His actions constituted a grave offense which cannot be mitigated by the length of his government service or the fact that it was his first offense. As the CA acutely observed, petitioner committed a series of violations over a number of years while in government service. Jurisprudence is replete with cases declaring that a grave offense cannot be mitigated by the public employee's length of service or the fact that he is a first-time offender.

APPEARANCES OF COUNSEL

Monsod Enriquez Barrios-Taran Lucido Tolentino Ramos Law Office for petitioner.

The Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review[1] of the September 15, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 107595 which affirmed the Decision[3] dated June 26, 2007 of the Office of the Ombudsman in OMB C-A-05-0324-G dismissing petitioner from the civil service for dishonesty, and the CA's August 22, 2012 Resolution[4] which denied petitioner's motion for reconsideration.

The Facts

On June 27, 2005, the General Investigation Bureau A (GIB-A)[5] of the Office of the Ombudsman filed a Complaint[6] against several personnel of the Veterinary Inspection Board (VIB) of the City of Manila for violations of Section 3 (e) and (i) of Republic Act No. 3019, Article 220 of the Revised Penal Code for Illegal Use of Public Funds or Property and for Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service under the Uniform Rules on Administrative Cases in the Civil Service (URACCS). Among those charged were petitioner as the City Government Division Head III of the VIB and Rodrigo R. Reyes (Reyes) as Mechanic III.

The Complaint alleged that on November 18, 1998, petitioner received from the Public Recreation Bureau of the City of Manila

---

[1] *Rollo*, pp. 16-35.

[2] Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court) and concurred in by Associate Justices Antonio L. Villamor and Ramon A. Cruz. *Id*. at 39-50.

[3] *Id*. at 80.

[4] Penned by Associate Justice Jose C. Reyes, Jr. (now a Member of this Court) and concurred in by Associate Justices Ramon A. Cruz and Isaias P. Dicdican *vice* Associate Justice Antonio L. Villamor. *Id*. at 52.

[5] As a nominal complainant and officially represented by Atty. Maria Olivia Elena A. Roxas, Graft Investigation and Prosecution Officer II. *Id.* at 84.

[6] *Id*. at 84-93.

"one (1) unit Jeep Yellow, CJ-81 Engine No. 406Y18."[7] On December 29, 1998, a Work Order for the replacement of the Jeep's engine was issued and engine number (no.) 406Y18 was replaced by engine no. 13T-4990303. Engine no. 406Y18 was consequently decommissioned. Meanwhile, per the Inventory and Inspection Report of Unserviceable Property dated August 31, 1999 and signed by petitioner, the Toyota Land Cruiser with plate no. SCB-995 was declared "unserviceable."[8] In a letter dated July 9, 2001, approved by petitioner, the Personal Assistant of the Chairperson of the Appraisal/Disposal Committee and Sub-Committee on Canvass and Bidding of the Office of the City Mayor was authorized to withdraw said Toyota Land Cruiser for disposal at the dumping area in Arroceros, Manila for being unserviceable. This notwithstanding, the VIB's "Gasoline Fuel Supplies Ledger Card Withdrawals" revealed that 4,555 liters of gasoline were withdrawn for the vehicle with plate no. SCB-995 from January 1999 to December 2001 while 6,500 liters were withdrawn for the vehicle with engine number 406Y18 from May 2001 to December 2003, or a total of 11,055 liters of gasoline for a period of five (5) years.[9]

The Supplies Ledger Cards (SLC) identified petitioner and Reyes among the VIB officials responsible for the gasoline withdrawals for the period February 1999 to March 2003. According to the GIB-A, petitioner, who was already receiving transportation allowance, caused the request for the purchase and withdrawal of the gasoline despite the fact that engine no. 406Y18 had been decommissioned in December 1998 and the vehicle with plate no. SCB-995 had been declared unserviceable since August 31, 1999.[10]

The same SLC showed petitioner withdrawing gasoline for a vehicle with plate no. PPR-691, which he acknowledged as his personal vehicle.[11]

---

[7] *Id*. at 84.

[8] *Id*. at 85.

[9] *Id*. at 85-86.

[10] *Id*. at 86-91.

[11] *Id*. at 46 and 86.

In his Counter-Affidavit, petitioner denied the charges for being malicious and unfounded. He countered that the vehicle with engine no. CJ-8 406Y18 bearing plate no. SCB-995 was used by VIB from 1999 up to December 2003 despite the fact that it was already reported as unserviceable on August 31, 1999. He explained that this was because said engine was replaced by engine no. 4990303 purchased on December 1, 1998. He added that the same vehicle was finally declared unserviceable in December 2003 and was actually taken out from the VIB premises only on August 18, 2004 after it was sold at a public auction. He denied knowledge of gasoline withdrawals for his personal vehicle bearing plate no. PPR-691, arguing that his signature did not appear on the SLC and no evidence was presented to prove that he had requested for fuel.[12]

Reyes echoed petitioner's allegations as regards the vehicle with plate no. SCB-995.[13]

The Ombudsman's Ruling

On June 26, 2007, the Office of the Ombudsman rendered the Joint Decision finding petitioner and Reyes guilty of dishonesty under Section 52(A)(l), Rule IV of the URACCS, the dispositive portion of which reads:

> WHEREFORE, after finding substantial evidence, this Office hereby finds respondents [petitioners] JOSE L. DIAZ and RODRIGO R. REYES, City Government Head III and Mechanic III, respectively, of Veterinary Inspection Board, guilty of DISHONESTY. Accordingly, they are meted the penalty of Dismissal from the Service, pursuant to Section 52 (A-l), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (CSC Resolution No. 991936), with cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government Service.
>
> . . . . . .
>
> The Hon. ALFREDO S. LIM, City Mayor of Manila City is hereby directed to implement this Joint-Decision, imposing the administrative

[12] *Id*. at 137-138.

[13] *Id*. at 142.

penalty of dismissal from the service upon respondents [petitioners] JOSE L. DIAZ and RODRIGO R. REYES, and submit proof of compliance thereof to this office.

SO ORDERED.[14]

The charges against the other officials were dismissed for lack of substantial evidence.[15]

Giving weight to the SLC, the Ombudsman held that there was substantial evidence that petitioner and Reyes used government gasoline for personal use. According to the Ombudsman, the SLC showed that petitioner made a total withdrawal of 390 liters of gasoline worth ₱6,653.40 for his personal vehicle and that Reyes made gasoline withdrawals for the vehicle with engine no. 408Y18 amounting to ₱78,520.87. The Ombudsman held that petitioner and Reyes cannot claim that engine no. 406Y18 and the vehicle with plate no. SCB-995 were still being used from 1999 to 2003, considering that engine no. 408Y18 was already replaced by engine no. 4990303 as early as December 1998 and on July 9, 2001, petitioner had authorized the withdrawal of the vehicle with plate no. SCB-995 from the VIB.[16]

Their Joint Motion for Reconsideration having been denied in the Ombudsman's June 25, 2008 Joint Order, petitioner and Reyes filed a petition for review[17] before the CA, praying for the reversal of the Ombudsman's ruling.[18]

The CA's Ruling

In the assailed Decision[19] dated September 15, 2011, the CA denied the petition for review, disposing as follows:

---

[14] *Id*. at 41.

[15] *Id.*

[16] *Id*. at 42.

[17] *Id*. at 53-77.

[18] *Id*. at 39 and 42.

[19] *Id*. at 39-50.

WHEREFORE, the petition is **DENIED** for lack of merit. The Joint Decision dated June 26, 2007 and the Joint Order dated February 25, 2008 of the Office of the Ombudsman in OMB C-A-05-0324-G and OMB C-A-05-0325-G are hereby **AFFIRMED**.

SO ORDERED.[20]

The CA found that the Ombudsman's findings were supported by substantial evidence. It rejected petitioner's claim that the SLC were untrustworthy for being hearsay and for having been prepared with ill motives, holding that as public records, they constituted *prima facie* evidence of the facts stated therein.[21]

The CA likewise noted that based on the records, the vehicle with plate no. SCB-995 was already declared unserviceable on August 31, 1999, while engine no. 8406Y18 could be found in the storeroom of the Slaughterhouse Operation and Maintenance Division. The appellate court gave no weight to petitioner and Reyes' claim that they merely continued to use the vehicle with plate no. SCB-995 after replacing its engine, holding that this was belied by petitioner's own letter dated July 9, 2001 which authorized the withdrawal of said vehicle from the VIB for disposal at the dumping area.[22]

Like the Ombudsman, the CA rejected petitioner and Reyes' allegation that the vehicle with plate no. SCB-995 and engine no. 406Y18 were among the unserviceable properties auctioned off and withdrawn from the VIB's premises in August 2004, noting that the documents they presented to support such claim did not specify said vehicle.[23]

The CA also held that contrary to their claim, petitioner and Reyes were not denied due process because they were able to explain their side when they submitted their Counter-Affidavits with supporting documents.[24]

---

[20] *Id*. at 50.

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

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

[23] *Id*. at 47.

[24] *Id*. at 48.

The Motions for Reconsideration[25] filed by petitioner and Reyes were denied in the assailed Resolution[26] of August 22, 2012. The CA refused to consider their length of service as a mitigating circumstance because they committed a series of violations over a number of years.

Hence, this petition.

Petitioner argues that the Ombudsman's findings, as sustained by the CA, were not supported by substantial evidence. On the supposition that he is guilty, he posits that the supreme penalty of dismissal was too harsh considering that he has been in government service for 22 years and this was his first offense.[27]

The Court's Ruling

The petition lacks merit.

It must be emphasized at the outset that a petition for review under Rule 45 is limited only to questions of law because the Court is not a trier of facts.[28] It is not the Court's function to analyze or weigh all over again evidence already passed upon in the proceedings below.[29] While there are recognized exceptions[30] to this rule, none of them are present in this case.

---

[25] *Id*. at 166-175 and 221-225.

[26] *Id*. at 52.

[27] *Id*. at 20, 23 and 30.

[28] *Miro v. Mendoza Vda. de Erederas, et al.*, 721 Phil. 772, 785 (2013). *Office of the Ombudsman v. Atty. Bernardo*, 705 Phil. 524, 534 (2013).

[29] *Miro v. Mendoza*, *supra* at 785.

[30] (1) when the conclusion is a finding grounded entirely on speculation, surmises and 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 fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the findings set forth in the petition as well as in the petitioner's main and

The factual findings of the Office of the Ombudsman are generally accorded great weight and respect, if not finality, by the courts because of their special knowledge and expertise over matters falling under their jurisdiction. When supported by substantial evidence, their findings of fact are deemed conclusive.[31]

More than a mere scintilla of evidence, substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[32] The requirement is satisfied where there is reasonable ground to believe that the respondent is guilty of the act or omission complained of, even if the evidence might not be overwhelming.[33] Applying this standard of proof, the Court finds no cogent reason to overturn the Ombudsman's conclusions, as affirmed by the CA.

Indeed, the SLC showed gasoline withdrawals from 1999 to 2003 for vehicles with engine no. 406Y18 and plate numbers SCB-995 and PPR-691.[34]

However, engine no. 406Y18 was already decommissioned as of 1998. This is reflected in the Report of Waste Materials, indorsed by petitioner on December 29, 1998 to the Appraisal/ Disposal and Sub-Committee on Canvass and Bidding, indicating that the item could be found in the storeroom of the Slaughterhouse Operation and Maintenance Division.[35]

---

reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by evidence on record. (*Office of the Ombudsman v. Atty. Bernardo*, *supra* at 534-535).

[31] *Office of the Deputy Ombudsman for Luzon v. Dionisio*, G.R. No. 220700, July 10, 2017. *Office of the Ombudsman v. Mallari*, 79 Phil. 224, 249 (2014).

[32] *Office of the Ombudsman v. Bernardo*, *supra* at 534.

[33] *Office of the Deputy Ombudsman for Luzon v. Dionisio*, *supra* note 31.

[34] *Rollo*, pp. 85-89.

[35] *Id*. at 46, 85 and 95.

Likewise, the vehicle with plate no. SCB-995, a Toyota Land Cruiser, was already declared "unserviceable" on August 31, 1999, as evidenced by the Inventory and Inspection Report of even date which was signed by petitioner himself.[36] In fact, in a letter dated July 9, 2001 addressed to the VIB's security personnel, petitioner authorized the withdrawal of said vehicle by the Appraisal/Disposal and Sub-Committee on Canvass and Bidding, for disposal at the latter's dumping area in Arroceros, Manila.[37]

Furthermore, petitioner had acknowledged that the vehicle with plate no. PPR-691 was his personal property.[38] The Ombudsman also found and petitioner himself admitted that he was already receiving transportation allowance during the period covered by the subject gasoline withdrawals.[39]

The foregoing circumstances ineluctably justify the Ombudsman's finding that petitioner committed dishonesty.

The Court cannot sustain petitioner's objections to the SLC. While petitioner maintains that these Ledger Cards had been prepared with ill motive,[40] no evidence of malice or instance of spite had been presented or alleged by him. Furthermore, that the SLC were not prepared or signed by him will not divest said documents of probative value. Being public documents, they are *prima facie* proof of their contents.[41]

As the CA noted, this Court, in *Tecson v. Commission On Elections (supra)*, held:

The trustworthiness of public documents and the value given to the entries made therein could be grounded on (1) the sense of official

---

[36] *Id*. at 85 and 97.

[37] *Id*. at 47 and 99.

[38] *Id*. at 46.

[39] *Id*. at 90 and 137.

[40] *Id*. at 29.

[41] *Herce, Jr. v. Municipality of Cabuyao, Laguna*, 511 Phil. 420, 431 (2005). *Tecson v. The Commission on Elections*, 468 Phil. 421 (2004).

duty in the preparation of the statement made, (2) the penalty which is usually affixed to a breach of that duty, (3) the routine and disinterested origin of most such statements, and (4) the publicity of record which makes more likely the prior exposure of such errors as might have occurred.[42]

Absent evidence to the contrary, the SLC are presumed to have been regularly prepared by accountable officers who enjoy the legal presumption of regularity in the performance of their functions.[43] Petitioner has not offered proof that sufficiently overcomes these presumptions. In fact, even as he questions the SLC, petitioner confirmed that his office indeed used the vehicle with plate no. SCB 995 and engine no. 406Y18 for the period 1999 to December 2003,[44] as indicated in the SLC,[45] thereby lending credence to said documents.

Furthermore, the Court finds implausible petitioner's claim that his office continued to use the vehicle with plate no. SCB-995 even if it had been declared "unserviceable" on August 31, 1999.[46]

Petitioner alleged that the continued use of said vehicle was made possible by the replacement of its engine with another purchased on December 1, 1998.[47] If the engine had been replaced after December 1, 1998, it makes no sense for petitioner to consider said vehicle as unserviceable on August 31, 1999 under the Inventory and Inspection Report of Unserviceable Property he issued on even date.

Petitioner's disclaimer[48] of his signature on the August 31, 1999 Inventory and Inspection Report cannot be sustained. The

---

[42] *Tecson v. The Commission on Elections*, *supra* at 473.

[43] See *Herce v. Municipality of Cabuyao, Laguna*, *supra* at 431-432.

[44] *Rollo*, p. 137.

[45] *Id*. at 85-89.

[46] *Id*. at 31 and 137.

[47] *Id*. at 96 and 137.

[48] *Id.* at 31.

signature appears similar to his other signatures which appear on record and which he had not disputed. Petitioner also previously confirmed the same Report in his Counter-Affidavit, declaring that the vehicle with plate no. SCB-995 "was already reported as unserviceable per (said Report)."[49] Thus, petitioner's belated repudiation of his signature deserves scant consideration.

The Court also finds it curious that while petitioner alleged in his Counter-Affidavit that the VIB was able to continue to use said vehicle because of the engine replacement,[50] his petition makes no mention of such engine change and attributes the continued use of the vehicle merely to the "imaginative and innovative technical skills of (VIB's) mechanics."[51] Along with the foregoing observations, this serves to show that petitioner has been less than forthright with the Court in his submissions.

Petitioner averred that although he authorized the withdrawal of the subject vehicle for disposal on July 9, 2001, the vehicle was not taken out of the VIB's premises until 2004 after it was auctioned off together with other unserviceable items. In support of this claim, petitioner submitted the Certification of the Chairman of the Appraisal & Disposal Committee that a public bidding of unserviceable and scrap properties was conducted on August 11, 2004. Petitioner also submitted his August 18, 2004 letter, addressed to the VIB's security guard, authorizing the withdrawal of the unserviceable properties by the winning bidder. However, as the CA correctly pointed out, neither of these documents showed that the subject vehicle was among the items purchased at the public bidding or authorized to be withdrawn from the VIB in 2004.

In fine, what remains of petitioner's defense is a bare denial. Juxtaposed to the GIB-A's evidence, it cannot overturn the Ombudsman's finding, as affirmed by the CA, that petitioner committed acts of dishonesty.

---

[49] *Id*. at 137.

[50] *Id*.

[51] *Id*. at 19 and 31.

In the case of *Balasbas v. Monayao*[52], the Court explained:

> Dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness.

As the evidence shows, the questioned gasoline withdrawals by petitioner were made through deception. He made it appear that gasoline thus withdrawn was used for a government vehicle despite the fact that said vehicle was already declared "unserviceable." Notwithstanding the fact that he was already receiving transportation allowance, he was also able to obtain fuel, purchased with government funds, for his personal vehicle, which clearly indicates a disposition to defraud. Thus, the finding of guilt against petitioner, for the administrative offense of dishonesty under Section 52 (A) (l),[53] Rule IV of the URACCS, must stand.

Section 52 (A)(l), Rule IV of the URACCS supports the penalty of dismissal imposed on the petitioner. His actions constituted a grave offense which cannot be mitigated by the length of his government service or the fact that it was his first offense. As the CA acutely observed, petitioner committed a series of violations over a number of years while in government service.

Jurisprudence is replete with cases declaring that a grave offense cannot be mitigated by the public employee's length

---

[52] 726 Phil. 664, 674-675 (2014). *Gupilan-Aguilar, et al. v. Office of the Ombudsman, et al.*, 728 Phil. 210, 232 (2014).

[53] **Section 52.** ***Classification of Offenses.*** — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on the gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty

1st offense — Dismissal

x x x x x x x x x

of service or the fact that he is a first-time offender.[54] In *Medina v. Commission on Audit*,[55] the Court held:

> Also, in *Concerned Employees v. Nuestro*, a court employee charged with and found guilty of dishonesty for falsification was meted the penalty of dismissal notwithstanding the length of her service in view of the gravity of the offense charged.
>
> To end, it must be stressed that dishonesty and grave misconduct have always been and should remain anathema in the civil service. They inevitably reflect on the fitness of a civil servant to continue in office. **When an officer or employee is disciplined, the object sought is not the punishment of such officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in the government.** (Emphasis ours.)

As regards the accessory penalties imposed by the Ombudsman and the CA, namely, "cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service," the same are consistent with Section 58(a),[56] Rule IV of the URACCS.

WHEREFORE, the Petition for Review is **DENIED**. The Decision dated September 15, 2011 and Resolution dated August 22, 2012 in CA-G.R. SP No. 107595 are **AFFIRMED**.

SO ORDERED.

---

[54] *Medina v. Commission on Audit, et al.*, 567 Phil. 649, 664 (2008). *Chairman Duque III v. Veloso*, 688 Phil. 318 (2012). *Civil Service Commission v. Cortez*, 474 Phil. 670 (2004).

[55] *Medina v. Commission on Audit*, *supra* at 665.

[56] **Section 58.** ***Administrative Penalties Inherent in Certain Penalties*.**

a. The penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

x x x x x x x x x

Carpio,[*] *Senior Associate Justice, del Castillo*[**] *(Acting Chairperson)*, and *Gesmundo*,[***] *JJ.*, concur.

Leonardo-de Castro[****] *(Acting Chairperson), J.*, on official leave.

FIRST DIVISION

[G.R. No. 206800. July 2, 2018]

STRADCOM CORPORATION and JOSE A. CHUA, *petitioners, vs.* **JOYCE ANNABELLE L. ORPILLA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY ERRORS OF LAW ARE ALLOWED; EXCEPTIONS; FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC ARE CONFLICTING.— Generally, only errors of law are revived in petitions for review for *certiorari,* since this Court is not a trier of facts. As such, the findings of facts and conclusion of the NLRC are generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence. However, if the factual findings of the

---

[*] Designated additional Member per Raffle dated April 23, 2018 *vice* Associate Justice Francis H. Jardeleza.

[**] Designated Acting Chairperson per Special Order No. 2562 dated June 20, 2018.

[***] Designated Acting Member per Special Order No. 2560 dated May 11, 2018.

[****] Designated Acting Chairperson per Special Order No. 2559 dated May 11, 2018; On official leave.

LA and the NLRC are conflicting, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings. The exception, rather than the general rule, applies in the present case since the LA and the CA found facts supporting the conclusion that respondent was illegally dismissed, while the NLRC's factual findings contradicted the LA's findings. Under this situation, such conflicting factual findings are not binding on Us, and We retain the authority to pass on the evidence presented and draw conclusions therefrom.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; REQUISITES.—** Among the just causes for termination is the employer's loss of trust and confidence in its employee. Article 297 (c) [formerly Article 282] of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him/her. x x x In order for the said cause to be properly invoked, however, certain requirements must be complied with, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.

3. **ID.; ID.; ID.; PROCEDURAL DUE PROCESS; VIOLATION THEREOF WARRANTS AWARD OF NOMINAL DAMAGES.—** On the matter of procedural due process, it is well-settled that the employer must furnish the employee with two written notices before termination of employment can be legally effected. The first apprises the employee of the particular acts or omissions for which dismissal is sought. The second informs the employee of the employer's decision to dismiss him. x x x [T]he Court is given the latitude to determine the amount of nominal damages to be awarded to an employee who was validly dismissed but whose due process rights were violated. The two causes for a valid dismissal in the Labor Code are under Article 282, due to just causes and Article 283, based on authorized causes. x x x Here, the cause for termination was loss of trust and confidence, thus due to the employee or respondent's fault, but Stradcom failed to comply with the twin-notice requirement, thus, as a measure of equity, We order Stradcom to pay respondent nominal damages in the amount of ₱30,000.

4. ID.; ID.; ID.; ID.; ID.; SOLIDARY LIABILITY OF CORPORATE OFFICER NOT PROPER IN THE ABSENCE OF BAD FAITH.— It is well-settled that a corporation has its own legal personality separate and distinct from those of its stockholders, directors or officers. Absence of any evidence that a corporate officer and/or director has exceeded their authority, or their acts are tainted with malice or bad faith, they cannot be held personally liable for their official acts. Here, there was neither any proof that Chua acted without or in excess of his authority nor was motivated by personal ill-will towards respondent to be solidarily liable with the company.

APPEARANCES OF COUNSEL

Francisco Paredes & Morales Law Office for petitioners.
Samuel Dorillo for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioners Stradcom Corporation (Stradcom) and Jose A. Chua (Chua) (collectively referred to as petitioners), assailing the Decision[1] dated September 28, 2012 and Resolution[2] dated April 17, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 91150, which reversed the National Labor Relations Commission (NLRC) Decision[3] dated July 30, 2004 and Resolution[4] dated April 20, 2005 and reinstated the Labor Arbiter's (LA's) ruling[5] dated September 30, 2003.

---

[1] Penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela, *Rollo*, pp. 545-560.

[2] *Id*. at 573-575.

[3] Penned by Presiding Commissioner Ernesto S. Dinopol and concurred in by Commissioners Roy V. Señeres and Romeo L. Go; *Id*. at 209-228.

[4] *Id*. at 297-299.

[5] Penned by Labor Arbiter Facundo L. Leda; *Id*. at 181-208.

The Procedural and Factual Antecedents

The Version of Respondent Joyce Anabelle L. Orpilla

On November 15, 2001, Joyce Anabelle L. Orpilla (respondent) was employed by Stradcom as Human Resources Administration Department (HRAD) Head, under a probationary status for six months, with a monthly salary of ₱60,000.[6] Her duties included administrative and training matters.[7]

On January 2, 2003, Chua, the President and Chief Executive Officer (CEO) of Stradcom, issued a Memorandum addressed to the Chief Operating Officer (COO), Ramon G. Reyes (Reyes), and Chief Financial Officer (CFO), Raul C. Pagdanganan (Pagdanganan), announcing the reorganization of the HRAD.[8] The pertinent portions of the memorandum provides:

> 1. The Training Section of the Department shall be spinned off and will form part of the Business Operations. x x x (The Training Section shall be called Human Resources Training and Development).
>
> x x x x x x x x x
>
> 3. Under the said reorganization, new sections shall be reporting to the following:
>
> - The Human Resources Training and Development shall be reporting to Mr. Ramon G. Reyes, COO.
> - The Personnel and Administration shall be reporting to Mr. Raul Pagdangan, CFO.
> - Ms. Joyce Anabelle L. Orpilla and the Training Section will be reporting directly to the COO. x x x[9]

After the turn-over of the documents and equipment of HRAD, respondent inquired from Chua as to her status in the light of the said reorganization. Chua, on the other hand, replied that

---

[6] *Id.* at 88-90.

[7] *Id.* at 303.

[8] *Id.* at 120.

[9] *Id.*

the management has lost its trust and confidence in her and it would be better if she resigned. Respondent protested the resignation and insisted that if there were charges against her, she was open for formal investigation. Chua, however, was not able to come up with any charges.[10]

On January 9, 2003, a meeting was held wherein, Atty. Eric Gene Pilapil (Atty. Pilapil), the Chief Legal Officer (CLO) offered a settlement to respondent in exchange for her employment, otherwise, respondent would have to undergo the burden of litigation in pursuing the retention of her employment.[11] Atty. Pilapil set another meeting on January 13, 2003 with respondent, and told her to take a leave in the meantime to think about the settlement offer. Atty. Pilapil also assured respondent that she would continue to receive her salary.[12]

On January 13, 2003, per advice of Atty. Pilapil, respondent reported for work but the guards refused her entry and advised her to take a leave of absence.[13]

Respondent claimed that she was informed by Accounting Manager, Mr. Arnold C. Ocampo, that her January 15, 2003 salary was already deposited in her bank account which included the proportionate 13th month pay for the year 2003 and was her last and final pay. After such, respondent no longer received any kind of payment from petitioners.[14] Respondent claimed that she was constructively dismissed on January 2, 2003 and turned into an actual dismissal on January 15, 2003, when she received her last pay.[15]

On June 29, 2003, respondent filed a complaint for constructive dismissal with monetary claims of backwages, attorney's fees and damages.[16]

---

[10] *Id*. at 305.

[11] *Id*. at 306.

[12] *Id*. at 306.

[13] *Id*. at 307.

[14] *Id*. at 309.

[15] *Id*.

[16] *Id*. at 300.

The Version of Petitioners Stradcom Corporation and Jose A. Chua

On November 15, 2001, respondent was employed by Stradcom as HRAD Head, a managerial position with a monthly salary of ₱60,000.[17] As HRAD Head, respondent's duties and responsibilities included administration and personnel, and training matters.[18]

Sometime in December 2002, Pagdanganan gave instructions to respondent to commence preparations for Stradcom's 2002 Christmas party. Chua also gave instructions to respondent to include the Land Registration Systems, Inc. (Lares) officers and employees, an affiliate of Stradcom in the Christmas party, to foster camaraderie and working relations between the two companies.[19]

Contrary to Chua's instruction, respondent then called a staff lunch meeting for Stradcom's 2002 Christmas party, wherein respondent conveyed her intention of easing out Lares' employees from the party.[20]

Later, it had come to Stradcom's attention that respondent was not comfortable with the idea to include Lares in the Christmas party, as respondent appeared evasive on the queries about the event made by Ms. May Marcelo, the Head Personnel and Administration of Lares.[21] This matter was brought to the attention of Chua, who decided to strip respondent of any responsibility in organizing the Christmas party and transferred the same to another committee. As part of the turnover, respondent furnished the committee with a copy of the initial budget which included the catering services from G&W Catering Services at ₱250 per head.[22]

---

[17] *Id.* at 66.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 67.

[22] *Id.*

On December 16, 2002, Ms. Rowena Q. Samson (Samson) and Mr. Saturnino S. Galgana (Galgana), members of the new Christmas party committee went to see Mrs. Myrna G. Sese (Sese), the proprietress of the G&W Catering Services.[23] They were surprised to find out that the price of the food was actually ₱200 per head and not ₱250 per head as represented by respondent. Suspicious about the correct pricing, Samson and Galgana reported the matter to the Stradcom's management. Stradcom began its investigation and interviewed some employees regarding the conduct of respondent.[24]

After the investigation, Stradcom also discovered that respondent required her staff to prepare presentation/training materials/manuals using company resources for purposes not related to the affairs of the company, on overtime and on Sundays.[25]

Subsequently, Pagdanganan called for a conference with respondent, and discussed respondent's non-inclusion of Lares in Stradcom's Christmas party, the overpricing of the food, and her moonlighting. Respondent made a bare denial.[26]

On January 3, 2003, Chua notified his employees about the reorganization of the HRAD and the Business Operations Department.[27] On the same date and as part of routine procedure, respondent turned-over the necessary documents and equipment.[28] Respondent reported to Reyes, her new immediate superior and secured the latter's approval for her leave of absence on the dates of January 3 in the afternoon up to January 6, 2003, due to personal reasons. Reyes approved her leave.[29]

---

[23] *Id*.

[24] *Id*.

[25] *Id*. at 68.

[26] *Id*. at 69.

[27] *Id.* at 70.

[28] *Id*.

[29] *Id.*

However, before respondent's scheduled leave, she approached Chua to discuss the reorganization and her previous conference with Pagdanganan regarding her said infractions. Chua told respondent that the management has lost its trust and confidence in her due to her willful disobedience in excluding the employees of Lares in the Stradcom's Christmas party and for willful breach of trust in connection with the canvassing of the caterer.[30]

Respondent explained her side and asked Chua for his advice. Chua replied that considering her position is one that requires the trust and confidence of the management, it would be difficult to force herself on the management. Thus, respondent conveyed her willingness to resign. In view of this, Stradcom's officers agreed that any formal investigation on respondent was unnecessary in view of her willingness to resign.[31]

However, on January 7, 2003, respondent reported for work and suprisedly informed Stradcom that she would not resign. When Chua found out about the respondent's retraction of her statement to resign, he instructed Atty. Pilapil to talk things through with respondent.[32]

On January 9, 2003, Atty. Pilapil invited respondent for dinner outside the company premises. Respondent was given another chance regarding her said infractions. Respondent then requested for four days leave to think things through and Atty. Pilapil adhered to request and assured her that she will receive her pay while on leave. They likewise agreed that they would meet again on January 13, 2003, outside the office to discuss respondent's final decision.[33]

Petitioners were shocked when they found out that respondent had filed a complaint for constructive dismissal with monetary claims of backwages, attorney's fees and damages on January 29, 2003.[34]

---

[30] *Id*.

[31] *Id*. at 71.

[32] *Id*.

[33] *Id*.

[34] *Id*. at 300.

Petitioners contended that the dismissal of respondent was for just cause on the ground of loss of trust and confidence and the same was in compliance with the due process requirements.[35] Petitioners further contended that the acts that caused the loss of trust and confidence of the petitioners in the respondent were her mishandling of Stradcom's 2002 Christmas party, dishonesty in preparing the budget thereof, misrepresentation in her application for employment, and using company personnel and resources for purposes not beneficial to the interest of Stradcom.[36]

The Ruling of the LA

On September 30, 2003, the LA rendered a Decision, which ruled that respondent was illegally dismissed and Chua is solidarily liable with Stradcom for the payment of the monetary awards to respondent.[37] The dispositive portion of the LA Decision, provides:

> WHEREFORE, decision is hereby rendered, as follows:
>
> 1. Declaring that the complainant was illegally dismissed;
> 2. Declaring that the dismissal was effected in violation of the due process and notice requirements; and
> 3. Ordering respondents Stradcom Corporation and Jose A. Chua to pay complainant, jointly and severally, the total amount of EIGHT HUNDRED FORTY SEVEN THOUSAND PESOS (₱847,000.00) representing her separation pay, backwages, moral and exemplary damages and attorney fees.
>
> The awards for separation pay, backwages and the corresponding 10% attorney's fees shall be subject to further computation until the decision in this case becomes final and executory.
>
> The other claims are denied for lack of merit.
>
> SO ORDERED.[38]

---

[35] *Id*. at 75.

[36] *Id*. at 75-85.

[37] *Id.* at 208.

[38] *Id*.

Aggrieved, petitioners seasonably filed a memorandum of appeal before the NLRC.

The Ruling of the NLRC

On July 30, 2004, the NLRC issued its Decision. It partially granted the appeal filed by petitioners and modified the Decision of the LA. The NLRC ruled that respondent was validly dismissed on the ground of loss of trust and confidence, due to her mishandling of the 2002 budget for the Christmas party. The NLRC awarded respondent her unpaid salary for the period of January 16 to April 16, 2003, the date when she was formally advised of her disengagement from service. Attorney's fees were also awarded.[39] The decretal portion of the NLRC Decision thus, reads:

WHEREFORE, in view of the foregoing considerations, the appeal is hereby PARTIALLY GRANTED. The dispositive portion of the appealed Decision is hereby MODIFIED and another one entered:

1. Declaring that Appellee, Joyce Anabelle L. Orpilla was validly dismissed and;
2. Ordering appellant corporation to pay her the following:

a) Withheld wages from January 16 to April 16, 2003 (₱60,000.00 x 3 plus 1/12 thereof as 13th month pay) - - - - - ₱195,000.00

b) attorney's fees- - - - - - - - - - - - - - - - - - - ₱ 19,500.00

Total Award - - - - - - - ₱214,500.00

SO ORDERED.[40]

Respondent sought to reconsider the above-mentioned Decision but it was denied by the NLRC in its Resolution[41] dated April 20, 2005, for lack of merit.

Dismayed, respondent filed a petition for review on *certiorari* under Rule 65 with the CA.

---

[39] *Id*. at 209-228.

[40] *Id*. at 227.

[41] *Id*. at 298.

The Ruling of the CA

On September 28, 2012, the CA reversed and set aside the NLRC and ruled that respondent was illegally dismissed.[42] The *fallo* of the CA Decision provides:

> **IN VIEW OF ALL THESE**, the Petition is **GRANTED**. The assailed Decision and Resolution of public respondent NLRC are **SET ASIDE**. The Decision of the Labor Arbiter dated September 30, 2003 is **REINSTATED**.
>
> **SO ORDERED**.[43]

Petitioners promptly filed a Motion for Reconsideration but it was denied by the CA in its Resolution dated April 17, 2013.[44]

Hence, the present petition.

The Issues

A. WHETHER OR NOT THE COURT OF APPEALS HAS COMMITTED SERIOUS AND REVERSIBLE ERRORS IN REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION AND FAULTING THE SAME WITH GRAVE ABUSE OF DISCRETION BY FINDING THAT PETITIONERS HAS ILLEGALLY DISMISSED RESPONDENT FROM HER EMPLOYMENT AS HEAD OF THE HUMAN RESOURCE DEPARTMENT?

A.1 WHETHER OR NOT RESPONDENT HAS WILLFULLY DISOBEYED PETITIONERS' LAWFUL AND REASONABLE INSTRUCTIONS?

A.2 WHETHER OR NOT RESPONDENT HAS COMMITTED FRAUD, MISREPRESENTATION, DISHONESTY AND OTHER ACTS INIMICAL TO THE INTEREST OF THE PETITIONERS WHILE BEING EMPLOYED BY THE PETITIONER?

A.3 WHETHER OR NOT REPONDENT HAS ENGAGED IN MOONLIGHTING ACTIVITIES AND USED COMPANY

---

[42] *Id*. at 558-559.

[43] *Id*. at 559.

[44] *Id.* at 574.

PERSONNEL AND RESOURCES NOT IN LINE WITH THE BUSINESS OF STRADCOM.

B. WHETHER OR NOT THE COURT OF APPEALS HAS COMMITTED SERIOUS AND REVERSIBLE ERRORS IN REVERSING THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION AND FAULTING THE SAME WITH GRAVE ABUSE OF DISCRETION BY FINDING THAT RESPONDENT WAS DEMOTED BY THE PETITIONERS AND THE LATTER DID NOT ACCORD THE FORMER DUE PROCESS?

B.1 WHETHER OR NOT THE REORGANIZATION OF THE HUMAN RESOURCE AND ADMINISTRATION (HRA) DEPARTMENT WAS A VALID EXERCISE OF MANAGEMENT PREROGATIVE?

B.2 WHETHER OR NOT RESPONDENT WAS DENIED DUE PROCESS?

B.3 WHETHER OR NOT RESPONDENT VOLUNTARILY RESIGNED [FROM] HER EMPLOYMENT WITH STRADCOM.

C. WHETHER OR NOT THE RESPONDENT IS ENTITLED TO BACKWAGES, REINSTATEMENT OR SEPARATION PAY?

D. WHETHER OR NOT THE RESPONDENT IS ENTITLED TO MORAL AND EXEMPLARY DAMAGES?

E. WHETHER OR NOT PETITIONER CHUA MAY BE HELD JOINTLY AND SEVERALLY LIABLE WITH CO-PETITIONER STRADCOM FOR THE PAYMENT OF WHATEVER MONETARY AWARD IN FAVOR OF RESPONDENT?[45]

The pivotal issue for Our resolution is whether or not respondent was validly dismissed from employment on the ground of loss of trust and confidence.

The Court's Ruling

The petition is meritorious.

Generally, only errors of law are revived in petitions for review for *certiorari,* since this Court is not a trier of facts. As such, the findings of facts and conclusion of the NLRC are

[45] *Id.* at 17-18.

generally accorded not only great weight and respect but even clothed with finality and deemed binding on this Court as long as they are supported by substantial evidence.[46] However, if the factual findings of the LA and the NLRC are conflicting, as in this case, the reviewing court may delve into the records and examine for itself the questioned findings.[47] The exception, rather than the general rule, applies in the present case since the LA and the CA found facts supporting the conclusion that respondent was illegally dismissed, while the NLRC's factual findings contradicted the LA's findings.

Under this situation, such conflicting factual findings are not binding on Us, and We retain the authority to pass on the evidence presented and draw conclusions therefrom.[48]

After judicious review on the records of the case, this Court finds that the petitioners proved that respondent was dismissed for a just cause.

The dismissal of respondent was founded on just cause - loss of trust and confidence

Among the just causes for termination is the employer's loss of trust and confidence in its employee. Article 297 (c) [formerly Article 282] of the Labor Code provides that an employer may terminate the services of an employee for fraud or willful breach of the trust reposed in him/her.[49] Article 297, provides:

Article 297. TERMINATION BY EMPLOYER.—An employer may terminate an employment for any of the following causes:

---

[46] *Paredes v. Feed the Children Philippines. Inc*., 769 Phil. 418, 433 (2015) citing *Acebedo Optical v. National Labor Relations Commission*, 554 Phil. 524, 541 (2007).

[47] *Id*., citing *Agabon v. National Labor Relations Commission*, 458 Phil. 248, 277 (2004).

[48] *Id.*

[49] *Alaska Milk Corporation, et al. v. Ponce,* G.R. No. 224812, July 26, 2017.

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
(b) Gross and habitual neglect by the employee of his duties;
(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and
(e) Other causes analogous to the foregoing. (Emphasis ours)

In order for the said cause to be properly invoked, however, certain requirements must be complied with, namely: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.[50]

The two classes of positions of trust were enunciated in the case of *Alaska Milk Corporation, et al. v. Ponce*:[51]

(1) managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and (2) fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are, thus, classified as occupying positions of trust and confidence.[52]

As regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such

---

[50] *Id.*, citing *Philippine Plaza Holdings, Inc. v. Episcope*, 705 Phil. 210, 217 (2013).

[51] *Id.*

[52] *Id.*

as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.[53]

It is undisputed that at the time of respondent's dismissal, she was holding a managerial position, which was HRAD Head of Stradcom and directly reported to the President, herein Chua and other high ranking officials of Stradcom. Likewise, respondent performed key and sensitive functions, as her duties and responsibilities included the administration, personnel and training matters of the company. Respondent held a trust and critical position which required the conscientious observance of the company rules and procedures.

The presence of the first requisite is thus certain. Anent to the second requisite, the Court finds that the petitioners meet their burden of proving that the respondent's dismissal was for a just cause.

The acts alleged to have caused the loss of trust and confidence of the petitioners in the respondent was her mishandling of Stradcom's 2002 Christmas party, dishonesty in preparing the budget thereof, misrepresentation in her application for employment, and using company personnel and resources for purposes not beneficial to the interest of Stradcom. The evidence on record support Stradcom's claims.

There was substantial evidence to support that respondent overpriced the food for the 2002 Christmas party. The overpricing was discovered by the new committee which took over the preparations for the said party. It is undisputed that respondent was the one who initially negotiated with G&W Catering Services. Respondent was also the one who prepared the budget for the approval of the President, herein Chua. G&W billed Stradcom for food at the rate of Two Hundred Pesos (₱200) per head only, contrary to the Two Hundred Fifty (₱250) per head quoted by respondent, and the rental for chairs at Twenty-

---

[53] *Id.*, citing *Mendoza v. HMS Credit Corporation, et al.*, 709 Phil. 756, 767 (2013).

Eight Pesos (₱28), in the aggregate amount of Sixty-Three Thousand Eight Hundred Forty Pesos (₱63,840) as evidenced by the Affidavit of Sese, the proprietress of the G&W Catering Services. Clearly, the overpricing amounted to dishonesty.

Also, respondent's overpricing of ₱250 per head for the Christmas party was corroborated by Ms. Rowena Samson,[54] Chua's Secretary of the President and CEO and Mr. Saturnino S. Galgana,[55] Stradcom's Purchasing Assistant, as evidenced by their affidavits dated March 18, 2003.

Furthermore, respondent was proven to have engaged in moonlighting activities and used company personnel and resources for purposes not in line with the business interest of Stradcom. In fact, respondent admitted that she actually took home some of the training materials owned by the company without the latter's prior clearance and without disclosed purpose.

Such dishonesty on the part of the respondent in carrying out her duties is prejudicial to the interest of Stradcom and constitutes just cause to terminate her employment.

Considering the foregoing, this Court agrees with the findings of the NLRC that there was a just cause for the respondent's dismissal. We emphasize that dismissal of a dishonest employee is to the best interest not only of the management but also of labor.[56] Stradcom, as an employer in the exercise of self-protection, cannot be compelled to continue employing an employee who is guilty of acts inimical to its interest.

Respondent is entitled to nominal damages for violation of her right to statutory procedural due process

We note however that even if there is a just cause to terminate respondent's employment, her right to due process was not satisfied.

---

[54] *Rollo*, pp. 99-100.

[55] *Id*. at 101-102.

[56] *Yabut v. Manila Electric Company, et al.*, 679 Phil. 97, 113 (2012).

On the matter of procedural due process, it is well-settled that the employer must furnish the employee with two written notices before termination of employment can be legally effected.[57] The first apprises the employee of the particular acts or omissions for which dismissal is sought.[58] The second informs the employee of the employer's decision to dismiss him.[59]

The case of *Libcap Marketing Corp., et al. v. Baquial*[60] explains:

> The law and jurisprudence, on the other hand, allow the award of nominal damages in favor of an employee in a case where a valid cause for dismissal exists but the employer fails to observe due process in dismissing the employee. Financial assistance is granted as a measure of equity or social justice, and is in the nature or takes the place of severance compensation.
>
> On the other hand, nominal damages "may be awarded to a plaintiff whose right has been violated or invaded by the defendant, for the purpose of vindicating or recognizing that right, and not for indemnifying the plaintiff for any loss suffered by him. Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right." The amount of nominal damages to be awarded the employee is addressed to the sound discretion of the court, taking into consideration the relevant circumstances. (Citations omitted)[61]

As discussed above, the Court is given the latitude to determine the amount of nominal damages to be awarded to an employee who was validly dismissed but whose due process rights were violated. The two causes for a valid dismissal in the Labor Code are under Article 282, due to just causes and Article 283, based on authorized causes. These were differentiated in the case of *Jaka Food Processing Corp. v. Pacot*,[62] to wit:

---

[57] *Id*.

[58] *Id*.

[59] *Id*. citing *Asian Terminals, Inc. v. Sallao, et al.*, 580 Phil. 229 (2008).

[60] 735 Phil. 349 (2014).

[61] *Id*. at 361.

[62] 494 Phil. 114 (2005).

A dismissal for just cause under Article 282 implies that the employee concerned has committed, or is guilty of, some violation against the employer, i.e. the employee has committed some serious misconduct, is guilty of some fraud against the employer, or, as in Agabon, he has neglected his duties. Thus, it can be said that the employee himself initiated the dismissal process.

On another breath, a dismissal for an authorized cause under Article 283 does not necessarily imply delinquency or culpability on the part of the employee. Instead, the dismissal process is initiated by the employer's exercise of his management prerogative, *i.e*. when the employer opts to install labor saving devices, when he decides to cease business operations or when, as in this case, he undertakes to implement a retrenchment program.

x x x x x x x x x

Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.[63]

Here, the cause for termination was loss of trust and confidence, thus due to the employee or respondent's fault, but Stradcom failed to comply with the twin-notice requirement, thus, as a measure of equity, We order Stradcom to pay respondent nominal damages in the amount of ₱30,000.

The solidary liability of Chua as a corporate officer is not proper and must be recalled

It is well-settled that a corporation has its own legal personality separate and distinct from those of its stockholders, directors or officers.[64] Absence of any evidence that a corporate officer

---

[63] *Id*. at 120-121.

[64] *Torres v. Rural Bank of San Juan, Inc., et al*., 706 Phil. 355, 376 (2013).

and/or director has exceeded their authority, or their acts are tainted with malice or bad faith, they cannot be held personally liable for their official acts. Here, there was neither any proof that Chua acted without or in excess of his authority nor was motivated by personal ill-will towards respondent to be solidarily liable with the company. We quote with affirmation the NLRC's pronouncement, *viz*:

> Finally, on the issue of whether or not the Labor Arbiter committed manifest error in ordering appellant Chua solidarily liable with appellant corporation, we have to rule in the affirmative. Appellant Chua cannot be made solidarily liable with appellant corporation for any award in favor of appellee. Appellant corporation is separate and distinct from Appellant Chua.
>
> x x x x x x x x x
>
> Appellant Chua's acts were official acts, done in his capacity as an officer of appellant corporation on its behalf. There is no showing of any act, or that he acted without or in excess of his authority or was motivated by personal ill-will toward appellee. Stated simply, appellant Chua was merely doing his job. In fact, he even tried to save appelle from undue embarrassment.[65]

Respondent is not entitled to backwages, separation pay, moral and exemplary damages, as well as attorney's fees

With the sad reality that the respondent was not illegally dismissed, she is not entitled to backwages. Backwages may be granted only when there is a finding that the dismissal is illegal.[66] Respondent's monetary claims for backwages, separation pay, moral and exemplary damages, as well as attorney's fees must necessarily fail as a consequence of Our finding that her dismissal was for a just cause and that the petitioners acted in good faith when they terminated her services.[67]

---

[65] *Rollo*, p. 226.

[66] *Velez v. Shangri-La's Edsa Plaza Hotel,* 535 Phil. 12, 31 (2006).

[67] *Deoferio v. Intel Technology Philippines, Inc., et al.*, 736 Phil. 625, 643 (2014).

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Court of Appeals Decision dated September 28, 2012 and Resolution dated April 17, 2013, are hereby **REVERSED and SET ASIDE**, and the Decision of the National Labor Relations Commission dated July 30, 2004, is **REINSTATED** but **MODIFIED** to the effect that backwages and attorney's fees are hereby **DELETED**, and that Stradcom Corporation is liable to pay respondent Joyce Anabelle L. Orpilla nominal damages in the amount of ₱30,000.

SO ORDERED.

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

Leonardo-de Castro (Chairperson), J., on official leave.

THIRD DIVISION

[G.R. No. 207711. July 2, 2018]

MARIA C. OSORIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED.— The rule with respect to petitions for review brought under Rule 45 of the Rules of Court is that only questions of law may be raised. The factual findings of the trial court, as affirmed by the Court of Appeals, are binding on this Court

[*] Designated as Acting Chairperson pursuant to Special Order No. 2562 dated June 20, 2018.

[**] Designated as Acting Member pursuant to Special Order No. 2560 dated May 11, 2018.

and will not be disturbed on appeal. There is a question of law when "doubt or difference arises as to what the law is on a certain set of facts or circumstances." On the other hand, there is a question of fact when "the issue raised on appeal pertains to the truth or falsity of the alleged facts." This includes an assessment of the probative value of evidence presented during trial. If the principal issue may be resolved without reviewing the evidence, then the question before the appellate court is one of law.

2. **CRIMINAL LAW; REVISED PENAL CODE; ESTAFA BY MEANS OF DECEIT UNDER ARTICLE 315(2)(a); ELEMENTS; DECEIT CONSISTING OF THE FALSE PRETENSE OR REPRESENTATION MUST BE PROVEN BEYOND REASONABLE DOUBT.—** Petitioner was charged with estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code: x x x In sustaining a conviction under this provision, the following elements must concur: (a) [T]hat there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage. There are different modalities of committing the crime of estafa under Article 315(2)(a). The false pretense or fraudulent representation referred to under the first element exists when the accused uses a fictitious name, pretends to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions, or when the accused commits other similar deceits. x x x In estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code, the element of deceit consisting of the false pretense or representation must be proven beyond reasonable doubt. Otherwise, criminal liability will not attach.

3. **ID.; ID.; ID.; OTHER SIMILAR DECEITS; LIMITED TO ACTS OF THE SAME NATURE AS THOSE SPECIFICALLY ENUMERATED; CANNOT BE CONSTRUED TO INCLUDE ALL KINDS OF DECEIT.—** In this case, although there is no proof that petitioner used a

fictitious name or pretended to possess power, qualifications, property, credit, agency, or business in soliciting private complainant's money, petitioner should nevertheless be held criminally liable for misrepresenting to private complainant that the latter's money would be invested in Philam Life Fund management and that its proceeds may be utilized to pay for private complainant's insurance premiums. x x x The false representations committed by petitioner in this case fall beyond the scope of "other similar deceits" under Article 315(2)(a) of the Revised Penal Code. The phrase "other similar deceits" in Article 315(2)(a) of the Revised Penal Code has been interpreted in *Guinhawa v. People* as limited to acts of the same nature as those specifically enumerated. Under the principle of *ejusdem generis*, "other similar deceits" cannot be construed in the broadest sense to include all kinds of deceit.

4. ID.; ID.; OTHER DECEITS UNDER ARTICLE 318; ELEMENTS.— [P]etitioner may be held criminally liable for other deceits under Article 318 of the Revised Penal Code. Article 318 of the Revised Penal Code is broad in application. It is intended as a catch-all provision to cover all other kinds of deceit not falling under Articles 315, 316, and 317 of the Revised Penal Code. For an accused to be held criminally liable under Article 318 of the Revised Penal Code, the following elements must exist: (a) [The accused makes a] false pretense, fraudulent act or pretense other than those in [Articles 315, 316, and 317]; (b) such false pretense, fraudulent act or pretense must be made or executed prior to or simultaneously with the commission of the fraud; and (c) as a result, the offended party suffered damage or prejudice.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; AS A RULE, ACCUSED CAN ONLY BE CONVICTED OF THE CRIME CHARGED; EXCEPTIONS; VARIANCE RULE; APPLIED IN CASE AT BAR.— As a rule, an accused can only be convicted of the crime with which he or she is charged. This rule proceeds from the Constitutional guarantee that an accused shall always be informed of the nature and cause of the accusation against him or her. An exception to this is the rule on variance under Rule 120, Section 4 of the Revised Rules of Criminal Procedure, x x x Rule 120, Section 4 of the Revised Rules of Criminal Procedure simply means that if there is a variance between the offense charged and the offense proved, an accused

may be convicted of the offense proved if it is included in the offense charged. An accused may also be convicted of the offense charged if it is necessarily included in the offense proved. x x x In the present case, the crime of other deceits under Article 318 of the Revised Penal Code is necessarily included in the crime of estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code. Therefore, petitioner may be convicted of other deceits under Article 318 of the Revised Penal Code.

6. CRIMINAL LAW; ESTAFA UNDER ARTICLE 318; PENALTY.— The imposable penalty for other deceits under paragraph 1 of Article 318 of the Revised Penal Code has been retained by Republic Act No. 10951. Accordingly, petitioner should suffer the penalty of *arresto mayor* and pay a fine, which should neither be less than nor more than twice the amount of the damage caused. The amount of damage caused against private complainant in this case is ₱200,000.00.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Persons who receive money for investment in a particular company but divert the same to another without the investor's consent may be held criminally liable for other deceits under Article 318 of the Revised Penal Code. Article 318 of the Revised Penal Code is broad in scope intended to cover all other kinds of deceit not falling under Articles 315, 316, and 317 of the Revised Penal Code.

For resolution is a Petition for Review on Certiorari[1] challenging the January 30, 2013 Decision[2] and June 14, 2013

[1] *Rollo,* pp. 10-24.

[2] *Id.* at 26-39. The Decision was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Remedios A. Salazar-

Resolution[3] of the Court of Appeals in CA-G.R. CR No. 34274. The assailed judgments affirmed Maria C. Osorio's (Osorio) conviction for the crime of estafa.

In an Information, Osorio was charged with estafa, punished under Article 315, paragraph 2(a) of the Revised Penal Code, committed as follows:

> That in or about and sometime during the period comprised from November 19, 2001 to January 11, 2002, in the City of Manila[,] Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud JOSEFINA O. GABRIEL, in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representations which she made to said JOSEFINA O. GABRIEL, prior to and even simultaneous with the commission of the fraud, to the effect that her money, if invested with Philamlife Fund Management will earn 20% interest per annum, and by means of other similar deceits, induced and succeeded in inducing the said JOSEFINA O. GABRIEL to give and deliver, as in fact, she gave and delivered to the said accused the total amount of Php200,000.00, on the strength of the manifestations and representations of said accused well knowing that the said manifestation and representation were false and fraudulent and were made solely for the purpose of obtaining, as in fact she did obtain the total amount of Php200,000.00, which amount once in her possession, with intent to defraud, willfully, unlawfully and feloniously misappropriated, misapplied and converted the same to her own personal use and benefit, to the damage and prejudice of said JOSEFINA O. GABRIEL in the aforesaid amount Php200,000.00, Philippine Currency.
>
> Contrary to law.[4]

Osorio pleaded not guilty upon arraignment. After pre-trial, trial on the merits ensued.[5]

Fernando and Manuel M. Barrios of the Second Division, Court of Appeals, Manila.

[3] *Id.* at 41-42. The Resolution was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios of the Second Division, Court of Appeals, Manila.

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

[5] *Id.* at 12.

The prosecution presented as witnesses private complainant, Josefina O. Gabriel (Gabriel), and Alberto G. Fernandez (Fernandez), head of Philam Life's Business Values and Compliance Department. Their collective testimonies produced the prosecution's version of the incident.[6]

Gabriel was a proprietor of a stall in Paco Market, Manila. Sometime in December 2000, Osorio visited Gabriel's store and introduced herself as an agent of the Philippine American Life and General Insurance Company (Philam Life). As proof, Osorio presented her company ID and calling card. During their meeting, Osorio offered insurance coverage to Gabriel. Gabriel told Osorio to come back at a later date as she needed more time to think about the offer.[7]

When Osorio returned, Gabriel availed Philam Life's Tri-Life Plan and Excelife Gold Package.[8] Gabriel consistently paid the quarterly premiums from February 2001 to November 2001.[9]

On November 19, 2001, Osorio offered Gabriel an investment opportunity with Philam Life Fund Management.[10] The proposed investment would be placed under a time deposit scheme[11] and would earn 20% annually. Osorio informed Gabriel that the proceeds of her investment may be channeled to pay for her insurance premiums. Enticed by the offer, Gabriel tendered ₱200,000.00 to Osorio, who in turn issued Philam Life receipts.[12]

A few months later, Gabriel discovered that her insurance policies had lapsed due to non-payment of premiums. When Gabriel confronted Osorio about the matter, Osorio assured Gabriel that she would take responsibility.[13]

---

[6] *Id.* at 28.

[7] *Id*. at 12 and 28.

[8] *Id*. at 12.

[9] *Id*. at 62.

[10] *Id*. at 64.

[11] *Id*. at 29.

[12] *Id*. at 12 and 29.

[13] *Id*. at 12.

Meanwhile, in May 2002, Gabriel received a letter from Philippine Money Investment Asset Management (PMIAM), thanking her for investing in the company. In the same letter, PMIAM informed Gabriel that her investment would earn interest on a semi-annual basis starting June 20, 2002.[14] Gabriel confronted Osorio on why her investment was diverted to PMIAM. Osorio explained that PMIAM investments would yield a higher rate of return. Displeased with what had happened, Gabriel asked for a refund of her initial investment.[15]

On August 2, 2002, Gabriel received ₱13,000.00 from PMIAM as evidenced by PMIAM Voucher No. 001854.[16] In spite of this, Gabriel insisted on the refund.[17]

Later, PMIAM informed Gabriel that her initial investment and unpaid interest income would be released to her on May 14, 2004. Unfortunately, she was unable to recover it. She then visited the Philam Life office to see Osorio but she was nowhere to be found. Philam Life referred Gabriel to a certain Atty. Cabugoy[18] who sent a demand letter to Osorio.[19]

Fernandez testified that Osorio was a Philam Life agent and that she was allowed to engage in other lines of work. He stated that Osorio should not have issued Philam Life receipts for Gabriel's ₱200,000.00 investment.[20] Although the receipts were genuine, Fernandez claimed that they should only be issued for insurance premium payments.[21]

The defense presented Osorio as its sole witness. Osorio admitted that aside from being a Philam Life agent, she was

---

[14] *Id.* at 95.

[15] *Id*. at 30.

[16] *Id*.

[17] *Id*. at 64.

[18] *Id*. at 63.

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

[20] *Id*. at 64.

[21] *Id*. at 31.

also a referral agent of PMIAM. She received ₱4,000.00 from the company as commission for Gabriel's investment.[22] She asserted that she initially planned to place Gabriel's investment in Philam Life but decided later on to divert it to PMIAM since the latter offered a higher rate of return.[23] When Osorio informed Gabriel of her decision, Gabriel allegedly gave her consent.[24] Osorio claimed that her husband also failed to recover his ₱300,000.00 investment in PMIAM[25] due to internal problems with its mother company in the United States.[26]

On April 19, 2011, the Regional Trial Court rendered judgment finding Osorio guilty beyond reasonable doubt of estafa.[27] It ruled that Gabriel was induced to part with her money through Osorio's misrepresentation that it would be invested in Philam Life, a company with an established reputation. It rejected Osorio's defense that Gabriel later on consented to the placement. When she was informed of the placement with PMIAM, Gabriel had no other choice but to agree.[28]

The dispositive portion of the Regional Trial Court April 19, 2011 Decision stated:

> WHEREFORE, the court finds the accused MARIA C. OSORIO GUILTY beyond reasonable doubt of Estafa punishable under Article 315 par. 2 (a) of the Revised Penal Code and hereby sentences her to an indeterminate penalty of imprisonment ranging from four (4) years and two (2) months of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum.
>
> Accused MARIA C. OSORIO is also directed to reimburse the private complainant, Josefina Gabriel the sum of Php200,000.00,

---

[22] *Id*. at 32.

[23] *Id*. at 31.

[24] *Id*.

[25] *Id*. at 32.

[26] *Id*. at 13.

[27] *Id*. at 60-69. The Decision, docketed as Criminal Case No. 06-246346, was penned by Judge Antonio M. Rosales of Branch 52, Regional Trial Court, Manila.

[28] *Id*. at 66-68.

with legal rate of interest fixed at 6% per annum from the date of filing of the complaint until the same is fully settled, which the accused received from the offended party.

With costs against the accused.

SO ORDERED.[29]

Osorio was sentenced to suffer an indeterminate penalty of imprisonment of four (4) years and two (2) months of *prisión correccional* as minimum to 20 years of *reclusión temporal* as maximum. She was also directed to pay ₱200,000.00 plus six percent (6%) legal interest per annum from the date of the filing of the complaint until satisfaction.[30]

Osorio appealed the Decision of the Regional Trial Court, arguing that her act of investing Gabriel's money with PMIAM was done in good faith.[31]

On January 30, 2013, the Court of Appeals rendered judgment affirming Osorio's conviction.[32] Osorio moved for reconsideration but her motion was denied.[33]

On August 8, 2013, Osorio filed a Petition for Review before this Court[34] to which the People of the Philippines, through the Office of the Solicitor General, filed a Comment.[35]

In its February 10, 2014 Resolution, this Court required petitioner to file a reply to the comment on the petition.[36] On April 24, 2014, petitioner manifested that she would no longer file a reply.[37]

---

[29] *Id*. at 68-69.

[30] *Id*.

[31] *Id*. at 57.

[32] *Id.* at 36-39.

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

[34] *Id.* at 10.

[35] *Id.* at 93-106.

[36] *Id*. at 107.

[37] *Id*. at 108-112.

On June 18, 2014, this Court gave due course to the petition and required both parties to submit their respective memoranda.[38] However, both parties manifested that they would no longer file their memoranda.[39]

In praying for her acquittal,[40] petitioner asserts that not all the elements of estafa under Article 315(2)(a) of the Revised Penal Code were established by the prosecution. Only damage on the part of the private complainant was proven. Petitioner argues that she did not employ any deceit in soliciting private complainant's investment as nothing in the records shows that she used a fictitious name or that she pretended to possess power, agency, or certain qualifications. Fernandez, one of the prosecution's witnesses, even admitted that she was a Philam Life agent.[41]

Furthermore, petitioner claims that she acted in good faith when she decided to place private complainant's investment in PMIAM. She adds that she did not conceal this from private complainant, who later on agreed to the placement.[42]

In its Comment,[43] respondent claims that the main issue raised by petitioner is factual in nature. Thus, it is beyond the scope of review in a Rule 45 petition. Respondent argues that even if this Court undertakes a factual review in this case, the lower courts did not err in convicting petitioner of estafa.[44] Petitioner misrepresented to private complainant that the latter's investment would be placed in Philam Life and that its proceeds would be channeled to pay for her insurance premiums. This

---

[38] *Id*. at 114-114-A.

[39] *Id*. at 115-118, Office of the Solicitor General's Manifestation, and *rollo*, pp. 120-124, Osorio's Manifestation.

[40] *Id*. at 18.

[41] *Id*. at 17.

[42] *Id*. at 17-18.

[43] *Id*. at 93-106.

[44] *Id*. at 97-98.

misrepresentation caused private complainant to part with her money.[45]

The principal issue presented by this case is whether or not petitioner's acts constitute estafa as defined and punished under Article 315(2)(a) of the Revised Penal Code.

The rule with respect to petitions for review brought under Rule 45 of the Rules of Court is that only questions of law may be raised.[46] The factual findings of the trial court, as affirmed by the Court of Appeals, are binding on this Court and will not be disturbed on appeal.[47]

There is a question of law when "doubt or difference arises as to what the law is on a certain set of facts or circumstances."[48] On the other hand, there is a question of fact when "the issue raised on appeal pertains to the truth or falsity of the alleged facts."[49] This includes an assessment of the probative value of evidence presented during trial.[50] If the principal issue may be resolved without reviewing the evidence, then the question before the appellate court is one of law.

Petitioner claims that the prosecution failed to prove her guilt beyond reasonable doubt on the ground that she did not employ deceit in soliciting private complainant's funds. The determination of whether the element of deceit or fraud is present

---

[45] *Id.* at 101-102.

[46] RULES OF COURT, Rule 45, Sec. 1.

[47] *Pascual v. Burgos*, 776 Phil. 169, 182 (2016) [Per *J.* Leonen, Second Division].

[48] *Spouses Miano v. Manila Electric Company*, G.R. No. 205035, November 16, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/205035.pdf> 4 [Per *J.* Leonen, Second Division] citing *Bases Conversion Development Authority v. Reyes*, 711 Phil. 631 (2013) [Per *J.* Perlas-Bernabe, Second Division].

[49] *Id.*

[50] *Pascual v. Burgos*, 776 Phil. 169, 183 (2016) [Per *J.* Leonen, Second Division].

in a charge for estafa is a question of fact as it involves a review of the lower court's appreciation of the evidence.[51]

Petitioner concedes that the case involves mixed questions of fact and law. However, she claims that this Court is authorized to undertake a factual review if the findings of the lower courts do not conform to the evidence on record.[52] Her contention is well-taken.

Petitioner was charged with estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code:

> Article 315. *Swindling (Estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> . . . . . .
>
> 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.

In sustaining a conviction under this provision, the following elements must concur:

> (a) [T]hat there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.[53]

---

[51] See *Quesada v. Department of Justice*, 532 Phil. 159, 166 (2006) [Per *J.* Sandoval-Gutierrez, Second Division].

[52] *Rollo*, p.15.

[53] *Sy v. People*, 632 Phil. 276, 284 (2010) [Per *J.* Nachura, Third Division].

There are different modalities of committing the crime of estafa under Article 315(2)(a). The false pretense or fraudulent representation referred to under the first element exists when the accused uses a fictitious name, pretends to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions, or when the accused commits other similar deceits.

There is no evidence to prove that petitioner committed any of these acts when she obtained private complainant's money.

Petitioner neither used a fictitious name nor misrepresented herself as an agent of Philam Life. During her first meeting with private complainant, petitioner presented her company ID and calling card as proof of her identity and employment.[54] Fernandez, head of Philam Life's Business Values and Compliance Department, even admitted during trial that petitioner had been a Philam Life agent as of December 2000.[55]

There is also no proof that petitioner pretended to possess the authority to solicit investments for Philam Life Fund Management. All that Fernandez stated was that the issuance of Philam Life receipts to private complainant was improper because the receipts only cover insurance premium payments.[56] Thus, in the absence of contrary evidence, it is presumed that petitioner was authorized to solicit money for investment purposes.

In estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code, the element of deceit consisting of the false pretense or representation must be proven beyond reasonable doubt. Otherwise, criminal liability will not attach. In *Aricheta v. People*,[57] the accused was charged of estafa for selling property that she had previously sold to a third party. She allegedly

---

[54] *Rollo*, p. 28.

[55] *Id.* at 64.

[56] *Id.* at 31.

[57] 560 Phil. 170 (2007) [Per *J.* Chico-Nazario, Third Division].

misrepresented to the buyer that she was still the owner at the time of the sale.[58] In acquitting the accused, this Court found that the prosecution failed to prove the alleged false representation she made:

> As can be gleaned from the allegations in the information, petitioner was charged with Estafa for allegedly selling to private complainant the subject property knowing fully well that she had already sold the same to a third party. From this, it is therefore clear that the supposed false representation or false pretense made by petitioner to private complainant was that she was still the owner of the property when she sold it to private complainant.
>
> . . . . . .
>
> The question to be resolved is whether the prosecution was able to prove beyond reasonable doubt the alleged false representation or false pretense contained in the information.
>
> As above explained, the alleged false representation or false pretense made by petitioner to private complainant was that she was still the owner of the property when she sold it to private complainant. To prove such allegation, the prosecution should first establish that the property was previously sold to a third party before it was sold to private complainant. The prosecution utterly failed to do this. The fundamental rule is that upon him who alleges rests the burden of proof. It made this allegation but it failed to support it with competent evidence. Except for private complainant's bare allegation that petitioner told her that she (petitioner) sold the property to another person, the records are bereft of evidence showing that the property was indeed previously sold to a third person before it was sold again to private complainant. What was shown by the prosecution and admitted by the defense is the fact that the property is being currently occupied by a person other than private complainant. This fact does not prove that the property was previously sold to another person before being sold again to private complainant.[59] (Citation omitted)

In this case, although there is no proof that petitioner used a fictitious name or pretended to possess power, influence, qualifications, property, credit, agency, or business in soliciting

---

[58] *Id.* at 175.

[59] *Id.* at 182-183.

private complainant's money, petitioner should nevertheless be held criminally liable for misrepresenting to private complainant that the latter's money would be invested in Philam Life Fund Management and that its proceeds may be utilized to pay for private complainant's insurance premiums.

Private complainant accepted the investment opportunity offered by petitioner due to the promise that her money would be invested in Philam Life, a company with which she had existing insurance policies. She parted with her funds because of the representation that her investment's earnings would be conveniently channeled to the payment of her insurance premiums. As a result of petitioner's representations, private complainant no longer saw the need to pay for the succeeding insurance premiums as they fell due.[60] Moreover, petitioner's issuance of Philam Life receipts[61] led private complainant to believe that her money was already as good as invested in the company.

The false representations committed by petitioner in this case fall beyond the scope of "other similar deceits" under Article 315(2)(a) of the Revised Penal Code. The phrase "other similar deceits" in Article 315(2)(a) of the Revised Penal Code has been interpreted in *Guinhawa v. People*[62] as limited to acts of the same nature as those specifically enumerated. Under the principle of *ejusdem generis*, "other similar deceits" cannot be construed in the broadest sense to include all kinds of deceit:

> [T]he petitioner's reliance on paragraph 2(a), Article 315 of the Revised Penal Code is misplaced. The said provision reads:
>
> > 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,

[60] *Rollo*, p. 67.

[61] *Id.* at 29.

[62] 505 Phil. 383 (2005) [Per *J.* Callejo, Sr., Second Division].

> business or imaginary transactions; or by means of other similar deceits.

The fraudulent representation of the seller, in this case, that the van to be sold is brand new, is not the deceit contemplated in the law. Under the principle of *ejusdem generis*, where a statement ascribes things of a particular class or kind accompanied by words of a generic character, the generic words will usually be limited to things of a similar nature with those particularly enumerated unless there be something in the context to the contrary.[63] (Citation omitted)

Nevertheless, petitioner may be held criminally liable for other deceits under Article 318 of the Revised Penal Code.

Article 318 of the Revised Penal Code is broad in application. It is intended as a catch-all provision to cover all other kinds of deceit not falling under Articles 315, 316, and 317 of the Revised Penal Code.[64]

For an accused to be held criminally liable under Article 318 of the Revised Penal Code, the following elements must exist:

> (a) [The accused makes a] false pretense, fraudulent act or pretense other than those in [Articles 315, 316, and 317]; (b) such false pretense, fraudulent act or pretense must be made or executed prior to or simultaneously with the commission of the fraud; and (c) as a result, the offended party suffered damage or prejudice.[65] (Citation omitted)

All the elements of Article 318 of the Revised Penal Code are present in this case.

Petitioner, in soliciting private complainant's money, falsely represented that it would be invested in Philam Life and that its proceeds would be used to pay for private complainant's insurance premiums. This false representation is what induced private complainant to part with her funds and disregard the payment of her insurance premiums. Since petitioner deviated

---

[63] *Id.* at 401.

[64] *Id.*

[65] *Id.* at 400.

from what was originally agreed upon by placing the investment in another company, private complainant's insurance policies lapsed.

The present case is different from money market transactions where dealers are usually given full discretion on where to place their client's investments. In *MERALCO v. Atilano*,[66] this Court explained the nature of money market transactions and the corresponding liabilities that dealers may face when dealing with their clients' investments:

> [I]n money market transactions, *the dealer is given discretion on where investments are to be placed*, absent any agreement with or instruction from the investor to place the investments in specific securities.
>
> Money market transactions may be conducted in various ways. One instance is when an investor enters into an investment contract with a dealer under terms that oblige the dealer to place investments only in designated securities. Another is when there is no stipulation for placement on designated securities; thus, the dealer is given discretion to choose the placement of the investment made. Under the first situation, a dealer who deviates from the specified instruction may be exposed to civil and criminal prosecution; in contrast, the second situation may only give rise to a civil action for recovery of the amount invested.[67] (Emphasis in the original)

Although petitioner was charged of estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code, she may be convicted of other deceits under Article 318 of the Revised Penal Code.

As a rule, an accused can only be convicted of the crime with which he or she is charged. This rule proceeds from the Constitutional guarantee that an accused shall always be informed of the nature and cause of the accusation against him or her.[68]

---

[66] 689 Phil. 394 (2012) [Per *J.* Brion, Second Division].

[67] *Id.* at 409.

[68] *Navarrete v. People*, 542 Phil. 496, 504 (2007) [Per *J.* Corona, First Division].

An exception to this is the rule on variance under Rule 120, Section 4 of the Revised Rules of Criminal Procedure, which states:

> RULE 120
> *Judgment*
>
> Section 4. *Judgment in Case of Variance Between Allegation and Proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

Rule 120, Section 4 of the Revised Rules of Criminal Procedure simply means that if there is a variance between the offense charged and the offense proved, an accused may be convicted of the offense proved if it is included in the offense charged. An accused may also be convicted of the offense charged if it is necessarily included in the offense proved.

In *Sales v. Court of Appeals*,[69] the accused was charged with estafa by means of deceit under Article 315(2)(d) of the Revised Penal Code. She was convicted of other deceits under Article 318 of the Revised Penal Code. In holding that there was no violation of the accused's constitutional right to be informed of the accusation against her, this Court held that the elements of the crime of other deceits under Article 318 of the Revised Penal Code also constitute one (1) of the elements of estafa by means of deceit under Article 315(2)(d) of the Revised Penal Code:

> In the information filed against her, the petitioner with the crime of estafa under Article 315, paragraph 2(d) of the Revised Penal Code which reads:
>
> . . . . . .
>
> "(d) By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or

[69] 247-A Phil. 38 (1988) [Per *J.* Gutierrez, Jr., Third Division].

his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be *prima facie* evidence of deceit constituting false pretense or fraudulent act. (As amended by Rep. Act No. 4885, approved June 17, 1967.)"

Under the aforequoted provision, the elements of estafa as defined therein are as follows: (1) postdating or issuance of a check in payment of an obligation contracted at the time the check was issued; (2) lack or insufficiency of funds to cover the check and (3) damage to the payee thereof . . . Basically, the two essential requisites of fraud or deceit and damage or injury must be established by sufficient and competent evidence in order that the crime of estafa may be established.

On the other hand, Article 318 of the same Code partly provides that:

"Other deceits. — The penalty of arresto mayor and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter."

. . . . . .

Clearly, the principal elements of deceit and damage are likewise present in the preceding article cited. The petitioner's conviction under the latter provision instead of that with which she was charged was merely an application of the rule on variance between allegation and proof defined under Rule 120, Section 4 of the Revised Rules of Court which states that:

"Judgment in case of variance between allegation and proof. — When there is variance between the offense charged in the complaint or information, and that proved or established by the evidence, and the offense as charged is included in or necessarily includes the offense proved, the defendant shall be convicted of the offense proved included in that which is charged, or of the offense charged included in that which is proved."

Simply put, an accused may be convicted of an offense proved provided it is included in the charge or of an offense charged which is included in that which is proved. In the case at bar, the petitioner

was convicted of the crime falling under "Other deceits" which is necessarily included in the crime of estafa under Article 315, paragraph 2(d) considering that the elements of deceit and damage also constitute the former. Hence, the petitioner's right to be properly informed of the accusation against her was never violated.[70] (Citation omitted)

In the present case, the crime of other deceits under Article 318 of the Revised Penal Code is necessarily included in the crime of estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code. Therefore, petitioner may be convicted of other deceits under Article 318 of the Revised Penal Code.

The imposable penalty for other deceits under paragraph 1 of Article 318 of the Revised Penal Code[71] has been retained by Republic Act No. 10951.[72] Accordingly, petitioner should suffer the penalty of *arresto mayor* and pay a fine, which should neither be less than nor more than twice the amount of the damage caused. The amount of damage caused against private complainant in this case is ₱200,000.00.

---

[70] *Id.* at 42-43.

[71] REV. PEN. CODE, Art. 318 provides:

Article 318. Other Deceits. — The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of *arresto menor* or a fine not exceeding 200 pesos.

[72] Rep. Act No. 10951, Sec. 86 provides:

Section 86. Article 318 of the same Act is hereby amended to read as follows:

Article 318. Other deceits. — The penalty of *arresto mayor* and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this Chapter.

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of *arresto mayor* or a fine not exceeding Forty thousand pesos (₱40,000).

As a final note, the defense that private complainant eventually consented to the investment in PMIAM deserves scant consideration. Records show that private complainant asked petitioner for a refund of her initial investment when she discovered that her investment was placed in PMIAM.[73] The ratification allegedly given by private complainant hardly qualifies as genuine consent. When private complainant discovered the transaction, her insurance policies had already lapsed. She was trapped in a difficult situation where she could potentially lose another investment. Thus, she had no other choice but to agree to the placement. The lack of genuine consent is further evidenced by private complainant's repeated requests for a refund of her initial investment even after she received the first tranche of interest income.[74]

WHEREFORE, the Court of Appeals January 30, 2013 Decision and the June 14, 2013 Resolution in CA-G.R. CR No. 34274 are **AFFIRMED** with **MODIFICATION**. Petitioner Maria C. Osorio is **GUILTY BEYOND REASONABLE DOUBT** of other deceits under Article 318 of the Revised Penal Code. There being no aggravating or mitigating circumstances, petitioner is sentenced to suffer the penalty of two (2) months and (1) day to four (4) months of *arresto mayor* in its medium period,[75] and to pay a fine of ₱200,000.00.

SO ORDERED.

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

---

[73] *Rollo*, pp. 29-30.

[74] *Id.*

[75] The Indeterminate Sentence Law is inapplicable because the maximum term of imprisonment does not exceed one year.

FIRST DIVISION

[G.R. No. 212034. July 2, 2018]

COLEGIO MEDICO-FARMACEUTICO DE FILIPINAS, INC., *petitioner, vs.* **LILY LIM AND ALL PERSONS CLAIMING UNDER HER,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; NON-FORUM SHOPPING; THE PRESIDENT OF A CORPORATION MAY SIGN THE VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING.—** A corporation exercises its powers and transacts its business through its board of directors or trustees. Accordingly, unless authorized by the board of directors or trustees, corporate officers and agents cannot exercise any corporate power pertaining to the corporation. A board resolution expressly authorizing the officers and agents is therefore required. However, in filing a suit, jurisprudence has allowed the president of a corporation to sign the verification and the certification of non-forum shopping even without a board resolution as said officer is presumed to have sufficient knowledge to swear to the truth of the allegations stated in the complaint or petition.

2. **CIVIL LAW; SPECIAL CONTRACTS; LEASE; UNLAWFUL DETAINER; REQUISITES.—** To justify an action for unlawful detainer, the following essential requisites must concur: (1) the fact of lease by virtue of an implied or expressed contract; (2) the expiration or termination of the possessor's right to hold possession; (3) withholding of the possession of the land or building after the expiration or the termination of the right to possession by the lessee; (4) written demand upon lessee to pay the rental or comply with the terms of the lease and vacate the premises; (5) the action must be filed within one (1) year from date of last demand received by the lessee.

3. **COMMERCIAL LAW; CORPORATION; THE PRESIDENT OF A CORPORATION ACTING WITHIN THE SCOPE OF HIS USUAL DUTIES MAY BIND THE CORPORATION.—** In *People's Aircargo and Warehousing*

Co., Inc. v. Court of Appeals, the Court laid down an exception to the general rule that no person, not even its officers, can validly bind a corporation without an express authority from the board of directors. In that case, the Court sustained the authority of the president to bind the corporation for the reason that the president has the power to perform acts within the scope of his or her usual duties.

4. CIVIL LAW; DAMAGES; ACTUAL DAMAGES; MUST BE AWARDED PLUS LEGAL INTEREST THEREOF.—[A]s to the amount of reasonable compensation for the use of the subject property, the Court finds that the amount should be ₱55,000.00 per month as stipulated in the Contract of Lease, not just ₱50,000.00 as awarded by the RTC. In addition, the award of actual damages shall earn interest at the rate of 12% *per annum* from March 5, 2008, the date of extrajudicial demand, to June 30, 2013. From July 1, 2013 until full satisfaction of the monetary award, the rate of interest shall be six percent (6%).

APPEARANCES OF COUNSEL

Payumo and Associates for petitioner.
Ramil G. Gabao for respondents.

D E C I S I O N

DEL CASTILLO,[*] *J.*:

"In the absence of a charter or by[-]law provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties."[1]

Before us is a Petition for Review on *Certiorari*[2] filed under Rule 45 of the Rules of Court assailing the June 13, 2013

[*] Acting Chairperson, Per Special Order No. 2562 dated June 20, 2018.

[1] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, 351 Phil. 850, 866 (1998).

[2] *Rollo*, pp. 8-40.

Decision[3] and the April 7, 2014 Resolution[4] of the Court of Appeals (CA) in CA-G.R SP No. 114856.

Factual Antecedents

Petitioner Colegio Medico Farmaceutico de Filipinas, Inc. (petitioner) is the registered owner of a building located in Sampaloc, Manila.[5]

On June 19, 2008, petitioner filed before the Metropolitan Trial Court (MeTC) of Manila, Branch 24, a Complaint for Ejectment with Damages,[6] docketed as Civil Case No. 185161-CV, against respondent Lily Lim (respondent), the President/ Officer-in-charge of St. John Berchman School of Manila Foundation (St. John). Petitioner alleged, that in June 2005, it entered into a Contract of Lease[7] for the period June 2005 to May 2006 with respondent; that after expiration of the lease period, petitioner, represented by its then President Dr. Virgilio C. Del Castillo (Del Castillo), sent respondent another Contract of Lease for the period June 2006 to May 2007 for her approval; that despite several follow-ups, respondent failed to return the Contract of Lease; that during a board meeting in December 2007, petitioner informed respondent of the decision of the Board of Directors (Board) not to renew the Contract of Lease; that on March 5, 2008, Del Castillo wrote a letter[8] to respondent demanding the payment of her back rentals and utility bills in the total amount of ₱604,936.35, with a request to vacate the subject property on or before March 16, 2008; and that respondent refused to comply with the demand.

---

[3] *Id*. at 41-49; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion.

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

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

[6] *Id*. at 52-59.

[7] *Id*. at 62-68.

[8] *Id*. at 75.

For her part, respondent alleged that in May 2003, St. John, represented by Jean Li Yao, entered into a 10-year Contract of Lease with petitioner; that on May 3, 2005, due to financial difficulties, the Board of Trustees of St. John assigned the rights and interest of the school in her favor; that the assignment of rights was with the knowledge and approval of petitioner; that to ensure advance payment of the rentals, petitioner persuaded her to execute a one-year Contract of Lease for the period of June 2005 to May 2006, with advance payment of rentals for the said period; that the said contract was executed with no intention of amending, repealing, or shortening the original 10-year lease; that she occupied the subject property even after May 2006 without any objection from petitioner because, as agreed by the parties, the term of the lease would continue until the year 2013; that she sent several letters to petitioner for the immediate repairs of the library, the toilets of the school building, and the basketball court; and that she suspended the payment of the rentals due to the refusal of petitioner to act on all her letters.

The Ruling of the Metropolitan Trial Court

On June 1, 2009, the MeTC rendered a Decision[9] dismissing the Complaint for lack of a valid demand letter. The MeTC considered the demand letter dated March 5, 2008 as legally non-existent for failure of petitioner to show that Del Castillo was duly authorized by the Board to issue the same. The MeTC stressed that a demand letter is a jurisdictional requirement the absence of which opens the case susceptible to dismissal.

Aggrieved, petitioner appealed the dismissal to the Regional Trial Court (RTC) of Manila, Branch 11.

The Ruling of the Regional Trial Court

On May 13, 2010, the RTC rendered a Decision[10] reversing the MeTC Decision. The RTC ruled that the issuance of the demand letter dated March 5, 2008 was done by Del Castillo

---

[9] *Id*. at 78-82; penned by Presiding Judge Jesusa S. Prado-Maniñgas.

[10] *Id*. at 200-200-B; penned by Presiding Judge Cicero D. Jurado, Jr.

in the usual course of business and that the issuance of the same was ratified by petitioner when it passed the Board Resolution dated May 13, 2008 authorizing Del Castillo to file a case against respondent. Thus –

> WHEREFORE, premises considered, the Decision of the Metropolitan Trial Court Branch 24, Manila in Civil Case No. 185161-CV dated June 1, 2009 is REVERSED and SET ASIDE and judgment is hereby rendered in favor of [petitioner] and against [respondent], as follows:
>
> 1. Ordering [respondent] and all persons claiming rights under her, to vacate the leased unit located at Building C, Colegio Compound, R. Papa and S.H. Loyola Street, Sampaloc, Manila;
>
> 2. Ordering [respondent] to pay [petitioner] the amount of Six Hundred Four Thousand Nine Hundred Thirty-Six Pesos and Thirty-Five Centavos (Php604,936.35) representing unpaid utility bills as of February 2008;
>
> 3. Ordering [respondent] to pay [petitioner] the amount of Fifty Thousand Pesos (Php50,000,00) per month for and as the reasonable value for the use of the subject property, to be reckoned from March 28 up to the time the possession of the subject property is restored to [petitioner].
>
> 4. Ordering [respondent] to pay [petitioner] the amount of One Hundred Fifty Thousand Pesos (Php150,000.00) for and as attorney's fees, plus Four Thousand Pesos (Php4,000.00) for every appearance in court as well as the costs of suit.
>
> SO ORDERED.[11]

Petitioner moved for the issuance of a writ of execution while respondent moved for reconsideration.

On June 23, 2010, the RTC issued an Order granting the writ of execution. The RTC denied respondent's motion for reconsideration.

Respondent moved to quash the writ of execution but the same was unavailing.

---

[11] *Id*. at 200-A to 200-B.

This prompted respondent to elevate the matter to the Court of Appeals *via* a Petition for Review under Rule 42 of the Rules of Court.

The Ruling of the Court of Appeals

On June 13, 2013, the CA rendered the assailed Decision reversing the RTC Decision, and consequently, dismissing the Complaint. The CA opined that petitioner's failure to attach a copy of the Board Resolution dated May 13, 2008 to the Complaint was a fatal defect.[12]

Petitioner moved for reconsideration but the CA denied the same in its April 7, 2014 Resolution for lack of merit.[13]

Hence, petitioner filed the instant Petition for Review on *Certiorari* questioning the dismissal of its Complaint.

Petitioner's Arguments

Petitioner seeks the reversal of the CA Decision and the reinstatement of the RTC Decision ordering respondent to vacate the subject property and to pay actual damages and attorney's fees plus costs of suit. Petitioner maintains that its failure to attach a copy of the Board Resolution dated May 13, 2008 to the Complaint was not a fatal defect considering that, under prevailing jurisprudence, the president of a corporation is duly authorized to sign the verification and certification without need of a board resolution.[14] As to the demand letter dated March 5, 2008 by Del Castillo, petitioner argues that it was validly issued as it was an authorized act done in the usual course of business.[15] Thus, no board resolution was required.[16] And even if it were unauthorized, the demand letter dated March 5, 2008 was not repudiated by the corporation but was even ratified when it

---

[12] *Id*. at 46-49.

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

[14] *Id*. at 416-421.

[15] *Id*. at 427-432.

[16] *Id*.

issued the Board Resolution dated May 13, 2008 authorizing Del Castillo to file the instant case.[17] In any case, petitioner contends that demand to vacate was not necessary as the case for unlawful detainer was based on the expiration of the lease contract.[18] Lastly, petitioner prays that the monthly rental of ₱50,000.00 awarded by the RTC be increased to ₱55,000.00 as stipulated in the Contract of Lease and that it be awarded exemplary and moral damages.[19]

Respondent's Arguments

Respondent, on the other hand, argues that the certification of non-forum shopping is a jurisdictional requirement and that the failure of petitioner to attach to the Complaint a copy of the Board Resolution dated May 13, 2008 authorizing Del Castillo to sign on behalf of petitioner was a fatal defect.[20] Petitioner further argues that the demand letter dated March 5, 2008 was premature and without legal basis considering that it was issued by Del Castillo without an express authority from the Board in the form of a board resolution.[21] As to the period of lease, respondent insists that the Contract of Lease entered into by petitioner and St. John was for a period of 10 years or from June 1, 2003 to May 31, 2013.[22] Respondent also puts in issue the fact that the instant case was filed against respondent, not against St. John, despite the fact that demand letter dated March 5, 2008 was addressed to St. John, through respondent.[23]

Our Ruling

The Petition is meritorious.

---

[17] *Id*. at 432.

[18] *Id*. at 422-427.

[19] *Id*. at 432-434.

[20] *Id*. at 454-456.

[21] *Id*. at 446-454.

[22] *Id*. at 456-458.

[23] *Id*. at 458.

The president of a corporation may sign the verification and certification of non-forum shopping.

A corporation exercises its powers and transacts its business through its board of directors or trustees.[24] Accordingly, unless authorized by the board of directors or trustees, corporate officers and agents cannot exercise any corporate power pertaining to the corporation.[25] A board resolution expressly authorizing the officers and agents is therefore required.[26] However, in filing a suit, jurisprudence has allowed the president of a corporation to sign the verification and the certification of non-forum shopping even without a board resolution as said officer is presumed to have sufficient knowledge to swear to the truth of the allegations stated in the complaint or petition.[27]

In view of the foregoing jurisprudential exception, the CA gravely erred in dismissing the Complaint on the mere failure of petitioner to present a copy of the Board Resolution dated May 13, 2008. With or without the said Board Resolution, Del Castillo, as the President of petitioner, was authorized to sign the verification and the certification of non-forum shopping.

All the essential requisites of an unlawful detainer are present.

Now, as to whether respondent may be validly ejected from the subject property, the Court rules in the affirmative.

To justify an action for unlawful detainer, the following essential requisites must concur:

(1) the fact of lease by virtue of an implied or expressed contract;

---

[24] CORPORATION CODE, Section 23.

[25] *Manila Metal Container Corporation v. Philippine National Bank*, 540 Phil. 451, 474 (2006).

[26] *Id*.

[27] *Hutama-RSEA/Supermax Phils., J.V. v. KCD Builders Corporation*, 628 Phil. 52, 61 (2010).

(2) the expiration or termination of the possessor's right to hold possession;

(3) withholding of the possession of the land or building after the expiration or the termination of the right to possession by the lessee;

(4) written demand upon lessee to pay the rental or comply with the terms of the lease and vacate the premises;

(5) the action must be filed within one (1) year from date of last demand received by the lessee.[28]

In this case, requisites 1, 2, 3, and 5 have been duly established. It is undisputed that a Contract of Lease was entered into by petitioner with St. John, which contract was later assigned to respondent; that respondent failed to pay the monthly rentals; that non-payment of the monthly rentals is a ground for the termination of the Contract of Lease;[29] that respondent continued to possess the subject property despite the termination of the Contract of Lease; and that the Complaint was filed within one (1) year from March 5, 2008 or the date of the last demand received by respondent.[30] Thus, the only question to be resolved is whether there was a valid written demand upon respondent to pay the unpaid rentals and vacate the subject property.

On March 5, 2008, Del Castillo wrote a demand letter to respondent requiring the latter to pay the unpaid rentals in the amount of ₱604,936.35 and to vacate the subject property. Respondent, however, contends that said demand letter had no legal effect because it was issued without an express authority from the Board in the form of a board resolution. Respondent harps on the fact that Del Castillo was authorized by the Board to institute the instant case only on May 13, 2008 or two months after the demand letter dated March 5, 2008 was issued.

The Court does not agree with the reasoning of respondent.

---

[28] *Dela Cruz v. Court of Appeals*, 539 Phil. 158, 170-171 (2006).

[29] *Rollo*, p. 62.

[30] *Id.* at 52.

In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*,[31] the Court laid down an exception to the general rule that no person, not even its officers, can validly bind a corporation without an express authority from the board of directors. In that case, the Court sustained the authority of the president to bind the corporation for the reason that the president has the power to perform acts within the scope of his or her usual duties. The Court explained that:

> Being a juridical entity, a corporation may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies and is responsible for the efficiency of management, as provided in Section 23 of the Corporation Code of the Philippines:
>
> > SEC. 23. *The Board of Directors or Trustees*. — Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x.
>
> Under this provision, the power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in the board, subject to the articles of incorporation, by-laws, or relevant provisions of law. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. The authority of such individuals to bind the corporation is generally derived from law, corporate by laws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business, *viz.*:
>
> > A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers which have been intentionally conferred, and also such powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent

[31] *Supra* note 1.

powers as the corporation has caused persons dealing with the officer or agent to believe that it has conferred.

Accordingly, the appellate court ruled in this case that the authority to act for and to bind a corporation may be presumed from acts of recognition in other instances, wherein the power was in fact exercised without any objection from its board or shareholders. Petitioner had previously allowed its president to enter into the First Contract with private respondent without a board resolution expressly authorizing him; thus, it had clothed its president with apparent authority to execute the subject contract.

Petitioner rebuts, arguing that a single isolated agreement prior to the subject contract does not constitute corporate practice, which Webster defines as 'frequent or customary action.' It cites *Board of Liquidators v. Kalaw*, in which the practice of NACOCO allowing its general manager to negotiate and execute contract in its copra trading activities for and on its behalf, without prior board approval, was inferred from sixty contracts — not one, as in the present case — previously entered into by the corporation without such board resolution.

Petitioner's argument is not persuasive. Apparent authority is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers. It requires presentation of evidence of similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation.

x x x x x x x x x

Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation. In the absence of a charter or by[-]law provision to the contrary, the president is presumed to have the authority to act within the domain

of the general objectives of its business and within the scope of his or her usual duties.

Hence, it has been held in other jurisdictions that the president of a corporation possesses the power to enter into a contract for the corporation, when the 'conduct on the part of both the president and the corporation [shows] that he had been in the habit of acting in similar matters on behalf of the company and that the company had authorized him so to act and had recognized, approved and ratified his former and similar actions.'

Furthermore, a party dealing with the president of a corporation is entitled to assume that he has the authority to enter, on behalf of the corporation, into contracts that are within the scope of the powers of said corporation and that do not violate any statute or rule on public policy.[32]

In this case, the issuance of the demand letter dated March 5, 2008 to collect the payment of unpaid rentals from respondent and to demand the latter to vacate the subject property was done in the ordinary course of business, and thus, within the scope of the powers of Del Castillo. In fact, it was his duty as President to manage the affairs of petitioner, which included the collection of receivables. Article IV, Section 2 of the By-laws of petitioner expressly states that the President has the power to:

x x x x x x x x x

b. Exercise general [supervision], control and direction of the business and affairs of the Colegio;

x x x x x x x x x

e. Execute in behalf of the Colegio, bonds, mortgages, and all other contracts and agreements which the Colegio may enter into;

x x x x x x x x x

j. Exercise or perform such other duties as are incident to his office or such powers and duties as the Board may from time to time [prescribe].[33]

---

[32] *Id*. at 863-867.

[33] *Rollo*, p. 27.

Accordingly, even without a board resolution, Del Castillo had the power and authority to issue the demand letter dated March 5, 2008.

In any case, even if, for the sake of argument, Del Castillo acted beyond the scope of his authority in issuing the demand letter dated March 5, 2008, the subsequent issuance of the Board Resolution dated May 13, 2008 cured any defect possibly arising therefrom as it was a clear indication that the Board agreed to, consented to, acquiesced in, or ratified the issuance of the said demand letter.

All told, the Court agrees with the findings of the RTC that all the requisites of an unlawful detainer were present in the instant case, and thus, petitioner was entitled to the possession of the subject property.

However, as to the amount of reasonable compensation for the use of the subject property, the Court finds that the amount should be ₱55,000.00 per month as stipulated in the Contract of Lease,[34] not just ₱50,000.00 as awarded by the RTC.

In addition, the award of actual damages shall earn interest at the rate of 12% *per annum* from March 5, 2008, the date of extrajudicial demand, to June 30, 2013. From July 1, 2013 until full satisfaction of the monetary award, the rate of interest shall be six percent (6%).[35]

WHEREFORE, the Petition is hereby **GRANTED**. The assailed June 13, 2013 Decision and the April 7, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 114856 are hereby **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court of Manila, Branch 11, dated May 13, 2010 is hereby **REINSTATED and AFFIRMED with MODIFICATION** that the amount of reasonable compensation for the use of the subject property be increased to ₱55,000.00 as stipulated in the Contract of Lease. In addition, the award of actual damages shall earn interest at the rate of 12% *per annum* from March 5, 2008, the

---

[34] *Id.* at 62.

[35] *Nacar v. Gallery Frames*, 716 Phil. 267, 279-281 (2013).

date of extrajudicial demand, to June 30, 2013. From July 1, 2013 until full satisfaction of the monetary award, the rate of interest shall be six percent (6%) *per annum*.

SO ORDERED.

Jardeleza, Tijam, and *Gesmundo*,** *JJ*., concur.

Leonardo-de Castro, J., on official leave.

SECOND DIVISION

[G.R. No. 225803. July 2, 2018]

SHERYLL R. CABAÑAS, *petitioner, vs.* **ABELARDO G. LUZANO LAW OFFICE/ABELARDO G. LUZANO**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; APPEAL UNDER RULE 45; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS; WHERE THE FINDINGS OF THE COURT OF APPEALS AND THE LABOR TRIBUNAL ARE CONTRADICTORY.—** As a rule, the Court does not review questions of fact, but only questions of law in an appeal by *certiorari* under Rule 45 of the Rules of Court. The rule, however, is not absolute as the Court may review the facts in labor cases where the findings of the Court of Appeals and of the labor tribunals are contradictory.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; BURDEN OF PROOF.—** In illegal dismissal cases, the general rule is that the employer has the burden of proving that the dismissal was

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

legal. To discharge this burden, the employee must first prove, by substantial evidence, that he/she had been dismissed from employment.

3. **ID.; ID.; GROUNDS; ABANDONMENT OF WORK; ELEMENTS.—** For abandonment of work to fall under Article 282 (b) of the Labor Code as gross and habitual neglect of duties, which is a just cause for termination of employment, there must be concurrence of two elements. First, there should be a failure of the employee to report for work without a valid or justifiable reason; and, second, there should be a showing that the employee intended to sever the employer-employee relationship, the second element being the more determinative factor as manifested by overt acts.

4. **ID.; ID.; PROCEDURAL DUE PROCESS.—** [T]he termination of an employee must be effected in accordance with law. Therefore, the employer must furnish the worker or employee sought to be dismissed with two (2) written notices, *i.e.*, (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her.

5. **ID.; ID.; ILLEGAL DISMISSAL; PRAYER FOR SEPARATION PAY IS AN INDICATION OF STRAINED RELATIONS.—** An employee's prayer for separation pay is an indication of the strained relations between the parties. Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone. Thus, it is the task of labor tribunals and the appellate courts to resolve whether the employee be reinstated or granted separation pay.

6. **ID.; ID.; ID.; ATTORNEY'S FEES AWARDED EVEN WHEN LEGAL COUNSEL IS A PUBLIC ATTORNEY.—** [P]etitioner, whose legal counsel is a Public Attorney of the PAO, prayed for the award of attorney's fees in her Position Paper and now seeks the award of attorney's fees as she was compelled to litigate in order to seek redress. She contends that R.A. No. 9406 allows the PAO to receive attorney's fees, x x x Indeed, petitioner is entitled to the award of attorney's

fees equivalent to ten percent (10%) of the total monetary award. R.A. No. 9406 sanctions the receipt by the PAO of attorney's fees, and provides that such fees shall constitute a trust fund to be used for the special allowances of their officials and lawyers. The matter of entitlement to attorney's fees by a claimant who was represented by the PAO has already been settled in *Our Haus Realty Development Corporation v. Parian*. The Court ruled therein that the employees are entitled to attorney's fees, notwithstanding their availment of free legal services offered by the PAO and the amount of attorney's fees shall be awarded to the PAO as a token recompense to them for their provision of free legal services to litigants who have no means of hiring a private lawyer.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals dated April 21, 2016, annulling and setting aside the Decision[2] dated June 30, 2014 of the National Labor Relations Commission (*NLRC*), Sixth Division and dismissing herein petitioner Sheryll R. Cabañas' complaint for illegal dismissal and money claims.

The facts are as follows:

On October 1, 2013, petitioner Sheryll Cabañas filed before the NLRC a Complaint for illegal dismissal and money claims against herein respondent Abelardo G. Luzano Law Office and its manager, Mary Ann Z. Detera. Respondent Law Office is a service provider for the Bank of the Philippine Islands, Banco de Oro, Rizal Commercial Banking Corporation and Unionbank

[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Jose C. Reyes, Jr. and Ramon Paul L. Hernando concurring; *rollo*, pp. 39-49.

[2] In NLRC LAC No. 04-001071-14; *id.* at 73-81.

of the Philippines in the collection of delinquent credit cards and personal loan accounts.

In her Position Paper,[3] complainant-herein petitioner Cabañas stated that she was employed as an Administrative Secretary for respondent Abelardo G. Luzano Law Office from June 27, 2012 to September 18, 2013. She was tasked to act as receptionist/lawyer's staff, monitor petty cash disbursements and office employees, make demand letters and do other clerical tasks. Her performance was satisfactory as she was employed as a regular employee on [January 30, 2013] per her employment contract.[4]

In June 2013, Cabañas received a final warning in a Memorandum[5] dated June 18, 2013. The memorandum notified her that her performance as Administrative Secretary failed to meet the performance requirements of the position due to the following: (1) erroneous entry of data for the liquidation of petty cash; (2) erroneous computation of accounts for mailing; (3) erroneous breakdown of expenses for cash payments; (4) instructions from colleagues are not being strictly followed; and (5) not strict in releasing gas allowance for skiptracers. Cabañas was warned that a similar violation in the future would mean termination of her employment.

At this point, Cabañas said that the office manager, Mary Ann Detera, began meddling with her office equipment. Detera would also lose her requests relating to the demand letters that she (Cabañas) prepares. She was even asked to cover-up irregularities.

Cabañas stated that as she was in charge of the petty cash disbursements, which was used to defray the transport expenses of skiptracers or messengers, she would ask for receipts for the disbursements of Jomari Delos Santos, a messenger assigned to Detera. Detera wanted her to cover-up any irregularity which

---

[3] *Rollo*, pp. 86-97.

[4] *Id*. at 124-126.

[5] *Id*. at 160.

may have been committed by her messenger and not report the same to Mrs. Ivy Theresa Buenaventura, the General Manager, who was also the daughter of Atty. Abelardo G. Luzano (A*tty. Luzano*). Cabañas refused to do Detera's wishes. Thus, Detera's angry actuation began toward Cabañas.

Cabañas alleged that Detera would fail to report Mr. Delos Santos' absences, which placed Cabañas in a delicate situation as Mrs. Buenaventura would ask her regarding Mr. Delos Santos' absences. Mr. Delos Santos would also ask Cabañas for transportation expenses, but he would take three to four days to liquidate the said expenses. Detera would also belatedly submit receipts for liquidating the petty cash disbursements. It was Cabañas who bore the ire of her superiors for the delay. Cabañas said that she endured this ordeal as she wanted to remain employed.

On September 1, 2013, Cabañas stated that she was summoned to the office of Atty. Luzano. Atty. Luzano and his daughter and General Manager, Mrs. Buenaventura, asked her to resign and execute a resignation letter, but she did not do so.

On September 18, 2013, while Cabañas was on vacation leave, her officemate Josephine Santos told her that Detera went through her (Cabañas') box containing letters she had prepared.

On September 19, 2013, Cabañas received another Memorandum of even date with the subject: "Notice of Termination," alleging her commission of the following infractions: (1) erroneous computation of accounts for mailing; (2) erroneous encoding of petty cash liquidation report; (3) erroneous breakdown of expenses for cash payments; (4) instructions from superiors and collectors are not being strictly followed; (5) careless releasing of gas allowance for skiptracers; (6) erroneous filing of court orders to the wrong case folders; (7) erroneous photocopying of a different legal document; (8) reproduction of excessive copies of documents for case filing; (9) wastage of company resources such as paper and ink due to failure to request for mailing expenses for demand letters printed in August 2013; and (10) erroneous listing for mailing

of a new batch of accounts, which were not included in the actual count of the printed demand letters on September 18, 2013.

Cabañas was given up to the close of office hours of the next day, Friday, September 20, 2013, to submit her explanation why her employment will not be terminated due to gross incompetence and negligence.

According to Cabañas, she verbally explained her side to Atty.Luzano and informed him that Detera was going through her work. Atty. Luzano advised her to prepare an incident report.

At 6:00 p.m. of the same day, September 19, 2013, Cabañas stated that she was summoned by Atty. Luzano. He asked her to execute a resignation letter, but Cabañas refused to do so.

The next day, September 20, 2013, Cabañas submitted her explanation letter to the charges against her contained in the Memorandum dated September 19, 2013. She spoke with Atty. Luzano and inquired why she was no longer given any work and she was not informed that she already had a replacement. Atty. Luzano informed her that the same date was her last day of work and that her salary would just be deposited in her account. However, on September, 30, 2013, no salary was deposited in her ATM account.

On October 1, 2013, Cabañas filed a complaint for illegal dismissal and the payment of her monetary claims against respondents.

During the mediation conferences, respondents offered a settlement, but this did not push through. Hence, both parties were required to submit their respective Position Paper and Reply.

Cabañas contended that it was undeniable that she was an employee of respondent Law Office. On September 19, 2013, a memorandum was issued asking her to explain her side, but when she submitted her explanation the following day, September 20, 2013, she was there and then dismissed, which was tantamount

to illegal dismissal. Moreover, her salary was not given on September 30, 2013 as promised. She prayed that a judgment be rendered that she was illegally dismissed and entitled to the following money claims: nonpayment of service incentive leave, 13th month pay, backwages and separation pay.

On the other hand, respondents contended in their Position Paper[6] that Cabañas was not terminated from her employment, but she abandoned her work.

Respondents stated that in the early part of 2013, Cabañas' job performance deteriorated; thus, she was repeatedly admonished to be careful and avoid repetition of her errors in the liquidation of petty cash, computation of accounts for mailing, and in the breakdown of cash payments. She was admonished for repeatedly failing to follow the instructions of her superiors, doing things incorrectly, and being very lax and incorrectly releasing amounts for gas allowances of the company's motorized skiptracers as well as the unintelligible filing of papers and folders of accounts assigned to her.

Cabañas' job performance did not improve despite repeated warnings; thus, Cabañas was given a final warning in a Memorandum[7] dated June 18, 2013 that a similar violation in the future would mean termination of her employment. Since the final warning did not work, a Memorandum[8] dated September 19, 2013 was issued, requiring Cabañas to explain why her employment will not be terminated due to gross incompetence and negligence.

On September 20, 2013, a Friday, Cabañas submitted her written explanation on the charges contained in the Memorandum dated September 19, 2013. The following Monday, September 23, 2013, she stopped reporting for work. Since she abandoned her work and went on absence without leave, respondents' decision whether to terminate her or not became moot and academic.

---

[6] *Id.* at 104-107.

[7] *Id.* at 160.

[8] *Id.* at 112.

Respondents prayed for the dismissal of the complaint.

Cabañas filed her Reply,[9] maintaining that she did not abandon her work. She averred that other than the fact that she was asked to execute a resignation letter, which she refused to do, she was also asked on September 20, 2013 to turnover all the files assigned to her to respondents' Head Administrative Assistant Antoinette Castro. She asserted that she was not absent without leave (*AWOL*), because respondents terminated her employment; hence, she is entitled to her monetary claims.

In their Reply[10] to complainant-herein petitioner Cabañas' Position Paper, respondents reiterated that they did not force complainant to resign, and that complainant was not dismissed, but she abandoned her work.

In a Decision[11] dated March 27, 2014, Labor Arbiter Marcial Galahad T. Makasiar held that Cabañas was illegally dismissed and ordered respondents to pay her backwages, separation pay, service incentive leave pay and 13th month pay.

The Labor Arbiter held that in termination cases, the employer has the *onus probandi* to prove, by substantial evidence, that the dismissal of an employee is due to a just cause. Failure to discharge this burden would be tantamount to an unjustified and illegal dismissal. He cited *Kams International, Inc., et al. v. NLRC*, *et al.,*[12] which held that abandonment of work does not *per se* sever the employer-employee relationship. It is merely a form of neglect of duty, which is in turn a just cause for termination of employment.[13] The operative act that will ultimately put an end to this relationship is the dismissal of the employee after complying with the procedure prescribed by law.[14] In this case, Cabañas was served a memorandum-notice

[9] Records, pp. 76-79.

[10] *Id.* at 81.

[11] *Rollo*, pp. 131-135.

[12] 373 Phil. 950, 959 (1999).

[13] *Id.*

[14] *Id.*

regarding her performance. However, in regard to the ground of abandonment, neither notice to explain nor notice of termination was issued. Moreover, Cabañas' commencement of an action for illegal dismissal was proof of her desire to return to work, negating abandonment of her work.

The dispositive portion of the Decision of the Labor Arbiter reads:

x x x x x x x x x

FALLO

ACCORDINGLY, the termination of complainant's employment is declared illegal. Respondent Atty. Abelardo G. Luzano is ordered to pay complainant:

a. SEPARATION PAY of PhP23,712.00
b. BACKWAGES of PhP169,540.80;
c. SERVICE INCENTIVE LEAVE PAY of PhP2,798.70;
d. 13th MONTH PAY of PhP14,553.24;

The foregoing awards shall be subject to 5% withholding tax upon payment/execution only where the same is applicable.

Respondents's claim of damages is DENIED for lack of merit.

SO ORDERED.[15]

Respondents appealed the Decision of the Labor Arbiter to the NLRC.

In a Decision[16] dated June 30, 2014, the NLRC affirmed the Decision of the Labor Arbiter and dismissed the appeal.

The NLRC considered the Memorandum dated September 19, 2013, with the subject: "Notice of Termination," as a termination letter. It held that Cabañas was terminated on the basis of her poor and unsatisfactory performance particularly in her quality of work and job knowledge. However, the NLRC found that the acts alleged in the memorandum to have been

---

[15] *Rollo*, p. 135.

[16] *Id.* at 73-81.

committed by Cabañas have not been proven nor substantiated by respondents for these reasons: (1) respondents have not shown any company policy which provides that the commission of any of the alleged acts shall be dealt with the penalty of dismissal from employment to bolster their claim against Cabañas; and (2) other than respondents' self-serving statements that Cabañas showed gross incompetence and negligence in the performance of her tasks, no convincing proof was offered to substantiate Cabañas' alleged negligence or incompetence.

The NLRC noted that Cabañas was employed by respondents since June 27, 2012 until her dismissal on September 19, 2013, or more than a year and three (3) months. Had Cabañas exhibited gross incompetence and negligence in her work, respondents should not have extended her employment upon completion of her probationary contract of employment.

Moreover, the NLRC stated that while respondents argued that in the early part of 2013, they repeatedly admonished and verbally warned Cabañas of her poor performance, there was no single evidence presented to show the particular errors allegedly committed by her.

Further, the NLRC did not agree with respondents' contention that Cabañas was not dismissed from employment, but she voluntarily severed her employment through abandonment. It held, thus:

> Abandonment is a form of neglect of duty, one of the just causes for an employer to terminate an employee. It is a hornbook precept that in illegal dismissal cases, the employer bears the burden of proof. For a valid termination of employment on the ground of abandonment, the employer must prove, by substantial evidence, the concurrence of the employee's failure to report for work for no valid reason and his categorical intention to discontinue employment. In the present case, there is no substantial evidence that will prove complainant's categorical intention to discontinue employment. The story of abandonment is simply doubtful as complainant even refused to execute a resignation letter when she was asked to resign by respondents. In the case of *Garcia v. NLRC*, the Supreme Court emphasized that there must be *concurrence of the intention to abandon and some*

overt acts from which an employee may be deduced as having no more intention to work. Moreover, as correctly observed by the Labor Arbiter, neither notice to explain nor notice of termination was issued to complainant on the ground of abandonment.

There being no just cause for the termination of complainant's employment, the compelling conclusion is that she was illegally dismissed from employment. x x x.[17]

The dispositive portion of the Decision of the NLRC reads:

WHEREFORE, the appeal filed by the respondents is hereby DISMISSED for lack of merit. Accordingly, the Decision dated March 27, 2014 is AFFIRMED.[18]

Respondents' motion for reconsideration was denied for lack of merit by the NLRC in a Resolution[19] dated July 31, 2014.

On October 3, 2014, respondents filed a petition for *certiorari* with the Court of Appeals, questioning whether the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding that petitioner Cabañas was illegally dismissed and, therefore, entitled to her monetary claims.

On April 21, 2016, the Court of Appeals rendered a Decision in favor of herein respondents, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, the instant petition is hereby GRANTED. The assailed Decision dated June 30, 2014 of the National Labor Relations Commission, Sixth Division, in NLRC LAC No. 04-001071-14 is ANNULLED and SET ASIDE.

Private respondents Sheryll Cabañas' complaint for illegal dismissal and money claims is hereby DISMISSED for lack of merit.[20]

The Court of Appeals held that Cabañas was not illegally dismissed, but she abandoned her job. The appellate court stated

---

[17] *Id*. at 79-80.

[18] *Id*. at 80.

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

[20] *Id*. at 48.

that to constitute abandonment, two elements must be present: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act.[21] It found the presence of the elements of abandonment in this case.

The Court of Appeals stated that although the subject of the Memorandum dated September 19, 2013 was "Notice of Termination," the memorandum merely asked Cabañas to explain why she should not be dismissed from employment. The next day, September 20, 2013, Cabañas submitted a handwritten letter in response to the memorandum and she also made a handwritten document wherein she turned over the office files in her custody in favor of Antoinette Castro. Thereafter, she failed to report for work as evidenced by her payslip for the month of September. Based on the foregoing, the Court of Appeals concluded that Cabañas failed to report for work without valid or justifiable reason. It stressed that respondents did not ask Cabañas to leave or prevent her from working in the law firm. Although Cabañas alleged that Atty. Luzano and Mrs. Buenaventura asked her to resign, such allegation ran counter to her statement in her handwritten letter dated September 20, 2013, wherein she thanked the former for treating her well. If indeed she was asked to resign, she should have stated the same in her letter or at the very least, she should not have thanked them.

Anent the second element of abandonment, the Court of Appeals held that Cabañas showed her clear intent to sever the employer-employee relationship when she voluntarily and personally turned over the files in her custody in favor of Antoinette Castro, which is an overt act manifesting her intent to leave her post in the law firm.

The Court of Appeals cited the case of *Jo v. National Labor Relations Commission*[22] to support its ruling that although

---

[21] *Id.* at 44, citing *W.M. Manufacturing, Inc. v. Dalag, et al.*, 774 Phil. 353, 383 (2015).

[22] 381 Phil. 428, 438 (2000).

Cabañas instituted an illegal dismissal case immediately after her alleged termination, she, nonetheless, belies her claim of illegal dismissal when she prayed for separation pay, not reinstatement.

Hence, this petition for review on *certiorari* raising these issues:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT [CABAÑAS] ABANDONED HER EMPLOYMENT.

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT [CABAÑAS] WAS NOT ILLEGALLY DISMISSED.[23]

Petitioner maintains that she did not abandon her work as ruled by the Court of Appeals, but she was illegally dismissed from employment.

She reiterated that when she went to work on September 20, 2013, she was surprised to learn that she had already been replaced. She was no longer given any work and ordered to turn over all the files assigned to her. The said files were received by Antoinette Castro as shown in the turnover that she executed. She inquired from respondent Atty. Luzano the reason therefor, and she was told that it was her last day of work and her unpaid salary would be deposited in her account.

Moreover, petitioner averred that her actuations before she allegedly abandoned her job negate any intention to sever her employment with respondents. On two separate occasions, respondent Atty. Luzano urged her to resign, but she refused to give in to his prodding. She would not have likewise gone to great lengths to prepare and submit her written explanation to the Memorandum dated September 19, 2013 had she intended to relinquish her employment. She wanted to continue to be in

---

[23] *Rollo*, p. 21.

their employ, considering that it was her means of providing for herself and her family.

Further, petitioner stated that thanking the respondents for treating her well does not necessarily counter respondents' act of asking her to resign. She was merely being thankful for being treated well during her employ. She pointed out that respondents neither exerted any effort to question her alleged failure to report for work since September 23, 2013 nor required her to return to work, which could have enabled them to ascertain whether she had intention to resume her employment.

Petitioner maintains that the respondents terminated her employment without just or valid cause and without observing the requirements of due process in violation of her right to security of tenure guaranteed by the Constitution and the Labor Code. Hence, she is entitled to reinstatement and backwages, and her other money claims. However, since reinstatement is no longer feasible due to strained relations considering her unjust termination from employment, she prayed for the payment of separation pay in lieu thereof and her other money claims. She likewise prayed for the payment of attorney's fees as she was compelled to litigate. Although she is represented by the Public Attorney's Office (*PAO*), this should not deter the award of attorney's fees, which is sanctioned by Section 6 of Republic Act (*R.A.*) No. 9406.[24]

The Ruling of the Court

The petition is meritorious.

As a rule, the Court does not review questions of fact, but only questions of law in an appeal by *certiorari* under Rule 45

---

[24] R.A. No. 9406 is entitled,"*AN ACT REORGANIZING AND STRENGTHENING THE PUBLIC ATTORNEY'S OFFICE (PAO), AMENDING FOR THE PURPOSE PERTINENT PROVISIONS OF EXECUTIVE ORDER NO. 292, OTHERWISE KNOWN AS THE "ADMINISTRATIVE CODE OF 1987", AS AMENDED, GRANTING SPECIAL ALLOWANCE TO PAO OFFICIALS AND LAWYERS, AND PROVIDING FUNDS THEREFOR." (Approved on March 23, 2007.)*

of the Rules of Court.[25] The rule, however, is not absolute as the Court may review the facts in labor cases where the findings of the Court of Appeals and of the labor tribunals are contradictory.[26]

In this case, the factual findings of the Labor Arbiter and the NLRC differ from those of the Court of Appeals. Hence, the Court shall review and evaluate the evidence on record.

The main issue is whether or not the Court of Appeals correctly held that petitioner was not illegally dismissed, but petitioner abandoned her job.

In illegal dismissal cases, the general rule is that the employer has the burden of proving that the dismissal was legal. To discharge this burden, the employee must first prove, by substantial evidence, that he/she had been dismissed from employment.[27]

Petitioner contends that she was terminated by respondents since she was not only asked to resign by respondent Atty. Luzano, which she refused to do, but on September 20, 2013, she was asked to turn over all the files assigned to her, and when she asked Atty. Luzano why she was not given any work, she was told that it was her last day of work and that her unpaid salary would just be deposited in her ATM account.

The records show the document[28] dated September 20, 2013 evidencing petitioner's turnover of all the files assigned to her to respondents' Head Administrative Assistant Antoinette L. Castro, who acknowledged receipt of the turnover by affixing her signature on the document. In employment parlance, the turnover of work by an employee signifies severance of

---

[25] *Alaska Milk Corp. v. Ponce*, G.R. Nos. 228412 & 228439, July 26, 2017.

[26] *Id.*

[27] *Spectrum Security Services, Inc. v. Grave*, G.R. No. 196650, June 7, 2017.

[28] Records, p. 80.

employment.[29] In addition, petitioner narrated that when she asked respondent Atty. Luzano, the owner of respondent Law Office, why she was not given any work, Atty. Luzano told her that it was her last day of work and that her unpaid salary would just be deposited in her ATM, which is an overt act of dismissal by petitioner's employer who had the authority to dismiss petitioner.[30] In effect, petitioner was terminated on that day, September 20, 2013, a Friday. This would explain why petitioner no longer reported to work the next working day, September 23, 2013, a Monday, and she filed a complaint for illegal dismissal on October 1, 2013.

As petitioner Cabañas has proven that she was dismissed, the burden to prove that such dismissal was not done illegally is now shifted to her employer, respondents herein. It is incumbent upon the employer to show by substantial evidence that the dismissal of the employee was validly made and failure to discharge that duty would mean that the dismissal is not justified and therefore illegal.[31]

Respondents contended that petitioner was not dismissed from work, but she stopped reporting for work the following Monday, September 23, 2013, after submitting her written explanation to the charges against her on September 20, 2013; hence, petitioner abandoned her work.

For abandonment of work to fall under Article 282 (b) of the Labor Code as gross and habitual neglect of duties, which is a just cause for termination of employment, there must be concurrence of two elements.[32] First, there should be a failure of the employee to report for work without a valid or justifiable reason; and, second, there should be a showing that the employee

---

[29] See *Reyes v. Global Beer Below Zero, Inc.*, G.R. No. 222816, October 4, 2017.

[30] *Id.*

[31] *People's Security, Inc. v. Flores*, G.R. No. 211312, December 5, 2016, 812 SCRA 260, 270.

[32] *Id.*

intended to sever the employer-employee relationship, the second element being the more determinative factor as manifested by overt acts.[33]

The Court of Appeals held that petitioner abandoned her work and the intent to do so was manifested by petitioner's overt act of voluntarily turning over the files in her custody to Antoinette L. Castro, respondents' Head Administrative Assistant.

Thus, petitioner's act of turning over all the files assigned to her to respondents' Head Administrative Assistant is contended to be an overt act of dismissal by petitioner, while it is held to be an overt act of abandonment by the Court of Appeals.

The Court has carefully reviewed the records and we have discussed earlier that petitioner's turnover of all the files in her custody was an overt act of dismissal. Thus, the Court does not agree with the ruling of the Court of Appeals that petitioner abandoned her job and the intent to do so was manifested by her overt act of voluntarily turning over the files in her custody to Antoinette L. Castro for these reasons:

First, the records show that it was petitioner who *first* stated in her Reply[34] to respondents' Position Paper that she was illegally terminated because on September 20, 2013, when she submitted her letter of explanation to the charges against her, she was asked to turn over all the files assigned to her to respondents' Head Administrative Assistant Antoinette L. Castro.[35] In her Position Paper,[36] petitioner also stated that when she submitted her explanation letter on September 20, 2013, she inquired from Atty. Luzano why she was no longer given any work nor was she informed that she already had a replacement, and Atty. Luzano informed her that it was her last day of work and her salary would just be deposited in her ATM account.[37]

---

[33] *Id.*

[34] Records, pp. 76-79.

[35] *Id.* at 77.

[36] Complainant's Position Paper, *rollo*, pp. 86-95.

[37] *Id.* at 91.

Second, respondents did not mention the fact that it was the petitioner who voluntarily turned over the files assigned to her in their Position Paper, or in their Reply to Complainant's Position Paper, or in their appeal[38] from the Labor Arbiter's Decision before the NLRC, but only mentioned it for the first time in their Reply Memorandum[39] to Complainant's Comment/Opposition before the NLRC. Such an important fact constituting the overt act of abandonment as defense could not have been taken for granted to not be alleged at the first instance by respondents in their Position Paper if it were true that it was petitioner who voluntarily turned over all the files assigned to her to respondents' representative. Hence, the belated allegation before the NLRC was merely an afterthought on the part of respondents.

Third, if petitioner wanted to abandon her job, she could just have left without turning over all the files assigned to her.

Fourth, the filing of an illegal dismissal case is inconsistent with abandonment of work.

Moreover, the termination of an employee must be effected in accordance with law. Therefore, the employer must furnish the worker or employee sought to be dismissed with two (2) written notices, *i.e*., (a) notice which apprises the employee of the particular acts or omissions for which his/her dismissal is sought; and (b) subsequent notice which informs the employee of the employer's decision to dismiss him/her.[40] In this case, as observed by the Labor Arbiter and the NLRC, respondents did not issue a notice to apprise/explain and a notice of termination on the ground of abandonment; hence, respondents failed to comply with procedural due process.

Further, the Court of Appeals ruled that petitioner's prayer for separation pay, not reinstatement, belies her claim of illegal dismissal on the basis of *Jo v. National Labor Relations Commission*.[41]

---

[38] Memorandum of Appeal; *id*. at 138-152.

[39] Records, p. 378.

[40] *Kams International, Inc., et al. v. NLRC*, *et al., supra* note 11.

[41] *Supra* note 21.

The Court finds that the facts and the finding of the Court in *Jo v. National Labor Relations Commission* is different from this case; hence, the said ruling therein does not apply in this case.

The Court of Appeals summarized *Jo v. National Labor Relations Commission*, thus:

> x x x [P]rivate respondent Mejila was hired as a barber and caretaker of a barbershop. When the barbershop was sold to petitioners Jo, Mejila retained his job as a barber-caretaker. He, however, had an altercation with his co-barber which prompted him to institute a labor case against the latter and petitioners. Pending the resolution thereof, petitioners assured him that he was not being driven out as barber-caretake[r]. Hence, Mejila continued reporting for work at the barbershop. But, on January 2, 1993, he turned over the duplicate keys of the shop to the cashier and took away all his belongings therefrom. On January 8, 1993, he began working as a regular barber at the newly-opened Goldilocks Barbershop also in Iligan City. Four (4) days after, Mejila instituted a complaint for illegal dismissal against petitioners Jo. x x x.[42]

In *Jo v. National Labor Relations Commission*, the Court found that therein private respondent Mejila's intention to sever his ties with his employers or petitioners therein were manifested by the following circumstances: (1) private respondent bragged to his co-workers his plan to quit his job at Cesar's Palace Barbershop and Massage Clinic as borne out by the affidavit executed by his former co-workers; (2) he surrendered the shop's keys and took away all his things from the shop; (3) he did not report anymore to the shop without giving any valid and justifiable reason for his absence; (4) he immediately sought a regular employment in another barbershop, despite previous assurance that he could remain in petitioners' employ; and (5) he filed a complaint for illegal dismissal without praying for reinstatement.[43]

We find that the ruling in *Jo v. National Labor Relations Commission* that the employee's prayer for separation pay, not

---

[42] *Rollo*, p. 46.

[43] *Jo v. NLRC, supra* note 22, at 437-438.

reinstatement, belied his claim of illegal dismissal was made in consideration of *all* the circumstances that showed the employee's intention to sever his ties with his employers, including the employee's contemporaneous conduct, and not only because of his prayer for separation pay. Hence, it does not apply in this case.

An employee's prayer for separation pay is an indication of the strained relations between the parties. Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable.[44] The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone.[45] Thus, it is the task of labor tribunals and the appellate courts to resolve whether the employee be reinstated or granted separation pay.

In this case, the Labor Arbiter noted that complainant-herein petitioner Cabañas prayed for separation pay in her Complaint, and the Labor Arbiter was convinced that it is more fitting to grant separation pay to complainant in lieu of reinstatement.[46] The NLRC affirmed the decision of the Labor Arbiter. The Court accords respect to the decision of the labor tribunals considering the facts of this case.

Further, petitioner, whose legal counsel is a Public Attorney of the PAO, prayed for the award of attorney's fees in her Position Paper and now seeks the award of attorney's fees as she was compelled to litigate in order to seek redress. She contends that R.A. No. 9406 allows the PAO to receive attorney's fees, thus:

SEC. 6. New sections are hereby inserted in Chapter 5, Title III, Book IV of Executive Order No 292 to read as follows:

x x x x x x x x x

---

[44] *Symex Security Services, Inc. v. Rivera, Jr.*, G.R. No. 202613, November 8, 2017.

[45] *Id.*

[46] *Rollo*, p. 133.

"SEC. 16-D. *Exemption from Fees and Costs of the Suit*. — The clients of the PAO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.

The costs of the suit, attorney's fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO."[47]

Indeed, petitioner is entitled to the award of attorney's fees equivalent to ten percent (10%) of the total monetary award.[48] R.A. No. 9406 sanctions the receipt by the PAO of attorney's fees, and provides that such fees shall constitute a trust fund to be used for the special allowances of their officials and lawyers.[49] The matter of entitlement to attorney's fees by a claimant who was represented by the PAO has already been settled in *Our Haus Realty Development Corporation v. Parian*.[50] The Court ruled therein that the employees are entitled to attorney's fees, notwithstanding their availment of free legal services offered by the PAO and the amount of attorney's fees shall be awarded to the PAO as a token recompense to them for their provision of free legal services to litigants who have no means of hiring a private lawyer.[51]

In fine, petitioner Cabañas was dismissed by respondents without just cause and without procedural due process.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The assailed Decision dated April 21, 2016 and Resolution dated June 30, 2016 of the Court of Appeals in CA-

---

[47] Emphasis supplied.

[48] *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, 687 Phil. 351, 375 (2012).

[49] *Alva v. High Capacity Security Force, Inc*., G.R. No. 203328, November 8, 2017.

[50] 740 Phil. 699, 720 (2014).

[51] *Alva v. High Capacity Security Force, Inc*., *supra* note 49.

G.R. SP No. 137447 are hereby **REVERSED** and **SET ASIDE**, and the Decision dated June 30, 2014 and Resolution dated July 31, 2014 of the National Labor Relations Commission, Sixth Division in NLRC LAC No. 04-001071-14 are hereby **REINSTATED** and **UPHELD but MODIFIED** to the effect that, in addition to the award of separation pay of ₱23,712.00; backwages of ₱169,540.80; service incentive leave pay of ₱2,798.70 and 13th month pay of ₱14,553.24, petitioner Sheryll R. Cabañas is also entitled to the award of attorney's fees equivalent to ten percent (10%) of the total monetary award.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 226013. July 2, 2018]

LUZVIMINDA DELA CRUZ MORISONO, *petitioner, vs.* **RYOJI*[*] MORISONO and LOCAL CIVIL REGISTRAR OF QUEZON CITY**, *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGES; RULES ON DIVORCE PREVAILING IN THIS JURISDICTION.— The rules on divorce prevailing in this jurisdiction can be summed up as follows: *first*, Philippine laws do not provide for absolute divorce, and hence, the courts cannot grant the same; *second*, consistent with Articles 15 and 17 of the Civil Code, the marital bond between two (2) Filipino citizens cannot be dissolved

---

[*] "Kyoji" in some parts of the *rollo*.

even by an absolute divorce obtained abroad; *third*, an absolute divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws; and *fourth*, **in mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry**.

2. ID.; ID.; ID.; ID.; UNDER ARTICLE 26(2), IN MIXED MARRIAGES INVOLVING A FILIPINO AND A FOREIGNER, THE FORMER IS ALLOWED TO CONTRACT A SUBSEQUENT MARRIAGE IN CASE THE ABSOLUTE DIVORCE IS VALIDLY OBTAINED ABROAD BY THE ALIEN SPOUSE CAPACITATING HIM OR HER TO REMARRY; ELEMENTS.— The fourth rule, which has been invoked by Luzviminda in this case, is encapsulated in Article 26 (2) of the Family Code which reads: Article 26. x x x Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law. This provision confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage. It authorizes our courts to adopt the effects of a foreign divorce decree precisely because the Philippines does not allow divorce. Philippine courts cannot try the case on the merits because it is tantamount to trying a divorce case. Under the principles of comity, our jurisdiction recognizes a valid divorce obtained by a spouse of foreign nationality, but the legal effects thereof, *e.g.*, on custody, care and support of the children or property relations of the spouses, must still be determined by our courts. The rationale for this rule is to avoid the absurd situation of a Filipino as still being married to his or her alien spouse, although the latter is no longer married to the former because he or she had obtained a divorce abroad that is recognized by his or her national law. x x x According to *Republic v. Orbecido III*, the following elements must concur in order for Article 26 (2) to apply, namely: (*a*) that there is a valid marriage celebrated between a Filipino citizen and a foreigner; and (*b*) that a valid

divorce is obtained abroad by the alien spouse capacitating him or her to remarry. In the same case, the Court also initially clarified that Article 26 (2) applies not only to cases where a foreigner was the one who procured a divorce of his/her marriage to a Filipino spouse, but also to instances where, at the time of the celebration of the marriage, the parties were Filipino citizens, but later on, one of them acquired foreign citizenship by naturalization, initiated a divorce proceeding, and obtained a favorable decree.

3. ID.; ID.; ID.; ID.; ID.; APPLICATION OF THE RULE EXTENDED TO MIXED MARRIAGES WHERE IT WAS THE FILIPINO CITIZEN WHO DIVORCED THE FOREIGN SPOUSE.— [I]n the recent case of *Republic v. Manalo* (*Manalo*), the Court *En Banc* extended the application of Article 26 (2) of the Family Code to further cover mixed marriages where it was the Filipino citizen who divorced his/her foreign spouse. x x x Thus, pursuant to *Manalo*, foreign divorce decrees obtained to nullify marriages between a Filipino and an alien citizen may already be recognized in this jurisdiction, regardless of who between the spouses initiated the divorce; provided, of course, that the party petitioning for the recognition of such foreign divorce decree – presumably the Filipino citizen – must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it.

CAGUIOA, *J.*, *separate concurring opinion*:

CIVIL LAW; FAMILY CODE; MARRIAGES; ARTICLE 26(2) ON DIVORCE OF MARRIED FILIPINO AND FOREIGNER; REQUISITES PRESENT IN CASE AT BAR.— I submit, as I did in the case of *Republic v. Manalo* (*Manalo*), that Article 26(2) of the Family Code had been crafted to serve as an exception to the nationality principle embodied in Article 15 of the Civil Code. Such exception is narrow, and intended *only* to address the unfair situation that results when a foreign national obtains a divorce decree against a Filipino citizen, leaving the latter stuck in a marriage without a spouse. x x x Petitioner herein is a Filipino citizen, seeking recognition of a divorce decree obtained in accordance with Japanese law. Unlike the divorce decree in question in *Manalo*, the divorce decree herein had been obtained *not* by petitioner alone, but

> *jointly*, by petitioner *and* her then husband, who, in turn, is a Japanese national. Hence, the twin requisites for the application of the exception under Article 26(2) are present — there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and **a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.**

APPEARANCES OF COUNSEL

Divinagracia Solis & Associates Law Offices for petitioner.
Office of the Solicitor General for public respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is a direct recourse to the Court from the Regional Trial Court of Quezon City, Branch 105 (RTC), through a petition for review on *certiorari*[1] assailing the Decision[2] dated July 18, 2016 of the RTC in SP. PROC. NO. Q-12-71830 which denied petitioner Luzviminda Dela Cruz Morisono's (Luzviminda) petition before it.

The Facts

Luzviminda was married to private respondent Ryoji Morisono (Ryoji) in Quezon City on December 8, 2009.[3] Thereafter, they lived together in Japan for one (1) year and three (3) months but were not blessed with a child. During their married life, they would constantly quarrel mainly due to Ryoji's philandering ways, in addition to the fact that he was much older than Luzviminda.[4] As such, she and Ryoji submitted a "Divorce by Agreement" before the City Hall of Mizuho-Ku, Nagoya City, Japan, which was eventually approved on January 17, 2012

---

[1] *Rollo*, pp. 9-25.

[2] *Id.* at 26-29. Penned by Presiding Judge Rosa M. Samson.

[3] *Id.* at 26 and 30.

[4] *Id.* at 27.

and duly recorded with the Head of Mizuho-Ku, Nagoya City, Japan on July 1, 2012.[5] In view of the foregoing, she filed a petition for recognition of the foreign divorce decree obtained by her and Ryoji[6] before the RTC so that she could cancel the surname of her former husband in her passport and for her to be able to marry again.[7]

After complying with the jurisdictional requirements, the RTC set the case for hearing. Since nobody appeared to oppose her petition except the government, Luzviminda was allowed to present her evidence *ex-parte*. After the presentation and absent any objection from the Public Prosecutor, Luzviminda's formal offer of evidence was admitted as proof of compliance with the jurisdictional requirements, and as part of the testimony of the witnesses.[8]

The RTC Ruling

In a Decision[9] dated July 18, 2016, the RTC denied Luzviminda's petition. It held that while a divorce obtained abroad by an alien spouse may be recognized in the Philippines – provided that such decree is valid according to the national law of the alien – the same does not find application when it was the Filipino spouse, *i.e.*, petitioner, who procured the same. Invoking the nationality principle provided under Article 15 of the Civil Code, in relation to Article 26 (2) of the Family Code, the RTC opined that since petitioner is a Filipino citizen whose national laws do not allow divorce, the foreign divorce decree she herself obtained in Japan is not binding in the Philippines;[10] hence, this petition.

---

[5] See Divorce Notification; *id*. at 37-38.

[6] Dated August 24, 2012. *Id*. at 30-33.

[7] See *id*. at 27.

[8] See *id*. at 27-28.

[9] *Id*. at 26-29.

[10] See *id*. at 28-29.

The Issue Before the Court

The issue for the Court's resolution is whether or not the RTC correctly denied Luzviminda's petition for recognition of the foreign divorce decree she procured with Ryoji.

The Court's Ruling

The petition is partly meritorious.

The rules on divorce prevailing in this jurisdiction can be summed up as follows: *first*, Philippine laws do not provide for absolute divorce, and hence, the courts cannot grant the same; *second*, consistent with Articles 15[11] and 17[12] of the Civil Code, the marital bond between two (2) Filipino citizens cannot be dissolved even by an absolute divorce obtained abroad; *third*, an absolute divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws; and *fourth*, **in mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry**.[13]

The fourth rule, which has been invoked by Luzviminda in this case, is encapsulated in Article 26 (2) of the Family Code which reads:

Article 26. x x x

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad

---

[11] Article 15 of the Civil Code reads:

Article 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

[12] Article 17 of the Civil Code reads:

Article 17. The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.

[13] See *Republic v. Manalo*, G.R. No. 221029, April 24, 2018; citations omitted.

by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

This provision confers jurisdiction on Philippine courts to extend the effect of a foreign divorce decree to a Filipino spouse without undergoing trial to determine the validity of the dissolution of the marriage. It authorizes our courts to adopt the effects of a foreign divorce decree precisely because the Philippines does not allow divorce. Philippine courts cannot try the case on the merits because it is tantamount to trying a divorce case. Under the principles of comity, our jurisdiction recognizes a valid divorce obtained by a spouse of foreign nationality, but the legal effects thereof, *e.g.*, on custody, care and support of the children or property relations of the spouses, must still be determined by our courts. The rationale for this rule is to avoid the absurd situation of a Filipino as still being married to his or her alien spouse, although the latter is no longer married to the former because he or she had obtained a divorce abroad that is recognized by his or her national law.[14] In *Corpuz v. Sto. Tomas*,[15] the Court held:

> As the RTC correctly stated, the provision was included in the law "**to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse**." The legislative intent is for the benefit of the Filipino spouse, by clarifying his or her marital status, settling the doubts created by the divorce decree. **Essentially, the second paragraph of Article 26 of the Family Code provided the Filipino spouse a substantive right to have his or her marriage to the alien spouse considered as dissolved, capacitating him or her to remarry.** Without the second paragraph of Article 26 of the Family Code, the judicial recognition of the foreign decree of divorce, whether in a proceeding instituted precisely for that purpose or as a related issue in another proceeding, would be of no significance to the Filipino spouse since our laws do not recognize divorce as a mode of severing the marital bond; Article 17 of the Civil Code provides that the policy against absolute divorces cannot be subverted by judgments promulgated in a foreign country. The inclusion of

[14] See *id.*; citations omitted.

[15] 642 Phil. 420 (2010).

the second paragraph in Article 26 of the Family Code provides the direct exception to this rule and serves as basis for recognizing the dissolution of the marriage between the Filipino spouse and his or her alien spouse.

Additionally, an action based on the second paragraph of Article 26 of the Family Code is not limited to the recognition of the foreign divorce decree. **If the court finds that the decree capacitated the alien spouse to remarry, the courts can declare that the Filipino spouse is likewise capacitated to contract another marriage**. No court in this jurisdiction, however, can make a similar declaration for the alien spouse (other than that already established by the decree), whose status and legal capacity are generally governed by his national law.[16] (Emphases and underscoring supplied)

According to *Republic v. Orbecido III*,[17] the following elements must concur in order for Article 26 (2) to apply, namely: (*a*) that there is a valid marriage celebrated between a Filipino citizen and a foreigner; and (*b*) that a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.[18] In the same case, the Court also initially clarified that Article 26 (2) applies not only to cases where a foreigner was the one who procured a divorce of his/her marriage to a Filipino spouse, but also to instances where, at the time of the celebration of the marriage, the parties were Filipino citizens, but later on, one of them acquired foreign citizenship by naturalization, initiated a divorce proceeding, and obtained a favorable decree.[19]

However, in the recent case of *Republic v. Manalo* (*Manalo*),[20] the Court *En Banc* extended the application of Article 26 (2) of the Family Code to further cover mixed marriages where it was the Filipino citizen who divorced his/her foreign spouse. Pertinent portions of the ruling read:

---

[16] *Id*. at 430; citations omitted.

[17] 509 Phil. 108 (2005).

[18] *Id*. at 115.

[19] See *supra* note 13.

[20] *Id*.

Now, the Court is tasked to resolve **whether, under the same provision, a Filipino citizen has the capacity to remarry under Philippine law after initiating a divorce proceeding abroad and obtaining a favorable judgment against his or her alien spouse who is capacitated to remarry**. x x x.

We rule in the affirmative.

x x x x x x x x x

When this Court recognized a foreign divorce decree that was initiated and obtained by the Filipino spouse and extended its legal effects on the issues of child custody and property relation, it should not stop short in likewise acknowledging that one of the usual and necessary consequences of absolute divorce is the right to remarry. Indeed, there is no longer a mutual obligation to live together and observe fidelity. When the marriage tie is severed and ceased to exist, the civil status and the domestic relation of the former spouses change as both of them are freed from the marital bond.

x x x x x x x x x

Paragraph 2 of Article 26 speaks of "*a divorce x x x validly obtained abroad by the alien spouse capacitating him or her to remarry.*" **Based on a clear and plain reading of the provision, it only requires that there be a divorce validly obtained abroad. The letter of the law does not demand that the alien spouse should be the one who initiated the proceeding wherein the divorce decree was granted. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding.** The Court is bound by the words of the statute; neither can We put words in the mouths of the lawmakers. "The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by the use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure."

Assuming, for the sake of argument, that the word "*obtained*" should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act. Laws have ends to achieve, and statutes should be so construed as not to defeat but to carry out such ends and purposes. x x x.

x x x x x x x x x

To reiterate, the purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. The provision is a corrective measure to address an anomaly where the Filipino spouse is tied to the marriage while the foreign spouse is free to marry under the laws of his or her country. **Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law**.

x x x x x x x x x

A Filipino who is married to another Filipino is not similarly situated with a Filipino who is married to a foreign citizen. There are real, material and substantial differences between them. *Ergo*, they should not be treated alike, both as to rights conferred and liabilities imposed. Without a doubt, there are political, economic, cultural, and religious dissimilarities as well as varying legal systems and procedures, all too unfamiliar, that a Filipino national who is married to an alien spouse has to contend with. More importantly, while a divorce decree obtained abroad by a Filipino against another Filipino is null and void, a divorce decree obtained by an alien against his or her Filipino spouse is recognized if made in accordance with the national law of the foreigner.

On the contrary, there is no real and substantial difference between a Filipino who initiated a foreign divorce proceedings and a Filipino who obtained a divorce decree upon the instance of his or her alien spouse. In the eyes of the Philippine and foreign laws, both are considered as Filipinos who have the same rights and obligations in an alien land. The circumstances surrounding them are alike. Were it not for Paragraph 2 of Article 26, both are still married to their foreigner spouses who are no longer their wives/husbands. Hence, to make a distinction between them

based merely on the superficial difference of whether they initiated the divorce proceedings or not is utterly unfair. Indeed, the treatment gives undue favor to one and unjustly discriminate against the other.

x x x x x x x x x

The declared State policy that marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State, should not be read in total isolation but must be harmonized with other constitutional provisions. Aside from strengthening the solidarity of the Filipino family, the State is equally mandated to actively promote its total development. It is also obligated to defend, among others, the right of children to special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development. To Our mind, the State cannot effectively enforce these obligations if We limit the application of Paragraph 2 of Article 26 only to those foreign divorce initiated by the alien spouse. x x x.

A prohibitive view of Paragraph 2 of Article 26 would do more harm than good. If We disallow a Filipino citizen who initiated and obtained a foreign divorce from the coverage of Paragraph 2 of Article 26 and still require him or her to first avail of the existing "mechanisms" under the Family Code, any subsequent relationship that he or she would enter in the meantime shall be considered as illicit in the eyes of the Philippine law. Worse, any child born out of such "extra-marital" affair has to suffer the stigma of being branded as illegitimate. Surely, these are just but a few of the adverse consequences, not only to the parent but also to the child, if We are to hold a restrictive interpretation of the subject provision. The irony is that the principle of inviolability of marriage under Section 2, Article XV of the Constitution is meant to be tilted in favor of marriage and against unions not formalized by marriage, but without denying State protection and assistance to live-in arrangements or to families formed according to indigenous customs.

This Court should not turn a blind eye to the realities of the present time. With the advancement of communication and information technology, as well as the improvement of the transportation system that almost instantly connect people from all over the world, mixed marriages have become not too uncommon. Likewise, it is recognized that not all marriages are made in heaven and that imperfect humans more often than not create imperfect unions. Living in a flawed world,

the unfortunate reality for some is that the attainment of the individual's full human potential and self-fulfillment is not found and achieved in the context of a marriage. Thus, it is hypocritical to safeguard the quantity of existing marriages and, at the same time, brush aside the truth that some of them are of rotten quality.

Going back, We hold that **marriage, being a mutual and shared commitment between two parties, cannot possibly be productive of any good to the society where one is considered released from the marital bond while the other remains bound to it**. x x x.[21] (Emphases and underscoring supplied)

Thus, pursuant to *Manalo*, foreign divorce decrees obtained to nullify marriages between a Filipino and an alien citizen may already be recognized in this jurisdiction, regardless of who between the spouses initiated the divorce; provided, of course, that the party petitioning for the recognition of such foreign divorce decree – presumably the Filipino citizen – must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it.[22]

In this case, a plain reading of the RTC ruling shows that the denial of Luzviminda's petition to have her foreign divorce decree recognized in this jurisdiction was anchored on the sole ground that she admittedly initiated the divorce proceedings which she, as a Filipino citizen, was not allowed to do. In light of the doctrine laid down in *Manalo*, such ground relied upon by the RTC had been rendered nugatory. However, the Court cannot just order the grant of Luzviminda's petition for recognition of the foreign divorce decree, as Luzviminda has yet to prove the fact of her "Divorce by Agreement" obtained in Nagoya City, Japan and its conformity with prevailing Japanese laws on divorce. Notably, the RTC did not rule on such issues. Since these are questions which require an examination of various factual matters, a remand to the court *a quo* is warranted.

---

[21] See *id.*; citations omitted.

[22] See *id*.; citing *Garcia v. Recio*, 418 Phil. 723, 731 (2001). See also *Medina v. Koike*, 791 Phil. 645 (2016); *Corpuz v. Sto. Tomas*, *supra* note 15; *Bayot v.* CA, 591 Phil. 452 (2008); and *San Luis v. San Luis*, 543 Phil. 275 (2007).

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated July 18, 2016 of the Regional Trial Court of Quezon City, Branch 105 in SP. PROC. NO. Q-12-71830 is hereby **REVERSED** and **SET ASIDE**. Accordingly, the instant case is **REMANDED** to the court *a quo* for further proceedings, as directed in this Decision.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta,* and *Reyes, Jr., JJ.,* concur.

Caguioa, J., maintains his dissent in *RP vs. Manalo,* see separate concurring opinion.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.:*

I concur in the result.

I submit, as I did in the case of *Republic v. Manalo*[1] *(Manalo),* that Article 26(2) of the Family Code had been crafted to serve as an exception to the nationality principle embodied in Article 15 of the Civil Code. Such exception is narrow, and intended *only* to address the unfair situation that results when a foreign national obtains a divorce decree against a Filipino citizen, leaving the latter stuck in a marriage without a spouse.

As stated in my *Dissenting Opinion* in *Manalo:*

x x x [R]ather than serving as bases for the blanket recognition of foreign divorce decrees in the Philippines, I believe that the Court's rulings in [*Van Dorn v. Judge Romillo, Jr.*[2]], [*Republic of the Philippines v. Orbecido III*[3]] and [*Dacasin v. Dacasin*[4]] merely clarify

---

[1] G.R. No. 221029, April 24, 2018.

[2] 223 Phil. 357 (1985) [Per *J.* Melencio-Herrera, First Division].

[3] 509 Phil. 108 (2005) [Per *J.* Quisumbing, First Division].

[4] 625 Phil. 494 (2010) [Per *J.* Carpio, Second Division].

the parameters for the application of the nationality principle found in Article 15 of the Civil Code, and the exception thereto found in Article 26(2) [of] the Family Code. These parameters may be summarized as follows:

1. Owing to the nationality principle, all Filipino citizens are covered by the prohibition against absolute divorce. As a consequence of such prohibition, a divorce decree obtained abroad by a Filipino citizen cannot be enforced in the Philippines. To allow otherwise would be to permit a Filipino citizen to invoke foreign law to evade an express prohibition under Philippine law.

2. Nevertheless, the effects of a divorce decree obtained by a foreign national may be extended to the Filipino spouse, provided the latter is able to prove (i) the issuance of the divorce decree, and (ii) the personal law of the foreign spouse allowing such divorce. This exception, found under Article 26(2) of the Family Code, respects the binding effect of the divorce decree on the foreign national, and merely recognizes the residual effect of such decree on the Filipino spouse.[5]

Petitioner herein is a Filipino citizen, seeking recognition of a divorce decree obtained in accordance with Japanese law.

Unlike the divorce decree in question in *Manalo,* the divorce decree herein had been obtained *not* by petitioner alone, but *jointly,* by petitioner *and* her then husband, who, in turn, is a Japanese national. Hence, the twin requisites for the application of the exception under Article 26(2) are present — there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and **a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.**[6]

Based on these premises, I vote to **GRANT** the Petition.

---

[5] *J.* Caguioa, Dissenting Opinion in *Republic v. Manalo,* G.R. No. 221029, April 24, 2018, p. 6.

[6] *Republic v. Orbecido III, supra* note 3.

SECOND DIVISION

[G.R. No. 229861. July 2, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANCISCO EJERCITO**, *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; AN APPEAL IN CRIMINAL CASES THROWS THE ENTIRE CASE OPEN FOR REVIEW.—** [I]n criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. **CRIMINAL LAW; RAPE UNDER ARTICLE 266-A (1) OF THE REVISED PENAL CODE (RPC), AS AMENDED BY RA 8353; THE GRAVAMAN OF RAPE IS SEXUAL INTERCOURSE WITH A WOMAN AGAINST HER WILL.—** For a charge of Rape by sexual intercourse under Article 266-A (1) of the RPC, as amended by RA 8353, to prosper, the prosecution must prove that: (*a*) the offender had carnal knowledge of a woman; and (*b*) he accomplished this act under the circumstances mentioned in the provision, *e.g.*, through force, threat or intimidation. The gravamen of Rape is sexual intercourse with a woman against her will.

3. **ID.; RAPE; BETWEEN ARTICLE 266-A OF THE RPC, AS AMENDED BY RA 8353 AND SECTION 5(b) OF RA 7610 (SPECIAL PROTECTION AGAINST CHILD ABUSE, ON CHILD EXPLOITED TO PROSTITUTION OR SUBJECTED TO OTHER SEXUAL ABUSE), BOTH APPLICABLE TO THE CRIME OF RAPE COMMITTED AGAINST A 15-YEAR OLD VICTIM IN CASE AT BAR, THE COURT DEEMS IT APT TO APPLY THE FORMER.—** The Court remains mindful that Section 5 (b) of

RA 7610, which, to note, was passed prior to RA 8353 on June 17, 1992, equally penalizes those who commit sexual abuse, by means of either (*a*) **sexual intercourse or** (*b*) lascivious conduct, **against "a child exploited in prostitution or subjected to other sexual abuse**," x x x In this case, it has been established that Ejercito committed the act of sexual intercourse against and without the consent of AAA, who was only fifteen (15) years old at that time. As such, she is considered under the law as a child who is "exploited in prostitution or subjected to other sexual abuse;" hence, Ejercito's act may as well be classified as a violation of Section 5 (b) of RA 7610. Between Article 266-A of the RPC, as amended by RA 8353, and Section 5 (b) of RA 7610, the Court deems it apt to clarify that Ejercito should be convicted under the former. Verily, penal laws are crafted by legislature to punish certain acts, and when two (2) penal laws may both theoretically apply to the same case, then the law which is more special in nature, regardless of the time of enactment, should prevail. x x x After much deliberation, the Court herein observes that RA 8353 amending the RPC should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of RA 7610. Indeed, while RA 7610 has been considered as a special law that covers the sexual abuse of minors, RA 8353 has expanded the reach of our already existing rape laws. These existing rape laws should not only pertain to the old Article 335 of the RPC but also to the provision on sexual intercourse under Section 5 (b) of RA 7610 which, applying *Quimvel*'s characterization of a child "exploited in prostitution or subjected to other abuse," virtually punishes the rape of a minor. It bears to emphasize that not only did RA 8353 re-classify the crime of Rape from being a crime against chastity to a crime against persons, it also provided for more particularized instances of rape and conjunctively, a new set of penalties therefor. Under RA 8353, Rape is considered committed not only through the traditional means of having carnal knowledge of a woman (or penile penetration) but also through certain lascivious acts now classified as rape by sexual assault.

4. ID.; ID.; ID.; PENALTY.— In this case, it has been established that Ejercito had carnal knowledge of AAA through force, threat, or intimidation. Hence, he should be convicted of rape under paragraph 1 (a), Article 266-A of the RPC, as amended by RA 8353. x x x As such, pursuant to the first paragraph of Article

266-B of the same law, Ejercito should be meted with the penalty of *reclusion perpetua*, as ruled by both the RTC and the CA. Further, the Court affirms the monetary awards in AAA's favor in the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, all with legal interest at the rate of six percent (6%) per annum from finality of this ruling until fully paid, since the same are in accord with prevailing jurisprudence.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Paulino B. Labrado for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated October 28, 2016 of the Court of Appeals (CA) in CA-G.R. CEB CR. HC. No. 01656, which affirmed the Decision[3] dated April 8, 2013 of the Regional Trial Court of [redacted],[4] Branch 60

[1] See Notice of Appeal dated November 28, 2016; *rollo,* pp. 21-23.

[2] *Id*. at 4-20. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi concurring.

[3] Records, pp. 212-221. Penned by Presiding Judge Leopoldo V. Cañete.

[4] 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 RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015,

(RTC) in Crim. Case No. CEB-BRL-1300 finding accused-appellant Francisco Ejercito (Ejercito) guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,[5] otherwise known as "The Anti-Rape Law of 1997."

The Facts

This case stemmed from an Information[6] filed before the RTC charging Ejercito of the aforesaid crime, the accusatory portion of which reads:

> That on or about the 10th day of October, 2001 at past 7:00 o'clock in the evening, at [redacted], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with [AAA], a minor, who is only fifteen (15) years old at the time of the commission of the offense against her will and consent and which act demeans the intrinsic worth and dignity of said minor as a human being.
>
> CONTRARY TO LAW.[7]

The prosecution alleged that at around six (6) o'clock in the evening of October 10, 2001, AAA, then a fifteen (15) year old high school student, was cleaning the chicken cage at the back of their house located in [redacted] when suddenly, she saw Ejercito pointing a gun at her saying, "*Ato ato lang ni.*

---

entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.)

[5] 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," approved on September 30, 1997.

[6] Records, pp. 1-2.

[7] *Id*. at 1.

Sabta lang ko. Ayaw gyud saba para dili madamay imo pamilya." AAA pleaded, "'*Tang,* don't do this to me" but the latter replied, "Do you want me to kill you? I will even include your mother and father." Thereafter, Ejercito dragged AAA to a nearby barn, removed her shorts and underwear, while he undressed and placed himself on top of her. He covered her mouth with his right hand and used his left hand to point the gun at her, as he inserted his penis into her vagina and made back and forth movements. When he finished the sexual act, Ejercito casually walked away and warned AAA not to tell anybody or else, her parents will get killed. Upon returning to her house, AAA hurriedly went to the bathroom where she saw a bloody discharge from her vagina. The following day, AAA absented herself from school and headed to the house of her aunt, CCC, who asked if she was okay. At that point, AAA tearfully narrated the incident and requested CCC to remain silent, to which the latter reluctantly obliged.[8]

Haunted by her harrowing experience, AAA was unable to focus on her studies. Wanting to start her life anew, AAA moved to the city to continue her schooling there. However, Ejercito was able to track AAA down, and made the latter his sex slave. From 2002 to 2005, Ejercito persistently contacted AAA, threatened and compelled her to meet him, and thereafter, forced her to take *shabu* and then sexually abused her. Eventually, AAA got hooked on drugs, portrayed herself as Ejercito's paramour, and decided to live together. When Ejercito's wife discovered her husband's relationship with AAA, the former filed a complaint against AAA before the barangay. By this time, even AAA's mother, BBB, found out the illicit relationship and exerted efforts to separate them from each other. Finally, after undergoing rehabilitation, AAA finally disclosed to her parents that she was raped by Ejercito back in 2001 and reported the same to the authorities on September 3, 2005.[9]

In his defense, Ejercito pleaded not guilty to the charge against him, and maintained that he had an illicit relationship with AAA.

---

[8] See *rollo*, pp. 5-6.

[9] See *id.* at 6-7.

He averred that during the existence of their affair from 2002 to 2004, he and AAA frequently had consensual sex and the latter even abandoned her family in order to live with him in various places in [redacted]. He even insisted that he and AAA were vocal about their choice to live together despite vehement objections from his own wife and AAA's mother. Finally, he pointed out that when AAA was forcibly taken from him by her mother, as well as police authorities, no charges were filed against him. Thus, he was shocked and dismayed when he was charged with the crime of Rape which purportedly happened when they were lovers.[10]

The RTC Ruling

In a Decision[11] dated April 8, 2013, the RTC found Ejercito guilty beyond reasonable doubt of the crime charged and, accordingly, sentenced him to suffer the penalty of *reclusion perpetua*, and ordered him to separately pay AAA and her parents ₱50,000.00 each as moral damages.[12]

Aggrieved, Ejercito appealed[13] to the CA.

The CA Ruling

In a Decision[14] dated October 28, 2016, the CA affirmed the RTC ruling with modification, convicting Ejercito of Rape defined and penalized under Article 335 of the RPC, and accordingly, sentenced him to suffer the penalty of *reclusion perpetua*, and ordered him to pay the offended party, AAA, the amounts of ₱75,000.00 as civil indemnity *ex delicto*, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with legal interest of six percent (6%) per annum to be imposed on all monetary awards from finality of the ruling until fully paid.[15]

---

[10] See *id*. at 7-8.

[11] Records, pp. 212-221.

[12] See *id*. at 221.

[13] See Notice of Appeal dated May 2, 2013; *id*. at 224-225.

[14] *Rollo*, pp. 4-20.

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

Agreeing with the RTC's findings, the CA held that through AAA's clear and straightforward testimony, the prosecution had established that Ejercito raped her in 2001. On the other hand, it did not give credence to Ejercito's sweetheart defense, pointing out that assuming *arguendo* that he indeed eventually had a relationship with AAA, their first sexual encounter in 2001 was without the latter's consent and was attended with force and intimidation as he pointed a gun at her while satisfying his lustful desires.[16]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Ejercito's conviction for the crime of Rape must be upheld.

The Court's Ruling

The appeal is without merit.

Time and again, it has been held that in criminal cases, "an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[17]

Based on this doctrine, the Court, upon careful review of this case, deems it proper to correct the attribution of the crime for which Ejercito should be convicted and, consequently, the corresponding penalty to be imposed against him, as will be explained hereunder.

At the onset, the Court observes that the CA, in modifying the RTC ruling, erroneously applied the old Rape Law, or Article

---

[16] See *id*. at 9-18.

[17] See *Miguel v. People*, G.R. No. 227038, July 31, 2017, citing *People v. Alejandro*, G.R. No. 225608, March 13, 2017.

335 of the RPC, since the same was already repealed upon the enactment of RA 8353 in 1997. To recount, the Information alleges "[t]hat on or about the **10th day of October 2001** x x x [Ejercito], with lewd design and by means of force and intimidation, did then and there willfully, unlawfully and feloniously lie and succeed in having carnal knowledge with [AAA], a minor who is only fifteen (15) years old at the time of the commission of the offense against her will and consent x x x"; hence, in convicting Ejercito of Rape, the CA should have applied the provisions of RA 8353, which enactment has resulted in the new rape provisions of the RPC under Articles 266-A in relation to 266-B, *viz.*:

> 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;
>
> x x x x x x x x x
>
> Article 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.
>
> x x x x x x x x x

For a charge of Rape by sexual intercourse under Article 266-A (1) of the RPC, as amended by RA 8353, to prosper, the prosecution must prove that: (*a*) the offender had carnal knowledge of a woman; and (*b*) he accomplished this act under the circumstances mentioned in the provision, *e.g.*, through force, threat or intimidation. The gravamen of Rape is sexual intercourse with a woman against her will.[18]

In this case, the prosecution was able to prove beyond reasonable doubt the presence of all the elements of Rape by

---

[18] See *People v. Bagamano*, 793 Phil. 602, 608 (2016).

sexual intercourse under Article 266-A (1) of the RPC, as amended by RA 8353. Through AAA's positive testimony, it was indeed established that in the evening of October 10, 2001, AAA, then just a fifteen (15)-year old minor, was cleaning chicken cages at the back of her house when suddenly, Ejercito threatened her, removed her lower garments, covered her mouth, and proceeded to have carnal knowledge of her without her consent. The RTC, as affirmed by the CA, found AAA's testimony to be credible, noting further that Ejercito failed to establish any ill motive on her part which could have compelled her to falsely accuse him of the aforesaid act. In this relation, case law states that the trial court is in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[19] As there is no indication that the RTC, as affirmed by the CA, overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case, the Court therefore finds no reason to deviate from its factual findings.

The Court remains mindful that Section 5 (b) of RA 7610,[20] which, to note, was passed prior to RA 8353 on June 17, 1992, equally penalizes those who commit sexual abuse, by means of either (*a*) **sexual intercourse or** (b) lascivious conduct, **against** "**a child exploited in prostitution or subjected to other sexual abuse**," *viz.*:

> Section 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
>
> The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

---

[19] See *Peralta v. People*, G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[20] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION, AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES," approved on June 17, 1992.

x x x x x x x x x

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; x x x

x x x x x x x x x

In *Quimvel v. People* (*Quimvel*),[21] the Court set important parameters in the application of Section 5 (b) of RA 7610, to wit:

(1) A child is considered as one "***exploited in prostitution or subjected to other sexual abuse***" when the child indulges in sexual intercourse or lascivious conduct "under the coercion or influence of any adult":

> **To the mind of the Court, the allegations are sufficient to classify the victim as one "*exploited in prostitution or subject to other sexual abuse*."** This is anchored on the very definition of the phrase in Sec. 5 of RA 7610, **which encompasses children who indulge in sexual intercourse or lascivious conduct** (a) for money, profit, or any other consideration; or **(b) under the coercion or influence of any adult, syndicate or group**.
>
> Correlatively, Sec. 5 (a) of RA 7610 punishes acts pertaining to or connected with child prostitution wherein the child is abused primarily for profit. On the other hand, **paragraph (b) punishes sexual intercourse or lascivious conduct committed on a child subjected to other sexual abuse**. **It covers not only a situation where a child is abused for profit but also one in which a child, through coercion, intimidation or influence, engages in sexual intercourse or lascivious conduct.** Hence, the law punishes not only child prostitution but also other forms

[21] See G.R. No. 214497, April 18, 2017.

of sexual abuse against children. x x x.[22] (Emphases and underscoring supplied)

(2) A violation of Section 5 (b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim **only once**, even without a prior sexual affront:

> [T]he very definition of "*child abuse*" under Sec. 3 (b) of RA 7610 does not require that the victim suffer a separate and distinct act of sexual abuse aside from the act complained of. For it refers to the maltreatment, whether habitual or not, of the child. **Thus, a violation of Sec. 5 (b) of RA 7610 occurs even though the accused committed sexual abuse against the child victim only once, even without a prior sexual affront**.[23] (Emphasis and underscoring supplied)

(3) For purposes of determining the proper charge, the term "coercion and influence" as appearing in the law is **broad enough to cover "force and intimidation" as used in the Information**; in fact, as these terms are almost used synonymously, it is then "of no moment that the terminologies employed by RA 7610 and by the Information are different":

> **The term "*coercion and influence*" as appearing in the law is broad enough to cover "*force* and *intimidation*" as used in the Information**. To be sure, Black's Law Dictionary defines "*coercion*" as "*compulsion*; *force*; *duress*" while "[undue] *influence*" is defined as "*persuasion carried to the point of overpowering the will*." On the other hand, "*force*" refers to "*constraining power, compulsion; strength directed to an end*" while jurisprudence defines **"*intimidation*" as "*unlawful coercion*; *extortion*; *duress*; *putting in fear*." As can be gleaned, the terms are used almost synonymously. It is then of no moment that the terminologies employed by RA 7610 and by the Information are different**. And to dispel any remaining lingering doubt as to their interchangeability, the Court enunciated in *Caballo v. People* [(710 Phil. 792, 805-806 [2013])] that:

---

[22] See *id*. (see *ponencia* in *Quimvel*, pp. 8-9), citing *People v. Larin*, 357 Phil. 987, 998-999 (1998) and *Malto v. People*, 560 Phil. 119, 135 (2007).

[23] See *id*. (see *ponencia* in *Quimvel*, p. 15).

> x x x sexual intercourse or lascivious conduct under the coercion or influence of any adult exists when there is some form of compulsion equivalent to intimidation which subdues the free exercise of the offended party's free will. Corollary thereto, Section 2 (g) of the Rules on Child Abuse Cases conveys that sexual abuse involves the element of influence which manifests in a variety of forms. It is defined as:
>
> > The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another person to engage in, sexual intercourse or lascivious conduct or the molestation, prostitution, or incest with children.
>
> To note, the term "influence" means the "improper use of power or trust in any way that deprives a person of free will and substitutes another's objective." Meanwhile, "coercion" is the "improper use of x x x power to compel another to submit to the wishes of one who wields it."[24] (emphases and underscoring supplied)

Thus, the Court, in *Quimvel*, observed that although the Information therein did not contain the words "coercion or influence" (as it instead, used the phrase "through force and intimidation"), the accused may still be convicted under Section 5 (b) of RA 7610. Further, following the rules on the sufficiency of an Information, the Court held that the Information need not even mention the exact phrase "exploited in prostitution or subjected to other abuse" for the accused to be convicted under Section 5 (b) of RA 7610; it was enough for the Information to have alleged that the offense was committed by means of "force and intimidation" for the prosecution of an accused for violation of Section 5 (b) of RA 7610 to prosper.[25]

In this case, it has been established that Ejercito committed the act of sexual intercourse against and without the consent of AAA, who was only fifteen (15) years old at that time. As

---

[24] See *id*. (see *ponencia* in *Quimvel*, pp. 10-11).

[25] See *id*. (see *ponencia* in *Quimvel*, pp. 11-12).

such, she is considered under the law as a child who is "exploited in prostitution or subjected to other sexual abuse;" hence, Ejercito's act may as well be classified as a violation of Section 5 (b) of RA 7610.

Between Article 266-A of the RPC, as amended by RA 8353, as afore-discussed and Section 5 (b) of RA 7610, the Court deems it apt to clarify that Ejercito should be convicted under the former. Verily, penal laws are crafted by legislature to punish certain acts, and when two (2) penal laws may both theoretically apply to the same case, then the law which is more special in nature, regardless of the time of enactment, should prevail. In *Teves v. Sandiganbayan*:[26]

> It is a rule of statutory construction that where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but **if there is any conflict, the latter shall prevail regardless of whether it was passed prior to the general statute.** Or where two statutes are of contrary tenor or of different dates but are of equal theoretical application to a particular case, **the one designed therefor specially should prevail over the other**.[27] (Emphases supplied)

After much deliberation, the Court herein observes that RA 8353 amending the RPC should now be uniformly applied in cases involving sexual intercourse committed against minors, and not Section 5 (b) of RA 7610. Indeed, while RA 7610 has been considered as a special law that covers the sexual abuse of minors, RA 8353 has expanded the reach of our already existing rape laws. These existing rape laws should not only pertain to the old Article 335[28] of the RPC but also to the

---

[26] 488 Phil. 311 (2004).

[27] *Id*. at 332.

[28] Article 335. *When and How Rape is Committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

provision on sexual intercourse under Section 5 (b)[29] of RA 7610 which, applying *Quimvel*'s characterization of a child "exploited in prostitution or subjected to other abuse," virtually punishes the rape of a minor.

It bears to emphasize that not only did RA 8353 re-classify the crime of Rape from being a crime against chastity to a crime against persons,[30] it also provided for more particularized instances of rape and conjunctively, a new set of penalties therefor. Under RA 8353, Rape is considered committed not only through the traditional means of having carnal knowledge of a woman (or penile penetration) but also through certain lascivious acts now classified as rape by sexual assault:

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:

---

3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.

The crime of rape shall be punished by *reclusión temporal.*

[29] Section 5. *Child Prostitution and Other Sexual Abuse*. Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

x x x x x x x x x

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; *Provided*, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

x x x x x x x x x

[30] See Section 2 of RA 8353.

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person. (Emphasis supplied)

Moreover, RA 8353 provides for new penalties for Rape that may be qualified under the following circumstances:

Article 266-B. *Penalty*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, the victim has become insane, the penalty shall become *reclusion perpetua* to death.

When the rape is attempted and a homicide is committed by reason or on the occasion thereof, the penalty shall be *reclusion perpetua* to death.

When by reason or on the occasion of the rape, homicide is committed, the penalty shall be death.

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

l) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim;

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity;

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5) When the victim is a child below seven (7) years old;

6) When the offender knows that he is afflicted with the Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8) When by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation or disability;

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime; and

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

x x x x x x x x x (Emphases supplied)

Significant to this case, the above-highlighted provisions of RA 8353 already accounted for the circumstance of minority under certain peculiar instances. The consequence therefore is a clear overlap with minority as an element of the crime of sexual intercourse against a minor under Section 5 (b) of RA 7610. However, as it was earlier intimated, RA 8353 is not only the more recent statutory enactment but more importantly, the more comprehensive law on rape; therefore, the Court herein clarifies that in cases where a minor is raped through sexual

intercourse, the provisions of RA 8353 amending the RPC ought to prevail over Section 5 (b) of RA 7610 although the latter also penalizes the act of sexual intercourse against a minor.

The Court is not unaware of its previous pronouncements in *People v. Tubillo*,[31] citing the cases of *People v. Abay*[32] and *People v. Pangilinan*[33] (*Tubillo, et al.*), wherein the potential conflict in the application of Section 5 (b) of RA 7610, on the one hand, vis-à-vis RA 8353 amending the RPC, on the other, was resolved by examining whether or not the *prosecution's evidence focused on the element of "coercion and influence" or "force and intimidation."* In *Tubillo*:

> To reiterate, the elements of rape under Section 266-A of the RPC are: (1) the offender had carnal knowledge of the victim; and (2) such act was accomplished through force or intimidation; or when the victim is deprived of reason or otherwise unconscious; or when the victim is under twelve years of age.
>
> On the other hand, the elements of Section 5 (b) of R.A. No. 7610, are: (1) the accused commits the act of sexual intercourse or lascivious conduct; (2) the act is performed with a child exploited in prostitution or subjected to other sexual abuse; and (3) the child, whether male or female, is below 18 years of age. It is also stated there that children exploited in prostitution and other sexual abuse are those children, whether male or female, who, for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct.
>
> In the recent case of *Quimvel v. People*, the Court ruled that the term "coercion and influence" as appearing in the law is broad enough to cover "force and intimidation." Black's Law Dictionary defines coercion as compulsion; force; duress, while undue influence is defined as persuasion carried to the point of overpowering the will. On the other hand, force refers to constraining power, compulsion; strength directed to an end; while jurisprudence defines intimidation as unlawful coercion; extortion; duress; putting in fear. **As can be gleaned, the**

---

[31] See G.R. No. 220718, June 21, 2017.

[32] 599 Phil. 390 (2009).

[33] 676 Phil. 16 (2011).

terms are used almost synonymously. **Thus, it is not improbable that an act of committing carnal knowledge against a child, twelve (12) years old or older, constitutes both rape under Section 266-A of the RPC and child abuse under Section 5 (b) of R.A. No. 7610.**

In *People v. Abay*, the Court was faced with the same predicament. In that case, both the elements of Section 266-A of the RPC and Section 5 (b) of R.A. No. 7610 were alleged in the information. Nevertheless, these provisions were harmonized, to wit:

> Under Section 5 (b), Article III of RA 7610 in relation to RA 8353, if the victim of sexual abuse is below 12 years of age, the offender should not be prosecuted for sexual abuse but for statutory rape under Article 266-A (1) (d) of the Revised Penal Code and penalized with *reclusion perpetua*. On the other hand, if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5 (b) of RA 7610 or rape under Article 266-A (except paragraph 1 [d]) of the Revised Penal Code. However, the offender cannot be accused of both crimes for the same act because his right against double jeopardy will be prejudiced. A person cannot be subjected twice to criminal liability for a single criminal act. Likewise, rape cannot be complexed with a violation of Section 5 (b) of RA 7610. Under Section 48 of the Revised Penal Code (on complex crimes), a felony under the Revised Penal Code (such as rape) cannot be complexed with an offense penalized by a special law. (Emphasis supplied)

In *Abay*, the offended party was thirteen (13) years old at the time of the rape incident. Again, the information therein contained all the elements of Article 266-A (1) of the RPC and Section 5 (b) of R.A. No. 7610. **Nevertheless, the Court observed that the prosecution's evidence only focused on the specific fact that accused therein sexually violated the offended party through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, accused therein was convicted of the crime of rape under Article 266-A (1) of the RPC. Notably, the prosecution did not tackle the broader scope of "influence or coercion" under Section 5 (b) of R.A. No. 7610**.

Similarly, in *People v. Pangilinan*, the Court was faced with the same dilemma because all the elements of Article 266-A (1) of the RPC and Section 5 (b) of R.A. No. 7610 were present. It was ruled

therein that the accused can be charged with either rape or child abuse and be convicted therefor. **The Court observed, however, that the prosecution's evidence proved that accused had carnal knowledge with the victim through force and intimidation by threatening her with a samurai sword. Thus, rape was established. Again, the evidence in that case did not refer to the broader scope of "influence or coercion" under Section 5 (b) of R.A. No. 7610.**

In the present case, the RTC convicted Tubillo for the crime of rape because the prosecution proved that there was carnal knowledge against by means of force or intimidation, particularly, with a bladed weapon. On the other hand, the CA convicted Tubillo with violation of Section 5 (b) of R.A. No. 7610 because the charge of rape under the information was in relation to R.A. No. 7610.

After a judicious study of the records, the Court rules that Tubillo should be convicted of rape under Article 266-A (1) (a) of the RPC.

A reading of the information would show that the case at bench involves both the elements of Article 266-A (1) of the RPC and Section 5 (b) of R.A. No. 7610. As elucidated in *People v. Abay* and *People v. Pangilinan*, in such instance, **the court must examine the evidence of the prosecution, whether it focused on the specific force or intimidation employed by the offender or on the broader concept of coercion or influence to have carnal knowledge with the victim**.

Here, the evidence of the prosecution unequivocally focused on the force or intimidation employed by Tubillo against HGE under Article 266-A (1) (a) of the RPC. The prosecution presented the testimony of HGE who narrated that Tubillo unlawfully entered the house where she was sleeping by breaking the padlock. Once inside, he forced himself upon her, pointed a knife at her neck, and inserted his penis in her vagina. She could not resist the sexual attack against her because Tubillo poked a bladed weapon at her neck. Verily, Tubillo employed brash force or intimidation to carry out his dastardly deeds.

In fine, Tubillo should be found guilty of rape under Article 266-A (1) (a) of the RPC with a prescribed penalty of *reclusion perpetua*, instead of Section 5 (b) of R.A. No. 7610.[34] (Emphases and underscoring supplied)

---

[34] See *People v. Tubillo*, *supra* note 31.

As may be gleaned therefrom, the Court examined the evidence of the prosecution to determine "whether it focused on the specific force or intimidation employed by the offender or on the broader concept of coercion or influence to have carnal knowledge with the victim."[35] The premise in *Tubillo* that "coercion or influence" is the broader concept in contrast to "force or intimidation" appears to have been rooted from that statement in *Quimvel* wherein it was mentioned that "[t]he term 'coercion and influence' as appearing in the law is broad enough to cover 'force and intimidation' **as used in the Information.**"[36] However, *Quimvel* did not intend to provide any distinction on the meanings of these terms so as to determine whether an accused's case should fall under Section 5 (b) of RA 7610 or RA 8353 amending the RPC, much more foist any distinction depending on what the prosecution's evidence "focused" on. In fact, the Court in *Quimvel* stated "the terms ['coercion and influence' and 'force and intimidation'] are used almost synonymously";[37] as such, the Court in *Quimvel* held that "[i]t is then of no moment that the terminologies employed by RA 7610 and by the Information are different";[38] and that "the words 'coercion or influence' need not specifically appear"[39] in order for the accused to be prosecuted under Section 5 (b) of RA 7610. As such, the Court misconstrued the aforesaid statement in *Quimvel* and misapplied the same to somehow come up with *Tubillo*, *et al.*'s "focus of evidence" approach.

However, the mistaken interpretation of *Quimvel* in *Tubillo, et al.* only compounds the fundamental error of the "focus of evidence" approach, which is to rely on evidence appreciation, instead of legal interpretation. Ultimately, there is no cogent legal basis to resolve the possible conflict between two (2) laws

---

[35] See *id*.

[36] See *Quimvel v. People*, *supra* note 21.

[37] See *id*. (see *ponencia* in *Quimvel*, p. 10).

[38] See *id.*

[39] See *id*. (see *ponencia* in *Quimvel*, p. 11).

by ascertaining what was the focus of the evidence presented by the prosecution. Presentation of evidence leads to determining what act was committed. Resolving the application of either RA 8353 amending the RPC or Section 5 (b) of RA 7610 already presupposes that evidentiary concerns regarding what act has been committed (*i.e.*, the act of sexual intercourse against a minor) have already been settled. Hence, the Court is only tasked to determine what law should apply based on legal interpretation using the principles of statutory construction. In other words, the Court need not unearth evidentiary concerns as what remains is a pure question of law – that is: *in cases when the act of sexual intercourse against a minor has been committed, do we apply RA 8353 amending the RPC or Section 5 (b) of RA 7610?* Herein lies the critical flaw of the "focus of evidence" approach, which was only compounded by the mistaken reading of *Quimvel* in the cases of *Tubillo, et al.* as above-explained.

Neither should the conflict between the application of Section 5 (b) of RA 7610 and RA 8353 be resolved based on which law provides a higher penalty against the accused. The superseding scope of RA 8353 should be the sole reason of its prevalence over Section 5 (b) of RA 7610. The higher penalty provided under RA 8353 should not be the moving consideration, given that penalties are merely accessory to the act being punished by a particular law. The term "'[p]enalty' is defined as '[p]unishment imposed on a wrongdoer usually in the form of imprisonment or fine'; '[p]unishment imposed by lawful authority upon a person who commits a deliberate or negligent act.'"[40] Given its accessory nature, once the proper application of a penal law is determined over another, then the imposition of the penalty attached to that act punished in the prevailing penal law only follows as a matter of course. ***In the final analysis, it is the determination of the act being punished together with its attending circumstances – and not the gravity of the penalty ancillary to that punished act – which is the key consideration in resolving the conflicting applications of two penal laws***.

---

[40] See *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City,* G.R. No. 225442, August 8, 2017.

Notably, in the more recent case of *People v. Caoili* (*Caoili*),[41] the Court encountered a situation wherein the punishable act committed by therein accused, *i.e.*, lascivious conduct, may be prosecuted either under "Acts of Lasciviousness under Article 336 of the RPC in relation to Section 5 (b) of RA 7610" or "Lascivious Conduct under Section 5 (b) of RA 7610." In resolving the matter, the Court did not consider the "focus" of the evidence for the prosecution nor the gravity of the penalty imposed. Rather, it is evident that the determining factor in designating or charging the proper offense, and consequently, the imposable penalty therefor, is the nature of the act committed, *i.e.*, lascivious conduct, taken together with the attending circumstance of the age of the victim:

> Accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5 (b) of R.A. No. 7610, and in determining the imposable penalty:
>
> 1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.
>
> 2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5 (b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5 (b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.
>
> 3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5 (b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.[42]

---

[41] See G.R. No. 196342, August 8, 2017.

[42] See *id*. (see *ponencia* in *Caoili*, p. 19).

Thus, being the more recent case, it may be concluded that *Caoili* implicitly **abandoned** the "focus of evidence" approach used in the *Tubillo, et al.* rulings. Likewise, it is apt to clarify that if there appears to be any rational dissonance or perceived unfairness in the imposable penalties between two applicable laws (say for instance, that a person who commits rape by sexual assault under Article 266-A in relation to Article 266-B of the RPC,[43] as amended by RA 8353 is punished less than a person who commits lascivious conduct against a minor under Section 5 (b) of RA 7610[44]), then the solution is through remedial legislation and not through judicial interpretation. It is well-settled that the determination of penalties is a policy matter that belongs to the legislative branch of government.[45] Thus, however compelling the dictates of reason might be, our constitutional order proscribes the Judiciary from adjusting the gradations of the penalties which are fixed by Congress through its legislative function. As Associate Justice Diosdado M. Peralta had instructively observed in his opinion in *Caoli*:

> Curiously, despite the clear intent of R.A. 7610 to provide for stronger deterrence and special protection against child abuse, the penalty **[*reclusion temporal* medium]** when the victim is under 12 years old is lower compared to the penalty **[*reclusion temporal* medium to *reclusion perpetua*]** when the victim is 12 years old and below 18. The same holds true if the crime of acts of lasciviousness is attended by an aggravating circumstance or committed by persons under Section 31, Article XII of R.A. 7610, in which case, the imposable penalty is *reclusion perpetua*. In contrast, when no mitigating or aggravating circumstance attended the crime of acts of lasciviousness, the penalty therefor when committed against a child under 12 years old is aptly higher than the penalty when the child is 12 years old and below 18. This is because, applying the Indeterminate Sentence Law, the

---

[43] The penalty is only *prision mayo*r pursuant to Article 266-B of the RPC, as amended by RA 8353.

[44] The penalty is *reclusion temporal* in its medium period to *reclusion perpetua* if the child is under eighteen years old but over twelve years old, while the penalty is actually lesser when the child is under twelve years old, *i.e.*, *reclusion temporal* in its medium period.

[45] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018.

minimum term in the case of the younger victims shall be taken from *reclusion temporal* minimum, whereas as [sic] the minimum term in the case of the older victims shall be taken from *prision mayor* medium to *reclusion temporal* minimum. **It is a basic rule in statutory construction that what courts may correct to reflect the real and apparent intention of the legislature are only those which are clearly clerical errors or obvious mistakes, omissions, and misprints, but not those due to oversight, as shown by a review of extraneous circumstances, where the law is clear, and to correct it would be to change the meaning of the law. To my mind, a corrective legislation is the proper remedy to address the noted incongruent penalties for acts of lasciviousness committed against a child**.[46] (Emphasis supplied)

Based on the foregoing considerations, the Court therefore holds that in instances where an accused is charged and eventually convicted of having sexual intercourse with a minor, the provisions on rape under RA 8353 amending the RPC should prevail over Section 5 (b) of RA 7610. Further, to reiterate, the "focus of evidence" approach used in the *Tubillo, et al.* rulings had already been abandoned.

In this case, it has been established that Ejercito had carnal knowledge of AAA through force, threat, or intimidation. Hence, he should be convicted of rape under paragraph 1 (a), Article 266-A of the RPC, as amended by RA 8353. To note, although AAA was only fifteen (15) years old and hence, a minor at that time, it was neither alleged nor proven that Ejercito was her "parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim" so as to qualify the crime and impose a higher penalty. As such, pursuant to the first paragraph of Article 266-B of the same law, Ejercito should be meted with the penalty of *reclusion perpetua*, as ruled by both the RTC and the CA. Further, the Court affirms the monetary awards in AAA's favor in the amounts of ₱75,000.00

---

[46] See Separate Concurring Opinion of Justice Peralta in *People v. Caoili*, *supra* note 41. See also Separate Opinion of Justice Peralta in *Quimvel v. People*, *supra* note 21.

as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, all with legal interest at the rate of six percent (6%) per annum from finality of this ruling until fully paid, since the same are in accord with prevailing jurisprudence.[47]

WHEREFORE, the appeal is **DENIED**. The Decision dated October 28, 2016 of the Court of Appeals in CA-G.R. CEB CR. HC. No. 01656 is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant Francisco Ejercito is hereby found **GUILTY** beyond reasonable doubt of the crime of Rape under Article 266-A of the Revised Penal Code, as amended by Republic Act No. 8353. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua*. Further, he is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, all with legal interest at the rate of six percent (6%) per annum from finality of this ruling until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. Nos. 231655 and 231670. July 2, 2018]

FELISA AGRICULTURAL CORPORATION, *petitioner, vs.* **NATIONAL TRANSMISSION CORPORATION (having been substituted in lieu of the NATIONAL POWER CORPORATION),** *respondent.*

---

[47] See *People v. Jugueta*, G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382-383 and 388.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; THERE IS NO NEED TO DETERMINE WITH REASONABLE CERTAINTY THE FINAL AMOUNT OF JUST COMPENSATION UNTIL AFTER THE TRIAL COURT ASCERTAINS THE PROVISIONAL AMOUNT TO BE PAID.— [I]t bears pointing out that the RTC Orders subject of the *certiorari* petition before the CA merely pertained to the preliminary or provisional determination of the value of the subject land. At that time, the first stage of the expropriation proceedings, *i.e.*, the determination of the validity of the expropriation, has not been completed since no order of expropriation has yet been issued by the RTC, albeit it is not contested that the NPC's entry in the subject land was done for a public purpose, *i.e.*, the construction/installation of transmission towers and lines which fall within the term "national government projects." It is settled that there is no need to determine with reasonable certainty the final amount of just compensation until after the trial court ascertains the provisional amount to be paid.

2. ID.; ID.; ID.; ID.; UPON THE FILING OF THE EXPROPRIATION COMPLAINT, THE PLAINTIFF HAS THE RIGHT TO TAKE OR ENTER INTO POSSESSION OF THE REAL PROPERTY INVOLVED IF HE DEPOSITS WITH THE AUTHORIZED GOVERNMENT DEPOSITARY AN AMOUNT EQUIVALENT TO THE ASSESSED VALUE OF THE PROPERTY, EXCEPT WITH RESPECT TO NATIONAL GOVERNMENT PROJECTS, WHICH REQUIRE THE PAYMENT OF 100% OF THE ZONAL VALUE OF THE PROPERTY TO BE EXPROPRIATED AS THE PROVISIONAL VALUE.— The general rule is that upon the filing of the expropriation complaint, the plaintiff has the right to take or enter into possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property. An exception to this procedure is provided by RA 8974 with respect to national government projects, which requires the payment of 100% of the zonal value of the property to be expropriated as the provisional value. It must be

emphasized, however, that whether a deposit is made under Rule 67 of the Rules of Court or the provisional value of the property is paid pursuant to RA 8974, the said amount serves the double-purpose of: (*a*) pre-payment if the property is fully expropriated, and (*b*) indemnity for damages if the proceedings are dismissed.

3. ID.; ID.; ID.; ID.; REPUBLIC ACT 8974 SUPERSEDES THE SYSTEM OF DEPOSIT UNDER RULE 67 OF THE RULES OF COURT IN EXPROPRIATION CASES INVOLVING NATIONAL GOVERNMENT INFRASTRUCTURE PROPERTY; THE RIGHT OF THE OWNER TO RECEIVE JUST COMPENSATION PRIOR TO ACQUISITION OF POSSESSION BY THE STATE OF THE PROPERTY IS A PROPRIETARY RIGHT, APPROPRIATELY CLASSIFIED AS A SUBSTANTIVE MATTER AND, THUS, WITHIN THE SOLE PROVINCE OF THE LEGISLATURE TO LEGISLATE ON.— Section 2, Rule 67 of the Rules of Court requires the expropriator to deposit the amount equivalent to the assessed value of the property to be expropriated prior to entry. The assessed value of a real property constitutes a mere percentage of its fair market value based on the assessment levels fixed under the pertinent ordinance passed by the local government where the property is located. In contrast, RA 8974 requires the payment of the amount equivalent to 100% of the *current* zonal value of the property, which is usually a higher amount. In *Republic of the Philippines v. Judge Gingoyon*, the Court recognized that while expropriation proceedings have always demanded just compensation in exchange for private property, the deposit requirement under Rule 67 of the Rules of Court **"impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed."** Thus, it categorically declared that **"[i]t is the plain intent of [RA] 8974 to *supersede* the system of deposit under Rule 67 with the scheme of 'immediate payment' in cases involving national government infrastructure projects."** The same case further ruled: It likewise bears noting that **the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of [RA] 8974. Specifically, this prescribes the new standard in determining the amount**

of just compensation in expropriation cases relating to national government infrastructure projects, as well as the payment of the provisional value as a prerequisite to the issuance of a writ of possession. Of course, rules of procedure, as distinguished from substantive matters, remain the exclusive preserve of the Supreme Court by virtue of Section 5(5), Article VIII of the Constitution. Indeed, Section 14 of the Implementing Rules recognizes the **continued applicability of Rule 67 on procedural aspects** when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court." **Indubitably, a matter is substantive when it involves the creation of rights to be enjoyed by the owner of the property to be expropriated.** The right of the owner to receive just compensation prior to acquisition of possession by the State of the property is a proprietary right, appropriately classified as a substantive matter and, thus, within the sole province of the legislature to legislate on.

4. ID.; ID.; ID.; ID.; REPUBLIC ACT NO. 8974 APPLIED TO THE CASE AT BAR AS IT IS MORE FAVORABLE TO THE LANDOWNER; A NEW LAW SHALL NOT HAVE RETROACTIVE EFFECT ONLY GOVERNS RIGHTS ARISING FROM ACTS DONE UNDER THE RULE OF THE FORMER LAW; HOWEVER, IF A RIGHT BE DECLARED FOR THE FIRST TIME BY A SUBSEQUENT LAW, IT SHALL TAKE EFFECT FROM THAT TIME EVEN THOUGH IT HAS ARISEN FROM ACTS SUBJECT TO THE FORMER LAWS, PROVIDED THAT IT DOES NOT PREJUDICE ANOTHER ACQUIRED RIGHT OF THE SAME ORIGIN.— Statutes are generally applied prospectively unless they expressly allow a retroactive application. It is well known that the principle that a new law shall not have retroactive effect only governs rights arising from acts done under the rule of the former law. **However, if a right be declared for the first time by a subsequent law, it shall take effect from that time even though it has arisen from acts subject to the former laws, provided that it does not prejudice another acquired right of the same origin.** In this case, the government had long entered the subject land

and constructed the transmission towers and lines. However, petitioner initiated inverse condemnation proceedings after the effectivity of RA 8974 on November 26, 2000; hence, procedurally and substantially, the said law should govern. Notably, the payment of the provisional value of the subject land equivalent to 100% of its *current* zonal value is declared for the first time by the said law which is evidently more favorable to the landowner than the mere deposit of its assessed value as required by Rule 67. Accordingly, the application of the provisions of RA 8974 to the instant case is beyond cavil.

5. **ID.; ID.; ID.; ID.; MERE PHYSICAL POSSESSION THAT IS GAINED BY ENTERING THE PROPERTY IS NOT EQUIVALENT TO EXPROPRIATING IT WITH THE AIM OF ACQUIRING OWNERSHIP OVER, OR EVEN THE RIGHT TO POSSESS, THE EXPROPRIATED PROPERTY.—** [T]here is no legal impediment to the issuance of a writ of possession in favor of respondent, as successor of NPC, despite entry to the subject land long before the filing of the inverse condemnation proceedings before the RTC because **physical possession gained by entering the property is not equivalent to expropriating it with the aim of acquiring ownership thereon**. In *Republic v. Hon. Tagle*, the Court explained: **The expropriation of real property does not include mere physical entry or occupation of land.** Although eminent domain usually involves a taking of title, there may also be compensable taking of only some, not all, of the property interests in the bundle of rights that constitute ownership. x x x [M]ere physical entry and occupation of the property fall short of the taking of title, which includes all the rights that may be exercised by an owner over the subject property. Its actual occupation, which renders academic the need for it to enter, does not by itself include its acquisition of all the rights of ownership. x x x. x x x **Ineludibly, [the] writ [of possession] is both necessary and practical, because mere physical possession that is gained by entering the property is not equivalent to expropriating it with the aim of acquiring ownership over, or even the right to possess, the expropriated property.**

6. **ID.; ID.; ID.; ID.; THE GOVERNMENT AND ITS AGENCIES HAVE THE OBLIGATION TO IMMEDIATELY INITIATE EMINENT DOMAIN PROCEEDINGS WHENEVER THEY INTEND TO TAKE PRIVATE**

PROPERTY FOR ANY PUBLIC PURPOSE, WHICH INCLUDES THE PAYMENT OF THE PROVISIONAL VALUE THEREOF.— Since the NPC's entry in the subject land on September 21, 1989, or for almost twenty-nine (29) years, the registered owner had been effectively deprived of the beneficial enjoyment of the subject land without having been paid a single centavo. The Court reminds the government and its agencies that it is their obligation to immediately initiate eminent domain proceedings whenever they intend to take private property for any public purpose, which includes the payment of the provisional value thereof. In view of the foregoing, the Court finds that the CA erred in setting aside the RTC Orders which should be, perforce, reinstated. Accordingly, the case should be remanded to the RTC for the determination of just compensation for the subject land, taking into consideration, the relevant standards set forth under RA 8974.

7. **ID.; ID.; ID.; ID.; WHERE ACTUAL TAKING WAS MADE WITHOUT THE BENEFIT OF EXPROPRIATION PROCEEDINGS, AND THE OWNER SOUGHT RECOVERY OF THE POSSESSION OF THE PROPERTY PRIOR TO THE FILING OF EXPROPRIATION PROCEEDINGS, IT IS THE VALUE OF THE PROPERTY AT THE TIME OF TAKING THAT IS CONTROLLING FOR PURPOSES OF COMPENSATION; RATIONALE.—** It must be emphasized that RA 8974 does not take away from the courts the power to judicially determine the amount of just compensation. It merely provides relevant standards in order to facilitate the determination of just compensation, and sets the minimum price of the property as the provisional value to immediately recompense the landowner with the same degree of speed as the taking of the property, which reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity. Nonetheless, it is settled that where actual taking was made without the benefit of expropriation proceedings, and the owner sought recovery of the possession of the property prior to the filing of expropriation proceedings, the Court has invariably ruled that it is the value of the property at the time of taking that is controlling for purposes of compensation. Any other interpretation would be repugnant to the Constitution which commands the exproriator to pay the property owner no less than the full and fair equivalent of the

property **from the date of taking**. The reason for the rule, as pointed out in *Republic v. Lara*, is that: [W]here property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enchanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken. This is the only way that compensation to be paid can be truly just; *i.e.*, "just not only to the individual whose property is taken," "but to the public, which is to pay for it."

8. ID.; ID.; ID.; ID.; IN DETERMINING JUST COMPENSATION, THE COURTS MUST CONSIDER AND APPLY THE PARAMETERS SET BY THE LAW AND ITS IMPLEMENTING RULES AND REGULATIONS IN ORDER TO ENSURE THAT THEY DO NOT ARBITRARILY FIX AN AMOUNT AS JUST COMPENSATION THAT IS CONTRADICTORY TO THE OBJECTIVES OF THE LAW, BUT THE COURTS MAY, IN THE EXERCISE OF THEIR DISCRETION, RELAX THE APPLICATION OF THE GUIDELINES SUBJECT TO THE JURISPRUDENTIAL LIMITATION THAT THE FACTUAL SITUATION CALLS FOR IT AND THE COURTS CLEARLY EXPLAIN THE REASON FOR SUCH DEVIATION. — [I]t must be emphasized that in determining just compensation, the courts must consider and apply the parameters set by the law and its implementing rules and regulations in order to ensure that they do not arbitrarily fix an amount as just compensation that is contradictory to the objectives of the law. Be that as it may, when acting within such parameters, courts are not strictly bound to apply the same to its minutest detail, particularly when faced with situations that do not warrant its strict application. **Thus, the courts may, in the exercise of their discretion, relax the application of the guidelines subject to the jurisprudential limitation that the factual situation calls for it and the courts clearly explain the reason for such deviation**.

9. ID.; ID.; ID.; THE GOVERNMENT'S INITIAL PAYMENT OF THE LAND'S PROVISIONAL VALUE DOES NOT EXCUSE IT FROM AVOIDING PAYMENT OF INTEREST ON ANY DIFFERENCE BETWEEN THE AMOUNT OF FINAL JUST COMPENSATION ADJUDGED AND THE INITIAL PAYMENT; LEGAL INTEREST OF 12% AND 6% PER ANNUM, IMPOSED.— [The Court deems it proper to modify the amount of the provisional value from ₱7,845,000.00 to ₱7,854,000.00 computed by multiplying the area of 19,635 sq. m. occupied by the transmission lines by the zonal value of the subject land at ₱400.00/sq. m. Moreover, it must be clarified that the government's initial payment of the land's provisional value does not excuse it from avoiding payment of interest on any difference between the amount of final just compensation adjudged and the initial payment (unpaid balance). Legal interest shall be imposed on the unpaid balance at the rate of twelve percent (12%) per annum from the time of taking, *i.e.*, from entry in the subject land on September 21, 1989, until June 30, 2013; thereafter, or beginning July 1, 2013, until fully paid, the just compensation due petitioner shall earn interest at the rate of six percent (6%) per annum.

APPEARANCES OF COUNSEL

Valencia Ciocon Valencia Dionela Pandan Rubica Garcia & Rubica Law Offices for petitioner.

Office of the Government Corporate Counsel for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Amended Decision[2] dated May 26, 2016 and the Resolution[3]

---

[1] *Rollo*, pp. 11-38.

[2] *Id.* at 42-53. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Pamela Ann Abella Maxino and Germano Francisco D. Legaspi concurring.

[3] *Id.* at 54-55.

dated March 17, 2017 of the Court of Appeals (CA) in CA-G.R. CEB SP. Nos. 06204 and 06286, which nullified and set aside the Orders dated May 7, 2010[4] and May 11, 2011[5] (RTC Orders) of the Regional Trial Court of Bacolod City, Branch 54 (RTC) in Civil Case No. 01-11356 directing the National Power Corporation (NPC) or its assignee to compensate petitioner the amount of ₱7,845,000.00 representing the 100% zonal value of the subject land as initial payment.

The Facts

The instant case stemmed from a Complaint[6] for recovery of possession with damages or payment of just compensation dated January 9, 2001 filed by petitioner Felisa Agricultural Corporation (petitioner) against NPC before the RTC, docketed as Civil Case No. 01-11356. Petitioner claimed that in 1997, it discovered that the NPC's transmission towers and transmission lines were located within a 19,635-square meter (sq. m.) portion (subject land) of its lands situated in Brgy. Felisa, Bacolod City. Further verification revealed that the transmission towers were constructed sometime before 1985 by NPC which entered the subject land without its knowledge and consent.[7]

For its part,[8] NPC denied having entered the subject land without any authority, and claimed that petitioner's President, Jovito Sayson, granted it the permit to enter[9] on September 21, 1989 for the construction of the 138 KV Mabinay-Bacolod Transmission Line. It further countered that since the transmission lines have been in existence for more than ten (10) years, a continuous easement of right of way has already been established. Considering, however, that the action was brought beyond the

---

[4] CA *rollo* (CA-G.R. CEB SP. No. 06286), pp. 27-28. Issued by Judge Demosthenes L. Magallanes.

[5] *Id*. at 29.

[6] *Id*. at 30-36.

[7] See CA *rollo* (CA-G.R. CEB SP. No. 06286), pp. 27 and 31-32.

[8] See Answer dated April 10, 2001; *id*. at 40-45.

[9] *Id*. at 46.

five-year prescriptive period to do so in accordance with the NPC Charter, the claim is barred by prescription.[10]

In the course of the proceedings, the parties agreed to narrow down the issue to the payment of just compensation and agreed to settle the case at the price of ₱400.00/sq. m. but the proposed compromise did not push through in view of the failure of the Office of the Solicitor General (OSG) to act on the Deed of Sale entered into by the parties.[11] Subsequently, petitioner moved that NPC be immediately ordered to pay the amount of ₱7,845,000.00[12] representing the 100% zonal value of the subject land[13] in accordance with Republic Act No. (RA) 8974.[14] NPC opposed the motion, contending that the said law only applies to expropriation cases initiated by the government to acquire property for any national government infrastructure project.[15]

The RTC Ruling

In an Order[16] dated May 7, 2010, the RTC granted the motion and directed NPC or its assignee to compensate petitioner in the amount of ₱7,845,000.00 as initial payment.[17] It likewise

---

[10] See *id*. at 40-42.

[11] See *rollo*, p. 48. See also CA *rollo* (CA-G.R. CEB SP. No. 06286), pp. 63-64.

[12] Should be ₱7,854,000.00 computed as follows:
400.00/sq. m. – zonal value of the subject land
x 19,635 sq. m. – area occupied by the transmission lines
₱7,854,000.00 initial payment sought by petitioner
(See CA *rollo* [CA-G.R. CEB SP. No. 06286], p. 49)

[13] See *rollo*, p. 48.

[14] Entitled "AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES," approved on November 7, 2000.

[15] See NPC's Comment (On Plaintiff's Motion for Initial Payment of the Amount Pertaining to Just Compensation) dated March 8, 2009; CA *rollo* (CA-G.R. CEB SP. No. 06286), pp. 59-62.

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

[17] See *id*.

denied the NPC's motion for reconsideration[18] in an Order[19] dated May 11, 2011, explaining further that the "initial payment is not the [j]ust [c]ompensation that is determined in the decision that shall dispose the case. The law so provides to obviate the long litigation and the landowner is partially paid."[20]

Unperturbed, NPC filed a petition for *certiorari*[21] before the CA, docketed as CA-G.R. CEB SP. Nos. 06204 and 06286.[22]

The CA Ruling

In a Decision[23] dated June 27, 2014, the CA granted the *certiorari* petition, thereby nullifying and setting aside the RTC Orders.[24] It ruled that RA 8974 finds no application to the recovery of possession case as it only applies to an expropriation proceeding.[25]

Dissatisfied, petitioner moved for reconsideration,[26] contending that RA 8974 applies even if the government failed

---

[18] Dated June 1, 2010. *Id*. at 193-198.

[19] *Id*. at 29.

[20] *Id*.

[21] Dated August 19, 2011. *Id*. at 3-26.

[22] The NPC's Motion for Extension of Time to File Petition for *Certiorari* (CA *rollo* [CA-G.R. CEB SP. No. 06204], pp. 3-8) was docketed as CA-G.R. CEB SP. No. 06204, while the corresponding petition for *certiorari* (CA *rollo* [CA-G.R. CEB SP. No. 06286], pp. 3-26) was erroneously assessed as a newly filed case, and accordingly, docketed separately as CA-G.R. CEB SP. No. 06286. However, none of the cases was dropped, hence, continued and resolved jointly. (See CA Resolution dated June 17, 2013 penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Ramon Paul L. Hernando and Carmelita Salandanan-Manahan concurring [CA-G.R. CEB SP. No. 06286), pp. 97-102].)

[23] *Id.* at 169-176. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Gabriel T. Ingles and Marie Christine Azcarraga-Jacob concurring.

[24] *Id*. at 175.

[25] See *id*. at 172-175.

[26] Dated July 28, 2014. *Id*. at 182-192.

or refused to file an expropriation case considering that: (*a*) the recovery of possession case partakes of the nature of an inverse expropriation proceedings; and (*b*) the initiatory complaint was filed after its effectivity.[27]

Subsequently, respondent National Transmission Corporation (respondent), which assumed the electrical transmission function and the transmission-related cases of NPC, was substituted as party respondent in the case.[28]

In an Amended Decision[29] dated May 26, 2016, the CA denied the motion.[30] It ruled that since the taking of the property occurred sometime in 1985, RA 8974 which was approved and took effect subsequent thereto does not apply, and the provisions of Rule 67 of the Rules of Court should govern the case.[31] Accordingly, it remanded the case to the RTC for the determination of just compensation plus legal interest reckoned from the time of the taking of the subject land.[32]

Petitioner filed a partial motion for reconsideration,[33] which was, however, denied in a Resolution[34] dated March 17, 2017; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA was correct in holding that Rule 67 of the Rules of Court and not RA 8974 should govern the case.

---

[27] See *id*. at 184-190.

[28] See *rollo*, p. 44. See also Section 8 of Republic Act No. 9136, entitled "AN ACT ORDAINING REFORMS IN THE ELECTRIC POWER INDUSTRY, AMENDING FOR THE PURPOSE CERTAIN LAWS AND FOR OTHER PURPOSES," otherwise known as the "Electric Power Industry Reform Act of 2001," approved on June 8, 2001.

[29] *Id*. at 42-53.

[30] *Id*. at 53. Erroneously stated as "petition" in the CA's Amended Decision.

[31] See *id*. at 51-52.

[32] See *id*. at 52-53.

[33] Dated July 1, 2016. CA *rollo* (CA-G.R. CEB SP. No. 06286), pp. 251-260.

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

The Court's Ruling

Preliminarily, it bears pointing out that the RTC Orders subject of the *certiorari* petition before the CA merely pertained to the preliminary or provisional determination of the value of the subject land. At that time, the first stage of the expropriation proceedings, *i.e.*, the determination of the validity of the expropriation, has not been completed since no order of expropriation has yet been issued by the RTC, albeit it is not contested that the NPC's entry in the subject land was done for a public purpose,[35] *i.e.*, the construction/installation of transmission towers and lines which fall within the term "national government projects."[36] It is settled that there is no need to determine with reasonable certainty the final amount of just compensation until after the trial court ascertains the provisional amount to be paid.[37]

The general rule is that upon the filing of the expropriation complaint, the plaintiff has the right to take or enter into possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property. An exception to this procedure is provided by RA 8974 with respect to national government projects, which requires the payment of 100% of the zonal value of the property to be expropriated as the provisional value.[38] It must be emphasized, however, that whether a deposit is made

---

[35] See CA *rollo* (CA-G.R. CEB SP. No. 06286), p. 27.

[36] Section 2 (d) of the Implementing Rules and Regulations of RA 8974 explicitly includes power generation, transmission and distribution projects among the national government projects covered by the law.

[37] See *Republic v. Spouses Cancio*, 597 Phil. 342, 351-352 (2009).

[38] *Metropolitan Cebu Water District (MCWD) v. J. King and Sons Company, Inc.*, 603 Phil. 471, 483 (2009). RA 8974 has been repealed by RA 10752, which substantially maintained in Section 6 thereof the requirement of "deposit" of 100% of the value of the land based on the current relevant BIR zonal valuation issued not more than three (3) years prior to the filing of the expropriation complaint.

under Rule 67 of the Rules of Court or the provisional value of the property is paid pursuant to RA 8974,[39] the said amount serves the double-purpose of: (*a*) pre-payment if the property is fully expropriated, and (*b*) indemnity for damages if the proceedings are dismissed.[40]

Section 2, Rule 67 of the Rules of Court requires the expropriator to deposit the amount equivalent to the assessed value of the property to be expropriated prior to entry. The assessed value[41] of a real property constitutes a mere percentage of its fair market value based on the assessment levels fixed under the pertinent ordinance passed by the local government where the property is located.[42] In contrast, RA 8974 requires

---

[39] Section 6 of RA 10752 reverted to the term "deposit."

[40] See *Visayan Refining Co. v. Camus*, 40 Phil. 550, 563 (1919). See also *Capitol Steel Corp. v. PHIVIDEC Industrial Authority*, 539 Phil. 644, 660 (2006); citation omitted.

[41] Section 199 (h), Chapter I, Title III of RA 7160, otherwise known as the "Local Government Code of 1991" (LGC; approved on October 10, 1991) defines *assessed value* as "the fair market value of the real property multiplied by the assessment level[, and] is synonymous to taxable value [.]"

[42] Under Section 218 of the LGC, the assessment levels to be applied to the fair market value (FMV) of lands to determine their assessed value shall be fixed by ordinances of the *sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan* of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

CLASS	ASSESSMENT LEVELS
Residential	20%
Agricultural	40%
Commercial	50%
Industrial	50%
Mineral	50%
Timberland	20%

At the time of the filing of the motion for initial payment on February 22, 2010 (See CA *rollo* [CA-G.R. CEB SP. No. 06286], p. 48), the FMV of the subject land was at **₱360.00/sq. m.** (See p. 32, Schedule of Base Unit Market Values for Residential, Commercial and Industrial Land attached to the Classification of Lands Situated in Commercial, Residential and

the payment of the amount equivalent to 100% of the *current* zonal value[43] of the property, which is usually a higher amount.

Industrial Areas in the City of Bacolod, Annex "B" of City Ordinance No. 369 entitled "AN ORDINANCE PRESCRIBING A REVISED SCHEDULE OF CURRENT AND FAIR MARKET VALUES OF REAL PROPERTIES FOR THE CITY OF BACOLOD" passed by the *Sanggunian Panlungsod* of Bacolod (*Sanggunian*) on June 17, 2004; <http://www.bacolodcity.gov.ph/spordinances/co04060369.pdf> [visited July 6, 2018]).

Prior to the updating of the schedule of the FMV of real properties in Bacolod City through City Ordinance No. 827 entitled "AN ORDINANCE UPDATING THE SCHEDULE OF MARKET VALUE OF REAL PROPERTIES IN THE CITY OF BACOLOD AND OTHER PROVISIONS RELATIVE TO REAL PROPERTY TAX ADMINISTRATION" passed by the *Sanggunian* on October 26, 2017 (See <http://www.bacolodcity.gov.ph/images/CO827.pdf> [visited July 6, 2018]), the last updating was in 2005 (*via* City Ordinance No. 393 dated October 10, 2005 which amended the dates of implementation of certain provisions in City Ordinance No. 369; <http://www.bacolodcity. gov.ph/spordinances/co05100393. pdf> [visited July 6, 2018]), as the attempt to update in 2014 (via City Ordinance No. 08-14-700 dated November 19, 2014) was declared null and void by the Department of Justice in February 2015 (See third preambular clause of City Ordinance No. 827. See also City Ordinance No. 09-16-781 passed by the Sanggunian on July 13, 2016; <http://www.bacolodcity.gov.ph/spordinances/co0916781.pdf> [visited July 6, 2018]).

On the other hand, the assessment levels were at the rates not exceeding the following:

CLASS	ASSESSMENT LEVELS
Residential	**8%**
Agricultural	40%
Commercial	12%
Industrial	12%
Mineral	50%
Timberland	20%

(See Article 21 of the Real Property Tax Code, Annex "A" of City Ordinance No. 369; <http://www.bacolodcity.gov.ph/ spordinances/co04060369.pdf> [visited July 6, 2018]), which became effective on January 1, 2006 (See Section 2, City Ordinance No. 393 passed by the Sanggunian On October 10, 2005; <http://www.bacolodcity.gov.ph/spordinances/co05100393. pdf> [visited July 6, 2018].)

[43] Admittedly, **₱400.00/sq. m.** at the time of the filing of the motion for initial payment; see CA *rollo* (CA-G.R. CEB SP. No. 06286), pp. 10-11.

In *Republic of the Philippines v. Judge Gingoyon*,[44] the Court recognized that while expropriation proceedings have always demanded just compensation in exchange for private property, the deposit requirement under Rule 67 of the Rules of Court **"impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed."**[45] Thus, it categorically declared that **"[i]t is the plain intent of [RA] 8974 to *supersede* the system of deposit under Rule 67 with the scheme of 'immediate payment' in cases involving national government infrastructure projects."**[46] The same case further ruled:

> It likewise bears noting that **the appropriate standard of just compensation is a substantive matter. It is well within the province of the legislature to fix the standard, which it did through the enactment of [RA] 8974. Specifically, this prescribes the new standard in determining the amount of just compensation in expropriation cases relating to national government infrastructure projects, as well as the payment of the provisional value as a prerequisite to the issuance of a writ of possession.** Of course, rules of procedure, as distinguished from substantive matters, remain the exclusive preserve of the Supreme Court by virtue of Section 5(5), Article VIII of the Constitution. Indeed, Section 14 of the Implementing Rules recognizes the **continued applicability of Rule 67 on procedural aspects** when it provides "all matters regarding defenses and objections to the complaint, issues on uncertain ownership and conflicting claims, effects of appeal on the rights of the parties, and such other incidents affecting the complaint shall be resolved under the provisions on expropriation of Rule 67 of the Rules of Court."[47] (Emphases supplied)

Indubitably, a matter is substantive when it involves the creation of rights to be enjoyed by the owner of the property to be expropriated. The right of the owner to receive just

---

[44] 514 Phil. 657 (2005).

[45] *Id*. at 701; emphasis supplied.

[46] *Id* at 689; emphasis supplied.

[47] *Id*. at 690.

compensation prior to acquisition of possession by the State of the property is a proprietary right, appropriately classified as a substantive matter and, thus, within the sole province of the legislature to legislate on.[48]

Statutes are generally applied prospectively unless they expressly allow a retroactive application.[49] It is well known that the principle that a new law shall not have retroactive effect only governs rights arising from acts done under the rule of the former law. **However, if a right be declared for the first time by a subsequent law, it shall take effect from that time even though it has arisen from acts subject to the former laws, provided that it does not prejudice another acquired right of the same origin.**[50]

In this case, the government had long entered the subject land and constructed the transmission towers and lines. However, petitioner initiated inverse condemnation proceedings after the effectivity of RA 8974 on November 26, 2000;[51] hence, procedurally and substantially, the said law should govern. Notably, the payment of the provisional value of the subject land equivalent to 100% of its *current* zonal value is declared for the first time by the said law which is evidently more favorable to the landowner than the mere deposit of its assessed value[52] as required by Rule 67. Accordingly, the application of the provisions of RA 8974 to the instant case is beyond cavil. Besides, there is no legal impediment to the issuance of a writ of possession in favor of respondent, as successor of NPC, despite entry to

---

[48] See Resolution in *Republic of the Philippines v. Judge Gingoyon*, 517 Phil. 1, 12 (2006); emphasis and underscoring supplied.

[49] Article 4 of the Civil Code provides:

Article 4. Laws shall have no retroactive effect, unless the contrary is provided.

[50] *Bona v. Briones*, 38 Phil. 276, 282 (1918); emphasis supplied.

[51] See *Sps. Curata, et al. v. Philippine Ports Authority*, 608 Phil. 9, 90 (2009).

[52] Computed at 8% of the FMV of the subject land.

the subject land long before the filing of the inverse condemnation proceedings before the RTC because **physical possession gained by entering the property is not equivalent to expropriating it with the aim of acquiring ownership thereon**. In *Republic v. Hon. Tagle*,[53] the Court explained:

> **The expropriation of real property does not include mere physical entry or occupation of land.** Although eminent domain usually involves a taking of title, there may also be compensable taking of only some, not all, of the property interests in the bundle of rights that constitute ownership.
>
> x x x [M]ere physical entry and occupation of the property fall short of the taking of title, which includes all the rights that may be exercised by an owner over the subject property. Its actual occupation, which renders academic the need for it to enter, does not by itself include its acquisition of all the rights of ownership. x x x.
>
> x x x **Ineludibly, [the] writ [of possession] is both necessary and practical, because mere physical possession that is gained by entering the property is not equivalent to expropriating it with the aim of acquiring ownership over, or even the right to possess, the expropriated property.**[54] (Emphases supplied)

Section 1 of RA 8974 declares the State's policy to ensure that owners of real property acquired for national government infrastructure projects are **promptly** paid just compensation. However, the sad truth is that several cases reached this Court wherein various government agencies, including respondent, had constructed transmission lines, tunnels, and other infrastructure before it decided to expropriate the properties upon which they built the same. Still, in other cases, the property owners were compelled to initiate inverse condemnation proceedings due to the government's long inaction to commence expropriation proceedings to acquire their land. As early as the 1960 case of *Alfonso v. Pasay City*,[55] the Court had pronounced its disapproval of such practice and its vigilance

---

[53] 359 Phil. 892 (1998).

[54] *Id.* at 902-903.

[55] 106 Phil. 1017 (1960).

in the defense of the rights of the unpaid landowner who has been deprived of possession, thus:

> This Tribunal does not look with favor on the practice of the Government or any of its branches, of taking away property from a private landowner, especially a registered one, without going through the legal process of expropriation or a negotiated sale and paying for said property without delay. The private owner is usually at a great and distinct disadvantage. He has against him the whole Government, central or local, that has occupied and appropriated his property, summarily and arbitrarily, sometimes, if not more often, against his consent. There is no agreement as to its price or its rent. In the meantime, the landowner makes requests for payment, rent, or even some understanding, patiently waiting and hoping that the Government would soon get around to hearing and granting his claim. The officials concerned may promise to consider his claim and come to an agreement as to the amount and time for compensation, but with the not infrequent government delay and red tape, and with the change in administration, specially local, the claim is pigeon holed and forgotten and the papers lost, [or] mislaid x x x. And when finally losing patience and hope, he brings a court action and hires a lawyer to represent him in the vindication of his valid claim, he faces the government represented by no less than the Solicitor General or the Provincial Fiscal or City Attorney, who blandly and with self-assurance, invokes prescription. The litigation sometimes drags on for years. In our opinion, that is neither just nor fair. When a citizen, because of this practice loses faith in the government and its readiness and willingness to pay for what it gets and appropriates, in the future said citizen would not allow the Government to even enter his property unless condemnation proceedings are first initiated, and the value of the property, as provisionally ascertained by the Court, is deposited, subject to his disposal. This would mean delay and difficulty for the Government, but all of its own making.[56]

Notably, in its Answer,[57] NPC invoked prescription of petitioner's claim,[58] and despite the agreement to settle the case at the price of ₱400.00/ sq. m., the proposed compromise did

---

[56] *Id*. at 1020-1021.

[57] CA *rollo* (CA-G.R. CEB SP. No. 06286), pp. 401-45.

[58] See *id*. at 42.

not push through in view of the failure of the OSG for a number of years to duly act on the Deed of Sale entered into by the parties,[59] prompting petitioner to file the motion for the payment of the provisional value of the subject land. Since the NPC's entry in the subject land on September 21, 1989, or for almost twenty-nine (29) years, the registered owner had been effectively deprived of the beneficial enjoyment of the subject land without having been paid a single centavo.

The Court reminds the government and its agencies that it is their obligation to immediately initiate eminent domain proceedings whenever they intend to take private property for any public purpose, which includes the payment of the provisional value thereof.[60]

---

[59] See *rollo*, p. 48. See also CA *rollo* (CA-G.R. CEB SP. No. 06286), pp. 63-64.

[60] Section 6 of RA 10752, entitled "AN ACT FACILITATING THE ACQUISITION OF RIGHT-OF-WAY SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS," otherwise known as "The Right-of-Way Act," (April 3, 2016), which repealed RA 8974, pertinently provides:

> SECTION 6. *Guidelines for Expropriation Proceedings*. – Whenever it is necessary to acquire real property for the right-of-way site or location for any national government infrastructure through expropriation, the appropriate implementing agency, through the Office of the Solicitor General, the Office of the Government Corporate Counsel, or their deputize government or private legal counsel, shall immediately initiate the expropriation proceedings before the proper court under the following guidelines:
>
> **(a) Upon the filing of the complaint or at any time thereafter, and after due notice to the defendant, the implementing agency shall immediately deposit to the court in favor of the owner the amount equivalent to the sum of:**
>
> **(1) One hundred percent (100%) of the value of the land based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR) issued not more than three (3) years prior to the filing of the expropriation complaint subject to subparagraph (c) of this section;**
>
> (2) The replacement cost at current market value of the improvements and structures as determined by:
>
> (i) The implementing agency;

In view of the foregoing, the Court finds that the CA erred in setting aside the RTC Orders which should be, perforce, reinstated. Accordingly, the case should be remanded to the RTC for the determination of just compensation for the subject land, taking into consideration, the relevant standards[61] set forth under RA 8974.

It must be emphasized that RA 8974 does not take away from the courts the power to judicially determine the amount of just compensation. It merely provides relevant standards in order to facilitate the determination of just compensation, and sets the minimum price of the property as the provisional value[62] to immediately recompense the landowner with the same degree of speed as the taking of the property, which reconciles the inherent unease attending expropriation proceedings with a position of fundamental equity.[63]

Nonetheless, it is settled that where actual taking was made without the benefit of expropriation proceedings, and the owner sought recovery of the possession of the property prior to the filing of expropriation proceedings, the Court has invariably ruled that it is the value of the property at the time of taking

---

(ii) A government financial institution with adequate experience in property appraisal; and

(iii) An independent property appraiser accredited by the BSP.

(3) The current market value of crops and trees located within the property as determined by a government financial institution or an independent property appraiser to be selected as indicated in subparagraph (a) of Section 5 hereof.

Upon compliance with the guidelines abovementioned, the court shall immediately issue to the implementing agency an order to take possession of the property and start the implementation of the project.

x x x x x x x x x (Emphases and underscoring supplied)

[61] See Section 5 of RA 8974.

[62] *Metropolitan Cebu Water District v. J. King and Sons Co., Inc.*, *supra* note 38, at 485.

[63] 514 Phil. 657, 701 (2005).

that is controlling for purposes of compensation.[64] Any other interpretation would be repugnant to the Constitution which commands the exproriator to pay the property owner no less than the full and fair equivalent of the property **from the date of taking**.[65]

The reason for the rule, as pointed out in *Republic v. Lara*,[66] is that:

> [W]here property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enchanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken. This is the only way that compensation to be paid can be truly just; *i.e.*, "just not only to the individual whose property is taken," "but to the public, which is to pay for it." [67]

However, it must be emphasized that in determining just compensation, the courts must consider and apply the parameters set by the law and its implementing rules and regulations in order to ensure that they do not arbitrarily fix an amount as just compensation that is contradictory to the objectives of the law. Be that as it may, when acting within such parameters, courts are not strictly bound to apply the same to its minutest detail, particularly when faced with situations that do not warrant its strict application. **Thus, the courts may, in the exercise of**

---

[64] *Manila International Airport Authority v. Rodriguez*, 518 Phil. 750, 757 (2006).

[65] See Section 9, Article III of the 1987 Constitution which provides:

"Section 9. Private property shall not be taken for public use without just compensation."

[66] 96 Phil. 170 (1954).

[67] *Id*. at 177-178.

their discretion, relax the application of the guidelines subject to the jurisprudential limitation that the factual situation calls for it and the courts clearly explain the reason for such deviation.[68]

Finally, the Court deems it proper to modify the amount of the provisional value from ₱7,845,000.00 to ₱7,854,000.00 computed by multiplying the area of 19,635 sq. m. occupied by the transmission lines[69] by the zonal value of the subject land at 400.00/sq. m. Moreover, it must be clarified that the government's initial payment of the land's provisional value does not excuse it from avoiding payment of interest on any difference between the amount of final just compensation adjudged and the initial payment[70] (unpaid balance). Legal interest shall be imposed on the unpaid balance at the rate of twelve percent (12%) per annum from the time of taking, *i.e.*, from entry in the subject land on September 21, 1989,[71] until June 30, 2013; thereafter, or beginning July 1, 2013, until fully paid, the just compensation due petitioner shall earn interest at the rate of six percent (6%) per annum.[72]

WHEREFORE, the petition is **GRANTED.** The Amended Decision dated May 26, 2016 and the Resolution dated March 17, 2017 of the Court of Appeals in CA-G.R. CEB SP. Nos. 06204 and 06286 are hereby **REVERSED** and **SET ASIDE.** The Orders dated May 7, 2010 and May 11, 2011 of the Regional Trial Court of Bacolod City, Branch 54 (RTC) in Civil Case No. 01-11356 directing the National Power Corporation or its assignee (respondent National Transmission Corporation) to

---

[68] See *Republic of the Philippines v. Ng*, G.R. No. 229335, November 29, 2017.

[69] See CA *rollo* (CA-G.R. CEB SP. No. 06286), p. 49.

[70] *Republic v. Mupas*, 769 Phil. 21, 196 (2015).

[71] CA *rollo* (CA-G.R. CEB SP. No. 06286), p. 41.

[72] In line with the amendment introduced by the Bangko Sentral ng Pilipinas Monetary Board in BSP-MB Circular No. 799, Series of 2013 (Rate of interest in the absence of stipulation; dated June 21, 2013).

compensate petitioner the provisional value of the subject land in an amount equivalent to its 100% zonal value, herein recomputed at ₱7,854,000.00, is **REINSTATED.** The records of the case are **REMANDED** to the RTC for reception of evidence on the issue of just compensation in accordance with the guidelines afore-discussed.

The RTC is directed to conduct the proceedings in said case with reasonable dispatch, and to submit to the Court a report on its findings and recommended conclusions within sixty (60) days from notice of this Decision.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 233974. July 2, 2018]

CATALINA F. ISLA, ELIZABETH ISLA, and GILBERT F. ISLA, *petitioners, vs.* **GENEVIRA[*] P. ESTORGA,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; INTEREST; TWO TYPES OF INTEREST ARE THE MONETARY INTEREST AND THE COMPENSATORY INTEREST; EXCESSIVE MONETARY INTEREST MAY BE TEMPERED BY THE COURT TO PREVAILING LEGAL RATE OF INTEREST AT THE TIME OF AGREEMENT.— Case law states that there are two (2) types of interest, namely, monetary interest

[*] Also spelled as "Genevera" in some parts of the *rollo*.

and compensatory interest. Monetary interest is the compensation fixed by the parties for the use or forbearance of money. On the other hand, compensatory interest is that imposed by law or by the courts as penalty or indemnity for damages. Accordingly, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for delay or failure to pay the principal loan on which the interest is demanded (compensatory interest). Anent monetary interest, the parties are free to stipulate their preferred rate. However, courts are allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable, and/or exorbitant, such as stipulated interest rates of three percent (3%) per month or higher. In such instances, it is well to clarify that only the unconscionable interest rate is nullified and deemed not written in the contract; whereas the parties' agreement on the payment of interest on the principal loan obligation subsists. It is as if the parties failed to specify the interest rate to be imposed on the principal amount, in which case ***the legal rate of interest prevailing at the time the agreement was entered into*** is applied by the Court. This is because, according to jurisprudence, the legal rate of interest is the presumptive reasonable compensation for borrowed money.

2. ID.; ID.; ID.; ID.; ARTICLE 2212 OF THE CIVIL CODE; THAT INTEREST DUE SHALL EARN LEGAL INTEREST FROM THE TIME IT IS JUDICIALLY DEMANDED, CONTEMPLATES THE PRESENCE OF STIPULATED INTEREST ACCRUED WHEN DEMAND WAS JUDICIALLY MADE.— [P]ursuant to Article 2212 of the Civil Code, "[i]nterest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point." To be sure, Article 2212 contemplates the presence of stipulated or conventional interest, *i.e.*, monetary interest, which has accrued when demand was ***judicially*** made. In cases where no monetary interest had been stipulated by the parties, no accrued monetary interest could further earn compensatory interest upon judicial demand. Thus, the principal amount and monetary interest due to respondent shall earn compensatory interest of twelve percent (12%) per annum from judicial demand, *i.e.*, the date of the filing of the complaint on July 24, 2007, to June 30, 2013, and thereafter, at the rate of six percent (6%) per annum from July 1, 2013 until fully paid.

3. ID.; ID.; ATTORNEY'S FEES; AWARD OF ATTORNEY'S FEES MUST BE SUFFICIENTLY JUSTIFIED.— On the issue of attorney's fees, the general rule is that the same cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification. It must clearly state the reasons for awarding attorney's fees in the body of its decision, and not merely in its dispositive portion.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
J.P. Baliad Law Office 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 petitioners Catalina F. Isla (Catalina),Elizabeth Isla, and Gilbert F. Isla (collectively, petitioners) assailing the Decision[2] dated May 31, 2017 and the Resolution[3] dated August 24, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 101743, which affirmed with modification the Decision[4] dated December 10, 2012 of the Regional Trial Court of Pasay City, Branch 112 (RTC) in Civil Case No. 07-0014, directing petitioners to pay respondent Genevira P. Estorga (respondent) the following sums: (*a*) ₱100,000.00 representing the principal of the loan obligation; (*b*) an amount equivalent to twelve percent (12%) of ₱100,000.00 computed from November 16, 2006 until full

---

[1] *Rollo*, pp. 25-41.

[2] *Id.* at 46-55. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Jose C. Reyes, Jr. and Stephen C. Cruz concurring.

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

[4] *Id*. at 82-84. Penned by Presiding Judge Jesus B. Mupas.

payment, representing interest on the loan; (*c*) an amount equivalent to six percent (6%) of the sums due in (*a*) and (*b*) *per annum* computed from the finality of the CA Decision until full payment, representing legal interest; and (*d*) ₱20,000.00 as attorney's fees.

The Facts

On December 6, 2004, petitioners obtained a loan in the amount of ₱100,000.00 from respondent, payable anytime from six (6) months to one (1) year and subject to interest at the rate of ten percent (10%) per month, payable on or before the end of each month. As security, a real estate mortgage[5] was constituted over a parcel of land located in Pasay City, covered by Transfer Certificate of Title (TCT) No. 132673[6] and registered under the name of Edilberto Isla (Edilberto), who is married to Catalina (subject property). When petitioners failed to pay the said loan, respondent sought assistance from the barangay, and consequently, a *Kasulatan ng Pautang*[7] dated December 8, 2005 was executed. Petitioners, however, failed to comply with its terms, prompting respondent to send a demand letter[8] dated November 16, 2006. Once more, petitioners failed to comply with the demand, causing respondent to file a Petition for Judicial Foreclosure[9] against them before the RTC.[10]

For their part,[11] petitioners maintained that the subject mortgage was not a real estate mortgage but a mere loan, and that the stipulated interest of ten percent (10%) per month was exorbitant and grossly unconscionable.[12] They also insisted that

---

[5] See the Deed of Real Estate Mortgage dated December 6, 2004; *id*. at 80-81.

[6] *Id*. at 69.

[7] *Id*. at. 70.

[8] *Id*. at 72.

[9] Dated July 19, 2007. *Id*. at 61-65.

[10] See *id.* at 47.

[11] See Opposition dated October 9, 2007; *id*. at 73-79.

[12] See *id*. at 73-76.

since petitioners were not the absolute owners of the subject property – as the same was allegedly owned by Edilberto – they could not have validly constituted the subject mortgage thereon.[13]

The RTC Ruling

In a Decision[14] dated December 10, 2012, the RTC granted the Petition for Judicial Foreclosure, finding that petitioners themselves admitted that: (*a*) they obtained a loan in the amount of ₱100,000.00 and that the said loan was secured by a real estate mortgage over the subject property; and (*b*) the subject mortgage was annotated on TCT No. 132673.[15] Further, the RTC observed that while it is true that the present action pertains to a judicial foreclosure, the underlying principle is that a real estate mortgage is but a security and not a satisfaction of indebtedness. Thus, it is only proper to render petitioners solidarily liable to pay respondent and/or foreclose the subject mortgage should they fail to fulfill their obligation.[16]

Consequently, the RTC directed petitioners to pay respondent the amounts of ₱100,000.00 with twelve percent(12%) interest per annum from December 2007 until fully paid and ₱20,000.00 as attorney's fees. Alternatively, in the event that petitioners fail to pay or deposit with the Clerk of Court the said amounts within a period of six (6) months from receipt of a copy of the RTC Decision, it held that the subject property will be foreclosed and sold at public auction to satisfy the mortgage debt, and the surplus, if any,will be delivered to petitioners with reasonable interest under the law.[17]

Aggrieved, respondent appealed[18] to the CA.

---

[13] See *id*. at 77.

[14] *Id*. at 82-84.

[15] See *id*. at 83.

[16] See *id*. at 84.

[17] See *id*.

[18] See Notice of Appeal dated October 21, 2013 (*id*. at 85-86) and Brief for the Defendants-Appellants dated October 27, 2014 (*id*. at 91-101).

The CA Ruling

In a Decision[19] dated May 31, 2017, the CA affirmed with modification the RTC Decision, and accordingly, ordered petitioners to pay respondent the following sums: (*a*) ₱100,000.00 representing the principal of the loan obligation; (*b*) an amount equivalent to twelve percent (12%) of ₱100,000.00 computed per year from November 16, 2006 until full payment, representing interest on the loan; (*c*) an amount equivalent to six percent (6%) of the sums due in (*a*) and (*b*) per annum computed from the finality of the CA Decision until full payment, representing legal interest; and (*d*) ₱20,000.00 as attorney's fees.[20]

The CA held that in light of the registry return receipt bearing the signature of Catalina, it was established that petitioners indeed received the demand letter dated November 16, 2006.[21] Meanwhile, it did not agree with the RTC's order providing petitioners alternative remedies, which remedies are, by law, mutually exclusive. Thus, since respondent's Petition for Judicial Foreclosure was essentially an action to collect a sum of money, she is then barred from causing the foreclosure of the subject mortgage.[22]

Moreover, the CA ruled that the RTC erred in imposing the interest rate of twelve percent (12%) per annum from December 2007 until full payment. It likewise held that the stipulated interest of ten percent (10%) per month on the real estate mortgage is exorbitant. And finally, it declared that respondent is entitled to the award of attorney's fees based on equity and in the exercise of its discretion.[23]

Undaunted, petitioners sought partial reconsideration,[24] claiming that the award of attorney's fees was without factual,

---

[19] *Id.* at 46-55.

[20] *Id*. at 54.

[21] See *id*. at 52-53.

[22] *Id*. at 53.

[23] See *id.* at 54.

[24] See Motion for Partial Reconsideration dated June 23, 2017; *id*. at 117-120.

legal, and equitable justification and should therefore be deleted.[25] The same, however, was denied in a Resolution[26] dated August 24, 2017; hence, the instant petition,claiming that the CA gravely erred not only in awarding attorney's fees despite the absence of factual justification in the body of its Decision but also in imposing interest of twelve percent (12%) per annum interest until full payment.[27]

In her Comment,[28] respondent retorted that the CA's award of attorney's fees was proper and within the discretion of the court. Likewise, the CA correctly imposed interest at the rate of twelve percent (12%) per annum to the principal loan obligation of petitioners.[29]

The Issues Before the Court

The issue for the Court's resolution is whether or not the CA erred in awarding: (*a*) twelve percent (12%) interest on the principal obligation until full payment; and (*b*) attorney's fees.

The Court's Ruling

The petition is partly meritorious.

I.

In their petition, petitioners contest the interest imposed on the principal amount of the loan at the rate of twelve percent (12%) per annum from the date of extrajudicial demand until full payment, as stated in paragraph 2 of the CA ruling. In this regard, they argue that pursuant to *ECE Realty and Development, Inc. v. Hernandez* (*ECE Realty*),[30] the applicable interest rate should only be six percent (6%).[31]

---

[25] See *id*. at 119.

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

[27] See *id*. at 31-36.

[28] Dated April 23, 2018. *Id*. at 128-134.

[29] See *id*. at 130-133.

[30] 740 Phil. 784 (2014).

[31] See *rollo*, pp. 31-33.

The argument is untenable.

Case law states that there are two (2) types of interest, namely, monetary interest and compensatory interest. Monetary interest is the compensation fixed by the parties for the use or forbearance of money. On the other hand, compensatory interest is that imposed by law or by the courts as penalty or indemnity for damages. Accordingly, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for delay or failure to pay the principal loan on which the interest is demanded (compensatory interest).[32]

Anent monetary interest, the parties are free to stipulate their preferred rate. However, courts are allowed to equitably temper interest rates that are found to be excessive, iniquitous, unconscionable, and/or exorbitant,[33] such as stipulated interest rates of three percent (3%) per month or higher.[34] In such instances, it is well to clarify that only the unconscionable interest rate is nullified and deemed not written in the contract; whereas the parties' agreement on the payment of interest on the principal loan obligation subsists.[35] It is as if the parties failed to specify the interest rate to be imposed on the principal amount, in which case ***the legal rate of interest prevailing at the time the agreement was entered into*** is applied by the Court.[36] This is because, according to jurisprudence, the legal rate of interest is the presumptive reasonable compensation for borrowed money.[37]

In this case, petitioners and respondent entered into a loan obligation and clearly stipulated for the payment of monetary

---

[32] See *Pen v. Santos*, G.R. No. 160408, January 11, 2016, 778 SCRA 56, 68.

[33] See *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation*, 523 Phil. 360, 366 (2006).

[34] *Chua v. Timan*, 584 Phil. 144, 148 (2008).

[35] *Limso v. Philippine National Bank*, G.R. No. 158622, January 27, 2016, 782 SCRA 137, 229.

[36] *Id*. at 230, citing *Spouses Abella v. Spouses Abella*, 763 Phil. 372, 385-386 (2015).

[37] See *id.* at 386.

interest. However, the stipulated interest of ten percent (10%) per month was found to be unconscionable, and thus, the courts *a quo* struck down the same and pegged a new monetary interest of twelve percent (12%) per annum, which was the prevailing legal rate of interest for loans and forbearances of money at the time the loan was contracted on December 6, 2004.

In *Spouses Abella v. Spouses Abella*,[38] the Court was also faced with a situation where the parties entered into a loan with an agreement to pay monetary interest. Since the stipulated rate of interest by the parties was found to be unconscionable, the Court struck down the same and substituted it with the prevailing legal interest rate at the time the loan was perfected, *i.e.*, twelve percent (12%) per annum. In holding that such rate shall persist in spite of supervening events, the Court held:

> Jurisprudence is clear about the applicable interest rate if a written instrument fails to specify a rate. In *Spouses Toring v. Spouses Olan* [(589 Phil. 362 [2008])], this court clarified the effect of Article 1956 of the Civil Code and noted that the legal rate of interest (then at 12%) is to apply: "In a loan or forbearance of money, according to the Civil Code, the interest due should be that stipulated in writing, and *in the absence thereof, the rate* ***shall*** *be 12% per annum*."
>
> *Spouses Toring* cites and restates (practically verbatim) what this court settled in *Security Bank and Trust Company v. Regional Trial Court of Makati, Branch 61*[(331 Phil. 787 [1996])]: "In a loan or forbearance of money, the interest due should be that stipulated in writing, and *in the absence thereof, the rate* ***shall*** *be 12% per annum*."
>
> x x x x x x x x x
>
> The rule is not only definite; it is cast in mandatory language. From *Eastern Shipping* [*Lines, Inc. v. CA*][(G.R. No. 97412, July 12, 1994, 234 SCRA 78)] *to Security Bank* to *Spouses Toring*, jurisprudence has repeatedly used the word "shall," a term that has long been settled to denote something imperative or operating to impose a duty. Thus, the rule leaves no room for alternatives or otherwise does not allow for discretion. It *requires* the application of the legal rate of interest.

---

[38] *Id.*

Our intervening Decision in *Nacar v. Gallery Frames* [(716 Phil. 267 [2013])] recognized that the legal rate of interest has been reduced to 6% per annum[.]

x x x x x x x x x

Nevertheless, both Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013 and *Nacar* retain the definite and mandatory framing of the rule articulated in *Eastern Shipping, Security Bank*, and *Spouses Toring*. *Nacar* even restates *Eastern Shipping*:

x x x x x x x x x

Thus, it remains that where interest was stipulated in writing by the debtor and creditor in a simple loan or mutuum, but no exact interest rate was mentioned, the legal rate of interest shall apply. At present, this is 6% per annum, subject to *Nacar's* qualification on prospective application.

Applying this, the loan obtained by respondents from petitioners is deemed subjected to conventional interest at the rate of 12% per annum, the legal rate of interest at the time the parties executed their agreement. Moreover, *should conventional interest still be due as of July 1, 2013, the rate of 12% per annum shall persist as the rate of conventional interest.*

This is so because interest in this respect is used as a surrogate for the parties' intent, as expressed as of the time of the execution of their contract. In this sense, **the legal rate of interest is an affirmation of the contracting parties' intent; that is, by their contract's silence on a specific rate, the then prevailing legal rate of interest shall be the cost of borrowing money. This rate, which by their contract the parties have settled on, is deemed to persist regardless of shifts in the legal rate of interest. Stated otherwise, the legal rate of interest, *when applied as conventional interest*, shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate**.[39] (Emphases and underscoring supplied)

Following this pronouncement, the Court rules that the CA correctly imposed a straight monetary interest rate of twelve percent (12%) per annum on the principal loan obligation of

---

[39] *Id*. at 382-386.

petitioners to respondent, reckoned from the date of extrajudicial demand until finality of this ruling. At this point, suffice it to say that petitioner's reliance on *ECE Realty* is misplaced primarily because unlike in this case, the amount due therein does not partake of a loan obligation or forbearance of money.

In addition, not only the principal amount but also the monetary interest due to respondent as discussed above shall itself earn compensatory interest at the legal rate, pursuant to Article 2212 of the Civil Code, which states that "[i]nterest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point."[40] To be sure, Article 2212 contemplates the presence of stipulated or conventional interest, *i.e.*, monetary interest, which has accrued when demand was ***judicially*** made. In cases where no monetary interest had been stipulated by the parties, no accrued monetary interest could further earn compensatory interest upon judicial demand.[41] Thus, the principal amount and monetary interest due to respondent shall earn compensatory interest of twelve percent (12%) per annum from judicial demand, *i.e.*, the date of the filing of the complaint on July 24, 2007,[42] to June 30, 2013, and thereafter, at the rate of six percent (6%) per annum from July 1, 2013 until fully paid.

II.

On the issue of attorney's fees, the general rule is that the same cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit.[43]

---

[40] See also *Eastern Shipping Lines, Inc. v. CA*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95 and *Nacar v. Gallery Frames*, 716 Phil. 267, 282 (2013).

[41] See *David v. CA*, 375 Phil. 177, 185 (1999), citing *The Philippine American Accident Insurance Company, Inc. vs. Flores*, 186 Phil. 563, 566 (1980).

[42] See *rollo*, p. 61.

[43] See *Delos Santos v. Abejon*, G.R. No. 215820, March 20, 2017, citing *Spouses Vergara v. Sonkin*, 759 Phil. 402, 414 (2015).

The power of the court to award attorney's fees under Article 2208[44] of the Civil Code demands factual, legal, and equitable justification.[45]It must clearly state the reasons for awarding attorney's fees in the body of its decision, and not merely in its dispositive portion.[46]

In this case, the CA awarded the amount of ₱20,000.00 as attorney's fees premised merely on the general statement "upon equity and in the exercise of [its] discretion."[47] Hence, since the CA failed to "clearly state the reasons for awarding attorney's fees in the body of its decision", the Court finds it proper to delete the same.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated May 31, 2017 and the Resolution dated

---

[44] Article 2208 of the Civil Code reads:

Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In all cases, the attorney's fees and expenses of litigation must be reasonable.

[45] See *Delos Santos v. Abejon* , *supra* note 43.

[46] See *Marilag v. Martinez*, 764 Phil. 576, 593 (2015).

[47] *Rollo*, p. 54.

August 24, 2017 of the Court of Appeals in CA-G.R. CV No. 101743 are hereby **MODIFIED** as follows:

1. Petitioners Catalina F. Isla, Elizabeth Isla, and Gilbert F. Isla are **ORDERED** to pay respondent Genevira P. Estorga:

   (*a*) ₱100,000.00 representing the principal loan obligation;

   (*b*) Monetary interest on the principal loan obligation at the rate of twelve percent (12%) per annum from the date of default, *i.e.*, extrajudicial demand on November 16, 2006, until finality of this ruling;

   (*c*) Compensatory interest on the monetary interest as stated in letter(*b*) at the rate of twelve percent (12%) per annum from judicial demand, *i.e.*, July 24, 2007, to June 30, 2013, and thereafter, at the rate of six percent (6%) per annum from July 1, 2013 until finality of this ruling; and

   (*d*) Legal interest at the rate of six percent (6%) per annum imposed on the sums due in letters (*a*), (*b*), and (*c*) from finality of this ruling until full payment; and

2. The award of attorney's fees in favor of respondent is **DELETED**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Peralta, Caguioa, and *Reyes, Jr., JJ.,* concur.

INDEX

INDEX

enforcing the customs laws; here, the actual possession over respondent corporation's shipment remained with the petitioner since they were stored at its premises. (Asian Terminals, Inc. *vs*. Padoson Stainless Steel Corp., G.R. No. 211876, June 25, 2018) p. 47

CERTIORARI

Grave abuse of discretion –– It must be emphasized that the Ombudsman itself conducted its own preliminary investigation in this case; the Ombudsman, faced with the facts and circumstances extant herein, was led to believe that (1) a crime has been committed; and (2) there is probable cause that petitioner was guilty thereof; no grave abuse of discretion on the part of the Office of the Ombudsman when it found probable cause to file the Information against the accused in these cases; on the basis of these findings, the Sandiganbayan cannot be said to have committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied the petitioner's assertion that no probable cause exists for both cases. (Reyes *vs*. Sandiganbayan, G.R. Nos. 203797-98, June 27, 2018) p. 487

–– The Court finds that the First Division of the Sandiganbayan did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner's Urgent Omnibus Motion/s (For Judicial Determination of Probable Cause); it is shown that the letter request and purchase request are enough to engender a well-founded belief that the crime charged may have been committed by petitioner and that any assertion by petitioner that negates the complication of the documents are matters of defense; said connections can also establish probable cause which the Sandiganbayan may disprove during the trial. (*Id*.)

Petition for –– A *certiorari* proceeding is limited in scope and narrow in character; the special civil action for *certiorari* lies only to correct acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse

prescription; they both issued memorandum circulars in 1994 and 1995 to announce guidelines or procedures relative to the filing of the SALNs pursuant to R.A. No. 6713; the prescriptive period under Act No. 3326 was long enough for the Office of the Ombudsman and the CSC to investigate and identify the public officials and employees who did not observe the requirement for the submission or filing of the verified SALNs – information that was readily available to the public. (*Id.*)

–– The guidelines summarized in *Presidential Commission on Good Government v. Carpio-Morales* already settled how to determine the proper reckoning points for the period of prescription; whether it is the general rule or the exception that should apply in a particular case depends on the availability or the suppression of information relative to the crime should first be ascertained; if the information, data, or records from which the crime is based could be plainly discovered or were readily available to the public, as in the case of the petitioner herein, the general rule should apply, and prescription should be held to run from the commission of the crime; otherwise, the discovery rule is applied; secondly, when there are reasonable means to be aware of the commission of the offense, the discovery rule should not be applied. (*Id.*)

–– Under Sec. 2 of Act No. 3326, there are two modes of determining the reckoning point when prescription of an offense runs; the first, to the effect that prescription shall "run from the day of the commission of the violation of the law," is the general rule; the fact that any aggrieved person entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises does not prevent the running of the prescriptive period; the second mode is an exception to the first, and is otherwise known as the discovery rule; under the rulings in the Behest Loans Cases, the discovery rule, which is also known as the blameless ignorance doctrine, the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action. (*Id.*)

CODE OF CONDUCT FOR COURT PERSONNEL

it could reasonably be inferred that a major purpose of the donor is to influence the court personnel in performing official duties"; in *Cabauatan v. Uvero,* the Court reiterated its condemnation on some court employees' abominable use of "common practice" as a defense; the sole act of receiving money from litigants, whatever the reason may be, is antithesis to being a court employee; she should, thus, be held accountable even for mere receiving money from bondsmen, more so, considering that she admitted that she is the one who had direct dealings with them by virtue of her position. (Hon. Perez *vs*. Roxas, A.M. No. P-16-3595 [Formerly OCA I.P.I. No. 15-4446-P], June 26, 2018) p. 163

COMMON CARRIERS

Air Waybill –– Checks, whether payable to order or to bearer, so long as they comply with the requirements under Section 1 of the Negotiable Instruments Law, are negotiable instruments; an order instrument, which has to be endorsed by the payee before it may be negotiated, cannot be a negotiable instrument equivalent to cash; the instruments given as further examples under the Air Waybill must be endorsed to be considered equivalent to cash. (Federal Express Corp. *vs*. Antonino, G.R. No. 199455, June 27, 2018) p. 398

–– The prohibition in the Air Waybill has a singular object: money; what follows the phrase "transportation of *money*" is a phrase enclosed in parentheses, and commencing with the words "including but not limited to"; despite the utterance of the enclosed phrase, the singular prohibition remains: money; money, defined; it is settled in jurisprudence that checks, being only negotiable instruments, are only substitutes for money and are not legal tender; more so when the check has a named payee and is not payable to bearer. (*Id*.)

Extraordinary diligence –– Extraordinary diligence is that extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their own property or rights; the Civil

that the public official has no foreknowledge of any facts or circumstances that would prompt him or her to investigate or exercise a greater degree of care; in a number of cases, this Court refused to apply the *Arias* doctrine considering that there were circumstances that should have prompted the government official to inquire further. (Abubakar *vs*. People, G.R. No. 202408, June 27, 2018) p. 435

CRIMINAL PROCEDURE

Appeal from the dismissal of a criminal action — The Court has recognized instances where a private complainant would have standing to file a petition for *certiorari* under Rule 65 against the dismissal of a criminal case; in *Dee v. Court of Appeals*, it affirmed the CA's decision granting *certiorari* to a private complainant against a trial court's order dismissing the criminal case for *estafa* upon recommendation of the Secretary of Justice; petitioner's legal personality to file the petition, upheld. (Rural Bank of Mabitac, Laguna, Inc. *vs*. Canicon, G.R. No. 196015, June 27, 2018) p. 346

— The OSG has the sole authority to represent the State in appeals of criminal cases before the Supreme Court and the CA; rationale; in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution; thus, when a criminal case is dismissed by the trial court or if there is an acquittal, an appeal on the criminal aspect may be undertaken only by the State through the Solicitor General; the private offended party or complainant may not take such appeal; but may only do so as to the *civil* aspect of the case. (*Id*.)

Meritorious defense — Liberality has been applied in criminal cases but under exceptional circumstances; given that a person's liberty is at stake in a criminal case, *Umali* concedes that the strict application of the general rule may lead to a manifest miscarriage of justice; appropriate relief may be accorded to a defendant who has shown a meritorious defense and who has satisfied the court that acquittal would follow after the introduction of omitted

Jurisdiction of the Provincial Agrarian Reform Adjudicator (PARAD) –– An agrarian dispute is any controversy relating to, among others, tenancy over lands devoted to agriculture; here, the controversy raised squarely falls under that class of cases described under Par. 1.1, Sec. 1, Rule II of the 2003 DARAB Rules of Procedure; the specific elements of tenancy are sufficiently averred in the subject complaint: *first*, that the parties are the landowner and the tenant or agricultural lessee; *second*, that the subject matter of the relationship is an agricultural land; *third*, that there is consent between the parties to the relationship; *fourth*, that the purpose of the relationship is to bring about agricultural production; *fifth*, that there is personal cultivation on the part of the tenant or agricultural lessee; and *sixth*, that the harvest is shared between the landowner and the tenant or agricultural lessee. (Sps. Nolasco *vs*. Rural Bank of Pandi, Inc., G.R. No. 194455, June 27, 2018) p. 317

–– The determination of whether a tribunal has subject matter jurisdiction in a case is not affected by the defenses set up in an answer or motion to dismiss; certifications of municipal reform officers as to the presence or absence of a tenancy relationship are merely provisional; in one case, the Court even ruled that they do not bind the courts; given the averments of the subject complaint, the Court rules that the PARAD already obtained a jurisdictional foothold in this case; as an incidence, it could take on all the issues of the case, including the defenses raised by respondent bank. (*Id*.)

DOUBLE JEOPARDY

Elements –– As a rule, where the dismissal was granted upon motion of the accused, jeopardy will not attach; in this case, respondent's filing of the urgent motion for reinvestigation did not amount to her express consent; the Court has held before that the mere filing of a motion for reinvestigation cannot be equated to the accused's express consent; however, the Court still finds that she gave her express consent when her counsel did not object

ESTAFA

Commission of –– For an accused to be held criminally liable under Art. 318 of the Revised Penal Code, the following elements must exist: (a) the accused makes a false pretense, fraudulent act or pretense other than those in [Arts. 315, 316, and 317]; (b) such false pretense, fraudulent act or pretense must be made or executed prior to or simultaneously with the commission of the fraud; and (c) as a result, the offended party suffered damage or prejudice. (Osorio *vs*. People, G.R. No. 207711, July 2, 2018) p. 768

Estafa by means of deceit –– The following elements must concur: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage. (Osorio *vs*. People, G.R. No. 207711, July 2, 2018) p. 768

–– The phrase "other similar deceits" in Art. 315(2)(a) of the Revised Penal Code has been interpreted as limited to acts of the same nature as those specifically enumerated; under the principle of *ejusdem generis*, "other similar deceits" cannot be construed in the broadest sense to include all kinds of deceit. (*Id*.)

EVIDENCE

Admissibility of official records kept in foreign country –– Under Rule 132, Sec. 24 of the Rules of Court, the admissibility of official records that are kept in a foreign country requires that it must be accompanied by a certificate from a secretary of an embassy or legation, consul general, consul, vice consul, consular agent or any officer of the foreign service of the Philippines stationed in that foreign country; applying said provision,

Public documents –– The trustworthiness of public documents and the value given to the entries made therein could be grounded on: (1) the sense of official duty in the preparation of the statement made; (2) the penalty which is usually affixed to a breach of that duty; (3) the routine and disinterested origin of most such statements; and (4) the publicity of record which makes more likely the prior exposure of such errors as might have occurred. (Diaz *vs*. Office of the Ombudsman, G.R. No. 203217, July 2, 2018) p. 735

EXEMPTING CIRCUMSTANCES

Insanity –– An inquiry into the mental state of an accused should relate to the period immediately before or at the very moment the felony is committed; for purposes of exemption from criminal liability, mere behavioral oddities cannot support a finding of insanity unless the totality of such behavior indubitably shows a total absence of reason, discernment, or free will at the time the crime was committed; in the Philippines, the courts have established a clearer and more stringent criterion for insanity to be exempting as it is required that there must be a complete deprivation of intelligence in committing the act. (People *vs*. Salvador, Sr. *y* Masayang, G.R. No. 223566, June 27, 2018) p. 632

–– Insanity exists when there is a complete deprivation of intelligence while committing the act, *i.e.,* when the accused is deprived of reason, he acts without the least discernment because there is a complete absence of power to discern, or there is total deprivation of freedom of the will; the plea of insanity is in the nature of confession and avoidance; he who invokes insanity as a defense has the burden of proving its existence; two (2) elements must concur: (1) that defendant's insanity constitutes a complete deprivation of intelligence, reason, or discernment; and (2) that such insanity existed at the time of, or immediately preceding, the commission of the crime. (*Id*.)

EXPROPRIATION

while expropriation proceedings have always demanded just compensation in exchange for private property, the deposit requirement under Rule 67 of the Rules of Court impeded immediate compensation to the private owner, especially in cases wherein the determination of the final amount of compensation would prove highly disputed. (*Id*.)

–– The general rule is that upon the filing of the expropriation complaint, the plaintiff has the right to take or enter into possession of the real property involved if he deposits with the authorized government depositary an amount equivalent to the assessed value of the property; an exception to this procedure is provided by R.A. No. 8974 with respect to national government projects, which requires the payment of 100% of the zonal value of the property to be expropriated as the provisional value. (*Id*.)

–– The government's initial payment of the land's provisional value does not excuse it from avoiding payment of interest on any difference between the amount of final just compensation adjudged and the initial payment (unpaid balance). (*Id*.)

–– There is no need to determine with reasonable certainty the final amount of just compensation until after the trial court ascertains the provisional amount to be paid. (*Id*.)

–– Whether a deposit is made under Rule 67 of the Rules of Court or the provisional value of the property is paid pursuant to R.A. No. 8974, the said amount serves the double-purpose of: (*a*) pre-payment if the property is fully expropriated and (*b*) indemnity for damages if the proceedings are dismissed. (*Id*.)

–– Where actual taking was made without the benefit of expropriation proceedings, and the owner sought recovery of the possession of the property prior to the filing of expropriation proceedings, it is the value of the property

could have decided it as soon as its factual basis had been clearly laid; further, counsel for the prosecution expressly agreed that the motion be submitted for resolution. (*Id*.)

— Whether or not to voluntarily inhibit from hearing a case is a matter within the judge's discretion; absent clear and convincing evidence to overcome the presumption that the judge will dispense justice in accordance with law and evidence, this Court will not interfere; second paragraph of Rule 137, Sec. 1; no concrete proof of the judge's personal interest in the case was presented. (*Id*.)

Functions — There is nothing in the law or the rules that prevented respondent judge from acting on the bail application submitted to him on a weekend; accordingly, he acted in accordance with the rules in granting the application for bail. (Rodriguez *vs*. Hon. Noel, Jr., A.M. No. RTJ-18-2525 [Formerly OCA IPI No. 15-4435-RTJ], June 25, 2018) p. 9

Gross ignorance of the law — The Court agrees that respondent extended the TRO beyond the period allowed by Sec. 5, Rule 58 of the Rules of Court, considering that at the time he issued the order extending the TRO, the original 72-hour TRO had already expired; thus, in conducting the summary hearing and issuing the Order, respondent in effect revived what would have already been an expired 72-hour TRO and extended the same to a full twenty (20)-day period beyond the Rules' contemplation; under Sec. 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge; mitigating circumstances; penalty of reprimand. (Rodriguez *vs*. Hon. Noel, Jr., A.M. No. RTJ-18-2525 [Formerly OCA IPI No. 15-4435-RTJ], June 25, 2018) p. 9

Gross inefficiency and delay in the administration of justice — The judge failed to meet the expectation of promptness and efficiency that is required of a trial court judge; she failed to act on the Motion to Expunge the Pre-Trial

prescriptive period but before the judicial action; unlike Sec. 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit; it is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended inaction by the local treasurer; application. (City of Manila *vs*. Cosmos Bottling Corp., G.R. No. 196681, June 27, 2018) p. 371

Sections 195 and 196 — A taxpayer who had protested and paid an assessment is not precluded from later on instituting an action for refund or credit; the taxpayers' remedies of protesting an assessment and refund of taxes are stated in Secs. 195 and 196 of the LGC; the first provides the procedure for contesting an assessment issued by the local treasurer; whereas, the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge; both sections mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court; in Sec. 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Sec. 196, it is the written claim for refund or credit with the same office. (City of Manila *vs*. Cosmos Bottling Corp., G.R. No. 196681, June 27, 2018) p. 371

LOCAL TAXATION

Double taxation — While the City of Manila could impose against respondent corporation a manufacturer's tax under Sec. 14 of Ordinance No. 7794, or the Revenue Code of Manila, it cannot at the same time impose the tax under Sec. 21 of the same code; otherwise, an obnoxious double taxation would set in; in *The City of Manila v. Coca-Cola Bottlers, Inc*. (*2009*), the Court explained – there is indeed double taxation if respondent is subjected to the taxes under both Secs. 14 and 21 of Tax Ordinance No. 7794, since these are being imposed: (1) on the same subject matter – the privilege of doing business in

(1) the accused has not been actually arrested; (2) the accused surrenders himself to a person in authority or the latter's agent; and (3) the surrender is voluntary; illustrated in this case. (People *vs*. Salvador, Sr. *y* Masayang, G.R. No. 223566, June 27, 2018) p. 632

MURDER

Elements — Settled is the rule that minor children, by reason of their tender years, cannot be expected to put up a defense; when an adult person attacks a child, treachery exists; jurisprudence dictates that the elements of murder are as follows: (a) that a person was killed; (b) that the accused killed him; (c) that the killing was attended by any of the qualifying circumstances mentioned in Art. 248; and (d) that the killing is not parricide or infanticide; conviction for murder in these cases should be sustained. (People *vs*. Salvador, Sr. *y* Masayang, G.R. No. 223566, June 27, 2018) p. 632

Penalty and civil liability — Taking into account the mitigating circumstance of voluntary surrender and following Art. 63 of the RPC, the penalty of *reclusion perpetua* shall be imposed upon accused-appellant for each of the criminal cases; in addition, accused-appellant shall be held liable to the heirs for the following: civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00; interest for the civil indemnity and the moral, exemplary, and temperate damages at the rate of 6% per annum reckoned from the finality of this decision until full payment. (People *vs*. Salvador, Sr. *y* Masayang, G.R. No. 223566, June 27, 2018) p. 632

NATIONAL LABOR RELATIONS COMMISSION RULES OF PROCEDURE

Liberal application — In the present case, the NLRC Rules of Procedure must be liberally applied so as to prevent injustice and grave or irreparable damage or injury to an illegally dismissed employee; the matter should be remanded to the NLRC for determination of the inclusions

and (*b*) personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules; 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. (Triol *vs*. Atty. Agcaoili, Jr., A.C. No. 12011, June 26, 2018) p. 154

OBLIGATIONS AND CONTRACTS

Forbearance of money, goods or credits –– "The term 'forbearance,' within the context of usury law, has been described as a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to repay the loan or debt then due and payable"; "forbearance of money, goods or credits, should therefore refer to arrangements other than loan agreements, where a person acquiesces to the temporary use of his money, goods or credits pending happening of certain events or fulfillment of certain conditions" consequently, if those conditions are breached, said person is entitled not only to the return of the principal amount paid, but also to compensation for the use of his money which would be the same rate of legal interest applicable to a loan since the use or deprivation of funds therein is similar to a loan. (Asian Terminals, Inc. *vs*. Padoson Stainless Steel Corp., G.R. No. 211876, June 25, 2018) p. 47

–– This case does not involve an acquiescence to the temporary use of a party's money but merely a failure to pay the storage fees arising from a valid contract of service entered into between petitioner and respondent corporation; considering that there is an absence of any stipulation as to interest in the agreement between the parties herein, the matter of interest award arising from the dispute in this case would actually fall under the category of an "obligation, not constituting a loan or forbearance of money" as aforecited; consequently, this

concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract; the same provision defines a work-related illness is "any sickness as a result of an occupational disease listed under Sec. 32-A of the Contract with the conditions set therein satisfied"; illnesses not mentioned under Sec. 32 are disputably presumed as work-related; notwithstanding the presumption of work-relatedness of an illness under Sec. 20(A)(4), the seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease. (Ilustricimo *vs*. NYK-FIL Ship Mgm't., Inc./Int'l. Cruise Services, Ltd., G.R. No. 237487, June 27, 2018) p. 693

Doctor's assessment — In *INC Shipmanagement Incorporated v. Rosales*, the Court reiterated its earlier pronouncement in *Bahia Shipping Services, Inc. v. Constantino* that when the seafarer challenges the company doctor's assessment through the assessment made by his own doctor, the seafarer shall so signify and the company thereafter carries the burden of activating the third doctor provision; the POEA-SEC does not require a specific period within which the parties may seek the opinion of a third doctor, and they may do so even during the mandatory conference before the labor tribunals; upon being notified of petitioner's intent to dispute the company doctors' findings, whether prior or during the mandatory conference, the burden to refer the case to a third doctor has shifted to the respondents; this, they failed to do so, and petitioner cannot be faulted for the non-referral; effect. (Ilustricimo *vs*. NYK-FIL Ship Mgm't., Inc./Int'l. Cruise Services, Ltd., G.R. No. 237487, June 27, 2018) p. 693

Total and permanent disability — In determining whether a disability is total or partial, what is crucial is whether the employee who suffered from disability could still perform his work notwithstanding the disability he met; a permanent partial disability presupposes a seafarer's

evidence that the police officers were inspired by any improper motive or did not properly perform their duty, their testimonies on the operation deserve full faith and credit; in these cases, the presumption became conclusive when the accused-appellants failed to refute it. (People *vs*. Abella *y* Sedego, G.R. No. 213918, June 27, 2018) p. 511

PROSECUTION OF OFFENSES

Selective prosecution — The prosecution of offenses is generally addressed to the sound discretion of the fiscal; a claim of "selective prosecution" may only prosper if there is extrinsic evidence of "clear showing of intentional discrimination"; selective prosecution is a concept that originated from *United States v. Armstrong*, a 1996 case decided by the United States Supreme Court; a case for selective prosecution arises when a prosecutor charges defendants based on "constitutionally prohibited standards such as race, religion or other arbitrary classification"; although not formally adopted in this jurisdiction, there are cases that have been decided by this Court recognizing the possibility of defendants being unduly discriminated against through the prosecutorial process. (Abubakar *vs*. People, G.R. No. 202408, June 27, 2018) p. 435

QUALIFYING CIRCUMSTANCES

Evident premeditation — For evident premeditation to be appreciated as a qualifying circumstance, the following elements must be present: (a) a previous decision by the accused to commit the crime; (b) overt act or acts indicating that the accused clung to one's determination; and (c) lapse of time between the decision to commit the crime and its actual execution sufficient to allow accused to reflect upon the consequences of one's acts; not established in this case. (People *vs*. Delima, G.R. No. 222645, June 27, 2018) p. 616

RAPE

Commission of — For a charge of rape by sexual intercourse under Art. 266-A (1) of the RPC, as amended by

encounters. (People *vs*. YYY, G.R. No. 224626, June 27, 2018) p. 656

— The victim's testimony alone sufficed in establishing the elements of rape: (1) accused had carnal knowledge of the victim; and (2) it was accomplished (a) through the use of force or intimidation; (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. (*Id*.)

TAX REFUND

Action for — There are two conditions that must be satisfied in order to successfully prosecute an action for refund in case the taxpayer had received an assessment: *one*, pay the tax and administratively assail within 60 days the assessment before the local treasurer, whether in a letter-protest or in a claim for refund; *two*, bring an action in court within thirty (30) days from decision or inaction by the local treasurer, whether such action is denominated as an appeal from assessment and/or claim for refund of erroneously or illegally collected tax; application. (City of Manila *vs*. Cosmos Bottling Corp., G.R. No. 196681, June 27, 2018) p. 371

TREACHERY

As a qualifying circumstance — On the first element, the legal teaching consistently upheld by the Court is that the essence of treachery is when the attack comes without 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; relative to the second element, jurisprudence imparts that there must be evidence to show that the accused deliberately or consciously adopted the means of execution to ensure its success since unexpectedness of the attack does not always equate to treachery; the means adopted must have been a result of a determination to ensure success in committing the crime; established in this case. (People *vs*. Salvador, Sr. *y* Masayang, G.R. No. 223566, June 27, 2018) p. 632

consciously and deliberately adopted the particular means, methods or forms of attack employed; not only must the victim be shown defenseless, but it must also be shown that the accused deliberately and consciously employed the means and method of attack. (People *vs*. Delima, G.R. No. 222645, June 27, 2018) p. 616

UNLAWFUL DETAINER

Action for — To justify an action for unlawful detainer, the following essential requisites must concur: (1) the fact of lease by virtue of an implied or expressed contract; (2) the expiration or termination of the possessor's right to hold possession; (3) withholding of the possession of the land or building after the expiration or the termination of the right to possession by the lessee; (4) written demand upon lessee to pay the rental or comply with the terms of the lease and vacate the premises; (5) the action must be filed within one (1) year from date of last demand received by the lessee. (Colegio Medico-Farmaceutico De Filipinas, Inc. *vs*. Lim, G.R. No. 212034, July 2, 2018) p. 789

WILLS

Disposition of conjugal property — While it has been settled that the congruence of the wills of the spouses is essential for the valid disposition of conjugal property, it cannot be ignored that the wife's consent to the disposition of her one-half interest in the subject property remained undisputed; the Court deems it proper to uphold the validity of the Deed of Donation but only to the extent of the wife's one-half share in the subject property; the right of the donee is limited only to the one-half undivided portion that the wife owned; explained. (Sps. Carlos *vs*. Tolentino, G.R. No. 234533, June 27, 2018) p. 679

WITNESSES

Credibility of — Anent the claim of inconsistencies, what really prevails is the consistency of the testimonies of the witnesses in relating the principal occurrence and positive identification of the appellants; slight

would affect the result of the case, or that the judge acted arbitrarily, his assessment of the credibility of witnesses deserves high respect by appellate courts. (People *vs*. Parba-Rural, G.R. No. 231884, June 27, 2018) p. 668

Testimony of — It is a settled rule that discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not actually touching upon the central fact of the crime, or the basic aspects of "the who, the how, and the when" of the crime committed, do not impair their credibility because they are but natural and even enhance their truthfulness as they wipe out any suspicion of a counseled or rehearsed testimony; and minor contradictions among witnesses are to be expected in view of differences of impressions, vantage points, memory, and other relevant factors. (People *vs*. Beringuil, G.R. No. 220141, June 27, 2018) p. 587

Testimony of minor victim — Inconsistencies on minor details and collateral matters do not affect the substance, truth, or weight of the victim's testimonies; even granting that there were inconsistencies in the victim's claim as to the number of times accused-appellant had carnal knowledge of her, jurisprudence instructs that "when the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true; youth and immaturity are generally badges of truth and sincerity." (People *vs*. Rupal, G.R. No. 222497, June 27, 2018) p. 594

— When a rape victim's allegation is corroborated by a physician's finding of penetration, "there is sufficient foundation to conclude the existence of the essential requisite of carnal knowledge"; such 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; the "physical evidence is evidence of the highest order";

moreover, a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction. (*Id*.)

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS

(Local)

II. FOREIGN AUTHORITIES

A. STATUTES

Page

B. BOOKS