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OF THE

PHILIPPINES

FROM

JULY 10, 2018 TO JULY 23, 2018

SUPREME COURT
MANILA
2020

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 10557. July 10, 2018]
(Formerly CBD Case No. 07-1962)

JERRY M. PALENCIA, *complainant, vs.* **Atty. PEDRO L. LINSANGAN, Atty. GERARD M. LINSANGAN, and Atty. GLENDA M. LINSANGAN-BINOYA,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); "AMBULANCE CHASING" OR THE SOLICITATION OF ALMOST ANY KIND OF BUSINESS BY AN ATTORNEY, PERSONALLY OR THROUGH AN AGENT, IN ORDER TO GAIN EMPLOYMENT, IS PROSCRIBED; RATIONALE.— The practice of law is a profession and not a business. Lawyers are reminded to avoid at all times any act that would tend to lessen the confidence of the public in the legal profession as a noble calling, including, among others, the manner by which he makes known his legal services. A lawyer in making known his legal services must do so in a dignified manner. They are prohibited from soliciting cases for the purpose of gain, either personally or through paid agents or brokers. The CPR explicitly states that "[a] lawyer shall not do or permit to be done any act designed primarily to solicit legal business." Corollary to this duty is for lawyers not to encourage any suit or proceeding for any corrupt motive or interest. Thus, "ambulance chasing," or the

solicitation of almost any kind of business by an attorney, personally or through an agent, in order to gain employment, is proscribed. x x x In employing paralegals to encourage complainant to file a lawsuit against his employers, respondents indirectly solicited legal business and encouraged the filing of suit. These constitute malpractice which calls for the exercise of the court's disciplinary powers and warrants serious sanctions.

2. ID.; ID.; LAWYER-CLIENT RELATIONSHIP IS HIGHLY FIDUCIARY; MONEY COLLECTED BY A LAWYER ON A JUDGMENT RENDERED IN FAVOR OF HIS CLIENT CONSTITUTES TRUST FUNDS AND MUST BE IMMEDIATELY PAID OVER TO THE CLIENT. — The relationship between a lawyer and his client is highly fiduciary. This relationship holds a lawyer to a great degree of fidelity and good faith especially in handling money or property of his clients. Thus, Canon 16 and its rules remind a lawyer to: (1) hold in trust all moneys and properties of his client that may come into his possession; (2) deliver the funds and property of his client when due or upon demand subject to his retaining lien; and (3) account for all money or property collected or received for or from his client. Money collected by a lawyer on a judgment rendered in favor of his client constitutes trust funds and must be immediately paid over to the client. As he holds such funds as agent or trustee, his failure to pay or deliver the same to the client after demand constitutes conversion. Thus, whenever a lawyer collects money as a result of a favorable judgment, he must promptly report and account the money collected to his client. It is the lawyer's duty to give a prompt and accurate account to his client. Upon the collection or receipt of property or funds for the benefit of the client, his duty is to notify the client promptly and, absent a contrary understanding, pay or remit the same to the client, less only *proper fees* and disbursements, as soon as reasonably possible. He is under absolute duty to give his client a full, detailed, and *accurate account* of all money and property which has been received and handled by him, and must justify all transactions and dealings concerning them. And while he is in possession of the client's funds, he should not commingle it with his private property or use it for his personal purposes without his client's consent.

3. ID.; ID.; ID.; THE FACT ALONE THAT A LAWYER HAS A LIEN FOR HIS ATTORNEY'S FEES ON MONEY IN

HIS HANDS COLLECTED FOR HIS CLIENT DOES NOT ENTITLE HIM TO UNILATERALLY APPROPRIATE HIS CLIENT'S MONEY FOR HIMSELF; VIOLATION IN CASE AT BAR.— Since a claim for attorney's fees may be asserted either in the very action in which the services of a lawyer had been rendered, or in a separate action, respondents, instead of forcibly deducting their share, should have moved for the judicial determination and collection of their attorney's fees. The fact alone that a lawyer has a lien for his attorney's fees on money in his hands collected for his client does not entitle him to unilaterally appropriate his client's money for himself. x x x Even if we give credence to this explanation, it is improper for the lawyer to put his client's funds in his personal safe deposit vault. Funds belonging to the client should be deposited in a separate trust account in a bank or trust company of good repute for safekeeping. It is apparent from the foregoing that respondents failed to handle their client's money with great degree of fidelity. Respondents also showed their lack of good faith when they appropriated for themselves more than what is allowed under their contract. They have demonstrated that the payment of their attorney's fees is more important than their fiduciary and faithful duty of accounting and returning what is rightfully due to their client. More, they also failed to observe proper safekeeping of their client's money. Respondents violated the trust reposed in them, and demonstrated their lack of integrity and moral soundness. Respondents' flagrant and malicious refusal to comply with the CPR amounts to gross misconduct. This warrants the imposition of disciplinary sanctions.

4. **ID.; ID.; ID.; THE VIOLATION OF THE LAWYER'S OATH AND/OR BREACH OF THE ETHICS OF THE LEGAL PROFESSION EMBODIED IN THE CPR MAY, DEPENDING ON THE EXERCISE OF SOUND JUDICIAL DISCRETION BASED ON SURROUNDING FACTS, RESULT IN THE SUSPENSION OR DISBARMENT OF A MEMBER OF THE BAR; CASE AT BAR.—** The practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. Thus, the violation of the lawyer's oath and/or breach of the ethics of the legal profession embodied in the CPR may, depending on the exercise of sound judicial discretion based on the surrounding facts, result in the suspension

or disbarment of a member of the Bar. x x x For his violation of the proscription on ambulance chasing, we have previously imposed the penalty of suspension of one year. We find no reason not to impose the same penalty here. x x x In addition, the penalty for gross misconduct consisting in the failure or refusal, despite demand, of a lawyer to account for and to return money or property belonging to a client has been suspension from the practice of law for two years. x x x We recognize, however, respondents' efforts in tendering payment, albeit of an improper amount, to complainant, as well as the fact that this is their first offense. The imposition of a one year suspension is sufficient under the circumstances. x x x For both violations, we adopt the recommendation of the IBP Board of Governors of the imposition of two-year suspension for respondents Attys. Pedro L. Linsangan and Gerard M. Linsangan. We emphasize that this penalty of two years of suspension corresponds to the compounded infractions of the violations of Rule 1.03, Rule 2.03, Canon 3, Canon 16, Rule 16.01, and Rule 16.03 of the CPR: (1) the penalty of suspension of one year is imposed for the violation of the proscription on ambulance chasing; and (2) the penalty of one year suspension for gross misconduct consisting in the failure or refusal, despite demand, of a lawyer to account for and to return money or property belonging to a client.

VELASCO, JR.*, J.*, *dissenting opinion*:

LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); GROSS VIOLATION CONNOTES A FLAGRANT AND/OR MALICIOUS REFUSAL TO COMPLY WITH A SET OF RULES, LIKE THE CODE OF PROFESSIONAL RESPONSIBILITY; NOT PRESENT IN CASE AT BAR.— Gross violation connotes a flagrant and/or malicious refusal to comply with a certain set of rules, in this case the CPR. x x x In this case, respondents did not demonstrate the same callous and disdainful disregard of the law. They showed fidelity to complainant's cause by pursuing his claims against his employers which resulted in a successful settlement. Thereafter, respondents promptly notified complainant of their receipt of the settlement amount and attempted to deliver the net proceeds due to complainant. Respondents' indiscretion lies in their erroneous computation

and application of attorney's fees which they already rectified by filing their Compliance with the trial court's order for accounting and submission of receipts in connection with the final decision in Civil Case No. 10678. Given these circumstances, I believe that respondents are entitled to some measure of forbearance. As for their alleged violation of Canon 2 of the CPR, the facts of the case indicate a strong possibility that respondents committed ambulance chasing by soliciting legal business through agents. At any rate, considering that this is respondents' first administrative case and they fully participated in the proceedings before the IBP, I find the penalty of two-year (2-year) suspension too harsh. Accordingly, I urge the Court to show compassion to respondents in light of the mitigating circumstances above pointed out.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for respondents.

D E C I S I O N

***PER CURIAM*:**

Before us is a complaint[1] filed by Jerry M. Palencia (complainant) against Attorneys (Attys.) Pedro L. Linsangan, Gerard M. Linsangan[2] and Glenda Linsangan-Binoya (respondents) for disciplinary action.

Complainant was an overseas Filipino worker seafarer who was seriously injured during work when he fell into the elevator shaft of the vessel M/T "Panos G" flying a Cyprus flag.[3] After initial treatment in Singapore, complainant was discharged and flown to the Philippines to continue his medical treatment and rehabilitation. While confined at the Manila Doctors Hospital,

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[1] *Rollo*, pp. 2-3.

[2] Also referred to as "Gerald" in some parts of the records.

[3] *Rollo*, pp. 31-32.

one "Moises," and later Jesherel L. Millena (Jesherel), paralegals in respondents' law office, approached complainant. They convinced him to engage the services of respondents' law office in order to file a suit against his employers for indemnity.[4] After several visits from the paralegals and respondent Atty. Pedro Linsangan, complainant executed (1) an Attorney-Client Contract,[5] and (2) a Special Power of Attorney,[6] where he engaged the legal services of respondents and Gurbani & Co., a law firm based in Singapore, and agreed to pay attorney's fees of 35% of any recovery or settlement obtained for both.

After execution of the contract, complainant, through the efforts of respondents, was paid by his employer the following amounts: US$60,000.00 as indemnity and US$20,000.00 under their collective bargaining agreement. From these amounts, respondents charged complainant attorney's fees of 35%.[7]

Respondents and Gurbani & Co. also filed a tort case against the owners of "Panos G" before the High Court of Singapore (Singapore case). For this case, respondents engaged the services of Papadopoulos, Lycourgos & Co., a law firm based in Cyprus, to draft a written opinion on the issues involving Cyprus law, among others.[8] They also engaged the services of retired Justice Emilio Gancayco (Justice Gancayco) for his expert opinion regarding various issues raised by defendant's lawyer and representatives.[9] Thereafter, negotiations led to a settlement award in favor of complainant in the amount of US$95,000.00. Gurbani & Co. remitted to respondents the amount of US$59,608.40.[10] From this amount, respondents deducted:

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

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

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

[7] *Id.* at 8.

[8] *Id.* at 127-141.

[9] *Id.* at 156.

[10] *Id.* at 151-152. The difference after deducting: (1) US$8,398.33 representing the fees paid to Papadopoulos, Lycourgos & Co.;

(1) US$5,000.00 as payment to Justice Gancayco; (2) their attorney's fees equivalent to 35%; and (3) other expenses, leaving the net amount of US$18,132.43 for complainant.[11]

Respondents tendered the amount of US$20,756.05 (representing the US$18,132.43) to complainant, which the latter refused.[12] As complainant contested the amount comprised of the expenses and attorney's fees deducted, the following civil actions ensued between complainant and respondents:

(1) On September 12, 2005, respondents filed an action for preliminary mandatory injunction (Civil Case No. 05113475) before the Regional Trial Court (RTC) of Manila to compel complainant to receive the amount tendered.[13] This case was dismissed by the RTC, and the dismissal was eventually upheld by this Court on July 7, 2008.[14]

(2) On September 22, 2005, complainant filed with the RTC of Ligao City an action for accounting, remittance of settlement amounts and damages (Civil Case No. 2401 or accounting case).[15] On June 16, 2011, the RTC ruled in favor of complainant and ordered respondents to make proper accounting, among others.[16] Although the RTC

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(2) US$27,587.67 covering their fees and expenses; and (3) US$22.50 bank charges from the US$95,000.00; and adding US$616.90 which is the client's balance in his account.

[11] *Id.* at 35, 808.

[12] *Id*.

[13] *Rollo*, pp. 37, 104, 337-338.

[14] *Id*. at 449-450.

[15] *Id.* at 4-20, 492.

[16] *Id.* at 492-507. The dispositive portion of the Decision reads:

Wherefore, above premises considered, defendant law office through Atty. Pedro Linsangan, is hereby directed to:

a) make a proper accounting, within five (5) days from receipt hereof, regardless of whether it will move for a reconsideration or file an appeal, of all the funds it received, inclusive of the funds deducted by its Singapore collaborating counsel, on behalf of plaintiff;

upheld the stipulated attorney's fees as binding between the parties, it determined that the fees are lumped for both respondents and Gurbani & Co.[17] On appeal, the CA affirmed the RTC's Decision but reduced the rate of attorney's fees to 10%.[18] This Court affirmed the CA Decision in our Resolution dated February 20, 2013 in G.R. No. 205088. An Entry of Judgment was issued on August 8, 2013.

On March 28, 2007, complainant also filed the subject letter-complaint[19] with the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD). He requested that an

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b) refund to plaintiff the equivalent amount of 35% it deducted from plaintiff's POEA-standard US$60,000.00 indemnity;

c) revert back to plaintiff the excess funds insofar as the US$95,000.00 is concerned that will result from subtracting first all the litigation expenses incurred in connection with plaintiff's tort claim in Singapore, and from the resulting amount to deduct their (Linsangan and Gurbani) 35% attorney's fees;

d) pay the amount of ₱100,000.00 as moral damages to plaintiff;

e) pay the amount of ₱100,000.00 as exemplary damages to plaintiff;

f) pay the amount of ₱50,000.00 as attorney's fees to plaintiff;

g) immediately release the amount of US$20,756.05, inclusive of interest as mandated by the Fifth Division of the Court of Appeals to plaintiff which was the subject of this Court's Order dated March 16, 2010, within five days from receipt hereof;

h) pay the interest rate of 6% per annum from June 2005 of the total amount that will be refunded, by virtue of this decision, to plaintiff. After this decision attains finality, the legal interest shall be at 12% per annum, until fully paid. x x x. *Id*. at 506-507. (Emphasis omitted.)

[17] *Id*. at 497.

[18] *Id*. at 856-871; Docketed as CA-G.R. CV No. 97674. The dispositive portion of which states:

WHEREFORE, premises considered, the appeal is **DISMISSED** and the Decision dated June 16, 2011 of the Regional Trial Court of Legazpi City is hereby **AFFIRMED** with **MODIFICATION** that the award of attorney's fees shall be ten percent (10%) of the total monetary award to appellee Jerry M. Palencia.

SO ORDERED. *Id*. at 870. (Emphasis in the original.)

[19] *Supra* note 1.

investigation be conducted and the corresponding disciplinary action be imposed upon respondents for committing the following unethical acts: (1) refusing to remit the amount collected in the Singapore case worth US$95,000.00, and in offering only US$20,756.05; (2) depositing complainant's money into their own account; and (3) engaging in "ambulance chasing" by deploying their agents to convince complainant to hire respondents' services while the former was still bedridden in the hospital.

In their answer,[20] respondents explained that complainant retained respondents and Gurbani & Co.'s services in 2004 for purposes of filing a claim against the ship owner, its agents and principals. This led to the filing of a claim before the Singapore High Court. They averred that on April 29, 2005, Gurbani & Co. advised respondents of the settlement of the claim in Singapore for US$95,000.00.[21] On June 20, 2005, respondents sent a letter to complainant informing him that they already received the settlement amount and requested him to come to the former's office to get his net share.[22] Complainant went to respondents' law office on June 28, 2005 where respondents tendered to the former his net share of US$20,756.05.[23] However, complainant unjustly refused to accept the amount. Complainant also refused their tender of payment in their letter dated August 3, 2005.[24] On September 12, 2005, respondents even filed a "consignation case" (Civil Case No. 05113475) before the RTC of Manila.[25]

Respondents denied that they deposited the amount to their own account. They claimed that the amount of US$20,756.05 has been placed for safekeeping in a vault located inside their

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[20] *Rollo*, pp. 31-44.

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

[22] *Id.* at 34.

[23] *Id*. at 34-35.

[24] *Id.* at 36, 161-162.

[25] *Id*. at 37.

office ever since.[26] On May 3, 2007, after their receipt of the complaint and the IBP-CBD's Order dated April 3, 2007, they decided to deposit the money with Bank of the Philippine Islands in an interest savings account, in trust for complainant.[27]

As to the allegations of ambulance chasing, respondents averred that they provide free legal advice to the public. It was in the course of this public service when they met complainant.[28]

After proceedings, the IBP-CBD in its Report and Recommendation[29] ruled that respondents violated the canons of the Code of Professional Responsibility (CPR): (1) in soliciting legal business through their agents while complainant was in the hospital; (2) in failing to account for, and deliver the funds and property of his client when due or upon demand; and (3) in hiring the services of a foreign law firm and another lawyer without prior knowledge and consent of complainant of the fees and expenses to be incurred.[30] The IBP-CBD found that all three respondents connived and thus recommended that all respondents be suspended from the practice of law for a period of one year. It also directed respondents to comply with the Decision in the accounting case (Civil Case No. 2401) in favor of complainant.[31]

The IBP Board of Governors adopted the Report and Recommendation.[32] After respondents' motion for

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[26] *Id*. at 39.

[27] *Id*.

[28] *Rollo*, p. 360.

[29] *Id.* at 805-817.

[30] *Id*. at 810-815.

[31] *Id*. at 815-816.

[32] *Id.* at 804. The IBP Board of Governors passed Resolution No. XX-2013-257 dated March 20, 2013, which states:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled*

reconsideration[33] and complainant's opposition[34] thereto, the IBP Board of Governors modified the penalty and increased respondents' suspension from the practice of law to two years with warning, and ordered respondents to return the 5% of the amount assessed to complainant as attorney's fees.[35]

We adopt the findings of the IBP on the unethical conduct of respondents Attys. Pedro L. Linsangan and, Gerard M. Linsangan. We, however, absolve respondent Atty. Glenda M. Linsangan-Binoya for lack of any evidence as to her participation in the acts complained of.

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case, x x x *and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that Respondents violated Rule 2.04, Canon 2; Rule 15.05, Canon 15; Rule 16.03, Canon 16; Canon 17 and Rule 18.01, Canon 18 of the Code of Professional Responsibility, Attys. Pedro L. Linsangan, Gerard M. Linsangan and Glenda Linsangan-Binoya are hereby* ***SUSPENDED from the practice of law for one (1) year with Warning*** *to be circumspect in his dealing and repetition of the same conduct shall be dealt with more severely and* ***Ordered to Return*** *the 5% of the amount assessed to complainant.* (Emphasis and italics in the original.)

[33] *Id*. at 818-855.

[34] *Id*. at 1011.

[35] *Id*. at 1023. The IBP Board of Governors passed Resolution No. XXI-2014-195 dated March 23, 2014, which states:

RESOLVED to DENY Respondents' Motion for Partial Reconsideration, there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Further, in view of Respondents' gross violation of Rule 16.03, Canon 16 and Canon 17 of the Code of Professional Responsibility, Resolution No. XX-2013-257 dated March 20, 2013 is hereby ***AFFIRMED, with modification****, and accordingly Atty. Pedro L. Linsangan, Atty. Gerard M. Linsangan and Atty. Glenda Linsangan-Binoya* ***SUSPENDED from the practice of law for two (2) years with Warning*** *to be circumspect in their dealings and repetition of the same conduct shall be dealt with more severely and* ***Ordered to Return the 5% of the amount assessed to complainant.*** (Emphasis and italics in the original.)

I

The practice of law is a profession and not a business.[36] Lawyers are reminded to avoid at all times any act that would tend to lessen the confidence of the public in the legal profession as a noble calling, including, among others, the manner by which he makes known his legal services.

A lawyer in making known his legal services must do so in a dignified manner.[37] They are prohibited from soliciting cases for the purpose of gain, either personally or through paid agents or brokers.[38] The CPR explicitly states that "[a] lawyer shall not do or permit to be done any act designed primarily to solicit legal business."[39] Corollary to this duty is for lawyers not to encourage any suit or proceeding for any corrupt motive or interest.[40] Thus, "ambulance chasing," or the solicitation of almost

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[36] *Linsangan v. Tolentino*, A.C. No. 6672, September 4, 2009, 598 SCRA 133, 138-139.

[37] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 3 states:

CANON 3 – A lawyer in making known his legal services shall use only true, honest, fair, *dignified* and objective information or statement of facts. (Italics supplied.)

[38] *Linsangan v. Tolentino, supra* note 36 at 139, citing Rule 138, Section 27 of the Rules of Court, which in turn provides:

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

[39] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 2.03.

[40] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 1.03 states:

A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

any kind of business by an attorney, personally or through an agent, in order to gain employment, is proscribed.[41]

Here, there is sufficient evidence to show that respondents violated these rules. No less than their former paralegal Jesherel admitted that respondent Atty. Pedro Linsangan came with her and another paralegal named Moises, to Manila Doctors Hospital several times to convince complainant to hire their services.[42] This is a far cry from respondents' claim that they were merely providing free legal advice to the public. Moreover, while respondents deny Jesherel's connection with their law firm, this was sufficiently rebutted by complainant when he presented Jesherel's resignation letter as received by respondents' firm.[43] In employing paralegals to encourage complainant to file a lawsuit against his employers, respondents indirectly solicited legal business and encouraged the filing of suit. These constitute malpractice[44] which calls for the exercise of the court's disciplinary powers and warrants serious sanctions.[45]

II

The relationship between a lawyer and his client is highly fiduciary.[46] This relationship holds a lawyer to a great degree of fidelity and good faith especially in handling money or property of his clients.[47] Thus, Canon 16 and its rules remind a lawyer to: (1) hold in trust all moneys and properties of his client that may come into his possession;[48] (2) deliver the funds and property of his client when due or upon demand subject to

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[41] *Linsangan v. Tolentino*, *supra* note 36 at 139.

[42] *Rollo*, pp. 354-355.

[43] *Id.* at 523.

[44] *Linsangan v. Tolentino*, *supra* note 36 at 139.

[45] *Id.* at 142.

[46] *Bayonla v. Reyes*, A.C. No. 4808, November 22, 2011, 660 SCRA 490, 499.

[47] *Id.*

[48] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 16.

his retaining lien;[49] and (3) account for all money or property collected or received for or from his client.[50]

Money collected by a lawyer on a judgment rendered in favor of his client constitutes trust funds and must be immediately paid over to the client.[51] As he holds such funds as agent or trustee, his failure to pay or deliver the same to the client after demand constitutes conversion.[52] Thus, whenever a lawyer collects money as a result of a favorable judgment, he must promptly report and account the money collected to his client.[53]

It is the lawyer's duty to give a prompt and accurate account to his client. Upon the collection or receipt of property or funds for the benefit of the client, his duty is to notify the client promptly and, absent a contrary understanding, pay or remit the same to the client, less only *proper fees* and disbursements, as soon as reasonably possible.[54] He is under absolute duty to give his client a full, detailed, and *accurate account* of all money and property which has been received and handled by him, and must justify all transactions and dealings concerning them.[55] And while he is in possession of the client's funds, he

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[49] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 16.03 states:

A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

[50] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 16.01 states:

A lawyer shall account for all money or property collected or received for or from the client.

[51] *Rayos v. Hernandez*, G.R. No. 169079, February 12, 2007, 515 SCRA 517, 525.

[52] 7A CJS § 247, p. 452. Citation omitted.

[53] *Bayonla v. Reyes*, *supra* note 46 at 498-499.

[54] 7A CJS § 247, p. 451. Citation omitted.

[55] *Id.* Italics supplied, citations omitted.

should not commingle it with his private property or use it for his personal purposes without his client's consent.[56]

Here, respondents claim that they promptly accounted for the total award of US$95,000.00, and after deducting their fees, tendered the amount of US$20,756.05. Complainant, however, refused to accept the amount because he contested both the expenses and the separate deduction of attorney's fees by respondents and Gurbani & Co.

We find that while respondents gave prompt notice to complainant of their receipt of money collected in the latter's favor, they were amiss in their duties to give accurate accounting of the amounts due to complainant, and to return the money due to client upon demand.

The Attorney-Client Contract between the parties states: "We/I hereby voluntarily agree and bind ourselves, our heirs and assigns to pay Atty. Pedro L. Linsangan and his collaborating Singapore counsels, the sum equivalent to thirty-five [35%] percent of any recovery or settlement obtained."[57] Clearly, the stipulated rate referred to the combined professional fees of both respondents and their collaborating Singapore counsel, Gurbani & Co.[58] Nevertheless, respondents proceeded to deduct separate fees on top of the amount already deducted by Gurbani & Co. Complainant contested this deduction and refused to accept the amount being tendered by respondents. Since a claim for attorney's fees may be asserted either in the very action in which the services of a lawyer had been rendered, or in a separate action,[59] respondents, instead of forcibly deducting their share, should have moved for the judicial determination and collection of their attorney's fees. The fact alone that a lawyer has a lien

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[56] *Camino v. Pasagui*, A.C. No. 11095, September 20, 2016, 803 SCRA 404, 415.

[57] *Rollo*, p. 21.

[58] *Id.*

[59] See *Aquino v. Casabar*, G.R. No. 191470, January 26, 2015, 748 SCRA 181, 191-193, citing *Traders Royal Bank Employees Union-Independent v. NLRC*, G.R. No. 120592, March 14, 1997, 269 SCRA 733, 741-742.

for his attorney's fees on money in his hands collected for his client does not entitle him to unilaterally appropriate his client's money for himself.[60]

Worse, respondents allegedly kept the money inside the firm's vault for two years until they were made aware of the disciplinary complaint against them before the IBP-CBD. However, as noted by the IBP-CBD in its Report and Recommendation:

> [T]he defense of respondents that they kept in their office vault the share of complainant as computed by them in the amount of US$18,132.43, hence, they forgot the same and remembered it only when they received the Order of this Commission for them to file an Answer to complainant's Complaint [*which is more than 2 years*] is rather highly incredible considering that it involves a substantial amount, the series of communications between the parties, and the Civil cases subsequently filed.[61] (Italics in the original.)

Even if we give credence to this explanation, it is improper for the lawyer to put his client's funds in his personal safe deposit vault.[62] Funds belonging to the client should be deposited in a separate trust account in a bank or trust company of good repute for safekeeping.[63]

It is apparent from the foregoing that respondents failed to handle their client's money with great degree of fidelity. Respondents also showed their lack of good faith when they appropriated for themselves more than what is allowed under their contract. They have demonstrated that the payment of their attorney's fees is more important than their fiduciary and faithful duty of accounting and returning what is rightfully due to their client. More, they also failed to observe proper safekeeping of their client's money. Respondents violated the trust reposed in them, and demonstrated their lack of integrity

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[60] *Rayos v. Hernandez*, *supra* note 51 at 526.

[61] *Rollo*, p. 814.

[62] 7A CJS § 250, p. 455. Citation omitted.

[63] *Id*.

and moral soundness.[64] Respondents' flagrant and malicious refusal to comply with the CPR amounts to gross misconduct.[65] This warrants the imposition of disciplinary sanctions.[66]

III

The practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character.[67] Thus, the violation of the lawyer's oath and/or breach of the ethics of the legal profession embodied in the CPR may, depending on the exercise of sound judicial discretion based on the surrounding facts, result in the suspension or disbarment of a member of the Bar.[68]

While we find respondents Attys. Pedro Linsangan and Gerard Linsangan to have violated Rule 1.03, Rule 2.03, Canon 3, Canon 16, Rule 16.01, and Rule 16.03 of the CPR, the records do not support respondent Atty. Glenda Linsangan-Binoya's participation in their unethical activities. Complainant himself admits that he only dealt with respondents Attys. Pedro and Gerard Linsangan.[69] Thus, we hold that the case against Atty. Glenda Linsangan-Binoya be dismissed.

For his violation of the proscription on ambulance chasing, we have previously imposed the penalty of suspension of one year.[70] We find no reason not to impose the same penalty here.

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[64] *Villanueva v. Gonzales*, A.C. No. 7657, February 12, 2008, 544 SCRA 410, 416.

[65] See *Viray v. Sanicas*, A.C. No. 7337, September 29, 2014, 736 SCRA 557, 565.

[66] *Id.*

[67] *Sison, Jr. v. Camacho*, A.C. No. 10910, January 12, 2016, 779 SCRA 142, 155.

[68] *Id.*

[69] *Rollo*, p. 587.

[70] *Linsangan v. Tolentino*, *supra* note 36 at 143.

On the other hand, the penalty for violation of Canon 16 of the CPR usually ranges from suspension for six months, to suspension for one year, or two years, and even disbarment depending on the amount involved and the severity of the lawyer's misconduct.[71] In addition, the penalty for gross misconduct consisting in the failure or refusal, despite demand, of a lawyer to account for and to return money or property belonging to a client has been suspension from the practice of law for two years.[72] Complainant, who was impaired for life, was constrained to file this complaint and the action for accounting because of his lawyers' lack of fidelity and good faith in handling the award he received. We recognize, however, respondents' efforts in tendering payment, albeit of an improper amount, to complainant, as well as the fact that this is their first offense. The imposition of a one year suspension is sufficient under the circumstances.[73]

This penalty of one year suspension for the second infraction is justified, and does not deserve a further reduction. The fact that it is respondents' first administrative case cannot serve to mitigate the penalty. In *Cerdan v. Gomez*,[74] respondent there was still suspended for a period of one year, after already taking into account that it was his first offense. More, there are several decisions which support the imposition of the one year suspension for similar violations.[75] In *Viray v. Sanicas*,[76] the court imposed

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[71] *Cerdan v. Gomez*, A.C. No. 9154, March 19, 2012, 668 SCRA 394, 404.

[72] *Viray v. Sanicas*, *supra*.

[73] *Id.*

[74] *Supra* note 71.

[75] See *Isalos v. Cristal*, A.C. No. 11822, November 22, 2017; *Viray v. Sanicas*, *supra* note 65; *Segovia-Ribaya v. Lawsin*, A.C. No. 7965, November 13, 2013, 709 SCRA 287; *Cunanan v. Rimorin*, A.C. No. 5315, August 23, 2000, 338 SCRA 546.

[76] *Supra* note 65.

a one year penalty for the same infraction even after exercising its "compassionate judicial discretion."[77]

More importantly, respondents' acts do not merely constitute a violation of Canon 16 and its rules, but already amounts to gross misconduct.[78] *First*, respondents breached the trust reposed in them when they betrayed the express language of their Attorney-Client Contract that they are only entitled to a single 35% attorney's fees together with the Singapore counsels. In the process, respondents have also unjustly retained for themselves the 35% of the settlement award amounting to US$95,000.00—which is more or less US$33,250.00 or roughly around ₱1.5 million pocketed, and also immensely disparaging to the US$20,756.05 they tendered to complainant. *Second*, their actions following complainant's objection manifests their disregard of their fiduciary duties. For two years, respondents insisted on, and forcibly deducted the amount when there are alternative avenues to determine the correct amount of attorney's fees. They instead treaded to a path where they advanced their own interests ahead of their client's. *Third*, respondents also mishandled their client's money when they did not exercise proper safekeeping over it; they failed to deposit it in a separate trust account in a bank or trust company of good repute for safekeeping but co-mingled it with their own funds. Undoubtedly, the gravity of these acts amounts to gross misconduct that warrants, at the very least, a suspension.[79]

For both violations, we adopt the recommendation of the IBP Board of Governors of the imposition of two-year suspension for respondents Attys. Pedro L. Linsangan and Gerard M. Linsangan. We emphasize that this penalty of two years of suspension corresponds to the compounded infractions of the violations of Rule 1.03, Rule 2.03, Canon 3, Canon 16, Rule 16.01, and Rule 16.03 of the CPR: (1) the penalty of suspension of one year is imposed for the violation of the

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[77] *Id*. at 565.

[78] *Id.*

[79] *Id.*

proscription on ambulance chasing; and (2) the penalty of one year suspension for gross misconduct consisting in the failure or refusal, despite demand, of a lawyer to account for and to return money or property belonging to a client.

To reiterate, there is no basis, and would even be unjust under the circumstances, to reduce the penalty imposed on respondents. Quite the contrary, respondents should find themselves so fortunate that for all their exploits, including their ambulance chasing, this Court would only impose a two-year suspension.

Finally, we note that this Court, in G.R. No. 205088, has already affirmed the CA's ruling as to the issue of how much respondents can collect from complainant as attorney's fees. This judgment has long attained finality and, in fact, appears to be set for execution. For this reason, we do not adopt the IBP Board of Governors' recommendation for respondents to return to complainant 5% of the amount assessed. The principle of immutability of judgments behooves us from making any further statements on this particular issue.

WHEREFORE, we find respondents Attys. Pedro L. Linsangan and Gerard M. Linsangan **GUILTY**. Accordingly, we **SUSPEND** respondents Attys. Pedro Linsangan and Gerard Linsangan from the practice of law for **TWO YEARS** effective upon finality of this Decision, with a **WARNING** that a repetition of the same or similar act in the future will be dealt with more severely. The complaint against Atty. Glenda M. Linsangan-Binoya is **DISMISSED**.

SO ORDERED.

Carpio, Senior Associate Justice,[*] *Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Martires, Tijam, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Velasco, Jr., J., see dissenting opinion.

Leonen, J., on official business.

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[*] Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended.

DISSENTING OPINION

VELASCO, JR., *J.*:

I dissent on the penalty imposed upon respondents Atty. Pedro L. Linsangan and Atty. Gerard M. Linsangan as I am of the view that a two (2)- year suspension from the practice of law is too harsh under the circumstances of the case.

In the Attorney-Client Contract[1] executed by the parties, complainant agreed to pay the respondents' firm and its collaborating Singapore counsels, Gurbani & Co., attorney's fees equivalent to thirty-five percent (35%) of any recovery or settlement obtained. A case was thereafter filed before the High Court of Singapore wherein the total amount of US$95,616.90 was awarded to complainant. From the said amount, Gurbani & Co. deducted US$27,587.67 covering their fees and expenses, US$8,398.33 that they paid to Papadopoulos, Lycourgos & Co., and remitted to respondents the net amount of US$59,608.40.[2]

Thereafter, respondents promptly informed complainant that they have received the settlement amount from the Singapore case and requested the former to come to their office to get his net share. When complainant went to respondents' office, Atty. Pedro L. Linsangan explained to him the fees and expenses deducted by Gurbani & Co, thus leaving the balance of US$59,608.40 remitted to them. Atty. Pedro L. Linsangan further explained that after deducting their attorney's fees and expenses from US$59,608.40, complainant's net share amounted to US$18,132.43.[3] Atty. Pedro L. Linsangan then tendered the total amount of US$20,756.05[4] (including the US$18,132.43) to complainant, which the latter refused as he contested the fees and expenses deducted by Gurbani & Co. and respondents.

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[1] *Rollo*, pp. 21-22.

[2] *Id*. at 151-152.

[3] *Id*. at 35, 808.

[4] *Id*.

Through a letter dated August 3, 2005, respondents, again, asked complainant to come to their office to receive the amount of US$20,756.05 within ten (10) days from receipt; otherwise, respondents will file an action for consignation.[5] However, as complainant found the amount being tendered by respondents erroneous and unacceptable, civil actions ensued between the parties. Thus, complainant filed an action for Accounting, Remittance of Settlement Amounts and Damages (Civil Case No. 10678) while respondents filed a complaint for Preliminary Mandatory Injunction to compel complainant to receive the said amount offered. Respondents' case was dismissed with finality while the trial court ruled in favor of complainant and ordered respondents to make proper accounting, among others. The CA affirmed the trial court's ruling but reduced the rate of attorney's fees to 10%.[6] The said ruling had also attained finality and has been set for execution.[7]

Based on the foregoing facts, it cannot be denied that respondents gave prompt notice to complainant of the receipt of money collected in the latter's favor. It is also clear that respondents made several attempts to immediately pay complainant after deducting what they believe is the correct amount due them as attorney's fees and disbursements.

What respondents failed to do, however, is to promptly provide complainant with a detailed and accurate accounting of the fees and expenses incurred in pursuing the Singapore case. Nonetheless, I am of the view that such indiscretion did not equate to a gross violation of Canons 16[8]

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[5] *Id*. at 161-162.

[6] *Id*. at 856-871.

[7] *Id*. at 1188.

[8] Particularly Rule 16.03 thereof, which provides: "A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court."

and 17[9] of the CPR.

Gross violation connotes a flagrant and/or malicious refusal to comply[10] with a certain set of rules, in this case the CPR. To exemplify, in *Del Mundo v. Capistrano*,[11] despite collecting several fees from his client, respondent lawyer Atty. Capistrano neglected to inform the former of the status of her case and to file the agreed petition for declaration of nullity of marriage. Worse, Atty. Capistrano failed to account for and return the funds entrusted to him. Thus, the Court ruled that the conversion of funds entrusted to Atty. Capistrano constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession. Yet, he was meted a penalty of suspension from the practice of law for one (1) year only.

In *Egger v. Duran*,[12] respondent lawyer Atty. Duran breached his duty when he failed to prepare, much less file, the appropriate pleading to initiate therein complainant's case before the proper court. He also did not return complainant's money despite demand and earlier promise to do so. Further, Atty. Duran exhibited a patent lack of respect for the Commission and its proceedings through his repeated and deliberate failure to appear in the scheduled hearings in an attempt to wiggle away from having to explain and ventilate his side. Worse, he did not file an answer to controvert the allegations in the complaint. As such, Atty. Duran is found guilty of violating Rules 16.01 and 16.03, Canon 16 and Rule 18.03, Canon 18 of the CPR. Despite the foregoing violations, however, the penalty imposed upon him was suspension from the practice of law for a period of six (6) months only.

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[9] Canon 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence in him.

[10] *University of Santo Tomas Faculty Union v. University of Sto. Tomas*, G.R. No. 203957, July 30, 2014.

[11] A.C. No. 6903, April 16, 2012.

[12] A.C. No. 11323, September 14, 2016.

Clearly, the foregoing cases illustrate a wrongful intention on the part of the erring lawyers therein. Their acts were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules.[13] Nevertheless, the respective penalties imposed upon the erring lawyers therein were lighter than the two-year (2-year) suspension imposed by the *ponencia* in the instant case.

In this case, respondents did not demonstrate the same callous and disdainful disregard of the law. They showed fidelity to complainant's cause by pursuing his claims against his employers which resulted in a successful settlement. Thereafter, respondents promptly notified complainant of their receipt of the settlement amount and attempted to deliver the net proceeds due to complainant. Respondents' indiscretion lies in their erroneous computation and application of attorney's fees which they already rectified by filing their Compliance[14] with the trial court's order for accounting and submission of receipts in connection with the final decision in Civil Case No. 10678. Given these circumstances, I believe that respondents are entitled to some measure of forbearance.

As for their alleged violation of Canon 2[15] of the CPR, the facts of the case indicate a strong possibility that respondents committed ambulance chasing by soliciting legal business through agents. At any rate, considering that this is respondents' first administrative case and they fully participated in the proceedings before the IBP, I find the penalty of two-year (2-year) suspension too harsh. Accordingly, I urge the Court to show compassion to respondents in light of the mitigating circumstances above pointed out.

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[13] *Nevada v. Casuga*, A.C. No. 7591, March 20, 2012.

[14] *Rollo*, pp. 1150-1152.

[15] Canon 2 – A lawyer shall make his legal services available in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession.

IN VIEW OF THE FOREGOING, for committing infractions and professional misconduct in violation of the Code of Professional Responsibility, I vote to impose upon respondents Atty. Pedro L. Linsangan and Atty. Gerard M. Linsangan the penalty of **SUSPENSION from the practice of law for a period of SIX (6) MONTHS** with a **STERN WARNING** that a repetition of the same or similar acts in the future shall be dealt with more severely.

EN BANC

[G.R. No. 210204. July 10, 2018]

ASSOCIATION OF RETIRED COURT OF APPEALS JUSTICES, INC. (ARCAJI), represented by TEODORO P. REGINO, *petitioner, vs.* **HON. FLORENCIO ABAD, JR., as SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; DEFINED; THE WRIT OF *MANDAMUS* WILL LIE IF THE TRIBUNAL, CORPORATION, BOARD, OFFICER OR PERSON UNLAWFULLY NEGLECTS THE PERFORMANCE OF AN ACT WHICH THE LAW ENJOINS AS A DUTY RESULTING FROM AN OFFICE, TRUST OR STATION.— *Mandamus* is a command issuing from a court of law of competent jurisdiction directed to some inferior court, tribunal, or board or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.

The writ will lie if the tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station. The writ of *mandamus*, however, will not issue to compel an official to do anything which is not his duty to do, or to give to the applicant anything to which he is not entitled by law. The guidepost therefore is whether or not there is a law that imposes a duty upon the defending person or office to perform a certain act.

2. POLITICAL LAW; JUDICIAL DEPARTMENT; REPUBLIC ACT NO. 910, AS AMENDED (RETIREMENT BENEFITS OF JUSTICES OF THE SUPREME COURT AND THE COURT OF APPEALS, AS AMENDED BY R.A. NO. 1797 AND R.A. NO. 9946); ANY INCREASE IN THE SALARY OF THE INCUMBENT JUSTICE SHALL REDOUND TO THE BENEFIT OF THE RETIREE IF GIVEN DURING THE FIVE YEAR PERIOD RECKONED FROM THE DATE OF RETIREMENT; CASE AT BAR; EXPLAINED.— To rule on the central issue whether there is a duty on the part of the DBM to pay the differentials during the 5 year period after date of retirement under existing laws, We turn to R.A. No. 910, as amended by R.A. No. 1797 and R.A. No. 9946, which captures the rules on retirement of justices of the Supreme Court and of the Court of Appeals. x x x Section 3 is unequivocal and is straightforward enough. Upon retirement, the justice shall be "automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation etc. up to further annuity payable monthly during the residue of his/her natural life pursuant to section l hereof x x x." x x x To shed light on the issue whether herein claimants are entitled to increases in the salaries of the incumbent justices occupying the same position from which they retired during the 5 year period after the date of retirement, Section 3-A clearly states that **"all pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired."** Thus, any increase in the salary of the incumbent justice shall redound to the benefit of the retiree if given during the five (5) year period reckoned from date of retirement. The law cannot be any clearer. The rationale behind the law is that the lump sum of 5 years gratuity is actually the equivalent of

the 60 monthly pensions which the retiree is allowed to receive under R.A. No. 910 as amended. If the retiree is to be paid the monthly pension for 60 months or within the 5 year period, then he/she will definitely be entitled to the increases in salary granted during the said period. x x x R.A. No. 9946 clarified that Section 3 of R.A. No. 910 applies to retirement gratuity at the time of retirement and the monthly pensions after 5 years from date of retirement. Section 3-A covers the payment of differentials in the event salary adjustments to the incumbent justices are granted by law DURING THE 5 YEAR PERIOD from date of retirement. In light of the foregoing, the Court finds that Section 3-A of R.A. No. 910, as amended, buttressed by the Resolution in A.M. No. 91-8-225-CA, prescribes a duty under the law upon the DBM to pay to the petitioners the increases in salary granted by law during the 5 year period after date of retirement. *Mandamus* will lie to compel respondent DBM to fulfil its duty under the law.

3. ID.; ID.; ID.; THE RETIREMENT GRATUITY OF THE RETIRED JUSTICES IS PROPERLY SOURCED FROM THE PENSION AND GRATUITY FUND, AND NOT FROM THE SPECIAL ALLOWANCE FOR THE JUDICIARY (SAJ); HENCE, REFUSAL OF DBM TO ISSUE THE CORRESPONDING SARO AND NCA IS TANTAMOUNT TO GRAVE ABUSE OF DISCRETION WHICH LIES *MANDAMUS* AS A REMEDY.— DBM's position is confined solely to SAJ allowances, but the claim of the petitioners is mainly based on the adjustments to the salaries of justices by reason of SSL 2 and SSL 3 and not from the said SAJ allowances. Presumably, the SAJ allowances were sourced from the SAJ Fund pursuant to RA No. 9227. However, said SAJ allowances were fully converted to basic monthly salary of the justices as of June 1, 2011. Any increases that have been implemented after that date already forms part of basic salary as there is no more SAJ component to speak of. The claims of petitioners are grounded on the salary increases brought about by the two salary increases under SSL 2 implemented by E.O. No. 611 effective July 1, 2007 and E.O. No. 719 effective July 1, 2008 and three salary tranches under SSL 3 implemented by E.O. Nos. 811, 900 and 40, respectively. The entire amount that the petitioners are receiving as retirement gratuity corresponds only to the basic monthly salary (BMS) and other additional allowances, due to the full conversion after

> the implementation of EO No. 40. x x x Even assuming that there is a portion in the retirement gratuity that had not been fully converted to BMS, such component can still not be sourced from the SAJ Fund, owing to the nature of the SAJ Fund as a special fund. x x x Moreover, this Court had already ruled that the SAJ Component of the retirement gratuity and other terminal leave benefits should not be sourced from the SAJ Fund, but from the Pension and Gratuity Fund. We issued a Resolution in A.M. No. 07-5-10-SC and A.M. No. 07-8-03-SC, dated June 7, 2011, x x x In the same Resolution, the Court made it clear that the same ruling shall apply to future issuances: x x x The inevitable conclusion, therefore, is that the retirement gratuity of the petitioners is properly sourced from the Pension and Gratuity Fund, and not from the SAJ Fund. Hence, the act of the respondent DBM in refusing to issue the corresponding SARO and NCA, is tantamount to grave abuse of discretion. *Mandamus* then lies as a remedy to the petitioners, as the issuance of SARO and NCA partakes of a ministerial duty of the DBM based on the application of Section 3-A of RA No. 910, as amended.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This is a Petition for *Mandamus* filed by the Association of Retired Court of Appeals Justices, Inc. (ARCAJI), represented by its President, Teodoro P. Regino, praying that respondent Florencio Abad Jr. (Sec. Abad), as the Secretary of the Department of Budget and Management, be ordered to immediately issue the necessary Special Allotment Release Order (SARO) and Notice of Cash Allocation (NCA) to cover the funding requirements for the retirement gratuity differentials of twenty-eight (28) retired Court of Appeals (CA) Justices, namely: Sixto C. Marella, Jr., Arturo G. Tayag, Arcangelita R.

Lontok, Regalado E. Maambong, Edgardo F. Sundiam, Edgardo F. Cruz, Teresita Dy-Liacco Flores, Monina A. Zenarosa, Jose L. Sabio, Jr., Myrna Dimaranan-Vidal, Aurora Santiago-Lagman, Marina L. Buzon, Enrico A. Lanzanas, Lucenito N. Tagle, Agustin S. Dizon, Rodrigo V. Cosico, Roberto A. Barrios, Arsenio J. Magpale, Santiago J. Ranada, Eliezer R. Delos Santos, Vicente L. Yap, Delilah V. Magtolis, Eugenio S. Labitoria, Mercedes G. Dadole, Danilo P. Pine, Ruben C. Ayson, Conrado M. Vasquez, and Renato C. Dacudao.[1]

The Facts

In the case now before the Court, all the twenty eight (28) CA associate justices retired from the judiciary on various dates from 2005 to 2010. During the five-year span after their retirement, a series of salary increases were granted to all employees in the public sector, thereby increasing the salaries being received by incumbent CA Justices at the time of said adjustments. These salary increases were brought about by the implementation of Salary Standardization Law 2 (SSL 2) and Salary Standardization Law 3 (SSL 3). The first round of salary increase was implemented under Executive Order No. 611, effective July 1, 2007, which upped the salary by ten percent (10%). The second round of salary increase was implemented under Executive Order No. 719, effective July 1, 2008, which further increased the salary by another 10%. These two salary increases were a result of the full implementation of SSL 2.

The next round of salary increases were brought about by the passing and implementation of SSL 3. The first *tranche* of increases under SSL 3 was implemented under Executive Order No. 811, effective July 1, 2009; the second *tranche* under Executive Order No. 900, effective June 24, 2010; and the third *tranche* under Executive Order No. 40, effective June 1, 2011.

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[1] *Rollo*, p. 22.

The aforesaid increases in the salary of incumbent CA Justices prompted the petitioners, the twenty-eight retired Justices, to file a claim for their retirement gratuity differentials. Since the retirement gratuity that they received was computed solely on the basis of their salary at the time of their retirement, they asked for the payment of said differentials anchored on the salary increases given to incumbents of similar rank during the 5-year period after their retirement. They thus petitioned the DBM to allow the adjustment and release of their retirement gratuity differentials.

In total, the 28 petitioners are claiming differentials under RA Nos. 910 and 9946 amounting to Twenty Three Million Twenty-Five Thousand Ninety-Three and 75/100 Pesos (₱23,025,093.75), broken down as follows:

	Retirement Date	Amount
1. Hon. Sixto C. Marella, Jr.	02/01/2010	₱2,372,165.95
2. Hon. Arturo G. Tayag	03/02/2010	1,283,498.05
3. Hon. Arcangelita R. Lontok	03/18/2010	830,422.23
4. Hon. Regalado E. Maambong	01/02/2009	624,708.78
5. Hon. Edgardo F. Sundiam	02/01/2009	2,276,270.38
6. Hon. Edgardo F. Cruz	05/12/2009	777,666.78
7. Hon. Teresita Dy-Liacco Flores	05/14/2009	762,640.89
8. Hon. Monina A. Zenarosa	08/22/2009	874,752.17
9. Hon. Jose L. Sabio Jr.	12/15/2009	2,188,495.53
10. Hon. Myrna Dimaranan-Vidal	12/20/2009	896,461.88
11. Hon. Aurora Santiago-Lagman	01/16/2008	353,410.48
12. Hon. Marina L. Buzon	03/19/2008	387,792.04
13. Hon. Enrico A. Lanzanas	04/19/2008	527,128.84
14. Hon. Lucenito N. Tagle	06/26/2008	524,049.00
15. Hon. Agustin S. Dizon	06/27/2008	564,269.34
16. Hon. Rodrigo V. Cosico	07/04/2008	494,329.53
17. Hon. Roberto A. Barrios	02/13/2007	1,829,270.33
18. Hon. Arsenio J. Magpale	07/03/2007	1,765,336.63
19. Hon. Santiago J. Ranada	11/10/2006	121,311.84
20. Hon. Eliezer R. Delos Santos	12/20/2006	1,776,510.22

21. Hon. Vicente L. Yap	08/22/2006	96,080.63
22. Hon. Delilah V. Magtolis	11/29/2005	17,027.26
23. Hon. Eugenio S. Labitoria	12/13/2005	17,068.68
24. Hon. Mercedes G. Dadole	12/20/2005	23,560.33
25. Hon. Danilo P. Pine	12/27/2005	29,224.74
26. Hon. Ruben C. Ayson	03/02/2011	1,195,018.13
27. Hon. Conrado M. Vasquez	01/06/2010	181,066.63
28. Hon. Renato C. Dacudao	06/19/2007	235,556.46
GRAND TOTAL		**₱23,025,093.75**

In fine, the petitioners are arguing that due to the increase in the salaries received by the incumbent Justices of the CA, they are also entitled to receive as part of their retirement gratuity all the increases in salaries that have been implemented within five years after their retirement from service.

For example, in the case of petitioner Justice Delilah V. Magtolis, who retired on November 29, 2005, she is claiming a differential of **₱17,027.26.** The following illustrates the difference between the salary she was receiving at the time of her retirement, as opposed to the increased salary received by an incumbent:

	Received as of 11/29/2005	2nd tranche, SSL 3 2010
Basic Salary and Allowances	₱50,314.00	₱90,923.60
Special Allowance under R.A. 9227	₱31,095.00	
Longevity Pay (20%)	6,219	
TOTAL BASIC SALARY AND ALLOWANCE	**₱87,628.00**	**90,923.60**
Differential		**₱3,295.60**

Thus, the differentials being claimed by retired Justice Magtolis can be computed as follows:

June 24, 2010 to June 30, 2010 (7 days)	₱3,295.60/30 x 7 days	₱ 768.97
July 1, 2010 to October 31, 2010 (4 months)	₱3,295.60 x 4 months	13,182.40
November 1-28, 2010 (28 days)	₱3,295.60/30 x 28 days	3,075.89
TOTAL DIFFERENTIALS		**₱17,027.26**

The ₱17,027.26 differential claimed by Justice Magtolis can be attributed to the implementation of the second *tranche* of SSL 3 starting June 24, 2010. Prior increases in the salary of incumbent CA Justices implemented after Justice Magtolis's retirement are already deemed part of the retirement gratuity that she received when retired in 2005, due to the provision in Republic Act (R.A.) No. 9227 providing that the SAJ component are deemed advanced implementation of future salary increases. Hence, the Special Allowance for the Judiciary (SAJ) component of the retirement gratuity she received in 2005 would have already covered for such salary increases. With the implementation of the second *tranche* of SSL 3, however, the SAJ has been fully integrated in the basic salary, i.e. there is no more SAJ component to the basic salary given to incumbent Justices. Consequently, the SAJ component that Justice Magtolis received in 2005 would no longer suffice to cover the differential brought about by the implementation of the second *tranche* of SSL 3. This situation, which occurs in the case of all 28 petitioners, necessitates the recomputation of their respective retirement gratuities, and the granting of differentials in their favor. Thus, their request for the DBM to recompute their retirement gratuities.

Rejecting the claim of petitioners for retirement gratuity differentials, the DBM, in its letter dated October 8, 2012, stated that the claimed differentials must be sourced from the SAJ, and not from the Pension and Gratuity Fund. More particularly, the DBM said:

> The request stemmed on Administrative Matter (AM) No. 91-8-225-CA dated October 24, 1995 which decreed the right of certain retired Justices to receive their RG [retirement gratuity] based on the increased rates of salary and representation, living and

transportation allowances given to incumbents after their retirement from government service.

Section 3 of RA No. 910 explicitly provides that a retired [J]ustice shall receive a five (5) year lump-sum gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, living, and representation allowances at the time of retirement. The requested RG differentials are due to subsequent salary increases authorized after the dates of their retirement.

Section 4 of RA No. 9946, which is the latest amendatory law of RA 910, however, authorized the automatic pension increase whenever there is an increase in the salary of incumbents. Said adjustment shall be applied prospectively to the monthly pensions to be received by the retired justice subsequent to the date the salary increase was granted.

The reliance by the Justices on A.M. No. 91-8-225-CA may not be proper because RA No. 910, as amended[,] is clear, and grants automatic adjustment of the retirees' monthly pension only excluding RG.

Our [lawmakers] therefore enacted laws which clearly differentiated the bases/treatment between the five (5) year lump RG and the monthly pension after the expiry of the five years. Otherwise, they could easily have included in any of the amendatory laws to RA No. 910 that both RG and pension shall be automatically adjusted in case of increase in the salary of the incumbents.

In view of the foregoing, the request for the release of funds for RG differentials [cannot] be acted upon favorably.[2]

Comment of the Solicitor General

In its Comment, the Office of the Solicitor General (OSG), for respondent DBM, argued that *mandamus* does not lie to compel the DBM to issue the SAROs and NCAs for the SAJ component of the retirement gratuities of the concerned retired CA Justices, because to do so would violate Article VI, Section 29 (1) of the 1987 Philippine Constitution, which mandates that "[n]o money shall be paid out of the Treasury

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[2] *Id*. at 25.

except in pursuance of an appropriation made by law." Further, the OSG argued that from the 2007 General Appropriations Act (GAA) to the 2014 GAA, the law has specifically, clearly, and consistently provided that the SAJ component of the retirement benefits should be sourced from the SAJ Fund, and not elsewhere. Hence, the OSG argued, there is no ministerial duty on the part of the respondent DBM to issue the requested SAROs and NCAs.[3]

The OSG further argued in its Comment:

> During the incumbency of Justices and judges, they receive personnel benefits which consist of their basic salary, the SAJ, and other allowances. The basic salary is sourced from the General Fund while the SAJ is sourced from the SAJ Fund, pursuant to Section 3 of the SAJ Law. Section 38 of the General Provisions of the 2007 GAA (and its counterpart provisions in subsequent GAAs) provides that in the payment of retirement gratuity and terminal leave benefits, "only the portion attributed to personnel benefits cost charged against the General Fund shall be sourced from such. In no case shall personnel benefits costs charged against another source be charged against the General Fund."
>
> Thus, the DBM cannot charge money from the General Fund to pay for the SAJ component of the retirement benefits. Under this provision, the SAJ Fund should pay for the SAJ component of the retirement benefits. The point here is that the General Fund is not a "funding source" that can be used by the Executive Department, through the DBM, to pay for whatever expenditure it wants to fund. Under our Constitution, the General Fund, or the National Treasury, can only be unlocked by two keys – (a) an appropriation by Congress, and (b) executive action (whether by SARO or some other administrative device) pursuant to that appropriation. Following this metaphor, what petitioner actually wants is to open the Treasury with one key, in the face of the refusal of the Congress to provide the other key. This simply cannot be done.[4]

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[3] *Id*. at 64.

[4] *Id*. at 66-67.

The then Presiding Justice of the CA, Justice Andres B. Reyes, Jr. (Justice Reyes), addressed a letter[5] to respondent Sec. Abad, requesting reconsideration of the DBM's virtual denial action. Citing *Santiago v. Commission on Audit*,[6] Justice Reyes argued that retirement laws should be interpreted liberally in favor of the retiree because their intention is to provide for his sustenance and comfort when he no longer has the stamina to continue earning his livelihood. In its response letter dated August 1, 2013, however, the DBM reiterated its position that the automatic adjustment in benefits shall be applied prospectively to the monthly pension of the retired justices but not to the retirement gratuity,[7] and hence, denied reconsideration.

Thus, this recourse.[8]

The Issues

First, the Court is confronted with the procedural matter of whether *mandamus* would, under the premises, lie against the DBM.

Next, the Court is called upon to resolve the core issue of whether or not the CA Justices are entitled to receive retirement gratuity differentials amounting to ₱23,025,093.75, equivalent to the amount of salary increases granted to incumbent CA Justices during the five-year period following their retirement.

Corollarily, the Court is asked to determine the funding source for such retirement gratuities, whether it should be funded by the SAJ Fund or the Pension and Gratuity Fund managed by the DBM.

The Court's Ruling

We find merit in the petition.

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[5] *Id*. at 23-26.

[6] G.R. No. 92284, July 12, 1991.

[7] *Rollo*, p. 24.

[8] *Id*. at 5.

On the procedural issue, the OSG claims that mandamus will not lie to compel DBM to pay the gratuity differentials.

The Court does not agree.

Mandamus is a command issuing from a court of law of competent jurisdiction directed to some inferior court, tribunal, or board or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law. The writ will lie if the tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station. The writ of mandamus, however, will not issue to compel an official to do anything which is not his duty to do, or to give to the applicant anything to which he is not entitled by law.[9] The guidepost therefore is whether or not there is a law that imposes a duty upon the defending person or office to perform a certain act. The answer lies in the resolution of the core issue whether or not DBM has the duty under the law to pay the retirement gratuities.

To rule on the central issue whether there is a duty on the part of the DBM to pay the differentials during the 5 year period after date of retirement under existing laws, We turn to R.A. No. 910, as amended by R.A. No. 1797 and R.A. No. 9946, which captures the rules on retirement of justices of the Supreme Court and of the Court of Appeals. Sections 3, 3-A and 3-B of R.A. No. 910 respectively read as follows:

Sec. 3. Upon retirement, a Justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the Regional Trial Court, Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, Municipal Circuit Trial Court, Shari'a District Court, Shari'a Circuit Court, or any other court hereafter established **shall be automatically entitled to a lump sum of five (5) years gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate**

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[9] *Uy Kiao Eng v. Nixon Lee*, G.R. No. 176831, January 15, 2010.

of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement and thereafter upon survival after the expiration of five (5) years x x x

x x x x x x x x x

Sec. 3-A. All pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired.

Sec. 3-B. The benefits under this Act shall be granted to all those who have retired prior to the effectivity of this Act: Provided, that the benefits shall be applicable only to members of the Judiciary: Provided, further, That the benefits to be granted shall be prospective. (Emphasis added)

Section 3 is unequivocal and is straightforward enough. Upon retirement, the justice shall be "automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation etc. up to further annuity payable monthly during the residue of his/her natural life pursuant to Section l hereof x x x."

In A.M. No. 91-8-225-CA (Re: Request of the retired justices of the Court of Appeals for re-adjustment of their monthly pension) issued on October 24, 1995, the Court elucidated that the lump sum of five (5) years' gratuity granted to the retiring justice consist of the 60 monthly entitlements "GIVEN FIVE YEARS IN ADVANCE" and are guaranteed for five years. Thus, the usual 60 monthly pensions to which the justice is entitled to receive is converted by law into a lump sum payment to accord him/her more flexibility or maximization in the use of the funds.

To shed light on the issue whether herein claimants are entitled to increases in the salaries of the incumbent justices occupying the same position from which they retired during the 5 year period after the date of retirement, Section 3-A clearly states that **"all pension benefits of retired members of the Judiciary**

shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired." Thus, any increase in the salary of the incumbent justice shall redound to the benefit of the retiree if given during the five (5) year period reckoned from date of retirement. The law cannot be any clearer. The rationale behind the law is that the lump sum of 5 years gratuity is actually the equivalent of the 60 monthly pensions which the retiree is allowed to receive under R.A. No. 910 as amended. If the retiree is to be paid the monthly pension for 60 months or within the 5 year period, then he/she will definitely be entitled to the increases in salary granted during the said period.

The discussion of the Court in A.M. No. 91-8-225-CA is instructive:

> The issue in the present request of retired Justices and widows of Justices is whether or not a retiree who received a 5-year lump sum payment is entitled to automatic adjustments during the five years after retirement, corresponding to increase in the salaries and RATA given to incumbent Justices during those same five years.
>
> Section 10, Article VIII of the 1987 Constitution, provides that during the continuance in office of Justices, their salary shall not be reduced. Any adjustments in retirement benefits under R.A. 1797 will, therefore, be based solely on increases in salaries and RATA of incumbents since there never are any decreases.
>
> **Sec. 3-a of the retirement law is sufficiently clear that whenever the salary of an incumbent Justice is increased, such increased salary shall be deemed to be the salary or the retirement pension which a Justice who retired was receiving at the time of his cessation in office. In other words, the increased salary of the incumbent becomes the basis of the salary of the retiree at the time of his cessation in office.**
>
> The office of the Court Administrator was ordered on June 13, 1995 to evaluate and report on the request of the retired Justices. On August 28, 1995, the OCA submitted a report which, in part, states:
>
> 'It is worthy to note that RA 1797 previously discussed speaks of pension received by retired Justices of the Court, payable

> monthly during the residue of his natural life. This is the reason why pursuant to the Resolution of the court dated November 28, 1991, qualified justices were paid their pension differential which commences on the sixth year after retirement of these justices. The five-year lump sum payment granted to retiring justices is what RA 910, as amended, provides, and based on their highest monthly salary and aggregate amount of allowances. Contrary to what abovenamed Justices claim, this office respectfully beg to disagree that the benefits of RA 910 are all pensions including those paid in advance in lump sum to the retiree. Pensions are those given to retired justices and judges after the expiration of the fifth year from their retirement. Nowhere in the retirement law can we find a provision signifying that the lump sum payment of five years is tantamount to an advance payment of pension requirement to sixty (60) months.'

We do not agree with the OCA report as it is based on a misperception of the nature of "pension" and applicable laws.

First, the OCA omitted or overlooked the key word "salary" found in the retirement law. RA 1797 provides that the increased salary shall be deemed to be the salary or the retirement pension which a Justice who retired was receiving at the time of his cessation in office. A member of this Court has a "salary", not a pension on the date of his retirement. In fact, this last highest salary becomes the basis of his future pensions, five years of which pensions are given in advance when he retires.

And since this last salary is adjusted every time there is an increase in the salaries of incumbents, the adjusted salary retroacting to "the time of his cessation in office" becomes the basis of retirement pensions. The base date is "the time of his cessation in office," not the start of the sixth year period after retirement.

Second, it is error to state that the amounts given as five-year lump sum are not "pensions." They cannot be anything else. If they are not "pensions," what are they? And what do they represent? What is their basis? Simply because the monthly entitlements are given five years in advance and, thus, guaranteed for five years, they do not lose their character as "pensions." They cannot be "salaries" nor can the five-year lump sum be gratuity given out of pure generosity.

A pension is given to retired Justice as compensation for services rendered in the past. In a loose sense, the words "retirement gratuities"

are sometimes used interchangeably for pensions. But retirement payments under RA 910 as amended are not gratuities in the strict sense of the word. They are not given out of pure generosity of the Government. As declared in Bengzon vs. Drilon, supra, the right to pensions is a vested right. Pensions are part of the payment for past services. The retiree has also contributed premiums towards his retirement benefits while working. Deductions are made from his salary every month. The retiree cannot be deprived of his vested right accorded by law.

Bengzon vs. Drilon, 208 SCRA 133, 156 (1992) reiterates the ruling in Santiago vs. Commission on Audit, G.R. No. 92284, July 12, 1991, thus:

> "Retirement laws should be interpreted liberally in favor of the retiree because their intention is to provide for his sustenance, and hopefully even comfort, when he no longer has the stamina to continue earning his livelihood. After devoting the best years of his life to the public service, he deserves the appreciation of grateful government as best concretely expressed in a generous retirement gratuity commensurate with the value and length of his services. That generosity is the least he should expect now that his work is done and his youth is gone. Even as he feels the weariness in his bones and glimpses the approach of the lengthening shadows, he should be able to luxuriate in the thought that he did his task well, and was rewarded for it.
>
> For as long as these retired Justices are entitled under laws which continue to be effective, the government cannot deprive them of their vested right to the payment of their pensions."

Under the law, therefore, from the moment a member of this Court or the Court of Appeals retires and for the entire five-year period following said retirement and continuing on during the residue of his or her natural life, he or she should not receive an amount less than what an incumbent receives as salary and RATA. It, of course, follows that he or she cannot receive more. (Emphasis added)

The *fallo* of the resolution in A.M. No. 91-8-225-CA is beyond equivocation:

2. In case the salary or representation, living and transportation allowances or both, or an incumbent Justice are increased, such

increased salary and representation, living and transportation allowances shall be deemed to be the retirement benefit of the retired Justice, effective upon the date of said increase. (Emphasis added)

The DBM contends that R.A. No. 910 differentiated the bases/treatment between the five (5) year lump retirement gratuity and the monthly pension after the expiry of the five years. It concludes that the "amendatory laws to RA No. 910 issued have provided that "both retirement gratuity and pension shall be automatically adjusted in case of increase in salary of incumbents."

This view is incorrect. Precisely, R.A. No. 9946 clarified that Section 3 of R.A. No. 910 applies to retirement gratuity at the time of retirement and the monthly pensions after 5 years from date of retirement. Section 3-A covers the payment of differentials in the event salary adjustments to the incumbent justices are granted by law DURING THE 5 YEAR PERIOD from date of retirement.

In light of the foregoing, the Court finds that Section 3-A of R.A. No. 910, as amended, buttressed by the Resolution in A.M. No. 91-8-225-CA, prescribes a duty under the law upon the DBM to pay to the petitioners the increases in salary granted by law during the 5 year period after date of retirement. Mandamus will lie to compel respondent DBM to fulfil its duty under the law.

The Pension and Gratuity Fund is the proper funding source for the retirement differentials

The DBM, in defense of its position not to pay the retirement gratuity differentials, asserts that the claimed increases partake of SAJ allowances and if ever that is a basis for the claim, that the claim should be sourced from the SAJ Fund, pursuant to Section 3 of the SAJ law. It explains that only the gratuities based on personnel benefit costs can be charged against the General Fund. In no case, it added, can such costs charged against another source be charged against the General Fund.

This proposition is incorrect.

DBM's position is confined solely to SAJ allowances, but the claim of the petitioners is mainly based on the adjustments to the salaries of justices by reason of SSL 2 and SSL 3 and not from the said SAJ allowances.

Presumably, the SAJ allowances were sourced from the SAJ Fund pursuant to RA No. 9227. However, said SAJ allowances were fully converted to basic monthly salary of the justices as of June 1, 2011. Any increases that have been implemented after that date already forms part of basic salary as there is no more SAJ component to speak of. The claims of petitioners are grounded on the salary increases brought about by the two salary increases under SSL 2 implemented by E.O. No. 611 effective July 1, 2007 and E.O. No. 719 effective July 1, 2008 and three salary tranches under SSL 3 implemented by E.O. Nos. 811, 900 and 40, respectively.

The entire amount that the petitioners are receiving as retirement gratuity corresponds only to the basic monthly salary (BMS) and other additional allowances, due to the full conversion after the implementation of EO No. 40. We reiterate and affirm the ensuing submission of the Fiscal Management and Budget Office (FMBO) of the Court:

> The arguments raised by the DBM fall flat as the claims of the members of petitioner for retirement gratuity differentials do not refer to the SAJ component of their retirement gratuity, which, as already mentioned, have long been paid, but to the salary increases under the SSL 3 which are in excess of the SAJ. As determined from the supporting computations for each claimant prepared by the CA, the claims were reckoned only from June 24, 2010, upon the implementation of the second *tranche* of SSL 3 where there still remained a portion of the SAJ still not converted to BMS. Even assuming that the argument of the DBM that the [R]esolutions of the Court in A.M. No. 07-5-10-SC and A.M. No. 07-8-03-SC do not enjoin it from implementing the special provisions of subsequent GAAs prohibiting the funding of the SAJ component of the retirement gratuity from the Pension and Gratuity Fund, the same would still not apply since the differentials being requested for payment only accrued in 2011 when there is no longer a SAJ component to speak of.

The DBM, therefore, has the duty to fund these salary increases under the third and fourth *tranches* of the SSL 3, which no longer have a corresponding SAJ component, as the members of petitioner ARCAJI have the clear legal right to such claims.

As to the payment of the differentials for the RATA and PERA/ADCOM, the petitioners also have a clear legal right as earlier established. Thus, the DBM has the ministerial duty to likewise release the funding for the RATA and PERA differentials and mandamus lies as a remedy to compel the DBM to perform its duty and enforce the rightful claims of the members of petitioner.[10]

Even assuming that there is a portion in the retirement gratuity that had not been fully converted to BMS, such component can still not be sourced from the SAJ Fund, owing to the nature of the SAJ Fund as a special fund. In A.M. No. 04-7-05-SC, We said:

However, **as a special fund, the SAJ can only be used for the purposes for which it was created, namely, the grant of special allowances to incumbent or serving Justices**, judges and all other positions in the Judiciary with the equivalent rank of Justices of the Court of Appeals and of the Regional Trial Court. It cannot therefore be availed of to grant the retirement gratuity, terminal leave or other benefits to a retired Justice, judge or employee of the Judiciary with a rank equivalent to that of a Court of Appeals Justice or a Regional Trial Court judge.

Section 5 of R.A. No. 9227 only mandates that the actual amount of special allowances received by a Justice during his incumbency under that law be included in the computation of his retirement benefits. It does not ordain the source from which where the portion of the retirement benefit corresponding to the special allowances will be taken. There being no exception under R.A. No. 9227 to the general rule under Section 34 of the 2003 GAA, the general rule that the personnel benefits of a government employee whose salary is taken from the General Fund must also be taken from the General Fund applies. (Emphasis added)

Moreover, this Court had already ruled that the SAJ Component of the retirement gratuity and other terminal leave

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[10] *Rollo*, p. 123.

benefits should not be sourced from the SAJ Fund, but from the Pension and Gratuity Fund. We issued a Resolution in A.M. No. 07-5-10-SC and A.M. No. 07-8-03-SC, dated June 7, 2011, where We said:

x x x x x x x x x

2. In A.M. No. 07-5-10-SC:

   a. To **ORDER** that the SAJ component of the retirement gratuity and terminal leave benefits and pensions of retired Justices, Judges, and Judiciary officials with the equivalent rank of a CA Justice or RTC Judge shall continue to be sourced from the Pension and Gratuity Fund; and

   b. To **DIRECT** the DBM to issue the necessary SARO and the corresponding NCA to cover the funding requirements for the SAK component of the retirement benefits and pensions of retired Justices, Judges, and Judiciary officials with the equivalent rank of a CA Justice or RTC judge. (Underscoring supplied)

In the same Resolution, the Court made it clear that the same ruling shall apply to future issuances:

> The DBM is duty-bound to comply with the said Order and should release the necessary funding corresponding to the salary increases authorized under E.O. Nos. 611, 719, and 811 of Justices, judges, and judiciary officials with the equivalent rank of a Court of Appeals Justice of a Regional Trial Court Judge, beginning April 2020 and every month thereafter. It would be tedious to require the Court to issue a new resolution or order every year, just to give effect to the salary increases authorized under future executive issuances.

The inevitable conclusion, therefore, is that the retirement gratuity of the petitioners is properly sourced from the Pension and Gratuity Fund, and not from the SAJ Fund. Hence, the act of the respondent DBM in refusing to issue the corresponding SARO and NCA, is tantamount to grave abuse of discretion. *Mandamus* then lies as a remedy to the petitioners, as the issuance of SARO and NCA partakes of a ministerial duty of the DBM based on the application of Section 3-A of RA No. 910, as amended.

To sum up, We restate the rules on payment of retirement gratuities of Supreme Court and appellate court justices as follows:

1. Under Section 3 of RA No. 910, as amended by RA No. 1797 and RA No. 9946, "a justice of the Supreme Court or of the Court of Appeals, the Sandiganbayan or of the Court of Tax Appeals, or a Judge of the Regional Trial Court x x x or any other court hereafter established shall be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance he/she was receiving on the date of his/her retirement x x x."

   The lump sum of five (5) years' gratuity are actually payment of the sixty (60) monthly pensions for the period of five (5) years from date of retirement but are given in ADVANCE in the form of a lump sum payment equal to said 60 monthly pensions.

2. After receipt of said lump sum payment of five years gratuity and during the five year period from date of retirement, the justice or judge who retired is entitled to any increase in the salary of the incumbent justice or judge granted by law based on Section 3-A of RA No. 910, as amended, that "[a]ll pension benefits of retired members of the Judiciary shall be automatically increased whenever there is an increase in the salary of the same position from which he/she retired."

3. After surviving the 5 year period from date of retirement, the retiree shall be entitled to a monthly pension for the rest of his/her natural life. Any increase in the salary of the incumbent justice of judge shall automatically redound to the benefit of the retiree and his/her monthly pension shall be automatically adjusted.

WHEREFORE, in view of the foregoing, a writ of *mandamus* is hereby **ISSUED** against respondent Department of Budget and Management, directing it to immediately issue the necessary Special Allotment Release Order, with the corresponding Notice of Cash Allocation payable from the Pension and Gratuity Fund, to cover the funding requirements for the retirement gratuity differentials of the twenty-eight retired Court of Appeals Justices, enumerated in Annex "D" of the petition, with a total amount of **Twenty-Three Million, Twenty-Five Thousand, Ninety-Three and 75/100 Pesos (₱23,025,093.75)**.

SO ORDERED.

Carpio, Senior Associate Justice, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Caguioa, Martires, Tijam, and *Gesmundo, JJ.,* concur.

Jardeleza and *Reyes, Jr., JJ.,* no part.

Leonen, J., on official business.

EN BANC

[G.R. No. 218721. July 10, 2018]

BINGA HYDROELECTRIC PLANT, INC., Herein Represented by its Executive Vice-President, ERWIN T. TAN, *petitioner, vs.* **COMMISSION ON AUDIT and NATIONAL POWER CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE PETITION SHALL BE FILED

WITHIN 30 DAYS FROM NOTICE OF THE JUDGMENT OR FINAL ORDER OR RESOLUTION SOUGHT TO BE REVIEWED; THE COURT RECOGNIZES EXCEPTION TO THE RULES ONLY FOR MOST COMPELLING REASONS WHERE THE STUBBORN OBEDIENCE TO THE RULES WOULD DEFEAT RATHER THAN SERVE THE ENDS OF JUSTICE; NOT APPLICABLE IN CASE AT BAR.— The petition is filed under Rule 64, in relation to Rule 65, of the Rules of Court. Section 3 of Rule 64 provides that the petition shall be filed within 30 days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt this period. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five days in any event, reckoned from notice of denial. BHEPI received the Decision of the COA on March 5, 2013 and filed a motion for reconsideration on March 20, 2013. The filing of this motion for reconsideration interrupted the 30-day reglementary period, thus, giving BHEPI a remaining 15-day period within which to file a petition for *certiorari*. Having received the notice of the denial of its motion on June 11, 2015, BHEPI had until June 26, 2015 to file a petition for *certiorari*. It, however, filed one only on July 8, 2015. We have said previously that the belated filing of a petition for *certiorari* under Rule 64 is fatal. Procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the rules but only for the most compelling reasons, where stubborn obedience to the rules would defeat rather than serve the ends of justice. Every plea for a liberal construction of the rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction. Where strong considerations of substantive justice are manifest in the petition, we may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction. x x x

2. POLITICAL LAW; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 292 (ADMINISTRATIVE CODE OF 1987); POWER TO COMPROMISE CLAIMS; THE AUTHORITY TO COMPROMISE A SETTLED CLAIM OR LIABILITY EXCEEDING ₱100,000.00 INVOLVING A GOVERNMENT AGENCY IS VESTED IN CONGRESS, THE PARTICIPATION OF THE COMMISSION ON AUDIT (COA) IN CONJUNCTION WITH THE PRESIDENT, IS MERELY TO RECOMMEND TO GRANT THE APPLICATION FOR RELIEF OR NOT; CASE AT BAR.— Under Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292 (Administrative Code of 1987), the authority to compromise a settled claim or liability exceeding ₱100,000.00 involving a government agency is vested, not in the COA, but exclusively in Congress. An agency of the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein. Thus, the provision applies to all GOCCs, with or without original charters. A GOCC cannot validly invoke its autonomy to enter into a compromise agreement that is in violation of the above provision. x x x Similarly in this case, the liabilities of the NPC in the amounts of $5,000,000.00 and ₱40,118,442.79 far exceed ₱100,000.00 and consequently, in line with Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292, Congress alone has the power to compromise the liabilities of the NPC. The participation of the COA, in conjunction with the President, is merely to recommend whether to grant the application for relief or not. x x x As already discussed, EO No. 292 and PD No. 1445 give the COA the authority to do so, prescinding from its role to recommend the compromise of claims before Congress. This is consistent with the general jurisdiction of the COA to examine, audit, and settle all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. x x x The COA still retains its primary jurisdiction to adjudicate a claim even after the issuance of a writ of execution. We said that as a matter of fact, the claimant has to first seek the COA's approval of the monetary claim, despite the rendition of a final and executory judgment validating said money claim against an agency or instrumentality of the Government. Its filing with the COA is a condition *sine qua*

> *non* before payment can be effected. Concomitantly, the duty to examine, audit, and settle claims means deciding whether to allow or disallow the same. This duty involves more than the simple expedient of affirming or granting the claim on the basis that it has already been validated by the courts. To limit it would render the power and duty of the COA meaningless. This rationale also rings true with the Compromise Agreement at hand, which again, as we have demonstrated, needs not only the recommendation of the COA and the President, but also the approval of Congress pursuant to EO No. 292.

APPEARANCES OF COUNSEL

Lourdes Maita Cascolan-Andres for petitioner.

The Solicitor General for public respondent Commission on Audit.

National Power Corporation Office of the Legal Counsel for respondent National Power Corporation.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 64, in relation to Rule 65, of the Rules of Court, assailing the Decision No. 2013-050[2] dated January 30, 2013 and the Resolution No. 2015-134[3] dated April 6, 2015 of the Commission on Audit (COA), which denied petitioner's money claim in the amount of $5,000,000.00 and ₱40,118,442.79.

In March 2003, the Binga Hydroelectric Plant, Inc. (BHEPI)[4] and the National Power Corporation (NPC),[5] together with the

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[1] *Rollo*, pp. 3-52.

[2] *Id*. at 59-66.

[3] *Id*. at 68-74.

[4] A duly organized corporation under Philippine laws.

[5] A government-owned and controlled corporation.

Power Sector Assets and Liabilities Management Corporation (PSALM),[6] entered into a Settlement Framework Agreement (SFA)[7] for the complete resolution and settlement of all claims and disputes between BHEPI and NPC in connection with the Rehabilitate-Operate-Leaseback (ROL) Contract of the Binga Hydroelectric Power Plant located at Tinongdan, Itogon, Benguet. The SFA pertinently provided that NPC shall pay BHEPI an amount equivalent to $5,000,000.00. It was preconditioned on the complete settlement of the unpaid claims of the subcontractors and employees of BHEPI in the amount of $6,812,552.55 and upon their execution of absolute quitclaims and waivers of rights and claims against the NPC.[8]

BHEPI and NPC also agreed that BHEPI would exert its best efforts to negotiate with its subcontractors and employees to further reduce their claims on record. Any savings to be generated from this reduction shall be equally shared between the NPC and BHEPI.[9]

The SFA was endorsed by the Department of Justice (DOJ) and approved by the Secretary of the Department of Energy (DOE). It was adopted *in toto* by the Boards of the NPC and PSALM in their resolutions.[10]

In May 2005, due to the alleged failure of the NPC to comply with the conditions of the SFA, BHEPI filed a case for specific performance with damages before the Regional Trial Court (RTC) of Baguio City. BHEPI demanded for the payment of $5,000,000.00, plus $1,700,000.00 representing 50% of generated savings realized from the reduction of the claims of its

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[6] A government-owned and controlled corporation created by virtue of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001."

[7] *Rollo*, pp. 76-78.

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

[9] *Id*. at 60.

[10] *Id.* at 8.

subcontractors and employees.[11] The RTC dismissed the case, prompting BHEPI to appeal before the Court of Appeals (CA). During the pendency of the appeal, BHEPI and NPC filed a joint motion to approve compromise agreement.[12] Assisted by the Office of the Solicitor General (OSG), the NPC agreed to pay BHEPI $5,000,000.00, representing complete settlement of the unpaid claims of subcontractors/employees, and ₱40,118,442.79 as savings realized from the reduction of the claims of subcontractors and employees, subject to certain conditions.[13] The CA approved the Compromise Agreement[14] and, accordingly, dismissed the appeal. An Entry of Judgment was subsequently issued.[15]

BHEPI moved for the execution of the judgment of the CA before the RTC, but the trial court noted that execution of money claims against the government including government-owned and controlled corporations (GOCCs) should be lodged before the COA.[16] Thus, BHEPI filed its petition[17] for money claim before the COA, praying that the COA take cognizance of the CA's judgment award on the Compromise Agreement.

In the assailed Decision, the COA denied BHEPI's money claim. The COA ruled that the power to compromise claims is vested exclusively in the Commission or Congress, pursuant

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[11] *Id*. at 61.

[12] *Id*. at 131-136.

[13] *Id*. at 131-134. These conditions were: (a) Execution by BHEPI of all corresponding quitclaims and waivers of claims and rights against NPC for any other claims based on the SFA;(b) Submission and approval of the Compromise Agreement by the appropriate court, and the dismissal of the case filed by BHEPI for payment based on the SFA; and (c) Withdrawal/ settlement/dismissal with prejudice of all other claims and cases filed by BHEPI in relation to the SFA to which NPC is a defendant.

[14] *Id*. at 120-124.

[15] *Id*. at 150.

[16] *Id*. at 151-153.

[17] *Id*. at 154-160.

to Section 20(1), Chapter IV, Subtitle B, Title I, Book V of Executive Order (EO) No. 292, also known as the Administrative Code of 1987. Thus, the Compromise Agreement not having been submitted to the COA for approval, as required by law, is null and void.[18]

The COA also ruled that PSALM, an indispensable party, was not a signatory to the Compromise Agreement. Even on the assumption that PSALM had assented to it, the COA held that the Compromise Agreement must still be denied because it was not supported with the necessary documents, and hence, the claim against the NPC's liability to BHEPI was unsubstantiated, and its reasonableness cannot be ascertained.[19]

BHEPI moved for reconsideration[20] of the COA Decision, but it was also denied via a Resolution dated April 6, 2015.[21] The COA reiterated its holding that the power to compromise a claim is vested in the Commission, the President or the Congress as provided under Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292. As such, it is Congress, upon the recommendation of the Commission and the President, which has the authority to compromise the claims of BHEPI against the NPC. The COA explained that in the exercise of its jurisdiction under the Section, it is mandated to confirm the veracity and validity of the claims of BHEPI before recommending to Congress the approval of the compromise. Having done so, the COA restated its earlier findings of the uncertainty of the reasonableness and validity of the compromised claims of unnamed subcontractors and employees and the alleged savings realized from the reduction of such unpaid claims in the absence of substantial supporting documents, such as vouchers, invoices, receipts, statement of accounts and other related papers within reach of accounting officers. The COA

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[18] *Id.* at 63.

[19] *Id.* at 63-64.

[20] *Id.* at 178-219.

[21] *Supra* note 3.

likewise found BHEPI's claim to the "savings" in the amount of ₱40,118,442.79 to be improper and highly doubtful.[22]

Accordingly, apart from denying BHEPI's motion for reconsideration, the COA also recommended to Congress, through the President of the Philippines, the denial of the claim embodied in the Compromise Agreement between BHEPI and the NPC.[23]

Hence, this petition which essentially raises the issue of whether the COA committed grave abuse of discretion in denying the money claim. BHEPI argues in the main that the Judgment on the Compromise Agreement[24] is already final and immutable. Thus, the COA cannot anymore rule on the validity of the Compromise Agreement, as well as on the veracity of the money claim. BHEPI stresses that the Compromise Agreement, as approved by the OSG, was reached in good faith by the parties after the liability of the NPC had been thoroughly evaluated as early as the execution of the SFA. The SFA, in turn, had been reached by the parties, together with PSALM, DOE, and DOJ. BHEPI claims that contrary to the COA's assertion that the NPC's liability is unsubstantiated, evidence had been duly presented before the courts when it filed its action for specific performance.[25]

We deny the petition.

At the outset, we agree with the COA that the petition was filed out of time.[26] The petition is filed under Rule 64, in relation to Rule 65, of the Rules of Court. Section 3 of Rule 64 provides that the petition shall be filed within 30 days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said

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[22] *Rollo*, pp. 72-73.

[23] *Id*. at 73.

[24] *Id*. at 142-149.

[25] *Id.* at 3-5.

[26] *Id*. at 360.

judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt this period. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five days in any event, reckoned from notice of denial.

BHEPI received the Decision of the COA on March 5, 2013 and filed a motion for reconsideration on March 20, 2013. The filing of this motion for reconsideration interrupted the 30-day reglementary period, thus, giving BHEPI a remaining 15-day period within which to file a petition for *certiorari*. Having received the notice of the denial of its motion on June 11, 2015, BHEPI had until June 26, 2015 to file a petition for *certiorari*. It, however, filed one only on July 8, 2015.[27]

We have said previously that the belated filing of a petition for *certiorari* under Rule 64 is fatal. Procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the rules but only for the most compelling reasons, where stubborn obedience to the rules would defeat rather than serve the ends of justice. Every plea for a liberal construction of the rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction. Where strong considerations of substantive justice are manifest in the petition, we may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction.[28]

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[27] *Id*. at 361; See *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit*, G.R. No. 185544, January 13, 2015, 745 SCRA 269.

[28] *Osmeña v. Commission on Audit*, G.R. No. 188818, May 31, 2011, 649 SCRA 654, 660. Citations omitted.

Here, there is no compelling reason why we should relax the rules. BHEPI, for one, did not advance any explanation in its petition as to why it failed to comply with procedural rules. With the COA pointing out the matter in its comment, BHEPI then invokes in its reply the relaxation of the strict application of procedural rules in the interest of substantial justice, harping on the alleged grievous error of the COA in overturning a final and executory decision of the CA. But as we will discuss shortly, this is not an error on the part of the COA. More importantly, the petition lacks merit.

To begin with, the COA is correct that the Compromise Agreement is null and void because the power to compromise the claims in this case is lodged with Congress.

Both BHEPI and the NPC argue that the NPC, as a GOCC, has the power to compromise claims under Section 36(2) of Presidential Decree (PD) No. 1445,[29] to wit:

> (2) **The respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters** and if in their judgment, the interest of their respective corporations or agencies so requires. When the charters do not so provide, the power to compromise shall be exercised by the Commission in accordance with the preceding paragraph. (Emphasis supplied.)

The only requirement under the second paragraph is that the government agency be authorized by its charter to compromise a particular claim. It does not state that the COA must approve the same.

BHEPI contends that the NPC has the power and authority, through its Board, to settle claims against it in furtherance of its interests for as long as the settlement is not disadvantageous to the interests of the government. BHEPI points out that the

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[29] GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

NPC, under its charter, has the power to sue and be sued. This means, therefore, that it has the power to compromise claims.

The NPC, through the OSG, meanwhile, contends that even if its charter does not expressly state that it has the power to compromise claims, such is inherent in its mandated powers to do things as may be reasonably necessary to carry out its business and purpose as enshrined in its charter.

BHEPI's and the NPC's arguments do not persuade. We have ruled in *Strategic Alliance Development Corporation v. Radstock Securities Limited*,[30] that Section 36 of PD No. 1445, enacted on June 11, 1978, has been superseded by a later law — Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292, which provides:

> Sec. 20. *Power to Compromise Claims*. – (1) When the interest of the Government so requires, the Commission may compromise or release in whole or in part, any settled claim or liability to any government agency not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. **In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress** x x x. (Emphasis supplied.)

Under this provision, the authority to compromise a settled claim or liability exceeding ₱100,000.00 involving a government agency is vested, not in the COA, but exclusively in Congress. An agency of the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein.[31] Thus, the provision applies to all GOCCs, with or without original charters.

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[30] G.R. No. 178158, December 4, 2009, 607 SCRA 413.

[31] Section 2 on Introductory Provisions of the Administrative Code of 1987.

A GOCC cannot validly invoke its autonomy to enter into a compromise agreement that is in violation of the above provision.[32]

In *Strategic*, we held that since the liabilities of Philippine National Construction Corporation (PNCC), a GOCC, to Radstock amounted to more than ₱6 Billion, Congress had the exclusive power to compromise the claim. Without congressional approval, the Compromise Agreement between Radstock and PNCC is void for being contrary to Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292. The Court stressed that the case involving PNCC and Radstock was exactly what the law seeks to prevent: a compromise agreement on a creditor's claim settled through admission by a government agency without the approval of Congress for amounts exceeding ₱100,000.00.[33]

Similarly in this case, the liabilities of the NPC in the amounts of $5,000,000.00 and ₱40,118,442.79 far exceed ₱100,000.00 and consequently, in line with Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292, Congress alone has the power to compromise the liabilities of the NPC. The participation of the COA, in conjunction with the President, is merely to recommend whether to grant the application for relief or not. In its Resolution denying the motion for reconsideration of BHEPI, the COA did make a recommendation to Congress, which unfortunately for BHEPI, was for the denial of the claim embodied in the Compromise Agreement. We find that the COA did not gravely abuse its discretion in making such recommendation, even if it went against a final and executory judgment of an appellate court. Contrary to the arguments of BHEPI and the NPC, the finality of the CA's judgment does not preclude the COA from ruling on the validity and veracity of the claims. As already discussed, EO No. 292 and PD

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[32] See *Strategic Alliance Development Corporation v. Radstock Securities Limited, supra* at 489, where the Court so declared that the Philippine National Construction Corporation is "not 'just like any other private corporation' precisely because it is not a private corporation but indisputably a government owned corporation." (Emphasis omitted.)

[33] *Id.* at 486-487.

No. 1445 give the COA the authority to do so, prescinding from its role to recommend the compromise of claims before Congress. This is consistent with the general jurisdiction of the COA to examine, audit, and settle all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities.[34]

In the past, we have ruled that this authority and power can still be exercised by the COA even if a court's decision in a case has already become final and executory. The COA still retains its primary jurisdiction to adjudicate a claim even after the issuance of a writ of execution.[35] We said that as a matter of fact, the claimant has to first seek the COA's approval of the monetary claim, despite the rendition of a final and executory judgment validating said money claim against an agency or instrumentality of the Government.[36] Its filing with the COA is a condition *sine qua non* before payment can be effected.[37] Concomitantly, the duty to examine, audit, and settle claims

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[34] PD No. 1445, Sec. 26.

[35] *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City*, G.R. No. 181792, April 21, 2014, 722 SCRA 66, 86.

[36] Supreme Court Administrative Circular 10-2000 dated October 25, 2000, Re: Exercise of utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units, provides in part:

> [I]t is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P. D. No. 1445, otherwise known as the Government Auditing Code of the Philippines x x x. All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and, in effect, sue the State thereby x x x. (Citing *Department of Agriculture v. NLRC*, G.R. No. 104269, November 11, 1993, 227 SCRA 693, 701-702; *Republic v. Villasor*, G.R. No. L-30671, November 28, 1973, 54 SCRA 83; P.D. No. 1445, Secs. 49-50.)

[37] See *Rallos v. City of Cebu*, G.R. No. 202651, August 28, 2013, 704 SCRA 378, 401-402.

means deciding whether to allow or disallow the same. This duty involves more than the simple expedient of affirming or granting the claim on the basis that it has already been validated by the courts. To limit it would render the power and duty of the COA meaningless. This rationale also rings true with the Compromise Agreement at hand, which again, as we have demonstrated, needs not only the recommendation of the COA and the President, but also the approval of Congress pursuant to EO No. 292.

At this juncture, we emphasize anew, the import of the word "settled" in Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292. Citing an earlier case, *Benedicto v. The Board of Administrators of Television Stations RPN, BBC and IBC*,[38] we held in *Strategic* that the mandatory congressional approval of the compromise is only for claims that are already settled. This is in harmony with the scope of the COA's authority to only take cognizance of money claims that are liquidated and uncontested. This means that claims must be determined or readily determinable from vouchers, invoices, and such other papers within reach of accounting officers.[39] It may also mean that the claim no longer presents a justiciable question ripe for judicial determination.[40] The liability or non-liability of the government shall no longer be in issue and shall no longer require the examination of evidence and the use of judicial discretion.[41]

In *Strategic*, the Court considered the liabilities of PNCC settled in light of the admission of its Board through a formal Board Resolution of PNCC's liability for the Marubeni loans. The Court said that "PNCC's express admission of liability for the Marubeni loans is essentially the premise of the execution

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[38] G.R. No. 87710, March 31, 1992, 207 SCRA 659.

[39] *Euro-Med Laboratories, Phil., Inc. v. The Province of Batangas*, G.R. No. 148106, July 17, 2006, 495 SCRA 301, 306.

[40] *F.F. Mañacop Construction Co., Inc. v. Court of Appeals*, G.R. No. 122196, January 15, 1997, 266 SCRA 235, 241.

[41] See *Philippine Operations, Inc. v. Auditor General of the Philippines*, 94 Phil. 868, 875-876 (1954).

of the Compromise Agreement. In short, Radstock's claim against PNCC is *settled* by virtue of PNCC's express admission of liability for the Marubeni loans. The Compromise Agreement merely reduced this *settled liability* from ₱17 billion to ₱6.185 billion."[42]

While here, it may appear that the liabilities of the NPC have also been rendered settled as early as the NPC's and PSALM's approval of the SFA through their respective Board Resolutions,[43] it is patent, though, that PSALM was not a party to the Compromise Agreement. There is also no proof that PSALM issued a Board Resolution confirming or approving the Compromise Agreement. PSALM's non-participation and non-assent to the Compromise Agreement render the claims of BHEPI against the liabilities of the NPC doubtful and therefore, unsettled. As correctly held by the COA, PSALM should have been made a party to the Compromise Agreement. The Electric Power Industry Reform Act (EPIRA), which took effect on June 26, 2001, expressly created PSALM as a corporate entity separate and distinct from the NPC.[44] Section 49 of the EPIRA provides the creation of PSALM and its take-over of all existing NPC generation assets, *liabilitie*s, independent power producer contracts, real estate and all other disposable assets. Moreover, Section 56 of the EPIRA expressly provides that NPC liabilities transferred to PSALM shall constitute as claims against PSALM. Considering, therefore, that PSALM has assumed the outstanding liabilities of the NPC upon the effectivity of EPIRA in mid-2001, BHEPI should have negotiated with it instead. The NPC

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[42] *Strategic Alliance Development Corporation v. Radstock Securities Limited, supra* note 30 at 488. Italics in the original.

[43] PSALM Board Resolution No. 03-09 (was mentioned as attached to the complaint but it cannot be found in the records, see *rollo*, p. 183) and NPC Board Resolution No. 2004-30 dated April 27, 2004 (*id.* at 323-324); Subsequently, NPC issued Board Resolution No. 2010-03 dated February 1, 2010 approving the Compromise Agreement (*id*. at 330-332).

[44] *Power Sector Assets and Liabilities Management Corporation (PSALM) v. Court of Appeals (21st Division)*, G.R. No. 194226, February 15, 2017, 817 SCRA 551, 558-559.

no longer had the personality, interest, and right to do so. This is also buttressed by the very own contention of BHEPI that the communications between the NPC and PSALM would show that PSALM acknowledges the liabilities of the NPC to BHEPI as one among those transferred to it pursuant to the EPIRA.

We likewise cannot blame the COA for concluding that the claims of BHEPI remain unsubstantiated and that the manner by which BHEPI succeeded the original party to the ROL Contract, China Chang Jiang Energy Corporation Group (CCJEC), remains dubious. Other than its bare assertions, BHEPI did not bother to present any record or document which would have established how the rights and obligations of CCJEC were assigned to it, and which would have consequently proven its contractual relationship with the NPC under the ROL Contract. Apart from this, the COA also noted the lack of records or documents showing details of actual accomplishments or services rendered by BHEPI or the subcontractors/employees under the ROL Contract of the 100 MW Binga Hydroelectric Power Plant. BHEPI, instead, banked on the years that the liabilities have supposedly been negotiated, the number of government agencies involved in said negotiations, the good faith it exercised, together with the NPC, in entering into the Compromise Agreement, and the approval of the OSG of the same. These, however, hardly guarantee that a compromise agreement borne out of the negotiations would be free from any infirmity.

Finally, we agree with the ruling of the COA that the claim for ₱40,118,442.79 representing the savings generated from the reduction of the claims of the subcontractors and employees of BHEPI is improper. As aptly observed by the COA, BHEPI would, in effect, get a commission of 50% on the waived portion of the original claims of its subcontractors and employees. This is a clear form of unjust enrichment at the expense of the subcontractors and employees. It does not only diminish the obligation of BHEPI to negotiate with its employees under the Compromise Agreement, but it also practically defeats the purpose of why the NPC even negotiated in the first place. In the end, the government would still end up paying substantially when it could have managed otherwise.

WHEREFORE, the petition is **DENIED**. The Decision No. 2013-050 dated January 30, 2013 and the Resolution No. 2015-134 dated April 6, 2015 of the Commission on Audit are **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice,[*] *Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Caguioa, Martires, Tijam, Reyes, Jr.,* and *Gesmundo, JJ.,* concur.

Leonen, J., on official business.

THIRD DIVISION

[G.R. No. 189723. July 11, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ALAMINOS ICE PLANT AND COLD STORAGE, INC., Represented by SAMUEL C. CHUA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; REGALIAN DOCTRINE; ALL LANDS OF THE PUBLIC DOMAIN BELONG TO THE STATE, THE SOURCE OF ANY ASSERTED RIGHT TO ANY OWNERSHIP OF LAND; IN ORDER TO OVERCOME THE PRESCRIPTION OF STATE OWNERSHIP OF PUBLIC DOMINION LANDS, THE APPLICANT MUST PRESENT INCONTROVERTIBLE

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[*] Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended.

EVIDENCE THAT THE LAND SUBJECT OF THE APPLICATION IS ALIENABLE OR DISPOSABLE.— The Regalian Doctrine, embodied in our Constitution, decrees that all lands of the public domain belong to the State, the source of any asserted right to any ownership of land. Corollary to the doctrine, lands not appearing to be clearly within private ownership are presumed to belong to the State. Hence, while a burden of proof in registration proceedings exists, it is this: that of overcoming the presumption of State ownership of lands of the public domain. Logically, such burden lies on the person applying for registration. Stated differently, and as we held in *Republic v. Roche*, the onus of proving that the land is alienable and disposable lies with the applicant in an original registration proceeding; the government, in opposing the purported nature of the land, need not adduce evidence to prove otherwise. In order to overcome the presumption of State ownership of public dominion lands, the applicant must present incontrovertible evidence that the land subject of the application is alienable or disposable.

2. CIVIL LAW; PROPERTY; LAND REGISTRATION; ALL APPLICATIONS FOR ORIGINAL REGISTRATION UNDER THE PROPERTY REGISTRATION DECREE MUST INCLUDE BOTH (1) A CENRO OR PENRO CERTIFICATION, AND (2) A CERTIFIED TRUE COPY OF THE ORIGINAL CLASSIFICATION MADE BY THE DENR SECRETARY; NOT ESTABLISHED IN CASE AT BAR.— In the 2008 *Republic v. T.A.N. Properties*, this Court categorically held that it was not enough for the CENRO or the Provincial Environment and Natural Resources Office (*PENRO*) to certify that a certain parcel of land is alienable and disposable in order for said land to be registrable, x x x Clearly, the appellate court erred in relying solely on the CENRO certification in order to affirm the approval of the application for the original registration of the subject public land. Significantly – and this point serves to stress the gravity of the CA's mistake – the CA ruling came after this Court had promulgated *Republic v. T.A.N. Properties*, wherein the strict requirement in land registration cases for proving public dominion lands as alienable and disposable had been duly recognized. The above pronouncements in *Republic v. T.A.N.*

Properties remain current, and were current at the time of the CA ruling. Naturally, the pronouncements found iteration in succeeding cases, notably in the 2011 *pro hac vice* case of *Republic v. Vega*, where the general rule was nevertheless summarized and reaffirmed in this wise: To establish that the land subject of the application is alienable and disposable public land, the general rule remains: all applications for original registration under the Property Registration Decree must include **both** (1) a CENRO or PENRO certification **and** (2) a certified true copy of the original classification made by the DENR Secretary. Respondent failed to present a certified true copy of the DENR's original classification of the land. With this failure, the presumption that Lot 6411-B, Csd-01-013782-D, is inalienable public domain has not been overturned. The land is incapable of registration in this case. On the strength of this reason alone, we reverse the assailed ruling.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Amon Layno and Associates for respondent.

D E C I S I O N

MARTIRES, *J.*:

Through the present petition for review on *certiorari*,[1] the Republic assails the Decision,[2] dated 30 September 2009, of the Court of Appeals in CA G.R. CV. No. 90527, whereby the appellate court affirmed the ruling[3] of the Regional Trial Court of Alaminos City, dated 25 October 2005, in Land Registration Case No. A-637, which granted the application of Alaminos Ice Plant and Cold Storage, Inc., for the original registration of a piece of land in Alaminos City. In affirming the ruling, the appellate court found that the land was part of the alienable

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[1] *Rollo*, pp. 8-23; Filed under Rule 45 of the Rules of Court.

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

[3] *Id*. at 42-46; Decision dated 25 October 2005.

and disposable public domain based on a certification issued by the Community Environment and Natural Resources Office (*CENRO*); said certification was submitted at the appellate proceedings.

We required[4] the parties to submit their respective Comment and Reply. They complied.[5]

THE FACTS

ANTECEDENTS

On 17 August 2004, respondent Alaminos Ice Plant and Cold Storage, Inc., a domestic corporation, filed an application for the original registration, under the Torrens system, of a 10,000-square meter piece of land located at Barangay Pogo, Alaminos City, and identified as Lot No. 6411-B, Cad-325-D of Plan CSD-01-013782-D. Said land is described as "*bounded on the NW. along line 1-2 by National Road (20.00 m. wide), on the E. along line 2-3 by lot 6411-C of the subdivision plan; on the SE. along line 3-4 also by lot 6411-C of the subdivision plan; on the W. along line 4-5 by lot 6947, Pogo Elem. School Site; along lines 5-6-7-8-9 by lot 4027 and along lines 9-10-1 by lot 6411-A of the subdivision plan*."[6]

As found by the trial court, the original claimants of the land were Juan Duldulao and Leonora Duldulao, who then conveyed the land to their daughter Mary Jane Almazan;[7] parents and daughter were its tax declarants from 1951 to 1997.[8] Mary Jane Almazan later sold the land to Rissa Santos Cai, from whom respondent acquired the land in April 2002; this acquisition

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[4] *Rollo*, p. 71; Per Resolution dated 7 December 2009.

[5] *Id*. at 83-90, Comment; pp. 100-107 Reply.

[6] *Id*. at 25.

[7] *Id*.

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

is memorialized in a Deed of Absolute Sale.[9] Thereafter, respondent enclosed the area with a concrete fence and constructed an ice plant thereon.[10]

The application for original registration was docketed as LRC Case No. A-637 before Branch 54 of the Regional Trial Court of Alaminos City.[11]

The RTC Ruling

Germane to the present review is the following discussion, leading to the dispositive portion of the RTC ruling granting the application:

> The Government Oppositor Director of Lands, represented by the Solicitor General, thru City Prosecutor Abraham L. Ramos II, adduced no evidence in support of his opposition. Indeed, Prosecutor Ramos was convinced that the instant application for registration of land is meritorious, the evidence of the applicants being sufficient and competent to confer title to the present owner Alaminos Ice Plant and Cold Storage, Inc.
>
> **FROM THE EVIDENCE ADDUCED** in the above-entitled case and after careful scrutiny of the case, the Court finds that the applicant is owner in fee simple and together with its predecessors-in-interest, as testified to by its witness, have been in possession and occupation of the land sought to be registered in the concept of owner, openly, continuously, exclusively and notoriously under a bonafide claim of ownership for more than fifty (50) years now or from the year 1951, per Exhibit "R" and is free from any adverse claim or conflict. The applicant has therefore satisfactorily proven and established sufficient and competent title over the land subject of registration under the Land Registration Act, as amended by Presidential Decree No. 1529.
>
> **WHEREFORE**, after confirming the Order of General Default and considering that all the publications, notices and posting required by law have been duly complied with, and finding the evidence

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[9] *Id.* at 25.

[10] *Id.* at 52.

[11] *Id.*

adduced to be sufficient and complement, ***JUDGMENT*** is hereby rendered ordering the registration, in accordance with the Property Registration decree (Presidential Decree 1529) of the parcel of land denominated as Lot 6411-B of Plan Csd-01-013782-D, situated in Barangay Pogo, Municipality, Now City, of Alaminos, Province of Pangasinan, containing an area of Ten Thousand (₱10,000) SQUARE METERS in favor of the applicant **ALAMINOS ICEPLANT & COLD STORAGE, INC.**, a domestic corporation duly organized and existing under Philippine laws, with principal office at No. 178 6th Street, cor. 9th Avenue, Grace Park, Kalookan City.

Furnish copies of this Decision to the Honorable Solicitor General at 134 Amorsolo St., Legaspi Village, Makati City, and the parties accordingly.

Once this Decision becomes FINAL, let the corresponding Decree and Title issue to the applicant **ALAMINOS ICEPLANT & COLD STORAGE, INC.**[12]

IT IS SO ORDERED.

The CA Ruling

On 4 November 2008, the Office of the Solicitor General, for the Republic, filed an appeal[13] imputing error on the grant of the application based on two points: *first*, that respondent failed to submit in evidence a certification that the subject land was alienable and disposable;[14] and *second*, that respondent failed to prove specific acts of possession for the requisite period of at least thirty (30) years.[15]

In its brief,[16] dated 29 January 2009, respondent countered that the land was not of the public domain, and so a certification of its alienability and disposability was unnecessary; at any rate, the Republic failed to present evidence of its non-

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[12] *Id*. at 45.

[13] *Id*. at 48-60; Appellant's Brief.

[14] *Id*. at 54.

[15] *Id*. at 57.

[16] *Id*. at 61-65.

alienability. Respondent emphasized the tax declarations it presented during trial, which it claims prove its continuous possession of the land as well as of its predecessors-in-interest beginning in 1951.

Interestingly, on 20 March 2009, respondent subsequently filed with the appellate court a document titled *Manifestation/ Compliance with Comment to Appellants Arguments*.[17] Apparently, the CA had ordered respondent to submit proof that the Office of the Solicitor General had received a copy of the appellant's brief.[18] Said document was thus filed in compliance with this order. In the same document, respondent reiterated that a certification of alienability and disposability was unnecessary as the land was an agricultural farm, not a land of the public domain.[19] Nevertheless, now appended to the document was a certification from the CENRO, the Department of Environment and Natural Resources (*DENR*), Alaminos City, dated 9 March 2009. The certification identifies the land as alienable and disposable. It reads:

CERTIFICATION

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that based on map projection, Lot 6411-B, Csd-01-013782-D, identical to lot 16699, Cad. 325-D, Alaminos Cadastre falls within the Alienable and Disposable Area per Block III, Project No. 30, Alaminos Project, Land Classification Map No. 681, certified August 8, 1927.

This certification is issued upon the request of Atty. Artemio O. Amon, Counsel for Alaminos Ice Plant this 9th day of March, 2009 for whatever legal purpose it may serve.[20]

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

[18] *Id*. at 67.

[19] *Id*. at 68.

[20] *Id*. at 70.

It was on this certification that the appellate court solely based its finding that the subject land was alienable, disposable, hence registrable. Its assailed decision speaks for itself, in its full discussion and disposition on respondent's entitlement to the original registration of the land, *viz*:

Section 14 of Presidential Decree No. 1529 states:

> SECTION 14. Who may apply. – The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws. x x x
>
> Similarly, Section 48 of Commonwealth Act No. 141 or the Public Land Act, as amended, provides:
>
> SECTION 48. The following described citizens of the Philippines, occupying lands of public domain or claiming to own such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereof, under the Land Registration Act, to wit: x x x
>
> (b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public dominion, under a bona fide claim of ownership, since June 12, 1945, or earlier, immediately preceding the filing of the application for confirmation of title except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

It is evident from the above-cited provisions that an application for land registration must conform to three requisites: (1) the land is

alienable public land; (2) the applicant's open, continuous, exclusive, and notorious possession and occupation thereof must be since 12 June 1945, or earlier; and (3) it is under a bona fide claim of ownership. **We are of the considered view that these requisites were satisfactorily established in this case.**

Any question concerning the nature of the subject parcel of land – whether it is alienable and disposable public land or not — has been answered by the certification issued by the Department of Environment and Natural Resources dated 9 March 2009. Said certification confirms that the subject parcel of land forms part of the alienable and disposable public domain. It states:

> ... based on map projection, Lot 6411-B, Csd-01-013782- D, identical to lot 16699, Cad. 325-D, Alaminos Cadastre falls within the Alienable and Disposable Area per Block III, Project No. 30, Alaminos Project, Land Classification Map No. 681, certified August 8, 1927.

We are convinced that appellee and its predecessors-in-interest have been in open, continuous, exclusive, and notorious possession of the subject parcel of land since 1951 under a *bona fide* claim of ownership. Appellee avows that from 1951, his predecessors-in-interest had exercised acts of dominion over the subject parcel of land by occupying and cultivating it, declared the same in their names, and paid taxes due thereon. From its acquisition of the subject parcel of land in 2002, appellee had also exercised acts of dominion over the subject parcel of land by occupying it and constructing structures thereon, declared the same in its name, and paid taxes due thereon. It is worth noting that in the trial court, no one contested the possession and claim of ownership of appellee and its predecessors-in-interest over the subject parcel of land despite due publication of their claim. Even the Republic, through the Director of Lands, presented no serious opposition on their claims. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the state and all other interested parties, but also the intention to contribute needed revenues to the Government. Further, although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good indicia of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the

holder has a claim of title over the property. Such an act strengthens one's bona fide claim of acquisition of ownership. As is well known, the payment of taxes coupled with actual possession of the land covered by the tax declaration strongly supports a claim of ownership.

WHEREFORE, in view of the foregoing, the 25 October 2005 decision of the Regional Trial Court of Alaminos City, Pangasinan (Branch 54), in Land Registration Case No. A-637 is ***AFFIRMED***.

SO ORDERED.[21]

[original emphasis retained]

The Petition for Review

To impute reversible error on the appellate court, the present petition presents the following arguments. *First*, the appellate court erred, on a question of law, in giving evidentiary weight to the certification allegedly issued by the DENR-CENRO, as it was unoffered during the trial as well as unidentified.[22] *Second*, the appellate court erred, on a question of law, in ruling that respondent and its predecessors-in-interest had complied with the required period of possession and occupation.[23]

OUR RULING

The petition is meritorious.

Preliminarily, we deal with the notion, espoused by respondent, that in registration proceedings the Republic has a burden of proving that a piece of land is inalienable, indisposable, hence incapable of registration. There is no such burden of proof. The Regalian Doctrine, embodied in our Constitution, decrees that all lands of the public domain belong to the State, the source of any asserted right to any ownership of land. Corollary to the doctrine, lands not appearing to be clearly within private ownership are presumed to belong to the State. Hence, while

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[21] *Rollo*, pp. 27-29.

[22] *Id*. at 12.

[23] *Id*. at 17.

a burden of proof in registration proceedings exists, it is this: that of overcoming the presumption of State ownership of lands of the public domain. Logically, such burden lies on the person applying for registration.[24] Stated differently, and as we held in *Republic v. Roche*,[25] the onus of proving that the land is alienable and disposable lies with the applicant in an original registration proceeding; the government, in opposing the purported nature of the land, need not adduce evidence to prove otherwise.

In order to overcome the presumption of State ownership of public dominion lands, the applicant must present incontrovertible evidence that the land subject of the application is alienable or disposable.[26]

The certification in the case at bar is no such evidence. In the 2008 *Republic v. T.A.N. Properties*,[27] this Court categorically held that it was not enough for the CENRO or the Provincial Environment and Natural Resources Office (*PENRO*) to certify that a certain parcel of land is alienable and disposable in order for said land to be registrable, *viz*:

> The certifications are not sufficient. DENR Administrative Order (DAO) No. 20, dated 30 May 1988, delineated the functions and authorities of the offices within the DENR. Under DAO No. 20, series of 1988, the CENRO issues certificates of land classification status for areas below 50 hectares. The Provincial Environment and Natural Resources Offices (PENRO) issues certificate of land classification status for lands covering over 50 hectares. DAO No. 38, dated 19 April 1990, amended DAO No. 20, series of 1988. DAO No. 38, series of 1990, retained the authority of the CENRO to issue certificates of land classification status for areas below 50 hectares, as well as the authority of the PENRO to issue certificates of land classification status for lands covering over 50 hectares. In this case, respondent

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[24] *Republic v. Medida*, 692 Phil. 454, 463 (2012); citing *Republic v. Dela Paz*, 649 Phil. 106, 115 (2010).

[25] 638 Phil. 112, 117-118 (2010).

[26] *Republic v. Lualhati*, 757 Phil. 119, 129 (2015).

[27] 578 Phil. 441, 451-453 (2008).

applied for registration of Lot 10705-B. The area covered by Lot 10705-B is over 50 hectares (564,007 square meters). The CENRO certificate covered the entire Lot 10705 with an area of 596,116 square meters which, as per DAO No. 38, series of 1990, is beyond the authority of the CENRO to certify as alienable and disposable.

The Regional Technical Director, FMS-DENR, has no authority under DAO Nos. 20 and 38 to issue certificates of land classification. Under DAO No. 20, the Regional Technical Director, FMS-DENR:

1. Issues original and renewal of ordinary minor products (OM) permits except rattan;
2. Approves renewal of resaw/mini-sawmill permits;
3. Approves renewal of special use permits covering over five hectares for public infrastructure projects; and
4. Issues renewal of certificates of registration for logs, poles, piles, and lumber dealers.

Under DAO No. 38, the Regional Technical Director, FMS-DENR:

1. Issues original and renewal of ordinary minor [products] (OM) permits except rattan;
2. Issues renewal of certificate of registration for logs, poles, and piles and lumber dealers;
3. Approves renewal of resaw/mini-sawmill permits;
4. Issues public gratuitous permits for 20 to 50 cubic meters within calamity declared areas for public infrastructure projects; and
5. Approves original and renewal of special use permits covering over five hectares for public infrastructure projects.

Hence, the certification issued by the Regional Technical Director, FMS-DENR, in the form of a memorandum to the trial court, has no probative value.

Further, it is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal

custodian of the official records. These facts must be established to prove that the land is alienable and disposable.

Clearly, the appellate court erred in relying solely on the CENRO certification in order to affirm the approval of the application for the original registration of the subject public land. Significantly – and this point serves to stress the gravity of the CA's mistake – the CA ruling came after this Court had promulgated *Republic v. T.A.N. Properties*, wherein the strict requirement in land registration cases for proving public dominion lands as alienable and disposable had been duly recognized.

The above pronouncements in *Republic v. T.A.N. Properties* remain current, and were current at the time of the CA ruling. Naturally, the pronouncements found iteration in succeeding cases,[28] notably in the 2011 *pro hac vice* case of *Republic v. Vega*,[29] where the general rule was nevertheless summarized and reaffirmed in this wise:

> To establish that the land subject of the application is alienable and disposable public land, the general rule remains: all applications for original registration under the Property Registration Decree must include **both** (1) a CENRO or PENRO certification **and** (2) a certified true copy of the original classification made by the DENR Secretary.

Respondent failed to present a certified true copy of the DENR's original classification of the land. With this failure, the presumption that Lot 6411-B, Csd-01-013782-D, is inalienable public domain has not been overturned. The land is incapable of registration in this case. On the strength of this reason alone, we reverse the assailed ruling.

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[28] *Republic of the Philippines v. Ruby Lee Tsai*, 608 Phil. 224, 235 (2009); *Republic of the Philippines v. Hanover Worldwide Trading Corp.*, 636 Phil. 739, 752 (2010); *Republic of the Philippines v. Vega*, 654 Phil. 511, 527 (2011); *Union Leaf Tobacco Corp. v. Republic of the Philippines*, 661 Phil. 277, 280-281 (2011); *Republic of the Philippines v. Castuera*, 750 Phil. 884, 890-891 (2015).

[29] 654 Phil. 511, 527 (2011).

At any rate, the subject CENRO certification had not been formally offered. As petitioner correctly pointed out, a formal offer of evidence is necessary as courts must base their findings of fact and judgment solely on evidence formally offered at trial.[30] Absent formal offer, no evidentiary value can be given to the evidence.[31]

Moreover, as said certification had surfaced only during appeal, the appellate court based its ruling on a document not previously scrutinized by the lower court. We note, too, that the CENRO officer who had issued the certification had of course not been able to testify in open court as to the identity of the document and the veracity of its contents. In the conduct of review proceedings, an appellate court cannot rightly appreciate firsthand the genuineness of an unverified and unidentified document; much less, accord it evidentiary value.[32] Further, to allow a party to attach any document to his pleading and then expect the court to consider it as evidence, as what happened in this case, would draw unwarranted consequences; for instance, the opposing party would be deprived of the chance to examine the document and to object to its admissibility.[33] It is for such reasons that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.[34]

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[30] *Fideldia v. Sps. Mulato*, 586 Phil. 1, 15 (2008).

[31] *People v. Dela Cruz*, 296 Phil. 371, 384 (1993).

[32] *People v. Sumalpong*, 348 Phil. 501, 522 (1998).

[33] *Candido v. Court of Appeals*, 323 Phil. 95, 100 (1996).

[34] *Mendoza and Casiño v. Bautista*, 493 Phil. 804, 813 (2005); citing *Sesbreño v. Central Board of Assessment Appeals*, 337 Phil. 89, 107 (1997); *Manila Bay Club Corporation v. Court of Appeals*, 319 Phil. 4I3, 420 (1995); *DBP v. West Negros College, Inc.*, 472 Phil. 937, 949-950 (2004); *Solid Homes, Inc. v. Court of Appeals*, 341 Phil. 261, 277-278 (1997); *People v. Echegaray*, 335 Phil. 343, 349 (1997).

In fine, not only is the CENRO certification in this case insufficient, it is also of no evidentiary value.

WHEREFORE, based on the foregoing premises, the petition is **GRANTED**. The Decision, dated 30 September 2009, of the Court of Appeals in CA G.R. CV. No. 90527 affirming the ruling of the Regional Trial Court of Alaminos City, dated 25 October 2005, in Land Registration Case No. A-637, is **REVERSED** and **SET ASIDE**. The application for the registration of title filed by Alaminos Ice Plant and Cold Storage, Inc., in said registration case is hereby **DISMISSED**.

SO ORDERED.

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

Leonen, J., on official leave.

FIRST DIVISION

[G.R. No. 192285. July 11, 2018]

MATEO ENCARNACION (Deceased), substituted by his heirs, namely: ELSA DEPLIAN-ENCARNACION, KRIZZA MARIE D. ENCARNACION, LORETA ENCARNACION, CARMELITA E. STADERMAN, CORAZON S. ENCARNACION, RIZALINA ENCARNACION-PARONG, VICTORIA ENCARNACION-DULA, MARIA HELEN ENCARNACION-DAY, TERESITA ENCARNACION-MANALANG, GEORGE ENCARNACION, MARY MITCHIE E. EDWARDSON, ERNESTO ENCARNACION, MATEO ENCARNACION, JR., and GRACE WAGNER, *petitioners, vs.* **THOMAS JOHNSON,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; ANNULMENT OF JUDGMENTS; AN ACTION FOR ANNULMENT OF JUDGMENT IS A REMEDY IN LAW INDEPENDENT OF THE CASE WHERE THE JUDGMENT SOUGHT TO BE ANNULLED IS RENDERED; REQUISITES.—** An action for annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled is rendered. The ultimate objective of the remedy is "to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense." The remedy is provided by Section 1 of Rule 47 of the Rules of Court: x x x In *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company*, we said that owing to the extraordinary nature and objective of the remedy of annulment of judgment or final order, there are requirements that must be complied with before the remedy is granted. *First*, the remedy is only available when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief, or other appropriate remedies through no fault of the petitioner. *Second*, the ground for the remedy is limited to either extrinsic fraud or lack of jurisdiction (although lack of due process has been cited as a ground by jurisprudence). *Third*, the time for availing the remedy is set by the rules: if based on extrinsic fraud, it must be filed within four years from the discovery of extrinsic fraud; if based on lack of jurisdiction, it must be brought before it is barred by laches or estoppel. *Fourth*, the petition should be verified and should allege with particularity the facts and law relied upon, and those supporting the petitioner's good and substantial cause of action or defense.

2. **ID.; ID.; THE PROPER PARTY TO FILE FOR ANNULMENT OF JUDGMENT OR FINAL ORDER NEED NOT BE A PARTY TO THE JUDGMENT SOUGHT TO BE ANNULED, NEVERTHELESS, IT IS ESSENTIAL THAT HE IS ABLE TO PROVE BY PREPONDERANCE OF EVIDENCE THAT HE IS ADVERSELY AFFECTED BY THE JUDGMENT.—** The proper party to file a petition for annulment of judgment or final order need not be a party to the judgment sought to be annulled. Nevertheless, it is essential that he is able to prove by preponderance of evidence that he is adversely affected by the judgment. A person not adversely

affected by a decision in the civil action or proceeding cannot bring an action for annulment of judgment under Rule 47 of the Rules of Court. The exception is if he is a successor in interest by title subsequent to the commencement of the action, or if the action or proceeding is *in rem*, in which case the judgment is binding against him. In *Bulawan v. Aquende*, we held that assuming that the petitioner is not an indispensable party to the case that is being annulled, he may still file for a petition for annulment of judgment. Our basic ruling is that "[w]hat is essential is that he can prove his allegation that the judgment was obtained by the use of fraud and collusion and that he would be adversely affected thereby."

3. **ID.; EXECUTION OF JUDGMENT; FOREIGN JUDGMENT; THE ACTION FOR RECOGNITION OF FOREIGN JUDGMENT DOES NOT REQUIRE THE RELITIGATION OF THE CASE UNDER A PHILIPPINE COURT.—** Under Section 48(b), Rule 39 of the Rules of Court, a foreign judgment or final order against a person creates a "presumptive evidence of a right as between the parties and their successors in interest by a subsequent title." We have previously held that Philippine courts exercise limited review on foreign judgments and are not allowed to delve into its merits. Thus, the action for recognition of foreign judgment does not require the relitigation of the case under a Philippine court. Once admitted and proven in a Philippine court, a foreign judgment can only be repelled by the *parties* and *their successors in interest by subsequent title* on grounds external to its merits, *i.e.*, "want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact."

4. **ID.; ID.; REMEDIES OF A THIRD-PARTY CLAIMANT OF AN ALLEGED WRONGFULLY LEVIED PROPERTY, ENUMERATED.—** Section 16, Rule 39 of the Rules of Court provides for the remedies of a third-party claimant of an alleged wrongfully levied property: x x x Based on this section, a third-party claimant has the following cumulative remedies: (a) he may avail of "*terceria*" by serving on the levying officer making the levy an affidavit of his title, and serving also a copy to the judgment creditor; (b) he may file a case for damages against the bond issued by the judgment debtor within 120 days from the date of the filing of the bond; and (c) he may file "any proper action" to vindicate his claim to the property. x x x

In this case, the proper recourse for petitioners is to vindicate and prove their ownership over the properties in a separate action as allowed under Section 16, Rule 39 of the Rules of Court. This is the more prudent action since respondent also asserts that the properties claimed were owned by Mary, and the CA upheld such assertion. At this juncture, we note that if we grant the petition, we would be nullifying the whole proceeding in Civil Case No. 110-0-2003 which is more than what is necessary to address the remedy being sought by petitioners.

5. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; THE RIGHT TO ACQUIRE LANDS OF THE PUBLIC DOMAIN IS RESERVED ONLY TO FILIPINO CITIZENS OR CORPORATIONS AT LEAST 60% OF THE CAPITAL OF WHICH IS OWNED BY FILIPINOS; VIOLATION IN CASE AT BAR.— The fundamental law is clear that aliens, whether individuals or corporations, are disqualified from acquiring lands of the public domain. The right to acquire lands of the public domain is reserved only to Filipino citizens or corporations at least 60% of the capital of which is owned by Filipinos. Consequently, they are also disqualified from acquiring private lands. x x x In this case, it is undisputed that respondent is a Canadian citizen. Respondent neither denied this, nor alleged that he became a Filipino citizen. Being an alien, he is absolutely prohibited from acquiring private and public lands in the Philippines. Concomitantly, respondent is also prohibited from participating in the execution sale, which has for its object, the transfer of ownership and title of property to the highest bidder. What cannot be legally done directly cannot be done indirectly. In light of this, we nullify the auction sales conducted on June 23, 2004 and November 29, 2006 where respondent was declared the highest bidder, as well as the proceedings which led to the acquisition of ownership by respondent over the lands involved. Article 1409(1) and (7) of the Civil Code states that all contracts whose cause, object, or purpose is contrary to law or public policy, and those expressly prohibited or declared void by law are inexistent and void from the beginning. We thus remand the case back to Branch 72 of the RTC of Olongapo City, to conduct anew the auction sale of the levied properties, and to exclude respondent from participating as bidder.

APPEARANCES OF COUNSEL

Law Firm Of Diaz Del Rosario & Associates for petitioners.
Alreuela M. Bundang-Ortiz for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to nullify the Court of Appeals' (CA) August 12, 2009 Decision[2] and May 13, 2010 Resolution[3] in CA-G.R. SP No. 100483. The CA denied the petition for annulment of judgment filed by Mateo Encarnacion (Mateo) against the February 17, 2005 Order[4] of Branch 72 of the Regional Trial Court (RTC) of Olongapo City in Civil Case No. 110-0-2003. The RTC granted Thomas Johnson's (respondent) prayer to further amend the amended writ of execution in his action for recognition and enforcement of foreign judgment.

On October 6, 2000, respondent filed an action for breach of contract with prayer for damages and costs against spouses Narvin Edwarson (Narvin) and Mary Mitchie Edwarson (also known as Mary Encarnacion; hereinafter shall be referred to as Mary), Mateo's daughter, before the Vancouver Registry of the Supreme Court of British Columbia, Canada. Respondent alleged that Narvin and Mary convinced him to invest his money and personal property in a vehicle leasing company owned by the couple, which turned out to be a fraudulent business scheme. The couple neither deposited the promised profits into his account

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[1] *Rollo*, pp. 9-45.

[2] *Id*. at 46-63; penned by Associate Justice Normandie B. Pizarro, and concurred in by Associate Justices Portia Aliño-Hormachuelos and Fernanda Lampas-Peralta.

[3] *Id*. at 72-73.

[4] *Id*. at 105.

nor gave an accounting or explanation as to where his funds went.[5]

The Supreme Court of British Columbia gave due course to respondent's action and ordered summons to be served upon Narvin and Mary. While service of summons was being attempted, respondent moved that the Supreme Court of British Columbia grant him a Mareva injunction, with *ex juris affect*, to restrain Narvin and Mary from dealing with any of their assets except as is necessary for payment of ordinary living expenses or to carry on their ordinary business.[6] On October 6, 2000, the Supreme Court of British Columbia issued a Mareva injunction[7] and authorized respondent, among others, to obtain orders in foreign jurisdictions which would permit its enforcement in those jurisdictions.

On February 26, 2001, the Supreme Court of British Columbia issued a Default Judgment[8] finding Narvin and Mary liable to respondent in the amount of C$380,431.00 with interest in the amount of C$18,385.56, C$1,198.04 as cost, and for damages to be determined. On June 29, 2001, it ordered Narvin and Mary

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[5] *Id*. at 47, 75-77.

[6] See CA *rollo*, pp. 62-66.

[7] *Id*. at 69-84.

[8] *Id*. at 115-116. The full dispositive portion of which reads:

> The Defendants, Narvin Edwardson also known as Narvin Wray Clarence Edwardson and Mary Mi[t]chie Edwardson also known as Mary Mi[t]chie Encarnacion, not having filed an Appearance to the Writ of Summons and Statement of Claim in this action and the time for doing so having expired.
>
> THIS COURT ORDERS that the Defendant, Narvin Edwardson also known as Narvin Wray Clarence Edwardson, pay to the Plaintiff the sum of [C]$380,431.00 together with interest pursuant to the *Court Order Interest Act,* R.S.B.C. 1996 c. 79 in the sum of [C]$18,385.56 and [C]$1198.04 costs.
>
> THIS COURT FURTHER ORDERS that the Defendants, Narvin Edwardson also known as Narvin Wray Clarence Edwardson and Mary Mi[t]chie Edwardson also known as Mary Mi[t]chie Encarnacion, pay to the Plaintiff damages to be assessed, and costs to be assessed.

to each pay respondent the sum of C$25,000.00 as aggravated damages.[9]

On February 24, 2003, respondent filed an action for recognition and enforcement of foreign judgment with prayer for the recognition of the Mareva injunction[10] with Branch 72 of the RTC of Olongapo City, docketed as Civil Case No. 110-0-2003. Respondent also simultaneously petitioned to be allowed to litigate as a pauper litigant.[11] On February 27, 2003, the RTC granted his petition on the condition that a lien of ₱123,161.00, representing the amount of the filing fees, would be imposed upon him in the event of a favorable judgment.[12]

On March 5, 2003, the RTC issued an Order[13] restraining Narvin and Mary from disposing or encumbering their assets, as well as those belonging to, or controlled by, the Zambales-Canada Foundation, the 5-E Foundation, and those belonging to Mateo (for being properties transferred in fraud of creditors). On May 12, 2003, the RTC ordered the Register of Deeds of Zambales and the Provincial Assessor to annotate its March 5, 2003 Order on the titles and tax declarations of all properties owned by Narvin and Mary, as well as those belonging to Mateo.[14] Thereafter, the RTC ordered the service of summonses by publication upon Narvin and Mary.[15] Despite publication, Narvin and Mary still failed to file their answer. Accordingly, on December 1, 2003, the RTC declared them in default, and subsequently rendered a judgment in default in accordance with the judgment of the Supreme Court of British Columbia.[16]

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[9] *Id*. at 119-120.

[10] *Rollo*, pp. 74-91.

[11] *Id*. at 92-94.

[12] CA *rollo*, p. 158.

[13] *Id*. at 148-149.

[14] *Id*. at 150.

[15] *Rollo*, p. 53.

[16] *Id*. at 103.

On March 30, 2004, the RTC issued a Writ of Execution[17] authorizing the sheriff to attach sufficient properties belonging to Narvin and Mary to satisfy the judgment award. On August 3, 2004, the RTC, acting on respondent's motion to modify the Writ of Execution (to include in the writ the properties under the name of Mateo whose title and tax declarations were previously annotated), modified the Writ of Execution.[18] It issued an Amended Writ of Execution[19] on September 9, 2004 authorizing the sheriff to include the properties registered in the name of Mateo as subject of the execution.

Subsequently, 13 levied properties not covered by certificates of title were sold in public auction on June 23, 2004, wherein respondent placed the highest bid of ₱10,000,000.00.[20] The properties listed in the Certificate of Sale[21] were: (1) a coco/agricultural land covered by Tax Declaration No. 016-0322A in the name of "Mary Mitchie Encarnacion;" and (2) a commercial/agricultural land covered by Tax Declaration No. 007-0410AR in the name of "Mary Mitchie E. Edwardson."

On January 11, 2005, respondent filed a motion for clarificatory order[22] seeking further amendment of the writ of execution to expressly authorize the levy of the properties in the name of Mateo whose title and tax declarations were previously annotated with the March 30, 2004 Order.

Subsequently, Mateo filed an Affidavit of Third Party Claim[23] dated January 17, 2005 before the RTC, which was noted on January 20, 2005,[24] claiming that he is the owner of 14 parcels

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[17] CA *rollo*, pp. 153-154.

[18] *Id.* at 155.

[19] *Id.* at 156-157.

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

[21] CA *rollo*, pp. 229-230.

[22] *Id.* at 231-233. See also records, pp. 215-217.

[23] *Rollo*, p. 110.

[24] See CA *rollo*, p. 159.

of land which were being levied. The records, however, are not clear as to what action was taken by the RTC on Mateo's third party claim.[25]

In its February 17, 2005 Order,[26] the RTC, acting on respondent's motion for clarificatory order, further amended the Writ of Execution as follows:

"x x x x x x x x x

"AND FURTHER ORDERS to levy the properties registered under the name of Mateo Encarnacion which was previously annotated in the Assessors Office and the Register of Deeds of Iba, Zambales, shall be the subject of the same under execution."

On September 10, 2007, or more than two years after the February 17, 2005 Order was issued, Mateo filed a petition for annulment of judgment[27] before the CA (CA-G.R. SP No. 100483). He alleged that he is the owner of 18 properties levied in Civil Case No. 110-0-2003; that he was not made a party to the case; and that the inclusion of his properties in the levy and execution sale were made without notice to him.[28] Mateo, nonetheless, admitted before the CA that he has no standing to question the proceedings on the action for recognition and enforcement of judgment. He asserts that he is only questioning the February 17, 2005 Order which deprived him of his properties.[29]

In his answer,[30] respondent countered that the tax declarations under Mateo's name cannot be invoked as a legal basis to claim ownership over the properties. According to respondent, Mateo fraudulently caused the issuance of these tax declarations under

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[25] *Rollo*, p. 54.

[26] *Id*. at 105.

[27] CA *rollo*, pp. 4-10.

[28] *Id*. at 5-7.

[29] *Id*. at 7, 306.

[30] *Id*. at 181-224.

his name—they were effected after the issuance of the March 5, 2003 Order and the execution sale on July 23, 2004.[31] Respondent also averred that the RTC conducted an investigation and had already excluded from the levy certain properties which undisputedly belonged to Mateo.[32]

Meanwhile, another sale in Civil Case No. 110-0-2003 resulted in a Certificate of Sale[33] dated November 29, 2006 in favor of respondent, covering the properties covered by the following: (1) Original Certificate of Title (OCT) No. P-9496; (2) Tax Declaration No. 016-0324AR; (3) OCT No. P-9498; (4) OCT No. P-9336; (5) OCT No. P-9421; (6) OCT No. P-9508; and (7) Tax Declaration No. 016-0845. Respondent was the highest bidder for these properties in the total amount of ₱4,000,000.00. On November 3, 2008, the RTC issued an Order[34] granting the motion for consolidation of title filed by respondent over the properties subject of the Certificates of Sale.

During the pendency of the proceedings before the CA, Mateo died and was substituted by his heirs (petitioners), including his daughter Mary.[35] In their Memorandum[36] dated January 12, 2009, petitioners amended their argument to aver that all the proceedings in Civil Case No. 110-0-2003 should be annulled on the ground of lack of jurisdiction and extrinsic fraud.[37]

On August 12, 2009, the CA denied the petition.[38] It upheld the jurisdiction of the RTC over the action of recognition of foreign judgment. By filing an Affidavit of Third Party Claim, Mateo was deemed to have voluntarily submitted himself to

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[31] *Id.* at 359-360.

[32] *Id.* at 185-186.

[33] *Rollo*, pp. 111-114.

[34] CA *rollo*, pp. 392-394.

[35] *Id.* at 290-292.

[36] *Id.* at 402-426.

[37] *Id.* at 403 & 425.

[38] *Rollo*, p. 62.

the jurisdiction of the RTC.[39] It also ruled that the remedy of annulment of judgment is not proper because the February 17, 2005 Order is not a final order as it merely seeks to clarify the RTC's further amended writ of execution; the proper remedy is to move to quash the writ of execution and if unsuccessful, to file a petition for *certiorari* under Rule 65 of the Rules of Court.[40] The CA also said that even if procedural rules were relaxed, the petition would still fail because it has already been barred by estoppel and laches due to Mateo's delay in filing the petition despite numerous opportunities to do so.[41] Lastly, the CA pointed out that Mateo is not the proper party to file the petition, as he had already transferred the properties to Mary by virtue of a deed of quitclaim on February 27, 1995.[42]

On May 13, 2010, the CA denied petitioners' motion for reconsideration.[43] Hence, this petition.

Petitioners reiterate their arguments before the CA that the whole proceedings in Civil Case No. 110-0-2003 be annulled on grounds of lack of jurisdiction and extrinsic fraud because the RTC: (1) allowed respondent to sue as an indigent party when he is willing and able to put up a bond that may be required by the court; (2) allowed a complaint with a grossly defective certification against forum shopping; (3) allowed service of summons by publication in an action *in personam* and exercised jurisdiction on that basis; (4) recognized a global injunction issued by a foreign court as a writ of attachment; (5) promulgated a final order without requiring the presentation of evidence, even *ex parte*, and without distinctly stating the facts and the law on which it is based; (6) allowed the levy on execution of properties belonging to a party who was not named as defendant in the civil action; and (7) allowed the sale and delivery of the

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[39] *Id.* at 56.

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

[41] *Id.* at 58-61.

[42] *Id.* at 61.

[43] *Id.* at 73.

properties to a foreigner who is disqualified from owning private lands under the Constitution.[44]

The issues presented are:

I. Whether an action for annulment of judgment is the proper remedy of a third-party claimant of properties levied and sold under execution sale; and

II. Whether respondent, an alien, may own private lands by virtue of an execution sale.

We deny the petition. Nevertheless, we nullify the sale of the private lands to respondent for being a flagrant violation of Section 7, Article XII of the Constitution.

I

An action for annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled is rendered.[45] The ultimate objective of the remedy is "to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense."[46] The remedy is provided by Section 1 of Rule 47 of the Rules of Court:

> Sec. 1. *Coverage*. – This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

In *Dare Adventure Farm Corporation v. Court of Appeals*,[47] we explained the nature of the remedy, to wit:

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[44] *Id*. at 20-42.

[45] See *Galang v. Court of Appeals*, G.R. No. 139448, October 11, 2005, 472 SCRA 259, 269. Citation omitted.

[46] *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company*, G.R. No. 159926, January 20, 2014, 714 SCRA 226, 241.

[47] G.R. No. 161122, September 24, 2012, 681 SCRA 580.

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the *Rules of Court* that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid corner stone in the dispensation of justice by the courts.[48] x x x (Citations omitted.)

In *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company*,[49] we said that owing to the extraordinary nature and objective of the remedy of annulment of judgment or final order, there are requirements that must be complied with before the remedy is granted. *First*, the remedy is only available when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief, or other appropriate remedies through no fault of the petitioner. *Second*, the ground for the remedy is limited to either extrinsic fraud or lack of jurisdiction (although lack of due process has been cited as a ground by jurisprudence). *Third*, the time for availing the remedy is set by the rules: if based on extrinsic fraud, it must be filed within four years from the discovery of extrinsic fraud; if based on lack of jurisdiction, it must be brought before it is barred by laches or estoppel. *Fourth*, the petition should be verified and should allege with particularity the facts

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[48] *Id.* at 586-587.

[49] *Supra*.

and law relied upon, and those supporting the petitioner's good and substantial cause of action or defense.[50]

Petitioners failed to show their standing to file the petition. They have also failed to comply with the first requirement.

a.

The proper party to file a petition for annulment of judgment or final order need not be a party to the judgment sought to be annulled. Nevertheless, it is essential that he is able to prove by preponderance of evidence that he is adversely affected by the judgment.[51] A person not adversely affected by a decision in the civil action or proceeding cannot bring an action for annulment of judgment under Rule 47 of the Rules of Court. The exception is if he is a successor in interest by title subsequent to the commencement of the action, or if the action or proceeding is *in rem*, in which case the judgment is binding against him.[52]

In *Bulawan v. Aquende*,[53] we held that assuming that the petitioner is not an indispensable party to the case that is being annulled, he may still file for a petition for annulment of judgment. Our basic ruling is that "[w]hat is essential is that he can prove his allegation that the judgment was obtained by the use of fraud and collusion and that he would be adversely affected thereby."[54]

Here, the action sought to be annulled is a recognition of foreign judgment in a collection case rendered by the Supreme Court of British Columbia filed by respondent against Narvin and Mary. Under Section 48(b), Rule 39 of the Rules of Court,

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[50] *Id.* at 241-247.

[51] *Islamic Da'Wah Council of the Phils. v. Court of Appeals,* G.R. No. 80892, September 29, 1989, 178 SCRA 178, 186.

[52] *Dare Adventure Farm Corporation v. Court of Appeals, supra* note 47 at 583.

[53] G.R. No. 182819, June 22, 2011, 652 SCRA 585.

[54] *Id.* at 597-598. Citation omitted.

a foreign judgment or final order against a person creates a "presumptive evidence of a right as between the parties and their successors in interest by a subsequent title." We have previously held that Philippine courts exercise limited review on foreign judgments and are not allowed to delve into its merits. Thus, the action for recognition of foreign judgment does not require the relitigation of the case under a Philippine court.[55] Once admitted and proven in a Philippine court, a foreign judgment can only be repelled by the *parties* and *their successors in interest by subsequent title* on grounds external to its merits, *i.e.*, "want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact."[56] Consequently, the right being enforced in the action is the subject of the collection case, which is a personal one against the couple and their successors in interest.

Considering the foregoing, Mateo is not a party who could be adversely affected by the outcome of Civil Case No. 110-0-2003. To begin with, he was not an indispensable party to the action for recognition whose interest in the controversy is such that a final decree will necessarily affect his rights, as he was not the judgment debtor in the action.[57] Neither is Mateo a real party in Interest[58] in Civil Case No. 110-0-2003, as aptly noted by the CA, having already transferred his interest in the properties to Mary. Lastly, he is not a successor in interest of Narvin and Mary.

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[55] See *Fujiki v. Marinay*, G.R. No. 196049, June 26, 2013, 700 SCRA 69, 91-92.

[56] RULES OF COURT, Rule 39, Sec. 48.

[57] See RULES OF COURT, Rule 3, Sec. 7 and *Gochan v. Mancao*, G.R. No. 182314, November 13, 2013, 709 SCRA 438, 457-458.

[58] RULES OF COURT, Rule 3, Sec. 2. *Parties in interest*. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

Further, since the ultimate objective of the remedy is to grant the petitioner an opportunity to prosecute his cause or ventilate his defense,[59] granting the petition for annulment of judgment would not give Mateo or petitioners available defenses that he originally did not possess. Mateo and petitioners were affected only in as far as the alleged properties of Mateo were levied and sold at the public auction—which came **after** the judgment in Civil Case No. 110-0-2003. Mateo himself admitted this when he initially filed the petition.[60] Therefore, Mateo and his heirs cannot raise the alleged irregularities in the action for recognition of foreign judgment; he may only question the propriety of the levy and sale of their alleged properties.

Petitioners' arguments show that the very relief they are claiming is one against the alleged wrongful execution of the decision (which resulted in the levy and sale of the properties allegedly belonging to Mateo), and not the decision itself. It is apparent that had the judgment not been executed against the properties they are claiming, they would not be seeking to annul the judgment in Civil Case No. 110-0-2003. However, any alleged irregular implementation of a writ of execution (or resulting levy) cannot be corrected through the equitable relief of annulment of judgment; the remedy lies elsewhere.[61]

b.

In this regard, there is another reason that militates against petitioners. The remedy of annulment of judgment is a remedy in equity so exceptional in nature that it may only be availed of when the ordinary or other appropriate remedies provided by law are wanting *without fault or neglect* on the petitioner's part.[62] It is a condition *sine qua non* that one must have availed

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[59] *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company, supra* note 46 at 241.

[60] CA *rollo*, pp. 7, 306.

[61] See *Galang v. Court of Appeals, supra* note 45 at 272-273.

[62] *Republic v. De Castro*, G.R. No. 189724, February 7, 2011, 641 SCRA 584, 588-589.

of the proper remedies before resorting to the action for annulment of judgment.[63]

We note that the ordinary remedies of new trial, appeal, and petition for relief were not available to Mateo for the reason that he was not a party to Civil Case No. 110-0-2003. Mateo was neither able to participate in the original proceedings nor resort to the other remedies because he was not a real party in interest or an indispensable party thereto. There are, however, other appropriate remedies available to him that he could have resorted to.

Section 16, Rule 39 of the Rules of Court provides for the remedies of a third-party claimant of an alleged wrongfully levied property:

> Sec. 16. *Proceedings where property claimed by third person.* – If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.
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> The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same

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[63] *Id*. at 589-590, citing *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc*., G.R. No. 139895, August 15, 2003, 409 SCRA 186, 191-192.

or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

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Based on this section , a third-party claimant has the following cumulative remedies: (a) he may avail of "*terceria*" by serving on the levying officer making the levy an affidavit of his title, and serving also a copy to the judgment creditor; (b) he may file a case for damages against the bond issued by the judgment debtor within 120 days from the date of the filing of the bond; and (c) he may file "any proper action" to vindicate his claim to the property.[64]

In *Sy v. Discaya*,[65] and later in *Power Sector Assets and Liabilities Management Corporation (PSALM) v. Maunlad Homes, Inc.*,[66] we recognized the right of a third-party claimant to file an independent action to vindicate his claim of ownership over the properties seized under Section 16, Rule 39 of the Rules of Court. As we pointed out in Sy, a "proper action" is entirely "distinct and separate from that in which the judgment is being enforced, with the court of competent jurisdiction." Such a "proper action" may have for its object the recovery of ownership or possession of the property seized by the sheriff, as well as damages from the allegedly wrongful seizure and detention of the property. This determination of ownership is not the proper subject of an action for annulment of judgment.[67]

In this case, the proper recourse for petitioners is to vindicate and prove their ownership over the properties in a separate action as allowed under Section 16, Rule 39 of the Rules of Court. This is the more prudent action since respondent also asserts that the properties claimed were owned by Mary, and the CA

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[64] See *Sy v. Discaya*, G.R. No. 86301, January 23, 1990, 181 SCRA 378, 382-384.

[65] *Supra*.

[66] G.R. No. 215933, February 8, 2017, 817 SCRA 278, 287, 288.

[67] *Sy v. Discaya, supra* at 383-384.

upheld such assertion. At this juncture, we note that if we grant the petition, we would be nullifying the whole proceeding in Civil Case No. 110-0-2003 which is more than what is necessary to address the remedy being sought by petitioners.

II

While mindful of our ruling that petitioners cannot file the petition for annulment of judgment, we nevertheless cannot turn a blind eye to the blatant violation of the Constitution's prohibition on foreign ownership of lands. This violation was committed when respondent was allowed to participate in the public auction sales where, as highest bidder, he acquired land.

Section 7, Article XII of the Constitution states:

> Sec. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

The fundamental law is clear that aliens, whether individuals or corporations, are disqualified from acquiring lands of the public domain.[68] The right to acquire lands of the public domain is reserved only to Filipino citizens or corporations at least 60% of the capital of which is owned by Filipinos.[69] Consequently, they are also disqualified from acquiring private lands.

In *Matthews v. Taylor*,[70] we took cognizance of the violation of the Constitutional prohibition on alien land ownership despite the failure of the trial and appellate courts to consider and apply these constitutional principles. There we said, "[t]he trial and appellate courts both focused on the property relations of

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[68] *Matthews v. Taylor*, G.R. No. 164584, June 22, 2009, 590 SCRA 394, 401, citing *Muller v. Muller*, G.R. No. 149615, August 29, 2006, 500 SCRA 65, 71.

[69] *Id*., citing *Ting Ho, Jr. v. Teng Gui*, G.R. No. 130115, July 16, 2008, 558 SCRA 421.

[70] *Supra* note 68 at 400-405.

petitioner and respondent in light of the Civil Code and Family Code provisions. They, however, failed to observe the applicable constitutional principles, which, in fact, are the more decisive."[71] We said further:

The rule is clear and inflexible: aliens are absolutely not allowed to acquire public or private lands in the Philippines, save only in constitutionally recognized exceptions. There is no rule more settled than this constitutional prohibition, as more and more aliens attempt to circumvent the provision by trying to own lands through another. **In a long line of cases, we have settled issues that directly or indirectly involve the above constitutional provision.** We had cases where aliens wanted that a particular property be declared as part of their father's estate; that they be reimbursed the funds used in purchasing a property titled in the name of another; that an implied trust be declared in their (aliens') favor; and that a contract of sale be nullified for their lack of consent.

In *Ting Ho, Jr. v. Teng Gui*, Felix Ting Ho, a Chinese citizen, acquired a parcel of land, together with the improvements thereon. Upon his death, his heirs (the petitioners therein) claimed the properties as part of the estate of their deceased father, and sought the partition of said properties among themselves. We, however, excluded the land and improvements thereon from the estate of Felix Ting Ho, precisely because he never became the owner thereof in light of the above-mentioned constitutional prohibition.

In *Muller v. Muller,* petitioner Elena Buenaventura Muller and respondent Helmut Muller were married in Germany. During the subsistence of their marriage, respondent purchased a parcel of land in Antipolo City and constructed a house thereon. The Antipolo property was registered in the name of the petitioner. They eventually separated, prompting the respondent to file a petition for separation of property. Specifically, respondent prayed for reimbursement of the funds he paid for the acquisition of said property. In deciding the case in favor of the petitioner, the Court held that respondent was aware that as an alien, he was prohibited from owning a parcel of land situated in the Philippines. He had, in fact, declared that when the spouses acquired the Antipolo property, he had it titled in the name of the petitioner because of said prohibition. Hence, we

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[71] *Id*. at 400.

denied his attempt at subsequently asserting a right to the said property in the form of a claim for reimbursement. Neither did the Court declare that an implied trust was created by operation of law in view of petitioner's marriage to respondent. We said that to rule otherwise would permit circumvention of the constitutional prohibition.

In *Frenzel v. Catito*, petitioner, an Australian citizen, was married to Teresita Santos; while respondent, a Filipina, was married to Klaus Muller. Petitioner and respondent met and later cohabited in a common-law relationship, during which petitioner acquired real properties; and since he was disqualified from owning lands in the Philippines, respondent's name appeared as the vendee in the deeds of sale. When their relationship turned sour, petitioner filed an action for the recovery of the real properties registered in the name of respondent, claiming that he was the real owner. Again, as in the other cases, the Court refused to declare petitioner as the owner mainly because of the constitutional prohibition. The Court added that being a party to an illegal contract, he could not come to court and ask to have his illegal objective carried out. One who loses his money or property by knowingly engaging in an illegal contract may not maintain an action for his losses.

Finally, in *Cheesman v. Intermediate Appellate Court*, petitioner (an American citizen) and Criselda Cheesman acquired a parcel of land that was later registered in the latter's name. Criselda subsequently sold the land to a third person without the knowledge of the petitioner. The petitioner then sought the nullification of the sale as he did not give his consent thereto. The Court held that assuming that it was his (petitioner's) intention that the lot in question be purchased by him and his wife, he acquired no right whatever over the property by virtue of that purchase; and in attempting to acquire a right or interest in land, vicariously and clandestinely, he knowingly violated the Constitution; thus, the sale as to him was null and void.[72] (Emphasis supplied; citations omitted.)

Also in *Hulst v. PR Builders, Inc.*,[73] we said that "[b]efore resolving the question [of] whether the CA erred in affirming the Order of the [Housing and Land Use Regulatory Board

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[72] *Id.* at 402-405.

[73] G.R. No. 156364, September 3, 2007, 532 SCRA 74.

(HLURB)] setting aside the levy made by the sheriff, it behooves this Court to address **a matter of public and national importance** which completely escaped the attention of the HLURB Arbiter and the CA: petitioner and his wife are foreign nationals who are disqualified under the Constitution from owning real property in their names."[74] There, Hulst, a Dutch national, won an action for rescission of a contract to sell over a 210-square meter townhouse against the developer in the HLURB. The HLURB ordered reimbursement of the contract price to Hulst. Subsequently, the sheriff levied real properties owned by the developer. The developer filed a motion to quash the writ of levy on the ground of over-levy of properties, which the HLURB Arbiter granted. While the issue before the CA, and successively before us, was whether the HLURB Arbiters erred in setting aside the levy, we took cognizance of the violation of the Constitution that escaped both the HLURB and the CA. We declared that the contract to sell was void.

In this case, it is undisputed that respondent is a Canadian citizen.[75] Respondent neither denied this, nor alleged that he became a Filipino citizen. Being an alien, he is absolutely prohibited from acquiring private and public lands in the Philippines. Concomitantly, respondent is also prohibited from participating in the execution sale, which has for its object, the transfer of ownership and title of property to the highest bidder. What cannot be legally done directly cannot be done indirectly.

In light of this, we nullify the auction sales conducted on June 23, 2004 and November 29, 2006 where respondent was declared the highest bidder, as well as the proceedings which led to the acquisition of ownership by respondent over the lands involved. Article 1409(1) and (7) of the Civil Code states that all contracts whose cause, object, or purpose is contrary to law or public policy, and those expressly prohibited or declared void by law are inexistent and void from the beginning. We

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[74] *Id.* at 89. Emphasis supplied.

[75] *Rollo*, p. 74.

thus remand the case back to Branch 72 of the RTC of Olongapo City, to conduct anew the auction sale of the levied properties, and to exclude respondent from participating as bidder.

WHEREFORE, the petition is **DENIED**. Nevertheless, the public auction sales conducted on June 23, 2004 and November 29, 2006 in Civil Case No. 110-0-2003, and the proceedings which resulted therefrom, are **NULLIFIED** for being contrary to Section 7, Article XII of the Constitution. Branch 72 of the Regional Trial Court of Olongapo City, in Civil Case No. 110-0-2003, is directed: (1) to proceed with the execution of the Decision dated December 1, 2003; (2) to exclude respondent Thomas Johnson from participating in any public auction sale of lands in said case; and (3) to order the delivery of the proceeds of any public auction sale relevant to the execution of the Decision dated December 1, 2003 to respondent Thomas Johnson. No costs.

SO ORDERED.

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

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[*] Designated as Acting Chairperson of the First Division per Special Order No. 2559 dated May 11, 2018.

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

THIRD DIVISION

[G.R. No. 206725. July 11, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. **ESMAEL GERVERO, FLORENCIO ARBOLONIO, DANILO CASTIGADOR, CELSO SOLOMON and EDUARDO BAÑES,** *accused*. **ESMAEL GERVERO (deceased), DANILO CASTIGADOR, CELSO SOLOMON and EDUARDO BAÑES,** *accused-appellants*.

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— As early as in the case of *People v. Oanis and Galanta*, the Court has ruled that mistake of fact applies only when the mistake is committed without fault or carelessness: x x x Further, in *Yapyuco v. Sandiganbayan*, the Court has laid down the requisites for such defense to prosper, *viz*: x x x **A proper invocation of this defense requires (a) that the mistake be honest and reasonable; (b) that it be a matter of fact; and (c) that it negate the culpability required to commit the crime or the existence of the mental state which the statute prescribes with respect to an element of the offense.** x x x *First*, there was no reason for the accused not to recognize the victims because they were traversing an open area which was illuminated not only by moonlight, but also by a light bulb. In addition, the witnesses testified that the victims were conversing and laughing loudly. It must be borne in mind that it was not the first time that the accused had seen the victims as, in fact, accused Bañes and Castigador met Hernando just a few hours before the shooting. Moreover, they all reside in the same town and, certainly, the accused who were all members of the CAFGU would know the residents of that town so as to easily distinguish them from unknown intruders who might be alleged members of the NPA. *Second*, when Jose fell down, Hernando identified himself and shouted, "This is Hernando!" However, instead of verifying the identities of the victims, the accused continued to fire at them. One of them

even shouted, "Birahi na!" ("Shoot now!"). *Third*, when the victims fell down, the accused approached their bodies. At that point, they could no longer claim that they didn't recognize the victims; and still not contented, they sprayed them with bullets such that Jose suffered 14 gunshot wounds, Hernando 16 gunshot wounds, and Benito 20 gunshot wounds. *Fourth*, contrary to their testimonies during trial to the effect that the victims were the first to fire their weapons, Brgy. Capt. Balinas testified that when he asked the accused whether the victims had fired at them, the accused answered him in the negative. *Fifth*, the accused would like the Court to believe that the victims knew the safe word "Amoy" which must be uttered in response to "Simoy" in order to easily determine whether they were members of the NPA. However, the victims could not have known the safe words as accused Gervero himself stated in his testimony that only he and his co-accused were present when their commanding officer briefed them about the safe words to be used in their operation. All these circumstances negate accused-appellants' claim of mistake of fact and point instead to a concerted action to eliminate the victims.

2. **ID.; ID.; ID.; FULFILLMENT OF DUTY AND EXERCISE OF A RIGHT; REQUISITES.—** In *People v. Oanis*, the Court set forth two requisites in order that fulfillment of duty and exercise of a right may be considered as justifying circumstance, namely: (a) that the offender acts in the performance of a duty or in the lawful exercise of a right; and (b) that the injury or offense committed be the necessary consequence of the due performance of such duty or in the lawful exercise of such right or office. If one is absent, accused is entitled to the privileged mitigating circumstance of incomplete fulfillment of duty or lawful exercise of right or office.

3. **ID.; ID.; MURDER; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** Murder is defined and penalized under Article 248 of the Revised Penal Code *(RPC)*, as amended, x x x Generally, the elements of murder are: 1) That a person was killed; 2) That the accused killed him; 3) That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248; and 4) That the killing is not parricide or infanticide. That Hernando, Jose, and Benito died and that the killing is neither parricide nor infanticide have already been established by the trial and appellate courts. Moreover, that accused-appellants killed the three victims remain undisputed considering

that they had admitted the act of shooting the victims, but raised the defense of mistake of fact. However, as previously mentioned, neither mistake of fact nor fulfilment of duty is applicable to exculpate accused-appellants from criminal liability.

4. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUISITES.— Paragraph 16, Article 14 of the RPC provides that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make." Thus, in order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape."

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 31 March 2011 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00674 which affirmed with modification the 6 March 2006 Decision[2] of the

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[1] *Rollo*, pp. 3-18; penned by Associate Justice Eduardo B. Peralta, Jr. with Associates Justice Edgardo L. Delos Santos and Gabriel T. Ingles, concurring.

[2] Records, pp. 805-827; penned by Pairing Judge Loida J. Diestro-Mapurol.

Regional Trial Court, Branch 29, Iloilo City *(RTC)*, in Criminal Case No. 37792, finding Esmael Gervero, Florencio Arbolonio, Celso Solomon, Danilo Castigador, and Eduardo Bañes *(the accused)* guilty of murder.[3]

THE FACTS

In an Information, dated 27 March 1992, the accused were charged with multiple murder. The information reads:

> That on or about the 25th day of November, 1991, in the Municipality of Lemery, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, with deliberate intent and decided purpose to kill, armed with firearms, they were then provided, through treachery, evident premeditation and superior strength, did then and there, wilfully, unlawfully, and feloniously attack, assault, shoot and hit HERNANDO VILLEGAS, JOSE VILLEGAS and BENITO BASUG, JR. with said firearms inflicting upon said Hernando Villegas, Jose Villegas and Benito Basug, Jr. numerous gunshot wounds on different parts of their bodies which caused their deaths immediately thereafter.
>
> CONTRARY TO LAW.[4]

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

Version of the Prosecution

The prosecution presented Delia Villegas *(Delia)*, Isaac Villegas *(Isaac)*, Dr. Alexander Rendon *(Dr. Rendon)*, Barangay Captain Hernando Balinas *(Brgy. Capt. Balinas)*, Roda Incronal *(Roda)*, SPO3 Julius Dacles, PO3 Nazario Apundar, PS/Supt. Juan Mabugat, Jr., Inspector Norberto Simon, Nenita Villegas, and Ramona Basug as its witnesses. Their combined testimony tended to establish the following:

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[3] Remegildo P. Arbolonio and Jesus A. Catequista, Jr. died during the pendency of the case.

[4] Records, p. 1.

At around 6:30 p.m. of 25 November 1991, at Barangay Milan, Lemery, Iloilo, Roda was at the house of Barangay Civilian Volunteer Organization *(CVO)* Commander Hernando Villegas *(Hernando)*. After eating and while Roda was waiting for transportation bound for her residence at Ajuy, Hernando, CVO members Jose Villegas *(Jose)* and Benito Basug, Jr. *(Benito)* came out of Hernando's house. Citizens Armed Forces Geographical Unit *(CAFGU)* officers Bañes, Castigador, and their two companions, who were carrying firearms, approached Hernando and asked him for money. When Hernando gave them ₱20.00, Bañes remarked, "Is that the only amount you can give when you just received money from your wife?" Castigador took the money and said, "You just watch out." When the CAFGU officers left, Roda informed Hernando of Castigador's remark, which Hernando dismissed. Thereafter, Hernando, Jose, and Benito went back to Hernando's house and prepared to go to the wake of CVO member Saturnino Inventor's wife.[5]

At around eight o'clock in the evening, while Delia was inside their house at Barangay Milan, Lemery, Iloilo, her husband Jose, together with Hernando and Benito, passed by. Delia peeped through the window, called Jose's attention, and told him not to stay long at the wake. With the area being illuminated by a light bulb, Delia saw the three walk along the national road and cross towards the rice field. A few minutes later, Isaac, Jose's younger brother and also a CVO member, passed by Delia's house together with Roda. Isaac shouted to call the attention of Hernando, who was then already in the middle of the rice field. Roda, Delia, and Isaac could hear the three CVOs laughing while they were traversing the rice field.[6]

Suddenly, Delia, Roda, and Isaac heard a burst of gunfire from where Hernando, Jose, and Benito were walking. Jose, who was then wearing a pair of white pants, fell first. Delia heard someone shout, "This is Hernando, a CVO!" and someone

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[5] Records, pp. 994-999.

[6] Records, pp. 886-890, 905-907, 1000.

replied, "Birahi na!" ("Shoot now!"). Delia, from her window, also saw Hernando attempting to turn back but was also gunned down. She also witnessed the group of armed men approach the three CVOs whom they fired upon at close range.[7]

When they heard the gunfire, Isaac dropped to the ground and ran back to his house; Roda took cover among the rice paddies, looked at the direction of the gunshots, and saw persons with long firearms. When Roda reached Hernando's house, she saw Hernando's son Ronnie and told him that his father was shot but warned him not to go out as he might also be harmed. Delia and Isaac heard men pass by their houses thereafter. Isaac recognized some of the gunmen to be his friends and positively identified the accused as the armed men he saw.[8]

Later that same night, Pilar Basulgan, wife of Brgy. Capt. Balinas, summoned Isaac. Together with Delia and Ronnie, Isaac went to the house of Brgy. Capt. Balinas. There they saw the accused who had already told Brgy. Capt. Balinas that they made a mistake in shooting Hernando, Jose, and Benito because they thought that the three were members of the New People's Army *(NPA)*. Isaac asserted that misapprehension was impossible because the CAFGU officers personally knew the victims and the voices of the three CVO members were recognizable. Brgy. Capt. Balinas asked if the victims were able to shoot back, but the accused answered in the negative. Thereafter, Isaac, Delia and Ronnie proceeded to the crime scene and saw Hernando, Jose, and Benito lifeless on the ground.[9]

Version of the Defense

At around six o'clock in the evening of 25 November 1991, the accused were given oral instructions by Senior Inspector Benigno Baldevinos *(Senior Inspector Baldevinos)* to conduct tactical patrol and combat operations against NPA members at Barangay Milan, Lemery, Iloilo. In that briefing, they were

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[7] Records, pp. 890-891, 908, 1000-1002.

[8] Records, pp. 891-893, 908-909, 1001-1002.

[9] Records, pp. 910-911, 941-942.

told to use the password "Simoy," to which the response would be "Amoy."[10]

At Barangay Milan, the accused positioned themselves near the river. A while later, they noticed people approaching, which prompted Arbolonio to utter the password "Simoy." Instead of replying with the agreed safe word, the men fired at the accused. The accused fired back and the exchange of gunfire lasted for about thirty minutes. Gervero thereafter ordered his group to gather the firearms of the slain persons. Arbolonio crawled ahead of his companions and with the use of a flashlight, he recovered a homemade armalite and one pistolized 12 gauge with two live ammunitions. Gervero ordered the group to proceed to the house of Brgy. Capt. Balinas to inform him that they encountered a group of men, whom they believed to be members of the NPA. They also turned over the recovered firearms to the police and reported the incident to Senior Inspector Baldevinos, who went back to the scene of the incident with the accused.[11]

The Regional Trial Court's Ruling

In its decision, the RTC found the accused guilty of murder. It found the testimonies of prosecution witnesses straightforward, credible, and in accord with the physical evidence.

With regard to the defense of fulfillment of duty, the trial court ruled that the attendant circumstances leading to the killing of the three victims by the accused clearly showed the absence of the two essential requisites for such defense to prosper. It declared that while it may be initially said that the accused acted in obedience to the order of their superior to conduct foot patrol and take up ambush position at the place of the incident, they undoubtedly exceeded in the performance of their duties by immediately firing successive shots on the three unsuspecting victims. The RTC observed that the accused approached their victims and mercilessly sprayed them with bullets to completely silence them.

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[10] Records, pp. 1054-1057, 1106.

[11] Records, pp. 1059-1064.

The court a quo further held that the defense of misencounter due to mistake of fact was unbelievable. It noted that just a few hours before the incident happened, Bañes, Castigador, and two other unidentified CAFGU members came to the house of Hernando to ask for money, indicating that they knew each other; and that Gervero was likewise bound by his testimony that he knew Hernando. Lastly, the RTC concluded that the suddenness of the attack and the lack of opportunity for the victims to defend themselves constituted treachery. The *fallo* reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the remaining five (5) accused ESMAEL GERVERO, FLORENCIO ARBOLONIO, CELSO SOLOMON, DANILO CASTIGADOR and EDUARDO BAÑES GUILTY beyond reasonable doubt of the crime of MURDER under Art. 248 of the Revised Penal Code, and hereby sentences each of them as follows:
>
> 1. The penalty of RECLUSION PERPETUA for the death of Hernando Villegas;
> 2. The penalty of RECLUSION PERPETUA for the death of Jose Villegas; and
> 3. The penalty of RECLUSION PERPETUA for the death of Benito Basug, Jr.
>
> Each of the accused are likewise ordered to pay the heirs of Hernando Villegas, Jose Villegas and Benito Basug, Jr. the following:
>
> 1. ₱15,000.00 as temperate damages;
> 2. ₱50,000.00 as civil indemnity;
> 3. ₱50,000.00 as exemplary damages;
> 4. ₱50,000.00 as moral damages; and
> 5. To pay the costs.
>
> SO ORDERED.[12]

Aggrieved, the accused elevated its appeal before the CA.

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[12] Records, p. 827.

The Court of Appeals Ruling

In its assailed decision, the CA affirmed the conviction of the accused but modified the amount of damages awarded. It pronounced that even in cases of arrest, the use of unnecessary force, the wantonly violent treatment of the offender, and the resort to dangerous means, when such apprehension could be done otherwise, were not justified acts. The appellate court opined that the accused were entirely careless in not first verifying the identities of the victims; such negligence diminished the defense of mistake of fact. It added that if self-defense could be negated by the manner it was allegedly employed, the sheer number of gunshot wounds demonstrated the accused's *mens rea*. The CA disposed of the case in this wise:

> WHEREFORE, in view of the foregoing premises, the assailed Decision of 06 March 2006 rendered by the Regional Trial Court (RTC) of Iloilo City, Branch 29, in Criminal Case No. 37792 is hereby AFFIRMED with MODIFICATION only insofar as the amount of damages as follows:
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> "Each of the accused [is] likewise ordered to pay the heirs of Hernando Villegas, Jose Villegas, and Benito Basug, Jr. the following:
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> 1. ₱25,000.00 as temperate damages;
> 2. ₱75,000.00 as civil indemnity;
> 3. ₱30,000.00 as exemplary damages;
> 4. ₱75,000.00 as moral damages; and
> 5. To pay the costs."
>
> SO ORDERED.[13]

Hence, this appeal by Esmael Gervero *(deceased),* Danilo Castigador, Celso Solomon, and Eduardo Bañes *(accused-appellants).*

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[13] *Rollo*, p. 17.

ISSUES

I. WHETHER THE TRIAL COURT ERRED IN NOT APPRECIATING THE DEFENSE OF MISTAKE OF FACT; AND

II. WHETHER THE TRIAL COURT ERRED IN RULING THAT THE AGGRAVATING CIRCUMSTANCE OF TREACHERY QUALIFIED THE KILLING TO MURDER.

Accused-appellants assert that the patrol and combat operation they conducted on 25 November 1991, was authorized by their commanding officer Senior Inspector Baldevinos; that the year 1991 was a time of political instability as the then administration had to deal with an invigorated communist insurgency; that when they went their way to confront their enemies, they needed the mindset of men with resolve; thus, when they confronted three non-uniformed armed men who fired at them, they were acting in good faith; that there was no treachery because they were justified by the circumstances of place and time to introduce the element of surprise; and that they reported the encounter to the barangay captain of Barangay Milan and to the Lemery Police Station at their own volition, when during such time they could have already fled if indeed they had acted in malice and bad faith.[14]

THE COURT'S RULING

Mistake of fact finds no application in this case.

As early as in the case of *People v. Oanis and Galanta*,[15] the Court has ruled that mistake of fact applies only when the mistake is committed without fault or carelessness:

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[14] CA *rollo*, pp. 38-58.

[15] 74 Phil. 257 (1943).

In support of the theory of non-liability by reasons of honest mistake of fact, appellants rely on the case of *U.S. v. Ah Chong*, 15 Phil., 488. The maxim is *ignorantia facti excusat*, but this applies only when the mistake is committed without fault or carelessness. In the Ah Chong case, defendant therein after having gone to bed was awakened by someone trying to open the door. He called out twice, "who is there," but received no answer. Fearing that the intruder was a robber, he leaped from his bed and called out again., "If you enter the room I will kill you." But at that precise moment, he was struck by a chair which had been placed against the door and believing that he was then being attacked, he seized a kitchen knife and struck and fatally wounded the intruder who turned out to be his room-mate. A common illustration of innocent mistake of fact is the case of a man who was marked as a footpad at night and in a lonely road held up a friend in a spirit of mischief, and with leveled, pistol demanded his money or life. He was killed by his friend under the mistaken belief that the attack was real, that the pistol leveled at his head was loaded and that his life and property were in imminent danger at the hands of the aggressor. In these instances, there is an innocent mistake of fact committed without any fault or carelessness because the accused, having no time or opportunity to make a further inquiry, and being pressed by circumstances to act immediately, had no alternative but to take the facts as they then appeared to him, and such facts justified his act of killing. In the instant case, appellants, unlike the accused in the instances cited, found no circumstances whatsoever which would press them to immediate action. The person in the room being then asleep, appellants had ample time and opportunity to ascertain his identity without hazard to themselves, and could even effect a bloodless arrest if any reasonable effort to that end had been made, as the victim was unarmed, according to Irene Requinea. This, indeed, is the only legitimate course of action for appellants to follow even if the victim was really Balagtas, as they were instructed not to kill Balagtas at sight but to arrest him, and to get him dead or alive only if resistance or aggression is offered by him.

Although an officer in making a lawful arrest is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm (People *vs.* Delima, 46 Phil, 738), yet he is never justified in using unnecessary force or in treating

him with wanton violence, or in resorting to dangerous means when the arrest could be effected otherwise x x x[16]

Further, in *Yapyuco v. Sandiganbayan*,[17] the Court has laid down the requisites for such defense to prosper, *viz*:

At this juncture, we find that the invocation of the concept of mistake of fact faces certain failure. In the context of criminal law, a "mistake of fact" is a misapprehension of a fact which, if true, would have justified the act or omission which is the subject of the prosecution. Generally, a reasonable mistake of fact is a defense to a charge of crime where it negates the intent component of the crime. It may be a defense even if the offense charged requires proof of only general intent. The inquiry is into the mistaken belief of the defendant, and it does not look at all to the belief or state of mind of any other person. **A proper invocation of this defense requires (a) that the mistake be honest and reasonable; (b) that it be a matter of fact; and (c) that it negate the culpability required to commit the crime or the existence of the mental state which the statute prescribes with respect to an element of the offense.**

The leading authority in mistake of fact as ground for non-liability is found in *United States v. Ah Chong*, but in that setting, the principle was treated as a function of self-defense where the physical circumstances of the case had mentally manifested to the accused an aggression which it was his instinct to repel. There, the accused, fearful of bad elements, was woken by the sound of his bedroom door being broken open and, receiving no response from the intruder after having demanded identification, believed that a robber had broken in. He threatened to kill the intruder but at that moment he was struck by a chair which he had placed against the door and, perceiving that he was under attack, seized a knife and fatally stabbed the intruder who turned out to be his roommate. Charged with homicide, he was acquitted because of his honest mistake of fact. Finding that the accused had no evil intent to commit the charge, the Court explained:

x x x The maxim here is *Ignorantia facti excusat* ("Ignorance or mistake in point of fact is, in all cases of supposed offense, a sufficient excuse").

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[16] *Id.* at 257-258.

[17] 689 Phil. 75 (2012).

Since evil intent is in general an inseparable element in every crime, **any such mistake of fact as shows the act committed to have proceeded from no sort of evil in the mind necessarily relieves the actor from criminal liability, provided always there is no fault or negligence on his part** and as laid down by Baron Parke, "The guilt of the accused must depend on the circumstances as they appear to him." x x x

If, in language not uncommon in the cases, one has reasonable cause to believe the existence of facts which will justify a killing — or, in terms more nicely in accord with the principles on which the rule is founded, if without fault or carelessness he does not believe them — he is legally guiltless of homicide; though he mistook the facts, and so the life of an innocent person is unfortunately extinguished. In other words, and with reference to the right of self-defense and the not quite harmonious authorities, it is the doctrine of reason, and sufficiently sustained in adjudication, that notwithstanding some decisions apparently adverse, whenever a man undertakes self-defense, he is justified in acting on the facts as they appear to him. If, without fault or carelessness, he is misled concerning them, and defends himself correctly according to what he thus supposes the facts to be, the law will not punish him though they are in truth otherwise, and he has really no occasion for the extreme measure.

x x x x x x x x x

Besides, as held in *People v. Oanis* and *Baxinela v. People*, the justification of an act, which is otherwise criminal on the basis of a mistake of fact, must preclude negligence or bad faith on the part of the accused. Thus, *Ah Chong* further explained that —

The question then squarely presents itself, whether in this jurisdiction one can be held criminally responsible who, by reason of a mistake as to the facts, does an act for which he would be exempt from criminal liability if the facts were as he supposed them to be, but which would constitute the crime of homicide or assassination if the actor had known the true state of the facts at the time when he committed the act. To this question we think there can be but one answer, and we hold that under such circumstances there is no criminal liability, provided always that the alleged ignorance or mistake of fact was not due to negligence or bad faith. [emphases supplied][18]

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[18] *Id.* at 115-118.

First, there was no reason for the accused not to recognize the victims because they were traversing an open area which was illuminated not only by moonlight, but also by a light bulb. In addition, the witnesses testified that the victims were conversing and laughing loudly. It must be borne in mind that it was not the first time that the accused had seen the victims as, in fact, accused Bañes and Castigador met Hernando just a few hours before the shooting. Moreover, they all reside in the same town and, certainly, the accused who were all members of the CAFGU would know the residents of that town so as to easily distinguish them from unknown intruders who might be alleged members of the NPA. *Second*, when Jose fell down, Hernando identified himself and shouted, "This is Hernando!" However, instead of verifying the identities of the victims, the accused continued to fire at them. One of them even shouted, "Birahi na!" ("Shoot now!"). *Third*, when the victims fell down, the accused approached their bodies. At that point, they could no longer claim that they didn't recognize the victims; and still not contented, they sprayed them with bullets such that Jose suffered 14 gunshot wounds,[19] Hernando 16 gunshot wounds,[20] and Benito 20 gunshot wounds.[21] *Fourth*, contrary to their testimonies during trial to the effect that the victims were the first to fire their weapons, Brgy. Capt. Balinas testified that when he asked the accused whether the victims had fired at them, the accused answered him in the negative. *Fifth*, the accused would like the Court to believe that the victims knew the safe word "Amoy" which must be uttered in response to "Simoy" in order to easily determine whether they were members of the NPA. However, the victims could not have known the safe words as accused Gervero himself stated in his testimony that only he and his co-accused were present when their commanding officer briefed them about the safe words to be used in their operation.[22] All these circumstances negate accused-appellants'

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[19] Records, p. 927.

[20] Records, pp. 808-809.

[21] Records, p. 930.

[22] Records, p. 1106.

claim of mistake of fact and point instead to a concerted action to eliminate the victims.

No justifying circumstance of fulfillment of duty

In *People v. Oanis*,[23] the Court set forth two requisites in order that fulfillment of duty and exercise of a right may be considered as justifying circumstance, namely: (a) that the offender acts in the performance of a duty or in the lawful exercise of a right; and (b) that the injury or offense committed be the necessary consequence of the due performance of such duty or in the lawful exercise of such right or office. If one is absent, accused is entitled to the privileged mitigating circumstance of incomplete fulfillment of duty or lawful exercise of right or office.[24]

In this case, it could not even be said that the accused acted in the performance of their duty. Indeed, Gervero narrated that they conducted the operation on 25 November 1991, on the verbal instruction of Senior Inspector Baldevinos who later on testified in court to corroborate this claim. However, even assuming that they were indeed tasked to capture members of the NPA, their actions on that fateful night disprove their defense of fulfillment of duty as shown by the way they had viciously attacked their helpless victims. The evidence speaks in no uncertain terms that the accused, instead of fulfilling their sworn duty to protect the public in accordance with law, allowed their personal grudges and thirst for vengeance to prevail and killed Jose, Hernando, and Benito in cold blood.

Accused-appellants are guilty of murder qualified by treachery.

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

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[23] *Supra* note 15.

[24] *Id*. at 259.

ART. 248. *Murder*. Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
2. In consideration of a price, reward, or promise;
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
4. On occasion of any calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
5. With evident premeditation;
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Generally, the elements of murder are: 1) That a person was killed; 2) That the accused killed him; 3) That the killing was attended by *any* of the qualifying circumstances mentioned in Art. 248; and 4) That the killing is not parricide or infanticide.[25]

That Hernando, Jose, and Benito died and that the killing is neither parricide nor infanticide have already been established by the trial and appellate courts. Moreover, that accused-appellants killed the three victims remain undisputed considering that they had admitted the act of shooting the victims, but raised the defense of mistake of fact. However, as previously mentioned, neither mistake of fact nor fulfilment of duty is applicable to exculpate accused-appellants from criminal liability. Thus, what remains to be resolved is the appreciation of treachery as a qualifying circumstance.

Paragraph 16, Article 14 of the RPC provides that "[t]here is treachery when the offender commits any of the crimes against

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

the person, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make." Thus, in order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.[26] "The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape."[27]

The witnesses were all consistent in declaring that accused-appellants suddenly fired at the three unsuspecting victims who never had a chance to mount a defense. The victims, who were on their way to attend a wake and happily conversing with one another, were caught off guard when all of a sudden, they were met with multiple gunshots. In such a rapid motion, accused-appellants shot the victims, affording the latter no opportunity to defend themselves or fight back. Without any doubt, the manner of execution was deliberately adopted by the accused who were all armed with heavily powered firearms. They positioned themselves in what they termed as "ambush position," at a distance where their victims could not easily see them, thereby ensuring that they hit and terminate their targets.

Penalty and award of damages

Pursuant to Art. 248 of the RPC, the penalty for murder is *reclusion perpetua* to death. Applying Art. 63(2) of the RPC, the lesser of the two indivisible penalties, i.e., *reclusion perpetua,* shall be imposed upon the accused-appellants in view of the

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[26] *People v. Manzano, Jr.,* G.R. No. 217974, 5 March 2018.

[27] *People v. Amora*, 748 Phil. 608, 621 (2014).

absence of any mitigating or aggravating circumstance that attended the killing of Jose, Hernando, and Benito.

Following the jurisprudence laid down by the Court in *People v. Jugueta*,[28] accused-appellants are ordered to pay the heirs of Hernando Villegas, Jose Villegas, and Benito Basug, Jr. ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.[29] It was also ruled in *Jugueta* that when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded. In addition, interest at the rate of six percent per annum shall be imposed on all monetary awards from the date of finality of this decision until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The 31 March 2011 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00674 is **AFFIRMED** with **MODIFICATIONS**. Accused-appellants Danilo Castigador, Celso Solomon, and Eduardo Bañes are found **GUILTY** beyond reasonable doubt of **MURDER** for the killing of Hernando Villegas, Jose Villegas, and Benito Basug, Jr. and are hereby sentenced to suffer the penalty of *reclusion perpetua*. They are ordered to pay the heirs of the victims the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages; and Fifty Thousand Pesos (₱50,000.00) as temperate damages.

All monetary awards shall earn interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

Leonen, J., on official leave.

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[28] 783 Phil. 806 (2016).

[29] *Id*. at 847.

THIRD DIVISION

[G.R. No. 219582. July 11, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENITO PALARAS *y* LAPU-OS,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); BUY-BUST OPERATION, CONSTRUED.—** As a "trap for the unwary criminal," a buy-bust operation is generally considered a valid means of arresting those who commit violations under R.A. No. 9165, where the idea to commit the crime originates from the offender without inducement or prodding from anybody. It finds its basis in the validity of an *in flagrante delicto* arrest, when a suspect has just committed, or is in the act of committing, or is attempting to commit an offense. However, proof of the transaction constituting the crime must be credibly and completely established in order to secure a conviction because in every criminal prosecution, the State bears the burden of proving the crime beyond reasonable doubt.

2. **ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** An accused may only be convicted of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 if the prosecution is able to prove the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. It is important that the sale transaction is properly established and that the object of the transaction, the seized drugs, be presented in court and identified as the same items seized from the accused.

3. **ID.; ID.; ID.; THE NON-PRESENTATION OF THE POSEUR-BUYER IS FATAL WHEN THERE IS NO EYEWITNESS ACCOUNT TO THE ILLEGAL SALE OF DANGEROUS DRUGS SINCE THE EVIDENCE OF THE PROSECUTION DOES NOT SATISFY THE QUANTUM OF PROOF NECESSARY FOR ACCUSED-APPELLANT'S CONVICTION.—** While it is true that the non-presentation of the poseur-buyer is fatal only if there is no other eyewitness

to the illicit transaction, PO2 Bernil and the other members of the buy-bust team cannot be considered as eyewitnesses to the illegal sale of drugs because their distance raises doubt that they could confirm whether what transpired was actually a sale, considering the legal characterizations of the act constituting the crime. x x x Notably, also, PO2 Bernil testified that accused-appellant was inside a tricycle when the transaction took place and it was not established that he was still able to clearly see the acts of both the poseur-buyer and accused-appellant despite the latter's position and the cover afforded by the tricycle. x x x It can also be gleaned from the foregoing testimonies that the members of the buy-bust team primarily relied on the pre-arranged signal in order to effect the arrest. x x x Consequently, the non-presentation of the poseur-buyer in this case is fatal to the prosecution's case. Without an eyewitness account to the illegal sale, the evidence of the prosecution does not satisfy the quantum of proof necessary for accused-appellant's conviction. Since the poseur-buyer was not presented to testify on the details of the subject transaction, the act of accused-appellant as witnessed by the members of the buy-bust team cannot, therefore, be limited to illegal sale of drugs. It was capable of multiple explanations. It is a well-established rule that "if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction."

4. ID.; ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; WHEN THE SALE TRANSACTION FOR ILLEGAL DRUGS IS NOT ESTABLISHED, NO CRIME CAN BE ATTRIBUTED TO THE ACCUSED, HENCE, THERE CAN BE NO BASIS FOR THE WARRANTLESS ARREST.— A conviction for illegal possession of dangerous drugs requires the prosecution to establish the following: (1) that the accused was in possession of dangerous drugs; (2) that such possession was not authorized by law; and (3) that the accused was freely and consciously aware of being in possession of dangerous drugs. The seizure of the items marked as "BIT2", "BIT3", "BIT4", and "BIT5" was made after a warrantless search on accused-appellant incidental to his arrest based on the buy-bust operation. However, as discussed earlier, since the sale

transaction was not sufficiently established and no crime for the sale of illegal drugs could be attributed to accused-appellant, then there could have been no basis for the warrantless search. Any item it yielded could not, therefore, be used as evidence against the accused-appellant. More importantly, accused-appellant's possession of the drugs was premised on his sale thereof. There is no showing that the prosecution independently established illegal possession through testimony or other evidence, aside from merely linking it to the illegal sale. Since the sale was not duly proven, then it cannot be said that the third element of the crime — that accused-appellant freely and consciously possessed the drug — was sufficiently established. Thus, proof beyond reasonable doubt of accused-appellant's possession of illegal drugs is wanting. It is also worth noting that the buy-bust team had conducted a surveillance and monitoring operation on accused-appellant prior to the buy-bust operation, and that a test-buy operation was in fact made months before the actual buy-bust operation, where a laboratory examination on the bought item yielded positive for *shabu*. There was thus enough time and reason for the team to secure a search warrant on accused-appellant, and it is curious why they did not.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

On automatic appeal is the 29 January 2015 Decision[1] of the Court of Appeals (*CA*), in CA-G.R. CR HC No. 01758, which affirmed the 14 November 2013 Decision[2] of the Regional Trial Court (*RTC*), Branch 69, Silay City, in Criminal Case Nos. 8561-69 and 8562-69. The RTC found accused-appellant

[1] *Rollo*, pp. 4-19.

[2] CA *rollo*, pp. 52-65.

Benito Palaras *y* Lapu-os (*accused-appellant*) guilty beyond reasonable doubt of the charges against him, and sentenced him with life imprisonment and a fine of ₱500,000.00 for violating Section 5, Article II of Republic Act No. 9165[3] (*R.A. No. 9165*).

THE FACTS

Two Informations filed on 13 March 2012 charged accused-appellant with violation of Sections 5 and 11, respectively, of Article II of R.A. No. 9165, *viz*:

CRIMINAL CASE NO. 8561-69

That on February 22, 2012 in Silay City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously sell one sachet of *shabu* marked as "BIT1", a prohibited drug, to an asset of the Silay City PNP posing as a poseur buyer in exchange for two One hundred peso bills with serial numbers SQ914777 & ZE353426 and one fifty peso bill with serial number SB019053, all marked with an underline at the last digit of each serial number.

CONTRARY TO LAW.[4]

CRIMINAL CASE NO. 8562-69

That on February 22, 2012 in Silay City, Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wilfully, unlawfully and feloniously have in his possession and control four sachets of *shabu* marked as Bit2, Bit3, Bit4, & Bit5, a prohibited drug, without any license or permit to possess the same.

CONTRARY TO LAW.[5]

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[3] Otherwise known as 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 Further Funds Therefor, and for Other Purposes.

[4] Records (Criminal Case No. 8561-69), p. 1.

[5] Records (Criminal Case No. 8562-69), p. 1.

Upon arraignment, accused-appellant pleaded not guilty. The two cases were jointly tried.

Version of the Prosecution

The Office of the Solicitor General (*OSG*) summarized the prosecution's case as follows:

The Intelligence Section of the Philippine National Police of Silay City (*PNP-Silay City*) received reports that a certain Benito Palaras *y* Lapu-os a.k.a. "Bitoy," a resident of Sitio Matagoy, Barangay Rizal, Silay City, was actively engaged in selling *shabu* in the said area together with his brother, Joemarie Palaras, who had been previously arrested for a similar offense.

Pursuant to the said reports, P/Supt. Rosauro B. Francisco, Jr., the Chief of Police of PNP-Silay City, ordered surveillance, monitoring, and casing operation on accused-appellant. A test-buy operation was then undertaken with the use of a confidential asset, who acted as the poseur-buyer. A sachet of *shabu* was purchased by the poseur-buyer from accused-appellant for the sum of Two Hundred Fifty Pesos (₱250.00). The item purchased from the accused-appellant in said test-buy was brought to the PNP Crime Laboratory of the Negros Occidental Provincial Police Office (*NOPPO*) on 14 December 2011. The contents of the said plastic sachet was "positive" for methamphetamine hydrochloride (*shabu*), a dangerous drug, as shown in Chemistry Report No. D-241-2011.

A buy-bust operation was thus set on 22 February 2012, to be conducted by the same police unit on accused-appellant Palaras. Two (2) ₱100-peso bills and a ₱50-peso bill were marked by underlining the last digit of the serial numbers on each of them. The same were subscribed to before Prosecutor Ma. Lisa Lorraine H. Atotubo as the money to be used in said buy-bust operation. This was entered in the blotter of the PNP-Silay City as Entry No. 024885.

The planned buy-bust operation was coordinated with the Philippine Drug Enforcement Agency (*PDEA*), Regional

Office 6. A pre-operation report and coordination form were likewise issued. Details of the operation were planned at a short briefing in the office of the Intelligence Section of the PNP-Silay City. The members of the buy-bust operation team were PO2 Reynaldo Bernil, Jr. (*PO2 Bernil*), PO2 Ian Libo-on (*PO2 Libo-on*), and a number of civilian agents of the police unit, with PO2 Bernil as the lead police officer.

The marked bills were given by PO2 Bernil to the confidential asset, who was to act as the poseur-buyer. The poseur-buyer proceeded to Burgos Street, Barangay Rizal, Silay City, ahead of the other members of the buy-bust team, to meet accused-appellant. The poseur-buyer was instructed to immediately call PO2 Bernil the moment he saw accused-appellant at the said place. Shortly after the poseur-buyer made the call that he had already seen accused-appellant in the area, the other members of the buy-bust team proceeded there. They positioned themselves a few meters away from where the poseur-buyer was, such that their presence would not be noticed by accused-appellant but sufficient for them to clearly see him and the poseur-buyer.

The poseur-buyer approached a person seated in a tricycle parked on the street. Since the farmer was a previous customer of accused-appellant, Palaras did not become suspicious. The poseur-buyer took out from his pocket the marked bills and handed them to accused-appellant, who readily received the bills and placed them in his pocket. Accused-appellant, thereafter, took something from his pocket and gave it to the poseur-buyer. As they parted ways, the poseur-buyer gave the pre-arranged signal that the sale had already been consummated by placing his right hand on top of his head. The other members of the buy-bust team, specifically PO2 Bernil, SPO1 Rayjay Rebadomia (*SPO1 Rebadomia*), and PO2 Libo-on, hurriedly proceeded towards accused-appellant who, upon noticing the approaching police officers, attempted to escape but was promptly apprehended.

PO2 Bernil searched the body of accused-appellant and recovered from the left pocket of his pants the marked bills, as well as four (4) small heat-sealed transparent plastic sachets

containing white crystalline substances. PO2 Bernil handed these transparent plastic sachets to PO2 Libo-on, who marked them as "BIT2," "BIT3," "BIT4," and "BIT5," respectively.

On the other hand, the poseur-buyer handed to PO2 Bernil a small heat-sealed transparent plastic sachet containing a crystalline substance which the former received from accused-appellant. PO2 Bernil, in turn, handed it to PO2 Libo-on which the latter marked as "BIT1," the buy-bust item.

Accused-appellant and the items recovered from him were then brought to the police station of the PNP-Silay City. An inventory was made of the seized items from accused-appellant which he signed. The said inventory was witnessed by, among others: Councilor Ireneo Celis, media representative Ed Gumban, Kagawad Noel Lacson, and DOJ representative Danilo Tumlos.

Thereafter, the marked plastic sachets were brought to the PNP Crime Laboratory NOPPO at Bacolod City, for laboratory examination.

Chemistry Report No. D-049-2012[6] was issued by Police Inspector Hernand Gutierrez Donado, a forensic chemist, showed that "BIT1" had a net weight of 0.2 gram, and "BIT2," "BIT3," "BIT4," and "BIT5" had a net weight of 0.01 gram each, with an aggregate weight of 0.06 gram. Said report found that all the aforementioned specimen tested "positive" for methamphetamine hydrochloride (*shabu*), a dangerous drug.[7]

Version of the Defense

Accused-appellant testified that on 22 February 2012, at around 4:00 P.M., he was inside a private tricycle at Kahilwayan, Brgy. 2, Silay City. While he was conversing with his friends, two armed men in civilian clothes approached him, aimed a gun at him, and handcuffed him. He resisted and asked them why he was being arrested as he had done nothing wrong. No

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[6] Records, p. 111; Exhibits "1" to "I-3".

[7] CA *rollo*, pp. 138-140.

answer was given and he was forcibly held in front of the jeep. To his surprise, one of the police officers inserted his hand on accused-appellant's pocket and eventually made a search. Accused-appellant resisted the body search as his pockets had holes in them; however, the police authorities persisted.

Accused-appellant further testified that during the search, a Tanduay Rum bottle cap dropped to the ground, but he had no idea where it came from. Subsequently, he was made to board a green multicab and taken to the police station. At the station, he saw a small transparent plastic sachet on the table and was astounded when police authorities told him that the transparent sachet was found inside the bottle cap, evidence that he was in possession of an illegal drug. He further testified that a photographer arrived and took the ₱250.00 from his pocket and placed it on the table. Photographs were taken and accused-appellant was forced to sign the certificate of inventory being informed by the authorities that another case would be filed against him if he refused to sign the document.

Jenny Casiano, accused-appellant's niece, claimed that on 22 February 2012, a neighbor called her while she was at home watching TV. She ran outside and there she saw her uncle, accused-appellant, being held forcefully by the police officers. Accused-appellant asked for her help. Jenny narrated that she was dragged by the police officers away from her uncle.

Jenny also claimed that while her uncle was being handcuffed, a bottle cap was inserted by PO2 Bernil into her uncle's pocket. She observed that the bottle cap contained a small transparent sachet which fell to the floor and which PO2 Bernil picked up. After the body search, the crowd applauded as the seized items were seen to have been purposely placed in accused-appellant's pocket. Jenny did not go with her uncle when the latter was brought to the police station, but she immediately reported the incident to her father.[8]

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[8] *Id*. at 104-105.

The RTC Ruling

The RTC convicted accused-appellant for violation of Section 5 and Section 11, Article II, of R.A. No. 9165.

The dispositive portion reads:

WHEREFORE, PREMISES CONSIDERED:

In Criminal Case No. 8561-69, this Court finds accused, BENITO PALARAS *y* [LAPU-OS], a.k.a. "BITOY," GUILTY of "Violation of Section 5, Article II of Republic Act No. 9165" (The Comprehensive Dangerous Drugs Act of 2002), as his guilt had been proven by the prosecution beyond reasonable doubt.

Accordingly, this Court sentences accused, BENITO PALARAS *y* [LAPU-OS] a.k.a. "BITOY," to suffer the penalty of Life Imprisonment, the same to be served by him at the National Penitentiary, Muntinlupa City, Rizal.

Accused, Benito Palaras *y* [Lapu-os], a.k.a. "Bitoy" is, further, ordered to pay a fine of ₱500,000.00.

In Criminal Case No. 8562-69, this Court finds accused, BENITO PALARAS *y* [LAPU-OS], a.k.a. "BITOY," guilty of Violation of Section 11, Article II of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002), as the Prosecution had proven his guilt for said crime beyond any reasonable doubt.

Accordingly, and in application of the pertinent provisions of the Indeterminate Sentence Law, this Court sentences accused, BENITO PALARAS *y* [LAPU-OS], a.k.a. "BITOY," to suffer the penalty of imprisonment for a period of from TWELVE (12) YEARS and ONE (1) DAY as Minimum, to SEVENTEEN (17) YEARS and FOUR (4) Months as maximum, the same to be served by him at the National Penitentiary, Muntinlupa City, Rizal.

Accused named is, further, ordered to pay a line of ₱400,000.00.

In the service of the sentences imposed by this Court on accused, Benito Palaras *y* [Lapu-os], a.k.a. "Bitoy," his period of detention pending trial of this case shall be credited in his favor.

Accused, Bentito Palaras *y* [Lapu-os] a.k.a. "Bitoy" is, in the meantime, remanded to the custody of the Jail Warden of the Bureau of Jail Management and Penology (BJMP), Silay City, Negros

Occidental, pending his transfer to the National Bilibid Prisons, where he shall serve the sentence imposed on him by the Court.

The one (1) small heat-sealed transparent plastic sachet containing white crystalline substances in it of methamphetamine hydrochloride ("*Shabu*") subject of the buy-bust operation on the accused and the four (4) small heat-sealed plastic sachets, likewise, containing methamphetamine hydrochloride ("*Shabu*") on them, with a total weight of 0.6 grams, are ordered remitted to the Philippine Drug Enforcement Agency (PDEA), Negros Occidental Police Office, Camp Alfredo Montelibano, Bacolod City, for proper disposition.

NO COSTS.

SO ORDERED.[9]

In rendering its judgment of conviction, the RTC ruled that the sale and possession by accused-appellant of the drug were sufficiently established by the prosecution, and the identity and integrity of the drug seized were duly preserved.

Aggrieved, accused-petitioner elevated an appeal to the CA.

The CA Ruling

The CA denied the appeal and affirmed the decision of the RTC, *viz*:

WHEREFORE, in view of all the foregoing, the appeal is **DENIED**. The Decision of the Regional Trial Court, Branch 69, Silay City dated November 14, 2013 in Criminal Cases Nos. 8561-69 and 8562-69 is hereby **AFFIRMED**.

SO ORDERED.[10]

Hence, the present appeal.

ISSUE

WHETHER OR NOT THE CA AND THE RTC ERRED IN FINDING THAT THE EVIDENCE PRESENTED BY THE PROSECUTION

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[9] *Id*. at 63-64.

[10] *Id*. at 165.

WARRANTED ACCUSED-APPELLANT'S CONVICTION FOR THE CRIMES CHARGED.

Accused-appellant contends that the CA erred in affirming his conviction because the illegal sale and possession of dangerous drug were not sufficiently established considering that: (1) the arresting officers were at least 10 meters away from the location of accused-appellant and the poseur-buyer had an obstructed view of the transaction; (2) the poseur-buyer, who had personal knowledge of the transaction, was not presented to testify on the details of the sale; and (3) there were gaps in the chain of custody because while it was established that the seized drugs were in PO2 Bernil's custody en route to the police station, no details were provided as to the handling of the items.

THE COURT'S RULING

The Court finds the present appeal meritorious.

As a "trap for the unwary criminal," a buy-bust operation is generally considered a valid means of arresting those who commit violations under R.A. No. 9165, where the idea to commit the crime originates from the offender without inducement or prodding from anybody.[11] It finds its basis in the validity of an *in flagrante delicto* arrest, when a suspect has just committed, or is in the act of committing, or is attempting to commit an offense.[12]

However, proof of the transaction constituting the crime must be credibly and completely established in order to secure a conviction because in every criminal prosecution, the State bears the burden of proving the crime beyond reasonable doubt.[13]

An accused may only be convicted of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165 if the prosecution is able to prove the following elements: (1) the

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[11] *People v. Bartolome*, 703 Phil. 148, 161 (2013).

[12] *People v. Andaya*, 745 Phil. 237, 246 (2014).\

[13] *Id*. at 247.

identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[14] It is important that the sale transaction is properly established and that the object of the transaction, the seized drugs, be presented in court and identified as the same items seized from the accused.[15]

PO2 Bernil's testimony shows that the members of the buy-bust team apprehended accused-appellant based on the pre-arranged signal from the poseur-buyer that the transaction with accused-appellant had been consummated. However, the prosecution did not present the poseur-buyer during the trial to describe the said transaction. The records also show that it was PO2 Bernil who was tasked to monitor the movements of accused-appellant and the poseur-buyer and was positioned the closest to the subject transaction, but he was located ten (10) meters away from the transaction, *viz*:

(to SPO1 Rebadomia)

Q. What happened there?
A. **Our poseur-buyer went ahead of us and it was PO2 Bernil who will monitor the actions of our poseur-buyer while I and PO2 Libo-on will wait for the signal of PO2 Bernil.**

Q. How far were you from the subject person?
A. I was about 20 meters from the subject person because I was waiting [sic] the signal of PO2 Bernil.[16] (emphasis and underscoring supplied)

x x x x x x x x x

(to PO2 Bernil)

Q. Were you able to have a meeting?
A. Yes. After a short briefing at the Intelligence Section Office. I was the one who briefed our poseur-buyer and I also briefed him with respect to our pre-arranged signal to indicate that

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[14] *People v. Ismael*, G.R. No. 208093, 20 February 2017.

[15] *Id*.

[16] TSN, 27 September 2012, p. 12.

the exchange of the marked money and illegal drug is being consummated.

Q. What is your signal, the pre-arranged signal?
A. After the exchange, he will put his right hand over his head.[17]

x x x x x x x x x

(to PO2 Bernil)

Q. And what happened when you reached the place?
A. <u>When we were already at the place wherein Mr. Benito Palaras was seen sitting inside the tricycle, our poseur-buyer made ready to transact business.</u> I gave the signal to proceed. Our poseur-buyer went to the subject person to start to transact business.

Q. <u>How far were you from them?</u>
A. <u>More or less, ten meters away.</u>

Q. While they were transacting business, what did you see?
A. When our poseur-buyer approached Benito Palaras, I saw our poseur-buyer took out the money from his pocket and gave it to Mr. Benito Palaras, and as his regular customer their transaction proceeded after the exchange of marked money. After the receipt of the suspected one sachet of *shabu*, he placed his hand over his head and we proceeded to arrest the subject person.

Q. You said you saw your poseur-buyer and the accused transacting with each other. Were you in front of them?
A. No. I was near the Pugzone Store, and he could not see us.

Q. But you were able to see them?
A. Yes, the place where Mr. Benito Palaras was is very visible from where I was. I was in the fruit store at Burgos St.

Q. Was there a store there?
A. There were several eateries in the left side.

Q. <u>But was he outside the store?</u>
A. <u>Yes, sitting inside a tricycle.</u>[18] (emphases and underscoring supplied)

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[17] TSN, 13 September 2012, pp. 19-20.

[18] *Id.* at 20-21.

While it is true that the non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction,[19] PO2 Bernil and the other members of the buy-bust team cannot be considered as eyewitnesses to the illegal sale of drugs because their distance raises doubt that they could confirm whether what transpired was actually a sale, considering the legal characterizations[20] of the act constituting the crime.

In *People v. Amin*,[21] this Court did not deem as eyewitness account the testimony of the prosecution witnesses who were ten (10) meters away from the transaction. Similarly, in *People v. Guzon*,[22] a police officer who admitted that he was seven (7) to eight (8) meters away from the actual transaction was not considered an eyewitness to the crime.

Notably, also, PO2 Bernil testified that accused-appellant was inside a tricycle when the transaction took place and it was not established that he was still able to clearly see the acts of both the poseur-buyer and accused-appellant despite the latter's position and the cover afforded by the tricycle.

It can also be gleaned from the foregoing testimonies that the members of the buy-bust team primarily relied on the pre-arranged signal in order to effect the arrest.

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[19] *People v. Berdadero*, 636 Phil. 199, 213 (2010).

[20] Section 5 of Republic Act No. 9165 punishes "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." Under the law, selling was any act "of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration;" while delivering was any act "of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration."

[21] G.R. No. 215942, 18 January 2017, 814 SCRA 639.

[22] 719 Phil. 441 (2013).

In *People v. Andaya*,[23] the Court ruled that "the reliance on the supposed signal to establish the consummation of the transaction between the poseur-buyer and Andaya was unwarranted because the unmitigatedly hearsay character of the signal rendered it entirely bereft of trustworthiness. The arresting members of the buy-bust team interpreted the signal from the anonymous poseur-buyer as sign of the consummation of the transaction. Their interpretation, being necessarily subjective without the testimony of the poseur-buyer, unfairly threatened the liberty of Andaya."[24]

Consequently, the non-presentation of the poseur-buyer in this case is fatal to the prosecution's case. Without an eyewitness account to the illegal sale, the evidence of the prosecution does not satisfy the quantum of proof necessary for accused-appellant's conviction.

Since the poseur-buyer was not presented to testify on the details of the subject transaction, the act of accused-appellant as witnessed by the members of the buy-bust team cannot, therefore, be limited to illegal sale of drugs. It was capable of multiple explanations. It is a well-established rule that "if the inculpatory facts and circumstances are capable of two or more interpretations, one of which being consistent with the innocence of the accused and the other or others consistent with his guilt, then the evidence in view of the constitutional presumption of innocence has not fulfilled the test of moral certainty and is thus insufficient to support a conviction."[25]

On accused-appellant's conviction for illegal possession of *shabu*, this Court is also constrained to reverse the same.

A conviction for illegal possession of dangerous drugs requires the prosecution to establish the following: (1) that the accused was in possession of dangerous drugs; (2) that such possession

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[23] *Supra* note 12.

[24] *Id*. at 249.

[25] *Franco v. People*, 780 Phil. 36, 50 (2016).

was not authorized by law; and (3) that the accused was freely and consciously aware of being in possession of dangerous drugs.[26]

The seizure of the items marked as "BIT2", "BIT3", "BIT4", and "BIT5" was made after a warrantless search on accused-appellant incidental to his arrest based on the buy-bust operation. However, as discussed earlier, since the sale transaction was not sufficiently established and no crime for the sale of illegal drugs could be attributed to accused-appellant, then there could have been no basis for the warrantless search. Any item it yielded could not, therefore, be used as evidence against the accused-appellant.[27]

More importantly, accused-appellant's possession of the drugs was premised on his sale thereof. There is no showing that the prosecution independently established illegal possession through testimony or other evidence, aside from merely linking it to the illegal sale. Since the sale was not duly proven, then it cannot be said that the third element of the crime — that accused-appellant freely and consciously possessed the drug — was sufficiently established. Thus, proof beyond reasonable doubt of accused-appellant's possession of illegal drugs is wanting.

It is also worth noting that the buy-bust team had conducted a surveillance and monitoring operation on accused-appellant prior to the buy-bust operation, and that a test-buy operation was in fact made months before the actual buy-bust operation, where a laboratory examination on the bought item yielded positive for *shabu*. There was thus enough time and reason for the team to secure a search warrant on accused-appellant, and it is curious why they did not.

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[26] *People v. Ismael*, *supra* note 14.

[27] In *Veridiano v. People*, G.R. No. 200370, 7 June 2017, this Court reiterated that "a search incidental to a lawful arrest requires that there must first be a lawful arrest before a search is made. Otherwise stated, a lawful arrest must precede the search; 'the process cannot be reversed.'"

In view of the foregoing, it is no longer necessary to discuss other issues raised by both parties.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the Court of Appeals Decision, dated 29 January 2015, in CA-G.R. CR HC No. 01758, affirming the 14 November 2013 Decision of the Regional Trial Court (*RTC*), Branch 69, Silay City, in Criminal Case Nos. 8561-69 and 8562-69, and **ACQUITS** accused-appellant **BENITO PALARAS *y* LAPU-OS** of the crimes charged in Criminal Case Nos. 8561-69 and 8562-69 on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby **ORDERED** to immediately release accused-appellant **BENITO PALARAS *y* LAPU-OS** from custody unless he is being detained for some other lawful cause.

SO ORDERED.

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

Leonen, J., on official leave.

THIRD DIVISION

[G.R. No. 220492. July 11, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CCC,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MATTERS OF CREDIBILITY ARE ADDRESSED BASICALLY TO THE TRIAL JUDGE WHO IS IN A BETTER POSITION

TO APPRECIATE THE WEIGHT AND EVIDENTIARY VALUE OF THE TESTIMONIES OF WITNESSES WHO HAVE PERSONALLY APPEARED BEFORE HIM.— Jurisprudence is replete with rulings that an appellant can justifiably be convicted of rape based solely on the credible testimony of the victim. We consider, too, that nothing in the records indicates that the RTC and the CA had overlooked or had failed to appreciate facts that, if considered, would change the outcome of the case. In rape cases where no other person could accurately account what happened, except for the victim and the accused-appellant, the witnesses' credibility plays a big factor. When it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. Matters of credibility are addressed basically to the trial judge who is in a better position than the appellate court to appreciate the weight and evidentiary value of the testimonies of witnesses who have personally appeared before him. The appellate courts are far detached from the witnesses' deportment and manner of testifying during trial and thus have to rely solely on the records of the case in its review. On the matter of credence and credibility of witnesses, therefore, we acknowledge said limitations and recognize the advantage of the trial court whose findings must be given due deference.

2. **ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT; THE TRIAL COURT'S CHOICE IS GENERALLY VIEWED AS CORRECT AND ENTITLED TO THE HIGHEST RESPECT; RATIONALE.—** On the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, this rule should not be disturbed.

3. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS; WHEN A FATHER COMMITS THE ODIOUS CRIME OF RAPE AGAINST HIS OWN DAUGHTER WHO IS A MINOR AT THE**

TIME OF THE COMMISSION OF THE OFFENSE, HIS MORAL ASCENDANCY OR INFLUENCE OVER THE LATTER SUBSTITUTE FOR VIOLENCE AND INTIMIDATION.— In appreciating the testimony of the victim, we have to bear in mind that rape is a painful experience which is oftentimes not remembered in detail. For some, however, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would not easily forget. To recall this unwanted episode in one's life, not to mention having to call on one's memory over and over again just to narrate what really happened, is something we have to consider especially when it causes humiliation and mortification to the victim. Here, we do not see any possible reason why AAA would falsely accuse her own father and at the same time divulge to the public that she had been sexually abused by the man who nurtured her as she was growing up. Worse, the accused failed to adduce evidence of ill motive against him for us to even consider that AAA would come up with a dastardly story just to see his father in jail. That a daughter would make up a story that would send her own father to jail is far beyond what the human conscience could take. Moreover, the moral ascendancy of the accused took the place of the element of violence and intimidation. When the offender is the victim's father, there need not be actual force, threat or intimidation. When a father commits the odious crime of rape against his own daughter, as in this case, was a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation.

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.*:

The instant case is another account of incestuous rape brought before the Court on appeal from the 19 December 2014

Decision[1] of the Court of Appeals (*CA*) in CA G.R. CR-HC No. 06025 affirming the Decision[2] of the Regional Trial Court, Nueva Vizcaya (*RTC*), convicting accused-appellant CCC (*accused-appellant*) of three (3) counts of Rape.

THE FACTS

Antecedent

In Criminal Case Nos. 3149-50, accused-appellant was accordingly charged in two (2) separate informations which read:

Criminal Case No. 3149

That sometime in January 2011, in the Municipality of [XXX], Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, willfully, unlawfully and feloniously did then and there, by means of force and intimidation inserted his penis inside the vagina and for several times had carnal knowledge of his own daughter [AAA],[3] a 17 year old minor, without her consent and against her will, to the damage and prejudice of [AAA].[4] (emphasis and underlining omitted)

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[1] *Rollo*, pp. 2-12; penned by Associate Justice Mario V. Lopez, and concurred in by Associate Justices Jose C. Reyes and Melchor Q. Sadang.

[2] Records, pp. 68-81; penned by Judge Jose Godofredo M. Naui.

[3] Pursuant to R.A. No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes;" R.A. No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes;" Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective 15 November 2004; and *People v. Cabalquinto*, 533 Phil. 703 (2006), the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed.

[4] Records, p. 4.

Criminal Case No. 3150

That sometime in September 2011, in the Municipality of [XXX], Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, willfully, unlawfully and feloniously did then and there, by means of force and intimidation inserted his penis inside the vagina and for several times had carnal knowledge of his own daughter [AAA], a 17 year old minor, without her consent and against her will, to the damage and prejudice of [AAA].[5] (emphasis and underlining omitted)

On 3 September 2012, accused-appellant was arraigned and, with the assistance of counsel, pleaded not guilty.[6] Pre-trial and trial on the merits ensued.

The Prosecution's Evidence

The prosecution's evidence accounted three (3) episodes of rape committed by accused-appellant against AAA that all happened in 2011. As a result, AAA conceived. She alleged it was her father's child as she did not have any prior sexual experience with any other man. The child was born on 27 May 2012.

In her testimony, AAA narrated that the first time his father raped her was while she was in the bathroom outside their house. While she was about to take a bath, accused-appellant entered, removed her panty, and made her lie down. He held her feet down, mounted her, and inserted his penis into her vagina. After he was done, accused-appellant left, AAA continued to take a bath.

The second time AAA was raped happened inside her parent's bedroom. Accused-appellant pressed on AAA's thighs and removed her undergarments while she was lying down. Again, accused-appellant went on top of AAA and inserted his penis into her vagina. When he was done, accused-appellant left AAA

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[5] *Id*. at 1.

[6] *Id*. at 33.

inside the bedroom. While all this was happening, AAA's mother was out at the garden and her siblings were in school.

The last episode AAA narrated was when accused-appellant told her to fix the water fixture beside the *palali* tree near their house. As she did, accused-appellant followed AAA, grabbed her, and removed her undergannents. While he was doing this, he told AAA he would hurt her if she told anyone. After instructing her to lie down, accused-appellant inserted his penis into her vagina.

AAA never told anybody about what was happening until her sister, asked if she was pregnant. Upon her sister's insistence, AAA confided to her that their father had been raping her.[7]

When AAA was brought to the proper authorities to file the complaint, she was made to undergo a physical examination. The medico-legal examiner testified that AAA had told her that she was raped; thus, she concluded that the lacerations she noted in her genitalia at 11 o'clock and 6 o'clock positions were caused by sexual abuse.[8]

The Defense of the Accused-Appellant

On his part, accused-appellant raised the defense of denial and alibi. He said that he would never do such a thing to his own daughter and that the charge was brought against him because he would often scold and spank AAA for being stubborn. Also, it was impossible for him to rape AAA because his paralyzed father-in-law was always at home. Moreover, he said that he rarely encountered AAA at home because of their work schedule on the farm. He also offered the alibi that he rarely went home because he did not live in the same house with his family.[9]

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[7] *Rollo*, p. 3: CA Decision.

[8] *Id*. at 4.

[9] *Id*.

The Ruling of the Trial Court

After trial on the merits, the RTC found accused-appellant guilty beyond reasonable doubt of three (3) counts of rape. The dispositive portion reads:

> WHEREFORE, the court finds the accused guilty beyond reasonable doubt of three counts of rape as defined under Article 266-A and penalized 266-B of the Revised Penal Code, as amended by RA 9353 and RA 9346, and hereby imposes upon him the penalty of *reclusion perpetua* without eligibility of parole in each of the cases. He is also ordered to pay the complainant the amount of ₱75,000.00 as indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as [exemplary damages] in each of the three counts.[10]

In convicting the accused-appellant, the RTC found AAA's account of what happened credible and more believable. The trial court considered her testimony over the accused-appellant's defense of denial and alibi which simply could not prevail against her positive and credible testimony. More than this, the evidence to prove his alibi was not enough to show that it was physically impossible for accused-appellant to have been present at the scene of the crime.

The Assailed CA Decision

On appeal, accused-appellant raised the following arguments: (1) AAA's testimony was improbable as it failed to mention any act of resistance and interest to fight back; (2) her narration of how she was raped was contrary to common human experience because accused-appellant could not hold both AAA's hands and feet simultaneously; (3) accused-appellant's moral ascendancy over AAA was insufficient or not overpowering enough to have a paralyzing effect on AAA; (4) AAA's reaction after every episode of rape puts doubt in her story's credibility; and (5) the real motive in filing rape charges against her father is to hide her indiscretion of having consented sexual intercourse with him.[11]

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[10] *Id.* at 81.

[11] CA *rollo*, 57-67; Brief for the accused-appellant.

The CA found no reason to depart from the trial court's finding that AAA's testimony is credible. It said that an error-free testimony cannot be expected of a rape victim for she may not be able to recount every detail of her harrowing experience. Furthermore, the CA held that AAA's silence and submission to accused-appellant's abuses should not be taken as giving her consent because her father's moral ascendancy over her substitutes for violence and intimidation. The CA did not give much credence to accused-appellant's defense of denial and alibi.

As a result, the CA affirmed the trial court's decision, but imposed legal interest of six percent (6%) per annum on all the damages awarded.

OUR RULING

The appeal lacks merit.

We find no reason to deviate from the findings of the RTC and the CA. Jurisprudence is replete with rulings that an appellant can justifiably be convicted of rape based solely on the credible testimony of the victim. We consider, too, that nothing in the records indicates that the RTC and the CA had overlooked or had failed to appreciate facts that, if considered, would change the outcome of the case.

In rape cases where no other person could accurately account what happened, except for the victim and the accused-appellant, the witnesses' credibility plays a big factor. When it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence.[12] Matters of credibility are addressed basically to the trial judge who is in a better position than the appellate court to appreciate the weight and evidentiary value of the testimonies of witnesses who have personally appeared before

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[12] *People v. Court of Appeals,* 755 Phil. 80, 110 (2015).

him.[13] The appellate courts are far detached from the witnesses' deportment and manner of testifying during trial and thus have to rely solely on the records of the case in its review. On the matter of credence and credibility of witnesses, therefore, we acknowledge said limitations and recognize the advantage of the trial court whose findings must be given due deference.[14]

As a result, the findings of fact of the trial court, particularly when affirmed by the CA, are binding upon us. On the question of whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies.[15] Without any clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, this rule should not be disturbed.[16]

In appreciating the testimony of the victim, we have to bear in mind that rape is a painful experience which is oftentimes not remembered in detail. For some, however, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would not easily forget. To recall this unwanted episode in one's life, not to mention having to call on one's memory over and over again just to narrate what really happened, is something we have to consider especially when it causes humiliation and mortification to the victim.

Here, we do not see any possible reason why AAA would falsely accuse her own father and at the same time divulge to the public that she had been sexually abused by the man who

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[13] *Valbueco, Inc. v. Province of Bataan,* 710 Phil. 633, 652 (2013) citing *Sapu-an v. CA*, 289 Phil. 319, 325 (1992).

[14] *People v. Vergara,* 713 Phil. 224, 234 (2013).

[15] *People v. Burce*, 730 Phil. 576, 586 (2014).

[16] *People v. Basao*, 697 Phil. 193, 209 (2012).

nurtured her as she was growing up. Worse, the accused failed to adduce evidence of ill motive against him for us to even consider that AAA would come up with a dastardly story just to see his father in jail. That a daughter would make up a story that would send her own father to jail is far beyond what the human conscience could take.

Moreover, the moral ascendancy of the accused took the place of the element of violence and intimidation. When the offender is the victim's father, there need not be actual force, threat or intimidation. When a father commits the odious crime of rape against his own daughter, as in this case, was a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[17] In *People v. Barcela*,[18] the Court expounded:

> [I]n the incestuous rape of a minor, actual force or intimidation need not be [proven]. x x x The moral and physical [domination] of the father is sufficient to [intimidate] the victim into submission to his [carnal] desires. x x x The [rapist], by his overpowering and overbearing moral influence, can easily consummate his bestial lust with impunity. [Consequently], proof of force and violence is unnecessary, unlike when the accused is not an ascendant or a blood relative of the victim.[19]

All said, we affirm the conviction of accused-appellant. Whatever beastly motive drove him to commit such a vile and despicable act on his own daughter is something he should ponder on for the rest of his life. For a man who rapes his own daughter violates not only her purity and her trust but also the mores of society which he had scornfully defied.[20] By inflicting his animal greed on her in a disgusting coercion of incestuous lust, he forfeits all respect as a human being and is justly to be spurned

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[17] *People v. Bentayo*, G.R. No. 216938, 5 June 2017 citing *People v. Fragante*, 657 Phil. 577, 592 (2011).

[18] 652 Phil. 134 (2010).

[19] *Id*. at 147.

[20] *People v. Ramos*, 247-A Phil. 484, 492 (1988).

by all, not least of all by the fruit of his own loins whose progeny he has forever stained with his shameful and shameless lechery.[21]

We have to correct, however, the number of counts of rape accused-appellant is convicted of. To recall, accused-appellant was charged under two (2) separate informations, but was convicted for three (3) counts of rape because AAA testified to three (3) accounts: (a) one was before she took a bath; (b) another in her parents' bedroom; and (c) lastly, by the *palali* tree. On this matter, the RTC said:

> As stated in the informations, the accused was charged with multiple rape. The accused did not file any motion to quash on the ground that more than one offense had been charged. Thus, the accused is considered to have waived the defect and he may be convicted of as many offenses as has been charged and proven. During trial, the prosecution elicited from the complainant the fact that the accused had carnal knowledge of her on three separate occasions. The accused never raised any objection to the presentation of such evidence.[22]

Contrary to the understanding of the trial court, the informations filed against accused-appellant do not charge more than one offense which could be the subject of a motion to quash. A cursory reading of the informations filed against accused-appellant would show that each information charged him for a single crime of rape—the first one in January 2011 and the second one in September 2011. There is no duplicity (or multiplicity) of charges in a single information in the case at bar.

This said, we, therefore, cannot convict accused-appellant for three (3) counts of rape absent a third charge or information filed against him. Simply said, there is no basis for the third count of rape.

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[21] *Id*.

[22] Records, p. 80.

Lastly, following our ruling in *People v. Jugueta*,[23] we increase the award of exemplary damages to ₱75,000.00 for each crime of rape when the penalty imposed is *reclusion perpetua*.

WHEREFORE, in the light of all these, we **DISMISS** the appeal and **AFFIRM** the 19 December 2014 Decision of the CA in CA-G.R. CR-HC No. 06025 with the following **MODIFICATION**: accused-appellant CCC is **GUILTY** beyond reasonable doubt of only two (2) counts of rape, and hereby impose upon him the penalty of *reclusion perpetua* without eligibility of parole in each count. He is also ordered to pay the victim the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages in each of the two counts.

SO ORDERED.

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

Leonen, J., on official leave.

FIRST DIVISION

[G.R. No. 222964. July 11, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CAJETO CABILIDA, JR. *y* CANDAWAN,** *accused-appellant.*

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[23] 783 Phil. 806, 851 (2016).

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A FEW DISCREPANCIES AND INCONSISTENCIES IN THE TESTIMONY OF WITNESSES REFERRING TO MINOR DETAILS AND NOT IN ACTUALITY TOUCHING UPON THE CENTRAL FACT OF THE CRIME DO NOT IMPAIR THE CREDIBILITY OF WITNESSES.—** To begin with, the inconsistencies in the testimonies of AAA and her daughter as to whether or not that night was the first time appellant went to their house were not sufficient to discredit their testimonies. Jurisprudence holds that "a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses." In fact, such inconsistencies strengthen the credibility of the witness as these discount the possibility of being rehearsed. What is important was that the testimony of AAA on the events that transpired that night was corroborated by the testimony of her daughter BBB.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE EXISTENCE OF AN ILLICIT RELATIONSHIP DO NOT NEGATE THE COMMISSION OF RAPE; CASE AT BAR.—** Appellant's defense that he and AAA were having an illicit affair and that it was AAA who asked him to come to her house that night so that they could have sex also fails to inspire belief from the Court. x x x Besides, even if true, the existence of such relationship did not negate the commission of rape. Having a relationship with the victim is not a license to have sexual intercourse against her will, and will not exonerate the accused from the criminal charge of rape as "[b]eing sweethearts does not prove consent to the sexual act."

3. **ID.; ID.; ID.; MEDICAL CERTIFICATE IS NOT NECESSARY TO PROVE THE COMMISSION OF RAPE AND A MEDICAL EXAMINATION OF THE VICTIM IS NOT INDISPENSABLE IN THE PROSECUTION FOR RAPE.—** The Court has consistently ruled that "[a] medical certificate is not necessary to prove the commission of rape and a medical examination of the victim is not indispensable in a prosecution for rape x x x [because] the expert testimony

is merely corroborative in character and not essential to conviction." In fact, an accused may be convicted based on the sole testimony of the victim as long as her testimony is clear, positive, and convincing. In this case, the testimony of AAA was not only clear, positive, and convincing but was also corroborated by the testimony of her daughter BBB.

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

DEL CASTILLO, *J.*:

"A woman will not expose herself to the humiliation of a trial, with its attendant publicity and the morbid curiosity it would arouse, unless she has been truly wronged and seeks atonement for her abuse."[1]

This is an appeal filed by appellant Cajeto Cabilida, Jr. *y* Candawan from the December 10, 2014 Decision[2] and the November 19, 2015 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR HC No. 01087-MIN, affirming the September 17, 2012 Decision[4] of the Regional Trial Court (RTC) of Oroquieta City, Branch 14, in Criminal Case Nos. 986-14-433 and 988-14-435, finding the appellant guilty beyond reasonable doubt of two counts of rape.

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[1] *People v. Domingo*, 432 Phil. 590, 607 (2002).

[2] *Rollo*, pp. 3-15; penned by Associate Justice Pablito A. Perez and concurred in by Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting.

[3] CA *rollo*, pp. 93-94.

[4] *Id*. at 32-37; penned by Acting Presiding Judge Ma. Nimfa Penaco-Sitaca.

The Factual Antecedents

Appellant and his co-accused Toto Cabilida (Toto) were charged under the following Amended Informations:

Criminal Case No. 986-14-433

That on or about the 24th day of December 2005 at about 12:00 o'clock midnight, more or less, x x x Province of Misamis Occidental, and within the jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and helping one another, armed with a hunting knife by means of violence and intimidation, accused Jojo Cabilida did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant AAA,[5] against her will, in her own house and in the presence and in full view of her minor children BBB and CCC, both 10 years old and 8 years old, respectively and while co-accused Toto Cabilida was threatening to box the victim and pointing and threatening the children with the knife and then pointing the flashlight during the rape.

CONTRARY TO LAW, with the presence of qualifying aggravating circumstance of committing the crime of rape in the full view of the victim's minor children and generic aggravating circumstance of dwelling.[6]

Criminal Case No. 988-14-435

That on or about the 24th day of December 2005 at about 12:00 o'clock midnight, more or less, x x x Province of Misamis Occidental, and within the jurisdiction of the Honorable Court, the above-named

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[5] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, Providing Penalties for its Violation, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

[6] *Rollo*, p. 4.

accused, by means of force and intimidation, and just after accused Toto Cabilida had committed acts of lasciviousness against AAA, co-accused Jojo Cabilida did then and there willfully, unlawfully and feloniously have carnal knowledge of the complainant AAA for the second time against her will, in her own house and in the presence and in full view of her minor children BBB and CCC, both 10 years old and 8 years old, respectively.

CONTRARY TO LAW, with the presence of qualifying aggravating circumstance of committing the crime of rape in the full view of the victim's minor children and generic aggravating circumstance of dwelling.[7]

When arraigned, appellant pleaded not guilty to both charges.[8] His co-accused Toto, however, remains at large.

Version of the Prosecution

During the trial, the prosecution presented the testimonies of the complainant AAA and her daughter BBB.

The evidence of the prosecution, as summarized by the CA, is as follows:

Based on the testimony of AAA, it was a rainy evening x x x when the rape occurred. At or around midnight of 24 December 2005, AAA and with her four minor children were all awake and awaiting the arrival of their father who was then visiting his nephew and who promised to bring home food for the family, when there was a knock on their door. Thinking it was their father, one of the children called out "Pang" but no one replied. AAA called out again, and then heard somebody replied "O" (yes). A[s] it was raining very hard, AAA mistook the voice she heard as that of her husband. When she opened the door, appellant was standing outside completely naked with x x x Toto beside him. Before she could react, appellant immediately hugged AAA and kissed her as they both fell on the floor. Despite her resistance, appellant successfully removed AAA's panty, and inserted his penis inside her vagina. All this time, AAA tried to resist, was crying while being assaulted and repeatedly entreated for accused

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[7] *Id*. at 5.

[8] *Id*.

to stop. AAA cried as did her children who witnessed the alleged rape right before their eyes. While appellant was raping AAA, Toto remained standing by the door, holding a knife and a flashlight, directing its beam towards AAA and appellant.

After satisfying himself, appellant turned to Toto and said, "Bord ikaw pod" (You also). Toto then approached AAA and began to mount her, bit AAA's lips, but could not consummate as Toto held back when AAA parried him with her arms and legs, and he was not able to remove his short pants.

Unsatiated with the first rape, appellant dragged AAA down by her arms, and while AAA was in a sitting position, appellant grabbed her head and put his penis inside her mouth while AAA attempted to shake her head sideways. Afterwards, appellant again inserted his penis inside AAA's vagina and started a pumping motion.

AAA also testified that as appellant and Toto were about to leave, appellant warned AAA and her children that if they told her husband or anyone else about the incident, they would harm or kill them, including AAA's husband.

AAA's husband arrived at about seven in the morning of the next day, and AAA reported to him what happened. That same day, they went to the barangay captain to seek assistance, but the latter was somewhere else. The day after, they reported the sexual assault to the police. x x x

x x x x x x x x x

The second daughter BBB, who was then 8 years old at the time of the alleged rape and already 10 years old when she testified, was also presented to corroborate the account given by her mother AAA. x x x[9]

Version of the Appellant

In his defense, appellant testified that he was accompanied by his cousin, Toto, to AAA's house and that he had sexual intercourse with AAA twice on the said date.[10] However, he

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

[10] *Id*. at 7.

claimed that the sexual intercourse were consensual and pre-arranged as they had an ongoing relationship for more than one year.[11] He further testified that prior to that incident, he had sexual intercourse with AAA on at least ten (10) occasions.[12] He also denied encouraging Toto to have sexual intercourse with AAA.[13]

To support the "sweetheart theory," the defense presented witness Dennis U. Taan (Dennis), a friend of appellant, who testified that appellant and AAA had gone to his house twice; that they requested to stay in one of his rooms to rest; that he did not see what happened inside the room as it was covered by a curtain; and that he was surprised to hear about the charges against appellant because according to appellant, he and AAA had an ongoing relationship.[14]

Ruling of the Regional Trial Court

On September 17, 2012, the RTC rendered a Decision finding the appellant guilty of the charges against him. The RTC found the "sweetheart theory" unworthy of belief as it was contrary to common experience for a mother of four young children to invite her lover to her house and have sexual intercourse with him while her children were sleeping in the same room.[15] Thus —

> WHEREFORE, finding accused Cajeto "Jojo" Cabilida, Jr., guilty beyond reasonable doubt of two counts of rape, aggravated by its commission in full view of private complainant's children and in her dwelling, the court sentences him to two penalties of *reclusion perpetua* without eligibility for parole. He is ordered to pay private complainant ₱75,000.00 as rape indemnity, ₱75,000.00 as moral

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[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*. at 8.

[15] CA *rollo*, pp. 36-37.

damages, ₱30,000.00 as exemplary damages. With costs. He is credited with full time spent in preventive detention since July 31, 2006.

SO ORDERED.[16]

Ruling of the Court of Appeals

Appellant appealed the case to the CA.

On December 10, 2014, the CA rendered the assailed Decision denying the appeal and affirming the RTC Decision. The CA likewise rejected the "sweetheart theory" propounded by the defense as it found no evidence to prove that such relationship actually existed except for the self-serving testimony of the appellant and the ambivalent and inconclusive testimony of witness Dennis.[17]

Appellant moved for reconsideration but the CA denied the same in its November 19, 2015 Resolution.

Hence, appellant filed the instant appeal.

The Court required both parties to file their respective supplementary briefs; however, they opted not to file the same.[18]

The Court's Ruling

The appeal lacks merit.

Appellant insists that he should be acquitted as the prosecution failed to prove his guilt beyond reasonable doubt. Appellant maintains that he and AAA were having an illicit affair and that she filed the instant case against him only because one of her children saw them in the act of making love. He claims that AAA was lying when she testified in court as evidenced by the fact that her testimony was inconsistent with the testimony of her daughter BBB. According to AAA, appellant was never in her house, except on the night of the incident. Her daughter

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[16] *Id*. at 37.

[17] *Rollo*, p. 12.

[18] *Id*. at 21-22 and 36.

BBB, on the other hand, testified that appellant went to their house once to ask for a chicken. Finally, appellant puts in issue the failure of the prosecution to present any medical certificate to prove that appellant applied force or violence against AAA.

The Court does not agree.

Minor inconsistencies do not impair the credibility of the witnesses.

To begin with, the inconsistencies in the testimonies of AAA and her daughter as to whether or not that night was the first time appellant went to their house were not sufficient to discredit their testimonies. Jurisprudence holds that "a few discrepancies and inconsistencies in the testimonies of witnesses referring to minor details and not in actuality touching upon the central fact of the crime do not impair the credibility of the witnesses."[19] In fact, such inconsistencies strengthen the credibility of the witness as these discount the possibility of being rehearsed.[20] What is important was that the testimony of AAA on the events that transpired that night was corroborated by the testimony of her daughter BBB.

Sweetheart theory does not negate the commission of rape.

Appellant's defense that he and AAA were having an illicit affair and that it was AAA who asked him to come to her house that night so that they could have sex also fails to inspire belief from the Court. As aptly pointed out by the RTC:

> How can a mother of four young children invite a lover to her house so that she could have sex with him in the presence of her children, sleeping or awake, with the likelihood of their seeing her in a tryst with her lover and her husband suddenly arriving and catching them out? Indeed, if they were really and truly lovers who had had sexual trysts for no less than ten times, they could have continued

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[19] *People v. Hilet*, 450 Phil. 481, 490 (2003).

[20] *Id*.

to meet at the same places. Definitely, not in private complainant's home, on Christmas Eve, while the children were with her, awaiting their father's return.[21]

Besides, even if true, the existence of such relationship did not negate the commission of rape. Having a relationship with the victim is not a license to have sexual intercourse against her will, and will not exonerate the accused from the criminal charge of rape as "[b]eing sweethearts does not prove consent to the sexual act."[22]

A medical certificate is not indispensable in the prosecution for rape.

As a last ditch effort to exonerate himself, appellant puts in issue the failure of the prosecution to present any medical certificate to prove that appellant applied force or violence against AAA. Such failure, however, is not fatal in the prosecution for rape. The Court has consistently ruled that "[a] medical certificate is not necessary to prove the commission of rape and a medical examination of the victim is not indispensable in a prosecution for rape x x x [because] the expert testimony is merely corroborative in character and not essential to conviction."[23] In fact, an accused may be convicted based on the sole testimony of the victim as long as her testimony is clear, positive, and convincing.[24] In this case, the testimony of AAA was not only clear, positive, and convincing but was also corroborated by the testimony of her daughter BBB.

Finally, both the trial court and the CA properly meted out the penalty of *reclusion perpetua* without eligibility for parole on appellant on both counts of rape.

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[21] CA *rollo*, p. 36.

[22] *People v. Magbanua*, 576 Phil. 642, 648 (2008).

[23] *People v. Balonzo*, 560 Phil. 244, 259-260 (2007).

[24] *Id.* at 260.

However, in order to conform to prevailing jurisprudence,[25] the Court finds it necessary to increase the awards of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each for each count of rape.

In addition, all damages awarded shall earn legal interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

WHEREFORE, premises considered, the appeal is **DISMISSED**. The Court hereby **ADOPTS** the findings of facts of the Regional Trial Court as affirmed by the Court of Appeals. The December 10, 2014 Decision and the November 19, 2015 Resolution of the Court of Appeals in CA-G.R CR HC No. 01087-MIN, finding appellant Cajeto Cabilida, Jr. *y* Candawan guilty beyond reasonable doubt of the charges against him are **AFFIRMED with MODIFICATION** that the awards of civil indemnity, moral damages, and exemplary damages should be increased to ₱100,000.00 each for each count of rape.

In addition, the awards of damages shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[25] *People v. Jugueta*, 783 Phil. 806, 848 (2016).

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

[**] Per Special Order No. 2560-C dated July 6, 2018 vice *J.* Jardeleza who recused due to prior action as Solicitor General.

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

FIRST DIVISION

[G.R. No. 223125. July 11, 2018]

IBM DAKSH BUSINESS PROCESS SERVICES PHILIPPINES, INC. (now known as CONCENTRIX DAKSH BUSINESS PROCESS SERVICES PHILIPPINES CORPORATION), *petitioner, vs.* **ROSALLIE S. RIBAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CONSOLIDATION OF CASES; AT THE TRIAL STAGE, CONSOLIDATION OF CASES IS PERMISSIVE AND A MATTER OF JUDICIAL DISCRETION WHILE IN THE APPELLATE STAGE, THE RIGID POLICY IS TO MAKE THE CONSOLIDATION OF ALL CASES AND PROCEEDINGS RESTING ON THE SAME SET OF FACTS, OR INVOLVING IDENTICAL CLAIMS OR INTEREST OR PARTIES, MANDATORY.— Unfortunately, one of the evils sought to be prevented by the mandatory rule of consolidating such cases, has occurred – the CA rendered two conflicting and irreconcilable decisions on the matter. x x x Such conflict could have been avoided if only the CA had properly complied with the mandatory rule for the consolidation of petitions or proceedings relating to or arising from the same controversies. Section 3(a), Rule III of the 2009 Internal Rules of the Court of Appeals has forthrightly mandated the consolidation of related cases assigned to different Justices, x x x Thus, unlike in the trial stage where the consolidation of cases is permissive and a matter of judicial discretion, in the appellate stage, the rigid policy is to make the consolidation of all cases and proceedings resting on the same set of facts, or involving identical claims or interests or parties mandatory. Regardless of whether or not there was a request therefor, consolidation should be made as a matter of course. Indeed, this "mandatory policy eliminates conflicting results concerning similar or like issues between the same parties or interests even as it enhances the administration of justice."

2. ID.; ID.; ID.; LAWYERS ARE RESPONSIBLE NOT ONLY TO GIVE PROMPT NOTICE TO THE COURT OF ANY RELATED PENDING CASES BUT ALSO TO MOVE FOR CONSOLIDATION THEREOF, WHICH RESPONSIBILITY PROCEEDS FROM LAWYER'S EXPRESS UNDERTAKINGS IN THE CERTIFICATION AGAINST FORUM SHOPPING THAT ACCOMPANY THEIR INITIATORY PLEADINGS.— Notably, bordering an ethical discussion if proven to have been deliberately done, this Court cannot turn a blind eye on the fact that respondent's counsel never made mention of the final and executory CA Decision in CA-G.R. No. 132743. Thus, at this juncture, this Court also reminds all counsels of this rigid policy of consolidating cases and their responsibility, not only to give prompt notice to the court of any related pending cases but also to move for consolidation thereof. In Administrative Matter No. CA-13-51-J, this Court explained that this responsibility proceeds from lawyers' express undertakings in the certifications against forum shopping that accompany their initiatory pleadings pursuant to Section 5 of Rule 7 and related rules in the Rules of Court.

3. ID.; ID.; ID.; JUDGMENT; ONCE A JUDGMENT ATTAINS FINALITY, IT BECOMES IMMUTABLE AND UNALTERABLE; EXCEPTIONS; NOT PRESENT IN CASE AT BAR.— Facing now these conflicting decisions on the matter, this Court is constrained to reverse the assailed CA Decision herein and uphold the CA's ruling in CA-G.R. SP No. 132743 on the ground that the same has already attained finality. It is also important to note that petitioner, through counsel, already manifested that it will no longer pursue the filing of a petition for review on *certiorari* before this court. It cannot be denied that the CA's Decision in CA-G.R. SP No. 132743 became final and executory even before the rendition of the herein assailed CA Decision in CA-G.R. SP No. 132908. It is a hornbook doctrine that once a judgment attains finality, it becomes immutable and unalterable. x x x The only exceptions to the rule on the immutability of final judgments are: (1) correction of clerical errors; (2) *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. None

of these exists in this case. The case at bar is simply brought about by the patent procedural mistake committed in the appellate court.

APPEARANCES OF COUNSEL

Alonso and Associates for petitioner.
R. Sese & Associates Law Office for respondent.

D E C I S I O N

TIJAM, *J.*:

For Our resolution is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated December 18, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 132908. The CA Resolution[3] dated February 22, 2016, denying IBM Daksh Business Process Services Philippines, Inc.'s (petitioner) motion for reconsideration, is likewise impugned herein.

Factual Antecedents

Petitioner is an outsourcing company engaged in customer care services with foreign clientele.[4] Rosallie S. Ribas (respondent), on the other hand, was employed by the petitioner as a customer care specialist on July 6, 2010.[5]

On March 8, 2011, respondent was issued a Show Cause Memo for her absences on March 1, 2, 5, and 6, 2011, which reads:

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[1] *Rollo*, pp. 9-33.

[2] Penned by Associate Justice Nina G. Antonio-Valenzuela, concurred in by Associate Justices Fernanda Lampas Peralta and Jane C. Lantion; *id*. at 38-47.

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

[4] *Id*. at 11.

[5] *Id*. at 11 and 112.

As per attendance report from workforce, you were tagged NCNS (No Call No Show) for four (4) consecutive working days (March 1, 2, 5, & 6, 2011).

Based on the company's code of conduct, failure to report for work for 3 or more consecutive days is considered as absence without official leave (AWOL), and that all employees who are unable to report for work must call and notify their immediate supervisor/ operations manager or department head at least four (4) hours before their scheduled shift regarding their intended absence. x x x.[6]

On March 13, 2011, respondent submitted her written explanation, which reads, in part, as follows:

I was absent starting February 23rd until March 9th because of threatened pre-term labor & vaginal spotting. I texted my UM on the following days: February 23, 26, 27 to advise him that I wouldn't be able to report to work due to my health condition. I didn't received [sic] any reply nor any phone calls from him to advise me what needs to be done since I've been out of the office for 3 days now. On February 28th, I went to my OB to have myself checked because my condition isn't getting any better. My OB advised me that I needed to take a rest for another week (until March 9th) since the occurrence of my spotting had been on & off. That night, I texted my UM to tell him that I need to take a rest & that I have my medical certificate with me which would explain my condition. Again I didn't received [sic] any reply from my UM so I believed that everything is in order since I had already informed him of what's happening to me.[7]

Respondent was then formally charged with violation of the company's code of conduct for being absent for several days without leave or proper prior notice. A hearing therefor was conducted on March 16, 2011.[8]

Thereafter, having established that respondent committed the imputed acts, she was issued a termination letter effective April 8, 2011, which partly reads:

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[6] *Id*. at 176.

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

[8] *Id*. at 177.

Conclusion

It was established that you committed Absence without Official Leave when you failed to report for work starting 1 March 2011 and again beginning 2 April 2011 without prior notice to your immediate manager. It can be substantiated from the foregoing circumstances that you violated the Company's Code of Conduct on Offenses against the Attendance. The evidence we have are substantial to establish that you violated the company policy.

Decision

Your act constitutes Serious Misconduct, a violation of the Company's Code of Conduct. In view of foregoing circumstances, Management is terminating your employment effective 8 April 2011.[9]

Arguing that her dismissal was illegal, respondent filed a complaint before the Labor Arbiter (LA). According to respondent, her absences were justified as she had a delicate pregnancy condition from February 23 to March 9, 2011 and that her son was sick of bronchopneumonia on April 2 and 3, 2011. She also maintains that she notified her immediate superior about her absences. Lastly, respondent argued that the penalty of dismissal is too harsh and not commensurate to the violation imputed against her.[10]

For its part, petitioner maintains that respondent was dismissed for cause and after compliance with due process. Respondent was found to have violated Section 6.5 of the company's Code of Conduct when she did not report to work without leave or notice for more than three consecutive days. According to petitioner, respondent's repeated absences without leave constitutes gross and habitual neglect of duty. It is petitioner's position that it merely exercised its management prerogative when it dismissed respondent for a cause.[11]

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[9] *Id.* at 178.

[10] *Id.*

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

On April 23, 2013, the LA rendered a Decision[12] dismissing respondent's complaint for lack of merit.

On appeal, the National Labor Relations Commission (NLRC), in its Decision[13] dated June 28, 2013, in NLRC LAC No. 06-001767-13 that reversed and set aside the LA decision, ruling that respondent was illegally dismissed, ordering thus petitioner to reinstate respondent to her former position and to pay her backwages.

In its Resolution[14] dated August 30, 2013, however, the NLRC partially granted petitioner's motion for reconsideration,[15] ruling that respondent's dismissal was justified but nevertheless ordered petitioner to reinstate respondent to her former position sans backwages for reasons of equity and compassion.

On November 8, 2013, petitioner filed a petition for *certiorari*[16] before the CA, docketed as CA-G.R. SP No. 132743, questioning NLRC's August 30, 2013 Resolution. Petitioner argued therein that the NLRC committed grave abuse of discretion in ordering respondent's reinstatement despite its finding that there was a valid dismissal.

On November 28, 2013, respondent filed her own petition for *certiorari*[17] before the CA, docketed as CA-G.R. SP No. 132908, also questioning the NLRC's August 30, 2013 Resolution. For respondent, the NLRC committed grave abuse of discretion in ruling that there was a valid dismissal and for deleting the award of backwages.

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[12] Rendered by Executive Labor Arbiter Fatima Jambaro-Franco; *id.* at 144-149.

[13] Penned by Presiding Commissioner Alex A. Lopez, concurred in by Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr.; *id.* at 175 -186.

[14] *Id.* at 204-209.

[15] *Id.* at 187-201.

[16] *Id.* at 211-231.

[17] *Id.* at 235-249.

Interestingly, the CA did not consolidate the two petitions despite clear notice[18] given to it by petitioner in its petition.

Thus, on January 20, 2015, the CA's Eleventh Division rendered a Decision[19] in CA-G.R. SP No. 132743, denying petitioner's petition and affirming the NLRC's August 30, 2013 Resolution. Specifically, the CA sustained the NLRC's findings that there was a valid dismissal but respondent should be reinstated to her former position sans backwages. This Decision became final and executory upon this Court's Resolution[20] dated November 9, 2015 in G.R. No. 219675, which reads:

x x x – The Court resolves to:

1. **NOTE** counsel for petitioner's manifestation and motion dated 5 October 2015 stating that, after several considerations, petitioner decided that it will no longer pursue the filing of the petition for review on *certiorari*; and

2. **INFORM** the Court of Appeals and adverse parties that no petition for review has been filed in this case and that the judgment sought to be reviewed has now become final and executory, and to **DECLARE** this case **CLOSED** and **TERMINATED**.

On December 18, 2015, the CA Sixth Division rendered a Decision[21] in CA-G.R. SP No. 132908, granting respondent's petition and setting aside the Resolution dated August 30, 2013. Specifically, the CA ruled that respondent was illegally dismissed for employment and thus should be reinstated with payment of backwages. The CA further ruled that, in case reinstatement is no longer feasible, it ordered petitioner to pay respondent separation pay. Unlike the CA's Decision in CA-G.R. SP No. 132743, the CA's Decision in CA-G.R. SP No. 132908 became the subject of review in the case at bar.

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[18] *Id*. at 256.

[19] Penned by Justice Franchito N. Diamante, concurred in by Associate Justices Japar B. Dimaampao and Melchor Q.C. Sadang; *id*. at 271-281.

[20] *Id*. at 282.

[21] *Id*. at 38-47.

Issue

Did the CA Sixth Division err in reversing and setting aside the NLRC Decision?

Ruling of the Court

We answer in the affirmative.

In the exercise of this Court's administrative supervision over the CA, this Court finds it proper and necessary to point out the CA's patent procedural blunder in failing to consolidate CA-G.R. SP No. 132743 and CA-G.R. SP No. 132908 despite notice. There is no question that the two petitions before the CA involved the exact same parties, same set of facts, and assailed the same NLRC Resolution. Further, the issues are not merely closely related but in fact, entirely identical as they both involved questions on the validity of respondent's dismissal from employment, propriety of reinstatement, and the propriety of awarding backwages.

Unfortunately, one of the evils sought to be prevented by the mandatory rule of consolidating such cases, has occurred – the CA rendered two conflicting and irreconcilable decisions on the matter. In the prior case, the CA affirmed the NLRC Resolution, in the subsequent case, the CA set the same aside. In the prior case, the CA ruled that there was a valid dismissal, in the subsequent, the CA ruled that it was illegal. While in both cases the CA ruled for reinstatement, in the prior case it was by reason of equity and compassion, while in the subsequent case it was simply because respondent was found to be illegally dismissed and the CA further ruled in the latter case that in case reinstatement is not feasible, separation pay should be given. Lastly, backwages were not awarded in the prior case, while the same was awarded in the subsequent case due to the finding of illegal dismissal.

Such conflict could have been avoided if only the CA had properly complied with the mandatory rule for the consolidation of petitions or proceedings relating to or arising from the same

controversies.[22] Section 3(a), Rule III of the 2009 Internal Rules of the Court of Appeals has forthrightly mandated the consolidation of related cases assigned to different Justices, *viz.*:

> Section 3. Consolidation of Cases.– When related cases are assigned to different Justices, **they *shall* be consolidated and assigned to one Justice**.
>
> (a) Upon motion of a party with notice to the other party/ies, **or at the instance of the Justice to whom any or the related cases is assigned, upon notice to the parties, consolidation shall ensue when the cases involve the same parties and/or related questions of fact and/or law.** (Emphasis ours)

Thus, unlike in the trial stage where the consolidation of cases is permissive and a matter of judicial discretion, in the appellate stage, the rigid policy is to make the consolidation of all cases and proceedings resting on the same set of facts, or involving identical claims or interests or parties mandatory. Regardless of whether or not there was a request therefor, consolidation should be made as a matter of course. Indeed, this "mandatory policy eliminates conflicting results concerning similar or like issues between the same parties or interests even as it enhances the administration of justice."[23]

Notably, bordering an ethical discussion if proven to have been deliberately done, this Court cannot turn a blind eye on the fact that respondent's counsel never made mention of the final and executory CA Decision in CA-G.R. No. 132743.

Thus, at this juncture, this Court also reminds all counsels of this rigid policy of consolidating cases and their responsibility, not only to give prompt notice to the court of any related pending cases but also to move for consolidation thereof. In Administrative Matter No. CA-13-51-J, this Court explained that this responsibility proceeds from lawyers' express

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[22] *Re: Letter Complaint of Fabiana against Presiding Justices Reyes, Jr., et al.*, 713 Phil. 161, 174 (2013).

[23] *Id.* at 177.

undertakings in the certifications against forum shopping that accompany their initiatory pleadings pursuant to Section 5[24] of Rule 7 and related rules in the Rules of Court.[25]

Facing now these conflicting decisions on the matter, this Court is constrained to reverse the assailed CA Decision herein and uphold the CA's ruling in CA-G.R. SP No. 132743 on the ground that the same has already attained finality. It is also important to note that petitioner, through counsel, already manifested that it will no longer pursue the filing of a petition for review on *certiorari* before this court.[26]

It cannot be denied that the CA's Decision in CA-G.R. SP No. 132743 became final and executory even before the rendition of the herein assailed CA Decision in CA-G.R. SP No. 132908.[27]

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[24] Section 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

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

[25] *Re: Letter Complaint of Fabiana against Presiding Justice Reyes, Jr., et al.*, *supra* at 177.

[26] *Rollo*, p. 282.

[27] *Id*.

It is a hornbook doctrine that once a judgment attains finality, it becomes immutable and unalterable. In a catena of cases, this Court has explained:

> A final and executory judgment 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 factor or law and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. This is the doctrine of finality of judgment. It is grounded on fundamental considerations of public policy and sound practice that, at the risk of occasional errors, the judgments or orders of courts must become final at some definite time fixed by law. Otherwise, there will be no end to litigations, thus negating the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justiciable controversies with finality.[28] (Citation omitted)

The only exceptions to the rule on the immutability of final judgments are: (1) correction of clerical errors; (2) *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[29] None of these exists in this case. The case at bar is simply brought about by the patent procedural mistake committed in the appellate court.

At this point, there is nothing left to do but to uphold the ruling of the CA in the said Decision considering that the same is immutable, unalterable, binding between the parties, and conclusive to this Court.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated December 18, 2015 of the Court of Appeals in CA-G.R. SP No. 132908 is hereby **REVERSED and SET ASIDE**.

SO ORDERED.

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[28] *Lomondot, et al. v. Judge Balindong, et al.*, 763 Phil. 617, 627 (2015).

[29] *Sps. Navarra v. Liongson*, 784 Phil. 942, 954 (2016).

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

EN BANC

[A.M. No. 18-06-01-SC. July 17, 2018]

RE: SHOW CAUSE ORDER IN THE DECISION DATED MAY 11, 2018 IN G.R. No. 237428 (REPUBLIC OF THE PHILIPPINES, REPRESENTED BY SOLICITOR GENERAL JOSE C. CALIDA *vs.* MARIA LOURDES P. A. SERENO)

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF ATTORNEYS; LAWYERS MAY BE DISCIPLINED FOR ACTS COMMITTED EVEN IN THEIR PRIVATE CAPACITY FOR ACTS WHICH TEND TO BRING REPROACH ON THE LEGAL PROFESSION OR TO INJURE IT IN THE FAVORABLE OPINION OF THE PUBLIC.— Time and again, this Court has emphasized the high sense of morality, honesty, and fair dealing expected *and* required of members of the Bar. Lawyers must conduct themselves with great propriety, and their behavior must be beyond reproach anywhere and at all times, whether they are dealing with their clients or the public at large. Lawyers may be disciplined for acts committed even in their private capacity for acts which tend to bring reproach

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

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

on the legal profession or to injure it in the favorable opinion of the public. There can be no distinction as to whether the transgression is committed in lawyers' private lives or in their professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another. As eloquently put by the Court in one case: "Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority for there is perhaps no profession after that of the sacred ministry in which a high-toned morality is more imperative than that of law." For the same reasons, judges or Justices are held to a higher standard for they should be the embodiment of competence, integrity, and independence, hence, their conduct should be above reproach.

2. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; *SUB JUDICE* RULE; *SUB JUDICE* RULE FINDS SUPPORT IN THE PROVISION ON INDIRECT CONTEMPT UNDER SECTION 3, RULE 71 OF THE RULES OF COURT.— *Sub judice* is a Latin term which refers to matters under or before a judge or court; or matters under judicial consideration. In essence, the *sub judice* rule restricts comments and disclosures pertaining to pending judicial proceedings. The restriction applies to litigants and witnesses, the public in general, and most especially to members of the Bar and the Bench. Historically, the *sub judice* rule is used by foreign courts to insulate members of the jury from being influenced by prejudicial publicity. It was aimed to prevent comment and debate from exerting any influence on juries and prejudicing the positions of parties and witnesses in court proceedings. x x x In fact, *sub judice* rule finds support in the provision on indirect contempt under Section 3, Rule 71 of the Rules of Court, x x x As can be observed, discussions regarding *sub judice* often relates to contempt of court. In this regard, respondent correctly pointed out that the "clear and present danger" rule should be applied in determining whether, in a particular situation, the court's contempt power should be exercised to maintain the independence and integrity of the Judiciary, or the Constitutionally-protected freedom of speech should be upheld.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE ACTIONS; ACTIONS IN VIOLATION OF THE *SUB JUDICE* RULE MAY BE DEALT WITH

ONLY THROUGH CONTEMPT PROCEEDINGS BUT ALSO THROUGH ADMINISTRATIVE ACTIONS, SUSTAINED.— As We have stated in Our decision in the *quo warranto* case, actions in violation of the *sub judice* rule may be dealt with not only through contempt proceedings but also through administrative actions. This is because a lawyer speech is subject to greater regulation for two significant reasons: *one*, because of the lawyer's relationship to the judicial process; and *two*, the significant dangers that a lawyer's speech poses to the trial process. Hence, the Court *En Banc* resolved to treat this matter in this separate administrative action. Indeed, this Court has the plenary power to discipline erring lawyers through this kind of proceeding, aimed to purge the law profession of unworthy members of the Bar and to preserve the nobility and honor of the legal profession. Thus, contrary to respondent's argument, the "clear and present danger" rule does not find application in this case. What applies in this administrative matter is the CPR [CODE OF PROFESSIONAL RESPONSIBILITY] and NCJC [NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY], which mandate the strict observance of the *sub judice* rule both upon members of the Bar and the Bench.

4. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS; VIOLATION IN CASE AT BAR.— Respondent's actions and statements are far from being an innocent discharge of duty of upholding the Constitution, the laws, rules, and legal processes. On the contrary, they were direct and loaded attacks to the Court and its Members, which constitute a blatant disrespect to the institution. Respondent cannot justify her attacks against the Court under the guise of merely discharging her duties as a Justice and a member of the Bar. No matter how passionate a lawyer is towards defending his cause or what he believes in, he must not forget to display the appropriate decorum expected of him, being a member of the legal profession, and to continue to afford proper and utmost respect due to the courts. As the nation's then highest-ranking judicial official, it is with more reason that respondent is expected to have exercised extreme caution in giving her opinions and observed genuine confidence to the Court's

processes. As aptly and eloquently concluded by Justice Marvic M.V.F. Leonen in his Dissenting Opinion in the *quo warranto* case, respondent, not only as a member of the Bar, but more importantly, as Chief Justice of the Court, must exemplify the highest degree of leadership, and must refrain from activities that will tend to cause unwarranted attacks against the Court. x x x Truth be told, respondent miserably failed to discharge her duty as a member of the Bar to observe and maintain the respect due to the court and its officers. Specifically, respondent violated CANON 11 of the CPR, x x x In *Montencillo v. Gica*, the Court emphasized the importance of observing and maintaining the respect due to the Courts and to its judicial officers, x x x At the risk of being repetitive, it bears stressing that lawyers, as first and foremost officers of the court, must never behave in such a way that would diminish the sanctity and dignity of the courts even when confronted with rudeness and insolence. x x x The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Suffice it to say, in this case, respondent has been given several opportunities to explain her side. Records show that the Congress invited her to shed light on the accusations hurled against her but she never heeded the invitation. Likewise, the Court gave her the opportunity to comment on the petition and file several motions in the *quo warranto* case. A special hearing for her requested oral argument was even conducted during the Court's Baguio session last April of this year. During the hearing, she was given the chance to answer several questions from her colleagues. In fact, she even freely raised questions on some of the magistrates present during the hearing. Undeniably, she was accorded due process not only through her written pleadings, but also during the special hearing wherein she voluntarily participated. These facts militate against her claim of denial of due process.

5. REMEDIAL LAW; DISBARMENT OR SUSPENSION OF ATTORNEYS; THE POWER TO DISBAR OR SUSPEND OUGHT ALWAYS TO BE EXERCISED ON THE PRESERVATIVE AND NOT ON THE VINDICTIVE PRINCIPLE, WITH GREAT CAUTION AND ONLY FOR MOST WEIGHTY REASONS AND ONLY ON CLEAR

CASES OF MISCONDUCT WHICH SERIOUSLY AFFECT THE STANDING AND CHARACTER OF THE LAWYER AS AN OFFICER OF THE COURT AND MEMBER OF THE BAR; CASE AT BAR.— In exercising its disciplinary authority in administrative matters, however, this Court has always kept in mind that lawyers should not be hastily disciplined or penalized. In administrative proceedings against lawyers, this Court is always guided by this principle, that is: The power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons and only on clear cases of misconduct which seriously affect the standing and character of the lawyer as an officer of the court and member of the Bar. x x x Indeed, "lawyer discipline x x x is not meant to punish; rather, its purpose is to protect clients, the public, the courts, and the legal profession." Conviction, punishment, retribution, much less, denigration have no place in administrative proceedings against lawyers. Guided by the foregoing, despite the severity of the offenses committed by respondent, We are constrained to suspend the application of the full force of the law and impose a lighter penalty. Mindful of the fact that respondent was removed and disqualified as Chief Justice as a result of *quo warranto* proceedings, suspending her further from law practice would be too severe to ruin the career and future of respondent. We are also not inclined to merely disregard respondent's length of service in the government, specifically, when she was teaching in the University of the Philippines, as well as during her incumbency in this Court. Further, the fact that, per available record, respondent has not been previously found administratively liable is significant in determining the imposable penalty. These factors have always been considered by the Court in the determination of proper sanctions in such administrative cases. This Court is not merciless and opts to dispense judicial clemency even if not sought by respondent. To be clear, however, this accommodation is not a condonation of respondent's wrongdoings but a second chance for respondent to mend her ways, express remorse for her disgraceful conduct, and be forthright to set an example for all law-abiding members of the legal profession. The legal profession is a noble profession: as a former Member of this Court, it is incumbent upon respondent to exemplify respect, obedience, and adherence to this institution. This judicial temperance is not unprecedented

as this Court has in several cases reduced the imposable penalties so that erring lawyers are encouraged to repent, reform, and be rehabilitated. Henceforth, respondent is expected to be more circumspect, discerning, and respectful to the Court in all her utterances and actions. Respondent is reminded that the practice of law is neither a natural right nor a Constitutional right demandable or enforceable by law. It is a mere privilege granted by this Court premised on continuing good behavior and ethical conduct, which privilege can be revoked or cancelled by this Court for just cause.

APPEARANCES OF COUNSEL

Alexander J. Poblador for Ma. Lourdes P.A. Sereno.

D E C I S I O N

TIJAM, *J.*:

The instant administrative matter is an offshoot of G.R. No. 237428 entitled *Republic of the Philippines, represented by Solicitor General Jose C. Calida v. Maria Lourdes P. A. Sereno*, hereinafter referred to as the *quo warranto* case or proceedings against Maria Lourdes P. A. Sereno (respondent). A brief statement of the factual and procedural antecedents of the case is, thus, in order.

Factual and Procedural Antecedents

On August 30, 2017, an impeachment complaint was lodged before the Committee on Justice of the House of Representatives against respondent for culpable violation of the Constitution, corruption, high crimes, and betrayal of public trust. Having learned of respondent's disqualification as a Chief Justice from the House Committee on Justice's hearings, the Republic of the Philippines (Republic), through the Office of the Solicitor General, filed a petition for *quo warranto* against respondent, basically questioning her eligibility for the Chief Justice position.

The Court observed that since the filing of the impeachment complaint, during the pendency of the *quo warranto* case, and

even after the conclusion of the *quo warranto* proceedings, respondent continuously opted to defend herself in public through speaking engagements before students and faculties in different universities, several public forums, interviews on national television, and public rallies. As the Court noted in its decision in the *quo warranto* case, respondent initially refused to participate in the congressional hearings for the impeachment complaint. When the petition for *quo warranto* was filed, respondent likewise continuously refused to recognize this Court's jurisdiction. Instead of participating in the judicial process and answering the charges against her truthfully to assist in the expeditious resolution of the matter, respondent opted to proceed to a nationwide campaign, conducting speeches and accepting interviews, discussing the merits of the case and making comments thereon to vilify the members of the Congress, cast aspersions on the impartiality of the Members of the Court, degrade the faith of the people to the Judiciary, and falsely impute ill motives against the government that it is orchestrating the charges against her. In short, as the Court stated in the said decision, respondent chose to litigate her case before the public and the media instead of the Court.[1]

The Court was disquieted as doubts against the impartiality and dignity of the Court and its Members emerged, and the obfuscation of the issues in the *quo warranto* proceedings resulted from such out-of-court discussions on the merits of the case. Worse, the Court was perturbed by the fact that respondent, not only being a member of the Bar but one who was asserting her eligibility and right to the highest position in the Judiciary, significantly participated in such detestable and blatant disregard of the *sub judice* rule.[2]

Consequently, having great regard of judicial independence and its duty to discipline member of the Bar to maintain the dignity of the profession and the institution, the Court in its

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[1] *Republic of the Philippines, represented by Solicitor General Jose C. Calida v. Maria Lourdes P. A. Sereno*, G.R. No. 237428, May 11, 2018.

[2] *Id*.

decision in the *quo warranto* case, ordered respondent to show cause why she should not be sanctioned for violating the Code of Professional Responsibility (CPR) and the New Code of Judicial Conduct for the Philippine Judiciary (NCJC) for transgressing the *sub judice* rule and for casting aspersions and ill motives to the Members of this Court.[3]

On June 13, 2018, respondent filed her Verified Compliance (To the Show Cause Order dated 11 May 2018) with Respectful Motion for Inhibition (Of Hon. Associate Justices Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Noel G. Tijam, Francis H. Jardeleza, Lucas P. Bersamin, and Samuel R. Martires),[4] arguing that the acts imputed against her in the May 11, 2018 Decision do not amount to conduct unbecoming of a Justice and a lawyer which would warrant her disbarment nor warrant any other disciplinary measure.

Respondent's Explanations/Arguments

(1) Respondent contends that she should not be judged on the stringent standards set forth in the CPR and the NCJC, emphasizing that her participation in the *quo warranto* case is not as counsel or a judge but as a party-litigant.[5]

(2) The imputed acts against respondent did not create any serious and imminent threat to the administration of justice to warrant the Court's exercise of its power of contempt in accordance with the "clear and present danger" rule.[6] Respondent avers that she cannot be faulted for the attention that the *quo warranto* case gained from the public considering that it is a controversial case, which involves issues of transcendental importance.[7]

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[3] *Id*.

[4] *Rollo*, pp. 7-42.

[5] *Id*. at 8.

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

[7] *Id*. at 28.

(3) Assuming arguendo that the CPR and the NCJC apply, respondent argues that in addressing the matters of impeachment and *quo warranto* to the public, she was in fact discharging her duty as a Justice and a lawyer to uphold the Constitution and promote respect for the law and legal processes pursuant to the said Codes.[8]

(4) Assuming arguendo that respondent violated some provisions of the CPR and the NCJC in her public statements, the same does not warrant the exercise of the Court's power to discipline in view of the attendant circumstances, to wit: (a) no less than the Solicitor General repeatedly made personal attacks against her and publicly discussed the merits of the case, hence, she had to respond to such accusations against her; and (b) she was not given her right to due process despite her repeated demand.[9]

Issue

May respondent be held administratively liable for her actions and public statements as regards the *quo warranto* case against her during its pendency?

Ruling of the Court

Before delving into the merits, We first resolve respondent's motion for inhibition. As respondent, herself, stated, the grounds for this motion are the same as those discussed in her motion for inhibition in the *quo warranto* case. We find no cogent reason to belabor on this issue and deviate from what has been discussed in the Court's Decision in the *quo warranto* case. We reiterate that mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis.[10]

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[8] *Id*. at 25.

[9] *Id*. at 29-36.

[10] *Republic of the Philippines, represented by Solicitor General Jose C. Calida v. Maria Lourdes P. A. Sereno*, G.R. No. 237428, June 19, 2018.

Hence, this Court resolves to **DENY** the Motion for Inhibition of Justices Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Noel Gimenez Tijam, Francis H. Jardeleza, Lucas P. Bersamin, and Samuel R. Martires.

Proceeding now to the substantive issue of this administrative matter: May respondent be held administratively liable for her actions and public statements as regards the *quo warranto* case against her during its pendency?

We answer in the affirmative.

First. This Court cannot subscribe to respondent's position that she was merely a party-litigant in the *quo warranto* case, not a counsel nor a judge, hence, should not be judged on the exacting standards expected of a member of the Bar or of the Court.

Respondent argues that she had no obligation to be an impartial judge where she does not act as one. Also, she cannot be expected to be as circumspect with her words or detached from her emotions as a usual legal counsel as she is directly affected by the outcome of the proceedings. Respondent then remarked that just because she is a lawyer and a judge does not mean that she is less affected by the tribulations of a public trial than an ordinary litigant.

Time and again, this Court has emphasized the high sense of morality, honesty, and fair dealing expected *and* required of members of the Bar. Lawyers must conduct themselves with great propriety, and their behavior must be beyond reproach anywhere and at all times,[11] whether they are dealing with their clients or the public at large.[12] Lawyers may be disciplined for acts committed even in their private capacity for acts which tend to bring reproach on the legal profession or to injure it in the favorable opinion of the public. There can be no distinction

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[11] *Mendoza v. Atty. Deciembre*, 599 Phil. 182, 191 (2009).

[12] *Manuel L. Valin and Honorio L. Valin v. Atty. Rolando T. Ruiz*, A.C. No. 10564, November 7, 2017.

as to whether the transgression is committed in lawyers' private lives or in their professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another.[13] As eloquently put by the Court in one case: "Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority for there is perhaps no profession after that of the sacred ministry in which a high-toned morality is more imperative than that of law."[14]

For the same reasons, judges or Justices are held to a higher standard for they should be the embodiment of competence, integrity, and independence, hence, their conduct should be above reproach.[15]

The Court is, thus, reluctant to accept respondent's position that she should be treated as an ordinary litigant in judging her actions. The fact that respondent was not the judge nor the counsel but a litigant in the subject case does not strip her off of her membership in the Bar, as well as her being a Member and the head of the highest court of the land at that time. Her being a litigant does not mean that she was free to conduct herself in less honorable manner than that expected of a lawyer or a judge.[16]

Consequently, any errant behavior on the part of a lawyer and/or a judge, be it in their public or private activities, which tends to show said lawyer/judge deficient in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.[17] Respondent should be reminded:

> Of all classes and professions, the lawyer is most sacredly bound to uphold the laws, as he is their sworn servant; and for him, of all

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[13] *Mendoza v. Atty. Deciembre*, *supra* at 191-192.

[14] *Radjaie v. Atty. Alovera*, 392 Phil. 1, 17 (2000).

[15] *Barrios v. Atty. Martinez*, 485 Phil. 1, 14 (2004).

[16] *Id.*

[17] *Ventura v. Atty. Samson*, 699 Phil. 404, 415 (2012).

men in the world, to repudiate and override the laws, to trample them under foot and to ignore the very bonds of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic.

[T]he practice of law is a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law. The Supreme Court, as guardian of the legal profession, has ultimate disciplinary power over attorneys. **This authority to discipline its members is not only a right but a bounden duty as well x x x. That is why respect and fidelity to the Court is demanded of its members.**[18] (Citations omitted and emphasis ours)

Second. Respondent argues that the public statements attributed to her must have created a serious and imminent threat to the administration of justice to warrant punishment.

According to respondent, the public utterances in question did not create such effect of a serious and imminent threat to the administration of justice; did not, in any way, prevent or delay the Court from rendering its judgment; and criticism and public reaction remained within the bounds of proper debate and despite widespread dissent, no violent protest erupted after the decision was promulgated. Further, respondent avers that considering that the *quo warranto* case in itself is already controversial and of transcendental importance, her public statements and actions cannot be blamed for the natural attention that it gained from the public.

Before proceeding to address these arguments, it is necessary, at this juncture, to discuss the concept of the *sub judice* rule for which respondent is being charged of violating in this administrative case.

Sub judice is a Latin term which refers to matters under or before a judge or court; or matters under judicial consideration.[19]

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[18] *Valencia v. Atty. Antiniw*, 579 Phil. 1, 13 (2008).

[19] *Black's Law Dictionary*.

In essence, the *sub judice* rule restricts comments and disclosures pertaining to pending judicial proceedings. The restriction applies to litigants and witnesses, the public in general, and most especially to members of the Bar and the Bench.[20]

Historically, the *sub judice* rule is used by foreign courts to insulate members of the jury from being influenced by prejudicial publicity.[21] It was aimed to prevent comment and debate from exerting any influence on juries and prejudicing the positions of parties and witnesses in court proceedings.[22] Relatedly, in 2010, the late Senator Miriam Defensor-Santiago, in filing Senate Bill No. 1852, also known as the Judicial Right to Know Act, explained that *sub judice* is a foreign legal concept, which originated and is applicable to countries who have adopted a trial by jury system. She emphasized the difference between a jury system and the Philippine court system, implying the inapplicability of the concept in our jurisdiction.

Acknowledging the fact that *sub judice* is a foreign concept, Justice Arturo Brion noted in a Separate Opinion that in our jurisdiction, the Rules of Court does not contain a specific provision imposing the *sub judice* rule.[23] He, however, opined that "the fact that the jury system is not adopted in this jurisdiction is not an argument against our observance of the *sub judice* rule; justices and judges are no different from members of the jury, they are not immune from the pervasive effects of media."[24] In fact, *sub judice* rule finds support in the provision on indirect contempt under Section 3, Rule 71 of the Rules of Court, to wit:

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[20] Separate Opinion of Justice Arturo Brion in *Lejano v. People*, 652 Phil. 512, 652 (2010).

[21] *Id*.

[22] <https://www.parliament.nsw.gov.au/la/proceduralpublications/Pages/factsheetno22.aspx> (visited June 30, 2018).

[23] *Supra* note 20.

[24] *Id*.

Sec. 3. *Indirect contempt to be punished after charge and hearing.* – x x x, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x x x x x x

c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

x x x x x x x x x.

As can be observed, discussions regarding *sub judice* often relates to contempt of court. In this regard, respondent correctly pointed out that the "clear and present danger" rule should be applied in determining whether, in a particular situation, the court's contempt power should be exercised to maintain the independence and integrity of the Judiciary, or the Constitutionally-protected freedom of speech should be upheld. Indeed, in *P/Supt. Marantan v. Atty. Diokno, et al.*,[25] the Court explained:

The *sub judice* rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of this rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court, x x x.

x x x x x x x x x

The proceedings for punishment of indirect contempt are criminal in nature. This form of contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. Intent is a necessary element in criminal contempt, and no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it.

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[25] 726 Phil. 642 (2014).

For a comment to be considered as contempt of court "it must really appear" that such does impede, interfere with and embarrass the administration of justice. What is, thus, sought to be protected is the all-important duty of the court to administer justice in the decision of a pending case. The specific rationale for the *sub judice* rule is that courts, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.

The power of contempt is inherent in all courts in order to allow them to conduct their business unhampered by publications and comments which tend to impair the impartiality of their decisions or otherwise obstruct the administration of justice. As important as the maintenance of freedom of speech, is the maintenance of the independence of the Judiciary. The "clear and present danger" rule may serve as an aid in determining the proper constitutional boundary between these two rights.

The "clear and present danger" rule means that the evil consequence of the comment must be "extremely serious and the degree of imminence extremely high" before an utterance can be punished. There must exist a clear and present danger that the utterance will harm the administration of justice. Freedom of speech should not be impaired through the exercise of the power of contempt of court unless there is no doubt that the utterances in question make a serious and imminent threat to the administration of justice. It must constitute an imminent, not merely a likely, threat.[26] (Citations omitted)

From the foregoing, respondent may be correct in arguing that there must exist a "clear and present danger" to the administration of justice for statements or utterances covered by the *sub judice* rule to be considered punishable under the rules of contempt.

The case at bar, however, is not a contempt proceeding. The Court, in this case is not geared towards protecting itself from such prejudicial comments outside of court by the exercise of its inherent contempt power. Rather, in this administrative matter,

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[26] *Id.* at 648-649.

the Court is discharging its Constitutionally-mandated duty to discipline members of the Bar and judicial officers.

As We have stated in Our decision in the *quo warranto* case, actions in violation of the *sub judice* rule may be dealt with not only through contempt proceedings but also through administrative actions. This is because a lawyer speech is subject to greater regulation for two significant reasons: *one*, because of the lawyer's relationship to the judicial process; and *two*, the significant dangers that a lawyer's speech poses to the trial process.[27] Hence, the Court *En Banc* resolved to treat this matter in this separate administrative action.[28] Indeed, this Court has the plenary power to discipline erring lawyers through this kind of proceeding, aimed to purge the law profession of unworthy members of the Bar and to preserve the nobility and honor of the legal profession.[29]

Thus, contrary to respondent's argument, the "clear and present danger" rule does not find application in this case. What applies in this administrative matter is the CPR and NCJC, which mandate the strict observance of the *sub judice* rule both upon members of the Bar and the Bench, specifically:

CODE OF PROFESSIONAL RESPONSIBILITY

CANON 13 – A LAWYER SHALL RELY UPON THE MERITS OF HIS CAUSE AND REFRAIN FROM ANY IMPROPRIETY WHICH TENDS TO INFLUENCE, OR GIVES THE APPEARANCE OF INFLUENCING THE COURT.

Rule 13.02 – A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.

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[27] *Republic of the Philippines, represented by Solicitor General Jose C. Calida v. Maria Lourdes P. A. Sereno*, G.R. No. 237428, May 11, 2018, citing *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991).

[28] *Republic of the Philippines, represented by Solicitor General Jose C. Calida v. Maria Lourdes P. A. Sereno*, G.R. No. 237428, May 11, 2018.

[29] *Feliciano v. Atty. Bautista-Lozada*, 755 Phil. 349, 356 (2015).

NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY

CANON 1 – INDEPENDENCE

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

SECTION 3. Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before any court or administrative agency.

SECTION 7. Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

SECTION 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

CANON 2 – INTEGRITY

Integrity is essentially not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

CANON 3 – IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

SECTION 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession, and litigants in the impartiality of the judge and of the judiciary.

SECTION 4. Judges shall not knowingly, while a proceeding is before or could come before them, make any comment that might

reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.

CANON 4 – PROPRIETY

SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

SECTION 6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

Besides, as We have stated in the *quo warranto* case decision, the Court takes judicial notice of the undeniably manifest detrimental effect of this open and blatant disregard of the *sub judice* rule, which is a clear manifestation of the evil sought to be prevented by the said rule, *i.e.*, "to avoid prejudging the issue, influencing the court, or obstructing the administration of justice."[30] In the said decision, We cited the May 2, 2018 issue of the *Philippine Daily Inquirer*, wherein certain individuals from different sectors of the society, lawyers included, not only pre-judged the case but worse, accused certain Members of the Court of being unable to act with justice, and threatening that the people will not accept any decision of such Members of the Court as the same is tainted by gross injustice. To be sure, these statements do not only "tend to" but categorically force and attempt to influence the deliberative and decision-making process of this Court.[31]

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[30] *Romero II, et al. v. Senator Estrada, et al.*, 602 Phil. 312, 319 (2009).

[31] *Republic of the Philippines, represented by Solicitor General Jose C. Calida v. Maria Lourdes P. A. Sereno*, G.R. No. 237428, May 11, 2018, *supra* note 1.

Albeit advancing explanations to her actions, respondent undoubtedly violated the above-cited provisions of the CPR and the NCJC. The Court, in the *quo warranto* case, enumerated some of the instances where respondent openly and blatantly violated the *sub judice* rule:[32]

Event	Source	Quotations
'Speak Truth to Power' forum in UP Diliman, Quezon City on **May 5, 2018**	Video: <https://web.facebook.com/juliusnleonen/videos/889291114607029/> Article: <https://www.rappler.com/nation/201854-sereno-quo-warranto-destroy-judicial-independence>	*"Kung manalo ang quo warranto, mapupunta tayo sa diktaturya," she said. "Talagang wawasakin completely ng quo warranto na ito ang judiciary."* *"Pag itong quo warranto natuloy, hindi na right and reason, kundi will — will na nu'ng whoever is on top. So kailangan natin pigilan ito . . ." she said.*
Integrated Bar of the Philippines (IBP) Central Luzon Regional Convention and Mandatory Continuing Legal Education at the Quest Hotel here on **May 2, 2018**	Article: <https://businessmirror.com.ph/sereno-sees-dictatorship-after-filing-of-quo-warranto-petition-against-her/>	*"Ano po ang tawag sa kondisyon na ang citizen walang kalaban-laban sa gobyerno" Chief Justice Maria Lourdes A. Sereno asked. "Ang tawag po doon dictatorship, hindi po constitutional democracy ang tawag doon," she said.* *"That is what is going to happen if the quo waranto petition is granted," Sereno stated.* *"The booming voice of Justice Vicente Mendoza has reverberated that if the quo warranto petition is granted, the Judiciary will destroy itself," Sereno said as she also praised the IBP's stand to oppose and dismiss the petition.*

[32] *Id*.

Forum on upholding Judicial Independence at the Ateneo Law School in Rockwell, Makati City on Wednesday, **April 25, 2018**	Video: <https://web.facebook.com/24OrasGMA/videos/10156438427991977/?t=16> Article: <http://newsinfo.inquirer.net/985460/defend-judicial-independence-cj-sereno-tells-law-students>	*"Of my colleagues, I know that several of them, have had their qualifications, their inability to submit documentary requirements, waived, several of them. If the JBC was correct in saying that an attempt to submit requirements, that good faith should be accorded to the 14, including those against me, why am I the only one being singled out?," she told law students at the Ateneo Law School during a forum on judicial independence.* *"The questions propounded by Supreme Court itself, they wanted to examine everything I did in the past in the hope they would find something scandalous in my life. I was just preparing myself for the question, 'ilang boyfriend mo na?,'" Sereno said, which elicited laughter from the crowd.* *"Hindi ko naman po minanipula ni konti ang JBC…14 kaming pare-parehong sitwasyon. Bakit nagreklamo kung kayo nalagay sa listahan at ako nalagay sa listahan. Ang masama ay hindi kayo ang nalagay at ako ang nalagay," she added.*
Speech at the Commencement Exercises of the College of Law of the University of San Agustin (USA) in Iloilo City, on **April 20, 2018**	<https://www.philstar.com/headlines/2018/04/23/1808492/sereno-camp-questions-sc-haste-decide-her-case> <https://news.mb.com.ph/2018/04/21/no-need-to-rush-quo-warranto-sereno/>	*"The month of May is a time that is supposed to be devoted to writing decisions in the many pending cases before the Court. Anyway the session will resume on June 5, so what's with the rush?"* *"Wala namang dahilan para magmadali."* *"Kung totoo po, indication po ito na mayroon na po silang conclusion bago pa man marinig ang lahat," Sereno said.*

Fellowship of the Philippine Bar Association (PBA) in Makati City on **April 11, 2018**	<http://newsinfo.inquirer.net/981806/sereno-ups-attack-vs-quo-warranto-in-speech-at-lawyers-forum?utm_campaign=Echobox&utm_medium=Social&utm_source=Facebook#link_time=1523450119>	*"Even your very livelihoods are threatened; there is no safety for any of you...That is how deadly this quo warranto petition is," she added.* *Sereno said if the Supreme Court would cooperate in the move of the Executive to oust her sans impeachment trial, "I will use directly the words of Chief Justice Davide that it will be judicial hara-kiri, if not a judicial kamikaze bringing it the destruction of the entire judiciary as well as the entire constitutional framework."*
30th Anniversary and 23rd National Convention of the Philippine Women Judges Association (PWJA) in Manila Hotel on Thursday, **March 8, 2018**	<http://newsinfo.inquirer.net/973692/sereno-delivers-most-powerful-speech-yet-not-all-peers-happy>	*"I look at any forum to try me other than the constitutionally exclusive form of impeachment as an admission by the complainant and my other detractors that after 15 hearings, they have failed to come up with any evidence which I can be convicted in the Senate," she asserted.* *"Sila ang nagsimula bakit ayaw nilang tapusin? Napakaaga naman yata para umamin sila na wala silang napala kundi matinding kabiguan kaya't kung anu-ano na lamang ang gimik ang ginagawa nila masunod lamang ang kanilang nais," Sereno added.*
CNN Philippines (March 9, 2018); One on One with the Chief Justice with Pinky Webb	<https://www.youtube.com/watch?v=HlYKAQ4QPcY1. http://cnnphilippines.com/videos/2018/03/09/One-on-one-with-Chief-Justice-Maria-Lourdes-Sereno.html>	In this interview, CJOL Sereno, among others, stated that her defense preparation was directed towards the impeachment proceedings as she has not assessed yet the *quo warranto* petition as of the interview. - *"From the very beginning, we were looking really at the impeachment provisions of the Constitution so that has been the*

		preparation all along. Well, I haven't yet assessed this latest quo warranto petition. Not yet time maybe" - CJOL Sereno refused to talk about the *quo warranto* petition, but interpreted the SC's resolution which directed her to comment on said petition without taking due course to the petition. CJOL said that such action of the SC does not mean anything and affirmed Webb's interpretation that such action does not mean that the SC assumes jurisdiction over the *quo warranto* case. - "*Yan naman talaga ang hindi ko pwede pagusapan, ano.*" - On jurisdiction: *"Normal yan, marami kaming ganyan petition. Wala naman talagang ibig sabihin yan. In most cases, walang ibig sabihin yun kasi hindi pa prejudged. Pero hayaan niyo po muna yung lawyers ko ang magsabi kasi mahirap naman pong pangunahan ko sila eh ginagawa pa po nila yung sagot eh".* *- "Marami ho kaming laging ginagamit na without due course at marami kaming dinidismiss na nanggaling sa without giving due course pero pinagkocomment... It doesn't mean... Ang usual tradition po namin ay walang ibig sabihin po yun"*
Speech of CJOL Sereno at the Panpacific University North Philippines (March 9, 2018) (Posted by CNN Philippines)	<https://www.youtube.com/watch?v=iN5l1xW9bpk>	Directed towards politicians supposedly regarding the ongoing impeachment proceedings, CJOL Sereno said, "'*Wag na 'wag niyo kami gigipitin*" and further stated that such what judicial independence means. *- I know that our women judges, for example, are always eager to make a stand for judicial*

		independence. Kayong mga pulitiko, wag nyong pakialaman ang aming mga gustong gawin kung palagay nyo kayo ay tama at andyan ang ebidensya, lalabas naman yan eh. Pero huwag na huwag nyo kaming gigipitin. Yan ang ibig sabihin ng judicial independence"
Speech on "The Mumshie on Fire: Speak Truth to Power" held at the University of the Philippines (May 5, 2018) *Forum was organized by youth groups, *Ako Ay Isang Sereno* and Youth for Miriam	<http://newsinfo.inquirer.net/987807/live-chief-justice-sereno-at-up-diliman-forum>	- CJOL Sereno emphasized that AJ Leonardo-De Castro's inhibition would prove that she is unbiased. - *Hindi sila tumigil, hangga't naisip ng isa, yung nagaakusa sa akin, "ay yung SALN niya, yung SALN nya na sinabi nya sa JBC na nahihirapan niyang humanap (sic). Yun, dun tugisin. At sinabi nya na dapat ako ay idisqualify dahil unjust daw na ako ang naappoint. May injustice na nangyari. So alam na natin ang isa sa pinagsisimulan nito"* - CJOL Sereno said that *"Even when they thought they have won, in the end, they will never win. The country is already woke. The youth would not listen to lies. The people own the judiciary. They are not owned by the judiciary, the justices, the judges"* and that the *"good will always prevail over evil"*. - CJOL Sereno said that two of her accusers, who she considers as her rival also, will be one of those who will decide the *quo warranto* petition filed against her, thereby against the basic rules of fair play. - *"Eh bakit biglang umatras sila* (pertaining to her accusers in the impeachment proceedings) *at ginawa itong kaso na quo warranto kung saan ang dalawa sa nagsabing hindi ako dapat naappoint eh sila rin ang maghuhusga sa akin. Saan kayo*

		nakakita ng sitwasyon na yung karibal niyo sa posisyon ang may kapangyarihan sabihin kayong dapat ka matanggal sa posisyon, hindi ikaw dapat. Paano nangyari? Under what rules of fairness, what rules of Constitution or legal system can an accuser who acted also as my prosecutor during the oral arguments now sit as judge? This violates the most basic norms of fairplay...Ngayon talaga, nakita na, na hindi ho ako bibigyan talaga ng ilang ito ng kahit anong modicum of fairness" - She discussed that one of the effects of an invalid appointment is the forfeiture of retirement benefits. - *"At alam nyo ho, pag sinabi na invalid yung appointment, pati yung retirement benefits ho tatanggalin"* - The granting of a *quo warranto* would result into dictatorship and would destroy the judiciary. - *At ano ho ang mangyayari kung ang buong sangay, ang lahat ng kawani ng gobyerno ay kayang takutin at hindi na pwedeng maging independent?.. Ano hong mangyayari kung ang COMELEC ho ay sinabihan ng Presidente at Solicitor General na "yung partido lang namin ang pwedeng manalo, kung hindi i-quo warranto ka namin?" Ano po yun? Ano yung tawag sa ganoong sitwasyon na may matinding pananakot sa buong bayan? Ang tawag po dun, diktaturya.. Kung manalo po ang quo warranto, yan po ang magiging resulta"* - *"Saang korte kayo pupunta? Sino ang magtatapang na huwes kung madali na sila mapatanggal?... Hindi na ho kayo makakatakbo, kasi lahat ho ng judges tatakutin ng Solicitor General...Saan ho*

		kayo pupunta sa isang arbiter na impartial?.. wala na po. Wawasakin nitong quo warranto petition nito, completely ang judiciary" *- "Ano na ho ang mangyayari sa bayan natin kung wala na hong security of tenure sa government service? Kasi kung may kaunting kulang lang sa file... kulang ang file na nabigay sa JBC.. eh naglalabasan na ho ang SALN ko... pero eto tatanggalin at gagawa sila ng prinsipyo at ikawawasak ng buong bayan para lang sa kanilang personal na interes. Nakakalagim po ang pangyayaring ito"*
Speech on Ateneo Law School for the forum Tindig: A forum on upholding judicial independence as a pillar of democracy (April 25, 2018)	<https://www.youtube.com/watch?v=oh35V4BMiww>	CJOL Sereno discussed the contents of the *quo warranto* petition. - On the prescriptive period, CJOL Sereno said that jobs of the justices, judges and government employees are jeopardized because of the assertion of the OSG that a petition for *quo warranto* does not prescribe against the government. CJOL Sereno said that such assertion makes the action imprescriptible. *- "According to the Solicitor General, the one year prescriptive period can never apply against government. It must be personal knowledge of the Solicitor General himself. And so if you change the person of the Solicitor General, the period continues to always be fresh. It's a never prescriptible, a completely imprescriptible action. So you jeopardize the jobs of the justices, the judges and all gov't employees. You allow selected targeting against the Chief Justice for reasons that are very obvious now and you destroy the legal profession"*

	- On the effect of the *quo warranto* petition, CJOL Sereno said that all incumbent judges and justices would be prejudiced because their qualifications may suddenly be reviewed. - *"The SC itself really wanted to examine every little thing I did in the past in the hope that they would find something scandalous about my life..."* - *"It also prejudices more than 2000 judges and justices that are already sitting now because all of their qualifications may suddenly be reviewed. The JBC was wrong to waive this qualification for this position. I can tell you as a matter of record that of my colleagues, I know that several of them have had their qualifications, their inability to submit documentary requirements, waived. Several of them. So if the JBC was correct in saying that an attempt to submit the requirements, the good faith accorded to those who had missing requirements, should be accorded to 14 of us, including those who have complained loudly against me among my colleagues, why am I the only one being singled out? The rules of inability to submit all the SALNs were waived in favor of 14 out of 20 applicants. 6 out of the 8 were shortlisted. Why is the rule being invoked only against me? And so it would appear that this is selected targeting"*

These public utterances did not only tend to arouse public opinion on the matter but as can be clearly gleaned from the tenor of the statements, such comments, speeches, and interviews given by the respondent in different forums indisputably tend to tarnish the Court's integrity and unfairly attributed false motives against its Members. Particularly, in several occasions, respondent insinuated the following: (i) that the grant of the

quo warranto petition will result to dictatorship; (ii) in filing the *quo warranto* petition, the livelihood and safety of others are likewise in danger; (iii) that the people could no longer rely on the Court's impartiality; and (iv) that she could not expect fairness from the Court in resolving the *quo warranto* petition against her.

Thus, while it may be true that the *quo warranto* case was controversial and naturally invited public attention to itself without necessity of respondent's statements, the fact remains that respondent, who is a lawyer and who was then asserting right to the highest position in the Judiciary, succumbed to and participated in the affray that diverted the *quo warranto* proceeding from its primary purpose and created a great deal of antipathy from the public to the Court and its Members.

In yet another attempt to evade sanctions for her public utterances concerning the *quo warranto* petition, respondent claims that she merely echoed her arguments in her pleadings submitted before this Court and that the same could not have influenced the outcome of the case nor caused obfuscation of the issues therein since the issues to which the utterances relate are the very same issues raised by the parties in their pleadings, invoking *P/Supt. Marantan*,[33] wherein the Court ruled that therein respondents' statement of their opinion were mere reiterations of their position in a related case, which according to the Court was not malicious and does not even tend to influence the court.

Respondent's reliance thereon, however, was misplaced and finds no application in the present case. In *P/Supt. Marantan*,[34] the subject public statements were indeed a reiteration of therein respondent's position in the related criminal case. A reading of the questioned public utterances in the said case would show that they were merely expressions of the victims' families and their counsel's opinion and position in the criminal case that P/Supt. Marantan perpetrated the murder of the victims.

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[33] *Supra* note 25.

[34] *Id*.

In the case at hand, as can be clearly seen from respondent's afore-quoted statements, respondent unquestionably directed her statements to the merits of the *quo warranto* case, to influence the public and the Members of the Court, and to attack the dignity and authority of the institution. Perhaps, to an unwilling mind, it may be argued that the public statements expressed by respondent were without the intention of prejudging the matters or issues that are before the Court. However, a scrutiny thereof clearly demonstrates that her statements went beyond the supposed arguments and contentions contained in her pleadings. To cite an example, respondent never alleged or argued in her pleadings nor during the Oral Argument, as she knows the ethical issues that would entail if she did, that the grant of the *quo warranto* petition would result into dictatorship and would destroy the judiciary, but she did during one of her public speeches as cited above.

Third. Respondent then proceeded to advance the argument that her public statements were actually aimed to discharge her duty as a Justice and a lawyer to uphold the Constitution and promote respect for the law and legal processes pursuant to the CPR and the NCJC. This is a desperate and convoluted, if not an absurd, argument to elude liability. Respondent's actions and statements are far from being an innocent discharge of duty of upholding the Constitution, the laws, rules, and legal processes. On the contrary, they were direct and loaded attacks to the Court and its Members, which constitute a blatant disrespect to the institution. Respondent cannot justify her attacks against the Court under the guise of merely discharging her duties as a Justice and a member of the Bar. No matter how passionate a lawyer is towards defending his cause or what he believes in, he must not forget to display the appropriate decorum expected of him, being a member of the legal profession, and to continue to afford proper and utmost respect due to the courts.[35] As the nation's then highest-ranking judicial official, it is with more reason that respondent is expected to have exercised extreme

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[35] *Ret. Judge Virgilio Alpajora v. Atty. Ronaldo Antonio V. Calayan*, A.C. No. 8208, January 10, 2018.

caution in giving her opinions and observed genuine confidence to the Court's processes.

As aptly and eloquently concluded by Justice Marvic M.V.F. Leonen in his Dissenting Opinion in the *quo warranto* case, respondent, not only as a member of the Bar, but more importantly, as Chief Justice of the Court, must exemplify the highest degree of leadership, and must refrain from activities that will tend to cause unwarranted attacks against the Court. Relevant portions thereof read:

> This dissent, however, should not be read as a shield for the respondent to be accountable for her actions.
>
> x x x x x x x x x
>
> Unfortunately, in her efforts to save her tenure of public office she held as a privilege, this nuance relating to this Court's role in the constitutional democracy may have been lost on the respondent. She may have created too much of a political narrative which elided her own accountability and backgrounded her responsibilities as a member of this Court.
>
> Ideally, a justice must be slow to make public statements, always careful that the facts before her may not be the entire reality. The conclusion that the initial effort to hold her to account for her acts was an attack on the entire judiciary itself should have been a judgment that should have been carefully weighed.
>
> **It was unfortunate that this seemed to have created the impression that she rallied those in political movements with their own agenda, tolerating attacks on her colleagues in social and traditional media. She may have broken the expectations we have had on parties to cases by speaking *sub judice* on the merits of the *Quo Warranto* Petition and her predictions on its outcome. She may not have met the reasonable expectation of a magistrate and a Chief Justice that, whatever the reasons and even at the cost of her own personal discomfort, she — as the leader of the Court — should not be the first to cause public shame and humiliation of her colleagues and the institution she represents.**
>
> x x x x x x x x x
>
> This Court has its faults, and I have on many occasions written impassioned dissents against my esteemed colleagues. **But, there**

have always been just, legal, and right ways to do the right thing. As a Member of this Court, it should be reason that prevails. We should maintain the highest levels of ethics and professional courtesy even as we remain authentic to our convictions as to the right way of reading the law. Despite our most solid belief that we are right, we should still have the humility to be open to the possibility that others may not see it our way. As mature magistrates, we should be aware that many of the reforms we envision will take time.

False narratives designed to simplify and demonize an entire institution and the attribution of false motives is not the mark of responsible citizenship. Certainly, it is not what this country expects from any justice. Courts are sanctuaries of all rights. There are many cases pending in this Court where those who have much less grandeur than the respondent seek succor. **Every judicial institution, every Justice of this Court, will have weaknesses as well as strengths. We should address the weaknesses tirelessly but with respect.** We should likewise acknowledge the strengths which we intend to preserve. No court is perfect. All courts need reform.

It is reasonable to expect that the Chief Justice should have the broadest equanimity, to have an open mind, and to show leadership by being the first to defend her Court against underserved, speculative, callous, *ad hominem*, and irrelevant attacks on their personal reputation. She should be at the forefront to defend the Court against unfounded speculation and attacks. Unfortunately, in her campaign for victory in this case, her speeches may have goaded the public to do so and without remorse.

To succeed in discrediting the entire institution for some of its controversial decisions may contribute to weakening the legitimacy of its other opinions to grant succor to those oppressed and to those who suffer injustice.[36] (Emphasis ours)

Truth be told, respondent miserably failed to discharge her duty as a member of the Bar to observe and maintain the respect

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[36] Dissenting Opinion of Justice Leonen in *Republic of the Philippines, represented by Solicitor General Jose C. Calida v. Maria Lourdes P. A. Sereno*, G.R. No. 237428, May 11, 2018.

due to the court and its officers. Specifically, respondent violated CANON 11 of the CPR, which states that:

CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

In *Montencillo v. Gica*,[37] the Court emphasized the importance of observing and maintaining the respect due to the Courts and to its judicial officers, to wit:

> It is the duty of the lawyer to maintain towards the courts a respectful attitude. As an officer of the court, it is his duty to uphold the dignity and authority of the court to which he owes fidelity, according to the oath he has taken. Respect for the courts guarantees the stability of our democratic institutions which, without such respect, would be resting on a very shaky foundation.[38] (Citations omitted)

Fourth. Respondent points out certain circumstances to justify her violative actions and statements.

It is respondent's position that her act of speaking in public was justified since there was a series of onslaught on her integrity over the media coming from no less than the Solicitor General himself. Further, respondent insists that newsman, Jomar Canlas, publicized information to condition the minds of the public that she should be removed from office.

We do not agree.

The tenor of the statements made by the Solicitor General, as well as the newsman, was never made to challenge the Court's authority or to undermine its ability to pass judgment with impartiality. Neither were those statements aimed at criticizing the professional competence and responsibility of the magistrates as well as the Court as a collegial body. Put differently, those statements had nothing to do with assailing the capacity of this

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[37] 158 Phil. 443 (1974).

[38] *Id*. at 453.

Court to render justice according to law, which is what the respondent has been doing through her public speeches.

At most, the Solicitor General's statements are the harmless statements contemplated in the case of *P/Supt. Marantan*, *i.e.*, mere reiterations of the Republic's position in the *quo warranto* case.

On the other hand, the newsman's questioned statements are nothing but a publication of reports on the status of the case, whether true or not, which on its face notably comes within the purview of the freedom of the press. Besides, as We have been emphasizing, an ordinary citizen's action cannot be judged with the same standard on this matter as that of a member of the Bar and Bench. Also, whether or not the Solicitor General or any newsman attacked respondent finds no relevance to her liability for her violative actions and statements. At the risk of being repetitive, it bears stressing that lawyers, as first and foremost officers of the court, must never behave in such a way that would diminish the sanctity and dignity of the courts even when confronted with rudeness and insolence.[39]

We also give short shrift to respondent's contention that she was denied due process despite her repeated demands to be heard, hence, she resorted to bringing her case to the public. Recall that this matter has already been squarely addressed by this Court in its decision in the *quo warranto* case. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[40]

Suffice it to say, in this case, respondent has been given several opportunities to explain her side. Records show that the Congress invited her to shed light on the accusations hurled against her but she never heeded the invitation. Likewise, the

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[39] *Bajar v. Baterisna*, 531 Phil. 229, 236 (2006).

[40] *Office of the Ombudsman v. Reyes*, 674 Phil. 416, 432 (2011), citing *F/O Ledesma v. Court of Appeals*, 565 Phil. 731, 740 (2007).

Court gave her the opportunity to comment on the petition and file several motions in the *quo warranto* case. A special hearing for her requested oral argument was even conducted during the Court's Baguio session last April of this year. During the hearing, she was given the chance to answer several questions from her colleagues. In fact, she even freely raised questions on some of the magistrates present during the hearing. Undeniably, she was accorded due process not only through her written pleadings, but also during the special hearing wherein she voluntarily participated. These facts militate against her claim of denial of due process.

At this point, this Court leaves an essential reminder to members of the Bar and the Bench alike: all lawyers should take heed that they are licensed officers of the courts who are mandated to maintain the dignity of the legal profession and the integrity of the judicial institution to which they owe fidelity according to the oath they have taken, hence, they must conduct themselves honorably and fairly in all circumstances.[41] It is one thing to show courage and another to display arrogance; it is one thing to demonstrate passion and another to exude heedless overzealousness. To be clear, this Court is not undermining the right of lawyers, as officers of the court and as citizens, to criticize the acts of courts and judges, as well as discuss issues of transcendental importance. However, they should be circumspect of their actions and statements, thus such criticisms and discussions should only be done in a proper and legally-accepted manner. The use of unnecessary language and means is proscribed if we are to promote high esteem in the courts and trust in judicial administration.[42]

All told, as shown by the above circumstances, respondent's reckless behavior of imputing ill motives and malice to the Court's process is plainly evident in the present case. Her public statements covered by different media organizations incontrovertibly brings the Court in a position of disrepute and

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[41] *Atty. Barandon, Jr. v. Atty. Ferrer, Sr.*, 630 Phil. 524, 532 (2010).

[42] *Judge Pantanosas v. Atty. Pamatong*, 787 Phil. 86, 98 (2016).

disrespect, a patent transgression of the very ethics that members of the Bar are sworn to uphold. This, the Court cannot countenance.

Respondent's liability having been established, We come now to the proper sanction to be imposed considering the gravity of her offense, as well as the circumstances surrounding this case.

In *Re: Suspension of Atty. Rogelio Z. Bagabuyo*,[43] this Court imposed the penalty of suspension from the practice of law for one year for therein respondent's act of resorting to the press instead of availing himself only of judicial remedies in airing out his grievances. The Court ruled:

> Lawyers are licensed officers of the courts who are empowered to appear, prosecute and defend; and upon whom peculiar duties, responsibilities and liabilities are devolved by law as a consequence. Membership in the bar imposes upon them certain obligations. Canon 11 of the Code of Professional Responsibility mandates a lawyer to "observe and maintain the respect due to the courts and to judicial officers and [he] should insist on similar conduct by others." Rule 11.05 of Canon 11 states that a lawyer "shall submit grievances against a judge to the proper authorities only."
>
> Respondent violated Rule 11.05 of Canon 11 when he admittedly caused the holding of a press conference where he made statements against the Order dated November 12, 2002 allowing the accused in Crim. Case No. 5144 to be released on bail.
>
> Respondent also violated Canon 11 when he indirectly stated that Judge Tan was displaying judicial arrogance in the article entitled, *Senior prosecutor lambasts Surigao judge for allowing murder suspect to bail out*, which appeared in the August 18, 2003 issue of the Mindanao Gold Star Daily. Respondent's statements in the article, which were made while Crim. Case No. 5144 was still pending in court, also violated Rule 13.02 of Canon 13, which states that "a lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party."

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[43] 561 Phil. 325 (2007).

In regard to the radio interview given to Tony Consing, respondent violated Rule 11.05 of Canon 11 of the Code of Professional Responsibility for not resorting to the proper authorities only for redress of his grievances against Judge Tan. Respondent also violated Canon 11 for his disrespect of the court and its officer when he stated that Judge Tan was ignorant of the law, that as a mahjong *aficionado*, he was studying mahjong instead of studying the law, and that he was a liar.

Respondent also violated the Lawyers Oath, as he has sworn to "conduct [himself] as a lawyer according to the best of [his] knowledge and discretion with all good fidelity as well to the courts as to [his] clients."

As a senior state prosecutor and officer of the court, respondent should have set the example of observing and maintaining the respect due to the courts and to judicial officers. x x x

x x x x x x x x x

The Court is not against lawyers raising grievances against erring judges but the rules clearly provide for the proper venue and procedure for doing so, precisely because respect for the institution must always be maintained.[44] (Citations omitted and italics in the original)

In *Judge Pantanosas v. Atty. Pamatong*,[45] respondent was suspended for two years for stating slanderous remarks in public against the judge and for resorting to the press for his grievances against the said judge while the case that he filed against the latter was already pending. The Court concluded its ruling with the following statements:

In closing, we find it befitting to reiterate that lawyers have the right, both as an officer of the court and as a citizen, to criticize in properly respectful terms and through legitimate channels the acts of courts and judges. However, closely linked to such rule is the cardinal condition that criticisms, no matter how truthful, shall not spill over the walls of decency and propriety. To that end, the duty of a lawyer to his client's success is wholly subordinate to the administration of justice.

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[44] *Id.* at 339-341.

[45] 787 Phil. 86 (2016).

True, lawyers must always remain vigilant against unscrupulous officers of the law. However, the purification of our justice system from venal elements must not come at the expense of decency, and worse, the discrediting of the very system that it seeks to protect.[46] (Citations omitted)

In exercising its disciplinary authority in administrative matters, however, this Court has always kept in mind that lawyers should not be hastily disciplined or penalized. In administrative proceedings against lawyers, this Court is always guided by this principle, that is:

The power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons and only on clear cases of misconduct which seriously affect the standing and character of the lawyer as an officer of the court and member of the Bar. Only those acts which cause loss of moral character should merit disbarment or suspension, while those acts which neither affect nor erode the moral character of the lawyer should only justify a lesser sanction unless they are of such nature and to such extent as to clearly show the lawyer's unfitness to continue in the practice of law. The dubious character of the act charged as well as the motivation which induced the lawyer to commit it must be clearly demonstrated before suspension or disbarment is meted out. The mitigating or aggravating circumstances that attended the commission of the offense should also be considered.[47] (Citation omitted)

In *Advincula v. Atty. Macabata*,[48] the Court further explained:

The question as to what disciplinary sanction should be imposed against a lawyer found guilty of misconduct requires consideration of a number of factors. When deciding upon the appropriate sanction, the Court must consider that the primary purposes of disciplinary proceedings are to protect the public; to foster public confidence in the Bar; to preserve the integrity of the profession; and to deter other

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[46] *Id.* at 99-100.

[47] *Advincula v. Atty. Macabata*, 546 Phil. 431, 447-448 (2007).

[48] 546 Phil. 431 (2007).

lawyers from similar misconduct. Disciplinary proceedings are means of protecting the administration of justice by requiring those who carry out this important function to be competent, honorable and reliable men in whom courts and clients may repose confidence. While it is discretionary upon the Court to impose a particular sanction that it may deem proper against an erring lawyer, it should neither be arbitrary and despotic nor motivated by personal animosity or prejudice, but should ever be controlled by the imperative need to scrupulously guard the purity and independence of the bar and to exact from the lawyer strict compliance with his duties to the court, to his client, to his brethren in the profession and to the public.[49] (Citations omitted)

Indeed, "lawyer discipline x x x is not meant to punish; rather, its purpose is to protect clients, the public, the courts, and the legal profession."[50] Conviction, punishment, retribution, much less, denigration have no place in administrative proceedings against lawyers.

Guided by the foregoing, despite the severity of the offenses committed by respondent, We are constrained to suspend the application of the full force of the law and impose a lighter penalty. Mindful of the fact that respondent was removed and disqualified as Chief Justice as a result of *quo warranto* proceedings, suspending her further from law practice would be too severe to ruin the career and future of respondent. We are also not inclined to merely disregard respondent's length of service in the government, specifically, when she was teaching in the University of the Philippines, as well as during her incumbency in this Court. Further, the fact that, per available record, respondent has not been previously found administratively liable is significant in determining the

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

[50] Fred C. Zacharias, THE PURPOSE OF LAWYER DISCIPLINE, 45 Wm. & Mary L. Rev.675 (2003) citing James Duke Cameron, STANDARDS FOR IMPOSING LAWYER SANCTIONS-A LONG OVERDUE DOCUMENT, 19 ARIZ. ST. L.J. 91 (1987) (discussing the ABA Standards for Imposing Lawyer Sanctions, at 97.

imposable penalty. These factors have always been considered by the Court in the determination of proper sanctions in such administrative cases.[51] This Court is not merciless and opts to dispense judicial clemency even if not sought by respondent.

To be clear, however, this accommodation is not a condonation of respondent's wrongdoings but a second chance for respondent to mend her ways, express remorse for her disgraceful conduct, and be forthright to set an example for all law-abiding members of the legal profession. The legal profession is a noble profession: as a former Member of this Court, it is incumbent upon respondent to exemplify respect, obedience, and adherence to this institution. This judicial temperance is not unprecedented as this Court has in several cases reduced the imposable penalties so that erring lawyers are encouraged to repent, reform, and be rehabilitated.

Henceforth, respondent is expected to be more circumspect, discerning, and respectful to the Court in all her utterances and actions. Respondent is reminded that the practice of law is neither a natural right nor a Constitutional right demandable or enforceable by law. It is a mere privilege granted by this Court premised on continuing good behavior and ethical conduct, which privilege can be revoked or cancelled by this Court for just cause.

WHEREFORE, in view of the foregoing, respondent Maria Lourdes P. A. Sereno is found guilty of violating CANON 13, Rule 13.02, and CANON 11 of the Code of Professional Responsibility, Sections 3, 7, and 8 of CANON 1, Sections 1 and 2 of CANON 2, Sections 2 and 4 of CANON 3, and Sections 2 and 6 of CANON 4 of the New Code of Judicial Conduct for the Philippine Judiciary. Thereby, after deep reflection and deliberation, in lieu of suspension, respondent is

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[51] See *Andres, et al. v. Atty. Nambi*, 755 Phil. 225 (2015); *Castro-Justo v. Atty. Galing*, 676 Phil. 139 (2011); *Plus Builders, Inc., et al. v. Atty. Revilla, Jr.*, 598 Phil. 255 (2009); *Pena v. Atty. Aparicio*, 552 Phil. 512 (2007); *Spouses Williams v. Atty. Enriquez*, 518 Phil. 372 (2006); *Civil Service Commission v. Cortez*, 474 Phil. 670 (2004).

meted the penalty of **REPRIMAND** with a **STERN WARNING** that a repetition of a similar offense or any offense violative of the Lawyer's Oath and the Code of Professional Responsibility shall merit a heavier penalty of a fine and/or suspension or disbarment.

This judgment is final and executory. No further motions for reconsideration or any further pleadings shall hereafter be entertained.

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

SO ORDERED.

Carpio, Senior Associate Justice, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Leonen, Jardeleza, Caguioa, Martires, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Velasco, Jr., J., no part, prior action in related case.

Perlas-Bernabe, J., on official business.

EN BANC

[G.R. No. 202275. July 17, 2018]

THE PROVINCIAL BUS OPERATORS ASSOCIATION OF THE PHILIPPINES (PBOAP), THE SOUTHERN LUZON BUS OPERATORS ASSOCIATION, INC. (SO-LUBOA), THE INTER CITY BUS OPERATORS ASSOCIATION (INTERBOA), and THE CITY OF SAN JOSE DEL MONTE BUS OPERATORS ASSOCIATION (CSJDMBOA), *petitioners, vs.* **DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) and LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB),** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE ACTIONS REVIEWABLE BY THE SUPREME COURT MAY EITHER BE QUASI-LEGISLATIVE OR QUASI-JUDICIAL, HENCE, DETERMINING WHETHER THE ACT UNDER REVIEW IS QUASI-LEGISLATIVE OR QUASI-JUDICIAL IS NECESSARY TO KNOW WHEN JUDICIAL REMEDIES MAY PROPERLY BE AVAILED OF; EXPLAINED.— Our governmental structure rests on the principle of separation of powers. Under our constitutional order, the legislative branch enacts law, the executive branch implements the law, and the judiciary construes the law. In reality, however, the powers are not as strictly confined or delineated to each branch. "[T]he growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws" require the delegation of powers traditionally belonging to the legislative to administrative agencies. The legislature may likewise apportion competencies or jurisdictions to administrative agencies over certain conflicts involving special technical expertise. Administrative actions reviewable by this Court, therefore, may either be quasi-legislative or quasi-judicial. As the name implies, quasi-legislative or rule-

making power is the power of an administrative agency to make rules and regulations that have the force and effect of law so long as they are issued "within the confines of the granting statute." The enabling law must be complete, with sufficient standards to guide the administrative agency in exercising its rule-making power. As an exception to the rule on non-delegation of legislative power, administrative rules and regulations must be "germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law." In *Pangasinan Transportation Co., Inc. v. The Public Service Commission*, this Court recognized the constitutional permissibility of the grant of quasi-legislative powers to administrative agencies, x x x On the other hand, quasi-judicial or administrative adjudicatory power is "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law." The constitutional permissibility of the grant of quasi-judicial powers to administrative agencies has been likewise recognized by this Court. In the 1931 case of *The Municipal Council of Lemery, Batangas v. The Provincial Board of Batangas*, this Court declared that the power of the Municipal Board of Lemery to approve or disapprove a municipal resolution or ordinance is quasi-judicial in nature and, consequently, may be the subject of a certiorari proceeding. Determining whether the act under review is quasi-legislative or quasi-judicial is necessary in determining *when* judicial remedies may properly be availed of. Rules issued in the exercise of an administrative agency's quasi-legislative power may be taken cognizance of by courts *on the first instance* as part of their judicial power, x x x However, in cases involving quasi-judicial acts, Congress may require certain quasi-judicial agencies to first take cognizance of the case before resort to judicial remedies may be allowed. This is to take advantage of the special technical expertise possessed by administrative agencies. *Pambujan Sur United Mine Workers v. Samar Mining Company, Inc*. explained the doctrine of primary administrative jurisdiction.

2. ID.; ID.; DOCTRINE OF PRIMARY JURISDICTION AND DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; DISTINGUISHED.— Usually contrasted with the doctrine of primary jurisdiction is the doctrine of exhaustion of administrative remedies. Though both concepts aim to

maximize the special technical knowledge of administrative agencies, the doctrine of primary administrative jurisdiction requires courts to not resolve or "determine a controversy involving a question which is within the jurisdiction of an administrative tribunal." The issue is jurisdictional and the court, when confronted with a case under the jurisdiction of an administrative agency, has no option but to dismiss it. In contrast, exhaustion of administrative remedies requires parties to exhaust all the remedies in the administrative machinery before resorting to judicial remedies. The doctrine of exhaustion presupposes that the court and the administrative agency have concurrent jurisdiction to take cognizance of a matter. However, in deference to the special and technical expertise of the administrative agency, courts must yield to the administrative agency by suspending the proceedings. As such, parties must exhaust all the remedies within the administrative machinery before resort to courts is allowed.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; DOCTRINE OF HIERARCHY OF COURTS; UNDER THE DOCTRINE OF HIERARCHY OF COURTS, THE SUPREME COURT'S ORIGINAL JURISDICTION OVER PETITIONS FOR *CERTIORARI* AND PROHIBITION MAY ONLY BE INVOKED FOR SPECIAL REASONS; ELUCIDATED.— While resort to courts may directly be availed of in questioning the constitutionality of an administrative rule, parties may not proceed directly before *this* Court, regardless of its original jurisdiction over certain matters. This Court's original jurisdiction over petitions for certiorari and prohibition may only be invoked for special reasons under the doctrine of hierarchy of courts. The doctrine of hierarchy of courts requires that recourse must first be obtained from lower courts sharing concurrent jurisdiction with a higher court. This is to ensure that this Court remains *a court of last resort* so as to "satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition." x x x For this Court to take cognizance of original actions, parties must clearly and specifically allege in their petitions the special and important reasons for such direct invocation. One such special reason is that the case requires "the proper legal interpretation of constitutional and statutory provisions." Cases of national interest and of serious implications,

and those of transcendental importance and of first impression have likewise been resolved by this Court on the first instance. In exceptional cases, this Court has also overlooked the rule to decide cases that have been pending for a sufficient period of time. This Court has resolved original actions which could have been resolved by the lower courts in the interest of speedy justice and avoidance of delay. Generally, the rule on hierarchy of courts may be relaxed when "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy." For all other cases, the parties must have exhausted the remedies available before the lower courts. A petition filed in violation of the doctrine shall be dismissed.

4. POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; THE CONSTITUTION REQUIRES AN ACTUAL CONTROVERSY FOR THE EXERCISE OF JUDICIAL POWER; WHEN A CONTROVERSY IS SAID TO BE JUSTICIABLE; ELEMENTS; NOT PRESENT IN CASE AT BAR.— No less than the Constitution in Article VIII, Section 1 requires an actual controversy for the exercise of judicial power: x x x As a rule, "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case. An actual case or controversy is "one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution." A case is justiciable if the issues presented are "definite and concrete, touching on the legal relations of parties having adverse legal interests." The conflict must be ripe for judicial determination, not conjectural or anticipatory; otherwise, this Court's decision will amount to an advisory opinion concerning legislative or executive action. x x x Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to

provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. x x x In other words, for there to be a real conflict between the parties, *there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.* x x x There being no actual facts from which this Court could conclude that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are unconstitutional, this case presents no actual controversy.

5. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO ACTIONS; *LOCUS STANDI;* LEGAL STANDING OR *LOCUS STANDI* IS THE RIGHT OF APPEARANCE IN A COURT OF JUSTICE ON A GIVEN QUESTION.— Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question." To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged." The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." x x x Standing in private suits requires that actions be prosecuted or defended in the name of the real party-in-interest, interest being "material interest or an interest in issue to be affected by the decree or judgment of the case[,] [not just] mere curiosity about the question involved." Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest."

6. ID.; ID.; ID.; ID.; THOSE WHO BRING THE SUIT MUST POSSESS THEIR OWN RIGHT TO THE RELIEF SOUGHT; EXCEPTIONS; ELUCIDATED.— Those who bring the suit must possess their own right to the relief sought. Like any rule, the rule on legal standing has exceptions. This Court has taken cognizance of petitions filed by those who have no personal or substantial interest in the challenged governmental act but whose petitions nevertheless raise "constitutional issue[s] of critical significance." This Court summarized the requirements for granting legal standing to "non-traditional suitors" in *Funa v. Villar*, thus: 1.) For *taxpayers*, there must be a claim of illegal

disbursement of public funds or that the tax measure is unconstitutional; 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question; 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators. Another exception is the concept of third-party standing. Under this concept, actions may be brought on behalf of third parties provided the following criteria are met: first, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute"; second, "the party must have a close relation to the third party"; and third, "there must exist some hindrance to the third party's ability to protect his or her own interests."

7. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS OF LAW; COMPLIANCE WITH BOTH PROCEDURAL AND SUBSTANTIVE DUE PROCESS IS REQUIRED; EXPLAINED.— Despite the debate on the historical meaning of "due process of law," compliance with both procedural and substantive due process is required in this jurisdiction. The first aspect of due process—procedural due process — "concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere." It requires notice and hearing, x x x It is said that due process means "a law which hears before it condemns." The "law" in the due process clause includes not only statute but also rules issued in the valid exercise of an administrative agency's quasi-legislative power. What procedural due process requires depends on the nature of the action. x x x However, notice and hearing are not required when an administrative agency exercises its quasi-legislative power. The reason is that in the exercise of quasi-legislative power, the administrative agency makes no "determination of past events or facts." The other aspect of due process—substantive due process—requires that laws be grounded on reason and be free from arbitrariness. The government must have "sufficient justification for depriving a person of life, liberty, or property." x x x Essentially, substantive due process is satisfied if the deprivation is done in the exercise of the police power of the State. Called "the most essential, insistent and illimitable" of

the powers of the State, police power is the "authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."

8. ID.; ID.; ID.; ID.; DEPARTMENT ORDER NO. 118-12 AND MEMORANDUM CIRCULAR NO. 2012-001 OF THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE) ARE IN THE NATURE OF SOCIAL LEGISLATIONS TO ENHANCE THE ECONOMIC STATUS OF BUS DRIVERS AND CONDUCTORS, AND TO PROMOTE THE GENERAL WELFARE OF THE RIDING PUBLIC, WHICH ARE REASONABLE AND NOT VIOLATIVE OF DUE PROCESS; SUSTAINED.— Laws requiring the payment of minimum wage, security of tenure, and traffic safety have been declared not violative of due process for being valid police power legislations. In these cases, the test or standard is whether the law is reasonable. The interests of the State to promote the general welfare, on the one hand, and the right to property, on the other, must be balanced. x x x Department Order No. 118-12 and Memorandum Circular No. 2012-001 are reasonable and are valid police power issuances. The pressing need for Department Order No. 118-12 is obvious considering petitioners' admission that the payment schemes prior to the Order's promulgation consisted of the "payment by results," the "commission basis," or the boundary system. These payment schemes do not guarantee the payment of minimum wages to bus drivers and conductors. There is also no mention of payment of social welfare benefits to bus drivers and conductors under these payment schemes which have allegedly been in effect since "time immemorial." There can be no meaningful implementation of Department Order No. 118-12 if violating it has no consequence. As such, the LTFRB was not unreasonable when it required bus operators to comply with the part-fixed-part-performance-based payment scheme under pain of revocation of their certificates of public convenience. The LTFRB has required applicants or current holders of franchises to comply with labor standards as regards their employees, and bus operators must be reminded that certificates of public convenience are not property. Certificates of public convenience are franchises always subject to amendment, repeal, or cancellation. Additional requirements may be added for their issuance, and there can be no violation of due process when a franchise is cancelled for

non-compliance with the new requirement. x x x In sum, Department Order No. 118-12 and Memorandum Circular No. 2012-001 are in the nature of social legislations to enhance the economic status of bus drivers and conductors, and to promote the general welfare of the riding public. They are reasonable and are not violative of due process.

9. ID.; ID.; ID.; NON-IMPAIRMENT CLAUSE; CONTRACTS WHOSE SUBJECT MATTERS ARE SO RELATED TO THE PUBLIC WELFARE ARE SUBJECT TO THE POLICE POWER OF THE STATE AND, THEREFORE, SOME OF ITS TERMS MAY BE CHANGED OR THE WHOLE CONTRACT MAY EVEN BE SET ASIDE WITHOUT OFFENDING THE CONSTITUTION, APPLICATION IN CASE AT BAR.— There is an impairment when, either by statute or any administrative rule issued in the exercise of the agency's quasi-legislative power, the terms of the contracts are changed either in the time or mode of the performance of the obligation. There is likewise impairment when new conditions are imposed or existing conditions are dispensed with. Not all contracts, however, are protected under the non-impairment clause. Contracts whose subject matters are so related to the public welfare are subject to the police power of the State and, therefore, some of its terms may be changed or the whole contract even set aside without offending the Constitution; otherwise, "important and valuable reforms may be precluded by the simple device of entering into contracts for the purpose of doing that which otherwise may be prohibited." Likewise, contracts which relate to rights not considered property, such as a franchise or permit, are also not protected by the non-impairment clause. The reason is that the public right or franchise is always subject to amendment or repeal by the State, the grant being a mere privilege. In other words, there can be no vested right in the continued grant of a franchise. Additional conditions for the grant of the franchise may be made and the grantee cannot claim impairment. x x x By statutory declaration, labor contracts are impressed with public interest and, therefore, must yield to the common good. Labor contracts are subject to special laws on wages, working conditions, hours of labor, and similar subjects. In other words, labor contracts are subject to the police power of the State. As previously discussed on the part on due process, Department Order No. 118-12 was issued to grant bus drivers and conductors minimum wages and social welfare benefits.

Further, petitioners repeatedly admitted that in paying their bus drivers and conductors, they employ the boundary system or commission basis, payment schemes which cause drivers to drive recklessly. Not only does Department Order No. 118-12 aim to uplift the economic status of bus drivers and conductors; it also promotes road and traffic safety. Further, certificates of public convenience granted to bus operators are subject to amendment. When certificates of public convenience were granted in 2012, Memorandum Circular No. 2011-004 on the "Revised Terms and Conditions of [Certificates of Public Convenience] and Providing Penalties for Violations Thereof" was already in place. This Memorandum Circular, issued before Memorandum Circular No. 2012-001, already required public utility vehicle operators to comply with labor and social legislations. Franchise holders cannot object to the reiteration made in Memorandum Circular No. 2012-001. All told, there is no violation of the non-impairment clause.

10. ID.; ID.; ID.; EQUAL PROTECTION OF THE LAW; THE EQUAL PROTECTION CLAUSE DOES NOT PREVENT THE LEGISLATURE FROM ENACTING LAWS MAKING VALID CLASSIFICATIONS; CASE AT BAR.— "Equal protection of the laws" requires that "all persons . . . be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced." "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities." However, the clause does not prevent the legislature from enacting laws making valid classifications. Classification is "the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars." To be valid, the classification must be: first, based on "substantial distinctions which make real differences"; second, it must be "germane to the purposes of the law"; third, it must "not be limited to existing conditions only"; and fourth, it must apply to each member of the class. x x x In the present case, petitioners' sole claim on their equal protection argument is that the initial implementation of Department Order No. 118-12 in Metro Manila "is not only discriminatory but is also prejudicial to petitioners." However,

petitioners did not even bother explaining how exactly Department Order No. 118-12 infringed on their right to equal protection. At any rate, the initial implementation of Department Order No. 118-12 is not violative of the equal protection clause. In *Taxicab Operators of Metro Manila, Inc. v. The Board of Transportation*, this Court upheld the initial implementation of the phase-out of old taxicab units in Metro Manila because of the "heavier traffic pressure and more constant use" of the roads. The difference in the traffic conditions in Metro Manila and in other parts of the country presented a substantial distinction. The same substantial distinction can be inferred here. Department Order No. 118-12 has also been implemented in other parts of the country.

APPEARANCES OF COUNSEL

Leonides S. Respicio & Associates Law Office for petitioners.
The Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

Government created policy based on the finding that the boundary payment scheme that has since determined the take-home pay of bus drivers and conductors has been proven inadequate in providing our public utility bus drivers and conductors a decent and living wage. It decided that this was the best approach to ensure that they get the economic and social welfare benefits that they deserve. This Court will not stand in its way. Policy questions are not what this Court decides.

This resolves an original action for certiorari and prohibition, assailing the constitutionality of the following:

First, the Department of Labor and Employment (DOLE) Department Order No. 118-12, otherwise known as the Rules and Regulations Governing the Employment and Working Conditions of Drivers and Conductors in the Public Utility Bus Transport Industry;

Second, all the implementing guidelines issued pursuant to Department Order No. 118-12, including the National Wages and Productivity Commission's Guidelines No. 1, series of 2012, otherwise known as the Operational Guidelines on Department Order No. 118-12; and

Finally, the Land Transportation Franchising and Regulatory Board (LTFRB) Memorandum Circular No. 2012-001, the subject of which is the Labor Standards Compliance Certificate.

Petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., Inter City Bus Operators Association, and City of San Jose Del Monte Bus Operators Association (collectively, petitioners) argue that Department Order No. 118-12 and Memorandum Circular No. 2012-001 violate the constitutional rights of public utility bus operators to due process of law, equal protection of the laws, and non-impairment of obligation of contracts.

The facts of the case are as follows:

To ensure road safety and address the risk-taking behavior of bus drivers as its declared objective, the LTFRB issued Memorandum Circular No. 2012-001[1] on January 4, 2012, requiring "all Public Utility Bus (PUB) operators . . . to secure Labor Standards Compliance Certificates" under pain of revocation of their existing certificates of public convenience or denial of an application for a new certificate. Memorandum Circular No. 2012-001 more particularly provides:

MEMORANDUM CIRCULAR
NUMBER 2012-001

SUBJECT: LABOR STANDARDS COMPLIANCE CERTIFICATE

This Memorandum Circular covers all Public Utility Bus (PUB) Operators and is being issued to ensure road safety through linking of labor standards compliance with franchise regulation.

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[1] *Rollo,* pp. 36-38.

It is based on a DOLE rapid survey of bus drivers/conductors and operators on the working conditions and compensation schemes in the bus transport sector. The survey results, as validated in a series of focus group discussions with bus operators, drivers, government regulating agencies and experts from the academe in the fields of engineering and traffic psychology, indicate that the risk[-]taking behavior of drivers is associated with the lack of proper training on motor skills, safety and on traffic rules and regulations; poor health due to long work hours and exposure to health hazards and; lack of income security under a purely commission-based compensation scheme. The industry players also cited problems with the enforcement of traffic rules and regulations as well as the franchising and licensing systems.

To strictly enforce this Memorandum Circular, the Board, thru the [Department of Transportation and Communication], shall strengthen cooperation and coordination with the Department of Labor and Employment.

Labor Standards Compliance Certificate

To ensure compliance with the established standards for employment and the Board's policies on the promotion of road safety, all Public Utility Bus (PUB) operators are required to secure Labor Standards Compliance Certificates from the Department of Labor and Employment (DOLE).

The Certificate shall indicate compliance by the PUB operators with all relevant legislations on wages, labor standards, terms and conditions of employment, and such mandatory benefits as may now or in the future be provided under Philippine Labor Laws; **Provided that —**

Compensation Scheme

The compensation scheme set or approved by the DOLE shall cover the PUB drivers and conductors and shall adopt a part-fixed-part-performance[-]based compensation system. The fixed component shall at no time be lower than the applicable minimum wage in the region. The performance[-]based component shall be based on the net income of the operator or bus company and on employee safety records such as that in regard to involvement in road accidents, commission of traffic violations, and observance of the elementary courtesies of the road.

All PUB drivers and conductors shall be entitled to other mandatory compensation such as but not limited to overtime, night shift differential, rest day, holiday, birthday, and service incentive leave pays.

Hours of Work

The number of working hours and rest periods of the drivers and conductors shall be determined taking into consideration the existing conditions, peculiarities and requirements of the transport industry.

Benefits

All PUB drivers and conductors shall likewise be entitled to retirement benefits and to all mandatory social security benefits such as membership in the SSS, Philhealth and Pag-Ibig as specified by law.

Right to Self Organization

The right of the drivers and conductors to organize themselves to advance their interests and welfare shall be encouraged. It shall not in any way be abridged or diminished by way of any agreement or contract entered into in complying with this issuance or in obtaining the Labor Standards Compliance Certificate.

Nothing herein shall be interpreted to mean as precluding the PUB operators and the drivers or conductors from entering into collective bargaining agreements granting them more rights, privileges and benefits.

Company policies and practices, and collective bargaining agreements existing on effectivity of this issuance which grant more rights, privileges, and benefits to the drivers and conductors than herein provided shall continue to be in effect and shall not be diminished by virtue hereof or any subsequent policies or agreements.

The exercise of the right to self-organization shall in no way adversely affect public safety and convenience.

Effectivity

Failure on the part of the PUB operators to secure and submit to the Board by July 30, 2012 the required Labor Standards Certificates shall be a ground for the immediate cancellation or revocation of their franchises/[Certificates of Public Convenience].

No application for new [Certificates of Public Convenience] or renewal of existing [Certificates of Public Convenience] shall thereafter be granted by the Board without the required Certificates.

This Memorandum Circular shall take effect fifteen (15) days following its publication in at least two (2) newspapers of general circulation. Let three (3) copies hereof be filed with the UP [L]aw Center pursuant to Presidential Memorandum Circular No. 11, dated 9 October 1992.

SO ORDERED.

Five (5) days later or on January 9, 2012, the DOLE issued Department Order No. 118-12, elaborating on the part-fixed-part-performance-based compensation system referred to in the LTFRB Memorandum Circular No. 2012-001.[2] Department Order No. 118-12, among others, provides for the rule for computing the fixed and the performance-based component of a public utility bus driver's or conductor's wage. Relevant portions of Department Order No. 118-12 provide:

DEPARTMENT ORDER NO. 118-12
Series of 2012

RULES AND REGULATIONS GOVERNING THE EMPLOYMENT AND WORKING CONDITIONS OF DRIVERS AND CONDUCTORS IN THE PUBLIC UTILITY BUS TRANSPORT INDUSTRY

Pursuant to the provision of Article 5 of the Labor Code of the Philippines, as amended, the following rules and regulations are hereby issued to ensure the protection and welfare of drivers and conductors employed in the public utility bus transport industry:

. . . . . .

RULE II
TERMS AND CONDITIONS OF EMPLOYMENT

SECTION 1. ***Employment Agreement for Drivers and Conductors*****.** — There shall be an agreement in writing between the public utility

[2] *Id*. at 31.

bus owner/operator and the public utility bus driver and/or conductor, which shall include the following terms:

a) Driver['s] or conductor's full name, date of birth or age, address, civil status, and SSS ID no.;

b) Public Utility Bus owner's/operator's name and address;

c) Place where and date when the employment agreement is entered into;

d) Amount of the driver's or conductor's fixed wage and formula used for calculating the performance[-]based compensation in accordance with Rule III (Compensation), as provided hereunder;

e) Hours of work;

f) Wages and wage-related benefits such as overtime pay, holiday pay, premium pay, 13th month pay and leaves;

g) Social security and welfare benefits;

h) Separation and retirement benefits; and

i) Other benefits under existing laws.

The public utility bus owner/operator shall provide the public utility bus driver/conductor the signed and notarized original copy of the agreement.

SECTION 2. ***Minimum Benefits***. — The public utility bus drivers and conductors are entitled to the following benefits:

a) Wages for all actual work during the normal work hours and days shall not be lower than the applicable minimum wage rates. Wages shall be paid at least once every two weeks or twice a month at intervals not exceeding 16 days;

b) Twelve (12) Regular Holidays with pay pursuant to *Republic Act 9849 (An Act Declaring The Tenth Day of Zhul Hijja, The Twelfth Month of The Islamic Calendar, A National Holiday For The Observance of Eidul Adha, Further Amending For The Purpose Section 26, Chapter 7, Book I of Executive Order No. 292, Otherwise Known As The Administrative Code of 1987, As Amended)*. The driver/conductor shall be paid holiday pay of 100% of the minimum wage even if he/she does not report for work,

provided he/she is present or is on leave of absence with pay on the workday immediately preceding the holiday. If the driver/conductor is required to work on said holiday, he/she shall be paid 200% of the minimum wage;

c) Rest day of twenty-four (24) consecutive hours for every six (6) consecutive working days. If the driver/conductor is required to work on a rest day, he/she shall be paid an additional premium pay of 30% of the basic wage. If the driver/conductor is required to work on special days under Republic Act No. 9849, he/she shall also be paid an additional premium pay of 30% of the basic wage. Whenever work is performed on a rest day, which happens to be also a special day, he/she is entitled to an additional 50% of the basic wage;

d) Overtime pay equivalent to at least 25% of the basic wage on ordinary days and 30% on regular holidays, special days and rest days for work beyond eight (8) hours per day;

e) Night shift pay of an additional 10% of the basic wage for work between 10:00 pm and 6:00 am of the following day;

f) Paid service incentive leave of five (5) days for every year of service;

g) 13th month pay pursuant to Presidential Decree No. 851, as amended, which entitles the employee to receive an amount equivalent to 1/12 of the total basic salary earned within the calendar year, not later than 24 December of each year;

h) Paid maternity leave of sixty (60) days for normal delivery or seventy[-]eight (78) days for caesarian section delivery, pursuant to Republic Act No. 8282, otherwise known as the Social Security Act of 1997;

i) Paid paternity leave of seven (7) days, pursuant to Republic Act No. 8187, otherwise known as the Paternity Leave Act of 1996;

j) Paid parental leave of seven (7) days for solo parents pursuant to Republic Act No. 8972, otherwise known as the Solo Parents' Welfare Act of 2000;

k) Paid leave of ten (10) days for victims of violence against women and their children, pursuant to Republic Act No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004;

l) Paid special leave for women who underwent surgery caused by gynecological disorders, pursuant to Republic Act No. 9710, otherwise known as the Magna Carta for Women; and

m) Retirement pay upon reaching the age of sixty (60) or more, pursuant to Republic Act No. 7641.

SECTION 3. ***Hours of Work and Hours of Rest***. — The normal hours of work of a driver and conductor shall not exceed eight (8) hours a day.

If the driver/conductor is required to work overtime, the maximum hours of work shall not exceed twelve (12) hours in any 24-hour period, subject to the overriding safety and operational conditions of the public utility bus.

Drivers and conductors shall be entitled to rest periods of at least one (1) hour, exclusive of meal breaks, within a 12-hour shift.

SECTION 4. ***Right to Security of Tenure*****. —** Drivers and conductors shall enjoy security of tenure in their employment as provided by law. Their employment can only be terminated for just or authorized causes pursuant to the provisions of the Labor Code, as amended.

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RULE III
COMPENSATION

SECTION 1. ***Fixed and Performance[-]Based Compensation Scheme***. — Bus owners and/or operators shall adopt a mutually-agreed upon "part-fixed, part-performance" based compensation scheme for their bus drivers and conductors.

SECTION 2. ***Method of Determining Compensation*****. —** Bus owners and/or operators, in consultation with their drivers and conductors shall determine the following:

[a]) The fixed component shall be based on an amount mutually agreed upon by the owner/operator and the driver/conductor, which shall in no case be lower than the applicable minimum wage for work during normal hours/days. They shall also be entitled to wage[-]related benefits such as overtime pay, premium pay and holiday pay, among others.

[b]) The performance-based component shall be based on safety performance, business performance and other related parameters.

SECTION 3. ***Operational Guidelines***. The [National Wages and Productivity Commission] shall develop operational guidelines to implement the part-fixed, part[-]performance-based compensation scheme including the formula that should be used by public utility bus companies within fifteen (15) days after publication of th[ese] Rules.

SECTION 4. ***Submission of Proposed Compensation Scheme***. — All public utility bus owners and/or operators shall submit a proposed compensation scheme, mutually agreed upon with their drivers/ conductors, to the appropriate [Regional Tripartite Wages and Productivity Board] for information and reference purposes based on Rule III, Section 2 of th[ese] Rules, within sixty (60) days after the effectivity of this Order.

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RULE V
SOCIAL PROTECTION

SECTION 1. ***Social Welfare Benefits*****. —** Without prejudice to established company policy, collective bargaining agreement or other applicable employment agreement, all bus drivers and conductors shall be entitled to coverage for social welfare benefits such as Pagibig Fund (Republic Act No. 7742), PhilHealth (Republic Act No. 7875, as amended by Republic Act No. 9241), Employees' Compensation Law (Presidential Decree No. 626), Social Security Law (Republic Act No. 1161 as amended by Republic Act No. 8282) and other applicable laws.

The cost of health services for the illnesses and injuries suffered by the driver and conductor shall be covered by mandatory social welfare programs under existing laws.

RULE VI
TRAINING AND DEVELOPMENT

SECTION 1. ***Assessment and Certification.*** **—** The [Technical Education and Skills Development Authority], in coordination with the [Occupational Safety and Health Center], the [Land Transportation Office], the LTFRB and the [Metropolitan Manila Development Authority] shall implement an assessment and certification program for professional drivers. The assessment will focus on knowledge, attitude and skills.

SECTION 2. ***Driver Proficiency Standards.*** **—** The [Technical Education and Skills Development Authority] shall work closely with LTFRB in the implementation of its Department Order No. 2011-25 "Inclusion of Driver Proficiency Standard as Additional Requirement in the Exercise of the Regulatory Powers of LTFRB to Issue Certificates of Public Convenience (CPC)". Applicants for CPCs shall present sufficient proof and submit a list of its drivers who are duly certified by the TESDA.

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RULE VIII
COMPLIANCE AND ENFORCEMENT

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SECTION 4. ***Failure to Comply/Restitute.*** **—** In case of violations committed by bus owners/operators and failure to comply or correct such violations, the DOLE shall coordinate with the LTFRB on the matter of appropriate action, including possible cancellation of franchise after due process.

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RULE IX
MISCELLANEOUS PROVISIONS

SECTION 1. ***Transitory Provisions.*** **—** Th[ese] Rules shall initially cover the public utility bus transport companies exclusively serving or plying Metro Manila routes and shall apply to other public utility bus companies by July 2012.

In the first six months but not later than one year from the effectivity of th[ese] Rules, the provisions herein stated shall be liberally construed to enable compliance by the public utility bus companies.

SECTION 2. ***Operational Guidelines.*** Operational guidelines to implement th[ese] Rules shall be issued by concerned DOLE agencies (i.e., [Bureau of Working Conditions], [Occupational Safety and Health Center], [National Conciliation and Mediation Board], and [Technical Education and Skills Development Authority]) within fifteen (15) days after its publication.

SECTION 3. ***Technical Assistance to Public Utility Bus Transport Companies.*** **—** Public utility bus operators may request for technical assistance from concerned DOLE agencies in the implementation of th[ese] Rules.

SECTION 4. ***Non-diminution of Benefits.*** **–** Nothing herein shall be construed to authorize diminution of benefits being enjoyed by the bus drivers and conductors at the time of the issuance hereof.

SECTION 5. ***Effect on Existing Company Policy, Contracts or CBAs.*** **—** The minimum benefits provided in th[ese] Rules shall be without prejudice to any company policy, contract, or Collective Bargaining Agreement (CBA) providing better terms and conditions of employment.

On January 28, 2012, Atty. Emmanuel A. Mahipus, on behalf of the Provincial Bus Operators Association of the Philippines, Integrated Metro Manila Bus Operators Association, Inter City Bus Operators Association, the City of San Jose Del Monte Bus Operators Association, and Pro-Bus, wrote to then Secretary of Labor and Employment Rosalinda Dimapilis-Baldoz, requesting to defer the implementation of Department Order No. 118-12.[3] The request, however, was not acted upon.

Meanwhile, on February 27, 2012 and in compliance with Rule III, Section 3 of Department Order No. 118-12, the National Wages and Productivity Commission issued NWPC Guidelines No. 1 to serve as Operational Guidelines on Department Order No. 118-12. NWPC Guidelines No. 1 suggested formulae for computing the fixed-based and the performance-based components of a bus driver's or conductor's wage. Relevant portions of the NWPC Guidelines, including its Annex "A" on

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

a sample computation implementing the part-fixed-part-performance-based compensation scheme, are reproduced below:

NWPC GUIDELINES NO. 1
(series 2012)

OPERATIONAL GUIDELINES ON DEPARTMENT ORDER NO. 118-12 "RULES AND REGULATIONS GOVERNING THE EMPLOYMENT AND WORKING CONDITIONS OF DRIVERS AND CONDUCTORS IN THE PUBLIC UTILITY BUS TRANSPORT INDUSTRY"

Pursuant to Section 3 of Rule III of Department Order No. 118-12 "Rules and Regulations Governing the Employment and Working Conditions of Drivers and Conductors in the Public Utility Bus Transport Industry,[''] the following operational guidelines on the adoption of a part-fixed, part-performance[-]based compensation scheme is hereby issued:

RULE I
COVERAGE AND DEFINITION OF TERMS

SECTION 1. ***Coverage.*** **—** Th[ese] Guidelines shall apply to all public utility bus owners and/or operators employing drivers and conductors. Owners/operators of coaches, school, tourist and similar buses who are holders of Certificates of Public Convenience (CPC) issued by the Land Transportation Franchising and Regulatory Board (LTFRB), however, are not covered by the provisions of th[ese] Guidelines.

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RULE II
COMPENSATION

SECTION 1. ***Part-Fixed, Part-Performance[-]Based Compensation Scheme.***

a) Bus owners and/or operators shall adopt a mutually-agreed upon "part-fixed, part-performance" based compensation scheme for bus drivers and conductors. It shall take into consideration revenue, ridership, safety, specific conditions of routes and other relevant parameters. *(Annex A – Sample Computation)*

SECTION 2. ***Fixed Wage Component.***

a) The fixed wage component shall be an amount mutually agreed upon by the owner/operator and the driver/conductor and shall be paid in legal tender. It shall in no case be lower than the applicable minimum wage (basic wage + COLA) for work performed during normal hours/days. It shall include wage[-]related benefits such as overtime pay, nightshift differential, service incentive leave and premium pay among others. The payment of 13th month pay, holiday and service incentive leave may be integrated into the daily wage of drivers and conductors, upon agreement of both owners/operators and drivers and conductors.

b) The fixed wage may be based on a time unit of work (e.g. hourly, daily or monthly). It may also be based on a per trip or per kilometer basis where the drivers/conductors and operators may consider the minimum number of trips or kilometres/distance travelled within an 8-hour period, as basis for determining regular/normal workload for an 8-hour period. The fixed wage may be computed as follows:

Fixed Wage (Time Rate) = (Basic Wage + Wage-Related Benefits)

OR

Fixed Wage (Trip Basis) = Rate per Trip x No. of Trips per Day

SECTION 3. ***Performance-Based Wage Component.***

a) The performance-based wage component shall be based on business performance, safety performance and other relevant parameters. Business performance shall consider revenue/ridership. Safety performance shall consider safety records such as the incidence of road accident and traffic violation. The performance-based wage may be computed as follows:

Reference Amount of Performance Incentive = (Current Average Daily Earnings – Fixed Wage) x Y%

Where:

i. Current average daily earnings shall be estimated based on average daily earnings for 2011 and/or prior years, as may be agreed upon.

ii. Y – range of values (in percent) that correspond to various levels of safety performance, such that:

- The lower the incidence of traffic violations and road accidents, the higher will be the value of Y and the performance incentive
- The higher the incidence of traffic violations and road accidents, the lower will be the value of Y and the performance incentive

b) Bus operators/owners and drivers/conductors may modify or use other formula for their compensation scheme provided it is in accordance with the part-fixed[-]part-performance[-] based compensation scheme as provided herein.

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SECTION 7. ***Submission of Proposed Compensation Scheme.*** **—** All public utility bus owners and/or operators shall submit their proposed compensation scheme, mutually agreed upon with their drivers/conductors, to the [Regional Tripartite Wage and Productivity Board] having jurisdiction over the principal place of business of the public utility bus operator, within sixty (60) days after the effectivity of the Guidelines using the attached Proposed Compensation Form (*Annex B*). This form shall be accomplished in duplicate (2) and shall be accompanied by a duly signed employment agreement between the bus owner/operator and bus driver and between the bus owner/operator and bus conductor.

Upon submission, the concerned [Regional Tripartite Wage and Productivity Board] shall review the compensation scheme for conformity with Rule II of the Guidelines. If found not in conformance with the Guidelines, the [Regional Tripartite Wage and Productivity Board] shall provide technical assistance to the concerned bus owner/operator to correct the non-conformance. The [Regional Tripartite Wage and Productivity Board] shall thereafter furnish the DOLE-[Regional Office] a copy of the compensation scheme and the agreements.

RULE III
MISCELLANEOUS PROVISIONS

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SECTION 2. ***Non-diminution of Benefits.*** **—** Nothing herein shall be construed to authorize diminution or reduction of existing wages and benefits being enjoyed by the bus drivers and conductors.

On July 4, 2012, petitioners filed before this Court a Petition with Urgent Request for Immediate Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction,[4] impleading the DOLE and the LTFRB as respondents. They pray that this Court enjoin the implementation of Department Order No. 118-12 and Memorandum Circular No. 2012-001 for being violative of their right to due process, equal protection, and non-impairment of obligation of contracts.

In its July 11, 2012 Resolution,[5] this Court deferred the issuance of a *status quo ante* order and, instead, required the DOLE and the LTFRB to comment on the Petition.

On July 13, 2012, petitioners filed the Urgent Manifestation with Motion for Clarification,[6] alleging that Atty. Ma. Victoria Gleoresty Guerra announced in a press conference that this Court agreed to issue a *status quo ante* order in the case. They prayed that this Court clarify whether a *status quo ante* order was indeed issued.

In its July 13, 2012 Resolution,[7] this Court noted without action the Urgent Manifestation with Motion for Clarification.

A Very Urgent Motion for Reconsideration[8] of the July 13, 2012 Resolution was filed by petitioners on which respondents filed a Comment.[9]

On July 27, 2012, the Metropolitan Manila Development Authority (MMDA) filed a Motion for Leave to Intervene,[10] alleging "direct and material interest in upholding the constitutionality of [Department Order No. 118-12 and

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[4] *Id*. at 3-26.

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

[6] *Id*. at 55-59.

[7] *Id*. at 60.

[8] *Id*. at 84-88.

[9] *Id*. at 384-390.

[10] *Id*. at 67-78.

Memorandum Circular No. 2012-001]."[11] This Court granted the MMDA's Motion in its August 10, 2012 Resolution.[12]

On August 22, 2012, the DOLE and the LTFRB filed their Comment[13] via registered mail after which petitioners filed their Reply.[14] For intervenor MMDA, it filed its Comment-in-Intervention[15] on January 8, 2013.

In its September 3, 2013 Resolution,[16] this Court directed the parties to file their respective memoranda. In compliance, petitioners filed their Memorandum[17] on October 10, 2013, while the DOLE, the LTFRB, and the MMDA filed a Consolidated Memorandum[18] on November 6, 2013.

As earlier stated, petitioners assail the constitutionality of Department Order No. 118-12 and Memorandum Circular No. 2012-001, arguing that these issuances violate petitioners' rights to non-impairment of obligation of contracts, due process of law, and equal protection of the laws. Particularly with respect to Department Order No. 118-12, its provisions on the payment of part-fixed-part-performance-based wage allegedly impair petitioners' obligations under their existing collective bargaining agreements where they agreed with their bus drivers and conductors on a commission or boundary basis. They contend that Memorandum Circular No. 2012-001 further requires compliance with Department Order No. 118-12 under threat of revocation of their franchises, which allegedly deprive petitioners of the capital they invested in their businesses in violation of their right to due process of law.

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[11] *Id*. at 73.

[12] *Id*. at 89.

[13] *Id*. at 232-269.

[14] *Id*. at 391-411.

[15] *Id*. at 414-437.

[16] *Id*. at 465.

[17] *Id*. at 472-517.

[18] *Id*. at 527-570.

Petitioners add that the initial implementation of Department Order No. 118-12 within Metro Manila allegedly creates an arbitrary distinction between bus operators operating in Metro Manila and those operating outside of Metro Manila, in violation of petitioners' right to equal protection of the laws.

Respondents counter that petitioners have no legal standing to file the present Petition considering that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are directed against bus operators, not against associations of bus operators such as petitioners. They add that petitioners violated the doctrine of hierarchy courts in directly filing their Petition before this Court. For these reasons, respondents pray for the dismissal of the Petition.

On the constitutional issues raised by petitioners, respondents contend that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are valid issuances promulgated by the DOLE and the LTFRB in the exercise of their quasi-legislative powers.

Further, they argue that Department Order No. 118-12 and Memorandum Circular No. 2012-001 do not violate public utility bus operators' rights to non-impairment of obligation of contracts, due process of law, and equal protection of the laws for the following reasons:

First, Department Order No. 118-12 and Memorandum Circular No. 2012-001 were issued "[to promote and protect] the welfare of the public utility bus drivers and conductors"[19] and "[to ensure] road safety"[20] by imposing a wage system where public utility bus drivers do not have to compete with one another and drive recklessly for additional income.[21] Department Order No. 118-12 and Memorandum Circular No. 2012-001 are social legislations and police power measures to

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[19] *Id*. at 548.

[20] *Id*.

[21] *Id*. at 549-550.

which petitioners' right against impairment of obligation of contracts must yield[22];

Second, certificates of public convenience are not property and are always subject to amendment, alteration, or repeal. Therefore, public utility bus operators cannot argue that they were deprived of their property without due process of law when the LTFRB required further compliance with Memorandum Circular No. 2012-001 for bus operators to retain their franchises[23]; and

Finally, Department Order No. 118-12 does not violate Metro Manila public utility bus operators' right to equal protection of the laws since it applies to all public utility bus operators in the country.[24]

Based on the pleadings, the issues for this Court's resolution are the following:

First, whether or not petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., Inter City Bus Operators Association, and City of San Jose Del Monte Bus Operators Association have legal standing to sue;

Second, whether or not this case falls under any of the exceptions to the doctrine of hierarchy of courts;

Third, whether or not the DOLE Department Order No. 118-12 and the LTFRB Memorandum Circular No. 2012-001 deprive public utility bus operators of their right to due process of law;

Fourth, whether or not the DOLE Department Order No. 118-12 and the LTFRB Memorandum Circular No. 2012-001 impair public utility bus operators' right to non-impairment of obligation of contracts; and

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[22] *Id*. at 551-552.

[23] *Id*. at 560-561.

[24] *Id*. at 561-562.

Finally, whether or not the DOLE Department Order No. 118-12 and the LTFRB Memorandum Circular No. 2012-001 deny public utility bus operators of their right to equal protection of the laws.

This Court dismisses the Petition. Petitioners fail to respect the doctrine of hierarchy of courts by directly invoking this Court's jurisdiction without any special reason. They fail to present an actual controversy ripe for adjudication and do not even have the requisite standing to file this case. Even if this Court proceeds on the merits, petitioners fail to show the unconstitutionality of the DOLE Department Order No. 118-12 and the LTFRB Memorandum Circular No. 2012-001.

I

The Constitution vests in this Court and such lower courts as may be established by law the power to "declare executive and legislative acts void if violative of the Constitution."[25] This Court's power of judicial review is anchored on Article VIII, Section 1 of the Constitution:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Our governmental structure rests on the principle of separation of powers. Under our constitutional order, the legislative branch enacts law, the executive branch implements the law, and the judiciary construes the law. In reality, however, the powers are not as strictly confined or delineated to each branch. "[T]he growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty

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[25] *Angara v. Electoral Commission*, 63 Phil. 139, 157 (1936) [Per *J.* Laurel, *En Banc*].

of administering the laws"[26] require the delegation of powers traditionally belonging to the legislative to administrative agencies. The legislature may likewise apportion competencies or jurisdictions to administrative agencies over certain conflicts involving special technical expertise.

Administrative actions reviewable by this Court, therefore, may either be quasi-legislative or quasi-judicial. As the name implies, quasi-legislative or rule-making power is the power of an administrative agency to make rules and regulations that have the force and effect of law so long as they are issued "within the confines of the granting statute."[27] The enabling law must be complete, with sufficient standards to guide the administrative agency in exercising its rule-making power.[28] As an exception to the rule on non-delegation of legislative power, administrative rules and regulations must be "germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law."[29] In *Pangasinan Transportation Co., Inc. v. The Public Service Commission*,[30] this Court recognized the constitutional permissibility of the grant of quasi-legislative powers to administrative agencies, thus:

> One thing, however, is apparent in the development of the principle of separation of powers and that is that the maxim of *delegatus non potest delegari* or *delegata potestas non potest delegari*, attributed to Bracton (De Legibus et Consuetedinious Angliae, edited by G.E. Woodbine, Yale University Press, 1922, vol. 2, p. 167) but which is also recognized in principle in the Roman Law (D. 17.18.3), has been made to adapt itself to the complexities of modern governments, giving

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[26] *Pangasinan Transportation v. Public Service Commission*, 70 Phil. 221, 229 (1940) [Per *J.* Laurel, First Division].

[27] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003) [Per *J.* Ynares-Santiago, First Division].

[28] *Id.*

[29] *Id.*

[30] 70 Phil. 221 (1940) [Per *J.* Laurel, First Division].

rise to the adoption, within certain limits, of the principle of "subordinate legislation," not only in the United States and England but in practically all modern governments. (People *vs*. Rosenthal and Osmeña, G. R. Nos. 46076 and 46077, promulgated June 12, 1939.) Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater powers by the legislature, and toward the approval of the practice by the courts. (Dillon Catfish Drainage Dist. *v*. Bank of Dillon, 141 S. E. 274, 275, 143 S. Ct. 178; State *v*. Knox County, 54 S. W. 2d. 973, 976, 165 Tenn. 319.) In harmony with such growing tendency, this Court, since the decision in the case of Compañía General de Tabacos de Filipinas *vs*. Board of Public Utility Commissioners (34 Phil., 136), relied upon by the petitioner, has, in instances, extended its seal of approval to the "delegation of greater powers by the legislature." (Inchausti Steamship Co. *vs*. Public Utility Commissioner, 44 Phil., 366; Alegre *vs*. Collector of Customs, 53 Phil., 394; Cebu Autobus Co. *vs*. De Jesus, 56 Phil., 446; People *vs*. Fernandez & Trinidad, G. R. No. 45655, promulgated June 15, 1938; People *vs*. Rosenthal & Osmeña, G. R. Nos. 46076, 46077, promulgated June 12, 1939; and Robb and Hilscher *vs*. People, G.R. No. 45866, promulgated June 12, 1939.)[31]

On the other hand, quasi-judicial or administrative adjudicatory power is "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."[32] The constitutional permissibility of the grant of quasi-judicial powers to administrative agencies has been likewise recognized by this Court. In the 1931 case of *The Municipal Council of Lemery, Batangas v. The Provincial Board of Batangas*,[33] this Court declared that the power of the Municipal Board of Lemery to

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[31] *Id*. at 229.

[32] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003) [Per *J*. Ynares-Santiago, First Division].

[33] 56 Phil. 260 (1931) [Per *J*. Villa-Real, *En Banc*].

approve or disapprove a municipal resolution or ordinance is quasi-judicial in nature and, consequently, may be the subject of a certiorari proceeding.

Determining whether the act under review is quasi-legislative or quasi-judicial is necessary in determining *when* judicial remedies may properly be availed of. Rules issued in the exercise of an administrative agency's quasi-legislative power may be taken cognizance of by courts *on the first instance* as part of their judicial power, thus:

> [W]here what is assailed is the validity or constitutionality of a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts. This is within the scope of judicial power, which includes the authority of the courts to determine in an appropriate action the validity of the acts of the political departments. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[34] (Citations omitted)

However, in cases involving quasi-judicial acts, Congress may require certain quasi-judicial agencies to first take cognizance of the case before resort to judicial remedies may be allowed. This is to take advantage of the special technical expertise possessed by administrative agencies. *Pambujan Sur United Mine Workers v. Samar Mining Company, Inc.*[35] explained the doctrine of primary administrative jurisdiction, thus:

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[34] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 158–159 (2003) [Per *J.* Ynares-Santiago, First Division].

[35] 94 Phil. 932 (1954) [Per *J.* Bengzon, *En Banc*].

That the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.[36]

Usually contrasted with the doctrine of primary jurisdiction is the doctrine of exhaustion of administrative remedies. Though both concepts aim to maximize the special technical knowledge of administrative agencies, the doctrine of primary administrative jurisdiction requires courts to not resolve or "determine a controversy involving a question which is within the jurisdiction of an administrative tribunal."[37] The issue is jurisdictional and the court, when confronted with a case under the jurisdiction of an administrative agency, has no option but to dismiss it.[38]

In contrast, exhaustion of administrative remedies requires parties to exhaust all the remedies in the administrative machinery before resorting to judicial remedies. The doctrine of exhaustion presupposes that the court and the administrative agency have concurrent jurisdiction to take cognizance of a matter. However, in deference to the special and technical expertise of the administrative agency, courts must yield to the administrative agency by suspending the proceedings. As such, parties must exhaust all the remedies within the administrative machinery before resort to courts is allowed.

Discussion of the doctrines of primary jurisdiction and exhaustion of administrative remedies aside, the present case does not require the application of either doctrine. Department Order No. 118-12 and Memorandum Circular No. 2012-001

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[36] *Id*. at 941 *citing* 42 Am. Jur., 698.

[37] *Javier v. Court of Appeals*, 289 Phil. 179, 183 (1992) [Per *J*. Nocon, Second Division].

[38] *Katon v. Palanca, Jr.,* 481 Phil. 168, 183 (2004) [Per *J*. Panganiban, Third Division].

were issued in the exercise of the DOLE's[39] and the LTFRB's[40] quasi-legislative powers and, as discussed, the doctrines of primary jurisdiction and exhaustion of administrative remedies may only be invoked in matters involving the exercise of quasi-judicial power. Specifically, Department Order No. 118-12 enforces the application of labor standards provisions, i.e., payment of minimum wage and grant of social welfare benefits in the public bus transportation industry. For its part, Memorandum Circular No. 2012-001 was issued by the LTFRB in the exercise of its power to prescribe the terms and conditions for the issuance of a certificate of public convenience and its power to promulgate and enforce rules and regulations on land transportation public utilities.

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[39] LABOR CODE, Art. 5 provides:

Article 5. *Rules and Regulations*. — The Department of Labor and other government agencies charged with the administration and enforcement of this Code or any of its parts shall promulgate the necessary implementing rules and regulations. Such rules and regulations shall become effective fifteen (15) days after announcement of their adoption in newspapers of general circulation.

[40] ADMINISTRATIVE CODE, Book IV, Title XV, Chapter 5, Sec. 19 partly provides:

Section 19. *Powers and Functions of the Land Transportation Franchising and Regulatory Board*. — The Board shall:

. . . . . .

(2) Issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public land transportation services provided by motorized vehicles, and prescribe the appropriate terms and conditions therefor;

. . . . . .

(11) Formulate, promulgate, administer, implement and enforce rules and regulations on land transportation public utilities, standards of measurements or design, and rules and regulations requiring operators of any public land transportation service to equip, install and provide in their utilities and in their stations such devices, equipment, facilities and operating procedures and techniques as may promote safety, protection, comfort and convenience to persons and property in their charges as well as the safety of persons and property within their areas of operation[.]

II

While resort to courts may directly be availed of in questioning the constitutionality of an administrative rule, parties may not proceed directly before *this* Court, regardless of its original jurisdiction over certain matters. This Court's original jurisdiction over petitions for certiorari and prohibition[41] may only be invoked for special reasons under the doctrine of hierarchy of courts.

The doctrine of hierarchy of courts requires that recourse must first be obtained from lower courts sharing concurrent jurisdiction with a higher court.[42] This is to ensure that this

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[41] CONST., Art. viii, Sec. 5 provides in part:

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

(1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(c) All cases in which the jurisdiction of any lower court is in issue.

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

(e) All cases in which only an error or question of law is involved.

[42] See *Kulayan v. Tan,* 690 Phil. 72 (2012) [Per J. Sereno, *En Banc*]; *United Claimants Association of NEA (UNICAN) v. National Electrification Administration (NEA),* 680 Phil. 506 (2012) [Per J. Velasco, Jr., *En Banc*]; *Review Center Association of the Philippines v. Ermita,* 602 Phil. 342, 360 (2009) [Per J. Carpio, *En Banc*]; *Bagabuyo v. Commission on Elections,* 593 Phil. 678, 689 (2008) [Per J. Brion, *En Banc*]; *Freedom from Debt Coalition v. Metropolitan Waterworks and Sewerage System*, 564 Phil. 566, 578-579 (2007) [Per J. Sandoval-Gutierrez, *En Banc*].

Court remains *a court of last resort* so as to "satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition."[43]

The doctrine was first enunciated in *People v. Cuaresma*[44] where a petition for certiorari assailing a trial court order granting a motion to quash was directly filed before this Court. Noting that there was no special reason for invoking this Court's original jurisdiction, this Court dismissed the petition and required the "strict observance" of the policy of hierarchy of courts, thus:

> This Court's original jurisdiction to issue writs of certiorari (as well as prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction) is not exclusive. It is shared by this Court with Regional Trial Courts (formerly Courts of First Instance), which may issue the writ, enforceable in any part of their respective regions. It is also shared by this Court, and by the Regional Trial Court, with the Court of Appeals (formerly, Intermediate Appellate Court), although prior to the effectivity of *Batas Pambansa Bilang* 129 on August 14, 1981, the latter's competence to issue the extraordinary writs was restricted to those "in aid of its appellate jurisdiction." This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and should also serve as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters

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[43] *Bañez, Jr. v. Concepcion*, 693 Phil. 399 (2012) [Per *J.* Bersamin, First Division] citing *Vergara, Sr. v. Suelto,* G.R. No. 74766, December 21, 1987, 156 SCRA 753, 766.

[44] 254 Phil. 418 (1989) [Per *J.* Narvasa, First Division].

within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. Indeed, the removal of the restriction on the jurisdiction of the Court of Appeals in this regard, *supra* — resulting from the deletion of the qualifying phrase, "in aid of its appellate jurisdiction" — was evidently intended precisely to relieve this Court *pro tanto* of the burden of dealing with applications for the extraordinary writs which, but for the expansion of the Appellate Court['s] corresponding jurisdiction, would have had to be filed with it.

The Court feels the need to reaffirm that policy at this time, and to enjoin strict adherence thereto in the light of what it perceives to be a growing tendency on the part of litigants and lawyers to have their applications for the so-called extraordinary writs, and sometime even their appeals, passed upon and adjudicated directly and immediately by the highest tribunal of the land. The proceeding at bar is a case in point. The application for the writ of *certiorari* sought against a City Court was brought directly to this Court although there is discernible special and important reason for not presenting it to the Regional Trial Court.

The Court therefore closes this decision with the declaration, for the information and guidance of all concerned, that it will not only continue to enforce the policy, but will require a more strict observance thereof.[45] (Citations omitted)

More recently, this Court in *The Diocese of Bacolod v. Commission on Elections*[46] explained the purpose of the doctrine: to "ensure that every level of the judiciary performs its designated roles in an effective and efficient manner."[47] This Court said:

Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within

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

[46] 751 Phil. 301 (2015) [Per *J*. Leonen, *En Banc*].

[47] *Id*. at 329.

those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.

The Court of Appeals is primarily designated as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.

This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[48] (Citation omitted)

For this Court to take cognizance of original actions, parties must clearly and specifically allege in their petitions the special and important reasons for such direct invocation.[49] One such special reason is that the case requires "the proper legal

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[48] *Id*. at 329-330.

[49] See *De Castro v. Carlos,* 709 Phil. 389 (2013) [Per *C.J.* Sereno, *En Banc*]; *Kulayan v. Tan,* 690 Phil. 72 (2012) [Per *J*. Sereno, *En Banc*]; *Review Center Association of the Philippines v. Ermita,* 602 Phil. 342, 360 (2009) [Per *J*. Carpio, *En Banc*]; *Bagabuyo v. Commission on Elections,* 593 Phil. 678, 689(2008) [Per *J*. Brion, *En Banc*]; *Civil Service Commission v. Department of Budget and Management,* 502 Phil. 372, 384 (2005) [Per *J*. Carpio-Morales, *En Banc*].

interpretation of constitutional and statutory provisions."[50] Cases of national interest and of serious implications,[51] and those of transcendental importance[52] and of first impression[53] have likewise been resolved by this Court on the first instance.

In exceptional cases, this Court has also overlooked the rule to decide cases that have been pending for a sufficient period of time.[54] This Court has resolved original actions which could

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[50] *The Province of Batangas v. Romulo,* 473 Phil. 806, 827 (2004) [Per *J.* Callejo, Sr., *En Banc*].

[51] Considered as cases of national interest, the following were resolved by this Court on the first instance: *Ocampo v. Abando,* 726 Phil. 441 (2014) [Per *C.J.* Sereno, *En Banc*], which involved the issue of whether leaders of the Communist Party of the Philippines-National Democratic Front may be prosecuted for murder allegedly committed in furtherance of rebellion apart from the separate charge of rebellion; *Chavez v. Romulo,* G.R. No. 157036, June 9, 2004, 431 SCRA 534, 548 [Per *J.* Sandoval-Gutierrez, *En Banc*], which involved citizens' right to bear arms; *Commission on Elections v. Judge Quijano-Padilla,* 438 Phil. 72, 88–89 (2002) [Per *J.* Sandoval-Gutierrez, *En Banc*], which involved the Commission on Elections' Voter's Registration and Identification System Project.

[52] The issues in the following cases were considered to be of transcendental importance: *The Province of Batangas v. Hon. Romulo,* 473 Phil. 806, 827 (2004) [Per *J.* Callejo, Sr., *En Banc*], where this Court resolved the issue of whether Congress may impose conditions for the release of internal revenue allotment of local government units; *Senator Jaworski v. Philippine Amusement and Gaming Corporation,* 464 Phil. 375, 385 (2004) [Per *J.* Ynares-Santiago, *En Banc*], which involved the grant of authority to a private corporation to operate internet gambling facilities; *Agan, Jr. v. Phil. International Air Terminals Co., Inc.,* 450 Phil. 744, 805 (2003) [Per *J.* Puno, *En Banc*], which involved the construction and operation of the Ninoy Aquino International Airport Terminal III.

[53] *Agan, Jr. v. Phil. International Air Terminals Co., Inc.,* 450 Phil. 744, 805 (2003) [Per *J.* Puno, *En Banc*], which involved the construction and operation of the Ninoy Aquino International Airport Terminal III; *Government of the United States of America v. Hon. Purganan,* 438 Phil. 417, 439 (2002) [Per *J.* Panganiban, *En Banc*], where this Court resolved for the first time the issue of whether bail may be availed of in a proceeding for extradition.

[54] *The Heirs of the Late Faustina Borres v. Judge Abela,* 554 Phil. 502 (2007) [Per *J.* Ynares-Santiago, Third Division].

have been resolved by the lower courts in the interest of speedy justice[55] and avoidance of delay.[56]

Generally, the rule on hierarchy of courts may be relaxed when "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."[57] For all other cases, the parties must have exhausted the remedies available before the lower courts. A petition filed in violation of the doctrine shall be dismissed.[58]

Based on the allegations in the present Petition, this Court finds no special reason for petitioners to invoke this Court's original jurisdiction.

The alleged "far-reaching consequences"[59] and wide "area of coverage"[60] of Department Order No. 118-12 and Memorandum Circular No. 2012-001 are not special reasons. With these justifications, petitioners could have very well filed their Petition before the Court of Appeals whose writs, as discussed, are likewise nationwide in scope. The issues raised are not even of first impression.

Petitioners, therefore, failed to respect the hierarchy of courts.

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[55] *Philippine Rural Electric Cooperative Association, Inc. v. DILG Secretary,* 451 Phil. 683, 689 (2003) [Per *J*. Puno, *En Banc*].

[56] See *Elma v. Jacobi,* 689 Phil. 307 (2012) [Per *J*. Brion, Second Division]; *The Heirs of the Late Faustina Borres v. Judge Abela,* 554 Phil. 502 (2007) [Per *J*. Ynares-Santiago, Third Division]; *Commission on Elections v. Judge Quijano-Padilla,* 438 Phil. 72 (2002) [Per *J*. Sandoval-Gutierrez, *En Banc*].

[57] See *Banco de Oro v. Republic*, 750 Phil. 349, 386 [Per *J*. Leonen, *En Banc*], citing *Congressman Chong, et al. v. Hon. Dela Cruz, et al.,* 610 Phil. 725, 728 (2009) [Per *J*. Nachura, Third Division].

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

[59] *Rollo*, p. 506, Memorandum for Petitioners.

[60] *Id*.

III

Furthermore, the issues raised in this Petition are not justiciable. The Petition presents no actual case or controversy.

No less than the Constitution in Article VIII, Section 1 requires an actual controversy for the exercise of judicial power:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Underscoring supplied)

As a rule, "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned."[61] A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.[62]

An actual case or controversy is "one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution."[63] A case is justiciable if the issues presented are "definite and concrete, touching on the legal

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[61] *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil. 806, 809 (1955) [Per J. Bengzon, *En Banc*].

[62] *Levy Macasiano v. National Housing Authority*, 296 Phil. 56, 63-64 (1993) [Per *C.J.* Davide, Jr., *En Banc*].

[63] See *Information Technology Foundation of the Philippines v. COMELEC*, 499 Phil. 281, 304 (2005) [Per *C.J.* Panganiban, *En Banc*].

relations of parties having adverse legal interests."[64] The conflict must be ripe for judicial determination, not conjectural or anticipatory; otherwise, this Court's decision will amount to an advisory opinion concerning legislative or executive action.[65] In the classic words of *Angara v. Electoral Commission*:[66]

> [T]his power of judicial review is limited to actual cases and controversies to be exercised after full opportunity of argument by the parties, and limited further to the constitutional question raised or the very *lis mota* presented. Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities. Narrowed as its function is in this manner, the judiciary does not pass upon questions of wisdom, justice or expediency of legislation. More than that, courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution but also because the judiciary in the determination of actual cases and controversies must reflect the wisdom and justice of the people as expressed through their representatives in the executive and legislative departments of the governments.[67]

Even the expanded jurisdiction of this Court under Article VIII, Section 1[68] does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting

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[64] *Id*. at 304-305.

[65] See *Southern Hemisphere Engagement Network v. Anti-Terrorism Council*, 646 Phil. 452, 479 (2010) [Per *J*. Carpio-Morales, *En Banc*], citing *Republic Telecommunications Holding, Inc. v. Santiago,* 556 Phil. 83, 91 (2007) [Per *J*. Tinga, Second Division].

[66] 63 Phil. 139 (1936) [Per *J*. Laurel, *En Banc*].

[67] *Id*. at 158.

[68] CONST., Art. VIII, Sec. 5 provides:

> Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Underscoring supplied).

is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, *there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text.*

The absence of actual facts caused the dismissal of the petitions in *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council.*[69] In that case, the petitioners challenged the constitutionality of Republic Act No. 9372 or the Human Security Act of 2007 that defines and punishes the crime of terrorism. They contended that since the enactment of the statute, they had been subjected to "close security surveillance by state security forces" and branded as "enemies of the State."[70]

In dismissing the petitions, this Court said that there were no "sufficient facts to enable the Court to intelligently adjudicate the issues."[71] Petitioners' allegations of "sporadic 'surveillance' and . . . being tagged as 'communist fronts'" were not enough to substantiate their claim of grave abuse of discretion on the part of public respondents. Absent actual facts, this Court said that the *Southern Hemisphere* petitions operated in the "realm of the surreal and merely imagined."[72] "Allegations of abuse must be anchored on real events before courts may step in to settle actual controversies involving rights which are legally demandable and enforceable."[73]

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[69] 646 Phil. 452 (2010) [Per *J.* Carpio Morales, *En Banc*].

[70] *Id*. at 473.

[71] *Id*. at 481.

[72] *Id*. at 482.

[73] *Id*. at 483.

The petitioners in *Republic of the Philippines v. Herminio Harry Roque, et al.*[74] likewise challenged provisions of the Human Security Act, this time, via a petition for declaratory relief filed before the Regional Trial Court of Quezon City. During the pendency of the case, this Court decided *Southern Hemisphere*, where, as just discussed, the challenge against the constitutionality of the Human Security Act was dismissed. Thus, the Republic filed a motion to dismiss before the Regional Trial Court, arguing that the declaratory relief case may no longer proceed.

The Regional Trial Court denied the motion to dismiss on the ground that this Court in *Southern Hemisphere* did not pass upon the constitutionality issue. However, this Court, on certiorari, set aside the Regional Trial Court's order and dismissed the declaratory relief petitions because they did not properly allege a "state of facts indicating imminent and inevitable litigation."[75] This Court said:

> Pertinently, a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory. Corollary thereto, by "ripening seeds" it is meant, not that sufficient accrued facts may be dispensed with, but that a dispute may be tried at its inception before it has accumulated the asperity, distemper, animosity, passion, and violence of a full blown battle that looms ahead. *The concept describes a state of facts indicating imminent and inevitable litigation provided that the issue is not settled and stabilized by tranquilizing declaration.*
>
> A perusal of private respondents' petition for declaratory relief would show that they have failed to demonstrate how they are left to sustain or are in immediate danger to sustain some direct injury as a result of the enforcement of the assailed provisions of RA 9372. Not far removed from the factual milieu in the *Southern Hemisphere* cases, private respondents only assert general interests as citizens, and taxpayers and infractions which the government could prospectively commit if the enforcement of the said law would

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[74] 718 Phil. 294 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

[75] *Id*. at 305.

remain untrammelled. As their petition would disclose, *private respondents' fear of prosecution was solely based on remarks of certain government officials which were addressed to the general public. They, however, failed to show how these remarks tended towards any prosecutorial or governmental action geared towards the implementation of RA 9372 against them.* In other words, there was no particular, real or imminent threat to any of them.[76] (Citations omitted, emphasis supplied)

Similar to the petitions in *Southern Hemisphere* and *Roque*, the present Petition alleges no actual facts for this Court to infer the supposed unconstitutionality of Department Order No. 118-12 and Memorandum Circular No. 2012-001.

According to petitioners, implementing Department Order No. 118-12 and Memorandum Circular No. 2012-001 "may [result] in [the] diminution of the income of . . . bus drivers and conductors."[77] The allegation is obviously based on speculation with the use of the word "may." There was even no showing of how granting bus drivers' and conductors' minimum wage and social welfare benefits would result in lower income for them.

Petitioners likewise claim that the part-fixed-part-performance-based payment scheme is "unfit to the nature of operation of public transport system or business."[78] This bare allegation, again, is not supported by facts from which this Court may conclude that the payment scheme under Department Order No. 118-12 are unfit to the nature of the businesses of public bus operators. The "time-immemorial" implementation of the boundary system does not mean that it is the only payment scheme appropriate for the public transport industry.

There being no actual facts from which this Court could conclude that Department Order No. 118-12 and Memorandum

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[76] *Id*. at 305-306.

[77] *Rollo,* p. 488, Memorandum for Petitioners.

[78] *Id*.

Circular No. 2012-001 are unconstitutional, this case presents no actual controversy.

IV

Not only is this Petition not justiciable for failing to present an actual controversy. Petitioners do not possess the requisite legal standing to file this suit.

Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question."[79] To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged."[80] The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." [81]

The requirements of legal standing and the recently discussed actual case and controversy are both "built on the principle of separation of powers, sparing as it does unnecessary interference or invalidation by the judicial branch of the actions rendered by its co-equal branches of government."[82] In addition, economic reasons justify the rule. Thus:

A lesser but not insignificant reason for screening the standing of persons who desire to litigate constitutional issues is economic in

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[79] *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board,* 701 Phil. 483, 493 (2013) [Per *J.* Reyes, *En Banc*].

[80] *Francisco, Jr. v. The House of Representatives,* 460 Phil. 830, 893 (2003) [Per *J.* Carpio-Morales, *En Banc*].

[81] *Association of Flood Victims v. Commission on Elections,* 740 Phil. 472, 481 (2014) [Per Acting *C.J.* Carpio, *En Banc*] citing *Integrated Bar of the Philippines v. Hon. Zamora*, 392 Phil. 618, 632-633 (2000).

[82] *White Light Corp., et al. v. City of Manila,* 596 Phil. 444, 455 (2009) [Per *J.* Tinga, *En Banc*].

character. Given the sparseness of our resources, the capacity of courts to render efficient judicial service to our people is severely limited. For courts to indiscriminately open their doors to all types of suits and suitors is for them to unduly overburden their dockets, and ultimately render themselves ineffective dispensers of justice. To be sure, this is an evil that clearly confronts our judiciary today.[83]

Standing in private suits requires that actions be prosecuted or defended in the name of the real party-in-interest,[84] interest being "material interest or an interest in issue to be affected by the decree or judgment of the case[,] [not just] mere curiosity about the question involved."[85] Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest."[86] Those who bring the suit must possess their own right to the relief sought.

Like any rule, the rule on legal standing has exceptions. This Court has taken cognizance of petitions filed by those who have no personal or substantial interest in the challenged governmental act but whose petitions nevertheless raise "constitutional issue[s] of critical significance."[87] This Court summarized the requirements for granting legal standing to "non-traditional suitors"[88] in *Funa v. Villar*,[89] thus:

1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

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[83] *Lozano v. Nograles*, 607 Phil. 334, 343-344 (2009) [Per *C.J.* Puno, *En Banc*].

[84] RULES OF COURT, Rule 3, Sec. 2.

[85] *Goco v. Court of Appeals*, 631 Phil. 394, 403 (2010) [Per *J.* Brion, Second Division].

[86] *Galicto v. Aquino III*, 683 Phil. 141, 171 (2012) [Per *J.* Brion, *En Banc*].

[87] *Funa v. Villar,* 686 Phil. 571, 585 (2012) [Per *J.* Velasco, Jr., *En Banc*].

[88] *Id*. at 586.

[89] 686 Phil. 571 (2012) [Per *J.* Velasco, Jr., *En Banc*].

2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;

3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.[90] (Emphasis in the original)

Another exception is the concept of third-party standing. Under this concept, actions may be brought on behalf of third parties provided the following criteria are met: first, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute";[91] second, "the party must have a close relation to the third party";[92] and third, "there must exist some hindrance to the third party's ability to protect his or her own interests."[93]

The concept was first introduced in our jurisdiction in *White Light Corp., et al. v. City of Manila*,[94] which involved the City of Manila's Ordinance No. 7774 that prohibited "short-time admission" in hotels, motels, inns, and other similar establishments located in the City. The Ordinance defined short-time admission as the "admittance and charging of room rate for less than twelve (12) hours at any given time or the renting out of rooms more than twice a day or any other term that may be concocted by owners or managers of [hotels and motels]."[95]

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[90] *Id*. at 586.

[91] *White Light Corp., et al. v. City of Manila,* 596 Phil. 444, 456 (2009) [Per *J*. Tinga, *En Banc*].

[92] *Id*.

[93] *Id*.

[94] 596 Phil. 444 (2009) [Per *J*. Tinga, *En Banc*].

[95] *Id*. at 451.

The declared purpose of the Ordinance was to protect "the morality of its constituents in general and the youth in particular."[96]

Hotel and motel operators White Light Corporation, Titanium Corporation, and Sta. Mesa Tourist and Development Corporation filed a complaint to prevent the implementation of the Ordinance. The hotel and motel operators argued, among others, that the Ordinance violated *their clients'* rights to privacy,[97] freedom of movement,[98] and equal protection of the laws.[99]

Based on third-party standing, this Court allowed the hotel and motel operators to sue on behalf of their clients. According to this Court, hotel and motel operators have a close relation to their customers as they "rely on the patronage of their customers for their continued viability."[100] Preventing customers from availing of short-time rates would clearly injure the business interests of hotel and motel operators.[101] As for the requirement of hindrance, this Court said that "the relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United States may also be construed as a hindrance for customers to bring suit."[102]

Associations were likewise allowed to sue on behalf of their members.

In *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*,[103] the Pharmaceutical and

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[96] *Id*.

[97] *Id*. at 454.

[98] *Id*.

[99] *Id*. at 455.

[100] *Id*. at 456.

[101] *Id*.

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

[103] 561 Phil. 386 (2007) [Per *J*. Austria-Martinez, *En Banc*].

Health Care Association of the Philippines, "representing its members that are manufacturers of breastmilk substitutes,"[104] filed a petition for certiorari to question the constitutionality of the rules implementing the Milk Code. The association argued that the provisions of the implementing rules prejudiced the rights of manufacturers of breastmilk substitutes to advertise their product.

This Court allowed the Pharmaceutical and Health Care Association of the Philippines to sue on behalf of its members. "[A]n association," this Court said, "has the legal personality to represent its members because the results of the case will affect their vital interests."[105] In granting the Pharmaceutical and Health Care Association legal standing, this Court considered the amended articles of incorporation of the association and found that it was formed "to represent directly or through approved representatives the pharmaceutical and health care industry before the Philippine Government and any of its agencies, the medical professions and the general public."[106] Citing *Executive Secretary v. Court of Appeals,*[107] this Court declared that "the modern view is that an association has standing to complain of injuries to its members."[108] This Court continued:

> [This modern] view fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents.
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> . . . . . .
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> . . . We note that, under its Articles of Incorporation, the respondent was organized . . . to act as the representative of any individual,

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[104] *Id*. at 394.

[105] *Id*. at 396.

[106] *Id*.

[107] 473 Phil. 27 (2004) [Per *J*. Callejo, Sr., Second Division].

[108] *The Pharmaceutical and Health Care Association of the Philippines v. Duque III*, 561 Phil. 386, 395 (2007) [Per *J*. Austria-Martinez, *En Banc*].

company, entity or association on matters related to the manpower recruitment industry, and to perform other acts and activities necessary to accomplish the purposes embodied therein. The respondent is, thus, the appropriate party to assert the rights of its members, because it and its members are in every practical sense identical . . . The respondent [association] is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.[109]

In *Holy Spirit Homeowners Association, Inc. v. Defensor,*[110] the Holy Spirit Homeowners Association, Inc. filed a petition for prohibition, praying that this Court enjoin the National Government Center Administration Committee from enforcing the rules implementing Republic Act No. 9207. The statute declared the land occupied by the National Government Center in Constitution Hills, Quezon City distributable to bona fide beneficiaries. The association argued that the implementing rules went beyond the provisions of Republic Act No. 9207, unduly limiting the area disposable to the beneficiaries.

The National Government Center Administration Committee questioned the legal standing of the Holy Spirit Homeowners Association, Inc., contending that the association "is not the duly recognized people's organization in the [National Government Center]."[111]

Rejecting the National Government Center Administration Committee's argument, this Court declared that the Holy Spirit Homeowners Association, Inc. "ha[d] the legal standing to institute the [petition for prohibition] whether or not it is the duly recognized association of homeowners in the [National Government Center]."[112] This Court noted that the individual members of the association were residents of the National Government Center. Therefore, "they are covered and stand

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[109] *Id*. at 395-396.

[110] 529 Phil. 573 (2006) [Per *J*. Tinga, *En Banc*].

[111] *Id*. at 583.

[112] *Id*. at 584.

to be either benefited or injured by the enforcement of the [implementing rules], particularly as regards the selection process of beneficiaries and lot allocation to qualified beneficiaries."[113]

In *The Executive Secretary v. The Hon. Court of Appeals*,[114] cited in the earlier discussed *Pharmaceutical and Health Care Association of the Philippines*, the Asian Recruitment Council Philippine Chapter, Inc. filed a petition for declaratory relief for this Court to declare certain provisions of Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 unconstitutional. The association sued on behalf of its members who were recruitment agencies.

This Court took cognizance of the associations' petition and said that an association "is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances."[115] It noted that the board resolutions of the individual members of the Asian Recruitment Council Philippine Chapter, Inc. were attached to the petition, thus, proving that the individual members authorized the association to sue on their behalf.

The associations in *Pharmaceutical and Health Care Association of the Philippines*, *Holy Spirit Homeowners Association, Inc.*, and *The Executive Secretary* were allowed to sue on behalf of their members because they sufficiently established who their members were, that their members authorized the associations to sue on their behalf, and that the members would be directly injured by the challenged governmental acts.

The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors.

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[113] *Id*.

[114] 473 Phil. 27 (2004) [Per *J*. Callejo, Sr., Second Division].

[115] *Id*. at 51.

In all these cases, there must be an actual controversy. Furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue.

Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit,[116] allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong.

In some circumstances similar to those in *White Light*, the third parties represented by the petitioner would have special and legitimate reasons why they may not bring the action themselves. Understandably, the cost to patrons in the *White Light* case to bring the action themselves—i.e., the amount they would pay for the lease of the motels—will be too small compared with the cost of the suit. But viewed in another way, whoever among the patrons files the case even for its transcendental interest endows benefits on a substantial number of interested parties without recovering their costs. This is the free rider problem in economics. It is a negative externality which operates as a disincentive to sue and assert a transcendental right.

In addition to an actual controversy, special reasons to represent, and disincentives for the injured party to bring the suit themselves, there must be a showing of the transcendent nature of the right involved.

Only constitutional rights shared by many and requiring a grounded level of urgency can be transcendent. For instance,

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[116] RULES OF COURT, Rule 3, Sec. 12.

in *The Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[117] the association was allowed to file on behalf of its members considering the importance of the issue involved, i.e., the constitutionality of agrarian reform measures, specifically, of then newly enacted Comprehensive Agrarian Reform Law.

This Court is not a forum to appeal political and policy choices made by the Executive, Legislative, and other constitutional agencies and organs. This Court dilutes its role in a democracy if it is asked to substitute its political wisdom for the wisdom of accountable and representative bodies where there is no unmistakable democratic deficit. It cannot lose this place in the constitutional order. Petitioners' invocation of our jurisdiction and the justiciability of their claims must be presented with rigor. Transcendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law.

As declared at the outset, petitioners in this case do not have standing to bring this suit. As associations, they failed to establish who their members are and if these members allowed them to sue on their behalf. While alleging that they are composed of public utility bus operators who will be directly injured by the implementation of Department Order No. 118-12 and Memorandum Circular No. 2012-001, petitioners did not present any proof, such as board resolutions of their alleged members or their own articles of incorporation authorizing them to act as their members' representatives in suits involving their members' individual rights.

Some of the petitioners here are not even persons or entities authorized by law or by the Rules allowed to file a suit in court. As intervenor MMDA sufficiently demonstrated, petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., and Inter City Bus Operators Association, Inc. had their certificates of incorporation revoked by the Securities and Exchange Commission for failure to submit

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[117] 256 Phil. 777 (1989) [Per *J.* Cruz, *En Banc*].

the required general information sheets and financial statements for the years 1996 to 2003.[118] With their certificates of incorporation revoked, petitioners Provincial Bus Operators Association of the Philippines, Southern Luzon Bus Operators Association, Inc., and Inter City Bus Operators Association, Inc. have no corporate existence.[119] They have no capacity to exercise any corporate power, specifically, the power to sue in their respective corporate names.

Again, the reasons cited—the "far-reaching consequences" and "wide area of coverage and extent of effect"[120] of Department Order No. 118-12 and Memorandum Circular No. 2012-001—are reasons not transcendent considering that most administrative issuances of the national government are of wide coverage. These reasons are not special reasons for this Court to brush aside the requirement of legal standing.

Thus far, petitioners have not satisfied any of the following requirements for this Court to exercise its judicial power. They

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[118] *Rollo,* pp. 453-455.

[119] CORP. CODE, Secs. 19 and 135 provide:

Section 19. *Commencement of Corporate Existence*. — A private corporation formed or organized under this Code commences to have corporate existence and juridical personality and is deemed incorporated from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal; and thereupon the incorporators, stockholders/members and their successors shall constitute a body politic and corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law.

. . . . . .

Section 135. *Issuance of Certificate of Revocation*. — Upon the revocation of any such license to transact business in the Philippines, the Securities and Exchange Commission shall issue a corresponding certificate of revocation, furnishing a copy thereof to the appropriate government agency in the proper cases.

The Securities and Exchange Commission shall also mail to the corporation at its registered office in the Philippines a notice of such revocation accompanied by a copy of the certificate of revocation.

[120] *Rollo*, p. 506.

have not sufficiently demonstrated why this Court should exercise its original jurisdiction. The issues they raised are not justiciable. Finally, as will be shown, they failed to demonstrate any breach of constitutional text.

V

The protection of private property is the primary function of a constitution. This can be gleaned in our earliest fundamental law where members of the Malolos Congress declared their purpose in decreeing the Malolos Constitution: "to secure for [the Filipino people] the blessings of liberty." It is understood that the rights to enjoy and to dispose of property are among these blessings considering that several provisions on property are found in the Constitution. Article 32 of the Malolos Constitution provided that "no Filipino shall establish . . . institutions restrictive of property rights." Likewise, Article 17 provided that "no one shall be deprived of his property by expropriation except on grounds of public necessity and benefit."

At present, the due process clause, the equal protection clause, and the takings clause of the Constitution serve as protections from the government's taking of property. The non-impairment clause may likewise be invoked if the property taken is in the nature of a contract. In any case, all these constitutional limits are subject to the fundamental powers of the State, specifically, police power. As such, the burden of proving that the taking is unlawful rests on the party invoking the constitutional right.

Unfortunately for petitioners, they miserably failed to prove why Department Order No. 118-12 and Memorandum Circular No. 2012-001 are unconstitutional.

VI

Article III, Section 1 of the Constitution provides:

ARTICLE III
Bill of Rights

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The values congealed in the fundamental principle prohibiting the deprivation of life, liberty, and property "without due process of law" may be those derived within our own cultures even though the current text is but an incarnation from foreign jurisdictions.

For instance, the phrase "due process of law" does not appear in the Malolos Constitution of 1899. Still, it had similar provisions in Article 32 stating that "no Filipino shall establish . . . institutions restrictive of property rights." Specific to deprivation of property was Article 17, which stated that "no one shall be deprived of his property by expropriation except on grounds of public necessity and benefit, previously declared."

Among the "inviolable rules" found in McKinley's Instructions to the Philippine Commission was "that no person shall be deprived of life, liberty, or property without due process of law."[121]

As it is now worded, the due process clause has appeared in the Philippine Bill of 1902, the Jones Law, the 1935 and 1973 Constitutions and, finally, in the 1987 Constitution.

The right to due process was first conceptualized in England, appearing in an English statute of 1354,[122] with some early scholars claiming that the right to due process is fundamentally procedural.[123] The statute in which the phrase "due process of law" first appeared was reportedly enacted to prevent the outlawing of individuals "without their being summoned to answer for the charges brought against them."[124] The statute, enacted during Edward the Third's reign, thus provided:

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[121] *See* G.N. Magliocca, *The Heart of the Constitution: How the Bill of Rights Became the Bill of Rights*, 78 (2018).

[122] *J.* Scalia's Concurring Opinion in *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991) *cited* in Agpalo, *Philippine Constitutional Law* 158 (2006).

[123] *See* Keith Jurow, *Untimely Thoughts: A Reconsideration of the Origins of Due Process of Law,* 19 AM. J. LEGAL HIST. 265 (1975).

[124] *Id*. at 267.

That no man of what Estate or Condition that he be, shall be put out of land or Tenement, nor taken, nor imprisoned, nor disinherited, nor put to death, without being brought in answer by due process of law.[125]

Still, other early scholars asserted that the right to due process originally has a substantive dimension, requiring that any taking of life, liberty, or property be according to "the law of the land."[126] This is the view of Sir Edward Coke in interpreting chapter 39 of the Magna Carta on which the due process clause of the United States Constitution is based.[127] Chapter 39 of the Magna Carta provides:

No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by lawful judgment of his peers and by the law of the land.

Currently, this Court reads the due process clause as requiring both procedural and substantive elements. In the landmark case of *Ermita-Malate Hotel and Motel Operators Association, Inc. v. The Honorable City Mayor of Manila*,[128] this Court clarified:

There is no controlling and precise definition of due process. It furnishes though a standard to which governmental action should conform in order that deprivation of life, liberty or property, in each appropriate case, be valid. What then is the standard of due process which must exist both as a procedural and as substantive requisite to free the challenged ordinance, or any government action for that matter, from the imputation of legal infirmity; sufficient to spell its doom? It is responsiveness to the supremacy of reason, obedience to the dictates of justice. Negatively put, arbitrariness is ruled out and unfairness avoided. To satisfy the due process requirement, official

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[125] *Id*. at 266.

[126] *See* James W. Ely, Jr., *The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process,* 16 CONST. COMMENT. 315 (1999).

[127] James W. Ely, Jr., *The Oxymoron Reconsidered: Myth and Reality in the Origins of Substantive Due Process,* 16 CONST. COMMENT. 315, 321 (1999).

[128] 127 Phil. 306 (1967) [Per *J*. Fernando, *En Banc*].

action, to paraphrase Cardozo, must not outrun the bounds of reasons and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly has it been identified as freedom from arbitrariness. It is the embodiment of the sporting idea of fair play. It exacts fealty "to those strivings for justice" and judges the act of officialdom of whatever branch "in the light of reason drawn from considerations of fairness that reflect [democratic] traditions of legal and political thought." It is not a narrow or "technical conception with fixed content unrelated to time, place and circumstances," decisions based on such a clause requiring a "close and perceptive inquiry into fundamental principles of our society." Questions of due process are not to be treated narrowly or pedantically in slavery to form or phrases.[129] (Citations omitted)

Despite the debate on the historical meaning of "due process of law," compliance with both procedural and substantive due process is required in this jurisdiction.

The first aspect of due process—procedural due process—"concerns itself with government action adhering to the established process when it makes an intrusion into the private sphere."[130] It requires notice and hearing, and, as further clarified in *Medenilla v. Civil Service Commission*:[131]

> [I]mplies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, and property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of the right in the matter involved.[132]

It is said that due process means "a law which hears before it condemns."[133] The "law" in the due process clause includes

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[129] *Id*. at 318-319.

[130] *White Light Corporation v. City of Manila,* 596 Phil. 444, 461 (2009) [Per *J*. Tinga, *En Banc*].

[131] 272 Phil. 107 (1991) [Per *J*. Gutierrez, Jr., *En Banc*].

[132] *Id*. at 115.

[133] *J*. Carson's Dissent in *United States v. Chauncey McGovern*, 6 Phil. 621, 629 (1906) [Per *C.J.* Arellano, Second Division].

not only statute but also rules issued in the valid exercise of an administrative agency's quasi-legislative power.

What procedural due process requires depends on the nature of the action. For instance, judicial proceedings generally require that:

> [First,] [t]here must be a court or tribunal clothed with judicial power to hear and determine the matter before it; [second,] jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; [third,] the defendant must be given an opportunity to be heard; and [fourth,] judgment must be rendered upon lawful hearing.[134]

For "trials and investigations of an administrative character,"[135] *Ang Tibay v. Court of Industrial Relations*[136] lay down the seven (7) cardinal primary rights, thus:

> (1) The first of these rights is the right to a hearing which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Justice Hughes, in Morgan v. U.S., . . ., "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play."
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> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. . . . In the language of this court in Edwards vs. McCoy, . . ., "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration."
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> (3) "While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision

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[134] *Rabino v. Cruz*, 294 Phil. 480, 488 (1993) [Per *J*. Melo, Third Division].

[135] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642 (1940) [Per *J*. Laurel, *En Banc*].

[136] 69 Phil. 635 (1940) [Per *J*. Laurel, *En Banc*].

with absolutely nothing to support it is a nullity, a place when directly attached." (Edwards vs. McCoy, *supra*.) This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) Not only must there be some evidence to support a finding or conclusion . . ., but the evidence must be "substantial." . . . "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." . . . The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. . . . But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. . . .

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected . . . Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. . . .

(6) [The tribunal or officer], therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. . . .

(7) [The tribunal or officer] should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.[137] (Underscoring supplied; citations omitted)

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[137] *Id*. at 642-644.

However, notice and hearing are not required when an administrative agency exercises its quasi-legislative power. The reason is that in the exercise of quasi-legislative power, the administrative agency makes no "determination of past events or facts."[138]

The other aspect of due process—substantive due process—requires that laws be grounded on reason[139] and be free from arbitrariness. The government must have "sufficient justification for depriving a person of life, liberty, or property."[140] In the words of Justice Felix Frankfurter, due process is "the embodiment of the sporting idea of fair play."[141]

Essentially, substantive due process is satisfied if the deprivation is done in the exercise of the police power of the State. Called "the most essential, insistent and illimitable"[142] of the powers of the State, police power is the "authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."[143] In the negative, it is the "inherent and plenary power in the State which enables it to prohibit all that is hurtful to the comfort,

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[138] *Dagan v. Philippine Racing Commission*, 598 Phil. 406, 421 (2009) [Per *J.* Tinga, *En Banc*].

[139] See *Legaspi v. Cebu City,* 723 Phil. 90 (2013) [Per *J.* Bersamin, *En Banc*]; *White Light Corporation v. City of Manila,* 596 Phil. 444 (2009) [Per *J.* Tinga, *En Banc*].

[140] *White Light Corporation v. City of Manila,* 596 Phil. 444, 461 (2009) [Per *J.* Tinga, *En Banc*].

[141] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. The Honorable City Mayor of Manila,* 127 Phil. 306, 319 (1967) [Per *J.* Fernando, *En Banc*] *citing* Frankfurter, *Mr. Justice Holmes and the Supreme Court* 32-33 (1938).

[142] *Ichong v. Hernandez*, 101 Phil. 1155, 1163 (1957) [Per *J.* Labrador, *En Banc*].

[143] *Philippine Association of Service Exporters, Inc. v. Drilon,* 246 Phil. 393, 398 (1988) [Per *J.* Sarmiento, *En Banc*].

safety, and welfare of society."[144] "The reservation of essential attributes of sovereign power is . . . read into contracts as a postulate of the legal order."[145]

"[P]olice power is lodged primarily in the National Legislature."[146] However, it "may delegate this power to the President and administrative boards as well as the lawmaking bodies of municipal corporations or local government units."[147] "Once delegated, the agents can exercise only such legislative powers as are conferred on them by the [National Legislature]."[148]

Laws requiring the payment of minimum wage, security of tenure, and traffic safety[149] have been declared not violative of due process for being valid police power legislations. In these cases, the test or standard is whether the law is reasonable. The interests of the State to promote the general welfare, on the one hand, and the right to property, on the other, must be balanced. As expounded in *Ichong v. Hernandez*:[150]

> The conflict, therefore, between police power and the guarantees of due process and equal protection of the laws is more apparent than real. Properly related, the power and the guarantees are supposed to coexist. The balancing is the essence or, shall it be said, the indispensable means for the attainment of legitimate aspirations of any democratic society. There can be no absolute power, whoever exercise it, for that would be tyranny. Yet there can neither be absolute liberty, for that would mean license and anarchy. So the State can deprive persons of life, liberty and property, provided there is due

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[144] *Acebedo Optical Company, Inc. v. The Honorable Court of Appeals,* 385 Phil. 956, 986 (2000) [Per *J*. Purisima, *En Banc*].

[145] *The Philippine American Life Insurance Company v. The Auditor General*, 130 Phil. 134, 148 (1968) [Per *J*. Sanchez, *En Banc*].

[146] *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.,* 385 Phil. 586, 601 (2000) [Per *J*. Puno, First Division].

[147] *Id*.

[148] *Id*. at 601-602.

[149] See *Edu v. Ericta*, 146 Phil. 469 (1970) [Per *J*. Fernando, First Division].

[150] 101 Phil. 1155 (1957) [Per *J*. Labrador, *En Banc*].

process of law; and persons may be classified into classes and groups, provided everyone is given the equal protection of the law. The test or standard, as always, is reason. The police power legislation must be firmly grounded on public interest and welfare, and a reasonable relation must exist between purposes and means. And if distinction and classification ha[ve] been made, there must be a reasonable basis for said distinction.[151]

Given the foregoing, this Court finds that Department Order No. 118-12 and Memorandum Circular No. 2012-001 are not violative of due process, either procedural or substantive.

Department Order No. 118-12 and Memorandum Circular No. 2012-001 were issued in the exercise of quasi-legislative powers of the DOLE and the LTFRB, respectively. As such, notice and hearing are not required for their validity.

In any case, it is undisputed that the DOLE created a Technical Working Group that conducted several meetings and consultations with interested sectors before promulgating Department Order No. 118-12. Among those invited were bus drivers, conductors, and operators with whom officials of the DOLE conducted focused group discussions.[152] The conduct of these discussions more than complied with the requirements of procedural due process.

Neither are Department Order No. 118-12 and Memorandum Circular No. 2012-001 offensive of substantive due process.

Department Order No. 118-12 and Memorandum Circular No. 2012-001 are reasonable and are valid police power issuances. The pressing need for Department Order No. 118-12 is obvious considering petitioners' admission that the payment schemes prior to the Order's promulgation consisted of the "payment by results," the "commission basis," or the boundary system. These payment schemes do not guarantee the payment of minimum wages to bus drivers and conductors. There is also no mention of payment of social welfare benefits to bus

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[151] *Id*. at 1165.

[152] *Rollo,* pp. 530-531.

drivers and conductors under these payment schemes which have allegedly been in effect since "time immemorial."

There can be no meaningful implementation of Department Order No. 118-12 if violating it has no consequence. As such, the LTFRB was not unreasonable when it required bus operators to comply with the part-fixed-part-performance-based payment scheme under pain of revocation of their certificates of public convenience. The LTFRB has required applicants or current holders of franchises to comply with labor standards as regards their employees, and bus operators must be reminded that certificates of public convenience are not property. Certificates of public convenience are franchises always subject to amendment, repeal, or cancellation. Additional requirements may be added for their issuance, and there can be no violation of due process when a franchise is cancelled for non-compliance with the new requirement.

An equally important reason for the issuance of Department Order No. 118-12 and Memorandum Circular No. 2012-001 is to ensure "road safety" by eliminating the "risk-taking behaviors" of bus drivers and conductors. This Court in *Hernandez v. Dolor*[153] observed that the boundary system "place[s] the riding public at the mercy of reckless and irresponsible drivers—reckless because the measure of their earnings depends largely upon the number of trips they make and, hence, the speed at which they drive."[154]

Behavioral economics explains this phenomenon. The boundary system puts drivers in a "scarcity mindset" that creates a tunnel vision where bus drivers are nothing but focused on meeting the boundary required and will do so by any means possible and regardless of risks.[155] They stop for passengers even outside of the designated bus stops, impeding traffic flow. They compete with other bus drivers for more income without

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[153] 479 Phil. 593 (2004) [Per *J.* Ynares-Santiago, First Division].

[154] *Id*. at 603.

[155] *See* S. Mullainhathan and E. Shafir, *Scarcity* 27-29 (2013).

regard to speed limits and bus lanes. Some drivers even take in performance-enhancing drugs and, reportedly, even illegal drugs such as *shabu*, just to get additional trips. This scarcity mindset is eliminated by providing drivers with a fixed income plus variable income based on performance. The fixed income equalizes the playing field, so to speak, so that competition and racing among bus drivers are prevented. The variable pay provided in Department Order No. 118-12 is based on safety parameters, incentivizing prudent driving.

In sum, Department Order No. 118-12 and Memorandum Circular No. 2012-001 are in the nature of social legislations to enhance the economic status of bus drivers and conductors, and to promote the general welfare of the riding public. They are reasonable and are not violative of due process.

VII

Related to due process is the non-impairment clause. The Constitution's Article III, Section 10 provides:

ARTICLE III
Bill of Rights

. . . . . .

Section 10. No law impairing the obligation of contracts shall be passed.

The non-impairment clause was first incorporated into the United States Constitution after the American Revolution, an unstable time when worthless money was routinely issued and the States enacted moratorium laws to extend periods to pay contractual obligations that further contributed to the lack of confidence to the monetary system during that time.[156] These practices were prohibited under the clause to limit State

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[156] *Pryce Corporation v. China Banking Corporation*, 727 Phil. 1, 23 (2014) [Per *J*. Leonen, *En Banc*]. John G. Harvey, *The Impairment of Obligation of Contracts*, 195 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 87 (1938).

interference with free markets and debtor-creditor relationships.[157]

The clause was first adopted in our jurisdiction through the Philippine Bill of 1902 and, similar to the due process clause, has consistently appeared in subsequent Constitutions.

Since the non-impairment clause was adopted here, this Court has said that its purpose is to protect purely private agreements from State interference.[158] This is to "encourage trade and credit by promoting confidence in the stability of contractual relations."[159]

There are views, however, that the non-impairment clause is obsolete and redundant because contracts are considered property, and thus, are protected by the due process clause. On the other hand, studies show why the non-impairment clause should be maintained. Aside from its traditional purpose of prohibiting State interference in purely private transactions, the non-impairment clause serves as a guarantee of the separation of powers between the judicial and legislative branches of the government.[160] The non-impairment clause serves as a check on the legislature "to act only through generally applicable laws prescribing rules of conduct that operate prospectively."[161]

This approach, called the institutional regularity approach, was applied in *United States v. Diaz Conde and R. Conde.*[162] The accused in the case lent ₱300.00 to two (2) debtors with

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[157] *Pryce Corporation v. China Banking Corporation*, 727 Phil. 1, 23 (2014) [Per *J*. Leonen, *En Banc*].

[158] *National Development Company v. Philippine Veterans Bank*, 270 Phil. 349, 359 (1990) [Per *J*. Cruz, *En Banc*].

[159] *Home Building & Loan Association v. Blaisdell,* 290 U.S. 398 (1934) *cited* in Agpalo, *Philippine Constitutional Law*, 502 (2006).

[160] *Rediscovering the Contract Clause*, 97 HARVARD LAW REVIEW 6, 1414, 1426 (1984).

[161] *Id*. at 1427.

[162] 42 Phil. 766 (1922) [Per *J*. Johnson, *En Banc*].

5% interest per month, payable within the first 10 days of each and every month. The Usury Law was subsequently passed in 1916, outlawing the lending of money with usurious interests.

In 1921, the accused were charged for violating the Usury Law for money lending done in 1915. The accused were initially convicted but they were subsequently acquitted. This Court held that the loan contract was valid when it was entered into; thus, to render a previously valid contract illegal for violating a subsequent law is against the non-impairment clause. This Court explained:

> A law imposing a new penalty, or a new liability or disability, or giving a new right of action, must not be construed as having a retroactive effect. It is an elementary rule of contract that the laws in force at the time the contract was made must govern its interpretation and application. Laws must be construed prospectively and not retrospectively. If a contract is legal at its inception, it cannot be rendered illegal by any subsequent legislation. If that were permitted then the obligations of a contract might be impaired, which is prohibited by the organic law of the Philippine Islands.[163]

It is claimed that the institutional regularity approach "offers the soundest theoretical basis for reviving the [non-impairment clause] as a meaningful constitutional constraint."[164] It is consistent with the government's right to regulate itself, but prevents "majoritarian abuse."[165] With the non-impairment clause, legislature cannot enact "retroactive laws, selective laws, and laws not supported by a public purpose."[166]

At any rate, so long as the non-impairment clause appears in the Constitution, it may be invoked to question the constitutionality of State actions.

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[163] *Id*. at 769-770 citing *U.S. vs. Constantino Tan Quingco Chua*, 39 Phil. 552 (1919) [Per *J*. Malcolm, *En Banc*] and *Aguilar vs. Rubiato and Gonzales Vila*, 40 Phil. 570 (1919) [Per *J*. Malcolm, First Division].

[164] *Rediscovering the Contract Clause*, 97 HARVARD LAW REVIEW 6, 1414, 1429 (1984).

[165] *Id*. at 1430.

[166] *Id*.

There is an impairment when, either by statute or any administrative rule issued in the exercise of the agency's quasi-legislative power, the terms of the contracts are changed either in the time or mode of the performance of the obligation.[167] There is likewise impairment when new conditions are imposed or existing conditions are dispensed with.[168]

Not all contracts, however, are protected under the non-impairment clause. Contracts whose subject matters are so related to the public welfare are subject to the police power of the State and, therefore, some of its terms may be changed or the whole contract even set aside without offending the Constitution;[169] otherwise, "important and valuable reforms may be precluded by the simple device of entering into contracts for the purpose of doing that which otherwise may be prohibited."[170]

Likewise, contracts which relate to rights not considered property, such as a franchise or permit, are also not protected by the non-impairment clause. The reason is that the public right or franchise is always subject to amendment or repeal by the State,[171] the grant being a mere privilege. In other words,

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[167] *Siska Development Corporation v. Office of the President,* 301 Phil. 678, 684 (1994) [Per *J*. Quiason, *En Banc*] citing *Clemons v. Nolting,* 42 Phil. 702 (1922) [Per *J*. Johnson, *En Banc*].

[168] *Id*.

[169] See *National Development Company v. Philippine Veterans Bank*, 270 Phil. 349, 358-359 (1990) [Per *J*. Cruz, *En Banc*].

[170] See *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 78 (1974) [Per *J*. Zaldivar, *En Banc*].

[171] CONST., Art. XII, Sec. 11 provides:

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty *per centum* of whose capital is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common

there can be no vested right in the continued grant of a franchise. Additional conditions for the grant of the franchise may be made and the grantee cannot claim impairment.

Similar to the right to due process, the right to non-impairment yields to the police power of the State.

In *Anucension v. National Labor Union*,[172] Hacienda Luisita and the exclusive bargaining agent of its agricultural workers, National Labor Union, entered into a collective bargaining agreement. The agreement had a union security clause that required membership in the union as a condition for employment. Republic Act No. 3350 was then subsequently enacted in 1961, exempting workers who were members of religious sects which prohibit affiliation of their members with any labor organization from the operation of union security clauses.

On the claim that Republic Act No. 3350 violated the obligation of contract, specifically, of the union security clause found in the collective bargaining agreement, this Court conceded that "there was indeed an impairment of [the] union security clause."[173] Nevertheless, this Court noted that the "prohibition to impair the obligation of contracts is not absolute and unqualified"[174] and that "the policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile — a government which retains adequate authority to secure the peace and good order of society."[175] A statute passed to protect labor is a "legitimate exercise of police power, although it incidentally

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good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

[172] 170 Phil. 373 (1977) [Per *J*. Makasiar, First Division].

[173] *Id*. at 386.

[174] *Id*.

[175] *Id*. at 387.

destroys existing contract rights."[176] "[C]ontracts regulating relations between capital and labor . . . are not merely contractual, and said labor contracts . . . [are] impressed with public interest, [and] must yield to the common good."[177]

This Court found the purpose behind Republic Act No. 3350 legitimate. Republic Act No. 3350 protected labor by "preventing discrimination against those members of religious sects which prohibit their members from joining labor unions, confirming thereby their natural, statutory and constitutional right to work, the fruits of which work are usually the only means whereby they can maintain their own life and the life of their dependents."[178] This Court, therefore, upheld the constitutionality of Republic Act No. 3350.

Laws regulating public utilities are likewise police power legislations. In *Pangasinan Transportation Co., Inc. v. The Public Service Commission*,[179] Pangasinan Transportation Co., Inc. (Pangasinan Transportation) filed an application with the Public Service Commission to operate 10 additional buses for transporting passengers in Pangasinan and Tarlac. The Public Service Commission granted the application on the condition that the authority shall only be for 25 years.

When the Public Service Commission denied Pangasinan Transportation's motion for reconsideration with respect to the imposition of the 25-year validity period, the bus company filed a petition for certiorari before this Court. It claimed that it acquired its certificates of public convenience to operate public utility buses when the Public Service Act did not provide for a definite period of validity of a certificate of public convenience. Thus, Pangasinan Transportation claimed that it "must be deemed to have the right [to hold its certificates of public convenience] in perpetuity."[180]

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[176] *Id*.

[177] *Id*.

[178] *Id*. at 387-388.

[179] 70 Phil. 221 (1940) [Per *J*. Laurel, *En Banc*].

[180] *Id*. at 231.

Rejecting Pangasinan Transportation's argument, this Court declared that certificates of public convenience are granted subject to amendment, alteration, or repeal by Congress. Statutes enacted for the regulation of public utilities, such as the Public Service Act, are police power legislations "applicable not only to those public utilities coming into existence after [their] passage, but likewise to those already established and in operation."[181]

Here, petitioners claim that Department Order No. 118-12 and Memorandum Circular No. 2012-001 violate bus operators' right to non-impairment of obligation of contracts because these issuances force them to abandon their "time-honored"[182] employment contracts or arrangements with their drivers and conductors. Further, these issuances violate the terms of the franchise of bus operators by imposing additional requirements after the franchise has been validly issued.

Petitioners' arguments deserve scant consideration. For one, the relations between capital and labor are not merely contractual as provided in Article 1700 of the Civil Code.[183] By statutory declaration, labor contracts are impressed with public interest and, therefore, must yield to the common good. Labor contracts are subject to special laws on wages, working conditions, hours of labor, and similar subjects. In other words, labor contracts are subject to the police power of the State.

As previously discussed on the part on due process, Department Order No. 118-12 was issued to grant bus drivers and conductors minimum wages and social welfare benefits. Further, petitioners repeatedly admitted that in paying their

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[181] *Id*. at 232.

[182] *Rollo,* p. 488, Memorandum for petitioners.

[183] CIVIL CODE, Art. 1700 provides:

Article 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

bus drivers and conductors, they employ the boundary system or commission basis, payment schemes which cause drivers to drive recklessly. Not only does Department Order No. 118-12 aim to uplift the economic status of bus drivers and conductors; it also promotes road and traffic safety.

Further, certificates of public convenience granted to bus operators are subject to amendment. When certificates of public convenience were granted in 2012, Memorandum Circular No. 2011-004 on the "Revised Terms and Conditions of [Certificates of Public Convenience] and Providing Penalties for Violations Thereof" was already in place. This Memorandum Circular, issued before Memorandum Circular No. 2012-001, already required public utility vehicle operators to comply with labor and social legislations. Franchise holders cannot object to the reiteration made in Memorandum Circular No. 2012-001.

All told, there is no violation of the non-impairment clause.

VIII

The equal protection clause was first incorporated in the United States Constitution through the Fourteenth Amendment, mainly to protect the slaves liberated after the Civil War from racially discriminatory state laws.[184] This was in 1868. When the Philippines was ceded by Spain to the United States in 1898, provisions of the United States Constitution were held not to have been automatically applicable here, except those "parts [falling] within the general principles of fundamental limitations in favor of personal rights formulated in the Constitution and its amendments."[185] It is said that the equal protection clause, "[b]eing one such limitation in favor of personal rights enshrined in the Fourteenth Amendment," was

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[184] *J.* Carpio-Morales' Dissenting Opinion in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 689 (2004) [Per *J.* Puno, *En Banc*].

[185] *United States v. Dorr*, 2 Phil. 269, 283-284 (1903) [Per *J.* Cooper, *En Banc*].

deemed extended in this jurisdiction upon our cession to the United States.[186] The text of the equal protection clause first appeared in the Philippine Bill of 1902 and has since appeared in our subsequent Constitutions.

"Equal protection of the laws" requires that "all persons . . . be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced."[187] "The purpose of the equal protection clause is to secure every person within a state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by the express terms of a statute or by its improper execution through the state's duly constituted authorities."[188]

However, the clause does not prevent the legislature from enacting laws making valid classifications. Classification is "the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars."[189] To be valid, the classification must be: first, based on "substantial distinctions which make real differences";[190] second, it must be "germane to the purposes of the law";[191] third, it must "not be limited to existing conditions only";[192] and fourth, it must apply to each member of the class.[193]

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[186] *J.* Panganiban's Dissenting Opinion in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [Per *J.* Puno, *En Banc*].

[187] *Ichong v. Hernandez,* 101 Phil. 1155, 1164 (1957) [Per *J.* Labrador, *En Banc*].

[188] *Bureau of Customs Employees Association v. Teves,* G.R. No. 181704, December 6, 2011, 661 SCRA 589, 609 [Per *J.* Villarama, Jr., *En Banc*].

[189] *The Philippine Judges Association v. Prado*, 298 Phil. 502, 513 (1993) [Per *J.* Cruz, *En Banc*].

[190] *Ormoc Sugar Company, Inc. v. The Treasurer of Ormoc City,* 130 Phil. 595, 598 (1968) [Per *J.* J.P. Bengzon, *En Banc*].

[191] *People v. Cayat,* 68 Phil. 12, 18 (1939) [Per *J.* Moran, First Division].

[192] *Id*.

[193] *Id*.

In *Ichong v. Hernandez,*[194] the constitutionality of Republic Act No. 1180 was assailed for alleged violation of the equal protection clause. The law prohibited aliens from engaging in retail business in the Philippines. This Court sustained the classification by citizenship created by Republic Act No. 1180. This Court observed how our economy primarily relied on retailers to distribute goods to consumers; thus, the legislature saw it fit to limit the conduct of retail business to Filipinos to protect the country's economic freedom. This Court said:

> Broadly speaking, the power of the legislature to make distinctions and classifications among persons is not curtailed or denied by the equal protection of the laws clause. The legislative power admits of a wide scope of discretion, and a law can be violative of the constitutional limitation only when the classification is without reasonable basis. In addition to the authorities we have earlier cited, we can also refer to the case of Lindsley *vs*. Natural Carbonic Gas Co. (1911), 55 L. ed., 369, which clearly and succinctly defined the application of equal protection clause to a law sought to be voided as contrary thereto:
>
> > "... '1. The equal protection clause of the Fourteenth Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of the wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary.'"[195]

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[194] 101 Phil. 1155 (1957) [Per *J*. Labrador, *En Banc*].

[195] *Id*. at 1177.

The petitioners in *Basco v. Philippine Amusement and Gaming Corporation*[196] claimed that Presidential Decree No. 1869, the charter of the Philippine Amusement and Gaming Corporation, was violative of the equal protection guarantee because it only allowed gambling activities conducted by the Philippine Amusement and Gaming Corporation but outlawed the other forms. This Court upheld the constitutionality of Presidential Decree No. 1869 mainly because "[t]he [equal protection] clause does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is not unreasonable or arbitrary."[197]

In the recent case of *Garcia v. Drilon*,[198] this Court rejected the argument that Republic Act No. 9262 or the Anti-Violence Against Women and Children violated the equal protection guarantee. According to this Court, the "unequal power relationship between women and men; the fact that women are more likely than men to be victims of violence; and the widespread gender bias and prejudice against women"[199] justify the enactment of a law that specifically punishes violence against women.

In the present case, petitioners' sole claim on their equal protection argument is that the initial implementation of Department Order No. 118-12 in Metro Manila "is not only discriminatory but is also prejudicial to petitioners."[200] However, petitioners did not even bother explaining how exactly Department Order No. 118-12 infringed on their right to equal protection.

At any rate, the initial implementation of Department Order No. 118-12 is not violative of the equal protection clause. In

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[196] 274 Phil. 323 (1991) [Per *J*. Paras, *En Banc*].

[197] *Id*. at 342, citing *Ichong v. Hernandez*, 101 Phil. 1155 (1957) [Per *J*. Labrador, *En Banc*].

[198] 712 Phil. 44 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

[199] *Id*. at 91.

[200] *Rollo,* p. 490, Memorandum for Petitioners.

Taxicab Operators of Metro Manila, Inc. v. The Board of Transportation,[201] this Court upheld the initial implementation of the phase-out of old taxicab units in Metro Manila because of the "heavier traffic pressure and more constant use" of the roads. The difference in the traffic conditions in Metro Manila and in other parts of the country presented a substantial distinction.

The same substantial distinction can be inferred here. Department Order No. 118-12 has also been implemented in other parts of the country. Petitioners' weak argument is now not only moot. It also deserves no merit.

IX

In constitutional litigation, this Court presumes that official acts of the other branches of government are constitutional. This Court proceeds on the theory that "before the act was done or the law was enacted, earnest studies were made by Congress or the President, or both, to insure that the Constitution would not be breached."[202] Absent a clear showing of breach of constitutional text, the validity of the law or action shall be sustained.

WHEREFORE, the Petition is **DISMISSED.**

SO ORDERED.

Carpio, Acting C.J., Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Martires, Tijam, Reyes, Jr., and *Gesmundo, JJ.,* concur.

Peralta and *Jardeleza, JJ.,* no part.

Perlas-Bernabe, J., on official leave.

Caguioa, J., on leave.

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[201] 202 Phil. 925 (1982) [Per *J.* Melencio-Herrera, *En Banc*].

[202] *Association of Small Landowners in the Philippines, Inc. v. Hon. Secretary of Agrarian Reform,* 256 Phil. 777, 798 (1989) [Per *J.* Cruz, *En Banc*].

EN BANC

[G.R. No. 217682. July 17, 2018]

JOSE "JINGGOY" P. EJERCITO ESTRADA and MA. PRESENTACION VITUG EJERCITO, *petitioners, vs.* **SANDIGANBAYAN (FIFTH DIVISION); ANTI-MONEY LAUNDERING COUNCIL, represented by its EXECUTIVE DIRECTOR, JULIA C. BACAY-ABAD; and PEOPLE OF THE PHILIPPINES, represented by the OFFICE OF THE SPECIAL PROSECUTOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*, PROHIBITION AND *MANDAMUS*; AVAILABLE ONLY TO A PARTY IN THE ORIGINAL PROCEEDINGS BEFORE THE RESPONDENT OFFICER, TRIBUNAL OR AGENCY.— The procedural rules under Rule 65 of the *Rules of Court* governing the special civil actions for *certiorari*, prohibition and *mandamus* limit the remedy to a *person aggrieved* by the assailed decision, resolution, order or act. For purposes of the rule, a *person aggrieved* is one who was a party in the original proceedings before the respondent officer, tribunal or agency. As such, Ejercito cannot seek the annulment of the assailed resolutions of the Sandiganbayan because she was not a party in the original proceeding pending thereat involving Estrada, her husband.

2. CRIMINAL LAW; THE ANTI-MONEY LAUNDERING ACT (REPUBLIC ACT NO. 9160, AS AMENDED); A COLLATERAL ATTACK AGAINST SECTION 11 OF R.A. NO. 9160, AS AMENDED, A PRESUMABLY VALID LAW, IS NOT PERMISSIBLE, FOR UNLESS A LAW OR RULE IS ANNULLED BY A DIRECT PROCEEDING, THE LEGAL PRESUMPTION OF ITS VALIDITY STANDS .— [T]he petitioners' assailing herein the constitutionality of Section 11 of R.A. No. 9160, as amended, constitutes a collateral attack against such legal provision. A collateral attack against a presumably valid law like R.A. No. 9160 is not permissible.

Unless a law or rule is annulled by a direct proceeding, the legal presumption of its validity stands.

3. ID.; ID.; AN *EX PARTE* APPLICATION FOR THE BANK INQUIRY ORDER BASED ON SECTION 11 OF R.A. NO. 9160, AS AMENDED BY R.A. NO. 10167, IS NOT VIOLATIVE OF SUBSTANTIVE AND PROCEDURAL DUE PROCESS. — It is relevant to remind, however, that the constitutionality of Section 11 of R.A. No. 9160, as amended, has been dealt with and upheld in *Subido*, where we ruled that the AMLC's *ex parte* application for the bank inquiry order based on Section 11 of R.A. No. 9160, as amended by R.A. No. 10167, did not violate substantive due process because the physical seizure of the targeted corporeal property was not contemplated by the law. We clarify that the AMLC, in investigating probable money laundering activities, does not exercise quasi-judicial powers, but merely acts as an investigatory body with the sole power of investigation similar to the functions of the National Bureau of Investigation (NBI). Hence, the *ex parte* application for the bank inquiry order cannot be said to violate any person's constitutional right to procedural due process. Also, the source of the right to privacy respecting bank deposits is statutory, not constitutional; hence, the Congress may validly carve out exceptions to the rule on the secrecy of bank deposits, as illustrated in Section 11 of R.A. No. 9160. With the consistency of the assailed provision of R.A. No. 9160 with the Constitution, the petitioners' argument that the Inquiry Report was the fruit of a poisonous tree and, therefore, inadmissible in evidence remains unsubstantiated.

4. ID.; *EX POST FACTO* LAW; CONCEPT.— An *ex post facto* law is a law that either: (1) makes criminal an act done before the passage of the law that was innocent when done, and punishes such act; or (2) aggravates a crime, or makes the crime greater than it was when committed; or (3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or (4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; or (5) assumes to regulate civil rights and remedies only, but in effect imposes a penalty or deprivation of a right for an act that was lawful when done; or (6) deprives a person

accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.

5. ID.; THE ANTI-MONEY LAUNDERING ACT (R.A. NO. 9160), AS AMENDED BY R.A. NO. 10167; PENAL PROVISIONS THEREOF SHALL NOT APPLY TO ACTS DONE PRIOR TO ITS EFFECTIVITY.— The petitioners' reliance on *Republic v. Eugenio, Jr.* is misplaced. Unlike the passage of R.A. No. 9160 in order to allow an exception to the general rule on bank secrecy, the amendment introduced by R.A. No. 10167 does away with the notice to the account holder at the time when the bank inquiry order is applied for. The elimination of the requirement of notice, by itself, is not a removal of any lawful protection to the account holder because the AMLC is only exercising its investigative powers at this stage. Indeed, R.A. No. 10167, in recognition of the *ex post facto* clause of the Constitution, explicitly provides that "the penal provisions shall not apply to acts done prior to the effectivity of the AMLA on October 17, 2001."

6. ID.; ID.; THE EXISTENCE OF PROBABLE CAUSE IS REQUIRED BEFORE ANY BANK INQUIRY ORDER IS ISSUED, AND THE ALLOWANCE OF AN *EX PARTE* APPLICATION FOR A BANK INQUIRY CANNOT BE CATEGORIZED AS AUTHORIZING THE ISSUANCE OF A GENERAL WARRANT.— [T]he AMLC's inquiry and examination into bank accounts are not undertaken whimsically based on its investigative discretion. The AMLC and the CA are respectively required to ascertain the existence of probable cause before any bank inquiry order is issued. Section 11 of R.A. 9160, even with the allowance of an *ex parte* application therefor, cannot be categorized as authorizing the issuance of a general warrant. This is because a search warrant or warrant of arrest contemplates a direct object but the bank inquiry order does not involve the seizure of persons or property.

7. ID.; ID.; THE HOLDER OF A BANK ACCOUNT SUBJECT OF A BANK INQUIRY ORDER ISSUED *EX PARTE* CAN ASSAIL THE FINDING OF PROBABLE CAUSE FOR THE ISSUANCE OF THE FREEZE ORDER AND THE BANK INQUIRY ORDER.— [T]he holder of a bank account subject of a bank inquiry order issued *ex parte* is not without recourse.

He has the opportunity to question the issuance of the bank inquiry order after a freeze order is issued against the account. He can then assail not only the finding of probable cause for the issuance of the freeze order, but also the finding of probable cause for the issuance of the bank inquiry order.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*, PROHIBITION AND *MANDAMUS*; THE GRANT OF BAIL TO PETITIONER RENDERED HIS PETITION FOR *CERTIORARI*, PROHIBITION AND *MANDAMUS* MOOT AND ACADEMIC.— On November 10, 2017, the Sandiganbayan denied the People's motion for reconsideration and upheld the grant of bail to Estrada. Considering that the resolutions being assailed trace their roots to the bail hearing of Estrada, the aforementioned conclusions of the Sandiganbayan relevant to his bail application, and the eventual grant of bail to him have rendered his petition for *certiorari*, prohibition and *mandamus* moot and academic. There is no question that whenever the issues have become moot and academic, there ceases to be any justiciable controversy, such that the resolution of the issues no longer have any practical value. In effect, the Court can no longer grant any substantial relief to which the petitioner may be entitled. Hence, the Court should abstain from expressing its opinion in a case where no legal relief is needed or called for.

APPEARANCES OF COUNSEL

Flaminiano Arroyo & Dueñas for petitioners.
Sabino E. Acut, Jr., et al. for petitioners.
Ranada Malaya Sanchez Simpao & Ortega Law Offices for petitioners.
Agabin Verzola & Layaoen Law Ofices for petitioners.
The Solicitor General for respondents.

R E S O L U T I O N

BERSAMIN, *J.*:

By petition for *certiorari*, prohibition and *mandamus*, the petitioners seek to annul and set aside the resolution promulgated

on February 2, 2015,[1] whereby the Sandiganbayan denied their *Urgent Motion to Suppress/Exclude (The Inquiry Report on the Bank Transactions Related to the Alleged Involvement of Senator Jose P. "Jinggoy" Ejercito Estrada in the PDAF Scam, and the Testimony of Witness Atty. Orlando C. Negradas, Jr. Thereon)* (motion to suppress) filed in Criminal Case No. SB-14-CRM-0239, a prosecution for plunder.[2]

Antecedents

On September 11, 2013, Benhur K. Luy, Merlina P. Suñas, Gertrudes K. Luy, Nova Kay Batal-Macalintal, Elena S. Abundo and Avelina C. Lingo (whistleblowers) executed their *Pinagsamang Sinumpaang Salaysay* in which they revealed the details of the Pork Barrel Scam that involved the misuse or illegal diversion by certain legislators of their allocations from the Priority Development Assistance Fund (PDAF) in connivance with Janet Lim Napoles (Napoles), the whistleblowers' former employer.[3]

The National Bureau of Investigation (NBI) conducted its investigation, and on September 16, 2013 resolved to file in the Office of the Ombudsman verified criminal complaints for plunder, malversation, direct bribery, and graft and corrupt practices against the persons involved in the Pork Barrel Scam, including petitioner Senator Jose "Jinggoy" P. Ejercito Estrada (Estrada).

Acting on the criminal complaints, the Office of the Ombudsman requested the Anti-Money Laundering Council (AMLC) on October 11, 2013 to conduct a financial investigation of the bank accounts of the petitioners and others.[4]

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[1] *Rollo* (Vol. I), pp. 169-171; penned by Associate Justice Roland B. Jurado (Chairperson), with the concurrence of Associate Justice Alexander G. Gesmundo (now a Member of the Court) and Associate Justice Ma. Theresa Dolores C. Gomez-Estoesta.

[2] *Rollo* (Vol. 1), p. 4.

[3] *Id.* at 318-319.

[4] *Id.* at 34, 319.

On March 28, 2014, the Office of the Ombudsman issued a joint resolution finding probable cause to indict Estrada and other persons for plunder and for violation of Republic Act No. 3019 (*The Anti-Graft and Corrupt Practices Act*).[5]

Meanwhile, the AMLC, determining that Estrada's accounts were probably related to the charge of plunder and the violation of R.A. No. 3019 charged against him and others, authorized its secretariat to file in the Court of Appeals (CA) an *ex parte* application for bank inquiry pursuant to R.A. No. 9160, as amended (*The Anti-Money Laundering Act*).

In the resolution promulgated on May 28, 2014, the CA granted the *ex parte* application.[6]

In the information dated June 5, 2014 filed in the Sandiganbayan, the Office of the Ombudsman charged Estrada and others with plunder, the accusatory portion of which was as follows:

> In 2004 to 2012, or thereabout, in the Philippines, and within this Honorable Court's jurisdiction, above-named accused **JOSE P. EJERCITO ESTRADA**, then a Philippine Senator, and **PAULINE THERESE MARY C. LABAYEN**, then Deputy Chief of Staff of Sen. Estrada's Office, both public officers, committing the offense in relation to their respective offices, conspiring with one another and with **JANET LIM NAPOLES**, and **JOHN RAYMUND DE ASIS**, did then and there willfully, unlawfully, and criminally amass, accumulate and/or acquire ill-gotten wealth amounting to at least ONE HUNDRED EIGHTY THREE MILLION SEVEN HUNDRED NINETY THREE THOUSAND SEVEN HUNDRED FIFTY PESOS (Php183,793,750.00) through a combination or series of overt criminal acts, as follows:
>
> a) by repeatedly receiving from NAPOLES and/or her representative DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ESTRADA and/or LABAYEN received, a percentage of the

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[5] *Id*. at 320.

[6] *Id*. at 320.

cost of a project to be funded from ESTRADA'S Priority Development Assistance Fund (PDAF), in consideration of ESTRADA'S endorsement, directly or through LABAYEN, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementors of ESTRADA'S PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;

b) by taking undue advantage, on several occasions, of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.

CONTRARY TO LAW.[7]

In the process of inquiring into Estrada's accounts, the AMLC discovered that Estrada had transferred substantial sums of money to the accounts of his wife, co-petitioner Ma. Presentacion Vitug Ejercito (Ejercito), on the dates relevant to the Pork Barrel Scam. Considering that the transfers lacked apparent legal or economic justifications, the AMLC concluded that the accounts were linked to a predicate crime of plunder. Hence, the AMLC filed in the CA a supplemental *ex parte* application for the bank inquiry to be conducted on Ejercito's accounts, among others.

On August 15, 2014, the CA granted the supplemental *ex parte* application.[8]

The results of the AMLC's bank inquiry into Estrada's accounts were contained in the so-called *Inquiry Report on the Bank Transactions Related to the Alleged Involvement of Senator Jose "Jinggoy" P. Ejercito Estrada in the PDAF Scam* (Inquiry Report). On December 19, 2014, the AMLC furnished the Office of the Ombudsman a copy of the Inquiry Report. During Estrada's bail hearings in the Sandiganbayan, the

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

[8] *Id.* at 321-322.

Prosecution presented Atty. Orlando C. Negradas, Jr., an AMLC financial investigator, who testified on the Inquiry Report.[9]

On January 23, 2015, Estrada filed the motion to suppress.[10]

On February 2, 2015, the Sandiganbayan issued the assailed resolution denying the motion to suppress.

Estrada moved for reconsideration, but the Sandiganbayan denied his motion on March 2, 2015.[11]

Hence, the petitioners have come to the Court by petition for *certiorari*, prohibition and *mandamus*, submitting that:

THE RESPONDENT TRIBUNAL COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICITON IN RULING THAT:

1. IN THIS CONTEXT, THE CONSTITUTIONAL RIGHTS AGAINST UNREASONABLE SEARCH AND SEIZURE AND ARREST AND THE RIGHT TO PRIVACY OF COMMUNICATION AND CORRESPONDENCE SHOULD ONLY YIELD TO THE MANDATE OF THE AMLC, SINCE SUCH ACTION OPENED THE GATE TO THE INTRODUCTION OF EVIDENCE OBTAINED BY A 'FISHING EXPEDITION' PROHIBITED BY THE CONSTITUTION;

2. THAT THE AMENDMENT TO SECTION 11 OF R.A. 9160 SHOULD BE APPLIED RETROACTIVELY IN THIS CASE, WITHOUT CONSIDERING THAT APPLICATION OF SECTION 11 IN THIS CASE VIOLATES THE RIGHT TO PRIVACY DERIVED FROM THE DUE PROCESS CLAUSE; AND THAT SECTION 11, INSOFAR AS IT DISPENSES WITH THE 'NOTICE' REQUIREMENT TO HOLDERS OF RELATED ACCOUNTS, IS UNCONSTITUTIONAL;

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[9] *Id*. at 34, 322-323.

[10] *Id*. at 323.

[11] *Id*.

3. THAT THE CONTENTS OF THE AMLC INQUIRY REPORT IS ADMISSIBLE EVIDENCE IN THIS CASE, CONSIDERING THAT IT WAS OBTAINED IN VIOLATION OF THE CONSTITUTIONAL RIGHT TO PRIVACY;

4. IN FAILING TO APPLY THE STANDARD OF 'STRICT SCRUTINY' IN DETERMINING WHETHER PETITIONER MA. PRESENTACION EJERCITO WAS DEPRIVED OF HER RIGHT TO PRIVACY.[12]

The Office of the Special Prosecutor (OSP), in representation of the State, counters that the petition has not laid the foundation for a finding of grave abuse of discretion on the part of the Sandiganbayan; that the Sandiganbayan correctly held that the right to privacy was not an illimitable right but one necessarily circumscribed by the exceptions embedded in both the 1987 Constitution and the laws; that the constitutionality of R.A. No. 10167 could not be attacked collaterally; that, in any event, the Sandiganbayan properly ruled that the amendment under R.A. No. 10167 applied to Estrada; that the "heightened/strict scrutiny" test was inapplicable because the extent and delimitation of Estrada's privacy rights were specifically laid down in laws and jurisprudence, and were matters of judicial application, not interpretation; and that the petition has not established grounds that would entitle the petitioners to the provisional remedy of a temporary restraining order or writ of preliminary injunction.[13]

In its comment, the AMLC posits that Ejercito is not a proper party; that R.A. No. 10167 does not violate the constitutional rights to privacy and to due process; that R.A. No. 10167 is not an *ex post facto* law; that the Congress has the power to enact R.A. No. 10167; and that the Inquiry Report did not emanate from a fishing expedition, and, as such, the Inquiry Report and the testimony of Atty. Negradas were admissible as evidence against Estrada.[14]

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[12] *Id*. at 8.

[13] *Id*. at 264.

[14] *Id*. at 323-324.

In other words, the issues are restated as follows:

a. Does Section 11 of R.A. No. 9160, as amended, violate the constitutionally mandated right to due process and right to privacy?

b. Should the *ex parte* application for a bank inquiry order provided for in Section 11 of R.A. No. 9160, as amended, be applied retroactively?

Ruling of the Court

1.
Section 11 of R.A. No. 9160, as amended, is constitutional

We restate the relevant legal and jurisprudential milieu expounded on in *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals*[15] (*Subido*), *viz.*:

As a brief backgrounder to the amendment to Section 11 of the AMLA, the text originally did not specify for an *ex-parte* application by the AMLC for authority to inquire into or examine certain bank accounts or investments. The extent of this authority was the topic of *Rep. of the Phils. v. Hon. Judge Eugenio, Jr., et al. (Eugenio)* where the petitioner therein, Republic of the Philippines, asseverated that the application for that kind of order under the questioned section of the AMLA did not require notice and hearing. *Eugenio* schooled us on the AMLA, specifically on the provisional remedies provided therein to aid the AMLC in enforcing the law.

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Quite apparent from the foregoing is that absent a specific wording in the AMLA allowing for *ex-parte* proceedings in orders authorizing inquiry and examination by the AMLC into certain bank deposits or investments, notice to the affected party is required.

Heeding the Court's observance in *Eugenio* that the remedy of the Republic then lay with the legislative, Congress enacted Republic Act No. 10167 amending Section 11 of the AMLA and specifically

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[15] G.R. No. 216914, December 6, 2016, 831 SCRA 1, 25, 28.

inserted the word *ex-parte* appositive of the nature of this provisional remedy available to the AMLC thereunder.

Like the petitioners in *Subido*, the petitioners herein contend that Section 11 of R.A. No. 9160, as amended, is unconstitutional insofar as it allows the filing of an *ex parte* application for an order to inquire into bank deposits and investments for violating the constitutionally-mandated right to due process and right to privacy; that Section 11 of R.A. No. 9160 is being used for a "fishing expedition;" that the disclosure of "related accounts" imposed by the amendment to Section 11 of R.A. No. 9160 is clearly a "fruit of the poisonous tree;" and that the Inquiry Report should consequently be declared inadmissible as evidence.[16]

The petitioners' contentions have no merit.

To start with, the procedural rules under Rule 65 of the *Rules of Court* governing the special civil actions for *certiorari*, prohibition and *mandamus* limit the remedy to a *person aggrieved* by the assailed decision, resolution, order or act.[17] For purposes of the rule, a *person aggrieved* is one who was a party in the original proceedings before the respondent officer, tribunal or agency.[18] As such, Ejercito cannot seek the annulment of the assailed resolutions of the Sandiganbayan because she was not a party in the original proceeding pending thereat involving Estrada, her husband.

And, secondly, the petitioners' assailing herein the constitutionality of Section 11 of R.A. No. 9160, as amended, constitutes a collateral attack against such legal provision. A collateral attack against a presumably valid law like R.A. No. 9160 is not permissible. Unless a law or rule is annulled

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[16] *Rollo* (Vol. 1), pp. 9-24, 381.

[17] Sections 1-3, Rule 65, *Rules of Court*.

[18] *Tang v. Court of Appeals*, G.R. No. 117204, February 11, 2000, 325 SCRA 394, 402-403.

by a direct proceeding, the legal presumption of its validity stands.[19]

It is relevant to remind, however, that the constitutionality of Section 11 of R.A. No. 9160, as amended, has been dealt with and upheld in *Subido*, where we ruled that the AMLC's *ex parte* application for the bank inquiry order based on Section 11 of R.A. No. 9160, as amended by R.A. No. 10167, did not violate substantive due process because the physical seizure of the targeted corporeal property was not contemplated by the law.

We clarify that the AMLC, in investigating probable money laundering activities, does not exercise quasi-judicial powers, but merely acts as an investigatory body with the sole power of investigation similar to the functions of the National Bureau of Investigation (NBI). Hence, the *ex parte* application for the bank inquiry order cannot be said to violate any person's constitutional right to procedural due process.[20] Also, the source of the right to privacy respecting bank deposits is statutory, not constitutional; hence, the Congress may validly carve out exceptions to the rule on the secrecy of bank deposits, as illustrated in Section 11 of R.A. No. 9160.[21]

With the consistency of the assailed provision of R.A. No. 9160 with the Constitution, the petitioners' argument that the Inquiry Report was the fruit of a poisonous tree and, therefore, inadmissible in evidence remains unsubstantiated.

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[19] *Vivas v. Monetary Board of the Bangko Sentral ng Pilipinas*, G.R. No. 191424, August 7, 2013, 703 SCRA 290, 311.

[20] *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals*, note 15, at 42.

[21] *Republic v. Bolante*, G.R. Nos. 186717 & 190357, April 17, 2017, 822 SCRA 526, 558.

2.
The amendment to Section 11 of R.A. 9160 allowing an *ex parte* application for the bank inquiry does not violate the proscription against *ex post facto* laws

The petitioners insist that R.A. No. 10167, which amended Section 11 of R.A. No. 9160, is an *ex post facto* legislation because it applies retroactively to bank transactions made prior to the effectivity of the amendment and imposes new legal burdens to already-completed transactions; that R.A. No. 10167 should only be prospective; that in *Republic v. Eugenio, Jr.* (545 SCRA 384), the application for the bank inquiry order issued on July 4, 2005 as a means of inquiring into the records of transactions entered into prior to the passage of R.A. No. 9160 would be constitutionally infirm and offensive to the *ex post facto* clause; that the present case involves transactions and deposits made by the petitioners in the period from 2005 up to 2012, or prior to the amendment of Section 11 of R.A. No. 9160 that took effect on June 18, 2012; that by analogy the authority given through the order issued upon *ex parte* application under R.A. No. 10167 cannot be made to apply to deposits and transactions of the petitioners prior to June 18, 2012.[22]

The insistence of the petitioners is unfounded and bereft of substance.

An *ex post facto* law is a law that either: (1) makes criminal an act done before the passage of the law that was innocent when done, and punishes such act; or (2) aggravates a crime, or makes the crime greater than it was when committed; or (3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when it was committed; or (4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense; or (5) assumes to regulate

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[22] *Rollo* (Vol. 1), pp. 9-24.

civil rights and remedies only, but in effect imposes a penalty or deprivation of a right for an act that was lawful when done; or (6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty.[23]

The petitioners rely on *Republic v. Eugenio, Jr.*, wherein the Court declared that the proscription against *ex post facto* laws should be applied to the interpretation of the original text of Section 11 of R.A. No. 9160 because the passage of said law "stripped another layer off the rule on absolute confidentiality that provided a measure of lawful protection to the account holder." Accordingly, we held therein that the application for the bank inquiry order as the means of inquiring into records of transactions entered into prior to the passage of R.A. No. 9160 would be constitutionally infirm, offensive as it was to the *ex post facto* clause of the Constitution.[24]

The petitioners' reliance on *Republic v. Eugenio, Jr.* is misplaced. Unlike the passage of R.A. No. 9160 in order to allow an exception to the general rule on bank secrecy, the amendment introduced by R.A. No. 10167 does away with the notice to the account holder at the time when the bank inquiry order is applied for. The elimination of the requirement of notice, by itself, is not a removal of any lawful protection to the account holder because the AMLC is only exercising its investigative powers at this stage. Indeed, R.A. No. 10167, in recognition of the *ex post facto* clause of the Constitution, explicitly provides that "the penal provisions shall not apply to acts done prior to the effectivity of the AMLA on October 17, 2001."

Furthermore, the AMLC's inquiry and examination into bank accounts are not undertaken whimsically based on its

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[23] *Republic v. Eugenio, Jr.*, G.R. No. 174629, February 14, 2008, 545 SCRA 384, 419.

[24] *Republic v. Eugenio, Jr.*, G.R. No. 174629, February 14, 2008, 545 SCRA 384, 418-420.

investigative discretion. The AMLC and the CA are respectively required to ascertain the existence of probable cause before any bank inquiry order is issued. Section 11 of R.A. 9160, even with the allowance of an *ex parte* application therefor, cannot be categorized as authorizing the issuance of a general warrant. This is because a search warrant or warrant of arrest contemplates a direct object but the bank inquiry order does not involve the seizure of persons or property.[25]

Lastly, the holder of a bank account subject of a bank inquiry order issued *ex parte* is not without recourse. He has the opportunity to question the issuance of the bank inquiry order after a freeze order is issued against the account. He can then assail not only the finding of probable cause for the issuance of the freeze order, but also the finding of probable cause for the issuance of the bank inquiry order.[26]

3.
The petition has been rendered moot and academic by supervening events

The foregoing discussion notwithstanding, the Court takes cognizance of the fact that Estrada has already been granted bail by the Sandiganbayan on September 15, 2017, the resolution for which disposed:

WHEREFORE, in view of the foregoing, the Court hereby **RESOLVES** to:

(1) DENY accused Estrada's Motion to Dismiss the case for lack of merit; and

(2) RECONSIDER and SET ASIDE the Resolution dated January 7, 2016 as to accused Estrada, and hereby GRANTS bail to accused Estrada, upon the submission and approval of bail in the amount of One Million Pesos (₱1,000,000.00), to be posted in cash.

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[25] *Subido Pagente Certeza Mendoza and Binay Law Offices v. Court of Appeals*, note 15, at 68.

[26] *Republic v. Bolante*, G.R. Nos. 186717 & 190357, April 17, 2017, 822 SCRA 526, 558.

SO ORDERED.[27]

On November 10, 2017, the Sandiganbayan denied the People's motion for reconsideration and upheld the grant of bail to Estrada.[28]

Considering that the resolutions being assailed trace their roots to the bail hearing of Estrada, the aforementioned conclusions of the Sandiganbayan relevant to his bail application, and the eventual grant of bail to him have rendered his petition for *certiorari*, prohibition and *mandamus* moot and academic. There is no question that whenever the issues have become moot and academic, there ceases to be any justiciable controversy, such that the resolution of the issues no longer have any practical value.[29] In effect, the Court can no longer grant any substantial relief to which the petitioner may be entitled. Hence, the Court should abstain from expressing its opinion in a case where no legal relief is needed or called for.[30]

WHEREFORE, the Court **DISMISSES** the petition for *certiorari*, prohibition and *mandamus* for being moot and academic, without pronouncement on costs of suit.

SO ORDERED.

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[27] http://sb.judiciary.gov.ph/RESOLUTIONS/2017/I_Crim_SB-14-CRM-0239_People%20vs%20Estrada,20et%20al_09_15_2017.pdf

[28] http://sb.judiciary.gov.ph/RESOLUTIONS/2017/K_Crim_SB-14-CRM-0239_People%20vs%20Estrada,%20et%20al_11_10_2017.pdf

[29] *City Sheriff, Iligan City v. Fortunado*, G.R. No. 80390, March 27, 1998, 288 SCRA 190, 195; *Philippine Airlines, Inc. v. Pascua*, G.R. No. 143258, August 15, 2003, 409 SCRA 195, 202; *Paloma v. Court of Appeals*, G.R. No. 145431, November 11, 2003, 415 SCRA 590, 595; *Banco Filipino Savings and Mortgage Bank v. Tuazon, Jr.*, G.R. No. 132796, March 10, 2004, 425 SCRA 129; *Vda. de Dabao v. Court of Appeals*, G.R. No. 116526, March 23, 2004, 426 SCRA 91, 97.

[30] *Desaville, Jr. v. Court of Appeals*, G.R. No. 128310, August 13, 2004, 436 SCRA 387, 391.

Carpio, Acting C.J., *Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Leonen, Martires, Tijam*, and *Reyes, Jr., JJ.*, concur.

Jardeleza, J., no part, due to prior participation as Solicitor General.

Gesmundo, J., no part, due to prior participation in the Sandiganbayan.

Perlas-Bernabe, J., on official business.

Caguioa, J., on leave.

THIRD DIVISION

[A.C. No. 12005. July 23, 2018]

ACHERNAR B. TABUZO, *complainant, vs.* **ATTY. JOSE ALFONSO M. GOMOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF ATTORNEYS; INTEGRATED BAR OF THE PHILIPPINES (IBP); INTEGRATED BAR OF THE PHILIPPINES-COMMISSION ON BAR DISCIPLINE (IBP-CBD); THE IBP-CBD's DELEGATED FUNCTION OF ENTERTAINING COMPLAINTS AGAINST LAWYERS IS PUBLIC IN NATURE BUT THE RESPONSIBLE OFFICER PERFORMING SUCH FUNCTION IS A PRIVATE INDIVIDUAL, NOT A PUBLIC OFFICER.— [T]he Congress (and the President exercising legislative powers in the case of P.D. No. 181), and the present Constitution all contributed to the emergence of the IBP's juridical personality. Due to this *peculiar manner of creation*, it now becomes

reasonable for the Court to conclude that the IBP is a ***sui generis* public institution** deliberately organized, by both the legislative and judicial branches of government and recognized by the present and past Constitutions, for the advancement of the legal profession. At this juncture, the Court needs to determine whether the IBP's officers, especially the IBP Commissioners, are considered as public officers under the purview of the law. Presently, the IBP as an organization has as its members all lawyers coming from both the public and private sectors who are authorized to practice law in the Philippines. However, Section 4 of the IBP's By-Laws **allows *only private practitioners* to occupy any position in its organization**. This means that only individuals engaged in the private practice are authorized to be officers or employees and to perform acts for and in behalf of the IBP. Hence, the IBP Commissioners, being officers of the IBP, **are private practitioners performing public functions** delegated to them by this Court in the exercise of its constitutional power to regulate the practice of law. This was aptly described in ***Frias v. Atty. Bautista-Lozada*** x x x Even if the afore-cited case did not expound *in what way* the IBP-Commission is to be "guided by the doctrines and principles laid down by this Court," it can be reasonably inferred that **the IBP-CBD's *delegated* function of entertaining complaints against lawyers is public in nature; but the responsible officer performing such function is a private individual—not a public officer**. Consequently, it also follows that IBP Commissioners are ***not* "public officers"** in context of Sec. 3(b) of R.A. No. 6713, Art. 203 the Revised Penal Code, Sec. 4(e) R.A. No. 9485, or even Sec. 2(b) of R.A. No. 3019. Especially in the context of R.A. No. 6713, they are not "public officials" as they are not elective or appointive officials of the "government" as defined by Sec. 3(a) of the same law.

2. ID.; ID.; ID.; ID.; IBP COMMISSIONERS AND OTHER IBP OFFICERS MAY BE HELD ADMINISTRATIVELY LIABLE FOR VIOLATION OF THE RULES PROMULGATED BY THE SUPREME COURT RELATIVE TO THE INTEGRATED BAR AND TO THE PRACTICE OF LAW, NOT AS PUBLIC OFFICERS.— IBP Commissioners cannot be held liable for violation of Sec. 15(1), Art. VIII of the Constitution because they are neither members of the Judiciary in the context of the Constitution or statutory

provisions organizing lower collegiate and trial courts nor quasi-judicial officers in the context of applicable laws creating quasi-judicial agencies. Finally, IBP Commissioners cannot be held administratively liable for malfeasance, misfeasance and non-feasance in the framework of administrative law because they cannot strictly be considered as being "employed" with the government or of any subdivision, agency or instrumentality including government-owned or controlled corporations. Nonetheless, IBP Commissioners and other IBP officers may be held administratively liable for violation of the rules promulgated by this Court relative to the integrated bar and to the practice of law. Even if they are not "public officers" in the context of their employment relationship with the government, they are still "officers of the court" and "servants of the law" who are expected to observe and maintain the rule of law and to make themselves exemplars worthy of emulation by others. Most importantly, no less than Sec. 5(5) of the Constitution placed them under the Court's administrative supervision. Therefore, IBP Commissioners may be held administratively liable **only in relation to their functions as IBP officers—*not* as government officials**.

3. **ID.; ID.; ID.; ID.; THE RULES OF PROCEDURE OF THE IBP-CBD PROVIDES THAT THE ONLY PLEADINGS ALLOWED ARE VERIFIED COMPLAINT, VERIFIED ANSWER AND VERIFIED POSITION PAPERS AND MOTION FOR RECONSIDERATION OF A RESOLUTION; RATIONALE.—** Sec. 1, Rule III of the Rules of Procedure of the IBP-CBD provides that "[t]he ***only* pleadings allowed** are **verified complaint**, **verified answer** and **verified position papers** and **motion for reconsideration** of a resolution." Such *restrictive* enumeration is consistent with the summary nature of disciplinary proceedings as well as the basic tenets of practical expediency encouraged by Sec. 5(5), Art. VIII of the Constitution which mandates this Court to adopt such rules for a "simplified and inexpensive procedure for the speedy disposition of cases." Relatedly, this is also the reason why a party has to first ask for a leave of court before filing any pleading which is not expressly sanctioned by applicable rules of procedure. Such practice is intended to alert litigants that the resolution of unsanctioned motions and other pleadings seeking for affirmative reliefs is discretionary on the part of

the courts (including quasi-judicial bodies or investigatory administrative agencies). This is because these unsanctioned pleadings clutter up court (or any administrative quasi-adjudicative or investigative body) records and tend to impede the speedy disposition of cases. x x x [I]t is settled that considering the serious consequences of the disbarment or suspension of a member of the Bar, the Court has consistently held that preponderant evidence is necessary to justify the imposition of administrative penalty on a member of the Bar. Here, preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other or that which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Conversely, bare allegations, unsubstantiated by evidence, are not equivalent to proof.

4. ID.; ID.; DISBARMENT OR SUSPENSION OF ATTORNEY'S; CONSIDERING THE SERIOUS CONSEQUENCES OF THE DISBARMENT OR SUSPENSION OF A MEMBER OF THE BAR, THE COURT HAS CONSISTENTLY HELD THAT PREPONDERANT EVIDENCE IS NECESSARY TO JUSTIFY THE IMPOSITION OF ADMINISTRATIVE PENALTY.— At any rate, the Court evinces its observation that the complainant's charge of delay in the resolution of the subject unsanctioned pleadings of the complainant appears to be a *mere retaliation* on the adverse Resolution No. XXI-205-074 dated January 31, 2015 in CBD Case No. 12-3457. The Court had already declared that an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available. Similarly, an administrative complaint is not the proper remedy for an adverse decision, order or resolution of an administrative adjudicator deemed by a complaining party as erroneous; especially when there are other remedies under the ordinary course of law such as a motion for reconsideration. Thus, a party who has lost his or right to appeal a decision, resolution or order of a court or quasi-judicial body (including administrative offices or agencies empowered to conduct investigations) cannot re-litigate the same matters in another administrative case filed against the adjudicator.

R E S O L U T I O N

GESMUNDO, *J.*:

The filing of an administrative complaint against an adjudicator is *not* the proper remedy for assailing the legal propriety of an adverse decision, order, resolution or recommendation, in the case of administrative complaints against lawyers. More importantly, the reckless practice of filing baseless administrative complaints against fellow lawyers undeniably degrades rather than cleanses the ranks of the legal profession.

The Antecedents:

Before the Court is a Verified Complaint[1] filed by Atty. Achernar B. Tabuzo (complainant) against Atty. Jose Alfonso M. Gomos (respondent)[2] who was then a Commissioner of the Integrated Bar of the Philippines *(IBP)*, for allegedly committing the following acts:

2.1 Violation of the Constitution of the Republic of the Philippines, the Rules of Procedure of the Commission on Bar Discipline, Rule 139-B of the Rules of Court and Republic Act 6713 (Code of Conduct and Ethical Standards for Public [O]fficials and Employees;

2.2 Violation of Canon[s] 1 and 3 of the Code of Judicial Conduct and the Guidelines for Imposing Lawyer Sanctions of the Commission on Bar Discipline;

2.3 Nonfeasance in deliberately refusing to institute disciplinary action for serious violations of duties owed to the Courts and the Legal Profession committed by a lawyer, despite repeated notice, and contrary to the mandate of his office and the Integrated Bar of the Philippines;

2.4 Gross Ignorance of the Law;

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[1] *Rollo*, pp. 2-19.

[2] His term as commissioner ended last June 30, 2017; see *rollo*, p. 79.

> 2.5 All the foregoing were aggravated by: a) pattern of misconduct; b) multiple offenses; [c)] substantial experience in the practice of law; and [d)] betrayal of the trust of his office as Commissioner of the Honorable Commission on Bar Discipline.[3]

The controversy stemmed from an administrative complaint filed by Lucille G. Sillo *(Sillo)* against complainant before the IBP, docketed as CBD Case No. 12-3457. The case was assigned to respondent for investigation and report.

On August 15, 2014, the respondent issued a Report and Recommendation[4] recommending that complainant be reprimanded for the impropriety of talking to Sillo, without her counsel, prior to the calling of their case for mediation conference, and for the abusive, offensive or improper language used in the pleadings she filed in the said case.

The report and recommendation was adopted and approved by the IBP Board of Governors *(Board)* in its Resolution No. XXI-2015-074, dated January 31, 2015.[5]

Hence, this administrative complaint.

Complainant alleged that respondent violated the Constitution, the Rules of Procedure of the IBP-Commission on Bar Discipline *(Commission)*, Rule 139-B of the Rules of Court and Republic Act *(R.A.)* No. 6713[6] when he failed to act on her pleadings with dispatch and for issuing his report and recommendation on August 15, 2014 or 174 days from the submission of the last pleading.[7]

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[3] *Rollo*, p. 2.

[4] *Id*. at 45-55.

[5] *Id*. at 44.

[6] The Code of Conduct and Ethical Standards for Public Officials and Employees.

[7] *Rollo*, pp. 3-7.

Complainant averred that respondent was very cruel and heartless to an inexperienced lawyer when he mutilated statements made in her pleadings in CBD Case No. 12-3457; and that he maliciously cropped and pasted portions of complainant's statement in her position paper to give the wrong impression before the IBP-Board of Governors *(Board)* that the introductory heading was an act of name calling against respondent, thereby violating Rules 1.01[8] and 1.02[9] of Canon 1 and Rules 3.01,[10] 3.02,[11] and 3.04[12] of Canon 3 of the Code of Judicial Conduct. [13]

Complainant asserted that respondent committed nonfeasance for deliberately refusing to institute disciplinary action against a lawyer for serious violation of duties owed to the Court and the legal profession despite several notices. She alleged that as early as December 2013, respondent was aware that Atty. Alan R. Bulawan committed forum shopping and other grave malpractices but respondent refused to institute disciplinary action reasoning that there should first be a verified complaint before he could act on it. Complainant claimed that respondent's

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[8] Rule 1.01 – A judge should be the embodiment of competence, integrity and independence.

[9] Rule 1.02 - A judge should administer justice impartially and without delay.

[10] Rule 3.01 – A judge shall be faithful to the law and maintain professional competence.

[11] Rule 3.02 – In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.

[12] Rule 3.04 – A judge should be patient, attentive, and courteous to lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts, instead of the courts for the litigants.

[13] *Rollo*, pp. 7-15.

inaction was a violation of Section 1,[14] Rule 139-B of the Rules of Court and Sec. 13[15] of the IBP's By-Laws.[16]

Lastly, complainant posited that respondent was grossly ignorant of the rules on privileged communication, on evidence, on the crime of perjury, and on forum shopping when he failed to dismiss the present administrative case outright because it had no merit and when he ignored the perjury and forum shopping committed by Sillo.[17]

In his Answer,[18] respondent denied the allegations and contended that they were not only false and an unfortunate misappreciation of the laws, facts and circumstances but also an act of harassment. He countered that it was complainant

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

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

Six (6) copies of the verified complaint shall be filed with the Secretary of the IBP or the Secretary of any of its chapters who shall forthwith transmit the same to the IBP Board of Governors for assignment to an investigator.

[15] Section 13. *Malfeasance, misfeasance, nonfeasance.* — Notwithstanding the provisions of the next preceding section, the Board of Governors may *motu proprio* or upon the petition of any person, inquire into any malfeasance, misfeasance, or nonfeasance committed by any member of the Integrated Bar or of any of its Chapters, and, after due hearing, take whatever action it may deem warranted. Such action may include his suspension or removal from any office in the Integrated Bar or of its Chapters held by such erring member, as well as recommendation to the Supreme Court for his suspension from the practice of law or disbarment.

[16] *Rollo*, pp. 15-16.

[17] *Id.* at 17.

[18] *Id.* at 79-85.

who caused the delay of the resolution of the case because of the numerous motions and pleadings she filed. Also, the report and recommendation was based on facts, law and jurisprudence which was adopted and approved by the IBP Board. If complainant felt aggrieved by the report and recommendation, she could have filed a motion for reconsideration of the Board's January 31, 2015 Resolution.

In Reply,[19] complainant claimed that the only proof that the report and recommendation was adopted and approved by the Board was the Notice of Resolution; and when she asked for a copy of the transcript and resolution of the case, she was informed by the head of the records section that it was confidential and that she should file a manifestation to secure a copy. Furthermore, complainant argued that it was respondent who was guilty of singling her out when he reprimanded her for alleged belligerence in her pleadings and papers, and maintained that respondent was grossly ignorant, inefficient and had no regard for due process of law.

The Report and Recommendation of the IBP

In its Report and Recommendation,[20] the Commission recommended the dismissal of the complaint for lack of merit. It ratiocinated that complainant's allegations while seemingly couched as acts of misconduct, actually assails the report and recommendation of respondent as investigating commissioner in CBD Case No. 12-3457. The Commission stated that it would be irregular and improper to review such findings because it would be tantamount to reopening matters and issues that have been passed upon and approved by the IBP Board. The Commission agreed with the respondent that if complainant felt aggrieved by such findings, her option would have been to file a motion for reconsideration or some other appropriate remedy, but not an administrative case against the investigating commissioner.

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[19] *Id.* at 86-89.

[20] *Id.* at 174-177.

On August 27, 2016, the Board, in its Resolution No. XXII-2016-468, adopted the Commission's report and recommendation dismissing the complaint.

Undeterred, complainant filed a Motion for Reconsideration[21] insisting that respondent, as an investigating commissioner, has an accountability to the legal profession separate and distinct from that of the IBP Board and such accountability is not a mere administrative matter inside the IBP-Commission. Complainant insisted that respondent could be held accountable independently of the Board or the staff assigned to him when he issued a late report and recommendation and issued it without the mandatory conference being held, and with no actual admissions or stipulations of facts and no definition of issues. Complainant averred that respondent cannot choose his deadline for submitting a report and recommendation, and his failure to decide a case within the required period constitutes gross inefficiency.[22]

Complainant posited that respondent could be held administratively liable because he was a quasi-judicial officer performing functions delegated by the Court, hence, a public officer.[23]

On February 23, 2017, respondent filed his Comment[24] stating that the complainant's motion for reconsideration was a mere rehash of the arguments raised in her complaint and position paper. Respondent reiterated that he immediately acted on the administrative case filed against complainant as soon as he received the records of the case; and that the cause of delay was due to the several motions filed by complainant instead of just filing the required position paper. The respondent emphasized that the report and recommendation was a product of a

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[21] *Id*. at 178-190.

[22] *Id*. at 179-183.

[23] *Id*. at 183-190.

[24] *Id*. at 195-199.

conscientious study of all the pleadings submitted by the parties and application of the law and jurisprudence.

Respondent added that complainant's inordinate liberty in calling him "grossly ignorant" and "grossly inefficient" at practically every turn or page of her pleadings notably characterizes her penchant for name-calling her adversaries. He believed that he was clearly being harassed and singled out considering that his report and recommendation was approved by the majority members of the Board.

In its Resolution No. XXII-2017-1120[25] dated May 27, 2017, the Board denied the motion for reconsideration.

On February 5, 2018, the IBP transmitted before the Court the records of the case for final disposition.[26]

The issues to be resolved are: (1) whether respondent may be held administratively liable in the same manner as judges and other government officials; and (2) whether respondent may be held administratively liable for rendering an alleged adverse judgment in his capacity as an investigating commissioner of the IBP.

The Court's Ruling

On the Respondent's Ascription of Liability in the Same Manner as Judges or Other Government Officials Due to His Position as Commissioner on Bar Discipline:

In order to have a meaningful understanding of the nature of the functions and accountabilities of an IBP Commissioner, it is necessary to first identify the character of the IBP as an organization. To do this, the Court deems it imperative to dig deep and trace its legislative and jurisprudential background.

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[25] *Id*. at 203.

[26] *Id*. at 202.

The IBP's existence traces its roots to Sec. 13, Article VIII of the 1935 Constitution which stated that:

> Section 13. **The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law**. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. **The Congress shall have the power to repeal, alter or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines**. (emphases supplied)

In view of this provision, Congress enacted R.A. No. 6397[27] which gave this Court the facility to initiate the integration process of the Philippine Bar; the provisions of which read:

> Section 1. Within two years from the approval of this Act, the Supreme Court **may adopt rules of court to effect the integration of the Philippine Bar under such conditions as it shall see fit** in order to raise the standards of the legal profession, improve the administration of justice, and enable the bar to discharge its public responsibility more effectively.
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> Section 2. The sum of five hundred thousand pesos is hereby appropriated, out of any funds in the National Treasury not otherwise appropriated, to carry out the purposes of this Act. Thereafter, such sums as may be necessary for the same purpose shall be included in the annual appropriations for the Supreme Court.
>
> Section 3. This Act shall take effect upon its approval. (emphasis supplied)

Meanwhile, the 1973 Constitution was ratified wherein Sec. 5(5) of Art. X enumerated the powers of this Court, thus:

> Promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration

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[27] An Act Providing for the Integration of the Philippine Bar, and Appropriating Funds Therefor (September 17, 1971).

of the bar, which, however, may be **repealed, altered or supplemented by the *Batasang Pambansa***. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. (emphasis supplied)

Finally, the legal quandary pertaining to the integration of the Philippine Bar culminated in the promulgation of ***In the Matter of the Integration of the Bar of the Philippines***[28] where the Court upheld the integration of the Philippine Bar on the ground that it was sanctioned by Sec. 13, Art. VIII of the 1935 Constitution.

Following this judicial pronouncement, Presidential Decree *(P.D.)* No. 181[29] was enacted formally creating the IBP and vesting it with corporate personality. Sec. 2 of the law states:

Section 2. **The Integrated Bar shall have perpetual succession and shall have all legal powers appertaining to a juridical person**, particularly the power to sue and be sued; to contract and be contracted with; to hold real and personal property as may be necessary for corporate purposes; to mortgage, lease, sell, transfer, convey and otherwise dispose of the same; to solicit and receive public and private donations and contributions; to accept and receive real and personal property by gift, devise or bequest; to levy and collect membership dues and special assessments from its members; to adopt a seal and to alter the same at pleasure; to have offices and conduct its affairs in the Greater Manila Area and elsewhere; to make and adopt by-laws, rules and regulations not inconsistent with the laws of the Philippines or the Rules of Court, particularly Rule 139-A thereof; and generally to do all such acts and things as may be necessary or proper to carry into effect and promote the purposes for which it was organized. (emphasis supplied)

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[28] 151 Phil. 132 (1973).

[29] Constituting the Integrated Bar of the Philippines Into a Body Corporate and Providing Government Assistance Thereto for the Accomplishment of its Purposes (May 4, 1973).

Significantly, Section 6[30] of P.D. No. 181 still recognized this Court's constitutional power to promulgate rules concerning the IBP, and such power of the Court was also institutionalized and carried into the present Constitution in which Sec. 5(5), Art. VIII now reads:

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

Now, given the IBP's statutory and jurisprudential background, the Court proceeds to answer the question: What branch of government created the IBP? More importantly: Is the IBP strictly a **public office** or a **private institution**?

To answer both questions, the Court highlights its observations regarding the important segments of the legal history which led to the grant of the IBP's juridical personality, *viz*:

Firstly, both the 1935 and 1973 Constitutions gave the Court and the Legislature the concurrent power to regulate the practice of law. In other words, the overlapping and coequal powers of both branches of government to regulate the practice of law became the initial bases for the IBP's establishment.

Secondly, Sec. 1 of R.A. No. 6397 used the phraseology "to effect the integration" which means that Congress, though it also had the power to enact laws affecting the practice of law under the 1935 Constitution, had *acknowledged* the Court's rightful (and primary) prerogative to adopt measures to raise

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[30] Section 6. The foregoing provisions shall without prejudice to the exercise by the Supreme Court of its rule-making power under the Constitution or to the provisions of Court Rule 139-A.

the standard of the legal profession.[31] At that time, only this Court had the power to "promulgate" rules concerning the practice of law while Congress may only "repeal, alter or supplement" these promulgated rules. That may be the apparent reason why Congress only appropriated (and allowed for subsequent appropriations of) the necessary funds to *assist* this Court in attaining the objective of initiating the integration of the Philippine Bar.

Thirdly, the Court had ordained the integration of the Philippine Bar to: a) assist in the administration of justice; b) foster and maintain on the part of its members high ideals of integrity, learning, professional competence, public service and conduct; c) safeguard the professional interests of its members; d) cultivate among its members a spirit of cordiality and brotherhood; e) provide a forum for the discussion of law, jurisprudence, law reform, pleading, practice and procedure, and the relations of the Bar to the Bench and to the public, and publish information relating thereto; f) encourage and foster legal education; g) promote a continuing program of legal research in substantive and adjective law, and make reports and recommendations thereon; h) enable the Bar to discharge its public responsibility effectively; i) render more effective assistance in maintaining the Rule of Law; j) protect lawyers and litigants against the abuse of tyrannical judges and prosecuting officers; k) discharge, fully and properly, its responsibility in the disciplining and/or removal of incompetent and unworthy judges and prosecuting officers; l) shield the judiciary, which traditionally cannot defend itself except within its own forum, from the assaults that politics and self-interest may level at it, and assist it to maintain its integrity, impartiality and independence; m) have an effective voice in the selection of judges and prosecuting officers; n) prevent the unauthorized practice of law, and break up any monopoly of local practice

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[31] In the judicial system from which ours has been evolved, the admission, suspension, disbarment and reinstatement of attorneys at law in the practice of the profession and their supervision have been disputably a judicial function and responsibility [*In re: Cunanan, et al*., 94 Phil. 534, 544 (1954)].

maintained through influence or position; o) establish welfare funds for families of disabled and deceased lawyers; p) provide placement services, and establish legal aid offices and set up lawyer reference services throughout the country so that the poor may not lack competent legal service; q) distribute educational and informational materials that are difficult to obtain in many of our provinces; r) devise and maintain a program of continuing legal education for practicing attorneys in order to elevate the standards of the profession throughout the country; s) enforce rigid ethical standards, and promulgate minimum fees schedules; t) create law centers and establish law libraries for legal research; u) conduct campaigns to educate the people on their legal rights and obligations, on the importance of preventive legal advice, and on the functions and duties of the Filipino lawyer; and v) generate and maintain pervasive and meaningful country-wide involvement of the lawyer population in the solution of the multifarious problems that afflict the nation.[32]

Fourthly, P.D. No. 181 endowed the IBP with the attributes of perpetual succession and, more importantly, "all legal powers appertaining to a juridical person." It means that the IBP had corporate attributes which gave it the ability to pursue desired activities on its own, subject only to the Court's administrative supervision.

Lastly, the present Constitution's acknowledgment of the "integrated bar" as one of the subjects of this Court's power to promulgate rules relative to the practice of law cements the IBP's existence as a juridical person.

The aforementioned observations indubitably establish that the collaborative enactments of the Court, the Congress (and the President exercising legislative powers in the case of P.D. No. 181), and the present Constitution all contributed to the emergence of the IBP's juridical personality. Due to this *peculiar manner of creation*, it now becomes reasonable for the Court

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[32] *Supra* note 28 at 135-137.

to conclude that the IBP is a ***sui generis*** **public**[33] **institution** deliberately organized, by both the legislative and judicial branches of government and recognized by the present and past Constitutions, for the advancement of the legal profession. At this juncture, the Court needs to determine whether the IBP's officers, especially the IBP Commissioners, are considered as public officers under the purview of the law.

Presently, the IBP as an organization has as its members all lawyers coming from both the public and private sectors who are authorized to practice law in the Philippines. However, Section 4[34] of the IBP's By-Laws **allows *only private practitioners* to occupy any position in its organization**. This means that only individuals engaged in the private practice are authorized to be officers or employees and to perform acts for and in behalf of the IBP. Hence, the IBP Commissioners, being officers of the IBP, **are private practitioners performing public functions** delegated to them by this Court in the exercise of its constitutional power to regulate the practice of law. This was aptly described in ***Frias v. Atty. Bautista-Lozada***[35] where the Court declared that:

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[33] *Cf*. The characteristics of a public office, according to Mechem, include the delegation of sovereign functions, its creation by law and not by contract, an oath, salary, continuance of the position, scope of duties, and the designation of the position as an office [*Laurel v. Desierto*, 430 Phil. 658, 672 (2002)], citing F.R. Mechem, *A Treatise on the law of Public Offices and Officers*, 1.

[34] Section 4. *Non-political bar.* – The Integrated Bar is strictly non-political, and every activity tending to impair this basic feature is strictly prohibited and shall be penalized accordingly. No lawyer holding an elective, judicial, quasi-judicial, or prosecutory office in the Government or any political subdivision or instrumentality thereof shall be eligible for election or appointment to any position in the Integrated Bar or any Chapter thereof. A Delegate, Governor, officer or employee of the Integrated Bar, or an officer or employee of any Chapter thereof shall be considered *ipso facto* resigned from his position as of the moment he files his certificate of candidacy for any elective public office or accepts appointment to any judicial, quasi-judicial, or prosecutory office in the Government or any political subdivision or instrumentality thereof. (emphasis supplied)

[35] 523 Phil. 17-20 (2006).

> The [IBP-CBD] **derives its authority** to take cognizance of administrative complaints against lawyers **from this Court** which has the inherent power to regulate, supervise and control the practice of law in the Philippines. Hence, in the **exercise of its delegated power to entertain administrative complaints against lawyers, the [IBP-CBD] should be guided by the doctrines and principles laid down by this Court**. (emphasis supplied)

Even if the afore-cited case did not expound *in what way* the IBP-Commission is to be "guided by the doctrines and principles laid down by this Court," it can be reasonably inferred that **the IBP-CBD's *delegated* function of entertaining complaints against lawyers is public in nature; but the responsible officer performing such function is a private individual—not a public officer**. Consequently, it also follows that IBP Commissioners are ***not* "public officers"** in context of Sec. 3(b)[36] of R.A. No. 6713, Art. 203 the Revised Penal Code,[37] Sec. 4(e)[38] R.A. No. 9485,[39] or even Sec. 2(b)[40] of R.A. No. 3019.[41] Especially in the context of R.A. No. 6713, they

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[36] "Public Officials" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount. (emphasis supplied)

[37] A public officer is defined in the Revised Penal Code as "any person who, by direct provision of the law, popular election, or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent, or subordinate official, of any rank or class [*Zoleta v. Sandiganbayan, et al*., 765 Phil. 39, 53 (2015), emphasis supplied].

[38] "Officer or Employee" refers to a person employed in a government office or agency required to perform specific duties and responsibilities related to the application or request submitted by a client for processing. (emphasis supplied)

[39] Anti-Red Tape Act of 2007 (June 2, 2007).

[40] "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph. (emphasis supplied)

[41] Anti-Graft and Corrupt Practices Act (August 17, 1960).

are not "public officials" as they are not elective or appointive officials of the "government" as defined by Sec. 3(a)[42] of the same law. Moreover, it is also obvious that IBP Commissioners cannot be held liable for violation of Sec. 15(1),[43] Art. VIII of the Constitution because they are neither members of the Judiciary in the context of the Constitution or statutory provisions organizing lower collegiate and trial courts nor quasi-judicial officers in the context of applicable laws creating quasi-judicial agencies. Finally, IBP Commissioners cannot be held administratively liable for malfeasance, misfeasance and non-feasance in the framework of administrative law because they cannot strictly be considered as being "employed" with the government or of any subdivision, agency or instrumentality including government-owned or controlled corporations.[44]

Nonetheless, IBP Commissioners and other IBP officers may be held administratively liable for violation of the rules promulgated by this Court relative to the integrated bar and to the practice of law. Even if they are not "public officers" in the context of their employment relationship with the government, they are still "officers of the court" and "servants of the law" who are expected to observe and maintain the rule of law and to make themselves exemplars worthy of emulation by others.[45] Most importantly, no less than Sec. 5(5) of the

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[42] "Government" includes the National Government, the local governments, and all other instrumentalities, agencies or branches of the Republic of the Philippines including government-owned or controlled corporations, and their subsidiaries.

[43] All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

[44] *See* Section 2(10), 2(13) & 2(15), Introductory Provisions of Executive Order No. 292 (Administrative Code of 1987, July 25, 1987); Sections 13 & 16 of Republic Act No. 6770 (The Ombudsman Act of 1989, November 17, 1989).

[45] See *De Leon v. Atty. Castelo*, 654 Phil. 224, 231 (2011), citations omitted.

Constitution placed them under the Court's administrative supervision. Therefore, IBP Commissioners may be held administratively liable **only in relation to their functions as IBP officers—*not* as government officials**.

On the Alleged Delay of the Resolution of CBD Case No. 12-3457:

Sec. 1, Rule III of the Rules of Procedure of the IBP-CBD provides that "[t]he ***only*** **pleadings allowed** are **verified complaint**, **verified answer** and **verified position papers** and **motion for reconsideration** of a resolution."[46] Such *restrictive* enumeration is consistent with the summary nature of disciplinary proceedings as well as the basic tenets of practical expediency encouraged by Sec. 5(5), Art. VIII of the Constitution which mandates this Court to adopt such rules for a "simplified and inexpensive procedure for the speedy disposition of cases." Relatedly, this is also the reason why a party has to first ask for a leave of court before filing any pleading which is not expressly sanctioned by applicable rules of procedure. Such practice is intended to alert litigants that the resolution of unsanctioned motions and other pleadings seeking for affirmative reliefs is discretionary on the part of the courts (including quasi-judicial bodies or investigatory administrative agencies). This is because these unsanctioned pleadings clutter up court (or any administrative quasi-adjudicative or investigative body) records and tend to impede the speedy disposition of cases.

Concomitantly, it is settled that considering the serious consequences of the disbarment or suspension of a member of the Bar, the Court has consistently held that preponderant evidence is necessary to justify the imposition of administrative penalty on a member of the Bar.[47] Here, preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other

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[46] *Ramientas v. Atty. Reyala*, 529 Phil. 128, 135 (2006).

[47] *Aba, et al. v. Atty. De Guzman, Jr., et al.*, 678 Phil. 588, 600 (2011), citations omitted.

or that which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[48] Conversely, bare allegations, unsubstantiated by evidence, are not equivalent to proof.[49]

In this case, the source of the complainant's main gripe against the respondent is the supposed delay in the resolution of the following motions as alleged[50] in the complaint, to wit:

Motion/Pleading Filed	Approximate Days Unresolved	Remarks
Motion for the Issuance of a Subpoena Duces Tecum and Subpoena Ad Testificandum	529 days	Ignored by previous Commissioner, denied by current Commissioner
Respondent's interrogatories to Complanant Lucille Sillo	529 days	Ignored by previous Commissioner, denied by current Commissioner
Motion to Sever	349 days	Ignored by previous Commissioner and granted by current Commissioner on the ground that "complaints for disbarment, suspension or for discipline of attorneys are to be instituted before this Commission by filing six (6) copies of a verified Complaint"

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[48] *Castro, et al. v. Atty. Bigay, Jr., et al.*, A.C. No. 7824, July 19, 2017, citations omitted.

[49] *Real v. Belo*, 542 Phil. 109, 122 (2007), citations omitted.

[50] *Rollo*, p. 3.

Motion to Inhibit	384 days	Ignored by previous Commissioner and deemed by current Commissioner as follows "Let it be placed on record that Commissioner Irving C. Corvera may now be **deemed to have inhibited himself** xxx"

These charted allegations show that the complainant had filed several pleadings which are not among those that are explicitly enumerated in Sec. 1, Rule III of the Rules of Procedure of the IBP-CBD. The rule uses the term "only" which is patently indicative that the enumeration is tightly restrictive. Clearly, the respondent had no positive duty *at all* to act on these unsanctioned pleadings, especially in a manner favorable to the complainant. The complainant cannot blame respondent for not acting on prohibited or unsanctioned pleadings. Her insistence in having the aforementioned motions resolved despite not being mentioned as among the pleadings allowed by Sec. 1, Rule III of the Rules of Procedure of the IBP-CBD actually contributed to the delay of the *whole* proceedings in CBD Case No. 12-3457.

Even if the Court were to consider the aforementioned pleadings as not prohibited for the sake of argument, the complainant never attached in her complaint or adduced during the hearings before the IBP-Commission certified true copies of the same documents to show the dates of actual filing so the periods to act on them may be fairly reckoned. She also failed to submit copies of respondent's supposed resolutions denying or granting these motions to show the date on when they were actually rendered or issued. These material omissions leave this Court unable to verify with certainty or to determine with practical accuracy the existence of delay. The only basis of the complainant in imputing delay on the part of the respondent

was her Position Paper[51] which merely alleged the existence of her motions in CBD Case No. 12-3457 and their supposedly tarried resolution. Undeniably, the complainant failed to offer any preponderant proof of respondent's supposed delay in the resolutions of her motions in CBD Case No. 12-3457 and merely relied on bare allegations and factual conclusions to support her administrative complaint. Clearly, the quantum of proof required in disbarment or administrative disciplinary cases was not satisfied by the complainant. Therefore, contrary to the complainant's hasty imputation of delay, it only appears that respondent merely disregarded the unsanctioned pleadings filed pursuant to Sec. 1, Rule III of the Rules of Procedure of the IBP-CBD and prudently proceeded to render the report and recommendation thereby belying the allegations of nonfeasance.

At any rate, the Court evinces its observation that the complainant's charge of delay in the resolution of the subject unsanctioned pleadings of the complainant appears to be a *mere retaliation* on the adverse Resolution No. XXI-205-074 dated January 31, 2015 in CBD Case No. 12-3457. The Court had already declared that an administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available.[52] Similarly, an administrative complaint is not the proper remedy for an adverse decision, order or resolution of an administrative adjudicator deemed by a complaining party as erroneous; especially when there are other remedies under the ordinary course of law such as a motion for reconsideration. Thus, a party who has lost his or right to appeal a decision, resolution or order of a court or quasi-judicial body (including administrative offices or agencies empowered to conduct investigations) cannot re-litigate the same matters in another administrative case filed against the adjudicator.

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[51] *Id.* at 20-43.

[52] *Atty. Tamondong v. Judge Pasal*, A.M. No. RTJ-16-2467, October 18, 2017.

On the Respondent's Comments Against the Complainant in the Report and Recommendation for Her Behavior:

The Court has, in some instances, even conceded that "a lawyer may think highly of his [or her] intellectual endowment."[53] Such observation is but a moderate and fair commentary to remind members of the legal profession to espouse humility in all their dealings not only with their clients and with their fellow lawyers but also against their adversaries.

The respondent's comment, that the complainant "must have thought so highly of herself that...she finds it necessary to declare that [Sillo's words] are not words a graduate of the only Pontifical University in Asia and a law school ran by monks would use," is merely a fair and realistic observation. Clearly, an academic slur implicating incompetence on a person's intellectual capabilities due to his or her scholastic background simply amounts to an intemperate language on the complainant's part. It finds no place in decent legal argumentation and debate. Besides, lawyers should not be too onion-skinned and should be tolerant of criticisms (especially those which are fair or mild) against them as litigation is inherently a hostile endeavor between adverse or contending parties. Hence, it was proper on the part of Commissioner Limpingco to recommend for the dismissal of the complainant's charges of impropriety for the respondent merely made a fair comment.

Canon 8 of the Code of Professional Responsibility states:

> CANON 8 – A lawyer shall conduct himself with **courtesy**, **fairness** and **candor** toward his **professional colleagues**, and shall avoid harassing tactics against opposing counsel. (emphasis supplied)

Obviously, the filing of baseless and unfounded administrative complaints against fellow lawyers is antithetical to conducting

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[53] See *Cruz v. Justice Aliño-Hormachuelos, et al.*, 470 Phil. 435, 445 (2004), citations omitted.

oneself with courtesy, fairness and candor. It reduces the Bar's disciplinary process into an avenue for childish bickering and trivial catfights. Realistically, filing harassment administrative complaints definitely causes undue anxiety and considerable psychological stress on wrongly charged respondents. Thus, it should be understood that the aforementioned Canon proscribes the filing of frivolous administrative complaints against fellow members of the legal profession to prevent exploitative lawyers from abusing the disciplinary process. Besides, an important portion of the Lawyer's Oath which should be the guiding beacon of every member of the legal profession states: "I will not wittingly nor willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same."

Here, the Court cannot help but notice that even a cursory reading of the complainant's pleadings exhibits her propensity for filing baseless complaints and penchant for hurling denigrating allegations against her adversaries. Moreover, the instant affidavit complaint contains a smorgasbord of violations ascribed to the respondent which the complainant had inaccurately and miserably failed to substantiate. Worse, the complaint's pointless perplexity was compounded by convoluted allegations which made it laborious for the Court to make coherent sense. Accordingly, the Court deems it proper to sternly warn the complainant and her collaborating counsel, Atty. Barboza, to refrain from filing and maintaining baseless administrative suits against fellow lawyers under pain of administrative sanctions.

Final Note

Lawyers are reminded to treat their fellow members of the legal profession and even their non-lawyer adversaries with utmost candor, respect and dignity. More importantly, the primary purpose of administrative disciplinary proceedings against delinquent lawyers is to uphold the law and to prevent the ranks of the legal profession from being corrupted by unscrupulous practices—not to shelter or nurse a wounded ego. Such is the reason why lawyers should always set a good example

in not using the law and the rules as weapons or tools of malicious vindication during petty squabbles as it degrades the credibility of the legal profession and tarnishes its integrity.

WHEREFORE, in view of the foregoing premises, the Court **AGREES** with the Report and Recommendation of the Integrated Bar of the Philippines – Committee on Bar Discipline adopted by the Integrated Bar of the Philippines – Board of Governors, and **DISMISSES** the administrative complaint filed against Atty. Jose Alfonso M. Gomos.

Furthermore, the Court **STERNLY WARNS** Atty. Achernar B. Tabuzo and her collaborating counsel Atty. Gaudencio A. Barboza, Jr. to **REFRAIN** from abusing the disciplinary proceedings thru filing and maintaining frivolous administrative complaints against fellow members of the Bar. A repetition of the same or commission of similar acts will be dealt with more severely.

SO ORDERED.

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

SECOND DIVISION

[A.C. No. 12044. July 23, 2018]

MARTIN J. SIOSON, *complainant, vs.* **ATTY. DIONISIO B. APOYA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); MEMBERS OF THE LEGAL

FRATERNITY SHOULD NOT DO ACTS WHICH MIGHT TEND TO LESSEN IN ANY DEGREE THE CONFIDENCE OF THE PUBLIC IN THE FIDELITY, HONESTY AND INTEGRITY OF THE PROFESSION; VIOLATION IN CASE AT BAR.— The Court agrees with the IBP Board of Governors that Atty. Apoya, Jr.'s refusal to return Sioson's money upon demand and his failure to respond to Sioson's calls, text messages and letters asking for a status update on the case filed before the DOJ reveal Atty. Apoya, Jr.'s failure to live up to his duties as a lawyer in consonance with the strictures of his oath and the Code of Professional Responsibility. The acts committed by Atty. Apoya, Jr. thus fall squarely within the prohibition of Rule 1.01 of Canon 1, Rule 16.01 of Canon 16, and Rule 18.03 and Rule 18.04 of Canon 18 of the Code of Professional Responsibility (CPR), x x x Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. A lawyer, to the best of his ability, is expected to respect and abide by the law, and thus, avoid any act or omission that is contrary to the same. A lawyer's personal deference to the law not only speaks of his character but it also inspires the public to likewise respect and obey the law. Rule 1.01, on the other hand, states the norm of conduct to be observed by all lawyers. Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is unlawful. To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession. Rule 16.01, Canon 16 of the Code of Professional Responsibility, on the other hand, requires the lawyer to account for all money or property collected or received for or from his client. Where a client gives money to his lawyer for a specific purpose, such as to file an action, appeal an adverse judgment, consummate a settlement, or pay the purchase price of a parcel of land, the lawyer should, upon failure to take such step and spend the money for it, immediately return the money to his client.

2. **ID.; ID.; VIOLATIONS, ESTABLISHED IN CASE AT BAR; IMPOSABLE PENALTY.—** The Investigating Commissioner correctly observed that Atty. Apoya, Jr.'s defense of denial of the existence of a lawyer-client relationship is flimsy and self-serving. The Court agrees that Atty. Apoya, Jr. could have easily submitted the affidavits of his mother Lolita Apoya and/or that

of Juvy Paghel to controvert Sioson's claims. Here, the circumstances of this case indubitably show that after receiving the amount of ₱10,000.00 as acceptance fee, Atty. Apoya, Jr. failed to render any legal service in relation to the case of Sioson. Despite Sioson's repeated follow-ups, Atty. Apoya, Jr. unjustifiably failed to update Sioson of the status of the case and to return to him the documents the latter gave him in connection with the case pending before the DOJ. All told, the Court finds that the evidence adduced is sufficient to support the allegations against Atty. Apoya, Jr. **WHEREFORE**, the Court finds Atty. Dionisio B. Apoya, Jr. **LIABLE** for violation of Canon 1, Rule 1.01, Canon 16, Rule 16.01, Canon 18, and Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility and he is hereby **SUSPENDED from the practice of law for six (6) months.** Atty. Apoya, Jr. is also ordered **to return the amount of Ten Thousand Pesos (₱10,000.00) to complainant Martin J. Sioson**.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is a complaint for disbarment[1] filed by complainant Martin J. Sioson (Sioson) against respondent Atty. Dionisio B. Apoya, Jr.(Atty. Apoya, Jr.).

The Factual Antecedents

Sioson alleged that on November 27, 2013, his friend, Allan C. Torregosa, brought Atty. Apoya, Jr. to his office to recommend the latter to handle Sioson's complaint for Qualified Theft pending before the Department of Justice (DOJ). Sioson immediately engaged the services of Atty. Apoya, Jr. in handling the petition for review he had earlier filed before the DOJ, in connection with his complaint for Qualified Theft titled, "Martin Jimenez Sioson and Mauro Jimenez Sioson, Jr. vs. Annaliza Sioson, et al." docketed as NPS Docket No. XV-10INV-12E-00273.

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[1] *Rollo*, pp. 2-12.

Atty. Apoya, Jr. required the payment of an acceptance fee of Ten Thousand Pesos (₱10,000.00), appearance fee of Two Thousand Five Hundred Pesos (₱2,500.00) per hearing and fifteen percent (15%) of whatever amount collected from the case as success fee. Atty. Apoya, Jr. also told Sioson that he would submit a manifestation before the DOJ to correct the allegations stated in Sioson's petition.

Sioson immediately issued Banco De Oro Check No. 0289017 to pay Atty. Apoya, Jr. ₱10,000.00 as acceptance fee. Atty. Apoya, Jr. then deposited the said check to his Bank of the Philippine Islands (BPI) Account No. 3503-0571-08, as evidenced by the machine copy of the dorsal portion of the subject check.

On December 6, 2013, Sioson sent a text message to Atty. Apoya, Jr. inquiring on the status of his case. Atty. Apoya, Jr. replied that he would file first a Notice of Entry of Appearance prior to filing the manifestation he and Sioson discussed on November 27, 2013.

On December 11, 2013, Sioson sent another text message to Atty. Apoya, Jr., requesting for a status update on the case. Atty. Apoya, Jr. told Sioson to wait for the order of the DOJ notifying the latter of the Notice of Entry of Appearance he had filed.

On February 20, 2014, Sioson went to the DOJ to follow up on his case. He discovered that Atty. Apoya, Jr. had not filed an Entry of Appearance in relation to his case. Sioson called Atty. Apoya, Jr. but the latter's phone could not be reached. Sioson averred that Atty. Apoya, Jr. thereafter continued to ignore his text messages.

In a letter dated February 20, 2014, Sioson requested Atty. Apoya, Jr. for a status update on his petition for review. The said February 20, 2014 letter was received by a certain Juvy Paghel on February 21, 2014 based on the certification issued by the Philippine Postal Corporation.[2] Atty. Apoya, Jr. did not respond to the said letter.

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[2] *Id*. at 8.

Sioson wrote another letter to Atty. Apoya, Jr., which was received by Lolita Apoya, the mother of Atty. Apoya, Jr.. In the said letter dated March 7, 2014, Sioson demanded for Atty. Apoya, Jr. to return the ₱10,000.00 he had given the latter as acceptance fee, to wit:

> On February 20, 2014 at around 10 a.m., I went personally to Docket Section of the Department of Justice to check the status of my case entitled "Martin Jimenez Sioson, [et al.] vs. Analiza Sioson, [et al.] docketed as XV-10-INV-12E-00273. Upon inquiry with the said unit, I was surprised to know that there was no pleading filed by you before the said office, not even a Notice of Entry of Appearance. I immediately texted you and you did not even bothered (sic) to reply. As far as I can remember, when you accepted my case on November 27, 2013, you informed me that you will file a manifestation before the Honorable Office, however, up to this date, there was none.
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> With this, I would like to ask for the return of the amount of Pesos: Ten Thousand (₱10,000.00) which you asked from me as an acceptance fee and received by you on the same date, five (5) days upon receipt hereof. Likewise, I would like to ask for you to return all the documents I sent to you pertaining to my case so I could look for another Legal Counsel, to handle my case efficiently and effectively. Otherwise, I will be constrained to file a Disbarment Case against you before the Integrated Bar of the Philippines for violation of "Canon Code" specifically Canons 16 and 18.[3]

On April 4, 2014, Sioson filed a Verified Complaint before the Commission on Bar Discipline of the Integrated Bar of the Philippines (CBD-IBP), praying that Atty. Apoya, Jr. be disciplined and be disbarred from the practice of law.

The CBD-IBP issued an Order requiring Atty. Apoya, Jr. to submit a duly verified Answer, within fifteen (15) days from receipt of the order.[4]

In his Answer dated May 21, 2014, Atty. Apoya, Jr. vehemently denied that Sioson was his client. He alleged that he does not know Sioson personally, to wit:

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[3] *Id*. at 10.

[4] *Id*. at 13.

2. That there is no Attorney-Client relationship, exist (sic) between the respondent and the complainant in this case. **Respondent came to surprised when he received an order requiring him to file an answer with respect to the complaint of herein alleged complainant.**

3. That sometimes on March 7, 2014 the said Martin J. Sioson had sent a letter address[ed] to the respondent asking for the return of the documents and money in the amount of ₱10,000.00 which he allegedly stated in his letter that respondent received from him as Acceptance fee to handled his case Qualified Theft against Analiza Sioson. That in his letter there is also a threat that if respondent refused to return the documents and money he will be constrained to file a disbarment case against the respondent. **Respondent respectfully stressed that he never had an occasion to met herein complainant. Respondent never received any amount from the complainant representing as acceptance fee. Respondent likewise never received any documents (sic) from the complainant pertaining to the case Qualified Theft he mentioned in his letter.** That there is absolutely no attorney-client relationship exist (sic) between the respondent and the complainant in this case. Thus, respondent felt a (sic) coercion and threat with respect to the said letter came from the complainant for compelling respondent to return something which he did not received (sic) from the complainant and threatening to harm and or (sic) filing an administrative against the respondent. Consequently, respondent filed Criminal Complaint (sic) GRAVE THREATS and GRAVE COERCION against the complainant before the office of the City Prosecutor of Caloocan City.[5]

On July 9, 2014, the CBD-IBP issued a Notice setting the mandatory conference/hearing of the subject complaint on August 13, 2014.[6]

On August 11, 2014, Sioson filed his Mandatory Conference Brief.[7]

On August 13, 2014, Atty. Apoya, Jr. filed his Mandatory Conference Brief.[8] The mandatory conference of the case held

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[5] *Id*. at 15.

[6] *Id*. at 34.

[7] *Id*. at 41-44.

[8] *Id*. at 36-39.

on the same day was re-scheduled to September 17, 2014 after Atty. Apoya, Jr. failed to attend the same.[9]

On September 17, 2014, the mandatory conference was again re-scheduled to October 22, 2014 after Atty. Apoya, Jr. filed an Urgent Motion to Cancel Hearing[10] due to a scheduled court hearing he had to attend in San Fernando City, La Union.

In an Order dated October 22, 2014, Investigating Commissioner Erwin L. Aguilera gave Sioson and Atty. Apoya, Jr. a period of ten (10) days from their receipt of the subject Order to submit their respective verified position papers.[11]

In November, 2014, Sioson and Atty. Apoya, Jr. filed their respective verified position papers.[12]

After due proceedings, Investigating Commissioner Erwin L. Aguilera rendered a Report and Recommendation[13] on November 26, 2014, recommending that Atty. Apoya, Jr. be suspended from the practice of law for a period of six (6) months and that he be ordered to return the amount of Ten Thousand Pesos (₱10,000.00) to Sioson, to wit:

> Thus, we find the confluence of the evidence submitted by the complainant to have clearly, convincingly and satisfactorily shown that indeed the respondent has authored this reprehensible act. Respondent committed deceitful and dishonest acts by misrepresenting that he had already filed a Notice of Appearance on behalf of the Petition for Review and pocketing the amount of ₱10,000.00.
>
> Respondent even went to the extent of denying that the meat of the allegation is baseless and no such evidence could prove of the existence of the valued [lawyer-client] relationship. After he was asked to return the documents and money, he made himself scarce. He ignored all communications sent to him by the complainant. After

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[9] *Id*. at 40.

[10] *Id*. at 48-50.

[11] *Id*. at 55.

[12] *Id*. at 56-72, 73-102.

[13] *Id*. at 167-177.

the disbarment complaint was filed, he was firm and compose thereafter he file his answer. He totally disregarded the bone of contention and faced everything through the assertion of complete denial.[14]

Commissioner Aguilera did not give credence to Atty. Apoya, Jr.'s defense of denial:

Moreover, the undersigned cannot believe that complainant merely made up a case of evasion of clear duty by respondent to hold the latter liable for professional misconduct. On the other hand, respondent could have easily submitted the affidavits of his mother Lolita Apoya and/or that of Juvy Paghel to controvert the complainant's claims had he not taken his professional engagement seriously.[15]

The dispositive portion of Commissioner Aguilera's Report and Recommendation reads as follows:

WHEREFORE, respondent Atty. Dionisio B. Apoya, Jr. is ordered **SUSPENDED** from the practice of law for a period of six (6) months. And is ordered to return the amount of ₱10,000.00 paid by to(sic) the complaint(sic).

RESPECTFULLY SUBMITTED.[16]

On February 20, 2015, the IBP Board of Governors passed a Resolution[17] adopting and approving the findings and recommendation of Investigating Commissioner Aguilera, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation to be fully supported by the evidence on record and applicable laws, and violation of Canon 16, Rule 16.01, Rule 16.03, Canon 18 and Rule 18.03, Atty. Dionisio B. Apoya, Jr. is hereby **SUSPENDED from the practice**

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[14] *Id*. at 171.

[15] *Id*. at 172.

[16] *Id*. at 177.

[17] *Id*. at 104.

of law for six (6) months and Ordered to Return the amount of Ten Thousand (₱10,000.00) Pesos to Complainant.[18]

Atty. Apoya, Jr. filed a Motion for Reconsideration[19] asserting that the February 20, 2015 Resolution of the IBP Board of Governors was based on a misapprehension of facts. Atty. Apoya, Jr. insisted that he never met Sioson on November 27, 2013, the day Sioson supposedly engaged his services. He averred that he never ignored the February 20, 2014 and March 7, 2014 letters from Sioson. In fact, he immediately filed criminal cases for Grave Threats and Grave Coercion against Sioson because of the latter's scheme to use the instant administrative case as leverage for the criminal cases respondent Apoya, Jr. filed against Sioson.

On August 26, 2016, the IBP Board of Governors passed a Resolution[20] denying respondent Atty. Apoya, Jr.'s Motion for Reconsideration, there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.

Atty. Apoya, Jr. filed a second Motion for Reconsideration,[21] insisting that the pieces of documentary evidence submitted by Sioson are not proof and do not show the existence of attorney-client relationship between him and Sioson.

On March 1, 2017, the IBP Board of Governors passed a Resolution[22] denying respondent Atty. Apoya, Jr.'s second Motion for Reconsideration on the ground that the rules do not allow the filing of a second motion for reconsideration and the same second Motion for Reconsideration is evidently dilatory.

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[18] *Id*.

[19] *Id*. at 155-159.

[20] *Id*. at 163-164.

[21] *Id*. at 145-148.

[22] *Id*. at 161-162.

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 Atty. Apoya, Jr.'s refusal to return Sioson's money upon demand and his failure to respond to Sioson's calls, text messages and letters asking for a status update on the case filed before the DOJ reveal Atty. Apoya, Jr.'s failure to live up to his duties as a lawyer in consonance with the strictures of his oath and the Code of Professional Responsibility.

The acts committed by Atty. Apoya, Jr. thus fall squarely within the prohibition of Rule 1.01 of Canon 1, Rule 16.01 of Canon 16, and Rule 18.03 and Rule 18.04 of Canon 18 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 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

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Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

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.[23] 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.[24] 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.[25] To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession.[26]

Rule 16.01, Canon 16 of the Code of Professional Responsibility, on the other hand, requires the lawyer to account for all money or property collected or received for or from his client. Where a client gives money to his lawyer for a specific purpose, such as to file an action, appeal an adverse judgment, consummate a settlement, or pay the purchase price of a parcel of land, the lawyer should, upon failure to take such step and spend the money for it, immediately return the money to his client.[27]

In *Rollon v. Naraval*,[28] the Court suspended Atty. Naraval from the practice of law for two (2) years for failing to render any legal service even after receiving money from the complainant and for failing to return the money and documents he received.

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[23] *Maniquiz v. Emelo*, A.C. No. 8968, September 26, 2017, p. 4.

[24] *Id*.

[25] *Id*.

[26] *Ducat, Jr. v. Villalon, Jr.*, 392 Phil. 394, 402 (2000).

[27] *Schulz v. Flores*, 462 Phil. 601, 612 (2003).

[28] 493 Phil. 24 (2005).

In *Small v. Banares*,[29] the Court suspended Atty. Banares from the practice of law for two (2) years for failing to file a case for which the amount of ₱80,000.00 was given to him by his client. He also failed to update his client on the status of the case and to return the said amount upon demand of his client.

In *Meneses v. Macalino*,[30] the Court meted out the penalty of one-year suspension to Atty. Macalino for his unjustified withholding of money belonging to his client.

The Investigating Commissioner correctly observed that Atty. Apoya, Jr.'s defense of denial of the existence of a lawyer-client relationship is flimsy and self-serving. The Court agrees that Atty. Apoya, Jr. could have easily submitted the affidavits of his mother Lolita Apoya and/or that of Juvy Paghel to controvert Sioson's claims.

Here, the circumstances of this case indubitably show that after receiving the amount of ₱10,000.00 as acceptance fee, Atty. Apoya, Jr. failed to render any legal service in relation to the case of Sioson. Despite Sioson's repeated follow-ups, Atty. Apoya, Jr. unjustifiably failed to update Sioson of the status of the case and to return to him the documents the latter gave him in connection with the case pending before the DOJ.

All told, the Court finds that the evidence adduced is sufficient to support the allegations against Atty. Apoya, Jr.

WHEREFORE, the Court finds Atty. Dionisio B. Apoya, Jr. **LIABLE** for violation of Canon 1, Rule 1.01, Canon 16, Rule 16.01, Canon 18, and Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility and he is hereby **SUSPENDED from the practice of law for six (6) months** effective immediately upon receipt of this Decision. Atty. Apoya, Jr. is also ordered **to return the amount of Ten Thousand Pesos (₱10,000.00) to complainant Martin J. Sioson** within thirty (30) days from receipt of this Decision.

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[29] 545 Phil. 226 (2007).

[30] 518 Phil. 378 (2006).

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.

THIRD DIVISION

[A.M. No. RTJ-13-2350. July 23, 2018]
(Formerly OCA IPI No. 10-3507-RTJ)

SPS. ALBERTO AND LILIAN PACHO, *complainants, vs.* **JUDGE AGAPITO S. LU, Regional Trial Court, Branch 88, Cavite City,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF JUDICIAL CONDUCT; ALL JUDGES ARE REQUIRED TO ADMINISTER JUSTICE IMPARTIALLY AND WITHOUT DELAY, AND TO PROMPTLY DISPOSE OF THEIR COURT'S BUSINESS AND TO DECIDE THEIR CASES WITHIN THE REQUIRED PERIODS.— Article VIII, Section 15(1) of the 1987 Constitution mandates that the first and second level courts should decide every case within three months from its submission for decision or resolution. "A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the *Rules of Court* or by the court itself." The *Code of Judicial Conduct* mirrors this constitutional edict by requiring all judges to administer justice impartially and without delay, and to promptly dispose of their courts' business and to decide their cases within the

required periods. The demand for impartiality and efficiency is by no means an empty platitude. All too often, the Court has expounded on the pressing need for judicial efficiency, as it has done in *Office of the Court Administrator v. Reyes*.

2. ID.; ID.; ID.; THE COURT RECOGNIZES THAT THE EXTENSION OF THE PERIOD MAY SOMETIMES BE PROPER OR NECESSARY, BUT THE JUDGE CONCERNED MUST REQUEST THE EXTENSION IN WRITING, AND STATE THEREIN THE MERITORIOUS GROUND FOR THE REQUEST; VIOLATION IN CASE AT BAR.— The period for disposing of judicial matters is mandatory. Yet, the Court recognizes that the extension of the period may sometimes be proper or necessary, but the judge concerned must request the extension in writing, and state therein the meritorious ground for the request. The extension is not loosely granted. The respondent Judge did not request any extension of his period to resolve the second appeal. He also did not tender in his comment on the administrative complaint the ground to justify or explain his inability to resolve the appeal within the period mandated by the Constitution. x x x It is clear from the circumstances that the respondent Judge had no excuse for not resolving the second appeal within the mandatory period despite its being already ripe for judicial adjudication and despite the complainants' constant follow-ups. Worse, as the OCA noted, the respondent Judge admitted in his comment that he resolved the appeal only after the administrative complaint had been lodged against him, x x x In not resolving the appeal until this administrative case was brought, the respondent Judge let five years from the time he should have resolved it to elapse. In other words, he would have incurred further delay in the resolution of the appeal were it not for the filing of the complaint.

3. REMEDIAL LAW; DISCIPLINE OF JUDGES; UNDUE DELAY IN RESOLVING A CASE; PENALTY.— Section 9, Rule 140 of the *Rules of Court* classifies undue delay in resolving a case as a less serious charge punishable by suspension from office without salary and other benefits for not less than one nor more than three months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Due to his intervening retirement from the service, it is now appropriate to impose a fine of ₱11,000.00, the amount recommended by the OCA, to be charged against the ₱40,000.00 withheld from his retirement benefits.

D E C I S I O N

BERSAMIN, *J.*:

Complainants Spouses Alberto and Lilian Pacho (Spouses Pacho) brought their administrative complaint charging respondent Judge Agapito S. Lu (Judge Lu), the former Presiding Judge of the Regional Trial Court (RTC), Branch 88, in Cavite City with undue delay in the rendition of the judgment in Civil Case No. N-7675 entitled *Sps. Lilian and Alberto S. Pacho v. Sps. Eric and Roselie Manongsong*.[1]

Antecedents

The Office of the Court Administrator (OCA) summarized the antecedents and contentions of the parties, as follows:

> Complainant Sps. Pacho alleges that the complaint for ejectment they filed against spouses Eric and Roselie Manongsong on 12 February 2004 was raffled to the Municipal Trial Court in Cities, Branch 1, Cavite City, presided over by Judge Amalia Samaniego-Cuapiaco. On 9 June 2004, Judge Samaniego-Cuapiaco rendered a Judgment dismissing the complaint for lack of jurisdiction. Complainant Sps. Pacho appealed the judgment to the Regional Trial Court, which was raffled to the court of respondent Judge Lu.
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> On 30 August 2004, respondent Judge Lu rendered a Decision setting aside the appealed judgment and remanding the case for further proceedings. On 12 August 2005, Judge Samaniego-Cuapiaco rendered a decision dismissing the case for the second time for lack of jurisdiction.
>
> Complainant Sps. Pacho elevated the decision of the lower court to the Regional Trial Court, which case was again raffled to respondent Judge Lu. Although the case was already submitted for decision, the appeal remained unresolved. Two (2) motions for early resolution, 9 July 2007 and on 21 November 2007, respectively, and almost weekly follow-ups thereafter, remained unacted upon.

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

In a letter-comment dated 14 December 2010, respondent Judge Lu alleged that on 30 August 2004, he rendered a decision setting aside the judgment of the lower court and then remanded the case for further proceedings.

On 26 January 2005, Judge Samaniego-Cuapiaco, by way of 1st Indorsement to respondent Judge Lu, insisted that remanding the case serves no useful purpose for the parties have already presented their evidence. By reason of this, respondent Judge Lu issued an Order on 16 February 2005, directing the former to resolve the issue of possession and all incidental issues.

On 12 August 2005, Judge Samaniego-Cuapiaco rendered a decision, dismissing the ejectment case for the second time for lack of jurisdiction. The appeal was again raffled to respondent Judge Lu who immediately drafted a Decision sometime December 2005. Anticipating Judge Samaniego-Cuapiaco's relentless defiance and the likelihood that the case would again find its way to his *sala* in a "judicial ping-pong", respondent Judge Lu deemed it more prudent not to finalize the draft of the Decision.

Further, respondent Judge Lu explained to Mrs. Lilian Pacho that he cannot give due course to their appeal as the Rules of Court proscribes a second appeal of the same case. He advised Mrs. Pacho to file an administrative complaint against Judge Samaniego-Cuapiaco instead. He also told Mrs. Pacho that he would **"defer action on her second appeal because if [he] immediately deny due course to or dismiss the appeal and the dismissal of the appeal becomes final, she may lose her right and opportunity to seek judicial relief."**

Lastly, respondent Judge Lu adopts his letter-comment as an administrative complaint against Judge Samaniego-Cuapiaco for Gross Ignorance of the Law, Grave Abuse of Discretion and for disregarding the hierarchy of courts."[2]

After hearing, the OCA issued its report and recommendation dated April 15, 2011, and recommended as follows:

Respectfully submitted for the consideration of the Honorable Court the recommendations that:

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[2] *Id.* at 66-67.

(a) The instant administrative complaint be **RE-DOCKETED** as a regular administrative complaint;

(b) Hold Judge Agapito S. Lu of Regional Trial Court, Branch 88, Cavite City, be found **GUILTY** for the less serious charge of delay in rendering judgment, for which he should be **FINED** ₱11,000.00; and

(c) To APPRISE respondent Judge Lu to file the appropriate **verified** complaint against Judge Amalia Samaniego-Cuapiaco should he decide to pursue his complaint against the latter.[3]

In support of its recommendation, the OCA explained thusly:[4]

Respondent Judge Lu virtually admitted the delay in rendering a decision in Civil Case No. N-7675 and that he failed to act on complainant Sps. Pacho's appeal within the three (3) month period prescribed in the Constitution. His statement to wit: ***"But now that Mrs. Pacho has filed a complaint against me, I will immediately act on her second appeal."*** Imparts a mere intention to act in the future thus, reinforcing the fact of delay. From the **later part of 2005** (when the parties have already submitted their respective memorandum thus deeming the appeal submitted for resolution) up to the purported date of his letter-comment on **14 December 2010**, respondent Judge Lu has yet to act on the appeal. Had it not been for the instant complaint, further delay in resolving the case is not too remote a possibility.

Presuming that, respondent Judge Lu drafted a Decision on December 2005, such draft Decision did not interrupt the period for rendering a decision. A draft decision is a mere draft, not "the Decision" contemplated in the Constitution. While the draft Decision may entail that Judge Lu did a positive act, [it] had no official bearing on the case as the litigants still remain in limbo for their unsettled differences.

While the Court takes note of the heavy caseload of judges, and to ease the burden, grants motions for extension of time to resolve cases, respondent Judge Lu, failed to indicate that he ever filed any. His concern over the probable loss of Mrs. Pacho's right and opportunity

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[3] *Id*. at 68.

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

to seek judicial relief is commendable but speculative. Besides, complainants Sps. Pacho's efforts to pursue their case as manifested by their two(2) motions for early resolution, the almost monthly follow-ups, and this administrative complaint, negate such situation. Hence, the fact remains that a decision on complainant Sps. Pacho's appeal is long overdue. Passing the blame to Judge Samaniego-Cuapiaco, cannot absolve him from liability.

Section 9 (1) in relation to Section 11 (B), both of Rule 140 of the Rules of Court classify delay in rendering a decision as a less serious offence, penalized with suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; **or** a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Considering the peculiar circumstances in this case, and the fact that respondent Judge Lu initially acted on the first appeal, not to mention his fast approaching retirement on 27 June 2011, this Office recommends that respondent Judge Lu be fined ₱11,000.00 for delay in rendering a decision.

In the meantime, the respondent Judge compulsorily retired from the service. In its resolution dated June 28, 2017,[5] the Court resolved to withhold a total of ₱40,000.00 from his retirement benefits to answer for any administrative liability arising from this or any other complaint.

Ruling of the Court

The Court **ADOPTS** the recommendation of the OCA.

Article VIII, Section 15(1) of the 1987 Constitution mandates that the first and second level courts should decide every case within three months from its submission for decision or resolution. "A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the *Rules of Court* or by the court itself."[6]

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[5] *Id*. at 75.

[6] Section 15(2), Article VIII, 1987 Constitution.

The *Code of Judicial Conduct* mirrors this constitutional edict by requiring all judges to administer justice impartially and without delay,[7] and to promptly dispose of their courts' business and to decide their cases within the required periods.[8] The demand for impartiality and efficiency is by no means an empty platitude. All too often, the Court has expounded on the pressing need for judicial efficiency, as it has done in *Office of the Court Administrator v. Reyes*,[9] thus:

> The honor and integrity of the judiciary is measured not only by the fairness and correctness of the decisions rendered, but also by the efficiency with which disputes are resolved. Thus, judges must perform their official duties with utmost diligence if public confidence in the judiciary is to be preserved. There is no excuse for mediocrity in the performance of judicial functions. The position of judge exacts nothing less than faithful observance of the law and the Constitution in the discharge of official duties.

The period for disposing of judicial matters is mandatory. Yet, the Court recognizes that the extension of the period may sometimes be proper or necessary, but the judge concerned must request the extension in writing, and state therein the meritorious ground for the request. The extension is not loosely granted. The respondent Judge did not request any extension of his period to resolve the second appeal. He also did not tender in his comment on the administrative complaint the ground to justify or explain his inability to resolve the appeal within the period mandated by the Constitution.

Instead, as the OCA correctly observed, the respondent Judge had deliberately not resolved the appeal within the period allowed by the Constitution. A look at the records discloses that the MTCC resolved the ejectment case through its decision dated June 9, 2004,[10] and the complainants appealed the adverse

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[7] Rule 1.02, Canon 1.

[8] Rule 3.02, Canon 3.

[9] A.M. No. RTJ-05-1892 [formerly A.M. No. 04-9-494-RTC], January 24, 2008, 542 SCRA 330, 338;citing *Petallar v. Pullos*, A.M. No. MTJ-03-1484, January 15, 2004, 419 SCRA 434, 438.

[10] *Rollo,* 29-36.

outcome; that the appeal went before the respondent Judge, who disposed of it on August 30, 2004[11] by remanding the case to the MTCC; and that, in turn, the MCTC resolved the case on August 12, 2005[12] by again dismissing the case a second time. This was the point when the whole trouble started. The complainants appealed the second dismissal by the MTCC, and their appeal went up again to the respondent Judge's court. Normally, the respondent Judge could have resolved the second appeal in due course, and let the aggrieved parties take it from there. Even if he sincerely believed that the outcome would not be any different from the previous one, he should not have desisted from complying with the mandatory period for disposing of the second appeal. But he did not comply. After nearly two years from the submission of their second appeal for resolution without its being acted upon, the complainants moved *ex parte* for its early resolution on July 9, 2007, and again on November 21, 2007. All to no avail, as the respondent Judge did not issue any resolution. Thus, they were impelled to commence this administrative case by filing their complaint dated August 31, 2010.

It is clear from the circumstances that the respondent Judge had no excuse for not resolving the second appeal within the mandatory period despite its being already ripe for judicial adjudication and despite the complainants' constant follow-ups. Worse, as the OCA noted, the respondent Judge admitted in his comment that he resolved the appeal only after the administrative complaint had been lodged against him, thus:

> So, when Mrs. Lilian Pacho followed up the case, I informed her that I can no longer entertain, much less, give due course to her second appeal because a second appeal of the same case involving the same issue of alleged lack of jurisdiction which has been resolved by me acting as an appellate court in the previous appeal is not allowed by the Rules of Court.

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[11] *Id*. at 37-45.

[12] *Id*. at 50-57.

Instead, I advised Mrs. Pacho to file an administrative complaint against Judge Cuapiaco to compel the latter to comply with my decision as an appellate court.

I also informed Mrs. Pacho that I will defer action on her second appeal because if I immediately deny due course to or dismiss her appeal and the dismissal of the appeal becomes final, she may lose her right and opportunity to seek judicial relief.

It is quite surprising therefore that Mrs. Pacho chose to file an administrative complaint against me instead of against Judge Amalia Samaniego-Cuapiaco.

But now that Mrs. Pacho has filed a complaint against me, I will immediately act on her second appeal.[13] [Emphasis Supplied]

In not resolving the appeal until this administrative case was brought, the respondent Judge let five years from the time he should have resolved it to elapse. In other words, he would have incurred further delay in the resolution of the appeal were it not for the filing of the complaint.

To evade liability, the respondent Judge attributes the delay to the stand-off between him and MTCC Judge Amalia Samaniego-Cuapiaco, the trial judge who had twice decided the case, on the issue of jurisdiction over the ejectment case.

The attribution of delay to the stand-off was unwarranted. The delay was far from the responsibility or fault of MTCC Judge Samaniego-Cuapiaco; it was the respondent Judge's exclusively. The complaint for forcible entry filed by the complainants in the MTCC was tried under the *1991 Revised Rules on Summary Procedure*, and the parties submitted all the necessary pleadings and papers. Judge Samaniego-Cuapiaco rendered her first decision of dismissal for want of jurisdiction *after trial on the merits*. With the MTCC having already tried the case on the merits and decided to dismiss the complaint for ejectment for lack of jurisdiction, his recourse was to resolve

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

the appeal in due course, which he did by reversing the MTCC and remanding the case to the MTCC with the order to resolve it on the merits, not to dismiss it. That Judge Samaniego-Cuapiaco rendered her second decision to still dismiss the complaint for lack of jurisdiction should not cause the impasse between her court and the RTC as to cause the five-year delay. If he still disagreed with the MTCC's second disposition, his recourse, if he sincerely believed that the MTCC had jurisdiction (contrary to Judge Samaniego-Cuapiaco's persuasion), was to render judgment by stating so and at the same time dismissing the case *for lack of original jurisdiction over it*. He should not think of remanding the case again to the MTCC. Remand, already superfluous, was no longer an option. Thereafter, he should just leave it to the complainants, if they would feel aggrieved by the judgment he rendered, to choose their remedies in the usual course. Indeed, the delay was avoidable by him.

Section 9, Rule 140 of the *Rules of Court* classifies undue delay in resolving a case as a less serious charge punishable by suspension from office without salary and other benefits for not less than one nor more than three months; or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[14] Due to his intervening retirement from the service, it is now appropriate to impose a fine of ₱11,000.00, the amount recommended by the OCA, to be charged against the ₱40,000.00 withheld from his retirement benefits.

WHEREFORE, the Court **FINDS** and **PRONOUNCES** respondent Judge Agapito S. Lu (retired) **GUILTY** of undue delay in resolving Civil Case No. N-7675; and **IMPOSES** a fine amounting to ₱11,000.00 to be charged against the ₱40,000.00 withheld from his retirement benefits.

SO ORDERED.

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

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[14] Section 11 (B), Rule 140, *Rules of Court*.

THIRD DIVISION

[A.M. No. RTJ-16-2484. July 23, 2018]

THE OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **HON. SELMA P. ALARAS, PRESIDING JUDGE, BRANCH 62, REGIONAL TRIAL COURT, MAKATI CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF JUDGES; JUDGES SHOULD ADHERE TO THE PROCEDURE SET BY THE RELEVANT RULES ENUNCIATED BY THE COURT AND SHOULD NOT TAKE ANY DIRECTION THAT IS TOO FAR FROM THE PATH CAREFULLY MAPPED OUT BY THE RULES OF COURT; ELUCIDATED.— Gross ignorance of the law is undoubtedly a serious offense. By their training and education in the law, present-day judges are expected to be fully conversant with the basics of the law they are enforcing and implementing. They can do so only if they adhere to the procedures set by the relevant rules enunciated by the Court to guide them in the daily endeavor to ensure a smooth, effective and efficient administration of justice. Their adherence must be with care and circumspection, and they should not take any direction that is too far from the paths carefully mapped out by the *Rules of Court*.

2. ID.; ID.; GROSS IGNORANCE OF THE LAW; A JUDGE MAY BE ADMINISTRATIVELY LIABLE IF SHOWN TO HAVE BEEN MOTIVATED BY BAD FAITH, FRAUD, DISHONESTY OR CORRUPTION IN IGNORING, CONTRADICTING OR FAILING TO APPLY SETTLED LAW AND JURISPRUDENCE.— The concept of gross ignorance of the law as an offense for judges has been expounded in *Department of Justice v. Mislang*, *viz.*: **Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. x x x A judge is presumed to have acted with regularity and good faith in**

the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions. For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive.

3. ID.; ID.; ID.; NOT ESTABLISHED WHEN THE TEMPORARY RESTRAINING ORDER (TRO) ISSUED BY THE JUDGE IS NOT SHOWN TO HAVE BEEN ISSUED IN BAD FAITH; CASE AT BAR.— Judge Alaras issued the TRO to be effective "within a period of twenty (20) days from date hereof or until further orders from this Court." The tenor of the TRO obviously confined its effectivity to the 20-day period provided under Section 5, Rule 58 of the *Rules of Court*. Given the circumstances, the additional phrase "*until further orders from this Court*" was an obvious surplusage and clearly unnecessary. Hence, the TRO cannot be regarded as grossly erroneous. We should consider the phrase a mere oversight on the part of Judge Alaras in light of her setting the application for the writ of preliminary injunction for hearing immediately upon her issuance of the TRO. Such hearing negated the notion that she intended the TRO to be effective for an indefinite period. x x x the party affected by Judge Alaras' did not seek any clarification, denoting that such party understood the extent of the effectivity of the TRO. Moreover, the TRO issued by Judge Alaras was not shown to have been issued in bad faith.

D E C I S I O N

BERSAMIN, *J.*:

Liability for gross ignorance of the law attaches when the respondent judge is found to have issued her assailed erroneous order, decision or actuation in the performance of official duties moved by bad faith, dishonesty, hatred, or some other like motive. Otherwise, her good faith prevails, and she must be absolved.

The Case

This administrative case stemmed from the *Affidavit-Complaint* dated May 23, 2013[1] executed by Spouses Crescenciano M. Pitogo and Nova A. Pitogo charging Teofilo C. Soon, Jr., Sheriff IV of the Regional Trial Court in Mandaue City, Cebu with grave abuse of discretion and impropriety relative to Extrajudicial Foreclosure Case No. 12-09-2069 entitled *Planters Development Bank v. Spouses Crescenciano M. Pitogo and Nova Arcayan.*[2]

On May 30, 2013, the Office of the Bar Confidant indorsed the *Affidavit-Complaint* to the Office of the Court Administrator (OCA).[3]

In its Report dated September 14, 2015, the OCA summarized the antecedents as follows:

> Complainants Spouses Crescenciano and Nova Pitogo are the President and Treasurer, respectively, of LSD Construction Corporation (LSDCC). On 13 July 2012, Planters Development Bank (PDB) filed with the RTC-OCC, Mandaue City, Cebu, a petition to extra-judicially foreclose the mortgage executed by complainants in favor of PDB to secure the loan obligation of LSDCC. A *Notice of Extra-Judicial Foreclosure Sale* setting the public auction on 14 November 2012 was issued by respondent Sheriff.
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> Meanwhile, on 4 October 2012, complainants filed with the RTC of Makati City a *Petition for Annulment of Foreclosure Sale with Prayer for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order (TRO) and Damages* against PDB and respondent Sheriff. The case was assigned to Judge Selma Palacio Alaras of Branch 62, docketed as Civil Case No. 12-961. In an Order dated 13 November 2012, Judge Alaras issued a TRO and directed PDB and respondent Sheriff to desist from proceeding with the foreclosure sale in EJF Case No. 12-09-2069 *"until further orders from this Court."*

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[1] *Rollo,* pp. 5-11.

[2] *Id*. at 12.

[3] *Id*. at 1.

On 26 February 2013, Judge Alaras recused herself from the case and it was re-raffled to Branch 147, RTC, Makati City, presided by Judge Roland B. Moreno. On 3 April 2013, Judge Moreno set the case for status conference on 7 June 2013.

On 2 May 2013, complainants read in the *Sun Star*, a Cebu tabloid, a *Second Amended Notice of Extra-Judicial Foreclosure Sale* setting the public auction on 7 June 2013, the same date as the hearing of the status conference. On 21 May 2013, complainants went to the post office and received a copy of the notice and discovered that it was sent on 14 May 2013.

Complainants aver that they sent a text message to respondent Sheriff inquiring as to who scheduled the auction sale on 7 June 2013, only to be told that it was respondent Sheriff himself who scheduled it. They asked respondent Sheriff why the public auction was set on the same day as the status conference, and whether PDB had requested that particular date. Respondent Sheriff replied that he had no knowledge of the status conference and the only request of Atty. Gomos (PDB lawyer based in Cebu City) was to proceed with the auction since there was no order from the trial court to stop the foreclosure sale after the lapse of the twenty (20)-day TRO. Complainants warned respondent Sheriff that if the request of PDB was not reduced in writing, there must be something wrong with his notice and he should be ready to explain. Respondent Sheriff's response was that he will defend himself in the proper forum.

Complainants aver that they reminded respondent Sheriff of the order of Judge Alaras which directed him to hold in abeyance the foreclosure proceedings until further orders from the court. However, respondent Sheriff insisted that he was just performing a ministerial duty.

Complainants opine that respondent Sheriff committed grave abuse of discretion when he scheduled the public auction upon the verbal request of Atty. Gomos. They aver that the notice was deliberately scheduled on the same date as the status conference set by Judge Moreno. Respondent Sheriff should have asked Atty. Gomos why it took him that long to request a public auction since the twenty (20)-day period of the TRO already expired on 3 December 2012. They assert that respondent Sheriff should have first ascertained the facts instead of precipitately acceding to Atty. Gomos' request.

Lastly, complainants posit that respondent Sheriff acted in bad faith when he sent them the *Second Amended Notice of Extra-Judicial Foreclosure Sale* by regular registered mail only on 14 May 2013 when the public auction was scheduled on 7 June 2013.

In his Comment dated 22 August 2013, respondent Sheriff states that after PDB filed with the OCC-RTC, Mandaue City, Cebu, a *Petition for Extra-Judicial Foreclosure of Real Estate Mortgage* against complainants, he issued on 11 September 2012 the corresponding *Sheriff's Notice to Parties at Public Auction* and *Notice of Extra Judicial Foreclosure Sale* and these notices were received by complainants on 26 September 2012, as evidenced by the post office registry receipt and return card.

On 19 September 2012, respondent Sheriff posted the *Notice of Extra-Judicial Foreclosure Sale* in three (3) conspicuous places at the Municipality of Consolacion, Cebu, and had the notice published in a newspaper of general circulation on 27 September, 4 October and 11 October 2012. However, complainants filed a civil case at the RTC, Makati City, docketed as Civil Case No. 12-961, seeking the annulment of the foreclosure sale, the issuance of a writ of preliminary injunction and TRO, and for damages.

On 25 October 2012, respondent Sheriff received an amended petition filed by PDB. He issued the corresponding *Sheriff's Amended Notice to Parties at Public Auction* and the *Amended Notice of Extra-Judicial Foreclosure Sale* and complainants received their copy of the notices on 7 November 2012. Respondent Sheriff also posted the *Amended Notice of Extra-Judicial Foreclosure Sale* in three (3) conspicuous public places in the Municipality of Consolacion, Cebu.

On 13 November 2012, Judge Alaras granted a TRO. The TRO was officially issued on the same day, with an additional directive to the PDB officials and respondent Sheriff to desist from giving due course to the foreclosure sale in EJF Case No. 12-09-2069 until further orders from the court.

Respondent Sheriff insists that he honored the TRO issued by Judge Alaras and held in abeyance the auction sale scheduled on 20 November 2012. Sometime in April 2013, after Judge Alaras already recused herself from hearing the case, respondent Sheriff received a letter from PDB requesting him to proceed with the extra-judicial foreclosure following the expiration of the twenty (20)-day period of the TRO. Consequently, he issued the *Sheriff's Second Amended*

Notice to Parties at Public Auction and *Second Amended Notice of Extra-Judicial Foreclosure Sale.* However, complainant Cresenciano Pitogo filed with the RTC, Mandaue City, Cebu, Civil Case No. MAN-7069, entitled *"Sps. Pitogo and LSD Construction Corp. vs. PDB and Sheriff Soon,"* for Specific Performance and Surrender of TCT No. 126508, Damages with Prayer for issuance of a TRO and Writ of Injunction.

When the RTC, Mandaue City, Cebu, did not issue a TRO, respondent Sheriff proceeded with the scheduled auction. He maintains that he strictly followed the rules on extra-judicial foreclosure of mortgage and avers that the instant complaint is sheer harassment.

In their *Reply* dated 5 September 2013, complainants accuse respondent Sheriff of misleading the Court. They claim that Civil Case No. MAN-7069, filed with the RTC, Mandaue City, is not related to Civil Case No. 12-961 where Branch 62, RTC, Makati City, issued a TRO. They claim that respondent Sheriff should have informed them of the written request of PDB to proceed with the auction sale. They insist that respondent Sheriff should have consulted his superiors on what he should do with the request of PDB to proceed with the foreclosure sale, in relation to the TRO issued by Judge Alaras qualified by the phrase "*until further orders from this Court."*

Finally, in a *Withdrawal of Complaint* dated 12 November 2013, complainants inform the OCA that they have come to the understanding that respondent Sheriff was only performing his ministerial duty and that they no longer have any intention to pursue the charges they filed against him. They pray that the proceedings in the instant case be terminated.[4]

On November 23, 2015, upon the recommendation of the Office of the Court Administrator (OCA),[5] the Court resolved to:

x x x ***ADOPT*** and ***APPROVE*** the findings of fact, conclusions of law, and recommendations of the Office of the Court Administrator in the attached Report dated September 14, 2015 (Annex A). Accordingly:

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[4] *Id*. at 303-306.

[5] *Id*. at 303-308.

(1) the instant administrative complaint against Sheriff IV Teofilo C. Soon, Jr. is ***DISMISSED*** for lack of merit; and

(2) Judge Selma Palacio Alaras, Regional Trial Court, Branch 62, Makati City, is required to ***COMMENT*** within ten (10) days from notice on why she should not be administratively held liable for gross ignorance of the law for issuing the Temporary Restraining Order dated November 13, 2012 in Civil Case No. 12-961 effective for an indefinite period.[6]

In her Comment,[7] Judge Alaras explained that both her November 13, 2012 Order[8] and the ensuing Writ of Temporary Restraining Order (TRO)[9] plainly indicated that the TRO was valid and effective only for 20 days;[10] that the last paragraph preceding the *fallo* of her November 13, 2012 Order and the last *Whereas* clause of the TRO conspicuously mentioned the 20-day limiting period, and were clear indications that Section 5, Rule 58 of the *Rules of Court* was faithfully observed;[11] that after the release and service of the twin issuances, the parties appeared to have clearly understood that the TRO was valid only for 20 days considering that the party enjoined made no motion for clarification;[12] and that it would have been highly illogical for her to still set the hearing for the application for the writ of preliminary injunction on November 22, 2012, or nine days after the issuance of the TRO, if she had intended the TRO's validity to be "indefinite."[13]

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

[7] *Id*. at 311-317.

[8] *Id*. at 318-320.

[9] *Id*. at 321.

[10] *Id*. at 314.

[11] *Id*. at 315.

[12] *Id*.

[13] *Id*. at 316.

In its Report dated October 19, 2016,[14] the OCA found Judge Alaras guilty of gross ignorance of the law, and recommended her to be fined in the amount of ₱10,000.00, with a stern warning that the commission of the same or similar act would be dealt with more severely. The OCA observed that:

> Judge Alaras failed to explain why she added in her order and in the writ the phrase "*until further orders from this court*". The instant administrative complaint could have been avoided if Judge Alaras carefully worded the order and writ in accordance with Section 5, rule 58 of the Rules of Court. This may erode the trust of the litigants in respondent Judge's impartiality and eventually, undermine the people's faith in the administration of justice. Judges must not only render a just, correct and impartial decision but should do so in such a manner as to be free from any suspicion as to his fairness, impartiality and integrity.
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> x x x x x x x x x
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> In the instant case, it was unnecessary to add in the order and in the TRO the phrase "*until further orders from this court."* By doing so, it caused confusion as to the duration of the TRO. It would appear that the Judge Alaras arrogated unto herself the power to extend the life of the TRO after the lapse of the twenty (20)-day period, the TRO automatically terminates without need of any action from the court and having no discretion to extend the same.
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> However, it does not appear that the issuance of the order and the TRO was motivated by bad faith. Bad faith does not simply denote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of a sworn duty through some motive or intent or ill-will; it partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.
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> Judge Alaras' non-observance of the basic procedural requirement in issuing a TRO amounts to gross ignorance of the law or procedure. Since there is no showing that she was motivated by bad faith in

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[14] *Id.* at 325-329.

rendering the assailed order and TRO and this is her first offense, a fine of Php10,000.00 is sufficient.[15]

In its resolution dated December 5, 2016,[16] the Court resolved to re-docket the case as a regular administrative matter against Judge Alaras.

Ruling of the Court

The recommendation to sanction Judge Alaras is unacceptable.

Gross ignorance of the law is undoubtedly a serious offense. By their training and education in the law, present-day judges are expected to be fully conversant with the basics of the law they are enforcing and implementing. They can do so only if they adhere to the procedures set by the relevant rules enunciated by the Court to guide them in the daily endeavor to ensure a smooth, effective and efficient administration of justice. Their adherence must be with care and circumspection, and they should not take any direction that is too far from the paths carefully mapped out by the *Rules of Court*.

The concept of gross ignorance of the law as an offense for judges has been expounded in *Department of Justice v. Mislang*,[17] *viz.*:

> **Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence.** Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Mislang. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know

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[15] *Id.* at 327-329.

[16] *Id.* at 330.

[17] A.M. No. RTJ-14-2369 (formerly OCA I.P.I. No. 12-3907-RTJ), July 26, 2016, 798 SCRA 225, 234-235.

it constitutes gross ignorance of the law. **A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions**.

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent and undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order. (Emphasis supplied.)

Did the respondent Judge traverse the standards defined by the Court as to be liable for gross ignorance of the law?

We rule that Judge Alaras did not.

Judge Alaras issued the TRO to be effective "within a period of twenty (20) days from date hereof or until further orders from this Court." The tenor of the TRO obviously confined its effectivity to the 20-day period provided under Section 5, Rule 58 of the *Rules of Court*. Given the circumstances, the additional phrase "*until further orders from this Court*" was an obvious

surplusage and clearly unnecessary. Hence, the TRO cannot be regarded as grossly erroneous. We should consider the phrase a mere oversight on the part of Judge Alaras in light of her setting the application for the writ of preliminary injunction for hearing immediately upon her issuance of the TRO. Such hearing negated the notion that she intended the TRO to be effective for an indefinite period.

The assailed TRO issued by Judge Alaras could not be equated with the TRO issued by Judge Gorgonio Ybañez that was held to be wrongfully issued in *Pahila-Garrido v. Tortogo*,[18] a ruling cited by the OCA in its Report. The TRO of Judge Ybañez expressly stated its effectivity to be until further orders of the court, and did not mention the 20-day limiting period imposed by the *Rules of Court*. Also, the party enjoined by the TRO issued by Judge Ybañez sought a clarificatory order as to the period of effectivity. In contrast, the party affected by Judge Alaras' did not seek any clarification, denoting that such party understood the extent of the effectivity of the TRO. Moreover, the TRO issued by Judge Alaras was not shown to have been issued in bad faith.

WHEREFORE, the Court **DISMISSES** the complaint for gross ignorance of the law against respondent **JUDGE SELMA P. ALARAS,** Presiding Judge of the Regional Trial Court, Branch 62, in Makati City for its lack of merit.

SO ORDERED.

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

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[18] G.R. No. 156358, August 17, 2011, 655 SCRA 553, 557.

THIRD DIVISION

[G.R. No. 179148. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEXIS DINDO SAN JOSE *y* SUICO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 6425, AS AMENDED (DANGEROUS DRUGS ACT OF 1972); IN PROSECUTIONS INVOLVING VIOLATIONS OF SECTION 15 AND SECTION 16 THEREOF, THE CONFISCATED SUBSTANCES AND ALLIED ARTICLES THEMSELVES CONSTITUTE THE *CORPUS DELICTI* OF THE OFFENSE WHICH MUST BE PROVEN BEYOND REASONABLE DOUBT.—In prosecutions involving narcotics and other illegal drugs, the confiscated substances and allied articles themselves constitute the *corpus delicti* of the offense. This is because the offense is not deemed committed unless the substances and articles subject of the accused's illegal dealing or illegal possession are themselves presented to the trial court as evidence. The fact of the existence of the substances and articles is vital to sustain a judgment of conviction beyond reasonable doubt. The concept of *corpus delicti* — the body, foundation, or substance of a crime — consists of two elements, namely: (a) that a certain result has been established, for example, that a man has died in prosecution for homicide; and (b) that some person is criminally responsible for the result. The Prosecution has to prove the *corpus delicti* beyond reasonable doubt either by direct evidence or by circumstantial or presumptive evidence. Else, the accused must be set free.

2. ID.; ID.; CHAIN OF CUSTODY; REFERS TO THE DOCUMENTATION OF VARIOUS MOVEMENTS AND CUSTODY OF THE SUBJECTS OF THE OFFENSE FROM THE MOMENT OF SEIZURE OR CONFISCATION TO THE TIME OF RECEIPT IN THE FORENSIC LABORATORY, TO THEIR SAFEKEEPING UNTIL THEIR PRESENTATION IN COURT AS EVIDENCE AND THEIR EVENTUAL DESTRUCTION; CASE AT BAR.—

The process essential to proving the *corpus delicti* calls for the preservation and establishment of the *chain of custody*. In drug-related criminal prosecutions, *chain of custody* specifically refers to the documented various movements and custody of the subjects of the offense — be they seized drugs, controlled chemicals or plant sources of dangerous drugs, and equipment for their production — from the moment of seizure or confiscation to the time of receipt in the forensic laboratory, to their safekeeping until their presentation in court as evidence and their eventual destruction. The documentation includes the inventory, the identity of the person or persons who held temporary custody thereof, the date and time when any transfer of custody was made in the course of safekeeping until presentation in court as evidence, and disposition. The safeguards of marking, inventory and photographing are all essential in establishing that such substances and articles seized or confiscated were the very same ones being delivered to and presented as evidence in court. Yet, the x x x excerpts from the testimony of poseur buyer SPO1 Edwin A. Anaviso, the State's main witness, bear out that no inventory and accounting of the confiscated substances were made herein at the time and at the scene of the seizure.

3. ID.; ID.; ID.; MARKING; SERVES TO SEPARATE THE MARKED SUBSTANCES OR ARTICLES FROM THE CORPUS OF ALL OTHER SIMILAR OR RELATED ARTICLES FROM THE TIME OF THE SEIZURE OR CONFISCATION FROM THE ACCUSED UNTIL DISPOSAL AT THE END OF THE CRIMINAL PROCEEDINGS, THEREBY OBVIATING THE HAZARDS OF SWITCHING, "PLANTING," OR CONTAMINATION OF THE EVIDENCE.—[T]he chain of custody in drug-related prosecutions always starts with the marking of the relevant substances or articles immediately upon seizure or confiscation. This, because the succeeding handlers would be using the marking as *reference*.The marking further serves to separate the marked substances or articles from the corpus of all other similar or related articles from the time of the seizure or confiscation from the accused until disposal at the end of the criminal proceedings, thereby obviating the hazards of switching, "planting," or contamination of the evidence.Verily, switching, or "planting," or contamination of the evidence destroys the proof of the *corpus delicti*. The marking likewise insulates and protects innocent

persons from dubious and concocted searches as well as shields the sincere apprehending officers from harassment claims based on false allegations of planting of evidence, robbery or theft.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE PROSECUTION ASSUMES THE BURDEN TO ESTABLISH ITS CASE WITH EVIDENCE THAT IS RELEVANT, THAT IS, THE EVIDENCE MUST THROW LIGHT UPON, OR HAVE A LOGICAL RELATION TO, THE FACTS IN ISSUE.—Under the *Rules of Court*, the Prosecution assumes the burden to establish its case with evidence that is relevant, that is, *the evidence must throw light upon, or, have a logical relation to, the facts in issue*. In all instances, the test of relevancy is whether evidence will have any value, as determined by logic and experience, in proving the proposition for which it is offered, or whether it will reasonably and actually tend to prove or disprove any matter of fact in issue, or corroborate other relevant evidence. The test of relevancy is satisfied if there is some logical connection either directly or by inference between the fact offered and the fact to be proved. Establishing the *chain of custody* of the contraband in drug-related prosecutions directly fulfills the basic requirement of relevance imposed by our rules on evidence. As such, the need to preserve the *chain of custody* applies regardless of whether the prosecution is brought for a violation of R.A. No. 6425, or for a violation of R.A. No. 9165.

5. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PROOF BEYOND REASONABLE DOUBT; DOES NOT MEAN SUCH A DEGREE OF PROOF AS, EXCLUDING THE POSSIBILITY OF ERROR, PRODUCES ABSOLUTE CERTAINTY; WHEN THE GUILT OF THE ACCUSED WAS NOT ESTABLISHED BY PROOF BEYOND REASONABLE DOUBT, ACQUITTAL IS PROPER.—To sustain a conviction for a criminal offense, the State must establish the guilt of the accused by proof beyond reasonable doubt. "Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind." In view of all the foregoing, reasonable doubt of the guilt of the accused exists. A reasonable doubt of guilt "*is a doubt growing reasonably out of evidence or the lack of it. It is not a captious doubt; not*

a doubt engendered merely by sympathy for the unfortunate position of the defendant, or a dislike to accept the responsibility of convicting a fellow man. If, having weighed the evidence on both sides, you reach the conclusion that the defendant is guilty, to that degree of certainty as would lead you to act on the faith of it in the most important and crucial affairs of your life, you may properly convict him. Proof beyond reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of mistake."With the proof of the guilt of the accused not being beyond reasonable doubt, he is entitled to acquittal as far as the charges for the violations of Section 14 and Section 16 of R.A. No. 6425 were concerned.

6. CRIMINAL LAW; REPUBLIC ACT NO. 8294; THERE IS NO SEPARATE CRIME OF ILLEGAL POSSESSION OF FIREARMS IF ANOTHER CRIME HAS BEEN COMMITTED.—The OSG's recommendation to dismiss the charge of illegal possession of firearms and ammunition against the accused on the ground that there was no such separate crime if another crime was committed fully accorded with the letter of the law. x x x We have affirmed in *People v. Ladjaalam* that there could be no offense of illegal possession of firearms and ammunition under R.A. No. 8294 if another crime was committed. With the letter of the law itself being forthright, the courts have no discretion to give the law a meaning detached from the manifest intendment and language of Congress, for our task is constitutionally confined to applying the law and pertinent jurisprudence to the proven facts, which we must do now in this case.

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

BERSAMIN, *J.*:

The successful prosecution of a criminal case must rest on proof beyond reasonable doubt. The State must establish all

the elements of the offense charged by sufficient evidence of culpability that produces a moral certainty of guilt in the neutral and objective mind. Any proof less than this should cause the acquittal of the accused.

The Case

The accused hereby urges the thorough review and reversal of the decision promulgated on April 27, 2007,[1] and asserts that the Court of Appeals (CA) erroneously affirmed his convictions for violations of Section 15 and Section 16 of Republic Act No. 6425 (*Dangerous Drugs Act of 1972*), and for illegal possession of firearms and ammunition as defined and punished under Presidential Decree No. 1866, as amended, through the judgment rendered on April 13, 2005 by the Regional Trial Court (RTC), Branch 156, in Pasig City.[2]

Antecedents

The CA summarized the factual and procedural antecedents in its assailed decision, as follows:

Accused-appellant Alexis Dindo San Jose was charged with three criminal acts under the following informations:

CRIMINAL CASE NO. 8633-D

The Prosecution, through the undersigned Public Prosecutor, charges **Alexis Dindo y (sic) San Jose y Suico a.k.a. 'Dodong Diamong**' (sic) with the crime of Violation of Sec. 15 Art. III of RA 6425, as amended (The Dangerous Drugs Act), committed as follows:

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[1] *Rollo*, pp. 2-20; penned by Justice Andres B. Reyes, Jr. (later Presiding Justice, and now a Member of the Court), with the concurrence of Justice Jose Catral Mendoza (later a Member of the Court, now retired), and Associate Justice Ramon M. Bato, Jr.

[2] CA *rollo,* pp. 31-43; penned by Judge Alex L. Quiroz (now an Associate Justice of the Sandiganbayan).

On or about January 26, 2000, in San Juan, Metro Manila, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to sell, dispense, transport or distribute any regulated drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to SPO1 Edwin Anaviso, a police poseur-buyer, two (2) heat-sealed transparent plastic bags containing 196.5 grams and 57.25 grams, respectively, of white crystalline substance, having a total weight of 253.75 grams, which was found positive to the test for methamphetamine hydrochloride (shabu), a regulated drug, in violation of the said law.

Contrary to law.

CRIMINAL CASE NO. 8634-D

The Prosecution, through the undersigned Public Prosecutor, charges **Alexis Dindo y (sic) San Jose y Suico a.k.a. 'Dodong Diamond**' with the crime of Violation of Sec. 16 Art. III of RA 6425, as amended (The Dangerous Drugs Act), committed as follows:

On or about January 26, 2000, in San Juan, Metro Manila, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to use or possess any regulated drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one self-sealed transparent plastic bag containing 372.3 grams of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride (shabu), a regulated drug, in violation of the said law.

Contrary to law.

CRIMINAL CASE NO. 11700

The Prosecution, through the undersigned Public Prosecutor, charges **Alexis Dindo San Jose y Suico a.k.a. 'Dodong Diamond'** with the crime of violation of P.D. 1866, as amended by R.A. 8294 (Illegal Possession of Firearms), committed as follows:

On or about January 26, 2000, in San Juan, Metro Manila and within the jurisdiction of this Honorable Court, the accused, being then a private person, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) caliber .45 pistol marked COLT

with serial no. 1811711 and one (1) super .38 caliber pistol marked 'Springfield Armory' with serial no. UJ1152 with magazine and nine (9) pieces of live ammunitions, without first securing the necessary license or permit from the proper authorities.

Contrary to law.

Upon arraignment on 12 April 2002, accused-appellant pleaded not guilty to all charges. After the pre-trial on 16 May 2000, the case was set for hearing. The prosecution presented three (3) witnesses in the persons of SPO4 Wilfredo Yee (SPO4 Yee), SPO1 Edwin Anaviso (SPO1 Anaviso) and Forensic Chemist Mayra M. Madria. The defense, on the other hand, presented accused-appellant himself to testify in his behalf.

According to the prosecution, a confidential informant known as "Bong" reported to the Regional Mobile Group, National Capital Regional Command at Camp Bagong Diwa, Taguig, Metro Manila, that an illicit drug trade was being conducted by two (2) drug pushers known as "Dodong Diamond" (herein accused-appellant), and Evita Ebora, whose trust and confident (sic) had been gained by said confidential informant. A surveillance team was then formed which conducted surveillance on 21 January 2000 and 22 January 2000.

On 24 January 2000, SPO1 Anaviso accompanied by Bong went inside the condominium unit known as Cluster 3-4 D to purchase shabu from accused-appellant. Then on 26 January 2000, a buy-bust operation was conducted with SPO1 Anaviso as *poseur buyer*. Two (2) small plastic bags, suspected to contain shabu, were sold by accused-appellant to SPO1 Anaviso, immediately after which accused-appellant was arrested.

A forensic examination of the substance seized was conducted by Mayra M. Madria who found that the specimen submitted all contained shabu. The Initial Laboratory Report and Physical Science Report were submitted in evidence. The testimonies of SPO1 Anaviso, SPO4 Yee were summed up by the trial court, thus:

On 21 January 2000, a male confidential informant (a.k.a. 'Bong') reported to the Regional Mobile Group (RMG), National Capital Regional Command stationed at Camp Bagong Diwa, Taguig, Metro Manila, an illicit drug trade of two notorious drug pushers identified as alias 'Dodong Diamond' (accused

herein) and Evita Ebora whose trust and confidence had been gained by the informant. Acting upon the information received, P/Supt. Jaime Calungsud, Jr. instructed SPO1 Edwin Anaviso (Anaviso, for brevity) and company to develop the said information. The latter, together with Bong, conducted a two-day surveillance and monitoring activity at Little Baguio Gardens Condominium located in RJ Fernandez St., Kabayanan, San Juan, Metro Manila, from 6:00 p.m. of 22 January 2000 to 9:00 a.m. of the following day. The result of the surveillance confirmed Bong's information that people came in and out with different vehicles at wee hours of the night, heading towards Cluster 3-4 D of the said condominium.

On 24 January 2000, Bong accompanied Anaviso to Cluster 3-4 D and was introduced to 'Dodong Diamond' inside the condominium unit. Accused acceded to their offer to buy two hundred and fifty grams. (250g) of shabu at Php150,000.00, but accused asked them to come back on the 26th of January at 11:00 p.m. for the actual exchange.

At around 6:00 p.m. of 26 January 2000, the buy-bust operation against the accused was hatched at the RMG, NCR, Camp Bagong Diwa, Taguig by the Intelligence Operatives which included SPO1 Anaviso as team leader, SPO4 Wilfredo Yee, SPO1 Samoy, SPO2 Ricardo Concepcion and their superior officer. Two (2) bundles of buy-bust marked money were prepared and given to Anaviso who was designated as poseur buyer. A Nextel cellphone was likewise provided (to) him for a pre-arranged signal (press of a button) to his team once a sale is consummated. SPO4 Wilfredo Yee together with SPO4 Baby Marcelo and SPO1 Samoy were instructed to give assistance (back up) to Anaviso during the buy-bust operation. The briefing lasted up to 9:00 p.m. of said date.

Two private vehicles composed of the two groups proceeded to RJ Fernandez St., Kabayanan, San Juan, Metro Manila. Once in the area, the RMG operatives conducted a final briefing. Anaviso then went alone to Cluster 3-4 D where he was allowed entry by the accused. Anaviso asked for the shabu from the accused and the latter took from the drawer of his table two (2) transparent plastic bags containing white crystalline substance. He weighed them one by one and said "*hayan, parehas yan*." Anaviso suddenly noticed two (2) guns placed on top of the table and another plastic bag containing shabu inside the drawer.

> Accused handed the two aforesaid plastic bags to Anaviso. After inspecting the items, Anaviso pulled out of (sic) his bag and handed to the accused the buy-bust money. Simultaneously, he pressed the button of his Nextel cellphone. He immediately introduced himself as a police officer, drew his 9 mm Baretta gun and pointed the same to the accused, informing him of his arrest and his rights under the law. Accused stood up, surprised. The back up team then arrived.
>
> A super .38 caliber with scope, with serial number SN-UJ 2252, one (1) magazine with nine (9) live bullets, and a .45 caliber pistol with serial number 1811711 were seized in addition to another plastic sachet of shabu found inside accused (sic) drawer. Accused could not produce pertinent documents as to the lawful possession of the firearms. In the course of the investigation, it was found out that accused['s] real name was Alexis Dindo San Jose y Suico.

The defense, on the other hand, claimed that he was framed up. He claimed that he was in the business of buying and selling used cars and was at Little Baguio only because he was selling a car to one Mr. Ong. He stated that he was arrested with Mr. Ong, who was the original suspect but was later released. His testimony were (sic) summed up by the trial court as follows:

> Sometime in January 2000, accused was engaged in the business of buying and selling second hand cars under the business name Elorde San Jose Trading, registered in the name of his wife, Ma. Lorita Elorde. He had been engaged in that business for the past ten years. At the time of the incident, he had six cars displayed at his residence (compound) in Elorde's Complex, Sucat, Parañaque. He advertised his business at the back of each car, indicating thereon his telephone number.
>
> On 26 January 2000, at about 10:00 a.m., accused was at the guardhouse of Little Baguio Condominium in San Juan, Metro Manila, waiting for a certain Mr. Ben Ong (Mr. Ong for brevity), a prospective buyer of accused['s] Nissan Patrol Car Model '92. Three to four days before said date, Mr. Ong, who was a resident of Little Baguio Condominium, called up the accused upon seeing that the latter's car was for sale. He invited the accused to go to Little Baguio Condominium. Mr. Ong also asked the accused to bring the car to the condominium for a test drive. The first time that accused went to said condominium,

he was able to talk to Mr. Ong. However, their sale transaction was not consummated because Mr. Ong had a visitor and told the accused that he would just call again.

Upon accused['s] arrival at the vicinity of the said condominium on the 26th of January (the second time that accused went to Little Baguio Condominium), he parked the Nissan Patrol car along the road and proceeded to the guardhouse. The security guard on duty called up Mr. Ong. The latter, together with his wife and son, came down and talked to the accused regarding the aforesaid car which accused was selling at the price of Php450,000.00. Accused also agreed to Mr. Ong's request for a test drive. Mr. Ong and his son drove away the car, leaving the accused at the condominium guardhouse.

Although it was not his practice to entrust the cars he was selling to interested buyers, accused agreed to allow Mr. Ong to test drive his car unaccompanied, since he (accused) knew that Mr. Ong was a resident of Little Baguio Condominium. The latter's family — his wife and children—also lived in the same condominium unit.

After the lapse of an hour that Mr. Ong had not returned, accused contacted him through cellular phone. Mr. Ong told him that he would be late, and that he was still in the bank to withdraw money purposely to pay the accused after a consummated sale. Accused remained at the guardhouse, talking to three security guards. He was not at all alarmed although Mr. Ong was gone for another three to four hours. Mr. Ong's wife even provided snacks for the accused while he was waiting at the guardhouse.

Also during the same period, police operatives arrived in two vehicles (a Toyota Corolla and a van). They barged into the unit of Mr. Ong, looking for the latter. Thereafter, two of them approached a guard and asked for the whereabouts of Mr. Ong. They introduced themselves as regional mobile group operatives. Accused, who was in front of the guard to whom the policemen were talking to, overheard the conversation. Accused butted in to advise the policemen to wait for Mr. Ong because the latter was still test driving the car.

The police operatives waited for Mr. Ong for more or less three to four hours, with their cars parked around the condominium area. At around 2:00 p.m., Mr. Ong and his son returned. While

still at the driver's seat of the Nissan Patrol, entering the gate of the condominium premises, Mr. Ong was told by the accused that some persons were looking for him. Suddenly, one of the policemen approached and pushed Mr. Ong inside the accused's car (Mr. Ong and his son had not yet alighted therefrom). One of the policemen sat on the driver's seat of the car. As accused realized that the police operatives were about to take Mr. Ong with them using his (accused) car, the accused asked the policemen regarding the same. They directed the accused to just follow them to Bicutan.

Accused boarded on the front seat of one of the police cars (the Toyota Corolla) and went with them to Bicutan in order to keep track of his Nissan Patrol. On their way to Bicutan, he and the policemen talked casually. They even asked him about his car, its selling price, and whether he knew the person of Mr. Ong. Accused replied that he met Mr. Ong only twice. At the police station in Bicutan, accused waited to get his car key until 7:00 p.m. He saw Mr. Ong and his son handcuffed in another room.

At 4:00 a.m., the policemen came from the office of Col. Calungsud, Jr. and handcuffed the accused. He protested because he did not know the reason for such. The policemen refused to answer his questions and told him to just cooperate with them. Within the vicinity of the headquarters, accused was brought for medical check-up and tattoo-finding. During the medical examination, police officers told the accused that he was arrested for being a drug lord.

Also during the accused stay (sic) at the police station in Bicutan, Col. Calungsud, Jr. told the accused that the alleged car sale transaction of the latter was only an alibi, the truth being that accused was caught by police operatives in his act of selling shabu at the Little Baguio Condominium. Accused vehemently denied the commander's accusations.

Upon returning to the police station after the medical examination, accused noticed that Mr. Ong was already released by the police operatives and no longer there at the station. Afterwards, accused was brought to the Fiscal's office where he was inquested and criminally charged. He protested and refused to sign papers; however, he was told that he had to sign them and thereafter engage the services of a lawyer.

Accused mentioned during his testimony that the police operatives entered the condominium unit owned by Mr. Ong and it was there that the illegal drugs and unlicensed firearms were seized. The police officers had to produce a suspect since the buy-bust operation was fully coordinated with a higher police authority. Accused overheard their conversation via radio while he was at the police station in Bicutan. However, instead of pressing charges against Mr. Ong, the policemen attributed the drug activities to the accused because Mr. Ong allegedly gave bribe money to the police officers during the investigation.

For failure of the defense to produce additional witnesses within the considerable lapse of time, this Court submitted these cases for decision (Order, 9 February 2005).[3]

Judgment of the RTC

In the judgment rendered on April 13, 2005,[4] the RTC pronounced the accused guilty of the offenses charged, and decreed thusly:

WHEREFORE, the Court finds herein accused ALEXIS DINDO SAN JOSE y SUICO:

1) in Criminal Case No. 8633-D, GUILTY beyond reasonable doubt of violation of Section 15, Article III, RA 6425, as amended, and hereby imposes the penalty of LIFE IMPRISONMENT. Accused is further ordered to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency;

2) in Criminal Case No. 8634-D, GUILTY beyond reasonable doubt of violation of Section 16, Article III, RA 6425, as amended, and hereby imposes the penalty of LIFE IMPRISONMENT. Accused is further ordered to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency; and

3) in Criminal Case No. 117700, GUILTY beyond reasonable doubt of the crime of Illegal Possession of Firearms under

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[3] *Rollo,* pp. 3-13.

[4] *Supra* note 2.

PD 1866, as amended, and sentences him to suffer the penalty of PRISION CORRECCIONAL in its maximum period and a fine of ₱15,000.00 for illegal possession of .38 caliber firearm, and the penalty of PRISION MAYOR in its minimum period and a fine of ₱30,000.00 for illegal possession of .45 caliber firearm.

SO ORDERED. [5]

Decision of the CA

On appeal, the accused contended that:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II

THE COURT *A QUO* GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES AND TOTALLY DISREGARDING THE VERSION OF THE DEFENSE.

On its part, the Office of the Solicitor General (OSG) sought the affirmance of the convictions for the violations of Section 15 and Section 16 of R.A. No. 6425, as amended, but recommended the acquittal of the accused on the charge of illegal possession of firearms and ammunition in violation of P.D. No. 1866, as amended by R.A. Act No. 8294.[6]

Nonetheless, on April 27, 2007, the CA affirmed the three convictions,[7] *viz.*:

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[5] *Id.*

[6] *Rollo*, pp. 38-54.

[7] *Supra* note 1.

WHEREFORE, the 13 April 2005 Decision of the Regional Trial Court of Pasig City, Branch 156 in Criminal Case Nos. 8633-34-D and 11700 is hereby **AFFIRMED** in toto.

SO ORDERED.[8]

Hence, this appeal.

Issues

The accused submits that the CA's findings were contrary to the facts, the relevant law, and applicable jurisprudence.[9]

The OSG counters that the guilt of the accused for the violations of Section 15 and Section 16 of R.A. No. 6425, as amended, was established beyond reasonable doubt;[10] but urges that he should be acquitted of the illegal possession of firearms and ammunition under P.D. No. 1866, as amended by R.A. No. 8294, in view of his commission of another crime.[11]

Ruling of the Court

After a meticulous review of the records, the Court rules that the accused should be acquitted of all the charges for the violations of Section 15 and Section 16 of R.A. No. 6425, as amended, on the ground of failure to prove his guilt beyond reasonable doubt; and of the charge for illegal possession of firearms and ammunition under P.D. No. 1866, as amended by R.A. No. 8294, on the ground of lack of legal basis.

1.

Violations of Section 15 and Section 16 of R.A. No. 6425, as amended, were not established beyond reasonable doubt

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[8] *Rollo*, p. 20.

[9] *Id*. at 21.

[10] *Id*. at 44.

[11] *Id*. at 51.

In prosecutions involving narcotics and other illegal drugs, the confiscated substances and allied articles themselves constitute the *corpus delicti* of the offense. This is because the offense is not deemed committed unless the substances and articles subject of the accused's illegal dealing or illegal possession are themselves presented to the trial court as evidence. The fact of the existence of the substances and articles is vital to sustain a judgment of conviction beyond reasonable doubt.[12] The concept of *corpus delicti* – the body, foundation, or substance of a crime – consists of two elements, namely: (a) that a certain result has been established, for example, that a man has died in a prosecution for homicide; and (b) that some person is criminally responsible for the result. The Prosecution has to prove the *corpus delicti* beyond reasonable doubt either by direct evidence or by circumstantial or presumptive evidence.[13] Else, the accused must be set free.

The process essential to proving the *corpus delicti* calls for the preservation and establishment of the *chain of custody*. In drug-related criminal prosecutions, *chain of custody* specifically refers to the documented various movements and custody of the subjects of the offense – be they seized drugs, controlled chemicals or plant sources of dangerous drugs, and equipment for their production – from the moment of seizure or confiscation to the time of receipt in the forensic laboratory, to their safekeeping until their presentation in court as evidence and their eventual destruction. The documentation includes the inventory, the identity of the person or persons who held temporary custody thereof, the date and time when any transfer of custody was made in the course of safekeeping until presentation in court as evidence, and disposition.

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[12] *People v. Suan*, G.R. No. 184546, February 22, 2010, 613 SCRA 366, 383.

[13] *People v. Tuniaco*, G.R. No. 185710, January 19, 2010, 610 SCRA 350, 355-356.

The safeguards of marking, inventory and photographing are all essential in establishing that such substances and articles seized or confiscated were the very same ones being delivered to and presented as evidence in court.

Yet, the following excerpts from the testimony of poseur buyer SPO1 Edwin A. Anaviso, the State's main witness, bear out that no inventory and accounting of the confiscated substances were made herein at the time and at the scene of the seizure, to wit:

x x x x x x x x x

Q When you were [previously] called to testify that apart from the subject matter of the buy-bust operation which is around 250 grams, you and your companion also recovered from the accused Alexis Dindo y San Jose another sachet or pack of suspected shabu. Do you still remember having testified to that effect?

A Yes, sir.

Q If this specimen or shabu will be again shown to you, will you be able to identify them?

A Yes, sir.

Q I am showing you this specimen earlier handed to this representation by representative from the Crime Laboratory Service a pack of or a plastic container with marking D-294-00 3M and with the label, several labels among which is eretromycin ethylsucimae chosen with confidence. I am now handing to you this…I still do not know the contents of this specimen?

A Inside this pack is… I think this plastic pack was wrapped by the Crime Laboratory, sir.

PROSECUTOR:
You can open that, Mr. Witness.

Interpreter:
Witness opening the plastic pack handed by the Public Prosecutor.

Q After opening this container, the package which you said provided by the Crime Laboratory and which bear the marking D-294-00, what can you now say with these contents?

A This was the one that I bought on January 26, 2000 from one alias Dodong Diamond, sir.

Q Mr. witness, I noticed that there are several plastic packs or sachets contained in this large, another large container previously marked in evidence as Exhibit D. Can you still identify or could you tell us which of those plastic sachets or packs was or were the subject of the buy-bust operation and which of those packs was or were confiscated subsequently from the accused Alexis Dindo San Jose?

A These two small plastic sachets which were marked as EAA-1 AND EAA-2 26 January 2000 were the subject of our agreed buy-bust or "bilihan ng shabu", sir.

Q And who placed those marking in those two packs?

A Me, sir.

Q And what was E[AA]-1 and EAA-2 stand for?

A Edwin Ajero Anaviso, sir.

Q And where did you place the markings?

A 26 January 2000, sir.

Q Where?

A **In our office, sir.**

Q How about the other plastic pack or sachet that you said in your previous testimony was recovered from the accused after the buy-bust operation?

A This one big plastic, I recovered it while I was purchasing from him. I found it in the drawer of his table.

Q How sure are you that this is the very same plastic pack?

A Because I also placed mark on it EAA, sir.

Q That is also your marking?

A Yes, sir.

Q Standing for Edwin Ajero Anaviso?

A Yes, sir.

PROSECUTOR:

For the record, your Honor, these pieces of evidence have already been previously marked as Exhibit D, the large plastic container and the … as Exhibits D-1, D-2 and D-3, respectively.

Q What time was that when you conducted this operation?

A 11 p.m. of January 26, 2000, sir.

Q The operation was through around how many minutes or hours?

A More or less one hour, sir.

Q This was somewhere in San Juan?

A At Lot 22 Cluster 3-4 Little Baguio Gardens Condominium at San Juan, Metro Manila, sir.

Q From the place of the operation, this place you referred to, where did you immediately proceed after this successful operation?

A We proceeded to our office to conduct investigation and I turned over the evidence to our investigator, sir.

Q You did not pass by to any other place?

A No, sir.

Q And who was in custody of this specimen or seized evidence from Little Baguio Gardens Condominium up to your office?

A Our investigator, sir.

Q How many vehicle (sic) did you use in this particular operation?

A Two, sir.

Q You were with the investigator when you returned to the headquarters?

A Yes, sir.

Q And immediately upon arrival at the headquarters, you placed the markings?

A Yes, sir.[14]

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[14] TSN dated January 22, 2002, pp. 3-7.

Moreover, the chain of custody in drug-related prosecutions always starts with the marking of the relevant substances or articles immediately upon seizure or confiscation. This, because the succeeding handlers would be using the marking as *reference*. The marking further serves to separate the marked substances or articles from the corpus of all other similar or related articles from the time of the seizure or confiscation from the accused until disposal at the end of the criminal proceedings, thereby obviating the hazards of switching, "planting," or contamination of the evidence.[15] Verily, switching, or "planting," or contamination of the evidence destroys the proof of the *corpus delicti*. The marking likewise insulates and protects innocent persons from dubious and concocted searches as well as shields the sincere apprehending officers from harassment claims based on false allegations of planting of evidence, robbery or theft.[16]

Under the *Rules of Court*, the Prosecution assumes the burden to establish its case with evidence that is relevant, that is, *the evidence must throw light upon, or have a logical relation to, the facts in issue*. In all instances, the test of relevancy is whether evidence will have any value, as determined by logic and experience, in proving the proposition for which it is offered, or whether it will reasonably and actually tend to prove or disprove any matter of fact in issue, or corroborate other relevant evidence. The test of relevancy is satisfied if there is some logical connection either directly or by inference between the fact offered and the fact to be proved. Establishing the *chain of custody* of the contraband in drug-related prosecutions directly fulfills the basic requirement of relevance imposed by our rules on evidence. As such, the need to preserve the *chain of custody* applies regardless of whether the prosecution is brought for a violation of R.A. No. 6425, or for a violation of R.A. No. 9165.[17]

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[15] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

[16] *People v. Saclena*, G.R. No. 192261, November 16, 2011, 660 SCRA 349, 368.

[17] *People v. Belocura*, G.R. No. 173474, August 29, 2012, 679 SCRA 318, 343.

It is true that the requirement of marking was not found in R.A. No. 6425. Even so, the arresting team of the accused herein still had to demonstrate the relevance of the substances and articles they identified during the trial and presented as evidence of guilt to the substances and articles seized or confiscated during the transaction with the accused. This is accomplished only by showing an unbroken chain of custody vis-à-vis the *corpus delicti*. Without such showing, the chain of custody would be broken, and the logical connection between the substances and articles presented in court, on one hand, and the substances and articles seized or confiscated from the accused, on the other, would be cut off.

The arresting officers of the accused herein were also very aware that they would be turning over all the substances recovered during the supposed transaction with him to the evidence custodian and to the laboratory. Such awareness imposed on them the duty to preserve the chain of custody by marking the substances to prevent their being mixed up with other material in the custody and keeping of the evidence custodian or the laboratory. The marking became crucial to the chain of custody and ceased to be a mere measure of precaution once the arresting officers decided to transport the arrestees and the pieces of evidence from the scene of the arrest to the police office, which, physically speaking, was some distance.

As above discussed, the marking of the seized substances was admittedly done only at the police office. That was another critical lapse on the part of the arresting lawmen because it broke the chain of custody of the *corpus delicti*. Even if deferring the marking at the scene of the arrest and seizure to a later time, at the police office, was probably the tolerated practice for buy-bust arrests under R.A. No. 6425, the practice did not really justify the failure to do the marking immediately after the arrest of the accused and the seizure of the substances if the objective thereof was precisely to prevent planting, substitution or tampering of evidence. The arresting officers had to explain the failure to do the marking immediately, for to dispense with the reasonable explanation was to undervalue the chain of custody as the means of insulating the evidence

from the risks of planting, substitution or tampering. Yet, no explanation was tendered during the trial.

We cannot presume that the marking could not be done at the place of the arrest because of risks present thereat. Based on the records, the arresting officers were under no threat by virtue of their anti-drug operation being actually backed up by four policemen from the Regional Mobile Group of the National Capital Region Police Office.[18]

The State did not also establish that the substances presented during the trial had been safeguarded from tampering or substitution in subsequent phases of the custodial chain. Poseur buyer SPO1 Anaviso might have detailed the conduct of the buy-bust operation and attested to the marking being done later at the police office, but no witness actually testified during the trial about how the seized substances were sealed and transported to the crime laboratory for the examination and confirmatory tests. The lack of such testimony signified that the seized substances were not shown to have been kept intact while in transit from the scene of the arrest to the police office, and from the police office to the laboratory.

In view of all the foregoing, the integrity of the evidence presented in court became suspect.

2.

The incrimination of the accused was highly doubtful

Another source of serious doubt about the proof of guilt was the shallow and shoddy investigation that led to the filing of the charges against the accused *alone* for the very serious crimes of drug dealing, illegal possession of dangerous drugs, and illegal possession of firearms and ammunition.

The accused claimed to be a resident of Parañaque City at the time of his arrest in San Juan City. Although drug dealers

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[18] TSN dated February 5, 2003, pp. 11-12.

could conduct their operations outside of their own localities, it was very strange for him to be apprehended in the course of the buy-bust operation conducted inside the premises of the residential unit of one Benjamin Ong located in the Little Baguio Gardens Condominium without Ong being himself implicated. The accused actually declared that Ong himself had been the target of the operation, and that he (accused) had gone to the condominium of Ong on the day of his arrest only as an incident of his business of selling pre-owned motor vehicles to show Ong the vehicle he was interested in. The accused recalled that Ong had requested to test-drive the vehicle, and that it was while the accused was waiting at or near the guardhouse of the condominium for Ong to return from the test drive when the lawmen came looking for Ong. The team then arrested Ong upon his return from the test drive, and brought him and the vehicle of the accused to the police office. The sequestration of his vehicle forced the accused to tag along with them to recover his vehicle, but sadly for him the lawmen unjustly placed him under arrest and charged him with the crimes that are now the subject of this appeal. Strangely, Ong was released *without charges*.

It is incomprehensible why Ong, the registered tenant of the unit in which the arrest was supposedly made, was not charged or investigated by the police for possible involvement in the drug transaction and for the possession of the unlicensed firearms and ammunition recovered from his place of residence despite his arrest.

It is notable that the arresting officers did not refute or rebut the version of the accused despite such version directly contradicting their narrative about his arrest. At the very least, the State could have presented Ong himself to clarify not only his role in the incrimination of the accused in Ong's premises but also to explain why Ong had not been charged at all despite being the owner or tenant of the place of the arrest. The non-presentation of Ong was suspicious, and should have alerted the CA to examine the records more carefully and thoroughly with the view to delving into the persistent claim of the accused of having been the victim of a vicious frame-up.

To sustain a conviction for a criminal offense, the State must establish the guilt of the accused by proof beyond reasonable doubt. "Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."[19]

In view of all the foregoing, reasonable doubt of the guilt of the accused exists. A reasonable doubt of guilt "*is a doubt growing reasonably out of evidence or the lack of it. It is not a captious doubt; not a doubt engendered merely by sympathy for the unfortunate position of the defendant, or a dislike to accept the responsibility of convicting a fellow man. If, having weighed the evidence on both sides, you reach the conclusion that the defendant is guilty, to that degree of certainty as would lead you to act on the faith of it in the most important and crucial affairs of your life, you may properly convict him. Proof beyond reasonable doubt is not proof to a mathematical demonstration. It is not proof beyond the possibility of mistake*."[20]

With the proof of the guilt of the accused not being beyond reasonable doubt, he is entitled to acquittal as far as the charges for the violations of Section 14 and Section 16 of R.A. No. 6425 were concerned.

3.

There is no separate crime of illegal possession of firearms if another crime has been committed

It is academic to discuss the criminal liability of the accused for illegal possession of firearms and ammunition in view of the serious doubt surrounding the non-incrimination for the offense of Ong despite his being the owner of the residential unit where the firearms and ammunition were recovered. But we should nonetheless stress that the CA should have heeded the recommendation of the OSG and dismissed the charge of

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[19] Section 2, Rule 133 of the *Rules of Court*.

[20] *United States v. Youthsey*, 91 Fed. Rep. 864, 868.

illegal possession of firearms and ammunition for lack of any legal basis for holding the accused liable therefor.

The OSG's recommendation to dismiss the charge of illegal possession of firearms and ammunition against the accused on the ground that there was no such separate crime if another crime was committed fully accorded with the letter of the law. Section 1 of R.A. No. 8294[21] states:

> Sec. 1. Unlawful manufacture, sale, acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition. – The penalty of *prision correccional* in its maximum period and a fine of not less than Fifteen thousand pesos (₱15,000) shall be imposed upon any person who shall unlawfully manufacture, deal in, acquire, dispose, or possess any low powered firearm, such as rimfire handgun, .380 or .32 and other firearm of similar firepower, part of firearm, ammunition, or machinery, tool or instrument used or intended to be used in the manufacture of any firearm or ammunition: Provided, **That no other crime was committed**.
>
> The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (₱30,000) shall be imposed if the firearm is classified as high powered firearm which includes those with bores bigger in diameter than .38 caliber and 9 millimeter such as caliber .40, .41, .44, .45 and also lesser calibered firearms but considered powerful such as caliber .357 and caliber .22 center-fire magnum and other firearms with firing capability of full automatic and by burst of two or three: Provided, however, **That no other crime was committed by the person arrested.**

We have affirmed in *People v. Ladjaalam*[22] that there could be no offense of illegal possession of firearms and ammunition under R.A. No. 8294 if another crime was committed. With

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[21] *An Act amending the provisions of Presidential Decree No. 1866, as amended, entitled "Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing Stiffer Penalties for Certain Violations thereof, and for Relevant Purposes.*

[22] G.R. Nos. 136149-51, September 19, 2000, 340 SCRA 617.

the letter of the law itself being forthright, the courts have no discretion to give the law a meaning detached from the manifest intendment and language of Congress, for our task is constitutionally confined to applying the law and pertinent jurisprudence to the proven facts, which we must do now in this case.[23]

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on April 27, 2007; **ACQUITS** accused Alexis Dindo San Jose *y* Suico of the violations of Section 15 and Section 16 of Republic Act No. 6425, as amended, on the ground of reasonable doubt; **DISMISSES** the charges against him for violation of Section 1 of Republic Act No. 8294 (illegal possession of firearms and ammunition) for lack of legal basis; **DIRECTS** his immediate **RELEASE** from the National Penitentiary in Muntinlupa City unless he is confined for some other lawful cause; and **ORDERS** the Director of the Bureau of Corrections to implement this decision, and to report his action hereon within 10 days from receipt hereof.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 191495. July 23, 2018]

NIPPON EXPRESS (PHILIPPINES) CORPORATION, *petitioner*, *vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

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[23] *Id.* at 650-651.

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; CANNOT BE WAIVED BECAUSE IT IS CONFERRED BY LAW AND IS NOT DEPENDENT ON THE CONSENT OR OBJECTION OR THE ACTS OR OMISSIONS OF THE PARTIES OR ANY ONE OF THEM; CASE AT BAR.—**[E]ven if not raised in the present petition, the Court is not prevented from considering the issue on the court's jurisdiction consistent with the well-settled principle that when a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case. The matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.Besides, courts have the power to *motu proprio* dismiss an action over which it has no jurisdiction pursuant to Section 1, Rule 9 of the Revised Rules of Court.

2. **TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; SECTION 112 ON REFUNDS OR TAX CREDITS OF INPUT TAX; THE THIRTY (30)-DAY PERIOD TO APPEAL FROM THE DECISION OR INACTION BY THE COMMISSIONER OF INTERNAL REVENUE IS MANDATORY AND JURISDICTIONAL; IN CASE AT BAR, THE JUDICIAL CLAIM BEING BELATEDLY FILED, THE COURT OF TAX APPEALS DID NOT ACQUIRE JURISDICTION.—**Concerning the claim for refund of excess or unutilized creditable input VAT attributable to zero-rated sales, the pertinent law is Section 112 of the NIRC. x x x Under the said provision, a VAT-registered taxpayer who has excess and unutilized creditable input VAT attributable to zero-rated sales may file an application for cash refund or issuance of TCC (administrative claim) before the CIR who has primary jurisdiction to decide such application. The period within which to file the administrative claim is two (2) years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made. From the submission of complete documents to support the administrative claim, the CIR is given a 120-day period to decide. In case of whole or partial denial of or inaction on the administrative claim, the taxpayer may bring his judicial claim, through a petition for review, before the CTA who has exclusive and appellate

jurisdiction. The period to appeal is **thirty (30) days** counted from the receipt of the decision or inaction by the CIR. However, Nippon Express filed its petition for review with the CTA only on **31 March 2006,** or **two hundred forty-six (246) days** from the inaction by the CIR. In other words, the petition of Nippon Express was belatedly filed with the CTA and, following the doctrine above, the court ought to have dismissed it for lack of jurisdiction.

3. ID.; ID.; ID.; ID.; SUBSTANTIATION REQUIREMENT TO BE ENTITLED TO REFUND OR TAX CREDIT; A VAT INVOICE IS NECESSARY FOR EVERY SALE, BARTER OR EXCHANGE OF GOODS OR PROPERTIES WHILE A VAT OFFICIAL RECEIPT PROPERLY PERTAINS TO EVERY LEASE OF GOODS OR PROPERTIES, AND FOR EVERY SALE, BARTER OR EXCHANGE OF SERVICES; A VAT INVOICE AND A VAT RECEIPT CANNOT BE USED ALTERNATIVELY; CASE AT BAR.—It was in *Kepco Philippines Corporation v. Commissioner (Kepco)* that the Court was directly confronted with the adequacy of a sales invoice as proof of the purchase of services and official receipt as evidence of the purchase of goods. The Court initially cited the distinction between an invoice and an official receipt as expressed in the *Manila Mining* case. We then declared for the first time that a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties while a *VAT official receipt* properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. Thus, we held that a VAT invoice and a VAT receipt should not be confused as referring to one and the same thing; the law did not intend the two to be used alternatively. x x x Irrefutably, when a VAT-taxpayer claims to have zero-rated sales of services, it must substantiate the same through valid VAT official receipts, not any other document, not even a sales invoice which properly pertains to a sale of goods or properties. In this case, the documentary proofs presented by Nippon Express to substantiate its zero-rated sales of services consisted of sales invoices and other secondary evidence like transfer slips, credit memos, cargo manifests, and credit notes. It is very clear that these are inadequate to support the petitioner's sales of services. Consequently, the CTA, albeit without jurisdiction, correctly ruled that Nippon Express is not entitled to its claim.

APPEARANCES OF COUNSEL

Cabrera Lavadia & Associates for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

MARTIRES, *J.*:

In a claim for refund under Section 112 of the National Internal Revenue Code *(NIRC),* the claimant must show that: *(1)* it is engaged in zero-rated sales of goods or services; and *(2)* it paid input VAT that are attributable to such zero-rated sales. Otherwise stated, the claimant must prove that it made a *purchase* of taxable goods or services for which it paid VAT (input), and later on engaged in the *sale* of goods or services subject to VAT (output) but at zero rate. There is a refundable sum when the amount of input (VAT (attributable to zero-rated sale) is higher than the claimant's output VAT during one taxable period (quarter).

The issue in the present petition concerns the proof that the claimant, petitioner Nippon Express (Philippines) Corporation *(Nippon Express),* is engaged in zero-rated sales of services (not goods or properties).

THE FACTS

Petitioner Nippon Express repaired to the Court via its petition for review on certiorari under Rule 45 of the Rules of Court to assail the 15 December 2009 Decision of the Court of Tax Appeals *(CTA)* En Banc in CTA EB No. 492. The CTA En Banc affirmed the ruling of the CTA Second Division in CTA Case No. 7429 denying the refund claim of Nippon Express.

The present controversy stemmed from an application for the issuance of a tax credit certificate *(TCC)* of Nippon Express' excess or unutilized input tax attributable to its zero-rated sales for all four taxable quarters in 2004 pursuant to Section 112 of the National Internal Revenue Code *(NIRC).*

The Antecedents

Nippon Express is a domestic corporation registered with the Large Taxpayer District Office *(LTDO)* of the Bureau of Internal Revenue *(BIR),* Revenue Region No. 8–Makati, as a Value Added Tax *(VAT)* taxpayer.[1]

On **30 March 2005**, Nippon Express filed with the LTDO, Revenue Region No. 8, an application for tax credit of its excess/unused input taxes attributable to zero-rated sales for the taxable year 2004 in the total amount of ₱27,828,748.95.

By reason of the inaction by the BIR, Nippon Express filed a Petition for Review before the CTA on **31 March 2006**.[2] In its Answer, respondent Commissioner of Internal Revenue *(CIR)* interposed the defense, among others, that Nippon Express' excess input VAT paid for its domestic purchases of goods and services attributable to zero-rated sales for the four quarters of taxable year 2004 was not fully substantiated by proper documents.[3]

The Ruling of the CTA Division

After trial, the CTA Division *(the court)* found that Nippon Express' evidentiary proof of its zero-rated sale of services to PEZA-registered entities consisted of documents other than official receipts. Invoking Section 113 of the NIRC, as amended by Section 11 of Republic Act *(R.A.)* No. 9337, the court held the view that the law provided for invoicing requirements of VAT-registered persons to issue a VAT invoice for every sale, barter or exchange of goods or properties, and a VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services. Noting that Nippon Express is engaged in the business of providing services, the court denied

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[1] *Rollo,* pp. 94-95, see Decision, dated 15 December 2009, promulgated by CTA *En Banc* in CTA EB No. 492, pp. 2-3.

[2] *Id*. at 80.

[3] *Id*. at 96.

the latter's claim for failure to submit the required VAT official receipts as proof of zero-rated sales. The dispositive portion of the CTA Division's Decision, dated 5 December 2008, reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.[4]

Aggrieved, Nippon Express moved for reconsideration or new trial but was rebuffed by the CTA Division in its Resolution[5] of 5 May 2009. Hence, Nippon Express filed on 10 June 2009 a petition for review with the CTA En Banc.

The Petition for Review before the CTA En Banc

In its appeal before the CTA En Banc, Nippon Express alleged that it had fully complied with the invoicing requirements when it submitted sales invoices to support its claim of zero-rated sales. Nippon argued that there is nothing in the tax laws and regulations that requires the sale of goods or properties to be supported only by sales invoices, or the sale of services by official receipts only. Thus, as Nippon Express put it, the CTA Division erred in holding that the sales invoices and their supporting documents are insufficient to prove Nippon Express' zero-rated sales.

The Ruling of the CTA En Banc

As stated at the outset, the CTA En Banc affirmed the decision of the CTA Division. The CTA En Banc disposed as follows:

"**WHEREFORE**, the Petition for Review is **DISMISSED**. Accordingly, the impugned Decision of the Court in Division dated December 5, 2008 and its Resolution promulgated on May 5, 2009 in CTA Case No. 7429 are **AFFIRMED**.

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[4] *Id*. at 142.

[5] *Id*. at 145-150.

SO ORDERED."[6]

Worth mentioning is the lone dissent registered by Presiding Justice *(PJ)* Ernesto D. Acosta who opined that an official receipt is not the only acceptable evidence to prove zero-rated sales of services. He ratiocinated:

Sections 113 and 237 of the 1997 National Internal Revenue Code (NIRC) x x x made use of the disjunctive term "or" which connotes that either act qualifies as two different evidences of input VAT. x x x It is indicative of the intention of the lawmakers to use the same interchangeably in the sale of goods or services.

This is bolstered by the fact that Section 113 of the 1997 NIRC has been amended by Section 11 of Republic Act (RA) No. 9337, wherein the amendatory provisions of the law categorically required that VAT invoice shall be issued for sale of goods while VAT official receipt for the sale of services, which is absent in the amended law. Since this amendment took effect on July 1, 2005, the same cannot be applied in the instant case which involves a claim for refund for taxable year 2004. RA 9337 cannot apply retroactively to the prejudice of petitioner given the well-entrenched principle that statutes, including administrative rules and regulations operate prospectively only, unless the legislative intent to the contrary is manifest by express terms or by necessary implication.

Equally relevant are **Section 110 of the 1997 NIRC** and **Section 4.106-5 of Revenue Regulations No. 7-95**. x x x A reading of both provisions would show the intention to accept other evidence to substantiate claims for VAT refund, particularly the use of either a VAT invoice or official receipt.[7]

Nippon Express opted to forego the filing of a motion for reconsideration; hence, the direct appeal before the Court.

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[6] *Id*. at 111.

[7] *Id*. at 113-115.

The Present Petition for Review

In its petition, Nippon Express reiterated its stance that nowhere is it expressly stated in the laws or implementing regulations that *only* official receipts can support the sale of *services*, or that *only* sales invoices can support the sale of *goods* or *properties*. Nippon Express also adopted at length the dissenting opinion of PJ Acosta, *viz* the use of the disjunctive term "or" in Section 237 of the NIRC connoting the interchangeable nature of either VAT invoice or official receipt as evidence of sale of goods or services; the lack of any statutory basis for the exclusivity of official receipts as proof of sale of service; and the non-retroactivity of R.A. No. 9337, enacted in 2005, to the petitioner's case.

In addition, Nippon Express posed the query on whether it may still be allowed to submit official receipts, in addition to those already produced during trial, in order to prove the existence of its zero-rated sales.

By way of Comment,[8] the CIR impugns the petition as it essentially seeks the re-evaluation of the evidence presented during trial which cannot be done in a petition for review under Rule 45. Likewise, the CIR argues that the evidence of the sale of service, as the CTA held, is none other than an official receipt. In contrast, the sales invoice is the evidence of a sale of goods. Since the petitioner's transactions involve sales of services, they should have been properly supported by official receipts and not merely by sales invoices.

THE COURT'S RULING

We deny the petition.

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[8] *Id*. at 205-224.

I.

The judicial claim of Nippon Express was belatedly filed. The thirty (30)-day period of appeal is mandatory and jurisdictional, hence, the CTA did not acquire jurisdiction over Nippon Express' judicial claim.

First, we observe that much of the CTA's discussion in the assailed decision dwelt on the substantiation of the petitioner's claim for refund of unutilized creditable input VAT. It did not touch on the subject of the court's jurisdiction over the petition for review filed before it by Nippon Express. Neither did the CIR bring the matter to the attention of the court *a quo*.

Nonetheless, even if not raised in the present petition, the Court is not prevented from considering the issue on the court's jurisdiction consistent with the well-settled principle that when a case is on appeal, the Court has the authority to review matters not specifically raised or assigned as error if their consideration is necessary in reaching a just conclusion of the case.[9] The matter of jurisdiction cannot be waived because it is conferred by law and is not dependent on the consent or objection or the acts or omissions of the parties or any one of them.[10] Besides, courts have the power to *motu proprio* dismiss an action over which it has no jurisdiction pursuant to Section 1, Rule 9 of the Revised Rules of Court.[11]

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[9] See *Aichi Forging Company of Asia v. CTA,* G.R. No. 193625, 30 August 2017, citing *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR*, 757 Phil. 54, 69 (2015); *Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.) v. CIR*, 727 Phil. 487, 499 (2014).

[10] *Id*., citing *Nippon Express (Philippines) Corporation v. CIR*, 706 Phil. 442, 450-451 (2013).

[11] SECTION 1. *Defenses and objections not pleaded* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence

Concerning the claim for refund of excess or unutilized creditable input VAT attributable to zero-rated sales, the pertinent law is Section 112 of the NIRC[12] which reads:

SEC. 112. *Refunds or Tax Credits of Input Tax*. –

(A) Zero-rated or Effectively Zero-rated Sales.– Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, ***within two (2) years after the close of the taxable quarter when the sales were made***, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax:

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes ***within one hundred twenty (120) days from the date of submission of complete documents*** in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or **the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**. (emphases supplied)

Under the aforequoted provision, a VAT-registered taxpayer who has excess and unutilized creditable input VAT attributable

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on record that the court has ***no jurisdiction over the subject matter***, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim. (emphasis supplied)

[12] Before the amendments introduced by R.A. No. 9337 and R.A. No. 9361. R.A. No. 9337 took effect on 1 November 2005; R.A. No. 9361 on 28 November 2006. Recently, R.A. No. 10963 (or the TRAIN Law) amended Section 112 of the NIRC. Notably, the 120-day period was shortened to ninety (90) days.

to zero-rated sales may file an application for cash refund or issuance of TCC (administrative claim) before the CIR who has primary jurisdiction to decide such application.[13] The period within which to file the administrative claim is two (2) years reckoned from the close of the taxable quarter when the pertinent zero-rated sales were made.

From the submission of complete documents to support the administrative claim, the CIR is given a 120-day period to decide. In case of whole or partial denial of or inaction on the administrative claim, the taxpayer may bring his judicial claim, through a petition for review, before the CTA who has exclusive and appellate jurisdiction.[14] The period to appeal is **thirty (30) days** counted from the receipt of the decision or inaction by the CIR.

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[13] Based on the second paragraph of Section 4 of the NIRC which states:

Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*.– The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.

[14] Based on Section 7 (a) of R.A. No. 1125, as amended by R.A. No. 9282. It reads:

Sec. 7. Jurisdiction. – The CTA shall exercise:

a. Exclusive appellate jurisdiction to review by appeal, as herein provided:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;

2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; x x x

The 30-day period is further emphasized in Section 11 of R.A. No. 1125, as amended by R.A. No. 9282, or the CTA charter, which reads:

> SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA **within thirty (30) days** after the receipt of such decision or ruling or **after the expiration of the period** fixed by law for action as referred to in Section 7(a)(2) herein. (emphases supplied)

In the seminal cases of *Commissioner of Internal Revenue (Commissioner) v. Aichi Forging Company of Asia, Inc.*[15] and *Commissioner v. San Roque Power Corporation/Taganito Mining Corporation v. Commissioner/Philex Mining Corporation v. Commissioner (San Roque),*[16] the Court interpreted the 30-day period of appeal as **mandatory** and **jurisdictional**. Thus, noncompliance with the mandatory 30-day period renders the petition before the CTA void. The ruling in said cases as to the mandatory and jurisdictional character of the 30-day period of appeal was reiterated in a litany of cases thereafter.

Pertinently, the CTA law expressly provides that when the CIR fails to take action on the administrative claim, the "inaction shall be deemed a denial" of the application for tax refund or credit. The taxpayer-claimant must strictly comply with the mandatory period by filing an appeal with the CTA within thirty days from such inaction, otherwise, the court cannot validly acquire jurisdiction over it.

In this case, Nippon Express timely filed its administrative claim on **30 March 2005**, or within the two-year prescriptive period. Counted from such date of submission of the claim with supporting documents, the CIR had 120 days, or until 28

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[15] 646 Phil. 710 (2010).

[16] 703 Phil. 310 (2013).

July 2005, the last day of the 120-day period, to decide the claim. As the records reveal, the CIR did not act on the application of Nippon Express. Thus, in accordance with law and the cited jurisprudence, the claimant, Nippon Express, had thirty days from such inaction "deemed a denial," or until 27 August 2005, the last day of the 30-day period, within which to appeal to the CTA.

However, Nippon Express filed its petition for review with the CTA only on **31 March 2006**, or **two hundred forty-six (246) days** from the inaction by the CIR. In other words, the petition of Nippon Express was belatedly filed with the CTA and, following the doctrine above, the court ought to have dismissed it for lack of jurisdiction.

The present case is similar to the case of Philex Mining Corporation *(Philex)* in the consolidated cases of *San Roque*. In that case, Philex: (1) filed on 21 October 2005 its original VAT return for the third quarter of taxable year 2005; (2) filed on 20 March 2006 its administrative claim for refund or credit; (3) filed on 17 October 2007, its petition for review with the CTA.[17] As in this case, the CIR did not act on Philex's claim.

The Court considered Philex to have timely filed its administrative claim on 20 March 2006, or within the two-year period; but, its petition for review with the CTA on 17 October 2007, was late by 426 days. Thus, the Court ruled that the CTA Division did not acquire jurisdiction.

Due to the lack of jurisdiction of the CTA over the Nippon Express petition before it, all the proceedings held in that court must be void. The rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void.[18] It follows that the decision and the resolution of the CTA Division, as well as the decision rendered by the CTA En Banc on appeal, should be vacated or set aside.

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[17] *Id*. at 361.

[18] *Aichi Forging Company of Asia v. CTA, supra* note 9, citing *Paulino v. Court of Appeals*, 735 Phil. 448, 459 (2014).

As noted previously, Nippon Express asked leave from this Court to allow it to submit in evidence the official receipts of its zero-rated sales in addition to the sales invoices and other documents already presented before the CTA. Considering our finding as to the CTA's lack of jurisdiction, it is thus futile to even consider or allow such official receipts of Nippon Express.

II.

In view of the lack of jurisdiction of the CTA, we shall clarify and resolve, if only for academic purposes, the focal issue presented in this petition, i.e., whether the sales **invoices** and documents other than official receipts are proper in substantiating zero-rated sales of **services** in connection with a claim for refund under Section 112 of the NIRC.

Substantiation requirements to be entitled to refund or tax credit under Sec. 112, NIRC

As stated in our introduction, the burden of a claimant who seeks a refund of his excess or unutilized creditable input VAT pursuant to Section 112 of the NIRC is two-fold: *(1)* prove payment of input VAT to suppliers; and *(2)* prove zero-rated sales to purchasers. Additionally, the taxpayer-claimant has to show that the VAT payment made, called input VAT, is attributable to his zero-rated sales.

Be it noted that under the law on VAT, as contained in Title IV of the NIRC, there are three known taxable transactions, namely: *(i)* sale of goods or properties (Section 106); *(ii)* importation (Section 107); and *(iii)* sale of services and lease of properties (Section 108). Both sale transactions in Sections 106 and 108 are qualified by the phrase 'in the course of trade or business,' whereas importation in Section 107 is not.

At this juncture, it is imperative to point out that the law had set apart the sale of goods or properties, as contained in Section 106, from the sale of services in Section 108.

In establishing the fact that taxable transactions like sale of goods or properties or sale of services were made, the law provided for invoicing and accounting requirements, to wit:

Section 113. *Invoicing and Accounting Requirements for VAT-Registered Persons*. –

(A) *Invoicing Requirements*. – A VAT-registered person shall, for every sale, issue an **invoice** *or* **receipt**. In addition to the information required under Section 237, the following information shall be indicated in the **invoice** *or* **receipt**:

1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN); and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

(B) *Accounting Requirements*. – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

x x x x x x x x x

Section 237. *Issuance of Receipts or Sales or Commercial Invoices*. – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, issue duly registered **receipts** or sales or commercial **invoices**, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One hundred pesos (₱100.00) or more, or regardless of the amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the **receipt** is issued to cover payment made as rentals, commissions, compensations or fees, **receipts** *or* **invoices** shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client: Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the **invoice** *or* **receipt** shall further show the Taxpayer Identification Number (TIN) of the purchaser.

The original of each **receipt** *or* **invoice** shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such **invoice** *or* **receipt** was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period. (emphases supplied)

The CTA En Banc held the view that while Sections 113 and 237 used the disjunctive term "or," it must not be interpreted as giving a taxpayer an unconfined choice to select between issuing an invoice or an official receipt.[19] To the court *a quo*, sales invoices must support sales of goods or properties while official receipts must support sales of services.[20]

We agree.

Actually, the issue is no longer novel.

In *AT&T Communications Services Philippines, Inc. v. Commissioner (AT&T),*[21] we interpreted Sections 106 and 108 in conjunction with Sections 113 and 237 of the NIRC relative to the significance of the difference between a sales invoice and an official receipt as evidence for zero-rated transactions. For better appreciation, we simply quote the pertinent discussion, *viz:*

Although it appears under [Section 113] that there is no clear distinction on the evidentiary value of an invoice or official receipt, it is worthy to note that the said provision is a general provision which covers all sales of a VAT registered person, whether sale of goods or services. It does not necessarily follow that the legislature intended to use the same interchangeably. The Court therefore cannot conclude that the general provision of Section 113 of the NIRC of 1997, as amended, intended that the invoice and official receipt can be used for either sale of goods or services, because there are specific provisions of the Tax Code which clearly delineates the difference between the two transactions.

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[19] *Rollo,* p. 22.

[20] *Id*. at 24.

[21] 747 Phil. 337 (2014).

In this instance, Section 108 of the NIRC of 1997, as amended, provides:

> SEC. 108. ***Value-added Tax on Sale of Services*** and Use or Lease of Properties.–
>
> x x x x x x x x x
>
> (C) Determination of the Tax -The tax shall be computed by multiplying the total amount indicated in the ***official receipt*** by one- eleventh (1/11). (emphases supplied)

Comparatively, Section 106 of the same Code covers sale of goods, thus:

> SEC. 106. ***Value-added Tax on Sale of Goods or Properties***,-
>
> x x x x x x x x x
>
> (D) Determination of the Tax. – The tax shall be computed by multiplying the total amount indicated in the ***invoice*** by one-eleventh (1/11). (emphases supplied)

Apparently, the construction of the statute shows that the legislature intended to distinguish the use of an invoice from an official receipt. It is more logical therefore to conclude that subsections of a statute under the same heading should be construed as having relevance to its heading. The legislature separately categorized VAT on sale of goods from VAT on sale of services, not only by its treatment with regard to tax but also with respect to substantiation requirements. Having been grouped under Section 108, its subparagraphs, (A) to (C), and Section 106, its subparagraphs (A) to (D), have significant relations with each other.

x x x x x x x x x

Settled is the rule that every part of the statute must be considered with the other parts. Accordingly, the whole of Section 108 should be read in conjunction with Sections 113 and 237 so as to give life to all the provisions intended for the sale of services. There is no conflict between the provisions of the law that cover sale of services that are subject to zero rated sales; thus, it should be read altogether to reveal the true legislative intent.[22]

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

Contrary to the petitioner's position, invoices and official receipts are not used interchangeably for purposes of substantiating input VAT;[23] or, for that matter, output VAT. Nippon Express cites *Commissioner v. Manila Mining Corporation (Manila Mining)*[24] as its authority in arguing that the law made no distinction between an invoice and an official receipt. We have read said case and therein found just quite the opposite. The *Manila Mining* case in fact recognized a difference between the two, to wit:

> A "sales or commercial invoice" is a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services.
>
> A "receipt" on the other hand is a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services and client or customer.[25]

At this point, it is worth mentioning that the VAT law at issue in *Manila Mining* was Presidential Decree No. 1158 (National Internal Revenue Code of 1977). That a distinction between an invoice and receipt was recognized even as against the NIRC of 1977 as the legal backdrop is authority enough to dispel any notion harbored by the petitioner that a distinction between the two, with the legal effects that follow, arose only after the enactment of R.A. No. 9337. For emphasis, even prior to the enactment of R.A. No. 9337, which clearly delineates the invoice and official receipt, our Tax Code has already made the distinction.[26]

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[23] *KEPCO v. CIR,* 650 Phil. 525, 542 (2010).

[24] 505 Phil. 650 (2005).

[25] *Id*. at 665.

[26] *AT&T Communications Services Philippines, Inc. v. CIR, supra* note 21 at 335.

The *Manila Mining* case proceeded to state –

> These sales invoices or receipts issued by the supplier are necessary to substantiate the actual amount or quantity of goods sold and their selling price, and taken collectively are the best means to prove the input VAT payments.[27]

While the words "invoice" and "receipt" in said decision are seemingly used without distinction, it cannot be rightfully interpreted as allowing either document as substantiation for any kind of taxable sale, whether of goods/properties or of services. A closer reading of *Manila Mining* indeed shows that the question on whether an invoice is the proper documentary proof of a sale of goods or properties to the exclusion of an official receipt, and vice versa, official receipt as the proof of sale of services to the exclusion of an invoice, was not the pivotal issue.

It was in *Kepco Philippines Corporation v. Commissioner (Kepco)*[28] that the Court was directly confronted with the adequacy of a sales invoice as proof of the purchase of services and official receipt as evidence of the purchase of goods. The Court initially cited the distinction between an invoice and an official receipt as expressed in the *Manila Mining* case. We then declared for the first time that a *VAT invoice* is necessary for every sale, barter or exchange of goods or properties while a *VAT official receipt* properly pertains to every lease of goods or properties, and for every sale, barter or exchange of services. Thus, we held that a VAT invoice and a VAT receipt should not be confused as referring to one and the same thing; the law did not intend the two to be used alternatively. We stated:

> [T]he VAT invoice is the seller's best proof of the sale of the goods or services to the buyer while the VAT receipt is the buyer's best evidence of the payment of goods or services received from the seller. Even though VAT invoices and receipts are normally issued by the supplier/seller alone, the said invoices and receipts, taken

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[27] *Supra* note 24 at 666.

[28] *Supra* note 23.

collectively, are necessary to substantiate the actual amount or quantity of goods sold and their selling price (*proof of transaction*), and the best means to prove the input VAT payments (*proof of payment*). Hence, VAT invoice and VAT receipt should not be confused as referring to one and the same thing. Certainly, neither does the law intend the two to be used alternatively.[29]

In *Kepco*, the taxpayer tried to substantiate its input VAT on purchases of goods with *official receipts* and on purchases of services with *invoices.* The claim was appropriately denied for not complying with the required standard of substantiation. The Court reasoned that the invoicing and substantiation requirements should be followed because it is the only way to determine the veracity of the taxpayer's claims. Unmistakably, the indispensability of an official receipt to substantiate a sale of service had already been illustrated jurisprudentially as early as *Kepco*.

The doctrinal teaching in *Kepco* was further reiterated and applied in subsequent cases.

Thus, in *Luzon Hydro Corp. v. Commissioner*,[30] the claim for refund/tax credit was denied because the proof for the zero-rated sale consisted of secondary evidence like financial statements.

Subsequently, in *AT&T,*[31] the Court rejected the petitioner's assertion that there is no distinction in the evidentiary value of the supporting documents; hence, invoices or receipts may be used interchangeably to substantiate VAT. Apparently, the taxpayer-claimant presented a number of bank credit advice in lieu of valid VAT official receipts to demonstrate its zero-rated sales of services. The CTA denied the claim; we sustained the denial.

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[29] *Id*. at 542.

[30] 721 Phil. 202 (2013).

[31] *Supra* note 21.

Then, in *Takenaka Corporation-Philippine Branch v. Commissioner*,[32] the proofs for zero-rated sales of services were sales invoices. The claim was likewise denied.

Most recently, in *Team Energy Corporation v. Commissioner of Internal Revenue/Republic of the Philippines v. Team Energy Corporation*,[33] we sustained the CTA En Banc's disallowance of the petitioner's claim for input taxes after finding that the claimed input taxes on local purchase of goods were supported by documents other than VAT invoices; and, similarly, on local purchase of services, by documents other than VAT official receipts.

Irrefutably, when a VAT-taxpayer claims to have zero-rated sales of services, it must substantiate the same through valid VAT official receipts, not any other document, not even a sales invoice which properly pertains to a sale of goods or properties.

In this case, the documentary proofs presented by Nippon Express to substantiate its zero-rated sales of services consisted of sales invoices and other secondary evidence like transfer slips, credit memos, cargo manifests, and credit notes.[34] It is very clear that these are inadequate to support the petitioner's sales of services. Consequently, the CTA, albeit without jurisdiction, correctly ruled that Nippon Express is not entitled to its claim.

In sum, the CTA did not acquire jurisdiction over Nippon Express' judicial claim considering that its petition was filed beyond the mandatory 30-day period of appeal. Logically, there is no reason to allow the petitioner to submit further evidence by way of official receipts to substantiate its zero-rated sales of services. Likewise, there is no need to pass upon the issue on whether sales invoices or documents other than official

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[32] G.R. No. 193321, 19 October 2016, 806 SCRA 485.

[33] G.R. Nos. 197663 & 197770, 14 March 2018.

[34] Petition for Review, *rollo*, p. 57; see also Decision of the CTA Second Division, dated 5 December 2008, *rollo*, p.137.

receipts can support a sale of service considering the CTA's lack of jurisdiction. Even so, we find that VAT official receipts are indispensable to prove sales of services by a VAT-registered taxpayer. Consequently, the petitioner is not entitled to the claimed refund or TCC.

WHEREFORE, for lack of jurisdiction, the 5 December 2008 Decision and 5 May 2009 Resolution of the Court of Tax Appeals Second Division in CTA Case No. 7429, and the 15 December 2009 Decision of the Court of Tax Appeals En Banc in CTA-EB Case No. 492, are hereby **VACATED** and **SET ASIDE**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 192223. July 23, 2018]

DANILO A. LIHAYLIHAY, *petitioner, vs.* **THE TREASURER OF THE PHILIPPINES ROBERTO C. TAN, SECRETARY OF FINANCE MARGARITO B. TEVES, SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, and THE GOVERNOR OF BANGKO SENTRAL NG PILIPINAS (BSP),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHEN WRIT MAY BE ISSUED.—A writ of *mandamus* may issue in either of two (2) situations: first, "when any tribunal,

corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."

2. ID.; ID.; ID.; ID.; THE FIRST SITUATION DEMANDS A CONCURRENCE BETWEEN A CLEAR LEGAL RIGHT ACCRUING TO PETITIONER AND A CORRELATIVE DUTY INCUMBENT UPON RESPONDENTS TO PERFORM AN ACT, THIS DUTY BEING IMPOSED UPON THEM BY LAW.—The first situation demands a concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondents to perform an act, this duty being imposed upon them by law.Petitioner's legal right must have already been clearly established. It cannot be a prospective entitlement that is yet to be settled. In *Lim Tay v. Court of Appeals*, this Court emphasized that "[m]andamus will not issue to establish a right, but only to enforce one that is already established." In *Pefianco v. Moral*, this Court underscored that a writ of mandamus "never issues in doubtful cases."Respondents must also be shown to have *actually* neglected to perform the act mandated by law. Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully *neglect*" the performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997, AS AMENDED; SECTION 282 ON INFORMER'S REWARD; TO MERIT A REWARD, THE INFORMATION GIVEN BY AN INFORMER SHALL BE VOLUNTARILY GIVEN, DEFINITE, AND SWORN TO; THE INFORMATION MUST ALSO BE NOVEL AND, SUBSEQUENTLY, PROVE ITSELF EFFECTIVE.—The grant of an informer's reward for the discovery of tax offenses is currently governed by Section 282 of the National Internal Revenue Code of 1997, which was amended by Republic Act No. 8424 or the Tax Reform Act of 1997. x x x Under Section 282 of the National Internal Revenue Code of 1997, as amended, an information given by an informer shall merit a reward only when it satisfies certain formal and qualitative parameters. As a matter of form and procedure, that information

must be voluntarily given, definite, and sworn to. Qualitatively, that information must be novel and, subsequently, prove itself effective. Information is novel when it is "not yet in the possession of the Bureau of Internal Revenue" and "not refer[ring] to a case already pending or previously investigated or examined." Information has shown itself to be effective not only when it leads "to the discovery of frauds upon the internal revenue laws or violations of any of [its] provisions," but also when that discovery in turn enables "the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any of the fine or penalty."

4. ID.; ID.; ID.; ID.; DETERMINATION OF AN INFORMER'S ENTITLEMENT TO A REWARD IS A DISCRETIONARY, QUASI-JUDICIAL FUNCTION, DEMANDING AN EXERCISE OF INDEPENDENT JUDGMENT ON THE PART OF CERTAIN PUBLIC OFFICERS.—Petitioner's entitlement to an informer's reward is not a ministerial matter. Quite the contrary, its determination requires a review of evidentiary matters and an application of statutory principles and administrative guidelines. Its determination is a discretionary, quasi-judicial function, demanding an exercise of independent judgment on the part of certain public officers. Whether from Section 1 of Republic Act No. 2338, Presidential Decree No. 707, Section 331 of the National Internal Revenue Code of 1977, Section 35 of Presidential Decree No. 1773, or Section 282 of the National Internal Revenue Code of 1997, as amended, it is clear that the grant of an informer's reward is not a readily demandable entitlement. It is not a legally mandated duty in which every incident is prescribed with a preordained outcome. The mere consideration of a claim is contingent on several factual findings. Making these findings demands proof the appraisal of which is to be done by certain public officers. Hence, it demands the exercise of discretion. The information supplied must be new or not yet known to the Bureau of Internal Revenue.

5. ID.; ID.; ID.; ID.; CLEAR LEGAL RIGHT TO AN INFORMER'S REWARD; NOT ESTABLISHED IN CASE AT BAR.—Petitioner, too, has not shown that he has a clear legal right to an informer's reward. Indeed, the very claims that petitioner lodged before former Internal Revenue Commissioner Buñag and former Secretary Teves could have led to a determination of his entitlement to an informer's reward. However, he undercut this process himself by not having the

composure to await Secretary Teves' final official action and by proceeding directly with the present Petition before this Court instead. x x x First and most glaringly, the objects of petitioner's attempts at obtaining an informer's reward are not even tax cases. x x x Second, petitioner failed to demonstrate that his supplied information was the principal, if not exclusive, impetus for the State's efforts at prosecuting the Marcoses and their cronies for possible tax offenses and recovering from them their ill-gotten wealth. x x x Third, petitioner failed to prove that he was the sole and exclusive source of information leading to the discovery of fraud and violations of tax laws, which specifically resulted in the recovery of sums from the Marcos family and/or their conviction and punishment for violations of tax laws. His claims about President Marcos' Swiss accounts were hardly novel.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; A WRIT OF *MANDAMUS* IS UNAVAILING WHEN THERE IS ANOTHER "PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW"; FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES SHALL BE A GROUND FOR DISMISSING A PETITION FOR THE ISSUANCE OF THE WRIT OF *MANDAMUS* AS IT EFFECTIVELY LACKS A CAUSE OF ACTION.— A writ of *mandamus* is equally unavailing because there is evidently another "plain, speedy and adequate remedy in the ordinary course of law."This, of course, is the processing of his claims by the Bureau of Internal Revenue and the Department of Finance, and their final resolution by the Secretary of Finance. x x x The availability of a more basic recourse ahead of a Petition for Mandamus before this Court similarly demonstrates that petitioner failed to exhaust administrative remedies. Apart from his non-compliance with the specific requirements of Rule 65, Section 3, petitioner's failure to exhaust administrative remedies represents a distinct ground for dismissing the present Petition as it effectively lacks a cause of action. x x x The need for petitioner to have previously exhausted administrative remedies is congruous with the Bureau of Internal Revenue's and the Finance Secretary's preeminent competence to consider the merits of his claims. Indeed, between this Court on the one hand, and the Bureau of Internal Revenue and the Department of Finance on the other, the latter are in a better position to ascertain whether or not the information supplied by an informer has actually been

pivotal to the discovery of tax offenses, and the conviction and punishment of offenders.

7. ID.; CIVIL PROCEDURE; FORUM-SHOPPING; ESTABLISHED IN CASE AT BAR.—[P]etitioner's own pleadings and annexes, a prior resolution of this Court, and newspaper accounts reveal that the present Petition is but one of petitioner's many applications for informer's rewards owing to the recovery of the Marcos family's and their cronies' ill-gotten wealth. It is incorrect to say that the present Petition is merely the latest development in the linear and logical progression of the claims that petitioner initially asserted in his March 11, 1987 letters to Atty. Pitargue. For one, petitioner admits that the present Petition was filed while the claims he lodged before former Secretary Teves and former Treasurer Tan were still pending resolution. Ahead of his claims before them, as well as those before President Macapagal-Arroyo and Commissioner Buñag, petitioner interjected himself in at least two (2) cases being tried in the Sandiganbayan. A review of this Court's own resolutions also reveals that he had filed before this Court another petition for mandamus, docketed as G.R. No. 202556, which this Court dismissed in its September 12, 2012 Resolution. Similarly, a cursory search for past news reports reveals that the Commission on Audit has denied petitioner's claim for an informer's reward. Clearly then, petitioner has engaged in willful and deliberate forum-shopping. Consistent with Rule 7, Section 5 of the 1997 Rules of Civil Procedure,this is another reason for dismissing the present Petition.

APPEARANCES OF COUNSEL

Tiu Law Office for petitioner.
Lozano & Lozano-Endriano Law Office for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

The grant of an informer's reward for the discovery, conviction, and punishment of tax offenses is a discretionary

quasi-judicial matter that cannot be the subject of a writ of mandamus. It is not a legally mandated ministerial duty. This reward cannot be given to a person who only makes sweeping averments about undisclosed wealth, rather than specific tax offenses, and who fails to show that the information which he or she supplied was the undiscovered pivotal cause for the revelation of a tax offense, the conviction and/or punishment of the persons liable, and an actual recovery made by the State. Indiscriminate, expendable information negates a clear legal right and further impugns the propriety of issuing a writ of mandamus.

A writ of mandamus will not issue unless it is shown that there is no other plain, speedy, and adequate remedy in the ordinary course of law. While this Court exercises original jurisdiction over petitions for mandamus, it will not exercise jurisdiction over those filed without exhausting administrative remedies, in violation of the doctrine of primary jurisdiction and the principle of hierarchy of courts, and when their filing amounts to an act of forum shopping.

This resolves a Petition for Mandamus and Damages, with a Prayer for a Writ of Garnishment,[1] praying that former Treasurer of the Philippines Roberto C. Tan (Treasurer Tan), former Secretary of Finance Margarito B. Teves (Secretary Teves), the Governor of Bangko Sentral ng Pilipinas, and the Secretary of the Department of Environment and Natural Resources (collectively, respondents) be ordered to deliver to Danilo A. Lihaylihay (Lihaylihay) the amounts of ₱11,875,000,000,000.00 and ₱50,000,000,000.00, and several government lands as informer's rewards owing to Lihaylihay's alleged instrumental role in the recovery of ill-gotten wealth from former President Ferdinand E. Marcos (President Marcos), his family, and their cronies.

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[1] *Rollo*, pp. 3-29, Petition.

In his Petition, erstwhile presidential candidate[2] Lihaylihay identified himself as a "Confidential Informant of the State (CIS) pursuant to Republic Act No. 2338,[3] duly accredited and registered as such with the Bureau of Internal Revenue (BIR) and Presidential Commission on Good Government (PCGG)."[4]

Lihaylihay particularly recalled sending two (2) letters, both dated March 11, 1987, to Atty. Eliseo Pitargue (Atty. Pitargue), the former head of the Bureau of Internal Revenue-Presidential Commission on Good Government Task Force, concerning information on former President Marcos' ill-gotten wealth.

The first letter[5] concerned gold bullions and diamonds. It read:

March 11, 1987

ATTY. ELISEO PITARGUE
Head-BIR-PCGG Task Force
Pursuant to MOA dated 2/27/87
BIR Tax Fraud Division
Diliman, Quezon City

Dear Sir:

In obedience to the call of her Excellency President Corazon C. Aquino thru Executive Order Nos. 1, 2, 14-A granting immunity from

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[2] *This presidential wannabe claims chatting with Obama*, ABS-CBN HALALAAN 2016, October 18, 2018 <http://news.abs-cbn.com/halalan2016/nation/10/17/15/presidential-wannabe-claims-chatting-obama>; and Aries Joseph Hegina, *List: Presidential, VP, senatorial aspirations on day 1 of COC filing*, PHILIPPINE DAILY INQUIRER, October 12, 2015 <http://newsinfo.inquirer.net/730217/list-presidential-vp-senatorial-aspirants-on-day-1-of-coc-filing>.

[3] An Act to Provide for Reward to Informers of Violations of the Internal Revenue and Customs Laws.

[4] *Rollo*, p. 5.

[5] *Id*. at 30, Annex A of Petition.

criminal prosecution to all persons who cooperate [in] the government's efforts of recovering the ill-gotten wealth amassed by Former President F. Marcos and deposited in several banks (177 banks) in 72 countries all over the world. These treasures include 650,000 tons (of) gold and 500,000 p[ie]ces of 10-karat diamonds lent by Royal Clan to CB.

The 205,000 metric tons of gold bullions from the VAULTS of the Philippine Central Bank as reserves were looted by former President Marcos and deposited in England/Austria (CREDITSTALT BANKVEREIN GRAZ, FILLALE HERRENGASSE, AUSTRIA UNDER CERTIFICATE OF OBLIGATION NO. 400786822 CREDIT ANST/CS-564003-VIEN-SUISSE-BCTSWITZERLAND-CTs-034000206. The $13-Billion was also deposited by President Marcos in UBS Account No. 885931 alias 'I. ARENETTA'.

On February 4, 1972, the Honorable Judge Enrique B. Agana of the Court of First Instance (CFI), Branch 28, Pasay City, in LRC/ Civil Case No. 3957-P[,] ordered President Marcos to return such gold bullions and diamonds to the vaults of the Philippine Central Bank for the economic survival of the country and people.

I am privy to these transactions because I am the de[s]cendant of RAJAH LAPULAPU—the eldest son of KING LUISONG TAGEAN TALLANO, the ascendant of Don Esteban Benitez Tallano—the owner of those gold bullions/diamonds—the Royal clan that lent said treasures to the Philippine Central Bank during the time of President Manuel Roxas. Pres. Manuel Acuna Roxas is [a] first cousin of Don Esteban Benitez Tallano. While President Marcos was the brilliant lawyer of the Tagean- Tallano Clan before he entered politics in 1965.

However, upon learning of the aforesaid court decision which already became final and executory on April 4, 1972, President Marcos declared Martial Law on September 21, 1972 thereby prevented (sic) the actual enforcement of the court's decision aforecited.

I therefore hereby reserved (sic) my right to claim for the 25% informer's reward thereof pursuant to Section 1 of Republic Act No. 2338[6] upon actual recovery of those ill-gotten wealth/assets.

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[6] Section 1. Any person, except an internal revenue or customs official or employee, or other public officials, or his relative within the sixth degree

DANILO A. LIHAYLIHAY
Informer
Bacoor, Cavite

The second letter[7] concerned alleged dollar deposits at the Union Bank of Switzerland:

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of consanguinity, who voluntarily gives definite and sworn information, stating the facts constituting as grounds for such information not yet in the possession of the Bureau of Internal Revenue or the Bureau of Customs, leading to the discovery of frauds upon the internal revenue or customs laws, or violations of any of the provisions thereof, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any fine or penalty shall be rewarded in a sum equivalent to twenty-five per centum of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected. The same amount of reward shall also be given to informer or informers where the violator has offered to compromise the violation of law committed by him and his offer has been accepted by the Commissioner of Internal Revenue or the Commissioner of Customs, as the case may be, and in such a case the twenty-five per centum reward fixed herein shall be based on the amount agreed in the compromise and collected from the violator: Provided, That should no revenue surcharges or fees be actually recovered or collected, such persons should not be entitled to a reward: Provided, further, That the information required herein shall not refer to a case already pending or previously investigated or examined by the Commissioner of Internal Revenue or the Commissioner of Customs, or any of their deputies, agents or examiners, as the case may be, or the Secretary of Finance or any of his deputies or agents: Provided, finally, That the reward provided herein shall be paid under regulations issued jointly by the Commissioners of Internal Revenue and Customs with the approval of the Secretary of Finance, and that the determination of the degree of relationship between the Internal Revenue or Customs official or employee and the informer shall be left not only to the Commissioner of Internal Revenue or the Commissioner of Customs, as the case may be, but should be jointly made by such official and the Solicitor General.

The reward herein authorized shall be paid out of revenues, surcharges, compromises, and penalties established by law, collected and accounted for as a result of the information furnished by the informer.

[7] *Id*. at 31, Annex A-1 of the Petition.

March 11, 1987

ATTY. ELISEO PITARGUE
Head, PCGG-BIR Task Force
(Pursuant to MOA dated 2/27/87)

RE: MA VICTORIA IRENE MARCOS-ARANETA
(UBS Account No. 885931-US$13-B)

Dear Sir:

Pursuant to the call of Her Excellency President Corazon C. Aquino under Executive Order Nos. 14 and 14-A dated May 17, 1986, I hereby furnished (sic) the information that IRENE MARCOS-ARANETA, the younger daughter of former President Ferdinand E. Marcos, has ill-gotten wealth or ill-gained properties (moneys) deposited in the UNION BANK OF SWITZERLAND (UBS).

Mrs. Irene Marcos-Araneta is the wife of Gregorio Araneta III with present addresses at 915 Mountain Home Rd., Woodside, California, USA 94062; 3510 Baker Street, San Francisco, California, USA, 94123.

UBS Account No. 885931 in the amount of US$13-B, more or less, were deposited by Irene Araneta using an alias/cover-up "I. ARENETTA". The UBS tolerated to hide said deposit/account of the MARCOS FAMILY to avoid exposure and freezing thereby to mislead/cheat the Philippine Government.

It is, therefore, most respectfully requested of this administration to immediately initiate the necessary legal actions for the recovery of these ill-gotten wealth/prop[e]rties of the Marcos family which were being hidden in several secret bank accounts in Switzerland, in order to protect the national interest of our government and the people of the Philippines.

I also hereby reserved (sic) my right to claim for the 25% informer[']s reward under Section 1 of Republic Act No. 2338 in consonance with Section 9 of Department Order No. 46-66 of the Department of Finance (DOF) pursuant to the ruling of the Honorable Supreme Court in the case of "Gonzalo N. Rubic vs. Auditor General," 100 Phil[.] 772 (1957).

Very truly yours,

DANILO A. LIHAYLIHAY
Informer under R.A. 2338
Isla de Balot, Tabing Dagat
Bacoor, Cavite, Philippines

Almost 20 years later, on November 29, 2006, Lihaylihay wrote to then Commissioner of Internal Revenue, Jose Mario C. Buñag (Commissioner Buñag), demanding payment of 25% informer's reward on the ₱118,270,243,259.00 supposedly recovered by the Philippine government through compromise agreements with the Marcoses. He also insisted on the need for the government to collect Fortune Tobacco Corporation's tax deficiencies amounting to ₱97,039,862,933.40, to recover ₱47,500,000,000,000.00 of Marcos' deposits in Switzerland, and to deliver to him the informer's rewards corresponding to the recovery of these.[8]

On January 10, 2008, Lihaylihay wrote to then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo), insisting on the need to recover the Marcos' wealth that he identified and his corresponding entitlement to an informer's reward.[9]

Acting on Lihaylihay's letter, Assistant Executive Secretary Lynn Danao-Moreno referred the matter to the Presidential Commission on Good Government,[10] which eventually referred the matter to the Department of Finance.[11]

Lihaylihay wrote to then Department of Finance Secretary Teves on August 11, 2009, reiterating his entitlement to an informer's reward.[12] On September 1, 2009, Lihaylihay wrote

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[8] *Id*. at 32-36, Annex B of the Petition.

[9] *Id*. at 52, Annex E of the Petition.

[10] *Id*. at 53, Annex F of the Petition.

[11] *Id*. at 55, Annex H of the Petition.

[12] *Id*. at 66-68, Annex K of the Petition.

to both Secretary Teves and Treasurer Tan, again insisting on his entitlement to an informer's reward.[13]

On May 31, 2010, without waiting for Secretary Teves' and Treasurer Tan's official actions on his letters, Lihaylihay filed the present Petition,[14] dubbed a Petition for "Mandamus and Damages, with a Prayer for a Writ of Garnishment."[15] Insisting on his entitlement to informer's rewards, he prays that Treasurer Tan and Secretary Teves be ordered to deliver to him the amount of ₱11,875,000,000,000.00; that the Secretary of Environment and Natural Resources be ordered to transfer to him several government lands; and that the Governor of Bangko Sentral ng Pilipinas be ordered to garnish in his favor ₱50,000,000,000.00 worth of jewelry recovered from former First Lady Imelda Romualdez Marcos.[16]

For resolution is the issue of whether or not petitioner Danilo A. Lihaylihay is entitled to a writ of mandamus to compel respondents then Treasurer of the Philippines Roberto C. Tan, then Secretary of Finance Margarito B. Teves, the Secretary of the Department of Environment and Natural Resources, and the Governor of Bangko Sentral ng Pilipinas to deliver to him proceeds and properties representing 25% informer's reward pursuant to Section 1 of Republic Act No. 2338.

This Petition should clearly be denied.

I

Rule 65, Section 3 of the 1997 Rules of Civil Procedure spells out the parameters for the issuance of a writ of mandamus:

> Section 3. Petition for mandamus. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use

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[13] *Id.* at 69-71, Annex L of the Petition.

[14] *Id.* at 3-29.

[15] *Id.* at 3.

[16] *Id.* at 21-23.

and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

A writ of mandamus may issue in either of two (2) situations: first, "when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."

The first situation demands a concurrence between a clear legal right accruing to petitioner and a correlative duty incumbent upon respondents to perform an act, this duty being imposed upon them by law.[17]

Petitioner's legal right must have already been clearly established. It cannot be a prospective entitlement that is yet to be settled. In *Lim Tay v. Court of Appeals*,[18] this Court emphasized that "[m]andamus will not issue to establish a right, but only to enforce one that is already established."[19] In *Pefianco v. Moral*,[20] this Court underscored that a writ of mandamus "never issues in doubtful cases."[21]

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[17] *Philippine Coconut Authority v. Primex Coco Products, Inc.*, 528 Phil. 365 (2006) [Per *J.* Callejo, Sr., First Division].

[18] *Lim Tay v. Court of Appeals*, 355 Phil. 381 (1998) [Per *J.* Panganiban, First Division].

[19] *Id.* at 384.

[20] 379 Phil. 468 (2000) [Per *J.* Bellosillo, Second Division].

[21] *Id.* at 479.

Respondents must also be shown to have *actually* neglected to perform the act mandated by law. Clear in the text of Rule 65, Section 3 is the requirement that respondents "unlawfully *neglect*" the performance of a duty. The mere existence of a legally mandated duty or the pendency of its performance does not suffice.

The duty subject of mandamus must be ministerial rather than discretionary.[22] A court cannot subvert legally vested authority for a body or officer to exercise discretion. In *Sy Ha v. Galang*:[23]

> [M]andamus will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any matter in which he is required to act, because it is his judgment that is to be exercised and not that of the court.[24]

This Court distinguished discretionary functions from ministerial duties, and related the exercise of discretion to judicial and quasi-judicial powers. In *Sanson v. Barrios*:[25]

> Discretion, when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment,

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[22] *Sy Ha v. Galang*, 117 Phil. 798 (1963) [Per *J*. Bautista-Angelo, *En Banc*].

[23] 117 Phil. 798 (1963) [Per *J*. Bautista-Angelo, *En Banc*].

[24] *Id*. at 805, citing *Blanco v. Board of Medical Examiners*, 46 Phil. 190 (1924) [Per *J*. Malcolm, Second Division]; *Diokno v. RFC*, 91 Phil. 608 (1952) [Per *J*. Labrador, *En Banc*]; See also *Inchausti & Co. v. Wright,* 47 Phil. 866 (1925) [Per *J*. Johns, First Division]; *Marcelo Steel Corp. v. The Import Control Board*, 87 Phil. 374 (1950) [Per *J*. Bengzon, *En Banc*].

[25] 63 Phil. 198 (1936) [Per *J*. Recto, *En Banc*].

upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. . . . Mandamus will not lie to control the exercise of discretion of an inferior tribunal . . . , when the act complained of is either judicial or quasi-judicial. . . . It is the proper remedy when the case presented is outside of the exercise of judicial discretion.[26] (Citations omitted)

Mandamus, too, will not issue unless it is shown that "there is no other plain, speedy and adequate remedy in the ordinary course of law."[27] This is a requirement basic to all remedies under Rule 65, i.e., certiorari, prohibition, and mandamus.

II

The most basic obstacle to petitioner's claim for an informer's reward under Section 1 of Republic Act No. 2338 is that Republic Act No. 2338 is no longer in effect.

Section 1 of Republic Act No. 2338 provides:

Section 1. Any person, except an internal revenue or customs official or employee, or other public officials, or his relative within the sixth degree of consanguinity, who voluntarily gives definite and sworn information, stating the facts constituting as grounds for such information not yet in the possession of the Bureau of Internal Revenue or the Bureau of Customs, leading to the discovery of frauds upon the internal revenue or customs laws, or violations of any of the provisions thereof, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any fine or penalty shall be rewarded in a sum equivalent to twenty-five per centum of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected. The same amount of reward shall also be given to informer or informers where the violator has offered to compromise the violation of law

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[26] *Id*. at 203.

[27] RULES OF COURT, Rule 65, Sec. 3.

committed by him and his offer has been accepted by the Commissioner of Internal Revenue or the Commissioner of Customs, as the case may be, and in such a case the twenty-five per centum reward fixed herein shall be based on the amount agreed in the compromise and collected from the violator: Provided, That should no revenue surcharges or fees be actually recovered or collected, such persons should not be entitled to a reward: Provided, further, That the information required herein shall not refer to a case already pending or previously investigated or examined by the Commissioner of Internal Revenue or the Commissioner of Customs, or any of their deputies, agents or examiners, as the case may be, or the Secretary of Finance or any of his deputies or agents: Provided, finally, That the reward provided herein shall be paid under regulations issued jointly by the Commissioners of Internal Revenue and Customs with the approval of the Secretary of Finance, and that the determination of the degree of relationship between the Internal Revenue or Customs official or employee and the informer shall be left not only to the Commissioner of Internal Revenue or the Commissioner of Customs, as the case may be, but should be jointly made by such official and the Solicitor General.

The reward herein authorized shall be paid out of revenues, surcharges, compromises, and penalties established by law, collected and accounted for as a result of the information furnished by the informer.[28]

To effect Republic Act No. 2338, the Department of Finance issued its Department Order No. 46-66. It "prescribes the procedure in processing and evaluating claims of rewards under Republic Act No. 2338 and the manner of payment of rewards to informers of fraud upon or violation of the internal revenue[,] tariff and customs laws."[29] Section 5 of this Department Order identifies the persons to whom information may be given.[30] Its

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[28] Rep. Act No. 2338 (1959), Sec. 1.

[29] DOF Dep. O. Nos. 46-66, Sec. 1, as quoted in *Rollo*, p. 328.

[30] As quoted in *Rollo*, p. 44:

Section 5. Persons to Whom Information may be Given.– Information may be given to any of the following officials:

Section 6 lists the material facts that claims for reward must allege, as well as the venue where these claims are to be lodged.[31] Its Section 8 identifies the Secretary of Finance as the officer responsible for approving claims for informer's rewards.[32]

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a. Secretary of Finance, his deputies or authorized agents;
b. Presidential Assistant on Reforms and Government Operations, his deputies or authorized agents;
c. Commissioner of Customs, Collector of Customs, their deputies and authorized agents;
d. Commissioner of Internal Revenue, BIR Regional Directors, their deputies and authorized agents;
e. Chairman, Anti-Smuggling Action Center (ASAC);
f. All unit commanders of the Armed Forces of the Philippines;
g. Director, National Bureau of Investigation;
h. Chairman, Embroidery and Apparel Control and Inspection Board;
i. Other law-enforcement agencies.

[31] As quoted in *Rollo*, p. 43:

Section 6. Form of Claim. – No claim for reward shall be entertained unless it is based on an information entered in the Registry Book. Claims for reward shall be in writing and sworn to by the informer-claimant in quintuplicates and shall state, among other things, the following material facts:

1. Name and/or pseudonym and address of the informer-claimant;
2. The agency to which the information was reported;
3. The time and date when the information was reported;
4. The time and date when the information was reported; (sic)
5. A summary of the information.

D.F. Informer's Claim Form No. 3, attached hereto, should be substantially followed.

The claimant shall file his claim for reward with the agency to which he gave the information, which in turn shall forward it to the Chairman, Anti-Smuggling Action Center (ASAC), together with the sealed envelop[e] containing the original copy of the information. The claimant will retain a copy of the claim.

[32] As quoted in *Rollo*, pp. 45-46 and pp. 330-331:

Section 8. Rewards payable from proceeds from sales of articles at public auction. – (a) The agency which effect confiscation, seizure or catch based on the information described in Section 6 shall immediately submit a report thereof, by the fastest available means (wire or telephone) to the Anti-Smuggling Action Center (ASAC), Camp General Emilio Aguinaldo, Quezon City. He shall include a statement that such confiscation, seizure or catch

Section 1 of Republic Act No. 2338 was amended by Presidential Decree No. 707 in 1975.[33] It was then superseded by Section 331 of the National Internal Revenue Code of 1977,[34] which was itself amended in 1981 by Section 35 of Presidential Decree No. 1773.[35]

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was the direct result of an information (specify number), and that a claim for reward is being filed. He shall also notify the informant concerned to file a claim for reward in the form and manner described in Section 6 above.

(b) The [C]hairman, ASAC, shall forward all the claim papers with his recommendation to the Secretary of Finance.

(c) The Secretary of Finance approves or disapproves the claim. If his action is approval, he authorizes payment of the reward. In either case, he sends back the claim papers to ASAC.

(d)The Chairman, ASAC, shall take appropriate action on the decision made by the Secretary of Finance –

1. If the claim is disapproved, he shall advise the claimant accordingly, furnishing copies to ASAC and to the agency to which the information was given.

2. If the claim is approved, he shall refer the claim papers to CADA for payment of reward as outlined in Section 10 below. He shall accordingly inform the ASAC and the agency which received the information.

[33] Sections 1 and 2 of which, stated:

Section 1. The provisions of Section 1 of R.A. 2338, to the contrary notwithstanding, the reward authorized to be paid qualified informers shall be limited to the sum equivalent to five (5%) *per centum* of the realized revenues, surcharges, compromises and penalties established by law, collected and accounted for as a result of the information furnished.
Section 2. All laws, acts, decrees, orders, and regulations inconsistent herewith are considered repealed and/or modified accordingly.

[34] Section 331. Reward to persons instrumental in the discovery and seizure of smuggled goods. — To encourage the public and law-enforcement personnel to extend full cooperation and do their utmost in stamping out smuggling, a cash reward equivalent to five per centum of the fair market value of the smuggled and confiscated goods shall be given to persons instrumental in the discovery and seizure of such smuggled goods in accordance with the rules and regulations to be issued by the Secretary of Finance.
The provisions of this section, and not those of Republic Act Numbered 2338, as amended by Presidential Decree No. 707, shall govern the giving of reward in cases covered by this section.

[35] Section 35. Section 331 of the National Internal Revenue Code is hereby amended to read as follows:

The grant of an informer's reward for the discovery of tax offenses is currently governed by Section 282 of the National Internal Revenue Code of 1997, which was amended by Republic Act No. 8424 or the Tax Reform Act of 1997, states:

Section 282. Informer's Reward to Persons Instrumental in the Discovery of Violations of the National Internal Revenue Code and in the Discovery and Seizure of Smuggled Goods. —

(A) For Violations of the National Internal Revenue Code.— Any person, except an internal revenue official or employee, or other public official or employee, or his relative within the sixth degree of

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Sec. 331. Informer's reward to persons instrumental in the discovery of violations of the National Internal Revenue Code and in the discovery and seizure of smuggled goods. —

(1) For violations of the National Internal Revenue Code. — Any person, except an internal revenue official or employee, or other public official, or his relative within the sixth degree of consanguinity, who voluntarily gives definite and sworn information, not yet in the possession of the Bureau of Internal Revenue, leading to the discovery of frauds upon the internal revenue laws or violations of any of the provisions thereof, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any fine or penalty, shall be rewarded in a sum equivalent to fifteen per centum of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected. The same amount of reward shall also be given to an informer where the offender has offered to compromise the violation of law committed by him and his offer has been accepted by the Commissioner and in such a case, the fifteen per centum reward fixed herein shall be based on the amount agreed upon in the compromise and collected from the offender: Provided, That should no revenue, surcharges or fees be actually recovered or collected, such person shall not be entitled to a reward: Provided, further, That the information mentioned herein shall not defer to a case already pending or previously investigated or examined by the Commissioner or any of his deputies, agents or examiners, or the Minister of Finance or any of his deputies or agents: Provided, finally, That the reward provided herein shall be paid under regulations issued by the Commissioner of Internal Revenue with the approval of the Minister of Finance.

(2) For discovery and seizure of smuggled goods. — To encourage the public and law-enforcement personnel to extend full cooperation in eradicating smuggling, a cash reward equivalent to fifteen per centum of the fair market value of the smuggled and confiscated goods shall be given to persons instrumental in the discovery and seizure of such smuggled goods.

consanguinity, who voluntarily gives definite and sworn information, not yet in the possession of the Bureau of Internal Revenue, leading to the discovery of frauds upon the internal revenue laws or violations of any of the provisions thereof, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any of the fine or penalty, shall be rewarded in a sum equivalent to ten percent (10%) of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or One Million Pesos (₱1,000,000) per case, whichever is lower. The same amount of reward shall also be given to an informer where the offender has offered to compromise the violation of law committed by him and his offer has been accepted by the Commissioner and collected from the offender: Provided, That should no revenue, surcharges or fees be actually recovered or collected, such person shall not be entitled to a reward: Provided, further, That the information mentioned herein shall not refer to a case already pending or previously investigated or examined by the Commissioner or any of his deputies, agents or examiners, or the Secretary of Finance or any of his deputies or agents: Provided, finally, That the reward provided herein shall be paid under rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner.

(B) For Discovery and Seizure of Smuggled Goods. — To encourage the public to extend full cooperation in eradicating smuggling, a cash reward equivalent to ten percent (10%) of the fair market value of the smuggled and confiscated goods or One Million Pesos (₱1,000,000) per case, whichever is lower, shall be given to persons instrumental in the discovery and seizure of such smuggled goods.

The cash rewards of informers shall be subject to income tax, collected as a final withholding tax, at the rate of ten percent (10%).

The Provisions of the foregoing Subsections notwithstanding, all public officials, whether incumbent or retired, who acquired the information in the course of the performance of their duties during their incumbency, are prohibited from claiming informer's reward.[36]

The grant of informer's rewards under Section 282 of the National Internal Revenue Code of 1997, as amended, is further

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[36] Rep. Act. 8424 (1997), Sec. 3, amending ch. 4, Sec. 282 of the TAX CODE.

subject to the guidelines of Revenue Regulations No. 016-10,[37] Section 16 of which outlines the procedure for processing claims for informer's reward:

Section 16. Claims for Informer's Reward. —

The Informer's Claim for Reward shall be filed with the Prosecution Division at the BIR National Office or with the Legal Division, Revenue Regional Office, as the case may be.

Claims for rewards shall be filed within three (3) years from the date of actual payment, recovery or collection of revenues, surcharges and fees, and/or the imposition of any fine or penalty or the actual collection of a compromise amount, in case of amicable settlement.

Claims for Reward on cases investigated at the NID

1. The Informer/Claimant shall file his claim for reward at the Prosecution Division, National Office.
2. The Chief, Prosecution Division, shall evaluate the claim and determine whether the Informer is entitled to a reward as detailed in this Order.
3. After evaluation, the Chief, Prosecution Division, shall forward his recommendation of approval/denial of the claim, to the Assistant Commissioner, Enforcement Service.
4. After the review by the Assistant Commissioner, Enforcement Service, the recommendation of approval/denial shall be forwarded to the Deputy Commissioner, Legal and Inspection Group.
5. After the review by the Deputy Commissioner, Legal and Inspection Group, the recommendation of approval/denial shall be forwarded to the Commissioner of Internal Revenue.
6. Should the Commissioner of Internal Revenue find the claim meritorious, the same shall be forwarded to the Secretary of Finance for final approval. Otherwise, the Commissioner of Internal Revenue shall notify the Claimant/Informer of the denial of the claim.

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[37] BIR Revenue Regulations No. 016-10 (2010), Guidelines, Rules and Procedures in the Filing of Confidential Information and the Investigation of Cases Arising Therefrom.

Claims for Reward on cases investigated at the SID, Revenue Region

1. The Informer/Claimant shall file his claim for reward at the Legal Division of the concerned Revenue Regional Office.
2. The Chief, Legal Division, shall evaluate the claim and determine whether the Informer is entitled to a reward as detailed in this Order.
3. After evaluation, the Chief, Legal Division, shall forward his recommendation of approval/denial, to the Regional Director.
4. After the review by the Regional Director, the recommendation of approval/denial shall be forwarded to the Deputy Commissioner, Legal and Inspection Group.
5. After the review by the Deputy Commissioner, Legal and Inspection Group, the recommendation of approval/denial shall be forwarded to the Commissioner of Internal Revenue.
6. Should the Commissioner of Internal Revenue find merit on the claim, the same shall be forwarded to the Secretary of Finance for final approval. Otherwise, the Commissioner of Internal Revenue shall notify the Claimant/Informer of the denial of the claim.

Under Section 282 of the National Internal Revenue Code of 1997, as amended, an information given by an informer shall merit a reward only when it satisfies certain formal and qualitative parameters. As a matter of form and procedure, that information must be voluntarily given, definite, and sworn to. Qualitatively, that information must be novel and, subsequently, prove itself effective.

Information is novel when it is "not yet in the possession of the Bureau of Internal Revenue" and "not refer[ring] to a case already pending or previously investigated or examined." Information has shown itself to be effective not only when it leads "to the discovery of frauds upon the internal revenue laws or violations of any of [its] provisions," but also when that discovery in turn enables "the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any of the fine or penalty." In lieu of

enabling the conviction of the guilty party and the imposition of fines or penalties, information is also effective when the discovery of tax offenses leads the offender to offer "to compromise the violation." A mere offer, however, is not enough; it must have actually been accepted and collected. Regardless of whether a compromise or conviction ensues, actual recovery is indispensable: "should no revenue, surcharges or fees be actually recovered or collected, such person shall not be entitled to a reward." [38]

III

Petitioner's entitlement to an informer's reward is not a ministerial matter. Quite the contrary, its determination requires a review of evidentiary matters and an application of statutory principles and administrative guidelines. Its determination is a discretionary, quasi-judicial function, demanding an exercise of independent judgment on the part of certain public officers.

Whether from Section 1 of Republic Act No. 2338, Presidential Decree No. 707, Section 331 of the National Internal Revenue Code of 1977, Section 35 of Presidential Decree No. 1773, or Section 282 of the National Internal Revenue Code of 1997, as amended, it is clear that the grant of an informer's reward is not a readily demandable entitlement. It is not a legally mandated duty in which every incident is prescribed with a preordained outcome.

The mere consideration of a claim is contingent on several factual findings. Making these findings demands proof, the appraisal of which is to be done by certain public officers. Hence, it demands the exercise of discretion. The information supplied must be new or not yet known to the Bureau of Internal Revenue. It must not pertain to a pending or previously investigated case, and must have actually led to or was the actual cause for discovering frauds upon tax laws. Acting on

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[38] Rep. Act No. 8424 (1997), Sec. 3 amending Ch. 4, Sec. 282 of the TAX CODE.

the information, the government's response must have actually led to the recovery of sums relating to the fraud, as well as the conviction and/or punishment of the liable persons.

Therefore, the grant of an informer's reward depends on the consideration of evidence. In addition, it must be in keeping with rules and regulations issued by appropriate officers: Department Order No. 46-66, in the case of Republic Act No. 2338; and, at present, Revenue Regulations No. 016-10, in the case of the National Internal Revenue Code of 1997, as amended.

The grant of an informer's reward for the discovery of tax offenses is effectively a quasi-judicial function, which "determine[s] *questions of fact* to which the legislative policy is to apply and . . . [is] decide[d] in accordance with the standards laid down by the law itself in enforcing and administering the same law."[39] None of the respondents deviated from legally mandated norms and neglected to consummate a ministerial, legally-mandated duty, thereby enabling the issuance of a writ of mandamus.

IV

Petitioner, too, has not shown that he has a clear legal right to an informer's reward.

Indeed, the very claims that petitioner lodged before former Internal Revenue Commissioner Buñag and former Secretary Teves could have led to a determination of his entitlement to an informer's reward. However, he undercut this process himself by not having the composure to await Secretary Teves' final official action and by proceeding directly with the present Petition before this Court instead.

The impetus for mandamus cannot be a mere conjectured entitlement which has yet to be settled by the body or officer authorized to ascertain its propriety. Petitioner put the proverbial

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[39] *Smart Communications, Inc. v. National Telecommunications Commission,* 456 Phil. 145, 155 (2003) [Per *J.* Ynares-Santiago, First Division].

cart ahead of the horse by filing the present Petition ahead of Secretary Teves' resolution of his claims.

It is not proper for petitioner to plead before this Court the actual merits of his claims. The very nature of his action forbids it. "Mandamus will not issue to establish a right, but only to enforce one that is already established."[40] It is not for this Court to go ahead of the Secretary of Finance and decide for itself the issues that a statute has ordained the latter to settle. "Mandamus will not lie to control the exercise of discretion of an inferior [body or officer]."[41]

In any case, petitioner's own recollection of antecedents and recital of factual and legal bases demonstrate the utter inadequacy of his position vis-à-vis the basic requisites for his claim to prosper. Even if this Court were to overlook the procedural restrictions against its own consideration of the merits of petitioner's claims, petitioner still has not shown a clear legal right worthy of a writ of mandamus.

First and most glaringly, the objects of petitioner's attempts at obtaining an informer's reward are not even tax cases.

It is obvious from the evolved statutory provisions—from Section 1 of Republic Act No. 2338 to Section 282 of the National Internal Revenue Code of 1997, as amended—that an informer's reward under their auspices is proper only in cases of "frauds upon the internal revenue or customs laws, or violations of any of the provisions thereof."[42] Contrary to this basic

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[40] *Lim Tay v. Court of Appeals*, 355 Phil. 381 (1998) [Per *J.* Panganiban, First Division].

[41] *Sanson v. Barrios,* 63 Phil. 203 (1936) [Per *J.* Recto, *En Banc*].

[42] Rep. Act No. 2338 (1959). Cf. Rep. Act No. 2338 (1959) Sec. 1, and Rep. Act. 8424 (1997), Sec. 3 amending Ch. 4, Sec. 282 of the TAX CODE. While the former treats rewards for the discovery of violations of internal revenue laws and customs laws jointly, the latter, in its paragraphs (A) and (B) distinguished between rewards pertaining to the discovery of violations of internal revenue laws and rewards pertaining to the discovery and seizure of smuggled goods.

requirement, petitioner's March 11, 1987 letters to Atty. Pitargue of the Bureau of Internal Revenue-Presidential Commission on Good Government Task Force make broad claims about the Marcos family's ill-gotten wealth, and impress the need for the government to recover them. However, he makes no specific averments about specific acts of tax fraud, violations of internal revenue and customs laws, and/or smuggling.

Petitioner himself recalls filing a Manifestation[43] in Civil Case No. 0002 entitled *Republic of the Philippines v. Ferdinand Marcos, et al*., then pending before the Sandiganbayan. Here, he again beseeched the government to recover the Marcos family's ill-gotten wealth and prayed for the delivery to him of a 25% informer's reward. Yet, Civil Case No. 0002 was not a case pertaining to violations of tax laws. Rather, it was a case for "Reversion, Reconveyance, Restitution, Accounting and Damages."[44]

Petitioner, too, filed a Notice of Informer's Charging Lien in Civil Case No. 0013[45] entitled *Republic of the Philippines v. Herminio T. Disini, et al*., another action for "reconveyance, reversion, accounting, restitution and damages,"[46] then pending before the Sandiganbayan to claim his informer's reward. Plaintiff Republic of the Philippines filed a Comment/Opposition[47] rebuffing petitioner's claims precisely because it was out of order, having nothing to do with the substance of Civil Case No. 0013.[48]

Petitioner's subsequent letters to Commissioner Buñag, President Macapagal-Arroyo, Secretary Teves, and Treasurer

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[43] *Rollo*, pp. 37-41.

[44] *Presidential Commission on Good Government v. H. E. Heacock, Inc.,* 631 Phil. 147 (2010) [Per *J*. Carpio Morales, First Division].

[45] *Rollo*, p. 42.

[46] *Id*. at 47.

[47] *Id*. at 42-50.

[48] *Id*. at 47.

Tan are of the same tenor. Rather than disclose specific instances of tax fraud or violations of internal revenue and customs laws, he employed a figurative shotgun approach. From his 1987 letters to the present Petition, his bases for rewards swelled from the Swiss bank deposits, gold bars, and diamonds mentioned in his original letters to Atty. Pitargue to virtually all forms of the Marcos family's ill-gotten wealth. He would not even stop there. He also turned his attention to President Marcos' cronies such as Roberto Benedicto, Lucio Tan, Fabian Ver, Herminio Disini, and Jose Campos.[49] Rather than animate the State's efforts with direct and reliable information, he has embarked on a fishing expedition, casting his lot on a progressively widening net.

It may be true that the many cases brought against the Marcos family and their cronies tangentially involve violations of tax laws. This, however, does not suffice. The statutory provisions governing informer's rewards demand specificity because confused indiscriminate averments would be of no real help in either securing convictions for tax offenses or recovering proceeds that should have otherwise been paid to the government as taxes.

Second, petitioner failed to demonstrate that his supplied information was the principal, if not exclusive, impetus for the State's efforts at prosecuting the Marcoses and their cronies for possible tax offenses and recovering from them their ill-gotten wealth. He thereby failed to show that his information did "not refer to a case already pending or previously investigated or examined."[50] On the contrary, his March 11, 1987 letters acknowledge ongoing efforts by the Bureau of Internal Revenue and the Presidential Commission on Good Government to prosecute the Marcoses and recover their ill-gotten wealth. Likewise, his Manifestation in Civil Case No. 0002 and Notice in Civil Case No. 0013 demonstrate his attempts to merely interlope in proceedings that were already well under way.

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[49] *Id*. at 32.

[50] Rep. Act No. 8424 (1997), Sec. 3 amending Ch. 4, Sec. 282 of the TAX CODE.

Third, petitioner failed to prove that he was the sole and exclusive source of information leading to the discovery of fraud and violations of tax laws, which specifically resulted in the recovery of sums from the Marcos family and/or their conviction and punishment for violations of tax laws. His claims about President Marcos' Swiss accounts were hardly novel. For instance, Primitivo Mijares' book *The Conjugal Dictatorship of Ferdinand and Imelda Marcos*, which was first published in 1976 well ahead of petitioner's letters to Atty. Pitargue, already made intimations about these accounts.[51] There have also been other more comprehensive and officially recorded, albeit conflicting, testimonies and recollections of President Marcos' alleged gold bars.[52]

V

A writ of mandamus is equally unavailing because there is evidently another "plain, speedy and adequate remedy in the ordinary course of law."[53] This, of course, is the processing of his claims by the Bureau of Internal Revenue and the Department of Finance, and their final resolution by the Secretary of Finance.

Petitioner's own recollection of antecedents reveals his initial attempt at complying with the prescribed procedure with the Bureau of Internal Revenue, but also his own impatience for these pending proceedings. This Court cannot indulge his impetuosity for proceedings in progress. It cannot legitimize a manifest attempt at infringing statutorily institutionalized processes.

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[51] PRIMITIVO MIJARES, *THE CONJUGAL DICTATORSHIP OF FERDINAND AND IMELDA MARCOS*, Union Square Publications, (First Printing, 1976), San Francisco.

[52] Gerry Lirio, *Marcos gold bars: fact or fiction?*, ABS-CBN NEWS, September 21, 2017 <http://news.abs-cbn.com/focus/09/21/17/marcos-gold-bars-fact-or-fiction>.

[53] RULES OF COURT, Rule 65, Sec. 3.

The availability of a more basic recourse ahead of a Petition for Mandamus before this Court similarly demonstrates that petitioner failed to exhaust administrative remedies. Apart from his non-compliance with the specific requirements of Rule 65, Section 3, petitioner's failure to exhaust administrative remedies represents a distinct ground for dismissing the present Petition as it effectively lacks a cause of action:

> Under the doctrine of exhaustion of administrative remedies, recourse through court action cannot prosper until after all such administrative remedies have first been exhausted. If remedy is available within the administrative machinery, this should be resorted to before resort can be made to courts. It is settled that non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[54] (Citations omitted)

The need for petitioner to have previously exhausted administrative remedies is congruous with the Bureau of Internal Revenue's and the Finance Secretary's preeminent competence to consider the merits of his claims. Indeed, between this Court on the one hand, and the Bureau of Internal Revenue and the Department of Finance on the other, the latter are in a better position to ascertain whether or not the information supplied by an informer has actually been pivotal to the discovery of tax offenses, and the conviction and punishment of offenders. Having direct access to their own records, they are in the best position to know if the information supplied to them is novel, not having been previously within their knowledge or not otherwise having been the subject of previous proceedings. Petitioner's direct recourse to this Court is an invitation for it to run afoul with the doctrine of primary jurisdiction:

> In cases involving specialized disputes, the practice has been to refer the same to an administrative agency of special competence in observance of the doctrine of primary jurisdiction. The Court has ratiocinated that it cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal

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[54] *Teotico v. Baer*, 523 Phil. 670, 676 (2006) [Per *J.* Corona, Second Division].

prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered. The objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court. It applies where claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view.[55] (Citations omitted)

VI

This Court's competence to issue writs of mandamus does not also mean that petitioner was free to come to this Court and ignore the concurrent jurisdiction of inferior courts equally competent to entertain petitions for mandamus. It is basic that "[a]lthough th[is] Court, [the] Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum":[56]

The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. It cannot and should not be burdened with the task of dealing with causes in the first instance. Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor. Hence, that jurisdiction should

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[55] *Fabia v. Court of Appeals*, 437 Phil. 389, 402-403 (2002) [Per *J.* Bellosillo, Second Division].

[56] *Heirs of Hinog v. Melicor*, 495 Phil. 422, 431-432 (2005) [Per *J.* Austia-Martinez, Second Division].

generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another, are not controllable by the Court of Appeals. Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.[57]

VII

Finally, petitioner's own pleadings and annexes, a prior resolution of this Court, and newspaper accounts reveal that the present Petition is but one of petitioner's many applications for informer's rewards owing to the recovery of the Marcos family's and their cronies' ill-gotten wealth.

It is incorrect to say that the present Petition is merely the latest development in the linear and logical progression of the claims that petitioner initially asserted in his March 11, 1987 letters to Atty. Pitargue. For one, petitioner admits that the present Petition was filed while the claims he lodged before former Secretary Teves and former Treasurer Tan were still pending resolution. Ahead of his claims before them, as well as those before President Macapagal-Arroyo and Commissioner Buñag, petitioner interjected himself in at least two (2) cases being tried in the Sandiganbayan. A review of this Court's own resolutions also reveals that he had filed before this Court another petition for mandamus, docketed as G.R. No. 202556, which this Court dismissed in its September 12, 2012 Resolution.[58] Similarly, a cursory search for past news reports reveals that the Commission on Audit has denied petitioner's claim for an informer's reward.[59]

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[57] *Vergara, Sr. v. Suelto*, 240 Phil. 719, 732-733 (1987) [Per *J*. Narvasa, First Division].

[58] *Lihaylihay v. BIR*, G.R. No. 202556, September 12, 2012 (Notice) [Second Division].

[59] Peter Tabingo, *COA junks BIR informer's ₱3-billion reward claim*, MALAYA BUSINESS INSIGHT, August 22, 2016, <http://www.malaya.com.ph/

Clearly then, petitioner has engaged in willful and deliberate forum-shopping. Consistent with Rule 7, Section 5 of the 1997 Rules of Civil Procedure,[60] this is another reason for dismissing the present Petition.

While this Court appreciates active citizen participation in addressing the iniquities of public officials, it must underscore the need to comply with procedural and substantive standards set by law for the grant of remedies. The availability of reliefs is not a matter of personal preference, but of order and judicial economy, and due process.

The present Petition could have been dismissed outright for its readily discernible flaws. This Court has, nevertheless, gone out of its way to painstakingly explain the plethora of grounds

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business-news/news/coa-junks-bir-informer%E2%80%99s-p3-billion-reward-claim>; and Rio Araja, *'Informer' loses bid for tax reward*, MANILA STANDARD, August 22, 2016, <http://manilastandard.net/news/-main-stories/top-stories/214007/-informer-loses-bid-for-tax-reward.html>.

[60] Section 5. Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

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

for dismissal. Its indulgence of petitioner through this extended opinion is made with the hope that an example is set for the public and for members of the legal profession to be more judicious in availing of reliefs and that a message is sent to tribunals, administrative officers, and courts to be more circumspect in their consideration of cases.

This Decision is rendered with a stern warning for petitioner not to trifle with court actions. Frivolous litigation translates to injudicious delays, hampers the resolution of more meritorious cases, and compels courts and tribunals to unnecessarily expend themselves. Its ultimate result is a weakening of the courts' and tribunals' capacity to effectively and timely dispense justice.

WHEREFORE, the Petition is **DISMISSED** for lack of merit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 197624. July 23, 2018]

ABACUS CAPITAL AND INVESTMENT CORPORATION, *petitioner, vs.* **DR. ERNESTO G. TABUJARA,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; PRESIDENTIAL DECREE 129 (GOVERNING THE ESTABLISHMENT, OPERATION AND REGULATION OF INVESTMENT HOUSES); INVESTMENT HOUSE; DEFINED.— An investment house

is defined under Presidential Decree No. 129 as an entity engaged in underwriting of securities of other corporations.

2. ID.; ID.; UNDERWRITING; DEFINED.— "[U]nderwriting" is defined as the act or process of guaranteeing the distribution and sale of securities of any kind issued by another corporation.

3. ID.; REPUBLIC ACT NO. 8799 (SECURITIES REGULATION CODE); SECURITIES; DEFINED AS SHARES, PARTICIPATION OR INTERESTS IN A CORPORATION OR IN A COMMERCIAL ENTERPRISE OR PROFIT-MAKING VENTURE AND EVIDENCED BY A CERTIFICATE, CONTRACT, INSTRUMENTS, WHETHER WRITTEN OR ELECTRONIC IN CHARACTER; INCLUSIONS.— Republic Act No. 8799 or the Securities Regulation Code defines securities as shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. It includes: (a) Shares of stocks, bonds, debentures, notes evidences of indebtedness, asset-backed securities; (b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certifies of deposit for a future subscription; (c) Fractional undivided interests in oil, gas or other mineral rights; (d) Derivatives like option and warrants; (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments (f) Proprietary or non-proprietary membership certificates in corporations; and (g) Other instruments as may in the future be determined by the Commission.

4. ID.; MONEY MARKET PLACEMENTS; NATURE; PARTAKES THE NATURE OF LOAN; CASE AT BAR.— [A]s aptly observed by the CA, the transaction herein involved is *akin* to money market placements. *Perez v. CA, et al.* explains the nature of a money market transaction as follows: As defined by Lawrence Smith, "the money market is a market dealing in standardized short-term credit instruments (involving large amounts) where lenders and borrowers do not deal directly with each other but through a middle man or dealer in the open market." It involves "commercial papers" which are instruments "evidencing indebtedness of any person or entity ... which are

issued, endorsed, sold or transferred or in any manner conveyed to another person or entity, with or without recourse." The fundamental function of the money market device in its operation is to match and bring together in a most impersonal manner both the "fund users" and the "fund suppliers." The money market is an "impersonal market", free from personal considerations. "The market mechanism is intended to provide quick mobility of money and securities." The impersonal character of the money market device overlooks the individuals or entities concerned. The issuer of a commercial paper in the money market necessarily knows in advance that it would be expeditiously transacted and transferred to any investor/lender without need of notice to said issuer. In practice, no notification is given to the borrower or issuer of commercial paper of the sale or transfer to the investor. Stating that a money market placement partakes of the nature of loan, *Sesbreno v. CA* elucidates: In money market placement, the investor is a lender who loans his money to a borrower through a middleman or dealer. x xx In this case, Tabujara as the investor is the lender or the "funder" who loaned his ₱3,000,000.00 to IFSC through Abacus. Thus, when the loaned amount was not paid together with the contracted interest, Tabajura may recover from Abacus the amount so invested together with damages.

5. CIVIL LAW; DAMAGES; MORAL DAMAGES; AWARD THEREOF, PROPER IN CASE AT BAR.— We find no reason to delete the CA's award for moral damages as it was established that Tabujara, in his twilight years, suffered mental anguish and serious anxiety over the mishandling of his investment which represented his savings and retirement benefits. Indeed, "[i]f there is any party that needs the equalizing protection of the law in money market transactions, it is the members of the general public who place their savings in such market for the purpose of generating interest revenues."

APPEARANCES OF COUNSEL

Soo Gutierez Leogardo & Lee for petitioner.
Tabujara & Associates Law Offices for respondent.

D E C I S I O N

TIJAM, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated July 19, 2011 of the Court of Appeals (CA) in CA-G.R. CV No. 93250 which reversed the Decision[3] dated January 16, 2009 of the Regional Trial Court (RTC) of Pasig City, Branch 153. Contrary to the RTC's findings, the CA held petitioner Abacus Capital and Investment Corporation (Abacus) liable to respondent Dr. Ernesto G. Tabujara (Tabujara) for the amount of his investment with interest and damages.

The Antecedents

Abacus is an investment house engaged in activities related to dealing in securities and other commercial papers.[4] On July 6, 2000, Tabujara engaged Abacus as his lending agent for purposes of investing his money in the principal amount of ₱3,000,000.00. Abacus, in turn, lent the ₱3,000,000.00 to Investors Financial Services Corporation (IFSC, formerly CIPI Leasing and Finance Corporation) with a term of 32 days.[5] To confirm the money placement, Abacus issued to Tabujara a "Confirmation of Investment" slip stating as follows:[6]

Loan Agreement No. 0003

Borrower	CIPI Leasing & Finance Corporation
Value Date	07/06/00

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[1] *Rollo*, pp. 8-39.

[2] Penned by Associate Justice Ramon M. Bato, Jr., concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino; *id*. at 43-59.

[3] Rendered by Judge Briccio C. Ygaña; *id*. at 60-70.

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

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

[6] *Id*. at 44.

Maturity Date	08/07/00
Term	32 days
Principal Amount	3,000,000.00
Interest Rate	9.150000%
Interest Amount	24,400.00
Maturity Amount	3,024,400.00

However, on July 24, 2000 or shortly after Tabujara placed his investment, IFSC filed with the Securities and Exchange Commission (SEC) a Petition for Declaration of Suspension of Payments. This petition was granted by the SEC and consequently, all actions for claims against IFSC were immediately suspended.[7]

Learning of this development, Tabujara gave notice to Abacus and IFSC that he is opting to pre-terminate his money placement. Upon maturity of the loan on August 7, 2000, Tabujara did not receive either the interest amount or the principal.[8]

Meantime, IFSC's Petition for Declaration of Suspension of Payments was raffled to a regular court and was subsequently treated as a petition for rehabilitation.[9] Pursuant to IFSC's rehabilitation plan, Tabujara received interest payments from Abacus for the period January 1, 2001 to December 31, 2001.[10] The interest due, however, ceased to be paid come January 2002, prompting Tabujara to file his complaint *a quo* against Abacus and IFSC for collection of sum of money with damages.[11] In its Complaint,[12] Tabujara alleged, among others, that his investment was co-mingled with the monies of other investors to support the credit line facility in the amount of ₱700,000,000.00 which Abacus issued in favor of IFSC.

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[7] *Id.* at 64.

[8] *Id.* at 44 and 61.

[9] *Id.* at 64.

[10] *Id.* at 65.

[11] *Id.* at 45.

[12] *Id.* at 95-103.

The complaint as against IFSC was dismissed on the ground of lack of jurisdiction while the same proceeded against Abacus.

By way of defense, Abacus insisted that Tabujara directly transacted with IFSC and that its involvement therein was limited only to acting as collecting and paying agent for Tabujara.[13]

The RTC found that Abacus never guaranteed nor secured the obligations of IFSC which is the actual and real borrower of Tabujara's money and against which the latter has a cause of action.[14] Nevertheless, since IFSC is under rehabilitation, the RTC held that the latter's assets are held in trust for the equal benefit of the creditors and Tabujara should not be paid ahead of the others.[15]

In disposal, the RTC Decision[16] dated January 16, 2009 held:

WHEREFORE, foregoing premises considered, the instant case as against [Abacus] is hereby **DISMISSED**.

SO ORDERED.[17]

With the dismissal of its complaint, Tabujara interposed his appeal before the CA and argued that the RTC erred in finding that sole liability for re-payment of his money placement belongs to IFSC.

In reversing the RTC's decision, the CA reasoned that the transaction in this case was a money market transaction dealing with short-term credit instruments where lenders and borrowers do not deal directly with each other but through a middle man. The CA found that Abacus did not only act as a middle man pursuant to is function as an investment house, but as the "fund supplier" for the credit line facility it extended to IFSC. Further,

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[13] *Id*. at 64.

[14] *Id*. at 68.

[15] *Id*. at 70.

[16] *Id*. at 60-70.

[17] *Id*. at 70.

the CA held that Abacus is guilty of fraud in handling Tabujara's money placement, having loaned the same to IFSC despite the latter's financial woes.[18]

Thus, the CA Decision[19] dated July 19, 2011 held:

> ***WHEREFORE***, the instant appeal is ***GRANTED***. The assailed Decision of the RTC, Branch 153, Pasig City, dated January 16, 2009, is hereby ***ANNULLED*** and ***SET ASIDE***, and a new one entered ordering [ABACUS] to pay [TABUJARA] the principal amount of his investment, ₱3,000,000.00, with interest at the stipulated rate of 9.15% *per annum* from January 29, 2002 until finality of judgment, and interest on interest at the legal rate of 12% from May 8, 2002 until finality of judgment. The total amount due shall earn interest at 12% *per annum* from the finality of the judgment until full payment thereof. Further, [Abacus] is ordered to pay moral damages in the amount of ₱100,000.00, as well as the costs of suit.
>
> ***SO ORDERED.***[20]

The Issues

Abacus seeks a review of the CA's ruling through the instant petition arguing in the main that Tabujara has no cause of action against it as the actual and real borrower is IFSC.

Ruling of the Court

We deny the petition.

An investment house is defined under Presidential Decree No. 129[21] as an entity engaged in underwriting of securities of other corporations. In turn, "underwriting" is defined as the act or process of guaranteeing the distribution and sale of securities of any kind issued by another corporation; while

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[18] *Id*. at 55.

[19] *Id*. at 43-59.

[20] *Id*. at 58.

[21] GOVERNING THE ESTABLISHMENT, OPERATION AND REGULATION OF INVESTMENT HOUSES, February 15, 1973.

"securities" is therein defined as written evidences of ownership, interest, or participation, in an enterprise, or written evidences of indebtedness of a person or enterprise. Republic Act No. 8799 or the Securities Regulation Code defines securities as shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. It includes: (a) Shares of stocks, bonds, debentures, notes evidences of indebtedness, asset-backed securities; (b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certifies of deposit for a future subscription; (c) Fractional undivided interests in oil, gas or other mineral rights; (d) Derivatives like option and warrants; (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments (f) Proprietary or non-proprietary membership certificates in corporations; and (g) Other instruments as may m the future be determined by the Commission.

Purportedly in keeping with its nature as an investment house, Abacus claims to have facilitated Tabujara's purchase of debt instruments issued by IFSC. According to Abacus, it merely purchased a unit of participation in Loan Agreement No. 0003 issued by IFSC for Tabujara's account, using the latter's money in the amount of ₱3,000,000.00. As it turns out, Abacus had an existing Loan Agreement with IFSC whereby it agreed to grant the latter a credit line facility in the amount of ₱700,000,000.00. By testimonial evidence, it was established that the moneys used to fund the ₱700,000,000.00 credit line facility were gathered from various sources.[22]

That Tabujara's investment in the amount of ₱3,000,000.00 was used as part of the pool of funds made available to IFSC is confirmed by the facts that it is Abacus, and not Tabujara, which was actually regarded as IFSC's creditor in the rehabilitation plan and that Abacus even proposed to assign all its rights and privileges in accordance with the rehabilitation

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[22] *Rollo*, pp. 50-53.

plan to its "funders" in proportion to their participation. As such, in a letter[23] dated November 6, 2000, Abacus proposed passing on and assigning to Tabujara all the proceeds and rights which it has under the rehabilitation plan in proportion to Tabujara's principal participation in the amount of ₱3,000,000.00. In other words, it was really Abacus who was the creditor entitled to the proceeds of IFSC's rehabilitation plan — thus necessitating the assignment by Abacus of said proceeds to the actual source of funds, Tabujara included.

Further, as aptly observed by the CA, the transaction herein involved is *akin* to money market placements. *Perez v. CA, et al.*[24] explains the nature of a money market transaction as follows:

> As defined by Lawrence Smith, "the money market is a market dealing in standardized short-term credit instruments (involving large amounts) where lenders and borrowers do not deal directly with each other but through a middle man or dealer in the open market." It involves "commercial papers" which are instruments "evidencing indebtedness of any person or entity ... which are issued, endorsed, sold or transferred or in any manner conveyed to another person or entity, with or without recourse." The fundamental function of the money market device in its operation is to match and bring together in a most impersonal manner both the "fund users" and the "fund suppliers." The money market is an "impersonal market", free from personal considerations. "The market mechanism is intended to provide quick mobility of money and securities."
>
> The impersonal character of the money market device overlooks the individuals or entities concerned. The issuer of a commercial paper in the money market necessarily knows in advance that it would be expeditiously transacted and transferred to any investor/lender without need of notice to said issuer. In practice, no notification is given to the borrower or issuer of commercial paper of the sale or transfer to the investor.[25]

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[23] *Id.* at 54.

[24] 212 Phil. 587 (1984).

[25] *Id.* at 596-597.

Stating that a money market placement partakes of the nature of loan, *Sesbreno v. CA*[26] elucidates:

> In money market placement, the investor is a lender who loans his money to a borrower through a middleman or dealer. Petitioner here loaned his money to a borrower through Philfinance. When the latter failed to deliver back petitioner's placement with the corresponding interest earned at the maturity date, the liability incurred by Philfinance was a civil one. As such, petitioner could have instituted against Philfinance before the ordinary courts a simple action for recovery of the amount he had invested and he could have prayed therein for damages. x x x.[27] (Citations omitted)

In this case, Tabujara as the investor is the lender or the "funder" who loaned his ₱3,000,000.00 to IFSC through Abacus. Thus, when the loaned amount was not paid together with the contracted interest, Tabajura may recover from Abacus the amount so invested together with damages.

Finally, We find no reason to delete the CA's award for moral damages as it was established that Tabujara, in his twilight years, suffered mental anguish and serious anxiety over the mishandling of his investment which represented his savings and retirement benefits. Indeed, "[i]f there is any party that needs the equalizing protection of the law in money market transactions, it is the members of the general public who place their savings in such market for the purpose of generating interest revenues."[28]

In accordance, however, with *Nacar v. Gallery Frames, et al.*,[29] the legal rate of interest on the interest is modified from 12% to 6% beginning July 1, 2013 until finality of this judgment and the total amount due shall earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until full payment.

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[26] 310 Phil. 671 (1995).

[27] *Id*. at 682.

[28] *Sesbreño v. Court of Appeals*, 294 Phil. 445, 468 (1993).

[29] 716 Phil. 267 (2013).

WHEREFORE, the petition is **DENIED**. The Decision dated July 19, 2011 of the Court of Appeals in CA-G.R. CV No. 93250 is **AFFIRMED with MODIFICATION** that petitioner Abacus Capital and Investment Corporation is ordered to pay respondent Dr. Ernesto G. Tabujara the principal amount of his investment of ₱3,000,000.00 with interest at the rate of 9.1500% *per annum* from date of demand, January 29, 2002 until finality of this Decision, and interest on interest at the rate of twelve percent (12%) per annum from May 8, 2002 until June 30, 2013 and thereafter, at the rate of six percent (6%) *per annum* until finality of this Decision. The total amount due shall earn interest at the rate of six percent (6%) *per annum* from the finality of this Decision until full payment.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[G.R. Nos. 198916-17. July 23, 2018]

MALAYAN INSURANCE COMPANY, INC., *petitioner, vs.* **ST. FRANCIS SQUARE REALTY CORPORATION,** *respondent.*

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

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

[G.R. Nos. 198920-21. July 23, 2018]

ST. FRANCIS SQUARE REALTY CORPORATION, *petitioner, vs.* **MALAYAN INSURANCE COMPANY, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF QUASI-JUDICIAL BODIES, WHICH HAVE ACQUIRED EXPERTISE BECAUSE THEIR JURISDICTION IS CONFINED TO SPECIFIC MATTERS, ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT ALSO FINALITY.—It is well settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality if they are supported by substantial evidence, especially when affirmed by the CA. This is because when technical matters or intricate question of facts are involved, they require for their resolution the expertise, specialized skills and knowledge of a quasi-judicial body. In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by the Court on appeal.

2. ID.; ID.; ID.; INSTANCES WHEN THE FACTUAL FINDINGS OF CONSTRUCTION ARBITRATORS MAY BE REVIEWED; CASE AT BAR.—[F]actual findings of construction arbitrators may be reviewed by the Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of

a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (7) when the findings of the CA are contrary to those of the CIAC, and (8) when a party is deprived of administrative due process.After a careful review of the records, the Court finds that St. Francis was able to show that the CIAC imperfectly executed its powers such that a final and definite award was not made on the issue of whether input VAT should be included in the ARCC. Instead of resolving the said issue, the CIAC failed to explain why input VAT is a direct construction cost.

3. ID.; ID.; QUESTION OF LAW; MUST NOT INVOLVE AN EXAMINATION OF THE PROBATIVE VALUE OF THE EVIDENCE PRESENTED BY ANY OF THE LITIGANTS, AND THE RESOLUTION OF THE ISSUE MUST SOLELY DEPEND ON WHAT THE LAW PROVIDES ON THE GIVEN SET OF CIRCUMSTANCES; INTERPRETATION OF THE TRUE AGREEMENT OF THE PARTIES IS A QUESTION OF LAW.—It is not amiss to state that whether input VAT is a direct construction cost and should be included as component of the ARCC is a question of law, and not a question of fact. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by any of the litigants, and the resolution of the issue must solely depend on what the law provides on the given set of circumstances. Where an interpretation of the true agreement between the parties is involved in the appeal, the appeal is in effect an inquiry of the "law" between the parties and their successors in interest, its interpretation necessarily involves a question of law, properly raised in the certiorari proceedings.Perforce, the principle that findings of construction arbitrators on matters belonging to their field of expertise, especially when affirmed by the appellate court, are generally entitled to great respect if not finality, pertain only to factual issues, and not to questions of law, of which the Court is the final arbiter.

4. TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX; INPUT VAT CANNOT BE CONSIDERED WITHIN THE SCOPE AND MEANING OF THE ACTUAL REMAINING CONSTRUCTION COSTS (ARCC), THE BURDEN OF PAYING VAT ULTIMATELY

TO BE SHOULDERED BY FINAL CONSUMERS; CASE AT BAR.—As a VAT-registered purchaser which has sold condominium units and parking lots in the course of its business, and admitted to have offset input tax from the project against its output tax liabilities, Malayan can no longer claim that input VAT is an additional cost built into the cost of goods and services it purchased and procured from its contractors and suppliers. To allow Malayan to pass the burden of such indirect tax to buyers of the said units and slots, and to further claim that input VAT must still form part of the ARCC, would constitute unjust enrichment at the expense of St. Francis, as the latter's proportionate share in the remaining units would be unduly reduced, while Malayan's share would be increased. Granted that check vouchers, official receipts and other supporting documents indicate that payments made to the contractors and suppliers of the construction project are VAT-inclusive, the Court cannot close its eyes that the burden of paying VAT was ultimately shouldered by final consumers, and that input VAT was indeed used to offset Malayan's output VAT liabilities. In view thereof, the Court rules that input VAT cannot be considered within the scope and meaning of the ARCC, which should be understood in the traditional "construction" sense rather than the "investment," as the actual expenditures necessary to complete the project.

5. **ID.; ID.; ID.; A JOINT VENTURE FOR THE PURPOSE OF UNDERTAKING CONSTRUCTION PROJECTS IS NOT A TAXABLE CORPORATION; THE ASSIGNMENT BY THE OWNER TO DEVELOPER OF THE LATTER'S SHARE IN THE DEVELOPED LOTS UNDER A MEMORANDUM OF SHARING IS NOT SUBJECT TO VAT SINCE THE OWNER, BY CONTRIBUTING HIS PROPERTY NEITHER SELLS, BARTERS OR EXCHANGES GOODS OR PROPERTIES NOR RENDERS ANY SERVICE SUBJECT TO VAT; CASE AT BAR.—**Since St. Francis is entitled to a proportionate share in the reserved units (as will be discussed shortly), the allocation or transfer thereof from Malayan to St. Francis is not subject to VAT, as it does not entail a sale, barter, exchange or lease of goods, properties or services in the course of trade of business. In this regard, the Court takes note of the ruling of the Bureau of Internal Revenue that the allocation of condominium units to partners

of a joint venture or consortium formed for the purpose of undertaking construction projects as a return on their contribution is not subject to VAT because such allocation is not a sale, barter or exchange of real property done in the ordinary course of business.A joint venture for the purpose of undertaking construction projects, according to the BIR, is not a taxable corporation under Section 22(B) of the Tax Code, and the assignment by the owner to developer of the latter's share in the developed lots under a memorandum of sharing is not VAT since the owner, by contributing his property neither sells, barters or exchanges goods or properties nor renders any service subject to VAT. However, the subsequent disposition by the co-venturers of the areas allocated to them shall be subject to VAT, among other taxes.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; AMBIGUITIES IN A CONTRACT ARE INTERPRETED AGAINST THE PARTY THAT CAUSED THE AMBIGUITY; CASE AT BAR.—[S]ettled is the rule that ambiguities in a contract are interpreted against the party that caused the ambiguity. "Any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it."As the party who drafted the MOA which nebulously defines the term "actual remaining construction cost to complete the project," Malayan has no one to blame but itself why input VAT should not be allowed as part of the ARCC.

7. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; ITS VERY PURPOSE IS TO POINT OUT THE FINDINGS AND CONCLUSIONS OF THE DECISION WHICH IN THE MOVANT'S VIEW ARE NOT SUPPORTED BY LAW OR THE EVIDENCE.— Contrary to the Dissenting Opinion, what Section 1, Rule 37 provides is that the "aggrieved party may also move for reconsideration upon the grounds that the damages are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law." Section 2, of Rule 37. To be sure, the very purpose of a motion for reconsideration is to point out the findings and conclusions of the decision which in the movant's view, are not supported by law or the evidence. "The movant, therefore, is very often confined to the amplification on further discussion of the same issues already passed upon

by the court. Otherwise, his remedy would not be a reconsideration of the decision but a new trial or some other remedy."

VELASCO, JR., *J.*, *dissenting opinion*:

1. **CIVIL LAW; PRINCIPLE OF UNJUST ENRICHMENT; THE TRANSFER OF VALUE WITHOUT JUST CAUSE OR CONSIDERATION; NOT APPLICABLE IN CASE AT BAR.—**The principle of unjust enrichment is provided under Article 22 of the Civil Code which states: Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter **without just or legal ground**, shall return the same to him.Consistent therewith, this Court held that the fundamental doctrine of unjust enrichment is the transfer of value **without just cause or consideration**. As wisely stated in this Court's January 11, 2016 Decision in this case, "unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead **it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully**."Thus, the first condition for the application of the doctrine is that that **a person is benefited *without a valid basis or justification***.Surely, this condition is absent in this case as Malayan has a just cause or valid basis to credit the Input VAT against the Output VAT under Section 110 of the National Internal Revenue. As this Court first held, "in offsetting its input VAT against output VAT, **Malayan is merely availing of the benefits of the tax credit provisions of the law**, and it cannot be said to have benefitted at the expense or to the damage of St. Francis. After all, **Malayan is justified in including in the ARCC the input VAT** it had paid as part of the contract price of the goods, properties and services it had procured to complete the project."

2. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF QUASI-JUDICIAL BODIES, WHICH HAVE ACQUIRED EXPERTISE BECAUSE THEIR JURISDICTION IS CONFINED TO SPECIFIC MATTERS, ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT ALSO FINALITY; EXCEPTIONS; ABSENT IN CASE AT BAR.—** It is oft-repeated that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is

confined to specific matters, are generally **accorded not only respect, but also finality, especially when affirmed by the CA and this very Court**. The CIAC possesses that required expertise in the field of construction arbitration and the **factual findings of its construction arbitrators are final and conclusive, not reviewable by this Court on appeal**. The only exceptions are when: (1) [T]he award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.None of these exceptions finds application in this case. Least of all, given the aforequoted rationalizations provided by the CIAC in ruling on the inclusion of the Input VAT in the ARCC, this Court cannot plausibly conclude that it has so "imperfectly executed its powers such that a final and definite award was not made on the issue of whether input VAT should be included in the ARCC."St. Francis has not even attempted to show, as it cannot, that the CIAC arbitral tribunal conducted its affairs in a "haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled."Instead, St. Francis offered no new argument or any strong and compelling reason to warrant the reversal of the **uniform finding made by the CIAC, the CA, and this Court in its Decision as to the inclusion of the Input VAT**. Thus, there need not be a reconsideration of the issue as to the Input VAT.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESTOPPEL; ELEMENTS; ESTABLISHED IN CASE AT BAR.—St. Francis is estopped from claiming that Input VAT is, thus, excluded from the ARCC spent by Malayan on the project. Article 1431 of the New Civil Code (NCC) provides that "through estoppel, an admission or representation is rendered **conclusive** upon the person making it and cannot be denied or disproved

as against the person relying thereon." x x x For the principle of estoppel to apply, the following elements must be established: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the actual facts.All the foregoing elements are extant in the present case. By St. Francis' own inclusion of VAT in calculating its own expenses and costs, which it had communicated to Malayan, it cannot be allowed to renege on its own representation and deny Malayan the same privilege of using VAT as a component of the ARCC. That would simply be inequitable.

APPEARANCES OF COUNSEL

Teodoro C. Baroque for St. Francis Square Realty Corporation.
Poblador, Bautista & Reyes for Malayan Insurance Co., Inc.

R E S O L U T I O N

PERALTA, *J.*:

This resolves Malayan Insurance Company, Inc.'s Motion for Partial Reconsideration and St. Francis Square Realty Corporation's Motion for Reconsideration of the Court's Decision dated January 11, 2016, the dispositive portion of which states:

WHEREFORE, premises considered, the Court of Appeals Decision dated January 27, 2011 in CA-G.R. SP Nos. 109286 and 109298, is **AFFIRMED** with the following **MODIFICATIONS**:

1) The total amount of ₱57,474,561.39 should be deducted and excluded from the gross Actual Remaining Construction Cost (ARCC) of ₱562,866,135.02 to arrive at the net ARCC of ₱505,391,573.63;

2) Malayan is entitled to 30% ownership over the reserved units (₱52,966,724.63/₱175,856,325.05), together with

the corresponding interest in the income realized thereon in the same proportion; while St. Francis is entitled to 70% (₱122,889,598.42/₱175,856,325.05) ownership of the said units, as well as to its corresponding share in the said income. The distribution of the parties' proportionate share in the units shall be made by drawing of lots;

3) Malayan is directed to deliver possession and transfer title over the reserved units in the proportion above stated, to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date of the completion of the project on June 7, 2006 up to the finality of this decision, and to render full accounting of all the upkeep expenses, rentals and such other income derived from the reserved units so awarded to St. Francis;

4) Arbitration costs are maintained pursuant to the *pro rata* sharing that the parties had initially shared in accordance with the amounts claimed and counterclaimed by them, namely, St. Francis: ₱936,775.29; and Malayan: ₱127,742.09;

5) Malayan and all others claiming rights under it, are enjoined from exercising acts of ownership over the reserved units relative to the proportionate share awarded to St. Francis;

6) The Register of Deeds of Pasig City is directed to immediately reinstate the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) as the registered owner in the corresponding Condominium Certificates of Title covering the reserved units awarded to St. Francis; and

7) All other awards granted by CIAC in its Award dated 27 May 2009 which are not affected by the above modifications are affirmed. No costs.

SO ORDERED.

Malayan raises the following grounds in support of its motion:

A.

Assuming *arguendo* that interest expense and other cost items were properly excluded from the Actual Remaining Construction Cost ("ARCC"), the *Decision* nonetheless has mathematical and clerical

errors which, if corrected, will entitle *Malayan* to at least 59.9% of the Reserved Units, and not just 30% thereof as was computed in the *Decision*.

A.1. Malayan's interest expense of Php39,348,659.88 was excluded TWICE from the ARCC.

A.2. The sum of the items under "Total Exclusions" is Php15,158,864.73 not Php16,768,864/73, resulting in an over-deduction of Php610,000.00.

A.3. At least 3 items under "Total Exclusions" are fully supported by official receipts, checks and check vouchers and/or other documents. These 3 items were not "unsubstantiated" and should therefore not have been put under "Total Exclusions."

B.

There was no issue in the proceedings *a quo* as to whether Malayan had incurred its ARCC amounting to Php647,319,513.96. This was admitted by the parties and accepted by the arbitral tribunal. At any rate, this amount was proven by substantial evidence.

C.

The entire monetary award of Php21,948,852.39 which *Malayan* paid to TVI (in TVI vs. Malayan docketed as CIAC Case No. 27-2007) should be included in the ARCC, because the components of this award are purely "traditional" or "direct" construction costs.

D.

The "peculiar signification which the parties gave to the tem "Actual Remaining Construction Cost" in the 30 April 2002 Memorandum of Agreement (the "MOA"), prevails over the "primary and general acceptation" of the term "construction cost" in the construction industry.

E.

The terms of the MOA and the contemporaneous acts of the parties indicate that costs incurred to finance the completion of the Project, such as interest expense, must be included in the ARCC.

F.

Malayan implemented the "change orders not due to reconfiguration" with an aggregated value of Php971,796.29 in order to address security,

safety and marketability concerns. Therefore, these costs should have be included in the ARCC.

G.

Considering that the increase in the costs for "interior design works" is presumed fair and regular, and St. Francis failed to prove otherwise, the *entire* increase should have been included in the ARCC.

H.

The "Contingency Costs" of Php631,154.39 should have been included in the ARCC, because these were necessary to ensure the continued construction of the Project.

I.

There are several costs incurred or paid after June 2006 which were still necessary for the completion of the Project. They should therefore have been included in the ARCC.

J.

Considering that there is no legal basis to exclude any of the costs in *Malayan*'s ARCC in the amount of Php647,319,513.96, St. Francis is *not* entitled to share in the Reserved Units.

K.

St. Francis is *not* entitled to any share in the income from the Reserved Units. Under the MOA, its right to the Reserved Units, if any, and, therefore, to the income therefrom, arises only *after* the determination of the ARCC.

L.

St. Francis's Complaint was without basis. It should therefore be held liable for attorney's fees and arbitration costs.[1]

On the other hand, St. Francis' motion for partial reconsideration takes exception only to the Court's ruling that the input value added tax (VAT) in the amount of ₱45,419,770.44 should be considered as part of the ARCC. St. Francis states that the issue of input VAT is not limited to or purely about

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[1] *Rollo*, pp. 1804-1807.

technical classifications of taxes or accounting rules, and that input VAT can neither be considered an expense under tax laws nor be deemed part of the ARCC under the plain and ordinary meaning of cost. Citing VAT Ruling No. 053-94,[2] St. Francis posits that the VAT paid by a VAT-registered person on his purchases is an asset account in the Balance Sheet and cannot be treated as an expense unless he is exempt from VAT, in which case the VAT paid would form part of the cost to acquire what was purchased. According to St. Francis, this is the reason why under Malayan's own documentary evidence consisting of cash vouchers, input VAT was treated separately from the actual construction cost, and was treated in its audited financial statements under the heading "Other Assets" as opposed to expense.

St. Francis further contends that since Malayan admitted that the input VAT were used to offset its output VAT and thus lessen its tax liability, input VAT can no longer be charged as part of the ARCC. St. Francis asserts that Malayan has not made any actual expenditure as regards the input VAT because Malayan was able recover what it paid for the input VAT when it offset the same against its output VAT. St. Francis theorizes that there will be unjust enrichment if Malayan would be allowed to benefit twice by still including the input VAT in the ARCC, which will result in a corresponding decrease of its share in the reserved units. Finally, St. Francis posits that under the MOA, the reserved units are considered its property and will only be diminished should the ARCC exceed the RCC (Remaining Construction Cost). As such, there is no actual transfer or sale of said units from Malayan to St. Francis, and there would be no occasion for St. Francis to incur input VAT which it can use to offset against its output VAT.

Malayan counters that St. Francis is barred by estoppel from claiming that input VAT should not be included in the ARCC because it included such tax in computing its investment in the project which, in turn was the basis for determining its

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[2] February 9, 1994.

share in some of the units in the project. In support of its claim of a contemporaneous act revealing the intention of the parties to include input VAT as a component of the ARCC, Malayan calls attention the telefax dated August 1, 2000 where St. Francis included "Com.&VAT" in the amount of ₱47,739,805.00 as part of the "computation for reimbursement" for certain units in the project. Malayan insists that input VAT is considered a cost under the law and the principles of accounting, and is part of the ARCC as contemplated in the MOA.

There is partial merit in both the Motions for Partial Reconsideration filed by St. Francis and Malayan.

It is well settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality if they are supported by substantial evidence, especially when affirmed by the CA.[3] This is because when technical matters or intricate question of facts are involved, they require for their resolution the expertise, specialized skills and knowledge of a quasi-judicial body.[4] In particular, factual findings of construction arbitrators are final and conclusive and not reviewable by the Court on appeal.[5]

To reca1l, factual findings of construction arbitrators may be reviewed by the Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were

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[3] *Philippine Race Horse Trainer's Association v. Piedras Negras Construction and Development Corporation*, 774 Phil. 17, 25 (2015).

[4] *Werr Corporation International v. Highlands Prime, Inc.*, G.R. No. 187543 and *Highlands Prime, Inc. v. Werr Corporation International*, G.R. No. 187580, both dated February 8, 2017.

[5] *Shinryo (Philippines) Company, Inc. v. RRN, Incorporated*, G.R. No. 172525, October 20, 2010, 634 SCRA 123, 130, citing *IBEX International, Inc. v. Government Service Insurance System*, 618 Phil. 304, 313 (2009).

disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made; (6) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (7) when the findings of the CA are contrary to those of the CIAC, and (8) when a party is deprived of administrative due process.[6]

After a careful review of the records, the Court finds that St. Francis was able to show that the CIAC imperfectly executed its powers such that a final and definite award was not made on the issue of whether input VAT should be included in the ARCC. Instead of resolving the said issue, the CIAC failed to explain why input VAT is a direct construction cost, and digressed in this wise:

> Unlike the issue of interest, here, there is no question that input VAT is a direct construction cost and therefore, should be included in the ARCC. The only question that remains is What is the arrangement between Respondent [Malayan] on the one hand and its contractors/ suppliers on the other?
>
> Claimant's [St. Francis] draft decision admits that VAT "*appear to have been deducted from the billings of the concerned supplier or subcontractor totaling ₱45,419,770.44 as reflected in the pertinent cash vouchers in Exhibit R-48-series*." Claimant questions whether said amounts deducted for VAT was actually remitted by Respondent. Thus, Claimant inferentially admits that Respondent is entitled to add the input VAT as part of the ARCC.

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[6] *IBEX International, Inc. v. Government Service Insurance System, supra*, citing *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, 540 Phil. 350 (2009) and *David v. Construction Industry and Arbitration Commission*, 479 Phil. 578 (2004).

While "*submission of the quarterly and annual VAT return*" would have provided incontrovertible proof of Respondent's remittance to the BIR, as Claimant asserts, there is no prohibition against considering the pertinent cash vouchers. Examination of the documentary evidence submitted by Respondent (**Exhibit R-44** and **Exhibit R-48**), series) as well as those submitted by Claimant itself (**Exhibits C-7 up to C-40**) has persuaded the Tribunal of their sufficiency to show such remittance. As earlier pointed out, the two Reports (Surequest and DSL) supports this conclusion. Moreover, the contract entered into by the Claimant which were assumed by Respondent under the MOA, included VAT as part of costs.

It is accordingly the **holding** of this Arbitral Tribunal to **ALLOW** the input Value Added Taxes ("VAT") paid to the government for goods and services utilized for the Project to remain in the ARCC.[7]

Stressing that the factual findings of the CIAC are generally conclusive and binding upon it, the CA found that a meticulous examination of the voluminous records and check vouchers would clearly show that in the payment of contracts and construction materials, Malayan had deducted input VAT of 1/11% and 2% withholding tax from the contract price or construction costs. The CA held that payment of input VAT was automatically deducted from the total obligations paid to contractors and suppliers, and that the documentary evidence submitted by Malayan and St. Francis had led the CIAC to that they were sufficient to show proof of remittance to the government of the input VAT. Without resolving the question of law as to whether input VAT is a direct construction cost, the CA concluded that the summary and cash vouchers presented by Malayan totaling ₱47,593,994.29 are sufficient proof of the filing and payment of input VAT.

When St. Francis raised in its petition for review the issue of whether input VAT should be included in the computation of the ARCC, the Court initially ruled as follows:

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[7] *Rollo* (G.R. Nos. 198920-21), Vol. II, p. 574. (Emphasis in the original; underscoring added)

The Court finds no compelling reason to disturb the consistent findings of the CA and the CIAC that Input VAT should be allowed to remain in the ARCC. As aptly pointed out by the CA and the CIAC, ARCC refers to the actual expenditures made by Malayan to complete the project. The Court thus agrees with Malayan that in determining whether input VAT should be included as ARCC, the issue is not the technical classification of taxes under accounting rules, but whether such tax was incurred and paid as part of the construction cost. Given that input VAT is, strictly speaking, a financial cost and not a direct construction cost, it cannot be denied that Malayan had to pay input VAT as part of the contract price of goods and properties purchased, and services procured in order to complete the project. Moreover, that the burden of such tax was shifted to Malayan by its suppliers and contractors is evident from the photocopies of cash vouchers and official receipts on record, which separately indicated the VAT component in accordance with Section 113(B) of the Tax Code.

Anent the claim that it would be unjust and inequitable if Malayan would be allowed to include its input VAT in the ARCC, as well as to offset such tax against it output tax, the Court finds that such coincidence does not result in unjust enrichment at the expense of St. Francis. Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully. In offsetting its input VAT against output VAT, Malayan is merely availing of the benefits of the tax credit provisions of the law, and it cannot be said to have benefitted at the expense or to the damage of St. Francis. After all, Malayan is justified in including in the ARCC the input VAT it had paid as part of the contract price of the goods, properties and services it had procured to complete the project.

At any rate, St. Francis would also be entitled to avail of the same tax credit provisions upon the eventual sale of its proportionate share of the reserved units allocated and transferred to it by Malayan. It bears emphasis that the allocation of and transfer of such units to St. Francis is subject to output VAT which Malayan could offset against its input VAT. In turn, St. Francis would incur input VAT which it may later offset against its output VAT upon the sale of the said units. This is in accordance with the tax credit method of computing the VAT of a taxpayer whereby the input tax shifted by the seller to

the buyer is credited against the buyer's output taxes when it in turn sells the taxable goods, properties or services.[8]

It is not amiss to state that whether input VAT is a direct construction cost and should be included as component of the ARCC is a question of law, and not a question of fact. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by any of the litigants, and the resolution of the issue must solely depend on what the law provides on the given set of circumstances.[9] Where an interpretation of the true agreement between the parties is involved in the appeal, the appeal is in effect an inquiry of the "law" between the parties and their successors in interest, its interpretation necessarily involves a question of law, properly raised in the certiorari proceedings.[10] Perforce, the principle that findings of construction arbitrators on matters belonging to their field of expertise, especially when affirmed by the appellate court, are generally entitled to great respect if not finality, pertain only to factual issues, and not to questions of law, of which the Court is the final arbiter.

The Court previously ruled that input VAT is a financial cost, not a direct construction cost, but went on to state that such VAT should be included in the ARCC because the cash vouchers and receipts showed that Malayan's payment to the contractors and suppliers included the same tax. In deciding such question of law, however, the Court overlooked the nature of VAT as an indirect and consumption tax which the end users of consumer goods, properties or services ultimately shoulder, as the liability therefor is passed on to them by the providers of goods and services who, in turn, may credit their own VAT liability from the VAT payments they receive from the final

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[8] Citations omitted.

[9] *Heirs of Villanueva v. Heirs of Mendoza*, G.R. No. 209132, June 5, 2017.

[10] *Phil. National Construction Corporation v. Court of Appeals*, 541 Phil. 658, 669-670 (2007).

consumer.[11] For the VAT-registered purchaser, the tax burden passed on does not constitute cost, but input tax which is creditable against his output tax liabilities; conversely, it is only in the case of a non-VAT purchaser that VAT forms part of cost of the purchase price.[12] The input tax passed on to the final consumers, like the buyers of Malayan's condominium units and parking slots, thus becomes part of their acquisition cost of the asset or operating expense.[13]

As a VAT-registered purchaser which has sold condominium units and parking lots in the course of its business, and admitted to have offset input tax from the project against its output tax liabilities,[14] Malayan can no longer claim that input VAT is an

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[11] *The National Internal Revenue Code Annotated*, Vol. II, Hector S. De Leon and Hector M. De Leon, Jr. (2016), p. 5.

[12] *Id.*

[13] *Value Added Tax in the Philippines*, Victorino C. Mamalateo, 2013, p. 13.

[14] *Rollo* (G.R. Nos. 198916-17), Vol. IV, pp. 5238-5239; TSN, March 19, 2009, pp. 276-278. Pertinent portions of the record, read:

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

And you had input VAT for your insurance business and you also (had) input VAT for your sales[?]

MS. G. O. CHENG (RESPONDENT) [Chief Financial Officer and Treasurer of Malayan]

Yes.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT): Did you claim input VAT for your sales.

MS. G. O. CHENG (RESPONDENT):

Yes.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT): Did you claim your input VAT against your output VAT with the Bureau of Internal Revenue?

MS. G. O. CHENG (RESPONDENT):

I am not an accountant. I cannot answer that.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

So who can answer from your side whether the respondent actually claim their total input against their total output?

additional cost built into the cost of goods and services it purchased and procured from its contractors and suppliers. To allow Malayan to pass the burden of such indirect tax to buyers

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ATTY. A. F. TADIAR (ARBITRATOR):

You are talking about a whole year.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

Yes, for example in 2003 and 2004 for the duration of this project until it was completed.

ATTY. A. F. TADIAR(ARBITRATOR):

It is not a per transaction basis.

MS. G. O. CHENG (RESPONDENT):

Yeah, it's not a per transaction basis.

ATTY. A. F. TADIAR (ARBITRATOR):

It's a whole year.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

Yes, but my question is did you at least [file] for the year . . .

MS. G. O. CHENG (RESPONDENT):

The company filed the necessary tax . . .

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

So there were input VAT offset against output VAT[?]

MS. G. O. CHENG (RESPONDENT):

In concept, yes.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

No, in actual.

MS. G. O. CHENG (RESPONDENT):

Well, because I was not actually involved in the filing, I cannot answer you.

ATTY. T.C. BAROQUE (COUNSEL-CLAIMANT):

So who can answer me from your side? Because you are claiming that you had input VAT as evidence[d] by voucher and receipt. This is part of your answer. So I'm just verifying whether you know. So you don't know[?]

MS. C. A. AFUANG (RESPONDENT): [Accountant, Malayan]

Based on my knowledge of the transactions of the company, the input VAT was offset against output VAT.

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of the said units and slots, and to further claim that input VAT must still form part of the ARCC, would constitute unjust enrichment at the expense of St. Francis, as the latter's proportionate share in the remaining units would be unduly reduced, while Malayan's share would be increased. Granted that check vouchers, official receipts and other supporting documents indicate that payments made to the contractors and suppliers of the construction project are VAT-inclusive, the Court cannot close its eyes that the burden of paying VAT was ultimately shouldered by final consumers, and that input VAT was indeed used to offset Malayan's output VAT liabilities. In view thereof, the Court rules that input VAT cannot be considered within the scope and meaning of the ARCC, which should be understood in the traditional "construction" sense rather than the "investment," as the actual expenditures necessary to complete the project.

While it disagrees with St. Francis' claim that the reserved units are considered already under the MOA as its property and will only be diminished should the ARCC exceed the RCC, the Court must agree that there is no actual transfer or sale of said units from Malayan to St. Francis that would cause the latter to incur input VAT.

St. Francis can hardly claim that it is the owner of the reserved units because Section 4(b) of the MOA states that it (formerly ASB Realty Corp.) shall only be entitled to the reserved units in the event that the actual remaining construction costs (*ARCC*) exceed the Remaining Construction Cost (*RCC*), and that Malayan pays for such excess. It is only after the final determination of the ARCC, which is the core issue of this case, that the reserved units in the project may be allotted and transferred to St. Francis. It is even possible that St. Francis would not get any unit if the ARCC spent by Malayan exceeds both the RCC (the ₱452,424,849.00 cost to complete the project as represented by St. Francis to Malayan) and the aggregate value of the disputed reserved units, *i.e.*, ₱175,856,323.05

Since St. Francis is entitled to a proportionate share in the reserved units (as will be discussed shortly), the allocation or

transfer thereof from Malayan to St. Francis is not subject to VAT, as it does not entail a sale, barter, exchange or lease of goods, properties or services in the course of trade of business. In this regard, the Court takes note of the ruling of the Bureau of Internal Revenue that the allocation of condominium units to partners of a joint venture or consortium formed for the purpose of undertaking construction projects as a return on their contribution is not subject to VAT because such allocation is not a sale, barter or exchange of real property done in the ordinary course of business.[15] A joint venture for the purpose of undertaking construction projects, according to the BIR, is not a taxable corporation under Section 22(B) of the Tax Code, and the assignment by the owner to developer of the latter's share in the developed lots under a memorandum of sharing is not VAT since the owner, by contributing his property neither sells, barters or exchanges goods or properties nor renders any service subject to VAT. However, the subsequent disposition by the co-venturers of the areas allocated to them shall be subject to VAT, among other taxes.[16]

Guided by the foregoing VAT ruling of the BIR, the Court holds that the allocation of the remaining units in the building to St. Francis in accordance with the MOA is not subject to VAT. To recall, the parties initially entered into a Joint Project Development Agreement dated 9 November 1995 whereby (1) Malayan would contribute the property; (2) ASB Realty, Corp. (now St. Francis) would defray the cost of constructing the building; and (3) the parties would allocate the net saleable area of the building between them as return of their capital investment in the project. Unfortunately, ASB underwent rehabilitation and the Securities and Exchange Commission (*SEC*) suspended the performance of ASB's obligations under the said agreement. In order to protect the interest of those who bought units during pre-selling, to preserve its interest in

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[15] *The National Internal Revenue Code Annotated*, Vol. II, Hector S. De Leon and Hector M. De Leon, Jr. (2016), p. 3.

[16] *Id.* at 16-17, citing BIR Ruling No. DA-326-08, October 22, 2008.

the project, as well as its goodwill and reputation, Malayan proposed to complete the project, the terms and conditions of which were accepted by ASB (now St. Francis), and are now embodied in the MOA dated 30 April 2002. It is significant to note that Section 4 of the MOA states that as a return of their capital investment in the project, each party shall be entitled to such portion of all the net saleable area of the building that their respective contributions to the project bear to the actual construction costs. The core issue is the *pro rata* sharing in the remaining net saleable area of the building, consisting of 39 condominium units and 38 parking slots worth ₱175,856,325.05, which can be resolved by determining how much the exact amount of the ARCC exceeded the Remaining Construction Cost (₱452,424,849.00). Having determined the ARCC and finding that St. Francis is entitled to a proportionate share of the remaining units, the Court rules that the allocation of such units clearly involves a return of the parties' capital investments under the MOA, hence, not subject to VAT.

The Dissenting Opinion asserts that the Court can do no worse than disregard St. Francis' own use of input VAT as part of its own computation of the cost needed for the project, because per the telefax dated August 1, 2000 that St. Francis sent to Malayan, St. Francis included VAT in its "computation for reimbursement" for certain units in the Project. The Dissenting Opinion shares the view of Malayan that St. Francis is also estopped from claiming that input VAT is excluded from the ARCC because by St. Francis' own inclusion of VAT in calculating its own expenses and costs which it had communicated to Malayan, it cannot be allowed to renege on its own representation and deny Malayan the same privilege of using VAT as component of the ARCC, for that would simply be inequitable.

Malayan cannot decry that it would go against the precepts of justice and equity if St. Francis would be allowed to claim that input VAT should be excluded from the ARCC, despite having sent Malayan a telefax dated August 1, 2000. The Court stresses that such telefax — whereby St. Francis claimed VAT as part and parcel of its investment, and for which it was allotted

units in the project—is no longer relevant because Section 20 of the 30 April 2002 MOA clearly provides that such agreement wholly amends and supersedes all previous agreements or contract of the parties in relation to the project, and solely governs the rights and obligations of the parties. In line with the foregoing provision of the MOA, St. Francis' telefax can neither be considered as a contemporaneous act, much less a subsequent one, that reveals the intention of the parties to include input VAT in the computation of the ARCC.

Contrary to the stand of Malayan and of the Dissenting Opinion, the principle of estoppel will not apply because of the absence of its first element, *i.e.*, conduct which amounts to a false representation or concealment of material facts, or at least calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert. The Court holds that it is not enough that St. Francis' telefax is tantamount to "conduct and representation" that input VAT is part and parcel of St. Francis investment in the project, and that Malayan relied on such conduct and representation and, on that basis, allotted units in the project for St. Francis. As the party asserting the presence of estoppel, Malayan bears the burden of proving its allegation that St. Francis committed a "*false representation or concealment of material facts*," or a conduct "*calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert*." Apart from its bare allegation, Malayan failed to prove that when St. Francis sent the telefax dated August 1, 2000, it was aware that input VAT cannot be considered as a construction cost if credited against output VAT. In fact, the issue of whether input VAT is a construction cost arose only when St. Francis filed a complaint before the CIAC on November 7, 2008 because of the ambiguity of the meaning and scope of the term "ARCC" as used in the MOA dated April 30, 2002.

At any rate, settled is the rule that ambiguities in a contract are interpreted against the party that caused the ambiguity.[17]

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[17] *Fortune Medicare, Inc. v. Amorin*, 729 Phil. 484 (2014).

"Any ambiguity in a contract whose terms are susceptible of different interpretations must be read against the party who drafted it."[18] As the party who drafted the MOA which nebulously defines the term "actual remaining construction cost to complete the project," Malayan has no one to blame but itself why input VAT should not be allowed as part of the ARCC.

The Dissenting Opinion further submits that it cannot be claimed that the inclusion of VAT in the costs has been trounced by the MOA because nothing in the MOA explicitly excludes input VAT from the ARCC. Besides, the core issue of this case is the determination of what expenditures are included in the ARCC in the context of Section 9 of the MOA, which treats "Remaining Construction Cost" (RCC) in general terms.[19] The Dissenting Opinion then stresses that the estimated RCC of ₱452,424,849 in Section 9 of the MOA included the unpaid balance on SEAPAC's contract amounting to ₱35,606,000.00, which was VAT-inclusive as explained by Malayan's witness; thus, input VAT should be allowed as part of the ARCC.

The Court disagrees. While nothing in the MOA explicitly excludes input VAT from the ARCC, neither does the MOA expressly include input VAT from the ARCC. In fact, one of the specific issues raised, but was not resolved by the CIAC and the CA, is whether input VAT paid to the government for goods and services utilized for the project is a cost which should be considered part of the actual remaining cost incurred by Malayan.[20]

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[18] *Id.*

[19] Section 9. Remaining Construction Cost. – (a) [St. Francis] represents and warrants to Malayan that Malayan can complete the Project at a cost not exceeding Four Hundred Fifty-Two Million Four Hundred Twenty-Four Thousand Eight Hundred Forty-Nine Pesos (₱452,424,849) as set forth in [St. Francis'] Construction Budget Report attached hereto and made an integral part hereof as Schedule 9 x x x.

[20] CIAC Award dated May 27, 2009, pp. 7-8: "2.2 Specifically, were the following costs and expenses part of the actual remaining construction cost incurred by Respondent [Malayan] and questioned by Claimant [St. Francis] to wit:

The Court does not dispute that Malayan's payment of the unpaid balance of SEAPAC's Contract and the Construction Cost Budget in Exhibit I of the SGV Report are VAT-inclusive. Bearing in mind that taxation is the rule while exemption is the exception, it is safe to state that SEAPAC's contract for the curtain wall and aluminum doors and windows of the condominium project, as well as items in the said construction cost budget (like Polystone Builders, Inc.'s sewerage treatment plant works) are subject to VAT — a tax on the taxable sale, barter or exchange of goods, properties or services. Hence, the official receipts of the services of the said construction contractors separately show the VAT component, as required by law. The Court stresses, however, that when Malayan paid the VAT for such services, it also incurred input VAT, which means the value added tax due from or paid by a VAT-registered person in the course of trade or business on importation of goods or local purchase of goods, properties or services, including lease of property, from another VAT-registered person.[21] This is because the buyer becomes entitled to the input tax upon consummation of the sale and issuance of a VAT invoice, in the case of sale of goods or properties, and upon payment of service fee or compensation, in the case of sale of services.[22]

Considering that Malayan admitted that it had offset its input VAT against its output VAT, Malayan is deemed to have decided to pass the burden of the tax to the buyers of the condominium units and parking lots, and it virtually incurred no actual expenditure which could be included in the computation of the ARCC. The Court, therefore, rules that since Malayan had already benefitted from the crediting of the input VAT against its output VAT liabilities, to allow Malayan to claim input VAT as part of the ARCC would result in unjust enrichment:

2.2.4 Input Value Added Tax ("VAT") paid to the government for goods and services utilized for the Project";

[21] Section 110 (A) of the National Internal Revenue Code.

[22] *Value Added Tax in the Philippines*, Victorino C. Mamalateo, 2013, p. 4.

Malayan's proportionate share in the reserved units would increase whereas that of St. Francis will decrease.

Meanwhile, in arguing that input VAT should be allowed to remain as a component of the ARCC, Malayan cannot successfully rely on BIR Ruling No. 229-15 dated 30 June 2015 to the effect that once shifted to the buyer/customer as an addition to the costs of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods and services. Suffice it to state that Malayan is not the final buyer/customer contemplated in the BIR ruling, because it is a VAT- registered purchaser which, in the ordinary course of its business, has shifted the burden of such indirect tax to the buyers of its condominium units and parking lots, and has also used input VAT to offset its out-put VAT liabilities.

In fine, the Court reverses its ruling and holds that input VAT in the amount of ₱45,419,770.44[23] which is based on the official receipts, check vouchers and other supporting documents marked as Exhibit "*R-48-series*",[24] should be disallowed in the computation of the ARCC.

The Dissenting Opinion, citing Section 1, Rule 37 of the Rules of Court, states that "*Motions for reconsideration should be granted only upon a showing that the "evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law*." It adds, citing *Lazatin v. Desierto*,[25] that "*Decisions of this Court should only be set aside, abandoned, and reversed only on strong and compelling reason, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurable affected and the public's confidence in the stability of the solemn pronouncements diminished*."

Contrary to the Dissenting Opinion, what Section 1, Rule 37 provides is that the "aggrieved party may also move for

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[23] *Rollo* (G.R. Nos. 198916-17), Vol. IV, p. 5512; Exhibit "*C-50*".

[24] *Rollo* (G.R. Nos. 198916-17), Vols. II & IV, pp. 1370-3600.

[25] 606 Phil. 271 (2000).

reconsideration upon the grounds that the damages are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law." Section 2, of Rule 37. To be sure, the very purpose of a motion for reconsideration is to point out the findings and conclusions of the decision which in the movant's view, are not supported by law or the evidence. "The movant, therefore, is very often confined to the amplification on further discussion of the same issues already passed upon by the court. Otherwise, his remedy would not be a reconsideration of the decision but a new trial or some other remedy."[26]

After a careful review of the relevant law and jurisprudence, the Court finds that its earlier pronouncement regarding Input VAT is contrary to the nature thereof as an indirect consumption tax which is ultimately shouldered by final consumers, and that there would be unjust enrichment if the same is considered as part of the ARCC, despite the fact that Malayan had used its input VAT from the project to offset its output VAT liabilities.

The Dissenting Opinion's reliance on the afore-quoted phrase in *Lazatin v. Desierto* is also misplaced, because that applies to the doctrine of *stare decisis*, not to a motion for reconsideration, thus:

> The doctrine has assumed such value in our judicial system that the Court has ruled that [a]bandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished. Verily, only upon showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis*, can the courts be justified in setting aside the same.[27]

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[26] *Continental Cement Corporation v. Court of Appeals*, 263 Phil. 686 (1990).

[27] 606 Phil. 271 (2000). (Underscoring supplied)

Suffice it to state that the *stare decisis* is inapplicable to this case because there is no final decision yet, precisely because of the pending motions for reconsideration filed by both Malayan and St. Francis that are being resolved in this Resolution.

Having resolved the sole issue raised by St. Francis in its motion for partial reconsideration, the Court will now discuss in *seriatim* the issues raised by Malayan. It bears emphasis that the Court was constrained to review only those issues where there are conflicting findings of the CA and the CIAC as to the propriety of some arbitral awards, the accuracy of the mathematical computations and the entitlement to claim certain costs as part of the amount necessary to complete the project or ARCC. With respect to the other issues where the CA and the CIAC rendered consistent findings, the Court has also passed upon them, but found no compelling reason as to warrant a modification thereof.

A. Mathematical and clerical errors in the Court's decision which, if corrected will entitled Malayan to at least 59.9% of the reserved units and not just 30% thereof.

After a careful review of the records and a re-computation of the ARCC as will be discussed below, the Court finds that Malayan is entitled to **34%** of the reserved units, while St. Francis is entitled to **66%** of the said units.

A.1. Malayan's interest expense of ₱39,348,659.88 was excluded twice from the ARCC.

After thoroughly going over Exhibit "*R-48-series*", consisting of about 2,230 pages of construction costs computation, receipts, voucher, checks and other documents, the Court finds nothing in those documentary evidence to indicate that the interest expense of ₱39,348,659.88 paid by Malayan to Rizal Commercial Banking Corporation (RCBC) was included in the computation of the ARCC. While the Court agreed with CIAC that interest expense of ₱39,348,659.88 should be disallowed because it is not a direct construction cost, the same amount should no longer

be deducted from the ARCC based on Exhibit "*R-48-series*"[28] in the amount of ₱554,583,160.20. This is because the said interest expense was not included in the first place in the computation of the ARCC under Exhibit "*R-48-series*", in stark contrast to Exhibit "*C-3*"[29] or the cost to complete the project as of August 10, 2006, and Exhibit "*R-24*"[30] or the cost to complete as of October 2008, which both included interest expense as part of the ARCC.

A.2. The sum of items under "Total Exclusions" is ₱15,158,864.73 not ₱15,768,864.73.

A.3. At least 3 items under "Total Exclusions" are fully supported by official receipts, checks, check vouchers and/other documents.

In jointly resolving these twin issues, the Court takes a second look into Exhibit "*R-48-series*" in order to determine whether the following costs are substantiated by official receipts, checks, cash/check vouchers or other documents, and should be included in the computation of the ARCC: (1) ₱9,297,947.22 under Item 1.0 which refers to contract award to Total Venture, Inc. (TVI) for "General Construction and Fit-Out Works"; (2) ₱725,877.62 under Items 5.3 and 5.4 which pertain to Total Net Payment including 11% Attendant Fee" paid to TVI, and (3) ₱2,397,047.89 under Item 6.12.3.

Malayan claims that the total amount of expenses under Item 1.0 that are fully supported by official receipts is not only ₱85,818,322.72 or P95,116,269 but ₱104,841,576.73 [₱85,818,322.72 + (₱19,023,254.01 representing the two down payments to TVI in the amounts of ₱9,338,688.33 each)]. As a result of change orders and contract adjustments, Malayan submits that it included in the ARCC only the total adjusted contract amount of ₱98,415,523.98 based on Exhibit "*R-24*",

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[28] *Rollo* (G.R. Nos. 198916-17), Vols. II & IV, pp. 1370-3600.

[29] *Rollo* (G.R. Nos. 198920-21), Vol. I, p. 344. Total amount of interest expense is ₱37,705,346.62.

[30] *Id.* at 368. Total amount of interest expense is ₱39,348,659.88.

and that it is inaccurate to state that the amount of ₱9,297,947.22 is an unsubstantiated cost. The Dissenting Opinion agrees with Malayan.

However, the Court notes that the error in Malayan's claim lies in the fact that it merely banks on Exhibit "*R-24*" which is a mere tabulation of cost to complete the project as of October 2008 without supporting proofs of payment. After reviewing its computation based on Exhibit "*R-48-series*,"[31] consisting of construction costs computation, official receipts, vouchers, checks and recommendations for payment, the Court sees no cogent reason to reverse its ruling that the amount of ₱9,297,947.22 (Contract balance included in final payment) under Item 1.0 is an unsubstantiated cost which should be excluded in the computation of the ARCC.

Contrary to Malayan's claim and the Dissenting Opinion, the Court finds that Exhibit "*R-48-A-series*"[32] shows that only the total net payment of ₱80,309,108.43 is supported by official receipts and vouchers.[33] The said amount consists of a total net payment of ₱61,631,731.77 and the two (2) net down payments of ₱9,338,688.33 worth ₱18,677,376.66. The total amount of ₱85,818,322.72 cannot be considered as part of the ARCC because it includes the total deductions in the amount of ₱24,186,590.95. It should also be pointed out that while the 2 down payments of ₱9,511,627.00 with a total value of ₱19,023,254.01 are supported by official receipts, the said amount likewise includes total deductions of ₱345,877.35 [₱172,938.67 x 2] representing 2% withholding tax, which should be excluded in the ARCC. To stress, ARCC refers only to the actual expenditures made to complete the project; hence, the total amount of deductions ₱24,532,468.30 [₱24,186,590.95 + ₱345,877.35] should be not be allowed as part of the ARCC.

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[31] *Rollo* (G.R. Nos. 198916-17), Vol. II, pp. 1370-1419.

[32] *Id.* at 1371.

[33] *Id.* at 1372-1419.

Malayan also contends that costs under Items 5.3 and 5.4 involving the amount of ₱725,877.62 should be included in the ARCC because this expense is substantiated by official receipt No. 1912 in the amount of ₱1,051,922.82 which TVI issued to Malayan on 10 December 2004. Unfortunately for Malayan, the Court has perused the said official receipt and cash voucher,[34] but failed to see how a payment ₱1,051,922.82 substantiates the claim for Total Net Payment (including 11% Attendance Fee) of the exact amount of ₱725,877.62. Contrary to the view of the Dissenting Opinion that it is of no moment that the receipt bears an amount larger than what has been declared as the difference will even be for the benefit of St. Francis, the Court maintains that the unexplained difference is crucial because the computation of the ARCC is based consistently on official receipts, cash vouchers and other evidence of payment.

Anent Item 6.12.3 involving the amount of ₱2,397,047.89, the Court finds merit in Malayan's contention that there are two distinct costs items labeled as "Item 6.12.3" and supported by official receipts, namely: (1) Cesar Abaya Plumbing, Inc. – Change Order No. 3 – Plumbing and Sanitary & Fire Protection Works in the amount of ₱2,702,952.11;[35] and (2) ACG Builders Center – Supply and delivery of Plumbing Fixtures and Access in the amount of ₱5,100,000.00.[36] Hence, the Court holds that costs under Item. 6.12.3 in the amount of ₱2,397,047.89 should not be excluded from the ARCC.

As corrected, the Court's computation of the net ARCC of **₱511,851,901.12** is arrived at as follows:

Construction Cost as per receipts (Exhibit "*R-48-series*"[37])
(with 1/11% Input VAT and 2% withholding tax) – **₱554,583,160.20**

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[34] *Id.* at 1662.

[35] *Id.* at 2520-2521; "Exhibit *R-48-F-47 series*".

[36] *Id.* at 2550-2565; Exhibit "*R-48-F-55 series*".

[37] *Rollo* (G.R. Nos. 198916-17), Vols. II & IV, pp. 1370-3600.

Total Inclusion: ~~₱8,282,974 .82~~	**₱17,807,364.98**[38]	
Award to Total Ventures, Inc. (~~Prolongation costs and extended Overhead~~)	–	+ ~~8,282,974.82~~ **₱17,807,364.98**
Total ARCC: ~~₱554,583,160.20+8,282,974.82~~ = ₱554,583,160.20+₱17,807,364.98 = (Construction Costs as per receipts + Inclusion)		~~₱562,866,135.02~~ **₱572,390,525.18**
Total Deductions: ₱41,705,696.66	~~₱~~ **₱47,776,807.22**	
~~Interest expense paid by Malayan to RCBC~~	–	~~₱39,348,659.88~~
Change orders not due to Reconfiguration	–	971,796.29
Contingencies	–	631,154.39
Interior Design Works	–	754,086.10
Input VAT		**+45,419,770.44**
		~~₱41,705,696.66~~ **₱47,776,807.22**
Total Exclusions: ~~₱15,768,864.73~~ (Unsubstantiated Costs)	**₱12,761,816.84**	
Item 1.0[39]	–	~~₱~~ 9,297,947.22
Items 5.3 and 5.4[40]	–	530,563.65
Items 5.3 and 5.4	–	725,877.62
Item 5.7.1[41]	–	50,710.61
Item 6.2.25[42]	–	194,171.00
Item 6.11[43]	–	3,499.64
Item 6.11	–	1,360.00
~~Item 6.12.3~~[44]	–	~~2,397,047.89~~[45]

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[38] See discussion below under issue letter "C" on the award in *TVI v. MICO*, CIAC Case No. 27-2007.

[39] *Rollo* (G.R. Nos. 198916-17), Vol. II, p. 1371; Exhibit "*R-48-A-series*".

[40] *Id.* at 1661; Exhibit "*R-48-E-4-series*".

[41] *Id.* at 1787; Exhibit "*R-48-E-20-series*".

[42] *Id.* at 2349; Exhibit "*R-48-F-27-series*".

[43] *Id.* at 2477; Exhibit "*R-48-F-43-series*".

[44] *Id.* at 2520; Exhibit "*R-48-F-47-series*".

[45] ~~₱~~5,100,000.00 [Item 6.12.3 per CA] - ~~₱~~2,702,952.11 [Item 6.12.3 per Exhibit "*R-48-F-47-series*."] = ~~₱~~2,397,047.89

Item F3[46]	–	368,397.52
Item F3	–	448,534.59
Item F3	–	634,232.26
Professional Fees C& D[47]	–	427,500.00
Professional Fees N[48]	–	+79,022.73
		~~₱15,768,864.73~~
		₱12,761,816.84
(Total Deductions)		~~₱~~47,776,807.22
(Total Exclusions)		+12,761,816.84
		~~₱~~ 60,538,624.06

Total ARCC - Total Deductions & Exclusions = **Net ARCC:**

~~₱562,866,135.02 - ₱15,768,864.73~~ = ~~₱505,391,573.63~~

₱572,390,525.18 - ~~₱~~60,538,624.06 = **~~₱~~511,851,901.12**

B. There was no issue a quo as to whether Malayan had incurred its ARCC amounting to ~~₱~~647,319,513.96, as this was admitted by the parties and accepted by the arbitral tribunal.

Having fully discussed this issue and finding no convincing argument in Malayan's motion to reconsider the ruling thereon, the Court restates the pertinent portion of its decision:

Contrary to the claim that St. Francis admitted that Malayan had incurred the ARCC of ~~₱~~647,319,513.96, the allegations in St. Francis complaint and the Amended Terms of Reference would show that the substantiation of the cost items included in the ARCC and the exact amount thereof are the core issues of the construction arbitration before the CIAC.

For one, the contention that St. Francis' complaint contained no allegation that Malayan had not actually incurred the costs in its ARCC, nor was there any claim that specific costs items in the ARCC lacked evidentiary basis, is belied by the following allegations in same complaint:

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[46] *Rollo* (G.R. Nos. 198916-17), Vol. IV, p. 3523; Exhibit "*R-48-U-series*".

[47] *Id.* at 3169; Exhibit "*R-48-H-series*".

[48] *Id.* at 3265; Exhibit "*R-48-H-6-series*".

> 2.9 Sometime in August of 2006, [Malayan] presented a cost to complete construction of the Project in the amount of SIX HUNDRED FOURTEEN MILLION FIVE HUNDRED NINETY THREE THOUSAND FIVE HUNDRED SIXTY FIVE PESOS and 96/100 (₱614,593,565.96). **Said cost to complete however was a mere tabulation with a listing of items and appurtenant costs. There was no independent proof or basis as well as evidence that claimant incurred these costs, much less, if these costs conform with the actual construction cost as the same is understood under the MOA.** x x x

For another, one of the admitted facts in the Amended Terms of Reference states that "[d]espite the completion of the Project and the turnover of the units to [St. Francis], [Malayan], and other buyers of units, the issue of actual cost of construction has not been resolved to the mutual satisfaction of the parties." Not to mention, one of the issues raised before the CIAC is "[w]hat is the actual remaining construction cost to complete the Project spent by [Malayan] as of today in excess of [St. Francis'] estimate RCC?" Clearly, there is no merit in the claim that St. Francis admitted that Malayan had incurred the ARCC of ₱647,319,513.96 as of October 2008. It can be gathered from the complaint that, as early as August 2006 when the ARCC was just ₱614,593,565.96, St. Francis already disputed such amount for lack of independent proof or evidence that Malayan incurred these costs.

Anent Malayan's claim that St. Francis argued belatedly in its Draft Decision and its petition before the CA that new cost items should also be deducted from the ARCC because they were allegedly unsubstantiated or not fully supported by official receipts, suffice it to state that whether such cost items should be excluded from the ARCC is impliedly included in the issue of "[w]hat is the actual remaining construction cost to complete the Project spent by [Malayan] as of today in excess of [St. Francis'] estimate RCC?"

Moreover, in an action arising out of cost overruns on a construction project, the builder who has exclusive control of the project and is in a better position to know what other factors, if any, caused the increases, has the burden of segregating the overruns attributable to its own conduct from overruns due to other causes. As the co-owner and developer who assumed the general supervision, management and control over the project, and the one in possession of all the checks, vouchers, official receipts and other relevant documents,

Malayan bears the burden of proving that it incurred ARCC in excess of the RCC and the total aggregate value of the reserved units, in which case St. Francis would no longer be entitled to a proportionate share in the reserved units pursuant to the MOA.

In view of the foregoing discussion, the Court finds no merit in Malayan's contentions (1) that it did not have the burden of proving that it incurred the costs in its ARCC because this was never in issue; and (2) that there can be no dispute that it had incurred the ARCC of ₱647,319,513.96 based on the unrebutted testimony of its witnesses and the voluminous documents it introduced at trial.[49]

C. The entire monetary award of ₱21,948,852.39 which Malayan paid to TVI (in TVI vs. Malayan docketed as CIAC Case No. 27-2007) should be included in the ARCC, as they are purely direct construction costs.

The Court finds partial merit in Malayan's claim that the monetary award which Malayan paid to Total Ventures, Inc. pursuant to *TVI v. MICO* docketed as CIAC Case No. 27-2007 should be included in the ARCC because the components thereof are direct construction costs.

It must be emphasized that one of the issues raised in the Amended Terms of Reference is whether cost and expenses incurred by Malayan and questioned by St. Francis relative to the "Judgment Award in CIAC Case No. 27-2007 (*TVI v. MICO*)" should be allowed to form part of the ARCC. The CIAC made reference to CIAC Case No. 27-2007 with respect only to the allowance of ₱10,200,000.00 as attendance fees, and the disallowance of ₱6,000,000.00 as prolongation costs and extended overhead, whereas the CA held that it is proper to include in the ARCC the entire award of ₱21,948,852.39, which Malayan paid to TVI in accordance with CIAC Case No. 27-2007. In light of the conflicting findings of the CIAC and the CA, the Court reviewed the records and ruled that the prolongation costs and extended overhead for the period of January 2005 to August 2005 (₱6,313,846.43) and September 1,

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[49] Citations omitted; emphasis in the original.

2005 to August 31, 2005 (₱1,429,432.46) in the total amount ₱7,743,278.89,[50] as well as the accrued interest in the amount of ₱539,695.93,[51] or a total amount of ₱8,282,974.82, should be included as part of the ARCC. After a careful study of CIAC Case No. 27-2007 and of Malayan's motion for partial reconsideration, the Court resolves that a modification of its ruling is in order.

The Court maintains its ruling that the cause of delay in the completion of TVI's construction works was the reconfiguration of the room layout of the building along the side facing Discovery Suites hotel, was St. Francis' deviation from the original April 12, 1996 floor plans for the 9th to 31st floors of the project. Be that as it may, the Court cannot gloss over the CIAC's finding that the delay in the implementation of the project was also attributable to the "delay in the award by [Malayan Insurance Company, Inc.] MICO of the subcontract packages for other trade disciplines plus, the delayed delivery of materials which had a domino effect on the work of the succeeding packages, and eventually to the overall project completion date which had to be extended to August 31, 2005."[52] Considering that delays in the completion of the project was not only attributable to St. Francis but to Malayan as well, the Court finds it reasonable that only half of the prolongation costs and extended overhead

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[50] *Rollo* (G.R. Nos. 198916-17), Vol. I, p. 919, CIAC Decision in Case 27-2007, p. 66 of 68. Accordingly, the amount of **Php 20,518,725.34** adjudged in TVI's favor shall earn interest based on the 30-day regular loan rate of the Land Bank of the Philippines prevailing on the **due date** until the filing of this case with the CIAC.

As of October 30, 2006, the prevailing Prime Lending Rate as certified by Land Bank of the Philippines was 8.00% p.a. Time lapsed from October 31, 2006 (date of certification) to September 14, 2007 (filing of case with CIAC) is 318 days. TVI is therefore entitled to accrued interest computed as follows: **Php 20,518,725.34** (principal amount) x **.08** (interest rate) x **318/365** (days elapsed) or **Php 1,430,127.05**. (Emphasis in the original)

[51] (₱7,743,278.89 X. 08 X 318/365).

[52] *Rollo* (G.R. Nos. 198916-17), Vol. I, p. 917; CIAC Decision in Case 27-2007, pp. 64-68.

in the amount of ₱7,743,278.89,[53] or ₱3,871,639.45 should be included in the ARCC.

A cursory review of CIAC Case No. 27-2007 for which Malayan paid TVI in the full award of ₱21,948,852.39[54] and Exhibit "*R-48-series*" further impels the Court to rule that the following direct construction costs awarded by the CIAC, including the reduced prolongation costs and extended overhead, ought to be included in the ARCC:

Work accomplishment under the main contract -	₱ 1,378,521.12
Complete and accepted works on approved COs -	6,283,250.90
Extended overhead expenses for the period	
- January 2005 to August 2005 -	**3,156,923.22**[55]
- September 1, 2005 to August 31, 2005 -	**714,716.23**[56]
	[*3,871,639.45*][57]
Labor Escalation under the Main Contract -	1,542,380.59
And under the Change Orders -	403,843.12
Refund of advances for power consumption -	1,605,137.04
Refund of advances for water consumption -	282,139.36
OSM and STC Attendance Fee -	3,279,314.17
Unpaid billings on subcontractor's scope of work -	849,358.57
Work accomplishment for CPII.2 for Metal works -	240,537.07
Unbilled ONSC Attendance Fee -	3,255,677.12
Total Awarded Amount -	**₱ 22,991,798.51**[58]

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[53] Extended overhead expenses for the period of January 2005 to August 2005 ₱6,313,846.43 + ₱1,429,432.46 for the period of September 1, 2005 to August 31, 2005.

[54] *Rollo* (G.R. Nos. 198916-17), Vol. III, pp. 3781-3782; Exhibit "*R-65-A*".

[55] ₱6,313,846.43 / 2 = ₱3,156,923.22.

[56] ₱1,429,432.46 / 2 = ₱714,716.23.

[57] ₱3,156,923.22 + ₱714,716.23 = ₱3,871,639.45.

[58] In lieu of the amount the CIAC awarded to TVI in amount of ₱26,863,437.95.

The recomputed total award of ₱ 22,991,798.51 should be further reduced by the total amount of counterclaim awarded to MICO [Malayan] in the original sum of ₱6,344,712.61,[59] in order to arrive at the amount of award in *TVI v. MICO* (CIAC Case No. 27-2007) that the Court deems as the proper amount that should be allowed in the ARCC, *i.e.*, **₱16,647,085.90**.[60] Based on the dispositive portion of *TVI v. MICO*, accrued interest of **₱1,160,279.08**[61] should likewise be included in the ARCC. It should be stressed that the foregoing re-computation does not seek to alter the final award rendered by the CIAC between TVI and MICO (Malayan), but is only for the purpose of determining the proper amount that should be included in the ARCC. In sum, the Court resolves to allow the amount of **₱17,807,364.98** to be included in the ARCC, in lieu of ₱8,282,974.82 prolongation costs and extended overhead.

D. The peculiar signification which the parties gave to the term "Actual Remaining Construction Cost" in the 30 April 2002 Memorandum of Agreement prevails over the primary and general acceptation of the term "construction cost" in the construction industry.

Malayan's arguments on this issue fail to persuade, and they have already been discussed in the Court's decision in this wise:

> After a careful review of the MOA as to the scope and meaning of the term "ARCC," the Court sustains the CIAC that such term should be understood as the actual expenditures necessary to complete the project, which is the traditional "construction" sense rather than the "investment" sense. The Court thus reverses the CA's ruling that the parties' intention was to also include in the computation of the ARCC whatever expenditures relative to the actual completion of

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[59] *Rollo* (G.R. Nos. 198916-17), Vol. I, p. 920; CIAC Decision in Case No. 27-2007, p. 67.

[60] ₱22,991,798.51 - ₱6,344,712.61 = ₱16,647,085.90.

[61] *Rollo* (G.R. Nos. 198916-17), Vol. I, p. 921. Computed as follows: ₱16,647,085.90 (principal amount) x .08 (interest rate) x 318/365 (days elapsed).

the project, as such expenses are considered as their investment subject to the proportionate sharing after determining the actual construction cost.

It bears stressing that the intent of the parties in entering into the MOA is to provide for the terms and conditions of the completion of the Project and the allocation of the ownership of condominium units in the Project among themselves. To recall, Malayan and St. Francis (then ASB) entered into the Joint Project Development Agreement (JPDA) dated November 9, 1995 to construct a thirty-six (36) storey condominium [but originally a fifty (50) storey building] whereby the parties agreed (a) that Malayan would contribute a parcel of land, and ASB would defray the construction cost of the project, and (b) that they would allocate the net saleable area of the project, as return of their capital investment. In a Contract to Sell dated November 20, 1996, Malayan also agreed to sell the said land to ASB (now, St. Francis) for a consideration of ₱640,847,928.48, but the latter was only able to pay ₱427,231,952.32. However, ASB was unable to completely perform its obligations under the JPDA and the Contract to Sell because it underwent corporate rehabilitation, and the Securities and Exchange Commission suspended, among other things, the performance of such obligations. Since ASB had pre-sold a number of condominium units, and in order to protect the interests of the buyers, to preserve its interest in the project, its goodwill and business reputation, Malayan proposed to complete subject to the terms and conditions of the MOA.

Under Section 5(a) of the MOA, Malayan undertook to construct, develop and complete the Project based on the general specifications already agreed upon by the parties and set forth in Schedule 6 of the MOA, within two (2) years from (i) the date of effectivity of Malayan's obligations as provided in Section 21 or (ii) the date of approval of all financing/loan facilities from any financial or banking institution to fully finance the obligations of Malayan under the MOA, whichever of said dates shall come later; or within such extended period as may be agreed upon by the parties. Section 21 of the MOA provides that Malayan shall be bound by and perform its obligations, including the completion of the Project, only upon (i) fulfilment by St. Francis of all its obligations under Section 6, items (a), (b), (c) and (d), and (ii) approval by the Insurance Commission of the MOA.

Section 5(a) of the MOA also states that that the project shall be deemed complete, and the obligation of Malayan fulfilled, if the

construction and development of the Project is finished as certified by the architect of the project. Upon completion of the project, the general provision which governs the distribution and disposition of units is the first sentence of Section 4(a) of the MOA, *to wit*: "[a]s a return of its capital investment in the Project, each party shall be entitled to such portion of all the net saleable area of the Building that their respective contributions to the Project bear to the actual construction cost." The second sentence of Section 4(a) provides the specific details on the *pro rata* sharing of units to which the parties are entitled based on the RCC in relation to total costs incurred as of the date of the execution of the MOA dated April 30, 2002. It also states, however, that entitlement to certain units are subject to adjustments in the event that the ARCC exceeds the RCC, and Malayan pays for such excess.

Clearly, the parties foresaw that Malayan may incur additional cost and expenses in excess of the Remaining Construction Cost (RCC) of ₱452,424,849.00 which amount St. Francis represented and warranted that Malayan would have to spend to complete the project. Section 9(b) of the MOA thus adds that in such event, Malayan shall be entitled to such net saleable area as indicated in Schedule 4 that corresponds to the increase in remaining construction costs, while St. Francis shall be entitled to such net saleable area, if any, remaining in the said Schedule 4. As admitted by the parties in the Amended Terms of Reference, the net saleable area included in Schedule 4 ("Reserved Units") originally covered fifty three (53) units [which was reduced to thirty nine (39) units after reconfiguration] with thirty eight (38) parking spaces, and the aggregate monetary value of said units is ₱175,856,323.05.

In determining the entitlement of the parties to the reserved units in Schedule 4, Malayan insists that the ARCC should include all its capital contributions to complete the project, including financial costs which are not directly related to the construction of the building. It argues that the MOA is replete with provisions recognizing the parties' intent to include in the ARCC their respective capital contributions or investment.

Malayan's argument fails to persuade.

The term ARCC should only be construed in light of its plain meaning which is the actual expenditures necessary to complete the project, and it is not equivalent to the term "investment" under the MOA.

As stated in the MOA, the investment of Malayan is composed of (1) the amount necessary to complete the project, and (2) the following amounts: (a) ₱65,804,381, representing Malayan's payment on behalf of ASB (now, St. Francis) of the principal amount of the loan obtained by ASB from the RCBC to finance the project; and (b) ₱38,176,725, representing Malayan's payment on behalf of ASB of the outstanding obligations to project contractors as of the signing of the MOA. On the other hand, the investment of St. Francis is broadly defined as the ASB's invested amount equivalent to its entitlement to the net saleable area of the building under Section 4 of the MOA, including ASB's interest as buyer under the Contract to Sell. Hence, the Court holds that the ARCC, which pertains only to the amount necessary to complete the project, can be considered as part of the capital investment, but they are not synonymous.

Likewise negating Malayan's argument that all its contribution to complete the project should be included in the ARCC is the restrictive construction industry definition of "construction cost", *to wit*: the cost of all construction portions of the project, generally based upon the sum of the construction contract(s) and other direct construction costs; it does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner.[62]

E. The terms of the MOA and the contemporaneous acts of the parties indicate that costs incurred to finance the completion of the Project, such as interest expense, must be included in the ARCC.

Having exhaustively discussed and resolved this issue in its decision, the Court finds no justifiable reason to overturn its ruling, thus:

The Court upholds the CIAC ruling to disallow the interest expense from loans secured by Malayan to finance the completion of the project, and thus reverses the CA ruling that such expense in the amount of ₱39,348,659.88 should be included in the computation of the ARCC. As correctly held by the CIAC, only costs directly related to construction costs should be included in the ARCC. Interest expense should not

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[62] Citations omitted.

be included in the computation of the ARCC because it is not an actual expenditure necessary to complete the project, but a mere financial cost. As will be discussed later, the term ARCC should be construed in its traditional "construction" sense, rather than in the "investment" sense.

It also bears emphasis that part of Malayan's investment under Section 2 of the MOA is the payment of ₱65,804,381 as the principal amount of the loan obtained by ASB from the Rizal Commercial Banking Corporation (RCBC) to finance the project. If it were the intention of the parties to include interest expense as part of their investments, or even the ARCC, then the MOA would have expressly indicated such intent in the provisions on investments of Malayan and of ASB. Nowhere in the provisions of the MOA can it be gathered that interest expense is included in the computation of the ARCC.

Apart from the ARCC's definition as actual expenditures necessary to complete the project, the closest provision in the MOA that could shed light on the scope and meaning of ARCC is Section 9 on the Remaining Construction Cost (RCC) whereby St. Francis represented and warranted that Malayan can complete the project at a cost not exceeding ₱452,424,849.00 as set forth in ASB's Construction Budget Report, which reads:

Estimated Cost to Complete

I. Balance to Complete Existing Contracts–	Php 161,098,039.86
II. Unawarded Contracts	224,045,419.16
II. Professional Fee	4,138,108.08
IV. Contingencies	63,143,281.10
	Php 452,424,849.10

The Court concurs with the CIAC that the ARCC was intended to be spent within and among the four categories above, subject to adjustments by reason of price increases and awarded contracts. In construction parlance, "contingency" is an amount of money, included in the budget for building construction, that is uncommitted for any purpose, intended to cover the cost of unforeseen factors related to the construction which are not specifically addressed in the budget. Being a cost of borrowing money, interest expense from bank loans to finance the project completion can hardly be considered as a cost due to unforeseen factors.

That interest expense cannot be considered as part of any of the said categories is further substantiated by the reports of the Davis

Langdon Seah Philippines, Inc. (DLS) and Surequest Development Associates (Surequest), which contain traditional construction cost components and items, but not investment costs such as interest expense. As the one who engaged the services of both DLS and Surequest to come up with a valuation of the cost to complete the project and to evaluate what had been accomplished in the project prior the take-over, Malayan cannot deny that interest expense is not included in their computation of the construction costs.

As regards the supposed contemporaneous act of St. Francis of including the amount of ₱207,500,000.00 as interest expense in its claim for reimbursement for its contributions in the project, in the form of several units per Schedules 1 and 3 of the MOA, the Court cannot determine whether or not such expense should be considered as its contribution for purposes of computing the return of capital investment. Unlike the investment of Malayan which is specifically stated under Section 2 of the MOA, but does not include payment of interest of the bank loan to finance the project, the investment of ASB (now, St. Francis) is merely described as follows:

Section 3. *Recognition of ASB's Investment*. The parties confirm that as of the date hereof, ASB invested in the Project an amount equivalent to its entitlement to the net saleable area of the Building under Section 4 below, including ASB's interest as buyer under the Contract to Sell.

From such vague definition of ASB's investment, the Court cannot rule if St. Francis should also be disallowed from claiming interest expense as part of its investment, unlike Malayan which is disallowed from including interest expense as part of the ARCC contemplated in the MOA, because such financial cost is not an actual expenditure necessary to complete the project. Having in mind the rule that the interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity, the Court cannot give credence to the August 1, 2000 telefax of Evelyn Nolasco, St. Francis' former Chief Financial Officer (CFO), to Malayan's CFO, Gema Cheng, which shows St. Francis' computation for reimbursement, including the claim of ₱207,500,000.00 as interest expense.

Further negating Malayan's claim that interest expense should be included in the computation of the ARCC is the restrictive construction industry definition of the term "construction cost" which means the cost of all construction portions of the project, generally based upon the sum of the construction contracts(s) and other direct construction

costs; it does not include the compensation paid to the architect and consultants, the cost of the land, right-of-way, or other costs which are defined in the contract documents as being the responsibility of the owner. Aside from the fact that such expense is not a directly related construction cost, Section 2 of the MOA states that Malayan's investment includes, among other matters, the amount it had paid to RCBC, on behalf of ASB, for the principal loan to finance the project, but not the interest thereof. This casts doubt on Malayan's claim that the parties intended interest expense to become part of their capital contribution, let alone the ARCC.[63]

F. Malayan implemented the "change orders not due to reconfiguration" with an aggregate value of ₱971,796.29 in order to address security, safety, and marketability concerns, hence, these costs should have been included in the ARCC.

G. Considering that the increase in the costs for interior design works is presumed fair and regular, and St. Francis failed to prove otherwise, the entire increase should have been included in the ARCC.

H. Contigency Costs of ₱631,154.39 should have been included in the ARCC, because these were necessary to ensure the continued construction of the Project.

I. Several costs incurred or paid after June 2006 which were still necessary for the completion of the Project should have been included in the ARCC.

Malayan's arguments on these four issues are mere reiterations of those raised in its petition, which have already been decided in like manner by the CA and the CIAC. Considering that the common factual findings of the CIAC and the CA are supported by substantial evidence, and there being no significant matter raised in Malayan's motion for partial reconsideration, the Court upholds its ruling on said issues, to wit:

D.2. Change Order not due to Reconfiguration

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[63] Citations omitted.

Since the findings of the CIAC and the CA on this issue are consistent, the Court perceives no cogent reason to overturn such findings which are supported by substantial evidence. Besides, the Court takes issue with Malayan's claim that the CA gravely erred in rigidly applying the specifications in Schedule 6 of the MOA, considering that they were "general" in character and "for reference" purposes only. It is noteworthy that Schedule 6 not only provides for the Schedule of Finishes and Materials of ASB Malayan Tower as of 26 October 2000, covering Exterior Works, Interior Works, Elevators, Intercom, Fire Alarm System, Standby Generator Set, Lightning Protection and Pumps, among other things, but also includes the project floor plans from Basement 2 to 6, and levels 4, 5, 7 to 12, 14 to 18, 20, 22 to 31, 33 to 35, penthouse and upper penthouse. When a building contract refers to the plans and specifications and so makes them a part of itself, the contract is to be construed as to its terms and scope together with the plans and specifications. When the plans and specifications are by express terms made part of the contract, the terms of the plans and specifications will control with the same force as if they were physically incorporated in the very contract itself. Malayan cannot, therefore, brush aside Schedule 6 as "general" and "for reference only" matters in the interpretation of the MOA.

As to the costs incurred due to the supposed reasonable deviations from specifications in the exercise of its sound discretion as the developer, Malayan would do well to bear in mind that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. Under Section 5 of the MOA, Malayan undertook to construct, develop and complete the project based on the general specifications already agreed upon by the parties and set forth in Schedule 6 thereof. As duly pointed out by the CIAC, since the parties to the MOA had agreed on the specifications that will control the construction and completion of the project, anything that alters or adds to these specifications which adds to the costs, should not be part of the ARCC.

D.5. Half of Costs for Interior Design Works

x x x x x x x x x

The Court agrees with the CA and the CIAC rulings that the costs for interior design works should be included in the computation of the ARCC, and that what is being contested is whether the net increase of ₱3,049,909.73 from the original budget of ₱11,100,415.00. As

correctly found by the CA based on the official receipts, the net increase should only be ₱1,508,172.21. The also Court sustains the CA that such increase should be equally divided between the parties (₱754,086.10 each) due to the impossibility of separating the increased cost arising from flooring change and those from causes (change of specifications) other than gym equipment and the underlay of plywood and rubber pads.

However, there being no valid reason to extend such equal sharing of costs with respect to the gym items, the Court reverses the CA and the CIAC in ruling that costs of the gym equipment (₱962,250.00) and the underlay of plywood and rubber (₱96,967.73) amounting to ₱1,059,217.73 should be equally shared by the parties. The Court thus holds that the full amount thereof should be included in the computation of the ARCC.

D.6. **Contingency Cost**

x x x x x x x x x

The Court sustains the CAin ruling that the contingency costs in the amount of ₱631,154.39 should not be included in the computation of the ARCC. As duly noted by the CIAC and the CA, legal fees cannot be considered as part of the ARCC, as they are not directly related to the completion of the project. Despite the allegation that a TRO was issued, no proof of such order was presented by Malayan. Hence, such costs should not be included as part of the ARCC, but should be charged against the party responsible for the incident, or Malayan as the one responsible for the general supervision, management, control over the project.

D.7. **Costs Incurred/Paid after June 2006**

x x x x x x x x x

The Court finds no compelling reason to disturb the CA and the CIAC rulings that are consistent with Section 5 of the MOA which expressly states that the project "shall be deemed complete, and the obligation of Malayan fulfilled, if the construction and development of Project is finished as certified by the architect of the Project." Indeed, costs and expenses incurred after completion of the project cannot be considered as part of the ARCC.[64]

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[64] Citations omitted; emphasis added.

J. There being no legal basis to exclude any of the costs in Malayan's ARCC in the amount of ₱647,319,513.96, St. Francis is not entitled to a share in the Reserved units.

K. St. Francis is not entitled to any share in the income from the Reserved Units.

These two related issues should be resolved in the negative. In view of the modification of the computation of the total ARCC in light of the exclusion of the interest expense, and the inclusion of the cost under Item 6.12.3 and the award in *TVI v. MICO* in CIAC Case No. 27-2007, the Court modifies its ruling and holds that **34%** of the reserved units should be allocated to Malayan, while **66%** should be allocated to St. Francis. Below is the corrected computation of the parties' proportionate share in the said units:

₱511,851,901.12 [Net ARCC] - ₱452,424,849.00 [RCC] = **₱59,427,052.12** [Excess ARCC]

₱59,427,052.12 [Excess ARCC] / ₱175,856,325.05 [Total Aggregate Value of Reserved Units] = 0.3379 or **34%** - share of Malayan

₱116,429,272.93/₱175,856,325.05 = 0.6621 or **66%** - share of St. Francis.

In the same vein, St. Francis is also entitled to **66%** share in the income of said units, as discussed in the Court's decision, which upheld the parallel findings of the CIAC and the CA:

The Court finds that Malayan's obligation to give the reserved units is unilateral because it was subject to 2 suspensive conditions, *i.e.*, the completion of the project and the determination of the ARCC, the happening of which are entirely dependent upon Malayan, without any equivalent prestation on the part of St. Francis. Even if the obligation is unilateral, Malayan cannot appropriate all the civil fruits received because it could be inferred from the nature and circumstances of the obligation that the intention of the person constituting the same was different. Section 9(b) of the MOA states that in the event that Malayan shall pay additional cost and expenses in excess of the RCC, it shall be entitled to such net saleable areas indicated in Schedule

4 that corresponds to the increase in the remaining construction costs, while St. Francis shall be entitled to such remaining areas, if any.

As aptly noted by the CIAC, the determination of the ARCC should have been made upon the date of completion of the project on June 7, 2006, but it was only about 3 years later during the arbitration proceedings that such determination was done. Not until now has the issue of the correct computation of the ARCC been finally resolved. Such long delay in the determination of the ARCC and the proportionate distribution of units in the project could not have been the intention of the parties. The Court therefore sustains the CA and the CIAC rulings that the income realized from the reserved units from the completion date until present, should be considered as having received by Malayan in trust for such party that shall be determined to be the owner thereof. In light of the determination of the excess of the ARCC over the RCC, the income should be proportionately shared as follows: 30% for Malayan and 70% for St. Francis. Subject to proper accounting, upkeep expenses for the reserved units should also be shared by the parties in the same proportion.

Legal interest at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid is imposed upon the obligation of Malayan to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date of the completion of the project on June 7, 2006 up to the finality of this decision, pursuant to Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013.[65]

L. St. Francis' complaint is without basis, and it should be held liable for attorney's fees and arbitration costs.

Suffice it to state that no substantial argument was raised in Malayan's motion for partial reconsideration, as to warrant the reversal of the Court's ruling on this issue to the effect that the claim for attorney's fees must be denied, and that the arbitration expenses in the total amount of ₱1,064,517.38 should be shared in the following proportion:

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[65] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 282-283 (2013).

1. St. Francis: ₱202,161,179.09/₱228,814,375.17 = 0.88 x ₱1,064,517.38 = ₱ 936,775.29

2. Malayan: ₱26,653,196.08/₱228,814,375.17 = 0.12 x ₱1,064,517.38 = ₱ 127,742.09

Total Arbitration Expenses = ₱ 1,064,517.38

WHEREFORE, the Court's Decision dated January 11, 2016, which affirmed with modification the Court of Appeals Decision dated January 27, 2011 in CA-G.R. SP Nos. 109286 and 109298, is **AFFIRMED** with the following **MODIFICATIONS**:

1) The total amount of **₱60,538,624.06** should be deducted and excluded from the gross Actual Remaining Construction Cost (ARCC) of **₱572,390,525.18** to arrive at the net ARCC of **₱511,851,901.12**;

Malayan is entitled to **34%** ownership over the reserved units **₱59,427,052.12/**₱175,856,325.05), together with the corresponding interest in the income realized thereon in the same proportion; while St. Francis is entitled to **66% ₱116,429,272.93/**₱175,856,325.05) ownership of the said units, as well as to its corresponding share in the said income. The distribution of the parties' proportionate share in the units shall be made by drawing of lots;

2) Malayan is directed to deliver possession and transfer title over the reserved units in the proportion above stated, to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date of the completion of the project on June 7, 2006 up to the finality of this decision, and to render full accounting of all the upkeep expenses, rentals and such other income derived from the reserved units so awarded to St. Francis; and

3) Legal interest at the rate of Six percent (6%) *per annum* from finality of this Decision until fully paid, is imposed upon the obligation of Malayan to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date of the completion of the project on June 7, 2006 up to the finality of this decision.

All other matters stated in the dispositive portion of the Court's January 11, 2016 Decision, which are not affected by the above modifications **STAND.**

SO ORDERED.

Jardeleza, Caguioa, and *Reyes, Jr., JJ.*, concur.

Velasco, Jr. (Chairperson), J., see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

I am constrained to register my dissent from so much of the Resolution that deducts the Input Value Added Tax (VAT) and excludes Items 1.0 and Items 5.3 and 5.4 in the computation of the Actual Remaining Construction Cost (ARCC).

Input VAT

While the Resolution understandably corrects the miscalculation in the Decision and restored the erroneously deducted Interest Expense from the Construction Cost as Per Receipt, it has taken a complete turn-around on the matter of the Input VAT, deducting it from the Construction as Per Receipt. To this, I regret that I cannot agree. Instead, I maintain my concurrence to the previous disposition as written in the Court's original Decision, viz:

The Court finds no compelling reason to disturb the consistent findings of the CA and the CIAC that Input VAT should be allowed to remain in the ARCC. As aptly pointed out by the CA and the CIAC, **ARCC refers to the actual expenditures made by Malayan to complete the proiect**. The Court thus agrees with Malayan that in determining whether input VAT should be included as ARCC, **the issue is not the technical classification of taxes under accounting rules, but whether such tax was incurred and paid as part of the construction cost**. Given that input VAT is, strictly speaking, a financial cost and not a direct construction cost, **it cannot be denied that Malayan had to pay input VAT as part of the contract price of goods and properties purchased, and services procured in order**

to complete the project. Moreover, that burden of such tax was shifted to Malayan by its suppliers and contractors is evident from the photocopies of cash vouchers and official receipts on record, which separately indicated the VAT component in accordance with Section 113(B) of the Tax Code.

Anent the claim that it would be unjust and inequitable if Malayan would be allowed to include its input VAT in the ARCC, as well as to offset such tax against its output tax, the Court finds that such coincidence does not result in unjust enrichment at the expense of St. Francis. **Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully. In offsetting its input VAT against output VAT, Malayan is merely availing of the benefits of the tax credit provisions of the law**, and it cannot be said to have benefitted at the expense or to the damage of St. Francis. After all, **Malayan is justified in including in the ARCC the input VAT it had paid as part of the contract price of goods, properties and services it had procured to complete the project**.

At any rate, St. Francis would also be entitled to avail of the same tax credit provisions upon the eventual sale of its proportionate share of the reserved units allocated and transferred to it by Malayan. It bears emphasis that the allocation of and share of such units to St. Francis is subject to output VAT which Malayan could offset against its input VAT. In turn, St. Francis would incur input VAT which it may later offset against its output VAT upon the sale of the said units. This is in accordance with the tax credit method of computing the VAT of a taxpayer whereby the input tax shifted by the seller to the buyer is credited against the buyer's output taxes when it in turn sells as the taxable goods, properties, or services.[1]

Given that the ARCC was construed as "the actual expenditures made by Malayan to complete the project," the Court did not take into consideration the "technical classification" of an Input VAT "under accounting rules but whether such tax was incurred and paid as part of the construction cost."

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[1] Emphasis and underscoring supplied.

The Court cannot be considered, as the Resolution makes it appear, to have "*overlooked* the nature of VAT as an indirect and consumption tax . . . [and that] it is passed on to final consumers."[2] This Court was all too aware of this aspect of input VAT; thus, the majority's Decision held that "[i]n offsetting its input VAT against output VAT, Malayan is merely availing of the benefits of the tax credit provisions of the law." But this aspect of the Input VAT as creditable tax finds no relevance in a case between two parties whose ultimate issue is the determination of their proportionate participation in the remaining units of the project.[3]

This case is not concerned with the tax liabilities of a party; it does not involve a "question of law" to classify and construe the technical meaning of an Input VAT — that has long been established. Neither does this case call on this Court to rule on whether the allocation or distribution of the remaining reserved units between St. Francis and Malayan is subject to tax; there is no quibbling that it does not. A thorough examination of this issue is unnecessary and is but a deviation from the real question: how much was actually expended by Malayan to complete the project?

Indeed, the present case concerns the determination of the meaning of the ARCC and it has been taken to mean, to reiterate for emphasis, as "the ***actual expenditures*** **made by Malayan** to complete the project."

In other words, the ARCC has been established as that which has been **incurred and paid out** by Malayan Insurance Company, Inc. (Malayan) to complete the construction of the project and *not* what it has actually suffered. It is not germane to the

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[2] Resolution, p. 8.

[3] As the Resolution itself puts it, "[t]he core issue is the pro rata sharing in the remaining net saleable area of the building, consisting of 39 condominium units and 38 parking slots worth ₱175,856,325.05, which can be resolved by determining how much the exact amount of the [ARCC] exceeded the Remaining Construction Cost (₱452,424,849.00)." Resolution, p. 11.

resolution of this case whether Malayan may be able to recoup its expenses. And the fact that it is in a position to offset the Input VAT with Output VAT does not justify the application of the doctrine of unjust enrichment to favor St. Francis.

The principle of unjust enrichment is provided under Article 22 of the Civil Code which states:

> Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter **without just or legal ground**, shall return the same to him.[4]

Consistent therewith, this Court held that the fundamental doctrine of unjust enrichment is the transfer of value **without just cause or consideration**.[5] As wisely stated in this Court's January 11, 2016 Decision in this case, "unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead **it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully**."[6] Thus, the first condition for the application of the doctrine is that that **a person is benefited *without a valid basis or justification***.[7]

Surely, this condition is absent in this case as Malayan has a just cause or valid basis to credit the Input VAT against the Output VAT under Section 110 of the National Internal Revenue.[8] As this Court first held, "in offsetting its input VAT against

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[4] Emphasis supplied.

[5] *Spouses Golez v. Nemeño*, G.R. No. 178317, September 23, 2015, citing *P.C. Javier & Sons, Inc. v. Court of Appeals*, 500 Phil. 419 (2005).

[6] Emphasis supplied.

[7] *Flores v. Spouses Lindo, Jr.*, 664 Phil. 210 (2011).

[8] **SEC. 110. Tax Credits. –**

A. Creditable Input Tax. –

(1) Any input tax evidenced by a VAT invoice or official receipt issued in accordance with Section 113 hereof on the following transactions shall be creditable against the output tax: x x x

output VAT, **Malayan is merely availing of the benefits of the tax credit provisions of the law**, and it cannot be said to have benefitted at the expense or to the damage of St. Francis. After all, **Malayan is justified in including in the ARCC the input VAT** it had paid as part of the contract price of the goods, properties and services it had procured to complete the project."[9]

Guilty of reiteration, the controversy hinges on what has been **disbursed** from the coffers of Malayan that was necessary for the construction of the project. As it is established that the "check vouchers, official receipts and other supporting documents indicate that payments made to contractors and suppliers of the construction project are VAT-inclusive,"[10] the **Input VAT incurred and paid by Malayan** should be considered part of the ARCC.

This finding has been made by the Construction Industry Arbitration Commission (CIAC) when it first had the opportunity to resolve the controversy and so allowed the inclusion of Input VAT in the computation of the ARCC. The CIAC held:

RESOLUTION OF ISSUE ON VAT

Unlike the issue of interest, here, **there is no question that input VAT is a direct construction cost and therefore, should be included in the ARCC**. The only question that remains is: What was the arrangement between Respondent on the one hand and its contractors/ suppliers on the other?

[St. Francis'] draft decision admits that VAT "*appear to have been deducted from the billings of the concerned supplier or subcontractor totalling ₱45,419,770.44 as reflected in the pertinent cash vouchers in Exhibit "R-48 series*." [St. Francis] questions whether said amounts deducted for VAT was actually remitted by [Malayan]. Thus, **[St. Francis] inferentially admits that [Malayan] is entitled to add the input VAT as part of the ARCC**.

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[9] Emphasis supplied.

[10] Resolution, p. 9.

While "*submission of the quarterly and annual VAT return*" would have provided incontrovertible proof of [Malayan]'s remittance to the BIR, as [St. Francis] asserts, there is no prohibition against considering the pertinent cash vouchers. Examination of the documentary evidence submitted by [Malayan] (Exhibit R-44 and Exhibit R-48, series) as well as those submitted by [St. Francis] itself (Exhibits C-37 up to C-40) has persuaded the Tribunal of their sufficiency to show such remittance. As earlier pointed out, the two reports (Surequest and DSL) support this conclusion. **Moreover, the contract entered into by [St. Francis] which were assumed by [Malayan} under the MOA, included the VAT as part of the costs.**

It is accordingly **the holding of this Arbitral Tribunal to ALLOW the input Value Added Taxes ("VAT") paid to the government for goods and services utilized for the Project to remain in the ARCC**.[11]

The Resolution, however, takes exception to the CIAC's ruling on the inclusion of the Input VAT in the ARCC supposedly because "the CIAC failed to explain why input VAT is a direct construction cost." A closer scrutiny of the foregoing excerpt from the CIAC's Award Order should provide the explanation forgone in the Resolution.

The CIAC clearly provided the following reasons why Input VAT is a direct cost that should be included in the ARCC: (1) St. Francis inferentially admitted that Malayan is entitled to add the input VAT as part of the ARCC given that St. Francis only questioned whether the amounts deducted for VAT were actually remitted by Malayan; and, more importantly, (2) the contract entered into by St. Francis which was assumed by Malayan under the MOA, included the VAT as part of the costs.

After discussing the nature of Input VAT as defined by law and jurisprudence, the appellate court in turn held, as pointed out in the draft Resolution, that "payment of input VAT was automatically deducted from the total obligations paid to contractors and suppliers, and that the documentary evidence submitted by Malayan and St. Francis had led the CIAC to [conclude] that they were sufficient to show proof of remittance

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[11] CIAC Award, p. 17; emphasis supplied.

to the government of the input VAT."[12] Ergo, the CA sustained the finding of the CIAC that the Input VAT is direct construction cost and therefore, should be included in the ARCC. The CA held, thus:

> In the instant case, a meticulous examination of the voluminous records related to it would clearly show that, in the payment of contracts and construction materials, Malayan has deducted Input VAT of 1/11% and 2% withholding tax from the contract price or construction cost and this was clearly specified in the check vouchers issued by it. Clearly, **the payment of input VAT was, in effect, shifted to Malayan** considering that 1/11% Input VAT was automatically deducted from the total obligations paid to contractors and suppliers concerned. Here, **the documentary evidence submitted by Malayan and St. Francis had led the CIAC to conclude that they are sufficient to show proof of remittance to the government of the Input VAT. Thus, We find it unnecessary to disturb the findings of the CIAC as it is generally conclusive and binding with the Court**. In sum, the summary of the Cash Vouchers presented by Malayan totalling ₱47,593,994.29 are sufficient proof of the filing and payment of input VAT by it in the absence of proof to the contrary evidencing grave abuse of discretion on the part of the CIAC.[13]

As stated at the outset, in its January 11, 2016 Decision, this Court through the Third Division, affirmed the consistent ruling of both CIAC and CA on the inclusion of the Input VAT on the ARCC.

It is oft-repeated that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally **accorded not only respect, but also finality, especially when affirmed by the CA**[14] **and this very Court**. The CIAC possesses that required

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[12] Resolution, p. 6, citing CA Decision.

[13] CA Decision, pp. 41 to 42; emphasis supplied.

[14] *De Guzman v. Tomulva*, 675 Phil. 808 (2011), citing *Shinryo (Philippines) Company, Inc. v. RRN Incorporated*, G.R. No. 172525, October 20, 2010, 634 SCRA 123, 130, citing *IBEX International, Inc. v. Government Service Insurance System*, G.R. No. 162095, October 12, 2009, 603 SCRA 306.

expertise in the field of construction arbitration and the **factual findings of its construction arbitrators are final and conclusive, not reviewable by this Court on appeal**.[15] The only exceptions are when:

> (1) [T]he award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or of any of them; (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.[16]

None of these exceptions finds application in this case. Least of all, given the aforequoted rationalizations provided by the CIAC in ruling on the inclusion of the Input VAT in the ARCC, this Court cannot plausibly conclude that it has so "imperfectly executed its powers such that a final and definite award was not made on the issue of whether input VAT should be included in the ARCC."[17] St. Francis has not even attempted to show, as it cannot, that the CIAC arbitral tribunal conducted its affairs in a "haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled."[18] Instead, St. Francis

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[15] *National Transmission Corp. v. Alphaomega Integrated Corp.*, G.R. No. 184295, July 30, 2014; *Philippine Race Horse Trainer's Association, Inc. v. Piedras Negras Construction and Development Corp.*, G.R. No. 192659, December 2, 2015.

[16] *Metro Rail Transit Development Corp. v. Gammon Philippines, Inc.*, G.R. No. 200401, January 17, 2018 and *CE Construction Corp. v. Araneta Center, Inc.*, G.R. No. 192725, August 9, 2017, citing *Spouses David v. Construction Industry and Arbitration Commission*, 479 Phil. 578 (2004).

[17] Resolution, p. 5.

[18] *CE Construction Corp. v. Araneta Center, Inc.*, G.R. No. 192725, August 9, 2017.

offered no new argument or any strong and compelling reason to warrant the reversal of the **uniform finding made by the CIAC, the CA, and this Court in its Decision as to the inclusion of the Input VAT**. Thus, there need not be a reconsideration of the issue as to the Input VAT.

Given the same arguments proffered by both parties on the issue of the inclusion or exclusion of the Input VAT in the ARCC, **this Court need only observe consistency in its rulings and that of both the CIAC and the CA**. It can hardly flip or flop as it wishes when it has been confronted with the very same evidence, the same facts, the same legal provisions, and the same contentions as when it first promulgated the Decision. Motions for reconsideration should be granted only upon a showing that "the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law."[19] Decisions of this Court should only be set aside, abandoned, and reversed "only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished."[20] This guideline, usually applied to emphasize the doctrine of *stare decisis*, finds more relevance in this case when the Court is dealing with the same parties, facts, and arguments. Again, St. Francis offered no new argument, much less any strong and compelling reason, to reverse this Court's original ruling on the issue of the Input VAT's inclusion in the ARCC. At the very least, the parties are entitled to the reasonable expectation that this Court will rule on a certain manner when confronted with the very same set of facts and propositions. It cannot adopt as a norm the possibility of changing the rules in the middle of the game. That will be contrary to the most basic principles of fair play.

This court can do no worse than disregard St. Francis' own use of Input VAT as part of its own computation of the cost

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[19] Section 1, Rule 37, Rules of Court

[20] *Lazatin v. Desierto*, 606 Phil. 271 (2009).

needed for the project. Per the telefax dated August 1, 2000 that St. Francis sent to Malayan, St. Francis included VAT in its "computation for reimbursement" for certain units in the Project:

I. COMPUTATION FOR REIMBURSEMENT

Sales	₱638,132,759
Disbursement:	
Pay to Malayan	427,231,953
Cost incurred	451,419,858
Advances to Contractor	35,298,336
Com. & VAT	**47,739,805**
Interest Expense	207,500,000
	1,169,189,952
	(65,804,831)
	1,103,385,571
Amount spent by ASB	465,252,812

St. Francis is estopped from claiming that Input VAT is, thus, excluded from the ARCC spent by Malayan on the project. Article 1431 of the New Civil Code (NCC) provides that "through estoppel, an admission or representation is rendered **conclusive** upon the person making it and cannot be denied or disproved as against the person relying thereon." This substantive law is echoed in Section 2(a) of Rule 131, which states that "[w]henever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission be permitted to falsify it." The fundamental considerations of equity and fair play underlying the principle of estoppel were explained by case law, thus:

> Estoppel in pais arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts. **The principle of estoppel would step in to prevent one party from going back on his or her own acts and**

representations to the prejudice of the other party who relied upon them. It is a principle of equity and natural justice, expressly adopted in Article 1431 of the New Civil Code and articulated as one of the conclusive presumptions in Rule 131, Section 2 (a) of our Rules of Court.[21]

For the principle of estoppel to apply, the following elements must be established: (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the actual facts.[22]

All the foregoing elements are extant in the present case. By St. Francis' own inclusion of VAT in calculating its own expenses and costs, which it had communicated to Malayan, it cannot be allowed to renege on its own representation and deny Malayan the same privilege of using VAT as a component of the ARCC. That would simply be inequitable.

It is not necessary for Malayan "to prove that when St. Francis sent the telefax dated August 1, 2000, it was aware that input VAT cannot be considered as a construction cost if credited against output VAT." St. Francis' present action that is inconsistent with its prior posture on the Input VAT speaks for itself.

It cannot likewise be claimed that this inclusion of the VAT in the costs has been trounced by the parties' MOA, as it is made to appear in the Resolution. **Nothing in the MOA explicitly excludes Input VAT from the ARCC.** On the contrary, as correctly observed by the CIAC, "**the contract**

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[21] *Guison v. Heirs of Terry*, G.R. No. 191914, August 9, 2017, citing *GE Money Bank, Inc. v. Spouses Dizon*, G.R. No. 184301, March 23, 2015. Emphasis supplied.

[22] *Dizon v. Philippine Veterans Bank*, 620 Phil. 456 (2009).

entered by [St. Francis) which were assumed by [Malayan] under the MOA, *included* VAT as part of costs."[23] It would then follow, as a matter of logic, that input VAT remains included in the computation of the expenses necessary to the complete the project or the ARCC.

As repeatedly pointed out, the core issue of this case is the determination of what expenditures are included in the ARCC in the context of Section 9 of the MOA,[24] which treats "Remaining Construction Cost" (RCC) in the following general terms:

> Section 9. Remaining Construction Cost. – (a) [St. Francis] represents and warrants to Malayan that Malayan can complete the Project at a cost not exceeding Four Hundred Fifty-Two Million Four Hundred Twenty-Four Thousand Eight Hundred Forty-Nine Pesos (₱452,424,849) as set forth in [St. Francis'] Construction Budget Report attached hereto and made an integral part hereof as Schedule 9 x x x

On this note, the estimated RCC of ₱452,424,849 in Section 9 of the MOA included the unpaid balance on SEAPAC's contract amounting to ₱35,606,000.00, which was VAT-inclusive. Malayan's witness, Gema Cheng, explained, thus:

> Q.2.2.4.1 **How did you know that the unpaid balance of the SEAPAC Contract was VAT inclusive?**
>
> GOC: By virtue of a Deed of Assignment, [St. Francis] assigned to MALAYAN the SEAPAC Contract for the curtain wall and aluminum doors and windows. Upon completion of the SEAPAC's works, **MALAYAN paid SEAPAC. These payments to SEAPAC were all Input VAT inclusive**.
>
> Q.2.2.4.2. Apart from the SEAPAC Contract, do you have any other proof to show that the Php942,529,824 Construction Cost Budget in Exhibit I of the SGV Report is VAT inclusive?

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[23] *Infra.*

[24] January 11, 2016 Decision, p. 16. "As duly noted by the CA, the controversy between St. Francis and Malayan lies in the interpretation of the term 'Actual Remaining Construction Cost' (ARCC) in relation to the Estimated Remaining Construction Cost . . ."

GOC: Note that the amounts of the items composing the Construction Cost Budget are the prices of the works contracted with Claimant's contractors. These prices are already VAT inclusive. Thus, the sum of these amounts, which are VAT inclusive, would necessarily result to a total amount which is likewise VAT inclusive.

For instance, in [St. Francis'] contract for sewerage treatment plant works with Polystone Builders, Inc., the price was set at Php2,800,000.00. This price is VAT inclusive and as such, was included in the computation of the Construction Cost Budget in Exhibit I of the SGV Report.[25]

If the benchmark is Section 9 of the MOA, which contains the amount initially warranted by St. Francis to Malayan as the amount necessary to complete the project, then the ARCC should include the Input VAT as the warranted RCC in Section 9 included the Input VAT.

It would be most illogical for this Court to conclude that the Input VAT should be excluded from the amount spent by Malayan in excess of St. Francis' original estimate when such estimate included the Input VAT at the outset. Trite as it may be, the age old adage should find application in this case: what is sauce for the goose is sauce for the gander. **Malayan cannot be refused to include Input VAT in its computation of the construction costs when St. Francis had been including Input VAT in its computation of construction costs.**

Further, it bears reiterating that this Court adopted the CIAC's interpretation of ARCC as referring to the "actual expenditures necessary to complete the project"[26] based on the "restrictive construction industry definition of 'construction cost,' to wit: the cost of all construction portions of the project, **generally**

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[25] Joint Affidavit of Respondent's Witnesses by way of: (1) Evidence for New Issue No. 3 Defined under the Amended Terms of Reference; (2) Sur-Rejoinder to Joint Rejoinder Affidavit of Claimant's Witnesses; and (3) Redirect Examination, Annex "I" of Malayan's Petition for Partial Review, pp. 23-25, cited in Malayan's Opposition, pp. 10 and 11. Emphasis and underscoring supplied.

[26] Decision, pp. 12 and 18.

based upon the sum of the construction contract(s) and other direct construction costs."[27] And St. Francis' very own witness, Adrian Josue, admits that "the sum of the construction contract[s]" in the construction industry is usually VAT-inclusive, viz:

ATTY. D. TAMAYO (COUNSEL RESPONDENT):

> x x x Can you just read on and I ask Mr. Josue if you can see any indication on (sic) the SGV report that the information you gave and [St. Francis] gave to SGV would indicate that the contracts were not VAT-inclusive? Tingnan ninyo nalang po. **Contracts in the construction industry are usually VAT-inclusive?**

MR. A.L JOSUE (CLAIMANT WITNESS):

> **Yes.**

ATTY. D. TAMAYO (COUNSEL RESPONDENT):

> Okay.

MR. A.L. JOSUE (CLAIMANT WITNESS):

> **And actually, based on your contracts we discussed with TVI, it is VAT inclusive.**

ATTY. D. TAMAYO (COUNSEL RESPONDENT):

> **Okay. Now, the 452 Million remaining construction costs that you worked . . . okay, all of the contracts there are also VAT inclusive? That would be your position?**

MR. A.L. JOSUE (CLAIMANT WITNESS):

> **Yes.**[28]

There is, therefore, no reason to reverse our initial Decision, refusing to exclude from the ARCC the Input VAT paid by Malayan in order to complete the Project.

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[27] *Id*., p. 21.

[28] Transcript of Stenographic Notes of the March 19, 2000 Hearing before the CIAC, pp. 147-148, cited in Malayan's Opposition, pp. 9-10.

Items 1.0, 5.3 and 5.4

Independent of St. Francis' silence on the issue of the "Total Exclusions," a reexamination of the "Total Exclusions" in our Decision is urged by Malayan. The Resolution concedes removing Item 6.12.3 but maintains as exclusions Items 1, 5.3 and 5.4 on the ground that they are unsubstantiated costs. I regret that I cannot concur.

Item 1.0 in the column for "Total Exclusions" was for ₱9,297,947.22 and referred to the supposedly unsubstantiated portion of the contract award to Total Ventures, Inc. (TVI). In our Decision, this was taken from R-48-a-series where ₱95,116,269.94 is recorded as the "contract award" and ₱85,818,322.72 is the amount supported by receipts; ₱9,297,947.22 is the difference between these two figures. However, as Malayan correctly points out, R-48-a-series also indicate that Malayan had actually made two downpayments of ₱9,338,688.33 each, plus the withholding tax of ₱172,938.67 each, or a total of ₱19,023,254.01 to TVI. The last two Official Receipts (ORs) included in R-48-a-series, which were also reproduced by Malayan as annexes to its Motion for Partial Reconsideration—OR No. 1629 dated July 28, 2003 and OR No. 1653 dated October 24, 2003—show as much. Thus, the amount supported by receipts totals ₱104,841,576.73 and exceeds the "contract award" of ₱95,166,269.94. The entirety of Item 1.0 should, therefore, be eliminated from "Total Exclusions."

Similarly, Items 5.3 and 5.4 which referred to Exhibits R-48-E-4-series for "Total Net Payment including 11% Attendance Fee" have been explained to be substantiated by OR No. 1912 dated December 10, 2004. That the receipt bears an amount larger than what has been declared by Malayan is of no moment as the difference will even be for the benefit of St. Francis. What is crucial is that the expense has been supported by a receipt that has been submitted as evidence of the cost incurred by the Malayan to complete the project.

Proportionate Share in the Remaining Units

With the foregoing discussion on the Input VAT as an item that should be included in the ARCC and the deletion of Items 1, 5.3 and 5.4 from the Total Exclusions, I propose the following computation to determine the ARCC:

Construction Cost as per receipts (Exhibit "R-48-series") with 1/11% Input VAT and 2% Withholding Tax		**₱554,583,160.20**
Total Inclusion: (Award to TVI)		~~₱8,282,974.82~~
	+	₱17,807,364.98
TOTAL ARCC (Construction Costs as per Receipt + Inclusion)		**₱572,390,525.18**
Total Deductions:		**₱2,357,036.78**
~~Interest Expense paid by Malayan to RCBC~~		~~₱39,348,659.88~~
Change Orders not due to Reconfiguration		971,796.29
Contingencies		631,154.39
Interior Design Works	+	754,086.10
~~Input VAT~~		~~45,419,770.44~~
		₱2,357,036.78
Total Exclusions:		
~~Item 1.0~~		~~₱9,297,947.22~~
Item 5.3 and 5.4		530,563.65
~~Item 5.3 and 5.4~~		~~725,877.62~~
Item 5.7.1		50,710.61
Item 6.2.25		194,171.00
Item.6.11		3,499.64
Item 6.11		1,360.00
~~Item 6.12.3~~		~~2,397,047.89~~
Item F3		368,397.52
Item F3		448,534.59
Item F3		634,232.26
Professional Fees C&D		427,500.00
Professional Fees N	+	79,022.73
NET ARCC		**₱2,737,992.00**
(Total ARCC		₱572,390,525.18
Less - Total Deductions and Exclusions)		- ₱5,095,028.78
		₱567,295,496.40

Given the Net ARCC of ₱567,295,496.40, Malayan should have 65%, while St. Francis should have 35% of the remaining units in the project, as computed below:

₱567,295,496.40 (Net ARCC)
- 452,424,849 (RCC per Sec. 9)
_____
₱114,870,647.40 (Excess ARCC)
÷ 175,856,325.05 (Total Aggregate Value of Reserved Units)
_____

0.653207369 or 65% to Malayan

₱60,985,677.65
÷ 175,856,325.05
_____

0.346792631 or 35% to St. Francis

With the foregoing, I vote to PARTIALLY GRANT Malayan's Motion for Partial Reconsideration and DENY St. Francis' Motion for Partial Reconsideration. Accordingly, I vote to AFFIRM the Court of Appeals' Decision in CA-G.R. SP Nos. 109286 and 109298 with the following MODIFICATIONS:

1) The total amount of ₱5,095,028.78 should be deducted and excluded from the gross Actual Remaining Construction Cost (ARCC) of ₱572,390,525.18 to arrive at the net ARCC of ₱567,295,496.40.

2) **Malayan is entitled to 65% ownership over the reserved units** (₱114,870,647.40/₱175,856,325.05), together with the corresponding interest in the income realized thereon in the same proportion; while **St. Francis is entitled to 35% (₱60,985,677.65/ ₱175,856,325.05) ownership of the said units**, as well as its corresponding share in the said income. The distribution of the parties' proportionate share in the units shall be made by drawing of lots;

3) Malayan is directed to deliver possession and transfer title over the reserved units in the proportion stated above, to pay St. Francis its proportionate share of the income from the reserved units reckoned from the date

of the completion of the project on June 7, 2006 up to the finality of this decision, and to renderfull accounting of all the upkeep expenses, rentals and such other income derived from the reserved units so awarded to St. Francis;

4) Arbitration costs are maintained pursuant to the *pro rata* sharing that the parties had initially shared in accordance with the amounts claimed and counterclaimed by them.

5) Malayan and all others claiming rights under it, are enjoined from exercising acts of ownership over the reserved units relative to the proportionate share awarded to St. Francis;

6) The Register of Deeds of Pasig City is directed to immediately reinstate the name of St. Francis Square Realty Corporation (formerly ASB Realty Corporation) as the registered owner in the corresponding Certificates of Title covering the reserved units awarded to St. Francis; and

7) All other awards granted by CIAC in its Award dated May 27, 2009 which are not affected by the above modifications are affirmed. No costs.

THIRD DIVISION

[G.R. No. 202129. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EVELYN PATRICIO *y* CASTILLO, *alias* "NINGNAY",** *accused-appellant*.

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN A CRIMINAL PROCEEDING, AN APPEAL THROWS THE WHOLE CASE OPEN FOR REVIEW AND IT IS THE DUTY OF THE REVIEWING COURT TO CORRECT ANY ERROR IN THE APPEALED JUDGMENT, WHETHER ASSIGNED OR NOT; CASE AT BAR.—** An appeal in a criminal proceeding throws the whole case open for review, and it becomes the duty of this Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not.Impelled by this duty, we took a second hard look at the records. After a painstaking review of the evidence and testimonies presented, the Court finds that there is palpable noncompliance with the requirements of Section 21, Article II of R.A. No. 9165.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** For cases involving illegal sale of *shabu*, the following elements must be established: (1) the identities of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment thereof.

3. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [T]he offense of illegal possession of *shabu* has the following elements: "(1) the accused is in possession of an item or an object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug.

4. **ID.; ID.; SECTION 21, ARTICLE II; CHAIN OF CUSTODY RULE; LINKS THAT MUST BE ESTABLISHED.—**

Section 21, Article II of R.A. No. 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved. Under the said section, prior to its amendment by R.A. No. 10640,the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and take photographs of the seized items in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall then sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination purposes.Jurisprudence has been instructive in illustrating the links in the chain that need to be established: *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *Second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *Third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *Fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.The records in this case show no evidence that the buy-bust team followed the outlined procedure.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; OBTAINS ONLY WHERE THERE IS NO DEVIATION FROM THE REGULAR PERFORMANCE OF DUTY.— It is true that where no improper motive can be attributed to the police officers, the presumption of regularity in the performance of official duty should prevail. Such presumption, however, obtains only where there is no deviation from the regular performance of duty. A presumption of regularity in the performance of official duty applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law. Conversely, where the official act is irregular on its face, the presumption cannot arise. Hence, given the obvious evidentiary gaps in the chain of custody, the presumption of

regularity in the performance of duty cannot be applied in this case. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

This appeal seeks a reversal of the 16 March 2011 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 00647, which affirmed the 30 November 2006 Decision[2] of the Regional Trial Court, Branch 15, Roxas City *(RTC)*, in Criminal Case Nos. C-130-04 and C-131-04 finding accused-appellant Evelyn Patricio *y* Castillo (*Evelyn*) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act *(R.A.)* No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

FACTS

Evelyn was charged in two separate informations, to wit:

Criminal Case No. C-130-04

That on or about the 23rd day of April 2004, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court said accused, with deliberate intent and without any justifiable motive, did then and there wilfully, unlawfully and feloniously sell distribute and deliver to a police "poseur-buyer", two (2) "boltos" or two (2) pieces big transparent heat-sealed plastic sachets containing suspected Methamphetamine Hydrochloride or "shabu" weighing 8.68 grams, a dangerous drug without the authority to sell and distribute the same.

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[1] *Rollo*, pp. 3-16.

[2] CA *rollo,* pp. 27-55.

CONTRARY TO LAW.[3]

Criminal Case No. C-131-04

That on or about the 23rd day of April 2004, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court said accused, with deliberate intent and without any justifiable motive, did then and there wilfully, unlawfully and feloniously have in her possession and control 4.37 grams of methamphetamine hydrochloride (shabu), a dangerous drug, without being authorize (sic) by law to possess the same.

CONTRARY TO LAW.[4]

Evelyn pleaded not guilty to both charges. Thereafter, trial ensued.

Evidence for the Prosecution

The evidence for the prosecution tended to establish that in the afternoon of 23 April 2004, Police Officer 1 Rez G. Bernardez *(PO1 Bernardez)*, then assigned at the Capiz Police Provincial Office, Roxas City, was at the vicinity of Capiz Emmanuel Hospital pursuant to a mission order for a buy-bust operation issued by Police Senior Inspector Leo Batiles *(P/SInsp. Batiles)*. He was to act as poseur-buyer. PO1 Bernardez transacted with Evelyn through his cellular phone. They agreed to meet at 3:00 p.m. at the second floor corridor of the Capiz Emmanuel Hospital, the place chosen by Evelyn herself.

With the other members of the police team, PO1 Bernardez proceeded to the agreed place. There, PO1 Bernardez handed Evelyn a pouch containing money amounting to ₱20,000.00. In turn, Evelyn gave him a brown, mailing-size envelope folded and tied with a rubber band supposedly containing *shabu*. Immediately after the exchange, PO1 Bernardez introduced himself as a police officer and placed Evelyn under arrest. Evelyn resisted and fought back, hitting PO1 Bernardez in the nose

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[3] *Id*. at 27.

[4] *Id*. at 28.

and threw the money back at him. PO1 Jesus Galleron, who was then about two to three meters away from them, arrested Evelyn and informed her of her constitutional rights. Thereafter, Evelyn was led to the parking area at the side of the hospital where the rest of the apprehending team converged. The brown mailing envelope was opened in front of her, revealing two (2) large transparent plastic sachets of supposed *shabu*, weighing 4.37 and 4.31 grams, respectively.

Afterwards, Evelyn was brought to the Roxas City Police Station where she was bodily searched by two policewomen: PO1 Moonyen de Joseph and PO1 Maria Sheila Albances. They found another big plastic sachet of suspected *shabu*, weighing 4.37 grams, inside the secret pocket of her pants.

The seized items were turned over to the PNP Crime Laboratory of Iloilo City. After laboratory examination, the specimens were found positive for methamphetamine hydrochloride or *shabu*.

Evidence for the Defense

Evelyn testified that in the morning of 22 April 2004, she was in her house at Capricho II, Roxas City, preparing the clothes that she would wear for her nephew's wedding that afternoon. According to her, she only came to Roxas City to attend the wedding. In the morning of 23 April 2004, she and her driver, Louie Llena, went to Dao to look at a truck that his brother-in-law was interested in buying. From Dao, they returned to Roxas City at past 1:00 p.m. They proceeded to Gaisano Mall before going back to Capricho.

While resting at home, Evelyn was distracted by a text message on her cellphone from one Ronnie Detoga *(Ronnie)* asking her to go to Capiz Emmanuel Hospital where he would pay the ₱30,000.00 loan Ronnie allegedly borrowed two months prior, and which was used as bail bond for his wife Swannie Dela Cruz.

At about three o'clock in the afternoon, Evelyn proceeded to the second floor corridor of Capiz Emmanuel Hospital where

Ronnie was waiting. Upon reaching the place, Ronnie handed her a pouch or "poyo" made of cloth as big as her palm. Trusting Ronnie, she did not open the pouch anymore and simply placed it inside her handbag. She then went out of the hospital through the door leading to the parking lot. To her great surprise, she saw a man standing about three arm-lengths away with a gun pointed at her. Stunned, she asked if it was a holdup. The man approached her, held her by the hand, and said, "Do not run! I will shoot you!" Thereafter, a second man arrived and took away her bag. The second man opened her bag, took the pouch that Ronnie had given and exclaimed, "This is our pouch!" Later on, several policemen, media men, and the barangay captain arrived and poured out the contents of her bag, but no illegal drugs were found. She was then made to board a multicab and was brought to the Roxas City Police Station.

Upon arriving at the Roxas City Police Station, she was ordered to enter a room where two policewomen were waiting. The policewomen made her strip naked and searched her body, and even made her bend over so they could probe her private part. Finding nothing from their search and probing, the two policewomen went out of the room. Later on, the policewomen returned with the barangay captain, and they presented to the latter a plastic sachet of suspected *shabu* allegedly retrieved from Evelyn. She denied ownership thereof.

Swannie Dela Cruz testified that on 23 April 2004, she was at the house of one Nimfa Martirez *(Nimfa)* with her live-in partner, Ronnie. At that time, Ronnie was waiting for P/SInsp. Batiles as they had something to talk about. P/SInsp. Batiles arrived at Nimfa's house and told them that they would set up Evelyn, alias "Ningnay," because the police had been looking for her for a long time. P/SInsp. Batiles gave Ronnie money and *shabu* to be used in setting her up. The *shabu* was placed in a brown envelope and the money in a red pouch with floral design.

Later in the afternoon, Swannie heard over the radio that Evelyn was apprehended. She immediately went to Capiz Emmanuel Hospital to see Ronnie, but the latter was no longer

there. That same evening, she and Nimfa went to the house of a certain Gaga Cordovero, an alleged member of the Provincial Anti-Illegal Drugs Special Operations Task Force (*PAIDSOTF*) to inquire as to the whereabouts of Ronnie. P/SInsp. Batiles, who was present, told her not to worry because Ronnie was safe in their camp at Loctugan, Roxas City. P/SInsp. Batiles then brought her to that camp. There, a certain Col. Bautista talked to her and asked her how much she needed for her bail bond, to which she responded ₱30,000.00. Col. Bautista offered to give her the money as reward for helping in the arrest of Evelyn. As ordered by Col. Bautista, a police officer and a companion of P/SInsp. Batiles by the name of Bebot Escoltero delivered the money to them.

Jose Francisco, Jr. *(Francisco)* testified that he was a security guard assigned at Capiz Emmanuel Hospital; that during his tour of duty on 23 April 2004, from seven o'clock in the morning to three o'clock in the afternoon, his attention was never called regarding any buy-bust operation conducted by the police at the hospital; and that it was the practice of security guards to conduct a roving inspection of the premises. Eduardo Almario, another security guard, corroborated Francisco's testimony and attested that during his roving inspection, he did not notice any unusual incident like a buy-bust operation taking place inside the hospital's premises.

The RTC Ruling

The RTC found Evelyn guilty of the crimes charged. In so ruling, it held that Evelyn's account of her transaction with Ronnie at Capiz Emmanuel Hospital was unbelievable. According to the trial court, it was illogical and contrary to the natural course of human behavior for Evelyn not to open the pouch handed her and to count the money inside. It noted that it was the first time Evelyn met Ronnie. As such, it was absurd to claim that she had full trust in his person. Moreover, Ronnie was not even presented to corroborate Evelyn's testimony. Additionally, the RTC stated that for evidence to be believed, it must not only proceed from the mouth of a credible

witness, but must be credible in itself such as the common experience and observation of mankind can approve as probable under the circumstances.

Likewise, the trial court was unconvinced that Evelyn was framed up. It ruled that an illegal sale of dangerous drugs had indeed taken place; and that the *corpus delicti* was positively identified during its presentation in court. In the RTC's analysis, several points militated against Evelyn's theory that evidence was merely planted on her person. For one, it found unbelievable that no one saw the grouping of several policemen, barangay, and media personnel at the hospital's parking lot where Evelyn was allegedly restrained by PO1 Bernardez for about thirty minutes. This, despite the fact that the defense had already made of record that security guards were posted at every entrance including the gate leading out of the parking area. Also, the RTC brushed aside the contention that Evelyn would not have sold drugs in a public place, in broad daylight, and to a virtual stranger. Citing jurisprudence, it declared that familiarity between the buyer and the seller is of no moment, for what matters is the fact of agreement, as well as the act constituting sale and delivery of prohibited drugs. The decretal portion reads:

"WHEREFORE, premises considered, this Court finds –

(1) In Criminal Case No. C-130-04, accused EVELYN PATRICIO Y CASTILLO alias "NINGNAY," GUILTY beyond reasonable doubt of VIOLATION OF SECTION 5, ARTICLE II of R.A. 9165, otherwise known as the COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, and hereby sentences her to suffer the penalty of LIFE IMPRISONMENT and a fine of ₱500,000.00

(2) In Criminal Case No. C-131-04, accused EVELYN PATRICIO Y CASTILLO alias "NINGNAY" GUILTY beyond reasonable doubt of the crime of VIOLATION of SECTION 11, ARTICLE II of R.A. 9165, otherwise known as the COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, and hereby sentences her to suffer an indeterminate penalty of imprisonment of SIX (6) YEARS and ONE (1) DAY of Prison Mayor as Minimum to TWELVE (12) YEARS and ONE (1) DAY of Reclusion Temporal as Maximum and to pay a fine of ₱200,000.00.

In the service of her sentence in Crim. Case No. 131-04, accused Evelyn Patricio y Castillo alias "Ningnay," shall be credited with the full time during which she has undergone preventive imprisonment provided she agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

SO ORDERED.[5]

Dissatisfied, Evelyn sought recourse before the CA.

The CA Ruling

The assailed CA decision affirmed the RTC's ruling, but with modification as to the penalty imposed in Criminal Case No. C-131-04.

The appellate court began its disquisition by noting that Evelyn was a well-known drug pusher operating in Roxas City. It found that the buy-bust operation was spearheaded by the combined efforts of the PAIDSOTF and PDEA – agencies tasked to track down suspected members of syndicated drug groups; and that the buy-bust operation was conducted in order to verify reports received against Evelyn. According to the CA, there was no reason for these government agencies to accuse Evelyn of something she was not guilty of; and, besides, she failed to cite any motive for the arresting officers to frame her up. It also opined that testimonies of police officers who conduct buy-bust operations are generally accorded full faith and credit as they are presumed to have performed their duty in a regular manner.

In the same vein, the CA did not lend credence to Swannie Dela Cruz' testimony for it being self-serving and uncorroborated, taking into account the fact that such testimony was elicited from a person also accused of a crime involving violation of the Comprehensive Dangerous Drugs Act.

The CA was convinced that the elements of illegal sale and possession of dangerous drugs were established with moral

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[5] CA *rollo*, p. 55.

certainty. It sustained the RTC's finding that Evelyn was caught *in flagrante delicto* delivering *shabu* to PO1 Bernardez. Meanwhile, the seized contraband was marked and identified through Chemistry Report No. D-96-04. Accordingly, the CA held that the dangerous drugs recovered from Evelyn were admissible as evidence. The dispositive portion states:

> **WHEREFORE**, the Decision dated November 30, 2006 of the Regional Trial Court, 6th Judicial Region, Branch 15, Roxas City is **AFFIRMED** with MODIFICATION in that in Crim. Case No. C-131-04, appellant is sentenced to an indeterminate prison term of twelve (12) years and one (1) day to twenty (20) years with a fine of Three Hundred Thousand Pesos (₱300,000.00).
>
> **SO ORDERED**.[6]

Undaunted, Evelyn calls upon the Court to review her case.

In a Resolution,[7] dated 30 July 2012, the Court required the parties to submit their respective supplemental briefs simultaneously, if they so desire. In a manifestation,[8] Evelyn stated that she was adopting her appellant's brief filed before the CA. In like manner, the Office of the Solicitor General manifested that it was adopting its brief filed before the CA and would already dispense with the filing of a supplemental brief.

ISSUE

WHETHER EVELYN'S GUILT FOR THE CRIMES CHARGED WAS PROVEN BEYOND REASONABLE DOUBT.

THE COURT'S RULING

An appeal in a criminal proceeding throws the whole case open for review, and it becomes the duty of this Court to correct any error in the appealed judgment, whether it is made the subject

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[6] *Rollo*, p. 16.

[7] *Id*. at 20-21.

[8] *Id*. at 34-35.

of an assignment of error or not.[9] Impelled by this duty, we took a second hard look at the records. After a painstaking review of the evidence and testimonies presented, the Court finds that there is palpable noncompliance with the requirements of Section 21, Article II of R.A. No. 9165.

For cases involving illegal sale of *shabu*, the following elements must be established: (1) the identities of the buyer and the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment thereof. On the other hand, the offense of illegal possession of *shabu* has the following elements: "(l) the accused is in possession of an item or an object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug.[10]

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 for either illegal sale or illegal possession under R.A. 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.[11]

Conviction cannot be sustained if there is a persistent doubt on the identity of the *corpus delicti*. Apart from showing that the elements of possession or sale are present, the fact that the *shabu* illegally possessed and sold is the same *shabu* offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[12] In other words, it must be established with unwavering exactitude

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[9] *Ungsod v. People*, 514 Phil. 472, 486 (2005).

[10] *People v. Gayoso*, G.R. No. 206590, 27 March 2017.

[11] *People v. Nuarin*, 764 Phil. 550, 557 (2015).

[12] *People v. Gayoso*, G.R. No. 206590, 27 March 2017, *supra* note 8.

that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.[13] To show that the drugs examined and presented in court were the very ones seized from the accused, testimony as to the *chain of custody* of the seized drugs must be presented.[14] The chain of custody requirement ensures that unnecessary doubts concerning the identity of the evidence are removed.[15]

Section 21, Article II of R.A. No. 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved. Under the said section, prior to its amendment by R.A. No. 10640,[16] the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and take photographs of the seized items in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall then sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination purposes.[17]

Jurisprudence has been instructive in illustrating the links in the chain that need to be established:

> *First*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer;

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[13] *People v. Calvelo*, G.R. No. 223526, 6 December 2017.

[14] *People v. Dimaano*, 780 Phil. 586, 604 (2016).

[15] *People v. Havana*, 776 Phil. 462, 471 (2016).

[16] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002'" approved on 15 July 2014.

[17] *People v. Año*, G.R. No. 230070, 14 March 2018.

Second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer;

Third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and

Fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[18]

The records in this case show no evidence that the buy-bust team followed the outlined procedure.

The integrity of the evidence presented – the *corpus delicti* no less – became suspicious by the inability of the records to illustrate the links in the chain of custody after the alleged buy-bust transaction at Capiz Emmanuel Hospital.

The Court must thus undo the judgement of conviction.

There was no marking of the seized shabu.

Crucial in proving the chain of custody is the marking of the seized drugs or other related items immediately after they have been seized from the accused. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.[19]

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[18] *People v. Siaton*, 789 Phil. 87, 98-99 (2016).

[19] *People v. Doria*, 750 Phil. 212, 232 (2015).

Here, the prosecution failed to establish that PO1 Bernardez or any member of apprehending team had placed their initials and signature on the *shabu* seized from Evelyn during the buy-bust operation.

[PROSECUTOR POSADAS]

Q: And after you received the items from out of the sale using those marked money what did you do?
A: I declared a buy-bust.

Q: After you had declared a buy-busy what happened?
A: She was surprised, she won't believe that I was a policeman.

[COURT]

Q: How did she express her surprise?
A: She hit me in my nose with her hands.

Q: How did she do it?
A: She was about to throw the money, she raised her hands and going to my face (witness demonstrating by raising her hands up and down).

[PROSECUTOR POSADAS]

Q: And what did you do when she raised her hands as if to throw the money hitting your nose?
A: I did not push her in return but I hold her hands and said to her just be calm all things must be safe just relax, thereafter my back-up agent was helping me also.

Q: Who was that PDEA?
A: Police Officer Galleron.

Q: And you arrested Evelyn Patricio right there (sic) and there?
A: Yes, sir.

Q: And where did you bring her?
A: To the parking area of the hospital.

Q: What did you do at the parking area of the hospital?
A: When the group of Sir Batiles arrived we brought her down in a casual manner so that the people will not panic inside.

Q: And from the parking area of Capiz Emmanuel Hospital where did you go?
A: To the Roxas City Police Station.

Q: Did you have it entered in the police blotter book of the police station?
A: Yes, sir.

Q: And what did you do with the two (2) boltos of *shabu* that you have recovered or delivered to by accused Evelyn Patricio?
A: I turned it over to our PSINSP Leo Batiles.[20]

The foregoing shows that there was already a break in the very first link of the chain when PO1 Bernardez and his team failed to mark the two (2) "boltos" of *shabu* immediately upon their seizure. It is daylight clear that the seized items underwent an exchange of hands without prior marking. From the moment the drugs left PO1 Bernardez' custody without the corresponding markings, its identification in Court was essentially relegated to guesswork. At this early stage, uncertainty had loomed on whether the drugs presented as evidence during trial were the same drugs confiscated from Evelyn's person. Veritably, attainment of moral conviction that all subsequent handlers of the confiscated drugs dealt with the same specimens retrieved from Evelyn was perforce illusory.

The same break applies as regards the *shabu* recovered during the body search conducted at the Roxas Police Station which formed the basis of Evelyn's conviction for illegal possession. The policewomen who conducted the search also made no markings on the items allegedly recovered from the secret pocket of Evelyn's pants.

[PROSECUTOR POSADAS]

Q: How big was that sachet that you recovered from the secret pocket of her pants?
A: Just like this. (Witness demonstrating by raising her both hands).

Q: Are you familiar with that Ajinomoto pack?
A: Smaller than that of the one (1) peso worth of Ajinomoto pack.

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[20] TSN, 28 May 2004, pp. 22-25; Direct Examination of PO1 Bernardez.

Q: If that sachet that you recovered from the secret pants of the accused be shown to you, will you be able to identify the same?
A: Yes, sir.

Q: I am showing to you this plastic sachet which is already marked as Exh. "M" for the prosecution, will you please go over this if this is the one that you are referring to?
A: Yes sir, this is the one.

Q: Now, after you have recovered this Exh. "M" from the secret pocket of the accused, what did you do next?
A: We presented it to Police SInsp. Batiles.

Q: And after that what did you do with the accused?
A: We instructed her to just sit down and we will wait for the next instruction of Police SInp. Batiles.[21]

The police officers did not even bother to explain why they failed to mark or why they could not have marked the seized items immediately upon confiscation. Since the drugs were not properly marked, it could not, therefore, be determined how the unmarked drugs were handled. Evidently, alteration of the seized items was a possibility absent immediate marking.[22]

It was claimed that the seized items were turned over to P/SInsp. Batiles after Evelyn's arrest. The prosecution, however, did not present him to testify on the identity of the items he received from PO1 Bernardez and PO1 Moonyen de Joseph. This is fatal to the prosecution's case, as absence of testimony from P/SInsp. Batiles engendered yet another missing link in the chain – turnover of the illegal drugs seized by the apprehending officer to the investigating officer. In a manner of speaking, the trail had gone cold during the interregnum that P/SInsp. Batiles purportedly had custody of the *shabu*.

Meanwhile, the court notes that during the hearing for Evelyn's application for bail, forensic chemist P/SInsp. Agustina

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[21] TSN, 11 October 2004, pp. 10-11; Direct Examination of PO1 Moonyen De Joseph.

[22] *People v. Doria*, *supra* note 19 at 233.

L. Ompoy *(PSI Ompoy)* testified that she conducted a laboratory examination on the contents of three transparent plastic sachets of suspected *shabu* that accompanied a letter-request sent by P/SInsp. Batiles. She stated that the laboratory examination of these three sachets yielded positive for methamphetamine hydrochloride (*shabu)*; and that two (2) heat-sealed transparent plastic sachets had the markings "EP la" and "EP lb" and weighed 4.37 grams and 4.31 grams, respectively, while one heat-sealed plastic sachet with marking "EP 2" weighed 4.37 grams.[23]

Despite sifting through the records with a fine-toothed comb, the Court found no testimony on how the markings "EP la," "EP lb," and "EP 2" were placed on the specimens supposedly recovered from Evelyn. Not one of the prosecution witnesses attested to having placed the said markings on the plastic sachets. In fact, it appears that the prosecution witnesses who took the stand are oblivious to these markings, as not a single one of them referred to the said markings for identification during their respective testimonies. The purpose of marking is to obviate the situation that prosecution witnesses would have to rely on guesswork in identifying the seized contraband. Here, the very ill sought to be prevented by the marking requirement was, contrarily, demonstrated, *viz:*

[PROSECUTOR POSADAS]

Q: How did you conduct the body search on the accused, did you remove clothing?

A: We removed the upper and lower clothing together with the underwear.

Q: On the first thing you did when you remove her upper clothing, her bra, did you recover something?
A: No, Sir.

Q: How about when you removed her pants and her underwear, have you recovered something?
A: Inside the pocket of her pants we recovered a small plastic sachet of which containing shabu?

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[23] RTC Records, 23 June 2004, p. 60; Order.

Q: Who recovered from her pants that suspected sachet of shabu?
A: I, Sir.

Q: If that suspected plastic sachet of shabu recovered from the pants of accused Evelyn Patricio be shown to you could you be able to identify it?
A: No, Sir.

[ATTY. FAGUTAO]

The witness answered No.

[PROSECUTOR POSADAS]

May I repeat the question, Your Honor?

[COURT]

Okay, please repeat your question.

[PROSECUTOR POSADAS]

Q: If that sachet of shabu be shown to you, could you be able to identify it?
A: Yes, sir.

Q: I am showing to you a sachet already marked as Exh. "N," will you please go over this if this if this is the sachet that you have recovered from the pants of the accused Evelyn Patricio?
A: This is not.

Q: I am showing to you another 2 sachet already marked as Exh. "N" and "N-1". Exh "N" is weighing 4.47 grams and Exh. "N-1" is weighing 4.31 grams, Exh. "N" is 4.47 grams, I am showing you this 3 sachets, which of these 3 sachets were you able to recovered from the pants of accused, Evelyn Patricio?
A: This one Sir. (referring to Exh. "N")[24]

In addition to the absence of marking, the requirements of making an inventory and taking of photographs of the seized drugs were likewise omitted without offering an explanation for its noncompliance. The Court simply cannot brush aside this flaw, considering that the exactitude which the state requires in handling seized narcotics and drug paraphernalia was even

[24] TSN, 8 November 2004, pp. 38-40; Direct Examination of PO1 Maria Sheila Albances. (all emphasis ours)

reinforced by an amendment made to Section 21 by R.A. No. 10640. Section 21(1), as amended, now includes the following proviso, thereby making it even more stringent than as originally worded:[25]

> 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:

Presumption of regularity in the performance of duty is unavailing.

It is true that where no improper motive can be attributed to the police officers, the presumption of regularity in the performance of official duty should prevail. Such presumption, however, obtains only where there is no deviation from the regular performance of duty. A presumption of regularity in the performance of official duty applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law. Conversely, where the official act is irregular on its face, the presumption cannot arise. Hence, given the obvious evidentiary gaps in the chain of custody, the presumption of regularity in the performance of duty cannot be applied in this case. When challenged by the evidence of a flawed chain of custody, the presumption of regularity cannot prevail over the presumption of innocence of the accused.[26]

In *People v. Gatlabayan*,[27] the Court had the occasion to state that it is not unaware of the drug menace besetting our country and the direct link of certain crimes to drug abuse. The unrelenting drive of our law enforcers against trafficking and use of illegal drugs and other substance is indeed commendable. Those who engage in the illicit trade of dangerous

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[25] *Lescano v. People*, 778 Phil. 460, 475 (2016).

[26] *People v. Siaton*, *supra* note 18 at 108.

[27] *People v. Gatlabayan*, 669 Phil. 240, 261 (2011).

drugs and prey on the misguided members of the society, especially the susceptible youth, must be caught and properly prosecuted. Although the courts are committed to assist the government in its campaign against illegal drugs, a conviction under the Comprehensive Dangerous Drugs Act of 2002 can only be obtained after the prosecution discharges its constitutional burden to prove guilt beyond reasonable doubt.[28]

Otherwise, this Court, as vanguard of constitutional guarantees, is duty bound to uphold the constitutional presumption of innocence, without prejudice to how notorious or renowned a drug personality an accused is perceived to be.

All told, we find that the prosecution failed to: (1) overcome the presumption of innocence which accused-appellant Evelyn enjoys; (2) prove the *corpus delicti* of the crime; (3) establish an unbroken chain of custody of the seized drugs; and (4) offer any explanation as to why the provisions of Section 21, R.A. No. 9165 were not complied with. Consequently, we are constrained to acquit Evelyn based on reasonable doubt.[29]

WHEREFORE, the appeal is **GRANTED**. The assailed 16 March 2011 Decision of the Court of Appeals in CA-GR. CR-HC No. 00647, which affirmed the 30 November 2006 Decision of the Roxas City Regional Trial Court, Branch 15, in Criminal Case Nos. C-130-04 and C-131-04 is hereby **REVERSED** and **SET ASIDE**.

Accused-appellant Evelyn Patricio *y* Castillo is **ACQUITTED** on both charges based on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause her immediate release, unless she is being lawfully held for another cause.

SO ORDERED.

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

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[28] *Id*.

[29] *People v. Ismael*, G.R. No. 208093, 20 February 2017.

THIRD DIVISION

[G.R. No. 203249. July 23, 2018]

SAN ROQUE POWER CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; ARTICLE 8 THEREOF REQUIRES COURTS TO FOLLOW A RULE ALREADY ESTABLISHED IN A FINAL DECISION OF THE SUPREME COURT; DECISIONS OF THE COURT OF TAX APPEALS ARE NOT GIVEN THE SAME LEVEL OF RECOGNITION; CASE AT BAR.— Article 8 of the Civil Code enjoins adherence to judicial precedents. The law requires courts to follow a rule already established in a **final decision** of the **Supreme Court.** Contrary to the petitioner's view, the decisions of the CTA are not given the same level of recognition. Concerning the 120-day period in Section 112 (D) of the NIRC, there was no jurisprudential rule **prior to *Aichi*** interpreting such provision as permitting the premature filing of a judicial claim before the expiration of the 120-day period. The alleged CTA decisions that entertained the judicial claims despite their prematurity are not to be relied upon because they are not final decisions of the Supreme Court worthy of according binding precedence. That *Aichi* was yet to be promulgated at that time did not mean that the premature filing of a petition for review before the CTA was a permissible act.

2. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; VALUE-ADDED TAX; SECTION 112 ON REFUNDS OR TAX CREDITS OF INPUT TAX; THE 120-DAY AND 30-DAY PERIODS STATED THEREIN ARE MANDATORY AND JURISDICTIONAL; FAILURE TO COMPLY WITH THE 120+30-DAY PERIOD RENDERS THE PETITION BEFORE THE COURT OF TAX APPEALS VOID; CASE AT BAR.— The mandatory and jurisdictional nature of the 120-day period first expressed in *Aichi,* however, is not a ***new*** rule of procedure to be followed in pursuit of a

refund claim of unutilized creditable input VAT attributable to zero-rated sales. As suggested above, the pronouncement in *Aichi* regarding the mandatory and jurisdictional nature of the 120-day period was the Court's ***interpretation*** of Section 112 (D) of the NIRC. It is that law, Section 112 (D) of the NIRC, that laid the rule of procedure for maintaining a refund claim of unutilized creditable input VAT attributable to zero-rated sales. In said provision, the Commissioner has 120 days to act on an administrative claim. Hence, from the effectivity of the 1997 NIRC on 1 January 1998, the procedure has always been definite: the 120-day period is mandatory and jurisdictional. Accordingly, a taxpayer can file a judicial claim (1) ***only within thirty days after the Commissioner partially or fully denies the claim*** within the 120-day period, or (2) ***only within thirty days from the expiration of the 120- day period*** if the Commissioner does not act within such period.This is the rule of procedure beginning 1 January 1998 as *interpreted* in *Aichi.* x x x However, the petitioner, without waiting for the full expiration of the 120-day periods and without any decision by the CIR, immediately filed its petitions for review with the CTA on **30 March 2006,** or a mere **ninety-eight (98) days** for the first administrative claim; and on **20 June 2006,** or only **one hundred thirteen (113) days** for the second administrative claim, from the submission of the said claims. In other words, the judicial claims of the petitioner were prematurely filed as correctly found by the CTA En Banc.

3. ID.; ID.; ID.; BUREAU OF INTERNAL REVENUE (BIR) RULING NO. DA-489-03 CONSTITUTES AN EXCEPTION TO THE MANDATORY AND JURISDICTIONAL NATURE OF THE 120+30-DAY PERIOD; CASE AT BAR.—In the consolidated cases of *San Roque*, the Court en banc recognized an exception to the mandatory and jurisdictional nature of the 120+30-day period. It was noted that BIR Ruling No. DA-489-03, which expressly stated – [A] taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review. – is a general interpretative rule issued by the CIR pursuant to its power under Section 4 of the NIRC, hence, applicable to ***all*** taxpayers. Thus, taxpayers can rely on this ruling from the time of its issuance on 10 December 2003. The conclusion is impelled

by the principle of equitable estoppel enshrined in Section 246 of the NIRC which decrees that a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. x x x In other words, the 120+30-day period is generally mandatory and jurisdictional from the effectivity of the 1997 NIRC on 1 January 1998, up to the present. By way of an exception, judicial claims filed during the window period from 10 December 2003 to 6 October 2010, need not wait for the exhaustion of the 120-day period. The exception in *San Roque*has been applied consistently in numerous decisions of this Court. In this case, the two judicial claims filed by the petitioner fell within the window period, thus, the CTA can take cognizance over them.

4. ID.; ID.; ID.; ID.; THE BENEFIT OF BIR RULING NO. DA-489-03 APPLIES TO ALL TAXPAYERS WHO FILED THEIR JUDICIAL CLAIMS WITHIN THE WINDOW PERIOD FROM DECEMBER 10, 2003 UNTIL OCTOBER 6, 2010.—We resolve to apply the exception recognized in *San Roque,* which we quote, *viz:* x x x BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, ***all*** taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30-day periods are mandatory and jurisdictional.As previously stated, *San Roque* has been consistently applied in a long line of cases that recognized the exception to the mandatory and jurisdictional nature of the 120+30-day period. To limit the application of BIR Ruling No. DA-489-03 only to those who invoked it specifically would unduly strain the pronouncements in *San Roque.* To provide jurisprudential stability, it is best to apply the benefit of BIR Ruling No. DA-489-03 to ***all*** taxpayers who filed their judicial claims within the window period from 10 December 2003 until 6 October 2010.

APPEARANCES OF COUNSEL

Villanueva Caña & Associates Law Offices for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

MARTIRES, *J.*:

The application of the 120-day and 30-day periods provided in Section 112 (D) [later renumbered as Section 112 (C)] of the National Internal Revenue Code *(NIRC)* is at the heart of the present case.

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi),*[1] the Court considered whether the simultaneous filing of both the administrative claim (before the Bureau of Internal Revenue*[BIR]*) and judicial claim (before the Court of Tax Appeals *[CTA]*) for refund/credit of input VAT under the cited law is permissible. In that case, the respondent asserted that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and the judicial claims are filed within the two-year prescriptive period. We held that the premature filing of respondent's claim for refund/credit before the CTA warrants a dismissal inasmuch as no jurisdiction was acquired by that court.

In the case before us, San Roque Power Corporation *(petitioner)* brought its judicial claims before the CTA prior to the promulgation of the *Aichi* ruling. Yet, the lower court *(CTA En Banc)* dismissed the petitioner's judicial claims on the ground of prematurity, a decision that happily coincided with the Court's ruling in *Aichi*. In its petition, San Roque Power Corporation rues the retroactive application of *Aichi* to taxpayers who merely relied on the alleged prevailing rule of procedure antecedent to *Aichi* that allowed the filing of judicial claims before the expiration of the 120-day period.

We hold that there is no established precedence prior to *Aichi* that permits the simultaneous filing of administrative and judicial claims for refund/credit under Section 112 of the NIRC.

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[1] 646 Phil. 710 (2010).

Nonetheless, we concede that the CTA has jurisdiction over the claims in this case in view of our pronouncement in *Commissioner of Internal Revenue v. San Roque Power Corporation (San Roque)*.[2] In said case, the Court,while upholding *Aichi*, recognized an exception to the mandatory and jurisdictional character of the 120-day period: taxpayers who relied on BIR Ruling DA-489-03, issued on 10 December 2003, until its reversal in *Aichi* on 6 October 2010, are shielded from the vice of prematurity. The said ruling expressly stated that "a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of a Petition for Review."

THE FACTS

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the 4 April 2012 Decision[3] of the CTA En Banc in CTA EB No. 657. The CTA En Banc dismissed the petitioner's judicial claims on the ground of prematurity, thus, setting aside the CTA Second Division's partial grant of the refund claims in the consolidated CTA Case Nos. 7424 and 7492. In the subsequent 17 August 2012 Resolution[4] of the CTA En Banc, the court *a quo* denied the petitioner's motion for reconsideration.

The Antecedents

San Roque Power Corporation is a VAT-registered taxpayer which was granted by the BIR a zero-rating on its sales of electricity to National Power Corporation *(NPC)* effective 14 January 2004, up to 31 December 2004.[5]

On **22 December 2005** and **27 February 2006**,the petitioner filed two separate administrative claims for refund of its alleged

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[2] 703 Phil. 310 (2013).

[3] *Rollo*, pp. 7-28.

[4] *Id.* at 35-42.

[5] *Id.* at 9 (Decision of the CTA *En Banc* in CTA EB No. 657, p. 3).

unutilized input tax for the period 1 January 2004 up to 31 March 2004, and 1 April 2004 up to 31 December 2004, respectively.[6]

Due to the inaction of respondent CIR, the petitioner filed petitions for review before the CTA (raffled to the Second Division): *(1)* on **30 March 2006,** for its unutilized input VAT for the period 1 January 2004 to 31 March 2004, amounting to ₱17,017,648.31, docketed as CTA Case No. 7424; and *(2)* on **20 June 2006,** for the unutilized input VAT for the period 1 April 2004 to 31 December 2004, amounting to ₱14,959,061.57, docketed as CTA Case No. 7492.

The Ruling of the CTA Division

During trial, the petitioner presented documentary and testimonial evidence to prove its claim. On the other hand, respondent CIR was deemed to have waived its right to present evidence due to its failure to appear in the two scheduled hearings on the presentation of evidence for the defense. In due course, the CTA Division partially granted the refund claim of the petitioner in the total amount of ₱29,931,505.18 disposing as follows:

> **WHEREFORE**, premises considered, the instant Petitions for Review are hereby **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **TWENTY-NINE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FIVE PESOS AND 18/100 (₱29,931,505.18)** in favor of petitioner, representing unutilized input VAT attributable effectively zero-rated sales of electricity to NPC for the four quarters of 2004.
>
> **SO ORDERED**.[7]

The CIR moved for reconsideration but to no avail.Thus, on 4 August 2010, the CIR filed a petition for review with the CTA En Banc.

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[6] *Id*. at 10 (Decision of the CTA *En Banc* in CTA EB No. 657, p. 4).

[7] *Id*. at 363.

The Petition for Review before the CTA En Banc

Among other issues, the CIR questioned the claimant's judicial recourse to the CTA as inconsistent with the procedure prescribed in Section 112 (D) of the NIRC. The CIR asserted that the petitions for review filed with the CTA were premature, and thus, should be dismissed.

The Ruling of the CTA En Banc

The CTA En Banc sided with the CIR in ruling that the judicial claims of the petitioner were prematurely filed in violation of the 120-day and 30-day periods prescribed in Section 112 (D) of the NIRC. The court held that by reason of prematurity of its petitions for review, San Roque Power Corporation failed to exhaust administrative remedies which is fatal to its invocation of the court's power of review.The dispositive portion of the CTA En Banc's assailed decision reads:

> **WHEREFORE**, the Petition for Review filed by petitioner Commissioner of Internal Revenue is hereby **GRANTED**. Accordingly, the Petition for Review filed by respondent on March 30, 2006 docketed as CTA Case No. 7424, as well as the Petition for Review filed on June 20, 2006 docketed as CTA Case No. 7492 are hereby **DISMISSED** on ground of prematurity.
>
> **SO ORDERED.**[8]

The Present Petition for Review

The petitioner argues that at the time it filed the petitions for review before the CTA on 30 March 2006 and 20 June 2006, no ruling yet was laid down by the Supreme Court concerning the 120-day and 30-day periods provided in Section 112 of the NIRC. Instead, taxpayers such as the petitioner were guided only by the rulings of the CTA[9] which consistently

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

[9] The CTA cases cited were:*CIR v. Visayas Geothermal Power Company, Inc.,* CTA EB Case No. 282, 20 November 2007; *CIR v. CE Cebu Geothermal*

adopted the interpretation that a claimant is not bound by the 120-day and 30-day periods but by the two-year prescriptive period as provided in Section 112 (A) of the NIRC.Such CTA decisions, according to the petitioner, are recognized interpretations of Philippines' tax laws.

The petitioner also asserts that the CTA En Banc erred in applying retroactively the *Aichi* ruling as regards the 120-day and 30-day periods under Section 112 of the NIRC for the following reasons:*(1)*the *Aichi* ruling laid down a new rule of procedure which cannot be given retroactive effect without impairing vested rights; *(2)* a judicial ruling overruling a previous one cannot be applied retroactively before its abandonment; and *(3)* a judicial decision which declares an otherwise permissible act as impermissible violates the *ex post facto* rule under the Constitution.

THE COURT'S RULING

We grant the petition.

I.

No retroactive application of the Aichi ruling

At the outset, it bears stressing that while *Aichi* was already firmly established at the time the CTA En Banc promulgated the assailed decision, nowhere do we find in such assailed decision, however, that the court *a quo* cited or mentioned the *Aichi* case as basis for dismissing the subject petitions for review. As we see it, the CTA En Banc merely relied on Section 112 (D) of the NIRC, which provides —

Power Company, Inc.,CTA EB Nos. 426 and 427 (CTA Case Nos. 6791 and 6836), 29 May 2009; *CIR v. Accenture, Inc.*,CTA EB No. 410, 18 March 2009; *CE Luzon Geothermal Power Company, Inc. v. CIR,*CTA Case No. 7393, 2 March 2010; and *Eastern Telecommunications Philippines, Inc. v. CIR,* CTA EB Case No. 11 (CTA Case No.6255), 19 April 2005.

SEC. 112. *Refunds or Tax Credits of Input Tax*. –

(A) Zero-rated or Effectively Zero-rated Sales.- Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, ***within two (2) years after the close of the taxable quarter when the sales were made***, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax:

x x x x x x x x x

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. - In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes ***within one hundred twenty (120) days from the date of submission of complete documents*** in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or **the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals**. (emphases supplied)

— correctly interpreting the 120-day and 30-day periods prescribed therein as mandatory and jurisdictional. Thus, it cannot appropriately be insisted that the CTA En Banc's imputed error may be traced to a misplaced invocation of *Aichi.*

Be that as it may, the petitioner cannot find solace in the various CTA decisions that allegedly dispense with the timeliness of the judicial claim for as long as it is within the two-year prescriptive period. Such legal posturing has already been passed upon.

Thus, in *San Roque,*[10] a case involving the same parties and substantially the same factual antecedents as in the present

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[10] *Supra* note 2.

petition, we rejected the claim that the CTA decisions may be relied upon as binding precedents. We said —

> There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system. As held by this Court in *The Philippine Veterans Affairs Office v. Segundo*:
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> > x x x Let it be admonished that decisions of the Supreme Court "applying or interpreting the laws or the Constitution . . . form part of the legal system of the Philippines," and, as it were, "laws" by their own right because they interpret what the laws say or mean. **Unlike rulings of the lower courts, which bind the parties to specific cases alone, our judgments are universal in their scope and application, and equally mandatory in character**. Let it be warned that to defy our decisions is to court contempt.[11] (emphasis supplied)

We further held in said case that Article 8 of the Civil Code[12] enjoins adherence to judicial precedents. The law requires courts to follow a rule already established in a **final decision** of the **Supreme Court**. Contrary to the petitioner's view, the decisions of the CTA are not given the same level of recognition.

Concerning the 120-day period in Section 112 (D) of the NIRC, there was no jurisprudential rule **prior to *Aichi*** interpreting such provision as permitting the premature filing of a judicial claim before the expiration of the 120-day period. The alleged CTA decisions that entertained the judicial claims despite their prematurity are not to be relied upon because they

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[11] *Id*. at 382.

[12] ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.

are not final decisions of the Supreme Court worthy of according binding precedence. That *Aichi* was yet to be promulgated at that time did not mean that the premature filing of a petition for review before the CTA was a permissible act.

It was only in *Aichi* that this Court directly tackled the 120-day period in Section 112 (D) of the NIRC and declared it to be mandatory and jurisdictional. In particular, *Aichi* brushed aside the contention that the non-observance of the 120-day period is not fatal to the filing of a judicial claim as long as both the administrative and judicial claims are filed within the two-year prescriptive period provided in Section 112 (A) of the NIRC.

The mandatory and jurisdictional nature of the 120-day period first expressed in *Aichi*, however, is not a ***new*** rule of procedure to be followed in pursuit of a refund claim of unutilized creditable input VAT attributable to zero-rated sales. As suggested above, the pronouncement in *Aichi* regarding the mandatory and jurisdictional nature of the 120-day period was the Court's ***interpretation*** of Section 112 (D) of the NIRC. It is that law, Section 112 (D) of the NIRC, that laid the rule of procedure for maintaining a refund claim of unutilized creditable input VAT attributable to zero-rated sales. In said provision, the Commissioner has 120 days to act on an administrative claim.

Hence, from the effectivity of the 1997 NIRC on 1 January 1998, the procedure has always been definite: the 120-day period is mandatory and jurisdictional. Accordingly, a taxpayer can file a judicial claim (1) ***only within thirty days after the Commissioner partially or fully denies the claim*** within the 120-day period, or (2) ***only within thirty days from the expiration of the 120- day period*** if the Commissioner does not act within such period.[13] This is the rule of procedure beginning 1 January 1998 as *interpreted* in *Aichi.*

Given all the foregoing, it is indubitable that, subject to our discussion below on the reason why the present petition should

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[13] *CIR v. San Roque, supra* note 2 at 386-387.

nonetheless be granted,the petitioner's arguments have no leg to stand on —

(1) The Aichi ruling laid down a new rule of procedure which cannot be given retroactive effect without impairing vested rights.

- Section 112 (D) of the NIRC, not the *Aichi* ruling, lays down the rule of procedure governing refund claims of unutilized creditable input VAT attributable to zero-rated sales; *Aichi* is merely an interpretation of an existing law;there is no vested right to speak of respecting a wrong construction of the law[14] (permitting a premature filing of judicial claim);

(2) A judicial ruling overruling a previous one cannot be applied retroactively before its abandonment.

- There was no established doctrine abandoned or overturned by *Aichi;* the petitioner merely harps on CTA decisions that cannot be relied on as binding precedents; and

(3) A judicial decision which declares an otherwise permissible act as impermissible violates the ex post facto rule under the Constitution –

- Prior to *Aichi,* there was no law or jurisprudence permitting the premature filing of a judicial claim of creditable input VAT; *Aichi* did not declare as impermissible that which was previously recognized by law or jurisprudence as a permissible act; it is, therefore, inconsequential to consider the *ex post facto* provision of the Constitution.

To reiterate, the 120-day and 30-day periods, as held in the case of *Aichi,* are **mandatory** and **jurisdictional**. Thus, noncompliance with the mandatory 120+30-day period renders the petition before the CTA void. The ruling in said case as

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[14] *Philippine Bank of Communications v. CIR,* 361 Phil. 916, 931 (1999).

to the mandatory and jurisdictional character of said periods was reiterated in *San Roque* and a host of succeeding similar cases.

Significantly, a taxpayer can file a judicial claim ***only within thirty (30) days from the expiration of the 120-day period*** if the Commissioner does not act within the 120-day period.The taxpayer cannot file such judicial claim prior to the lapse of the 120-day period, unless the CIR partially or wholly denies the claim within such period. The taxpayer-claimant must strictly comply with the mandatory period by filing an appeal to the CTA within thirty days from such inaction; otherwise, the court cannot validly acquire jurisdiction over it.

In this case, the petitioner timely filed its administrative claims for refund/credit of its unutilized input VAT for the first quarter of 2004, and for the second to fourth quarters of the same year,on **22 December 2005** and **27 February 2006**, respectively, or within the two-year prescriptive period. Counted from such dates of submission of the claims (with supporting documents), the CIR had 120 days, or until **13April 2006,** with respect to the first administrative claim,and until **27 June 2006,** on the second administrative claim, to decide.

However, the petitioner, without waiting for the full expiration of the 120-day periods and without any decision by the CIR,immediately filed its petitions for review with the CTA on **30 March 2006**, or a mere **ninety-eight (98) days** for the first administrative claim; and on **20 June 2006**, or only **one hundred thirteen (113) days** for the second administrative claim, from the submission of the said claims. In other words, the judicial claims of the petitioner were prematurely filed as correctly found by the CTA En Banc.

II.

Ordinarily, a prematurely filed appeal is to be dismissed for lack of jurisdiction in line with our ruling in *Aichi.* But, as stated in the premises, we shall accord to the CTA jurisdiction over the claims in this case due to our ruling in *San Roque.*

BIR Ruling No. DA-489-03 constitutes an exception to the mandatory and jurisdictional nature of the 120+30-day period.

In the consolidated cases of *San Roque*, the Court en banc recognized an exception to the mandatory and jurisdictional nature of the 120+30-day period. It was noted that BIR Ruling No. DA-489-03, which expressly stated –

> [A] taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review.

— is a general interpretative rule issued by the CIR pursuant to its power under Section 4 of the NIRC, hence, applicable to ***all*** taxpayers.Thus, taxpayers can rely on this ruling from the time of its issuance on 10 December 2003. The conclusion is impelled by the principle of equitable estoppel enshrined in Section 246[15] of the NIRC which decrees that a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal.

Then, in *Taganito Mining Corporation v. CIR,*[16] the Court further clarified the doctrines in *Aichi* and *San Roque* explaining that during the **window period** from 10 December 2003, upon the issuance of BIR Ruling No. DA-489-03 up to 6 October

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[15] SEC. 246. Non-Retroactivity of Rulings. – Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

(a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
(b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
(c) Where the taxpayer acted in bad faith.

[16] 736 Phil. 591 (2014).

2010, or date of promulgation of *Aichi*, taxpayers need not observe the stringent 120-day period.[17]

In other words, the 120+30-day period is generally mandatory and jurisdictional from the effectivity of the 1997 NIRC on 1 January 1998, up to the present. By way of an exception, judicial claims filed during the window period from 10 December 2003 to 6 October 2010, need not wait for the exhaustion of the 120-day period.The exception in *San Roque* has been applied consistently in numerous decisions of this Court.

In this case, the two judicial claims filed by the petitioner fell within the window period, thus, the CTA can take cognizance over them.

The petitioner is similarly situated as Taganito Mining Corporation *(Taganito)* in the consolidated cases of *San Roque.* In that case, Taganito prematurely filed on 14 February 2007 its petition for review with the CTA, or within the window period from 10 December 2003, with the issuance of BIR Ruling DA-489-03 and 6 October 2010, when *Aichi* was promulgated. The Court considered Taganito to have filed its administrative claim on time. Similarly, the judicial claims in this case were filed on 30 March 2006 and 20 June 2006, or within the said window period. Consequently, the exception to the mandatory and jurisdictional character of the 120-day and 30-day periods is applicable.

What this means is that the CTA can validly take cognizance over the two judicial claims filed in this case. The CTA Division, in fact, did this,which eventually led to the partial grant of the refund claims in favor of the petitioner. In reversing the CTA Division for lack of jurisdiction, the CTA En Banc failed to consider BIR Ruling No. DA-489-03.

III.

It is imperative, however, to point out that the petitioner did not actually invoke BIR Ruling No. DA-489-03 in all its pleadings

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[17] *Id*. at 600.

to justify the timeliness of its judicial claims with the CTA.To recall, the petitioner vociferously insisted on the propriety of its judicial claims in view of the prevailing interpretations of the CTA prior to *Aichi* that allowed premature filing of petitions for review before the CTA.This apparently also explains the silence on the end of the CTA En Banc regarding such BIR ruling in disposing of the matter on jurisdiction.

Hence, whether the petitioner can benefit from BIR Ruling DA-489-03 even if it did not invoke it is a question worthy of consideration.

The beneficiaries of BIR Ruling No. DA-489-03 include those who did not specifically invoke it.

We resolve to apply the exception recognized in *San Roque,* which we quote, *viz:*

> x x x BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, ***all*** taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120+30-day periods are mandatory and jurisdictional.[18] (emphasis supplied)

As previously stated, *San Roque* has been consistently applied in a long line of cases that recognized the exception to the mandatory and jurisdictional nature of the 120+30-day period. To limit the application of BIR Ruling No. DA-489-03 only to those who invoked it specifically would unduly strain the pronouncements in *San Roque*. To provide jurisprudential stability, it is best to apply the benefit of BIR Ruling No. DA-489-03 to ***all*** taxpayers who filed their judicial claims within the window period from 10 December 2003 until 6 October 2010.

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[18] *Supra* note 2 at 376.

We said the same in *Commissioner of Internal Revenue v. Air Liquide Philippines, Inc.,*[19] thus –

> The Court agrees with ALPI in its survey of cases which shows that BIR Ruling No. DA-489-03 was applied even though the taxpayer did not specifically invoke the same. As long as the judicial claim was filed between December 10, 2003 and October 6, 2010, then the taxpayer would not be required to wait for the lapse of 120-day period. This doctrine has been consistently upheld in the recent decisions of the Court. On the other hand, in *Nippon Express v. CIR, Applied Food Ingredients v. CIR* and *Silicon Philippines v. CIR,* the taxpayer did not benefit from BIR Ruling No. DA-489-03 because they filed their precipitate judicial claim before December 10, 2003.
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> Indeed, BIR Ruling No. DA-489-03 is a general interpretative law and it applies to each and every taxpayer.To subscribe to the contention of the CIR would alter the Court's ruling in *San Roque.* It will lead to an unreasonable classification of the beneficiaries of BIR Ruling No. DA-489-03 and further complicate the doctrine. ALPI cannot be faulted for not specifically invoking BIR Ruling No. DA-489-03 as the rules for its application were not definite until the *San Roque* case was promulgated.
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> In the furtherance of the doctrinal pronouncements in *San Roque,* the better approach would be to apply BIR Ruling No. DA-489-03 to **all** taxpayers who filed their judicial claim for VAT refund within the period of exception from December 10, 2003 to October 6, 2010.[20] (citations omitted)

Moreover, in *Procter and Gamble Asia Pte Ltd. v. Commissioner of Internal Revenue,*[21] we considered as insignificant the failure of a taxpayer to invoke BIR Ruling No. DA-489-03 before the CTA. Our reason was that the said ruling is an official act emanating from the BIR. We can take judicial notice of such issuance and its consistent application in past rulings of the Court relating to the timeliness of judicial claims which makes it even more mandatory in taking cognizance of the same.

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[19] 765 Phil. 304 (2015).

[20] *Id*. at 311-312.

[21] 785 Phil. 817 (2016).

All told, the CTA has jurisdiction over the judicial claims filed by the petitioner in this case. The CTA En Banc, thus, erred in setting aside the decision of the CTA Division on the ground of lack of jurisdiction. Consequently, the decision of the CTA Division partially granting the claim for refund/credit in favor of the petitioner must be reinstated.

WHEREFORE, the petition is **GRANTED**. The 4 April 2012 Decision and 17 August 2012 Resolution of the Court of Tax Appeals En Banc in CTA EB No. 657 are **REVERSED** and **SET ASIDE**. The 8 January 2010 Decision and 28 June 2010 Resolution of the CTA Former Second Division in CTA Cases Nos. 7424 and 7492 are hereby **REINSTATED**.

The public respondent Commissioner of Internal Revenue is hereby **ORDERED TO REFUND** or, in the alternative, **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of the petitioner in the total sum of Twenty-Nine Million Nine Hundred Thirty-One Thousand Five Hundred Five Pesos and 18/100 Centavos (₱29,931,505.18) representing unutilized input VAT attributable to zero-rated sales to the NPC for the four taxable quarters of 2004.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 210286. July 23, 2018]

WELBILT CONSTRUCTION CORP., WACK WACK CONDOMINIUM CORP., and SPOUSES EUGENIO JUAN GONZALEZ AND MATILDE GONZALEZ, *petitioners, vs.* **HEIRS OF CRESENCIANO C. DE CASTRO,** *respondents.*

SYLLABUS

CIVIL LAW; REPUBLIC ACT NO. 4726 (THE CONDOMINIUM ACT); ASSESSMENTS UPON ANY CONDOMINIUM SHALL BE A LIEN UPON THE CONDOMINIUM; FORECLOSURE PROCEEDING TO ENFORCE THE LIEN UPON THE CONDOMINIUM, VALID IN CASE AT BAR.— Section 20 of the Condominium Act merely provides that the assessments, upon any condominium made in accordance with a duly registered declaration of restrictions, shall be a lien upon the said condominium, and also prescribes the procedure by which such liens may be enforced, *viz.*: x x x Indeed, it does not grant the petitioners the authority to foreclose. The aforecited provision clearly provides that the rules on extra-judicial foreclosure of mortgage or real property should be followed. Accordingly, Section 1 of Act No. 3135, which prescribes for the procedure for the extra-judicial foreclosure of real properties subject to real estate mortgage, in relation to Circular No. 7-2002 and SC A.M. No. 99-10-05-0 requires that the petition for extra-judicial foreclosure be supported by evidence that petitioners hold a special power or authority to foreclose, x x x In the case at bar, the foreclosure was not merely based on the notice of assessment annotated on CCT No. 2826 nor solely upon the Condominium Act but also on the Master Deed and the condominium corporation's By-Laws. x x x Clearly, petitioners were authorized to institute the foreclosure proceeding to enforce the lien upon the condominium unit. Moreover, this conclusion finds support in the 1984 condominium corporation's Board Resolution No. 84-007, also signed by De Castro as a member of the Board of Directors at that time, x x x Furthermore, in the similar case of *Wack Wack Condominium Corp. v. Court*

of Appeals, involving petitioners and another unit owner, wherein the petitioners likewise extra-judicially foreclosed a condominium unit to enforce assessments albeit the issue therein was the jurisdiction of the SEC, this Court had already ruled that the Condominium Act and the By-Laws of the condominium corporation recognize and authorize assessments upon a condominium unit to constitute a lien on such unit which may be enforced by judicial or extra-judicial foreclosure. Clearly, petitioners' authority to foreclose a condominium unit to enforce assessments, pursuant to the Condominium Act and the condominium corporation's Master Deed and By-Laws, had long been established.

APPEARANCES OF COUNSEL

Solis Medina Limpingco & Fajardo Law Offices for petitioners.

RRV Legal Consultancy Firm for respondents.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated September 30, 2013 and Resolution[3] dated December 4, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 93366.

Factual Antecedents

Petitioners Welbilt Construction Corporation and Wack Wack Condominium Corporation are the developer and management body of Wack Wack Apartments Building (condominium),

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[1] *Rollo*, pp. 11-55.

[2] Penned by Associate Justice Normandie B. Pizarro, concurred in by Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios; *id*. at 64-78.

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

respectively,[4] while Spouses Eugenio Juan and Matilde Gonzalez are the owners thereof.[5]

The late Cresenciano C. De Castro (De Castro) is the registered owner of Unit 802 of the condominium, covered by Condominium Certificate of Title (CCT) No. 2826[6] (subject property). For failure to pay assessment dues amounting to ₱79,905.41 as of July 31, 1986 despite demand, Welbilt Construction Corp., Wack Wack Condominium Corp., and Spouses Eugenio Juan Gonzalez and Matilde Gonzalez (petitioners) caused the annotation of a lien for unpaid assessments and other dues at the back of De Castro's title on August 14, 1986 pursuant to Section 4 of the Master Deed with Declaration of Restrictions of Wack Wack Condominium (Master Deed).[7]

As the said dues remained unsettled, petitioners filed a petition for the extra-judicial foreclosure of the subject property with the Office of the *Ex-Officio* Sheriff of Pasig City on October 27, 1986. The requirements of publication and posting of the notice were then complied with and the public auction was set on February 10, 1987. A copy of such notice was received by De Castro on January 29, 1987.[8]

Petitioners emerged as the highest bidder for ₱88,809.94. Accordingly, a certificate of sale was issued in their favor on February 10, 1987. On April 2, 1987, the sale was registered with the Register of Deeds of Pasig City and annotated at the back of De Castro's title. De Castro failed to redeem the property.[9]

When requested to surrender his owner's duplicate copy of CCT No. 2826, De Castro filed a petition for annulment of

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[4] *Id*. at 14.

[5] *Id*. at 65.

[6] *Id*. at 80-82.

[7] *Id*. at 65-66.

[8] *Id*. at 66.

[9] *Id*.

foreclosure proceedings before the Securities and Exchange Commission (SEC) which then had the jurisdiction over intra-corporate disputes. In the said petition, De Castro argued that petitioners have no legal personality to invoke the Condominium Act and should have availed of other remedies in law; the annotation of assessment dues and certificate of sale, and the extra-judicial proceedings were highly irregular and devoid of factual and legal basis; that the assessments imposed were excessive, oppressive, unconscionable, and arbitrary; and that the petitioners have no special power of attorney or authority was granted to them nor was there any agreement between the parties to that effect.[10]

For their part, petitioners countered that the foreclosure was lawful pursuant to the Master Deed to which De Castro was bound as a unit owner. Petitioners further averred that the assessment was fair and reasonable as the rate in computing the same was the same applied to all condominium unit owners. As for the foreclosure proceedings, De Castro was notified thereof but never made any opposition nor did he attend the foreclosure sale.[11]

Sometime in February 1992, during the pendency of the case, De Castro passed away[12] and substituted by Heirs of Cresenciano C. De Castro (respondents).

Ruling of the Regional Trial Court

In its March 31, 2009 Decision,[13] the Regional Trial Court (RTC) of Mandaluyong City, Branch 211, ruled for the validity of the extra-judicial foreclosure proceedings instituted by the petitioners. The RTC thoroughly discussed that the evidence on record clearly show that De Castro was aware of his unsettled

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[10] *Id*. at 67.

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

[12] *Id*. at 68.

[13] Rendered by Acting Presiding Judge Edwin D. Sorongon; *id*. at 183-190.

dues and penalties. The RTC also held that De Castro cannot deny that he is bound by the Master Deed, which gave authority to the petitioners to issue assessments against him for his unpaid dues and penalties. The RTC also cited the By-Laws of the condominium corporation that gives authority to the Board of Directors to enforce collection of unpaid assessments duly levied in by any of the remedies provided by the Republic Act No. 4726[14] or the Condominium Act and other pertinent laws, such as foreclosure. The RTC, disposed, thus:

WHEREFORE, judgement is hereby rendered as follows:

(a) Dismissing as it is hereby **DISMISSED** the instant petition for lack of merit; and,

(b) Dismissing as it is hereby **DISMISSED** the counter-claims of the [petitioners].

SO ORDERED.[15]

Ruling of the CA

In its September 30, 2013 Decision,[16] the CA reversed and set aside the RTC Decision, on the sole ground that the petitioners have no sufficient authority to extra-judicially foreclose the subject property. The CA cited the case of *First Marbella Condominium Association, Inc. v. Gatmaytan*,[17] wherein the Court ruled that it is mandatory that a petition for extra-judicial foreclosure be supported by evidence that petitioner holds a special power or authority to foreclose pursuant to Circular No. 7-2002,[18] implementing Supreme Court (SC) Administrative

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[14] AN ACT TO DEFINE CONDOMINIUM, ESTABLISH REQUIREMENTS FOR ITS CREATION, AND GOVERN ITS INCIDENTS. Approved on June 18, 1966.

[15] *Id*. at 190.

[16] *Id*. at 64-78.

[17] 579 Phil. 432 (2008).

[18] Guidelines for the Enforcement of the Supreme Court Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0, as Amended by the Resolutions dated January 30, 2001 and August 7, 2001; effective April 22, 2002.

Matter (A.M.) No. 99-10-05-0.[19] According to the CA, herein condominium corporation's By-Laws or the Master Deed does not vest the petitioners with sufficient authority to extra-judicially foreclose the property. Neither does Section 20 of the Condominium Act gives authority to the petitioners to enforce the liens on the condominium unit through extra-judicial foreclosure as the said provision merely prescribes the procedure therefor, *i.e.*, it should be done in the same manner provided for by law for the judicial or extra-judicial foreclosure of mortgage of real property.[20] The CA disposes, thus:

> **WHEREFORE**, the appeal is **GRANTED**. The assailed RTC ***Decision*** dated March 31, 2009 is **REVERSED** and **SET ASIDE**. Accordingly, the petition in SEC Case No. MC-01-002 is **GRANTED**. The extra-judicial foreclosure of Condominium Unit No. 802 is **SET ASIDE** for being null and void. With costs.
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> **SO ORDERED.**[21]

Hence, this petition.

Issue

Whether or not the CA erred in declaring the extra-judicial foreclosure proceeding null and void.

Ruling of the Court

We find merit in the instant petition.

As can be gleaned from the CA's assailed Decision, its conclusion that the extra-judicial foreclosure proceeding instituted by the petitioners is null and void for the latter's lack of proof of authority is heavily anchored upon the case of *First Marbella*[22] above-cited. A careful perusal of the said case,

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[19] Re: Procedure in Extra-Judicial or Judicial Foreclosure of Real Estate Mortgage; effective January 15, 2000.

[20] *Rollo*, pp. 76-77.

[21] *Id*. at 77.

[22] *Supra* note 17.

however, would show that the same is not applicable in the case at bar.

Section 20 of the Condominium Act merely provides that the assessments, upon any condominium made in accordance with a duly registered declaration of restrictions, shall be a lien upon the said condominium, and also prescribes the procedure by which such liens may be enforced, *viz.*:

> Sec. 20. The assessment upon any condominium made in accordance with a duly registered declaration of restrictions shall be an obligation of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs (including attorney's fees) and penalties, as such may be provided for in the declaration of restrictions, ***shall be and become a lien upon the condominium to be registered with the Register of Deeds of the city or province where such condominium project is located***. The notice shall state the amount of such assessment and such other charges thereon as may be authorized by the declaration of restrictions, a description of condominium unit against which same has been assessed, and the name of the registered owner thereof. Such notice shall be signed by an authorized representative of the management body or as otherwise provided in the declaration of restrictions. Upon payment of said assessment and charges or other satisfaction thereof, the management body shall cause to be registered a release of the lien.
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> Such lien shall be superior to all other liens registered subsequent to the registration of said notice of assessment except real property tax liens and except that the declaration of restrictions may provide for the subordination thereof to any other liens and encumbrances, ***such liens may be enforced in the same manner provided for by law for the judicial or extra-judicial foreclosure of mortgage or real property***. Unless otherwise provided for in the declaration of the restrictions, the management body shall have power to bid at foreclosure sale. The condominium owner shall have the right of redemption as in cases of judicial or extra-judicial foreclosure of mortgages.[23] (Emphasis in the original)

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[23] *Id*. at 441.

Indeed, it does not grant the petitioners the authority to foreclose. The aforecited provision clearly provides that the rules on extra-judicial foreclosure of mortgage or real property should be followed. Accordingly, Section 1[24] of Act No. 3135,[25] which prescribes for the procedure for the extra-judicial foreclosure of real properties subject to real estate mortgage, in relation to Circular No. 7-2002 and SC A.M. No. 99-10-05-0 requires that the petition for extra-judicial foreclosure be supported by evidence that petitioners hold a special power or authority to foreclose, thus:

> Sec. 1. All applications for extra-judicial foreclosure of mortgage, whether under the direction of the Sheriff or a notary public pursuant to Art. No. 3135, as amended, and Act 1508, as amended, shall be filed with the Executive Judge, through the Clerk of Court, who is also the Ex-Officio Sheriff (A.M. No. 99-10-05-0, as amended, March 1, 2001).
>
> Sec. 2. Upon receipt of the application, the Clerk of Court shall:
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> a. Examine the same to ensure that the special power of attorney authorizing the extra-judicial foreclosure of the real property is either inserted into or attached to the deed of real estate mortgage (Act No. 3135, Sec. 1, as amended) x x x.[26]

In *First Marbella*, the Court held that "[w]ithout proof of petitioner's special authority to foreclose, the Clerk of Court as *Ex-Officio* Sheriff is precluded from acting on the application for extra-judicial foreclosure."[27]

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[24] Section 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following election shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

[25] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES. Approved on March 6, 1924.

[26] *Rollo*, p. 75.

[27] *First Marbella Condominium Ass'n., Inc. v. Gatmaytan*, *supra* note 17, at 440.

Unlike in *First Marbella*, however, the CA erred in ruling that herein petitioners have no such special authority to foreclose. In the said case, the Court found that the only basis of therein petitioners for causing the extra- judicial foreclosure of therein respondent's condominium unit was a mere notice of assessment annotated on the latter's CCT. Thus, the Court ruled that neither annotation nor law vests therein petitioner with sufficient authority to foreclose on the property.[28]

In the case at bar, the foreclosure was not merely based on the notice of assessment annotated on CCT No. 2826 nor solely upon the Condominium Act but also on the Master Deed[29] and the condominium corporation's By-Laws.[30] As correctly found by the RTC:

> Thus, Section 1 of the Article V of the By-laws of the Condominium Corporation authorizes the board to assess the unit owner penalties and expenses for maintenance and repairs necessary to protect the common areas or any portion of the building or safeguard the value and attractiveness of the condominium. **Under Section 5 of Article [V] of the By-Laws, in the event a member defaults in the payment of any assessment duly levied in accordance with the Master Deed and the By-Laws, the Board of Directors may enforce collection thereof by any of the remedies provided by the Condominium Act and other pertinent laws, such as foreclosure.** x x x.
>
> x x x x x x x x x
>
> **The Master Deed with Declaration of Restrictions of the Condominium Project is annotated on the Condominium Certificate of title 2826. The Master Deed and By-Laws constitute as the contract between the unit owner and the condominium corporation. As a unit owner, [De Castro] is bound by the rules and restrictions embodied in the said Master Deed and by-Laws pursuant to the provisions of the Condominium Act. Under the Condominium Act (*Section 20 of RA 4726*) and the by-laws (*Section 5 of Article [V]*) of the Wack Wack, the assessments upon a condominium constitute**

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[28] *Id*.

[29] *Rollo*, pp. 103-123.

[30] *Id*. at 84-102.

a lien on such condominium and may be enforced by judicial or extra-judicial foreclosure.[31] (Emphasis ours)

Clearly, petitioners were authorized to institute the foreclosure proceeding to enforce the lien upon the condominium unit. Moreover, this conclusion finds support in the 1984 condominium corporation's Board Resolution No. 84-007,[32] also signed by De Castro as a member of the Board of Directors at that time, stating that:

> RESOLVED to, as we do hereby authorize our President, Arch. Eugenio Juan Gonzalez and/or the law offices of Siguion Reyna, Montecillo and Ongsiako and/or whomsoever Arch. Gonzalez may appoint or designate, to effect foreclosure of Condominium Apartment Units at Wack Wack Apartment Building Condominium Project, Mandaluyong, Metro Manila with unpaid or delinquent accounts to satisfy the unit's obligation to Wack Wack Condominium Corporation;
>
> RESOLVED FURTHER TO, as we do hereby designate and appoint Arch. Eugenio Juan Gonzalez as the Wack Wack Condominium Corporation's attorney-in-fact for the purpose of foreclosure;
>
> RESOLVED FINALLY TO, as we do hereby authorize the above-named Architect Eugenio Juan Gonzalez to execute, sign, and deliver documents and whatever papers necessary, and in general, to do and perform all such acts and things that are or may be necessary to give effect to the foregoing authority.

Furthermore, in the similar case of *Wack Wack Condominium Corp. v. Court of Appeals*,[33] involving petitioners and another unit owner, wherein the petitioners likewise extra-judicially foreclosed a condominium unit to enforce assessments albeit the issue therein was the jurisdiction of the SEC, this Court had already ruled that the Condominium Act and the By-Laws of the condominium corporation recognize and authorize assessments upon a condominium unit to constitute a lien on

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[31] *Id*. at 189-190.

[32] *Id*. at 148.

[33] 290 Phil. 357 (1992).

such unit which may be enforced by judicial or extra-judicial foreclosure. Clearly, petitioners' authority to foreclose a condominium unit to enforce assessments, pursuant to the Condominium Act and the condominium corporation's Master Deed and By-Laws, had long been established.

WHEREFORE, premises considered, the Petition is **GRANTED**. Accordingly, the Decision dated September 30, 2013 and Resolution dated December 4, 2013 of the Court of Appeals in CA-G.R. CV No. 93366 are hereby **REVERSED and SET ASIDE.** The Decision dated March 31, 2009 of the Regional Trial Court of Mandaluyong City, Branch 211 in SEC Case No. MC-01-002 is **REINSTATED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 211450. July 23, 2018]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **LOVING F. FETALVERO, JR.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; POWER OF CONTROL

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

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

AND POWER OF SUPERVISION, DISTINGUISHED.— As the Assistant General Manager for Operations, Cecilio exercised control and supervision over the Port Police Department. His authority over it is evident in Philippine Ports Authority Memorandum Circular No. 18-2000, or the Revised Port Security Services Procurement and Contract Administration x x x. The power of supervision involves oversight of a subordinate to ensure that the rules are followed. On the other hand, the power of control is broader as it involves laying down the actual rules to be followed. If the rules are not followed, the power of control allows the controlling officer to order that the act be done or undone, or even to supplant the subordinate's act with his or her own act. *Mondano v. Silvosa* expounded on the difference between supervision and control: In administrative law[,] supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them[,] the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. Petitioner faults Cecilio for readjusting Lockheed's original rating from the Port Police Department, thereby leading to Lockheed's eligibility to participate in the bidding for a security service contract. However, as the controlling officer over the Port Police Department, Cecilio precisely had the authority to supplant its rating with a new one as long as the new rating was backed by the necessary evidence and he did not gravely abuse his authority to do so.

2. ID.; ID.; ADMINISTRATIVE CHARGES; DISHONESTY INVOLVES INTENTIONALLY MAKING A FALSE STATEMENT TO DECEIVE OR COMMIT A FRAUD, WHILE MISCONDUCT IS MORE THAN JUST MERE ERROR OF JUDGMENT AS IT INVOLVES A WRONGFUL INTENTION FROM THE PUBLIC OFFICER INVOLVED.— Petitioner attempts to pin liability on respondent by insisting that the Certificate of Final Rating issued by Cecilio was "loosely based" on the reply that petitioner drafted.

However, as respondent's reply is a compilation of Lockheed's ratings, it is inevitable that it will be referred to for the issuance of Certificate of Final Rating in Lockheed's favor. This cannot be interpreted as respondent's positive act to recompute or adjust Lockheed's rating to give it undue preference. Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity." It involves intentionally making a false statement to deceive or commit a fraud. On the other hand, misconduct is more than just mere error of judgment as it involves a wrongful intention from the public officer involved. It is also defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."

3. ID.; ID.; ID.; IN ADMINISTRATIVE PROCEEDINGS, COMPLAINANTS CARRY THE BURDEN OF PROVING THEIR ALLEGATIONS WITH SUBSTANTIAL EVIDENCE OR SUCH RELEVANT EVIDENCE AS A REASONABLE MIND WILL ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION.— In administrative proceedings, complainants carry the burden of proving their allegations with substantial evidence or "such relevant evidence as a reasonable mind will accept as adequate to support a conclusion." x x x. As the complainant, petitioner has the burden of proving that respondent deliberately committed falsehood or transgressed established rules to give Lockheed undue preference during the bidding process of the contract for services. Petitioner fails to discharge its burden. What petitioner only managed to prove was that respondent, upon orders of his superior, collated the ratings and recommendations submitted by the other officers and then summarized them into a report. By no stretch of mind can respondent's submission of a report, an act which was done within the confines of his function as the Superintendent of the Port District Office-Luzon, be seen as an unlawful act.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Cesar G. Viola for respondent.

D E C I S I O N

LEONEN, *J.*:

Complainants in administrative proceedings carry the burden of proving their allegations with substantial evidence or such "relevant evidence that a reasonable mind might accept as adequate to support a conclusion."[1]

This resolves the Petition for Review[2] filed by the Office of the Ombudsman assailing the April 15, 2013 Decision[3] and February 20, 2014 Resolution[4] of the Court of Appeals in CA-G.R. SP No. 119495.

The facts as borne by the records are as follows:

Lockheed Detective and Watchman Agency, Inc. (Lockheed) was the security services contractor for Philippine Ports Authority's Port District Office-Luzon. When the time came to bid for a new security provider, Lockheed applied for accreditation to bid for the security services contract.[5]

Officers from the Port Police Department reviewed Lockheed's performance and gave it a rating of 78.30 or "fair." Lockheed's fair rating effectively disqualified it from being accredited to bid for the new security services contract.[6]

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[1] *De Jesus v. Guerrero III*, 614 Phil. 520, 528-529 (2009) [Per *J.* Quisumbing, Second Division].

[2] *Rollo*, pp. 11-29.

[3] *Id*. at 31-39. The Decision was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Florito S. Macalino and Pedro B. Corales of the Seventeenth Division, Court of Appeals, Manila.

[4] *Id*. at 41-44. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Florito S. Macalino and Pedro B. Corales of the Former Seventeenth Division, Court of Appeals, Manila.

[5] *Id*. at 67.

[6] *Id*. at 68.

Philippine Ports Authority Assistant General Manager for Operations Benjamin Cecilio (Cecilio) referred Lockheed's rating to Port District Office-Luzon for its review and comments. Port District Office-Luzon Security Staff Officer Captain Geronimo R. Grospe (Grospe), in turn, directed Lockheed to comment on its rating from the Port Police Department.[7]

Lockheed submitted its comment, and Grospe, finding merit in its arguments for reconsideration, recommended the reconsideration of its rating and the issuance of its Certificate of Accreditation to bid for the new security services contract.[8]

Port District Office-Luzon Port District Manager Hector Miole (Miole) also recommended the recomputation of Lockheed's rating and the issuance of its Certificate of Accreditation.[9]

Cecilio directed Port District Office-Luzon Superintendent Loving F. Fetalvero, Jr. (Fetalvero) to review Grospe's and Miole's recommendations against the guidelines and to draft a reply.[10]

Port Management Office-Puerto Princesa, Palawan Station Commander Aquilino Peregrino (Peregrino) submitted Lockheed's re-evaluation performance to Miole.[11]

Cecilio eventually adapted Grospe's and Miole's recommendations and issued Lockheed a Certificate of Final Rating, with a readjusted rating of 83.97, or satisfactory, from the original rating of 78.30, or fair, making Lockheed eligible for the accreditation to bid.[12]

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[7] *Id*.

[8] *Id*.

[9] *Id*. at 68-69.

[10] *Id*. at 69.

[11] *Id*.

[12] *Id*. at 70.

Port Police Department Division Manager Maximo Aguirre (Aguirre) filed a complaint-affidavit against Cecilio, Fetalvero, Miole, Grospe, and Peregrino for Grave Misconduct and Dishonesty.[13]

Aguirre claimed that Cecilio issued Lockheed's Certificate of Final Rating without going through the prescribed procedure under the Philippine Ports Authority Memorandum Circular No. 18-2000.[14]

Aguirre also averred that the Port Police Officers who gave Lockheed its original rating did not participate in its reevaluation, contrary to the claims of Peregrino that they did. Furthermore, the Port Police Officers who rated Lockheed denied reevaluating Lockheed and changing its rating. Thus, Aguirre asserted that Cecilio committed deceit, misrepresentation, and deception because the reassessment was without basis and was done to favor Lockheed.[15]

On May 21, 2003, Graft Investigation and Prosecution Officer I Moreno F. Generoso (Officer Generoso) dismissed[16] the complaint. However, in his November 25, 2004 Review Resolution,[17] Assistant Special Prosecutor III Roberto T. Agagon recommended the reversal of the May 21, 2003 Decision and the dismissal from service of the charged officers.

The Review Resolution held that while it was acceptable to move for the reconsideration of the issued rating, readjusting it from 78.30 to 83.97 was another matter altogether and constituted Grave Misconduct and Dishonesty.[18]

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[13] *Id*. at 66-67.

[14] *Id*. at 67.

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

[16] *Id*. at 66.

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

[18] *Id*. at 70.

It likewise noted that Lockheed's reevaluation was irregularly made because the Port Police Officers who conducted the first evaluation denied being part of the reevaluation. Furthermore, Peregrino and Grospe had no personal knowledge of Lockheed's performance; hence, they had no basis for their reevaluation of the original rating. It also emphasized that the readjustment was done whimsically and capriciously since there were no documents or computations submitted to support the readjustment.[19]

The *fallo* of the Review Resolution read:

> WHEREFORE, it is recommended that respondents Benjamin Cecilio, Loving Fetalvero, Jr., Hector Miole, Geronimo Gorospe (sic) and Aquilino Peregrino be held guilty of Grave Misconduct and Dishonesty and are meted the penalty of Dismissal from the service.[20]

The recommendation was approved by Orlando C. Casimiro, the Deputy Ombudsman for the Military and Other Law Enforcement Offices.[21]

On June 7, 2006, Graft Investigation and Prosecution Officer II Joselito Fangon (Officer Fangon) granted the motions for reconsideration filed by Fetalvero, Cecilio, Miole, Grospe, and Peregrino, and reversed the November 25, 2004 Review Resolution.[22]

However, on October 20, 2006,[23] Graft Investigation and Prosecution Officer I Russel C. Labor recommended the reversal of the June 7, 2006 Order and the affirmation of the November 25, 2004 Review Resolution.

The October 20, 2006 Review Order pointed out that personal knowledge of Lockheed's performance was needed to readjust

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[19] *Id*. at 71-72.

[20] *Id*. at 72.

[21] *Id*.

[22] *Id*. at 45.

[23] *Id*. at 45-65.

or reevaluate its rating. Thus, the readjustment by persons without personal knowledge of the behavior and performance of Lockheed's guards was improper and highly irregular.[24]

The Review Order also brought up that Cecilio's and the other officers' acts showed a "common intent ... to cover up [Lockheed's] below satisfactory rating" so that it could qualify for the bidding of Philippine Port Authority's security services.[25]

The recommendation of the Review Order read:

> The undersigned respectfully recommends for the affirmation of the Review Resolution of Special Prosecutor III Agagon holding respondents, **BENJAMIN B. CECILIO, LOVING F. FETALVERO, JR., HECTOR E. MIOLE, GERONIMO GROSPE**, and **AQUILINO PEREGRINO**, liable for **GRAVE MISCONDUCT** and **DISHONESTY**.[26] (Emphasis in the original)

The recommendation was approved by Deputy Ombudsman for Luzon Mark E. Jalandoni.[27]

Fetalvero appealed the Office of the Ombudsman's November 25, 2004 Review Resolution and October 20, 2006 Review Order to the Court of Appeals.[28]

Fetalvero claimed that his acts of collating and computing Lockheed's reevaluated ratings from Grospe and Miole were "ministerial ... done in the regular performance of his duty."[29]

On April 15, 2013,[30] the Court of Appeals granted Fetalvero's petition.

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[24] *Id*. at 62-63.

[25] *Id*. at 63.

[26] *Id*. at 64.

[27] *Id*.

[28] *Id*. at 31.

[29] *Id*. at 36.

[30] *Id*. at 31-39.

The Court of Appeals sustained the May 21, 2003 Decision of Officer Generoso and upheld his findings that Fetalvero's acts did not constitute dishonesty and grave misconduct.[31]

It likewise noted that in the June 7, 2006 Order granting the motion for reconsideration and reversing the November 25, 2004 Review Resolution, Officer Fangon found no abuse of discretion in the readjustment of Lockheed's rating.[32]

Finally, it emphasized that the related criminal complaint of the administrative case against Fetalvero and the other officers was withdrawn by the Ombudsman from the Sandiganbayan.[33]

The *fallo* of the Court of Appeals April 15, 2013 Decision read:

> **WHEREFORE**, premises considered, the Petition for Review is **GRANTED**. The Review Resolution dated November 25, 2004 and Review Order dated October 20, 2006 of the Office of the Ombudsman in OMB-C-A-02-0023-A are hereby **REVERSED and SET ASIDE**. Administrative Case No. OMB-C-A-02-0023-A against petitioner Loving Fetalvero, Jr. is hereby **DISMISSED**.
>
> **SO ORDERED.**[34] (Emphasis in the original)

On February 20, 2014, the Court of Appeals denied[35] the motions for reconsideration filed by the Office of the Ombudsman and Aguirre.

On April 24, 2014, the Office of the Ombudsman filed its petition before this Court.[36]

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

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

[33] *Id*. at 38.

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

[35] *Id*. at 41-44.

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

In its Petition, petitioner emphasizes that the readjusted Certificate of Final Rating awarded to Lockheed was loosely based on respondent Fetalvero's Reply.[37]

Petitioner also points out that two (2) Certificates of Final Rating were prepared, with one pre-dated for April 25, 2001 and the other one submitted on May 3, 2001. Furthermore, the officers who conducted the reevaluation were not the same officers who conducted the original evaluations. The officers who conducted the reevaluation, including respondent Fetalvero, had no personal knowledge of the performance of Lockheed's security guards to serve as basis for their reevaluation.[38]

Petitioner asserts that respondent's acts of adjusting Lockheed's ratings and giving it undue preference call for a finding of administrative liability for grave misconduct and dishonesty.[39]

Citing *Miro v. Dosono*,[40] petitioner insists that when it comes to administrative proceedings, the lowest standard of substantial evidence will suffice for administrative liability to attach.[41] Nonetheless, petitioner claims that even if respondent indeed only acted in a ministerial capacity, this will not absolve him of administrative liability.[42]

Petitioner likewise stresses that the principle of conclusiveness of judgment does not apply in the case at bar because the Information against respondent and the other officers was withdrawn. Hence, the issues in the administrative case were not judicially passed upon and determined by a court of competent jurisdiction.[43]

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[37] *Id*. at 18.

[38] *Id*.

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

[40] 634 Phil. 54 (2010) [Per *J*. Carpio, Second Division].

[41] *Rollo*, pp. 19-20.

[42] *Id*. at 20.

[43] *Id*. at 20-22.

Finally, petitioner states that an administrative case may continue despite dismissal of the criminal charges as administrative cases proceed independently of criminal cases.[44]

In his Comment,[45] respondent continues to deny that he gave undue advantage to Lockheed with the reevaluated final rating since his act of collating the performance ratings transmitted to him by Miole was merely ministerial in character.[46]

Respondent points out that the Court of Appeals in *Miole v. Aguirre*, docketed as CA-G.R. SP No. 119526, upheld the dismissal of the administrative case against Miole, Geronimo, and Peregrino on the ground of *res judicata* in light of the Office of the Ombudsman's withdrawal of the criminal case against them.[47]

In its Reply,[48] petitioner reiterates that an administrative case may proceed independently of criminal proceedings and that the principle of conclusiveness of judgment does not apply in the case at bar.[49]

The sole issue for this Court's resolution is whether or not there is substantial evidence to hold respondent Loving F. Fetalvero, Jr. administratively liable for the charges of dishonesty and misconduct against him.

The Petition must fail.

In administrative proceedings, complainants carry the burden of proving their allegations with substantial evidence or "such relevant evidence as a reasonable mind will accept as adequate to support a conclusion."[50]

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[44] *Id*. at 22.

[45] *Id*. at 86-89.

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

[47] *Id*. at 87.

[48] *Id*. at 103-112.

[49] *Id*. at 104.

[50] *De Jesus v. Guerrero III*, 614 Phil. 520, 528-529 (2009) [Per J. Quisumbing, Second Division].

Petitioner accuses respondent of conniving with Cecilio, Miole, and Grospe to give Lockheed an unfair preference by readjusting its rating so that it could participate in the bidding for a security services contract with the Philippine Ports Authority.[51]

Petitioner faults Cecilio for ordering a reassessment of the Port Police Department's rating of Lockheed's performance as the then incumbent security provider. It claims that the reassessment and eventual readjustment of Lockheed's rating to 83.97 from the original 78.30 were without basis and were clearly meant to favor Lockheed.[52]

Petitioner fails to convince.

As the Assistant General Manager for Operations, Cecilio exercised control and supervision over the Port Police Department. His authority over it is evident in Philippine Ports Authority Memorandum Circular No. 18-2000, or the Revised Port Security Services Procurement and Contract Administration,[53] which provides:

> 23.4.1 The security agency/guards shall be rated on their performance and compliance to the Security Services Contract by Port Management Office (PMO) Port Police Division monthly and/or *by the Office of the [Assistant General Manager for Operations] through the Port Police Department* - Head Office, at least once every six months during the effectivity of the contract to ensure that the desired quality of service is rendered.
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> . . . . . .
>
> 23.4.4. The Office of the [Assistant General Manager for Operations] shall issue a Certificate of Final Rating, based on the average rating of the Agency/Security Guards. Monthly Performance Ratings in the [Port Management Offices] within a certain [Port District Office] from the effectivity of the contract, and *the average of the [Assistant*

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[51] *Rollo*, pp. 18-19.

[52] *Id*. at 15 and 18.

[53] *Id*. at 53.

General Manager for Operations], through the Port Police Department – Head Office rating on inspections conducted, pursuant to 23.4 hereof (with the last rating conducted at least one month before expiration of the contract) divided by two (for incumbent contractor).[54] (Emphasis supplied)

The power of supervision involves oversight of a subordinate to ensure that the rules are followed. On the other hand, the power of control is broader as it involves laying down the actual rules to be followed. If the rules are not followed, the power of control allows the controlling officer to order that the act be done or undone, or even to supplant the subordinate's act with his or her own act.[55]

Mondano v. Silvosa[56] expounded on the difference between supervision and control:

In administrative law[,] supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them[,] the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.[57]

Petitioner faults Cecilio for readjusting Lockheed's original rating from the Port Police Department, thereby leading to Lockheed's eligibility to participate in the bidding for a security service contract. However, as the controlling officer over the Port Police Department, Cecilio precisely had the authority to supplant its rating with a new one as long as the new rating was backed by the necessary evidence and he did not gravely abuse his authority to do so.

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[54] *Id*. at 67.

[55] *Pimentel, Jr. v. Aguirre*, 391 Phil. 84, 99-100 (2000) [Per *J*. Panganiban, *En Banc*] citing *Drilon v. Lim*, 305 Phil. 146 (1994) [Per *J*. Cruz, *En Banc*].

[56] 97 Phil. 143 (1955) [Per *J*. Padilla, First Division].

[57] *Id*. at 147-148.

In petitioner's June 7, 2006 Order, Officer Fangon found sufficient basis for the readjustment of Lockheed's rating:

> Needless to state, the ensuing review of the recommended ratings resulted in the re-adjustment of the ratings of [Lockheed] from Fair to Satisfactory (or from 78.3[0] to 83.97). The records of the case will reveal that *the re-adjusted ratings were based on documents culled by the officials who conducted the review of the ratings consisting of Summary Reports and Monthly Performance Ratings*. From these documents, it appears that there was sufficient basis to recommend the increase of the ratings of [Lockheed].
>
> It becomes clear from the foregoing, that *the re-adjustment of the ratings was based on reliable proof which was contained in the records of the [Philippine Ports Authority]*, and which can not be said of the initial ratings given to [Lockheed].[58] (Emphasis supplied)

Even petitioner admitted that the readjustment was not altogether devoid of evidentiary basis:

> Moreover, if there be any re-adjustments made, it must have the accompanying documents/computations, not just re-adjusted whimsically and capriciously. The *submissions of only the portion of the computation or comment in the logbook* is not sufficient.[59] (Emphasis supplied)

As for respondent, petitioner claims that he was guilty of dishonesty and misconduct because of the undue preference that he purportedly extended to Lockheed.

Petitioner again fails to convince.

In its Statement of Facts, petitioner puts forth that it was Grospe and Miole who recommended to Cecilio the reconsideration and readjustment of Lockheed's rating, while respondent, upon Cecilio's instructions, reviewed their recommendations vis-a-vis the guidelines.[60]

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[58] *Id*. at 37.

[59] *Id*. at 71.

[60] *Id*. at 14.

Nowhere was it alleged that respondent likewise recommended the reconsideration or readjustment of Lockheed's original rating. This supports respondent's assertion that he performed the ministerial task of creating a report by collating and computing the ratings transmitted to him by Miole.[61]

In the May 21, 2003 Decision, Officer Generoso likewise found that respondent was not guilty of dishonesty and grave misconduct since his participation was limited to the mechanical act of computing the raw data provided to him:

> Similarly, the allegations against respondent Fetalvero deserves scant consideration considering that the Memorandum dated May 2, 2001 which he submitted together with the draft Certificate of Final Rating pre-dated April 25, 2001 and the computation of ratings of [Lockheed] was regular.
>
> We likewise, do not find any irregularity on the Re-evaluated Performance of [Lockheed] *since he (Fetalvero) only conducted the numerical computation pursuant to [Philippine Ports Authority Memorandum Circular No.] 18-2000*.[62] (Emphasis supplied)

Petitioner attempts to pin liability on respondent by insisting that the Certificate of Final Rating issued by Cecilio was "loosely based"[63] on the reply that petitioner drafted. However, as respondent's reply is a compilation of Lockheed's ratings, it is inevitable that it will be referred to for the issuance of Certificate of Final Rating in Lockheed's favor. This cannot be interpreted as respondent's positive act to recompute or adjust Lockheed's rating to give it undue preference.

Dishonesty is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity."[64] It involves

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[61] *Id*. at 86.

[62] *Id*. at 37.

[63] *Id*. at 18.

[64] *Office of the Ombudsman v. Torres*, 567 Phil. 46, 58 (2008) [Per *J*. Nachura, Third Division], citing *Black's Law Dictionary*, 6th Ed. (1990).

intentionally making a false statement to deceive or commit a fraud.[65]

On the other hand, misconduct is more than just mere error of judgment as it involves a wrongful intention from the public officer involved.[66] It is also defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer."[67]

As the complainant, petitioner has the burden of proving that respondent deliberately committed falsehood or transgressed established rules to give Lockheed undue preference during the bidding process of the contract for services.

Petitioner fails to discharge its burden.

What petitioner only managed to prove was that respondent, upon orders of his superior, collated the ratings and recommendations submitted by the other officers and then summarized them into a report. By no stretch of mind can respondent's submission of a report, an act which was done within the confines of his function as the Superintendent of the Port District Office-Luzon, be seen as an unlawful act.

WHEREFORE, this Court resolves to **DENY** the Petition and **AFFIRM** the Court of Appeals April 15, 2013 Decision and February 20, 2014 Resolution in CA-G.R. SP No. 119495.

SO ORDERED.

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

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[65] *Aquino v. General Manager of the GSIS*, 130 Phil. 488, 492 (1968) [Per *J.* Reyes, J.B.L., *En Banc*].

[66] *In re: Impeachment of Horrilleno*, 43 Phil. 212, 214 (1922) [Per *J.* Malcolm, First Division].

[67] *Id*.

SECOND DIVISION

[G.R. No. 214794. July 23, 2018]

NARCISO VICTORIANO, *petitioner, vs.* **JUNIPER DOMINGUEZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF COURT; STRICT APPLICATION OF TECHNICAL RULES OF PROCEDURE MAY BE EXCUSED IN ORDER TO GIVE WAY TO A JUST RESOLUTION OF THE CASE ON THE MERITS; CASE AT BAR.—**Analyzing the procedural errors committed in the petition, *vis-á-vis* the substance and gravity of the case, **the Court rejects the strict application of the technical rules of procedure, in order to give way to a just resolution of the case on the merits.** This stems from the oft-repeated rule that the dismissal of an appeal purely on technical grounds is frowned upon. Significantly, rules of procedure ought not to be applied in a very rigid, technical sense, but must be used to help secure, and not override substantial justice. After all, the court's primary duty is to render or dispense justice. x x x Verily, the merits of case, involving as it does the imposition of the supreme penalty of dismissal on a government employee, thereby depriving him of his very livelihood, warrant a departure from a strict and rigid application of the rules of court. Besides, as will be shown, the perceived errors pointed out by the CA, may be excused on the basis of substantial compliance with the rules.

2. **ID.; ID.; SECTION 6, RULE 43 MANDATES THAT THE PETITIONER MUST STATE THE SPECIFIC MATERIAL DATES SHOWING THAT HIS/HER PETITION WAS FILED WITHIN THE PERIOD FIXED; FAILURE TO INCLUDE A COMPLETE STATEMENT OF MATERIAL DATES MAY BE EXCUSED, INSOFAR AS THE DATE OF THE RECEIPT OF THE ASSAILED RULING IS SPECIFIED, AND THE PETITION WAS ACTUALLY FILED ON TIME.—**Significantly, Section 6 of Rule 43 of the Revised Rules of Court mandates that the petitioner must state the specific material dates showing that his/her petition

was filed within the period fixed. Remarkably, the inclusion of a complete statement of material dates in a petition for review is essential to allow the Court to determine whether the petition was indeed filed within the period fixed in the rules. The absence of such a statement will leave the Court at a quandary on whether the petition was in fact filed on time. However, in *Capin-Cadiz v. Brent Hospital and Colleges, Inc*.,the Court excused therein petitioner's failure to indicate the date when the assailed decision was received. The Court ruled that the said error is not fatal, since the important date that must be alleged in the petition is the date when the petitioner received the resolution denying his/her motion for reconsideration. x x x A perusal of the Petition for Review shows that Victoriano clearly specified that he received the assailed OMB MOLEO resolution denying his motion for reconsideration on October 7, 2013. More importantly, the records show that the petition was filed by registered mail on October 21, 2013, or well-within the 15-day reglementary period.Accordingly, Victoriano is deemed to have substantially complied with the rules. His failure to indicate the date when he received the other orders and resolutions of the OMB MOLEO may be dispensed with in the interest of justice.

3. **ID.; ID.; FILING AND SERVICE OF PLEADINGS; PLEADINGS SHALL BE SERVED AND FILED PERSONALLY; RESORT TO OTHER MODES OF SERVICE MAY ONLY BE DONE WHEN PERSONAL SERVICE IS RENDERED IMPRACTICABLE, WITH A WRITTEN EXPLANATION ON WHY PERSONAL SERVICE WAS NOT PRACTICABLE; WHEN ABSENCE OF A WRITTEN EXPLANATION MAY BE EXCUSED; CASE AT BAR.—**Section 11, Rule 13 of the Rules of Court requires the personal service and filing of all pleadings. x x x It is clear from the foregoing rule that the filing of pleadings and other papers, whenever practicable, must be done personally. Personal service is preferred because it expedites the action or resolution on a pleading, motion or other paper. Conversely, it also minimizes, if not eliminates, delays likely to be incurred if service is done by mail, and deters the pernicious practice of some lawyers who craftily try to catch their opposing counsel off-guard or unduly procrastinate in claiming the parcel containing the pleading served. On this score, resort to other modes of service may only be done when personal service is rendered

impracticable in light of the circumstances of time, place and person. Consequently, any deviation from this preferred mode of service must be accompanied by a corresponding written explanation on why personal service or filing was not practicable to begin with.However, the strict requirement of attaching a written explanation on why the pleading was not served personally is susceptible of exceptions. In *Spouses Ello v. CA*, and *Peñoso v. Dona*,the Court enumerated the grounds that may excuse the absence of a written explanation, to wit: "(i) the practicability of personal service; (ii) the importance of the subject matter of the case, or the issues involved therein; and (iii) the *prima facie* merit of the pleading sought to be expunged x x x." x x x In the same vein, in *Pagadora v. Ilao*,the Court considered the distance between the appellant and the appellate court, as a justifiable excuse for the failure to personally serve the pleadings. x x x Applying the aforementioned jurisprudential tenets to the case at bar, Victoriano's failure to attach a written explanation shall also be excused. The Court takes note of the distance between Bontoc, Mountain Province (where Victoriano resides) and the CA. Certainly, the distance between these two places rendered prompt personal service of the petition impracticable and difficult.

4. ID.; ID.; PARTS OF A PLEADING; VERIFICATION; WAYS TO VERIFY A PLEADING; THE STATEMENT IN THE VERIFICATION "THAT THE ALLEGATIONS ARE TRUE AND CORRECT OF THE AFFIANT'S PERSONAL KNOWLEDGE" CONSTITUTES SUFFICIENT COMPLIANCE WITH THE RULES.—Notably, a pleading may be verified in any of the following ways, (i) based on one's own personal knowledge ; (ii) or based on authentic records; (iii) or both, as the circumstances may warrant. x x x Besides, the requirement that the contents of a petition should also be based on authentic records, bears more significance in petitions where the greater portions of the allegations are based on the records of the proceedings in the court of origin, and not solely on the personal knowledge of the petitioner. This scenario does not obtain in the case at bar. Needless to say, a verification is a formal requirement, and is not jurisdictional. It is mainly intended to secure an assurance that matters alleged are done in good faith or are true and correct, and not of mere speculation.Resultantly, Victoriano's failure to indicate that the

allegations are true and correct based on authentic records, may be excused, inasmuch as he already attested to the truth and correctness of the allegations based on his personal knowledge.

5. ID.; ID.; ID.; CERTIFICATION AGAINST FORUM SHOPPING; A CERTIFICATION THAT FAILED TO STATE THAT THERE IS NO OTHER SIMILAR ACTION PENDING IN ANY OTHER COURT OR TRIBUNAL SHALL BE EXCUSED; PETITIONER'S UNDERTAKING THAT HE/SHE HAS NOT FILED A SIMILAR CASE BEFORE ANY OTHER COURT OR TRIBUNAL, AND THAT HE/SHE WILL INFORM THE COURT IF HE/SHE LEARNS OF A PENDING CASE SIMILAR TO THE ONE HE/SHE HAD FILED THEREIN IS MORE THAN SUBSTANTIAL COMPLIANCE.—In *Santos*, the Court held that the petitioner's undertaking that she has not filed a similar case before any other court or tribunal, and that she would inform the court if she learns of a pending case similar to the one she had filed therein, was more than substantial compliance with the requirements of the Rules. It has been held that "with respect to the contents of the certification[,] x x x the rule on substantial compliance may be availed of."Applying this to the case at bar, Victoriano's assurance in his Certification that he had not filed any other case in court, shall likewise constitute substantial compliance with the rule on the Certification against non-forum shopping.

6. ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE (AS AMENDED BY A.M. NO. 02-8-13-SC); COMPETENT EVIDENCE OF IDENTITY; AS A RULE, THE AFFIANT MUST PRESENT HIS/HER IDENTIFICATION CARD ISSUED BY AN OFFICIAL AGENCY, BEARING HIS/HER PHOTOGRAPH AND SIGNATURE; THE PRESENTATION OF AFFIANT'S COMMUNITY TAX CERTIFICATE IN LIEU OF OTHER COMPETENT EVIDENCE OF IDENTITY MAY BE ALLOWED IF THE AFFIANT IS PERSONALLY KNOWN BY THE NOTARY PUBLIC; CASE AT BAR.—A.M. No. 02-8-13-SC, February 19, 2008, amended Section 12 (a), Rule II of the 2004 Rules on Notarial Practice, requires the presentation of competent evidence of identity. x x x Indeed, as a general rule, the affiant must present his/her identification card issued by an official agency, bearing his/her photograph and signature.

> However, this is not an iron-clad rule. Particularly, in *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz, et al.*, the Court allowed the presentation of the affiant's community tax certificate in lieu of other competent evidence of identity. According to the Court, a glitch in the evidence of the affiant's identity should not defeat his petition, and may be overlooked in the interest of substantial justice, taking into account the merits of the case. Furthermore, in *Reyes v. Glaucoma Research Foundation, Inc., et al.*, the Court ruled that competent evidence of identity is not required in cases where the affiant is personally known to the notary public. Specifically, the Court categorically stated that "[i]f the notary public knows the affiants personally, he need not require them to show their valid identification cards." x x x Thus, it is all too apparent that Victoriano's Community Tax Certificate constituted sufficient proof of his identity, considering that he was personally known by the Notary Public, being a longtime client of the latter.

APPEARANCES OF COUNSEL

Perdigon Duclan Allaga And Associates for petitioner.

D E C I S I O N

REYES, JR., *J.*:

The Court's ultimate task is to render and dispense justice. To achieve this end, the Court may excuse certain procedural lapses, if the strict application of the rules will only serve to unjustly deprive a litigant of the chance to present his/her case on the merits.

This treats of the Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court seeking the reversal of the Resolutions dated November 29, 2013,[2] and October 3,

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[1] *Rollo,* pp. 3-22.

[2] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr., concurring; *id*. at 23.

2014,[3] issued by the Court of Appeals (CA) in CA-G.R. SP No. 132581, which dismissed outright the Petition for Review filed by herein petitioner Narciso Victoriano (Victoriano) on technical grounds.

The Antecedents

On January 29, 2003, the Spouses Narciso and Josephine Victoriano (Spouses Victoriano) purchased a house and lot located at Nakagang, Sabangan, Mountain Province from the Philippine National Bank (PNB), Bontoc, Mountain Province. Victoriano was an employee of the Bureau of Fire Protection at Nakagang, Sabangan, Mountain Province. The sale was processed by Benedicto Vasquez (Vasquez), Branch Manager of the PNB in Bontoc, Mountain Province.[4] On even date, the parties signed a Deed of Sale (January Deed of Sale), which indicated a purchase price of Php 150,000.00.[5]

Barely a month after, on February 12, 2003, the parties again executed another Deed of Sale (February Deed of Sale) involving the same property, but this time changing the purchase price to reflect the higher amount of Php 850,000.00. Both Deeds of Sale included a proviso stating that the payment of taxes shall be shouldered by the buyer.[6] The Spouses Victoriano submitted the January Deed of Sale to the Bureau of Internal Revenue (BIR) for taxation purposes.

On December 4, 2006, respondent Juniper Dominguez (Dominguez) filed criminal and administrative complaints before the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices (OMB MOLEO) against the Spouses Victoriano and Vasquez.[7] In his Complaint, Dominguez charged

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[3] *Id*. at 25-26.

[4] *Id*. at 5; 50.

[5] *Id*. at 32.

[6] *Id*.

[7] *Id*. at 50.

the Spouses Victoriano as vendees, and Vasquez as vendor, with Falsification of Public Documents Defrauding the Government of Taxes Due. According to Dominguez, the parties deliberately executed two separate deeds of sale covering the same subject property to evade the payment of correct taxes, which should have been based on the true selling price of Php 850,000.00.[8]

On May 19, 2011, the OMB MOLEO issued a Joint Resolution[9] dismissing the Complaint. The OMB MOLEO noted that the Spouses Victoriano submitted the February Deed of Sale (which bore the higher purchase price of Php 850,000.00) to the BIR. This conclusion was based on its observation that the February Deed of Sale bore a BIR stamp.[10]

The dispositive portion of the OMB MOLEO Joint Resolution reads:

WHEREFORE, premises considered, the instant criminal and administrative cases against [**SPOUSES VICTORIANO**]**, and [VASQUEZ]** be **DISMISSED.**

SO ORDERED.[11]

Dissatisfied with the ruling, Dominguez filed a Motion for Reconsideration.

Joint Order of the OMB

On November 14, 2011, the OMB MOLEO issued a Joint Order[12] reconsidering its earlier ruling. In reversing its earlier Joint Resolution, the OMB MOLEO found that Victoriano tried to evade the payment of correct taxes by executing two deeds of sale, each bearing a different purchase price. Interestingly,

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[8] *Id.* at 35.

[9] *Id.* at 32-34.

[10] *Id.* at 33.

[11] *Id.*

[12] *Id.* at 35-38.

Victoriano did not deny this fact. The OMB MOLEO held that this was clear proof that one of the Deeds of Sale was falsified, and the execution of the same was deliberately done to evade the payment of correct taxes. Accordingly, the OMB MOLEO found Victoriano guilty of Dishonesty, and thus ordered his dismissal from the government service.[13]

Moreover, the OMB MOLEO ordered the filing of a criminal Information for Falsification under Article 172 of the Revised Penal Code against the Spouses Victoriano and Vasquez.[14]

The dispositive portion of the Joint Order reads:

> WHEREFORE, premises considered, [Dominguez's] Motion for Reconsideration is hereby GRANTED. Accordingly, this Office's Joint Resolution dated May 19, 2011, recommending the dismissal of the criminal and administrative cases against respondents [the Spouses Victoriano] and [Vasquez] is hereby REVERSED and SET ASIDE.
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> With respect to OMB-P-C-10-0015-A, let an Information for Falsification under Article 172 of the Revised Penal Code be FILED against respondents [the SPOUSES VICTORIANO] and [VASQUEZ] before the proper court.
>
> With respect to OMB-P-A-10-0019-A, [VICTORIANO] is hereby found GUILTY of Dishonesty and is meted the penalty of DISMISSAL from the service, together with its accessory penalties. If the penalty of dismissal from the service can no longer be served by reason of retirement or resignation of respondent, the alternative penalty of FINE in the amount equivalent to respondent's salary for ONE YEAR is hereby imposed.
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> Let a copy of this *Joint Order* be furnished the Secretary of the Department of Interior and Local Government, and the Chief, Bureau of Fire and Protection, for immediate implementation.
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> SO ORDERED.[15]

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

[14] *Id.* at 37.

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

The Joint Order dated November 14, 2011 was approved on February 21, 2012.[16]

Aggrieved, Victoriano filed a Motion for Reconsideration and Reinvestigation.[17] In Victoriano's Motion, he claimed that new evidence, which consisted of the original copy of the Deed of Sale dated February 12, 2003, has surfaced.[18]

The Motion for Reconsideration was denied in the Order[19] dated April 27, 2012.

Undeterred, Victoriano filed a second Motion for Reconsideration. The same was denied in the Order[20] dated December 26, 2012.

Dissatisfied, Victoriano filed a Petition for Review with the CA.

Ruling of the CA

On November 29, 2013, the CA Eleventh Division[21] issued a Resolution[22] dismissing the Petition for Review outright, due to the following fatal infirmities found therein, *viz.*:

i. the statement of material dates is incomplete;
ii. there is no explanation as to why the preferred mode of personal service was not resorted to, per Rule 13, Sec. 11, Rules of Court;
iii. the Verification does not state that the allegations in the petition are true and correct of the affiant's personal

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[16] *Id*. at 38.

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

[18] *Id*. at 47.

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

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

[21] Issued by Atty. Celedonia M. Ogsimer, and witnessed by Associate Justice Vicente S.E. Veloso, as Chairman, with Associate Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr., as Members.

[22] *Rollo*, p. 23.

knowledge and based on authentic records, pursuant to Rule 7, Sec. 4, Rules of Court;

iv. the Certification on non-forum shopping does not state that to the best knowledge of the affiant, no such other action is pending;

v. the notarization of the Verification/Certification and the Affidavit of Service failed to comply with Secs. 6 and 12, Rule II of the 2004 Rules on Notarial Practice, as amended by A.M. No. 02-8-13-SC dated February 19, 2008, there being no properly accomplished jurat showing that the affiants exhibited before the notary public competent evidence (at least one current identification document issued by an official agency bearing the photograph and signature of the affiant) of their identity; and

vi. the petitioner's counsel's 'IBP NO. 792254', with no date of issuance indicated, does not appear to be updated.[23] (Citations omitted)

Victoriano filed a Motion for Reconsideration, which was denied by the CA in its Resolution[24] dated October 3, 2014. In the said resolution, the CA affirmed the outright dismissal of the petition, due to the absence of a complete statement of the specific material dates showing that the said petition was filed on time.[25]

Aggrieved, Victoriano filed the instant Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court.

The Issue

The main issue raised for the Court's resolution pertains to whether or not the CA erred in dismissing the petition outright due to technical grounds.

Victoriano bewails the outright dismissal of his Petition based on mere technicality. Seeking the Court's liberality, he prays that his mistakes be excused on the ground of his substantial

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[23] *Id*.

[24] *Id*. at 25-26.

[25] *Id*. at 25.

compliance with Rules of Court. He explains that for his statement of material dates, he sufficiently alleged the date when he received the OMB MOLEO's assailed ruling, and showed that his petition was actually filed within the reglementary period. As for the other infirmities in his petition, he urges that an examination of his petition will show that he substantially complied with the rules.[26] Finally, Victoriano prays that he be given a chance to argue his case on the merits.

On the other hand, Dominguez maintains in his Manifestation/ Comment,[27] that the instant Petition must be denied, considering that the OMB correctly dismissed Victoriano from the service. He asserts that Victoriano knowingly and willfully submitted a fraudulent deed of sale to the BIR to escape the payment of the correct amount of taxes due.[28]

Ruling of the Court

The instant petition is impressed with merit.

It must be noted at the outset that a party aggrieved by the decision of the OMB in an administrative case, may appeal the adverse ruling by filing a petition for review under Rule 43 with the CA. The Petition must be filed within 15 days from the receipt of the assailed ruling.[29]

Parenthetically, Section 6, Rule 43 of the Rules of Court ordains that the petition for review must: (i) state the full names of the parties to the case; (ii) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (iii) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; (iv) contain a sworn certification

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

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

[28] *Id*. at 64.

[29] RULES OF COURT, Rule 43, Sec. 4.

against forum shopping; and (v) state the specific material dates showing that the petition was filed on time.[30] Failure to comply with the above-mentioned rules shall be a sufficient ground for the dismissal of the petition.[31]

In the instant case, the CA dismissed Victoriano's petition for review outright, due to the following six infirmities attendant in his Petition, namely, (i) an incomplete statement of material dates; (ii) absence of an explanation on why personal service was not resorted to; (iii) absence of a statement in his Verification that the allegations in his petition are true and correct based on his personal knowledge and based on authentic records; (iv) failure to state in his Certification on non-forum shopping that to the best of his knowledge, no such other action is pending; (v) violation of the notarial rules which ordain the presentation of competent evidence of one's identity before the notary public; and (vi) failure to indicate the date of issuance of his counsel's Integrated Bar of the Philippines (IBP) number, which was also not updated.[32]

In his defense, Victoriano claims that he had substantially complied with all the purported defects pointed out by the CA. He likewise beseeches the Court's liberality in giving due course to his petition, considering the gravity of his case, where the OMB meted upon him the supreme penalty of dismissal from the service.

Analyzing the procedural errors committed in the petition, *vis-á-vis* the substance and gravity of the case, **the Court rejects the strict application of the technical rules of procedure, in order to give way to a just resolution of the case on the merits.** This stems from the oft-repeated rule that the dismissal of an appeal purely on technical grounds is frowned upon. Significantly, rules of procedure ought not to be applied in a very rigid, technical sense, but must be used to help secure,

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[30] RULES OF COURT, Rule 43, Sec. 6.

[31] RULES OF COURT, Rule 43, Sec. 7.

[32] *Rollo*, p. 23.

and not override substantial justice. After all, the court's primary duty is to render or dispense justice.[33]

In fact, in *Hadji-Sirad v. Civil Service Commission,*[34] the Court enumerated the reasons that may provide a justification for the suspension of a strict adherence to procedural rules. These include (i) "matters of life, liberty, honor or property; (ii) the existence of special or compelling circumstances; (iii) the merits of the case; (iv) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (v) a lack of any showing that the review sought is merely frivolous and dilatory; and (vi) a showing that the other party will not be unjustly prejudiced thereby.[35]

Verily, the merits of case, involving as it does the imposition of the supreme penalty of dismissal on a government employee, thereby depriving him of his very livelihood, warrant a departure from a strict and rigid application of the rules of court. Besides, as will be shown, the perceived errors pointed out by the CA, may be excused on the basis of substantial compliance with the rules.

The Failure to Include a Complete Statement of Material Dates May Be Excused, insofar as The Date of the Receipt of the Assailed Ruling is Specified, and the Petition was Actually Filed on Time

Significantly, Section 6 of Rule 43 of the Revised Rules of Court mandates that the petitioner must state the specific material dates showing that his/her petition was filed within the period fixed. Remarkably, the inclusion of a complete statement of material dates in a petition for review is essential to allow the

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[33] *Peñoso v. Dona*, 549 Phil. 39, 45-46 (2007).

[34] 614 Phil. 119 (2009).

[35] *Id*. at 135, citing *Barranco v. Commission on the Settlement of Land Problems*, 524 Phil. 533, 543 (2006).

Court to determine whether the petition was indeed filed within the period fixed in the rules.[36] The absence of such a statement will leave the Court at a quandary on whether the petition was in fact filed on time.

However, in *Capin-Cadiz v. Brent Hospital and Colleges, Inc.,*[37] the Court excused therein petitioner's failure to indicate the date when the assailed decision was received. The Court ruled that the said error is not fatal, since the important date that must be alleged in the petition is the date when the petitioner received the resolution denying his/her motion for reconsideration.[38] Over the years, the Court extended the same modicum of leniency, as shown in a long line of cases, ranging from *Great Southern Maritime Services Corporation v. Acuña*;[39] *Acaylar, Jr. v. Harayo*;[40] *Barra v. Civil Service Commission*;[41] and *Sara Lee Philippines, Inc. v. Macatlang, et al.*[42] In these cases, the Court emphasized that the "material date" for purposes of an appeal to the CA is the date of receipt of the lower court's order denying the motion for reconsideration. All other material dates may be gleaned from the records of the case, if reasonably evident.[43]

A perusal of the Petition for Review shows that Victoriano clearly specified that he received the assailed OMB MOLEO resolution denying his motion for reconsideration on October 7, 2013. More importantly, the records show that the petition was filed by registered mail on October 21, 2013, or well-within

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[36] *Capin-Cadiz v. Brent Hospital and Colleges, Inc.*, 781 Phil. 610, 621 (2016).

[37] 781 Phil. 610 (2016).

[38] *Id*. at 621.

[39] 492 Phil. 518 (2005).

[40] 582 Phil. 600 (2008).

[41] 706 Phil. 523 (2013).

[42] 735 Phil. 71 (2014).

[43] *Id*. at 92.

the 15-day reglementary period. Accordingly, Victoriano is deemed to have substantially complied with the rules. His failure to indicate the date when he received the other orders and resolutions of the OMB MOLEO may be dispensed with in the interest of justice.[44]

The Failure to Attach an Affidavit of Explanation as to Why Personal Service was not Resorted to May be Excused If Personal Service is Impracticable and Difficult

The CA also dismissed Victoriano's petition outright due to the absence of an affidavit of explanation on why he did not personally serve copies of his petition.

Indeed, Section 11, Rule 13 of the Rules of Court requires the personal service and filing of all pleadings, as follows:

> **Sec. 11.** *Priorities in modes of service and filing.* – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

It is clear from the foregoing rule that the filing of pleadings and other papers, whenever practicable, must be done personally. Personal service is preferred because it expedites the action or resolution on a pleading, motion or other paper. Conversely, it also minimizes, if not eliminates, delays likely to be incurred if service is done by mail, and deters the pernicious practice of some lawyers who craftily try to catch their opposing counsel off-guard or unduly procrastinate in claiming the parcel containing the pleading served. On this score, resort to other modes of service may only be done when personal service is rendered impracticable in light of the circumstances of time, place and person. Consequently, any deviation from this

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[44] *Id.* at 94-95.

preferred mode of service must be accompanied by a corresponding written explanation on why personal service or filing was not practicable to begin with.[45]

However, the strict requirement of attaching a written explanation on why the pleading was not served personally is susceptible of exceptions. In *Spouses Ello v. CA*,[46] and *Peñoso v. Dona*,[47] the Court enumerated the grounds that may excuse the absence of a written explanation, to wit: "(i) the practicability of personal service; (ii) the importance of the subject matter of the case, or the issues involved therein; and (iii) the *prima facie* merit of the pleading sought to be expunged x x x."[48] Notably, the Court warned that the exercise of discretion to dismiss an appeal must be exercised properly and reasonably. To be sure, the appellate court must first consider the situation of the petitioner/appellant and the reasons proffered for non-compliance with the said rule.

In the same vein, in *Pagadora v. Ilao*,[49] the Court considered the distance between the appellant and the appellate court, as a justifiable excuse for the failure to personally serve the pleadings.[50] This liberality was a reflection of the Court's earlier pronouncements in *Maceda v. De Guzman Vda. De Macatangay*,[51] and *Musa v. Amor*,[52] where the Court allowed resort to other modes of service, and further excused the petitioner's failure to file a corresponding explanation thereof, considering the distance between the opposing parties' counsels. Furthermore, in *Musa*, the Court even characterized the affidavit

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[45] *Pagadora v. Ilao*, 678 Phil. 208 (2011), citing *Sarmiento v. CA*, 320 Phil. 146, 155 (1995).

[46] 499 Phil. 398 (2005).

[47] 549 Phil. 39 (2007).

[48] *Ello v. CA, supra* note 46, at 409; *Peñoso v. Dona*, *id.* at 45.

[49] 678 Phil. 208 (2011).

[50] *Id.* at 226.

[51] 516 Phil. 755 (2006).

[52] 430 Phil. 128 (2002).

of explanation as something that "might have been superfluous," considering the distance between Sorsogon and the CA.[53]

Applying the aforementioned jurisprudential tenets to the case at bar, Victoriano's failure to attach a written explanation shall also be excused. The Court takes note of the distance between Bontoc, Mountain Province (where Victoriano resides) and the CA. Certainly, the distance between these two places rendered prompt personal service of the petition impracticable and difficult. Besides, the Affidavit of Service submitted by the secretary of Victoriano's counsel, sufficed as substantial compliance with the rule. It bears noting that the secretary explained the circumstances behind the service of the petition by registered mail. Moreover, she confirmed that she deposited the petition in the post office addressed to the Clerk of Court of the CA, and likewise furnished copies of the same to the OMB and to Dominguez.[54]

The Statement in the Verification "That the Allegations Are True and Correct of the Affiant's Personal Knowledge" Constitutes Sufficient Compliance with the Rule

The third alleged infirmity pertains to Victoriano's failure to state in his Verification that the allegations in his petition are true and correct based on his personal knowledge, ***and*** based on authentic records. The CA deemed the failure to include the adjunct, "and based on authentic records" as an error that renders the Verification defective, and correspondingly, the petition dismissible.

Essentially, Rule 7, Section 4 of the Rules of Court states that:

Section 4. ***Verification.*** — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit. (5a)

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[53] *Id*. at 138.

[54] *Rollo*, p. 10.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his knowledge and belief.

A pleading required to be verified which contains a verification based on "information and belief", or upon "knowledge, information and belief", or lacks a proper verification, shall be treated as an unsigned pleading. (6a)

Notably, a pleading may be verified in any of the following ways, (i) based on one's own personal knowledge; (ii) or based on authentic records; (iii) or both, as the circumstances may warrant. This rule was underscored in *Hun Hyung Park v. Eung Won Choi*,[55] where the Court affirmed the validity of a verification, which merely stated that the contents of the petition for review are true and correct to the best of the petitioner's personal knowledge. The Court excused the petitioner's failure to attest that the contents of the petition are also based on authentic records. The Court explained that:

A reading of the above-quoted Section 4 of Rule 7 indicates that a pleading may be verified under either of the two given modes or under both. The veracity of the allegations in a pleading may be affirmed **based on either one's own personal knowledge or on authentic records, or both,** as warranted. The use of the preposition "or" connotes that either source qualifies as a sufficient basis for verification and, needless to state, the concurrence of both sources is more than sufficient. **Bearing both a disjunctive and conjunctive sense, this parallel legal signification avoids a construction that will exclude the combination of the alternatives or bar the efficacy of any one of the alternatives standing alone.**[56] (Citations omitted and emphasis and underscoring Ours)

Similarly, in *Heirs of Faustino Mesina, et al. v. Heirs of Domingo Fian, Sr., et al.*,[57] the Court extended the same leniency, and stressed that the presence of the word "or" serves as a

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[55] 553 Phil. 96 (2007).

[56] *Id.* at 438-439.

[57] 708 Phil. 327 (2013).

disjunctive article indicating an alternative. "As such, 'personal knowledge' and 'authentic records' need not concur in a verification as they are to be taken separately."[58]

Besides, the requirement that the contents of a petition should also be based on authentic records, bears more significance in petitions where the greater portions of the allegations are based on the records of the proceedings in the court of origin, and not solely on the personal knowledge of the petitioner. This scenario does not obtain in the case at bar.

Needless to say, a verification is a formal requirement, and is not jurisdictional. It is mainly intended to secure an assurance that matters alleged are done in good faith or are true and correct, and not of mere speculation.[59] Resultantly, Victoriano's failure to indicate that the allegations are true and correct based on authentic records, may be excused, inasmuch as he already attested to the truth and correctness of the allegations based on his personal knowledge.

The Certification of Non-Forum Shopping Which Failed to State that There is No Other Similar Action Pending in Any Other Court or Tribunal, Shall Be Excused.

Another reason behind the outright dismissal of Victoriano's petition was the allegedly defective certification of non-forum shopping which did not specify that to the best of his knowledge, there is no such other action pending before any other court.

Remarkably, a similar Certification was excused by the Court in *Santos v. Litton Mills Incorporated and/or Atty. Mariño*.[60] In that case, the petitioners merely attested that they have not commenced any other action or proceeding involving the same issues in the Supreme Court, or any other tribunal or agency;

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[58] *Id*. at 335.

[59] *Id*. at 336.

[60] 667 Phil. 640 (2011).

and that if they learn that a similar action or proceeding has been filed or is pending before the Supreme Court, or any other tribunal or agency, they will report the matter within five (5) days to the Court.[61] In *Santos* and in the instant case, the petitioners failed to specifically state that "there is no other similar action pending in any other court."

In *Santos*, the Court held that the petitioner's undertaking that she has not filed a similar case before any other court or tribunal, and that she would inform the court if she learns of a pending case similar to the one she had filed therein, was more than substantial compliance with the requirements of the Rules. It has been held that "with respect to the contents of the certification[,] x x x the rule on substantial compliance may be availed of."[62] Applying this to the case at bar, Victoriano's assurance in his Certification that he had not filed any other case in court, shall likewise constitute substantial compliance with the rule on the Certification against non-forum shopping.

A Community Tax Certificate Constitutes Sufficient Proof of Identity If the Affiant is Personally Known By The Notary Public

The CA held that the notarization of the Verification/ Certification and Affidavit of Service was done in violation of the rules on notarial practice, due to the absence of a properly accomplished jurat showing that the affiants exhibited competent evidence of their identity before the Notary Public.

The Court does not agree.

Parenthetically, A.M. No. 02-8-13-SC, February 19, 2008, amended Section 12 (a), Rule II of the 2004 Rules on Notarial

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[61] *Id*. at 649.

[62] *Id*. at 651, citing *Ching v. The Secretary of Justice*, 517 Phil. 151, 166 (2006). *See* also *Ateneo de Naga University v. Manalo*, 497 Phil. 635, 646 (2005); *MC Engineering Inc. v. National Labor Relations Commission*, 412 Phil. 614, 622 (2001).

Practice, requiring the presentation of competent evidence of identity, to wit:

> **Sec. 12. Component 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 Disable Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; or"

Indeed, as a general rule, the affiant must present his/her identification card issued by an official agency, bearing his/her photograph and signature. However, this is not an iron-clad rule. Particularly, in *Coca-Cola Bottlers Phils., Inc. v. Dela Cruz, et al.*,[63] the Court allowed the presentation of the affiant's community tax certificate in lieu of other competent evidence of identity. According to the Court, a glitch in the evidence of the affiant's identity should not defeat his petition, and may be overlooked in the interest of substantial justice, taking into account the merits of the case.[64]

Furthermore, in *Reyes v. Glaucoma Research Foundation, Inc., et al.*,[65] the Court ruled that competent evidence of identity is not required in cases where the affiant is personally known to the notary public.[66] Specifically, the Court categorically stated

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[63] 622 Phil. 886 (2009).

[64] *Id*. at 900.

[65] 760 Phil. 779 (2015).

[66] *Id*. at 786.

that "[i]f the notary public knows the affiants personally, he need not require them to show their valid identification cards."[67] This stems from the fact that a jurat simply pertains to an act in which an individual on a single occasion (i) personally appears before the notary public and presents an instrument or document; (ii) is personally known to the notary public or is identified by the notary public through competent evidence of identity; (iii) signs the instrument or document in the presence of the notary; and (iv) takes an oath or affirmation before the notary public as to such instrument or document.[68] Added to this, the Court emphasized that the verification of a pleading is a mere formal, and not jurisdictional requirement. It is intended to secure the assurance that the matters alleged in a pleading are true and correct.[69]

Thus, it is all too apparent that Victoriano's Community Tax Certificate constituted sufficient proof of his identity, considering that he was personally known by the Notary Public, being a longtime client of the latter.

The Counsel's Inadvertence Shall Not Prejudice His Client, provided that He Immediately Rectifies Such Minor Defect

Finally, the last procedural glitch pointed out by the CA pertained to the failure of Victoriano's counsel to indicate his IBP number in the pleading, and show that the same was updated.

Although the IBP Number was inadvertently omitted, this mistake was immediately rectified in Victoriano's Motion for Reconsideration.[70] His counsel subsequently indicated the date and place of the issuance of his IBP number, which was shown to have been updated.

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[67] *Id*.

[68] *Id*.

[69] *Manarpiis v. Texan Phils., Inc., et al.*, 752 Phil. 305 (2015).

[70] *Rollo*, p. 11.

All told, the facts show that Victoriano substantially complied with the Rules of Court. With this, the strict and rigid application of the rules shall give way to the promotion of substantial justice. Courts are reminded to temper their propensity to dismiss cases on sheer technical errors. After all, it must be remembered that a "litigation is not a game of technicalities."[71] "Lawsuits unlike duels are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts."[72]

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED.** Accordingly, the case shall be **REMANDED** to the Court of Appeals for a proper resolution on the merits.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 219774. July 23, 2018]

MANILA HOTEL CORPORATION, *petitioner, vs.* **ROSITA DE LEON,** *respondent.*

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[71] *Peñoso v. Dona*, *supra* note 47, at 46.

[72] *Marlon Curammeng y Pablo v. People of the Philippines*, G.R. No. 219510, November 14, 2016, citing *Heirs of Zaulda v. Zaulda*, 729 Phil. 639 (2014).

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; COLLECTIVE BARGAINING AGREEMENT (CBA) RETIREMENT PROVISIONS; THE CBA WITH THE RANK-AND-FILE EMPLOYEES DOES NOT APPLY TO THE MANAGERIAL EMPLOYEE.—** Because respondent is a managerial employee, petitioner's CBA with its rank-and-file employees does not apply to her. Furthermore, as the CA held, there is nothing in petitioner's submissions showing that respondent had assented to be covered by the CBA's retirement provisions. x x x Thus, in the absence of an agreement to the contrary, managerial employees cannot be allowed to share in the concessions obtained by the labor union through collective negotiation. Otherwise, they would be exposed to the temptation of colluding with the union during the negotiations to the detriment of the employer. Accordingly, the fact that respondent had rendered more than 20 years of service to petitioner will not justify the latter's act of compulsorily retiring her at age 57, absent proof that she agreed to be covered by the CBA's retirement clause.

2. **ID.; ID.; RETIREMENT; RETIREMENT AGE PRIMARILY DETERMINED BY THE EXISTING AGREEMENT OR EMPLOYMENT CONTRACT; COMPULSORY RETIREMENT IMPOSED BY EMPLOYER WITHOUT CONSENT OF EMPLOYEE IS ILLEGAL DISMISSAL.—** As amended by Republic Act No. 7641, Article 287 of the Labor Code, in pertinent part, provides x x x [that] the retirement age is primarily determined by the existing agreement or employment contract." "By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at below 60 years." Absent such an agreement, the retirement age shall be that fixed by law, and the above-cited law mandates that the compulsory retirement age is 65 years, while the minimum age for optional retirement is set at 60 years. x x x [A]n employee in the private sector who did not expressly agree to an early retirement cannot be retired from the service before he reaches the age of 65 years. "Acceptance by the employee of an early retirement age option must be explicit, voluntary, free and uncompelled." "The law demanded more than a passive acquiescence on the part of the employee, considering that his

early retirement age option involved conceding the constitutional right to security of tenure." x x x In the instant case, respondent's early retirement arose not from a bilateral act but a unilateral decision on the part of petitioner. x x x For this reason, respondent's compulsory retirement, as imposed by petitioner in its June 6, 2011 letter, constitutes illegal dismissal.

3. ID.; ID.; ILLEGAL DISMISSAL; BACKWAGES AND SEPARATION PAY AWARDED IN LIEU OF ACTUAL REINSTATEMENT.— Having been unjustly dismissed, respondent is entitled to the reliefs under Article 279 of the Labor Code. x x x The CA held that reinstatement was no longer feasible as it would not work to the best interest of the parties. It found that petitioner had consistently objected to respondent's return to work and concluded that reintroducing her into the workplace may initiate conflicts which would ultimately hamper the efficient management of petitioner's hotel and foster ill feelings and enmity between respondent and her former superiors. In this light, We hold that separation pay in lieu of actual reinstatement should be awarded. Indeed, "[t]he accepted doctrine is that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties." Accordingly, respondent is entitled to backwages and all other benefits from June 10, 2011, when her employment was terminated, until the finality of this Decision, with interest at twelve percent (12%) *per annum* from June 10, 2011 to June 30, 2013 and at six percent (6%) *per annum* from July 1, 2013 until their full satisfaction. Respondent shall also receive separation pay, in lieu of reinstatement, equivalent to one (1) month salary for every year of service, which shall earn interest at six percent (6%) *per annum* from the finality of this Decision until full payment. Both the separation pay and backwages shall be computed up to the finality of the Decision as it is at that point that the employment relationship is effectively ended.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Offices for petitioner.

Atienza Formento & Aquino Law Offices for respondent.

D E C I S I O N

TIJAM, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court over the Decision[2] dated March 19, 2015 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 132576, which set aside the Decision[3] dated June 10, 2013 and Resolution[4] dated September 4, 2013 of the National Labor Relations Commission (NLRC) in NLRC-LAC No. 01-000432-13 reversing the Decision[5] dated December 10, 2012 of the Labor Arbiter (LA) in NLRC-NCR Case No. 08-12795-11, dismissing Rosita De Leon's (respondent) complaint for illegal dismissal and the CA Resolution[6] dated July 31, 2015 which denied Manila Hotel Corporation's (petitioner) Motion for Partial Reconsideration.[7]

The Facts

Respondent began working for petitioner on September 1, 1976 as a Restaurant and Bar Cashier. She was promoted to Front Office Cashier in October 1977, as Front Office Cashier's Shift Leader in August 1986, and as Head Cashier in January 1988. In March 1989, she assumed the post of Income Auditor. Seven years later, she accepted the position of Assistant Credit and Collection Manager. In March 2000, petitioner turned

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[1] *Rollo*, pp. 17-40.

[2] Penned by Associate Justice Marlene Gonzales-Sison, concurred in by Associate Justices Remedios A. Salazar-Fernando and Ramon A. Cruz; *rollo*, pp. 314-336.

[3] Penned by Commissioner Numeriano D. Villena, concurred in by Commissioners Angelo Ang Palaña and Herminio V. Suelo; *id*. at 161-178.

[4] *Id*. at 214-216.

[5] Penned by Labor Arbiter Lilia S. Savari; *id*. at 129-143.

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

[7] *Id*. at 337-353.

over to her the functions of the General Cashier who had resigned.[8]

On June 7, 2011, respondent received petitioner's June 6, 2011 letter, captioned as a Notice of Compulsory Retirement (Notice),[9] which read:

Re: **Notice of Compulsory Retirement**

Dear **Ms. De Leon**:

Following your verbal conversation with the Vice President of Human Resources and Security, P/SSupt Felipe H. Buena Jr. (Ret), the undersigned would like to formally inform you of the intention of the Management to exercise its prerogative to compulsorily retire you having been rendered 35 years in service from the Hotel [sic] effective at the close of office hours of June 10, 2011. You shall, however, be paid your retirement pay accordingly.

We thank you and wish you good luck in your future endeavors. (Emphasis in the original)

At the time she received said Notice, respondent was 57 years old[10] and held the position of Assistant Credit and Collection Manager/Acting General Cashier.[11] She had by then rendered 34 years of service to petitioner.[12]

Respondent subsequently filed against petitioner and its Chairman, President, Vice President for Finance and Human Resources Assistant Director (officers),[13] a Complaint for illegal dismissal, underpayment of salaries and 13th month pay, non-payment of service charges, transportation allowance and other related benefits, and illegal deductions, with prayer for

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[8] *Id*. at 64-66 and 315.

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

[10] *Id*. at 20.

[11] *Id*. at 20, 66, 122 and 315.

[12] *Id*. at 20.

[13] Emilio Yap, Rogelio Quiambao, Cecilia Go and Aurora Caday who eventually became Human Resources Director; *id*. at 46-47 and 64.

reinstatement without loss of seniority rights, backwages, actual, moral and exemplary damages and attorney's fees.[14]

Respondent claimed that she had been forced to retire without due process. She averred that petitioner gave no rational basis for her retirement or dismissal and merely relied on management prerogative which, she stressed, could not be utilized to circumvent the law and the public policy on labor and social justice.[15]

Petitioner countered that there was no dismissal because respondent voluntarily accepted its offer to avail the compulsory retirement program under the Collective Bargaining Agreement (CBA) between petitioner and its rank-and-file employees.[16] Under the CBA, an employee's retirement is compulsory when he or she reaches the age of 60 or has rendered 20 years of service, whichever comes first.[17]

Petitioner averred that when respondent received the Notice, she went directly to the Human Resources Director to inquire about her retirement pay, and upon learning that the same would amount to ₱1.5 Million, she graciously accepted the retirement offer and even personally and eagerly processed her Personnel Clearance. However, when notified that the release of her retirement pay at ₱1,510,757.92 had been approved, respondent refused to get her check and instead maliciously sued petitioner for illegal dismissal.[18]

Petitioner pointed out that respondent already rendered 14 years in excess of the 20-year cut-off period for compulsory retirement, thus, it allegedly had all the right to terminate her services. According to petitioner, that respondent was only 57 years of age and still willing to serve, or that her services had

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[14] *Id*. at 64.

[15] *Id*. at 70 and 73.

[16] *Id*. at 51.

[17] *Id*. at 52.

[18] *Id*. at 48-49 and 51.

been extended for 14 years, would not bar its exercise of the management prerogative to terminate her employment, stressing that labor law discourages interference with an employer's judgment in conducting its business.[19]

Petitioner explained that it was implementing a cost-cutting program to avoid heavy losses caused by the worldwide economic crisis, and the exigencies for the continuation of respondent's employment, which it alone could determine, no longer existed.[20]

In any case, petitioner argued, respondent could be compulsorily retired under the CBA, being a rank-and-file employee. It averred that respondent's work, the most crucial aspect of which was merely to count and keep petitioner's money, was routinary and did not involve the exercise of any discretion. Petitioner added that respondent was not a supervisory employee as she had no staff to supervise. Furthermore, respondent had supposedly been receiving benefits under the CBA.[21]

Petitioner, in addition, denied liability for respondent's money claims.[22]

Respondent, however, decried petitioner's claim that she graciously accepted its retirement offer, asserting that she questioned her dismissal from the beginning, and that her signing of the Personnel Clearance only indicated an intention to clear all her accountabilities.[23]

Respondent also contended that petitioner's CBA with the rank-and-file employees did not apply to her because she held a managerial or supervisory position as shown no less by her job title. To further prove that she was a managerial or supervisory employee, she averred that: the Performance

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[19] *Id*. at 52-54.

[20] *Id*. at 55.

[21] *Id*. at 84-86.

[22] *Id*. at 90-92.

[23] *Id*. at 121-122.

Appraisal Sheet for Supervisory Positions was used to rate her; she was awarded Model Supervisor in 1992; as early as 1994, she was entitled to the Officer's Check Privilege which was exclusively enjoyed by employees holding managerial and supervisory positions; and the 50% discount she enjoyed in all outlets/restaurants was a privilege given only to petitioner's officers or managers.[24]

Respondent also submitted office memorandums purportedly negating petitioner's claim that she did not exercise discretion or independent judgment in discharging her functions. Pointing to documents submitted by petitioner itself as proof that she was not a rank-and-file employee, she argued that: the Regular Payroll Journal showed her as a confidential employee from 1996, when she assumed the position of Assistant Credit and Collection Manager, until June 10, 2011; the Payroll Register included her name under "CONFI-MANA" which stood for Confidential-Manager; and the Travelling Allowance and Certification Report applied only to managers.[25]

Ruling of the LA

Ruling in respondent's favor, the LA held that respondent was a managerial employee, as evinced by the Personnel Status Form and Appraisal Sheets she submitted and based on her responsibilities and duties and the benefits and privileges that came with her post. The LA, thus, concluded that the CBA did not apply to respondent and her compulsory retirement resultantly constituted constructive dismissal.[26]

The LA found merit in respondent's claims for attorney's fees and illegal deductions but denied her claims for salary differentials and damages.[27]

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[24] *Id*. at 122 and 125-126.

[25] *Id*. at 126-127.

[26] *Id*. at 317.

[27] *Id*. at 317-318.

The dispositive portion of the LA Decision[28] dated December 10, 2012 reads:

> WHEREFORE, a Decision is hereby rendered declaring that [respondent] was illegally dismissed. Corollarily, [petitioner] are hereby ordered to reinstate [respondent] to her former position without loss of seniority rights and other privileges and to pay her backwages from the time of dismissal up to actual reinstatement, which is only up to the retirable age of 60, for which a retirement pay is hereby also ordered to be paid by the [petitioner].
>
> In addition, [petitioner] are hereby ordered to return the amount illegally deducted from the [respondent]. An [sic] attorney's fees equivalent to ten (10%) of the total award is hereby granted. Computation is as follows:

a) BACKWAGES		
6/10/11- 12[/]10/12 - 16.06 mos. ₱24,749.00 x 16.06 =	397,468.94	
13th MONTH PAY		
₱397,468.94/12 =	33,122.41	
SERVICE INCENTIVE LEAVE PAY		
₱24,749/26 x 5/12 x 16.06	6,369.00	430,961.04
b) ILLEGAL DEDUCTION (given)		72,616.77
		509,577.81
10% Attorney's fees		50,957.78
	Total	₱560,535.59

> SO ORDERED.[29]

Ruling of the NLRC

On June 10, 2013, the NLRC, in its Decision[30] granted the appeal interposed by petitioner and its officers, disposing as follows:

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[28] *Id*. at 129-143.

[29] *Id*. at 142-143.

[30] *Id*. at 161-178.

WHEREFORE, premises considered, the appealed decision dated December 10, 2012 is reversed and set aside. Accordingly, the complaint for illegal constructive dismissal is dismissed for lack of merit.

However, [petitioner] is ordered to pay [respondent] the amount of ₱72,616.77 representing its illegal deductions as previously granted and the amount of ₱7,261.67 which is equivalent to 10% of the monetary award for and by way of attorney's fees.

Likewise, [petitioner] is ordered to immediately pay [respondent] her retirement pay and benefits based on law and the [CBA].

SO ORDERED.[31]

According to the NLRC, while managerial employees are ordinarily outside the scope of CBA, nothing prevents employers from granting them benefits equal to or higher than those given to union members. It held that in extending the retirement benefits under the CBA to respondent, petitioner was merely exercising a management prerogative, and by immediately processing her retirement requirements, including the Personnel Clearance, respondent accepted petitioner's offer of retirement. The NLRC noted that respondent, as a managerial employee, was presumed to be well-educated and to have understood the import of the Personnel Clearance when she signed it.[32]

The NLRC thus concluded that petitioner's offer of retirement and respondent's acceptance thereof constituted a bilateral agreement — the "applicable employment contract" on retirement sanctioned under Article 287[33] of the Labor Code, the existence

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[31] *Id*. at 177.

[32] *Id*. at 319.

[33] Art. 287. **Retirement.** Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

of which rendered unimportant the issue of whether respondent was a managerial employee or not. The NLRC held that having assented to her compulsory retirement, respondent was already estopped from contesting the same.[34]

The NLRC approved petitioner's computation of respondent's retirement pay. It also sustained the award of attorney's fees since respondent was compelled to litigate. Because petitioners did not challenge the award for illegal deductions, the NLRC retained the same but held that all adjudged liabilities shall be borne by petitioner alone.[35]

Both parties moved for reconsideration, petitioner insofar only as the NLRC sustained the award for illegal deductions and attorney's fees.[36]

Respondent, for her part, maintained that she never assented to sever her employment with petitioner and that she had in fact questioned the basis for her compulsory retirement. Respondent, in particular, denied that she personally processed her Personnel Clearance, alleging that it was the staff from petitioner's Human Resources Division who went to the different departments and to her own office to have the clearance signed.

On September 4, 2013, the NLRC, in its Resolution[37] denied both parties' motions for reconsideration.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishmert, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

x x x x x x x x x

[34] *Rollo*, p. 319.

[35] *Id*. at 319-320.

[36] *Id*. at 179-185 and 207-212.

[37] *Id*. at 214-215.

Ruling of the CA

Granting respondent's petition for *certiorari*, the CA rendered its Decision[38] dated March 19, 2015, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the **PETITION** is **GRANTED**. The assailed 10 June 2013 Decision of the NLRC, and its assailed Resolution promulgated on 4 September 2013, in so far as these hold that [respondent] had been validly compulsorily retired and dismissing [respondent's] complaint for illegal dismissal, are hereby **ANNULLED** and **SET ASIDE**.
>
> [Petitioner] is hereby **ORDERED** to pay [respondent] her backwages from the termination of her employment on 10 June 2011, her last day at work, until the date when [respondent] has turned sixty (60) years of age, and thereupon, to immediately pay her retirement benefits in accordance with law.
>
> [Petitioner] is likewise **ORDERED** to pay [respondent] the amount of Php72,616.77, representing illegal deductions, as held by the NLRC and uncontested by [petitioner], as well as Php7,261.67, representing attorney's fees of 10% of the amount unlawfully withheld.
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> SO ORDERED.[39]

In its Motion for Partial Reconsideration,[40] petitioner asked that the NLRC's ruling be affirmed. However, it was denied in the Resolution[41] dated July 31, 2015.

Hence, this petition seeking the annulment of the CA's decision and the reinstatement of the NLRC 's resolution.

Petitioner insists that respondent was not illegally dismissed because she voluntarily accepted her inclusion in its compulsory retirement program, and that by such acceptance, she made the CBA provision on retirement applicable to her.[42]

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[38] *Id*. at 314-336.

[39] *Id*. at 335.

[40] *Id*. at 337-353.

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

[42] *Id*. at 24.

Ruling of the Court

The petition lacks merit.

The CA held that respondent is a managerial employee, as found by the LA and the NLRC — a finding "which (petitioner) never bothered to contest."[43] There is, thus, no issue as to the managerial position held by respondent in petitioner's hotel.

Because respondent is a managerial employee, petitioner's CBA with its rank-and-file employees does not apply to her. Furthermore, as the CA held, there is nothing in petitioner's submissions showing that respondent had assented to be covered by the CBA's retirement provisions.

In *United Pepsi-Cola Supervisory Union v. Judge Laguesma*,[44] this Court ruled:

> Nor is the guarantee of organizational right in Art. III, §8 infringed by a ban against managerial employees forming a union. The right guaranteed in Art. III, §8 is subject to the condition that its exercise should be for purposes "not contrary to law." In the case of Art. 245, there is a rational basis for prohibiting managerial employees from forming or joining labor organizations. As Justice Davide, Jr., himself a constitutional commissioner, said in his *ponencia* in *Philips Industrial Development, Inc. v. NLRC*:
>
> > In the first place, all these employees, with the exception of the service engineers and the sales force personnel, are confidential employees. Their classification as such is not seriously disputed by PEO-FFW; the five (5) previous CBAs between PIDI and PEO-FFW explicitly considered them as confidential employees. **By the very nature of their functions, they assist and act in a confidential capacity to, or have access to confidential matters of, persons who exercise managerial functions in the field of labor relations.** As such, the rationale behind the ineligibility of managerial employees to form, assist or join a labor union equally applies to them.

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[43] *Id*. at 329.

[44] 351 Phil. 244 (1998).

In *Bulletin Publishing Co., Inc. v. Hon. Augusto Sanchez*, this Court elaborated on this rationale, thus:

> "**... The rationale for this inhibition has been stated to be, because if these managerial employees would belong to or be affiliated with a Union, the latter might not be assured of their loyalty to the Union in view of evident conflict of interests. The Union can also become company-dominated with the presence of managerial employees in Union membership.**"

To be sure, the Court in *Philips Industrial* was dealing with the right of confidential employees to organize. But the same reason for denying them the right to organize justifies even more the ban on managerial employees from forming unions. After all, **those who qualify as top or middle managers are executives who receive from their employers information that not only is confidential but also is not generally available to the public, or to their competitors, or to other employees.** It is hardly necessary to point out that to say that the first sentence of Art. 245 is unconstitutional would be to contradict the decision in that case.[45] (Citations omitted and emphasis ours)

Thus, in the absence of an agreement to the contrary, managerial employees cannot be allowed to share in the concessions obtained by the labor union through collective negotiation. Otherwise, they would be exposed to the temptation of colluding with the union during the negotiations to the detriment of the employer.[46]

Accordingly, the fact that respondent had rendered more than 20 years of service to petitioner will not justify the latter's act of compulsorily retiring her at age 57, absent proof that she agreed to be covered by the CBA's retirement clause.

As amended by Republic Act No. 7641,[47] Article 287 of the Labor Code, in pertinent part, provides:

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[45] *Id*. at 279-280.

[46] *Martinez v. NLRC*, 358 Phil. 288, 297 (1998).

[47] AN ACT AMENDING ARTICLE 287 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE

Art. 287. Retirement. – Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining agreement and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (½) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term one-half (½) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

x x x x x x x x x

"Undoubtedly, under this provision, the retirement age is primarily determined by the existing agreement or employment contract."[48] "By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at below 60 years."[49] Absent such an agreement, the retirement age shall be that fixed by law, and the above-cited law mandates

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OF THE PHILIPPINES, BY PROVIDING FOR RETIREMENT PAY TO QUALIFIED PRIVATE SECTOR EMPLOYEES IN THE ABSENCE OF ANY RETIREMENT PLAN IN THE ESTABLISHMENT. Approved on December 9, 1992.

[48] *Obusan v. Philippine National Bank*, 639 Phil. 554, 562 (2010).

[49] *Jaculbe v. Silliman University*, 547 Phil. 352, 3456 (2007).

that the compulsory retirement age is 65 years, while the minimum age for optional retirement is set at 60 years.[50]

Petitioner maintains that it had an implied agreement with respondent for the latter's compulsory retirement, which constitutes a retirement contract sanctioned under Article 287 of the Labor Code.[51] According to petitioner, this agreement was perfected when respondent verbally accepted its retirement offer as provided in its June 6, 2011 letter, and when she personally and voluntarily processed her Personnel Clearance.[52]

The Court is not persuaded.

A cursory reading of petitioner's June 6, 2011 letter will readily reveal that it was not an offer for compulsory retirement. The letter, to begin with, was a Notice, which indicates that it merely served to notify respondent of a decision to retire her services. It was clearly not a notice to avail of the retirement provisions under the CBA. As said caption suggests, the retirement was compulsory and not optional as to give respondent the choice to decline.

The body of the letter, too, signifies that retirement was no longer a choice or a decision to be made by respondent, as the termination of her services was already *fait accompli* — an accomplished or consummated act. *First*, the Notice specified the effectivity date of respondent's retirement, *i.e.*, at "close of office hours of June 10, 2011," or barely three days from the time she received the Notice. *Second*, it also stated that the management was exercising its prerogative to compulsorily retire respondent. Thus, petitioner was invoking its *exclusive* judgment and *discretion* in terminating respondent's employment through compulsory retirement. *Third*, petitioner thanked respondent for her services and wished her luck in her future endeavors, which indicates that from petitioner's perspective, cessation

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[50] *Obusan v. Philippine National Bank*, *supra* at 562.

[51] *Rollo*, p. 37.

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

of employment was certain and final, and respondent's future was no longer as its employee.

Indeed, the Notice gave respondent no opportunity to explore a mere possibility or option of retirement. In fact, there is nothing in the Notice asking respondent to express her conformity to any retirement plan or offer or suggesting that management was willing to discuss her retirement. Thus, contrary to petitioner's claim, the Notice was not a proposal, but a management decision, to retire respondent who then had not yet reached the age of compulsory retirement under Article 287 of the Labor Code.

By all indications, therefore, petitioner's June 6, 2011 letter was a notice of severance or termination of employment through compulsory retirement. It was not, as petitioner would have this Court believe, an offer which respondent was free to accept or decline. Petitioner had unilaterally made a decision to retire respondent and by its Notice, imposed such decision on her.

The conversations between respondent and petitioner's Vice President of Human Resources and Security, P/SSupt Felipe H. Buena Jr. (Ret) (Buena), also show that respondent had no intention to quit her job or to retire, and that she questioned petitioner's decision to compulsorily retire her. In her Position Paper,[53] respondent narrated:

> 18. On June 3, 2011, P/SSupt. Felipe H. Buena, Jr., V.P.-HRD & Security required [respondent] to come to his office. During the middle of the conversation, he suddenly commented "*You know Rose I resigned effective June 5, 2011 because I am not happy with my boss anymore; so same thing with you. Why don't you just resign?* With conviction he uttered, ***"Rose, you have to resign.***
>
> 19. [Respondent] stated in response, ***"I am not yet planning to resign nor retire since I am the sole breadwinner of the family and my son will continue his studies in college for two (2) more years, which mainly [sic] my primary reasons why I am maintaining love, concern, good working relationship, being hardworking employee [sic], above***

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[53] *Id*. at 63-79.

all my honesty and integrity for almost 35 years of continues [sic] dedication to the company."

20. On **June 4, 2011**, P/SSupt. Felipe H. Buena asked [respondent] to see him in his office. Right away he informed [respondent] that management decided to compulsory [sic] retire her. The same was manifested by respondent Aurora Caday, Asst. Director to HR-Legal.

21. [Respondent] asked him what was the reason and why? He said that *management opted to apply what is stated in the CBA of the "employees-"**20 years of service or 50 years old whichever comes first**" and he added that this applied to all". [Respondent] simply commented that if its [sic] true that it applies to all, how come that there are lots of rank & file employees, supervisors and managers/ officers who are older than her and working for more than 35 years of service, are [sic] still with the company?*[54] (Emphasis in the original)

These conversations were never denied by petitioner.[55] It bears noting, too, that petitioner itself acknowledged in its June 6, 2011 letter that Buena had discussed with respondent her compulsory retirement, lending credence to the above-cited exchanges. As the CA found, the June 4, 2011 exchange between respondent and Buena establish that "the information regarding respondent's retirement was not an offer at all, but an order, and that respondent had questioned her coverage in the CBA."[56]

Petitioner has not likewise denied that after receiving the Notice, respondent approached its President asking for an explanation and possibly a better package, but the latter simply answered: "*Ok na yon pahinga ka na* and besides that was the decision of the management."[57] This clearly belies petitioner's claim that there was a "meeting of the minds"[58] between its management and respondent as regards her early retirement. In this regard, it bears to reiterate that "company retirement

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

[55] *Id*. at 329.

[56] *Id*. at 327.

[57] *Id*. at 69 and 316.

[58] *Id*. at 28.

plans must not only comply with the standards set by existing labor laws, but they should also be accepted by the employees to be commensurate to their faithful service to the employer within the requisite period."[59]

The Court cannot subscribe to petitioner's argument that respondent's act of signing and processing her Personnel Clearance amounts to indubitable proof that she accepted its retirement offer. To reiterate, there was no such offer that respondent was at liberty to consider, accept or reject; petitioner already resolved to compulsorily retire respondent when Buena informed her of such decision and when it formally served upon her its Notice. Furthermore, faced with unemployment, respondent would naturally want to have her last pay released and this requires the accomplishment of the Personnel Clearance. As the CA aptly explained:

> It is a familiar axiom that employer and employee do not stand on equal footing, a situation which often causes an employee to act out of need instead of any genuine acquiescence to the employer. It cannot be ignored that [respondent] has only six days before she is deemed "compulsorily retired." She has appealed the decision of [petitioner] but its representatives remained adamant. Therefore, it is unsurprising that [respondent] would process her clearances; after all, without such clearance, her retirement pay would not be released, and she would still be out of work. Hence, it was not out of eagerness, excitement, and acceptance that she attended to her retirement requirements, but only out of sheer necessity and to assure the release of her retirement pay.[60]

Furthermore, the CA correctly observed that respondent's refusal to accept her retirement pay and her objections to being retired early, as well as the filing of her complaint for illegal dismissal, confirm that she did not consent to her compulsory retirement.[61] Apropos is the following pronouncement in

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[59] *Obusan v. Philippine National Bank*, *supra* note 48, at 565.

[60] *Rollo*, pp. 328-329.

[61] *Id*. at 328.

Universal Robina Sugar Milling Corp. (URSUMCO) and/or Cabatt v. Caballeda, et al.:[62]

> Furthermore, the fact that respondents filed a complaint for illegal dismissal against petitioners completely negates their claim that respondents voluntarily retired. To note, respondents vigorously pursued this case against petitioners, all the way up to this Court. Without doubt, this is a manifestation that respondents had no intention of relinquishing their employment, wholly incompatible to petitioners' assertion that respondents voluntarily retired.[63]

Contrary to petitioner's assertion, the exercise of management prerogative cannot justify its compulsory retirement of respondent's services. There can be no debate that the exercise of management prerogatives cannot trounce the requirements of the law which, in this case, demand the employee's unequivocal agreement to an early retirement. The Court has held:

> It is true that an employer is given a wide latitude of discretion in managing its own affairs. The broad discretion includes the implementation of company rules and regulations and the imposition of disciplinary measures on its employees. **But the exercise of a management prerogative like this is not limitless, but hemmed in by good faith and a due consideration of the rights of the worker.** In this light, the management prerogative will be upheld for as long as it is **not wielded as an implement to circumvent the laws and oppress labor**.[64] (Citations omitted and emphasis ours)

All told, an employee in the private sector who did not expressly agree to an early retirement cannot be retired from the service before he reaches the age of 65 years.[65] "Acceptance

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[62] 582 Phil. 118 (2008).

[63] *Id*. at 137.

[64] *Dongon v. Rapid Movers and Forwarders Co., Inc., et al.*, 716 Phil. 533, 545 (2013).

[65] *Alfredo F. Laya, Jr. v. Philippine Veterans Bank and Ricardo A. Balbido, Jr.*, G.R. No. 205813, January 10, 2018.

by the employee of an early retirement age option must be explicit, voluntary, free and uncompelled."[66] "The law demanded more than a passive acquiescence on the part of the employee, considering that his early retirement age option involved conceding the constitutional right to security of tenure."[67] Thus, We held that "[r]etirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees to sever his or her employment with the former."[68]

In the instant case, respondent's early retirement arose not from a bilateral act but a unilateral decision on the part of petitioner. Respondent's consent was neither sought nor procured by petitioner in deciding to prematurely retire her services. For this reason, respondent's compulsory retirement, as imposed by petitioner in its June 6, 2011 letter, constitutes illegal dismissal. As this Court recently held in *Alfredo F. Laya, Jr. v. Philippine veterans Bank and Ricardo A. Balbido, Jr.*:[69]

> Although the employer could be free to impose a retirement age lower than 65 years for as long its employees consented, **the retirement of the employee whose intent to retire was not clearly established, or whose retirement was involuntary is to be treated as a discharge**.[70] (Citations omitted and emphasis ours)

Having been unjustly dismissed, respondent is entitled to the reliefs under Article 279 of the Labor Code which provides:

> Article 279. Security of tenure. In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement

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[66] *Cercado v. UNIPROM, Inc.*, 647 Phil. 603, 612 (2010).

[67] *Alfredo F. Laya, Jr. v. Philippine Veterans Bank and Ricardo A. Balbido, Jr.*, *supra*.

[68] *Cercado v. UNIPROM, Inc.*, *supra* at 608.

[69] G.R. No. 205813, January 10, 2018.

[70] *Id*.

without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[71]

In *ICT Marketing Services, Inc. v. Sales*,[72] the Court held that:

> The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.[73]

The CA held that reinstatement was no longer feasible as it would not work to the best interest of the parties. It found that petitioner had consistently objected to respondent's return to work and concluded that reintroducing her into the workplace may initiate conflicts which would ultimately hamper the efficient management of petitioner's hotel and foster ill feelings and enmity between respondent and her former superiors.[74] In this light, We hold that separation pay in lieu of actual reinstatement should be awarded. Indeed, "[t]he accepted doctrine is that separation pay may avail in lieu of reinstatement if reinstatement is no longer practical or in the best interest of the parties."[75]

Accordingly, respondent is entitled to backwages and all other benefits from June 10, 2011, when her employment was terminated,[76] until the finality of this Decision, with interest at

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[71] *Id*.

[72] 769 Phil. 498 (2015).

[73] *Id.* at 524-525, citing *Aliling v. Feliciano, et al.*, 686 Phil. 889, 917 (2012).

[74] *Rollo*, p. 332.

[75] *Macasero v. Southern Industrial Gases Philippines and/or Lindsay*, 597 Phil. 494, 501 (2009) citing *Velasco v. NLRC*, 525 Phil. 749, 761 (2006).

[76] *Rollo*, p. 335.

twelve percent (12%) *per annum* from June 10, 2011 to June 30, 2013 and at six percent (6%) *per annum* from July 1, 2013 until their full satisfaction.[77] Respondent shall also receive separation pay, in lieu of reinstatement, equivalent to one (1) month salary for every year of service,[78] which shall earn interest at six percent (6%) *per annum* from the finality of this Decision until full payment.[79] Both the separation pay and backwages shall be computed up to the finality of the Decision as it is at that point that the employment relationship is effectively ended.[80]

WHEREFORE, the Petition is **DENIED**. The Decision dated March 19, 2015 and Resolution dated July 31, 2015 of the Court of Appeals in CA-G.R. SP No. 132576 are **AFFIRMED with MODIFICATIONS** in that petitioner Manila Hotel Corporation is ordered to pay respondent Rosita De Leon:

(a) backwages and all other benefits due from June 10, 2011 until the finality of this Decision, plus interest at twelve percent (12%) *per annum* from June 10, 2011 to June 30, 2013, and at six percent (6%) *per annum* from July 1, 2013 until their full satisfaction; and

(b) separation pay, in lieu of reinstatement, from September 1, 1976 until the finality of this Decision, equivalent to one (1) month pay for every year of service, plus interest at six percent (6%) *per annum* from the finality of this Decision until full payment.

SO ORDERED.

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[77] *Alfredo F. Laya, Jr. v. Philippine Veterans Bank and Ricardo A. Balbido, Jr.*, *supra* note 65, citing *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 281 (2013); *ICT Marketing Services, Inc. v. Sales*, *supra* at 525.

[78] *Alfredo F. Laya, Jr. v. Philippine Veterans Bank and Ricardo A. Balbido, Jr.*, *supra* note 65; *ICT Marketing Services, Inc. v. Sales*, *supra* at 525.

[79] *Nacar v. Gallery Frames, et al.*, *supra* at 283.

[80] *Bani Rural Bank, Inc., et al. v. De Guzman, et al.*, 721 Phil. 84, 102 (2013).

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

SECOND DIVISION

[G.R. No. 220898. July 23, 2018]

MON C. ANUAT, *petitioner, vs.* **PACIFIC OCEAN MANNING, INC./TRANS STAR SHIPPING AGENCY CORPORATION, MASSOEL MERIDIAN LTD. and/or HERNANDO S. EUSEBIO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; PERMANENT TOTAL DISABILITY; THE INABILITY OF A WORKER TO PERFORM HIS JOB FOR MORE THAN 120 DAYS, REGARDLESS OF WHETHER OR NOT HE LOSES THE USE OF ANY PART OF HIS BODY; THE PERIOD OF 120 DAYS MAY BE EXTENDED TO 240 DAYS WHEN FURTHER MEDICAL TREATMENT IS REQUIRED.—[A]s a general rule, permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body. However, **the Rules provide that the period of 120 days may be extended to 240 days when further medical treatment is required.** x x x In *Gomez v. Crossworld Marine*

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

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

Services, Inc., this Court held that temporary total disability only becomes permanent when so declared by the company-designated physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period provided by the Rules without a declaration of either fitness to work or the existence of a permanent disability. x x x In the present case, Anuat sustained the injury on 19 May 2011 during unloading operations in a foreign port while discharging his duties as Pacific's able seaman. x x x Anuat no longer went back to Pacific's company-designated physician on 30 September 2011. Instead, Anuat filed a claim against Pacific for total and permanent disability benefits on 26 October 2011 or **160 days from the onset of his work-connected injury**. This Court rules that Anuat prematurely filed his total and permanent disability claim. When Anuat filed his disability claim he was still under medical treatment by Pacific's company-designated physician. In fact, he was advised by Pacific's company-designated physician to return on 30 September 2011 for a medical examination and he chose not to do so. **Notably, the 240-day extended period of medical treatment provided by Sections 2 and 3(1), Rule X of the Amended Rules on Employees' Compensation had not yet lapsed**. Pacific was still addressing Anuat's medical condition and the company-designated physician was still in the process of determining whether Anuat was permanently disabled or fit to resume his duties as an able seaman. Following *Gomez v. Crossworld Marine Services, Inc.*,Anuat's temporary total disability had not yet become permanent since the 240-day extended period for Anuat's medical treatment had not yet lapsed when he filed his claim.

2. ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; THE LAW BETWEEN THE EMPLOYER AND THE EMPLOYEES; ENTITLEMENT OF PETITIONER TO PARTIAL AND PERMANENT DISABILITY BENEFITS OF GRADE 10 AND GRADE 11; ESTABLISHED IN CASE AT BAR.—It is a fundamental doctrine in labor law that the CBA is the contract between both the employer and the employees. An executed CBA, thus, is a valid and binding contract between the parties with the force and effect of law. In *Goya, Inc. v. Goya, Inc. Employees Union-FFW*, this Court ruled that the CBA is the law between the employer and the employees.

x x x The NLRC is correct in ruling that both Pacific and Anuat acknowledged in their position papers and reply the existence of the CBA and its application to Anuat's disability claim. The records reveal that Pacific admitted that Anuat, in fact, suffered a partial and permanent disability. In its Position Paper dated 19 March 2012, Pacific alleged that Anuat had indeed sustained a work-connected injury of "Grade 10" and "Grade 11" amounting to partial and permanent disability. x x x **[F]ollowing the obligatory effects of the CBA and Pacific's admission that the company-designated physician issued a disability rating of "Grade 10" on Anuat's injured left knee and "Grade 11" on Anuat's injured back, Pacific is liable to Anuat for the applicable disability compensation equivalent to both "Grade 10" and "Grade 11" in the CBA.**

3. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; THE MERE FACT THAT A PARTY WAS COMPELLED TO LITIGATE IS INSUFFICIENT TO JUSTIFY AN AWARD OF ATTORNEY'S FEES; THERE MUST BE A SUFFICIENT SHOWING OF BAD FAITH ON THE PART OF THE OTHER PARTY TO RECOVER ATTORNEY'S FEES; CASE AT BAR.—In *Development Bank of the Philippines v. Traverse Development Corp.*, this Court held that a claim for attorney's fees must be supported by evidence of bad faith. The mere fact that a party was compelled to litigate is insufficient to justify an award of attorney's fees. The pertinent part of the decision states: The general rule is that attorney's fees 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 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause. x x x In the present case, Anuat did not present sufficient evidence that Pacific acted in bad faith. As discussed, Anuat was still legally under extended medical treatment when he prematurely filed his total and permanent disability claim on 26 October 2011. Pacific is not guilty of any act or omission constituting bad faith since Pacific's

company-designated physician continued giving Anuat medical care and even advised Anuat to return on 30 September 2011, and it was Anuat who chose not to return and instead filed his disability claim. Hence, Anuat's claim for attorney's fees must be denied.

APPEARANCES OF COUNSEL

R. Go, Jr. Law Office for petitioner.
Del Rosario & Del Rosario Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on certiorari[1] assailing the 10 March 2015 Decision[2] and the 6 October 2015 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 130102.

The Facts

Respondent Pacific Ocean Manning, Inc. (Pacific) is a corporation organized and existing under Philippine law which is licensed to engage in the recruitment and deployment of Filipino seafarers for vessels traveling through international waters.[4] On 7 February 2011, petitioner Mon C. Anuat (Anuat) was hired by Pacific as an able seaman on board the vessel M/V Satigny for a period of nine (9) months with a basic monthly

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[1] *Rollo,* pp. 27-62. Under Rule 45 of the Rules of Court.

[2] *Id*. at 8-21. Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Normandie B. Pizarro and Myra V. Garcia-Fernandez concurring.

[3] *Id*. at 22-23. Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Normandie B. Pizarro and Myra V. Garcia-Fernandez concurring.

[4] *Id*. at 28.

salary of US$662.00.[5] Pacific and Anuat entered into a Philippine Overseas Employment Administration (POEA) standard employment contract on the same date.[6] Prior to his deployment as an able seaman, Anuat was subjected to a pre-employment medical examination by Pacific's company-designated physician and was declared by the physician as "Fit for Sea Duty."[7] On 10 February 2011, Anuat departed from the Philippines to join M/V Satigny in Norfolk, United States.[8]

On 19 May 2011, Anuat had an accident during unloading operations in the port of Cabello, Venezuela.[9] Anuat fell down the vessel's deck while he was connecting the crane hook to the vessel's grab which was located at a high position. Anuat suffered injuries on his neck, back and knee.[10] Anuat was brought by an ambulance to a hospital in Venezuela where he was diagnosed to have sustained head injury, whiplash injury, and trauma in his left knee. Anuat was confined in the hospital until 21 May 2011 and was advised by the hospital physician to continue treatment in the Philippines. Anuat was declared by the hospital physician as unfit to resume his work as a seaman.[11] Thus, Anuat was medically repatriated to the Philippines on 22 May 2011.[12]

Upon Anuat's arrival on 24 May 2011, Anuat was referred to Dr. Nicomedes Cruz (Dr. Cruz), Pacific's company-designated physician, at NGC Medical Specialist Clinic.[13] In a medical

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[5] *Id*. at 84.

[6] *Id*.

[7] *Id*. at 149.

[8] *Id*. at 29.

[9] *Id*. at 65.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 67.

[13] *Id*. at 390.

report dated 15 July and 22 July 2011, Dr. Cruz recommended that Anuat undergo a Magnetic Resonance Imaging (MRI) on his spine and left knee.[14] On 1 August 2011, Anuat's MRI examination results showed that Anuat's lumbosacral spine still suffered from "disc dessication and mild loss of height at L5-S1 with associated annular tear/fissure."[15] Anuat's MRI examination on 2 August 2011 also showed that his left knee still suffered from an "[i]nferior surface tear involving the body and posterior horn of the medial meniscus."[16] In a medical report[17] dated 22 September 2011, Dr. Cruz found that Anuat still suffered from a blunt traumatic injury in his back, muscular spasm of the cervical muscle, swelling and medial meniscus tear in his left knee. Dr. Cruz recommended that Anuat undergo surgery to repair his left knee and was advised to come back on 30 September 2011. However, Anuat did not return for his doctor's visit on 30 September 2011.

Anuat claimed that after surgery and despite a month of physical therapy his condition did not improve and he continued to suffer pain in his left knee. Anuat claimed that due to his injuries he could no longer work as an able seaman. Hence, on 26 October 2011, Anuat filed a Complaint[18] with the Labor Arbiter for total and permanent disability benefits, reimbursement of medical expenses, sickness allowance, damages and attorney's fees against Pacific.[19]

In a Position Paper[20] dated 12 March 2012, Anuat alleged that the injuries he sustained during his employment contract with Pacific were undoubtedly work-connected. Anuat claimed

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[14] *Id*. at 224-225.

[15] *Id*. at 155.

[16] *Id*. at 156.

[17] *Id*. at 229.

[18] *Id*. at 81-83.

[19] *Id*. at 83.

[20] *Id*. at 85-112.

that since his spinal and knee injuries constantly caused him pain and limited his ability to lift objects and to stand while carrying heavy loads, he was no longer capable of performing his work as an able seaman. Anuat contended that he was entitled to total permanent disability benefits since more than 120 days have already lapsed after he was medically repatriated on 22 May 2011.[21]

In a Position Paper[22] dated 19 March 2012, Pacific contended that Anuat's claim for total permanent disability benefits was not supported by law. Pacific claimed that the standard in measuring the disability of a seafarer must depend on the disability grading issued by the company-designated physician. Pacific alleged that Anuat was only entitled to partial permanent disability since the company-designated physician determined that Anuat only suffered from a disability of "Grade 10" and "Grade 11." Pacific alleged that the basis of the "Grade 10" and "Grade 11" rating was a medical report dated 26 October 2011 and Pacific claimed that the medical report was annexed to its Position Paper as "Annex 11."[23] Finally, Pacific contended that Anuat was not entitled to attorney's fees because Pacific was not remiss in fulfilling its obligations with Anuat and did not act in bad faith.[24]

In a Reply[25] dated 10 April 2012, Anuat contended that the "Grade 10" assessment made by the company-designated physician is baseless and arbitrary. Anuat alleged that Pacific falsely claimed that "Annex 11" of Pacific's position paper contained a medical report dated 26 October 2011 which stated the "Grade 10" and "Grade 11" assessment of the company-designated physician.[26] Anuat claimed that total and permanent

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[21] *Id*. at 94.

[22] *Id*. at 189-214.

[23] *Id*. at 193.

[24] *Id*. at 207-208.

[25] *Id*. at 158-178.

[26] *Id*. at 161.

disability does not mean that an employee must be totally paralyzed. What is necessary is that the injury must be such that the employee cannot pursue his usual work. Moreover, Anuat contended that total disability is permanent if it lasts continuously for more than 120 days.[27] Anuat asserted that more than 120 days have already elapsed from the day he was medically repatriated. Hence, he was already entitled to total and permanent disability benefits.

In a Reply[28] dated 10 April 2012, Pacific contended that the existence of permanent disability is not determined by the lapse of the number of days but the standard in measuring must depend on the disability grading issued by the company-designated physician. Pacific claimed that the loss of earning capacity alone does not automatically equate to maximum disability benefits under the law.

The Ruling of the Labor Arbiter

In a Decision[29] dated 24 September 2012, the Labor Arbiter granted total and permanent disability benefits to Anuat. The Labor Arbiter held that permanent disability refers to the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines entitlement to permanent disability is the inability to work for more than 120 days. The fact that Anuat was still undergoing physical rehabilitation and was not able to seek gainful employment after 120 days shows that he suffered a total and permanent disability. The Labor Arbiter ruled that it does not matter whether the company designated-physician assessed Anuat to have suffered a "Grade 10" and "Grade 11" disability rating since it is undisputed that Anuat was unable to work for more than 120 days.

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[27] *Id*. at 159.

[28] *Id*. at 231-250.

[29] *Id*. at 333-346. Penned by Labor Arbiter Jonalyn M. Gutierrez.

In determining the value of total permanent disability benefits, the Labor Arbiter applied the schedule of disability benefits of the POEA standard employment contract which amounted to US$60,000.00. The Labor Arbiter held that the provisions of the collective bargaining agreement (CBA) did not apply since there is no substantial evidence that Pacific and Anuat were privy to the CBA.[30] The Labor Arbiter denied Anuat's claim for moral and exemplary damages and attorney's fees because the Labor Arbiter found that there was no evidence showing bad faith or malice on the part of Pacific.

The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering Respondents to pay Complainant total and permanent disability grading of "1" or a total of US$ 60,000.00 pursuant to the POEA Standard Employment Contract.
>
> Other claims for damages and attorney's fees are dismissed for lack of merit.
>
> SO ORDERED.[31]

On 22 October 2012, Anuat filed a Memorandum of Partial Appeal[32] with the National Labor Relations Commission (NLRC). Anuat claimed that the CBA should apply in the determination of the amount of total and permanent disability and that attorney's fees should likewise be awarded because he was compelled to litigate and incur expenses for litigation.[33]

On 22 October 2012, Pacific filed its Memorandum of Appeal[34] with the NLRC. However, Pacific paid the required appeal fees only on 27 November 2012.

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[30] *Id*. at 342.

[31] *Id*. at 346.

[32] *Id*. at 347-361.

[33] *Id*. at 359.

[34] *Id*. at 362-386.

The Ruling of the NLRC

In a Resolution[35] dated 31 January 2013, the NLRC granted Anuat's Memorandum of Partial Appeal and modified the Labor Arbiter's Decision. The NLRC held that the CBA applies in the determination of Anuat's total and permanent disability benefits. The NLRC held that both Pacific and Anuat acknowledged in their position papers and reply the existence of the CBA and its application to Anuat's disability claim. The NLRC ruled that total and permanent disability benefits shall be awarded to an employee if the temporary total disability lasts for more than 120 days. The 120-day period may only be extended to 240 days when there is a finding by the company-designated physician within 120 days that such injury or sickness still requires medical treatment beyond 120 days.[36] The NLRC held that there was no declaration by Pacific's company-designated physician within 120 days that Anuat's injury required further medical treatment to justify another extension of 120 days, a total of 240 days.[37]

The NLRC considered Pacific's appeal filed on 22 October 2012 as not perfected since Pacific paid the required appeal fees only on 27 November 2012 which is more than 10 days beyond the reglementary period of appeal, counted from 11 October 2012, the date Pacific received the decision of the Labor Arbiter. The NLRC held that the rules provide that a notice of appeal filed without the required appeal fees does not stop the running of the period for perfecting an appeal.

The dispositive portion of the NLRC Resolution states:

WHEREFORE, the herein appeal of the complainant is hereby declared with merit, while that of the [r]espondents is hereby

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[35] *Id*. at 388-410. Penned by Commissioner Teresita D. Castillon-Lora, with Presiding Commissioner Raul T. Aquino and Commissioner Erlinda T. Agus concurring.

[36] *Id*. at 406.

[37] *Id*. at 408.

DISMISSED as NOT PERFECTED or for lack of merit. The assailed Decision of Labor Arbiter Jonalyn M. Gutierrez dated September 24, 2012 is hereby MODIFIED in that [r]espondents are hereby ordered to pay [c]omplainant:

1. Disability benefits	-	US$89,000.00
2. 10% attorney's fees	-	8,900.00
		US$97,900.00

payable in Philippine currency at the rate of exchange prevailing at the time of payment.

The rest of the decision, STANDS.

SO ORDERED.[38]

Pacific filed a motion for reconsideration on 27 February 2013[39] which was denied by the NLRC on 20 March 2013.[40] On 24 May 2013, Pacific filed a Petition for Certiorari[41] with the Court of Appeals (CA). Anuat filed his Comment[42] with the CA on 12 August 2013.

The Ruling of the CA

In a Decision[43] dated 10 March 2015, the CA granted Pacific's petition for certiorari. The CA ruled that Anuat prematurely filed his claim for total and permanent disability benefits. The CA held that a seaman may pursue an action for total and permanent disability benefits if: (a) the company-designated physician failed to issue a declaration as to the employee's fitness to engage in sea duty or disability even after the lapse

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[38] *Id*. at 409-410.

[39] *Id*. at 34.

[40] *Id*. at 412-413. Penned by Commissioner Teresita D. Castillon-Lora with Presiding Commissioner Raul T. Aquino and Commissioner Erlinda T. Agus concurring.

[41] *Id*. at 415-443.

[42] *Id*. at 444-468.

[43] *Supra* note 2.

of the 120-day period and there is no indication that further medical treatment would address his temporary total disability; hence, justify an extension of the period to 240 days; or (b) 240 days had lapsed without any certification being issued by the company-designated physician.

The CA held that Anuat's cause of action for total and permanent disability had not yet accrued. The CA ruled that *C.F. Sharp Crew Management, Inc. v. Taok*[44] applies in the case at bar. The CA held that although 123 days had already lapsed from the day Anuat was medically repatriated on 22 May 2011 to Anuat's last medical examination by Pacific's company-designated physician on 22 September 2011, the 120-day period may still be extended. The CA ruled that the extension of another 120 days is justified since Anuat was required by Pacific's company-designated physician to have further treatment on 30 September 2011, but Anuat decided to file his disability claim instead on 26 October 2011.

The dispositive portion of the CA Decision states:

> WHEREFORE, premises considered, the instant petition is GRANTED. The 31 January 2013 and 20 March 2013 respective Resolutions of the NLRC in NLRC LAC No. 11-000967-12 are hereby VACATED. Accordingly, the complaint filed by the private respondent against the petitioners is DISMISSED.
>
> SO ORDERED.[45]

Anuat filed a Motion for Reconsideration[46] on 1 April 2015 which the CA denied on 6 October 2015.[47]

The Issues

(1) Whether Anuat is entitled to total and permanent disability benefits under the Labor Code; and

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[44] 691 Phil. 521 (2012).

[45] *Rollo*, p. 20.

[46] *Id*. at 469-499.

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

(2) Whether Anuat is entitled to attorney's fees.

The Decision of this Court

We affirm the decision of the CA and deny Anuat's claim for total and permanent disability benefits. Instead, this Court resolves to grant partial and permanent disability benefits of "Grade 10" and "Grade 11" to Anuat in accordance with the CBA.

Anuat's cause of action for total and permanent disability benefits has not yet accrued.

Presidential Decree No. 442, also known as the "Labor Code of the Philippines" (Labor Code), contains the requirements when an employee can claim for total and permanent disability benefits. The pertinent provision states:

> ART. 192. Permanent total disability. – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: Provided, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.
>
> x x x x x x x x x
>
> **(c) The following disabilities shall be deemed total and permanent:**
>
> **(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;** (Emphasis supplied)

Section 1, Rule XI of the Amended Rules on Employee Compensation provides:

> Sec. 1. Conditions of entitlement – x x x.
>
> x x x x x x x x x

(b) The following total disabilities shall be considered permanent:

(1) Temporary total disability lasting continuously for more than 120 days, except as otherwise provided in Rule X hereof; (Emphasis supplied)

In *Valenzona v. Fair Shipping Corporation*,[48] this Court held that permanent disability refers to the inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body.[49] What determines petitioner's entitlement to permanent disability benefits is his inability to work for more than 120 days. On the other hand, in *Remigio v. NLRC*,[50] this Court ruled that "[p]ermanent total disability means disablement of an employee to earn wages in the same kind of work, or 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 attainment could do. It does not mean absolute helplessness."[51] Likewise, in *Oriental Shipmanagement Co., Inc. v. Bastol*,[52] this Court ruled that total disability does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity.[53] Thus, as a general rule, permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body.

However, **the Rules provide that the period of 120 days may be extended to 240 days when further medical treatment is required.** Sections 2 and 3(1), Rule X of the Amended Rules on Employees' Compensation state:

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[48] 675 Phil. 713 (2011).

[49] *Id*. at 726.

[50] 521 Phil. 330 (2006).

[51] *Id*. at 347.

[52] 636 Phil. 358 (2010).

[53] *Id*. at 392.

Sec. 2. Period of Entitlement — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability** in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Emphasis supplied)

x x x x x x x x x

Sec 3. Amount of Benefit — Any employee entitled to benefit for temporary total disability shall be paid an income benefit equivalent to 90 percent of his average daily salary credit, subject to the following conditions:

(1) The daily income benefit shall not be less than ₱10.00 nor more than ₱90.00 nor paid longer than 120 days for the same disability, **unless the injury or sickness requires more extensive treatment that lasts beyond 120 days, but not to exceed 240 days from onset of disability**, in which case he shall be paid benefit for temporary total disability during the extended period. (Emphasis supplied)

In *Gomez v. Crossworld Marine Services, Inc.*,[54] this Court held that temporary total disability only becomes permanent when so declared by the company-designated physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period provided by the Rules without a declaration of either fitness to work or the existence of a permanent disability. Hence, if the company-designated physician requires the employee to undergo further medical treatment beyond the initial 120 days, temporary total disability **only becomes permanent if the 240 days lapse without a prior declaration on the part of the company-**

[54] G.R. No. 220002, 2 August 2017.

designated physician of the fitness of the employee to resume his or her duties or when the company-designated physician finds that permanent disability exists during the 240-day period.

In the present case, Anuat sustained the injury on 19 May 2011 during unloading operations in a foreign port while discharging his duties as Pacific's able seaman. Upon Anuat's medical repatriation on 22 May 2011, Anuat was referred to Pacific's company-designated physician and was subjected to treatment. Anuat was initially diagnosed by the company-designated physician as having sustained a blunt traumatic back and head whiplash injury. Anuat also started his physical therapy to rehabilitate his injuries. In a medical report dated 15 July and 22 July 2011, Pacific's company-designated physician recommended that Anuat undergo an MRI on his spine and left knee.[55] The MRI revealed that Anuat also suffered "disc dessication and mild loss of height at L5-S1 with associated annular tear/fissure."[56] Anuat's left knee also suffered from an "[i]nferior surface tear involving the body and posterior horn of the medial meniscus."[57]

In a medical report dated 26 August 2011,[58] Pacific's company-designated physician found that Anuat was still experiencing moderate pain on both the lumbosacral region and his left knee. The report also stated that Anuat's physical therapy was still on-going. On 22 September 2011, Pacific's company-designated physician once again examined Anuat and issued a medical report recommending that Anuat undergo further surgery to medically repair the existing tear in his left knee. Lastly, Anuat was advised by the company-designated physician to come back on 30 September 2011. The pertinent portion of the 22 September 2011 medical report states:

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[55] *Rollo*, pp. 224-225.

[56] *Id*. at 155.

[57] *Id*. at 156.

[58] *Id*. at 228.

Diagnosis:

Blunt traumatic injury back
Muscular spasm of the cervical muscles, craniocerebral injury
Medial meniscus tear, left knee
S/P Arthroscopy, medial menisectomy and debridement

x x x x x x x x x

He is advised to come back on September 30, 2011.[59]
(Emphasis supplied)

Anuat no longer went back to Pacific's company-designated physician on 30 September 2011. Instead, Anuat filed a claim against Pacific for total and permanent disability benefits on 26 October 2011 or **160 days from the onset of his work-connected injury**.

This Court rules that Anuat prematurely filed his total and permanent disability claim. When Anuat filed his disability claim he was still under medical treatment by Pacific's company-designated physician. In fact, he was advised by Pacific's company-designated physician to return on 30 September 2011 for a medical examination and he chose not to do so. **Notably, the 240-day extended period of medical treatment provided by Sections 2 and 3(1), Rule X of the Amended Rules on Employees' Compensation had not yet lapsed**. Pacific was still addressing Anuat's medical condition and the company-designated physician was still in the process of determining whether Anuat was permanently disabled or fit to resume his duties as an able seaman. Following *Gomez v. Crossworld Marine Services, Inc.*,[60] Anuat's temporary total disability had not yet become permanent since the 240-day extended period for Anuat's medical treatment had not yet lapsed when he filed his claim.

In denying Anuat's total and permanent disability claim and reversing both the Labor Arbiter and NLRC, the CA applied the ruling of this Court in *C.F. Sharp Crew Management, Inc.*

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[59] *Id*. at 229.

[60] *Supra* note 54.

v. Taok.[61] The CA ruled that, following the ruling in *C.F. Sharp Crew Management, Inc.*,[62] Anuat had not acquired a cause of action for his total and permanent disability claim.

The CA is correct.

The ruling of this Court in *C.F. Sharp Crew Management, Inc. v. Taok*[63] applies in the present case. In *C.F. Sharp Crew Management, Inc.*,[64] the CA ruled that Taok, the seaman who filed the total and permanent disability claim, had not acquired a cause of action over his total and permanent disability claim because he filed his disability claim before the lapse of the 240-day period under the law. The pertinent part of the Decision reads:

> Based on this Court's pronouncements in Vergara, it is easily discernible that the 120-day or 240-day period and the obligations the law imposed on the employer are determinative of when a seafarer's cause of action for total and permanent disability may be considered to have arisen. Thus, a seafarer may pursue an action for total and permanent disability benefits if: x x x **240 days had lapsed without any certification being issued by the company-designated physician;** x x x.
>
> **As the facts of this case show, Taok filed a complaint for total and permanent disability benefits while he was still considered to be temporarily and totally disabled; while the petitioners were still attempting to address his medical condition which the law considers as temporary; and while the company-designated doctors were still in the process of determining whether he is permanently disabled or still capable of performing his usual sea duties.**[65] (Boldfacing and underscoring supplied)

In *C.F. Sharp Crew Management, Inc.*,[66] Taok, the seaman, filed his total and permanent disability claim before the expiry

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[61] *Supra* note 44.

[62] *Supra* note 44.

[63] *Supra* note 44.

[64] *Supra* note 44.

[65] *Supra* note 44, at 538-539.

[66] *Supra* note 44.

of the 240-day period. Likewise, in the present case, Anuat filed his total and permanent disability claim on 26 October 2011 or **160 days from the onset of his work-connected injury, 80 days before the lapse of the 240-day period of extended medical treatment provided for by law**. Since the 240 days have not lapsed from the onset of Anuat's injury and since Pacific's company-designated physician was still treating Anuat and was in the process of determining whether Anuat was permanently disabled or fit to resume his duties as an able seaman, the CA did not err in ruling that Anuat's disability claim had not ripened into a cause of action for total and permanent disability.

Anuat is still entitled to partial and permanent disability benefits of "Grade 10" and "Grade 11" in accordance with the collective bargaining agreement.

It is a fundamental doctrine in labor law that the CBA is the contract between both the employer and the employees. An executed CBA, thus, is a valid and binding contract between the parties with the force and effect of law. In *Goya, Inc. v. Goya, Inc. Employees Union-FFW*,[67] this Court ruled that the CBA is the law between the employer and the employees. In *Goya*, *Inc.,* this Court recognized a CBA's binding effects, to wit:

> A collective bargaining agreement or CBA refers to the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work and all other terms and conditions of employment in a bargaining unit. As in all contracts, the parties in a CBA may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order or public policy. **Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law.**[68] (Emphasis supplied)

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[67] 701 Phil. 645 (2013).

[68] *Id*. at 659-660, citing *Honda Phils., Inc. v. Samahan ng Malayang Manggagawa sa Honda* (citations omitted).

The NLRC is correct in ruling that both Pacific and Anuat acknowledged in their position papers and reply the existence of the CBA and its application to Anuat's disability claim. The records reveal that Pacific admitted that Anuat, in fact, suffered a partial and permanent disability. In its Position Paper dated 19 March 2012, Pacific alleged that Anuat had indeed sustained a work-connected injury of "Grade 10" and "Grade 11" amounting to partial and permanent disability. The pertinent portion of Pacific's Position Paper states:

> After the extensive treatment and rehabilitation under the care and supervision of the company-designated physician, the said doctor issued a disability report stating that complainant is suffering from a partial permanent disability of **Grade 11 – slight rigidity or 1/3 loss of motion or lifting power of the trunk and Grade 10 – stretching of ligaments of a knee resulting to instability of the joint [See medical report dated 26 October 2011 attached as ANNEX "11"].**[69] (Emphasis supplied)

The CBA, which was mutually executed by Pacific and Anuat, provides for the obligation[70] of Pacific to compensate its seafarers for any work-related injury while serving on board including accidents and work-related illness occurring while traveling to or from the ship, to wit:

> 20.1.3 COMPENSATION FOR DISABILITY
>
> 20.1.3.1 A Seafarer who suffers permanent disability as a result of work related illness or from an injury as a result of an accident, regardless of fault but excluding injuries caused by a seafarer's willful act, whilst serving on board, including accidents and work related illness occurring whilst traveling to or from the ship, and whose ability to work is reduced as a result thereof, shall in addition to sick pay, **be entitled to compensation according to the provisions of this Agreement.** In determining work related illness, reference shall be made to the Philippine Employees Compensation Law and or Social Security Law.[71] (Emphasis supplied)

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[69] *Rollo,* p. 193.

[70] Pacific admitted in its pleadings the fulfillment of its obligations under the POEA contract and the applicable CBA.

[71] *Rollo*, p. 130.

Moreover, the CBA also states that the disability grade determined by Pacific's company-designated physician shall be the primary basis of Pacific's liability to its seafarer who suffers a work-connected injury, to wit:

20.1.3.2 **The degree of disability which the employer, subject to this Agreement, is liable to pay shall be determined by a doctor appointed by the Employer.** x x x.

20.1.3.3 **The aforesaid medical report should determine the degree of disability as defined in the schedule of disability** x x x **and the Company shall pay the Seafarer disability compensation based on the degree of disability as stated below.** This compensation however shall not exceed US$148,500.00 for senior officers, US$118,800.00 for junior officers and US$89,100.00 for ratings (effective January 1, 2008).[72] (Boldfacing and underscoring supplied)

Article 20.1.3.4 of the CBA provides for the applicable disability compensation with the corresponding impediment grade and rate of compensation, to wit:

Disability Compensation Effective 01 January 2008

Impediment Grade	Ratings (in $)
1	89,100
2	79,130
3	69,819
4	61,176
5	52,533
6	44,550
7	37,244
8	29,929
9	23,273
10	**17,954**
11	**13,303**
12	9,311[73] (Boldfacing and underscoring supplied)

[72] *Id*.

[73] *Id*.

In the present case, Pacific admitted in its Position Paper that the company-designated physician issued a medical report stating that Anuat **had sustained two major injuries because of his fall from the vessel's grab to the vessel's deck** which resulted to "Grade 10" disability on Anuat's left knee and "Grade 11" disability on Anuat's back. In *Alfelor v. Halasan*,[74] this Court held that admissions contained in a pleading are conclusive against the pleader, to wit:

> [A]n admission made in the pleadings cannot be controverted by the party making such admission and [is] conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. **A party cannot subsequently take a position contrary [to] or inconsistent with what was pleaded.** (Emphasis supplied)

Thus, following the obligatory effects of the CBA and Pacific's admission[75] **that the company-designated physician issued a disability rating of "Grade 10" on Anuat's injured left knee and "Grade 11" on Anuat's injured back, Pacific is liable to Anuat for the applicable disability compensation equivalent to both "Grade 10" and "Grade 11" in the CBA.** Consequently, Anuat is entitled to US$17,954.00 representing "Grade 10" disability compensation for Anuat's left knee injury and US$13,303.00 representing "Grade 11" disability compensation for Anuat's back injury. Consequently, Pacific is liable to Anuat for a total amount of US$31,257.00 as disability compensation.

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[74] 520 Phil. 982, 991 (2006).

[75] Section 26 of Rule 130 of the Rules of Court states: "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him."

Anuat is not entitled to attorney's fees.

In *Development Bank of the Philippines v. Traverse Development Corp.*,[76] this Court held that a claim for attorney's fees must be supported by evidence of bad faith. The mere fact that a party was compelled to litigate is insufficient to justify an award of attorney's fees. The pertinent part of the decision states:

> The general rule is that attorney's fees 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 demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[77] (Emphasis supplied)

Similarly, in *Abante v. KJGS Fleet Management Manila*,[78] this Court held that attorney's fees are recoverable only when the "**defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest.**"[79] In the present case, Anuat did not present sufficient evidence that Pacific acted in bad faith. As discussed, Anuat was still legally under extended medical treatment when he prematurely filed his total and permanent disability claim on 26 October 2011. Pacific is not guilty of any act or omission constituting bad faith since Pacific's company-designated physician continued giving Anuat medical care and even advised Anuat to return on 30 September 2011, and it was Anuat who chose not to return and instead filed his disability claim. Hence, Anuat's claim for attorney's fees must be denied.

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[76] 674 Phil. 405 (2011).

[77] *Id*. at 415.

[78] 622 Phil. 761 (2009).

[79] *Id*. at 771.

WHEREFORE, we **AFFIRM** the Decision dated 10 March 2015 and the Resolution dated 6 October 2015 of the Court of Appeals in CA-G.R. SP No. 130102 **in so far as the denial of Anuat's claim for total and permanent disability benefits is concerned**. We resolve to **GRANT** partial and permanent disability benefits of "Grade 10" and "Grade 11" in favor of petitioner Mon C. Anuat in accordance with the collective bargaining agreement and the admission of respondent Pacific Ocean Manning, Inc. Pacific is ordered to pay Anuat US$31,257.00 representing partial and permanent disability benefits under the collective bargaining agreement for "Grade 10" disability for knee injury and "Grade 11" disability for back injury, in Philippine currency prevailing at the time of actual payment, broken down as follows:

1. Grade 10 disability compensation for knee injury	-	US$17,954.00
2. Grade 11 disability compensation for back injury	-	US$13,303.00
TOTAL	**-**	**US$31,257.00**

SO ORDERED.

Peralta, Perlas-Bernabe, Caguioa, and *Reyes, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 220949. July 23, 2018]

RICKMERS MARINE AGENCY PHILS., INC., GLOBAL MANAGEMENT LIMITED and/or GEORGE C. GUERRERO, *petitioners, vs.* **EDMUND R. SAN JOSE,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; SEAFARER; TOTAL PERMANENT DISABILITY BENEFITS; GUIDELINES IN DETERMINING WHETHER A SEAFARER IS ENTITLED TO TOTAL PERMANENT DISABILITY BENEFITS, SUMMARIZED.— [The provisions of the Labor Code and its implementing rules and the 2000 POEA-SEC] may be condensed into the following guidelines: 1. The seafarer shall submit himself to a post-employment medical examination by a company–designated physician within three working days upon his return. If physically incapacitated to do so, written notice to the agency within the same period shall be deemed compliance. 2. The seafarer shall cooperate with the company-designated physician on his medical treatment and regularly report for follow-up check-ups or procedures, as advised by the company-designated physician. 3. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within 120 days from repatriation. The period may be extended to 240 days if justifiable reason exists for its extension (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative). 4. If the company-designated physician fails to give his assessment within the period of 120 days or the extended 240 days, as the case may be, then the seafarer's disability becomes permanent and total. On this note, it must be clarified that the lapse of the 120/240-day period alone does not automatically entitle the seafarer to total permanent disability compensation. In fact, the POEA-SEC itself provides that the disability shall be based on the schedule provided therein and not on the duration of the seafarer's treatment. x x x However, this presupposes that the company-designated physician issued a valid and timely assessment. Without the assessment, there will be no other basis for the disability rating. **Thus, it is mandatory for company-designated physician to issue his assessment within the 120/240-day periods. Otherwise, the seafarer's illness shall be deemed total and permanent disability.**

2. ID.; ID.; ID.; WHERE THE COMPANY-DESIGNATED PHYSICIAN'S MEDICAL ASSESSMENT OF THE SEAFARER WAS MADE ONLY AFTER 263 DAYS FROM REPATRIATION, HIS DISABILITY IS DEEMED TOTAL

AND PERMANENT.— [R]espondent was repatriated on March 3, 2011. He underwent the first eye operation on March 16, 2011 (13 days from repatriation). His next operation was performed on September 18, 2011 (or 199 days from repatriation). Justifiably, the extension of the 120-day period was in order as the respondent required further treatment. However, the company-designated physician's assessment of fitness to work was issued only on November 21, 2011, which was 263 days from repatriation. Thus, the medical assessment of respondent was made beyond the maximum 240-day period prescribed under the POEA-SEC. x x x Thus, in this case, respondent is entitled to the total and permanent disability of US$60,000.00 because the company-designated physician failed to make an assessment within the 240-day period.

3. **ID.; ID.; ID.; BEING COMPELLED TO LITIGATE IS NOT SUFFICIENT REASON TO GRANT ATTORNEY'S FEES; IN THE ABSENCE OF EVIDENCE SHOWING EMPLOYERS' BAD FAITH, THE AWARD OF ATTORNEY'S FEES IS INAPPROPRIATE**.— Being compelled to litigate is not sufficient reason to grant attorney's fees. The Court has consistently held that attorney's fees cannot generally be recovered as part of damages based on the policy that no premium should be placed on the right to sue. Under Article 2208 of the Civil Code, factual, legal, and equitable grounds must be presented to justify an award for attorney's fees. Absent a showing of bad faith on the part of petitioners, the award of attorney's fees is deemed inappropriate.

4. **ID.; ID.; ID.; AWARD OF SALARIES FOR THE UNEXPIRED PORTION OF THE CONTRACT AND FINANCIAL ASSISTANCE IS ERRONEOUS IN THIS CASE.—** [T]he employer shall be liable for salaries of an injured or ill seafarer only while the latter is onboard the vessel. However, the seafarer shall be entitled to a sickness allowance equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. In this case, there is no dispute that petitioners paid respondent sickness allowance and covered the cost of his repatriation and medical treatment.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Sapalo Velez Bundang & Bulilan Law Offices for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This Petition for Review on *Certiorari*[1] (Petition) filed by Rickmers Marine Agency Phils., Inc., Global Management Limited and/or George C. Guerrero (collectively, petitioners), assails the Decision[2] dated December 2, 2014 (Assailed Decision) and Resolution[3] dated October 1, 2015 (Assailed Resolution) of the Court of Appeals (CA) in CA-G.R. SP No. 130065, which affirmed the Resolutions dated February 7, 2013 and March 15, 2013 of the National Labor Relations Commission (NLRC) granting permanent total disability benefits and attorney's fees to herein respondent Edmund R. San Jose (respondent).

The Facts

The facts, as summarized by the Labor Arbiter (LA) and adopted by the CA, are as follows:

> Succinctly, the facts of this case show the Complainant Edmund R. San Jose was engaged by Respondent local manning agency Rickmers Marine Agency Phil. Inc. [and]/or George C. Guerrero for and in behalf of its foreign principal Global Management Limited, for deployment on board the vessel MV Maersk Edinburg under a nine (9) month Standard POEA Employment Contract for Filipino Seamen

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[1] *Rollo*, pp. 36-87.

[2] *Id*. at 88-101, penned by Associate Justice Vicente S.E. Veloso, and concurred in by Associate Justices Edwin D. Sorongon and Nina G. Antonio-Valenzuela.

[3] *Id*. at 142-147, penned by Associate Justice Edwin D. Sorongon, and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

with a basic monthly salary of US$ 420.00 as a wiper. (Annex A, Complainant's Position Paper). Record also shows an addendum that provides for an additional US$ 40.00. Before deployment, Complainant underwent the necessary medical examinations and was declared fit for work. (Annexes C to F, Complainant's Position Paper). Thereafter, Complainant departed on June 28, 2010 to join his vessel on and assumed his post as a wiper/seaman.

Sometime in February 2011, Complainant upon waking complained of loss of/impaired vision in his left eye. His condition was then reported to the ship's captain and at the port of call in Singapore allowed for a medical examination of his left eye and prescribed eye drops. Even as his condition did not improve, Complainant continued with his journey and upon arrival in Le Havre, France, was seen by an ophthalmologist on February 28, 2011 who diagnosed him with retinal detachment/tear affecting the macula. (Annex G, Complainant's Position paper) and recommended for medical repatriation.

Upon arrival in Manila sometime in March 2011, Complainant was referred to the Respondent's designated physician, Dr. Natalio G. Alegre II of the Alegre Medical Clinic located at St. Luke's Hospital (Annex H, Complainant's Position Paper). Complainant was assessed to be suffering from rhegmatogenous retinal detachment with proliferative [vitreoretinopathy], lattice degeneration, myopia, OS,[4] and was recommended for eye surgery to attach the retina. (Annex I, Complainant's Position paper). He underwent surgery and was confined for a period of three (3) days. (Annexes J and K, Complainant's Position Paper).

Since the procedure to attach a detached retina requires more than one (1) surgical operation, a second one was scheduled for September 2011. A medical certificate dated July 4, 2011 was then issued by the Respondents' designated physician that gave the Complainant a Partial Temporary Disability Rating (Annex L, Complainant's Position Paper). Respondents' designated physician thereafter gave him a "fit for work" rating on November 21, 2011 in so far as the cause of repatriation is concerned (Annex M, Complainant's Position Paper).

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[4] "OS," abbreviation for "oculus sinister" or left eye. *See* Abbreviations Commonly Used in Opthalmology, available at <https://optometry.nova.edu/ce/tpacc/forms/opth_abbreviations.pdf> (last accessed July 10, 2018).

Even after undergoing more than one (1) eye surgery, the sight of the complainant in his left eye remains blurred if not impaired, thus he instituted this Complaint on February 14, 2012.[5]

Findings of the LA and NLRC

In its Decision dated June 25, 2012, the LA ruled in favor of respondent and awarded him US$ 60,000.00 and attorneys' fees equivalent to 10% of the total award. The LA considered respondent's illness as compensable as it occurred onboard the vessel and during the effectivity of the employment contract. Furthermore, the LA reasoned that respondent had failed to resume his duties as a seafarer for more than 120 days; thus, entitling him to total permanent disability benefits.

Petitioners elevated the case to the NLRC. On February 7, 2013, the NLRC issued its Decision reversing the LA's ruling. The NLRC noted that the respondent's appointed physician did not state in the medical certificate any grading for which complainant should be compensated, neither did the company-designated physician. In fact, both the medical certifications/assessments from the two doctors stated that respondent was "fit to work." The NLRC held that petitioners were only liable for respondent's salaries during the unexpired portion of the employment contract of US$ 420.00 and financial assistance of ₱50,000.00. The NLRC denied respondent's motion for reconsideration in its Resolution dated March 15, 2013.

Aggrieved, respondent elevated the case to the CA via petition for certiorari under Rule 65.

The CA Decision

In the Assailed Decision, the CA set aside the NLRC Decision and Resolution and reinstated the LA Decision. The CA held that respondent was able to prove his claim of total permanent disability benefits with substantial evidence. Furthermore, respondent had been unable to perform his customary work

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[5] *Rollo*, pp. 89-90.

for more than 120 days. The CA also affirmed the award of attorney's fees. In addition, the CA maintained the NLRC's award of US$ 420.00 representing unpaid salaries for the unexpired portion of the contract, and ₱50,000.00 financial assistance.

The Petition

Thus, petitioners elevated the case before the Court, averring that the CA committed reversible error in issuing the Assailed Decision. They argue that respondent's illness was not work-related, as he had already been certified by the company-designated physician as "fit to work" in a certification dated November 21, 2011. They also claim that the mere lapse of the 120/240-day period does not automatically entitle the seafarer to disability compensation. On the US$ 420.00 award, petitioners allege that respondent is not entitled thereto as he was medically repatriated, and he was already given his sickness allowance. They also argue that the financial assistance of ₱50,000.00 has no basis, and neither is respondent entitled to attorneys' fees.

Respondent filed his Comment[6] to the Petition on April 12, 2016. He contends that he is entitled to total and permanent disability benefits because the company-designated physician did not issue any assessment within the 120/240-day period. Respondent was repatriated on March 3, 2011 and the medical assessment was issued only on November 21, 2011 or a total of 263 days. Thus, he is considered to be suffering from permanent total disability. Respondent also claims that rhegmatogenous retinal detachment is work-related; and that the illness befell him while he was onboard the vessel and during the term of the employment contract. Moreover, retinal detachment is listed as an occupational disease under Section 32-A (18) of the 2010 Philippine Overseas Employment Administration — Standard Employment Contract (POEA-SEC). Respondent also quoted the 9th Progress Report[7] dated June 21,

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[6] *Id*. at 159-199.

[7] *Id*. at 166.

2011 issued by the company-designated physician, which states: "x x x regarding the work relatedness of the retinal detachment, lifting of heavy objects caused the detachment on an elongated eye due to nearsightedness. The lifting of heavy objects provoked the retinal detachment." Lastly, respondent asserts that he is entitled to the US$ 420.00 award representing the unexpired portion of the contract, ₱50,000.00 financial assistance, and attorneys' fees.

Petitioners filed their Reply[8] to the Comment on November 28, 2016, reiterating their positions, as stated in the Petition.

Issue

Whether respondent is entitled to total permanent disability benefits.

The Court's Ruling

Generally, only questions of law may be raised and resolved by the Court in a petition for review on certiorari under Rule 45.[9] However, when the findings of the courts or tribunals below are conflicting or contradictory, as in this case, the Court may review the facts to arrive at a fair and complete resolution of the case.[10]

While the respective decisions of the LA, NLRC, and CA are contradictory, the significant dates in the case are not disputed: that **respondent was medically repatriated and arrived in the Philippines on March 3, 2011**. Respondent was examined by the company-designated physician and was diagnosed with "rhegmatogenous retinal detachment with proliferative vitreoretinopathy, lattice degeneration, myopia" in the left eye. Respondent's condition necessitated two operations on the affected eye, which he underwent on March 16, 2011 and September 18, 2011. **On November 21, 2011, the company-**

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[8] *Id.* at 215-247.

[9] RULES OF COURT, Rule 45, Sec. 1.

[10] *Miro v. Mendoza, Vda. De Erederos*, 721 Phil. 772, 786-787 (2013).

designated physician issued a medical report declaring him "fit to work." On February 14, 2012, respondent instituted a complaint before the LA for total permanent disability benefits.

The resolution of this controversy lies in the determination of petitioners' compliance with the mandatory procedures and periods under the POEA-SEC, which is the contract and law between the parties. The cited 120/240-day periods can be found in the Labor Code and its implementing rules, as well as the POEA-SEC. Article 192(c)(l) of the Labor Code provides:

Art. 192. *Permanent Total Disability*. — x x x

x x x x x x x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

Section 2, Rule X of the Amended Rules on Employees' Compensation implementing Title II, Book IV of the Labor Code, states:

Sec. 2. *Period of Entitlement*. — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

Meanwhile, Section 20(B)(3) of the 2000 POEA-SEC, provides:

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

Parsed, the above provisions may be condensed into the following guidelines:

1. The seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return. If physically incapacitated to do so, written notice to the agency within the same period shall be deemed compliance.[11]

2. The seafarer shall cooperate with the company-designated physician on his medical treatment and regularly report for follow-up check-ups or procedures, as advised by the company-designated physician.

3. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within 120 days from repatriation. The period may be extended to 240 days if justifiable reason exists for its extension (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative).

4. If the company-designated physician fails to give his assessment within the period of 120 days or the extended 240 days, as the case may be, then the seafarer's disability becomes permanent and total.[12]

On this note, it must be clarified that the lapse of the 120/240-day period alone does not automatically entitle the seafarer to total permanent disability compensation. In fact, the POEA-

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[11] 2000 POEA-SEC, Sec. 20 (B)(3).

[12] *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 363 (2015).

SEC itself provides that the disability shall be based on the schedule provided therein and not on the duration of the seafarer's treatment. Section 20(B)(6) thereof provides:

> In case of permanent total or partial disability of the seafarer caused by either injury or illness **the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of this contract**. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted. (Emphasis supplied)

However, this presupposes that the company-designated physician issued a valid and timely assessment. Without the assessment, there will be no other basis for the disability rating. **Thus, it is mandatory for company-designated physician to issue his assessment within the 120/240-day periods. Otherwise, the seafarer's illness shall be deemed total and permanent disability.**

In the instant case, respondent was repatriated on March 3, 2011. He underwent the first eye operation on March 16, 2011 (13 days from repatriation). His next operation was performed on September 18, 2011 (or 199 days from repatriation). Justifiably, the extension of the 120-day period was in order as the respondent required further treatment.

However, the company-designated physician's assessment of fitness to work was issued only on November 21, 2011, which was 263 days from repatriation. Thus, the medical assessment of respondent was made beyond the maximum 240-day period prescribed under the POEA-SEC. As such, the disability of respondent is deemed total and permanent.

The Court ratiocinated in *Vergara v. Hammonia*:[13]

> [T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no

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[13] 588 Phil. 895 (2008).

case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period **until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally**, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. **If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.** x x x

x x x x x x x x x

x x x [A] temporary total disability only becomes permanent **when so declared by the company physician within the periods** he is allowed to do so, **or upon the expiration of the maximum 240-day medical treatment period without a declaration of either fitness to work or the existence of a permanent disability**.[14] (Emphasis and underscoring supplied)

In other words, the seafarer's condition is considered to be **temporary total disability** for the duration of his treatment which shall have an initial maximum period of 120 days. If the seafarer requires further medical treatment, the period may be extended to 240 days. Within the said periods, the company-designated physician must assess and certify the seafarer's condition; that is, whether he is "fit to work" or if the seafarer's permanent disability has become partial or total.

However, if after the lapse of 240 days, the company-designated physician has not made any assessment at all (whether the seafarer is fit to work or whether his permanent disability is partial or total), it is only then that the conclusive presumption that the seafarer is totally and permanently disabled arises. Thus, in this case, respondent is entitled to the total and permanent disability compensation of US$ 60,000.00 because the company-designated physician failed to make an assessment within the 240-day period.

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[14] *Id*. at 912-913.

The CA was thus correct in reinstating the LA decision as regards the award of total and permanent disability compensation. However, the award of attorney's fees, salaries for the unexpired portion of the contract of US$ 420.00, and financial assistance of ₱50,000.00 is erroneous for having no basis.

Being compelled to litigate is not sufficient reason to grant attorney's fees. The Court has consistently held that attorney's fees cannot generally be recovered as part of damages based on the policy that no premium should be placed on the right to sue. Under Article 2208 of the Civil Code, factual, legal, and equitable grounds must be presented to justify an award for attorney's fees. Absent a showing of bad faith on the part of petitioners, the award of attorney's fees is deemed inappropriate.[15]

The payment of salaries for the unexpired portion of the contract and financial assistance is also erroneous. The 2000 POEA-SEC mandates the responsibilities of the employer when the seafarer becomes ill or injured:

SECTION 20. x x x

x x x x x x x x x

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

1. The employer shall continue to pay the seafarer his **wages during the time he is on board the vessel;**

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the **full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.**

However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the

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[15] *Heirs of Dela Cruz v. Philippine Transmarine Carriers, Inc.*, 758 Phil. 382, 401 (2015).

degree of his disability has been established by the company-designated physician.

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to **sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period** exceed 120 days. (Emphasis supplied)

As stated above, the employer shall be liable for salaries of an injured or ill seafarer only while the latter is onboard the vessel. However, the seafarer shall be entitled to a sickness allowance equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. In this case, there is no dispute that petitioners paid respondent sickness allowance and covered the cost of his repatriation and medical treatment.

WHEREFORE, premises considered, the Petition is hereby **DENIED**. The Decision dated December 2, 2014 and Resolution dated October 1, 2015 of the Court of Appeals in CA-G.R. SP No. 130065 are **AFFIRMED WITH MODIFICATION.**

The award of attorney's fees, salaries for the unexpired portion of the contract of US$ 420.00, and financial assistance of ₱50,000.00 is **DELETED**. Petitioners Rickmers Marine Agency, Phils., Inc., and Global Management Limited are **DECLARED** solidarily liable to pay respondent total permanent disability compensation in the amount of **US$ 60,000.00**, or its peso equivalent. Respondent is hereby **DIRECTED** to return to the petitioners any amount received in excess thereof.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Peralta, Perlas-Bernabe*, and *Reyes, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 221813. July 23, 2018]

MARICALUM MINING CORPORATION, *petitioner, vs.* **ELY G. FLORENTINO, GLENN BUENVIAJE, RUDY J. GOMEZ, represented by his heir THELMA GOMEZ, ALEJANDRO H. SITCHON, NENET ARITA, FERNANDO SIGUAN, DENNIS ABELIDA, NOEL S. ACCOLADOR, WILFREDO TAGANILE, SR., MARTIR S. AGSOY, SR., MELCHOR APUCAY, DOMINGO LAVIDA, JESUS MOSQUEDA, RUELITO A. VILLARMIA, SOFRONIO M. AYON, EFREN T. GENISE, ALQUIN A. FRANCO, PABLO L. ALEMAN, PEPITO G. HEPRIANA, ELIAS S. TRESPECES, EDGAR SOBRINO,** *respondents.*

[G.R. No. 222723. July 23, 2018]

ELY FLORENTINO, GLENN BUENVIAJE, RUDY J. GOMEZ, represented by his heir THELMA GOMEZ, FERNANDO SIGUAN, DENNIS ABELIDA, NOEL S. ACCOLADOR, WILFREDO TAGANILE, SR., MARTIR S. AGSOY, SR., MELCHOR APUCAY, DOMINGO LAVIDA, JESUS MOSQUEDA, RUELITO A. VILLARMIA, SOFRONIO M. AYON, EFREN T. GENISE, ALQUIN A. FRANCO, PABLO L. ALEMAN, PEPITO G. HEPRIANA, ELIAS S. TRESPECES, EDGAR SOBRINO, ALEJANDRO H. SITCHON, NENET ARITA, WELILMO T. NERI, ERLINDA FERNANDEZ, and EDGARDO PEÑAFLORIDA, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION - 7th DIVISION, CEBU CITY, "G" HOLDINGS, INC., and TEODORO G. BERNARDINO, ROLANDO DEGOJAS, MARICALUM MINING CORPORATION,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; IN LABOR CASES, THE COURT HAS TO EXAMINE THE COURT OF APPEALS' DECISION FROM THE PRISM OF WHETHER THE LATTER HAD CORRECTLY DETERMINED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION IN THE NATIONAL LABOR RELATIONS COMMISSION'S (NLRC) DECISIONS; CASE AT BAR.—** It is basic that only pure questions of law should be raised in petitions for review on *certiorari* under Rule 45 of the Rules of Court. It will not entertain questions of fact as the factual findings of appellate courts are final, binding or conclusive on the parties and upon this court when supported by substantial evidence. In labor cases, however, the Court has to examine the CA's Decision from the prism of whether the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision. In this case, the principle that this Court is not a trier of facts applies with greater force in labor cases. Grave abuse must have attended the evaluation of the facts and evidence presented by the parties. This Court is keenly aware that the CA undertook a Rule 65 review—not a review on appeal—of the NLRC decision challenged before it. It follows that this Court will not re-examine conflicting evidence, reevaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field. It may only examine the facts only for the purpose of resolving allegations and determining the existence of grave abuse of discretion. Accordingly, with these procedural guidelines, the Court will now proceed to determine whether or not the CA had committed any reversible error in affirming the NLRC's Decision.

2. **ID.; ID.; ID.; REMAND OF THE CASE TO THE LOWER COURTS OR APPROPRIATE TRIBUNALS; A REMAND IS ONLY NECESSARY WHEN THE PROCEEDINGS BELOW ARE GROSSLY INADEQUATE TO SETTLE FACTUAL ISSUES; NOT PROPER IN CASE AT BAR.—** Ordinarily, when there is sufficient evidence before the Court to enable it to resolve fundamental issues, it will dispense with the regular procedure of remanding the case to the lower court

or appropriate tribunal in order to avoid a further delay in the resolution of the case. A remand is only necessary when the proceedings below *are grossly inadequate to settle factual issue.* This is in line with the Court's power to issue a process in order to enforce its own decrees and thus avoid circuitous actions and vexatious litigation. In the case at bench, Maricalum Mining is seeking to have the case remanded because the LA allegedly miscomputed the amount of the monetary awards. However, **it failed to offer any reasonable argument or explanation why the proceedings conducted before the NLRC or LA were "grossly inadequate to settle factual issues,"** especially as regards the computation of monetary awards. Its bare allegations — that the monetary awards were improperly computed because prescribed claims have been granted, that the net surpluses of the manpower cooperative were not properly distributed, and that the awards in favor of some of the complainants were improbable — do not warrant the invocation of this Court's power to have the case remanded back to the LA. Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.

3. ID.; CIVIL PROCEDURE; INTERVENTION; A MOTION TO INTERVENE MAY BE ENTERTAINED OR ALLOWED EVEN IF FILED AFTER JUDGMENT WAS RENDERED BY THE TRIAL COURT, ESPECIALLY IN CASES WHERE THE INTERVENORS ARE INDISPENSABLE PARTIES.— Intervention is a remedy by which a third party, who is not originally impleaded in a proceeding, becomes a litigant for purposes of protecting his or her right or interest that may be affected by the proceedings. The factors that should be reckoned in determining whether or not to allow intervention are whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether the intervenors rights may be fully protected in a separate proceeding. A motion to intervene may be entertained or allowed **even if filed after judgment was rendered** by the trial court, especially in cases where the intervenors are indispensable parties. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just.

4. MERCANTILE LAW; CORPORATION CODE; DOCTRINE OF PIERCING THE CORPORATE VEIL; BASIC AREAS

WHEN THE DOCTRINE IS APPLICABLE; ENUMERATED.— The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: (a) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (b) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (c) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. This principle is basically applied only to determine established liability. However, piercing of the veil of corporate fiction is frowned upon and must be done with caution. This is because a corporation is invested by law with a personality separate and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.

5. ID.; ID.; ID.; PARENT OR HOLDING COMPANY, CONSTRUED; WHILE THE VEIL OF CORPORATE FICTION MAY BE PIERCED UNDER CERTAIN CIRCUMSTANCES, MERE OWNERSHIP OF A SUBSIDIARY DOES NOT JUSTIFY THE IMPOSITION OF LIABILITY ON THE PARENT COMPANY.— A parent or holding company is a corporation which owns or is organized to own a substantial portion of another company's voting shares of stock enough to control or influence the latter's management, policies or affairs thru election of the latter's board of directors or otherwise. However, the term "holding company" is customarily used interchangeably with the term "investment company" which, in turn, is defined by Section 4 (a) of Republic Act (*R.A.*) No. 2629 as "any issuer (corporation) which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities." In other words, a "holding company" is organized and is basically conducting its business by investing substantially in the equity securities of another company for the purposes of controlling their policies (as opposed to directly engaging in operating activities) and "holding" them in a conglomerate or umbrella structure along with other subsidiaries. Significantly, the holding company itself—being a separate entity—does not own the assets of and does not answer for the liabilities of the

subsidiary or affiliate. The management of the subsidiary or affiliate still rests in the hands of its own board of directors and corporate officers. It is in keeping with the basic rule a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The corporate form was created to allow shareholders to invest without incurring personal liability for the acts of the corporation. While the veil of corporate fiction may be pierced under certain instances, mere ownership of a subsidiary does not justify the imposition of liability on the parent company. **It must further appear that to recognize a parent and a subsidiary as separate entities would aid in the consummation of a wrong. Thus, a holding corporation has a separate corporate existence and is to be treated as a separate entity; unless the facts show that such separate corporate existence is a mere sham, or has been used as an instrument for concealing the truth.**

6. ID.; ID.; ID.; ALTER EGO THEORY, ELEMENTS; ALL THE THREE ELEMENTS OF THE ALTER EGO THEORY MUST CONCUR BEFORE THE CORPORATE VEIL MAY BE PIERCED.— The elements of the alter ego theory were discussed in *Philippine National Bank v. Hydro Resources Contractors Corporation,* to wit: The first prong is the **"instrumentality" or "control" test**. This test requires that the subsidiary be completely under the control and domination of the parent. It examines the parent corporation's relationship with the subsidiary. x x x The second prong is the **"fraud" test**. This test requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful. It examines the relationship of the plaintiff to the corporation. x x x The third prong is the **"harm" test**. This test requires the plaintiff to show that the defendant's control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused the harm suffered. A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. x x x To summarize, piercing the corporate veil based on the *alter ego* theory **requires the concurrence of three elements**: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation. **The absence of**

any of these elements prevents piercing the corporate veil. x x x Again, all these three elements must concur before the corporate veil may be pierced under the alter ego theory.

7. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTIONS; PROXIMATE CAUSE; DEFINED; FOR AN ACT OR EVENT TO BE CONSIDERED AS PROXIMATE LEGAL CAUSE, IT SHOULD BE SHOWN THAT SUCH ACT OR EVENT HAD INDEED CAUSED INJURY TO ANOTHER.— Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. More comprehensively, the proximate legal cause is that "acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom." Hence, for an act or event to be considered as proximate legal cause, it should be shown that such act or event had indeed caused injury to another.

8. LABOR AND SOCIAL LEGISLATION; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST TO DETERMINE EMPLOYER-EMPLOYEE RELATIONSHIP, EXPLAINED.— Under the **four-fold test**, the employer-employee relationship is determined if the following are present: a) the selection and engagement of the employee; b) the payment of wages; c) the power of dismissal; and d) the power to control the employee's conduct, or the so-called "control test." Here, the "control test" is the most important and crucial among the four tests. However, in cases where there is no written agreement to base the relationship on and where the various tasks performed by the worker bring complexity to the relationship with the employer, the better approach would therefore be to adopt a **two-tiered test** involving: a) the putative employer's power to control the employee with respect to the means and methods

by which the work is to be accomplished; and b) the underlying economic realities of the activity or relationship. In applying the second tier, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity (**economic reality or multi-factor test**), such as: a) the extent to which the services performed are an integral part of the employer's business; b) the extent of the worker's investment in equipment and facilities; c) the nature and degree of control exercised by the employer; d) the worker's opportunity for profit and loss; e) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; f) the permanency and duration of the relationship between the worker and the employer; and g) the degree of dependency of the worker upon the employer for his continued employment in that line of business. Under all of these tests, the burden to prove by substantial evidence all of the elements or factors is incumbent on the employee for he or she is the one claiming the existence of an employment relationship. x x x Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end. As applied in the healthcare industry, an employment relationship exists between a physician and a hospital if the hospital controls both the means and the details of the process by which the physician is to accomplish his task. But where a person who works for another performs his job more or less at his own pleasure, in the manner he sees fit, not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, no employer-employee relationship exists. A corporation may only exercise its powers within the definitions provided by law and its articles of incorporation.

LEONEN, *J.*, *dissenting opinion*:

1. MERCANTILE LAW; CORPORATION CODE; CORPORATIONS; A CORPORATION HAS A SEPARATE AND DISTINCT PERSONALITY FROM THAT OF ITS STOCKHOLDERS, OFFICERS, OR ANY OTHER LEGAL ENTITY TO WHICH IT IS RELATED; EXCEPTION, EXPLAINED.— A corporation has a separate and distinct

personality from that of its stockholders, officers, or any other legal entity to which it is related. It is presumed to be a bona fide legal entity that has its own powers and attributes. Its assets and properties are its own, and it is liable for its own acts and obligations. x x x The exception to this rule is when the separate personality of the corporation is used to "defeat public convenience, justify wrong, protect fraud or defend crime." It is done when the separate personality of the corporation is being abused or used for wrongful purposes, such as a shield for fraud, illegality, or inequity committed against third persons. It applies when it is used in defrauding creditors or evading obligations and liabilities. The corporation's separate personality is "a fiction created by law for convenience and to prevent injustice." Thus, when it is used in such a way that injustice prevails, the corporate veil is instead pierced to protect the rights of innocent third persons. It is an equitable remedy, done in the interest of justice and to protect public policy.

2. ID.; ID.; ID.; DOCTRINE OF PIERCING THE CORPORATE VEIL; THREE (3) INSTANCES WHEN THE DOCTRINE OF PIERCING THE CORPORATE VEIL APPLIES, ENUMERATED.— The party alleging that the corporate veil must be pierced has the burden to prove it by clear and convincing evidence. The wrongdoing alleged is never presumed. x x x When the separate personality of the corporation is pierced, the corporation is not seen as one (1) entity. Instead, its acts, assets, and liabilities become the direct responsibility of the individuals owning, controlling, and conducting its business. x x x The doctrine of piercing the corporate veil applies in three (3) instances: (i) When the corporation's separate personality is being used to defeat public convenience, such as in evading existing obligations; (ii) In *fraud cases*, when it is used to justify a wrong, protect fraud, or defend a crime; and (iii) In *alter-ego cases*, where the corporation's separate personality is not bona fide, such that it is only a conduit of another person, or its business is controlled or maintained as a mere agency or adjunct of another, that it has no mind or will of its own. In all instances, *malice and bad faith* are necessary to pierce the corporate veil. x x x Thus, it is not enough that there is dominance over the subsidiary company. The rule is there must be "a fraud or a wrong *to perpetuate the violation of a statutory or other positive legal duty*, or a dishonest and an unjust act in contravention of plaintiff's legal right."

3. ID.; ID.; ID.; ID.; THE COURT HAS APPLIED THE DOCTRINE OF PIERCING THE CORPORATE VEIL IN CASES WHEN A CORPORATION DENIES EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP TO AVOID PAYING RETIREMENT BENEFITS OR TO AVOID ANY LIABILITY FOR ILLEGAL DISMISSAL; APPLICATION IN CASE AT BAR.— It must be emphasized, however, that *fraud* is not the only basis for the piercing of the corporate veil. Any act which involves the commission of a wrong or the evasion of a duty may be a ground to apply the doctrine. Thus, this Court has applied the doctrine of piercing the corporate veil in cases when a corporation denies the existence of an employer-employee relationship to avoid paying retirement benefits or to avoid any liability for illegal dismissal. x x x Thus, the corporate veil may be pierced when it is used to evade obligations or perpetrate a social injustice. x x x Thus, while the corporate veil cannot be pierced as to the mortgage and transfer of Maricalum Mining's properties to G Holdings, the corporate veil may still be pierced for other acts in which the elements for the application of the doctrine are present. It is my position that it cannot be said that G Holdings had no participation in the labor-only contracting arrangement with the complainants. x x x G Holdings did not merely own Maricalum Mining as a holding company. It had a say in its processes and procedures. Thus, it cannot claim to be innocent. It cannot participate in the illegal dismissal of employees and thereafter hide behind its separate corporate personality to avoid the liability arising from it. It likewise cannot be said that no injury arose from the arrangement. While the *ponencia* found that there is no *monetary* injury to the employees, it still held that the employees were illegally dismissed. Thus, it cannot be denied that they suffered an injury, albeit not a monetary one. The elements of control, bad faith, and injury are present in the case at bar. Moreover, assuming that the case does not fall within the purview of fraud or alter-ego cases, the doctrine of piercing the corporate veil still applies when the separate personality of the corporation is being used to "defeat . . . public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation." Likewise, it applies when recognizing a parent company and its subsidiary as separate entities would aid in the consummation of a wrong, such as illegal dismissal and avoiding labor claims.

APPEARANCES OF COUNSEL

Mario B. Espirito Jr. for Maricalum Mining Corporation.
Manlapao and Manlapao Law Office for Ely Florentino, *et al*.
Dennis P. Ancheta for respondent "G" Holdings, Inc.

D E C I S I O N

GESMUNDO, *J*.:

A subsidiary company's separate corporate personality may be disregarded only when the evidence shows that such separate personality was *being used* by its parent or holding corporation to perpetrate a fraud or evade an existing obligation. Concomitantly, employees of a corporation have no cause of action for labor-related claims against another unaffiliated corporation, which does not exercise control over them.

The subjects of the instant consolidated cases are two (2) petitions for appeal by *certiorari* filed by the following petitioners:

1) Maricalum Mining Corporation *(Maricalum Mining)* in **G.R. No. 221813**; and

2) Ely Florentino, Glenn Buenviaje, Rudy J. Gomez,[1] Fernando Siguan, Dennis Abelida, Noel S. Acollador, Wilfredo C. Taganile, Sr., Martir S. Agsoy, Sr., Melchor B. Apucay, Domingo Lavida, Jesus Mosqueda, Ruelito A. Villarmia, Sofronio M. Ayon, Efren T. Genise, Alquin A. Franco, Pabio L. Aleman, Pepito G. Hepriana, Elias S. Trespeces, Edgar M. Sobrino, Alejandro H. Sitchon, Nenet Arita, Dr. Welilmo T. Neri, Erlinda L. Fernandez, and Edgardo S. Peñaflorida *(complainants)* in **G.R. No. 222723**.

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[1] *Rollo* (G.R. No. 222723) p. 12, represented by his heir Thelma G. Gomez, *et al*.

Both of these petitions are assailing the propriety of the October 29, 2014 Decision[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 06835. The CA upheld the November 29, 2011 Decision[3] and January 31, 2012 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC Case No. VAC-05-000412-11. In the present petitions, complainants seek to **reinstate** the April 20, 2011 Decision[5] of the Labor Arbiter *(LA)* in consolidated cases NLRC RAB VI CASE No. 09-10755-10, NLRC RAB VI CASE No. 12-10915-10, NLRC RAB VI CASE No. 12-10916-10 and NLRC RAB VI CASE No. 12-10917-10, which granted their joint complaints for monetary claims against G Holdings, Inc. *(G Holdings)*; while Maricalum Mining seeks to have the case **remanded** to the LA for proper computation of its total monetary liability to the complainants.

The Antecedents

The dispute traces its roots back to when the Philippine National Bank (*PNB*, a former government-owned-and-controlled corporation) and the Development Bank of the Philippines *(DBP)* transferred its ownership of Maricalum Mining to the National Government for disposition or privatization because it had become a non-performing asset.[6]

On October 2, 1992, the National Government thru the Asset Privatization Trust *(APT)* executed a Purchase and Sale

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[2] *Id*. (G.R. No. 221813, Vol. 1) at 67-80; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.

[3] *Id*. at 381; penned by Presiding Commissioner Violeta Ortiz-Bantug and concurred by Commissioner Julie C. Rendoque.

[4] *Id*. at 440.

[5] *Id*. at 250; penned by Labor Arbiter Romulo P. Sumalinog.

[6] See "*G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU), et al*., 619 Phil. 69, 78 (2009).

Agreement *(PSA)* with G Holdings, a domestic corporation primarily engaged in the business of owning and holding shares of stock of different companies. G Holding bought 90% of Maricalum Mining's shares and financial claims in the form of company notes. In exchange, the PSA obliged G Holdings to pay APT the amount of ₱673,161,280.00, with a down payment of ₱98,704,000.00 and with the balance divided into four tranches payable in installment over a period of ten years.[7] Concomitantly, G Holdings also assumed Maricalum Mining's liabilities in the form of company notes. The said financial liabilities were converted into three (3) Promissory Notes *(PNs)* totaling ₱550,000,000.00 (₱114,715,360.00, ₱186,550,560.00 and ₱248,734,080.00), which were secured by mortgages over some of Maricalum Mining's properties.[8] These PNs obliged Maricalum Mining to pay G Holdings the stipulated amount of ₱550,000,000.00.

Upon the signing of the PSA and paying the stipulated down payment, G Holdings immediately took physical possession of Maricalum Mining's Sipalay Mining Complex, as well as its facilities, and took full control of the latter's management and operations.[9]

On January 26, 1999, the Sipalay General Hospital, Inc. *(Sipalay Hospital)* was duly incorporated to provide medical services and facilities to the general public.[10]

Afterwards, some of Maricalum Mining's employees retired and formed several manpower cooperatives,[11] as follow:

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[7] See *Republic of the Philippines v. "G" Holdings, Inc.,* 512 Phil. 253, 258 (2005).

[8] *Supra* note 5.

[9] *Id*.

[10] *Rollo* (G.R. No. 222723), pp. 437, 447.

[11] *Id*. (G.R. No. 221813, Vol. II), pp. 553, 557.

COOPERATIVE	DATE OF REGISTRATION
San Jose Multi-Purpose Cooperative *(SJMPC)*	December 8, 1998
Centennial Multi-Purpose Cooperative *(CeMPC)*	April 5, 1999
Sipalay Integrated Multi-Purpose Cooperative *(SIMPC)*	April 5, 1999
Allied Services Multi-Purpose Cooperative *(ASMPC)*	July 23, 1999
Cansibit Multi-Purpose Cooperative *(CaMPC)*	September 16, 1999

In 2000, each of the said cooperatives executed identical sets of Memorandum of Agreement[12] with Maricalum Mining wherein they undertook, among others, to provide the latter with a steady supply of workers, machinery and equipment for a monthly fee.

On June 1, 2001, Maricalum Mining's Vice President and Resident Manager Jesus H. Bermejo wrote a Memorandum[13] to the cooperatives informing them that Maricalum Mining has decided to stop its mining and milling operations effective July 1, 2001 in order to avert continuing losses brought about by the low metal prices and high cost of production.

In July 2001, the properties of Maricalum Mining, which had been mortgaged to secure the PNs, were extrajudicially foreclosed and eventually sold to G Holdings as the highest bidder on December 3, 2001.[14]

On September 23, 2010, some of Maricalum Mining's workers, including complainants, and some of Sipalay General Hospital's employees jointly filed a Complaint[15] with the LA

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[12] *Id*. at 527-552.

[13] *Id*. (G.R. No. 222723) at 112.

[14] *Supra* note 5.

[15] *Rollo* (G.R. No. 221813, Vol. I), pp. 500-504.

against G Holdings, its president, and officer-in-charge, and the cooperatives and its officers for illegal dismissal, underpayment and nonpayment of salaries, underpayment of overtime pay, underpayment of premium pay for holiday, nonpayment of separation pay, underpayment of holiday pay, nonpayment of service incentive leave pay, nonpayment of vacation and sick leave, nonpayment of 13th month pay, moral and exemplary damages, and attorneys fees.

On December 2, 2010, complainants and CeMPC Chairman Alejandro H. Sitchon surprisingly filed his complaint for illegal dismissal and corresponding monetary claims with the LA against G Holdings, its officer-in-charge and CeMPC.[16]

Thereafter, the complaints were consolidated by the LA.

During the hearings, complainants presented the affidavits of Alejandro H. Sitchon and Dennis Abelida which attested that, prior to the formation of the manpower cooperatives, their services were terminated by Maricalum Mining as part of its retrenchment program.[17] They claimed that, in 1999, they were called by the top executives of Maricalum Mining and G Holdings and informed that they will have to form a cooperative for the purpose of providing manpower services in view of the retrenchment program. Thus, they were "rehired" only after their respective manpower cooperative services were formed. Moreover, they also submitted the following documents: (a) Cash Vouchers[18] representing payments to the manpower cooperatives; (b) a Payment Schedule[19] representing G Holdings' payment of social security contributions in favor of some Sipalay Hospital employees (c) Termination Letters[20] written by representatives of G Holdings, which were addressed to complainants including

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[16] *Id*. at 508-509; *rollo* (G.R. No. 221813, Vol. II), pp. 510-511.

[17] *Id*. (G.R. No. 222723) at 171-175.

[18] *Id*. at 154-166; 233-245, 251-297, 308-314.

[19] *Id*. at 167.

[20] *Id*. at 168-169.

those employed by Sipalay Hospital; and (d) Caretaker Schedules[21] prepared by G Holdings to prove the existence of employment relations.

After the hearings were concluded, complainants presented their Position Paper[22] claiming that: they have not received any increase in wages since they were allegedly rehired; except for Sipalay Hospital's employees, they worked as an augmentation force to the security guards charged with securing Maricalum Mining's assets which were acquired by G Holdings; Maricalum Mining's assets have been exposed to pilferage by some of its rank-and-file employees whose claims for collective bargaining benefits were undergoing litigation; the Sipalay Hospital is purportedly "among the assets" of Maricalum Mining acquired by G Holdings; the payrolls for their wages were supposedly prepared by G Holdings' accounting department; since the second half of April 2007, they have not been paid their salary; and some of their services were dismissed without any due process.

Based on these factual claims, complainants posited that: the manpower cooperatives were mere alter egos of G Holdings organized to subvert the "tenurial rights" of the complainants; G Holdings implemented a retrenchment scheme to dismiss the caretakers it hired before the foreclosure of Maricalum Mining's assets; and G Holdings was their employer because it allegedly had the power to hire, pay wages, control working methods and dismiss them.

Correspondingly, G Holdings filed its Position Paper[23] maintaining that: it was Maricalum Mining who entered into an agreement with the manpower corporations for the employment of complainants' services for auxiliary or seasonal mining activities; the manpower cooperatives were the ones who paid the wages, deducted social security contributions, withheld taxes, provided medical benefits and had control over

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[21] *Id*. at 207-232.

[22] *Id*. at 175-190.

[23] *Id*. (G.R. No. 221813, Vol. 1) at 143-159.

the working means and methods of complainants; despite Maricalum Mining's decision to stop its mining and milling operations, complainants still continued to render their services for the orderly winding down of the mines' operations; Maricalum Mining should have been impleaded because it is supposed to be the indispensable party in the present suit; (e) Maricalum Mining, as well as the manpower cooperatives, each have distinct legal personalities and that their individual corporate liabilities cannot be imposed upon each other; and there was no employer-employee relationship between G Holdings and complainants.

Likewise, the manpower cooperatives jointly filed their Position Paper[24] arguing that: complainants had exhibited a favorable response when they were properly briefed of the nature and benefits of working under a cooperative setup; complainants received their fair share of benefits; complainants were entitled to cast their respective votes in deciding the affairs of their respective cooperatives; complainants, as member of the cooperatives, are also co-owners of the said cooperative and they cannot bargain for higher labor benefits with other co-owners; and the LA has no jurisdiction over the case because there is no employer-employee relationship between a cooperative and its members.

The LA Ruling

In its decision dated April 28, 2011, the LA ruled in favor of complainants. It held that G Holdings is guilty of labor-only contracting with the manpower cooperatives thereby making all of them solidarily and directly liable to complainants. The LA reasoned that: G Holdings connived with Marcalum Mining in orchestrating the formation of manpower cooperatives to circumvent complainants' labor standards rights; it is highly unlikely that complainants (except Sipalay Hospital's employees) would spontaneously form manpower cooperatives on their own and in unison without the guidance of G Holdings and Maricalum Mining; and complainants effectively became the employees

[24] *Id*. at 162-173.

of G Holdings because their work had changed from assisting in the mining operations to safeguarding the properties in the Sipalay Mining Complex, which had already been acquired by G Holding. On the other hand, the LA denied the claims of complainants Nenet Arita and Domingo Lavida for lack of factual basis. The *fallo* of the LA decision reads:

WHEREFORE, premises considered, judgment is hereby rendered DIRECTING respondent "G" HOLDINGS, INC. to pay complainants as follows:

	Unpaid Salaries/Wages	13th Month Pay
(1) Salvador Arceo	₱81,418.08	₱ 6,784.84
(2) Sofronio Ayon	79,158.50	6,596.54
(3) Glenn Buenviaje	105,558.40	8,796.53
(4) Ely Florentino	102,325.28	8,527.11
(5) Rogelio Fulo	99,352.23	8,279.35
(6) Efren Genise	161,149.18	13,429.10
(7) Rudy Gomez	72,133.41	6,011.12
(8) Jessie Magallanes	239,251.94	19,937.66
(9) Freddie Masicampo	143,415.85	11,951.32
(10) Edgardo Penaflorida	146,483.60	12,206.97
(11) Noel Acollador	89,163.46	7,430.29
(12) Gorgonio Baladhay	220,956.10	18,413.01
(13) Jesus Mosqueda	48,303.22	4,025.27
(14) Alquin Franco	180,281.25	15,023.44
(15) Fabio Aleman	30,000.00	2,500.00
(16) Elias Trespeces	180,000.00	15,000.00
(17) Pepito Hedriana	18,000.00	1,500.00
(18) Dennis Abelida	149,941.00	12,945.08
(19) Melchor Apucay	371,587.01	30,965.58
(20) Martin Agsoy	128,945.08	10,745.42
(21) Ruelito Villarmia	224,486.95	18,707.25
(22) Fernando Siguan	417,039.32	34,753.28
(23) Alejandro Sitchon	380,423.16	31,701.93
(24) Welilmo Neri	456,502.36	38,041.86
(25) Erlinda Fernandez	125,553.88	10,462.82
(26) Edgardo Sobrino	112,521.40	9,376.78
(27) Wildredo Taganile	52,386.82	4,365.57
(28) Bartholomew Jamboy	68,000.00	5,666.67
	₱4,484,337.48	₱373,694.79

and the amount of ₱485,803.23 as attorney's fees, or the total amount of FIVE MILLION THREE HUNDRED FORTY-THREE THOUSAND EIGHT HUNDRED THIRTY-FIVE and 50/100 PESOS (₱5,343,835.50).

The other claims are DISMISSED for lack of merit.

Further, the complaints against respondents SIPALAY INTEGRATED MULTI-PURPOSE COOPERATIVE, ALLIED SERVICES MULTI-COOPERATIVE, SAN JOSE MULTI-PURPOSE COOPERATIVE, CANSIBIT MULTI-PURPOSE COOPERATIVE, and CENTENNIAL MULTI-PURPOSE COOPERATIVE, being mere agents of respondent "G" HOLDINGS, INC., are hereby DISMISSED.

SO ORDERED.[25]

The parties filed their respective appeals to the NLRC.

On July 18, 2011, Maricalum Mining filed its Appeal-in-Intervention[26] seeking to: (a) reverse and set aside the Labor Arbiter's Decision; (b) declare Maricalum Mining as the true and proper party-in-interest; (c) remand the case back to the Labor Arbiter for proper computation of the money claims of the complainants; and (d) give Maricalum Mining the opportunity to settle with the complainants.

The NLRC Ruling

In its decision dated November 29, 2011, the NLRC modified the LA ruling. It held that Dr. Welilmo T. Neri, Erlinda L. Fernandez and Edgar M. Sobrino are not entitled to the monetary awards because they were not able to establish the fact of their employment relationship with G Holdings or Maricalum Mining because Sipalay Hospital has a separate and distinct corporate personality. As to the remaining complainants, it found that no evidence was adduced to prove that the salaries/wages and the 13th month pay had been paid.

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

[26] *Rollo* (G.R. No. 221813, Vol. I), pp. 284-325.

However, the NLRC imposed the liability of paying the monetary awards imposed by the LA against Maricalum Mining, instead of G Holdings, based on the following observations that: it was Maricalum Mining—not G Holdings—who entered into service contracts by way of a Memorandum of Agreement with each of the manpower cooperatives; complainants continued rendering their services at the insistence of Maricalum Mining through their cooperatives; Maricalum Mining never relinquished possession over the Sipalay Mining Complex; Maricalum Mining continuously availed of the services of complainants through their respective manpower cooperatives; in *G Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU), et al.*[27] (NAMAWU Case), the Court already held that G Holdings and Maricalum Mining have separate and distinct corporate personalities. The dispositive portion of the NLRC ruling states:

> WHEREFORE, premises considered, the Decision rendered by the Labor Arbiter on 20 April 2011 is hereby MODIFIED, to wit:
>
> 1) the monetary award adjudged to complainants Jessie Magallanes, Rogelio E. Fulo, Salvador J. Arceo, Freddie Masicampo, Welilmo Neri, Erlinda Fernandez and Edgar Sobrino are CANCELLED;
>
> 2) the award of ten percent (10%) attorney's fees is ADJUSTED commensurate to the award of unpaid salaries/wages and 13th month pay of the remaining complainants;
>
> 3) the directive for respondent "G" Holdings, Inc. to pay complainants the monetary awards adjudged by the Labor Arbiter is CANCELLED;
>
> 4) it is intervenor that is, accordingly, directed to pay the remaining complainants their respective monetary awards.
>
> In all other respects the Decision STANDS.
>
> SO ORDERED.[28]

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[27] 619 Phil. 69, 78 (2009).

[28] *Rollo* (G.R. No. 221813, Vol. I), pp. 405-406.

Complainants and Maricalum Mining filed their respective motions for reconsideration before the NLRC. On January 31, 2012, it issued a resolution modifying its previous decision. The dispositive portion of the NLRC resolution state:

> WHEREFORE, premises considered, intervenor's Motion for Reconsideration is only PARTIALLY GRANTED. The Decision promulgated by the Commission on 29 November 2011 modifying the Labor Arbiter's decision as stated therein, is further MODIFIED to the effect that the monetary awards adjudged in favor of complainants Wilfredo Taganile and Bartholomew T. Jamboy are CANCELLED.
>
> SO ORDERED.[29]

Undaunted, the parties filed their respective petitions for *certiorari* before the CA.

The CA Ruling

In its decision dated October 29, 2014, the CA denied the petitions and affirmed the decision of the NLRC. It ratiocinated that factual issues are not fit subjects for review via the extraordinary remedy of *certiorari*. The CA emphasized that the NLRC's factual findings are conclusive and binding on the appellate courts when they are supported by substantial evidence. Thus, it maintained that it cannot review and re-evaluate the evidence all over again because there was no showing that the NLRC's findings of facts were reached arbitrarily. The decretal portion of the CA decision states:

> WHEREFORE, premises considered, the instant petition for certiorari is DENIED, and the assailed Decision dated 29 December 2011 and two Resolutions both dated 31 January 2012 of the National Labor Relations Commission are hereby AFFIRMED in all respects.
>
> Costs against petitioners.
>
> SO ORDERED.[30]

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[29] *Id*. at 451.

[30] *Id*. at 27.

Hence, these consolidated petitions essentially raising the following issues:

I

WHETHER THE COURT OF APPEALS ERRED IN REFUSING TO RE-EVALUATE THE FACTS AND IN FINDING NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC;

II

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE NLRC'S FINDING OF SUBSTANTIAL EVIDENCE IN GRANTING THE COMPLAINANTS' MONETARY AWARD AS WELL AS ITS REFUSAL TO REMAND THE CASE BACK TO THE LABOR ARBITER FOR RE-COMPUTATION OF SUCH AWARD;

III

WHETHER THE COURT OF APPEALS ERRED IN DISREGARDING THAT THE NLRC ALLOWED MARICALUM MINING TO INTERVENE IN THE CASE ONLY ON APPEAL;

IV

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE NLRC'S RULING WHICH ALLOWED THE PIERCING OF THE CORPORATE VEIL AGAINST MARICALUM MINING BUT NOT AGAINST SIPALAY HOSPITAL.

Complainants argue that the CA committed several reversible errors because: (a) it refused to re-evaluate the facts of the case even if the factual findings of the NLRC and the LA were conflicting; (b) it failed to consider that G Holdings had already acquired all of Maricalum Mining's assets and that Teodoro G. Bernardino *(Bernardino)* was now the president and controlling stockholder of both corporations; (c) it failed to take into account that Maricalum Mining was allowed to intervene only on appeal even though it was not a real party-in-interest; (d) it failed to appreciate the LA's findings that Maricalum Mining could not have hired complainants because G Holdings had already acquired in an auction sale all the assets in the Sipalay Mining Complex; (e) it failed to consider that

all resident managers of the Sipalay Mining Complex were employed by G Holdings; (f) the foreclosure of the assets in the Sipalay Mining Complex was intended to bring the said properties outside the reach of complainants; (g) the Sipalay Hospital had been existing as a hospital for Maricalum Mining's employees long before G Holdings arrived; (h) Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. were all hired by Maricalum Mining but were dismissed by G Holdings; (i) Sipalay Hospital existed without a board of directors and its employees were receiving orders from Maricalum Mining and, later on, replaced by G Holdings' officer-in-charge; and (j) Maricalum Mining and G Holdings controlled the affairs of Sipalay Hospital.

Maricalum Mining contends that the CA committed grave abuse of discretion because the monetary awards were improperly computed. It claims that complainants had stopped rendering their services since September 23, 2010, hence, their monetary claims covering the second half of April 2007 up to July 2007 have already prescribed as provided pursuant to Article 291 of the Labor Code. Moreover, it also stressed that the NLRC should have remanded the case to the LA for the determination of the manpower cooperatives' net surpluses and how these amounts were distributed to their members to aid the proper determination of the total amount of the monetary award. Finally, Maricalum Mining avers that the awards in favor of some of the complainants are "improbable" and completely unfounded.

On the other hand, G Holdings argues that piercing the corporate veil of Maricalum Mining is not proper because: (a) it did not acquire all of Maricalum Mining's assets; (b) it is primarily engaged in the business of owning and holding shares of stocks of different companies—not participating in the operations of its subsidiaries; (c) Maricalum Mining, the actual employers of complainants, had already manifested its willingness to settle the correct money claims; (d) Bernardino is not a controlling stockholder of Maricalum Mining because the latter's corporate records show that almost all of its shares of stock are owned by the APT; (e) Joost Pekelharing—not

Bernardino—is G Holdings' president; (f) in the NAMAWU Case, it was already held that control over Maricalum Mining was exercised by the APT and not G Holdings; (g) the NLRC did not commit any grave abuse of discretion when it allowed Maricalum Mining to intervene after the LA's decision was promulgated; (h) the cash vouchers, payment schedule, termination letters and caretaker schedules presented by complainants do not prove the employment relationship with G Holdings because the signatories thereto were either from Maricalum Mining or the manpower cooperatives; (i) this Court's pronouncements in the NAMAWU Case and in *Republic v. G Holdings, Inc.*[31] prove that Maricalum Mining never relinquished possession of the Sipalay Mining Complex in favor of G Holdings; and (j) Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. were employees of the Sipalay Hospital, which is a separate business entity, and were not members in any of the manpower cooperatives, which entered into a labor-only arrangement with Maricalum Mining.

The Court's Ruling

It is basic that only pure questions of law should be raised in petitions for review on *certiorari* under Rule 45 of the Rules of Court.[32] It will not entertain questions of fact as the factual findings of appellate courts are final, binding or conclusive on the parties and upon this court when supported by substantial evidence.[33] In labor cases, however, the Court has to examine the CA's Decision from the prism of whether the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision.[34]

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[31] *Supra* note 7.

[32] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 770 (2013), citations omitted.

[33] *Villarama v. Atty. De Jesus*, G.R. No. 217004, April 17, 2017, citations omitted.

[34] *Quebral, et al. v. Angbus Construction, Inc., et al.*, G.R. No. 221897, November 7, 2016, citations omitted.

In this case, the principle that this Court is not a trier of facts applies with greater force in labor cases.[35] Grave abuse must have attended the evaluation of the facts and evidence presented by the parties.[36] This Court is keenly aware that the CA undertook a Rule 65 review—not a review on appeal—of the NLRC decision challenged before it.[37] It follows that this Court will not re-examine conflicting evidence, reevaluate the credibility of witnesses, or substitute the findings of fact of the NLRC, an administrative body that has expertise in its specialized field.[38] It may only examine the facts only for the purpose of resolving allegations and determining the existence of grave abuse of discretion.[39] Accordingly, with these procedural guidelines, the Court will now proceed to determine whether or not the CA had committed any reversible error in affirming the NLRC's Decision.

Propriety of the Monetary Awards

Ordinarily, when there is sufficient evidence before the Court to enable it to resolve fundamental issues, it will dispense with the regular procedure of remanding the case to the lower court or appropriate tribunal in order to avoid a further delay in the resolution of the case.[40] A remand is only necessary when the proceedings below *are grossly inadequate to settle factual issues*.[41] This is in line with the Court's power to issue a process

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[35] *Noblado, et al. v. Alfonso*, 773 Phil. 271, 279 (2015), citations omitted.

[36] *Pascual v. Burgos, et al.*, 776 Phil. 167, 186 (2016), citations omitted.

[37] *Philippine National Bank v. Gregorio*, G.R. No. 194944, September 18, 2017, citations omitted.

[38] *Protective Maximum Security Agency, Inc. v. Fuentes*, 753 Phil. 482, 504 (2015), citations omitted.

[39] *United Coconut Planters Bank v. Looyuko, et al.*, 560 Phil. 581, 590 (2007), citations omitted.

[40] *Simon, et al. v. Canlas*, 521 Phil. 558, 575 (2006), citations omitted.

[41] *Tacloban II Neighborhood Association, Inc. v. Office of the President, et al.*, 588 Phil. 177, 195 (2008), citations omitted.

in order to enforce its own decrees and thus avoid circuitous actions and vexatious litigation.[42]

In the case at bench, Maricalum Mining is seeking to have the case remanded because the LA allegedly miscomputed the amount of the monetary awards. However, **it failed to offer any reasonable argument or explanation why the proceedings conducted before the NLRC or LA were "grossly inadequate to settle factual issues,"** especially as regards the computation of monetary awards. Its bare allegations – that the monetary awards were improperly computed because prescribed claims have been granted, that the net surpluses of the manpower cooperative were not properly distributed, and that the awards in favor of some of the complainants were improbable – do not warrant the invocation of this Court's power to have the case remanded back to the LA. Bare and unsubstantiated allegations do not constitute substantial evidence and have no probative value.[43]

Besides, it is not imperative for the Court to remand the case to the LA for the determination of the amounts of net surpluses that each of the manpower cooperatives had received from Maricalum Mining. The records show that Maricalum Mining was guilty of entering into a labor-only contracting arrangement with the manpower cooperatives, thus, **all of them are solidarily liable to the complainants** by virtue of Article 106[44] of the

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[42] *Cf. De Ortega v. Natividad, etc., et al.*, 71 Phil. 340, 342 (1941), citations omitted.

[43] *LNS International Manpower Services v. Padua, Jr.*, 628 Phil. 223, 224 (2010).

[44] Article 106. *Contractor or subcontractor.* Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

Labor Code. In *DOLE Philippines, Inc. v. Esteva, et al.*[45] it was ruled that a cooperative, despite having a personality separate from its members,[46] is engaged in a labor-only contracting arrangement based on the following indicators:

1) The cooperative had a measly paid-up capital of ₱6,600.00 and had only managed to increase the same by continually engaging in labor-only contracting with its client;

2) The cooperative *did not carry out an independent business from its client* and its own office and equipment were mainly used for administrative purposes;

3) The cooperative's members had to undergo instructions and pass the training provided by the client's personnel before they could start working alongside regular employees;

4) The cooperative was *not engaged to perform a specific and special job or service*; and

5) The cooperative's members *performed activities directly related and vital to the principal business* of its client.

Here, the virtually identical sets of memorandum of agreement with the manpower cooperatives state among others that: (a) the services covered shall consist of operating loading, drilling and various auxiliary equipments; and (b) the cooperative members shall abide by the norms and standards of the Maricalum Mining. These services and guidelines are essential to the operations of Maricalum Mining. Thus, since the cooperative

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There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him. (emphasis supplied)

[45] 538 Phil. 817, 867-869 (2006).

[46] See *Republic v. Asiapro Cooperative*, 563 Phil. 979, 1002 (2007).

members perform the work vital to the operation of the Sipalay Mining Complex, they were being contracted in a labor-only arrangement. Moreover, the burden of proving the supposed status of the contractor rests on the principal[47] and Maricalum Mining, being the principal, also failed to present any evidence before the NLRC that each of the manpower cooperatives had an independent viable business.

Propriety of Maricalum Mining's Intervention

Intervention is a remedy by which a third party, who is not originally impleaded in a proceeding, becomes a litigant for purposes of protecting his or her right or interest that may be affected by the proceedings.[48] The factors that should be reckoned in determining whether or not to allow intervention are whether intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether the intervenors rights may be fully protected in a separate proceeding.[49] A motion to intervene may be entertained or allowed **even if filed after judgment was rendered** by the trial court, especially in cases where the intervenors are indispensable parties.[50] Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just.[51]

In this case, it was never contested by complainants that it was Maricalum Mining—not G Holdings—who executed several sets of memorandum of agreement with the manpower cooperatives. The contractual connection between Maricalum

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[47] *Petron Corporation v. Caberte, et al.*, 759 Phil. 353, 367 (2015), citations omitted.

[48] *Neptune Metal Scrap Recycling, Inc. v. Manila Electric Company, et al.*, 789 Phil. 30, 37 (2016), citations omitted.

[49] *Salandanan v. Spouses Mendez*, 600 Phil. 229, 241.

[50] *Galicia, et al. v. Manliquez vda. de Mindo, et al.*, 549 Phil. 595, 605 (2007), citations omitted.

[51] *Plasabas, et al. v. Court of Appeals, et al.*, 601 Phil. 669, 675-676 (2009).

Mining and the manpower cooperatives is crucial to the determination of labor-related liabilities especially when it involves a labor-only contracting arrangement. Accordingly, Maricalum Mining will eventually be held solidarily liable with the manpower cooperatives. In other words, it stands to be injured by the incontrovertible fact that it entered into a labor-only arrangement with the manpower cooperatives. Thus, Maricalum Mining is an indispensable party and worthy of being allowed to intervene in this case.[52]

In order to properly analyze G Holdings's role in the instant dispute, the Court must discuss its peculiar relationship (or lack thereof) with Maricalum Mining and Sipalay Hospital.

G Holdings and Maricalum Mining

The doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: (a) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (b) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or (c) alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[53] This principle is basically applied only to determine established liability.[54] However, piercing of the veil of corporate fiction is frowned upon and must be done with caution.[55] This is because a corporation is invested by law with a personality separate

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[52] *Cf. In the Matter of the Heirship (Intestate Estates) of the Late Hermogenes Rodriguez, et al. v. Robles*, 653 Phil. 396, 404-405 (2010), citations omitted.

[53] *General Credit Corporation v. Alsons Development and Investment Corporation, et al.*, 542 Phil. 219, 232 (2007), citations omitted.

[54] *Kukan International Corporation v. Reyes, et al.*, 646 Phil. 210, 234 (2010), citations omitted.

[55] *Reynoso, IV v. Court of Appeals, et al.*, 399 Phil. 38, 50 (2000).

and distinct from those of the persons composing it as well as from that of any other legal entity to which it may be related.[56]

A parent[57] or holding company[58] is a corporation which owns or is organized to own a substantial portion of another company's voting[59] shares of stock enough to control[60] or influence the latter's management, policies or affairs thru election of the latter's board of directors or otherwise. However, the term "holding company" is customarily used interchangeably with the term "investment company" which, in turn, is defined by Section 4 (a) of Republic Act *(R.A.)* No. 2629[61] as "any issuer (corporation) which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities."

In other words, a "holding company" is organized and is basically conducting its business by investing substantially in the equity securities[62] of another company for the purposes of controlling their policies (as opposed to directly engaging in operating activities) and "holding" them in a conglomerate or umbrella structure along with other subsidiaries. Significantly, the holding company itself—being a separate entity—does not own the assets of and does not answer for the liabilities of the

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[56] *Ever Electrical Manufacturing, Inc., et al. v. Samahang Manggagawa ng Ever Electrical, et al.*, 687 Phil. 529, 538 (2012).

[57] *See* Section 3 (x) of Republic Act No. 9856 (The Real Estate Investment Trust Act of 2009).

[58] *See* Section 3 (g) of Republic Act No. 2629 (Investment Company Act).

[59] *See* Section 3 (ff) of Republic Act No. 2629 (Investment Company Act).

[60] *See* Section 3 (h) of Republic Act No. 2629 (Investment Company Act); *supra* note 58.

[61] The Investment Company Act (June 18, 1960).

[62] Equity securities represent ownership in a company (Stice, *et al.*, *Intermediate Accounting*, 17th Ed. [2010], p. 839).

subsidiary[63] or affiliate.[64] The management of the subsidiary or affiliate still rests in the hands of its own board of directors and corporate officers. It is in keeping with the basic rule a corporation is a juridical entity which is vested with a legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.[65] The corporate form was created to allow shareholders to invest without incurring personal liability for the acts of the corporation.[66]

While the veil of corporate fiction may be pierced under certain instances, mere ownership of a subsidiary does not justify the imposition of liability on the parent company.[67] **It must further appear that to recognize a parent and a subsidiary as separate entities would aid in the consummation of a wrong**.[68] **Thus, a holding corporation has a separate corporate existence and is to be treated as a separate entity; unless the facts show that such separate corporate existence is a mere sham, or has been used as an instrument for concealing the truth**.[69]

In the case at bench, complainants mainly harp their cause on the alter ego theory. Under this theory, piercing the veil of

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[63] Section 3 (kk) of Republic Act No. 9856 (The Real Estate Investment Trust Act of 2009).

[64] *See* Section 3 (b) of Republic Act No. 9856 (The Real Estate Investment Trust Act of 2009); *cf.* Section 3 (c) of Republic Act No. 2629 (Investment Company Act).

[65] *Aratea, et al. v. Suico, et al.*, 547 Phil. 407, 415 (2007), citations omitted.

[66] *Pearson, et al. v. Component Technology Corporation, et al.*, 247 F.3d 471 (2001), citations omitted.

[67] *Parkinson, et al. v. Guidant Corporation, et al.*, 315 F.Supp.2d 741 (2004), citations omitted.

[68] *Cf. Pacific Rehouse Corporation v. Court of Appeals, et al.*, 730 Phil. 325, 351 (2014), citations omitted.

[69] 18 C.J.S. *Corporations* § 5 (1939).

corporate fiction may be allowed only if the following elements concur:

1) Control—not mere stock control, but complete domination—not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own;

2) Such control must have been used by the defendant to commit a fraud or a wrong, to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiffs legal right; and

3) The said control and breach of duty must have proximately caused the injury or unjust loss complained of.[70]

The elements of the alter ego theory were discussed in *Philippine National Bank v. Hydro Resources Contractors Corporation,*[71] to wit:

The first prong is the **"instrumentality" or "control" test**. This test requires that the subsidiary be completely under the control and domination of the parent. It examines the parent corporation's relationship with the subsidiary. It inquires whether a subsidiary corporation is so organized and controlled and its affairs are so conducted as to make it a mere instrumentality or agent of the parent corporation such that its separate existence as a distinct corporate entity will be ignored. It seeks to establish whether the subsidiary corporation has no autonomy and the parent corporation, though acting through the subsidiary in form and appearance, "is operating the business directly for itself."

The second prong is the **"fraud" test**. This test requires that the parent corporation's conduct in using the subsidiary corporation be unjust, fraudulent or wrongful. It examines the relationship of the plaintiff to the corporation. It recognizes that piercing is appropriate only if the parent corporation uses the subsidiary in a way that harms

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[70] *Philippine National Bank, et al. v. Andrada Electric & Engineering Company*, 430 Phil. 882, 895 (2002), citations omitted.

[71] 706 Phil. 297, 310-312 (2013), citations omitted.

the plaintiff creditor. As such, it requires a showing of "an element of injustice or fundamental unfairness."

The third prong is the **"harm" test**. This test requires the plaintiff to show that the defendant's control, exerted in a fraudulent, illegal or otherwise unfair manner toward it, caused the harm suffered. A causal connection between the fraudulent conduct committed through the instrumentality of the subsidiary and the injury suffered or the damage incurred by the plaintiff should be established. The plaintiff must prove that, unless the corporate veil is pierced, it will have been treated unjustly by the defendant's exercise of control and improper use of the corporate form and, thereby, suffer damages.

To summarize, piercing the corporate veil based on the *alter ego* theory **requires the concurrence of three elements**: control of the corporation by the stockholder or parent corporation, fraud or fundamental unfairness imposed on the plaintiff, and harm or damage caused to the plaintiff by the fraudulent or unfair act of the corporation. **The absence of any of these elements prevents piercing the corporate veil.** (emphases and underscoring supplied)

Again, all these three elements must concur before the corporate veil may be pierced under the alter ego theory. Keeping in mind the parameters, guidelines and indicators for proper piercing of the corporate veil, the Court now proceeds to determine whether Maricalum Mining's corporate veil may be pierced in order to allow complainants to enforce their monetary awards against G Holdings.

I. Control or Instrumentality Test

In *Concept Builders, Inc. v. National Labor Relations Commission, et al.*,[72] the Court first laid down the first set of probative factors of identity that will justify the application of the doctrine of piercing the corporate veil, *viz*:

1) Stock ownership by one or common ownership of both corporations.

2) Identity of directors and officers.

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[72] 326 Phil. 955, 965 (1996), citations omitted.

3) The manner of keeping corporate books and records.

4) Methods of conducting the business.

Later, in *Philippine National Bank v. Ritratto Group Inc., et al.*,[73] the Court expanded the aforementioned probative factors and enumerated a combination of any of the following common circumstances that may also render a subsidiary an instrumentality, to wit:

1) The parent corporation **owns all or most of the capital stock** of the subsidiary;

2) The parent and subsidiary corporations have common directors or officers;

3) The parent corporation finances the subsidiary;

4) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation;

5) The subsidiary has grossly inadequate capital;

6) The **parent corporation pays the salaries and other expenses** or losses of the subsidiary;

7) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation;

8) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own;

9) The parent corporation uses the property of the subsidiary as its own;

10) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation; and

11) The formal legal requirements of the subsidiary are not observed.

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[73] 414 Phil. 494, 504-505 (2001).

In the instant case, there is no doubt that G Holdings—being the majority and controlling stockholder—had been exercising significant control over Maricalum Mining. This is because this Court had already upheld the validity and enforceability of the PSA between the APT and G Holdings. It was stipulated in the PSA that APT shall transfer 90% of Maricalum Mining's equity securities to G Holdings and it establishes the presence of absolute control of a subsidiary's corporate affairs. Moreover, the Court evinces its observation that Maricalum Mining's corporate name appearing on the heading of the cash vouchers issued in payment of the services rendered by the manpower cooperatives is being superimposed with G Holding's corporate name. Due to this observation, it can be reasonably inferred that G Holdings is paying for Maricalum Mining's salary expenses. Hence, the presence of both circumstances of dominant equity ownership and provision for salary expenses may adequately establish that Maricalum Mining is an instrumentality of G Holdings.

However, mere presence of control and full ownership of a parent over a subsidiary is not enough to pierce the veil of corporate fiction. It has been reiterated by this Court time and again that **mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality.**[74]

II. Fraud Test

The corporate veil may be lifted only if it has been used to shield fraud, defend crime, justify a wrong, defeat public convenience, insulate bad faith or perpetuate injustice.[75] To

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[74] *Zambrano, et al. v. Philippine Carpet Manufacturing Corporation, et al.*, G.R. No. 224099, June 21, 2017, citations omitted; *Francisco, et al. v. Mejia, et al.*, 415 Phil. 153, 170 (2001).

[75] See *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals, et al.*, 357 Phil. 631, 648-649 (1998).

aid in the determination of the presence or absence of fraud, the following factors in the "Totality of Circumstances Test"[76] may be considered, *viz*:

1) Commingling of funds and other assets of the corporation with those of the individual shareholders;

2) Diversion of the corporation's funds or assets to non-corporate uses (to the personal uses of the corporation's shareholders);

3) Failure to maintain the corporate formalities necessary for the issuance of or subscription to the corporation's stock, such as formal approval of the stock issue by the board of directors;

4) An individual shareholder representing to persons outside the corporation that he or she is personally liable for the debts or other obligations of the corporation;

5) Failure to maintain corporate minutes or adequate corporate records;

6) Identical equitable ownership in two entities;

7) Identity of the directors and officers of two entities who are responsible for supervision and management (a partnership or sole proprietorship and a corporation owned and managed by the same parties);

8) Failure to adequately capitalize a corporation for the reasonable risks of the corporate undertaking;

9) Absence of separately held corporate assets;

10) Use of a corporation as a mere shell or conduit to operate a single venture or some particular aspect of the business of an individual or another corporation;

11) Sole ownership of all the stock by one individual or members of a single family;

12) Use of the same office or business location by the corporation and its individual shareholder(s);

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[76] *Laya v. Erin Homes, Inc., et al.*, 352 S.E.2d 93 (1986), cited in: *Kinney Shoe Corporation v. Polan*, 939 F.2d 209 (1991).

13) Employment of the same employees or attorney by the corporation and its shareholder(s);

14) Concealment or misrepresentation of the identity of the ownership, management or financial interests in the corporation, and concealment of personal business activities of the shareholders (sole shareholders do not reveal the association with a corporation, which makes loans to them without adequate security);

15) Disregard of legal formalities and failure to maintain proper arm's length relationships among related entities;

16) Use of a corporate entity as a conduit to procure labor, services or merchandise for another person or entity;

17) Diversion of corporate assets from the corporation by or to a stockholder or other person or entity to the detriment of creditors, or the manipulation of assets and liabilities between entities to concentrate the assets in one and the liabilities in another;

18) Contracting by the corporation with another person with the *intent to avoid the risk of nonperformance* by use of the corporate entity; or the use of a corporation as a subterfuge for illegal transactions; and

19) The formation and use of the corporation to assume the existing liabilities of another person or entity.

Aside from the aforementioned circumstances, it must be determined whether the transfer of assets from Maricalum Mining to G Holdings is enough to invoke the equitable remedy of piercing the corporate veil. The same issue was resolved in *Y-I Leisure Phils., Inc., et al. v. Yu*[77] where this Court applied the "Nell Doctrine"[78] regarding the **transfer of all the assets of one corporation to another**. It was discussed in that case that as a general rule that where one corporation sells or otherwise

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[77] 769 Phil. 279, 293 (2015).

[78] *The Edward J. Nell Company v. Pacific Farms, Inc*., 122 Phil. 825, 827 (1965), citations omitted.

transfers *all* of its assets to another corporation, the latter is not liable for the debts and liabilities of the transferor, except:

1) Where the purchaser expressly or impliedly agrees to assume such debts;

2) Where the transaction amounts to a consolidation or merger of the corporations;

3) Where the purchasing corporation is merely a continuation of the selling corporation; and

4) Where the transaction is entered into fraudulently in order to escape liability for such debts.

If any of the above-cited exceptions are present, then the transferee corporation shall assume the liabilities of the transferor.[79]

In this case, G Holdings cannot be held liable for the satisfaction of labor-related claims against Maricalum Mining under the fraud test for the following reasons:

First, the transfer of some Maricalum Mining's assets in favor G Holdings was by virtue of the PSA as part of an official measure to dispose of the government's non-performing assets—not to evade its monetary obligations to the complainants. Even before complainants' monetary claims supposedly existed in 2007, some of Maricalum Mining's assets had already been validly extrajudicially foreclosed and eventually sold to G Holdings in 2001. Thus, G Holdings could not have devised a scheme to avoid a non-existent obligation. No fraud could be attributed to G Holdings because the transfer of assets was pursuant to a previously perfected valid contract.

Settled is the rule that where one corporation sells or otherwise transfers all its assets to another corporation for value, the latter is not, by that fact alone, liable for the debts and liabilities of the transferor.[80] In other words, control or ownership of

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[79] *Supra* note 77 at 293.

[80] *Pantranco Employees Association, et al. v. National Labor Relations Commission, et al.*, 600 Phil. 645, 660 (2009).

substantially all of a subsidiary's assets is not by itself an indication of a holding company's fraudulent intent to alienate these assets in evading labor-related claims or liabilities. As discussed earlier, the PSA was not designed to evade the monetary claims of the complainants. Although there was proof that G Holdings has an office in Maricalum Mining's premises and that that some of their assets have been commingled due to the PSA's unavoidable consequences, there was no fraudulent diversion of corporate assets to another corporation for the sole purpose of evading complainants' claim.

Besides, it is evident that the alleged continuing depletion of Maricalum Mining's assets is due to its disgruntled employees' own acts of pilferage, which was beyond the control of G Holdings. More so, complainants also failed to present any clear and convincing evidence that G Holdings was grossly negligent and failed to exercise the required degree of diligence in ensuring that Maricalum Mining's assets would be protected from pilferage.[81] Hence, no fraud can be imputed against G Holdings considering that there is no evidence in the records that establishes it systematically tried to alienate Maricalum Mining's assets to escape the liabilities to complainants.

Second, it was not proven that all of Maricalum Mining's assets were transferred to G Holdings or were totally depleted. Complainants never offered any evidence to establish that Maricalum Mining had absolutely no substantial assets to cover for their monetary claims. Their allegation that their claims will be reduced to a mere "paper victory" has not confirmed with concrete proof. At the very least, substantial evidence should be adduced that the subsidiary company's "net realizable value"[82]

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[81] See *Heirs of Fe Tan Uy v. International Exchange Bank*, 703 Phil. 477, 486 (2013).

[82] Net realizable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale (International Financial Reporting Standards No. 2.6).

of "current assets"[83] and "fair value"[84] of "non-current assets"[85] are collectively insufficient to cover the whole amount of its liability subject in the instant litigation.

Third, G Holdings purchased Maricalum Mining's shares from the APT not for the purpose of continuing the latter's existence and operations but for the purpose of investing in the mining industry without having to directly engage in the management and operation of mining. As discussed earlier, a holding company's primary business is merely to invest in the equity of another corporation for the purpose of earning from the latter's endeavors. It generally does not undertake to engage in the daily operating activities of its subsidiaries that, in turn, have their own separate sets of directors and officers. Thus, there should be proof that a holding company had indeed fraudulently used the separate corporate personality of its subsidiary to evade an obligation before it can be held liable. Since G Holdings is a holding company, the corporate veil of its subsidiaries may only be pierced based on fraud or gross negligence amounting to bad faith.

Lastly, no clear and convincing evidence was presented by the complainants to conclusively prove the presence of fraud on the part of G Holdings. Although the quantum of evidence needed to establish a claim for illegal dismissal in labor cases is substantial evidence,[86] the quantum need to establish the

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[83] Current assets are assets that a company expects to convert to cash or use up within one year or its operating cycle, whichever is longer (Weygandt, *et al*., *Accounting Principles*, 10th Ed. [2012], p. 172).

[84] Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction in the principal (or most advantageous) market at the measurement date under current market conditions (*i.e*. an exit price) regardless of whether that price is directly observable or estimated using another valuation technique (International Financial Reporting Standards No. 19.24).

[85] Non-current assets are those which are not likely to be converted into unrestricted cash within a year of the balance sheet date (see: https://www.accountingcoach.com/blog/what-is-a-noncurrent-asset [last visited: May 28, 2018]).

[86] *Functional, Inc. v. Granfil*, 676 Phil. 279, 287 (2011).

presence of fraud is clear and convincing evidence.[87] Thus, to disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly—it cannot be presumed.[88]

Here, the complainants did not satisfy the requisite quantum of evidence to prove fraud on the part of G Holdings. They merely offered allegations and suppositions that, since Maricalum Mining's assets appear to be continuously depleting and that the same corporation is a subsidiary, G Holdings could have been guilty of fraud. As emphasized earlier, **bare allegations do not prove anything**. There must be proof that fraud—not the inevitable effects of a previously executed and valid contract such as the PSA—was the cause of the latter's total asset depletion. To be clear, the presence of control *per se* is not enough to justify the piercing of the corporate veil.

III. Harm or Casual Connection Test

In *WPM International Trading, Inc., et al. v. Labayen,*[89] the Court laid down the criteria for the harm or casual connection test, to wit:

> In this connection, we stress that the control necessary to invoke the instrumentality or *alter ego* rule is not majority or even complete stock control but such domination of finances, policies and practices that the controlled corporation has, so to speak, no separate mind, will or existence of its own, and is but a conduit for its principal. The control must be shown to have been exercised at the time the acts complained of took place. Moreover, the control and breach of duty **must *proximately cause* the injury or unjust loss** for which the complaint is made. (emphases and underscoring supplied)

Proximate cause is defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening

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[87] *Republic v. Guerrero*, 520 Phil. 296, 311 (2006).

[88] *McLeod v. National Labor Relations Commission, et al.*, 541 Phil. 214, 239 (2007).

[89] 743 Phil. 192, 201-202 (2014).

cause, produces the injury, and without which the result would not have occurred.[90] More comprehensively, the proximate legal cause is that "acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom."[91] Hence, for an act or event to be considered as proximate legal cause, it should be shown that such act or event had indeed caused injury to another.

In the case at bench, complainants **have not yet even suffered any monetary injury**. **They have yet to enforce their claims against Maricalum Mining**. It is apparent that complainants are merely anxious that their monetary awards will not be satisfied because the assets of Maricalum Mining were allegedly transferred surreptitiously to G Holdings. However, as discussed earlier, since complainants failed to show that G Holdings's mere exercise of control had a clear hand in the depletion of Maricalum Mining's assets, no proximate cause was successfully established. The transfer of assets was pursuant to a valid and legal PSA between G Holdings and APT.

Accordingly, complainants failed to satisfy the second and third tests to justify the application of the alter ego theory. This inevitably shows that the CA committed no reversible error in upholding the NLRC's Decision declaring Maricalum Mining as the proper party liable to pay the monetary awards in favor of complainants.

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[90] *Mendoza, et al. v. Spouses Gomez*, 736 Phil. 460, 475 (2014).

[91] *Ramos v. C.O.L. Realty Corporation*, 614 Phil. 169, 177 (2009).

G Holdings and Sipalay Hospital

Sipalay Hospital was incorporated by Romulo G. Zafra, Eleanore B. Gutierrez, Helen Grace B. Fernandez, Evelyn B. Badajos and Helen Grace L. Arbolario.[92] However, there is absence of indication that G Holdings subsequently acquired the controlling interests of Sipalay Hospital. There is also no evidence that G Holdings entered into a contract with Sipalay Hospital to provide medical services for its officers and employees. This lack of stockholding or contractual connection signifies that Sipalay Hospital is not affiliated[93] with G Holdings. Thus, due to this absence of affiliation, the Court must apply the tests used to determine the existence of an employee-employer relationship; rather than piercing the corporate veil.

Under the **four-fold test**, the employer-employee relationship is determined if the following are present: a) the selection and engagement of the employee; b) the payment of wages; c) the power of dismissal; and d) the power to control the employee's conduct, or the so-called "control test."[94] Here, the "control test" is the most important and crucial among the four tests.[95] However, in cases where there is no written agreement to base

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[92] *Rollo* (G.R. No. 222723), p. 441.

[93] *See* Section 3 (c) of Republic Act No. 2629 (Investment Company Act).

(c) "Affiliated person" of another person means (1) any person directly or indirectly owning, controlling or holding with power to vote, ten per centum or more of the outstanding voting securities of such other person; (2) any person ten per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (3) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (4) any officer, director, partner, copartner, or employee of such other person; and (5) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof. (emphasis supplied)

[94] *South East International Rattan, Inc., et al. v. Coming*, 729 Phil. 298, 306 (2014).

[95] *Alba v. Espinosa, et al*., G.R. No. 227734, August 9, 2017, citations omitted.

the relationship on and where the various tasks performed by the worker bring complexity to the relationship with the employer, the better approach would therefore be to adopt a **two-tiered test** involving: a) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and b) the underlying economic realities of the activity or relationship.[96]

In applying the second tier, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity (**economic reality or multi-factor test**), such as: a) the extent to which the services performed are an integral part of the employer's business; b) the extent of the worker's investment in equipment and facilities; c) the nature and degree of control exercised by the employer; d) the worker's opportunity for profit and loss; e) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; f) the permanency and duration of the relationship between the worker and the employer; and g) the degree of dependency of the worker upon the employer for his continued employment in that line of business.[97] Under all of these tests, the burden to prove by substantial evidence all of the elements or factors is incumbent on the employee for he or she is the one claiming the existence of an employment relationship.[98]

In light of the present circumstances, **the Court must apply the four-fold test** for lack of relevant data in the case records relating to the underlying economic realities of the activity or relationship of Sipalay Hospital's employees.

To prove the existence of their employment relationship with G Holdings, complainants Dr. Welilmo T. Neri, Erlinda L.

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[96] *Valeroso, et al. v. Skycable Corporation*, 790 Phil. 93, 103 (2016).

[97] *Francisco v. National Labor Relations Commission, et al*., 532 Phil. 399, 408-409 (2006).

[98] See *Valencia v. Classique Vinyl Products Corporation, et al*., G.R. No. 206390, January 30, 2017, 816 SCRA 144, 156, citations omitted.

Fernandez, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. presented the following documents:

1) Affidavit[99] of Dr. Welilmo T. Neri attesting among others that he was the Medical Director of Sipalay Hospital which is allegedly owned and operated by G Holdings/Maricalum Mining;

2) Several cash vouchers[100] issued by G Holdings/Maricalum Mining representing Dr. Welilmo T. Neri's payment for services rendered to "various" personnel;

3) Schedules of social security premium payments[101] in favor of Dr. Welilmo T. Neri, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. stamped paid by G Holdings;

4) Notice of termination[102] dated July 3, 2010 issued by Rolando G. Degojas (OIC of G-Holdings Inc.) issued to Dr. Welilmo T. Neri and some of his companions who are not complainants in this case;

5) Notice of termination[103] addressed to Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and some of their co-employees who are not complainants in this case with a *collatilla* stating that the services of Dr. Welilmo T. Neri and nurse Erlinda L. Fernandez will be engaged on per call basis; and

6) A "Statement of Unpaid Salaries of Employees of G Holdings, Inc. Assigned to the Sipalay General Hospital"[104] prepared by Dr. Welilmo T. Neri which included his own along with complainants Erlinda L. Fernandez, Wilfredo C. Taganile, [Sr.] and Edgar M. [Sobrino].

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[99] *Rollo* (G.R. No. 222723), p. 153.

[100] *Id*. at 154-165.

[101] *Id*. at 166-167.

[102] *Id*. at 168.

[103] *Id*. at 169.

[104] *Id*. at 170.

A perusal of the aforementioned documents fails to show that the services of complainants Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. were indeed selected and engaged by either Maricalum Mining or G Holdings. **This gap in evidence clearly shows that the first factor of the four-fold test, or the selection and engagement of the employee, was not satisfied and not supported by substantial evidence**.

However, the same cannot be said as to the second and third factors of the four-fold test (the payment of wages and the power of dismissal). Since substantial evidence is defined as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,[105] the cash vouchers, social security payments and notices of termination are reasonable enough to draw an inference that G Holdings and Maricalum Mining may have had a hand in the complainants' payment of salaries and dismissal.

Notwithstanding the absence of the first factor and the presence of the second and third factors of the four-fold test, the Court still deems it best to examine the fourth factor—the presence of control—in order to determine the employment connection of complainants Dr. Welilmo T. Neri, Erlinda L. Fernandez, Edgar M. Sobrino and Wilfredo C. Taganile, Sr. with G Holdings.

Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[106] As applied in the healthcare industry, an employment relationship exists between a physician and a hospital if the hospital controls both the means and the details of the process by which the physician is to accomplish his task.[107] But where a person who

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[105] *Skippers United Pacific, Inc. v. National Labor Relations Commission, et al.*, 527 Phil. 248, 257 (2006).

[106] *Atok Big Wedge Company, Inc. v. Gison*, 670 Phil. 615, 627 (2011).

[107] *Calamba Medical Center, Inc. v. National Labor Relations Commission, et al.*, 592 Phil. 318, 326 (2008).

works for another performs his job more or less at his own pleasure, in the manner he sees fit, not subject to definite hours or conditions of work, and is compensated according to the result of his efforts and not the amount thereof, no employer-employee relationship exists.[108]

A corporation may only exercise its powers within the definitions provided by law and its articles of incorporation.[109] Accordingly, in order to determine the presence or absence of an employment relationship between G Holdings and the employees of Sipalay Hospital by using the control test, the Court deems it essential to examine the salient portion of Sipalay Hospital's Articles of Incorporation imparting its 'primary purpose,'[110] to wit:

> To own, manage, lease or operate hospitals or clinics offering and providing medical services and facilities to the **general public**, provided that purely professional, medical or surgical services shall be performed by duly qualified physicians or surgeons who may or **may not be connected with** the corporation and who shall be freely and individually contracted by patients. (emphasis supplied)

It is immediately apparent that Sipalay Hospital, even if its facilities are located inside the Sipalay Mining Complex, does not limit its medical services only to the employees and officers of Maricalum Mining and/or G Holdings. Its act of holding out services to the public reinforces the fact of its independence from either Maricalum Mining or G Holdings because it is free to deal with any client without any legal or contractual restriction. Moreover, G Holdings is a holding company primarily engaged in investing substantially in the stocks of another company—not in directing and managing the latter's daily business operations. Because of this corporate attribute, **the Court can reasonably draw an inference that G Holdings does not have**

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[108] *Orozco v. Court of Appeals, et al.*, 584 Phil. 35, 52 (2008).

[109] See *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et al.*, 776 Phil. 401, 428 (2016).

[110] *Rollo* (G.R. No. 222723), p. 438.

a considerable ability to control means and methods of work of Sipalay Hospital employees. Markedly, the records are simply bereft of any evidence that G Holdings had, in fact, used its ownership to control the daily operations of Sipalay Hospital as well as the working methods of the latter's employees. There is no evidence showing any subsequent transfer of shares from the original incorporators of Sipalay Hospital to G Holdings. Worse, it appears that complainants Dr. Welilmo T. Neri, Erlinda L. Fernandez, Wilfredo C. Taganile, Sr. and Edgar M. Sobrino are trying to derive their employment connection with G Holdings merely on an assumed premise that the latter owns the controlling stocks of Maricalum Mining.

On this score, the CA committed no reversible error in allowing the NLRC to delete the monetary awards of Dr. Welilmo T. Neri, Erlinda L. Fernandez, Wilfredo C. Taganile, Sr. and Edgar M. Sobrino imposed by the Labor Arbiter against G Holdings.

Conclusion

A holding company may be held liable for the acts of its subsidiary only when it is adequately proven that: a) there was control over the subsidiary; (b) such control was used to protect a fraud (or gross negligence amounting to bad faith) or evade an obligation; and c) fraud was the proximate cause of another's existing injury. Further, an employee is duly-burdened to prove the crucial test or factor of control thru substantial evidence in order to establish the existence of an employment relationship—especially as against an unaffiliated corporation alleged to be exercising control.

In this case, complainants have not successfully proven that G Holdings fraudulently exercised its control over Maricalum Mining to fraudulently evade any obligation. They also fell short of proving that G Holdings had exercised operational control over the employees of Sipalay Hospital. Due to these findings, the Court sees no reversible error on the part of the CA, which found no grave abuse of discretion and affirmed *in toto* the factual findings and legal conclusions of the NLRC.

WHEREFORE, the Court **AFFIRMS *in toto*** the October 29, 2014 Decision of the Court of Appeals in CA-G.R. SP No. 06835.

No pronouncement as to costs.

SO ORDERED.

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

Leonen, J., dissents, see dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

This case involves two (2) Petitions for Review questioning the Court of Appeals October 29, 2014 Decision in CA-G.R. SP No. 06835.

In G.R. No. 221813, Maricalum Mining Corporation (Maricalum Mining) is questioning the computation of its total monetary liability.

In G.R. No. 222723, Ely G. Florentino, Glenn Buenviaje, Rudy J. Gomez, represented by his heir Thelma Gomez, Fernando Siguan, Dennis Abelida, Noel S. Accolador, Wilfreda Taganile, Sr., Martir S. Agsoy, Sr., Melchor Apucay, Domingo Lavida, Jesus Mosqueda, Ruelito A. Villarmia, Sofronio M. Ayon, Efren T. Genise, Alquin A. Franco, Pablo L. Aleman, Pepito G. Hepriana, Elias S. Trespeces, Edgar Sobrino, Alejandro H. Sitchon, Nenet Arita, Welilmo T. Neri, Erlinda Fernandez, and Edgardo Peñaflorida (collectively, complainants) are insisting that G Holdings, Inc. (G Holdings) should be held liable with Maricalum Mining for their labor claims.

The following are the antecedent facts:

The Philippine National Bank and the Development Bank of the Philippines previously owned Maricalum Mining. When Maricalum Mining became a non-performing asset, both banks

transferred their ownership of Maricalum Mining to the National Government for disposition or privatization.[1]

On October 2, 1992, the National Government, through the Asset Privatization Trust, sold 90% of Maricalum Mining's shares and financial claims to G Holdings, a domestic corporation engaged in owning and holding shares of stock of different companies.[2]

The Asset Privatization Trust and G Holdings executed a Purchase and Sale Agreement. It provided for the purchase price for Maricalum Mining's shares. As for the value of Maricalum Mining's financial claims, Maricalum Mining executed promissory notes in favor of G Holdings. The notes were secured by Maricalum Mining's properties.[3]

When G Holdings had paid the down payment, it immediately took possession of Maricalum Mining's mine site, facilities, and took full control of the latter's management and operations.[4]

In 1999, several Maricalum Mining employees retired and formed manpower cooperatives.[5]

In 2000, the cooperatives executed separate but identical Memoranda of Agreement with Maricalum Mining, undertaking to supply the latter with workers, machinery, and equipment in exchange for a monthly fee.[6]

On June 1, 2001, Maricalum Mining informed the cooperatives that it was undergoing continuing losses because of high cost of production and low metal prices. Consequently, it would cease its mining and milling operations beginning July 1, 2001.[7]

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[1] *Ponencia*, p. 3.

[2] *Id*. at 4.

[3] *Id*.

[4] *Id*.

[5] *Id*.

[6] *Id*. at 5.

[7] *Id*.

In July 2001, Maricalum Mining's properties mortgaged in favor of G Holdings were extra-judicially foreclosed. On December 3, 2001, the properties were sold to G Holdings as the highest bidder.[8]

On September 23, 2010, the complainants filed an illegal dismissal case against G Holdings and the cooperatives. They also sought payment for several money claims, damages, and attorney's fees.[9]

The Labor Arbiter ruled that G Holdings, Maricalum Mining, and the manpower cooperatives were guilty of labor-only contracting, and thus, are liable for the money claims and attorney's fees.[10]

On appeal, the National Labor Relations Commission modified the ruling. It found that only Maricalum Mining was liable to the employees because Maricalum Mining and G Holdings had separate and distinct corporate personalities.[11]

The Court of Appeals affirmed the ruling of the National Labor Relations Commission.[12]

The complainants filed a Petition for Review with this Court, asserting that G Holdings should be held liable for their claims because the doctrine of piercing the corporate veil applies.

The *ponencia* affirmed the Court of Appeals' ruling. It held that the corporate veil should not be pierced because there is no evidence of fraud on the part of G Holdings.[13]

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[8] *Id*.

[9] *Id*.

[10] *Id*. at 8.

[11] *Id*. at 10.

[12] *Id*. at 11.

[13] *Id*. at 30.

It explained that the corporate veil must be lifted only if it was used to shield fraud, defend crime, justify a wrong, defeat public convenience, insulate bad faith, or perpetuate injustice.[14] Control and ownership of all assets of another corporation is not an indication of a fraudulent intent to evade labor claims and liabilities.[15] The *ponencia* ruled that the employees must present clear and convincing evidence to prove that the holding company is guilty of fraud or gross negligence amounting to bad faith to evade the obligation.[16]

It held that the transfer of Maricalum Mining's assets to G Holdings does not indicate fraud, as it was done pursuant to the Purchase and Sale Agreement executed in 1992. It noted that some of the assets had been foreclosed as early as 2001, even before the labor claims existed, and thus, there was no evidence that the transfer was done to evade their obligations.[17]

The *ponencia* also lent credence to the allegation that the continuing depletion of Maricalum Mining's assets is due to its employees' pilferage, and that there is no evidence that G Holdings was negligent in that aspect.[18]

It further ruled that there is no showing that all of Maricalum Mining's assets have been depleted such that it is insufficient to meet the employees' claims.[19]

It also concluded that G Holdings is a holding company that merely purchased Maricalum Mining's shares to invest in the mining industry, not to continue its existence and operations.[20]

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[14] *Id*. at 25.

[15] *Id*. at 28.

[16] *Id*. at 30.

[17] *Id*. at 28.

[18] *Id*.

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

[20] *Id*. at 29.

Moreover, it ruled that there is no showing that the employees have suffered any monetary injury, as they have yet to enforce their claims against Maricalum Mining.[21]

I dissent. I opine that the corporate veil should be pierced and that G Holdings should be held solidarily liable with Maricalum Mining.

A corporation has a separate and distinct personality from that of its stockholders, officers, or any other legal entity to which it is related.[22] It is presumed to be a bona fide legal entity that has its own powers and attributes. Its assets and properties are its own, and it is liable for its own acts and obligations.

> A corporation is an artificial being created by operation of law. It possesses the right of succession and such powers, attributes, and properties expressly authorized by law or incident to its existence. It has a personality separate and distinct from the persons composing it, as well as from any other legal entity to which it may be related. This is basic.[23]

This is the rule even if a single stockholder or a single corporation wholly owns all the capital stock of the corporation.[24] In *MR Holdings, Ltd. v. Bajar*:[25]

> *[T]he mere fact that a corporation owns all of the stocks of another corporation, taken alone is not sufficient to justify their being treated*

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[21] *Id*. at 31.

[22] CIVIL CODE, Art. 44 provides:

Article 44. The following are juridical persons:

. . . . . .

(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

[23] *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882, 894 (2002) [Per *J*. Panganiban, Third Division].

[24] See *Sunio v. National Labor Relations Commission*, 212 Phil. 355 (1984) [Per *J*. Melencio-Herrerra, First Division].

[25] 430 Phil. 443 (2002) [Per *J*. Sandoval-Gutierrez, Third Division].

as one entity. If used to perform legitimate functions, a subsidiary's separate existence shall be respected, and the liability of the parent corporation as well as the subsidiary will be confined to those arising in their respective business.[26] (Emphasis in the original, citation omitted)

The exception to this rule is when the separate personality of the corporation is used to "defeat public convenience, justify wrong, protect fraud or defend crime."[27] It is done when the separate personality of the corporation is being abused or used for wrongful purposes,[28] such as a shield for fraud, illegality, or inequity committed against third persons.[29] It applies when it is used in defrauding creditors or evading obligations and liabilities.

The corporation's separate personality is "a fiction created by law for convenience and to prevent injustice."[30] Thus, when it is used in such a way that injustice prevails, the corporate veil is instead pierced to protect the rights of innocent third persons.[31] It is an equitable remedy, done in the interest of justice and to protect public policy.[32]

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[26] *Id*. at 469-470.

[27] *Philippine National Bank v. Ritratto Group Inc.*, 414 Phil. 494, 505 (2001) [Per *J*. Kapunan, First Division].

[28] *Id*. at 503.

[29] *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882, 895 (2002) [Per *J*. Panganiban, Third Division].

[30] *Pantranco Employees Association v. National Labor Relations Commission*, 600 Phil. 645, 660 (2009) [Per *J*. Nachura, Third Division].

[31] See *Pantranco Employees Association v. National Labor Relations Commission*, 600 Phil. 645 (2009) [Per *J*. Nachura, Third Division] and *Traders Royal Bank v. Court of Appeals*, 336 Phil. 15 (1997) [Per *J*. Torres, Jr., Second Division].

[32] See *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882 (2002) [Per *J*. Panganiban, Third Division]; *Philippine National Bank v. Ritratto Group Inc.*, 414 Phil. 494 (2001) [Per *J*. Kapunan, First Division]; *Traders Royal Bank v. Court of Appeals*, 336 Phil. 15 (1997) [Per *J*. Torres, Jr., Second Division].

The party alleging that the corporate veil must be pierced has the burden to prove it by clear and convincing evidence.[33] The wrongdoing alleged is never presumed.[34] In *Philippine National Bank v. Andrada Electric & Engineering Co.*:[35]

> Equally well-settled is the principle that the corporate mask may be removed or the corporate veil pierced when the corporation is just an alter ego of a person or of another corporation. For reasons of public policy and in the interest of justice, the corporate veil will justifiably be impaled only when it becomes a shield for fraud, illegality or inequity committed against third persons.
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> Hence, any application of the doctrine of piercing the corporate veil should be done with caution. A court should be mindful of the milieu where it is to be applied. It must be certain that the corporate fiction was misused to such an extent that injustice, fraud, or crime was committed against another, in disregard of its rights. The wrongdoing must be clearly and convincingly established; it cannot be presumed. Otherwise, an injustice that was never unintended may result from an erroneous application.
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> This Court has pierced the corporate veil to ward off a judgment credit, to avoid inclusion of corporate assets as part of the estate of the decedent, to escape liability arising from a debt, or to perpetuate fraud and/or confuse legitimate issues either to promote or to shield unfair objectives or to cover up an otherwise blatant violation of the prohibition against forum-shopping. Only in these and similar instances may the veil be pierced and disregarded.[36] (Citations omitted)

When the separate personality of the corporation is pierced, the corporation is not seen as one (1) entity. Instead, its acts, assets, and liabilities become the direct responsibility of the individuals owning, controlling, and conducting its business.

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[33] *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882 (2002) [Per *J*. Panganiban, Third Division]; *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989 (1999) [Per *J*. Martinez, First Division].

[34] *Luxuria Homes, Inc. v. Court of Appeals*, 361 Phil. 989 (1999) [Per *J*. Martinez, First Division].

[35] 430 Phil. 882 (2002) [Per *J*. Panganiban, Third Division].

[36] *Id*. at 894-895.

In *Pantranco Employees Association v. National Labor Relations Commission*:[37]

> The general rule is that a corporation has a personality separate and distinct from those of its stockholders and other corporations to which it may be connected. This is a fiction created by law for convenience and to prevent injustice . . .
>
> Under the doctrine of "piercing the veil of corporate fiction", the court looks at the corporation as a mere collection of individuals or an aggregation of persons undertaking business as a group, disregarding the separate juridical personality of the corporation unifying the group. Another formulation of this doctrine is that when two business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third parties, disregard the legal fiction that two corporations are distinct entities and treat them as identical or as one and the same.
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> Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.[38]
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> (Citations omitted)

The doctrine of piercing the corporate veil applies in three (3) instances:

(i) When the corporation's separate personality is being used to defeat public convenience, such as in evading existing obligations;

(ii) In *fraud cases*, when it is used to justify a wrong, protect fraud, or defend a crime; and

(iii) In *alter-ego cases*, where the corporation's separate personality is not bona fide, such that it is only a conduit of another person, or its business is controlled or maintained as

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[37] 600 Phil. 645 (2009) [Per *J.* Nachura, Third Division].

[38] *Id*. at 660-661.

a mere agency or adjunct of another, that it has no mind or will of its own.

In all instances, *malice and bad faith* are necessary to pierce the corporate veil. Thus, in *Pantranco Employees Association v. National Labor Relations Commission*:[39]

Clearly, what can be inferred from the earlier cases is that the doctrine of piercing the corporate veil applies only in three (3) basic areas, namely: 1) defeat of public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; 2) fraud cases or when the corporate entity is used to justify a wrong, protect fraud, or defend a crime; or 3) *alter ego* cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation. In the absence of malice, bad faith, or a specific provision of law making a corporate officer liable, such corporate officer cannot be made personally liable for corporate liabilities.[40] (Citations omitted)

In *Philippine National Bank v. Andrada Electric & Engineering Co.*,[41] the elements of piercing the corporate veil were enumerated as follows:

(1) [C]ontrol — not mere stock control, but complete domination — not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) such control must have been used by the defendant to commit a fraud or a wrong to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiff's legal right; and (3) the said control and breach of duty must have proximately caused the injury or unjust loss complained of.[42] (Citation omitted)

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[39] 600 Phil. 645 (2009) [Per *J*. Nachura, Third Division].

[40] *Id*. at 663.

[41] 430 Phil. 882 (2002) [Per *J*. Panganiban, Third Division].

[42] *Id*. at 895.

Thus, the elements are control, the commission of a wrong, and injury.

Control is particularly relevant in alter-ego cases. In *Philippine National Bank v. Ritratto Group Inc.*,[43] this Court laid down several indicators of full control:

(a) The parent corporation owns all or most of the capital stock of the subsidiary.

(b) The parent and subsidiary corporations have common directors or officers.

(c) The parent corporation finances the subsidiary.

(d) The parent corporation subscribes to all the capital stock of the subsidiary or otherwise causes its incorporation.

(e) The subsidiary has grossly inadequate capital.

(f) The parent corporation pays the salaries and other expenses or losses of the subsidiary.

(g) The subsidiary has substantially no business except with the parent corporation or no assets except those conveyed to or by the parent corporation.

(h) In the papers of the parent corporation or in the statements of its officers, the subsidiary is described as a department or division of the parent corporation, or its business or financial responsibility is referred to as the parent corporation's own.

(i) The parent corporation uses the property of the subsidiary as its own.

(j) The directors or executives of the subsidiary do not act independently in the interest of the subsidiary but take their orders from the parent corporation.

(k) The formal legal requirements of the subsidiary are not observed.[44]

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[43] 414 Phil. 494 (2001) [Per *J.* Kapunan, First Division].

[44] *Id*. at 504-505.

However, there is particular emphasis in the element of fraud or commission of a wrong.

Previously, the piercing of the veil was allowed whenever there is a similarity in the personnel, officers, resources, and place of work of two (2) entities. Ownership and control of two (2) entities by the same parties is sufficient to disregard the legal fiction. Thus, in *Sibagat Timber Corp. v. Garcia*:[45]

> The circumstances that: (1) petitioner and Del Rosario & Sons Logging Enterprises, Inc. hold office in the same building; (2) the officers and directors of both corporations are practically the same; and (3) the Del Rosarios assumed management and control of Sibagat and have been acting for and managing its business . . ., bolster the conclusion that petitioner is an alter ego of the Del Rosario & Sons Logging Enterprises, Inc.
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> The rule is that the veil of corporate fiction may be pierced when made as a shield to perpetrate fraud and/or confuse legitimate issues . . . The theory of corporate entity was not meant to promote unfair objectives or otherwise, to shield them . . . Likewise, where it appears that two business enterprises are owned, conducted, and controlled by the same parties, both law and equity will, when necessary to protect the rights of third persons, disregard the legal fiction that two corporations are distinct entities, and treat them as identical . . .
>
> . . . . . .
>
> Assuming *arguendo* that this Court in G.R. No. 84497 held that petitioner is the owner of the properties levied under execution, that circumstance will not be a legal obstacle to the piercing of the corporate fiction. As found by both the trial and appellate courts, petitioner is just a conduit, if not an adjunct of Del Rosario & Sons Logging Enterprises, Inc. In such a case, the real ownership becomes unimportant and may be disregard for the two entities may/can be treated as only one agency or instrumentality.
>
> The corporate entity is disregarded where a corporation is the mere alter ego, or business conduit of a person or where the corporation is so organized and controlled and its affairs are so

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[45] 290-A Phil. 241 (1992) [Per *J.* Griño-Aquino, First Division].

conducted, as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[46] (Citations omitted)

Likewise, the corporate veil was pierced in *Philippine Bank of Communications v. Court of Appeals*,[47] where a parcel of land could not be levied upon because the property had already been transferred to another corporation controlled by the liable person.

The well settled principle is that a corporation "is invested by law with a separate personality, separate and distinct from that of the person composing it as well as from any other legal entity to which it may be related." . . . However, the separate personality of the corporation may be disregarded, or the veil of corporate fiction pierced when the corporation is used "as a cloak or cover for fraud or illegality, or to work an injustice, or where necessary to achieve equity or when necessary for the protection of creditors." . . .

In the instant case, the evidence clearly shows that Chua and his immediate family control JALECO. The Deed of Exchange executed by Chua and JALECO had for its subject matter the sale of the only property of Chua at the time when Chua's financial obligations became due and demandable. The records also show that despite the "sale", respondent Chua continued to stay in the property, subject matter of the Deed of Exchange.

These circumstances tend to show that the Deed of Exchange was not what it purports to be. Instead, they tend to show that the Deed of Exchange was executed with the sole intention to defraud Chua's creditor - the petitioner. It was not a *bona fide transaction* between JALECO and Chua. Chua entered a sham or simulated transaction with JALECO for the sole purpose of transferring the title of the property to JALECO without really divesting himself of the title and control of the said property.

Hence, JALECO's separate personality should be disregarded and the corporation veil pierced. In this regard, the transaction leading to the execution of the Deed of Exchange between Chua and JALECO must be considered a transaction between Chua and himself and not

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[46] *Id*. at 245-247.

[47] 272-A Phil. 565 (1991) [Per *J*. Gutierrez, Jr., Third Division].

between Chua and JALECO. Indeed, Chua took advantage of his control over JALECO to execute the Deed of Exchange to defraud his creditor, the petitioner herein. JALECO was but a mere *alter ego* of Chua.[48] (Citations omitted)

In *Tomas Lao Construction v. National Labor Relations Commission*,[49] the veils of corporate fiction of three (3) Companies owned, controlled, and managed by one (1) family were pierced to hold them all liable for monetary awards granted to illegally dismissed Workers.

Finally, public respondent NLRC did not err in disregarding the veil of separate corporate personality and holding petitioners jointly and severally liable for private respondents' back wages and separation pay. The records disclose that the three (3) corporations were in fact substantially owned and controlled by members of the Lao family composed of Lao Hian Beng alias Tomas Lao, Chiu Siok Lian (wife of Tomas Lao), Andrew C. Lao, Lao Y. Heng, Vicente Lao Chua, Lao E. Tin, Emmanuel Lao and Ismaelita Maluto. A majority of the outstanding shares of stock in LVM and T&J is owned by the Lao family. T&J is 100% owned by the Laos as reflected in its Articles of Incorporation. The Lao Group of Companies therefore is a closed corporation where the incorporators and directors belong to a single family. Lao Hian Beng is the same Tomas Lao who owns Tomas Lao Corporation and is the majority stockholder of T&J. Andrew C. Lao is the Managing Director of LVM Construction, and President and Managing Director of the Lao Group of Companies. Petitioners are engaged in the same line of business under one management and use the same equipment including manpower services. Where it appears that [three] business enterprises are owned, conducted and controlled by the same parties, both law and equity will, when necessary to protect the rights of third persons, disregard the legal fiction that the [three] corporations are distinct entities, and treat them as identical.

Consonant with our earlier ruling, we hold that the liability of petitioners extends to the responsible officers acting in the interest of the corporations. In view of the peculiar circumstances of this case, we disregard the separate personalities of the three (3) corporations

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[48] *Id*. at 578-579.

[49] 344 Phil. 268 (1997) [Per *J*. Bellosillo, First Division].

and at the same time declare the members of the corporations jointly and severally liable with the corporations for the monetary awards due to private respondents. It should always be borne in mind that the fiction of law that a corporation as a juridical entity has a distinct and separate personality was envisaged for convenience and to serve justice; therefore it should not be used as a subterfuge to commit injustice and circumvent labor laws.[50] (Citations omitted)

Later, this Court became stricter in the application of the instrumentality rule. It laid down requisites before the corporate veil may be pierced in alter-ego cases. It required that the control must have been used "to commit a fraud or a wrong to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiff's legal right."[51] In *Philippine National Bank v. Andrada Electric & Engineering Co.*:[52]

The question of whether a corporation is a mere alter ego is one of fact. Piercing the veil of corporate fiction may be allowed only if the following elements concur: (1) control — not mere stock control, but complete domination — not only of finances, but of policy and business practice in respect to the transaction attacked, must have been such that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) such control must have been used by the defendant to commit a fraud or a wrong to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and an unjust act in contravention of plaintiff's legal right; and (3) the said control and breach of duty must have proximately caused the injury or unjust loss complained of.

We believe that the absence of the foregoing elements in the present case precludes the piercing of the corporate veil. *First*, other than the fact that petitioners acquired the assets of [Pampanga Sugar Mill], there is no showing that their control over it warrants the disregard of corporate personalities. *Second*, there is no evidence that their

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[50] *Id*. at 286-287.

[51] *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882, 895 (2002) [Per *J*. Panganiban, Third Division].

[52] 430 Phil. 882 (2002) [Per *J*. Panganiban, Third Division].

juridical personality was used to commit a fraud or to do a wrong; or that the separate corporate entity was farcically used as a mere alter ego, business conduit or instrumentality of another entity or person. *Third*, respondent was not defrauded or injured when petitioners acquired the assets of [Pampanga Sugar Mill].

Being the party that asked for the piercing of the corporate veil, respondent had the burden of presenting clear and convincing evidence to justify the setting aside of the separate corporate personality rule. However, it utterly failed to discharge this burden; it failed to establish by competent evidence that petitioner's separate corporate veil had been used to conceal fraud, illegality or inequity.[53] (Citations omitted)

This Court further ruled that similarities are not sufficient to pierce the corporate veil, especially if there is a plausible business purpose for the existence of the corporate fiction. In *Padilla v. Court of Appeals*,[54] respondent Susana Realty, Inc. sought to enforce an alias writ of execution against the properties of petitioner Phoenix-Omega Development and Management Corporation to satisfy a monetary award, based on the finding that Phoenix-Omega Development and Management Corporation was the sister company of the liable corporation, PKA Development and Management Corporation. This Court ruled that it was not proper to pierce the corporate veil as there was no showing that it was used to defeat public convenience, justify wrong, protect fraud, or defend crime:

This veil of corporate fiction may only be disregarded in cases where the corporate vehicle is being used to defeat public convenience, justify wrong, protect fraud, or defend crime. (PKA Development and Management Corporation) and Phoenix-Omega are admittedly sister companies, and may be sharing personnel and resources, but we find in the present case no allegation, much less positive proof, that their separate corporate personalities are being used to defeat public convenience, justify wrong, protect fraud, or defend crime. "For the separate juridical personality of a corporation to be disregarded, the wrongdoing must be clearly and convincingly established. It cannot

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[53] *Id*. at 895-896.

[54] 421 Phil. 883 (2001) [Per *J*. Quisumbing, Second Division].

be presumed." We find no reason to justify piercing the corporate veil in this instance.[55] (Citations omitted)

In *Development Bank of the Philippines v. Court of Appeals*,[56] Remington Corporation (Remington) sought payment for construction materials purchased by Marinduque Mining and Industrial Corporation (Marinduque Mining). The Philippine National Bank and the Development Bank of the Philippines foreclosed and acquired the mortgaged properties of Marinduque Mining, and assigned their rights to the properties to three (3) newly created mining corporations. Remington then filed a collection case against Marinduque Mining, and impleaded the Philippine National Bank, the Development Bank of the Philippines, and the three (3) mining companies. It argued that the transfer of Marinduque Mining's properties to the three (3) mining corporations were made in fraud of creditors considering that the Philippine National Bank and the Development Bank of the Philippines practically wholly own the three (3) newly created entities. This Court ruled that the piercing of the corporate veil is not warranted because the transfer was done in good faith and in accordance with law and sound business practice:

> [T]his Court has disregarded the separate personality of the corporation where the corporate entity was used to escape liability to third parties. In this case, however, we do not find any fraud on the part of Marinduque Mining and its transferees to warrant the piercing of the corporate veil.
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> It bears stressing that [the Philippine National Bank] and [the Development Bank of the Philippines] are mandated to foreclose on the mortgage when the past due account had incurred arrearages of more than 20% of the total outstanding obligation . . .
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> Thus, [the Philippine National Bank] and [the Development Bank of the Philippines] did not only have a right, but the duty under said law, to foreclose upon the subject properties. The banks had no choice but to obey the statutory command.

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[55] *Id*. at 895.

[56] 415 Phil. 538 (2001) [Per *J*. Kapunan, First Division].

. . . . . .

Neither do we discern any bad faith on the part of [the Development Bank of the Philippines] by its creation of Nonoc Mining, Maricalum and Island Cement. As Remington itself concedes, [the Development Bank of the Philippines] is not authorized by its charter to engage in the mining business. The creation of the three corporations was necessary to manage and operate the assets acquired in the foreclosure sale lest they deteriorate from non-use and lose their value. In the absence of any entity willing to purchase these assets from the bank, what else would it do with these properties in the meantime? Sound business practice required that they be utilized for the purposes for which they were intended.

Remington also asserted in its third amended complaint that the use of Nonoc Mining, Maricalum and Island Cement of the premises of Marinduque Mining and the hiring of the latter's officers and personnel also constitute badges of bad faith.

Assuming that the premises of Marinduque Mining were not among those acquired by [the Development Bank of the Philippines] in the foreclosure sale, convenience and practicality dictated that the corporations so created occupy the premises where these assets were found instead of relocating them. No doubt, many of these assets are heavy equipment and it may have been impossible to move them. The same reasons of convenience and practicality, not to mention efficiency, justified the hiring by Nonoc Mining, Maricalum and Island Cement of Marinduque Mining's personnel to manage and operate the properties and to maintain the continuity of the mining operations.

To reiterate, the doctrine of piercing the veil of corporate fiction applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime. To disregard the separate juridical personality of a corporation, the wrongdoing must be clearly and convincingly established. It cannot be presumed. In this case, the Court finds that Remington failed to discharge its burden of proving bad faith on the part of Marinduque Mining and its transferees in the mortgage and foreclosure of the subject properties to justify the piercing of the corporate veil.[57] (Citations omitted)

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[57] *Id*. at 546-549.

In *Jardine Davies, Inc. v. JRB Realty, Inc.*,[58] respondent JRB Realty, Inc. filed an action against the parent corporation, Jardine Davies, Inc. for the replacement of air-conditioning units purchased from its subsidiary, Aircon and Refrigeration Industries, Inc. (Aircon). This Court refused to pierce the corporate veil:

> The rationale behind piercing a corporation's identity is to remove the barrier between the corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.
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> While it is true that Aircon is a subsidiary of the petitioner, it does not necessarily follow that Aircon's corporate legal existence can just be disregarded. In *Velarde v. Lopez, Inc.*, the Court categorically held that a subsidiary has an independent and separate juridical personality, distinct from that of its parent company; hence, any claim or suit against the latter does not bind the former, and *vice versa*. In applying the doctrine, the following requisites must be established: (1) control, not merely majority or complete stock control; (2) such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest acts in contravention of plaintiff's legal rights; and (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.
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> The records bear out that Aircon is a subsidiary of the petitioner only because the latter acquired Aircon's majority of capital stock. It, however, does not exercise complete control over Aircon; nowhere can it be gathered that the petitioner manages the business affairs of Aircon. Indeed, no management agreement exists between the petitioner and Aircon, and the latter is an entirely different entity from the petitioner.
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> Jardine Davies, Inc., incorporated as early as June 28, 1946, is primarily a financial and trading company . . .
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> On the other hand, Aircon, incorporated on December 27, 1952, is a manufacturing firm. Its Articles of Incorporation states that its purpose is mainly —

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[58] 502 Phil. 129 (2005) [Per *J.* Callejo, Sr., Second Division].

> To carry on the business of manufacturers of commercial and household appliances and accessories of any form, *particularly to manufacture, purchase, sell or deal in air conditioning and refrigeration products of every class and description* as well as accessories and parts thereof, or other kindred articles; and to erect, or buy, lease, manage, or otherwise acquire manufactories, warehouses, and depots for manufacturing, assemblage, repair and storing, buying, selling, and dealing in the aforesaid appliances, accessories and products . . .

The existence of interlocking directors, corporate officers and shareholders . . . is not enough justification to pierce the veil of corporate fiction, in the absence of fraud or other public policy considerations. But even when there is dominance over the affairs of the subsidiary, the doctrine of piercing the veil of corporate fiction applies only when such fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime. To warrant resort to this extraordinary remedy, there must be proof that the corporation is being used as a cloak or cover for fraud or illegality, or to work injustice. Any piercing of the corporate veil has to be done with caution. The wrongdoing must be clearly and convincingly established. It cannot just be presumed.

In the instant case, there is no evidence that Aircon was formed or utilized with the intention of defrauding its creditors or evading its contracts and obligations. There was nothing fraudulent in the acts of Aircon in this case. Aircon, as a manufacturing firm of air conditioners, complied with its obligation of providing two air conditioning units for the second floor of the Blanco Center in good faith, pursuant to its contract with the respondent.[59] (Emphasis supplied, citations omitted)

Thus, it is not enough that there is dominance over the subsidiary company. The rule is there must be "a fraud or a wrong *to perpetuate the violation of a statutory or other positive legal duty*, or a dishonest and an unjust act in contravention of plaintiff's legal right."[60]

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[59] *Id*. at 138-140.

[60] *Philippine National Bank v. Andrada Electric & Engineering Co.*, 430 Phil. 882, 895 (2002) [Per *J*. Panganiban, Third Division].

It must be emphasized, however, that *fraud* is not the only basis for the piercing of the corporate veil. Any act which involves the commission of a wrong or the evasion of a duty may be a ground to apply the doctrine. Thus, this Court has applied the doctrine of piercing the corporate veil in cases when a corporation denies the existence of an employer-employee relationship to avoid paying retirement benefits or to avoid any liability for illegal dismissal.

In *Enriquez Security Services, Inc. v. Cabotaje*,[61] respondent Victor A. Cabotaje was a security guard in Enriquez Security and Investigation Agency since 1979. In 1985, Enriquez Security Services, Inc. was incorporated and respondent continued to work for it. Both Enriquez Security and Investigation Agency and Enriquez Security Services, Inc. were owned by the Enriquez family and the latter held office where the former used to previously hold office. Respondent's employment with both security agencies was continuous and uninterrupted. When he reached the age of 60, he applied for retirement benefits. Enriquez Security Services, Inc. claimed that his benefits may only be reckoned from 1985, when it was incorporated. This Court ruled to pierce the corporate veil, finding that "[t]he attempt to make the security agencies appear as two separate entities, when in reality they were but one, was a devise to defeat the law."[62] It ruled that the separate entity of a corporation may be disregarded when it is used as a means to perpetrate a social injustice or as a vehicle to evade obligations.

In *Azcor Manufacturing, Inc. v. National Labor Relations Commission*,[63] this Court found that employee Candido Capulso (Capulso) was led into believing that while he was working with Filipinas Paso, his real employer was Azcor Manufacturing, Inc. (AZCOR), which never dealt with him openly or in good faith. It found that Capulso was not informed of the developments

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[61] 528 Phil. 603 (2006) [Per *J*. Corona, Second Division].

[62] *Id*. at 609.

[63] 362 Phil. 370 (1999) [Per *J*. Bellosillo, Second Division].

within the company, his transfer from AZCOR to Filipinas Paso, or the closure of AZCOR's manufacturing operations effective March 1, 1990. He continued to retain his AZCOR Identification Card, his pay slips contained the name of AZCOR, and he was paid the same salary. He likewise performed the same duties, worked in the same location and area under the same supervisor, and used the same tools. He worked from his hiring date until his last day of work. His employment contract was signed by an AZCOR personnel officer, and stated that he was being hired by AZCOR to do jobs for Filipinas Paso for a certain period. This Court ruled, thus:

> The doctrine that a corporation is a legal entity or a person in law distinct from the persons composing it is merely a legal fiction for purposes of convenience and to subserve the ends of justice. This fiction cannot be extended to a point beyond its reason and policy. Where, as in this case, the corporate fiction was used as a means to perpetrate a social injustice or as a vehicle to evade obligations or confuse the legitimate issues, it would be discarded and the two (2) corporations would be merged as one, the first being merely considered as the instrumentality, agency, conduit or adjunct of the other.
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> . . . . . .
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> In fine, we see in the totality of the evidence a veiled attempt by petitioners to deprive Capulso of what he had earned through hard labor by taking advantage of his low level of education and confusing him as to who really was his true employer — such a callous and despicable treatment of a worker who had rendered faithful service to their company.[64] (Citations omitted)

In *De Leon v. National Labor Relations Commission*,[65] Fortune Tobacco Corporation (Fortune Tobacco) contracted Fortune Integrated Services, Inc. (Fortune Integrated) to provide security guards. Around 11 years later, Fortune Integrated's incorporators and stockholders sold out their shares lock, stock, and barrel. Fortune Integrated's corporate name in the Articles of

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[64] *Id*. at 380-382.

[65] 410 Phil. 523 (2001) [Per *J*. Puno, First Division].

Incorporation was amended to read as Magnum Integrated Services, Inc. (Magnum Integrated). Fortune Tobacco then terminated its contract for security services with Fortune Integrated and engaged the services of two (2) other security agencies, thus, displacing 582 security guards who were originally assigned to it. Several security guards, through their labor union, filed a complaint for illegal dismissal and unfair labor practice, alleging that they were regular employees of Fortune Tobacco, which also used the corporate names Fortune Integrated and Magnum Integrated. In this case, this Court pierced the corporate veil:

> We are not persuaded by the argument of respondent [Fortune Tobacco] denying the presence of an employer-employee relationship. We find that the Labor Arbiter correctly applied the doctrine of piercing the corporate veil to hold all respondents liable for unfair labor practice and illegal termination of petitioners' employment. It is a fundamental principle in corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it is connected. However, when the concept of separate legal entity is used to defeat public convenience, justify wrong, protect fraud or defend crime, the law will regard the corporation as an association of persons, or in case of two corporations, merge them into one. The separate juridical personality of a corporation may also be disregarded when such corporation is a mere alter ego or business conduit of another person. In the case at bar, it was shown that [Fortune Integrated] was a mere adjunct of [Fortune Tobacco]. [Fortune Integrated], by virtue of a contract for security services, provided [Fortune Tobacco] with security guards to safeguard its premises. However, records show that [Fortune Integrated] and [Fortune Tobacco] have the same owners and business address, and [Fortune Integrated] provided security services only to [Fortune Tobacco] and other companies belonging to the Lucio Tan group of companies. The purported sale of the shares of the former stockholders to a new set of stockholders who changed the name of the corporation to Magnum Integrated Services, Inc. appears to be part of a scheme to terminate the services of [Fortune Integrated]'s security guards posted at the premises of [Fortune Tobacco] and bust their newly-organized union which was then beginning to become active in demanding the company's compliance with Labor Standards laws. Under these circumstances, the Court cannot allow [Fortune Tobacco] to use its separate corporate personality to shield itself

from liability for illegal acts committed against its employees.[66] (Citation omitted)

In *Reynoso IV v. Court of Appeals*,[67] a former resident manager employee sought the enforcement of an alias writ of execution against the mother corporation of a subsidiary:

> The defense of separateness will be disregarded where the business affairs of a subsidiary corporation are so controlled by the mother corporation to the extent that it becomes an instrument or agent of its parent. But even when there is dominance over the affairs of the subsidiary, the doctrine of piercing the veil of corporate fiction applies only when such fiction is used to defeat public convenience, justify wrong, protect fraud or defend crime.
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> . . . . . .
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> Factually and legally, the [Commercial Credit Corporation] had dominant control of the business operations of CCC-QC. The exclusive management contract insured that [Commercial Credit Corporation-Quezon City] would be managed and controlled by [Commercial Credit Corporation] and would not deviate from the commands of the mother corporation. In addition to the exclusive management contract, [Commercial Credit Corporation] appointed its own employee, petitioner, as the resident manager of [Commercial Credit Corporation-Quezon City].
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> . . . . . .
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> There are other indications in the record which attest to the applicability of the identity rule in this case, namely: the unity of interests, management, and control; the transfer of funds to suit their individual corporate conveniences; and the dominance of policy and practice by the mother corporation insure that [Commercial Credit Corporation-Quezon City] was an instrumentality or agency of [Commercial Credit Corporation].
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> . . . . . .
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> A court judgment becomes useless and ineffective if the employer, in this case [Commercial Credit Corporation] as a mother corporation,

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[66] *Id*. at 533-534.

[67] 399 Phil. 38 (2000) [Per *J*. Ynares-Santiago, First Division].

is placed beyond the legal reach of the judgment creditor[.][68] (Citation omitted)

Thus, the corporate veil may be pierced when it is used to evade obligations or perpetrate a social injustice.

In the case at bar, it is correct that this Court already ruled on the validity of the acquisition by G Holdings of Maricalum Mining's properties in *G Holdings, Inc. v. National Mines and Allied Workers Union Local 103*.[69] This Court ruled that the transfer pursuant to the Purchase and Sale Agreement was valid, considering it was entered into by the Philippine government, thus, giving rise to the presumption of its regularity. Moreover, the mortgages had existed since 1992, and thus, cannot be said to have been executed to evade labor claims, which arose later on:

> It may be remembered that [the Asset Privatization Trust] acquired the [Maricalum Mining] from the [the Philippine National Bank] and the [the Development Bank of the Philippines]. Then, in compliance with its mandate to privatize government assets, [the Asset Privatization Trust] sold the aforesaid [Maricalum Mining] shares and notes to [G Holdings]. To repeat, this Court has recognized this Purchase and Sale Agreement in *Republic, etc., v. "G" Holdings, Inc.*
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> The participation of the Government, through [the Asset Privatization Trust], in this transaction is significant. Because the Government had actively negotiated and, eventually, executed the agreement, then the transaction is imbued with an aura of official authority, giving rise to the presumption of regularity in its execution. This presumption would cover all related transactional acts and documents needed to consummate the privatization sale, inclusive of the Promissory Notes. It is obvious, then, that the Government, through [the Asset Privatization Trust], consented to the "establishment and constitution" of the mortgages on the assets of [Maricalum Mining] in favor of [G Holdings], as provided in the notes. Accordingly, the notes (and the stipulations therein) enjoy the benefit of the same presumption of regularity accorded to government actions. Given the Government consent thereto, and

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[68] *Id*. at 39.

[69] 619 Phil. 69 (2009) [Per *J*. Nachura, Third Division].

clothed with the presumption of regularity, the mortgages cannot be characterized as sham, fictitious or fraudulent.

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It is difficult to conceive that these mortgages, already existing in 1992, almost four (4) years before [the National Mines and Allied Workers Union Local 103] filed its notice of strike, were a "fictitious" arrangement intended to defraud [the National Mines and Allied Workers Union Local 103]. After all, they were agreed upon long before the seeds of the labor dispute germinated.

While it is true that the Deed of Real Estate and Chattel Mortgage was executed only on September 5, 1996, it is beyond cavil that this formal document of mortgage was merely a derivative of the original mortgage stipulations contained in the Promissory Notes of October 2, 1992. The execution of this Deed in 1996 does not detract from, but instead reinforces, the manifest intention of the parties to "establish and constitute" the mortgages on [Maricalum Mining]'s real and personal properties.

. . . . . .

The execution of the subsequent Deed of Real Estate and Chattel Mortgage on September 5, 1996 was simply the formal documentation of what had already been agreed in the seminal transaction (the Purchase and Sale Agreement) between [the Asset Privatization Trust] and [G Holdings]. It should not be viewed in isolation, apart from the original agreement of October 2, 1992. And it cannot be denied that this original agreement was supported by an adequate consideration. The [Asset Privatization Trust] was even ordered by the court to deliver the shares and financial notes of [Maricalum Mining] in exchange for the payments that [G Holdings] had made.

It was also about this time, in 1996, that [the National Mines and Allied Workers Union Local 103] filed a notice of strike to protest non-payment of its rightful labor claims. But, as already mentioned, the outcome of that labor dispute was yet unascertainable at that time, and [the National Mines and Allied Workers Union Local 103] could only have hoped for, or speculated about, a favorable ruling. To paraphrase *MR Holdings*, we cannot see how [the National Mines and Allied Workers Union Local 103]'s right was prejudiced by the Deed of Real Estate and Chattel Mortgage, or by its delayed registration, when substantially all of the properties of [Maricalum Mining] were already mortgaged to [G Holdings] as early as October 2, 1992. Given

this reality, the Court of Appeals had no basis to conclude that this Deed of Real Estate and Chattel Mortgage, by reason of its late registration, was a simulated or fictitious contract.

. . . . . .

Under the Torrens system, registration is the operative act which gives validity to the transfer or creates a lien upon the land. Further, entrenched in our jurisdiction is the doctrine that registration in a public registry creates constructive notice to the whole world . . .

But, there is nothing in Act No. 496, as amended by P.D. No. 1529, that imposes a period within which to register annotations of "conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land." If liens were not so registered, then it "shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make registration." If registered, it "shall be the operative act to convey or affect the land insofar as third persons are concerned." The mere lapse of time from the execution of the mortgage document to the moment of its registration does not affect the rights of a mortgagee.

Neither will the circumstance of [G Holdings]'s foreclosure of [Maricalum Mining]'s properties on July 31, 2001, or after the [Department of Labor and Employment] had already issued a Partial Writ of Execution on May 9, 2001 against [Maricalum Mining], support the conclusion of the [Court of Appeals] that [G Holdings]'s act of foreclosing on [Maricalum Mining]'s properties was "*effected to prevent satisfaction of the judgment award.*" [G Holdings]'s mortgage rights, constituted in 1992, antedated the Partial Writ of Execution by nearly ten (10) years. [G Holdings]'s resort to foreclosure was a legitimate enforcement of a right to liquidate a *bona fide* debt. It was a reasonable option open to a mortgagee which, not being a party to the labor dispute between [the National Mines and Allied Workers Union Local 103] and [Maricalum Mining], stood to suffer a loss if it did not avail itself of the remedy of foreclosure.

The well-settled rule is that a mortgage lien is inseparable from the property mortgaged. While it is true that [G Holdings]'s foreclosure of [Maricalum Mining]'s mortgaged properties may have had the "effect to prevent satisfaction of the judgment award against the specific mortgaged property that first answers for a mortgage obligation ahead of any subsequent creditors," that same foreclosure does not necessarily

translate to having been "*effected to prevent satisfaction of the judgment award*" against [Maricalum Mining].

. . . . . .

We also observe the error in the [Court of Appeals]'s finding that the 1996 Deed of Real Estate and Chattel Mortgage was not supported by any consideration since at the time the deed was executed, "*all the real and personal property of* [Maricalum Mining] *had already been transferred in the hands of G Holdings*". It should be remembered that the Purchase and Sale Agreement between [G Holdings] and [the Asset Privatization Trust] involved large amounts (₱550M) and even spawned a subsequent court action (Civil Case No. 95-76132, RTC of Manila). Yet, nowhere in the Agreement or in the RTC decision is there any mention of real and personal properties of [Maricalum Mining] being included in the sale to [G Holdings] in 1992. These properties simply served as mortgaged collateral for the 1992 Promissory Notes. The Purchase and Sale Agreement and the Promissory Notes themselves are the best evidence that there was ample consideration for the mortgage.

Thus, we must reject the conclusion of the [Court of Appeals] that the Deed of Real Estate and Chattel Mortgage executed in 1996 was a simulated transaction.[70] (Emphasis in the original, citations omitted)

In the same case, the separate and distinct personalities of Maricalum Mining and G Holdings in relation to the mortgage and transfer of the properties were also ruled on:

The negotiations between the [G Holdings] and the Government — through [the Asset Privatization Trust], dating back to 1992 — culminating in the Purchase and Sale Agreement, cannot be depicted as a contrived transaction. In fact, in the said *Republic, etc. v. "G" Holdings, Inc.*, this Court adjudged that [G Holdings] was entitled to its rightful claims — not just to the shares of [Maricalum Mining] itself, or just to the financial notes that already contained the mortgage clauses over [Maricalum Mining's] disputed assets, but also to the delivery of those instruments. Certainly, we cannot impute to this Court's findings on the case any badge of fraud. Thus, we reject the [Court of Appeals]'s conclusion that it was right to pierce the veil of corporate fiction, because the foregoing circumstances belie such an

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[70] *Id*. at 88-100.

inference. Furthermore, we cannot ascribe to the Government, or the [Asset Privatization Trust] in particular, any undue motive to participate in a transaction designed to perpetrate fraud. Accordingly, we consider the [Court of Appeals] interpretation unwarranted.

We also cannot agree that the presumption of fraud in Article 1387 of the Civil Code relative to property conveyances, when there was already a judgment rendered or a writ of attachment issued, authorizes piercing the veil of corporate identity in this case. We find that Article 1387 finds less application to an involuntary alienation such as the foreclosure of mortgage made before any final judgment of a court. We thus hold that when the alienation is involuntary, and the foreclosure is not fraudulent because the mortgage deed has been previously executed in accordance with formalities of law, and the foreclosure is resorted to in order to liquidate a *bona fide* debt, it is not the alienation by onerous title contemplated in Article 1387 of the Civil Code wherein fraud is presumed.

Since the factual antecedents of this case do not warrant a finding that the mortgage and loan agreements between [Maricalum Mining] and [G Holdings] were simulated, then their separate personalities must be recognized. To pierce the veil of corporate fiction would require that their personalities as creditor and debtor be conjoined, resulting in a merger of the personalities of the creditor ([G Holdings]) and the debtor ([Maricalum Mining]) in one person, such that the debt of one to the other is thereby extinguished. But the debt embodied in the 1992 Financial Notes has been established, and even made subject of court litigation (Civil Case No. 95-76132, RTC Manila). This can only mean that [G Holdings] and [Maricalum Mining] have separate corporate personalities.

Neither was [Maricalum Mining] used merely as an alter ego, adjunct, or business conduit for the sole benefit of [G Holdings], to justify piercing the former's veil of corporate fiction so that the latter could be held liable to claims of third-party judgment creditors, like [the National Mines and Allied Workers Union Local 103]. In this regard, we find American jurisprudence persuasive. In a decision by the Supreme Court of New York bearing upon similar facts, the Court denied piercing the veil of corporate fiction to favor a judgment creditor who sued the parent corporation of the debtor, alleging fraudulent corporate asset-shifting effected after a prior final judgment. Under a factual background largely resembling this case at bar, *viz.*:

. . . . . .

This doctrine is good law under Philippine jurisdiction.

In *Concept Builders, Inc.v. National Labor Relations Commission*, we laid down the test in determining the applicability of the doctrine of piercing the veil of corporate fiction, to wit:

1. Control, not mere majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own.

2. Such control must have been used by the defendant to commit fraud, or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest and, unjust act in contravention of plaintiffs legal rights; and,

3. The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

. . . . . .

Time and again, we have reiterated that mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not, by itself, a sufficient ground for disregarding a separate corporate personality. It is basic that a corporation has a personality separate and distinct from that composing it as well as from that of any other legal entity to which it may be related. Clear and convincing evidence is needed to pierce the veil of corporate fiction.

In this case, the mere interlocking of directors and officers does not warrant piercing the separate corporate personalities of [Maricalum Mining] and [G Holdings]. Not only must there be a showing that there was majority or complete control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked, so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own. The mortgage deed transaction attacked as a basis for piercing the corporate veil was a transaction that was an offshoot, a derivative, of the mortgages earlier constituted in the Promissory Notes dated October 2, 1992. But these Promissory Notes with mortgage were executed by [G Holdings] with [the Asset Privatization Trust] in the name of [Maricalum Mining], in a full privatization process. It appears that

if there was any control or domination exercised over [Maricalum Mining], it was [the Asset Privatization Trust], not [G Holdings], that wielded it. Neither can we conclude that the constitution of the loan nearly four (4) years prior to [the National Mines and Allied Workers Union Local 103]'s notice of strike could have been the proximate cause of the injury of [the National Mines and Allied Workers Union Local 103] for having been deprived of [Maricalum Mining]'s corporate assets.[71] (Citations omitted)

However, I maintain that the application or non-application of the doctrine of piercing the corporate veil in a particular case is not a fixed and permanent ruling on the subject corporations' legal personalities. The ruling applies only to the particular instance for which that doctrine was applied. Thus, in *Koppel (Phils.), Inc. v. Yatco*,[72]

I. In its first assignment of error appellant submits that the trial court erred in not holding that it is a domestic corporation distinct and separate from and not a mere branch of Koppel Industrial Car and Equipment Company. It contends that its corporate existence as a Philippine corporation [cannot] be collaterally attacked and that the Government is estopped from so doing. As stated above, the lower court did not deny legal personality to appellant for any and all purposes, but held in effect that in the transactions involved in this case the public interest and convenience would be defeated and what would amount to tax evasion perpetrated, unless resort is had to the doctrine of "disregard of the corporate fiction." In other words, in looking through the corporate form to the ultimate person or corporation behind that form, in the particular transactions which were involved in the case submitted to its determination and judgment, the court did so in order to prevent the contravention of the local internal revenue laws, and the perpetration of what would to a play evasion, inasmuch as it considered — and in our opinion, correctly — that appellant Koppel (Philippines) Inc. . . . as a mere branch or agency or dummy ("*hechura*") of Koppel Industrial Car and Equipment Co. *The court did not hold that the corporate personality of Koppel (Philippines), Inc., would also be disregarded in other cases or for other purposes. It would have had no power to so hold. The courts' action in this regard must*

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[71] *Id*. at 104-110.

[72] 77 Phil. 496 (1946) [Per *J*. Hilado, *En Banc*].

be confined to the transactions involved in the case at bar "for the purpose of adjudging the rights and liabilities of the parties in the case. They have no jurisdiction to do more." . . .

A leading and much cited case puts it as follows:

> "If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears, but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."[73] (Citations omitted, emphasis supplied)

Thus, while the corporate veil cannot be pierced as to the mortgage and transfer of Maricalum Mining's properties to G Holdings, the corporate veil may still be pierced for other acts in which the elements for the application of the doctrine are present.

It is my position that it cannot be said that G Holdings had no participation in the labor-only contracting arrangement with the complainants.

As the *ponencia* stated, G Holdings immediately took physical possession of Maricalum Mining's mine site and facilities, and took full control of its management and operations upon signing the Purchase and Sale Agreement and fully paying the down payment for the shares.[74]

It also found that G Holdings exercised absolute control over Maricalum Mining since it held 90% of its equity securities, and paid for the latter's salary expenses. It noted that Maricalum Mining's corporate name is superimposed with G Holding's corporate name on the heading of the cash vouchers issued in payment of the services rendered by the manpower cooperatives.[75]

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[73] *Id*. at 504-505.

[74] *Ponencia*, p. 4.

[75] *Id*. at 24.

It also recognized that there is proof that G Holdings has an office in Maricalum Mining's premises and some of its assets have commingled due to the Purchase and Sale Agreement.[76]

There is even an allegation by the employees that their payrolls were prepared by the accounting department of G Holdings. Likewise, they asserted that it was both Maricalum Mining and G Holdings that advised the employees to form the manpower cooperatives after the retrenchment program.

Moreover, as stated by the *ponencia*, the Labor Arbiter also ruled in favor of the employees on the following grounds:

> (a) G Holdings connived with Mar[i]calum Mining in orchestrating the formation of manpower cooperatives to circumvent the complainants' labor standards rights; (b) it is highly unlikely that complainants (except Sipalay Hospital's employees) would spontaneously form manpower cooperatives on their own and in unison without the guidance of G Holdings and Maricalum Mining; and (c) the complainants effectively became the employees of G Holdings because their work had changed from assisting in the mining and milling operations to caretaking and safeguarding the properties in the Sipalay Mining Complex which had already been acquired from Maricalum Mining. Additionally it denied the claims of complainants Nenet Arita and Domingo Lavida for lack of factual basis.[77]

G Holdings did not merely own Maricalum Mining as a holding company. It had a say in its processes and procedures. Thus, it cannot claim to be innocent. It cannot participate in the illegal dismissal of employees and thereafter hide behind its separate corporate personality to avoid the liability arising from it.

It likewise cannot be said that no injury arose from the arrangement. While the *ponencia* found that there is no *monetary* injury to the employees, it still held that the employees were illegally dismissed. Thus, it cannot be denied that they suffered an injury, albeit not a monetary one.

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[76] *Id*. at 28.

[77] *Id*. at 9.

The elements of control, bad faith, and injury are present in the case at bar.

Moreover, assuming that the case does not fall within the purview of fraud or alter-ego cases, the doctrine of piercing the corporate veil still applies when the separate personality of the corporation is being used to "defeat . . . public convenience as when the corporate fiction is used as a vehicle for the evasion of an existing obligation."[78] Likewise, it applies when recognizing a parent company and its subsidiary as separate entities would aid in the consummation of a wrong, such as illegal dismissal and avoiding labor claims.

Labor contracts operate on a higher plane in light of the social justice provisions in the Constitution. The State's social justice policy mandates a compassionate attitude toward the working class and strives for the full protection of labor.[79] It is established

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[78] *Pantranco Employees Association v. National Labor Relations Commission*, 600 Phil. 645, 663 (2009) [Per *J*. Nachura, Third Division].

[79] CONST., Art. II, Sec. 18 provides:

Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

CONST., Art. XIII, Sec. 3 provides:

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

that the relations between capital and labor are impressed with public interest, with the working class usually at a disadvantage. Thus, in case of doubt, courts rule in favor of labor.

It must be underscored that no less than our Constitution looks with compassion on the workingman and protects his rights not only under a general statement of a state policy, but under the Article on Social Justice and Human Rights, thus placing labor contracts on a higher plane and with greater safeguards. Verily, relations between capital and labor are not merely contractual. They are impressed with public interest and labor contracts must, perforce, yield to the common good.[80] (Citations omitted)

Thus, I **DISSENT** as to the ruling that the corporate veil should not be pierced. I maintain that the doctrine of piercing the corporate veil properly applies and that G Holdings, Inc. should be held liable with Maricalum Mining Corporation.

FIRST DIVISION

[G.R. No. 222337. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SHERNIEL UNGRIANO ASCARRAGA *a.k.a.* SERGIO ONGRIANO ASCARRAGA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THE POSITIVE IDENTIFICATION OF THE ASSAILANT,

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[80] *Brew Master International Inc. v. National Federation of Labor Unions*, 337 Phil. 728, 737 (1997) [Per *J.* Davide, Jr., Third Division].

WHEN CATEGORICAL AND CONSISTENT AND WITHOUT ILL MOTIVE ON THE PART OF THE EYEWITNESSES TESTIFYING ON THE MATTER, PREVAILS OVER ALIBI AND DENIAL.— The fact that witness Dictado was wearing eyeglasses with prescription grade of more than 200 did not affect her positive identification of appellant considering that she was only more or less two arm's length away from the victim. Moreover, appellant seems to forget that witness Dictado was not the only witness who positively identified him as the assailant. Aside from witness Dictado, the prosecution also presented as witness BSDO Abendano who was the emcee during the flag ceremony. He testified that he was only an arm's length or about a meter away from the victim; that he saw appellant approach and point a gun at the victim; and that the gun was fired at the victim's forehead. Thus, the Court finds no reason to doubt the positive identification of appellant by the prosecution's witnesses who have no ill motive to testify falsely against him. It bears stressing that ''the positive identification of the [assailant], when categorical and consistent and without any [ill motive] on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial." Appellant's attempt to discredit the police line-up must also fail. x x x In this case, the prosecution's eyewitnesses, witness BSDO Abendano and witness Dictado, both positively identified appellant as the assailant in open court.

2. **CRIMINAL LAW; REVISED PENAL CODE; MURDER; MOTIVE IS GENERALLY IMMATERIAL BECAUSE IT IS NOT AN ELEMENT OF THE CRIME OF MURDER; PENALTY AND AWARD OF DAMAGES, PROPER IN CASE AT BAR.—** Appellant's lack of motive for killing the victim likewise has no bearing as jurisprudence consistently holds that "[m]otive is generally x x x immaterial because it is not an element of the crime [of murder]." All told, the Court finds appellant guilty beyond reasonable doubt of murder. Both the trial court and the CA properly sentenced him to suffer the penalty of *reclusion perpetua*. The award of ₱75,000.00 as civil indemnity was also proper. The same is true with the award of actual damages in the amount of ₱75,000.00 which was duly supported by a receipt. The CA also correctly imposed legal interest at the rate of 6% *per annum* on all damages awarded from the date of finality of

judgment until fully paid. However, in order to conform to prevailing jurisprudence, the amounts of moral damages and exemplary damages should be increased to ₱75,000.00 each.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
UP Office of Legal Aid for accused-appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

It is a well-settled principle that the assessment of the credibility of a witness is best left to the trial court, most especially when affirmed by the Court of Appeals (CA), as the trial court had the unique opportunity to observe the witness' deportment and demeanor on the witness stand.[1]

This is an appeal filed by appellant Sherniel Ungriano Ascarraga a.k.a. Sergio Ongriano Ascarraga from the January 27, 2015 Decision[2] of the CA in CA-G.R CR-HC No. 04007, affirming the March 16, 2009 Decision[3] of the Regional Trial Court (RTC) of Quezon City, Branch 81, in Criminal Case No. Q-03-122084, finding appellant guilty beyond reasonable doubt of murder.

Factual Antecedents

Appellant was charged under the following Information:

That on or about the 13th day of October 2003, in Quezon City, Philippines, the said [appellant], conspiring and confederating with

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[1] *Manalili v. Court of Appeals*, 345 Phil. 632, 649 (1997).

[2] *Rollo*, pp. 2-14; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Magdangal M. De Leon and Jane Aurora C. Lantion.

[3] CA *rollo*, pp. 118-127; penned by Presiding Judge Ma. Theresa L. De La Torre-Yadao.

other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, with intent to kill, qualified by evident premeditation and treachery, taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of RODRIGO BORGONIA Y MONTESINES by then and there shooting him with a gun, thereby inflicting upon him serious and mortal wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of said RODRIGO BORGONIA Y MONTESINES.

CONTRARY TO LAW.[4]

When arraigned, appellant pleaded not guilty to the crime charged.[5]

Version of the Prosecution

During the trial, the prosecution presented the testimonies of the victim's widow, Milagros Borgonia; the Barangay Security Development Office (BSDO) Executive Officer Lope Abendano (BSDO Abendano); Editha Dictado (Dictado); PO3 Junie Verano (PO3 Verano); and Dr. Paul Ed Ortiz (Dr. Ortiz).

The evidence of the prosecution as summarized by the CA is as follows:

[The victim] was the chief of Barangay Pansol Proper, Quezon City. On October 13, 2003, at around 7:45 in the morning, [the victim], BSDO Abendano, [the] Barangay Staff [and] x x x Tanods, some street sweepers, some nuns, and others were gathered in front of the barangay hall for the Monday morning flag raising ceremony. After the flag rites, BSDO Abendano, who was the emcee, called on [the victim] to deliver a speech. As [the victim] was walking towards BSDO Abendano at the center of the plaza, an unidentified person appeared, pointed a gun at [the victim] and fired thrice. Another unidentified man was shooting indiscriminately to disperse the crowd. The malefactors retreated waving their guns.

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[4] Records, p. 1.

[5] *Rollo*, p. 4.

When the smoke cleared, BSDO Abendano approached [the victim] to check on his condition; when he felt no pulse, he declared the victim dead. Minutes later, police men, SOCO, and other city officials arrived.

BSDO Abendano, the widow of [the victim], and Dictado went to Camp Karingal to execute a sworn statement about the incident.

After around twenty (20) days, BSDO Abendano and Dictado returned to Camp Karingal to pick out the gunman at a police line-up; they both identified [appellant] as one of [the] gunmen.

Dr. Ortiz conducted an examination on the cadaver of the victim and his findings were that the victim sustained three (3) gunshot wounds – one with point of entry at the left orbital region, the second at the right preauricural region and the third at the left pectoral region; and concluded that the fatal wound was the gunshot to the head.[6]

Version of Appellant

Appellant, on the other hand, denied the accusations against him and interposed the defense of alibi. To corroborate his testimony, appellant presented as witnesses his father, Bayani Ascarraga; Allan Mamparair (Mamparair); and Damaso Tena (Tena). According to the defense, on October 13, 2003, at around 7 a.m., the appellant was with his father at their house in *Sitio* Uma, *Barangay* Pagsangahan, Gen. Nakar, Quezon as he was assigned to cook for the members of the *Samahan ng Katribo or Kabinsan*.[7] On October 14, 2003, he and Mamparair left the province of Quezon and arrived in Cubao in the evening of the following day.[8] On October 16, 2003, Mamparair accompanied appellant to a dentist.[9] The next day, they went to Bulacan to harvest rice.[10] On October 21, 2003, while on their way to Rodriguez, Rizal, they were arrested for violation of Presidential

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

[7] *Id.* at 5.

[8] *Id.* at 5-6.

[9] CA *rollo*, pp. 122-123.

[10] *Id.*

Decree No. 1866 (illegal possession of firearms) and were brought to Camp Karingal.[11] After posting bail, they were allowed to go home but on October 30, 2003, they were again invited to Kamp Karingal and made to stand in a police line-up.[12]

Ruling of the Regional Trial Court

On March 16, 2009, the RTC of Quezon City, Branch 81, rendered a Decision finding the appellant guilty of murder. Thus–

> WHEREFORE, the Court finds [appellant] SHERNIEL UNGRIANO ASCARRAGA a.k.a SERGIO ONGRIANO ASCARRAGA guilty beyond reasonable doubt of the crime of MURDER described and penalized under Article 248 of the Revised Penal Code as amended and is hereby sentenced to suffer the penalty of Reclusion Perpetua with all the accessory penalties provided by law and to indemnify the heirs of the late Barangay Chairman Rodrigo Borgonia the amounts of ₱75,000.00 as indemnity for his death, ₱75,000.00 as actual damages and ₱50,000.00 as moral damages.
>
> SO ORDERED.[13]

The RTC appreciated the qualifying circumstance of treachery to have attended the commission of the crime. It pointed out that the victim was shot while walking in the middle of the grounds to make some announcements. The attack was sudden and unexpected and the victim was totally unaware of the impending harm to his life.[14]

Ruling of the Court of Appeals

Appellant elevated the case to the CA.

On January 27, 2015, the CA rendered the assailed Decision, affirming the RTC Decision with modification, to wit:

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[11] *Id*. at 101.

[12] *Id*. at 101-102.

[13] *Id*. at 127.

[14] *Id*. at 126.

WHEREFORE, premises considered, the Appeal is DENIED. The Decision dated March 16, 2009, issued by the Regional Trial Court, Branch 81, Quezon City, in Criminal Case No. Q-03-122084 for Murder, is AFFIRMED with modification that ₱30,000.00 as exemplary damages is also awarded, and all awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this judgment until fully paid.

SO ORDERED.[15]

Hence, appellant filed the instant appeal.

On March 7, 2016, the Court required both parties to file their respective supplementary briefs.[16] Appellant filed his supplemental brief while the Office of Solicitor General opted not to file one.

The Court's Ruling

In assailing his conviction, appellant puts in issue the credibility of witness Dictado in identifying him as the assailant. Appellant insists that witness Dictado could not have seen the face of the assailant considering that she was crawling out of the area and was wearing eyeglasses which had a prescription grade of more than 200.[17] Appellant likewise questions the procedure employed by the police officers in conducting the police line-up.[18] Appellant claims that the procedure employed was prone to suggestiveness as the witnesses were all in the same room when they identified him in the line-up.[19] In addition, appellant points out lack of motive on his part for killing the victim.[20]

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[15] *Rollo*, p. 13.

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

[17] *Id.* at 27-30.

[18] *Id.* at 30-32.

[19] *Id.*

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

The Court is not persuaded.

The fact that witness Dictado was wearing eyeglasses with prescription grade of more than 200 did not affect her positive identification of appellant considering that she was only more or less two arm's length away from the victim. Moreover, appellant seems to forget that witness Dictado was not the only witness who positively identified him as the assailant. Aside from witness Dictado, the prosecution also presented as witness BSDO Abendano who was the emcee during the flag ceremony. He testified that he was only an arm's length or about a meter away from the victim;[21] that he saw appellant approach and point a gun at the victim;[22] and that the gun was fired at the victim's forehead.[23] Thus, the Court finds no reason to doubt the positive identification of appellant by the prosecution's witnesses who have no ill motive to testify falsely against him. It bears stressing that "the positive identification of the [assailant], when categorical and consistent and without any [ill motive] on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial."[24]

Appellant's attempt to discredit the police line-up must also fail. In *People v. Rivera*,[25] the Court explained –

> Even assuming *arguendo* that the appellant Alfonso Rivera's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may have attended it. Without hesitation, the two prosecution witnesses, Renato Losaria and Juanita Baylon identified the appellant as one of the assailants. In *People v. Timon*, the accused were identified through a show-up. The accused assailed the process of identification because no other suspect was presented in a police line-up. We ruled that a police line-up is not

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[21] TSN, May 26, 2004, Direct Examination of Witness BSDO Lope Abendano, p. 7.

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

[23] *Id*. at 8.

[24] *People v. Berdin*, 462 Phil. 290, 304 (2003).

[25] 458 Phil. 856, 876-877.

essential in identification and upheld the identification of the accused through a show-up. We also held that even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the 'inadmissibility of a police line-up identification x x x should not necessarily foreclose the admissibility of an independent in-court identification.'

In this case, the prosecution's eyewitnesses, witness BSDO Abendano and witness Dictado, both positively identified appellant as the assailant in open court.[26]

Appellant's lack of motive for killing the victim likewise has no bearing as jurisprudence consistently holds that "[m]otive is generally x x x immaterial because it is not an element of the crime [of murder]."[27]

All told, the Court finds appellant guilty beyond reasonable doubt of murder. Both the trial court and the CA properly sentenced him to suffer the penalty of *reclusion perpetua*. The award of ₱75,000.00 as civil indemnity was also proper. The same is true with the award of actual damages in the amount of ₱75,000.00 which was duly supported by a receipt.[28] The CA also correctly imposed legal interest at the rate of 6% *per annum* on all damages awarded from the date of finality of judgment until fully paid.[29]

However, in order to conform to prevailing jurisprudence, the amounts of moral damages and exemplary damages should be increased to ₱75,000.00 each.[30]

WHEREFORE, premises considered, the appeal is **DISMISSED**. The January 27, 2015 Decision of the Court of

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[26] TSN, May 26, 2004, Direct Examination of witness BSDO Lope Abendano, pp. 17-18; and TSN, July 12, 2004, Direct Examination of witness Editha Dictado, pp. 4-5.

[27] *People v. Babor*, 772 Phil. 252, 264 (2015).

[28] Records, p. 228.

[29] *People v. Jugueta*, 783 Phil. 806, 854, 856 (2016).

[30] *Id*. at 848.

Appeals, finding appellant Sherniel Ungriano Ascarraga a.k.a. Sergio Ongriano Ascarraga guilty beyond reasonable doubt of the crime of murder is **AFFIRMED with MODIFICATION** that the amounts of moral damages and exemplary damages should be increased to ₱75,000.00 each.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 222436. July 23, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **EURO-PHILIPPINES AIRLINE SERVICES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; ISSUES MAY NOT BE RAISED FOR THE FIRST TIME ON APPEAL; CASE AT BAR.— Euro-Phil contends that CIR raised new matters in its Petition for Review with the CTA *En Banc* and does it again in this Petition for Review which should not be allowed by this Court. We

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

[**] 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.

agree. In the case of *Aguinaldo Industries Corporation (Fishing Nets Division) vs. Commissioner of Internal Revenue and the Court of Tax Appeals*,this doctrine was explained by this Court as follows: To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level would be to sanction a procedure whereby the court – which is supposed to review administrative determinations would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.Here, it is not disputed that CIR raised the issue that the alleged failure to present VAT official receipts with the imprinted words "zero rated" adopting the dissent of Justice Del Rosario, only at the latter stage of the appeal on Motion for Reconsideration of the CTA *En Banc*'*s* decision. Accordingly, with the doctrine that issues may not be raised for the first time on appeal, CIR should not be allowed by this Court to raise this matter.

2. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; SECTION 108 THEREOF IMPOSES ZERO PERCENT (0%) VALUE-ADDED TAX ON SERVICES PERFORMED IN THE PHILIPPINES BY VAT-REGISTERED PERSONS TO PERSONS ENGAGED IN INTERNATIONAL AIR TRANSPORT OPERATIONS; CASE AT BAR.— [W]hile the issue arose from the dissent of Justice Del Rosario, the law is clear on the matter. Section 108 of the NIRC of 1997 imposes zero percent (0%) value-added tax on services performed in the Philippines by VAT-registered persons to persons engaged in international air transport operations.x x x Here, there is no dispute that Euro-Phil is VAT registered. Next, it is also not disputed that the services rendered by Euro-Phil was to a person engaged in international air-transport operations. Thus, by application, Section 108 of the NIRC of 1997 subjects the services of Euro-Phil to British Airways PLC, to the rate of zero percent VAT.

3. ID.; ID.; UNDER SECTION 113 THEREOF, NO PRESUMPTION IS CREATED BY LAW THAT THE NON-IMPRINTMENT OF THE WORD "ZERO RATED" DEEMS THE TRANSACTION SUBJECT TO 12% VAT; IN CASE AT BAR, FAILURE TO COMPLY WITH INVOICING REQUIREMENTS AS MANDATED BY LAW DOES NOT DEEM THE TRANSACTION SUBJECT TO 12% VAT.—[A]s dictated by Section 113 of the NIRC of 1997, on the said provisions on the "Consequences of Issuing Erroneous VAT Invoice of VAT Official Receipt,nowhere therein is a presumption created by law that the non-imprintment of the word "zero rated" deems the transaction subject to 12 % VAT. In addition,Section 4. 113-4 of Revenue Regulations 16-2005,Consolidated Value-Added Tax Regulations of 2005, also does not state that the non-imprintment of the word "zero rated" deems the transaction subject to 12 %VAT. Thus, in this case, failure to comply with invoicing requirements as mandated by law does not deem the transaction subject to 12% VAT.

CAGUIOA, *J., concurring opinion*:

TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; THE RULING IN *KEPCO PHILIPPINES CORPORATION V. COMMISSIONER OF INTERNAL REVENUE* AND OTHER RELEVANT VAT REFUND CASES ON STRICT COMPLIANCE WITH INVOICING REQUIREMENT IS INAPPLICABLE TO THE CASE AT BAR; CANCELLATION OF THE ASSESSMENT FOR DEFICIENCY VAT ON TRANSACTIONS THAT ARE CLEARLY SUBJECT TO 0% VAT RATE IS PROPER IN CASE AT BAR.— I find the ruling in *Kepco* and other relevant VAT refund cases on the strict compliance with invoicing requirement inapplicable to the instant case. In *Panasonic Communications Imaging Corp. of the Philippines v. Commissioner of Internal Revenue*,involving a claim for refund of input VAT attributable to zero-rated sales, the Court explained that the requirement of printing the word "zero-rated" on the invoice or receipt "is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. x x x the ratio for requiring the printing of the word "zero-rated" was essentially to protect the government from refunding a tax it did not actually collect; thus, unjustly enriching the taxpayer at the expense of the government. However, the "evil" of refunding taxes not

actually paid is not present in this case. Here, respondent is not claiming for a refund of its unutilized input VAT attributable to its zero-rated sales. On the contrary, respondent is being assessed by the government for deficiency VAT on transactions which, under the NIRC of 1997, as amended, and as sufficiently proven by respondent, are clearly subject to 0% VAT rate. Thus, to apply the strict compliance rule in this case is tantamount to allowing the government to collect taxes not authorized by law. Upholding the deficiency VAT assessment against respondent simply because the word "zero-rated" does not appear on the VAT official receipts will only result in the government effectively enriching itself at the expense of the taxpayer – the very evil which the strict compliance rule seeks to prevent in the first place. Verily, in light of the foregoing considerations, I concur with the denial of the CIR's petition and affirmance of the decision and resolution of the CTA *En Banc* cancelling the deficiency VAT assessment issued against respondent.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Pastrana Fallar for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, seeking to set aside the Decision[2] dated July 14, 2015 and Resolution[3] dated December 22, 2015 of the Court of Tax Appeals (CTA) *En Banc* in case CTA EB Case

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[1] *Rollo*, pp. 12-25.

[2] Penned by Court of Tax Appeals Associate Justice Cielito Mindaro-Grulla, with Associate Justices Roman G. Del Rosario, Juanito C. Catanela, Jr., Jonell R. Bautista, Erlinda P. Uy, Caesar A. Cassanova, Esperanza Fabon-Victorino, and Ma. Belen M. Ringpis Liban, concurring; *id.* at 31-48.

[3] *Id*. at 31.

No. 1106 affirming the Decision of the CTA Special First Division which cancelled and withdrew the assessments for deficiency value-added tax, as well as interest and surcharges.

THE ANTECEDENTS

Respondent Euro-Philippines Airline Services, Inc. (Euro-Phil) is an exclusive passenger sales agent of British Airways, PLC, an off-line international airline in the Philippines to service the latter's passengers in the Philippines.[4]

Euro-Phil received a Formal Assessment Notice (FAN)[5] dated September 13, 2010 from petitioner Commissioner of Internal Revenue (CIR) on 14 September 2010 in the aggregate amount of ₱4,271,228.20 consisting of assessment of Value Added Tax (VAT), among others, for the taxable year ending March 31, 2007 with Details of Discrepancies.[6]

On 29 September 2010, Euro-Phil filed a final protest on CIR.[7]

Following the lapse of the 180-day period within which to resolve the protest, Euro-Phil filed a petition for review before the Court of Tax Appeals Special First Division (CTA-First Division) praying, among others, for the cancellation of the FAN issued by CIR for deficiency VAT. Euro-Phil argued therein that the receipts that are supposedly subject to 12% VAT actually pertained to "services rendered to persons engaged exclusively in international air transport" hence, zero-rated.[8]

The CTA- Special First Division rendered a Decision[9] on 25 July 2013 finding Euro-Phil is rendering services to persons

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[4] *Id*. at 13.

[5] *Id*. at 55-56.

[6] *Id*. at 58-69.

[7] *Id*. at 15.

[8] *Id*.

[9] *Id*. at 86-114.

engaged in international air transport operations and, as such, is zero-rated under Section 108 of the NIRC of 1997. The said decision disposed thus:[10]

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. The assessments for deficiency value-added tax and documentary stamp tax, as well as the interests and surcharges, for the taxable year ending March 31, 2007 are hereby **CANCELLED** and **WITHDRAWN** for lack of legal basis.

x x x x x x x x x

SO ORDERED."[11]

CIR filed a Motion for Partial Reconsideration of the said Decision covering only the value-added tax that was denied therein. Such motion was denied for lack of merit in a Resolution dated 18 November 2013.[12]

CIR then appealed before the CTA *En Banc* alleging that CTA Special First Division erred in not holding that Euro-Phil's services is subject to 12 % VAT.[13]

The CTA *En Banc* rendered a Decision[14] denying the petition and sustaining the CTA Special First Division with which CTA Presiding Justice Roman G. Del Rosario (Justice Del Rosario) concurred with Dissenting Opinion.[15] The said decision disposed thus:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED.** Accordingly, the Decision and the

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[10] *Id*. at 113-114.

[11] *Id*. at 114.

[12] *Id*. at 43.

[13] *Id*. at 116-124.

[14] *Id*. at 31-48.

[15] Dissenting Opinion of CTA Presiding Justice Roman G. del Rosario; *id*. at 53-54.

Resolution, dated July 25, 2013 and November 18, 2013, respectively, are hereby **AFFIRMED.**

SO ORDERED.[16]

CIR moved for reconsideration of the said decision insisting that the presentation of VAT official receipts with the words "zero-rated" imprinted thereon is indispensable to cancel the value-added tax (VAT) assessment against Euro-Phil.[17] However, it was denied in a Resolution[18] dated December 22, 2015 with a dissenting opinion[19] from CTA Presiding Justice (Justice del Rosario), to quote as follows, pertinent to the issue of VAT:

> In the case at bar, respondent is assessed for deficiency VAT for services it rendered as passenger sales agent of British Airways PLC. Respondent invokes that services rendered by VAT-registered persons to persons engaged in international air transport operations is subject to zero percent (0%) rate, pursuant to Section 108 of the National Internal Revenue Code (NIRC) of 1997, as amended.
>
> To reiterate, it is not enough for respondent to invoke Section 108 of the NIRC of 1997, as amended. Respondent has likewise the burden to show compliance with the invoicing requirements laid down in Section 113 of the NIRC of 1997, as amended, to be entitled to zero rating. Needless to say, unless appropriately refuted, tax assessments by tax examiners are presumed correct and made in good faith.
>
> In fine, the issue of compliance with Section 113 of the NIRC of 1997, as amended, is vital in the disposition of the present controversy which the Court should consider, lest an indispensable requirement for the availment of VAT zero-rating is blatantly ignored.
>
> For all the foregoing, I VOTE to grant petitioner's Motion for Reconsideration and UPHOLD the VAT assessment."[20]

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[16] *Id.* at 47.

[17] *Id.* at 50.

[18] *Id.* at 49-52.

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

[20] *Id.* at 51-54.

Hence, this petition with CIR adopting Justice Del Rosario's dissent and that Euro-Phil had to comply with the invoicing requirements to be entitled to zero rating of VAT.[21] CIR also takes exception to the doctrine of "issues cannot be raised the first time on appeal."

The Issues

1. Whether or not the issue of non-compliance of the invoicing requirements by Euro-Phil must be recognized despite being raised only on appeal; and
2. Whether or not the Court of Tax Appeals *En Banc* erred in finding that the transaction sale made by respondent is entitled to the benefit of zero-rated VAT despite its failure to comply with invoicing requirements as mandated by law.

Our Ruling

The petition is denied.

The CTA *En Banc* did not commit any reversible error.

Euro-Phil contends that CIR raised new matters in its Petition for Review with the CTA En Banc and does it again in this Petition for Review which should not be allowed by this Court.

We agree.

In the case of *Aguinaldo Industries Corporation (Fishing Nets Division) vs. Commissioner of Internal Revenue and the Court of Tax Appeals*,[22] this doctrine was explained by this Court as follows:

> To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level would be to sanction a procedure whereby the court – which is supposed to review administrative determinations

[21] *Id.* at 19-24.

[22] 197 Phil. 822 (1982).

would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.[23]

Here, it is not disputed that CIR raised the issue that the alleged failure to present VAT official receipts with the imprinted words "zero rated" adopting the dissent of Justice Del Rosario, only at the latter stage of the appeal on Motion for Reconsideration of the CTA *En Banc's* decision. Accordingly, with the doctrine that issues may not be raised for the first time on appeal, CIR should not be allowed by this Court to raise this matter.

Moreover, while the issue arose from the dissent of Justice Del Rosario, the law is clear on the matter. Section 108 of the NIRC of 1997 imposes zero percent (0%) value-added tax on services performed in the Philippines by VAT-registered persons to persons engaged in international air transport operations, as it thus provides:

Section 108. Value-added Tax on Sale of Services and Use or Lease of Properties. –

(A) x x x x x x x x x

(B) ***Transactions Subject to Zero Percent (0%) Rate*** – **The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate.**

(1) x x x x x x x x x

x x x x x x x x x

(4) Services rendered to persons engaged in international shipping or **International air-transport operations,** including leases of property for use thereof;

x x x x x x x x x

[23] *Id.* at 828-829.

Here, there is no dispute that Euro-Phil is VAT registered. Next, it is also not disputed that the services rendered by Euro-Phil was to a person engaged in international air-transport operations. Thus, by application, Section 108 of the NIRC of 1997 subjects the services of Euro-Phil to British Airways PLC, to the rate of zero percent VAT.

While CIR contends that the dissenting opinion of Justice del Rosario that Euro-Phil's failure to present and offer any proof to show that it has complied with the invoicing requirements, deems its sale of services to British Airways PLC subject to 12% VAT, it does not negate the established fact that British Airways PLC is engaged in international air-transport operations.

Moreover, as dictated by Section 113 of the NIRC of 1997, on the said provisions on the "Consequences of Issuing Erroneous VAT Invoice of VAT Official Receipt,[24] nowhere therein is a presumption created by law that the non-imprintment of the

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[24] SEC. 113 **Invoicing and Accounting Requirements.** – x x x

(D) *Consequences of Issuing Erroneous VAT Invoice or VAT Official Receipt.* –

(1) If a person who is not a VAT-registered person issues an invoice or receipt showing his Taxpayer Identification Number (TIN), followed by the word "VAT":

(a) The issuer shall, in addition to any liability to other percentage taxes, be liable to:

(i) The tax imposed in Section 106 or 108 without the benefit of any input tax credit; and

(ii) A fifty percent (50%) surcharge under Section 248 (B) of this Code;

(b) The VAT shall, if other requisite information required under Subsection (B) hereof is shown on the invoice or receipt, be recognized as an input tax credit to the purchaser under Section 110 of this Code.

(2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term 'VAT-exempt sale', the issuer shall be liable to account for the tax imposed in Section 106 or 108 as if Section 109 did not apply.

"(E) x x x x x x x x x

word "zero rated" deems the transaction subject to 12 % VAT. In addition, Section 4. 113-4 of Revenue Regulations 16-2005,[25] Consolidated Value-Added Tax Regulations of 2005, also does not state that the non-imprintment of the word "zero rated" deems the transaction subject to 12 % VAT. Thus, in this case, failure to comply with invoicing requirements as mandated by law does not deem the transaction subject to 12% VAT.

In view of the foregoing considerations, the Court finds that the CTA *En Banc* did not commit any reversible error.

WHEREFORE, the Petition for Review is **DENIED**. The Decision[26] dated July 14, 2015 and Resolution[27] dated

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[25] **Sec. 4. 113-4.** ***Consequences of Issuing Erroneous VAT Invoice or VAT Official Receipt.—***

(A) Issuance of a VAT Invoice or VAT Receipt by a non-VAT person. – If a person who is not VAT-Registered issues an invoice or receipt showing his TIN, followed by the word "VAT", the erroneous issuance shall result to the following:

(1) The non-VAT person shall be liable to:

(i) the percentage taxes applicable to his transactions;

(ii VAT due on the transactions under Sec. 106 or 108 of the Tax Code, without the benefit of any input tax credit; and

(iii) A 50% surcharge under Sec. 248 (B) of the Tax Code;

(2) VAT shall be recognized as an input tax credit to the purchaser under Sec. 110 of the Tax Code, provided the requisite information required under Subsection 4.113 (B) of these Regulations is shown on the invoice receipt.

(B) Issuance of a VAT Invoice or VAT Receipt on an Exempt Transaction by a VAT-registered Person – If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the words "VAT-exempt sale", the transaction shall become taxable and the issuer shall be liable to pay VAT thereon. The purchaser shall be entitled to claim an input tax credit on his purchase.

[26] *Rollo*, p. 31.

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

December 22, 2015 of the Court of Tax Appeals (CTA) En Banc in CTA EB Case No. 1106 is **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Peralta*, and *Perlas-Bernabe, JJ.,* concur.

Caguioa, J., see concurring opinion.

CONCURRING OPINION

CAGUIOA, *J.*:

The petition of the Commissioner of Internal Revenue (CIR), which seeks to reverse and set aside the decision of the CTA *En Banc* cancelling the value-added tax (VAT) assessment issued against respondent Euro-Philippines Airline Services, Inc., is anchored on respondent's failure to comply with the invoicing requirements provided under Section 113 of the National Internal Revenue Code (NIRC) of 1997, as amended. The CIR asserts that since respondent failed to print the word "zero-rated" in its VAT official receipts, the subject transaction cannot be considered as zero-rated. In support of this argument, the CIR alludes to the case of *Kepco Philippines Corporation v. Commissioner of Internal Revenue*[1] (*Kepco*) and other VAT refund cases,[2] where the Court has consistently ruled that the failure to print the word "zero-rated" on the invoices or receipts is fatal to a claim for refund or credit of input VAT on zero-rated sales. The CIR, adopting the dissenting opinion of Presiding Justice Roman G. Del Rosario, posits that the strict compliance

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[1] 656 Phil. 68, 85-86 (2011).

[2] *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, 650 Phil. 525 (2010); *Hitachi Global Storage Technologies Philippines Corp. (formerly Hitachi Computer Products (Asia) Corporations) v. Commissioner of Internal Revenue*, 648 Phil. 425 (2010); *J.R.A. Philippines, Inc. v. Commissioner of Internal Revenue*, 647 Phil. 33 (2010); and *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*, 625 Phil. 631 (2010).

with the invoicing requirement in refund cases should also be applied in this case.

However, I find the ruling in *Kepco* and other relevant VAT refund cases on the strict compliance with invoicing requirement inapplicable to the instant case.

In *Panasonic Communications Imaging Corp. of the Philippines v. Commissioner of Internal Revenue,*[3] involving a claim for refund of input VAT attributable to zero-rated sales, the Court explained that the requirement of printing the word "zero-rated" on the invoice or receipt "is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. x x x [T]he appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect."[4] In other words, the ratio for requiring the printing of the word "zero-rated" was essentially to protect the government from refunding a tax it did not actually collect; thus, unjustly enriching the taxpayer at the expense of the government.

However, the "evil" of refunding taxes not actually paid is not present in this case. Here, respondent is not claiming for a refund of its unutilized input VAT attributable to its zero-rated sales. On the contrary, respondent is being assessed by the government for deficiency VAT on transactions which, under the NIRC of 1997, as amended, and as sufficiently proven by respondent, are clearly subject to 0% VAT rate. Thus, to apply the strict compliance rule in this case is tantamount to allowing the government to collect taxes not authorized by law. Upholding the deficiency VAT assessment against respondent simply because the word "zero-rated" does not appear on the VAT official receipts will only result in the government effectively

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[3] 625 Phil. 631 (2010).

[4] *Id*. at 642.

enriching itself at the expense of the taxpayer – the very evil which the strict compliance rule seeks to prevent in the first place.

Verily, in light of the foregoing considerations, I concur with the denial of the CIR's petition and affirmance of the decision and resolution of the CTA *En Banc* cancelling the deficiency VAT assessment issued against respondent.

THIRD DIVISION

[G.R. No. 222563. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO ROJAS *y* VILLABLANCA, JR.,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); IN THE PROSECUTION OF A VIOLATION THEREOF, THE STATE HAS THE BURDEN OF PROVING NOT ONLY THE ELEMENTS OF THE OFFENSES OF SALE AND POSSESSION OF THE DANGEROUS DRUGS BUT ALSO THE *CORPUS DELICTI*; *CORPUS DELICTI*; DEFINED.—In the prosecution of a violation of R.A. No. 9165, the State bears the burden of proving not only the elements of the offenses of sale and possession of the dangerous drugs but also of the *corpus delicti*. *Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime has actually been committed. As applied to a particular offense, it means the actual commission

by someone of the particular crime charged. The *corpus delicti* is a compound fact made up of two things, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result. The dangerous drug is itself the *corpus delicti* of the violation of the law prohibiting the mere possession of the dangerous drug. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* when the drugs are missing, or when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented in court.The substitution, or tampering, or adulteration of the seized drugs prevents the establishment of the *corpus delicti*. In view of these considerations, the duty to prove the *corpus delicti* of the crime is as essential as proving the elements of the crime itself.

2. ID.; ID.; SECTION 21 THEREOF ON THE CHAIN OF CUSTODY OF THE SEIZED DRUGS; DESIGNED TO CONTRIBUTE TO THE PRESERVATION OF THE INTEGRITY OF THE SEIZED DRUGS AS EVIDENCE; NOT COMPLIED WITH IN CASE AT BAR.—Here, there is a serious doubt as to whether the drugs supposedly seized from Reynaldo were still the same articles presented to the trial court. This doubt stemmed from the failure of the arresting officers to execute the safeguards set by law, particularly Section 21 of R.A. No. 9165. x x x The chain of custody *vis-a-vis* the drugs seized during entrapment is divided into four parts, each designed to contribute to the preservation of the integrity of the seized drugs as evidence. The seizure and marking, if practicable, of the seized drugs by the apprehending officer constitute the first part. Second is the turnover of the marked seized drugs by the apprehending officer to the investigating officer. The turnover of the marked seized drugs by the investigating officer to the forensic chemist for the laboratory examination is third. The turnover and submission of the marked seized drugs by the forensic chemist to the trial court make up the fourth part.Did the arresting lawmen adhere to the procedure laid down in Section 21, *supra*? The records show that they did not. x x x [T]he arresting lawmen committed very serious lapses that broke the chain of custody right at its inception.

3. ID.; ID.; ID.; ID.; NON-ADHERENCE TO THE PROCEDURE UNDER SECTION 21 BY THE ARRESTING OFFICERS ENTITLES THE ACCUSED TO AN ACQUITTAL BASED ON REASONABLE DOUBT.—The arresting officers' non-adherence to the procedure laid down by Section 21, *supra*, entitled him to acquittal on the ground of reasonable doubt. Indeed, the State did not discharge its burden of proving Reynaldo's guilt beyond reasonable doubt. "Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."Acquittal of Reynaldo should follow.

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

BERSAMIN, *J.*:

The failure of the arresting officers to explain the lapses in their compliance with the safeguards imposed by law for preserving the integrity of the confiscated substances as evidence of the *corpus delicti* entitles the accused to acquittal on the ground of failure of the State to establish guilt beyond reasonable doubt.

The Case

Reynaldo Rojas *y* Villablanca, Jr. (Reynaldo) assails the decision promulgated on August 20, 2015,[1] whereby the Court of Appeals (CA) affirmed the decision rendered on November 8, 2012 in Criminal Case No. 5856 (21884) and Criminal Case

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[1] *Rollo*, pp. 3-33; penned by Associate Justice Rafael Antonio M. Santos, with the concurrence of Associate Justice Edgardo A. Camello and Associate Justice Henri Jean Paul B. Inting.

No. 5857 (21885) by the Regional Trial Court (RTC), Branch 13, in Zamboanga City finding him guilty beyond reasonable doubt of violations of Section 5 and Section 11, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*).[2]

Antecedents

The informations filed against Reynaldo alleged thusly:

Criminal Case No. 5856 (21884)

That on or about August 11, 2005, in the City of Zamboanga, Philippines, and within the Jurisdiction of this Honorable Court, the above named accused not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drugs did then and there willfully, unlawfully, and feloniously sell and deliver to PO1 Albert Gonzales Santiago, PNP Zamboanga City Mobile Group, who acted as poseur buyer one (1) piece heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.0162 gram which when subjected to qualitative examination gave positive result to the test for the presence of methamphetamine hydrochloride (shabu) accused knowing the same to be a dangerous drugs in flagrant violation of the above mentioned law.

Contrary to Law.[3]

Criminal Case No. 5857 (21885)

That on or about August 11, 2005, in the City of Zamboanga, Philippines, and within the Jurisdiction of this Honorable Court, the above named accused not being authorized by law did then and there willfully, unlawfully, and feloniously have in his possession and under his custody and control (1) piece heat-sealed transparent plastic sachet containing white crystalline substance weighing 0.0145 gram which when subjected to qualitative examination gave positive result to the test for the presence of methamphetamine hydrochloride (shabu) accused knowing the same to be a dangerous drugs in flagrant violation of the above mentioned law.

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[2] CA *rollo*, pp. 36-42; penned by Presiding Judge Eric D. Elumba.

[3] *Id*. at 36.

Contrary to Law.[4]

The respective versions of the parties were summarized by the CA in the following manner:

The version of the Prosecution

Culled from the testimonies of the prosecution's witnesses, namely: PO2 Albert Santiago (PO2 Santiago), SPO3 Ireneo Bunac (SPO3 Bunac), and PSI Melvin Manuel (PSI Manuel), and from the documentary evidence submitted in court are the following antecedents:

At around 9:00 o'clock in the evening of 11 August 2005, a civilian informant arrived at the Zamboanga City Mobile Office (ZCMO) of the Philippine National Police at Sta. Barbara, Zamboanga City and reported to SPO3 Bunac that a certain "Jung-jung" was selling shabu at Presa Camino Nuevo. Consequently, SPO3 Bunac informed their Acting Commander PSI Diomarie Albarico about the report and the latter instructed him to conduct a short briefing for a possible buy-bust operation against a certain "Jung-jung."

During the briefing, it was agreed that PO2 Santiago would act as the poseur-buyer, SPO3 Bunac would be the arresting officer and the rest of the buy-bust team would serve as the back-up. It was further agreed that PO2 Santiago would buy shabu using the ₱100.00 marked money with serial no. FX 030478 and the pre-arranged signal would be the removal of PO2 Santiago's bull cap.

After the briefing, the buy-bust team together with the confidential informant immediately proceeded to the target area at Presa Camino Nuevo using four (4) motorcycles. They parked their motorcycles along the highway as Presa Camino Nuevo is located at the interior portion of Canelar St. Then they walked towards the target area passing through the rip-rap along the river and the foot-bridge until they reached the house of "Jung-jung."

At the target area, the buy-bust team saw "Jung-jung," the suspected drug pusher, standing outside his house and the confidential informant approached "Jung-jung" while PO2 Santiago followed the confidential informant. The latter talked with "Jung-jung" in chavacano dialect and PO2 Santiago was introduced to "Jung-jung" informing the latter that PO2 Santiago wanted to buy shabu. PO2 Santiago handed the

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

₱100.-00 to "Jung-jung" and the latter took from the right pocket of his jacket a sachet of suspected shabu and handed it to PO2 Santiago. When PO2 received it, he executed the pre-arranged signal by removing his bull cap.

Consequently, SPO3 Bunac rushed towards PO2 Santiago and arrested "Jung-jung." SPO3 Bunac recovered from "Jung-jung" the ₱100.00 marked money and another one (1) heat-sealed transparent plastic sachet of suspected shabu from the right pocket of "Jung-jung." SPO3 Bunac called, through his hand held radio, their vehicle, LRU Alpha, in order to conduct "Jung-jung." The buy-bust team brought "Jung-jung" to the highway where the LRU Alpha was waiting. On their way to their office in ZCMO, they passed by first at the Barangay Hall of Camino Nuevo for inventory. At the Barangay Hall, SPO3 Bunac conducted an inventory in the presence of "Jung-jung," Barangay Captain Antonio Delles (Delles), and the rest of the buy-bust team and he let Barangay Captain Delles sign the Inventory of Seized/ Confiscated Items. Thereafter, they proceeded to their office at Sta. Barbara. It was later learned that the real name of "Jung-jung" is Reynaldo Rojas, the accused-appellant in this case.

At the ZCMO, PO2 Santiago marked the sachet of suspected shabu subject of the buy-bust operation with his initials "AGS" which stands for Antonio Gonzales Santiago. He then turned it over to their investigator PO3 Daniel Taub (PO3 Taub). Likewise, SPO3 Bunac marked with his initials "IPB" the other sachet of suspected shabu found in the possession of the accused-appellant and turned it over also to investigator PO3 Taub.

The testimony of PSI Manuel was dispensed with by the parties after the defense stipulated on the following: that he is an expert in the field of chemistry; that the Regional Crime Laboratory Office-09 received on 12 August 2005 a written request from Zamboanga City Mobile Group (ZCMG) 09 for the examination of two (2) plastic sachets containing white crystalline substance suspected to be shabu marked with "AGS, DLT-BB" and "IPB, DLT-P," respectively, and that the Chemistry Report on the quantitative and qualitative examinations of the two (2) sachets show that the sachet with "AGS, DLT-BB" has a weight of 0.0162 gram while the other sachet with "IPB, DLT-P" has a weight of 0.0145 gram and both sachets were positive to the test of the presence of methamphetamine hydrochloride or shabu.

The version of the Defense

The defense presented its lone witness, the accused-appellant himself. From his testimony are the following antecedents:

At around 9:00 to 10:00 o'clock in the evening of 11 August 2005, accused-appellant, who was sick at that time, was at the store located about 150 meters from their house at Presa, Canelar to buy medicine. When he was about to go home, he saw six (6) persons from a distance of 20-25 meters from where he was and he also saw a motorized tricycle entering the alley. He noticed that there were five (5) armed men in civilian attire inside the tricycle. While the tricycle entered, he saw the six (6) persons scamper to different directions and some of them ran towards him. He was scared when two (2) of the armed men alighted from the tricycle and went towards him. He went to particular corner but the two (2) armed men approached him and asked him where were those persons who ran away. He told these armed men that he did not know where they went but they insisted and forced him to tell them where those persons were. Then a motorcycle arrived and the driver thereof, who was also armed, pointed to him and said "that is the one." The armed men forced him to go with them because he was allegedly the companion of a certain "Ben," a tough guy from their neighborhood.

Accused-appellant was then brought by the armed men to the police station. Thereat, he was made to enter a particular room and one of the policemen asked him where this certain "Ben" was hiding. He could not disclose where this "Ben" was at that time because he was afraid that "Ben" might turn against him and kill him. He was then told by one of the policemen that if he could not tell them where this "Ben" was hiding, he could settle his problem and he would be released if he paid ₱10,000.00. He asked the policemen what his fault was and the policemen told him it was about drugs. He told the policemen that he did not have ₱10,000.00 because he and his father were only construction workers. Then one of the policemen lowered the amount demanded from ₱10,000.00 to ₱5,000.00 and he was given until the following morning to pay the reduced amount. He wanted to contact his father but he was not allowed to use any of the cellphones of the policemen. He was then assured by the policemen that his relatives would be notified and would visit him the following morning. However, nobody visited him the following morning and he was brought to the hall of justice. He was also told by the policemen that a drug case

would be filed against him so that they could report some kind of an accomplishment considering that the policemen failed to arrest "Ben."

From the hall of justice, accused-appellant was brought to the city jail. His relatives knew of his arrest when Pinky Guanzon, who is also a friend of accused-appellant, informed the neighbor of accused-appellant's father. Pinky Guanzon saw the incident leading to the arrest of accuse-appellant although she did not know at that time that the person arrested was accused-appellant. Pinky Guanzon is allegedly already in Cebu and she could not testify for the accused-appellant.

Accused-appellant denied that the policemen were able to buy shabu from him and another sachet of shabu was taken from his possession. He likewise denied that an inventory was conducted by the policemen in relation to the case.[5]

Judgment of the RTC

As stated, the RTC convicted Reynaldo as charged, disposing:

WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING, this Court finds:

(1) In Criminal Case No. 5856 **(21884)**, accused **REYNALDO ROJAS Y VILLABLANCA, JR., guilty** beyond reasonable doubt for violating Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of LIFE IMPRISONMENT and pay a fine of FIVE HUNDRED THOUSAND PESOS (₱500,00.00) [sic] without subsidiary imprisonment in case of insolvency; and

(2) In Criminal Case No. 5857 **(21885)**, accused **REYNALDO ROJAS Y VILLABLANCA, JR., guilty** beyond reasonable doubt for violating Section 11, Article II of the Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165) and sentences him to suffer the penalty of 12 YEARS AND 1 DAY TO 14 YEARS OF IMPRISONMENT and pay a fine of Three hundred THOUSAND PESOS (₱300,000.00) without subsidiary imprisonment in case of insolvency.

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[5] *Rollo*, pp. 4-8.

SO ORDERED.[6]

The RTC considered the testimonies of the Prosecution's witnesses credible but dismissed the version of Reynaldo as ridiculous. It observed that Reynaldo's claim of frame-up and his denial were uncorroborated; and concluded that the evidence of the Prosecution proved the guilt of the accused for the crimes charged beyond reasonable doubt.

Decision of the CA

On appeal, the CA affirmed Reynaldo's conviction, holding that the State established all the elements of the crimes charged; and that the chain of custody of the seized drugs was preserved, thereby securing the integrity of the confiscated drugs. It decreed:

WHEREFORE, the appeal is DENIED and the assailed Decision dated 08 November 2012 of Branch 4 of the Regional Trial Court of Zamboanga City, in Criminal Case Nos. 5856 (21884) and 5857 (21885) is hereby AFFIRMED.

SO ORDERED.[7]

Hence, this appeal.

The Office of the Solicitor General (OSG), representing the People, and the Public Attorney's Office (PAO), representing Reynaldo, separately manifested that they were no longer filing supplemental briefs, and prayed that their respective briefs in the CA be considered in resolving the appeal.[8]

Issue

In his appellant's brief, Reynaldo insisted that he had been framed up, and had nothing to do with the seized drugs; that the police operatives had not observed the procedural safeguards provided for by Section 21 of R.A. No. 9165 to ensure the

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[6] CA *rollo*, pp. 41-42.

[7] *Rollo*, pp. 32-33.

[8] *Id*. at 43-45; 51-52.

integrity of the seized drugs; that the operatives had not coordinated with the PDEA; and that no physical inventory and no photographs of the drugs were taken in his presence and in the presence of the representative of the Department of Justice (DOJ), the media and elected officials, as directed by the law; and that such lapses were serious enough to warrant his acquittal based on reasonable doubt.

In response, the OSG argued that all the elements of the crimes charged were duly alleged and established by the Prosecution; that the police operatives secured the integrity of the seized drugs because the movement and location of the drugs from the time of their seizure until their presentation in court as evidence were fully accounted for; that not all breaches of the procedural requirements of Section 21 of R.A. No. 9165 should necessarily lead to the acquittal of the accused; that Reynaldo's defense of frame-up had nothing to support it; and that the presumption of regularity in favor of the police operatives and their operations warranted the rejection of his defense of frame-up.

Ruling of the Court

The appeal is meritorious.

Every conviction for a crime must rest on the strength of the Prosecution's evidence, not on the weakness of the evidence of the Defense.[9] This is because the innocence of the accused is constitutionally presumed; hence, the Prosecution carries the burden to show his guilt beyond reasonable doubt of the crime charged regardless of the strength or weakness of the defense of the accused.

In the prosecution of a violation of R.A. No. 9165, the State bears the burden of proving not only the elements of the offenses of sale and possession of the dangerous drugs but also of the *corpus delicti*. *Corpus delicti* has been defined as the body or

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[9] *People v. Maraorao*, G.R. No. 174369, June 20, 2012, 674 SCRA 151, 160.

substance of the crime and, in its primary sense, refers to the fact that a crime has actually been committed. As applied to a particular offense, it means the actual commission by someone of the particular crime charged. The *corpus delicti* is a compound fact made up of two things, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result. The dangerous drug is itself the *corpus delicti* of the violation of the law prohibiting the mere possession of the dangerous drug. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* when the drugs are missing, or when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts on the authenticity of the evidence presented in court.[10] The substitution, or tampering, or adulteration of the seized drugs prevents the establishment of the *corpus delicti*. In view of these considerations, the duty to prove the *corpus delicti* of the crime is as essential as proving the elements of the crime itself.

Here, there is a serious doubt as to whether the drugs supposedly seized from Reynaldo were still the same articles presented to the trial court. This doubt stemmed from the failure of the arresting officers to execute the safeguards set by law, particularly Section 21 of R.A. No. 9165, which pertinently states:

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 drugs shall, immediately after seizure and confiscation, **physically**

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[10] *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 531-532.

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

x x x x x x x x x

The *Implementing Rules and Regulations* for Section 21(a) of R.A. No. 9165 provides:

x x x x x x x x x

(a) The apprehending office/team having initial custody and control of the drugs **shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; *Provided, further* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; (Bold emphasis supplied)

x x x x x x x x x

The arresting officers are expected to faithfully comply with the foregoing requirements[11] because of the unique characteristic of the illegal drugs being easily rendered indistinct, not readily identifiable, and their being frequently open to tampering,

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[11] *Reyes v. Court of Appeals*, G.R. No. 180177, April 18, 2012, 670 SCRA 148, 158.

alteration, planting or substitution by accident or otherwise.[12] To obviate doubts about the proof, the law demands an unbroken chain of custody.

The chain of custody vis-à-vis the drugs seized during entrapment is divided into four parts, each designed to contribute to the preservation of the integrity of the seized drugs as evidence. The seizure and marking, if practicable, of the seized drugs by the apprehending officer constitute the first part. Second is the turnover of the marked seized drugs by the apprehending officer to the investigating officer. The turnover of the marked seized drugs by the investigating officer to the forensic chemist for the laboratory examination is third. The turnover and submission of the marked seized drugs by the forensic chemist to the trial court make up the fourth part.[13]

Did the arresting lawmen adhere to the procedure laid down in Section 21, *supra*?

The records show that they did not.

Of great significance in the preservation of the chain of custody is the initial marking of the seized drugs. The marking ensures that the drugs were the same items that entered the chain of custody, and would eventually be the pieces of evidence offered in court at the trial. It is required that the marking be done in the presence of the apprehended violator, and immediately upon seizure. The requirement protects innocent persons from dubious and concocted searches, as well as shields the apprehending officers from harassment suits based on planting of evidence and allegations of robbery or theft.[14]

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[12] See, *e.g.*, *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308, 319.

[13] *People v. Gatlabayan*, G.R. No. 186467, July 13, 2011, 653 SCRA 803, 816-817.

[14] *People v. Saclena*, G.R. No. 192261, November 16, 2011, 660 SCRA 349, 368.

Anent the compliance with the requirement of marking, PO3 Albert Santiago informed Reynaldo of his arrest upon the completion of their exchange. The drugs subject of the illegal sale remained in the hands of PO3 Santiago from that time onwards. On the other hand, SPO3 Ireneo Bunac was the officer who had effected the arrest of Reynaldo, and had recovered in the process of frisking him another sachet of *shabu*. The arresting lawmen immediately left the scene with Reynado and stopped at the Barangay Hall of Camino Nuevo to do the physical inventory of the seized drugs. SPO3 Bunac took the inventory in the presence of Barangay Captain Antonio T. Delles.[15] Afterwards, they left the Barangay Hall to proceed to their office where PO3 Santiago marked the seized drugs with his own initials of "AGS" and SPO3 Bunac marked the sachet of *shabu* he had recovered from Reynaldo with his own initials of "IPB."

The foregoing account indicates that the arresting lawmen committed very serious lapses that broke the chain of custody right at its inception. To start with, PO3 Santiago and SPO3 Bunac gave no explanation as to why they did not mark the seized drugs right after the arrest of the accused, or even during the taking of the inventory at the Barangay Hall. Their omissions exposed the seized drugs to the possibility of switching or tampering while in transit to the police office, or to planting of evidence, the very dangers that the marking was intended to preclude. Secondly, the *unmarked* sachet of *shabu* left the hands of PO3 Santiago when the same was inventoried by SPO3 Bunac. In that situation, the two officers did nothing to ensure that the sachet of *shabu* seized by PO3 Santiago would be differentiated and segregated from the sachet of *shabu* SPO3 Bunac seized from Reynaldo's possession. The practical problem of ascertaining which of the sachets of *shabu* was involved in the illegal sale or in the illegal possession naturally arose, putting in doubt the proof of the *corpus delicti*. And, thirdly, no witness testified on the circumstances surrounding the making of the

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[15] TSN, April 20, 2009, p. 16.

marking – whether the marking was made in the presence of Reynaldo, or of the other witnesses whose presence was required by law (namely, the representative of the Department of Justice [DOJ], an elective official, and the representative of the media). In this regard, although PO3 Santiago stated that the inventory had been taken in the presence of Reynaldo, nothing was offered to corroborate his statement. What appears in the records instead is the inventory that was not signed by Reynaldo despite the law itself requiring the accused to sign the same.

We next look at whether there was compliance with the requirement for the physical inventory and photographing. The Prosecution made it appear that the inventory was prepared by SPO3 Bunac in the presence of the Barangay Chairman. Although so required by Section 21, *supra*, the further presence of representatives from the DOJ and the media was not obtained despite the buy-bust operation against Reynaldo being supposedly pre-planned. Also, the witnesses of the State did not explain the absence of representatives from the DOJ and the media, and the lack of photographs of the seized drugs and the taking of the inventory.

The Court has consistently impressed the necessity of complying with the requirement for the taking of the inventory and photographs of the seized drugs. Albeit not indispensable, the requirements could only be dispensed with upon justifiable grounds.[16] Sadly, our assiduous search of the records for justifications why the police officers ignored or deviated from the procedure instituted to ensure the integrity of the evidence has been in vain.

The arresting officers' non-adherence to the procedure laid down by Section 21, *supra*, entitled him to acquittal on the ground of reasonable doubt. Indeed, the State did not discharge its burden of proving Reynaldo's guilt beyond reasonable doubt. "Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute

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[16] *People v. Pagaduan, supra* note 12, at 320-322.

certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind."[17] Acquittal of Reynaldo should follow.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on August 20, 2015 by the Court of Appeals in CA-G.R. CR-HC No. 01151-MIN; **ACQUITS** accused **REYNALDO ROJAS *y* VILLABLANCA, JR.** for failure of the Prosecution to prove his guilt beyond reasonable doubt of the violations of Section 5 and Section 11, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*); and **ORDERS** his immediate release from the San Ramon Prison and Penal Farm in Zamboanga City unless he is confined for some other lawful cause.

Let a copy of this decision be sent to the Superintendent of the San Ramon Prison and Penal Farm in Zamboanga City for immediate implementation. The Superintendent is directed to report the action taken to this Court within five days from receipt of this decision.

SO ORDERED.

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

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[17] Section 2, Rule 133 of the *Rules of Court*.

FIRST DIVISION

[G.R. No. 222837. July 23, 2018]

MACARIO LIM GAW, JR., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; COURT OF TAX APPEALS (CTA); A.M. NO. 05-11-07-CTA (REVISED RULES OF THE COURT OF TAX APPEALS); INCLUSION OF CIVIL ACTION IS APPLICABLE ONLY WHEN THE ACTION IS TO RECOVER CIVIL LIABILITY ARISING FROM THE CRIME; THE CIVIL ACTION QUESTIONING THE FINAL DECISION ON DISPUTED ASSESSMENT (FDDA) IS NOT DEEMED INSTITUTED WITH THE CRIMINAL CASE FOR TAX EVASION, THE CIVIL LIABILITY BEING ONE ARISING FROM AN OBLIGATION CREATED BY LAW.— Rule 9, Section 11 of A.M. No. 05-11-07-CTA,otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that: **SEC. 11.** *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized. Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review *Ad Cautelam,* is deemed instituted upon the filing of the criminal action. Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case. *We do not agree.* Rule 111, Section 1(a)of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime.Civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action. It is well-settled that the taxpayer's obligation to pay the tax is an obligation

that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.

2. **ID.; ID.; ID.; WHAT IS DEEMED INSTITUTED WITH THE CRIMINAL ACTION IS ONLY THE GOVERNMENT'S RECOVERY OF THE TAXES AND PENALTIES RELATIVE TO THE CRIMINAL CASE; CASE AT BAR.—** Under Sections 254 and 255 of the NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. x x x The tax evasion case filed by the government against the erring taxpayer has, for its purpose, the imposition of criminal liability on the latter. While the Petition for Review filed by the petitioner was aimed to question the FDDA and to prevent it from becoming final. The stark difference between them is glaringly apparent. As such, the Petition for Review *Ad Cautelam* is not deemed instituted with the criminal case for tax evasion. In fact, in the Resolution dated June 6, 2012, the CTA recognized the separate and distinct character of the Petition for Review from the criminal case. x x x In the said resolution, what is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.

3. **ID.; ID.; ID.; PAYMENT OF DOCKET FEES IS BOTH MANDATORY AND JURISDICTIONAL; NONPAYMENT OF DOCKET FEES AT THE TIME OF FILING OF THE INITIATORY PLEADING DOES NOT AUTOMATICALLY CAUSE ITS DISMISSAL SO LONG AS THE DOCKET FEES ARE PAID WITHIN A REASONABLE PERIOD AND THE PARTY HAD NO INTENTION TO DEFRAUD THE GOVERNMENT; CASE AT BAR.—**Basic is the rule that the payment of docket and other legal fees is both mandatory and jurisdictional. The court acquires jurisdiction over the case only upon the payment of the prescribed fees. However, the mere failure to pay the docket fees at the time of the filing of the complaint, or in this case the Petition for Review *Ad Cautelam,* does not necessarily cause

the dismissal of the case. As this Court held in *Camaso v. TSM Shipping (Phils.), Inc.,* while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its nonpayment at the time of filing of the initiatory pleading does not automatically cause its dismissal so long as the docket fees are paid within a reasonable period; and that the party had no intention to defraud the government.In this case, records reveal that petitioner has no intention to defraud the government in not paying the docket fees. In fact, when he appealed the FDDA insofar as the taxable year 2007 was concerned, he promptly paid the docket fees when he filed his Petition for Review.

4. ID.; ID.; ID.; THE CTA IN DIVISION HAS EXCLUSIVE APPELLATE JURISDICTION OVER DECISIONS OF THE COMMISSIONER OF INTERNAL REVENUE; THE SUPREME COURT HAS NO JURISDICTION TO REVIEW TAX CASES AT THE FIRST INSTANCE WITHOUT FIRST LETTING THE CTA TO STUDY AND RESOLVE THE SAME.—Rule 4, Section 3(a), paragraph 1 of the RRCTA provides that the CTA First Division has exclusive appellate jurisdiction over decisions of the Commissioner of Internal Revenue on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR. x x x The [said] provision means that the CTA exercises exclusive appellate jurisdiction to resolve decisions of the commissioner of internal revenue. There is no other court that can exercise such jurisdiction. "[I]t should be noted that the CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems."Thus, this Court has no jurisdiction to review tax cases at the first instance without first letting the CTA to study and resolve the same. x x x To determine as to whether the transaction between petitioner and Eagle I is an isolated transaction or whether the 10 parcels of land sold by petitioner is classified as capital assets or ordinary assets should properly be resolved by the CTA. Thus, it would be more prudent for Us to remand the case to CTA for the latter to conduct a full-blown trial where both parties are given the chance to present evidence of their claim. Well-settled is the rule that this Court is not a trier of facts.

5. ID.; ID.; ID.; THE SUPREME COURT'S REVIEW OF THE DECISION OF THE COURT OF TAX APPEALS *EN BANC* IS LIMITED IN DETERMINING WHETHER THERE IS GRAVE ABUSE OF DISCRETION ON THE PART OF THE CTA IN RESOLVING THE CASE.—Under Rule 16, Section 1of the RRCTA, this Court's review of the decision of the CTA *En Banc* is limited in determining whether there is grave abuse of discretion on the part of the CTA in resolving the case. Basic is the rule that delving into factual issues in a petition for review on *certiorari* is not a proper recourse, since a Rule 45 petition is only limited to resolutions on questions of law.

APPEARANCES OF COUNSEL

Tan Acut Lopez and Pison Law Offices for petitioner.
The Solicitor General 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 Macario Lim Gaw, Jr. (petitioner) assailing the Decision[2] dated December 22, 2014 and Resolution[3] dated February 2, 2016 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Criminal Case No. 026.

Antecedent Facts

Sometime in November 2007, petitioner acquired six (6) parcels of land. To finance its acquisition, petitioner applied

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[1] *Rollo,* pp. 38-122.

[2] Penned by Associate Justice Ma. Belen M. Ringpis-Liban, concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas and Roman G. Del Rosario (Inhibited); *id.* at 11-27.

[3] *Id*. at 28-35.

for, and was granted a Short Term Loan (STL) Facility from Banco De Oro (BDO) in the amount of ₱2,021,154,060.00.[4]

From April to June 2008, petitioner acquired four (4) more parcels of land. Again, petitioner applied for and was granted an STL Facility from BDO in the amount of ₱2,732,666,785.[5]

Petitioner entered into an Agreement to Sell[6] with Azure Corporation for the sale and transfer of real properties to a joint venture company, which at the time was still to be formed and incorporated. Then on July 11, 2008, petitioner conveyed the 10 parcels of land to Eagle I Landholdings, Inc. (Eagle I), the joint venture company referred to in the Agreement to Sell.[7]

In compliance with Revenue Memorandum Order No. 15-2003,[8] petitioner requested the Bureau of Internal Revenue (BIR)-Revenue District Office (RDO) No. 52 for the respective computations of the tax liabilities due on the sale of the 10 parcels of land to Eagle I.[9]

In accordance with the One Time Transactions (ONETT) Computation sheets, petitioner paid Capital Gains Tax amounting to ₱505,177,213.81[10] and Documentary Stamp Tax amounting to ₱330,390.00.[11]

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[4] *Id.* at 43.

[5] *Id.*

[6] *Id.* at 326-332.

[7] *Id.* at 354-356.

[8] Policies, Guidelines and Procedures in the Processing and Monitoring of One-Time Transactions (ONETT) and the Issuance of Certificates Authorizing Registration (CARs) Covering Transactions Subject to Final Capital Gains Tax on Sale of Real Properties Considered as Capital Assets as well as Capital Gains Tax on the Net Capital Gain on Sale, Transfer or Assignment of Stocks Not Traded in the Stock Exchange(s), Expanded Withholding Tax on Sale of Real Properties Considered as Ordinary Assets, Donor's Tax, Estate Tax and Other Taxes including Documentary Stamp Tax Related to the Sale/Transfer of Properties.

[9] *Rollo,* p. 45.

[10] *Id.* at 424, 426, 429, 431, 433, 435, 437, 439, 441 and 443.

[11] *Id.* at 425, 428, 430, 432, 434, 436, 438, 440, 442 and 444.

On July 23, 2008, the BIR-RDO No. 52 issued the corresponding Certificates Authorizing Registration and Tax Clearance Certificates.[12]

Two years later, Commissioner of Internal Revenue (respondent) opined that petitioner was not liable for the 6% capital gains tax but for the 32% regular income tax and 12% value added tax, on the theory that the properties petitioner sold were ordinary assets and not capital assets. Further, respondent found petitioner to have misdeclared his income, misclassified the properties and used multiple tax identification numbers to avoid being assessed the correct amount of taxes.[13]

Thus, on August 25, 2010, respondent issued a Letter of Authority[14] to commence investigation on petitioner's tax account.

The next day, respondent filed before the Department of Justice (DOJ) a Joint Complaint Affidavit[15] for tax evasion against petitioner for violation of Sections 254[16] and 255[17] of the National Internal Revenue Code (NIRC).

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[12] *Id*. at 445-454.

[13] *Id*. at 458, 460-462.

[14] *Id*. at 455.

[15] *Id*. at 456-465.

[16] **SEC. 254.** *Attempt to Evade or Defeat Tax.* – Any person who willfully attempts in any manner to evade or defeat any tax imposed under this Code or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand (₱30,000) but not more than One hundred thousand pesos (₱100,000) and suffer imprisonment of not less than two (2) years but not more than four (4) years: *Provided,* That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

[17] **SEC. 255.** *Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.* – Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully

The DOJ then filed two criminal informations for tax evasion against petitioner docketed as CTA Criminal Case Nos. O-206 and O-207.[18] At the time the Informations were filed, the respondent has not issued a final decision on the deficiency assessment against petitioner. Halfway through the trial, the respondent issued a Final Decision on Disputed Assessment (FDDA)[19] against petitioner, assessing him of deficiency income tax and VAT covering taxable years 2007 and 2008.

With respect to the deficiency assessment against petitioner for the year 2007, petitioner filed a petition for review with the CTA, docketed as CTA Case No. 8502. The clerk of court of the CTA assessed petitioner for filing fees which the latter promptly paid.[20]

However, with respect to the deficiency assessment against petitioner for the year 2008, the same involves the same tax liabilities being recovered in the pending criminal cases. Thus, petitioner was confused as to whether he has to separately file an appeal with the CTA and pay the corresponding filing fees considering that the civil action for recovery of the civil liability

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fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (₱10,000) but not more than Twenty thousand pesos (₱20,000) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

[18] *Rollo,* p. 13.

[19] *Id.* at 517-527.

[20] *Id.* at 51.

for taxes and penalties was deemed instituted in the criminal case.[21]

Thus, petitioner filed before the CTA a motion to clarify as to whether petitioner has to file a separate petition to question the deficiency assessment for the year 2008.[22]

On June 6, 2012, the CTA issued a Resolution[23] granting petitioner's motion and held that the recovery of the civil liabilities for the taxable year 2008 was deemed instituted with the consolidated criminal cases, thus:

> **WHEREFORE,** in light of the foregoing considerations, the prosecution's Motion for Leave of Court to Amend Information and Admit Attached Amended Information filed on May 16, 2012 is **GRANTED.** Accordingly, the Amended Information for CTA Crim. No. O-206 attached thereto is hereby **ADMITTED**. Re-arraignment of [petitioner] in said case is set on **June 13, 2012 at 9:00 a.m.**
>
> As regards, [petitioner's] Urgent Motion (With Leave of Court for Confirmation that the Civil Action for Recovery of Civil Liability for Taxes and Penalties is Deemed Instituted in the Consolidated Criminal Cases) filed on May 30, 2012, the same is hereby **GRANTED.** The civil action for recovery of the civil liabilities of [petitioner] for taxable year 2008 stated in the [FDDA] dated May 18, 2012 is **DEEMED INSTITUTED** with the instant consolidated criminal cases, without prejudice to the right of the [petitioner] to avail of whatever additional legal remedy he may have, to prevent the said FDDA from becoming final and executory for taxable year 2008.
>
> Additionally, [petitioner] is not precluded from instituting a Petition for Review to assail the assessments for taxable year 2007, as reflected in the said FDDA dated May 18, 2012.
>
> **SO ORDERED.**[24]

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[21] *Id*.

[22] *Id*.

[23] *Id*. at 546-554.

[24] *Id*. at 553.

However, as a caution, petitioner still filed a Petition for Review *Ad Cautelam* (with Motion for Consolidation with CTA Criminal Case Nos. O-206 and O-207).[25] Upon filing of the said petition, the clerk of court of the CTA assessed petitioner with "zero filing fees."[26]

Meanwhile, the CTA later acquitted petitioner in Criminal Case Nos. O-206 and O-207 and directed the litigation of the civil aspect in CTA Case No. 8503 in its Resolution[27] dated January 3, 2013, to wit:

> **WHEREFORE,** all the foregoing considered, the [petitioner's] **"DEMURRER TO EVIDENCE"** is hereby **GRANTED** and CTA Crim. Case Nos. O-206 and O-207 are hereby **DISMISSED.** Accordingly, [petitioner] is hereby **ACQUITTED** on reasonable doubt in said criminal cases.
>
> As regards CTA Case No. 8503, an Answer having been filed in this case on August 17, 2012, let this case be set for Pre-Trial on **January 23, 2013 at 9:00 a.m.**
>
> **SO ORDERED.**[28]

Thereafter, respondent filed a Motion to Dismiss[29] the Petition for Review *Ad Cautelam* on the ground that the CTA First Division lacks jurisdiction to resolve the case due to petitioner's non-payment of the filing fees.

On March 1, 2013, the CTA First Division issued a Resolution[30] granting the Motion to Dismiss. His motion for reconsideration being denied, petitioner elevated the case to the CTA *En Banc*. The latter however affirmed the dismissal of the case in its Decision[31] dated December 22, 2014, thus:

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[25] *Id*. at 555-589.

[26] *Id*. at 184.

[27] *Id*. at 626-639.

[28] *Id*. at 639.

[29] *Id*. at 674-683.

[30] *Id*. at 151-167.

[31] *Id*. at 11-27.

WHEREFORE, premises considered, the instant Petition for Review is **DENIED** for lack of merit. The Resolutions of the First Division of this Court promulgated on 01 March 2013 and 24 June 2013 are hereby **AFFIRMED.**

Costs against the petitioner.

SO ORDERED.[32]

Petitioner's motion for reconsideration was likewise denied by the CTA *En Banc* in its Resolution[33] dated February 2, 2016.

Hence, this petition.

Issues

Petitioner raises the following arguments:

IN RESOLVING CTA EB CRIM. CASE NO. 026, THE CTA *EN BANC* HAS NOT ONLY DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THIS HONORABLE COURT, BUT HAS ALSO DEPRIVED PETITIONER OF HIS RIGHT TO DUE PROCESS AS TO CALL FOR AN EXERCISE OF SUPERVISION, CONSIDERING THAT:

I

THE CTA *EN BANC* COMMITTED SERIOUS REVERSIBLE ERROR AND EFFECTIVELY DENIED PETITIONER DUE PROCESS BY DISMISSING THE PETITION FOR REVIEW *AD CAUTELAM* SUPPOSEDLY FOR LACK OF JURISDICTION DUE TO PETITIONER'S FAILURE TO PAY DOCKET AND OTHER LEGAL FEES.

A

BASED ON APPLICABLE LAWS AND JURISPRUDENCE, AS AFFIRMED BY THE CTA IN ITS PAST PRONOUNCEMENTS IN THE CONSOLIDATED CASES, IT HAD ALREADY ACQUIRED JURISDICTION OVER CTA

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[32] *Id*. at 141.

[33] *Id*. at 28-35.

CASE NO. 8503, AND THEREFORE COULD NOT BE DIVESTED OF SUCH JURISDICTION UNTIL FINAL JUDGMENT.

B

THE ZERO-FILING-FEE ASSESSMENT IN CTA CASE NO. 8503 ISSUED BY THE CLERK OF COURT OF THE CTA WAS CONSISTENT WITH APPLICABLE LAWS AND JURISPRUDENCE, AS AFFIRMED BY THE CTA IN ITS PAST PRONOUNCEMENTS IN THE CONSOLIDATED CASES.

C

PETITIONER WAS DEPRIVED OF DUE PROCESS WHEN HIS PETITION WAS DISMISSED WITHOUT FIRST BEING AFFORDED A FAIR OPPORTUNITY TO PAY PROPERLY ASSESSED FILING FEES.

II

THE CTA *EN BANC* COMMITTED SERIOUS REVERSIBLE ERROR IN DEPRIVING PETITIONER OF HIS RIGHT TO ASSAIL THE DEFICIENCY ASSESSMENTS AGAINST HIM FOR TAXABLE YEAR 2008 AND SANCTIONING RESPONDENT'S DENIAL OF PETITIONER'S RIGHT TO DUE PROCESS DESPITE THE FOLLOWING FACTUAL CIRCUMSTANCES WHICH RENDER THE ASSESSMENTS NULL AND VOID:

A

THE LETTER OF AUTHORITY NO. 2009-00044669 WHICH COVERS THE AUDIT OF "UNVERIFIED PRIOR YEARS" IS INVALID, BEING IN DIRECT CONTRAVENTION OF SECTION C OF REVENUE MEMORANDUM ORDER NO. 43-90.

B

THE FORMAL LETTER OF DEMAND DATED 08 APRIL 2011 AND FINAL DECISION ON DISPUTED ASSESSMENT NO. 2012-0001 DATED 18 MAY 2012 WERE IMPROPERLY SERVED ON PETITIONER.

C

RESPONDENT DISREGARDED PETITIONER'S PROTEST LETTER DATED 07 JUNE 2011 AND ADDITIONAL SUBMISSIONS IN SUPPORT OF HIS PROTEST.

D

THE DEFICIENCY TAX ASSESSMENTS AGAINST PETITIONER FOR TAXABLE YEAR 2008 HAVE NO FACTUAL AND LEGAL BASES.

E

IT HAS BEEN A CASE OF PERSECUTION RATHER THAN PROSECUTION ON THE PART OF THE RESPONDENT AGAINST PETITIONER, WARRANTING NOT ONLY AN ACQUITTAL BUT ALSO THE DISMISSAL OF THE CIVIL ASPECT OF CTA CRIMINAL CASE NOS. O-206 AND O-207.

III

IN THE INTEREST OF THE EXPEDITIOUS ADMINISTRATION OF JUSTICE, THIS HONORABLE COURT MAY ALREADY RESOLVE THE CIVIL ASPECT OF CTA CRIMINAL CASE NOS. O-206 AND O-207 ON THE MERITS.[34]

Ultimately, the issues for Our resolution are: 1) whether the CTA erred in dismissing CTA Case No. 8503 for failure of the petitioner to pay docket fees; 2) in the event that the CTA erred in dismissing the case, whether this Court can rule on the merits of the case; and 3) whether the petitioner is liable for the assessed tax deficiencies.

Arguments of the Petitioner

Petitioner claims that since the FDDA covering the year 2008 was also the subject of the tax evasion cases, the civil action for the recovery of civil liability for taxes and penalties was deemed instituted in the consolidated criminal cases as a matter of law. Thus, if the civil liability for recovery of taxes and

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[34] *Id.* at 58-61.

penalties is deemed instituted in the criminal case, it is the State, not the taxpayer that files the Information and pays the filing fee. Petitioner claims that there is no law or rule that requires petitioner to pay filing fees in order for the CTA to rule on the civil aspect of the consolidated criminal cases filed against him.[35]

Petitioner likewise asserts that when they filed the Petition for Review *Ad Cautelam* the clerk of court made a "zero filing fee" assessment. It is therefore a clear evidence that the civil action for recovery of taxes was deemed instituted in the criminal actions. Thus, the CTA has long acquired jurisdiction over the civil aspect of the consolidated criminal cases.[36] Therefore, the CTA erred in dismissing the case for nonpayment of docket fees.

Petitioner further argues that in order not to prolong the resolution of the issues and considering that the records transmitted to this Court are sufficient to determine and resolve whether petitioner is indeed liable for deficiency income tax, this Court can exercise its prerogative to rule on the civil aspect of the CTA Criminal Case Nos. O-206 and O-207.[37]

Arguments of the Respondent

Respondent, through the Office of the Solicitor General (OSG) argues that the tax evasion cases filed against petitioner were instituted based on Sections 254 and 255 of the NIRC, that in all criminal cases instituted before the CTA, the civil aspect of said cases, which constitutes the recovery by the government of the taxes and penalties relative to the criminal action shall not be subject to reservation for a separate civil action.[38] On the other hand, the civil remedy to contest

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[35] *Id*. at 62.

[36] *Id*. at 79-80.

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

[38] *Id*. at 1955.

the correctness or validity of disputed tax assessment is covered by Section 9[39] of Republic Act (R.A.) No.

[39] Sec. 9. Section 11 of the same Act is hereby amended to read as follows:

SEC. 11. Who May Appeal; Mode of Appeal; Effect of Appeal. – Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts may file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein.

Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon. A Division of the CTA shall hear the appeal: Provided, however, That with respect to decisions or rulings of the Central Board of Assessment Appeals and the Regional Trial Court in the exercise of its appellate jurisdiction appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 43 of the 1997 Rules of Civil Procedure with the CTA, which shall hear the case *en banc*.

All other cases involving rulings, orders or decisions filed with the CTA as provided for in Section 7 shall be raffled to its Divisions. A party adversely affected by a ruling, order or decision of a Division of the CTA may file a motion for reconsideration of new trial before the same Division of the CTA within fifteen (15) days from notice thereof: Provided, however, That in criminal cases, the general rule applicable in regular Courts on matters of prosecution and appeal shall likewise apply.

No appeal taken to the CTA from the decision of the Commissioner of Internal Revenue or the Commissioner of Customs or the Regional Trial Court, provincial, city or municipal treasurer or the Secretary of Finance, the Secretary of Trade and Industry and Secretary of Agriculture, as the case may be shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: Provided, however, That when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer the Court any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

In criminal and collection cases covered respectively by Section 7(b) and (c) of this Act, the Government may directly file the said cases with the CTA covering amounts within its exclusive and original jurisdiction.

9282.[40] The difference between the criminal case for tax evasion filed by the government for the imposition of criminal liability on the taxpayer and the Petition for Review filed by the petitioner for the purpose of questioning the FDDA is glaringly apparent. The mere appearance of the word "civil action" does not give rise to the conclusion that all "civil" remedies pertain to the same reliefs. The petitioner cannot simultaneously allege that the petition for review is the civil action that is deemed instituted with the criminal action and at the same time avail of the separate taxpayer's remedy to contest the FDDA through a petition for review.[41]

Respondent further argues that in ruling upon the merits of the Petition for Review *Ad Cautelam* would prompt this Court to become a trier of facts, which is improper, especially in a Petition for Review under Rule 45 of the Rules of Court. Additionally, assuming that the CTA *En Banc* erred in affirming the dismissal ordered by the CTA First Division due to non-payment of docket fees, the correct remedy is to remand the case and order the CTA to compute the required docket fees and reinstate the case upon payment of the same.[42]

Ruling of the Court

The petition is partly granted.

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[40] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES. Approved on March 30, 2004.

[41] *Rollo,* p. 1965.

[42] *Id.* at 1977.

The civil action filed by the petitioner to question the FDDA is not deemed instituted with the criminal case for tax evasion

Rule 9, Section 11 of A.M. No. 05-11-07-CTA,[43] otherwise known as the Revised Rules of the Court of Tax Appeals (RRCTA), states that:

> **SEC. 11.** *Inclusion of civil action in criminal action.* – In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding. The filing of the criminal action shall necessarily carry with it the filing of the civil action. No right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized.

Petitioner claimed that by virtue of the above provision, the civil aspect of the criminal case, which is the Petition for Review *Ad Cautelam,* is deemed instituted upon the filing of the criminal action. Thus, the CTA had long acquired jurisdiction over the civil aspect of the consolidated criminal cases. Therefore, the CTA erred in dismissing the case.

We do not agree.

Rule 111, Section 1(a)[44] of the Rules of Court provides that what is deemed instituted with the criminal action is only the action to recover civil liability arising from the crime.[45] Civil liability arising from a different source of obligation, such as

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[43] REVISED RULES OF THE COURT OF TAX APPEALS.

[44] **Sec. 1.** *Institution of criminal and civil actions.* — (a) **When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.** (Emphasis ours)

[45] *Casupanan v. Laroya,* 436 Phil. 582, 595 (2002).

when the obligation is created by law, such civil liability is not deemed instituted with the criminal action.

It is well-settled that the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case.[46]

In the case of *Republic of the Philippines v. Patanao,*[47] We held that:

Civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him. The criminal liability arises upon failure of the debtor to satisfy his civil obligation. The incongruity of the factual premises and foundation principles of the two cases is one of the reasons for not imposing civil indemnity on the criminal infractor of the income tax law. x x x Considering that the Government cannot seek satisfaction of the taxpayer's civil liability in a criminal proceeding under the tax law or, otherwise stated, since the said civil liability is not deemed included in the criminal action, acquittal of the taxpayer in the criminal proceeding does not necessarily entail exoneration from his liability to pay the taxes. It is error to hold, as the lower court has held that the judgment in the criminal cases Nos. 2089 and 2090 bars the action in the present case. **The acquittal in the said criminal cases cannot operate to discharge defendant appellee from the duty of paying the taxes which the law requires to be paid, since that duty is imposed by statute prior to and independently of any attempts by the taxpayer to evade payment. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non- existence of the criminal acts charged.** x x x.[48] (Citations omitted and emphasis ours)

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[46] *Proton Pilipinas Corp. v. Republic of the Phils.,* 535 Phil. 521, 533 (2006).

[47] 127 Phil. 105 (1967).

[48] *Id.* at 108-109.

Further, in a more recent case of *Proton Pilipinas Corp. v. Republic of the Phils.,*[49] We ruled that:

> While it is true that according to the aforesaid Section 4, of Republic Act No. 8249, the institution of the criminal action automatically carries with it the institution of the civil action for the recovery of civil liability, however, in the case at bar, **the civil case for the collection of unpaid customs duties and taxes cannot be simultaneously instituted and determined in the same proceedings as the criminal cases before the Sandiganbayan, as it cannot be made the civil aspect of the criminal cases filed before it.** It should be borne in mind that **the tax and the obligation to pay the same are all created by statute; so are its collection and payment governed by statute.** The **payment of taxes is a duty which the law requires to be paid. Said obligation is not a consequence of the felonious acts charged in the criminal proceeding nor is it a mere civil liability arising from crime that could be wiped out by the judicial declaration of non-existence of the criminal acts charged. Hence, the payment and collection of customs duties and taxes in itself creates civil liability on the part of the taxpayer. Such civil liability to pay taxes arises from the fact, for instance, that one has engaged himself in business, and not because of any criminal act committed by him.**[50] (Citations omitted and emphasis ours)

The civil action for the recovery of civil liability for taxes and penalties that is deemed instituted with the criminal action is not the Petition for Review *Ad Cautelam* filed by petitioner

Under Sections 254 and 255 of the NIRC, the government can file a criminal case for tax evasion against any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed in the tax code or the payment thereof. The crime of tax evasion is committed by the mere fact that the taxpayer

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[49] 535 Phil. 521 (2006).

[50] *Id.* at 532-533.

knowingly and willfully filed a fraudulent return with intent to evade and defeat a part or all of the tax. It is therefore not required that a tax deficiency assessment must first be issued for a criminal prosecution for tax evasion to prosper.[51]

While the tax evasion case is pending, the BIR is not precluded from issuing a final decision on a disputed assessment, such as what happened in this case. In order to prevent the assessment from becoming final, executory and demandable, Section 9 of R.A. No. 9282 allows the taxpayer to file with the CTA, a Petition for Review within 30 days from receipt of the decision or the inaction of the respondent.

The tax evasion case filed by the government against the erring taxpayer has, for its purpose, the imposition of criminal liability on the latter. While the Petition for Review filed by the petitioner was aimed to question the FDDA and to prevent it from becoming final. The stark difference between them is glaringly apparent. As such, the Petition for Review *Ad Cautelam* is not deemed instituted with the criminal case for tax evasion.

In fact, in the Resolution[52] dated June 6, 2012, the CTA recognized the separate and distinct character of the Petition for Review from the criminal case, to wit:

> As regards, [petitioner's] Urgent Motion (With Leave of Court for Confirmation that the Civil Action for Recovery of Civil Liability for Taxes and Penalties is Deemed Instituted in the Consolidated Criminal Cases) filed on May 30, 2012, the same is hereby **GRANTED.** The civil action for recovery of the civil liabilities of [petitioner] for taxable year 2008 stated in the [FDDA] dated May 18, 2012 is **DEEMED INSTITUTED** with the instant consolidated criminal cases, **without prejudice to the right of the [petitioner] to avail of whatever additional legal remedy he may have, to prevent the said FDDA from becoming final and executory for taxable year 2008.**[53] (Emphasis ours)

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[51] *Ungab v. Judge Cusi, Jr.,* 186 Phil. 604, 610-611 (1980).

[52] *Rollo,* pp. 546-554.

[53] *Id.* at 553.

In the said resolution, what is deemed instituted with the criminal action is only the government's recovery of the taxes and penalties relative to the criminal case. The remedy of the taxpayer to appeal the disputed assessment is not deemed instituted with the criminal case. To rule otherwise would be to render nugatory the procedure in assailing the tax deficiency assessment.

The CTA *En Banc* erred in affirming the dismissal of the case for nonpayment of docket fees

While it is true that the Petition for Review *Ad Cautelam* is not deemed instituted with the criminal case, We hold that the CTA *En Banc* still erred in affirming the dismissal of the case.

Rule 6, Section 3 of the RRCTA provides that:

> **SEC. 3.** *Payment of docket fees.* – The Clerk of Court shall not receive a petition for review for filing unless the petitioner submits proof of payment of the docket fees. Upon receipt of the petition or the complaint, it will be docketed and assigned a number, which shall be placed by the parties on all papers thereafter filed in the proceeding. The Clerk of Court will then issue the necessary summons to the respondent or defendant.

Basic is the rule that the payment of docket and other legal fees is both mandatory and jurisdictional. The court acquires jurisdiction over the case only upon the payment of the prescribed fees.[54]

However, the mere failure to pay the docket fees at the time of the filing of the complaint, or in this case the Petition for Review *Ad Cautelam,* does not necessarily cause the dismissal of the case. As this Court held in *Camaso v. TSM Shipping (Phils.), Inc.,*[55] while the court acquires jurisdiction over any case only upon the payment of the prescribed docket fees, its

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[54] *Gipa, et al. v. Southern Luzon Institute,* 736 Phil. 515, 527 (2014).

[55] G.R. No. 223290, November 7, 2016, 807 SCRA 204.

nonpayment at the time of filing of the initiatory pleading does not automatically cause its dismissal so long as the docket fees are paid within a reasonable period; and that the party had no intention to defraud the government.[56]

In this case, records reveal that petitioner has no intention to defraud the government in not paying the docket fees. In fact, when he appealed the FDDA insofar as the taxable year 2007 was concerned, he promptly paid the docket fees when he filed his Petition for Review.

Confusion resulted when the FDDA also covered tax deficiencies pertaining to taxable year 2008 which was also the subject of the consolidated criminal cases for tax evasion. To guide the petitioner, he sought the advise of the CTA First Division on whether he was still required to pay the docket fees. The CTA First Division issued its Resolution[57] dated June 6, 2012 ruling that the civil action for recovery of the civil liabilities of petitioner for taxable year 2008 stated in the FDDA was deemed instituted with the consolidated criminal cases. Pursuant to said CTA Resolution, the Clerk of Court issued a computed "zero filing fees"[58] when petitioner filed his Petition for Review *Ad Cautelam.*

Petitioner merely relied on good faith on the pronouncements of the CTA First Division that he is no longer required to pay the docket fees. As such, the CTA cannot just simply dismiss the case on the ground of nonpayment of docket fees. The CTA should have instead directed the clerk of court to assess the correct docket fees and ordered the petitioner to pay the same within a reasonable period. It should be borne in mind that technical rules of procedure must sometimes give way, in order to resolve the case on the merits and prevent a miscarriage of justice.

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[56] *Id*. at 210.

[57] *Rollo,* pp. 546-554.

[58] *Id*. at 184.

This Court will not however rule on the merits of the CTA Case No. 8503

Rule 4, Section 3(a), paragraph 1 of the RRCTA provides that the CTA First Division has exclusive appellate jurisdiction over decisions of the Commissioner of Internal Revenue on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, to wit:

SEC. 3. *Cases within the jurisdiction of the Court in Divisions.* – The Court in Divisions shall exercise:

(a) **Exclusive original or appellate jurisdiction to review by appeal the following:**

(1) **Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;**

The above provision means that the CTA exercises exclusive appellate jurisdiction to resolve decisions of the commissioner of internal revenue. There is no other court that can exercise such jurisdiction. "[I]t should be noted that the CTA has developed an expertise on the subject of taxation because it is a specialized court dedicated exclusively to the study and resolution of tax problems."[59] Thus, this Court has no jurisdiction to review tax cases at the first instance without first letting the CTA to study and resolve the same.

Under Rule 16, Section 1[60] of the RRCTA, this Court's review of the decision of the CTA *En Banc* is limited in determining

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[59] *Eastern Telecommunications Phils., Inc. v. Commissioner of Internal Revenue,* 757 Phil. 136, 143 (2015).

[60] **SEC. 1.** *Appeal to Supreme Court by petition for review on certiorari.* **– A party adversely affected by a decision or ruling of the Court *en***

whether there is grave abuse of discretion on the part of the CTA in resolving the case. Basic is the rule that delving into factual issues in a petition for review on *certiorari* is not a proper recourse, since a Rule 45 petition is only limited to resolutions on questions of law.[61]

Here, petitioner insists that the 10 parcels of idle land he sold on July 11, 2008 in a single transaction to Eagle I are capital assets. Thus, the said parcels of land are properly subject to capital gains tax and documentary stamp tax and not to the regular income tax and value-added tax. The CIR, on the other hand argues that the 10 parcels of land sold by petitioner are ordinary assets, hence should be subject to income tax and value-added tax. The CIR reasoned that the sole purpose of petitioner in acquiring the said lots was for the latter to make a profit. Further, the buying and selling of the said lots all occurred within the period of eight months and it involved sale transactions with a ready buyer.[62]

Section 39(A)(1) of the National Internal Revenue Code (NIRC) provides that:

(1) *Capital Assets.* – the term *'capital assets'* means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided

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banc **may appeal therefrom by filing with the Supreme Court a verified petition for review on *certiorari*** within fifteen days from receipt of a copy of the decision or resolution, as provided in Rule 45 of the Rules of Court. If such party has filed a motion for reconsideration or for new trial, the period herein fixed shall run from the party's receipt of a copy of the resolution denying the motion for reconsideration or for new trial. (Emphasis ours)

[61] *Nenita Quality Foods Corp. v. Galabo, et al.,* 702 Phil. 506, 515 (2013).

[62] *Rollo,* p. 524.

in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer.

The distinction between capital asset and ordinary asset was further defined in Section 2(a) and (b) Revenue Regulations No. 7-2003,[63] thus:

a. *Capital assets* shall refer to all real properties held by a taxpayer, whether or not connected with his trade or business, and which are not included among the real properties considered as ordinary assets under Sec. 39(A)(1) of the Code.

b. *Ordinary assets* shall refer to all real properties specifically excluded from the definition of capital assets under Sec. 39(A)(1) of the Code, namely:

1. Stock in trade of a taxpayer or other real property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year; or

2. Real property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business; or

3. Real property used in trade or business (i.e., buildings and/or improvements) of a character which is subject to the allowance for depreciation provided for under Sec. 34(F) of the Code; or

4. Real property used in trade or business of the taxpayer.

The statutory definition of capital assets is negative in nature. Thus, if the property or asset is not among the exceptions, it is a capital asset; conversely, assets falling within the exceptions are ordinary assets.[64]

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[63] Providing the Guidelines in Determining Whether a Particular Real Property is a Capital Asset or an Ordinary Asset Pursuant to Section 39(A)(1) of the National Internal Revenue Code of 1997 for Purposes of Imposing the Capital Gains Tax under Sections 24(D), 25(A)(3), 25(B) and 27(D)(5), or the Ordinary Income Tax under Sections 24(A), 25(A) & (B), 27(A), 28(A)(1) and 28(B)(1), or the Minimum Corporate Income Tax (MCIT) under Sections 27(E) and 28(A)(2) of the same Code.

[64] *Calasanz, et al. v. Commissioner of Internal Revenue,* 228 Phil. 638, 644 (1986).

To determine as to whether the transaction between petitioner and Eagle I is an isolated transaction or whether the 10 parcels of land sold by petitioner is classified as capital assets or ordinary assets should properly be resolved by the CTA. Thus, it would be more prudent for Us to remand the case to CTA for the latter to conduct a full-blown trial where both parties are given the chance to present evidence of their claim. Well-settled is the rule that this Court is not a trier of facts.

Considering Our foregoing disquisitions, the proper remedy is to remand the case to the CTA First Division and to order the Clerk of Court to assess the correct docket fees for the Petition for Review *Ad Cautelam* and for petitioner to pay the same within ten (10) days from receipt of the correct assessment of the clerk of court.

WHEREFORE, the Petition is hereby **PARTIALLY GRANTED.** The Decision dated December 22, 2014 and Resolution dated February 2, 2016 of the Court of Tax Appeals *En Banc* in CTA EB Criminal Case No. 026 are **REVERSED and SET ASIDE.** The case is **REMANDED** to the Court of Tax Appeals First Division to conduct further proceedings in CTA Case No. 8503 and to **ORDER** the Clerk of Court to assess the correct docket fees. Petitioner Mariano Lim Gaw, Jr., is likewise **ORDERED** to pay the correct docket fees within ten (10) days from the receipt of the correct assessment of the Clerk of Court.

SO ORDERED.

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

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[*] Designated additional Member per Raffle dated July 9, 2018 *vice* Associate Justice Francis H. Jardeleza.

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

FIRST DIVISION

[G.R. No. 223155. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANILO JAPAG and ALVIN LIPORADA,** *accused,* **DANILO JAPAG,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; REQUISITES; WHEN AN ACCUSED INVOKES SELF-DEFENSE,THE BURDEN OF PROOF IS SHIFTED FROM THE PROSECUTION TO THE DEFENSE.—**It is settled that when an accused invokes self-defense, the burden of proof is *shifted* from the prosecution to the defense, and it becomes incumbent upon the accused to prove, by clear and convincing evidence, the existence of the following requisites of self-defense: ***first***, unlawful aggression on the part of the victim; ***second***, reasonable necessity of the means employed to prevent or repel such aggression; and ***third***, lack of sufficient provocation on the part of the person defending himself.As the burden of proof is shifted to the defense, the accused must rely on the strength of his evidence and *not* on the weakness of the prosecution's evidence. After all, by invoking self-defense, the accused, in effect, admits having killed or injured the victim, and he can no longer be exonerated of the crime charged *if* he fails to prove the requisites of self-defense.

2. **ID.; ID.; ID.; UNLAWFUL AGGRESSION; A CONDITION *SINE QUA NON* FOR UPHOLDING SELF-DEFENSE AS A JUSTIFYING CIRCUMSTANCE, THUS IT MUST BE SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT THE VICTIM HAD COMMITTED UNLAWFUL AGGRESSION AGAINST THE ACCUSED; ABSENT IN CASE AT BAR.—**The most important requisite of self-defense is **unlawful aggression** which is the condition *sine qua non* for upholding self-defense as a justifying circumstance.In other words, unless it is shown by clear and convincing evidence that the victim had committed unlawful aggression against the accused, "self-defense, whether complete or incomplete, *cannot* be appreciated, for the two other essential elements [thereof]

would have *no factual and legal bases* without any unlawful aggression to prevent or repel."Unlawful aggression "contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of [a] weapon."After a thorough review of the records, we find that appellant failed to discharge the burden of proving that the unlawful aggression had originated from the victim. ***First***, it is undisputed that appellant boarded a motorcycle and fled the *situs criminis* immediately after stabbing the victim at the back. "Flight is a veritable badge of guilt and negates the plea of self-defense."***Second***, the location, nature and seriousness of the wound sustained by the victim is inconsistent with self-defense; rather, these factors indicate a determined effort to kill. x x x And ***third***, both the RTC and the CA found the testimony of Ramil (the victim's twin brother) to be clear and convincing in its vital points, *i.e.*, on his *detailed narration of the stabbing incident* and his *positive identification* of appellant as one of his brother's assailants.

3. ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT WHEN THE OFFENDER EMPLOY MEANS, METHODS OR FORMS IN THE EXECUTION OF ANY OF THE CRIMES AGAINST PERSONS THAT TEND DIRECTLY AND ESPECIALLY TO ENSURE ITS EXECUTION WITHOUT RISK TO HIMSELF ARISING FROM THE DEFENSE WHICH THE OFFENDED PARTY MIGHT MAKE; ESTABLISHED IN CASE AT BAR.—We likewise agree with the CA's conclusion that the victim's killing was qualified by treachery. "There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make."In this case, the records clearly show that the victim's killing was attended by treachery, considering that: (*a*) the victim was *fatally* stabbed by appellant *from behind* immediately after receiving a punch in the face from Liporada;(*b*) the victim was *held in place* by Macalalag when the stabbing blow was delivered by appellant;and (*c*) the attack was so *sudden* and *unexpected* that the victim's brother and even the nearby security guards were

unable to prevent it.The totality of these circumstances clearly shows that the means of execution of the attack gave the victim **no opportunity to defend himself** or to retaliate, and said means of execution was **deliberately** adopted by appellant.

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 May 21, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01807 which affirmed with modification the October 29, 2013 Decision[2] of the Regional Trial Court (RTC), Branch 13, Carigara, Leyte, finding appellant Danilo Japag guilty beyond reasonable doubt of the crime of murder.

The Antecedent Facts

Appellant, together with his co-accused, Alvin Liporada (Liporada), was charged with the crime of murder in an Information[3] dated May 11, 2009 which reads:

That on or about the 16th day of March, 2009[,] in the Municipality of Tunga, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping one another, with deliberate intent to kill, with treachery and taking advantage of superior strength, did then and there willfully, unlawfully and feloniously attack and stab RODEL PARROCHO *y* MONTE, with the use of a bladed weapon, which accused Danilo

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[1] *Rollo*, pp. 4-23; penned by Associate Justice Ma. Luisa C. Quijano-Padilla and concurred in by Associate Justices Marilyn B. Lagura-Yap and Marie Christine Azcarraga-Jacob.

[2] CA *rollo*, pp. 24-39; penned by Presiding Judge Emelinda R. Maquilan.

[3] Records, p. 1.

Japag provided himself for the purpose, thereby inflicting upon the victim an incised wound at the back left, medial to the inferior portion of the left scapula, penetrating the thoracic cavity, which was the direct and immediate cause of death of said Rodel Parrocho *y* Monte.

CONTRARY TO LAW.

During his arraignment on July 7, 2009, appellant entered a plea of not guilty.[4] Trial thereafter ensued.

Version of the Prosecution

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

On March 16, 2009, at around 3:00 p.m., Ramil Parrocho (Ramil), the victim's twin brother, was at a *sari-sari* store in front of Gregorio Catenza National High School when he saw appellant, Liporada, and Eman Macalalag (Macalalag) blocking the way of the victim who was then about to the enter the school gate.[5]

Ramil thereafter saw Liporada punch his brother at the left cheek while being held in place by Macalalag. Suddenly, appellant, who was positioned behind the victim, drew a bladed weapon from his pocket and stabbed the latter at the back. Upon receiving the stabbing blow, the victim fell on the ground. The attack on the victim was so unexpected that Ramil and even the security guards at the school outposts were not able to come to his rescue. Appellant, Liporada and Macalalag immediately fled towards the direction of the highway.[6]

The victim was rushed to the EVRMC Hospital in Tacloban City, but he was pronounced dead on arrival. He died while the ambulance was en route to the hospital from the Municipality of Jaro.[7]

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[4] See Order dated July 7, 2009, *id*. at 15-16; issued by Presiding Judge Crisostomo L. Garrido.

[5] CA *rollo*, p. 51.

[6] *Id*.

[7] *Id*. at 51-52.

Based on the post-mortem examination conducted on the victim's body by Dr. Crescento A. Uribe (Dr. Uribe), the Municipal Health Officer, the cause of death was *Intrathoracic Hemorrhage Secondary to a Penetrating Stab Wound*. The victim sustained an incised wound about 2 centimeters in length below the scapular bone of his back. The wound was fatal because it penetrated the victim's thoracic (chest) cavity.[8]

Version of the Defense

Appellant raised the justifying circumstance of self-defense in order to exculpate himself from criminal liability, *viz.*:

> x x x On the mentioned date[,] at 2:00 o'clock in the afternoon, he was practicing together with his classmates a song for their MSEP subject. Alvin Liporada and Eman Macalalag were also there. While they were practicing, Rodel Parrocho came in and threatened to kill him if he goes outside the school. Later that day, while he was on his way home, Rodel Parrocho attacked him and hit him on his face with a fist blow causing him to fall. When he was about to get up, Rodel Parrocho stabbed him with the use of [a] short bladed weapon locally known as *sipol*. Fortunately, he was able to parry it and wrestled for the knife. The next thing he knew was Rodel Parrocho fell to the ground with a stab wound. This gave him an opportunity to run home. The following day, March 17, 2009[,] at about 7:00 o'clock in the evening, he went to [the] Tunga Police Station to surrender. His father accompanied him.[9]

Ruling of the Regional Trial Court

In its Decision dated October 29, 2013, the RTC found appellant guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code.

The RTC found no merit in appellant's contention that he had acted in self-defense which resulted in the victim's killing. Aside of the absence of proof showing that he had sustained

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[8] *Id*. at 52. See also *POSTMORTEM* (EXTERNAL) REPORT dated March 16, 2009, Folder of Exhibits, p. 1.

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

any injury as a result of the supposed hard punch thrown at him by the victim,[10] the RTC also explained that:

> Verily, the self-defense invoked by the accused cannot be appreciated, as it is unworthy of belief. The wound sustained by the victim at his back, would belie the claim of the accused that the stabbing was not deliberate. In fact, accused['s] intent to kill the victim was proven through the deadly weapon used by him, his fatal stab thrust, and the location where the fatal blow was directed, which stab wound resulted in the severe blood loss of the victim leading to the latter's immediate death. x x x[11]

Moreover, the RTC ruled that the victim's killing was attended by the qualifying circumstance of treachery, as the suddenness of appellant's attack on the victim from behind rendered the latter defenseless and unable to flee or escape. The RTC held that appellant had consciously adopted the manner by which he mounted the attack on the victim in order to ensure his safety from any retaliatory attack and to deny the victim an opportunity to defend himself or repel the attack.[12]

Accordingly, the RTC sentenced appellant to suffer the penalty of *reclusion perpetua*. It likewise ordered appellant to pay the heirs of the victim: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱17,500.00 as actual damages.[13]

The RTC also issued an alias warrant of arrest against Liporada "to be served in his residence or anywhere where he could be found within the territory of the Philippines."[14]

Appellant thereafter appealed the RTC Decision before the CA.

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[10] *Id.* at 35.

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

[12] *Id.* at 38.

[13] *Id.* at 39.

[14] *Id.*

Ruling of the Court of Appeals

In its Decision dated May 21, 2015, the CA affirmed the assailed RTC Decision with modification as regards the imposition of interest at 6% per annum on all damages awarded from date of finality of the judgment until fully paid.[15]

Like the RTC, the CA also rejected appellant's claim of self-defense in the absence of proof of unlawful aggression on the part of the victim.[16] It noted that Ramil's "clear and detailed account of the incident negate[d] any hint that the unlawful aggression originated from the victim,"[17] as did the nature and location of the wound sustained by the latter.[18]

The CA further ruled that the elements of the qualifying circumstance of treachery were present in the case, since "[t]he victim had no chance to avoid the attack when he was boxed by Alvin first and then suddenly stabbed from behind by [appellant], while being held by Eman."[19] It thus concluded that under those dire circumstances, the victim could not have had the chance to defend himself.[20]

Aggrieved, appellant filed the present appeal.

The Issues

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

First, whether appellant was able to sufficiently prove the justifying circumstance of self-defense;[21]

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[15] *Rollo*, p. 23.

[16] *Id.* at 18.

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

[18] *Id.* at 19.

[19] *Id.* at 22.

[20] *Id.*

[21] *Id.* at 17-19.

And *second*, whether the victim's stabbing was attended by treachery.[22]

The Court's Ruling

The appeal is unmeritorious.

It is settled that when an accused invokes self-defense, the burden of proof is *shifted* from the prosecution to the defense,[23] and it becomes incumbent upon the accused to prove, by clear and convincing evidence, the existence of the following requisites of self-defense: ***first***, unlawful aggression on the part of the victim; ***second***, reasonable necessity of the means employed to prevent or repel such aggression; and ***third***, lack of sufficient provocation on the part of the person defending himself.[24]

As the burden of proof is shifted to the defense, the accused must rely on the strength of his evidence and *not* on the weakness of the prosecution's evidence. After all, by invoking self-defense, the accused, in effect, admits having killed or injured the victim, and he can no longer be exonerated of the crime charged *if* he fails to prove the requisites of self-defense.[25]

The most important requisite of self-defense is **unlawful aggression** which is the condition *sine qua non* for upholding self-defense as a justifying circumstance.[26] In other words, unless it is shown by clear and convincing evidence that the victim had committed unlawful aggression against the accused, "self-defense, whether complete or incomplete, *cannot* be appreciated, for the two other essential elements [thereof] would have *no factual and legal bases* without any unlawful aggression to prevent or repel."[27]

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

[23] *People v. Rubiso*, 447 Phil. 374, 380 (2003).

[24] *Id.* at 380-381. See also REVISED PENAL CODE, Article 11(l).

[25] See *People v. Gumayao*, 460 Phil. 735, 746 (2003).

[26] *People v. Panerio*, G.R. No. 205440, January 15, 2018.

[27] *Id.* Italics supplied.

Unlawful aggression "contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of [a] weapon."[28]

After a thorough review of the records, we find that appellant failed to discharge the burden of proving that the unlawful aggression had originated from the victim.

First, it is undisputed that appellant boarded a motorcycle and fled the *situs criminis* immediately after stabbing the victim at the back.[29] "Flight is a veritable badge of guilt and negates the plea of self-defense."[30]

Second, the location, nature and seriousness of the wound sustained by the victim is inconsistent with self-defense;[31] rather, these factors indicate a determined effort to kill.

On this point, Dr. Uribe testified that the stabbing wound sustained by the victim *at the back portion of his body* can be characterized as *fatal*, as it penetrated the latter's chest cavity, *viz.*:

[PROS. CONSTANTINO F. ESBER]

Q: Going now straight [to] your external findings, will you please explain your finding Number 4[?] [W]hat is meant by that?
A: 'Incised wound about 2 centimeters in length located at the back left, medial to inferior portion of the left scapula, penetrating the thoracic cavity.'

Q: Since there is no sketch attached to your post mortem report[,] will you indicate using the [interpreter as medium where that wound [was] exactly located?
A: This is the inferior portion of the scapula, so medial portion, [i]t is located here.

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[28] *People v. Rubiso*, *supra* note 23 at 381.

[29] TSN, May 10, 2012, p. 13.

[30] *People v. Gumayao*, *supra* note 25 at 746.

[31] See *People v. Rubiso*, *supra* note 23 at 381-382.

Witness indicated at the left side of the back portion below the scapular bone.

Q: In your examination[,] [d]octor, were you able to determine the entry?
A: At the back.

Q: Considering that it was at the back, was it probable that the assailant was at the back of the victim?
A: Yes.

Q: How many incise[d] wound[s] have you found on the said victim?
A: Only one incised wound.

Q: Considering that [sic] its location and nature, how would you classify the wound[?] [W]as it fatal?
A: **It was fatal because it penetrated the thoracic cavity.**

Q: What is meant, [d]octor, by thoracic cavity?
A: **Chest cavity.**[32] (Emphasis supplied)

And ***third***, both the RTC and the CA found the testimony of Ramil (the victim's twin brother) to be clear and convincing in its vital points, *i.e.*, on his *detailed narration of the stabbing incident* and his *positive identification* of appellant as one of his brother's assailants.[33] The pertinent portion of Ramil's testimony is quoted below:

[PROS. CONSTANTINO F. ESBER]

Q: What did [Danilo Japag, Alvin Liporada, and Eman Macalalag] do next[,] if any[,] aside from being at the gate of the school?
A: A: I saw them x x x x obstructing the passing on that gate of my brother Rodel and Danilo Japag stabbed Rodel.[34]

x x x x x x x x x

Q: Of the three, who boxed [the victim]?
A: Alvin Liporada.

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[32] TSN, September 29, 2010, p. 4.

[33] CA *rollo*, pp. 17-18.

[34] TSN, July 1, 2010, p. 5.

Q: And was your brother hit?
A: Yes[,] sir.

Q: Where?
A: On his face[.] ([W]itness indicated the left cheek.)

Q: How many times did Alvin Liporada [delivered the] boxing blow [on the victim]?
A: **Only once[,] sir[,] and immediately thereafter[,] Danilo Japag delivered [a] stab thrust.**[35]

x x x x x x x x x

Q: Is Danilo Japag around in the court room today?
A: Yes[,] sir.

Q: Will you point him out?
A: **There[.] ([W]itness pointed to a person inside the court room [who], when asked of his name[,] identified himself as Danilo Japag.)**[36] (Emphasis supplied)

We, too, see no reason to disbelieve Ramil's testimony, as it was not shown that the lower courts had *overlooked, misunderstood* or *misappreciated* facts or circumstances of weight and substance which, if properly considered, would have altered the result of the case.[37]

Simply stated, appellant's *self-serving* and *unsubstantiated* allegations that the victim was the unlawful aggressor must necessarily fail when weighed against the positive, straightforward and overwhelming evidence of the prosecution. **Where unlawful aggression on the part of the victim is not proven, there can be no self-defense.**

We likewise agree with the CA's conclusion that the victim's killing was qualified by treachery.[38]

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[35] *Id*. at 5-6.

[36] *Id*. at 8-[9*]. *unpaginated

[37] *People v. Espino, Jr.*, 577 Phil. 546, 562 (2008).

[38] *Rollo*, p. 21.

"There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make."[39]

In this case, the records clearly show that the victim's killing was attended by treachery, considering that: (*a*) the victim was *fatally* stabbed[40] by appellant *from behind*[41] immediately after receiving a punch in the face from Liporada;[42] (*b*) the victim was *held in place* by Macalalag when the stabbing blow was delivered by appellant;[43] and (*c*) the attack was so *sudden* and *unexpected* that the victim's brother and even the nearby security guards were unable to prevent it.[44]

The totality of these circumstances clearly shows that the means of execution of the attack gave the victim **no opportunity to defend himself** or to retaliate, and said means of execution was **deliberately** adopted by appellant.[45]

In light of these, we find no reason to overturn the factual findings and conclusions of the lower courts as they are supported by the evidence on record and applicable laws. However, we deem it appropriate to *increase* the amount of exemplary damages from ₱30,000.00 to ₱75,000.00 in conformity with prevailing jurisprudence.[46] In addition, and in lieu of actual damages, appellant is ordered to pay temperate damages in the amount of ₱50,000.00.[47]

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[39] *People v. Alajay*, 456 Phil. 83, 92 (2003).

[40] TSN, September 29, 2010, p. 4.

[41] TSN, July 1, 2010, p. 6.

[42] *Id*. at [13*]. *unpaginated.

[43] *Id*. at 7.

[44] *Id*. at [14-15*]. *unpaginated.

[45] See *People v. Alajay*, *supra* note 39 at 92.

[46] *People v. Jugueta*, 783 Phil. 806, 847-848 (2016).

[47] *Id*. at 846-847.

WHEREFORE, the appeal is **DISMISSED**. The May 21, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC. No. 01807 is hereby **AFFIRMED with MODIFICATION** in that the award of exemplary damages is increased to ₱75,000.00; and in lieu of actual damages, temperate damages in the amount of ₱50,000.00 is awarded.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 224015. July 23, 2018]

STEPHEN I. JUEGO-SAKAI, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; ARTICLE 26 ON MARRIAGES BETWEEN A FILIPINO CITIZEN AND A FOREIGNER VALIDLY CELEBRATED ABROAD; EVEN IF THE FILIPINO SPOUSE PARTICIPATED IN THE DIVORCE PROCEEDINGS ABROAD, SHE MUST STILL BE ALLOWED TO BENEFIT FROM THE EXCEPTION PROVIDED UNDER PARAGRAPH 2 OF ARTICLE 26; AS THE MARRIAGE BETWEEN PETITIONER AND HER

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

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

JAPANESE SPOUSE HAD ALREADY BEEN DISSOLVED BY A DIVORCE DECREE IN JAPAN, THEREBY CAPACITATING THE LATTER TO REMARRY, PETITIONER SHALL LIKEWISE HAVE THE CAPACITY TO REMARRY UNDER PHILIPPINE LAW.— [T]he Court similarly rules that despite the fact that petitioner participated in the divorce proceedings in Japan, and even if it is assumed that she initiated the same, she must still be allowed to benefit from the exception provided under Paragraph 2 of Article 26. Consequently, since her marriage to Toshiharu Sakai had already been dissolved by virtue of the divorce decree they obtained in Japan, thereby capacitating Toshiharu to remarry, petitioner shall likewise have capacity to remarry under Philippine law.

2. **REMEDIAL LAW; EVIDENCE; PROOF OF OFFICIAL RECORD; PHILIPPINE COURTS DO NOT TAKE JUDICIAL NOTICE OF FOREIGN JUDGMENTS AND LAWS; FOREIGN DIVORCE DECREE AND THE NATIONAL LAW OF THE ALIEN MUST BE PROVEN PURSUANT TO SECTION 24, RULE 132 OF THE RULES OF COURT.—** We cannot yet grant petitioner's Petition for Judicial Recognition of Foreign Judgment for she has yet to comply with certain guidelines before our courts may recognize the subject divorce decree and the effects thereof. Time and again, the Court has held that 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. 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. Since both the foreign divorce decree and the national law of the alien, recognizing his or her capacity to obtain a divorce, purport to be official acts of a sovereign authority, Section 24 of Rule 132 of the Rules of Court applies. Thus, what is required is proof, either by (1) official publications or (2) copies attested by the officer having legal custody of the documents. If the copies of official records are not kept in the Philippines, these must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.

CAGUIOA, *J.*, *separate concurring opinion*:

1. CIVIL LAW; FAMILY CODE; ARTICLE 26 ON MARRIAGES BETWEEN A FILIPINO CITIZEN AND A FOREIGNER VALIDLY CELEBRATED ABROAD; THE EXCEPTION UNDER ARTICLE 26(2) 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.— Article 26(2) of the Family Code was 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. Consequently, I disagree with the *ponencia's* pronouncement herein that under Article 26(2), there should be no distinction between a Filipino who initiated a foreign divorce proceeding and a Filipino who is at the receiving end of an alien-initiated proceeding.

2. ID.; ID.; ID.; THE REQUIREMENTS FOR THE APPLICATION OF THE EXCEPTION UNDER ARTICLE 26(2), PRESENT IN CASE AT BAR.— In contrast with the divorce decree at issue in *Manalo*, the divorce decree herein was obtained *not* by petitioner alone, but *jointly* by petitioner and her then spouse who, in turn, is a Japanese national. Thus, the requirements for the application of the exception under Article 26(2) have been met in this case, *i.e.*: (1) there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and (2) a valid divorce is obtained **by the alien spouse** capacitating him or her to remarry.

APPEARANCES OF COUNSEL

Godfrey A. Parale for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Amended Decision[1] dated March 3, 2016 of the Court of Appeals (*CA*) in CA-G.R. CV No. 104253 that set aside its former Decision dated November 25, 2015, which in turn, affirmed the Decision of the Regional Trial Court (*RTC*), Branch 40, Daet, Camarines Norte, granting petitioner's Petition for Judicial Recognition of Foreign Judgment.

The antecedent facts are as follows:

Petitioner Stephen I. Juego-Sakai and Toshiharu Sakai got married on August 11, 2000 in Japan pursuant to the wedding rites therein. After two (2) years, the parties, by agreement, obtained a divorce decree in said country dissolving their marriage.[2] Thereafter, on April 5, 2013, petitioner filed a Petition for Judicial Recognition of Foreign Judgment before the Regional Trial Court (*RTC*), Branch 40, Camarines Norte. In its Decision dated October 9, 2014, the RTC granted the petition and recognized the divorce between the parties as valid and effective under Philippine Laws.[3] On November 25, 2015, the CA affirmed the decision of the RTC.

In an Amended Decision[4] dated March 3, 2016, however, the CA revisited its findings and recalled and set aside its previous decision. According to the appellate court, the second of the following requisites under Article 26 of the Family Code is missing: (a) there is a valid marriage that has been celebrated

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting, concurring; *rollo*, pp. 18-21.

[2] *Rollo*, pp. 5 and 33.

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

[4] *Supra* note 1.

between a Filipino citizen and a foreigner; and (b) a divorce is obtained abroad by the alien spouse capacitating him or her to remarry.[5] This is because the divorce herein was consensual in nature, obtained by agreement of the parties, and not by Sakai alone. Thus, since petitioner, a Filipino citizen, also obtained the divorce herein, said divorce cannot be recognized in the Philippines. In addition, the CA ruled that petitioner's failure to present authenticated copies of the Civil Code of Japan was fatal to her cause.[6]

On May 2, 2016, petitioner filed the instant petition invoking the following arguments:

I.

WHETHER OR NOT THE HONORABLE [COURT OF APPEALS] GRAVELY ERRED UNDER LAW WHEN IT HELD THAT THE SECOND REQUISITE FOR THE APPLICATION OF THE SECOND PARAGRAPH OF ARTICLE 26 OF THE FAMILY CODE IS NOT PRESENT BECAUSE THE PETITIONER GAVE CONSENT TO THE DIVORCE OBTAINED BY HER JAPANESE HUSBAND.

II.

WHETHER OR NOT THE HONORABLE [COURT OF APPEALS] GRAVELY ERRED UNDER LAW WHEN IT HELD THAT THERE IS NO SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENT ON THE SUBMISSION OF AUTHENTICATED COPIES OF [THE] CIVIL CODE OF JAPAN RELATIVE TO DIVORCE AS REQUIRED BY THE RULES.[7]

Petitioner posits that the divorce she obtained with her husband, designated as Divorce by Agreement in Japan, as opposed to Judicial Divorce, is the more practical and common type of divorce in Japan. She insists that it is to her great

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[5] *Rollo,* p. 19.

[6] *Id*. at 20.

[7] *Id*. at 7.

disadvantage if said divorce is not recognized and instead, Judicial Divorce is required in order for her to avail of the benefit under the second paragraph of Article 26 of the Family Code, since their divorce had already been granted abroad.[8] Moreover, petitioner asserts that the mere fact that she consented to the divorce does not prevent the application of Article 26 for said provision does not state that where the consent of the Filipino spouse was obtained in the divorce, the same no longer finds application. In support of her contentions, petitioner cites the ruling in *Republic of the Philippines v. Orbecido III* wherein the Court held that a Filipino spouse is allowed to remarry in the event that he or she is divorced by a Filipino spouse who had acquired foreign citizenship.[9] As to the issue of evidence presented, petitioner explains that the reason why she was unable to present authenticated copies of the provisions of the Civil Code of Japan relative to divorce is because she was unable to go to Japan due to the fact that she was pregnant. Also, none of her friends could obtain a copy of the same for her. Instead, she went to the library of the Japanese Embassy to photocopy the Civil Code. There, she was issued a document which states that diplomatic missions of Japan overseas do not issue certified true copies of Japanese Law nor process translation certificates of Japanese Law due to the potential problem in the legal interpretation thereof. Thus, petitioner maintains that this constitutes substantial compliance with the Rules on Evidence.[10]

We grant the petition.

The issue before Us has already been resolved in the landmark ruling of *Republic v. Manalo,*[11] the facts of which fall squarely on point with the facts herein. In *Manalo*, respondent Marelyn Manalo, a Filipino, was married to a Japanese national named Yoshino Minoro. She, however, filed a case for divorce before

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[8] *Id.* at 9.

[9] *Id.* at 10.

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

[11] G.R. No. 221029, April 24, 2018.

a Japanese Court, which granted the same and consequently issued a divorce decree dissolving their marriage. Thereafter, she sought to have said decree recognized in the Philippines and to have the entry of her marriage to Minoro in the Civil Registry in San Juan, Metro Manila, cancelled, so that said entry shall not become a hindrance if and when she decides to remarry. The trial court, however, denied Manalo's petition and ruled that Philippine law does not afford Filipinos the right to file for a divorce, whether they are in the country or abroad, if they are married to Filipinos or to foreigners, or if they celebrated their marriage in the Philippines or in another country.

On appeal, however, the Court therein rejected the trial court's view and affirmed, instead, the ruling of the CA. There, the Court held that the fact that it was the Filipino spouse who initiated the proceeding wherein the divorce decree was granted should not affect the application nor remove him from the coverage of Paragraph 2 of Article 26 of the Family Code which states that "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." We observed that to interpret the word "obtained" to mean that the divorce proceeding must actually be initiated by the alien spouse would depart from the true intent of the legislature and would otherwise yield conclusions inconsistent with the general purpose of Paragraph 2 of Article 26, which is, specifically, 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 subject provision, therefore, should not make a distinction for 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.[12]

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[12] *Id*.

Applying the foregoing pronouncement to the case at hand, the Court similarly rules that despite the fact that petitioner participated in the divorce proceedings in Japan, and even if it is assumed that she initiated the same, she must still be allowed to benefit from the exception provided under Paragraph 2 of Article 26. Consequently, since her marriage to Toshiharu Sakai had already been dissolved by virtue of the divorce decree they obtained in Japan, thereby capacitating Toshiharu to remarry, petitioner shall likewise have capacity to remarry under Philippine law.

Nevertheless, as similarly held in *Manalo*, We cannot yet grant petitioner's Petition for Judicial Recognition of Foreign Judgment for she has yet to comply with certain guidelines before our courts may recognize the subject divorce decree and the effects thereof. Time and again, the Court has held that 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.[13] 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.[14] Since both the foreign divorce decree and the national law of the alien, recognizing his or her capacity to obtain a divorce, purport to be official acts of a sovereign authority, Section 24[15] of Rule 132 of the Rules of Court

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[13] *Corpus v. Sto. Tomas*, 642 Phil. 420, 432 (2010).

[14] *Id*.

[15] Section 24 of the Rules of Court 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

applies.[16] Thus, what is required is proof, either by (1) official publications or (2) copies attested by the officer having legal custody of the documents. If the copies of official records are not kept in the Philippines, these must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.[17]

In the instant case, the Office of the Solicitor General does not dispute the existence of the divorce decree, rendering the same admissible. What remains to be proven, therefore, is the pertinent Japanese Law on divorce considering that Japanese laws on persons and family relations are not among those matters that Filipino judges are supposed to know by reason of their judicial function.[18]

WHEREFORE, premises considered, the instant petition is **GRANTED.** The assailed Amended Decision dated March 3, 2016 of the Court of Appeals in CA-G.R. CV No. 104253 is **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the court of origin for further proceedings and reception of evidence as to the relevant Japanese law on divorce.

SO ORDERED.

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

Caguioa, J., concur in the result, see separate concurring opinion.

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foreign country in which the record is kept, and authenticated by the seal of his office.

[16] *Id*.

[17] *Id*.

[18] *Republic v. Manalo*, *supra* note 11.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur in the result.

At the outset, I disagree with the *ponencia*'s pronouncement that the facts of *Republic v. Manalo*[1] *(Manalo)* fall squarely on point with the facts herein. In *Manalo*, respondent Marelyn Manalo is a Filipino who was married to a Japanese national. She filed a case for divorce before a Japanese court, which granted the same and issued a divorce decree dissolving their marriage. Here, while petitioner is likewise a Filipino who was married to a Japanese national, unlike in *Manalo*, however, it was the parties who jointly obtained a divorce decree *by agreement* before a Japanese court.

I maintain my position in *Manalo* that Article 26(2) of the Family Code was 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. Consequently, I disagree with the *ponencia*'s pronouncement herein that under Article 26(2), there should be no distinction between a Filipino who initiated a foreign divorce proceeding and a Filipino who is at the receiving end of an alien-initiated proceeding.

Nevertheless, I agree with the *ponencia* in granting the present petition. 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*

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[1] G.R. No. 221029, April 24, 2018 [Per *J.* Peralta, *En Banc*].

[2] 223 Phil. 357 (1985) [Per *J.* Melencio-Herrera, First Division].

[3] 509 Phil. 108 (2005) [Per *J.* Quisumbing, First Division].

v. Dacasin[4]] merely clarify 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]

In contrast with the divorce decree at issue in *Manalo*, the divorce decree herein was obtained *not* by petitioner alone, but *jointly* by petitioner and her then spouse who, in turn, is a Japanese national. Thus, the requirements for the application of the exception under Article 26(2) have been met in this case, *i.e.*: (1) there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and (2) a valid divorce is obtained **by the alien spouse** capacitating him or her to remarry.[6]

For these reasons, I vote to **GRANT** the Petition.

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[4] 625 Phil. 494 (2010) [Per *J.* Carpio, Second Division].

[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.

THIRD DIVISION

[G.R. No. 224293. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN LUMAGUI *y* MALIGID,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT 2002); IN ALL PROSECUTIONS FOR VIOLATIONS THEREOF, THE *CORPUS DELICTI* IS THE DANGEROUS DRUG ITSELF, THE EXISTENCE OF WHICH IS ESSENTIAL TO A JUDGMENT OF CONVICTION; 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* MUST BE ACCOUNTED FOR BY THE PROSECUTION.— The teaching consistently upheld in our jurisdiction is that in all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established. 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*. 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.

2. ID.; ID.; LINKS IN THE CHAIN OF CUSTODY OF THE SEIZED DANGEROUS DRUGS.— The chain of custody of the dangerous drugs has been jurisprudentially established as follows: "*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."

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; IN CRIMINAL CASES, AN APPEAL OPENS THE ENTIRE CASE FOR REVIEW AND THE REVIEWING TRIBUNAL IS DUTY-BOUND TO CORRECT, CITE, AND APPRECIATE ERRORS IN THE APPEALED JUDGMENT WHETHER THEY ARE ASSIGNED OR UNASSIGNED.—** Significantly, an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. The appeal confers to 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. While it is an established jurisprudence that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying, this, however, is not cast in stone. Thus, it was pursuant to this full jurisdiction of the Court that it reviewed the records of these cases and found that it could not sustain the findings of the RTC as there were facts or circumstances of weight and influence which had been overlooked or the significance of which the RTC had misinterpreted.

4. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); VIOLATION OF SECTION 11 (ILLEGAL POSSESSION OF DANGEROUS DRUGS); ELEMENTS.—** Accused-appellant was charged with and convicted in Crim. Case 17178-2010-C for violation of Sec. 11, Art. II of R.A. No. 9165, the necessary 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.

5. ID.; ID.; VIOLATION OF SECTION 26 (B) (ATTEMPT OR CONSPIRACY FOR ILLEGAL SALE OF DANGEROUS DRUGS); ELEMENTS.— [T]he elements that should be proven beyond moral certainty for the attempt or conspiracy under Sec. 26, Art. II of R.A. No. 9165 for the illegal sale of dangerous drugs are as follows: (*a*) the identity of the buyer and the seller, the object and the consideration; and (*b*) the delivery of the thing sold and the payment.

6. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; CANNOT PREVAIL OVER THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT.— The presumption of innocence of an accused is a fundamental constitutional right that should be upheld at all times. x x x The fact is underscored that the records of these cases are replete with proof showing the serious lapses committed by the police officers. "Serious uncertainty is generated on the identity of the *shabu* in view of the broken linkages in the chain of custody; thus, the presumption of regularity in the performance of official duty accorded to the apprehending officers by the courts below cannot arise." Even granting that the defense presented by accused-appellant was inherently weak or that the record is bereft of any showing that there was ill motive on the part of the police officers in their conduct of the alleged buy-bust operation, these matters cannot outweigh the right of the accused to be presumed innocent, of which great premium is accorded by the fundamental law.

APPEARANCES OF COUNSEL

Balderama and Dalawampu Law & Notarial Offices for accused-appellant.

Office of the Solicitor General for plaintiff-appellee.

D E C I S I O N

MARTIRES, *J.*:

Through this appeal, accused-appellant Allan Lumagui y Maligid seeks the reversal and setting aside of the 24 April

2015 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 06423, affirming the 2 September 2013 Decision[2] of the Regional Trial Court, Branch 36, Calamba City (*RTC*), finding him guilty beyond reasonable doubt of Violation of Sections (*Sec.*) 11 and 26, Article (*Art.*) II, of Republic Act *(R.A.)* No. 9165.[3]

THE FACTS

Accused-appellant was charged with violation of Sec. 11, Art. II of R.A. No. 9165 in an information docketed as Criminal *(Crim.)* Case No. 17178-2010-C, the accusatory portion of which reads as follows:

> That on or about 4:45 in the afternoon of March 25, 2010, in Barangay Pansol, Calamba City, Province of Laguna, within the jurisdiction of this Honorable Court, the above-named accused, without authority of the law, did then and there willfully, unlawfully, and feloniously have in his possession five (5) pieces of plastic sachet[s] containing Methamphetamine Hydrochloride, otherwise known as shabu, which is a dangerous drug, having a total weight of 0.12 gram in violation of the above-cited law.[4]

In Crim. Case No. 17179-2010-C, accused-appellant and Antonio D. Rueda *(Rueda)* were charged with violation of Sec. 26, Art. II of R.A. No. 9165, *viz*:

> That on or about 4:45 in the afternoon of March 25, 2010, in Barangay Pansol, Calamba City, Province of Laguna, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping each other, without authority of the law, did then and there willfully, unlawfully, and

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[1] *Rollo,* pp. 2-13.

[2] Records (Crim. Case No. 17178-2010-C), pp. 167-175.

[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] Records (Crim. Case No. 17178-2010-C) p. 1.

feloniously sell to a poseur-buyer one piece of plastic sachet containing Methamphetamine Hydrochloride, otherwise known as shabu, which is a dangerous drug, having a total weight of 0.02 gram, in violation of the above-cited law.[5]

After pleading not guilty[6] to the charges against him, accused-appellant moved[7] that the cases be consolidated as these involved the same incident. The motion was granted,[8] hence, a joint hearing of these cases was conducted.

To prove its charges, the prosecution called to the witness stand Forensic Chemist Lalaine Ong-Rodrigo *(Ong-Rodrigo)*, Police Officer 1 Richard Cruz *(PO1 Cruz)* of the Philippine National Police *(PNP)* Cabuyao, Laguna, and PO2 Allen Llorente (*PO2 Llorente*) of the PNP Provincial Office, Sta. Cruz, Laguna.

Accused-appellant testified on his own behalf to prove his defense.

On the one hand, Rueda, who pleaded not guilty in Crim. Case 17179-2010-C, died[9] even before the defense could start presenting its evidence, thus, the charge against him was dismissed.[10]

Version of the Prosecution

On 25 March 2010, the PNP Cabuyao, through Colonel Nestor B. dela Cueva *(Col. Dela Cueva)*, received a complaint that Rueda, also known as "Papang," and a certain alias "Ninang" were still involved in the selling of illegal drugs. This information prompted Captain Rogel Sarreal *(Capt. Sarreal)* to form two teams that separately conducted buy-bust operations on Rueda and alias "Ninang."[11]

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[5] Records (Crim. Case No. 17179-2010-C) p. 1.

[6] Records (Crim. Case No. 17178-2010-C) pp. 33 and 41.

[7] *Id.* at 24-25.

[8] *Id.* at 35.

[9] *Id.* at 118.

[10] *Id*. at 120.

[11] TSN, 3 August 2011, pp. 3-5.

Senior Police Officer 1 Naredo *(SPO1 Naredo)*, PO2 Llorente, PO1 Cruz, Capt. Sarreal, and a civilian asset composed the team assigned to the buy-bust operation on Rueda. On that same day, the team proceeded to an abandoned resort at Purok 3, Barangay Pansol, Calamba City, where the sale transaction was to take place. SPO1 Naredo, PO2 Llorente and Capt. Sarreal positioned themselves at the corner of the railroad track near the resort. The asset proceeded to the resort gate where Rueda was waiting, while PO1 Cruz positioned himself at about three to five arm-lengths away from the asset. Rueda asked the asset if he would "get" and the latter replied that he would "get worth ₱200.00" at the same time handing to Rueda the ₱200.00 marked money. When Rueda called out to someone from inside the resort to bring out one sachet, it was accused-appellant who came out with a plastic sachet which he handed to Rueda who, in turn, gave it to the asset. Rueda told the asset that he had some more sachets should he want more.[12]

Immediately after the asset parted from Rueda and accused-appellant, the buy-bust team rushed to arrest Rueda and accused-appellant. PO1 Cruz handcuffed Rueda and confiscated the buy-bust money from him. After having been handed the plastic sachet sold by Rueda to the asset, PO1 Cruz marked it "AML-RMC."[13]

The buy-bust team bodily searched accused-appellant and found five plastic sachets which PO1 Cruz marked as "AML-RMC1," "AML-RMC2," "AML-RMC3," "AML-RMC4," and "AML-RMC5." It was only after the marking of the seized items that the Pansol barangay officials were called to the crime scene and the incident was entered in the barangay blotter.[14]

The testimony of Ong-Rodrigo was dispensed with after the parties agreed to stipulate on the following:

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[12] *Id.* at 6-11.

[13] *Id.* at 11-13.

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

1. [Her] qualification and expertise;

2. That pursuant to a letter request for laboratory examination on May 25, 2010 signed by Nestor dela Cueva, the six (6) specimens and the requests were delivered by PO2 Llorente to the Crime Laboratory. Witness examined the following six (6) specimens:

   a) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC" (Exh. "D") with 0.02 gram;

   b) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC1" (Exh. "D1") with 0.03 gram;

   c) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC2" (Exh. "D2") with 0.02 gram;

   d) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC3" (Exh. "D3") with 0.02 gram;

   e) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC4" (Exh. "D4") with 0.02 gram;

   f) one (1) elongated small heat-sealed transparent plastic sachet with white crystalline substance marked as "AML-RMC5" (Exh. "D5") with 0.03 gram;

   And after quarantine examination, she found the specimen mentioned together with their corresponding weights positive (+) for methamphetamine hydrochloride. After which, she issued chemistry report no. D-105-10.

3. The authenticity and due execution of chemistry report no. D-105-10.[15]

Version of the Defense

On 25 March 2010, accused-appellant went to the house of Rueda at Villa Peregrina, Pansol, Calamba City, to sort out his

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[15] Records (Crim. Case No. 17178-2010-C) pp. 82-83.

problems at home. While accused-appellant was sleeping in Rueda's house at around 4:00 p.m., he was roused by a noise from outside. As accused-appellant was about to open the door to check what was happening, two armed men in civilian clothing ordered him to lie on his stomach and asked if he was Joaquin Bordado. As accused-appellant was about to lie down, he told them that his name was Allan Lumagui. Several other persons arrived thereafter.[16]

PO2 Llorente, who was his batch mate in school, brought accused-appellant to a room where he was asked what he was doing in Rueda's house. Accused-appellant told him he had left home. PO2 Llorente's companions then asked accused-appellant the whereabouts of a gun; when he said he did not know about it, he was asked where Rueda was. Accused-appellant told them that he did not know where he went.[17]

When Rueda came home after a few minutes, he was immediately handcuffed and, together with accused-appellant, was brought to the living room where the armed men continued to ask for the whereabouts of a gun. Rueda told them that there was no gun in the house and said that they had found nothing when they searched the place. PO2 Llorente brought out a bag, poured out its contents, i.e., lighters and plastic sachets containing a white substance, on top of the table in front of Rueda and accused-appellant, arranged the items, and took pictures of the items together with Rueda and accused-appellant. Thereafter, the barangay officials arrived and jotted down accused-appellant's identification card in a logbook. Rueda and accused-appellant were made to board a pick-up and were brought to the police station.[18]

The Ruling of the RTC

The RTC held that, although not all the requirements under Sec. 21 of R.A. No. 9165 were complied with, it believed that

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[16] TSN, 5 June 2012, pp. 3-5.

[17] *Id*. at 6.

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

the integrity of the evidence had been duly preserved. It ruled that there was no showing that the arresting officers had ill motive against accused-appellant as in fact PO2 Llorente was his friend. It held that the prosecution was able to prove that accused-appellant, together with Rueda, was arrested in a legitimate buy-bust operation. Accused-appellant was positively identified by the prosecution witnesses and was caught in conspiracy with Rueda in the sale and possession of *shabu* and that the chain of custody was substantially proven. The RTC further ruled that the defense failed to overcome the presumption that the police officers had performed their duty with regularity.[19]

The dispositive portion of the RTC decision reads:

> WHEREFORE, in view of the foregoing, the accused **ALLAN M. LUMAGUI** is hereby found **GUILTY** beyond reasonable doubt of committing both offenses, as charged and is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and a fine of **FIVE HUNDRED THOUSAND PESOS (PHP500,000.00)** for Crim. Case No. 17179-2010-C; and
>
> Under Crim. Case No. 17178-2010-C, the accused is hereby sentenced to suffer the penalty of **IMPRISONMENT OF TWELVE (12) YEARS AND ONE DAY TO TWENTY (20) YEARS** and a fine of **THREE HUNDRED THOUSAND PESOS (PHP300,000.00).**
>
> In accordance with law, the Branch Clerk of Court shall forward the seized shabu in these cases to the Region IV-A, Philippine Drug Enforcement Agency, Camp Vicente Lim, Canlubang, Calamba City, Laguna for destruction.
>
> Furnish the Philippine Drug Enforcement Agency a copy of the Decision for its information and guidance.
>
> Costs against the accused.[20]

Aggrieved with the RTC's disposition of the charges against him, accused-appellant assailed the decision before the CA.

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[19] Records (Crim. Case No. 17178-2010-C) pp. 173-175.

[20] *Id*. at 175.

The Ruling of the CA

The CA found no merit in the appeal holding that criminal prosecutions involving violations of R.A. No. 9165 depend largely on the credibility of the police officers who conducted the buy-bust operation. It held that, granting that the buy-bust team failed to strictly implement the post-operational requirements as provided in Sec. 21 of the Act, its Implementing Rules and Regulations *(IRR),* however, offers flexibility with regard to the custody and disposition of the confiscated illegal drugs. It ruled that the prosecution had established with certainty that the police officers had complied with the required unbroken chain of custody of the seized items from the accused-appellant, and that the integrity and evidentiary value of the items were preserved. Additionally, accused-appellant failed to show that the buy-bust team was stirred by illicit motive or failed to perform their duty, hence, their testimonies deserve full faith and credit.[21]

With these findings, the CA resolved the appeal as follows:

WHEREFORE, the instant appeal is **DISMISSED.** The *Decision* dated 2 September 2013 of the Regional Trial Court of Calamba City, Branch 36, in Criminal Case Nos. 17178-2010-C and 17179-2010-C is hereby **AFFIRMED**.[22]

ISSUES

I.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE FACT THAT THE PROSECUTION FAILED TO ESTABLISH THE EXISTENCE OF THE INVENTORY OF THE SEIZED DRUGS AS REQUIRED UNDER SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE FACT THAT THE PROSECUTION

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[21] *Rollo*, pp. 8-12.

[22] *Id*. at 12.

FAILED TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE SEIZED DRUGS.[23]

OUR RULING

The appeal is meritorious.

The linkages in the chain of custody of the seized items were broken; thus, the identity and evidentiary value of the seized items were compromised.

The teaching consistently upheld in our jurisdiction is that in all prosecutions for violations of R.A. No. 9165, the *corpus delicti* is the dangerous drug itself, the existence of which is essential to a judgment of conviction; thus, its identity must be clearly established.[24] 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.*[25] 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.[26]

The chain of custody of the dangerous drugs has been jurisprudentially established as follows: "*first,* the seizure and

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[23] CA *rollo*, pp. 43-44.

[24] *People v. Jaafar*, G.R. No. 219829, 18 January 2017.

[25] *Belmonte v. People*, G.R. No. 224143, 28 June 2017.

[26] *People v. Jaafar*, *supra* note 23 cited in *People v. Arposeple*, G.R. No. 205787, 22 November 2017.

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."[27]

Sec. 21 of R.A. No. 9165 provides for the meticulous requirement as to the chain of custody of seized drugs and paraphernalia, *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;

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[27] *People v. Macud*, G.R. No. 219175, 14 December 2017.

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 detailed procedure relevant to Sec. 21(a) of R.A. No. 9165 can be found in its IRR, *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.

a. the first link: the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer

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.[28] 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.[29]

While there is no issue that it was PO1 Cruz who placed the markings on the seized items, the relevant question that arises is the determination of the period when these markings were placed considering the obvious conflicting testimony of the prosecution witnesses. PO1 Cruz testified that right after he got hold of the seized items, he immediately placed the markings thereon and it was only thereafter that the barangay officials were called to the scene of the crime to have the incident recorded in the barangay blotter, *viz*:

FISCAL BANATIN:

x x x x x x x x x

Q. What did you do, Mr. witness after you were able to get hold of Antonio Rueda?
A. I immediately handcuffed Antonio Rueda and I was able to get hold again of the buy-bust money from him, sir?

Q. And what happened after you were able to recover from Antonio Rueda the buy-bust money, Mr. witness?
A. I immediately put markings on the evidence that I was able to recover from Rueda and immediately went to PO2 Llorente.

Q. How about the plastic sachet which was brought by your civilian asset, Mr. witness, what happened to that?
A. It was given to me and I immediately put markings on it, sir.

Q. What are the markings [that] you placed on the plastic sachet which was brought by your civilian asset?
A. "AML-RMC," sir.

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[28] *People v. Gayoso*, G.R. No. 206590, 27 March 2017.

[29] *People v. Ismael*, G.R. No. 208093, 20 February 2017.

x x x x x x x x x

Q. After you placed the marking "AML-RMC" [on] the plastic sachet which was bought from Antonio Rueda by your civilian asset, what did you do next, Mr. witness?

A. After I went to PO2 Llorente, we conducted a preventive search and we were able to recover from Lumagui five (5) plastic sachets.

Q. Who conducted a preventive search on the person of Allan Lumagui, Mr. witness?

A. I, sir.

Q. And you were also the person who was able to recover from Allan Lumagui five (5) pieces of plastic sachets, is that correct?

A. Yes, sir.

Q. What did you do, Mr. witness, with those plastic sachets?

A. I also put markings on those 5 plastic sachets, sir.

Q. What were the markings you placed on those 5 plastic sachets recovered from Allan Lumagui?

A. "AML-RMC" to "AML-RMC5," sir.

x x x x x x x x x

Q. What happened after you placed the markings on those plastic sachets, Mr. witness?

A. We called on the barangay officials of barangay Pansol and have it blottered, sir.

Q. And the barangay official of barangay Pansol caused the blotter of the incident, Mr. witness?

A. Yes, sir.

Q. How about the plastic sachets which were recovered from both accused, were they included in the blotter, Mr. witness?

A. Yes, sir.[30] (emphases supplied)

On the one hand, PO2 Llorente testified that it was only after the barangay officials were called to the scene of the crime that the seized items were marked, *viz*:

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[30] TSN, 3 August 2011, pp. 12-15.

PROS. BANATIN:

Q. What happened, Mr. witness, after you called the barangay officials?

A. In front of the barangay officials, PO1 Cruz put markings and at the same time had it blottered at the barangay blotter, sir.

Q. Did you see PO1 Cruz placing markings on those specimens, Mr. witness?

A. Yes, sir, I have also pictures with me, sir.[31] (emphasis supplied)

It is worthy to note that, although there was a photograph[32] showing accused-appellant, Rueda, and the barangay official with the seized items, the requirement specified in Sec. 21(a)[33] of the IRR of R.A. No. 9165 was not complied with. A reading of the testimony of PO1 Cruz and PO2 Llorente will readily show that the physical inventory envisioned in the IRR was substituted by the police officers with the recording of the incident in the barangay blotter. It must be stressed, however, that this alternate method resorted to by the police officers is not sanctioned by R.A. No. 9165.

It was only during the cross-examination and after he was reminded of the provisions of Sec. 21 of R.A. No. 9165 that PO1 Cruz belatedly claimed that a physical inventory of the seized items was conducted after the buy-bust operation.[34] However, no physical evidence was presented and formally offered by the prosecution to prove that the police officers

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[31] TSN, 7 September 2011, p. 5.

[32] Records (Crim. Case No. 17178-2010-C) p. 114; Exh. "E".

[33] "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. x x x"

[34] TSN, 3 August 2011, p. 24.

actually undertook an inventory of these items. Indeed, PO1 Cruz's admission that the alleged inventory was not submitted to the prosecutors' office or attached to the records of these cases[35] buttresses the logical conclusion that no inventory had taken place.

While it is true that the Court has consistently declared that under varied field conditions, strict compliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 may not always be possible, the IRR of R.A. No. 9165, however, has provided that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **noncompliance with the requirements of Sec. 21, Art. II of R.A. No. 9165 under justifiable grounds — will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[36] "In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for noncompliance; **and** (*b)* the integrity and evidentiary value of the seized items are properly preserved."[37]

In this instance, the prosecution failed to elicit from the police officers a single justifiable ground in not complying with the requirement of Sec. 21 of R.A. No. 9165 and its IRR; thus, the Court cannot presume what these grounds are or that they even exist.[38]

Refuting the claim of PO1 Cruz that he had already placed markings on the seized items before the barangay official was

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[35] *Id*.

[36] *People v. Crispo*, G.R. No. 230065, 14 March 2018.

[37] *People v. Ceralde,* G.R. No. 228894, 7 August 2017.

[38] *People v. Crispo, supra* note 35.

called to the crime scene, is the photograph[39] depicting the seized items which do not bear any markings.

Notwithstanding the inconsistent testimony as to when the markings were placed on the seized items, it is significant to state that the photographs[40] show lighters and other paraphernalia which were never mentioned by PO1 Cruz or PO2 Llorente during their testimony. To stress, PO1 Cruz firmly stated that only the following items were seized after the buy-bust operation: the plastic sachet subject of the sale transaction by the asset with Rueda; the buy-bust money from Rueda; and the five plastic sachets seized from accused-appellant. Corollary thereto, serious doubt lingers on whether a buy-bust operation actually took place in these cases and whether the items presented before the RTC were the very same articles seized during the alleged buy-bust operation.

b. the second link: the turnover of the illegal drug seized by the apprehending officer to the investigating officer

The "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 at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of the seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition."[41]

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[39] Records (Crim. Case No. 17178-2010-C) p. 114; Exh. "E-1".

[40] *Id.*; Exh. "E" and"E-1".

[41] Sec. l(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002.

The record is bereft of any showing on who had possession of the seized items from the crime scene to the police station. Likewise, the prosecution did not establish who was in possession of the seized items at the police station before these were endorsed to the laboratory.

c. the third link: the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination

PO1 Cruz claimed that it was PO2 Llorente who brought the seized items to the laboratory[42] and verified by the stamp on the lower left side of Col. dela Cueva's request[43] for the laboratory examination of the seized items, i.e., "DELIVERED BY PO2 LLORENTE AB."

A review of the records will again show that the prosecution miserably failed to show how PO2 Llorente came into possession of the seized items prior to their delivery to the laboratory. Moreover, there was no indication whether PO2 Llorente was assigned as the investigating officer in these cases or had the authority to bring the seized items to the laboratory.

d. the fourth link: the turnover and submission of the marked illegal drug from the forensic chemist to the court

In *People v. Pajarin*,[44] the Court ruled that the chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered with pending trial.

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[42] TSN, 3 August 2011, p.15.

[43] Records (Crim. Case No. 17178-2010-C) p. 112; Exh. "B".

[44] 654 Phil. 461, 466 (2011).

As earlier stated, the testimony of Ong-Rodrigo was dispensed with due to the stipulation between the prosecution and the defense. Carelessly, however, the prosecution's offer for stipulation was limited to the following matters, to wit: her qualification and expertise; the subject matter of her examination which consisted of six heat-sealed plastic sachets; and the authenticity and due execution of chemistry report number D-105-10 dated 25 March 2010.[45] Undoubtedly, the prosecution failed to offer for stipulation that Ong-Rodrigo took the precautionary steps dictated in *Pajarin* when it dispensed with her testimony. It must be stressed that the Court cannot simply presume that these precautionary steps had been observed by Ong-Rodrigo especially when there is nothing from the records to support such finding.

Conspicuously absent from the offer for stipulation by the prosecution was the identity of the person who delivered the seized items to the RTC. Most importantly, the records were wanting of proof to establish the identity of the person who had temporary custody of the seized item for the purpose of safekeeping from the laboratory until these were brought to the court.

The evidence of the prosecution cannot support the conclusion that there was a legitimate buy-bust operation.

Significantly, an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[46] The appeal confers to 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

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[45] TSN, 23 June 2011, pp. 3-4.

[46] *People v. Crispo*, *supra* note 35.

of the penal law.[47] While it is an established jurisprudence that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying,[48] this, however, is not cast in stone. Thus, it was pursuant to this full jurisdiction of the Court that it reviewed the records of these cases and found that it could not sustain the findings of the RTC as there were facts or circumstances of weight and influence which had been overlooked or the significance of which the RTC had misinterpreted.

PO1 Cruz testified that he was about three to five arm-lengths away from the asset at the time of the transaction. PO1 Cruz claimed that it was not possible for Rueda to see him because there was a gate and a tall plant in front of him; although he could vividly see the sale transaction between Rueda and the asset. PO1 Cruz's testimony confirmed that he was not part of the sale transaction but was a back-up, as follows:

ATTY. AGUILA

Q. And you said that you positioned yourself at a distance of roughly three (3) to five (5) arm-lengths from the location of the asset and the subject which in this case is Antonio Rueda, is that correct?
A. Yes, ma'am.

x x x x x x x x x

Q. So you are trying to impress this Court that you witnessed the transaction?
A. Yes, ma'am.

Q. And that the area was well-lighted?
A. Yes, ma'am.

Q. So, it is possible also for the accused to see you?
A. He will not immediately notice me because there was a gate and a tall plant.

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[47] *People v. Lumaya*, G.R. No. 231983, 7 March 2018.

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

Q. So you mean to say in front of you there was a gate and a tall plant which could hamper your vision?
A. In between the plant and the gate, I can see the incident, ma'am.

Q. But there is a plant between you and the accused and the asset?
A. Yes, ma'am.[49] (emphasis supplied)

PO2 Llorente, who also witnessed the sale transaction, testified that PO1 Cruz acted as the poseur-buyer during the sale transaction, *viz*:

PROS. BANATIN:

Q. And how about you Mr. witness, what was your involvement in the operation?
A. I am the security back up of PO1 Richard Cruz, sir.

x x x x x x x x x

Q. So what happened Mr. witness, were you able to conduct the operation?
A. Yes, sir, the informant together with Sgt. Cruz conducted a buy bust operation and we acted as security for officer Naredo, sir.

Q. Who acted as the poseur buyer, Mr. Witness?
A. POI Richard Cruz, sir.

Q. As backup officer, Mr. Witness, how far were you from PO1 Cruz?
A. We were in the middle of the alley, sir, around 6 meters away.

Q. How about the accused in these cases, where were they at that time?
A. They were inside that's why the asset and PO1 Cruz also went inside, [s]ir.

Q. Inside what, Mr. Witness?
A. In an abandoned resort in Pansol, sir.[50] (emphasis supplied)

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[49] TSN, 3 August 2011, pp. 19, 21.

[50] TSN, 7 September 2011, p. 4.

Another factor that worked heavily against the claim that a legitimate buy-bust operation took place in these cases was the conflicting testimony as to the pre-arranged signal that the sale transaction had already been consummated. PO1 Cruz stated that as Rueda and accused-appellant were about to enter the resort after the sale transaction, he ran after Rueda while SPO1 Naredo, PO2 Llorente, and Capt. Sarreal went after the accused-appellant.[51] Apparently, the prosecution wanted to impress upon the trial court that because the back-up team was only five meters away from the crime scene and having witnessed the transaction, they went immediately after the accused-appellant when the sale had been consummated. Simply put, there was no pre-arranged signal as far as PO1 Cruz was concerned.

On the one hand, it can be easily gathered from the testimony of PO2 Llorente that the pre-arranged signal that the transaction was already consummated was the call he would receive from PO1 Cruz. Thus, PO2 Llorente claimed that it was only after his receipt of the call from PO1 Cruz that the team proceeded inside the resort to apprehend Rueda and the accused-appellant.[52] Surely, if his call to PO2 Llorente was the pre-arranged signal, PO1 Cruz could not have forgotten it when he testified.

Accused-appellant was charged with and convicted in Crim. Case 17178-2010-C for violation of Sec. 11,[53] Art. II of R.A.

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[51] TSN, 3 August 2011, p. 12.

[52] TSN, 7 September 2011, p. 5.

[53] 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.

No. 9165, the necessary 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.[54] In Crim. Case No. 17179-2010-C, the elements that should be proven beyond moral certainty for the attempt or conspiracy under Sec. 26,[55] Art. II of R.A. No. 9165 for the illegal sale of dangerous drugs are as follows: *(a)* the identity of the buyer and the seller, the object and the consideration; and *(b)* the delivery of the thing sold and the payment.[56]

Although, admittedly, the matters as to who acted as the poseur-buyer and the pre-arranged signals during the buy-bust operation are not elements of violation of Secs. 11 and 26 of R.A. No. 9165, the Court is persuaded to place emphasis on the conflicting testimonies relevant to these matters considering the pervading doubt on whether a legitimate buy-bust operation was conducted by the police officers.

It must be stressed that PO1 Cruz had disclosed that Rueda was the subject of a previous buy-bust operation but he was able to escape. PO1 Cruz knew that a case had been filed against Rueda before the RTC, Calamba, and that trial thereon was still ongoing.[57] It bewilders therefore, that despite PO1 Cruz's knowledge of the whereabouts of Rueda, he did not secure a warrant for his arrest and instead proceeded with the conduct of a buy-bust operation.

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[54] *People v. Lumaya*, *supra* note 47.

[55] Sec. 26**.** *Attempt or Conspiracy.* – Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:

x x x x x x x x x

(b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;

[56] *People v. Lumaya*, *supra* note 47.

[57] TSN, 3 August 2011, p. 18.

The uncertainty as to whether a legitimate buy-bust operation took place in these cases coupled with the glaring truth that each of the linkages in the chain of custody was broken, put too much strain on the claims of the prosecution that accused-appellant was in possession of the items allegedly seized from him in Crim. Case 17178-2010-C, and that he conspired with Rueda to sell prohibited drugs in Crim. Case 17179-2010-C. Worse, with the broken chain of custody, the identity and the evidentiary value of the items allegedly seized from the accused-appellant had been seriously compromised.

The presumption of regularity in the performance of duty cannot prevail over the constitutional right of the accused to be presumed innocent.

Much emphasis was given by the RTC and the CA on the presumption of regularity in the performance of duty by the police officers in striking down accused-appellant's defense of denial and frame-up.

The presumption of innocence of an accused is a fundamental constitutional right that should be upheld at all times, *viz*:

> 2. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided, that he has been duly notified and his failure to appear is unjustifiable.

In consonance with this constitutional provision, the burden of proof rests upon the prosecution and the accused must then be acquitted and set free should the prosecution not overcome

the presumption of innocence in his favor.[58] Concomitant thereto, the evidence of the prosecution must stand on its own strength and not rely on the weakness of the evidence of the defense.[59] Rule 133, Sec. 2 of the Revised Rules on Evidence specifically provides that the degree of proof required to secure the accused's conviction is proof beyond reasonable doubt, which does not mean such a degree of proof that excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind.

The fact is underscored that the records of these cases are replete with proof showing the serious lapses committed by the police officers. "Serious uncertainty is generated on the identity of the *shabu* in view of the broken linkages in the chain of custody; thus, the presumption of regularity in the performance of official duty accorded to the apprehending officers by the courts below cannot arise."[60] Even granting that the defense presented by accused-appellant was inherently weak or that the record is bereft of any showing that there was ill motive on the part of the police officers in their conduct of the alleged buy-bust operation, these matters cannot outweigh the right of the accused to be presumed innocent, of which great premium is accorded by the fundamental law.

WHEREFORE, the appeal is **GRANTED**. The Decision dated 24 April 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06423 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Allan Lumagui y Maligid is **ACQUITTED** of the crimes charged. He is ordered **IMMEDIATELY RELEASED** from detention unless he is otherwise legally detained for another cause.

Let a copy of this Decision be sent to the Superintendent of the New Bilibid Prisons for immediate implementation. The

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

[59] *People v. Santos*, G.R. No. 223142, 17 January 2018.

[60] *People v. Gayoso, supra* note 27.

New Bilibid Prison Superintendent is directed to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 225059. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **XXX**[*]**,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, AN ACCUSED MAY BE CONVICTED BASED ON THE VICTIM'S SOLE

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[*] The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to RA 7610 titled, "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; RA 9262 titled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, 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,

TESTIMONY, PROVIDED THAT IT IS LOGICAL, CREDIBLE, CONSISTENT, AND CONVINCING.— It is a long-standing rule that in rape cases, an accused may be convicted based on the victim's sole testimony, provided that it is logical, credible, consistent, and convincing. The rule becomes more binding where – as in the instant case – the victims are young and immature, not only because of their relative vulnerability, but also because of the shame and embarrassment which they stand to suffer during trial, if indeed the matters to be testified on were untrue.

2. ID.; ID.; ID.; WHEN THE CASE PIVOTS ON THE ISSUE OF THE CREDIBILITY OF THE VICTIM, THE FINDINGS OF THE TRIAL COURTS NECESSARILY CARRY GREAT WEIGHT AND RESPECT.— The Court has stressed, in the same vein, that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court. Thus, when the case pivots on the issue of the credibility of the victim, the findings of the trial courts necessarily carry great weight and respect. This is so because trial courts are in the most advantageous position to ascertain and measure the sincerity and spontaneity of witnesses during trial.

3. ID.; ID.; ID.; WHEN A RAPE VICTIM'S ACCOUNT IS STRAIGHTFORWARD AND CANDID AND IS FURTHER CORROBORATED BY THE MEDICAL FINDINGS OF THE EXAMINING PHYSICIAN, SUCH TESTIMONY IS SUFFICIENT TO SUPPORT A CONVICTION.— [B]BB's narration of events was corroborated by the physical evidence, as contained in the medico-legal report x x x. The Court has held on several occasions that when a rape victim's account is straightforward and candid and is further corroborated by the medical findings of the examining physician, such testimony is sufficient to support a conviction. As correctly pointed out

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342 [2013]. See also Amended Administrative Circular No. 83-2015 titled "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; and *People v. XXX and YYY*, G.R. No. 235652, July 9, 2018.)

in the questioned Decision, BBB was able to describe in clear detail how each incident of rape was committed by XXX. Moreover, the RTC, after observing BBB's manner and demeanor firsthand during trial, was sufficiently convinced of her credibility and the truthfulness of her testimony.

4. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; IN CRIMINAL PROSECUTIONS, "PROOF BEYOND REASONABLE DOUBT" DOES NOT MEAN SUCH DEGREE OF PROOF, EXCLUDING POSSIBILITY OF ERROR, THAT PRODUCES ABSOLUTE CERTAINTY; ONLY "MORAL CERTAINTY" IS REQUIRED, OR THAT DEGREE OF PROOF WHICH PRODUCES CONVICTION IN AN UNPREJUDICED MIND.— In criminal prosecutions, "proof beyond reasonable doubt" does not mean such degree of proof, excluding possibility of error, that produces absolute certainty; only "moral certainty" is required, or that degree of proof which produces conviction in an unprejudiced mind. Proceeding from the foregoing, the Court finds that XXX's guilt was proven beyond reasonable doubt by the evidence of the prosecution.

5. ID.; ID.; CREDIBILITY OF WITNESSES; A DELAY IN REPORTING A RAPE IS NOT *PER SE* SUFFICIENT BASIS TO DISBELIEVE AN ALLEGATION OF RAPE, AS ACCUSED'S MORAL ASCENDANCY OVER THE RAPE VICTIM IS MORE THAN ENOUGH TO SILENCE HER, NOT TO MENTION THE NORMAL TENDENCY OF RAPE VICTIM TO CONCEAL HER HUMILIATION AND SHAME RESULTING FROM THE IRREVOCABLE VIOLATION OF HER HONOR.— Delay, on its own, is open to many interpretations. Here, the Court takes note that the delay attributed to BBB together with her alleged failure to resist XXX's advances were fully explained in BBB's testimony x x x. The x x x narration adequately dispels whatever doubt XXX attempts to foster against BBB's credibility. Based on BBB's testimony, in all the incidents of rape, XXX was armed with a deadly weapon and he would, in several occasions, threaten BBB not to tell anyone of his acts. Thus, considering that XXX is the father of BBB, his moral ascendancy was certainly more than enough to silence her, not to mention the normal tendency of rape victims to conceal their humiliation and shame resulting from the irrevocable violation of their honor. On this score,

the case of *People v. Mingming* instructs: [W]e do not believe that delay in reporting a rape should directly and immediately translate to the conclusion that the reported rape did not take place; there can be no hard and fast rule to determine when a delay in reporting a rape can have the effect of affecting the victim's credibility. The heavy psychological and social toll alone that a rape accusation exacts on the rape victim already speaks against the view that a delay puts the veracity of a charge of rape in doubt. The effects of threats and the fear that they induce must also be factored in. At least one study shows that the decisive factor for non-reporting and the failure to prosecute a rape is the lack of support – familial, institutional and societal – for the rape victim, given the unfavorable socio-cultural and policy environment. All these, to our mind, speak for themselves in negating the conclusion that a delay in reporting a rape is *per se* sufficient basis to disbelieve an allegation of rape. The more reasonable approach is to take the delay into account but to disregard it if there are justifiable explanations for the victim's prolonged silence.

6. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; GENERALLY VIEWED WITH DISFAVOR BY THE COURTS DUE TO THEIR INHERENT WEAKNESS, HENCE, TO BE GIVEN EVIDENTIARY VALUE, SUCH DEFENSES MUST BE SUPPORTED BY STRONG EVIDENCE OF INNOCENCE INDEPENDENT OF THE ACCUSED'S SELF-SERVING STATEMENTS.— The defenses of alibi and denial are generally viewed with disfavor by the courts due to their inherent weakness. Hence, to be given evidentiary value, such defenses must be supported by strong evidence of innocence independent of the accused's self-serving statements. x x x. Here, XXX flatly denied all the accusations against him, imputing instead ill motive on the part of BBB for being "isip bata." XXX further claimed that BBB allegedly visited him in jail to ask for his forgiveness in falsely accusing of raping her and that the same was witnessed by his son and overheard by the "mayor" of the jail. Significantly, XXX's various claims were left uncorroborated during trial. XXX never presented any documentary evidence nor did he present any of the alleged witness to lend truth to his allegations. As observed by the RTC, that XXX's wife and two (2) sons chose to keep silent only adds credence to the truthfulness of BBB's imputations against her father.

7. ID.; ID.; DEFENSE OF ALIBI; TO BE CONSIDERED, THE ACCUSED MUST PROVE NOT ONLY THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED BUT THAT IT WAS ALSO PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE CRIME SCENE OR ITS IMMEDIATE VICINITY AT THE APPROXIMATE TIME OF ITS COMMISSION.— [F]or the defense of alibi to be considered, the accused must prove not only that he was somewhere else when the crime was committed but that it was also physically impossible for him to have been at the crime scene or its immediate vicinity at the approximate time of its commission. x x x. [A]s regards the May 18, 2010 incident in Criminal Case No. 671-V-10, XXX claimed that he was out of the house the entire day as he was working as a pedicab driver then. However, the records are bereft of any evidence, other than XXX's bare testimony, that it was physically impossible for him to be at the *locus criminis* at the time the act complained of transpired. XXX's defense of alibi must therefore be rejected.

8. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCE OF MINORITY; CANNOT BE CONSIDERED WHERE THE SAME WAS NOT PROPERLY ALLEGED IN THE INFORMATION, EVEN IF ESTABLISHED DURING THE TRIAL ITSELF.— As charged in the Information, the penalty imposable under Section 11 of Republic Act (R.A.) No. 7659, amending the RPC, is *reclusion perpetua* to death as the crime was committed with the use of a deadly weapon. However, because of R.A. No. 9346, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the Court can only mete out the penalty of *reclusion perpetua*. Parenthetically, the Court cannot take cognizance of the fact of BBB's minority as an attendant circumstance as the same was not properly alleged in the Information. While such fact was established during the trial itself, the same cannot be considered without infringing upon XXX's constitutional right to be informed of the nature and cause of the accusation against him.

9. ID.; ID.; RAPE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— [T]o conform with prevailing jurisprudence, the Court hereby awards the amounts of Seventy-Five Thousand

Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages.

10. ID.; ID.; ELEMENTS; ESTABLISHED; PROPER IMPOSABLE PENALTY.— With respect to these three (3) Informations, the crimes charged therein are punishable by death under R.A. No. 7659, as the following elements were sufficiently alleged and established during trial: (i) that the victim was below eighteen (18) years of age at the time all three (3) rape incidents occurred, and (ii) that the offender is the parent of the victim.

11. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Considering that the imposable penalty therefor is death but reduced to *reclusion perpetua* following R.A. No. 9346, the civil indemnity as well as the award for moral and exemplary damages shall each be set at One Hundred Thousand Pesos (₱100,000.00) for each count of rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an appeal[1] filed under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated July 24, 2015(questioned Decision) of the Court of Appeals, Eleventh Division (CA), in CA-G.R. CR-HC No. 05783, which affirmed the Joint Decision[3] dated July 10, 2012 (RTC Decision) of the Regional Trial Court of Valenzuela City, Branch 270 (RTC) in Criminal Case

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[1] CA *rollo*, pp. 157-159.

[2] *Rollo*, pp. 2-32. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rodil V. Zalameda and Pedro B. Corales concurring.

[3] CA *rollo*, pp. 54-76. Penned by Presiding Judge Evangeline M. Francisco.

Nos. 671-V-10, 672-V-10, 673-V-10, and 674-V-10, convicting herein accused-appellant XXX for the crimes charged therein.

The Facts

Four (4) separate Informations for rape under Article 266-A, par. 1, in relation to Article 266-B, par. 2, of the Revised Penal Code[4] were filed in the RTC against XXX for four (4) counts of rape committed against BBB, as follows:

CRIMINAL CASE NO. 671-V-10

The undersigned State Prosecutor accuses [XXX] of the crime of Rape under Article 266-A, par. 1 in relation to Art. 266-B, 2nd Par. of the RPC, committed as follows:

That on or about May 18, 2010 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of the complainant, with lewd design, by means of force and intimidation employed upon the person of one "BBB", did then and there willfully, unlawfully and feloniously have sexual intercourse with the said complainant, against her will and without her consent.

CONTRARY TO LAW.[5]

CRIMINAL CASE NO. 672-V-10

The undersigned State Prosecutor accuses [XXX] of the crime of Rape under Article 266-A, par. 1 in relation to Art. 266-B, 2nd Par. of the RPC, committed as follows:

That sometime in the year 2005 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of the complainant, with lewd design, by means of force and intimidation employed upon the person of one "BBB", then 15 years old, did then and there willfully, unlawfully and feloniously have sexual intercourse for the second time, the first

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[4] As amended by Republic Act No. 8353 (THE ANTI-RAPE LAW OF 1997) in relation to Republic Act No. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT).

[5] *Rollo*, pp. 2-3.

happened when "BBB" was 14 years old, with the said complainant, against her will and without her consent, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.[6]

CRIMINAL CASE NO. 673-V-10

The undersigned State Prosecutor accuses [XXX] of the crime of Rape under Article 266-A, par. 1 in relation to Art. 266-B, 2nd Par. of the RPC, committed as follows:

That sometime in the year 2005 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of the complainant, with lewd design, by means of force and intimidation employed upon the person of one "BBB", then 15 years old, did then and there willfully, unlawfully and feloniously have sexual intercourse for the third time, against her will and without her consent, thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.[7]

CRIMINAL CASE NO. 674-V-10

The undersigned State Prosecutor accuses [XXX] of the crime of Rape under Article 266-A, par. 1 in relation to Art. 266-B, 2nd Par. of the RPC, committed as follows:

That sometime in the year 2004 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, being then the father of the complainant, with lewd design, by means of force and intimidation employed upon the person of one "BBB", then 14 years old, did then and there willfully, unlawfully and feloniously have sexual intercourse with the said complainant thereby subjecting the said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.

CONTRARY TO LAW.[8]

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[6] *Id*. at 3.

[7] *Id*.

[8] *Id*. at 4.

Upon arraignment, XXX pleaded "not guilty" to all charges.[9] Trial on the merits ensued thereafter.

The antecedent facts were summarized in the RTC Decision, as affirmed by the CA, as follows:

THE VERSION OF THE PROSECUTION

"BBB" is the daughter of the accused, [XXX]. She is the only girl in the brood of three. Her mother is a manicurist while the accused is a pedicab driver. She recounted that on four different occasions, her father ravished her, inside their residence located at xxx, Valenzuela City.

It was in 2004 when she was still fourteen (14) years old that her very own father, the accused did the first horrid act of ravishing her. It was her narration that she arrived home from school and her mother and two brothers were not around. Her father went inside her room and began to undress her and made her lie down. He was naked and he went on top of her, inserted his penis to her vagina, caressed her thigh and made a pumping motion. She accounted that her father was then holding a knife and told her that if she would report what he did to her, he would kill her mother. She felt not only pain. She was afraid and angry at the same time. She felt so afraid that she was not able to fight back or even to shout for help.

The same bestial act of the accused towards her was repeated for the second time in 2005 at around 10:00 o'clock in the evening. Her father came home drunk. She was then left alone in their house watching TV. He instructed her to turn off the TV. He undressed himself and told her to remover hers too. He was at that time holding a knife compelling her to succumb to his desire out of fear. He told her to lie down. He initially sat beside her, caressed her thighs, then, went on top of her, and inserted his penis to her vagina while doing a pumping motion. He stopped when he heard someone knocking at the door.

About four (4) months had lapsed and she recalled that it was "holy week" in 2005 that she suffered the same fate in the hands of her father, the accused, once more. Her mother and siblings went to a birthday party that fateful night. She was sick then and was not

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[9] *Id.*

able to come along in the said birthday party. Her father just drove her mother and siblings and went back home drunk. He again went near her. She began to cry. But her father told her not to be noisy as he would do something to her and pulled a knife from his back pocket. He removed her blanket and while showing a knife began to undress her. He removed his clothing too. He told her to lie face down. He caressed her buttocks and thighs and inserted his penis to (*sic*) her vagina from behind. He did a pumping motion and when he stopped she was able to touch a sticky white substance slathered on her thighs.

On May 18, 2010, the accused repeated the same horrid act to her. Her father had a drinking session with his friend, a fellow pedicab driver. He came home very drunk and sent her cousin and brother to do an errand. She assisted her father in going to bed and gave him a sponge bath. After she had given him a sponge bath, he stood up and got a knife in a small box and started caressing her. With the use of the knife he tore down the shirt she was wearing, pulled down her shorts. For himself, he removed his underwear and stayed on top of her, inserted his penis, pumped for a while and left her alone.

She attested that it took her a while before she was able to muster enough courage to reveal to others her ordeal in the hands of her own father. She kept in silence for a long time, not revealing to anyone [what her] father had been doing to her, afraid that if she would tell anyone, her father would make good his threat to kill her mother and her family would be saddled with problems.

It was in 2010 that she decided not to go home anymore. She opted to stay in the house of a friend, "CCC". After a week and she was no longer coming back home with her family, her friend, "CCC" began to probe her, why she was not going home anymore. It was then that she disclosed to "CCC" what she had been through in the hands of her father. Her friend encouraged and helped her in filing a formal complaint against her father. They went to the police authorities at Polo Police Station. She was referred to the Women's Protection Desk. It was there that her Sworn Statement was taken. After, which she was subjected to medical examinations.

x x x x x x x x x

THE VERSION OF THE DEFENSE

[XXX] testified to belie the imputation against him made by his own daughter, [BBB]. He flatly denied the truth in the asseveration of facts labeled against him by his daughter, [BBB]. He claimed that

there is no truth in the charges against him stating that his daughter is "isip bata" and was influenced by this friend of hers with whom she is currently living with. He further claims that [BBB] visited him in jail and asked for his forgiveness for falsely accusing him of raping her. Such confession of [BBB] was witnessed by his son and overheard by the "mayor" of the jail where he is presently detained.[10]

Ruling of the RTC

In the RTC Decision, XXX was found guilty on all four (4) counts of rape and was sentenced to suffer the penalty of *reclusion perpetua* for each charge:

> WHEREFORE, in the light of the foregoing, this court finds accused [XXX]:
>
> (1) GUILTY for Criminal Case No. 671-V-10 and sentenced (*sic*) him to suffer the penalty of *reclusion perpetua*;
>
> (2) GUILTY for Criminal Case No. 672-V-10 and sentenced (*sic*) him to suffer the penalty of *reclusion perpetua*;
>
> (3) GUILTY for Criminal Case No. 673-V-10 and sentenced (*sic*) him to suffer the penalty of *reclusion perpetua*;
>
> (4) GUILTY for Criminal Case No. 674-V-10 and sentenced (*sic*) him to suffer the penalty of *reclusion perpetua*;
>
> (5) To indemnify [BBB] the amount of ₱75,000 as civil indemnity; P75,000 as moral damages; and ₱30,000 as exemplary damages, for each count of rape he was proven guilty.
>
> The service of his sentence shall be served simultaneously and his preventive imprisonment shall be credited in full to his favour.
>
> SO ORDERED.[11]

The RTC, in considering the evidence on record, found BBB's testimony to be straightforward and credible as against XXX's unsubstantiated defense of denial and alibi.[12] Likewise, XXX's

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[10] CA *rollo*, pp. 57-61.

[11] *Id*. at 75-76.

[12] *Id*. at 73-74.

imputation of ill motive to BBB was considered by the RTC as "too petty to merit belief."[13]

Unsatisfied, XXX elevated the case to the CA via Notice of Appeal dated July 17, 2012.[14] Briefs were then respectively filed by XXX and plaintiff-appellee on June 18, 2013[15] and December 6, 2013.[16]

In his appeal, XXX argued that the RTC's finding of guilt is negated by the following circumstances: (i) BBB's failure to offer any resistance or shout for help during the incidents; (ii) BBB's inconsistent statements during her testimony; (iii) BBB's willingness to live in the same house as XXX even after the incidents; (iv) BBB's failure to immediately report the crimes; and (v) the RTC's failure to give weight to his alibi that he was not at home during the May 18, 2010 incident in Criminal Case No. 671-V-10.[17]

Ruling of the CA

On July 24, 2015, the CA rendered the questioned Decision, affirming the RTC Decision with modification, to wit:

> WHEREFORE, in view of the foregoing, the Joint Decision dated July 10, 2012 of the Regional Trial Court of Valenzuela City, Branch 270, is hereby AFFIRMED with MODIFICATION, to read as follows:
>
> (1) In Criminal Case No. 671-V-10, appellant [XXX] is hereby found GUILTY and sentenced to suffer the penalty of *reclusion perpetua*;
>
> (2) In Criminal Case No. 672-V-10, appellant [XXX] is hereby found GUILTY and sentenced to suffer the penalty of *reclusion perpetua*;

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[13] *Id*. at 73.

[14] *Id*. at 6.

[15] *Id*. at 37-52.

[16] *Id*. at 91-109.

[17] *Id*. at 46-51.

(3) In Criminal Case No. 673-V-10, appellant [XXX] is hereby found GUILTY and sentenced to suffer the penalty of *reclusion perpetua*;

(4) In Criminal Case No. 674-V-10, appellant [XXX] is hereby found GUILTY and sentenced to suffer the penalty of *reclusion perpetua*;

(5) Appellant [XXX] is hereby ordered to indemnify the private offended party, "BBB", the amount of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages, for each count of rape he was proven guilty; and

(6) Appellant [XXX] is ordered to pay the private offended party the further amount equivalent to the legal interest rate of Six Percent (6%) per annum on the total monetary award, until full payment of the same.

SO ORDERED.[18] (Emphasis supplied)

Hence, the instant appeal.[19]

In lieu of supplemental briefs, plaintiff-appellee filed a Manifestation dated January 3, 2017,[20] while XXX filed a Manifestation in Lieu of Supplemental Brief dated January 11, 2017.[21]

Issue

The sole issue for resolution is whether XXX's guilt for the four (4) counts of rape was proven beyond reasonable doubt.

The Court's Ruling

The appeal lacks merit.

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[18] *Rollo*, pp. 30-31.

[19] *Id*. at 33.

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

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

The evidence is sufficient to prove XXX's guilt beyond reasonable doubt

It is a long-standing rule that in rape cases, an accused may be convicted based on the victim's sole testimony, provided that it is logical, credible, consistent, and convincing.[22] The rule becomes more binding where – as in the instant case – the victims are young and immature, not only because of their relative vulnerability, but also because of the shame and embarrassment which they stand to suffer during trial, if indeed the matters to be testified on were untrue.[23]

The Court has stressed, in the same vein, that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.[24] Thus, when the case pivots on the issue of the credibility of the victim, the findings of the trial courts necessarily carry great weight and respect.[25] This is so because trial courts are in the most advantageous position to ascertain and measure the sincerity and spontaneity of witnesses during trial.[26]

Bearing the foregoing in mind, after poring through the records of this case, the Court finds no cogent reason to vacate the RTC's appreciation of BBB's testimony, which was affirmed *in toto* by the CA in the questioned Decision. The CA summarized in detail the elements that were established by the testimony of BBB, as follows:

> Anent the first rape, it was established by sufficient evidence that appellant committed the offense charged in the information in Criminal Case No. 671-V-10. As testified to by "BBB", appellant:

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[22] *People v. Gallano*, 755 Phil. 120, 130 (2015).

[23] *People v. Magayon*, 640 Phil. 121, 135 (2010).

[24] *People v. Gerola*, G.R. No. 217973, July 19, 2017.

[25] *People v. Aguilar*, 565 Phil. 233, 247 (2007).

[26] *Id.*

1. Forcibly undressed her and made her lie down;
2. He went on top of her and inserted his penis inside her vagina and made a pumping motion causing her to feel severe pain;
3. He kissed her with his left hand caressing her thigh and his right hand holding a knife;
4. He threatened her that he would kill her mother if she would report what he did to her; and
5. She went to the bathroom and saw blood in her underwear.

In the second rape incident, the prosecution, likewise, was able to prove that appellant was able to rape "BBB" using force and intimidation. Thus:

1. Appellant, who was drunk, told her to lie down on the bed;
2. He undressed himself and while holding a fan knife, he told her to undress also;
3. He caressed her thighs and went on top of her;
4. He inserted his penis and did a pumping motion for minutes causing "BBB" to feel severe pain; and
5. He stopped pumping after he heard something.

With regard to the third rape incident, it was clearly shown by competent evidence that, using force and intimidation:

1. Appellant, who was drunk, pulled a knife from his back pocket and told "BBB" to undress herself;
2. He undress (*sic*) himself and told her to lie face down;
3. He caressed her buttocks and while threatening "BBB" with a knife, inserted his penis into her vagina and made pumping motion and threatened her not to tell anyone what he did to her;
4. She felt pain because appellant knelt on her thigh; and
5. When he stopped pumping, she felt something sticky in her thigh.

As regards the fourth rape incident, it was also clearly shown by competent evidence that, using force and intimidation:

1. Appellant, who was drunk, told her to give him a towel;
2. With the towel he undress (*sic*) himself and told her to lie face down;
3. He caressed her buttocks and while threatening "BBB" with a knife, inserted his penis into her vagina and made

pumping motion and threatened her not to tell anyone what he did to her;

4. She felt pain because appellant knelt and pinned down her thigh.[27]

Significantly, BBB's narration of events was corroborated by the physical evidence, as contained in the medico-legal report, to wit:

Q: And considering the brief history in the Sexual Crime Protocol and the Manifestation of Consent, after you conducted the physical and genital examination of the victim in this case, what is (*sic*) your findings for your Final Medico-Legal Report and the Initial Medico-Legal Report, doctor?

A: All the part that was indicated in my report revealed essentially normal except for the hymen which has a deep healed laceration at 5 o' clock position, sir.

x x x x x x x x x

Q: And in your conclusion doctor, in your Final Report, what was the cause?

A: **My conclusion is that medical evaluation shows clear evidence of application of blunt trauma to the hymen, sir.**

Q: And considering the brief history in the Sexual Crime Protocol written by the minor victim herself, what can you say about your findings?

A: **Findings is** (*sic*) **consistent with the history that was given by the victim, sir.**

x x x x x x x x x

Q: For the Sexual Crime Protocol, doctor, how many times was the alleged raped (*sic*) according to the minor victim?

A: **As stated in the history given by the victim, the incident happened "noong 14 anyos pa lang ako ay ginahasa na po ng aking ama hanggang ngayon ginagahasa pa rin**

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[27] *Rollo*, pp. 12-13.

> **ako ng 4 na beses ang huling pangyayari po ay taong May 18, 2010", sir.**[28] (Emphasis supplied)

The Court has held on several occasions that when a rape victim's account is straightforward and candid and is further corroborated by the medical findings of the examining physician, such testimony is sufficient to support a conviction.[29] As correctly pointed out in the questioned Decision, BBB was able to describe in clear detail how each incident of rape was committed by XXX.[30] Moreover, the RTC, after observing BBB's manner and demeanor firsthand during trial, was sufficiently convinced of her credibility and the truthfulness of her testimony.[31]

In criminal prosecutions, "proof beyond reasonable doubt" does not mean such degree of proof, excluding possibility of error, that produces absolute certainty; only "moral certainty" is required, or that degree of proof which produces conviction in an unprejudiced mind.[32]

Proceeding from the foregoing, the Court finds that XXX's guilt was proven beyond reasonable doubt by the evidence of the prosecution.

Failure to resist and delay in reporting the crime does not negate BBB's credibility

For his defense, XXX attacks BBB's credibility for her "delay" in immediately reporting the rape incidents.[33] He further argues that BBB's testimony should be doubted because she failed to offer any resistance or shout for help during any of the alleged rapes.[34] XXX's claims fail to persuade.

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[28] TSN, May 31, 2011; pp. 10-13; *rollo*, pp. 14-15.

[29] *People v. Traigo*, 734 Phil. 726, 730 (2014).

[30] *Rollo*, pp. 13-14.

[31] *Id*.

[32] RULES OF COURT, Rule 133, Sec. 2.

[33] CA *rollo*, p. 49.

[34] *Id*. at 46.

Delay, on its own, is open to many interpretations. Here, the Court takes note that the delay attributed to BBB together with her alleged failure to resist XXX's advances were fully explained in BBB's testimony, to wit:

First Incident of Rape

COURT

Q : When was that, do you recall, when exactly was that, the first time your father raped you?

A : 2004, Your Honor.

PROS. JUAN

Q : What did your father tell you?

A : That he will kill my mother if I am going report what he did to me, sir.

x x x x x x x x x

Q : When you were awakened and saw your father holding your back, what happened next?

A : He threatened me not to make any noise because he will kill me.

x x x x x x x x x

Second Incident of Rape

x x x x x x x x x

COURT

Q : Why did you not shout, knowing that this thing will happen again?

A : I was really afraid of him, You (*sic*) Honor, I know "wala akong laban sa kanya."

x x x x x x x x x

COURT

Q : Why did you try to hide you (*sic*) crying from your brother?

A : I am afraid that he will know, sir.

Q : And why are you afraid that he will find out?

A : "Baka po magkagulo sila sa bahay." It might cause trouble and mother might know, sir.

x x x x x x x x x

Third Incident of Rape

x x x x x x x x x

Q : And when he pulled out the knife, what happen (*sic*) next?

A : He removed my blanket, sir, and then he pointed the knife.

Q : What did he tell you while pointing the knife after removing your blanket?

A : He told me not to make any noise because he do (*sic*) something, sir.

x x x x x x x x x

Q : What was he whispering to you?

A : He warned me not to tell anybody what he did to me, sir.

x x x x x x x x x

Fourth Incident of Rape

x x x x x x x x x

Q : And when you saw the knife, how did you feel?

A : I felt afraid, sir.

Q : And then what happened after he got (*sic*) [out] the knife?

A : He used the knife in tearing my blouse, sir.

x x x x x x x x x

COURT

Q : Why did you not run when he was taking the knife?

A : I was about to go out of the room, Your Honor, but he was able to get hold of the knife right away and he pushed me.

x x x x x x x x x

Q : Did you not resist?

A : I resisted, sir.

COURT

Q : How?

A : I am attempting (*sic*) to stand up, You (*sic*) Honor.

Q : You said he drunk (*sic*) that time, why did you not kick him?

A : His knees were pinning my thigh so I could not stand up, Your Honor.[35]

The foregoing narration adequately dispels whatever doubt XXX attempts to foster against BBB's credibility. Based on BBB's testimony, in all the incidents of rape, XXX was armed with a deadly weapon and he would, in several occasions, threaten BBB not to tell anyone of his acts. Thus, considering that XXX is the father of BBB, his moral ascendancy was certainly more than enough to silence her, not to mention the normal tendency of rape victims to conceal their humiliation and shame resulting from the irrevocable violation of their honor. On this score, the case of *People v. Mingming*[36] instructs:

[W]e do not believe that delay in reporting a rape should directly and immediately translate to the conclusion that the reported rape did not take place; there can be no hard and fast rule to determine when a delay in reporting a rape can have the effect of affecting the victim's credibility. The heavy psychological and social toll alone that a rape accusation exacts on the rape victim already speaks against the view that a delay puts the veracity of a charge of rape in doubt. The effects of threats and the fear that they induce must also be factored in. At least one study shows that the decisive factor for non-reporting and the failure to prosecute a rape is the lack of support — familial, institutional and societal — for the rape victim, given the unfavorable socio-cultural and policy environment. All these, to our mind, speak for themselves in negating the conclusion that a delay in reporting a rape is *per se* sufficient basis to disbelieve an

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[35] *Rollo*, pp. 16-26.

[36] 594 Phil. 170 (2008).

allegation of rape. The more reasonable approach is to take the delay into account but to disregard it if there are justifiable explanations for the victim's prolonged silence.[37]

On a related matter, that BBB continued to stay at their home despite the rape incidents is of no consequence. While XXX argues that such circumstance mitigates the multiple charges of rape against him, the Court finds no merit in his claim. As succinctly held in the questioned Decision:

> It should be emphasized that when the first incident of rape was committed against "BBB", she was only fourteen (14) years old. A natural reluctant Filipina woman, who is fourteen (14) years old, would not have thought of leaving the house much less finding solace in [a] government institution that renders psychological and social services for [a] rape victim. It could hardly be expected that such a child of tender age would know what to do and where to go under the circumstances. Indeed, it is not proper to cast judgment on the actions of children who have undergone traumatic experiences by the norms of behavior expected under the circumstances from mature persons.[38]

XXX's defense of alibi and denial failed to overcome the prosecution's evidence

The defenses of alibi and denial are generally viewed with disfavor by the courts due to their inherent weakness. Hence, to be given evidentiary value, such defenses must be supported by strong evidence of innocence independent of the accused's self-serving statements. Moreover, for the defense of alibi to be considered, the accused must prove not only that he was somewhere else when the crime was committed but that it was also physically impossible for him to have been at the crime scene or its immediate vicinity at the approximate time of its commission.[39]

Here, XXX flatly denied all the accusations against him,

[37] *Id*. at 188-189.

[38] *Rollo*, p. 28.

[39] *People v. Alvarez*, 461 Phil. 188, 200 (2003).

imputing instead ill motive on the part of BBB for being "isip bata."[40] XXX further claimed that BBB allegedly visited him in jail to ask for his forgiveness in falsely accusing of raping her and that the same was witnessed by his son and overheard by the "mayor" of the jail.[41]

Significantly, XXX's various claims were left uncorroborated during trial. XXX never presented any documentary evidence nor did he present any of the alleged witness to lend truth to his allegations.[42] As observed by the RTC, that XXX's wife and two (2) sons chose to keep silent only adds credence to the truthfulness of BBB's imputations against her father.[43]

Meanwhile, as regards the May 18, 2010 incident in Criminal Case No. 671-V-10, XXX claimed that he was out of the house the entire day as he was working as a pedicab driver then.[44] However, the records are bereft of any evidence, other than XXX's bare testimony, that it was physically impossible for him to be at the *locus criminis* at the time the act complained of transpired. XXX's defense of alibi must therefore be rejected.

All told, the Court is fully convinced that the evidence, taken in its entirety, unmistakably convicts XXX for the heinous deeds committed against BBB.

As to the penalty, the Court accordingly modifies the award of damages to conform to prevailing jurisprudence.[45]

Criminal Case No. 671-V-10

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[40] CA *rollo*, p. 61.

[41] *Id.*

[42] *Id.*

[43] *Id.* at 74.

[44] *Id.* at 73-74.

[45] *People v. Jugueta*, 783 Phil. 806 (2016).

As charged in the Information, the penalty imposable under Section 11 of Republic Act (R.A.) No. 7659,[46] amending the RPC, is *reclusion perpetua* to death as the crime was committed with the use of a deadly weapon. However, because of R.A. No. 9346, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the Court can only mete out the penalty of *reclusion perpetua*. Parenthetically, the Court cannot take cognizance of the fact of BBB's minority as an attendant circumstance as the same was not properly alleged in the Information. While such fact was established during the trial itself, the same cannot be considered without infringing upon XXX's constitutional right to be informed of the nature and cause of the accusation against him.[47]

In this regard, to conform with prevailing jurisprudence, the Court hereby awards the amounts of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages.[48]

Criminal Case Nos. 672-V-10, 673-V-10, and 674-V-10

With respect to these three (3) Informations, the crimes charged therein are punishable by death under R.A. No. 7659, as the following elements were sufficiently alleged and established during trial: (i) that the victim was below eighteen (18) years of age at the time all three (3) rape incidents occurred, and (ii) that the offender is the parent of the victim.[49]

Hence, considering that the imposable penalty therefor is

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[46] 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.

[47] *People v. Tigle*, 465 Phil. 368, 383 (2004).

[48] *People v. Jugueta*, *supra* note 45.

[49] Section 11. Article [266-A] of the same Code is hereby amended to read as follows:

x x x x x x x x x

death but reduced to *reclusion perpetua* following R.A. No. 9346, the civil indemnity as well as the award for moral and exemplary damages shall each be set at One Hundred Thousand Pesos (₱100,000.00) for each count of rape.

WHEREFORE, in view of the foregoing, the appeal is **DISMISSED** for lack of merit and the Decision dated July 24, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05783 is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant XXX is hereby found **GUILTY** beyond reasonable doubt of four (4) counts of Rape as defined under Paragraph 1, Article 266-A of the Revised Penal Code, as amended, and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole for each count.

The amount of damages awarded is likewise increased, ordering accused-appellant to pay the private offended party, BBB, the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages for Criminal Case No. 671-V-10. Meanwhile, for Criminal Case Nos. 672-V-10, 673-V-10, and 674-V-10, accused-appellant is ordered to pay the private offended party, BBB, the amounts of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages, and One Hundred Thousand Pesos (₱100,000.00) as exemplary damages for each count of Rape. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. **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. (Emphasis supplied)

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Peralta, Perlas-Bernabe*, and *Reyes, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 225332. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEL JAIME *alias* "TORNING,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC); RAPE UNDER ARTICLE 266-A OF THE RPC DISTINGUISHED FROM THE CRIME OF RAPE IN RELATION TO REPUBLIC ACT NO. 7610; RESPECTIVE ELEMENTS OF BOTH CRIMES, ENUMERATED.— Under Article 266-A, paragraph 1 of the Revised Penal Code, the crime of rape is committed when a man 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 previously mentioned are present. It is penalized with *reclusion perpetua* as provided under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. On the other hand, Section 5(b), Article III of Republic Act No. 7610 provides: x x x The essential elements of Section 5(b) are: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and, (c) the child whether male or female, is below 18 years of age. The imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*, except that the penalty for lascivious conduct when the victim is under

twelve (12) years of age shall be *reclusion temporal* in its medium period.

2. ID.; ID.; ID.; WHERE THE VICTIM IS 12 YEARS OR OLDER, OFFENDER SHOULD BE CHARGED WITH EITHER SEXUAL ABUSE UNDER SECTION 5(b) OF R.A. 7610 OR RAPE UNDER ARTICLE 266-A OF THE RPC BUT HE CANNOT BE ACCUSED OF BOTH; NEITHER THESE TWO CRIMES BE COMPLEXED.— In *People v. Abay*, the RTC found the accused "guilty beyond reasonable doubt of committing the crime of rape under Article 335 of the Revised Penal Code in relation to Section 5, Article III of R.A. No. 7610" and imposed upon him the death penalty; although, on appeal, the CA found the accused guilty only of simple rape and reduced the penalty imposed to *reclusion perpetua*. The Court instructs that if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of R.A. No. 7610, or rape under Article 266-A (except paragraph 1(d)) of the Revised Penal Code; but, he cannot be accused of both crimes. Otherwise, his right against double jeopardy will be prejudiced. Neither can these two (2) crimes be complexed.

3. ID.; ID.; ID.; ELEMENTS OF RAPE UNDER ARTICLE 266-A, PARAGRAPH (1) (a) OF THE RPC, SUFFICIENTLY ESTABLISHED.— The elements of rape under Article 266-A, paragraph (1)(a) of the RPC, as amended, are: (1) the act is committed by a man; (2) that said man had carnal knowledge of a woman; and (3) that such act was accomplished through force, threat, or intimidation. Both the CA and the RTC found that these elements are present in this case. Accused-appellant had carnal knowledge of the victim through force, threat, and intimidation. x x x As to what transpired inside the pedicab and the events leading thereto, the victim gave a consistent and spontaneous testimony which the RTC and CA found to have proven the elements of carnal knowledge accomplished through force and intimidation. The victim also identified accused-appellant in open court to be the perpetrator of the crime[.] x x x The testimony of the victim that her vagina has been penetrated is supported by the Initial Medico-Report from the PNP Crime Laboratory prepared after examination of the victim on 16 December 2002. x x x The clear statement that the victim is already in a "non-virgin state" establishes that there was indeed carnal knowledge. x x x It was found that the

element of force, threat, and intimidation exists in this case. The victim did not board the vehicle of her own accord, but was forced to go with accused-appellant because of his threat to kill her parents. Also, right before penetrating the victim's vagina, accused-appellant made another threat, this time against the life of the victim. Accused-appellant also exerted physical force upon the victim to ensure consummation of the act. All these taken together satisfy the requirements to establish that indeed the victim was raped by accused-appellant.

4. ID.; ID.; ID.; ID.; PROPER PENALTY IS *RECLUSION PERPETUA*; SINCE DEATH PENALTY IS NOT WARRANTED IN THIS CASE, THE PHRASE "WITHOUT ELIGIBILITY FOR PAROLE" NEED NOT BE ASCRIBED AND AFFIXED TO *RECLUSION PERPETUA*.— Finding the accused guilty of the crime of rape, the appropriate penalty is *reclusion perpetua* as provided under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353. We, therefore, sustain the penalty imposed by the CA. The CA sentenced accused-appellant "to suffer the penalty of *reclusion perpetua* without eligibility for parole." x x x It should be noted, however, that the Supreme Court En Banc issued A.M. No. 15-08-02-SC, the *Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties*. It aims to promote uniformity in the court's promulgated decisions and resolutions and thus prevent confusion. It provides that the phrase "without eligibility for parole" is to be used to qualify the penalty of *reclusion perpetua* when circumstances are present warranting the imposition of the death penalty but which penalty is not imposed because of R.A. No. 9346. x x x Since the death penalty is not warranted in this case, the phrase "without eligibility for parole" does not need to describe and be affixed to *reclusion perpetua*. It is understood that accused-appellant is not eligible for parole having been meted an indivisible penalty.

5. ID.; ID.; ID.; ID.; CIVIL LIABILITY.— [A]s to the award of damages, the Court increases the same in line with the rule enunciated in *People v. Jugueta*, where the Court held that in the crime of rape where the imposable penalty is *reclusion perpetua*, the proper amounts of damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

On appeal is the 29 May 2015 Decision[1] of the Court of Appeals in CA G.R. CR HC No. 05923 which affirmed with modification the 2 August 2012 Decision of the Regional Trial Court, Branch 169 [redacted], in Criminal Case No. 28080-MN finding accused-appellant Joel Jaime guilty beyond reasonable doubt of one (1) count of Simple Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353.

The Information, dated 17 December 2002, indicting the accused reads:

> The undersigned Asst. City Prosecutor accuses the above-named accused of the crime of Rape in Relation to R.A. No. 7610, committed as follows:
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> That on or about the 14th day of December 2002, in [redacted] Metro Manila, 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 have sexual intercourse with AAA, a minor of 15 years old, by then and there inserting his sex organ to the said AAA, against her will and consent, which act debases, degrades or demeans the intrinsic worth and dignity of a child as a human being thereby endangering her youth, normal growth and development.
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> CONTRARY TO LAW.[2]

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[1] CA *rollo*, pp. 81-93; penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino, concurring.

[2] Records, p. 2.

Accused-appellant pleaded "not guilty" during arraignment. Thereafter, trial ensued.

Version of the Prosecution

During the presentation of evidence for the prosecution, AAA (the *victim*) and her mother, BBB, took the witness stand. The testimony of prosecution witness Police Senior Inspector Daileg, Duty Medico-Legal Officer of the Philippine National Police Crime Laboratory, Camp Crame, Quezon City, was dispensed with after counsel for the accused admitted the witness' proposed testimony.[3] PO1 Belany Dizon[4] of the [redacted] Police Station and Barangay Deputy Larito De Ocampo y Hernandez were likewise no longer presented before the court after the accused admitted the fact of arrest.[5]

The following is the narration of facts based on the testimonial and documentary evidence presented by the prosecution.

At around eight o'clock in the evening of 14 December 2002, the victim was on her way to buy medicine for her headache when the accused-appellant, who was then driving a tricycle "de padyak'' or pedicab, stopped by her and introduced himself as "Torning." Accused asked her to board the pedicab or he would kill her parents if she refused to do so. Gripped with fear, she boarded.[6]

When they arrived at [redacted], accused-appellant stripped from the waist down, knelt on the victim's thighs while she was lying on her back, and removed her lower garment and panty, before forcibly inserting his penis into her vagina.[7]

Meanwhile, barangay Deputy Larito De Ocampo (*De Ocampo*), who was stationed at the barangay outpost, received

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[3] *Id*. at 41.

[4] *Id*. at 43.

[5] *Id*. at 53, 98.

[6] *Id*. at 4.

[7] TSN, 13 November 2003, pp. 5-7.

a report from a fire volunteer that he saw a person atop another inside a pedicab at [redacted]. Together with two other barangay officers, De Ocampo went to investigate and at around five meters away from the pedicab, they saw it rocking. As De Ocampo was approaching the pedicab, accused-appellant and the victim got dressed and alighted therefrom. Accused-appellant told De Ocampo that he and his companion were just resting inside the pedicab. De Ocampo found out that the person with accused-appellant, AAA, was only 15 years old. Thinking that both were minors, De Ocampo brought them to the barangay outpost. There, the victim said that she was raped by accused-appellant. It was also at this point when they learned that the accused-appellant was already 20 years old.

A barangay tanod fetched BBB from their residence. After being informed of what happened to her daughter, BBB brought AAA to Camp Crame for medical examination and assisted her in filing a complaint against accused-appellant.

The Version of the Defense

The defense presented accused-appellant as its lone witness. He testified that on the night of the incident he was waiting for passengers when the victim hailed his pedicab. AAA boarded and told him to take her to the nearby church. Upon reaching their destination, the victim remained inside the pedicab and told him to continue driving because she wanted to "stroll around," otherwise she would report him to the barangay. Accused- appellant refused to do so and told her to get off. AAA alighted but shouted "Rape!" after which three barangay officers approached them and arrested accused-appellant.

The Ruling of the RTC

After trial, the RTC convicted accused-appellant of the crime of rape. The dispositive portion of its decision reads:

> WHEREFORE, premises considered, the Court finds accused **JOEL JAIME** @ TORNING **GUILTY** beyond reasonable doubt of the crime of Rape in relation to R.A. 7610. He is hereby sentenced to suffer the penalty of *reclusion perpetua* with all the accessory penalties

provided by law, and to pay the costs. Accused is further ordered to indemnify the offended party in the sum of Fifty Thousand Pesos (Php 50,000.00) as civil indemnity; Fifty Thousand Pesos (Php 50,000.00) as moral damages; and Thirty Thousand Pesos (Php 30,000.00) as exemplary damages.

SO ORDERED.[8]

The Ruling of the CA

On appeal, the CA found that the prosecution had fully discharged its duty of proving the guilt of accused-appellant. In its decision, the CA affirmed with modification the RTC decision to convict accused-appellant, thus:

WHEREFORE, premises considered, this Court **AFFIRMS with MODIFICATION** the *Decision* dated 2 August 2012 of the Regional Trial Court [redacted], Branch 169 in Criminal Case No. 28080-MN. Accused-appellant Joel Jaime is hereby found **GUILTY** beyond reasonable doubt of one (1) count of *Simple Rape* under Art. 266-A, paragraph 1 (a) of the Revised Penal Code, as amended by Republic Act No. 8353, and is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and to pay the victim, AAA, Php 50,000.00 as civil indemnity, Php 50,000.00 as moral damages, and Php 30,000.00 as exemplary damages. Interest at the rate of six percent (6%) per annum is likewise IMPOSED on all the damages awarded in this case from date of finality of this judgment until fully paid.

SO ORDERED.[9]

Both the prosecution and the defense opted not to file any supplemental briefs and manifested the adoption of their arguments in their respective briefs before the CA.

ISSUE

WHETHER OR NOT THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME

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[8] RTC Decision folder, p. 15.

[9] *Rollo*, pp. 13-14.

CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

OUR RULING

The RTC found accused-appellant guilty beyond reasonable doubt of the crime of Rape in relation to R.A. No. 7610. On appeal, the CA found him guilty of one (1) count of simple rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353. The difference in the terms used to designate the crime may have caused some confusion: we thus clarify the crime for which accused-appellant was charged and convicted by the RTC and the CA.

Under Article 266-A, paragraph 1 of the Revised Penal Code, the crime of rape is committed when a man 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 previously mentioned are present. It is penalized with *reclusion perpetua* as provided under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353.

On the other hand, Section 5(b), Article III of Republic Act No. 7610 provides:

> 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.
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> 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 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; and

x x x x x x x x x

The essential elements of Section 5(b) are: (a) the accused commits the act of sexual intercourse or lascivious conduct; (b) the said act is performed with a child exploited in prostitution or subjected to other sexual abuse; and, (c) the child whether male or female, is below 18 years of age.[10] The imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*, except that the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period.

In *People v. Abay*,[11] the RTC found the accused "guilty beyond reasonable doubt of committing the crime of rape under Article 335 of the Revised Penal Code in relation to Section 5, Article III of R.A. No. 7610" and imposed upon him the death penalty; although, on appeal, the CA found the accused guilty only of simple rape and reduced the penalty imposed to *reclusion perpetua*. The Court instructs that if the victim is 12 years or older, the offender should be charged with either sexual abuse under Section 5(b) of R.A. No. 7610, or rape under Article 266-A (except paragraph 1(d)) of the Revised Penal Code; but, he cannot be accused of both crimes. Otherwise, his right against double jeopardy will be prejudiced. Neither can these two (2) crimes be complexed. The Court's disquisition in the *Abay* case reads:

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

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[10] *People v. Abello*, 601 Phil. 373, 392 (2009).

[11] 599 Phil. 390, 394-396 (2009).

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 by a special law.

In this case, the victim was more than 12 years old when the crime was committed against her. The Information against appellant stated that AAA was 13 years old at the time of the incident. Therefore, appellant may be prosecuted either for violation of Section 5(b) of RA 7610 or rape under Article 266-A (except paragraph 1[d]) of the Revised Penal Code. While the Information may have alleged the elements of both crimes, the prosecution's evidence only established that appellant sexually violated the person of AAA through force and intimidation by threatening her with a bladed instrument and forcing her to submit to his bestial designs. Thus, rape was established.[12]

In *People v. Dahilig*,[13] "the accused can indeed be charged with either rape or child abuse and be convicted therefor. Considering, however, that the information correctly charged the accused with rape in violation of Article 266-A par. 1 in relation to Article 266-B, 1st par. of the Revised Penal Code, as amended by R.A. No. 8353, and that he was convicted therefor, the CA should have merely affirmed the conviction."

As in the case of *Abay*, the elements alleged in the information in this case may pertain to either rape in violation of Article 266-A (1) or sexual abuse under Section 5(b) of R.A. No. 7610. It must be noted though that according to the RTC, it was established during trial that the crime of rape was committed and thus it sentenced accused-appellant with the indivisible

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[12] *Id.* at 395-397.

[13] 667 Phil. 92, 103-104 (2011).

penalty of *reclusion perpetua* in accordance with Article 266-B of the Revised Penal Code, rather than impose upon him the penalty provided for under R.A. No. 7610. The CA decision made it clear when it stated that "[a]ccused-appellant Joel Jaime is hereby found **GUILTY** beyond reasonable doubt of one (1) count of *Simple Rape* under Art. 266- A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353, and is sentenced to suffer the penalty of reclusion perpetua x x x."

The question before us is whether the CA erred in affirming the RTC decision finding accused-appellant guilty of the crime of rape.

According to accused-appellant, the prosecution's evidence itself indicates that the commission of the crime is highly improbable. He argues that the pedicab could have easily tipped over if it is true that he was on his knees and exerting effort to penetrate the victim's vagina. Accused-appellant also pointed out that he was not armed at the time of the incident; thus, he could not have posed an immediate threat to the life and safety of the victim leaving her no choice but to submit to his advances. He insists that nothing in the stipulated testimony of De Ocampo would show or even indicate that a crime of rape was committed. To him, De Ocampo's statement only reveals that the victim and the accused-appellant were brought to the barangay outpost since the two were thought to be minors.

The Court is not convinced.

The elements of rape under Article 266-A, paragraph (1)(a) of the RPC, as amended, are: (1) the act is committed by a man; (2) that said man had carnal knowledge of a woman; and (3) that such act was accomplished through force, threat, or intimidation. Both the CA and the RTC found that these elements are present in this case. Accused-appellant had carnal knowledge of the victim through force, threat, and intimidation.

Accused-appellant's argument that the commission of the crime is highly improbable based on prosecution's evidence deserves scant consideration. Depraved individuals stop at

nothing in order to accomplish their purpose. Perverts are not used to the easy way of satisfying their wicked cravings.[14] Thus, it cannot be gainsaid that commission of the crime of rape was highly improbable because the pedicab could have easily tipped over if the accused-appellant was on his knees and exerting effort to penetrate the victim's vagina.

Though it might be true that the stipulated testimony of De Ocampo does not categorically indicate that the crime of rape has been committed, it still establishes accused-appellant as the same man found with the victim inside the pedicab, prior to their being taken into custody.

As to what transpired inside the pedicab and the events leading thereto, the victim gave a consistent and spontaneous testimony which the RTC and CA found to have proven the elements of carnal knowledge accomplished through force and intimidation. The victim also identified accused-appellant in open court to be the perpetrator of the crime, recounting the events on the night of 14 December 2002, as follows:

THE FISCAL:

Q: Did Joel Jaime do something wrong [to] you?
A: Yes, sir.

Q: What did Joel Jaime did to you?
A: He threatened me, sir.

Q: He did not rape you?
A: "Tinakot nya po ako bago nya ako ginalaw."

THE FISCAL:

Q: What do you mean "ginalaw ka?"
A: "Binaboy po nya ako."

THE FISCAL:

May we put on record that the witness [has] started crying.

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[14] *People v. Resurreccion*, 609 Phil. 726, 738 (2009).

THE FISCAL:

Q: When you said you were "binaboy" what do you mean by that?
A: I was raped, sir.

Q: When you said you were raped to my understanding the rape was the forcible insertion of male organ to female organ?
A: Yes, sir.

Q. Was that what Joel did to you?
A. Yes, sir.

THE FISCAL:

May we put on record that the witness is now crying.

THE FISCAL:

Q: And you said the accused threatened you before he rape you he forcibly entered his organ to your vagina. Did he [have] a weapon?
A: None, sir.

Q: How did he threaten you?
A: "Pag hindi daw ako sumama, papatayin daw nya ako."

Q. Did he exert physical force on you when he said this to you?
A. He kneeled on my thigh.

Q. Were you naked when he raped you?
A. Yes, sir.

Q. You said you were naked, all your clothing were taken off from your body?
A. My upper garment was there but my lower garment including my panty were removed.

Q: Who removed your lower garment and panty?
A. Joel, sir.

Q: Were you lying on your belly or on your back or you were lying sidewise?
A: I was lying on my back, sir.

Q: This rape perpetrated by the accused was committed to you happened in the tricycle.
A. Yes, sir.

x x x x x x x x x

Q. This was night-time when this rape happened to you?
A. Yes, sir.

Q. Could you recall what time was that?
A. Yes, sir.

Q. What time was that?
A. 8:00 o'clock in the evening.

Q. Where was the tricycle then?
A. Right in the street.

Q. Do you know the street?
A. [redacted], sir.

Q. How far was this to your house?
A. That is far distance, sir.

Q. When you walked, how far was it from your house?
A. It is far from our house.

Q. How did you reach that place?
A. I boarded on a tricycle.

Q. When you boarded on his tricycle was it voluntary on your part or he forcibly pushed you inside his tricycle?
A. He forced me to board on his tricycle because he said if I will refuse, he will kill my parents.

Q. Where were you when you boarded on his tricycle?
A. I was in the corner near our residence because I asked money from my father to buy medicine.

Q. Who will take this medicine?
A. I am the one, sir. Because during that time, I was sick.

Q. What is your illness?
A. Headache, sir.

Q. And what about the accused, was he naked when he raped you?
A. Yes, sir.

Q. All over or from waist down?
A. He was naked from waist down.

Q. And he placed himself on your top is that what you described to us earlier?
A. Yes, sir.

Q. Did I hear you right he forced himself by inserting his penis to your vagina?
A. Yes, sir.

Q. Did you feel pain?
A. Yes, sir.

Q. Did you shout?
A. Yes, sir.

Q. Why did you shout?
A. Because I was calling for help.

Q. Did any one respond to your call?
A. Yes, sir, the barangay official.[15]

The testimony of the victim that her vagina has been penetrated is supported by the Initial Medico-Report[16] from the PNP Crime Laboratory prepared after examination of the victim on 16 December 2002.

FINDINGS:

Hymen: Elastic fleshy type w/presence of shallow healed lacerations at 6 & 7 o'clock positions

CONCLUSION:
Subject is non-virgin state physically.

The clear statement that the victim is already in a "non-virgin state" establishes that there was indeed carnal knowledge.

The finding of existence of the element of force, threat, and intimidation is not negated by the fact that accused-appellant was unarmed before and during the commission of the sordid act. In the case of *People v. Battad*,[17] the Court said thus:

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[15] TSN folder, pp. 4-7.

[16] Exhibit Folder p. 4, Exh. "D".

[17] 740 Phil. 742, 750 (2014).

In rape, force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime. As already settled in jurisprudence, not all victims react the same way. Some people may cry out; some may faint; some may be shocked into insensibility; others may appear to yield to the intrusion. Some may offer strong resistance, while others may be too intimidated to offer any resistance at all. Besides, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as force or intimidation was present, whether it was more or less irresistible, is beside the point.

It was found that the element of force, threat, and intimidation exists in this case. The victim did not board the vehicle of her own accord, but was forced to go with accused-appellant because of his threat to kill her parents. Also, right before penetrating the victim's vagina, accused-appellant made another threat, this time against the life of the victim. Accused-appellant also exerted physical force upon the victim to ensure consummation of the act.

All these taken together satisfy the requirements to establish that indeed the victim was raped by accused-appellant.

Finding the accused guilty of the crime of rape, the appropriate penalty is *reclusion perpetua* as provided under Article 266-B of the Revised Penal Code, as amended by R.A. No. 8353. We, therefore, sustain the penalty imposed by the CA.

The CA sentenced accused-appellant "to suffer the penalty of *reclusion perpetua* without eligibility for parole." Section 2 of the Indeterminate Sentence Law (Act No. 4103 as amended by Act No. 4225) states that the Act "shall not apply to, among others, persons convicted of offenses punishable with the death penalty or life imprisonment." Although there was no reference to persons convicted of offenses punishable with *reclusion perpetua*, this Court has, time and again, considered the penalty of *reclusion perpetua* to be synonymous to life imprisonment for purposes of the Indeterminate Sentence Law, and has ruled

that this law does not apply to persons convicted of offenses punishable with *reclusion perpetua*.[18]

It should be noted, however, that the Supreme Court En Banc issued A.M. No. 15-08-02-SC, the *Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties*. It aims to promote uniformity in the court's promulgated decisions and resolutions and thus prevent confusion. It provides that the phrase "without eligibility for parole" is to be used to qualify the penalty of *reclusion perpetua* when circumstances are present warranting the imposition of the death penalty but which penalty is not imposed because of R.A. No. 9346. The pertinent portion of the resolution is quoted:

x x x x x x x x x

In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase "without eligibility for parole":

(1) In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility for parole" to qualify the penalty of reclusion perpetua; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not inposed because of R.A. No. 9346, the qualification of "without eligibility for parole" shall be used to qualify reclusion perpetua in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

Since the death penalty is not warranted in this case, the phrase "without eligibility for parole" does not need to describe and be affixed to *reclusion perpetua*. It is understood that accused-appellant is not eligible for parole having been meted an indivisible penalty.

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[18] *People v. Tuazon*, 563 Phil. 74, 91 (2007).

Finally, as to the award of damages, the Court increases the same in line with the rule enunciated in *People v. Jugueta*,[19] where the Court held that in the crime of rape where the imposable penalty is *reclusion perpetua*, the proper amounts of damages should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

WHEREFORE, premises considered, the 29 May 2015 Decision of the Court of Appeals is hereby **AFFIRMED with FURTHER MODIFICATIONS**. Accused-appellant Joel Jaime is hereby found **GUILTY** beyond reasonable doubt of one (1) count of Rape under Article 266-A, paragraph 1(a) of the Revised Penal Code, as amended by Republic Act No. 8353. He is sentenced to suffer the penalty of *reclusion perpetua* and is further ordered to pay the victim the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, with legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 225497. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* **MARCIANO UBUNGEN *y* PULIDO,** *accused-appellant*.

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[19] 783 Phil. 806, 848 (2016).

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THAT MUST BE PROVEN TO SECURE A CONVICTION THEREFOR.—** Jurisprudence teaches that to secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the accused peddled illicit drugs, coupled with the presentation in court of the *corpus delicti*.

2. **ID.; ID.; CHAIN OF CUSTODY RULE; LINKS THAT SHOULD BE ESTABLISHED IN THE CHAIN OF CUSTODY OF THE CONFISCATED ITEM.—** [T]he following links should be established in the chain of custody of the confiscated item: *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.

3. **ID.; ID.; ID.; ID.; FOR FAILURE OF THE PROSECUTION TO ESTABLISH THREE OUT OF THE FOUR LINKS IN THE CHAIN OF CUSTODY, THE COURT FINDS THE ACQUITTAL OF THE ACCUSED TO BE IN ORDER.—** [T]he Court opines that the prosecution failed to establish an unbroken chain of custody of the seized drugs in violation of Section 21, Article II of R.A. No. 9165. The identity of the subject drug was therefore not established with moral certainty. x x x *First*, the prosecution failed to show the second link in the chain of custody as no testimony was offered relating to the transmittal of the subject sachet from the arresting officer to the investigating officer. x x x *Second*, there exists serious doubt that the sachet confiscated by PO1 Abubo from Marciano is the same specimen submitted to and examined by the forensic chemist. As such, the third link in the chain of custody of the

> subject transparent plastic sachet was not established. x x x *Finally*, compliance with the fourth link in the chain of custody was not satisfactorily demonstrated by the prosecution. It must be recalled that the trial court dispensed with the testimony of PI Ordoño, the forensic chemist, in view of the stipulation entered into by the prosecution and the defense during the hearing of the case on 18 September 2008. x x x The lapses committed by the prosecution and the law enforcers herein could not be considered minor. Indeed, establishing every link in the chain of custody is crucial to the preservation of the integrity, identity, and evidentiary value of the seized illegal drug. Failure to demonstrate compliance with even just one of these links creates reasonable doubt that the substance confiscated from the accused is the same substance offered in evidence. In this case, the prosecution miserably failed to establish three out of the four links in the chain of custody. As a consequence of this serious blunder, the Court finds the acquittal of accused-appellant Marciano to be in order.

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 31 March 2015 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 04686, which affirmed the 29 July 2010 Decision[2] of the Regional Trial Court, Branch 66, San Fernando City, La Union (*RTC*), in Criminal Case No. 7580, convicting defendant-appellant Marciano Ubungen y Pulido (*Marciano*) for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo,* pp. 2-10.

[2] Records, pp. 114-121.

THE FACTS

In an Information, dated 12 February 2007, Marciano was charged with the crime of violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the information reads:

> That on or about the 17th day of January 2007, in the City of San Fernando (La Union), Philippines, and within the jurisdiction of this Honorable Court the above-named accused, did then and there willfully, unlawfully and feloniously sell and deliver one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as "shabu," weighing ZERO POINT ZERO FIFTY FOUR (0.054) gram to one PO1 ABUBO who posed as poseur buyer thereof and in consideration of said shabu, used marked money, two (2) hundred peso bills (₱200.00) with Serial Nos. AH425840 and AB205120, without first securing the necessary permit or license from the proper government agency.
>
> CONTRARY TO LAW.[3]

On 21 March 2007, Marciano was arraigned and, with the assistance of counsel, pleaded not guilty to the crime charged.[4]

Evidence for the Prosecution

The prosecution presented two witnesses, namely: PO1 Jimmy Abubo (*PO1 Abubo*), the police officer who acted as the poseur-buyer; and PO1 Armando Bautista (*PO1 Bautista*), a police officer detailed at the Philippine Drug Enforcement Agency (*PDEA*) at the time material to the case, and a member of the buy-bust team.

The prosecution also presented the forensic chemist, Police Inspector Meilani Joy R. Ordoño (*PI Ordoño*), but the RTC dispensed with her testimony in an Order,[5] dated 18 September 2008, in view of the defense's admission of the stipulations offered by the prosecution with respect to the following:

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[3] *Id*. at 1.

[4] *Id*. at 27.

[5] *Id*. at 69.

(1) the specimen as indicated in the Chemistry Report; (2) the findings as stated in the Chemistry Report; and (3) the due execution and genuineness of the Chemistry Report.[6]

The combined testimonies of the prosecution witnesses tended to establish the following:

On 17 January 2007, at around 8:30 a.m., PO1 Abubo was in their office at the Philippine National Police, Region I, 2nd Regional Mobile Group (*2nd RMG*), Bio, Tagudin, Ilocos Sur, when a friend arrived and reported to him the rampant selling of *shabu* at Pagdalagan, San Fernando City, La Union, by a certain "*Ciano*." PO1 Abubo referred the matter to his Commanding Officer, Police Senior Inspector Christopher Rebujio (*PSI Rebujio*) who, in turn, relayed the information to the PDEA Region I.[7]

After verifying that "*Ciano*" was included in the PDEA's watchlist, PO1 Abubo, the informant, and four (4) other police officers from 2nd RMG proceeded to the PDEA office at San Fernando City, La Union, for a briefing.[8] Thereafter, a team consisting of 2nd RMG personnel and PDEA agents was formed to conduct an entrapment operation. Two (2) one hundred-peso bills were prepared as marked money, and PO1 Abubo was designated as the poseur-buyer.[9] The team then proceeded to the house of "*Ciano*" at Pagdalagan, San Fernando City, La Union.[10]

Later, PO1 Abubo and the informant arrived outside the target's house,[11] while the other members of the buy-bust team, including PO1 Bautista and a certain PO1 Lagto, positioned

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[6] *Id.* at 68.

[7] TSN, dated 13 August 2008, pp. 4-5.

[8] *Id*. at 5-6, 26.

[9] *Id.* at 6.

[10] *Id*. at 8.

[11] *Id*.

themselves in the vicinity.[12] The informant introduced "*Ciano*" to PO1 Abubo as Marciano Ubungen;[13] while PO1 Abubo was introduced as the buyer of *shabu*. Marciano then asked how much PO1 Abubo wanted to buy. PO1 Abubo replied he was buying *shabu* worth ₱200.00 and handed Marciano the marked bills. Marciano entered his house and when he came back, he handed one (1) small plastic sachet to PO1 Abubo.[14] Immediately after receiving the sachet, PO1 Abubo called PO1 Lagto by cellphone, their pre-arranged signal.[15] Thereafter, the members of the buy-bust team arrested Marciano and recovered the marked bills from him.[16] Meanwhile, PO1 Abubo placed the markings "JA" on the plastic sachet.[17]

After the buy-bust operation, Marciano was taken to the PDEA office in San Fernando City, La Union, where they conducted an inventory and prepared the booking sheet, affidavit of arrest, request for physical examination of Marciano, and request for laboratory examination of the specimen seized from him.[18]

Chemistry Report No. D-004-07,[19] dated 17 January 2007, and prepared by PI Ordoño revealed that the contents of a small heat-sealed transparent plastic sachet marked as "A JA" tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. However, PI Ordoño did not take the witness stand to verify the contents of Chemistry Report No. D-004-07 because the RTC dispensed with her testimony in view of the stipulations reached by the parties.

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[12] TSN, dated 17 March 2009, p. 7.

[13] TSN, dated 13 August 2008, p. 35.

[14] *Id*. at 8-9, 36.

[15] *Id*. at 9.

[16] TSN, dated 17 March 2009, p. 9.

[17] TSN, dated 13 August 2008, p. 10.

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

[19] Records, p. 21; Exhibit "G".

The prosecution further submitted in evidence the following, among others: (1) Request for Laboratory Examination of the contents of the heat-sealed transparent plastic sachet seized from Marciano, signed by PSI Rebujio (Exhibit "D")[20]; (2) Certificate of Inventory, signed by PO1 Abubo (Exhibit "E")[21]; (3) two ₱100-bills (Exhibit "F")[22]; and (4) Chemistry Report No. D-004-07, prepared by PI Ordoño (Exhibit "G").[23]

Evidence for the Defense

On its part, the defense presented Marciano himself and his nephew, Gilbert Ubungen (*Gilbert*). Their combined testimonies sought to establish Marciano's innocence, as follows:

On 17 January 2007, at around three o'clock in the afternoon, Marciano, together with Gilbert, Wilfredo 'Pido' Pancho (*Wilfredo*), and Ricky Ducusin were drinking at a neighbor's house in Padalagan Norte, San Fernando City, La Union, when six non-uniformed policemen arrived. The policemen arrested Marciano, Gilbert, and Wilfredo and brought them to Camp Diego Silang in San Fernando City, La Union, where they were detained for three (3) days.[24] On the third day of their detention, the three were brought to Camp Florendo in San Fernando City, La Union, for drug tests. Afterwards, Marciano was brought back to Camp Diego Silang; Pido and Gilbert were released.[25]

In fine, Marciano denied the accusations against him. He insisted that no explanation was given him on why he was arrested or made to undergo drug tests.[26]

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[20] *Id*. at 20.

[21] *Id*. at 22.

[22] *Id*. at 23.

[23] *Id*. at 21.

[24] TSN, dated 16 July 2009, pp. 4-6; TSN, dated 25 August 2009, pp. 4-7.

[25] *Id*. at 7; TSN, dated 25 August 2009, p. 9.

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

The RTC Ruling

In its decision, the RTC found Marciano guilty of violating Section 5, Article II of R.A. No. 9165. The trial court gave credence to the testimonies of PO1 Abubo and PO1 Bautista ratiocinating that they gave a candid, clear, and straightforward narration of the events leading to the arrest of Marciano. In fine, the trial court was convinced that the prosecution was able to establish all the elements of illegal sale of drugs. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding accused Marciano Ubungen GUILTY beyond reasonable doubt for violating Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and is hereby sentenced to life imprisonment and a fine of five hundred thousand pesos (₱500,000.00).
>
> SO ORDERED.[27]

Aggrieved, Marciano appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed that of the RTC. The appellate court concurred with the trial court's assessment that the prosecution, through the testimony of PO1 Abubo, had successfully established the elements of the crime of illegal sale of drugs. It was also convinced that the integrity and evidentiary value of the drug seized from Marciano was preserved by the prosecution. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, the instant APPEAL is hereby DENIED for lack of merit. Accordingly, the Decision dated July 29, 2010 rendered by RTC, Branch 66, City of San Fernando, La Union, in Criminal Case No. 7580 is hereby AFFIRMED.
>
> SO ORDERED.[28]

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[27] Records, p. 121.

[28] *Rollo,* p. 10.

Hence, this appeal.

ISSUES

Marciano manifested that he would re-plead and adopt all the arguments raised in his Appellant's Brief, dated 28 March 2011,[29] as follows:

I.

THE COURT A QUO GRAVELY ERRED IN RENDERING A JUDGMENT OF CONVICTION DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH ACCUSED-APPELLANT'S GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROCEDURAL LAPSES ON THE PART OF THE POLICE OFFICERS IN THE CUSTODY OF THE SEIZED ILLEGAL DRUG.

III.

THE COURT A QUO GRAVELY ERRED IN RENDERING A JUDGMENT OF CONVICTION DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY.[30]

THE COURT'S RULING

The appeal is meritorious.

Jurisprudence teaches that to secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[31] What is material is the proof

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[29] *Id.* at 18.

[30] CA *rollo,* p. 36.

[31] *People v. Alberto,* 625 Phil. 545, 554 (2010), citing *People v. Dumlao,* 584 Phil. 732, 739-740 (2009).

that the accused peddled illicit drugs, coupled with the presentation in court of the *corpus delicti*.[32]

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.[33]

The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[34]

In particular, the following links should be established in the chain of custody of the confiscated item: *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.[35]

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[32] *People v. Chua Tan Lee*, 457 Phil. 443, 449 (2003).

[33] *People v. Ismael*, G.R. No. 208093, 20 February 2017.

[34] *Id*.

[35] *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

With these considerations and after a thorough review of the records of this case, the Court opines that the prosecution failed to establish an unbroken chain of custody of the seized drugs in violation of Section 21, Article II of R.A. No. 9165. The identity of the subject drug was therefore not established with moral certainty.

As already stated, the only witnesses presented by the prosecution are PO1 Abubo and PO1 Bautista who both participated in the buy-bust operation allegedly conducted against Marciano. While the two witnesses were able to establish the first link in the chain of custody with their respective testimonies regarding the arrest of Marciano and the seizure of the prohibited drug from him as well as the marking thereof, their testimonies were insufficient to establish the remaining three (3) links in the chain of custody.

First, the prosecution failed to show the second link in the chain of custody as no testimony was offered relating to the transmittal of the subject sachet from the arresting officer to the investigating officer. During his direct examination, PO1 Abubo narrated the actions his team took after the buy-bust operation. He also enumerated the documents which would prove that the said actions were indeed undertaken, thus:

PROS. MANGIBIN:

Q. Now Mr. Witness, after arresting the accused, you went to PDEA, what did you do there?
A. The subject and the confiscated evidence were submitted to the PNP Crime Laboratory for technical analysis, sir.

Q. Do you have documents to show that you have done that Mr. Witness?
A. Yes, sir.

Q. What are those documents, Mr. Witness?
A. The Certificate of Inventory, the Crime Laboratory Examination, sir.[36]

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[36] TSN, dated 13 August 2008, pp. 11-12.

PO1 Abubo's testimony, however, is silent as to the name of the investigating officer to whom the seized sachet of drug was transmitted, or on whether he transmitted the confiscated item to an investigating officer in the first place. The prosecution's Exhibit "E" or the Certificate of Inventory also failed to disclose the person who received the seized drug from PO1 Abubo. While the said document was signed by PO1 Abubo, no addressee or recipient was indicated therein.

The prosecution's Exhibit "D" or the Request for Laboratory Examination also suffers from substantially the same infirmity. While the said request was signed by PSI Rebujio and addressed to the Chief of the Crime Laboratory of Camp Florendo in San Fernando City, there was no indication of how and from whom PSI Rebujio received the subject sachet. Likewise, there was no mention of the person who submitted the specimen to the PNP Crime Laboratory for examination. Thus, there is uncertainty as to who had custody of the sachet from the time it left the custody of PO1 Abubo.

Even assuming *arguendo* that PSI Rebujio could be considered as the investigating officer to whom PO1 Abubo transmitted the seized specimen, and from whom PI Ordoño received the specimen which she examined, no mention was made on how PSI Rebujio handled the said specimen while it was in his custody. This is indispensable because the prosecution must satisfy the court that every person who had custody of the exhibit took the necessary precaution to preserve the integrity of the said evidence as well as to ensure that no opportunity would be afforded any other person to contaminate the same.

Clearly, the testimonies of the prosecution witnesses and the documentary evidence presented failed to establish the second link in the chain of custody of the subject drug.

Second, there exists serious doubt that the sachet confiscated by PO1 Abubo from Marciano is the same specimen submitted to and examined by the forensic chemist. As such, the third link in the chain of custody of the subject transparent plastic sachet was not established.

In his testimony, PO1 Abubo recalled the marking he placed on the sachet which he bought as poseur-buyer. He confirmed that the sachet presented before the RTC is the same sachet containing the illegal drug; thus:

PROS. MANGIBIN:

Q. Now, after doing that, was there anything that happened after that?
A. After that I immediately marked the plastic containing white crystalline with **marking JA**, sir.

Q. Now, I am showing to you a transparent plastic sachet containing white crystalline substance, will you please go over if this is the one you are referring to?
A. (After examining) Yes, sir.

Q. Why do you say that that was the exact item that was given to you?
A. I have a **marking JA**, sir.[37] [emphases supplied]

PO1 Abubo's testimony, however, is materially inconsistent with Chemistry Report No. D-004-07. In the said report, PI Ordoño stated that the specimen submitted to her was a plastic sachet marked as "**A JA**," thus:

SPECIMEN SUBMITTED:

A – One (1) small heat-sealed transparent plastic sachet marked as **"A JA"** containing 0.054 gram of white crystalline substance. xxx[38] [emphasis supplied]

Because of this discrepancy between the marking on the sachet seized by PO1 Abubo and the marking on the sachet submitted to the crime laboratory, it could not be reasonably and safely concluded that they are one and the same.

Indeed, it is possible that the forensic chemist committed a typographical error when she typed the marking "**A JA**" instead

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[37] *Id*. at 10.

[38] Records, p. 21.

of "**JA**" in her chemistry report. The Court, however, could not just accept this supposition considering that the prosecution gave no explanation for this glaring and obvious variance. As such, there is reasonable doubt that the third link in the chain of custody – the transfer of the sachet from the investigating officer to the forensic chemist – was not complied with.

Finally, compliance with the fourth link in the chain of custody was not satisfactorily demonstrated by the prosecution. It must be recalled that the trial court dispensed with the testimony of PI Ordoño, the forensic chemist, in view of the stipulation entered into by the prosecution and the defense during the hearing of the case on 18 September 2008.

In *People v. Pajarin*,[39] the Court ruled that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he took the precautionary steps required in order to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered pending trial.[40]

In this case, there is no record that the stipulations between the parties contain the aforesaid conditions.

In its Order, dated 18 September 2008, wherein it dispensed with the testimony of PI Ordoño, the trial court enumerated the stipulations agreed upon by the parties which were made the bases of the order:

In today's hearing, Public Prosecutor Bonifacio Mangibin and defense counsel Atty. Alexander Andres stipulated on the following:

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[39] 654 Phil. 461 (2011).

[40] *Id*. at 466.

1) The specimen as indicated in the Chemistry Report;
2) The findings as stated in the Chemistry Report; and
3) The due execution and genuineness of the Chemistry Report.[41]

Clear from the foregoing is the lack of the stipulations required for the proper and effective dispensation of the testimony of the forensic chemist. While the stipulations between the parties herein may be viewed as referring to the handling of the specimen at the forensic laboratory and to the analytical results obtained, they do not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left her possession.[42] Absent any testimony regarding the management, storage, and preservation of the illegal drug allegedly seized herein after its qualitative examination, the fourth link in the chain of custody of the said illegal drug could not be reasonably established.

The lapses committed by the prosecution and the law enforcers herein could not be considered minor. Indeed, establishing every link in the chain of custody is crucial to the preservation of the integrity, identity, and evidentiary value of the seized illegal drug. Failure to demonstrate compliance with even just one of these links creates reasonable doubt that the substance confiscated from the accused is the same substance offered in evidence.

In this case, the prosecution miserably failed to establish three out of the four links in the chain of custody. As a consequence of this serious blunder, the Court finds the acquittal of accused-appellant Marciano to be in order.

WHEREFORE, the appeal is **GRANTED**. Accordingly, the appealed 31 March 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04686, which affirmed the 29 July 2010 Decision of the Regional Trial Court, Branch 66, San Fernando City, La Union, in Criminal Case No. 7580 is hereby **REVERSED** and **SET ASIDE**. Defendant-appellant Marciano

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[41] Records, p. 69.

[42] *People v. Sanchez*, 590 Phil. 214, 237-238 (2008).

Ubungen y Pulido is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is detained for any other lawful cause.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 225590. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. **MICHAEL CABUHAY,** *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE IDENTITY AND INTEGRITY OF THE ILLEGAL DRUGS SEIZED, BEING THE *CORPUS DELICTI*, MUST BE SHOWN TO HAVE BEEN PRESERVED.— The elements necessary in every prosecution for the illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged. In prosecutions under the law on dangerous drugs, the illegal drug seized from the accused constitutes the *corpus delicti* of the offense. As the dangerous drug itself constitutes the very *corpus delicti* of the offense, its identity and integrity must definitely be shown to have been preserved.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; PURPOSE; LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY OF THE SEIZED ILLEGAL DRUGS.— [T]he Court has adopted the chain of custody rule, a method of authenticating evidence which requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. As the Court stressed in *People v. Nandi*, the prosecution must account for the following links in the chain of custody of the seized illegal drug, to wit: *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.

3. ID.; ID.; ID.; ID.; THE EVIDENT NON-OBSERVANCE OF THE MANDATORY REQUIREMENTS UNDER SECTION 21 OF R.A. 9165 CASTS DOUBT ON THE INTEGRITY OF THE ILLEGAL DRUGS SEIZED FROM THE ACCUSED; LIBERALITY IN THE APPLICATION OF THE PROVISION COULD NOT BE EXTENDED SINCE NO JUSTIFIABLE GROUNDS FOR NON-OBSERVANCE WAS OFFERED IN THIS CASE.— Readily apparent from the x x x inventory is the fact that none of the persons required to sign the inventory, as enumerated under the law, were made to sign the same. The signatures of the accused or his counsel, or the representatives from the media, the Department of Justice, or any elected public official were clearly absent. Moreover, the prosecution did not present a single photograph of the

seized illegal drug taken during the inventory as required by Section 21, R.A. No. 9165. Because of these glaring procedural lapses by the police officers, the prosecution failed to show that the physical inventory, if it was performed at all, was done in the presence of the accused, his representative, representatives from the media and the Department of Justice, and an elected public official. This evident non-observance of the mandatory requirements under Section 21 of R.A. No. 9165 necessarily casts doubt on the integrity of the *shabu* supposedly seized from accused. This, in turn, creates reasonable doubt in the conviction of herein defendant-appellant for violation of Article II, Section 5 of R.A. No. 9165. The Court is not unmindful of the rule that the failure to faithfully observe the procedural requirements under Section 21 would not necessarily result in the acquittal of the accused, provided the chain of custody remains unbroken. However, such liberality could not be extended in this case as the same finds application only when there exists justifiable grounds for non-observance of the mandatory requirements under Section 21 of R.A. No. 9165, and none was offered in this case.

4. ID.; ID.; ID.; ID.; STIPULATIONS REQUIRED FOR EFFECTIVE DISPENSATION OF THE FORENSIC CHEMIST'S TESTIMONY; IN THE ABSENCE OF SUCH STIPULATIONS, REASONABLE DOUBT EXISTS AND THE COURT IS NOW DUTY BOUND TO RENDER A JUDGMENT OF ACQUITTAL.— In *People v. Pajarin*, the Court ruled that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial. The said stipulations are wanting in this case. x x x Although herein stipulations satisfied the first requisite as stated in *People v. Pajarin*, they failed to cover the second and third requisites required to establish that, after the laboratory examination, there would have been no change in the condition of the seized drug and no opportunity for someone not in the

chain to have possession of and to tamper with the same. Absent any testimony regarding these precautions, doubt, that the illegal drug allegedly confiscated from the accused is not the same as that presented in court, remains. As a result, this reasonable doubt would prevent the prosecution from overcoming the presumption of innocence in favor of the accused. x x x With the prosecution's failure to establish an unbroken chain of custody, the Court is now duty bound to render a judgment of acquittal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

This is an appeal from the 3 July 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR HC No. 06125, which affirmed the 7 March 2013 Decision[2] of the Regional Trial Court, Branch 120, Caloocan City *(RTC)*, in Criminal Case No. C-81497, convicting herein defendant-appellant Michael Cabuhay *(Michael)* of the crime of illegal sale of dangerous drugs under Republic Act *(R.A.)* No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

THE FACTS

In two Informations, both dated 21 May 2009, Michael was indicted for violations of Sections 5 and 11, Article II of R.A. No. 9165 for illegal sale and illegal possession of dangerous drugs, respectively. The accusatory portions of the informations read:

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[1] *Rollo*, pp. 2-11.

[2] Records, pp. 166-177.

Criminal Case No. C-81497 (Violation of Section 5)

That on or about the 19th day of May 2009, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully and feloniously sell and deliver to PO3 Lauro Dela Cruz, who posed, as buyer, METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.04 gram, a dangerous drug, without the corresponding license or prescription therefor, knowing the same to be such.

CONTRARY TO LAW.[3]

Criminal Case No. C-81498 (Violation of Section 11)

That on or about the 19th day of May 2009, in Caloocan City, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there, willfully, unlawfully and feloniously have in his possession, custody and control One (1) heat-sealed transparent plastic sachet containing METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.04 gram, when subjected for laboratory examination gave positive result to the tests of Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[4]

On 1 July 2009, Michael, with the assistance of counsel, was arraigned and pleaded "not guilty" to the crimes charged.[5]

Evidence for the Prosecution

The prosecution presented four (4) witnesses, namely: PO3 Lauro Dela Cruz *(PO3 Dela Cruz)*, the police officer who acted as the poseur-buyer; PO3 Jose Martinez *(PO3 Martinez)*, a member of the buy-bust team; Police Chief Inspector Stella Ebuen *(PCI Ebuen)*, the forensic chemist; and PO3 Ricardo Montero *(PO3 Montero)*, the investigating officer. The defense,

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[3] *Id*. at 2.

[4] *Id*. at 16.

[5] *Id*. at 31.

however, admitted some of the stipulations offered by the prosecution with respect to the testimonies of PO3 Montero and PCI Ebuen.

PO3 Dela Cruz testified that on 19 May 2009, at around 3:30 p.m., he was at the Caloocan City Police Station at Samson Road, Caloocan City, when their chief, Police Chief Inspector Christopher Prangan *(PCI Prangan)* tasked him, together with SPO1 Julio Lobrin *(SPO1 Lobrin)*, PO3 Montero, PO3 Martinez, and PO3 George Ardedon, to plan for a possible buy-bust operation. Apparently, PCI Prangan received a telephone call from a confidential informant telling him about an ongoing sale of *shabu* at the BMBA Compound, Barangay 118, Caloocan City, by a certain alias "*Kongkong*" who was later identified as defendant-appellant Michael Cabuhay.[6]

During the planning, PO3 Dela Cruz was designated as the poseur-buyer. For this purpose, he prepared two (2) one hundred-peso bills on which he placed the markings "LP" on each upper left portion.[7] Thereafter, the team proceeded to the target area.[8]

The buy-bust team met with the informant at the target area[9] and thereafter proceeded to the BMBA Compound with PO3 Dela Cruz, followed by the other members of the buy-bust team. When he saw Michael, PO3 Dela Cruz and the informant approached him. The informant introduced PO3 Dela Cruz to Michael as the buyer of *shabu*. Michael then asked him how much *shabu* he wanted to buy. PO3 Dela Cruz did not verbally respond; instead, he handed the marked money to Michael who accepted it and put it inside his pocket.[10] Michael then took out one (1) plastic sachet from his right pocket and gave it to PO3 Dela Cruz. Upon receiving the sachet, PO3 Dela Cruz

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[6] TSN, 7 October 2009, pp. 3-4, 14-15.

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

[8] *Id.* at 8.

[9] *Id.*

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

scratched his head, the pre-arranged signal for his team to approach. At this point, PO3 Dela Cruz introduced himself as a policeman and arrested Michael. Meanwhile, the other members of the buy-bust team arrived and assisted PO3 Dela Cruz in apprehending Michael.[11]

After Michael's arrest, PO3 Dela Cruz and SPO1 Lobrin appraised him of his constitutional rights. Thereafter, PO3 Dela Cruz looked on as SPO1 Lobrin frisked Michael and recovered another plastic sachet containing white crystalline granules from the latter's right pocket. SPO1 Lobrin also recovered the buy-bust money from Michael.[12]

Meanwhile, in the same place of arrest, PO3 Dela Cruz placed the markings "MCV/LD BUY BUST" on the subject plastic sachet. PO3 Dela Cruz explained that "MCV" stood for Michael's initials, while the "LD" were his. He further stated that he wrote "05/19/09" on the subject sachet.[13] PO3 Dela Cruz likewise claimed that he saw SPO1 Lobrin mark the sachet recovered from Michael's right pocket with "MCV/JL 05-19-09," the initials of SPO1 Lobrin and Michael.[14] Thereafter, Michael, as well as the pieces of evidence seized from him, were brought to their office where they were turned over to the investigator.[15]

PO3 Dela Cruz identified the accused and the two (2) sachets of illegal drugs before the RTC.[16]

PO3 Martinez corroborated the testimony of PO3 Dela Cruz as regards Michael's arrest.[17]

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[11] *Id*. at 11.

[12] *Id*. at 12.

[13] *Id*. at 12-13.

[14] *Id*. at 14.

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

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

[17] TSN, 10 November 2010, pp. 2-6.

As previously stated, the parties entered into stipulations with respect to the testimonies of PO3 Montero and PCI Ebuen. Specifically, as regards PO3 Montero, the parties agreed on the following stipulations:

(1) That as investigator in these cases, the person of the accused and the pieces of evidence subject matter of the cases were turned over to him;

(2) That he prepared a Letter Request (Exhibit "A") addressed to the crime laboratory for the examination of the specimen (Exhibit "B") attached thereto;

(3) That the said specimen has been examined by the Forensic Chemist of the crime laboratory, the result of which was reduced into writing under Physical Science Report No. D-157-09 (Exhibit "C"), yielding positive result to the test for the presence of Methylamphetamine Hydrochloride;

(4) That he prepared the *Pinagsamang Sinumpaang Salaysay* of the arresting officers, the Booking Sheet and Arrest Report, the Referral Slip, the Pre-Operation Report, the Coordination Sheet, the Evidence Acknowledgment Receipt, and the Affidavit of Attestation;

(5) That he caused the photocopying of the money used as buy-bust money and that he can identify the same.[18]

On cross-examination, PO3 Montero admitted that he did not place his own markings on each of the sachets of illegal drugs. He explained, however, that he placed his markings on another plastic bag wherein he placed all of the pieces of evidence.[19]

With respect to the testimony of PCI Ebuen, the parties stipulated on the following facts, to wit:

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[18] TSN, 16 June 2010, pp. 7-8; Records, pp. 75-76.

[19] *Id*. at 6.

(1) That the witness is an expert witness;

(2) That on May 19, 2009, she is in receipt of (Exhibit "A") Request for Laboratory Examination of one (1) unsealed plastic sachet with SAID-SOTG EVIDENCE dated 05-19-09 markings containing two (2) pieces of small heat-sealed transparent plastic sachet containing a white crystalline substance believed to be *shabu* with markings MCV/LD (Buy-bust) and MCV/JL, both dated 05-19-09; Exhibit "B," Brown envelope with markings D-15709 "A-1" SGE 5/19/09; Exhibit "B-1," plastic sachet; Exhibit "B-2-a," white crystalline substance;

(3) That she conducted a laboratory examination on the specimen submitted to their office, the result of which she reduced in writing as evidenced by Physical Science Report No. D-157-09 (Exhibit "C"); the findings as (Exhibit "C-1") and the signatures as (Exhibit "C-2").[20]

Evidence for the Defense

On its part, the defense presented Michael himself, his mother Aurora Cabuhay *(Aurora)*, and Conrado Bungay *(Conrado)*, Michael's stepfather. Their combined testimonies sought to establish Michael's innocence, as follows:

On 18 May 2009, at around four o'clock in the afternoon, Michael was in a drinking session with his two friends in front of his house when five (5) men arrived. Three of the men were SPO1 Lobrin, PO3 Dela Cruz, and a certain Roland Mateo, their neighbor and also a police officer.[21] The men inquired about the whereabouts of one Erwin Villar, Michael's uncle. Immediately, one of the men whom Michael identified as SPO1 Lobrin frisked and handcuffed him. He was boarded in a black car and brought to the Sangandaan Police Station where he was detained. Despite his claim that nothing was taken from him, the men insisted that they were able to buy and confiscate

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[20] Records, p. 48.

[21] TSN, 3 May 2011, pp. 4-5.

an illegal substance from him.[22] He only learned the following day that he was being charged for violation of Sections 5 and 11 of R.A. No. 9165.[23]

Conrado and Aurora corroborated Michael's claim that he was just drinking in front of his house when he was suddenly apprehended by several policemen.[24]

The RTC Ruling

In its decision, the RTC acquitted Michael of violation of Section 11, R.A. No. 9165 for illegal possession of dangerous drugs (Criminal Case No. C-81498), but found him guilty for violation of Section 5 of R.A. No. 9165 for illegal sale of dangerous drugs (Criminal Case No. C-81497).

As to Michael's acquittal in Criminal Case No. 81498, the trial court opined that the prosecution failed to establish an unbroken chain of custody with respect to the heat-sealed transparent plastic sachet subject of the criminal case for illegal possession of dangerous drugs. The trial court reasoned that without the testimony of SPO1 Lobrin who allegedly frisked Michael and seized from him the plastic sachet, the identity of the dangerous drug was not established with reasonable certainty and the prosecution's theory on the crime had no leg to stand on.

On the other hand, with respect to Michael's conviction in Criminal Case No. 81497, the trial court was convinced that the prosecution was able to establish all the essential elements of the illegal sale of dangerous drugs. It gave full faith and credence to the version of the prosecution noting that unless there is a clear and convincing proof that the members of the buy-bust team were animated by improper motive or were not properly performing their duty, the testimonies of the witnesses-law enforcers deserve full faith and credit.

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

[23] *Id*. at 11.

[24] TSN, 8 November 2011; TSN, 5 February 2013.

The dispositive portion of the RTC decision reads:

> Premises considered, this Court finds and so holds that:
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> (1) In Crim. Case No. C-81497, accused Michael Cabuhay y Villar GUILTY beyond reasonable doubt for violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00).
>
> (2) In Crim. Case No. C-81498, the accused MICHAEL CABUHAY is hereby ACQUITTED.
>
> The drugs subject matter of these cases are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.
>
> SO ORDERED.[25]

Aggrieved, Michael elevated an appeal before the CA.

The CA Ruling

In its assailed decision, the CA dismissed Michael's appeal effectively affirming the RTC decision. The appellate court concurred with the trial court's assessment that the prosecution was able to prove all the elements of the crime of illegal sale of dangerous drugs. It further opined that the prosecution was able to preserve the integrity and evidentiary value of the seized item subject of the illegal sale of dangerous drugs. The dispositive portion of the appealed decision reads:

> We DISMISS the appeal.
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> SO ORDERED.[26]

Hence, this appeal.

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[25] Records, p. 177.

[26] *Rollo*, p. 11.

ISSUES

Repleading his arguments in his appellant's brief filed before the CA, dated 5 November 2013,[27] Michael urges this Court to consider the following assignment of errors:

I.

THE COURT A QUO GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGED CONFISCATED SHABU.

III.

THE COURT A QUO GRAVELY ERRED IN DISREGARDING ACCUSED-APPELLANT'S DEFENSE.[28]

THE COURT'S RULING

The appeal is meritorious.

The elements necessary in every prosecution for the illegal sale of dangerous drugs are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment. Similarly, it is essential that the transaction or sale be proved to have actually taken place coupled with the presentation in court of evidence of *corpus delicti* which means the actual commission by someone of the particular crime charged.[29]

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[27] CA *rollo*, pp. 41-54.

[28] *Id.* at 43.

[29] *People v. Hementiza*, G.R. No. 227398, 22 March 2017.

In prosecutions under the law on dangerous drugs, the illegal drug seized from the accused constitutes the *corpus delicti* of the offense.[30] As the dangerous drug itself constitutes the very *corpus delicti* of the offense, its identity and integrity must definitely be shown to have been preserved.[31]

For this purpose, the Court has adopted the chain of custody rule, a method of authenticating evidence which requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[32]

The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[33]

As the Court stressed in *People v. Nandi*,[34] the prosecution must account for the following links in the chain of custody of the seized illegal drug, to wit: *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;

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[30] *People v. Ismael*, G.R. No. 208093, February 20, 2017; *People v. Alcuizar*, 662 Phil. 794, 801 (2011).

[31] *People v. Enriquez*, 718 Phil. 352, 363 (2013).

[32] *Mallillin v. People,* 576 Phil. 576, 587 (2008).

[33] *Id*.

[34] 639 Phil. 134, 144-145 (2010).

and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

Unfortunately, in this case, the prosecution failed to demonstrate an unbroken chain of custody.

Non-Observance of the Procedural Requirements under Section 21 of R.A. No. 9165

The Court observes that the buy-bust team failed to observe the proper procedure in the custody of confiscated dangerous drugs. Section 21, Article II of R.A. No. 9165 provides:

> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment. —
>
> x x x x x x x x x
>
> **(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/ her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.** [emphasis supplied]

In this case, the prosecution was able to submit an inventory of the two (2) sachets of illegal drugs allegedly confiscated from Michael.[35] However, the only signatories to this inventory are the arresting officers PO3 Dela Cruz and SPO1 Lobrin, and the investigating officer PO3 Montero. Readily apparent from the same inventory is the fact that none of the persons required to sign the inventory, as enumerated under the law, were made to sign the same. The signatures of the accused or

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[35] Records, p. 106; Exhibit "I", Evidence Acknowledgment Receipt.

his counsel, or the representatives from the media, the Department of Justice, or any elected public official were clearly absent. Moreover, the prosecution did not present a single photograph of the seized illegal drug taken during the inventory as required by Section 21, R.A. No. 9165.

Because of these glaring procedural lapses by the police officers, the prosecution failed to show that the physical inventory, if it was performed at all, was done in the presence of the accused, his representative, representatives from the media and the Department of Justice, and an elected public official.

This evident non-observance of the mandatory requirements under Section 21 of R.A. No. 9165 necessarily casts doubt on the integrity of the *shabu* supposedly seized from accused.[36] This, in turn, creates reasonable doubt in the conviction of herein defendant-appellant for violation of Article II, Section 5 of R.A. No. 9165.

The Court is not unmindful of the rule that the failure to faithfully observe the procedural requirements under Section 21 would not necessarily result in the acquittal of the accused, provided the chain of custody remains unbroken.[37] However, such liberality could not be extended in this case as the same finds application only when there exists justifiable grounds for non-observance of the mandatory requirements under Section 21 of R.A. No. 9165, and none was offered in this case.[38]

Fourth Link in the Chain of Custody; Stipulations Required for Effective Dispensation of the Forensic Chemist's Testimony

It must be recalled that the testimony of the forensic chemist PCI Ebuen was the subject of a stipulation by the prosecution

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[36] *People v. Jaafar*, G.R. No. 219829, 18 January 2017, 815 SCRA 19, 33.

[37] *People v. Manlangit*, 654 Phil. 427-443 (2011).

[38] *People v. Del Mundo*, G.R. No. 208095, 20 September 2017.

and defense. However, even after admitting the stipulations offered by the prosecution with respect to PCI Ebuen's testimony, the defense insists that the prosecution could not take refuge in it as it did not complete the chain of custody.

The Court agrees with the defense.

In *People v. Pajarin*,[39] the Court ruled that in case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial.[40]

The said stipulations are wanting in this case.

Here, the prosecution offered and the defense admitted that PCI Ebuen is an expert witness; that on 19 May 2009, she received two small heat-sealed transparent plastic sachets including the subject of this case, with marking "MCV/LD BUY BUST"; and that the contents of the sachet yielded positive results for methylamphetamine hydrochloride or *shabu* after the laboratory examination thereon.

Although herein stipulations satisfied the first requisite as stated in *People v. Pajarin*, they failed to cover the second and third requisites required to establish that, after the laboratory examination, there would have been no change in the condition of the seized drug and no opportunity for someone not in the chain to have possession of and to tamper with the same. Absent any testimony regarding these precautions, doubt, that the illegal drug allegedly confiscated from the accused is not the same as that presented in court, remains. As a result, this reasonable

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[39] 654 Phil. 461, 466 (2011).

[40] *Id*.

doubt would prevent the prosecution from overcoming the presumption of innocence in favor of the accused.

The Court had already stressed the importance of establishing the precautions taken by the forensic chemist to ensure that the identity and integrity of the seized drug would be preserved after the conduct of the laboratory examination. On point is the case of *People v. Sanchez*[41] where the Court made the following pronouncement:

> xxx. While we are aware that the RTC's Order of August 6, 2003 dispensed with the testimony of the forensic chemist because of the stipulations of the parties, we view the stipulation to be confined to the handling of the specimen at the forensic laboratory and to the analytical results obtained. **The stipulation does not cover the manner the specimen was handled before it came to the possession of the forensic chemist and after it left his possession.** To be sure, personnel within the police hierarchy (as SPO2 Sevilla's testimony casually mentions) must have handled the drugs but evidence of how this was done, i.e., how it was managed, stored, preserved, labeled and recorded from the time of its seizure, to its receipt by the forensic laboratory, up until it was presented in court and subsequently destroyed is absent from the evidence adduced during the trial.[42] [emphasis supplied]

To repeat, the failure to include in the stipulations the precautions taken by the forensic chemist after the conduct of the laboratory examination on the illegal drug, as well as the manner it was handled after it left her custody, renders the stipulations in her testimony ineffective in completing an unbroken chain of custody.

With the prosecution's failure to establish an unbroken chain of custody, the Court is now duty bound to render a judgment of acquittal.

WHEREFORE, the appeal is **GRANTED**. Accordingly, the appealed Decision, dated 3 July 2015, of the Court of Appeals

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[41] *People v. Sanchez*, 590 Phil. 214-245 (2008).

[42] *Id.* at 237-238.

in CA-G.R. CR HC No. 06125, which affirmed the Decision, dated 7 March 2013, of the Regional Trial Court, Branch 120, Caloocan City *(RTC)*, in Criminal Case No. C-81497, is hereby **REVERSED** and **SET ASIDE**. Defendant-appellant Michael Cabuhay is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention unless he is detained for another crime or lawful cause.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 225604. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DIONESIO ROY *y* PERALTA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC); STATUTORY RAPE; ELEMENTS, SATISFACTORILY ESTABLISHED.— The prosecution satisfactorily established the elements of the crime of statutory rape, namely: "(1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse." As the law presumes absence of free

consent when the victim is below the age of 12, it is not necessary to prove force, intimidation or consent as they are not elements of statutory rape. It was established by the evidence on record, specifically AAA's Birth Certificate, that AAA was only nine years old at the time she was raped by her assailant. We, thus, rule that appellant's claim of absence of evidence of force and intimidation does not militate against the finding of rape.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF BOTH THE TRIAL COURT AND THE COURT OF APPEALS GIVEN GREAT WEIGHT.—** The Court then gives great weight to the findings of both the lower courts that AAA's testimony was worthy of credence. "It is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity." Both the RTC and the CA held that AAA was a credible witness whose testimony categorically and consistently identified appellant as her assailant and persuasively narrated her ordeal. Also, both held that AAA's testimony was rendered more persuasive as it was corroborated by the testimony of Bartulay (which supports AAA's account of the incident), by the testimony of Dr. Tan who examined her after the commission of the rape and the Medico-Legal Report she issued which revealed that AAA's anogenital findings were diagnostic of blunt force or penetrating trauma. There is no cogent reason to depart from these uniform findings. "Jurisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should be best addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts."

3. **CRIMINAL LAW; RPC; EXEMPTING CIRCUMSTANCES; INSANITY, EXPLAINED.—** Paragraph 1, Article 12 of the Revised Penal Code provides that an imbecile or insane person is exempt from criminal liability, unless he acted during a lucid interval. "[It] requires a complete deprivation of rationality in committing the act, *i.e.* that the accused be deprived of reason, that there be no consciousness of responsibility for his acts, or that there be complete absence of the power to discern." The

law presumes that every person is sane. Anyone who pleads the exempting circumstance of insanity bears the burden to prove that he was completely deprived of reason when he committed the crime charged. Note that the proof of an accused's insanity must "relate to the time immediately preceding or simultaneous with the commission of the offense with which he is charged."

4. **ID.; ID.; ID.; THE DEFENSE FAILED TO OVERCOME THE PRESUMPTION OF INSANITY; THE ACTIONS OF APPELLANT NEGATED COMPLETE DESTRUCTION OF INTELLIGENCE AT THE TIME THE RAPE WAS COMMITTED.—** Here, the defense failed to overcome the presumption of sanity. As correctly observed by the CA, Dr. Domingo's report could not positively and certainly conclude that appellant's state of imbecility afflicted him at the time he raped AAA. Moreover, we agree with the CA's observation, affirming the findings of the trial court, that the actions of appellant negated complete destruction of intelligence at the time the rape was committed. x x x

5. **ID.; ID.; STATUTORY RAPE; PENALTY AND CIVIL LIABILITY.—** x x x [W]e therefore affirm the conviction of appellant for the crime of statutory rape under Article 266-B of the Revised Penal Code. The trial court, thus, correctly imposed upon appellant, as affirmed by the CA, the penalty of *reclusion perpetua*. Under prevailing jurisprudence, when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amount of civil indemnity, moral damages, and exemplary damages should be ₱75,000.00 each. The CA, thus, correctly modified the awards of civil indemnity and moral damages to ₱75,000.00. However, the award of exemplary damages should be increased to ₱75,000.00. In addition, the civil indemnity, moral damages, and exemplary damages payable by appellant are subject to interest at the rate of 6% *per annum* from the finality of the Decision until fully paid.

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 February 27, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06582 that affirmed with modification the December 16, 2013 Decision[2] of the Regional Trial Court, Branch 5, Manila (RTC), finding Dionesio Roy *y* Peralta (appellant) guilty beyond reasonable doubt of the crime of statutory rape and sentencing him to suffer the penalty of *reclusion perpetua*.

Factual Antecedents

Appellant was charged with statutory rape before the RTC in an Information which reads:

That on or about June 30, 2010, in the City of Manila, Philippines, the said accused, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA],[3] a minor, 9 years of age, by then and there pulling her inside a building at Intramuros, this City, covering her mouth so she could not shout for help, removing her shorts and panty, make her sit on his lap, kissing

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[1] CA *rollo*, pp. 87-103; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Remedios A. Salazar-Fernando and Ramon A. Cruz.

[2] Records, pp. 310-314; penned by Acting Presiding Judge Mona Lisa V. Tiongson-Tabora.

[3] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, And for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." *People v. Dumadag*, 667 Phil. 664, 669 (2011).

her on the lips and forcibly inserting his penis into her vagina against her will and consent.

Contrary to law.[4]

Appellant was arraigned and pleaded not guilty. Thereafter, trial on the merits ensued.

The prosecution's evidence, consisting of the testimonies of AAA, the alleged eyewitness, Roger Bartulay (Bartulay), AAA's mother, BBB, and the attending physician, Dr. Merle Tan (Dr. Tan), as summarized by the appellate court, is as follows:

> AAA testified that 'around 4 p.m.' of 30 June 2010, she was strolling in Intramuros when somebody dragged her into a break or opening in a wall. She recognized her assailant as the appellant, whom she calls Roy and who lived a block away from her family's house. After dragging her into the opening, appellant allegedly removed her clothes. AAA shouted but appellant covered her mouth and removed his own shorts and briefs. Then he allegedly pulled her hair and made her sit on his lap, facing him. With her legs spread apart, appellant tried to insert his penis into her vagina. Appellant also held her by the waist and kissed her lips. There was no full penetration; she testified that he only 'dipped' his penis into her organ. Appellant then sensed that someone saw them and he stood up and put on his clothes. A security guard then arrived and handcuffed the appellant.
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> [Bartulay] testified that 'around 9 in the morning' of 30 June 2010[,] he proceeded from Letran College to San Gabriel Street in Intramuros to urinate. He then saw the appellant, whom he identified in court, and who was at the time of the incident naked and only a meter and a half away from him, sitting undressed with a naked child on his lap. [Bartulay] saw that the appellant had covered the child's mouth while the child appeared to be in pain. [Bartulay] described that the appellant appeared to be pulling out something in front of the child while the latter's legs had stretched out. He reported the ghastly scene to a security guard. On the stand, he also identified his Sinumpaang Salaysay.
>
> AAA's mother, BBB, presented a Certificate of Live Birth showing that her daughter was born on 13 May 2001. She testified that when the alleged rape happened, she was at the inauguration of President

[4] Records, p. 1.

Aquino at the Luneta Park. Before attending, she left AAA sleeping at her mother's house in Intramuros. She knew the appellant since she was 18 years old, and testified that she would usually see him near her residence. When she heard that her daughter had been molested, she accompanied AAA to the Philippine General Hospital ('PGH') for examination. With her assistance, AAA executed a sworn statement detailing the crime.

Dr. Merle Tan, the examining physician, testified that she attended to AAA on 30 June 2010. She summarized her findings in a report, which concluded that 'congenital findings are diagnostic of blunt force or penetrating trauma.'[5]

The defense, on the other hand, presented appellant who gave conflicting answers to the questions propounded. The defense thus prayed for the RTC to refer appellant for psychiatric examination to determine his mental status and level of comprehension which the RTC granted in an Order[6] dated November 16, 2012.

Appellant's testimony, as well as that of Dr. Grace Punzalan Domingo (Dr. Domingo) of the National Center for Mental Health, who testified on appellant's mental status, as summarized by the appellate court, are as follows:

For the defense, the appellant initially raised the defense of alibi. He testified that while he recognized AAA, he did not rape her. At the time of the alleged rape, he was only defecating, but was inconsistent on whether this was at home or at the hole where he was arrested.

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Subsequently, Dr. Grace Domingo from the National Center for Mental Health testified on the appellant's mental status. She stated that appellant had undergone a battery of tests and examinations, and concluded that the results showed appellant to be suffering from imbecility, or moderate mental retardation. She clarified that while this was irreversible, appellant can be taught, and recommended

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[5] CA *rollo*, pp. 88-89.

[6] Records, p. 193.

continuous treatment On cross, she testified that the finding of imbecility only covered the mental status of the appellant at the time he underwent mental evaluation, and not necessarily at the time of the offense, meaning that, at the time of the rape, appellant probably knew what he was doing and the consequences thereof.

On redirect, Dr. Domingo testified that she could not conclude absolutely that appellant was aware of his actions since he was not x x x brought to the Center immediately after the rape. On re-cross, Dr. Domingo maintained her general response.[7]

Ruling of the Regional Trial Court

In a Decision[8] dated December 16, 2013, the RTC held that the prosecution was able to discharge its burden of proving the culpability of appellant for statutory rape, particularly, that AAA was only nine years old at the time of the rape incident; that appellant was the perpetrator of the crime; and that the accused had carnal knowledge of AAA. The RTC accorded full faith and credence to the testimony of AAA which was validated by the medical findings of Dr. Tan and corroborated by Bartulay's testimony. The RTC found unavailing appellant's defense of imbecility as there was no clear and competent proof that he had no control over his mental faculties immediately prior to or during the perpetration of the crime. The RTC thus ruled:

WHEREFORE, the court hereby finds the accused DIONESIO ROY *y* PERALTA, GUILTY beyond reasonable doubt of the crime of Statutory Rape under Article 266-B of the Revised Penal Code and is hereby sentenced to suffer the penalty of *Reclusion Perpetua*.

The said accused is ordered to pay the victim, AAA the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages.

SO ORDERED.[9]

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[7] CA *rollo*, pp. 89-90.

[8] Records, pp. 310-314.

[9] *Id*. at 314.

Aggrieved, appellant appealed to the CA.

Ruling of the Court of Appeals

In his Brief, appellant argued that the prosecution failed to prove his guilt. He maintained that he is exempt from criminal liability due to insanity as he was suffering from moderate mental retardation and possessing the mental age of a seven-year old, as bolstered by the medical report of Dr. Domingo. He further argued that the prosecution failed to prove the employment of force, violence and intimidation in order to consummate the crime of rape, alleging that there was no indication that a weapon was used by appellant to force AAA to submit to appellant's erotic advances.

The Office of the Solicitor General (OSG), on the other hand, asserted that the guilt of appellant was proven beyond reasonable doubt. The OSG argued that proof of force, intimidation, and consent is not necessary for the conviction of statutory rape. It also opined that rape was consummated despite AAA's testimony that there was no full penetration of her genital organ. Furthermore, appellant cannot plead the exempting circumstance of insanity or imbecility as he failed to overcome the presumption of sanity at the time of the commission of the carnal act.

In a Decision[10] dated February 27, 2015, the CA affirmed the conviction of appellant with modification as to the award of damages. It increased the amounts of civil indemnity and moral damages to ₱75,000.00 each, but retained the award of ₱30,000.00 as exemplary damages. The CA found that all the elements of statutory rape had been established beyond reasonable doubt. It held that the issue of the existence of force, violence, and intimidation had become moot for, in statutory rape, the prosecution only has to prove that the accused had carnal knowledge of the offended party who was under 12 years of age and incapable of giving consent. It further held that appellant's defense of insanity and imbecility could not prosper because he failed to establish that he was deprived of reason when he committed the crime charged.

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[10] CA *rollo*, pp. 87-103.

Hence, this appeal. Both parties dispensed with the filing of their respective supplemental briefs.

Our Ruling

After a careful review of the records of the case, we find the appeal to be devoid of merit. The Court finds no reason to reverse the CA in affirming the ruling of the RTC finding appellant guilty beyond reasonable doubt of the crime of rape. However, the amount of exemplary damages awarded should be modified, consistent with prevailing jurisprudence.

The prosecution satisfactorily established the elements of the crime of statutory rape, namely: "(1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse."[11] As the law presumes absence of free consent when the victim is below the age of 12, it is not necessary to prove force, intimidation or consent as they are not elements of statutory rape.[12] It was established by the evidence on record, specifically AAA's Birth Certificate,[13] that AAA was only nine years old at the time she was raped by her assailant. We, thus, rule that appellant's claim of absence of evidence of force and intimidation does not militate against the finding of rape.

The Court then gives great weight to the findings of both the lower courts that AAA's testimony was worthy of credence. "It is settled jurisprudence that testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and

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[11] *People v. Ronquillo*, G.R. No. 214762, September 20, 2017.

[12] *People v. Cadano, Jr.*, 729 Phil. 576, 584 (2014).

[13] Records, p. 43.

sincerity."[14] Both the RTC and the CA held that AAA was a credible witness whose testimony categorically and consistently identified appellant as her assailant and persuasively narrated her ordeal. Also, both held that AAA's testimony was rendered more persuasive as it was corroborated by the testimony of Bartulay (which supports AAA's account of the incident), by the testimony of Dr. Tan who examined her after the commission of the rape and the Medico-Legal Report[15] she issued which revealed that AAA's anogenital findings were diagnostic of blunt force or penetrating trauma. There is no cogent reason to depart from these uniform findings. "Jurisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should be best addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts."[16]

The Court, further, cannot appreciate the exempting circumstance of insanity in favor of appellant.

Paragraph 1, Article 12 of the Revised Penal Code provides that an imbecile or insane person is exempt from criminal liability, unless he acted during a lucid interval. "[It] requires a complete deprivation of rationality in committing the act, *i.e.* that the accused be deprived of reason, that there be no consciousness of responsibility for his acts, or that there be complete absence of the power to discern."[17] The law presumes that every person is sane.[18] Anyone who pleads the exempting circumstance of insanity bears the burden to prove that he was completely deprived of reason when he committed the crime charged.[19] Note that the proof of an accused's insanity must "relate to the

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[14] *People v. Vergara*, 724 Phil. 702, 709 (2014).

[15] Records, p. 14.

[16] *People v. Barcela*, 734 Phil. 332, 342 (2014).

[17] *People v. Legaspi*, 409 Phil. 254, 268 (2001).

[18] CIVIL CODE, Article 800.

[19] *People v. Pambid*, 384 Phil. 702, 728 (2000).

time immediately preceding or simultaneous with the commission of the offense with which he is charged."[20]

Here, the defense failed to overcome the presumption of sanity. As correctly observed by the CA, Dr. Domingo's report could not positively and certainly conclude that appellant's state of imbecility afflicted him at the time he raped AAA. Moreover, we agree with the CA's observation, affirming the findings of the trial court, that the actions of appellant negated complete destruction of intelligence at the time the rape was committed. The CA wrote:

> Dr. Domingo's Report is likewise inconclusive as to the state of appellant's mental faculties at the time of the rape. While the report extensively discussed his condition in early 2013, it does not conclude that he was afflicted with imbecility, or that he was unaware of what he was doing, at the time he raped AAA. The report only concluded that 'at present, the patient is deemed INCOMPETENT to stand the rigors of court trial.' Unfortunately, such incompetence merely means that appellant's mental state is not fit for trial. It does not mean that he was completely deprived of reason and freedom of will at the time he committed the crime.
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> Furthermore, We agree with the RTC that appellant's actions at the moment of the rape reveal that appellant was aware of what he was committing, and that what he was doing was wrong. Appellant, as convincingly testified to by AAA, and corroborated by [Bartulay], dragged AAA into a secluded spot, thereby isolating himself and AAA to facilitate the commission of his lust. When AAA tried to call for help, appellant covered her mouth, ensuring that they would not be disturbed. Such precautions make it difficult to believe that appellant was in such a state that he could not discern what was right from wrong, or that he was completely deprived of intelligence or will.[21]

In view of the foregoing, we therefore affirm the conviction of appellant for the crime of statutory rape under Article 266-B of the Revised Penal Code. The trial court, thus, correctly imposed

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[20] *People v. Isla*, 699 Phil. 256, 267 (2012).

[21] CA *rollo*, p. 100.

upon appellant, as affirmed by the CA, the penalty of *reclusion perpetua*.

Under prevailing jurisprudence, when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the proper amount of civil indemnity, moral damages, and exemplary damages should be ₱75,000.00 each.[22] The CA, thus, correctly modified the awards of civil indemnity and moral damages to ₱75,000.00. However, the award of exemplary damages should be increased to ₱75,000.00. In addition, the civil indemnity, moral damages, and exemplary damages payable by appellant are subject to interest at the rate of 6% *per annum* from the finality of the Decision until fully paid.[23]

WHEREFORE, the appeal is **DISMISSED**. The assailed February 27, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06582, finding appellant Dionesio Roy *y* Peralta **GUILTY** beyond reasonable doubt of the crime of statutory rape under Article 266-A of the Revised Penal Code, sentencing him to suffer the penalty of *reclusion perpetua*, and ordering him to pay the victim AAA civil indemnity and moral damages of ₱75,000.00 each, is **AFFIRMED with MODIFICATION** that the amount of exemplary damages is increased to ₱75,000.00 and all damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[22] *People v. Jugueta*, 783 Phil. 806, 848 (2016).

[23] *Nacar v. Gallery Frames*, 716 Phil. 267, 282 (2013).

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

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

THIRD DIVISION

[G.R. No. 225605. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. **VENERANDO GOZO *y* VELASQUEZ,** *accused-appellant*.

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS.—** In convicting the accused for statutory rape, the prosecution has the burden to prove the following elements: (1) **the age of the complainant**; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant. In turn, conviction may result on the basis of the victim's sole testimony, provided it is credible, natural, and consistent with human nature and the normal course of things.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT; VICTIM'S TESTIMONY ALONE SUFFICIENT TO PROVE APPELLANT'S IDENTITY AND CARNAL KNOWLEDGE.—** AAA was straightforward and categorical in identifying Gozo as the one who abused her. x x x AAA was steadfast that Gozo truly inserted his penis leaving no doubt that she was unduly robbed of her purity and innocence. Notwithstanding the RTC's clarificatory questions, she was never confused and unequivocally recalled how Gozo had molested her. Thus, AAA's testimony alone is sufficient to prove Gozo's identity as the molester and to confirm that he had carnal knowledge of the victim. It is axiomatic that the findings of the trial courts as to the credibility of witnesses and their testimonies are afforded great weight and are left undisturbed, unless there are facts of substance or value which may have been overlooked and could materially affect the outcome of the case.

3. **CRIMINAL LAW; REVISED PENAL CODE; SIMPLE RAPE; WHERE THE PROSECUTION FAILED TO PROVE WITH SUFFICIENT AND APPROPRIATE EVIDENCE THAT THE VICTIM WAS BELOW 12 YEARS OLD, ACCUSED**

SHOULD BE CONVICTED OF SIMPLE RAPE; MORAL ASCENDANCY OF THE ACCUSED OVER THE VICTIM SHOWN DESPITE THE LACK OF BLOOD RELATIONS BETWEEN THEM.— As outlined in *Pruna,* the prosecution has the burden to prove the age of the offended party and the lack of opposition to the testimonial evidence on the part of the accused should not be taken against him. It is noteworthy that in the present case, there was no testimonial evidence that Gozo could have objected to. In addition, the trial court is required to make a categorical finding of the victim's age. Here, however, the RTC simply opined, based on its observation, that AAA could not have been more than 12 years of age. Clearly, the prosecution failed to prove with sufficient and appropriate evidence that AAA was below 12 years of age. Thus, the designation of the crime Gozo committed should be corrected from statutory rape to simple rape, consistent with the Criminal Law principle that doubts should be resolved in favour of the accused. In *People v. Hilarion (Hilarion)*, the Court convicted the accused for simple rape after the prosecution failed to prove the victim's age with certainty[.] x x x Similar to *Hilarion*, Gozo could also be convicted for simple rape due to the presence of force and intimidation. The accused, a full grown adult, had sexual intercourse with AAA, a minor of tender age. She was crying during the ordeal, indicating that the act was against her will. In addition, it is settled that even absent any actual force or intimidation, rape can be committed if the malefactor has moral ascendancy over the victim. In this case, Gozo and BBB, AAA's father, were close friends. In fact, he claimed that BBB would sometimes entrust AAA to his care and, on occasion, would sleep beside each other. Thus, notwithstanding the lack of blood relations between Gozo and AAA, it is shown that he had the authority or ascendancy over her in view of their close relationship.

4. **ID.; ID.; ID.; PROPER PENALTY IS *RECLUSION PERPETUA* WITHOUT NEED TO INDICATE THAT APPELLANT WAS INELIGIBLE FOR PAROLE; REASON.—** [T]here is only a need to qualify that the accused is not "eligible for parole" in cases where the imposable penalty should have been death were it not for the enactment of R.A. No. 9346. This is to differentiate cases where the penalty imposable was **reduced** to *reclusion perpetua* from cases where the penalty imposed was *reclusion perpetua*. Here, Gozo is guilty of simple rape,

punishable by *reclusion perpetua*; thus, there was no need to indicate that he was ineligible for parole because accused sentenced to indeterminate penalties are *ipso facto* ineligible for parole.

5. ID.; ID.; ID.; CIVIL LIABILITY.— As to the award of damages, the courts *a quo* required Gozo to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. In order to conform with recent jurisprudence, however, the exemplary damages should be increased to ₱75,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MARTIRES, *J.*:

This is an appeal from the 18 June 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06585, which affirmed with modification the 29 November 2013 Decision[2] of the Regional Trial Court *(RTC),* in Criminal Case No. 146571 finding accused-appellant Venerando Gozo *y* Velasquez *(Gozo)* guilty beyond reasonable doubt of Statutory Rape.

THE FACTS

In an Information dated 2 November 2011, Gozo was charged with the crime of statutory rape committed against AAA.[3] The accusatory portion of the information reads:

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[1] *Rollo*, pp. 2-15; penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

[2] CA *rollo*, pp. 13-21; penned by Judge Lorifel Lacap Pahimna.

[3] The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 (Subject: Protocols

That on or about the 27th day of October 2011, [XXX],[4] Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and intent to cause or gratify his sexual desire, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge with one [AAA], 6 years old, a minor, against her will and consent, the said crime having been attended by the qualifying circumstance of minority, to the damage and prejudice of the said victim.[5]

During his arraignment on 22 November 2011, Gozo pleaded not guilty.

Version of the Prosecution

On 27 October 2011, AAA was staying in the restaurant where her father BBB[6] worked as a stay-in cook. When it was time for her to sleep, she went up to the second floor of the restaurant. Thereafter, Gozo, who also worked in the restaurant as a stay-in janitor, decided to follow her inside the room. There, he began his advances and started molesting AAA. At first, Gozo

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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).

[4] The city where the crime was committed is blotted to protect the identity of the rape victim pursuant to Administrative Circular No. 83-2015 issued on 27 July 2015.

[5] Records, p. 1.

[6] The complete names and personal circumstances of the victim's family members or relatives, who may be mentioned in the court's decision or 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).

inserted his fingers into AAA's vagina but because his lust was not satiated, he eventually inserted his penis into the victim's genitals. After he was through abusing her, he instructed AAA not to tell anyone because it would cause a fight between him and BBB.[7]

Nevertheless, AAA immediately told BBB about the incident when he arrived. They then went to the police station to report what happened and proceeded to the hospital for physical examination. The genital physical examination revealed that AAA had fresh shallow lacerations in her hymen at the 3, 6, and 9 o'clock positions.[8]

Version of the Defense

In October 2011, Gozo was working as a janitor in a restaurant where his good friend BBB also worked. He was surprised when he was arrested for allegedly raping AAA noting that BBB sometimes entrusted her to him to the point that they sometimes slept beside each other. Gozo surmised that the rape case might have been filed due to a fight he had with BBB while they were together under a previous employer. He, however, explained that they again became friendly after BBB reached out to him to ask his help for employment in the restaurant.[9]

The RTC Ruling

In its 29 November 2013 decision, the RTC convicted Gozo of statutory rape. The trial court noted that AAA candidly and convincingly narrated how Gozo had defiled her. It quoted her testimony where she recalled how he had inserted his penis and fingers into her vagina. The RTC disregarded Gozo's contention that AAA may have been convinced to testify against him due to his previous fight with BBB because it was unsubstantiated. It found it absurd that AAA's father would

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[7] *Rollo*, p. 4 and CA *rollo*, p. 14.

[8] *Id*. at 5.

[9] *Id*. at 7.

allow his child to be subjected to medical examination and be exposed in a public trial if the fact of molestation were untrue.

Further, the trial court ruled that while the prosecution failed to prove AAA's age, Gozo was still guilty of statutory rape. It observed that AAA, who was presented in court, could not be more than 12 years of age. The dispositive portion read:

> WHEREFORE, finding accused Venerando Gozo *y* Velasquez guilty beyond reasonable doubt of STATUTORY RAPE, this court hereby sentences him to suffer the penalty of Reclusion Perpetua; and to indemnify AAA the amount of PhP75,000.00 as civil indemnity, PhP75,000.00 as moral damages, and PhP30,000.00 as exemplary damages.
>
> SO ORDERED.[10]

Aggrieved, Gozo appealed before the CA.

The CA Ruling

In its assailed 18 June 2015 decision, the CA affirmed the RTC decision with modifications. The appellate court agreed that all the elements of statutory rape were present. It explained that while the prosecution did not present any documentary evidence to prove that AAA was below 12 years old, Gozo never questioned nor disputed the trial court's opinion that AAA could not have been more than 12 years old. As such, the CA surmised such conclusion or finding of fact was entitled to great weight and should not be disturbed except for strong and cogent reasons.

The appellate court pointed out that AAA positively identified Gozo as the one who raped her and her testimony was corroborated by the physical findings. Further, it posited that there was insufficient evidence to hold that BBB prodded his own daughter to testify against Gozo out of ill will. The appellate court, however, modified the damages awarded by imposing legal interest and clarifying that Gozo was not entitled to parole. It ruled:

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[10] CA *rollo*, p. 21.

WHEREFORE, the present appeal is hereby **DENIED**. The Decision dated November 29, 2013 rendered by the Regional Trial Court, [XXX], in Criminal Case No. 146571, for Statutory Rape is hereby **AFFIRMED with MODIFICATIONS**, in that appellant is not eligible for parole and is hereby ordered to pay interest at the legal rate of 6% per annum on all damages awarded from the date of finality of this judgment until fully paid.

SO ORDERED.[11]

Hence, this appeal raising the following:

ISSUES

I

WHETHER THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT; AND

II

WHETHER THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S DEFENSE AND IN RELYING HEAVILY ON THE PROSECUTION'S VERSION.[12]

THE COURT'S RULING

The appeal has no merit.

In convicting the accused for statutory rape, the prosecution has the burden to prove the following elements: (1) **the age of the complainant**; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.[13] In turn, conviction may result on the basis of the victim's sole testimony, provided it is credible, natural, and consistent with human nature and the normal course of things.[14]

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[11] *Rollo*, p. 14.

[12] CA *rollo*, pp. 40-41.

[13] *People v. Cadano, Jr.*, 729 Phil. 576, 584-585 (2014).

[14] *People v. Gahi*, 727 Phil. 642, 657 (2014).

A reading of AAA's testimony shows how she candidly and consistently narrated the abuses she suffered at the hands of the accused, to wit:

COURT

Q: Noong lumipat ka ng higaan doon ka niya inano, ano ang ginawa niya sa iyo?
A: Ni-rape niya po ako.

Q: Hindi ko alam iyong rape, paano ba iyon? Ano ang ginawa niya sa iyo?
A: Ano po… tinusok.

Q: Ano ang tinusok?
A: (Witness demonstrated by the use of her finger).

Q: Saan ka tinusok?
A: Witness pointed to her private parts.

x x x x x x x x x

Q: AAA, daliri lang ba ang ginamit sa iyo?
A: Hindi po pati dito niya. (Witness pointed to her private part).

Q: Ano iyong pati dito niya, hindi ko naiintindihan iyong pati dito niya?
A: Iyong ano po niya.

Q: Iyong dito niya ang ginamit, alam mo ba ang tawag doon?
A: Hindi po.

Q: Hindi mo alam ang pangalan?
A: Hindi po.

Q: May ipapakita ako sa iyo… iyong tinuturo mo ginamit din sa iyo, tinsuok din sa iyo, iyon ba ang ibig mong sabihin o daliri lang?
A: Dalawa po.

Q: Daliri at saka ano?
A: Iyong dito niya (Witness pointed to her private part).

Q: Hindi mo alam ang pangalan noon?
A: Hindi po.

Q: May ipapakita ako sa iyo sasabihin mo sa akin kung alin doon ang tinusok sa iyo ha?
A: Opo.

Q: Nakita mo ba ito, doll ito ha?
A: Opo.

Q: Manika ito… alam mo ba kung ano ang itsura ng doll na ito, ano itsura niya mukha ba siyang lalaki o babae?
A: Lalaki po.

Q: Eh ituro mo nga sa amin kung alin ang sinasabi mo sa amin kasi hindi ko maintindihan kanina eh?
A: Dito po.

Q: Ano ang ginawa niya dito?
A: Tinusok niya po… tinsuok niya din po dito sa ano ko.

Q: May ipapakita ako sa iyo, gusto kong makita baka mamaya paa lang pala iyon… ipapakita ko sa iyo ha?
A: Ayoko po.

Q: Pero ito ang tinusok sa iyo? Manika lang ito, bubuksan ko para ituro mo kasi baka mamaya daliri lang, hindi ko alam eh… eto diba may daliri, andito sabi mo… ito ang tinusok sa iyo… papakita ko sa iyo kasi manika lang naman ito at hindi naman ito nakakatakot, bubuksan ko ha huwag kang magugulat ha… ngayon, alin diyan, ito ang kamay, alin diyan ang tinusok sa iyo?
A: Dalawa po pati po ito. (Witness pointed to the private part of the anatomically correct doll).

Q: Ano ang sabi mo daliri at saka ito pa?
A: Opo.

Q: So dalawa?
A: Opo.[15]

In her testimony, AAA was straightforward and categorical in identifying Gozo as the one who abused her. Despite her youthful innocence, AAA repeatedly said that Gozo inserted his finger and penis into her vagina. Through the help of anatomically correct dolls, she pointed to the body parts Gozo had inserted into her vagina even if she did not know what they were called. AAA was steadfast that Gozo truly inserted his penis leaving no doubt that she was unduly robbed of her

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[15] TSN, 20 March 2012, pp. 12-19.

purity and innocence. Notwithstanding the RTC's clarificatory questions, she was never confused and unequivocally recalled how Gozo had molested her.

Thus, AAA's testimony alone is sufficient to prove Gozo's identity as the molester and to confirm that he had carnal knowledge of the victim. It is axiomatic that the findings of the trial courts as to the credibility of witnesses and their testimonies are afforded great weight and are left undisturbed, unless there are facts of substance or value which may have been overlooked and could materially affect the outcome of the case.[16]

Gozo assails AAA's testimony to be incredible and contrary to human experience. He notes that given his bigger build, it would have been natural for AAA's genitals to bleed and not only turn red after he allegedly inserted his fingers. Thus, Gozo believes that such absurdity negatively affects AAA's testimony and raises the possibility that she was indeed coached.

The Court, however, finds that AAA's testimony was not inconsistent with the physical evidence. Lack of bleeding of the victim's genitals is not an element of rape. This bears significance considering that the slightest penetration of the female genitalia consummates rape; as a mere touching of the external genitalia by the penis is capable of consummating the sexual act and, thus, constitutes rape.[17] In fact, contrary to Gozo's position, physical evidence corroborates AAA's tale of defloration as it was discovered during the medical examinations that she had fresh lacerations in her vagina.

Considering the element of the victim's age, the trial court ruled that although the prosecution failed to present evidence as to AAA's age, Gozo should still be held guilty of statutory rape. It ratiocinated that upon observation of the victim while testifying, she could not have been more than 12 years old. On

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[16] *People v. Mangune*, 698 Phil. 759, 769 (2012).

[17] *People v. Butiong*, 675 Phil. 621, 630 (2011).

appeal, the CA also found that all elements of statutory rape were present because Gozo never questioned the trial court's findings of fact.

In *People v. Pruna (Pruna),*[18] the Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, *viz*:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party;
2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age;
3. If the certificate of live birth or authentic document is shown to have been lost, destroyed, or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:
    a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
    b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
    c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused;

[18] 439 Phil. 440 (2002).

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him; and

6. The trial court should always make a categorical finding as to the age of the victim.[19]

In the present case, no documentary evidence such as a birth certificate or other authentic documents were offered to prove AAA's age and there was no explanation why none was presented. Neither was there testimonial evidence from the concerned individuals to establish her age as only the medico-legal testified as to AAA's age. While the medico-legal may have testified as to her age,[20] he was not among the individuals enumerated in *Pruna* who may testify in case the birth certificate or authentic documents were lost or otherwise unavailable. In addition, his testimony as to AAA's age was hearsay as he had no personal knowledge because BBB merely relayed the said information to him. Thus, it is readily apparent that the prosecution miserably failed to prove AAA's exact age.

As outlined in *Pruna,* the prosecution has the burden to prove the age of the offended party and the lack of opposition to the testimonial evidence on the part of the accused should not be taken against him. It is noteworthy that in the present case, there was no testimonial evidence that Gozo could have objected to. In addition, the trial court is required to make a categorical finding of the victim's age. Here, however, the RTC simply opined, based on its observation, that AAA could not have been more than 12 years of age. Clearly, the prosecution failed to prove with sufficient and appropriate evidence that AAA was below 12 years of age.

Thus, the designation of the crime Gozo committed should be corrected from statutory rape to simple rape, consistent with the Criminal Law principle that doubts should be resolved in

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[19] *Id.* at 470-471.

[20] TSN, 23 October 2012, p. 20.

favour of the accused. In *People v. Hilarion (Hilarion)*,[21] the Court convicted the accused for simple rape after the prosecution failed to prove the victim's age with certainty, to wit:

> Second, the appellant employed threat, force and intimidation to satisfy his lust. As an element of rape, force, threat or intimidation need not be irresistible, but just enough to bring about the desired result. In the present case, AAA testified that she cried when the appellant inserted his penis into her vagina. As a child of tender years, she could not reasonably be expected to resist in the same manner that an adult would under the same or similar circumstances. **Nonetheless, AAA's act of crying during the rape is sufficient indication that the appellant's act was against her will**. x x x
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> x x x x x x x x x
>
> It is not lost on us that the victim's age had been properly alleged in the information which stated that AAA was a minor and six (6) years of age at the time of rape. **We cannot, however, sustain the appellant's conviction for statutory rape since the prosecution failed to sufficiently prove the victim's age**.
>
> x x x x x x x x x
>
> **Accordingly, as the Court did in Buado we can only sustain the accused's conviction for simple rape, as the victim's and her mother's testimonies to prove the victim's minority is insufficient**.[22] (emphases supplied)

Similar to *Hilarion*, Gozo could also be convicted for simple rape due to the presence of force and intimidation. The accused, a full grown adult, had sexual intercourse with AAA, a minor of tender age. She was crying during the ordeal, indicating that the act was against her will. In addition, it is settled that even absent any actual force or intimidation, rape can be committed if the malefactor has moral ascendancy over the victim.[23] In this case, Gozo and BBB, AAA's father, were close friends. In

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[21] 722 Phil. 52 (2013).

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

[23] *People v. Amoc*, G.R. No. 216937, 5 June 2017.

fact, he claimed that BBB would sometimes entrust AAA to his care and, on occasion, would sleep beside each other. Thus, notwithstanding the lack of blood relations between Gozo and AAA, it is shown that he had the authority or ascendancy over her in view of their close relationship.

Appropriate penalty and damages

In its assailed decision, the CA clarified in the dispositive portion that Gozo was not eligible for parole. In A.M No. 15-08-02-SC,[24] the Court had provided the guidelines for the use of the phrase "without eligibility for parole" to remove any confusion, to wit:

1. In cases where the death penalty is not warranted, there is no need to use the phrase "without eligibility of parole" to qualify the penalty of *reclusion perpetua*; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole; and

2. When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of Republic Act *(R.A.)* No. 9346, the qualification of without "eligibility of parole" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

In summary, there is only a need to qualify that the accused is not "eligible for parole" in cases where the imposable penalty should have been death were it not for the enactment of R.A. No. 9346. This is to differentiate cases where the penalty imposable was **reduced** to *reclusion perpetua* from cases where the penalty imposed was *reclusion perpetua*. Here, Gozo is guilty of simple rape, punishable by *reclusion perpetua*; thus, there was no need to indicate that he was ineligible for parole because

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[24] Guidelines for the proper use of the phrase "without eligibility for parole" in indivisible penalties.

accused sentenced to indeterminate penalties are *ipso facto* ineligible for parole.

As to the award of damages, the courts *a quo* required Gozo to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. In order to conform with recent jurisprudence,[25] however, the exemplary damages should be increased to ₱75,000.00.

WHEREFORE, the 18 June 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06585 is **AFFIRMED with MODIFICATION**. Accused-appellant Venerando Gozo *y* Velasquez is sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All damages awarded are subject to an interest 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.

THIRD DIVISION

[G.R. No. 225896. July 23, 2018]

CARMEN ALEDRO-RUÑA, *petitioner, vs.* **LEAD EXPORT AND AGRO-DEVELOPMENT CORPORATION,** *respondent.*

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[25] *People v. Jugueta*, 783 Phil. 806, 849 (2016).

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; ESSENTIAL CONDITIONS FOR *RES JUDICATA* TO SET IN.—** There is *res judicata* where the following four (4) essential conditions concur, *viz*.: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter and causes of action.

2. **ID.; ID.; ID.; ID.; A JUDGMENT CANNOT BE CONSIDERED AS AN ADJUDICATION ON THE MERITS WHEN THERE WAS NO LEGAL DETERMINATION OF THE PARTIES' RIGHTS AND LIABILITIES; THE COURT IS NOT PRECLUDED FROM RECTIFYING ERRORS OF JUDGMENT IF BLIND AND STUBBORN ADHERRENCE TO *RES JUDICATA* WOULD INVOLVE THE SACRIFICE OF JUSTICE TO TECHNICALITY.— A judgment may be considered as one rendered on the merits when it determines the rights and liabilities of the parties based on the disclosed facts**, irrespective of formal, technical or dilatory objections; or when the judgment is rendered after a determination of which party is right, **as distinguished from a judgment rendered upon** some preliminary or formal or **merely technical point**. It is not required that a trial, actual hearing, or argument on the facts of the case ensued, for as long as the parties had the full legal opportunity to be heard on their respective claims and contentions. Here, the order specifically stated that the dismissal is with prejudice, and as such, it is understood as an adjudication on the merits. Under Sec. 2, Rule 17 of the Rules of Court, the dismissal upon motion of the plaintiff is without prejudice, *except otherwise specified in the order*. However, *res judicata* is to be disregarded if its rigid application would involve the sacrifice of justice to technicality, particularly in this case where there was actually no determination of the substantive issues in the first case. There was no legal declaration of the parties' rights and liabilities. The CA remanded the case for further reception of evidence precisely because there were substantive issues needed to be resolved. The RTC, however, dismissed the case allegedly upon motion of the plaintiffs, through one of the heirs, Nilo, who prayed that the dismissal

be with prejudice. The court granted the dismissal without any sufficient legal basis other than because it was what the plaintiffs prayed for. x x x It must be stressed that what appears to be essential to a judgment on the merits is that **it be a reasoned decision, which clearly states the facts and the law on which it is based**. Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed. The broader interest of justice as well as the circumstances of the case justifies the relaxation of the rule on *res judicata*. The Court is not precluded from re-examining its own ruling and rectifying errors of judgment if blind and stubborn adherence to *res judicata* would involve the sacrifice of justice to technicality. This is not the first time that the principle of *res judicata* has been set aside in favor of substantial justice, which is after all the avowed purpose of all law and jurisprudence. Therefore, petitioner is not barred from filing a subsequent case of similar nature.

3. CIVIL LAW; LAND REGISTRATION; BUYER IN BAD FAITH; PETITIONER, BEING AN HEIR OF THE REGISTERED OWNER, HAS A BETTER RIGHT OF POSSESSION OVER THE SUBJECT PARCELS OF LAND; SUBSEQUENT BUYERS OF LAND COVERED BY UNREGISTERED DEED OF SALE ARE BUYERS IN BAD FAITH.— Clearly, Ringor, Gonzales and Cabuñas cannot be considered buyers in good faith because of their failure to exercise due diligence as regards their respective sale transactions. While this Court protects the right of the innocent purchaser for value and does not require him to look beyond the certificate of title, this protection is not extended to a purchaser who is not dealing with the registered owner of the land. In case the buyer does not deal with the registered owner of the real property, the law requires that a higher degree of prudence be exercised by the purchaser. While registration is not necessary to transfer ownership, it is, however, the operative act to convey or affect the land insofar as third persons are concerned. Since Advento did not register the deed of sale and no transfer certificate was issued in his name, it did not bind the land insofar as Ringor, Gonzales and Cabuñas, as subsequent buyers, are concerned. Moreover, the Court observes that Gonzales and Cabuñas

represented themselves as the **registered owners** of the subject property in the Contract of Lease they executed in favor of Lapanday Foods Corporation, a corporation which the respondent admitted as its affiliate. Ordinarily, with such a representation, it is human nature to require the presentation of the certificate of title to prove one's alleged ownership. In this case, however, Lapanday Foods Corporation did not require the presentation of the certificates of title. This led Us to the belief that respondent, including its affiliate Lapanday Foods Corporation, and its predecessors-in-interest knew right from the beginning that the unregistered deeds of sale, which showed the transfers of the subject properties to different persons while the former maintain in possession thereof, were but a sham. Ultimately, in this jurisdiction, a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein and that a person who has a Torrens title over a land is entitled to the possession thereof. Thus, as against the registered owner and the holder of an unregistered deed of sale, it is the former who has a better right to possess. In this case, it is the petitioner who, being an heir of the registered owner Segundo, acquires a better right of possession over the parcels of land covered by OCT Nos. (P-6303) P-1781 and (P-6224) P-1712.

4. **ID.; ID.; REGISTERED OWNER'S ACTION TO RECOVER POSSESSION IS NOT BARRED BY PRESCRIPTION OR LACHES; THE RULE ON IMPRESCRIPTIBILITY OF REGISTERED LANDS EXTENDS TO THE HEIRS OF THE REGISTERED OWNER AS WELL.—** An action to recover possession of a registered land never prescribes in view of the provision of Sec. 44 of Act No. 496 to the effect that no title to registered land in derogation of that of a registered owner shall be acquired by prescription or adverse possession. It follows that an action by the registered owner to recover a real property registered under the Torrens System does not prescribe. The rule on imprescriptibility of registered lands not only applies to the registered owner but **extends to the heirs of the registered owner as well**. Therefore, petitioner's right to recover possession did not prescribe. Likewise, laches did not bar petitioner's right of recovery. An action to recover registered land covered by the Torrens System may not generally be barred by laches. Neither can laches be set up to resist the enforcement of an

imprescriptible legal right. It is a principle based on equity and may not prevail against a specific provision of law, because equity, which has been defined as "justice outside legality," is applied in the absence of and not against statutory law or rules of procedure.

APPEARANCES OF COUNSEL

Sarona and Sarona-Lozare Law Offices for petititoner.
Baltazar Yangyang Espejo & Galicia for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal by *certiorari* filed by Carmen Aledro-Ruña *(petitioner)* against Lead Export and Agro-Development Corporation *(respondent)*, assailing the Decision[1] dated February 15, 2016 and Resolution[2] dated July 21, 2016 of the Court of Appeals *(CA)* in CA-G.R. CV No. 03735 which denied petitioner's appeal for lack of merit. She prays that the assailed decision be reversed and set aside, and that a new judgment be rendered declaring her to have a better right to possess the parcels of land subject of the instant case.

The Antecedents

This case originated from three (3) different civil cases involving two (2) parcels of land, Lots 3014 and 5722, covered by Original Certificate of Title No. (P-6303) P-1781 and Original Certificate of Title No. (P-6224) P-1712, respectively. The two parcels of land were registered under the name of Segundo Aledro *(Segundo)*.

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[1] *Rollo*, pp. 35-50; penned by Associate Justice Edgardo T. Lloren, with Associate Justices Rafael Antonio M. Santos and Ruben Reynaldo G. Roxas, concurring.

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

Segundo allegedly executed two (2) contracts covering the subject parcels of land on separate dates: 1) Contract of Lease executed on August 4, 1972 between him and Alfredo A. Rivera *(Rivera)* for a period of fifteen (15) years; and 2) Deed of Absolute Sale involving the same lands executed by Segundo and Mario D. Advento *(Advento)* on March 24, 1981.

On October 8, 1982, Advento sold the subject properties to Andres M. Ringor *(Ringor)*.

On April 25, 1988, Farmingtown Agro-Developers, Inc. *(FADI)*, a corporation engaged in the growing and selling of Cavendish bananas, leased the two (2) parcels of land from Ringor for a period of twenty-five (25) years.

First Case: Civil Case No. 95-13

On January 31, 1995, a complaint was filed by the heirs of Segundo, namely: petitioner, Antero, Basilisa, Nilo, Romeo, Edilberto and Expedito, all surnamed Aledro and represented by Sofia Aledro *(Sofia)* against Advento and FADI before the Regional Trial Court of Panabo City, Branch 34 *(RTC Br. 34)*, for Real Action over an Immovable, Declaration of Nullity of Deed, and Damages.[3]

On March 31, 1997, the RTC Br. 34 dismissed the complaint. The heirs of Segundo then appealed before the CA.

Meanwhile, in December 2000, FADI merged with respondent, the latter as the surviving corporation. In March 2001, respondent's former corporate name, Lead Export Corporation, was changed to Lead Export & Agro-Development Corporation. Consequently, respondent absorbed FADI's occupational and possessory rights pertaining to Lots 3014 and 5722.[4]

On October 12, 2001, the CA reversed and set aside the decision of the RTC Br. 34 and remanded the case thereto for further reception of evidence.

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[3] *Rollo*, p. 36.

[4] *Id*. at 37.

Allegedly, on September 18, 2003, the heirs of Segundo (including petitioner), then represented by their attorney-in-fact, Nilo Aledro *(Nilo)*, and assisted by their counsel, filed a motion to dismiss with prejudice on the ground of lack of interest to prosecute the case and to protect Advento and FADI from further prosecution respecting the subject matter of the case.[5]

On September 30, 2003, the RTC Br. 34 issued an Order[6] dismissing the case with prejudice. No appeal was filed, thus, the order became final and executory.

Second Case: Civil Case No. 41-2005

Another complaint was filed by Sofia, widow of Segundo, in 2005 before the RTC of Panabo City, Br. 4 *(RTC Br. 4)* against Advento for Declaration of Nullity of Deed of Sale and Quieting of Title, alleging that through fraud, she and Segundo were made to believe that they were signing a contract of lease on March 24, 1981 and not a deed of absolute sale.

Summons was issued against Advento, but it was returned unserved. Summons by publication was effected, but Advento still failed to file an answer. Hence, he was declared in default.[7]

On May 30, 2007, the RTC Br. 4 rendered a decision in favor of Sofia. It ordered the removal of cloud cast upon the OCTs of the subject parcels of land. It also declared the agreements of lease as having expired and terminated. Lastly, the deed of absolute sale executed by Segundo in favor of Advento on March 24, 1981 was declared as null and void.[8]

On April 17, 2009, the RTC Br. 4 issued a Certificate of Finality[9] of its decision.

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[5] *Id*. at 37.

[6] *Id*. at 120.

[7] *Id*. at 38.

[8] *Id*.

[9] *Id*. at 127.

Present Case: Civil Case No. 218-10

On September 30, 2010, petitioner filed a case for unlawful detainer, damages and attorney's fees against respondent before the 1st Municipal Circuit Trial Court of Carmen-Sto. Tomas-Braulio E. Dujali, Davao *(MCTC)*.

Respondent countered that it had a right of possession over the subject properties based on the contract of lease executed on April 25, 1988 between Ringor and FADI. It further argued that its possessory rights were based on the deeds of absolute sale between Segundo and Advento, and later between Advento and Ringor.

Respondent also argued that the case should be dismissed based on *res judicata* because a previous complaint had already been filed by petitioner as one of the heirs of Segundo against Advento and FADI for real action over an immovable, declaration of nullity of deeds and damages which was dismissed with prejudice.[10]

On May 10, 2011, the MCTC rendered judgment in favor of petitioner and ordered respondent, among others, to vacate the two (2) parcels of land.

Respondent appealed before the RTC Br. 34.

Meanwhile, Ringor sold the subject properties to Wilfredo Gonzales *(Gonzales)* and Oscar Q. Cabuñas, Jr. *(Cabuñas)* on January 7, 2012. They entered into a contract of lease with Lapanday Foods Corporation *(Lapanday)*, an affiliate of respondent, which provided for a lease contract period commencing on January 1, 2013, after the expiration of the lease between respondent and Ringor.

Meanwhile, this case was referred to a judicial dispute resolution *(JDR)*, but the same failed. Thus, it was re-raffled to the RTC Br. 4.

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[10] *Id.* at 39.

On October 1, 2012, the RTC Br. 4 reversed and set aside the MCTC decision for lack of jurisdiction, ruling that the action should have been one for recovery of the right to possess or *accion publiciana* because the alleged dispossession had exceeded the mandatory requirement of effecting the last demand to vacate within the year of dispossession.[11]

Thus, pursuant to Section 8, Rule 40 of the Rules of Court, the RTC Br. 4 took cognizance of the case and referred it for court-annexed mediation *(CAM)* and JDR proceedings.[12]

Respondent moved for reconsideration, but it was denied. Pre-trial was conducted. Trial then ensued.

After the parties' respective memoranda were filed, the RTC Br. 4 rendered a decision[13] on May 20, 2014 dismissing the case for lack of merit. It ruled that the case was barred by *res judicata* and thus, upheld the validity of the deeds of sale covering the series of transaction involving the subject properties and the contract of lease between Ringor and respondent.[14] Further, the trial court sustained respondent's assertion of being the lawful lessee of the subject properties, having the right to occupy and possess the same by virtue of contract of lease with Ringor.[15]

Aggrieved, petitioner sought relief from the CA.

The CA, however, denied the appeal and affirmed *in toto* the decision of the RTC Br. 4. In so ruling, the CA found that the principle of *res judicata* applied in the case and that petitioner's action had already prescribed.

As regards the issue of *res judicata*, the CA explained that all the requisites for the application of the principle exist. One,

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[11] *Id*. at 40.

[12] *Id*.

[13] *Id*. at 160-175.

[14] *Id*. at 174.

[15] *Id*. at 175.

the first case had already attained finality. The petitioner did not take any step to have the dismissal order set aside within the reglementary period to appeal.[16] Two, the RTC Br. 4 had jurisdiction over the first case.[17] Three, the case was dismissed with prejudice.[18] Four, between the first and second actions, there was identity of parties, subject matter and causes of action.[19] Hence, the ruling dismissing Civil Case No. 95-13 operated as a bar to a subsequent re-filing.[20]

With regard to the issue of prescription, the CA ruled that:

> In Civil Case No. 95-13, plaintiff, as one of the co-heirs of Segundo Aledro, filed the complaint for nullification of both the contract of lease and the deed of sale before the RTC Branch 34 on January 31, 1995, or almost twenty-three (23) years from the execution of the lease contract and fourteen (14) years from the execution of the deed of sale in 1981, which is clearly beyond the ten-year prescriptive period provided under Article 1144 of the New Civil Code to institute an action upon a written contract. Moreover, it is beyond the four-year prescriptive period provided under Article 1391 of the New Civil Code to annul a contract where the consent of a contracting party is vitiated by fraud.[21]

The CA also observed that during Segundo's lifetime, he did not take any act to impugn the validity of the sale or the lease. In the absence of any contrary evidence, the deed of sale and the contract of lease were deemed perfectly valid.[22]

Aggrieved, petitioner moved for reconsideration, but her motion was denied.

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[16] *Id*. at 45.

[17] *Id*. at 46.

[18] *Id*.

[19] *Id*. at 47.

[20] *Id*. at 48.

[21] *Id*. at 49.

[22] *Id*.

Hence, the present petition raising the following:

ISSUES

A.

THAT THE HONORABLE COURT OF APPEALS ERRED WHEN IT UPHELD THE RULING OF THE REGIONAL TRIAL COURT DISMISSING PETITIONER'S COMPLAINT ON THE GROUND THAT IT IS BARRED BY RES JUDICATA, DESPITE THE FACT THAT THERE IS A DECISION, ALREADY FINAL AND EXECUTORY, DECLARING THAT THE SUBJECT PARCELS OF LAND AS CLEARED FROM DOUBT AND THAT THE DEEDS OF ABSOLUTE SALE RELIED BY RESPONDENT WAS ALREADY NULL AND VOID[.]

B.

THAT THE HONORABLE COURT OF APPEALS ERRED WHEN IT DID NOT RULE THAT PETITIONER HAS THE BETTER RIGHT TO POSSESS THE SUBJECT PARCELS OF LAND[.]

C.

THAT THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT THE PLAINTIFF'S ACTION HAS ALREADY PRESCRIBED[.][23]

Prescinding therefrom, the pivotal issues for resolution are: 1) whether or not the case is already barred by *res judicata*; and 2) whether or not petitioner has the better right of possession.

The Court's Ruling

Ordinarily, when findings of the trial court are affirmed by the appellate court, such findings are deemed conclusive and binding upon this Court. This is in consonance with the settled rule that the Court is not a trier of facts. Its authority under Rule 45 of the Rules of Court is limited only to questions of law. However, when the inference made is manifestly mistaken, absurd or impossible, or when the judgment is based on

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[23] *Id*. at 19. (sentence case in the original)

misapprehension of facts,[24] the Court is cloaked with the authority to review factual findings made by the lower courts.

The time-honored principle is that litigation has to end and terminate sometime and somewhere, and it is essential to an effective administration of justice that once a judgment has become final, the issue or cause therein should be laid to rest.[25]

Corollarily, once a judgment has become final and executory, the issues resolved therein cannot be re-litigated in a subsequent action under the principle of *res judicata*.

Petitioner argues that *res judicata* by prior judgment is not applicable in this case because its essential requisites do not exist. She maintains that the order[26] dismissing Civil Case No. 95-13 is not a judgment on the merits;[27] that there was no actual determination of the substantive issues therein;[28] that there was no determination of the parties' rights and liabilities; no pronouncement that the possession of the subject parcels of land was granted to respondent; and there was no order cancelling the titles of the subject parcels of land registered in the name of Segundo.[29]

On the other hand, respondent maintains that petitioner's action is already barred by *res judicata* because: 1) the dismissal of Civil Case No. 95-13 was an order on the merits[30] as it was a dismissal with prejudice;[31] and 2) there is, between the first and present cases, identity of parties, identity of subject matter

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[24] *Ligtas v. People*, 766 Phil. 750, 762-764 (2015).

[25] *Guerrero v. Director, Land Management Bureau, et al.*, 759 Phil. 99, 108 (2015).

[26] *Rollo*, p. 120.

[27] *Id.* at 19.

[28] *Id.* at 21.

[29] *Id.*

[30] *Id.* at 229.

[31] *Id.* at 227.

and identity of causes of action.[32] It further argues that the dismissal was upon motion of the plaintiffs, through one of the heirs of Segundo, Nilo Aledro, who was assisted by the plaintiffs' counsel. That pursuant to Sec. 2, Rule 17[33] of the Rules of Court, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper.[34] Specifically, respondent explains that:

> The dismissal of Civil Case No. 95-13 was an order on the merits. Precisely, the plaintiffs in Civil Case No. 95-13 specified its dismissal to be WITH PREJUDICE because having settled with Mario V. Advento and respondent's predecessor, they considered the case as having been adjudicated on the merits and they wanted the defendants in the case to be protected against further suits involving the same subject matter.[35]

Thus, respondent strongly maintains that the dismissal is equivalent to an adjudication on the merits and has the effect of *res judicata*.[36]

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[32] *Id.* at 229-230.

[33] SECTION 2. Dismissal Upon Motion of Plaintiff. — Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

[34] *Rollo*, p. 230.

[35] *Id.* at 229.

[36] *Id.* at 227.

No determination of the parties' rights and liabilities

There is *res judicata* where the following four (4) essential conditions concur, *viz.*: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter and causes of action.[37]

On its face, the present case should have been barred by *res judicata* because: 1) there is a final order rendered in the first case; 2) the court that rendered the final order had jurisdiction over the subject matter and the parties; 3) the final order was on the merits by virtue of the prejudicial dismissal of the complaint; and 4) there is, between the first and the present cases, identity of parties, subject matter and causes of action.

The Court, however, agrees with the petitioner that *res judicata* should be disregarded.

The order of dismissal by the trial court reads:

> This treats of the Motion to Dismiss dated September 18, 2003 filed by the plaintiffs, through their counsel, Atty. Vincent Paul L. Montejo, praying this Court to grant their motion.
>
> WHEREFORE, there being no objection on the part of the defendants, through their counsel, Atty. Honesto A. Carroguis, to the dismissal of this case, the written motion adverted to above is hereby granted and this case is hereby **dismissed**, as prayed for by the plaintiffs, with prejudice.
>
> SO ORDERED.[38]

A careful scrutiny of the above order shows that there was no judgment on the merits.

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[37] *Cebu State College of Science and Technology v. Misterio, et al.*, 760 Phil. 672, 684 (2015).

[38] *Rollo*, p. 120.

A judgment may be considered as one rendered on the merits when it determines the rights and liabilities of the parties based on the disclosed facts, irrespective of formal, technical or dilatory objections; or when the judgment is rendered after a determination of which party is right, **as distinguished from a judgment rendered upon** some preliminary or formal or **merely technical point**.[39] It is not required that a trial, actual hearing, or argument on the facts of the case ensued, for as long as the parties had the full legal opportunity to be heard on their respective claims and contentions.[40]

Here, the order specifically stated that the dismissal is with prejudice, and as such, it is understood as an adjudication on the merits. Under Sec. 2, Rule 17 of the Rules of Court, the dismissal upon motion of the plaintiff is without prejudice, *except otherwise specified in the order*. However, *res judicata* is to be disregarded if its rigid application would involve the sacrifice of justice to technicality, particularly in this case where there was actually no determination of the substantive issues in the first case.[41] There was no legal declaration of the parties' rights and liabilities. The CA remanded the case for further reception of evidence precisely because there were substantive issues needed to be resolved. The RTC, however, dismissed the case allegedly upon motion of the plaintiffs, through one of the heirs, Nilo, who prayed that the dismissal be with prejudice. The court granted the dismissal without any sufficient legal basis other than because it was what the plaintiffs prayed for.

The Court notes that the plaintiffs' filing of the motion to dismiss is no longer a matter of right. As likewise provided under Sec. 2, Rule 17, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and

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[39] *Philippine Postal Corp. v. Court of Appeals, et al.*, 722 Phil. 860, 884 (2013).

[40] *Camarines Sur IV Electric Cooperative, Inc., et al. v. Aquino*, 762 Phil. 144, 156 (2015).

[41] *Philippine National Bank v. The Intestate Estate of De Guzman, et al.*, 635 Phil. 128, 135 (2010).

upon such terms and conditions as the court deems proper. While there was approval by the court, the terms and conditions upon which the prejudicial dismissal was granted was not shown. The order granting the dismissal did not comply with Sec. 2, Rule 17 as it did not clearly set forth therein the terms and conditions for the dismissal. Sec. 1, Rule 36 of the Rules of Court mandates that a judgment or final order determining the merits of the case shall be in writing personally and directly prepared by the judge, *stating clearly and distinctly the facts and the law on which it is based*, signed by him, and filed with the clerk of the court.

It must be stressed that what appears to be essential to a judgment on the merits is that **it be a reasoned decision, which clearly states the facts and the law on which it is based**.[42] Technicalities should not be permitted to stand in the way of equitably and completely resolving the rights and obligations of the parties. Where the ends of substantial justice shall be better served, the application of technical rules of procedure may be relaxed.[43]

The broader interest of justice as well as the circumstances of the case justifies the relaxation of the rule on *res judicata*. The Court is not precluded from re-examining its own ruling and rectifying errors of judgment if blind and stubborn adherence to *res judicata* would involve the sacrifice of justice to technicality. This is not the first time that the principle of *res judicata* has been set aside in favor of substantial justice, which is after all the avowed purpose of all law and jurisprudence.[44] Therefore, petitioner is not barred from filing a subsequent case of similar nature.

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[42] *Supra* note 39 at 157.

[43] *Millennium Erectors Corp. v. Magallanes*, 649 Phil. 199 (2010).

[44] *De Leon v. Balinag*, 530 Phil. 299 (2006).

Subsequent buyers are buyers in bad faith; petitioner has the better right to possess the land

Respondent argues that petitioner and her predecessors-in-interest's inaction for almost twenty (23) years from the time of execution of the lease contract in 1972, and fourteen (14) years in the case of the deed of absolute sale executed in 1981 barred them from seeking the nullification of the said agreements. These arguments, however, were not resolved in the first case which was dismissed allegedly upon motion of the plaintiff heirs.

Parenthetically, the Court cannot simply ignore the fact that the second case, Civil Case No. 41-2005 – an action for declaration of nullity of deed of sale and quieting of titles where the trial court declared the deed of absolute sale executed by Segundo in favor of Advento as null and void, and ordered the removal of cloud upon OCT Nos. (P-6303) P-1781 and (P-6224) P-1712, had long attained finality. Said decision was annotated at the back of the certificates of title. Hence, even assuming *arguendo* that the argument of prescription may be correct, the same becomes immaterial because by virtue of the final and executory decision in Civil Case No. 41-2005, the only issue left for resolution is who, between the petitioner – the heir of the registered owner – and the respondent lessee, has a better right to possess the subject properties.

It is a hornbook rule that once a judgment has become final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment.[45]

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[45] *One Shipping Corp., et al. v. Peñafiel*, 751 Phil. 204, 210 (2015).

Respondent's possession as a lessee was based on a contract of lease executed in its favor by the alleged subsequent buyers of the subject properties, namely Ringor and later, by Gonzales and Cabuñas. These buyers only had unregistered deeds of sale in their favor. It is baffling why these deeds, despite the long span of time, were never registered.

Interestingly, respondent kept on insisting that *res judicata* has already set in, but respondent, nor any of its predecessors-in-interest, did not cause the cancellation of the certificate of title registered in the name of Segundo. Since 1981 when Segundo allegedly sold the subject property to Advento, two subsequent transfers have been made, the last buyers being Gonzales and Cabuñas. Yet, the certificates of title of the parcels of land undisputedly remain under the name of Segundo and have never been transferred to any of the subsequent buyers up to the present. Neither were the purported deeds of sale executed in favor of Ringor, Gonzales and Cabuñas, and other subsequent transferees registered nor annotated on the certificates of title of the subject properties.

Thus, when Ringor purchased the lands from Advento, and was later purchased by Gonzales and Cabuñas from Ringor, they did not directly deal with the registered owner of the land. The fact that the lands were not in the name of their sellers should have put them on guard and should have prompted them to inquire on the status of the properties being sold to them.

Clearly, Ringor, Gonzales and Cabuñas cannot be considered buyers in good faith because of their failure to exercise due diligence as regards their respective sale transactions. While this Court protects the right of the innocent purchaser for value and does not require him to look beyond the certificate of title, this protection is not extended to a purchaser who is not dealing with the registered owner of the land. In case the buyer does not deal with the registered owner of the real property, the law requires that a higher degree of prudence be exercised by the purchaser.[46]

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[46] *Heirs of the Late Felix M. Bucton v. Sps. Go*, 721 Phil. 851, 864 (2013).

While registration is not necessary to transfer ownership, it is, however, the operative act to convey or affect the land insofar as third persons are concerned.[47] Since Advento did not register the deed of sale and no transfer certificate was issued in his name, it did not bind the land insofar as Ringor, Gonzales and Cabuñas, as subsequent buyers, are concerned.

Moreover, the Court observes that Gonzales and Cabuñas represented themselves as the **registered owners** of the subject property in the Contract of Lease[48] they executed in favor of Lapanday Foods Corporation, a corporation which the respondent admitted as its affiliate. Ordinarily, with such a representation, it is human nature to require the presentation of the certificate of title to prove one's alleged ownership. In this case, however, Lapanday Foods Corporation did not require the presentation of the certificates of title. This led Us to the belief that respondent, including its affiliate Lapanday Foods Corporation, and its predecessors-in-interest knew right from the beginning that the unregistered deeds of sale, which showed the transfers of the subject properties to different persons while the former maintain in possession thereof, were but a sham.

Ultimately, in this jurisdiction, a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein and that a person who has a Torrens title over a land is entitled to the possession thereof.[49] Thus, as against the registered owner and the holder of an unregistered deed of sale, it is the former who has a better right to possess.[50] In this case, it is the petitioner who, being an heir of the registered owner Segundo, acquires a better right of possession over the parcels of land covered by OCT Nos. (P-6303) P-1781 and (P-6224) P-1712.

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[47] Section 50, Act No. 496; *Saberon, et al. v. Ventanilla, Jr., et al.,* 733 Phil. 275, 299 (2014).

[48] *Rollo*, pp. 147-149.

[49] *Heirs of Maligaso, Sr. v. Spouses Encinas*, 688 Phil. 516, 523 (2012).

[50] *Catindig v. Vda. de Meneses*, 656 Phil. 361, 372-373 (2011).

Registered owner's action to recover possession is not barred by prescription or by laches

An action to recover possession of a registered land never prescribes in view of the provision of Sec. 44 of Act No. 496 to the effect that no title to registered land in derogation of that of a registered owner shall be acquired by prescription or adverse possession. It follows that an action by the registered owner to recover a real property registered under the Torrens System does not prescribe.[51] The rule on imprescriptibility of registered lands not only applies to the registered owner but **extends to the heirs of the registered owner as well**.[52] Therefore, petitioner's right to recover possession did not prescribe.

Likewise, laches did not bar petitioner's right of recovery. An action to recover registered land covered by the Torrens System may not generally be barred by laches. Neither can laches be set up to resist the enforcement of an imprescriptible legal right.[53] It is a principle based on equity and may not prevail against a specific provision of law, because equity, which has been defined as "justice outside legality," is applied in the absence of and not against statutory law or rules of procedure.[54]

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated February 15, 2016 in CA-G.R. CV No. 03735 is **REVERSED** and **SET ASIDE.** The Decision of the 1st Municipal Circuit Trial Court of Carmen-Sto. Tomas-Braulio E. Dujali, Davao del Norte dated May 10, 2011 in Civil Case No. 218-10 is **REINSTATED.**

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[51] *Heirs of Nieto v. Municipality of Meycauayan, Bulacan*, 564 Phil. 674, 679 (2007).

[52] *Id*. at 680.

[53] *Akang v. Municipality of Isulan, Sultan Kudarat Province*, 712 Phil. 420, 439 (2013).

[54] *Supra* note 51 at 681.

SO ORDERED.

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

Leonen, J., on official business.

THIRD DIVISION

[G.R. No. 226392. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NESTOR "TONY" CALIAO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS THAT MUST BE PROVED TO SUCCESSFULLY INVOKE SELF-DEFENSE; WITHOUT UNLAWFUL AGGRESSION FROM THE VICTIM, THERE CAN BE NO SELF-DEFENSE; SINCE IT WAS ACCUSED-APPELLANT WHO ATTACKED THE VICTIM, HIS CLAIM OF SELF-DEFENSE MUST FAIL.— [A] person invoking self-defense in effect admits to having performed the criminal act but claims no liability therefor, because the actual and imminent danger to his or her life justified his infliction of harm against an aggressor. This dispenses with the prosecution's burden to prove that the accused performed the criminal act; what remains to be established is whether the accused was justified in inflicting the harm. This the accused must prove with clear and convincing evidence. To successfully invoke self-defense, an accused must prove the following: (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. Among these

three elements, the condition *sine qua non* for the justifying circumstance of self-defense is unlawful aggression. Without said aggression coming from the victim, there can be no self-defense. x x x Since it is duly established that it was accused-appellant who attacked the victim, then no unlawful aggression could be attributed to the victim. Consequently, his claim of self-defense must fail.

2. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS THAT MUST CONCUR TO ESTABLISH TREACHERY; INSTANCES WHEN TREACHERY CANNOT BE APPRECIATED, CITED; WHERE THERE WAS NO SHOWING THAT ACCUSED-APPELLANT CONSCIOUSLY ADOPTED THE SUDDEN ATTACK TO PERPETUATE THE KILLING AND IT WAS DONE IN A PUBLIC PLACE AND IN THE PRESENCE OF OTHER PERSONS INCLUDING VICTIM'S FAMILY, TREACHERY CANNOT BE APPRECIATED.—** Treachery exists when the prosecution has sufficiently established the concurrence of the following elements: (1) the accused employed means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted. Bearing in mind that the qualifying circumstance of treachery must be indubitably proven as the crime itself, the Court finds that it was not sufficiently proven in this case. Treachery cannot be appreciated from the mere fact that the attack was sudden and unexpected. The Court has held that "the circumstance that an attack was sudden and unexpected on the person assaulted did not constitute the element of *alevosia* necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself." The Court has also ruled that when aid was easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident, including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted

means to insure the facilitation of the crime, he could have chosen another place or time. Here, there is no showing that accused-appellant consciously adopted the sudden attack to facilitate the perpetration of the killing. In fact, it was done in a public market, in the afternoon, with the victim's family and other vendors nearby who could have foiled accused-appellant's actions.

3. **ID.; ID.; HOMICIDE; IN THE ABSENCE OF A QUALIFYING CIRCUMSTANCE, ACCUSED MAY BE CONVICTED ONLY OF HOMICIDE; PENALTY.—** Since no qualifying circumstance exists, accused-appellant may only be convicted of homicide. Applying the Indeterminate Sentence Law and there being no mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *reclusion temporal* in its medium term with a duration of fourteen (14) years, eight (8) months, and one (1) day, to seventeen (17) years and four (4) months; and that the minimum should be within the range of *prision mayor* which has a duration of six (6) years and one (1) day to twelve (12) years. The Court thus imposes imprisonment from eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.

4. **ID.; ID.; ID.; CIVIL LIABILITY.—** The award of damages must be modified, consistent with prevailing jurisprudence. For crimes that result in the death of a victim and the penalty consists of divisible penalties, such as in this case of homicide, the civil indemnity awarded to the heirs of the victim shall be ₱50,000.00 and ₱50,000.00 for moral damages; and no award for exemplary damages. In line with current policy, the Court also imposes interest at the legal rate of 6% per annum on all monetary awards for damages 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-appellant.

D E C I S I O N

MARTIRES, *J.*:

Before the Court on automatic review is the 20 May 2016 Decision[1] rendered by the Court of Appeals *(CA)* in CA-G.R. CEB-CR.-H.C. No. 02006, which affirmed with modification the 25 September 2014 Decision[2] of the Regional Trial Court *(RTC),* Branch 18, Cebu City, in Criminal Case No. CBU-70511, finding accused-appellant Nestor "Tony" Caliao *(accused-appellant)* guilty beyond reasonable doubt of the crime of Murder.

THE FACTS

An Information filed on 20 August 2004 charged accused-appellant with murder committed as follows:

> That on or about the 25th day of April 2004, at about 12:45 p.m. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a kitchen knife, with deliberate intent, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully, and feloniously attack, assault and stab with said knife one William A. Fuentes, hitting him on the left side of his body and inflicting upon him physical injuries which caused the death of the latter a day after.
>
> CONTRARY TO LAW.[3]

The information was filed on 20 August 2004, but the accused was arrested only on 6 September 2010. Upon arraignment, accused-appellant pleaded not guilty, and trial thereafter ensued.

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[1] *Rollo,* pp. 5-16; penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justice Gabriel T. Ingles and Associate Justice Edward B. Contreras, concurring.

[2] CA *rollo,* pp. 39-47; penned by Judge Gilbert P. Moises.

[3] Records, p. 1.

Version of the Prosecution

The prosecution presented Virginia Fuentes *(Virginia),* wife of the victim William Fuentes *(the victim)*; Junnel Fuentes *(Junnel),* son of the victim; and market vendors Maximo Largo *(Maximo)* and Ricardo Tesorio *(Ricardo).*

Virginia and her husband William Fuentes, the victim in this case, owned a stall inside Taboan Market in Cebu City. During trial, Virginia testified that the victim and accused-appellant had an altercation on the night of 24 April 2004 because accused-appellant had placed garbage beside their store. The victim confronted accused-appellant who became angry and tried to strike the victim with a pipe. The victim secured a piece of wood to get back at accused-appellant, but Virginia stopped her husband from doing so.[4]

At three in the morning of the next day, accused-appellant called out to the victim and challenged him to a fistfight, but Virginia did not allow her husband to go out. When the victim went outside at past four that same morning, he found that the tires of their bicycle had been punctured.[5]

In the afternoon of 25 April 2004, Virginia was sleeping inside their store while her husband and their son Junnel were outside preparing ***pusò.***[6] Later on, the victim told his son that he was going to use the comfort room and would afterwards wake up his wife Virginia. As the victim approached their stall, Junnel saw accused-appellant suddenly appear and stab his father. When the victim went inside the store to get away, accused-appellant followed and attempted to stab him again, but the victim got hold of an electric fan that he used to fend off accused-appellant and to push him outside the store. Accused-appellant kept shouting, "I will kill you!"[7]

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[4] CA *rollo*, pp. 39 and 42.

[5] *Id*. at 42.

[6] **"*Pusò*" is the local term for hanging rice, which is rice boiled and wrapped in woven coconut leaves.**

[7] CA *rollo,* pp. 39-40.

Ricardo, who also had a stall in Taboan Market, was in his store selling ***pusò*** when he heard his mother-in-law shouting out to Racel Caliao *(Racel),* wife of accused-appellant, about what was happening. Racel immediately ran towards the victim's store and pulled accused-appellant away. Ricardo, together with Maximo, another stall owner, approached accused-appellant, who was holding a bloodied knife. They took the knife from accused-appellant and brought it along with him to the police station.[8]

Version of the Defense

The defense presented the testimonies of accused-appellant, Roberto Oralde (*Roberto*), and George Cabino (*George*).

Accused-appellant testified that he was at his store preparing ***pusò*** for delivery when the victim suddenly appeared and poured kerosene on the ***pusò***. Thereafter, the victim took out an iron pipe and repeatedly struck accused-appellant with it until the latter was cornered. Accused-appellant picked up the kitchen knife he had used for cutting ***pusò*** and struck the victim with it. Thereafter, he went home. He also denied that he had quarreled with the victim the night before the incident.[9]

Roberto, who was in the market at the time of the incident because he worked for accused-appellant's mother, confirmed accused-appellant's version by testifying that he saw the victim bring a pipe into accused-appellant's store and repeatedly strike accused-appellant with it, prompting the latter to strike back with a knife. George, a bystander who witnessed the incident, corroborated the same. Roberto also testified that he saw the victim bring kerosene into accused-appellant's store.[10]

However, the prosecution presented rebuttal evidence to Roberto's testimony through Belinda Ligan *(Belinda),* who had been working at the Taboan Market since she was five (5) years

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[8] *Id.* at 41.

[9] *Id.* at 42.

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

old and whose store was just five (5) meters away from the store of accused-appellant's mother. She testified that she had never seen Roberto work for accused-appellant's mother and that she saw him for the first time only when he testified in court.[11]

The RTC Ruling

The RTC ruled that self-defense could not be appreciated to exculpate accused-appellant for his failure to establish the elements thereof clearly and convincingly. It also found that the aggravating circumstances of treachery and evident premeditation are present in this case. Consequently, the RTC found accused-appellant guilty beyond reasonable doubt of murder, *viz*:

> WHEREFORE, in view of the foregoing consideration, the Court finds the accused Nestor "Tony" Caliao guilty beyond reasonable doubt of the crime of Murder qualified by treachery and evident premeditation and imposes upon him the penalty of reclusion perpetua with all its accessory penalties. He is further ordered to pay the heirs of the victim the amount of ₱50,000.00 as civil indemnity, ₱30,000.00 as moral damages, ₱25,000.00 as temperate damages and ₱25,000.00 as exemplary damages.
>
> SO ORDERED.[12]

Aggrieved, accused-appellant appealed before the CA.

The CA Ruling

The CA affirmed the conviction of the accused-appellant. However, it found that while treachery could be appreciated as a circumstance qualifying the crime to murder, evident premeditation could not be appreciated as an aggravating circumstance because it was not shown that accused-appellant had previously determined to kill the victim and that he had clung to said determination. Further, the CA found treachery

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[11] *Id*. at 43.

[12] Records, p. 159.

was present because accused-appellant's attack on the victim was sudden and unexpected, the latter being unaware of the former's presence. The CA ruled, thus:

> **WHEREFORE**, the instant appeal is **DENIED**. The 25 September 2014 Decision of Branch 18 of the Regional Trial Court of Cebu City in Criminal Case No. CBU-70511 is **AFFIRMED with MODIFICATION**. The aggravating circumstance of evident premeditation is **DELETED**. In addition, both civil indemnity and moral damages granted to the heirs of the victim are increased to ₱75,000.00 each. Exemplary damages are likewise **INCREASED** to ₱30,000.00.
>
> Accused Caliao shall pay interest at the rate of six percent (6%) per annum on the aggregate amount of all the monetary awards from the finality of this decision until fully paid.
>
> **SO ORDERED.**[13]

Hence, this appeal.

The Present Appeal

Accused-appellant contends that the CA erred in affirming his conviction because all the elements of self-defense were sufficiently established. He also contends that the prosecution's account of the incident is not worthy of belief and credence because the prosecution witnesses, being the wife and son of the victim, are expected to be biased against the accused-appellant.

ISSUE

WHETHER ACCUSED-APPELLANT'S GUILT FOR MURDER HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

THE COURT'S RULING

Although the Court finds no error in the CA's finding that accused-appellant killed the victim, accused-appellant may only be convicted of homicide.

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[13] *Rollo*, p. 16.

Self-defense was not clearly and convincingly proven by accused-appellant.

Pursuant to the presumption of innocence enshrined in our Constitution, it is incumbent upon the prosecution to prove beyond reasonable doubt the crime charged rather than for the accused to prove his innocence. However, a person invoking self-defense in effect admits to having performed the criminal act but claims no liability therefor, because the actual and imminent danger to his or her life justified his infliction of harm against an aggressor.[14] This dispenses with the prosecution's burden to prove that the accused performed the criminal act; what remains to be established is whether the accused was justified in inflicting the harm.[15] This the accused must prove with clear and convincing evidence.[16]

To successfully invoke self-defense, an accused must prove the following: (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.[17]

Among these three elements, the condition *sine qua non* for the justifying circumstance of self-defense is unlawful aggression. Without said aggression coming from the victim, there can be no self-defense.

As found by both the CA and the RTC, it was accused-appellant who attacked the victim when the former suddenly appeared at the latter's store and stabbed him. Both courts found accused-appellant's version of the events improbable, given that he failed to offer any explanation as to why the victim

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[14] *People v. Macaraig*, G.R. No. 219848, 7 June 2017.

[15] *Velasquez v. People*, G.R. No. 195021, 15 March 2017.

[16] *People v. Mediado*, 656 Phil. 377, 382 (2011).

[17] *Velasquez v. People, supra* note 15, citing *Belbis v. People*, 698 Phil. 706, 719 (2012).

would suddenly pour kerosene on his ***pusò***; or why, if such was the case, accused-appellant did not attempt to stop the victim and merely waited to see what the victim would do next, which he claimed was to strike accused-appellant with an iron pipe. Moreover, when Roberto testified that he saw the incident because he worked for accused-appellant's mother at Taboan Market where the incident happened, the prosecution presented rebuttal evidence through Belinda, who testified that in all her years as a vendor in the said market, she had never seen Roberto work there, considering that her store and that of accused-appellant's mother were only five (5) meters apart.

On the other hand, the CA and the RTC gave credence to the evidence of the prosecution. Both found that the prosecution was able to give a more credible account of the event, having ably established the root cause of accused-appellant's attack on the victim.

It is well-established that the trial court's findings on the credibility of witnesses is entitled to respect because it has the opportunity to observe the witnesses' demeanor and deportment on the witness stand and, therefore, is in the best position to weigh conflicting testimonies and to discern whether the witnesses are telling the truth.[18] The Court finds that no oversight or misapplication of facts and circumstances exists to disturb said findings.

Accused-appellant's contention that the prosecution witnesses were biased against him due to their relationship with the victim fails to persuade. This Court has held that a witness' relationship to the victim does not automatically affect the veracity of his or her testimony because no legal provision disqualifies relatives of the victim of a crime from testifying if they are competent.[19] Here, accused-appellant failed to show proof that Virginia and Junnel's testimonies were biased. Relationship to the victim alone is not enough reason to discredit them.

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[18] *People v. Amoc*, G.R. No. 216937, 5 June 2017.

[19] *Roca v. CA*, 403 Phil. 326, 333-334 (2001).

Since it is duly established that it was accused-appellant who attacked the victim, then no unlawful aggression could be attributed to the victim. Consequently, his claim of self-defense must fail.

Treachery was not sufficiently proven.

Treachery exists when the prosecution has sufficiently established the concurrence of the following elements: (1) the accused employed means of execution that gave the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted.[20]

Bearing in mind that the qualifying circumstance of treachery must be indubitably proven as the crime itself, the Court finds that it was not sufficiently proven in this case.

Treachery cannot be appreciated from the mere fact that the attack was sudden and unexpected. The Court has held that "the circumstance that an attack was sudden and unexpected on the person assaulted did not constitute the element of *alevosia* necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself."[21]

The Court has also ruled that when aid was easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident, including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time.[22]

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[20] *People v. Umawid,* 735 Phil. 737, 746 (2014).

[21] *People v. Vilbar*, 680 Phil. 767, 786 (2012).

[22] *Id*.

Here, there is no showing that accused-appellant consciously adopted the sudden attack to facilitate the perpetration of the killing. In fact, it was done in a public market, in the afternoon, with the victim's family and other vendors nearby who could have foiled accused-appellant's actions.

Since no qualifying circumstance exists, accused-appellant may only be convicted of homicide. Applying the Indeterminate Sentence Law and there being no mitigating or aggravating circumstance in this case, the maximum of the sentence should be within the range of *reclusion temporal* in its medium term with a duration of fourteen (14) years, eight (8) months, and one (1) day, to seventeen (17) years and four (4) months; and that the minimum should be within the range of *prision mayor* which has a duration of six (6) years and one (1) day to twelve (12) years. The Court thus imposes imprisonment from eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.

The award of damages must be modified, consistent with prevailing jurisprudence. For crimes that result in the death of a victim and the penalty consists of divisible penalties, such as in this case of homicide, the civil indemnity awarded to the heirs of the victim shall be ₱50,000.00 and ₱50,000.00 for moral damages; and no award for exemplary damages.[23] In line with current policy,[24] the Court also imposes interest at the legal rate of 6% per annum on all monetary awards for damages from the date of finality of this decision until fully paid.

WHEREFORE, the instant appeal is **DISMISSED** for lack of merit. The 20 May 2016 Decision of the Court of Appeals in CA-G.R. CEB-CR.-H.C. No. 02006 is **AFFIRMED** with **MODIFICATION**. Accused-appellant Nestor "Tony" Caliao is found **GUILTY** of the crime of **HOMICIDE**, for which he is **SENTENCED** to imprisonment of eight (8) years and one

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[23] *People v. Jugueta*, 783 Phil. 806, 846 (2016).

[24] *Id.* at 854.

(1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum, and is **ORDERED** to pay the heirs of William Fuentes the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 226405. July 23, 2018]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **EFREN BONGAIS, HOUSING AND HOMESITE REGULATION OFFICER IV, CITY HOUSING AND SETTLEMENTS OFFICE, CALAMBA CITY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; REQUIREMENTS FOR A MOTION TO INTERVENE TO PROSPER.— To warrant intervention under Rule 19 of the Rules of Court, the intervenor must possess legal interest in the matter in controversy. Legal interest is defined as such interest that is actual and material, direct and immediate such that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In addition to legal interest, the intervenor must file the motion to intervene before rendition of the judgment, the intervention being ancillary and supplemental to an existing litigation, not an independent action.

Corollarily, when the case is resolved or is otherwise terminated, the right to intervene likewise expires.

2. ID.; ID.; ID.; ID.; OMBUDSMAN'S LEGAL INTEREST TO INTERVENE AND DEFEND ITS RULING IN ADMINISTRATIVE CASES BEFORE THE COURT OF APPEALS PROCEEDS FROM ITS DUTY TO ACT AS A CHAMPION OF THE PEOPLE AND TO PRESERVE THE INTEGRITY OF THE PUBLIC SERVICE.— The Court agrees that the Ombudsman has legal standing to intervene on appeal in administrative cases resolved by it. In the 2008 case of *Ombudsman v. Samaniego* (*Samaniego*), the Court categorically ruled that, even if not impleaded as a party in the proceedings, the Office of the Ombudsman has legal interest to intervene and defend its ruling in administrative cases before the CA, its interest proceeding, as it is, from its duty to act as a champion of the people and to preserve the integrity of the public service.

3. ID.; ID.; ID.; ID.; THE RULE REQUIRING INTERVENTION BEFORE RENDITION OF JUDGMENT ALLOWS CERTAIN EXCEPTIONS; OMBUDSMAN'S BELATED INTERVENTION IS ALLOWED WHERE THE LEGAL ISSUES RAISED AFFECTED ITS MANDATE AND POWER.— The rule requiring intervention before rendition of judgment, however, is not inflexible. As jurisprudence has shown, interventions have been allowed even beyond the period prescribed in the Rule when demanded by the higher interest of justice; to afford indispensable parties, who have not been impleaded, the right to be heard; to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties; or, because of the grave legal issues raised, as will be shown below. Stated otherwise, the rule may be relaxed and intervention may be allowed subject to the court's discretion after consideration of the appropriate circumstances. After all, Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice; its purpose is not to hinder or delay, but to facilitate and promote the administration of justice. x x x [T]he Court allowed the Ombudsman's belated intervention in *Quimbo*, *Macabulos*, *Santos*, and *Beltran* because of the grave legal issues raised that affected the Ombudsman's mandate and power, which, as mentioned, may be considered as an exception

to the general rule reinforced in *Gutierrez* that the intervention must be timely made by the Ombudsman before rendition of judgment.

4. ID.; ID.; ID.; ID.; IN THE ABSENCE OF ANY EXCEPTING CIRCUMSTANCES, THE RULE REQUIRING THE MOTION TO INTERVENE TO BE FILED BEFORE RENDITION OF JUDGMENT, APPLIED; IN CHOOSING NOT TO ACT SOONER, THE OMBUDSMAN HAD WAIVED ITS STANDING TO INTERVENE.— [T]he status of the Ombudsman as a party adversely affected by – and therefore with the legal standing to assail – the CA Decision did not automatically warrant the grant of its motion to intervene. Since the Court does not find any of the excepting circumstances laid down in jurisprudence, including those laid down in *Santos*, *Beltran*, *Macabulos*, and *Quimbo*, obtaining in this case, the general rule provided under Section 2 of Rule 19, as reinforced in *Gutierrez*, squarely applies. Hence, while the Ombudsman had legal interest to intervene in the proceeding in CA-G.R. SP No. 139835, the period for the filing of its motion to intervene had already lapsed as it was filed after the CA had promulgated its Decision. x x x To the Court's mind, in choosing not to act sooner, the Ombudsman had clearly waived its legal standing to intervene in CA-G.R. SP No. 139835, which the Court cannot now restore.

APPEARANCES OF COUNSEL

Mariel Mailom-Llarena 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 Decision[2] dated April 7, 2016 and the Resolution[3] dated

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[1] *Rollo*, pp. 16-33.

[2] *Id*. at 40-48. Penned by Associate Justice Agnes Reyes-Carpio with Associate Justices Romeo F. Barza and Amy C. Lazaro-Javier concurring.

[3] *Id*. at 50-52.

July 26, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 139835, which modified the Decision[4] dated September 16, 2014 and the Order[5] dated January 12, 2015 of the Office of the Ombudsman (Ombudsman), and found respondent Efren Bongais (Bongais) guilty of Simple Neglect of Duty.

The Facts

The present case stemmed from a Letter-Complaint[6] dated September 30, 2010 filed before the Ombudsman by the National Bureau of Investigation (NBI) charging Bongais, among others,[7] in his capacity as Housing and Homesite Regulation Officer IV of the City Housing and Settlements Office, City of Calamba, Laguna, for grave misconduct and dishonesty by conniving and confederating with other known public officers and private individuals in defrauding the Bank of the Philippine Islands Family Bank (BPI Family). The complaint alleged that sometime in 2002, the local government of Calamba expropriated a parcel of land covered by Transfer Certificate of Title (TCT) No. T-44387[8] (subject title) issued in the name of Ferdinand Noguera (Noguera). Thereafter, the owner's duplicate copy of the subject title was surrendered to the local government and placed under the custody of Bongais. In May 2005, however, the said duplicate copy was lost. Thus, on May 3, 2005, Bongais executed an Affidavit of Loss[9] stating that he discovered that the owner's

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[4] *Id*. at 75-83. Penned by Graft Investigation and Prosecution Officer II Christine Carol A. Casela-Doctor and approved by Deputy Ombudsman for Luzon Gerard A. Mosquera.

[5] *Id*. at 84-87.

[6] Records, pp. 1-10.

[7] The other respondents were: Ronaldo Dela Cruz, Head, City Housing and Settlements Department, Calamba, Laguna; Edgar Santos, Register of Deeds, Sta. Cruz, Laguna; Spouses Reuel Rene L. and Elizabeth Sta. Maria Miravite; Ma. Victoria "Marivic" E. Ponce; Edilberto P. Camaisa; Ann Marie R. Capati; Conrado C. Gappi. Jr.; and Josefina "Jessie" Velecina (*id.* at 1-2).

[8] *Rollo*, pp. 110-113.

[9] Dated May 3, 2005. *Id*. at 71. The pertinent portions read:

duplicate copy of the subject title was missing and that despite diligent efforts on his part to locate the said title, the same remains missing and thus presumed lost. The following day, or on May 4, 2005, Bongais submitted the Affidavit of Loss to the Register of Deeds (RD) for annotation.[10]

On August 25, 2005, however, records show that an Affidavit of Recovery[11] was allegedly executed by Bongais, albeit the same was filed with the RD and annotated at the back of the original title only on August 6, 2007.[12]

On January 4, 2008, the City of Calamba filed a petition[13] praying for the nullification of the lost owner's duplicate copy of the subject title and issuance of a new title in its place.[14] During the pendency of the said petition, it was discovered that the subject title was already cancelled by the RD and replaced with TCT No. T-708861[15] issued in the name of Technoasia Airconditioning Refrigeration, Inc. (Technoasia) by virtue of

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3. That one of those properties I am currently processing covers a parcel of land previously owned by Ferdinand Noguera, covered by TCT No. 44387, known as Lot 1557, with an area of 7,604 square meters, and which was expropriated by the City Government of Calamba;

4. That sometime this month, I discovered that the owner's copy of the said Title, which was under my custody, was missing;

5. That despite diligent effort on my part to locate the said title, the same could no longer be located, thus presumed lost;

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[10] See *id*. at 40-41. See also *id*. at 19.

[11] *Id*. at 114. Annotated under Entry No. 82070 (see *id*. at 111 and CA *rollo*, p. 33).

[12] See *id*. at 41. See also *id*. at 19.

[13] See Petition for Issuance of New Owner's Duplicate Copy of TCT No. T-44387 dated December 10, 2007; *id*. at 115-117.

[14] The case was docketed as RTC SLRC Case No. 2913-2008-C; see *id*. at 20.

[15] Records, pp. 110-111.

a Deed of Absolute Sale,[16] which was executed on June 4, 2008 by the attorney-in-fact of Noguera's heirs in favor of Technoasia. Subsequently, Technoasia sold the property to spouses Reuel Rene and Elizabeth Miravite[17] (Spouses Miravite) who, in order to pay for the purchase price, obtained a loan from the BPI Family with the property as collateral. As a result, TCT No. T-708861 was cancelled and TCT T-730139[18] was issued in the name of Spouses Miravite. Not long after, the BPI Family received information that its transaction with Spouses Miravite was irregular; thus, it requested the latter to put up another collateral, but to no avail.[19]

In his Counter-Affidavit,[20] Bongais denied the allegations against him and maintained that he was not privy to the transaction between the bank and the other parties thereto. He claimed that his participation was limited to the physical custody of the duplicate copy of the subject title, which was part of his duties as personnel of the City Planning and Development Office, and that he observed due diligence in handling said title by securing it in a file cabinet which is beyond the access of other persons. Further, he denied having executed an Affidavit of Recovery after he caused annotation of the Affidavit of Loss on the copy of the said title in the RD's custody, pointing out that the signatures appearing in both affidavits were different.[21]

The Ombudsman Ruling

In a Decision[22] dated September 16, 2014, the Ombudsman dismissed the administrative case against the other public officers,

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[16] *Id.* at 117-118.

[17] Spelled as "Miravete" in the CA Decision. See *rollo*, p. 41.

[18] Records, pp. 57-58.

[19] See *rollo*, pp. 41-42. See also *id.* at 77-78.

[20] See Joint Counter-Affidavit with his co-respondent Ronaldo Dela Cruz dated May 18, 2011; *id.* at 72-74.

[21] See *id.* at 72-73.

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

but found Bongais guilty of Grave Misconduct, and accordingly, meted out the penalty of dismissal from the service and its accessory penalties.[23]While the Ombudsman did not find any conspiracy among Bongais and his co-respondents in the resulting fraudulent transaction, it found sufficient reason to hold Bongais liable for the loss of the subject title, maintaining that while he claimed that its loss might have been due to thievery – considering that it was securely kept inside the office file cabinet over which no other person had access – Bongais did not state nor show that the cabinet or its lock was destroyed or damaged due to its forcible opening. Neither did he offer any explanation as to how the alleged thievery was done. In this regard, the Ombudsman noted that in August 2005, Bongais also lost another title in his custody covering a property likewise expropriated by the City of Calamba. To the Ombudsman, notwithstanding the importance of these documents, Bongais did not report the incidents to the proper authorities, thus, giving the impression that he had a hand in their loss. Accordingly, the Ombudsman concluded that the loss of these titles, which were under Bongais's official custody on two different occasions, showed "gross neglect of duty amounting to grave misconduct" [24] on his part.

Aggrieved, Bongais sought reconsideration,[25] which the Ombudsman denied in an Order[26] dated January 12, 2015. Thus, he elevated the case to the CA via Petition for Review[27] under Rule 43 of the Rules of Court.

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[23] *Id*. at 82.

[24] See *id*. at 82.

[25] See motion for reconsideration dated November 12, 2014; CA *rollo*, pp. 40-44.

[26] *Rollo*, pp. 84-87.

[27] Dated April 7, 2015. CA *rollo*, pp. 3-17.

The CA Ruling

In a Decision[28] dated April 7, 2016, the CA granted the petition, and accordingly, modified the Ombudsman Decision, finding Bongais guilty of Simple Neglect of Duty only and imposing on him the penalty of suspension for a period of six (6) months.[29] According to the CA, there is nothing in the records that supports the Ombudsman's conclusion that Bongais intentionally or flagrantly disregarded established rules or laws in order to hold him liable for grave misconduct. In this regard, it pointed out that there is no evidence that Bongais participated in or had any direct connection with those who perpetuated the fraud. On the contrary, records show that as soon as he discovered that the owner's duplicate copy of the subject title was missing, Bongais immediately executed an Affidavit of Loss and caused its annotation on the title in the custody of the RD. While an Affidavit of Recovery was subsequently recorded in the RD, causing the cancellation of the subject title and issuance of a new one in Technoasia's name, the CA observed that the same does not bear Bongais's signature, and thus, could not be attributed to him. Additionally, the CA pointed out that while he is the only person who had access to the storage facility where the said title was kept and the same lacked any sign of forcible opening, it could not be concluded that he deliberately lost the copy of the title or that he was consciously indifferent to the consequences of the act. To the CA, Bongais was, at most, careless as he failed to give proper attention to how he had stored the lost owner's duplicate copy of the subject title, which careless act can be categorized as Simple Neglect of Duty.[30]

Dissatisfied with the CA ruling, the Ombudsman filed an Omnibus Motion to Intervene and to Admit Attached Motion for Reconsideration,[31] arguing that it "was not expressly

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[28] *Rollo*, pp. 40-48.

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

[30] See *id*. at 46-47.

[31] Dated May 2, 2016. *Id*. at 53-58.

impleaded as a party-respondent in the case," and thus, prayed for leave to intervene.[32]

In a Resolution[33] dated July 26, 2016, the CA denied the Ombudsman's Omnibus Motion for lack of interest to intervene in the proceeding; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in denying the Ombudsman's Omnibus Motion to Intervene.

The Court's Ruling

The Ombudsman argues, in the main, that the CA erred in denying its Omnibus Motion to Intervene, reasoning out that as the protector of the people against errant government employees, it has the legal interest to intervene and defend its decision before the CA.[34] In support, it cites *Ombudsman v. Quimbo*[35] (*Quimbo*), which in turn cited *Ombudsman v. De Chavez*[36] (*De Chavez*) and *Ombudsman v. CA and Macabulos*[37] (*Macabulos*). In this light, the Ombudsman reiterates that the evidence warrant the finding of administrative liability on Bongais's part for Gross Neglect of Duty tantamount to Gross Misconduct.[38]

For his part, Bongais asserts that the Ombudsman has no legal interest to intervene in the proceeding, citing *Ombudsman v. Sison*[39] (*Sison*) and *Republic v. Namboku Peak,*

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[32] *Id.* at 54.

[33] *Id.* at 50-52.

[34] See *id.* at 23-25.

[35] 755 Phil. 41 (2015).

[36] 713 Phil. 211 (2013).

[37] 576 Phil. 784 (2008).

[38] See *rollo*, pp. 29-31.

[39] 626 Phil. 598 (2010).

Inc;[40] and that, in any case, the CA did not err in downgrading the offense to Simple Neglect of Duty as there is no sufficient evidence to prove the charge of Grave Misconduct.[41]

Jurisprudence defines intervention as a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceedings.[42] It is, however, settled that intervention is not a matter of right, but is instead addressed to the sound discretion of the courts[43] and can be secured only in accordance with the terms of the applicable statute or rule.[44] Rule 19 of the Rules of Court prescribes the manner by which intervention may be sought, thus:

> Section 1. *Who may intervene.* – **A person who has a legal interest in the matter in litigation**, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof **may, with leave of court, be allowed to intervene in the action**. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.
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> Section 2. *Time to intervene.* – **The motion to intervene may be filed at any time before rendition of judgment by the trial court**. A copy of the pleading-in-intervention shall be attached to the motion and served on the original parties. (Emphases supplied)

To warrant intervention under Rule 19 of the Rules of Court, the intervenor must possess legal interest in the matter in controversy. Legal interest is defined as such interest that is

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[40] 759 Phil. 58 (2014).

[41] See *rollo*, pp. 96-100 and 101-106.

[42] See *Ombudsman v. Samaniego*, 586 Phil. 497, 509 (2008), citing *Manalo v. CA*, 419 Phil. 215, 233 (2001). See also *Ombudsman v. Gutierrez*, G.R. No. 189100, June 21, 2017.

[43] See *Ombudsman v. Gutierrez*, *id*.

[44] See *Ombudsman v. Samaniego*, *supra* note 42.

actual and material, direct and immediate such that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.[45] In addition to legal interest, the intervenor must file the motion to intervene before rendition of the judgment, the intervention being ancillary and supplemental to an existing litigation, not an independent action.[46] Corollarily, when the case is resolved or is otherwise terminated, the right to intervene likewise expires.[47]

The Court agrees that the Ombudsman has legal standing to intervene on appeal in administrative cases resolved by it. In the 2008 case of *Ombudsman v. Samaniego*[48] (*Samaniego*), the Court categorically ruled that, even if not impleaded as a party in the proceedings, the Office of the Ombudsman has legal interest to intervene and defend its ruling in administrative cases before the CA, its interest proceeding, as it is, from its duty to act as a champion of the people and to preserve the integrity of the public service. Thus, the Court explained:

[T]he Ombudsman is in a league of its own. It is different from other investigatory and prosecutory agencies of the government because the people under its jurisdiction are public officials who, through pressure and influence, can quash, delay or dismiss investigations directed against them. Its function is critical because public interest (in the accountability of public officers and employees) is at stake.

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[45] *Id*. at 510; citing *Magsaysay-Labrador v. CA*, 259 Phil. 748, 753-754 (1989).

[46] See *Ombudsman v. Gutierrez*, *supra* note 42, citing *Manalo v. CA*, *supra* note 42, at 234.

[47] See *id*.

[48] *Supra* note 42. See also *Ombudsman v. CA and Macabulos*, (*supra* note 37), where, albeit an obiter, the Court held that the CA "should have granted the motion for intervention filed by the Ombudsman. In its decision, the appellate court not only reversed the order of the Ombudsman but also delved into the investigatory power of the Ombudsman. Since the Ombudsman was not impleaded as a party when the case was appealed to the Court of Appeals in accordance with Section 6, Rule 43 of the Rules of Court, the Ombudsman had no other recourse but to move for intervention and reconsideration of the decision in order to prevent the undue restriction of its constitutionally mandated investigatory power." (*Id*. at 793-794.)

x x x x x x x x x

In asserting that it was a "competent disciplining body," the Office of the Ombudsman correctly summed up its legal interest in the matter in controversy. In support of its claim, it invoked its role as a constitutionally mandated "protector of the people," a disciplinary authority vested with quasi-judicial function to resolve administrative disciplinary cases against public officials. To hold otherwise would have been tantamount to abdicating its salutary functions as the guardian of public trust and accountability.

Moreover, the Office of the Ombudsman had a clear legal interest in the inquiry into whether respondent committed acts constituting grave misconduct, an offense punishable under the Uniform Rules in Administrative Cases in the Civil Service. **It was in keeping with its duty to act as a champion of the people and preserve the integrity of public service that petitioner had to be given the opportunity to act fully within the parameters of its authority.**

It is true that under our rule on intervention, the allowance or disallowance of a motion to intervene is left to the sound discretion of the court after a consideration of the appropriate circumstances. However, such discretion is not without limitations. One of the limits in the exercise of such discretion is that it must not be exercised in disregard of law and the Constitution. The CA should have considered the nature of the Ombudsman's powers as provided in the Constitution and RA 6770.

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Both the CA and respondent likened the Office of the Ombudsman to a judge whose decision was in question. This was a tad too simplistic (or perhaps even rather disdainful) of the power, duties and functions of the Office of the Ombudsman. **The Office of the Ombudsman cannot be detached, disinterested and neutral specially when defending its decisions. Moreover, in administrative cases against government personnel, the offense is committed against the government and public interest.** What further proof of a direct constitutional and legal interest in the accountability of public officers is necessary?[49] (Emphases supplied)

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[49] *Id.* at 508-512.

The Court reiterated *Samaniego* and upheld the Ombudsman's standing to intervene in *De Chavez*, *Quimbo* – cited by the Ombudsman – and recently, in *Ombudsman v. Gutierrez*[50] (*Gutierrez*). It appears, therefore, that as matters stand, *Samaniego* remains to be the prevailing doctrine, and thus, the Court upholds the Ombudsman's personality to intervene in appeals from its rulings in administrative cases. In asserting that "there is a need for [it] to uphold the existence and exercise" of its "administrative disciplinary power x x x endowed by no less than the Constitution and [Republic Act] No. 6770",[51] the Ombudsman, in this case, had indubitably shown such legal interest sufficient to clothe it with personality to intervene in the proceeding. Since its power to ensure enforcement of its Decision and Order was in danger of being impaired, the Ombudsman had a clear legal interest in defending its right to have its judgment carried out.

The Court is likewise aware of the 2010 case of *Sison*,[52] cited by Bongais, where it disallowed the Ombudsman's intervention despite the ruling in *Samaniego*. The Court held in *Sison* that, as the disciplining authority or tribunal which previously heard the case and imposed the penalty of dismissal from the service, the Ombudsman is not an appropriate party to intervene in the appeal of its decision. This is because in acting as the adjudicator, the Ombudsman is not an active combatant in such proceeding, and thus, must remain detached and impartial, leaving the opposing parties to contend their individual positions and the appellate court to decide the issues without its active participation.

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[50] *Supra* note 42.

[51] *Rollo*, p. 55. See also Republic Act No. 6770 entitled "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES," approved on November 17, 1989.

[52] *Supra* note 39. *Ombudsman v. Sison* cited the following cases: *Mathay, Jr. v. CA*, 378 Phil. 466 (1999); *National Appellate Board of the National Police Commission v. Mamauag*, 504 Phil. 186 (2005); and *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, 563 Phil. 842 (2007).

The Court concluded then that the government party with the standing to appeal is the one prosecuting the administrative case against the respondent. The Court took a similar stance in the earlier case of *Ombudsman v. Magno*[53] (*Magno*), as well as in the 2012 case of *Ombudsman v. Liggayu*[54] (*Liggayu*).

It should be pointed out, however, that in these cases, the Ombudsman moved to intervene after the CA had already rendered judgment on the appeal of its administrative ruling. Thus, it would appear that the Court was impelled to deny the Ombudsman's intervention in these cases because it was already filed beyond the allowable period. In the 2017 case of *Gutierrez*, the Court clarified this apparent conflict between *Sison*, *Magno*, and *Liggayu*, on the one hand, and *Samaniego*, *De Chavez*, and *Quimbo* on the other hand, as it held that:

> [A]s things currently stand, *Samaniego* remains to be the prevailing doctrine. The Ombudsman has legal interest in appeals from its rulings in administrative cases. Petitioner could not then be faulted for filing its Omnibus Motion before the appellate court x x x.
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> x x x x x x x x x
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> It is [the] requirement of timeliness that petitioner failed to satisfy, prompting the appellate court to issue the July 23, 2009 Resolution denying the Omnibus Motion. This course of action by the CA finds jurisprudential basis in *Magno, Sison*, and *Liggayu*. x x x**A review of these cases would show that the Ombudsman prayed for the admission of its pleading-in-intervention after the CA has already rendered judgment, and despite the Ombudsman's knowledge of the pendency of the case, in clear contravention of Sec. 2, Rule 19. This substantial distinction from the cases earlier discussed justifies the denial of the motions to intervene in *Magno, Sison,* and *Liggayu*.** x x x

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[53] 592 Phil. 636 (2008). *Ombudsman v. Magno* cited the following cases: *Mathay, Jr. v. CA*, *id.*; *National Appellate Board of the National Police Commission v. Mamauag*, *id.*; and *Pleyto v. PNP-CIDG*, *id.*

[54] 688 Phil. 443 (2012). *Ombudsman v. Liggayu* cited the following cases: *Mathay, Jr. v. CA*, *id.*; *National Appellate Board of the National Police Commission v. Mamauag*, *id.*; *Ombudsman v. Sison*, *supra* note 39, citing *Pleyto v. PNP-CIDG*, *id.*; and *Ombudsman v. Magno*, *id.*

x x x x x x x x x

Thus, **in the three cases that seemingly strayed from *Samaniego*, it can be said that under the circumstances obtaining therein, the appellate court had a valid reason for disallowing the Ombudsman to participate in those cases because the latter only moved for intervention after the CA already rendered judgment. By that time, intervention is no longer warranted**.[55] (Emphases supplied)

In the face of the clarification made in *Gutierrez*, it should now be considered as settled doctrine that the Ombudsman has legal standing to intervene in appeals from its rulings in administrative cases, **provided,** *that the Ombudsman moves for intervention before rendition of judgment,* pursuant to Rule 19 of the Rules of Court, lest its motion be denied as the Court did in *Sison*, *Magno*, and *Liggayu*.

The rule requiring intervention before rendition of judgment, however, is not inflexible. As jurisprudence has shown, interventions have been allowed even beyond the period prescribed in the Rule when demanded by the higher interest of justice; to afford indispensable parties, who have not been impleaded, the right to be heard; to avoid grave injustice and injury and to settle once and for all the substantive issues raised by the parties;[56] or, because of the grave legal issues raised,[57] as will be shown below. Stated otherwise, the rule may be relaxed and intervention may be allowed subject to the court's discretion after consideration of the appropriate circumstances.[58] After

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[55] See *Ombudsman v. Gutierrez*, *supra* note 42.

[56] See *Quinto v. Commission on Elections*, 627 Phil. 193, 218-219 (2010), citing *Lim v. Pacquing*, 310 Phil. 722, 771 (1995). See also *Tahanan Development Corporation v. CA*, 203 Phil. 652 (1982); *Director of Lands v. CA*, 190 Phil. 311 (1981); and *Mago v. CA*, 363 Phil. 225 (1999).

[57] See *Ombudsman v. Quimbo*, *supra* note 35; *Ombudsman v. CA and Macabulos*, *supra* note 37; *Ombudsman v. CA and Santos*, 537 Phil. 751 (2006); and *Ombudsman v. Beltran*, 606 Phil. 573 (2009).

[58] See *Quinto v. Commission on Elections*, *supra* note 56, at 219, citing *Heirs of Restrivera v. De Guzman*, 478 Phil. 592, 602 (2004). See also

all, Rule 19 of the Rules of Court is a rule of procedure whose object is to make the powers of the court fully and completely available for justice; its purpose is not to hinder or delay, but to facilitate and promote the administration of justice.[59]

Concrete examples of the exception to the period rule in intervention are the cases of *Quimbo* and *Macabulos*, cited by the Ombudsman, where the Court allowed the Ombudsman to intervene despite the fact that the CA had already rendered its decision. Other examples are *Ombudsman v. Santos*[60] (*Santos*) and *Ombudsman v. Beltran*[61] (*Beltran*). Notably, the Court's action allowing the Ombudsman's belated intervention in these cases present a contrary argument to the conclusion reached in *Gutierrez* as regards *Sison*, *Magno*, and *Liggayu's* deviation from *Samaniego*, as discussed above.

In *Quimbo* and *Macabulos*, as well as *Santos* and *Beltran*, it may be observed that apart from the sufficiency of the Ombudsman's findings of administrative liability, the validity or constitutionality of the Ombudsman's powers and mandate was put in issue. For example, the issue of whether or not the Ombudsman has the power to directly impose sanctions on the public official or employee it found to be at fault was raised and addressed by the Court in *Quimbo*, *Santos*, and *Beltran*. For this reason, the Court considered the Ombudsman as the real party-in-interest, considering the "essence of the Ombudsman's constitutionally and statutorily conferred powers establishing its clear legal interest in ensuring that its directive be implemented."[62] *Macabulos*, on the other hand, presented

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Ombudsman v. Miedes, Sr., 570 Phil. 464, 472 (2008); and *Mago v. CA*, *supra* note 56, at 233.

[59] See *Quinto v. Commission on Elections*, *id.*

[60] *Supra* note 57.

[61] *Id.*

[62] See *Ombudsman v. Quimbo*, *supra* note 35. See also *Ombudsman v. Beltran* (*id.*), where the Court held that "[i]t is the Office of the Ombudsman that stands to suffer if the decision would attain finality. As the 'protector of the people' against erring officers or employees of the Government, to

the questions of whether or not the Ombudsman is barred by prescription from investigating a complaint filed more than one (1) year from the occurrence of the act complained of, and whether or not the penalty of dismissal pending appeal is immediately executory. The Court, in *Macabulos*, allowed the intervention, as it declared that "x x x the appellate court not only reversed the order of the Ombudsman but also delved into the investigatory power of the Ombudsman. Since the Ombudsman was not impleaded as a party when the case was appealed to the [CA] in accordance with Section 6, Rule 43 of the Rules of Court, the Ombudsman had no other recourse but to move for intervention and reconsideration of the decision in order to prevent the undue restriction of its constitutionally mandated investigatory power."[63] Thus, it would appear that the Court allowed the Ombudsman's belated intervention in *Quimbo*, *Macabulos*, *Santos*, and *Beltran* because of the grave legal issues raised that affected the Ombudsman's mandate and power, which, as mentioned, may be considered as an exception to the general rule reinforced in *Gutierrez* that the intervention must be timely made by the Ombudsman before rendition of judgment.

Translating these principles to the current petition, the status of the Ombudsman as a party adversely affected by – and therefore with the legal standing to assail – the CA Decision did not automatically warrant the grant of its motion to intervene. Since the Court does not find any of the excepting circumstances laid down in jurisprudence, including those laid down in *Santos*, *Beltran*, *Macabulos*, and *Quimbo*, obtaining in this case, the general rule provided under Section 2 of Rule 19, as reinforced in *Gutierrez*, squarely applies. Hence, while the Ombudsman had legal interest to intervene in the proceeding in CA-G.R. SP No. 139835, the period for the filing of its motion to intervene

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deprive the Office of the Ombudsman of its administrative disciplinary authority would certainly derail the effective implementation of its mandated function and duties." (*Id*. at 587-588.)

[63] *Supra* note 37, at 793-794.

had already lapsed as it was filed after the CA had promulgated its Decision.

Additionally, it is well to point out that prior to the filing of the Omnibus Motion to Intervene, the Ombudsman was, pursuant to the Rules,[64] specifically furnished the following orders/resolutions of the CA: (*1*) Resolution[65] dated May 22, 2015 requiring therein respondent NBI to file its Comment; (*2*) Resolution[66] dated August 12, 2015 directing the NBI to show cause why the Petition for Review should not be submitted for decision without its Comment for failure to file the same despite actual receipt of the CA's May 22, 2015 Resolution; (*3*) Resolution[67] dated October 20, 2015 noting the Manifestation[68] filed by the NBI Director; (*4*) Resolution[69] dated February 17, 2016 submitting for decision the Petition for Review without the NBI's comment, the filing thereof having been deemed waived for the NBI's failure to file the same within the allowed period; and (*5*) Notice of Decision[70] dated April 7, 2016.[71] Despite these notices and the NBI's clear failure to act (on Bongais's petition) to defend the Ombudsman Decision that was in danger

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[64] See Section 5, Rule 43 of the Rules of Court which requires proof of service of copy of the petition for review on the adverse party. It pertinently reads:

> Section 5. *How appeal taken*. — Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, **with proof of service of a copy thereof on the adverse party and on the court or agency *a quo***. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.
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> x x x x x x x x x (Emphasis supplied)

[65] See CA *rollo*, p. 53.

[66] See *id*. at 54.

[67] See *id*. at 59.

[68] Dated September 4, 2015. *Id*. at 55-57.

[69] See *id*. at 60.

[70] See *id*. at 65.

[71] See *rollo*, p. 99.

of being impaired, the latter chose not to take action until the CA had rendered its Decision modifying its (the Ombudsman's) ruling. Worse, it did not offer any justifiable explanation for its belated attempt at intervention, other than the feeble excuse that "it was not expressly impleaded as a respondent"[72] in Bongais's petition. To the Court's mind, in choosing not to act sooner, the Ombudsman had clearly waived its legal standing to intervene in CA-G.R. SP No. 139835, which the Court cannot now restore.

All told, the CA did not commit reversible error when it denied the Ombudsman's Omnibus Motion to Intervene. While the Ombudsman had legal standing to intervene in Bongais's petition for review before the CA, the period for the filing of its motion to intervene had already lapsed as it was filed after the CA had promulgated its assailed Decision. Consequently, the present petition must be denied, without the need to delve into the merits of the substantive arguments raised.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated April 7, 2016 and the Resolution dated July 26, 2016 of the Court of Appeals in CA-G.R. SP No. 139835 are hereby **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

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[72] See *id*. at 51. See also *id*. at 23.

THIRD DIVISION

[G.R. No. 227388. July 23, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **MARIA THERESA MANAHAN-JAZMINES,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 IN RELATION TO COMMONWEALTH ACT NO. 141; REQUIREMENTS FOR ORIGINAL REGISTRATION OF IMPERFECT TITLES.— Under P.D. No. 1529, original registration of title can be acquired through Section 14, to wit: Section 14. *Who may apply.* — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives: (1) **Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.** x x x Section 14(1) of P.D. No. 1529 refers to the original registration of imperfect titles and must be discussed in reference to Section 11(4) and Section 48(b) of C.A. No.141, where the Court set forth the requirements as follows: 1. That the subject land forms part of the alienable and disposable lands of the public domain; 2. That the applicants, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership; and 3. That such possession and occupation must be **since June 12, 1945** or **earlier**.

2. ID.; ID.; ID.; ID.; THERE WAS NO OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF THE LAND SINCE JUNE 12, 1945 OR EARLIER IN THIS CASE.— Respondent utterly failed to show, through incontrovertible evidence, that she and her predecessors-in-interest's possession and occupation of the subject lots were open, continuous, exclusive and notorious

under a *bona fide* claim of ownership since June 12, 1945 or earlier. x x x It was not even shown by respondent the manner by which her alleged tenant cultivated the land. Verily, no evidence was presented to prove that respondent or her relatives have been continuously cultivating the land because the sole tenant of respondent and her family died several years ago. This was even corroborated by the evidence presented by respondent, specifically, the MARO Certification showing that the subject lots are idle and uncultivated, with no signs of agricultural activity. x x x Likewise, as properly opined by the Republic, there was no evidence presented, whether testimonial or documentary, would show that the subject lands actually contained permanent structures or were fenced. Thus, the said lands remain uncultivated, unoccupied and unfenced.

3. **ID.; ID.; ID.; ID.; ID.; SPORADIC TAX DECLARATIONS CANNOT ESTABLISH POSSESSION.—** [R]espondent did not religiously pay the taxes on the subject lots annually. There are merely 6 or 7 instances that she declared the subject lots for tax purposes on an alleged possession of more than 40 years and these are not sufficient proofs of possession and occupation contemplated by law. This type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation.

4. **ID.; ID.; ID.; ID.; FAILURE TO PROVE THE NATURE AND PERIOD OF POSSESSION REQUIRED BY LAW RESULTS IN THE DENIAL OF RESPONDENT'S APPLICATION FOR REGISTRATION.—** [R]espondent failed to prove that she and her predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation thereof under a *bona fide* claim of ownership since June 12, 1945 or earlier. Evidently, she failed to comply with the second and third requisites under Section 14(1) of P.D. 1529, thus, the subject lots could not be registered. Respondent's application for registration of title of the subject lots under P.D. No. 1529 should be denied.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Robert Michael Natividad for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal by *certiorari* seeking to reverse and set aside the Decision[1] dated March 15, 2016 and Resolution[2] dated September 20, 2016 of the Court of Appeals (*CA*) in CA-G.R. CV No. 99962. The CA affirmed the Decision[3] of the Regional Trial Court of San Mateo, Rizal, Branch 75 *(RTC)* dated October 5, 2012, granting the application of registration of title in LRC Case No. N-330-09 SM, filed by Maria Theresa Manahan-Jazmines (*respondent).*

The Antecedents

On March 11, 2009, respondent filed an application for the registration of four (4) parcels of land *(subject lots)* under Presidential Decree *(P.D.)* No. 1529 or the Property Registration Decree. She alleged that she is the absolute owner in fee simple of the subject lots, described as Lots 1, 2, 3 & 5 of Plan Psu-114423, Montalban Cadastre, with all the improvements thereon. The subject lots are situated at Brgy. San Rafael, Rodriguez, Rizal and have been declared for taxation purposes. Respondent asserted that she acquired ownership over the same by inheritance from her parents Mariano Manahan, Jr. and Rosita Manahan. She added that she and her predecessors-in-interest have occupied the subject lots for more than forty (40) years and have been in public, peaceful, open, continuous, uninterrupted and adverse possession in the concept of an owner prior to June 12, 1945, devoting the lots solely for agricultural purposes. Respondent averred that there is no mortgage or encumbrance of any kind whatsoever affecting the subject lots and there was no other person having any legal or equitable interest therein.

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[1] *Rollo,* pp. 67-81; penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Magdangal M. De Leon and Elihu A. Ybañez, concurring.

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

[3] *Id*. at 330-339; penned by Judge Ma. Teresa Cruz-San Miguel.

The Office of the Solicitor General (*OSG*) filed its notice of appearance for the oppositor, Republic of the Philippines (*Republic).* After compliance by respondent with the jurisdictional requirements, the RTC issued an order of general default against the whole world, except the Republic. Thereafter, trial ensued.

In support of the application, respondent presented her and Gregorio Manahan's testimonies, as well as the following documents:

a. Affidavit of Self-Adjudication of the Estate of Mariano Manahan, Jr. and Rosita S. Manahan;
b. Tax Declarations of the subject lots;
c. Original Approved Survey Plan of Psu-114423;
d. Letter from the Community Environment and Natural Resources Office *(CENRO)* Antipolo City;
e. Letter from the Land Management Bureau;
f. Certification from the CENRO Antipolo City dated May 13, 2009;
g. Certification from the Office of the Barangay Chairman of San Rafael, Rodriguez, Rizal dated December 21, 2009;
h. Certification from the Municipal Agrarian Reform Office *(MARO)* of Rodriguez, Rizal, dated December 8, 2009.[4]

Respondent testified that her paternal grandparents, Mariano Manahan Sr. and Angela Sta. Maria Manahan, owned the subject lots prior to June 12, 1945, and the total area covers more or less two (2) hectares; that when she was born in 1949, they were already in possession of the subject lots; that she acquired ownership over the subject lots when her father passed away in 1976 and her mother passed away in 2003; that she later on executed an affidavit of self-adjudication, which was published in Bulgar Tabloid on May 9, 16 and 23, 2008;[5] and that she has been paying the taxes due on the subject lots, and has obtained an approved survey plan thereof.[6] Respondent also presented

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[4] *Id*. at 174-188.

[5] *Id*. at 233.

[6] *Id*. at 106, 266-267.

a Certification[7] issued by the CENRO classifying the lands as alienable and disposable. Finally, she stated that a certain Vergel Carasco used to be a tenant therein and that he planted rice on the subject lots but died several years ago.

Gregorio Manahan testified that he was an adjoining owner of the subject lots; that respondent, the only heir of the late Mariano Manahan Jr. and Rosita Manahan, was the owner of the subject lots after she inherited the same; and that respondent and her predecessors-in-interest have been in possession of the subject lots in the concept of owners for more than thirty (30) years, which started prior to 1945.

Thereafter, respondent filed her formal offer of evidence. The Republic, through the Office of the Provincial Prosecutor of San Mateo, Rizal, did not present any evidence.

The RTC Ruling

In its decision dated October 5, 2012, the RTC granted respondent's application. It held that respondent duly established the ownership of her predecessors-in-interest over the subject lots and her continued possession over the same by virtue of the tax declarations acquired over the years. The RTC also observed that the subject lots were within the alienable and disposable portion of the public domain. The *fallo* of the decision reads:

> WHEREFORE, premises considered, the instant application is **GRANTED** and the applicant, **MA. THERESA MANAHAN-JAZMINES,** of legal age, Filipino, married and a resident of #955 Sto. Tomas St., Sampaloc, Manila, is declared the owner of the four (4) parcels of land described as lots 1, 2, 3 and 5 and Psu-114423, the accurate description of which are shown in the following technical descriptions, to wit:

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[7] *Id*. at 274.

Lot 1
Psu-114423
(Mariano Manahan, Jr.)

A PARCEL OF LAND (Lot 1 as shown on plan Psu-114423, LRC Record No. ___), situated in the Barrio of San Rafael, Municipality of Montalban, Province of Rizal. Bounded on the N, along line 1-2 by the property of the Heirs of Gonzalo Bautista and Gabriel Manahan (Lot 1, Psu-114425); on the NE, along lines 2 to 4 by the property of Josefa Basa; on the SE, along lines 4 to 7 by the property of Joaquin Manahan; on the SW, along line 7-8 by the property of Rosendo Cruz; on the NW, along line 8-9 by Eustaquia Manahan; and on the N, along line 9-1 by the Heirs of Gonzalea Bautista. Beginning at a point marked "1" on the plan, being S. 87 deg. 30'E, m. from BLLM 1, Montalban, Rizal, x x x x containing an area of **SIX THOUSAND EIGHT HUNDRED EIGHTY ONE (6,881) SQ. METERS** x x x[.]

LOT 2
Psu-114423
(Mariano Manahan, Jr. et. al.)

A PARCEL OF LAND (Lot 2 as shown on plan Psu-114423, LRC, Record No. ____), situated in the Barrio of San Rafael, Municipality of Montalban, Province of Rizal, Island of Luzon. Bounded on the SW, along line 1-2 by the property of Rosendo Cruz; on the NW, along lines 2-3 & 3-5 by the property of Joaquin Manahan and Pedro San Diego; on the NE, along lines 5-6 by the Heirs of Severino Santos; and on the SE, along line 6-1 by the property of Pedro San Diego. Beginning at a point marked "1" on the plan, Being S. 80 deg. 26'E, 1089.98 m from BLLM #1, Montalban, Rizal, x x x containing an area of **FOUR THOUSAND FOUR HUNDRED EIGHT (4,408) SQUARE METERS x x x[.]**

LOT 3
Psu-114423
(Mariano Manahan, Jr. et al)

A PARCEL OF LAND (Lot 3 as shown on plan Psu-114423, LRC Record No. ___) situated in the Barrio of San Rafael, Municipality of Montalban, Province of Rizal, Island of Luzon. Bounded on the NE, along line 1-2 by Eustaquia Manahan, on the SE, along line 2-3 by Joaquin Manahan; and on the SW;

along line 3-4 by Pedro San Diego, along line 4-5 by Jose Basa; and on the NW, along lines 5 to 7 by Joaquin Manahan; and along lines 7-8-1 by Hrs. of Juan San Juan. Beginning at a point marked "1" on the plan. Being S 72 deg. 28'E, 1120.28 m from BLLM #1, Montalban, Rizal x x x containing an area of **FOUR THOUSAND FOUR HUNDRED EIGHT (4,408) SQUARE METERS x x x[.]**

LOT 5
Psu-114423
(Mariano Manahan, Jr. et al.)

A PARCEL OF LAND (Lot 5 as shown on plan Psu-114423, LRC Rec. No. ____), situated in the Barrio of San Rafael, Municipality of Montalban, Province of Rizal, Island of Luzon. Bounded on the NE, along line 1-2 by Calle Lopez Jaena; on the SE, along line 2-3 by the Hrs. of Severino Santos; on the SW., along line 3-4 by the property of Pedro San Diego, and on the NW., along 4-1 by Joaquin Manahan. Beginning at a point marked "1" on the plan N. 79 deg. 39'E, 1119.18 m from BLLM #1, Montalban, Rizal x x x containing an area of **FIVE THOUSAND SIXTY TWO (5,062) SQUARE METERS x x x[.]**

Henceforth, upon payments (sic) of the corresponding registry fees and after this decision has become final, let a Decree of Registration be issued over the afore[-]described properties in favor of herein applicant, **MA. THERESA MANAHAN-JAZMINES**, with address at #955 Sto. Tomas St., Sampaloc, Manila.

SO ORDERED.[8]

Aggrieved, the Republic appealed to the CA asserting that the RTC erred in granting the application for land registration of the subject lots.

The CA Ruling

In its decision dated March 15, 2016, the CA denied the appeal and affirmed the RTC ruling. It found that the notice and publication of the initial hearing was sufficient for the court to acquire jurisdiction over the case. The CA stressed that the

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[8] *Id*. at 336-339.

identities of the lots were clearly established through the technical descriptions provided by respondent, which matched the original approved Survey Plan of Psu-114423. It also gave weight to the slew of tax declarations that respondent offered as evidence to prove her possession of the land.

Further, the CA emphasized that the subject lots were alienable and disposable based on *Republic v. T.A.N. Properties, Inc.*[9] It observed by judicial notice that Proclamation No. 1637 dated April 18, 1977, established a town site reservation in Antipolo, San Mateo, and Montalban of Rizal, which necessarily classified the lands therein as alienable and indispensable. The CA also highlighted that the CENRO certification confirmed that the subject lands were within the alienable and disposable area of public domain. The dispositive portion of the CA decision states:

WHEREFORE, premises considered, the appeal is **DENIED**. The Decision dated October 5, 2012 of the Regional Trial Court, Branch 75, San Mateo, Rizal, in Land Registration Case No. N-330-09 SM is **AFFIRMED**.

SO ORDERED.[10]

The Republic moved for reconsideration but it was denied by the CA in its September 20, 2016 resolution.

Hence, this petition. The Republic, through the OSG, raised the following grounds:

I

THE PRESENT PETITION COMES UNDER THE EXCEPTION TO THE GENERAL RULE THAT IN CERTIORARI PROCEEDINGS UNDER RULE 45 OF THE RULES OF COURT, ONLY QUESTIONS OF LAW ARE ENTERTAINED.

II

THE CA ERRED WHEN IT AFFIRMED THE RTC IN GRANTING THE APPLICATION FOR LAND REGISTRATION

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[9] 578 Phil. 441 (2008).

[10] *Rollo,* p. 23.

CONSIDERING THAT RESPONDENT FAILED TO PROVE THAT THE LAND IS ALIENABLE AND DISPOSABLE.

III

THE CA ERRED WHEN IT AFFIRMED THE RTC IN GRANTING THE APPLICATION FOR LAND REGISTRATION CONSIDERING THAT RESPONDENT FAILED TO PROVE THAT SHE AND HER PREDECESSORS-IN-INTEREST HAD OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF THE LAND IN THE CONCEPT OF AN OWNER SINCE JUNE 1945 OR EARLIER.[11]

The Republic argues that the evidence on record is not enough to support the findings and judgments made by the lower courts and that the complete records of the case must be reviewed. It also asserts that the certification from the CENRO falls short of the requirements set by law as the signatories of the said certification were not presented as witnesses.

The Republic also argues that respondent failed to show through incontrovertible evidence acts of dominion over the subject lots for the following reasons:

a. The testimonies of respondent and her distant cousin Gregorio S. Manahan are not convincing;
b. The tax declarations submitted dates back to 1965 only;
c. Respondent did not provide any explanation why it was only in 1965 that the said properties were declared for tax purposes if she and her predecessors-in-interest were indeed in possession of the subject lots from 1945 or earlier;
d. The real estate taxes were only paid for the year 1994 up to the present, or a mere 14 years, falling short of the requirements;
e. The subject lots remain to be unoccupied, unfenced, uncultivated, with no improvements except for a short period when a distant relative tended the subject lots; and

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

f. Respondent only lived in the subject lots until 1954 and afterwards, she merely visited the lots as she now resides in Sampaloc, Manila.

In her Comment,[12] respondent counters that the CENRO certification is a substantial compliance with the legal requirement and that the land classification map approved by the DENR Secretary is a mere surplusage. She also argues that the Republic is estopped from assailing the regularity of the said certification since the same was admitted by the public prosecutor.

In its Reply,[13] the Republic asserts that respondent failed to comply with the requisites for original registration. It adds that the tax declarations presented by respondent dates back only to 1965 showing at best, possession from that year, and the payment for realty taxes for a brief period of time cannot be considered as proof of ownership.

The Court's Ruling

The petition is meritorious.

While it is true that the Court is limited to reviewing only errors of law, and not of fact, in petitions for review on *certiorari* under Rule 45, when the findings of fact are devoid of support by the evidence on record, or when the assailed judgment is based on a misapprehension of facts, the Court may revisit the evidence in order to arrive at a decision in conformity with the law and evidence at hand.[14]

In this case, the evidence on record do not support the findings made by the courts below that respondent had a *bona fide* claim of possession and ownership of the subject lands since June 12, 1945 or earlier. While the general rule is that the factual findings of the lower courts are entitled to respect, the lack of

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[12] *Id*. at 406-410.

[13] *Id*. at 419-429.

[14] *Republic v. Lualhati*, 757 Phil. 119, 128 (2015).

conclusiveness of the factual findings of the CA would impel this Court to re-examine the records of the case.

The main issue in this case is whether respondent, in applying for an original registration of an imperfect title, met the requirements set forth by law and jurisprudence. Respondent's application is grounded on Section 14 (1) of P.D. No. 1529 and Sections 11(4) and 48(b) of Commonwealth Act *(C.A.)* No. 141.

Under P.D. No. 1529, original registration of title can be acquired through Section 14, to wit:

> Section 14. *Who may apply.* — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> **(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.**
>
> x x x x x x x x x (emphasis supplied)

Section 14(1) of P.D. No. 1529 refers to the original registration of imperfect titles and must be discussed in reference to Section 11(4)[15] and Section 48(b)[16] of C.A. No. 141, where the Court set forth the requirements as follows:

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[15] SECTION 11. Public lands suitable for agricultural purposes can be disposed of only as follows, and not otherwise:

x x x x x x x x x

(4) By confirmation of imperfect or incomplete titles:
(a) By judicial legalization;
(b) By administrative legalization (free patent).

[16] Section 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title thereafter, under the Land Registration Act, to wit:

1. That the subject land forms part of the alienable and disposable lands of the public domain;

2. That the applicants, by themselves or through their predecessors-in-interest, have been in open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership; and

3. That such possession and occupation must be **since June 12, 1945** or **earlier**.[17]

The Court finds that respondent failed to comply with the requisites under Section 14(1) of P.D. No. 1529, particularly, the second and third requisites.

There was no open, continuous, exclusive and notorious possession and occupation of the land since June 12, 1945 or earlier

Respondent utterly failed to show, through incontrovertible evidence, that she and her predecessors-in-interest's possession and occupation of the subject lots were open, continuous, exclusive and notorious under a *bona fide* claim of ownership since June 12, 1945 or earlier.

The testimonies of respondent and Gregorio Manahan, where they allege possession and occupation of the subject lots from June 12, 1945 or earlier up to the present, fail to convince. Both did not sufficiently demonstrate what specific acts of ownership were exercised by respondent and her predecessors-

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x x x x x x x x x

(b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition of ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the applications for confirmation of title, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

[17] *Republic v. Santos, et al.,* 691 Phil. 376-377 (2012).

in-interest on the subject lots. Their general statements on the alleged possession and occupation were not of the nature and character required by law. Moreover, their testimonies or proof of possession were self-serving and unsubstantiated, which do not qualify as competent evidences of open, continuous, exclusive and notorious possession and occupation. Respondent herself did not competently account for any occupation, development, cultivation or maintenance of the lots subject of her application either on her part or on her predecessors-in-interest for the entire time that they were supposedly in possession of the lands.

Indeed, respondent's own testimony defeats her claim of open, continuous, adverse, possession and occupation of the subject lots, to wit:

[Prosecutor:]
Q: How about… you mentioned in your application that you are now a resident of Sampaloc, Manila?
A: Yes, Sir.

Q: When did you begin to reside in that place, Madam witness?
A: Since 1954, sir, but at the same time, we have a residence here in San Mateo[,] which I also… where we also stayed from time to time.

Q: So from 1954?
A: Yes sir,

Q: From that time, Madam witness, when you transferred in Sampaloc, Manila, you have never gone anymore to San, Rafael, Rodriguez, Rizal?
A: I visited, sir.

Q: How often, Madam witness?
A: We visited the area from time to time. I cannot how many times (sic) we go there, sometimes once a year. We visited the area from time to time because we also have relatives there also, so we visit them.

Q: You also mentioned a while ago, Madam witness, that the lots you are applying for are still barren or no improvements introduced herein?
A: Yes, sir.

Q: Why is it so, Madam witness?
A: Because before, they were planting rice in that area and as a matter of fact, the persons, the tenants are our relatives. They were also a descendant of the Manahan family but since he got sick several years ago, he stopped tilling the property. So it's just idle sir.

Q: So, you mean to say, Madam witness, that those four lots are agricultural land?
A: Yes sir.

Q: Why did you not continue… by the way, Madam witness, may we know the name of the tenants of the lots you are requesting to be tilled, Madam witness?
A: Vergel Carasco, sir.

Q: Who else?
A: None sir, he's the only one.[18] (emphasis supplied)

From the foregoing testimony, respondent has not resided at any of the subject lots since 1954 because she moved to Sampaloc, Manila. She would rarely visit the subject lots. At one point, respondent admitted that she only went there once a year. There was a lack of continuity in the possession of the said properties.

It was not even shown by respondent the manner by which her alleged tenant cultivated the land. Verily, no evidence was presented to prove that respondent or her relatives have been continuously cultivating the land because the sole tenant of respondent and her family died several years ago. This was even corroborated by the evidence presented by respondent, specifically, the MARO Certification[19] showing that the subject lots are idle and uncultivated, with no signs of agricultural activity.

In *Wee v. Republic*,[20] the Court stated that mere casual cultivation of the land does not amount to exclusive and notorious

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[18] *Rollo,* pp. 305-306.

[19] *Id.* at 276.

[20] 622 Phil. 944 (2009).

possession that would give rise to ownership. To qualify as open, continuous, exclusive, and notorious possession and occupation, they must be of the following character:

> Possession is open when it is patent, visible, apparent, notorious and not clandestine. It is continuous when uninterrupted, unbroken, and not intermittent or occasional; exclusive when the adverse possessor can show exclusive dominion over the land and an appropriation of it to his own use and benefit; and notorious when it is so conspicuous that it is generally known and talked of by the public or the people in the neighborhood.[21]

Further, in *Republic v. Lualhati,*[22] the Court emphasized that testimony regarding mere casual cultivation, without any specific detail regarding the manner of cultivating or grazing the land, cannot establish the *bona fide* claim of ownership, *viz*:

> A mere casual cultivation of portions of the land by the claimant, and the raising thereon of cattle, do not constitute possession under claim of ownership. In that sense, possession is not exclusive and notorious as to give rise to a presumptive grant from the State. While grazing livestock over land is of course to be considered with other acts of dominion to show possession, the mere occupancy of land by grazing livestock upon it, without substantial enclosures, or other permanent improvements, is not sufficient to support a claim of title thru acquisitive prescription. xxx.[23]

Likewise, as properly opined by the Republic, there was no evidence presented, whether testimonial or documentary, would show that the subject lands actually contained permanent structures or were fenced. Thus, the said lands remain uncultivated, unoccupied and unfenced.

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[21] *Canlas v. Republic*, 746 Phil. 358, 375-376 (2014).

[22] 757 Phil. 119 (2015).

[23] *Id*. at 134, citing *Republic v. Bacas, et al.,* 721 Phil. 808, 833-834 (2013).

The sporadic tax declarations cannot establish possession.

Further, the tax declarations presented in support of respondent's application dates back to 1965 only. The CA gave weight to the slew of tax declarations that respondent offered as evidence in affirming the decision of the RTC. Although a tax declaration by itself is not adequate to prove ownership, it may serve as sufficient basis for inferring possession.[24] However, the Court cannot abide by respondent's assertion that she had been in open, continuous, exclusive and notorious possession of the properties for more than forty (40) years, when the same tax declarations presented depict declarations for tax purposes for only 6 (six) to 7 (seven) years per lot:

Lot 1

Tax Declaration No. 2823 registered on August 31, 1965
Tax Declaration No. 5021 registered on October 31, 1973
Tax Declaration No. 11-0460 registered on May 14, 1979
Tax Declaration No. 11-0324 registered on June 25, 1984
Tax Declaration No. P-011-0159 registered on October 4, 1993
Tax Declaration No. 00-R-011-0439 registered on July 26, 1999

Lot 2

Tax Declaration No. 2824 registered on August 31, 1965
Tax Declaration No. 5022 registered on October 31, 1973
Tax Declaration No. 11-0462 registered on May 14, 1979
Tax Declaration No. 11-0325 registered on June 25, 1984
Tax Declaration No. R-011-0160 registered on October 4, 1993
Tax Declaration No. 00-R-0110485 registered on July 26, 1999

Lot 3

Tax Declaration No. 2825 registered on August 31, 1965
Tax Declaration No. 5024 registered October 31, 1973
Tax Declaration No. 11-0463 registered on May 14, 1979
Tax Declaration No. 11-0326 registered on June 25, 1984
Tax Declaration No. R-011-0161 registered on October 4, 1993

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[24] See *Republic v. Court of Appeals*, *et al.,* 328 Phil. 238, 248 (1996).

Tax Declaration No. 00-R-011-0136 registered on July 26, 1999
Tax Declaration No. 00-R-011-6083 registered on November 21, 2008

Lot 5

Tax Declaration No. 2829 registered on August 31, 1965
Tax Declaration No. 5027 registered on October 31, 1973
Tax Declaration No. 11-0465 registered on May 14, 1979
Tax Declaration No. 11-0328 registered on June 25, 1984
Tax Declaration No. R-011-0163 registered on October 4, 1993
Tax Declaration No. 00-R-011-0138 registered on July 25, 1999
Tax Declaration No. 00-R0114207 registered on October 27, 2004

As can be gleaned above, respondent did not religiously pay the taxes on the subject lots annually. There are merely 6 or 7 instances that she declared the subject lots for tax purposes on an alleged possession of more than 40 years and these are not sufficient proofs of possession and occupation contemplated by law. This type of intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession and occupation.[25]

As correctly opined by the Republic, respondent did not provide any explanation why it was only in 1965 that the said properties were declared for tax purposes if she and her predecessors-in-interest were indeed in possession of the subject lots from 1945 or earlier.

Respondent should have presented other credible pieces of evidence to establish her and her family's possession and occupation of the property since June 12, 1945. She should not have relied on mere tax declarations as these are incomplete and only date back to 1965. She could have presented other testimonies or documentary evidence to substantiate the alleged possession and occupation of her family over the subject lot. However, respondent failed to do so, thus, she did not discharge the *onus* under the land registration application.

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[25] *Supra* note 20 at 956.

In *Republic v. Estate of Santos*,[26] aside from the fact that the respondent therein only had casual cultivation over the land, the Court denied its application for registration under Section 14(1) of P.D. No. 1529 because the respondent therein presented incomplete tax declarations. In that case, it was underscored that the earliest of these tax declarations dated back to 1949 only, short of the requirement that possession and occupation under a *bona fide* claim of ownership should be from June 12, 1945 or even earlier.

In fine, respondent failed to prove that she and her predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation thereof under a *bona fide* claim of ownership since June 12, 1945 or earlier. Evidently, she failed to comply with the second and third requisites under Section 14(1) of P.D. 1529, thus, the subject lots could not be registered. Respondent's application for registration of title of the subject lots under P.D. No. 1529 should be denied.

Accordingly, there is no more need to discuss the other issues raised by the Republic.

WHEREFORE, the petition is **GRANTED.** The Decision dated March 15, 2016, and Resolution dated September 20, 2016, of the Court of Appeals in CA-G.R. CV No. 99962 are **REVERSED** and **SET ASIDE.** The application for registration filed by Maria Theresa Manahan-Jazmines before the Regional Trial Court of San Mateo, Rizal, Branch 75 in LRC Case No. N-330-09 SM is hereby **DENIED.**

SO ORDERED.

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

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[26] G.R. No. 218345, December 7, 2016.

THIRD DIVISION

[G.R. No. 227421. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODOLFO OLARBE *y* BALIHANGO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE AND DEFENSE OF STRANGER; ELEMENTS THAT MUST BE ESTABLISHED.— In order for Olarbe to exonerate himself on the ground of self-defense under Article 11, paragraph 1, of the *Revised Penal Code*, he must establish the following facts, namely: (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. Olarbe also invoked defense of stranger under Article 11, paragraph 3, of the *Revised Penal Code* because Arca was likewise attacking his common-law spouse. Defense of stranger requires clear and convincing evidence to prove the following, to wit: (1) unlawful aggression by the victim; (2) reasonable necessity of the means to prevent or repel it; and (3) the person defending be not induced by revenge, resentment or other evil motive.

2. ID.; ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION AS AN INDISPENSABLE ELEMENT, EXPLAINED; TEST TO DETERMINE THE PRESENCE OF UNLAWFUL AGGRESSION.— The indispensable requisite for either of these justifying circumstances is that the victim must have mounted an unlawful aggression against the accused or the stranger. Without such unlawful aggression, the accused is not entitled to the justifying circumstance. The essence of the unlawful aggression indispensable in self-defense or defense of stranger has been fully discussed in *People v. Nugas*, thus: Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense

of oneself. **The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat**.

3. **ID.; ID.; ID.; ID.; ID.; THE VICTIM COMMITTED CONTINUOUS AND PERSISTENT UNLAWFUL AGGRESSION AGAINST THE ACCUSED AND HIS COMMON-LAW SPOUSE.—** We find that Arca committed continuous and persistent unlawful aggression against Olarbe and his common-law spouse that lasted from the moment he forcibly barged into the house and brandished his gun until he assaulted Olarbe's common-law spouse with the *bolo*. Such armed assault was not a mere threatening act. Olarbe was justified in believing his and his common-law spouse's lives to be in extreme danger from Arca who had just fired his gun in anger outside their home and whose threats to kill could not be considered idle in the light of his having forced himself upon their home. The imminent threat to life was positively strong enough to induce Olarbe to act promptly to repel the unlawful and unprovoked aggression. For Olarbe to hesitate to act as he had done would have cost him his own life. Arca's being dispossessed of his gun did not terminate the aggression, for, although he had been hit on the head, he quickly reached for the *bolo* and turned his assault towards Olarbe's common-law spouse. Olarbe was again forced to struggle for control of the *bolo*. The swiftness of the action heightened Olarbe's sense that the danger to their lives was present and imminent.

4. **ID.; ID.; ID.; ID.; ID.; GUIDING PRINCIPLES IN JUDGING PLEAS OF SELF-DEFENSE AND DEFENSE OF STRANGER; THE BELIEF AS TO WHETHER THE IMMINENCE AND SERIOUSNESS OF THE DANGER WAS REASONABLE OR NOT, AND THE REASONABLENESS OF THAT BELIEF MUST BE VIEWED FROM THE STANDPOINT OF THE ACCUSED AT THE TIME HE ACTED.—** In judging pleas of self-defense and defense of stranger, the courts should not demand that the accused conduct himself with the poise of a person not under imminent threat of fatal harm. He had no time to reflect and to reason out his responses. He had to be quick, and his responses

should be commensurate to the imminent harm. This is the only way to judge him, for the law of nature – the foundation of the privilege to use all reasonable means to repel an aggression that endangers one's own life and the lives of others – did not require him to use unerring judgment when he had the reasonable grounds to believe himself in apparent danger of losing his life or suffering great bodily injury. The test is whether his subjective belief as to the imminence and seriousness of the danger was reasonable or not, and the reasonableness of his belief must be viewed from his standpoint at the time he acted. The right of a person to take life in self-defense arises from his belief in the necessity for doing so; and his belief and the reasonableness thereof are to be judged in the light of the circumstances as they then appeared to him, not in the light of circumstances as they would appear to others or based on the belief that others may or might entertain as to the nature and imminence of the danger and the necessity to kill.

5. **ID.; ID.; ID.; ID.; ID.; IMPORTANT POINTS TO CONSIDER IN DETERMINING THE REASONABLENESS OF THE MEANS EMPLOYED; TO RULE OUT REASONABLE NECESSITY OF THE MEANS ADOPTED BY THE ACCUSED SOLELY ON THE BASIS OF THE NUMBER OF THE VICTIM'S WOUNDS WOULD BE UNFAIR; THE LAW REQUIRES RATIONAL EQUIVALENCE, AND NOT MATERIAL COMMENSURABILITY.—** Reasonable necessity of the means employed to repel the unlawful aggression does not mean absolute necessity. It must be assumed that one who is assaulted cannot have sufficient tranquility of mind to think, calculate and make comparisons that can easily be made in the calmness of reason. The law requires rational necessity, not indispensable need. In each particular case, it is necessary to judge the relative necessity, whether more or less imperative, in accordance with the rules of rational logic. The accused may be given the benefit of any reasonable doubt as to whether or not he employed rational means to repel the aggression. In determining the reasonable necessity of the means employed, the courts may also look at and consider the number of wounds inflicted. A large number of wounds inflicted on the victim can indicate a determined effort on the part of the accused to kill the victim and may belie the reasonableness of the means adopted to prevent or repel an unlawful act of an aggressor.

Here, however, although Arca sustained several wounds, the majority of the wounds were lacerations whose nature and extent were not explained. The lack of explanations has denied us the means to fairly adjudge the reasonableness of the means adopted by Olarbe to prevent or repel Arca's unlawful aggression. Accordingly, to rule out reasonable necessity of the means adopted by Olarbe solely on the basis of the number of wounds would be unfair to him. In any event, we have to mention that the rule of reasonable necessity is not ironclad in its application, but is dependent upon the established circumstances of each particular case. The courts ought to remember that a person who is assaulted has neither the time nor the sufficient tranquility of mind to think, calculate and choose the weapon to be used. For, in emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to hold the actor not responsible in law for the consequences. Verily, the law requires rational equivalence, not material commensurability, *viz.*: It is settled that reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is *rational equivalence,* in the consideration of which will enter the principal factors **the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury**.

6. ID.; ID.; ID.; ID.; BEING ENTITLED TO THE JUSTIFYING CIRCUMSTANCES OF SELF-DEFENSE AND DEFENSE OF A STRANGER, ACCUSED-APPELLANT'S ACQUITTAL FOLLOWS.— With Olarbe being entitled to the justifying circumstances of self-defense and defense of a stranger, his acquittal follows.

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

BERSAMIN, *J.*:

The accused who shows by clear and convincing evidence that the death of the victim arose from the need for self-preservation in the face of the victim's deadly unlawful aggression, and there was a reasonable necessity of the means employed to prevent or repel the same, is entitled to acquittal on the ground of self-defense in the absence of any indication of his having provoked such unlawful aggression.

In self-defense and defense of stranger, the circumstances as the accused perceived them at the time of the incident, not as others perceived them, should be the bases for determining the merits of the plea.

The Case

For the killing of the late Romeo Arca, accused Rodolfo Olarbe *y* Balihango (Olarbe) was charged with and convicted of murder by the Regional Trial Court (RTC), Branch 27, in Santa Cruz, Laguna through the judgment rendered on August 13, 2014 in Criminal Case No. SC-12274.[1]

On appeal, the Court of Appeals (CA) affirmed the conviction on March 22, 2016.[2]

Antecedents

The information charged Olarbe with murder, *viz.*:

That on or about May 7, 2006 at about 12:00 o'clock midnight, at Sitio Pananim, Municipality of Luisiana, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named

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[1] CA *rollo*, pp. 45-57; penned by Presiding Judge Cynthia R. Mariño-Ricablanca.

[2] *Rollo*, pp. 2-10; penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justice Franchito N. Diamante and Associate Justice Carmelita Salandanan Manahan.

accused, with intent to kill and with evident premeditation and treachery and with the use of a rifle (airgun) converted to caliber .22 and a bolo, did then and there, willfully, unlawfully and feloniously shoot and hack one ROMEO ARCA with the said weapons, thereby inflicting upon him gunshot wound and hacking wounds on the different parts of his body which resulted to (sic) his instantaneous death, to the damage and prejudice of his surviving heirs.

CONTRARY TO LAW.[3]

The CA recounted the factual and procedural background of the case in its assailed decision thusly:

Arraigned, OLARBE initially pled not guilty to the crime charged. Upon re-arraignment, OLARBE pleaded guilty but subsequently withdrew his plea of guilt and manifested for the presentation of his defense. Thereafter, trial on the merits ensued.

The prosecution's diegesis of the case is synthesized as follows:

On 8 May 2006 at around 12:30 o'clock midnight, OLARBE voluntarily surrendered to police officers SPO2 Vivencio Aliazas, PO3 Ricardo Cruz and PO1 William Cortez at the Police Station of Luisiana, Laguna. OLARBE informed them that he happened to have killed Romeo Arca (Arca) in Sitio Pananim, Luisiana, Laguna. Forthwith, OLARBE was booked, arrested and detained at the police station. Thereafter, the police officers proceeded to the crime scene and found the lifeless body of Arca with several wounds and the bolo used by OLARBE in killing him. The *Death Certificate* revealed that Arca's antecedent cause of death was gunshot wounds and his immediate cause of death was hacked wounds.

For his part, OLARBE invoked self-defense and avowed –

On the fateful incident, he and his wife Juliet were sleeping in their house in *Barangay* San Antonio, Sitio Pananim, Luisiana, Laguna. Suddenly they were awakened by the sound of a gunshot and shouting from Arca who appeared to be drunk. Arca was holding a rifle (an airgun converted to a calibre .22) and shouted "*mga putang ina ninyo, pagpapatayin ko kayo*." Then, Arca forcibly entered their house and aimed the gun at them. OLARBE immediately grabbed the gun from

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[3] CA *rollo*, p. 45.

him and they grappled for its possession. OLARBE managed to wrest the gun away from Arca. In a jiff, OLARBE shot Arca causing the latter to lean sideward ("*napahilig*"). Nevertheless, Arca managed to get his *bolo* from his waist and continued to attack them. OLARBE grabbed the *bolo* and in their struggle for its possession, they reached the outer portion of the house. OLARBE was able to wrestle the *bolo* and instantly, he hacked Arca. After the killing incident, OLARBE voluntarily surrendered to the police authorities.[4]

Judgment of the RTC

Rejecting Olarbe's pleas of self-defense and defense of stranger, the RTC pronounced him guilty of murder as charged. It observed that the initial unlawful aggression by Arca had ceased when Olarbe shot him in the head and caused him to "lean sideward." It disbelieved Olarbe's insistence that Arca had still been able to grab his *bolo* and assault Olarbe's common-law spouse therewith for being implausible considering that Arca had by then been hit in the head. It held that Olarbe's testimony that he had wrested the *bolo* from Arca after grappling for its control, and had then hacked him with it was improbable and not in accord with the natural order of things because the injury in the head had already weakened and subdued Arca; and that the killing was treacherous because Olarbe had hacked the then unarmed and weakened victim.

The dispositive portion of the judgment of the RTC reads:

> WHEREFORE, this court finds that herein accused was unable to prove the justifying circumstance of self-defense by clear, satisfactory and convincing evidence that excludes any vestige of criminal aggression on his part and further, he employed treachery when he killed the victim Romeo Arca. Thus, this Court finds the accused Rodolfo Olarbe y Balihango **GUILTY** of "Murder."
>
> On the other hand, finding that herein accused voluntarily surrendered to the police authorities of the Municipal Police Station of Luisiana, Laguna immediately after killing Romeo Arca, he is entitled to the said mitigating circumstance. The accused Rodolfo

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[4] *Rollo*, pp. 4-5.

Olarbe y Balihango is thereby hereby sentenced to the minimum penalty of imprisonment for the crime of murder, which is a period of TWENTY (20) YEARS AND ONE (1) DAY TO RECLUSION PERPETUA.

The accused Rodolfo Olarbe y Balihango is also hereby ordered to pay to the heirs of Romeo Arca the following:

Civil indemnity in the amount of ₱75,000.00;

Moral damages in the amount of ₱50,000.00;

Actual damages in the following amounts — ₱1,000.00 as expenses for church services from the Iglesia Filipina Independiente; the amount of ₱1,200.00 for expenses incurred in Jeralyn's Flower Shop; the amount of ₱20,000.00 paid to Mancenido Funeral Service; fees paid to the Municipal Treasurer of Luisiana in the amount of ₱150.00; and, the amount of ₱15,000.00 paid for the burial lot; and,

Exemplary damages in the amount of ₱30,000.00.

SO ORDERED.[5]

Decision of the CA

On appeal, the CA affirmed the conviction of Olarbe because the factual findings of the RTC were consistent with the evidence on record and accorded with human experience; and because treachery had attended the killing. The *fallo* of the assailed decision reads:

WHEREFORE, the *Appeal* is hereby **DENIED**. The *Judgment* dated 13 August 2014 of the Regional Trial Court, Fourth Judicial Region, Santa Cruz, Laguna, Branch 27, in Criminal Case No. SC-12274, is **AFFIRMED with MODIFICATION** in that accused-appellant Rodolfo Olarbe is **ORDERED** to pay temperate damages in the amount of ₱25,000.00. He is further **ORDERED** to pay interest at the rate of six percent (6%) per annum on the civil indemnity, moral, exemplary and temperate damages awarded from the finality of this judgment until fully paid.

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[5] CA *rollo*, p. 57.

SO ORDERED.[6]

Hence, this appeal.

The accused and the Office of the Solicitor General (OSG) have separately manifested that they would no longer be filing supplemental briefs in this appeal; and prayed that their respective briefs filed in the CA should be considered.[7]

Issue

In his appellant's brief filed in the CA, Olarbe submitted that it was erroneous to reject his pleas of self-defense and defense of stranger because he had killed Arca to save himself and his common-law wife from the latter's unlawful aggression; that his use of the victim's gun and *bolo* to repel or stop the unlawful aggression was necessary and reasonable; and that the killing was consequently legally justified.

The OSG countered that it was Olarbe who had mounted the unlawful aggression against Arca; and that the latter had been defenseless when Olarbe hacked him to death.

Ruling of the Court

The appeal has merit.

An accused who pleads any justifying circumstance in Article 11 of the *Revised Penal Code* admits to the commission of acts that show the commission of a crime. It thus becomes his burden to prove the justifying circumstance with clear and convincing evidence; otherwise, his conviction for the crime charged follows.[8]

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[6] *Rollo*, p. 9.

[7] *Id*. at 19-21; 24-25.

[8] *Velasquez v. People*, G.R. No. 195021, March 15, 2017, 820 SCRA 438, 442.

In order for Olarbe to exonerate himself on the ground of self-defense under Article 11, paragraph 1,[9] of the *Revised Penal Code*, he must establish the following facts, namely: (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.

Olarbe also invoked defense of stranger under Article 11, paragraph 3,[10] of the *Revised Penal Code* because Arca was likewise attacking his common-law spouse. Defense of stranger requires clear and convincing evidence to prove the following, to wit: (1) unlawful aggression by the victim; (2) reasonable necessity of the means to prevent or repel it; and (3) the person defending be not induced by revenge, resentment or other evil motive.[11]

The indispensable requisite for either of these justifying circumstances is that the victim must have mounted an unlawful

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[9] Article 11. *Justifying circumstances*. – The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression.
Second. Reasonable necessity of the means employed to prevent or repel it.
Third. Lack of sufficient provocation on the part of the person defending himself.

x x x x x x x x x

[10] Article 11. *Justifying circumstances*. – The following do not incur any criminal liability:

x x x x x x x x x

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this article are present and that the person defending be not induced by revenge, resentment, or other evil motive.

x x x x x x x x x

[11] *Cabuslay v. People*, G.R. No. 129875, September 30, 2005, 471 SCRA 241, 253.

aggression against the accused or the stranger. Without such unlawful aggression, the accused is not entitled to the justifying circumstance.[12] The essence of the unlawful aggression indispensable in self-defense or defense of stranger has been fully discussed in *People v. Nugas*,[13] thus:

> Unlawful aggression on the part of the victim is the primordial element of the justifying circumstance of self-defense. Without unlawful aggression, there can be no justified killing in defense of oneself. **The test for the presence of unlawful aggression under the circumstances is whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat.** Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (a) there must be a physical or material attack or assault; (b) the attack or assault must be actual, or, at least, imminent; and (c) the attack or assault must be unlawful.
>
> Unlawful aggression is of two kinds: (a) actual or material unlawful aggression; and (b) imminent unlawful aggression. Actual or material unlawful aggression means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. Imminent unlawful aggression means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong (like aiming a revolver

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[12] *People v. Fontanilla*, G.R. No. 177743, January 25, 2012, 664 SCRA 150, 153 (x x x It is basic that once an accused in a prosecution for murder or homicide admitted his infliction of the fatal injuries on the deceased, he assumed the burden to prove by clear, satisfactory and convincing evidence the justifying circumstance that would avoid his criminal liability. **Having thus admitted being the author of the death of the victim, [the accused] carne to bear the burden of proving the justifying circumstance to the satisfaction of the court, and he would he held criminally liable unless he established self-defense by sufficient and satisfactory proof. He should discharge the burden by relying on the strength of his own evidence, because the Prosecution's evidence, even if weak, would not be disbelieved in view of his admission of the killing.** Nonetheless, the burden to prove guilt beyond reasonable doubt remained with the State until the end of the proceedings.).

[13] G.R. No. 172606, November 23, 2011, 661 SCRA 159, 167-168.

at another with intent to shoot or opening a knife and making a motion as if to attack). Imminent unlawful aggression must not be a mere threatening attitude of the victim, such as pressing his right hand to his hip where a revolver was holstered, accompanied by an angry countenance, or like aiming to throw a pot.

Let us now revisit the events of that fateful night of May 7, 2006. Arca, armed with the rifle (described as an airgun converted into a caliber .22) and the *bolo*, went to the house of Olarbe towards midnight. The latter and his household were already slumbering, but were roused from bed because Arca fired his gun and was loudly shouting, *Mga putang ina ninyo, pagpapatayin ko kayo*. Thereafter, Arca forcibly entered Olarbe's house. Olarbe managed to grab the gun of Arca, and they struggled for control of it. Upon wresting the gun from Arca, Olarbe fired at him, causing him to totter. But Arca next took out the *bolo* from his waist and charged at Olarbe's common-law spouse. This forced Olarbe to fight for possession of the *bolo*, and upon seizing the *bolo*, he hacked Arca with it.

Arca's death was certified to have been due to the gunshot on the head and hacking wounds. The CA noted the following injuries, aside from the gunshot wound in the head, namely:

- Lacerated wound on the forehead;
- Lacerated wound, front rib area;
- Lacerated wound on the left upper quadrant;
- Lacerated wound on the left lower quadrant;
- Lacerated wound on the occipital area
- Two (2) hacking wounds posterior of neck; and
- Hacking wound on lumbar area.[14]

Only Olarbe's account of the incident existed in the records, but instead of giving weight to the account, the RTC and the CA rejected his pleas of self-defense and defense of stranger based on their common holding that Arca had been weakened from being hit on the head; and concluded that consequently Arca could not have charged with his *bolo*.

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[14] *Rollo*, p. 8.

The CA's rejection of Olarbe's pleas of self-defense and defense of stranger was unwarranted.

To start with, there was no credible showing that the shot to the head had rendered Arca too weak to draw the *bolo* and to carry on with his aggression in the manner described by Olarbe. The conclusion of the RTC and the CA thereon was obviously speculative. Secondly, the State did not demonstrate that the shot from the airgun converted to .22 caliber fired at close range sufficed to disable Arca from further attacking with his *bolo*. Without such demonstration, the RTC and the CA clearly indulged in pure speculation. Thirdly, nothing in the record indicated Arca's physical condition at the time of the incident How could the CA then reliably conclude that he could not have mounted the *bolo* assault? And, lastly, to rule out any further aggression by Arca with his *bolo* after the shot in the head was again speculative. On the other hand, our substantial judicial experience instructs that an armed person boldly seeking to assault others — like Arca — would have enough adrenaline to enable him to persist on his assault despite sustaining a wound that might otherwise be disabling.

To us, Olarbe's account of what did happen on that fateful night was highly plausible. At the minimum, the details and sequence of the events therein described conformed to human experience and the natural course of things. Armed with both the gun and the *bolo*, Arca not only disturbed Olarbe's peace but physically invaded the sanctity of latter's home at midnight. Given that the aggression by Arca was unprovoked on the part of Olarbe, and with no other person disputing the latter's account, we should easily see and understand why Olarbe would feel that his and his common-law spouse's lives had been put in extreme peril.

In addition, Olarbe's conduct following the killing of Arca — of voluntarily surrendering himself to the police authorities immediately after the killing (*i.e.*, at around 12:30 o'clock in the early morning of May 8, 2006), and reporting his participation in the killing of Arca to the police authorities — bolstered his pleas of having acted in legitimate self-defense and legitimate

defense of his common-law spouse. Such conduct manifested innocence.

To disbelieve Olarbe's account is to give primacy to surmise and speculation. That is not how courts of law whose bounden and sworn duty is to dispense justice should sit in judgment in a criminal trial. Judges should assiduously sift the records, carefully analyze the evidence, and reach conclusions that are natural and reasonable.

Did Olarbe clearly and convincingly establish the justifying circumstances invoked?

We find that Arca committed continuous and persistent unlawful aggression against Olarbe and his common-law spouse that lasted from the moment he forcibly barged into the house and brandished his gun until he assaulted Olarbe's common-law spouse with the *bolo*. Such armed assault was not a mere threatening act. Olarbe was justified in believing his and his common-law spouse's lives to be in extreme danger from Arca who had just fired his gun in anger outside their home and whose threats to kill could not be considered idle in the light of his having forced himself upon their home. The imminent threat to life was positively strong enough to induce Olarbe to act promptly to repel the unlawful and unprovoked aggression. For Olarbe to hesitate to act as he had done would have cost him his own life. Arca's being dispossessed of his gun did not terminate the aggression, for, although he had been hit on the head, he quickly reached for the *bolo* and turned his assault towards Olarbe's common-law spouse. Olarbe was again forced to struggle for control of the *bolo*. The swiftness of the action heightened Olarbe's sense that the danger to their lives was present and imminent.

In judging pleas of self-defense and defense of stranger, the courts should not demand that the accused conduct himself with the poise of a person not under imminent threat of fatal harm. He had no time to reflect and to reason out his responses. He had to be quick, and his responses should be commensurate to the imminent harm. This is the only way to judge him, for the law of nature — the foundation of the privilege to use all

reasonable means to repel an aggression that endangers one's own life and the lives of others — did not require him to use unerring judgment when he had the reasonable grounds to believe himself in apparent danger of losing his life or suffering great bodily injury.[15] The test is whether his subjective belief as to the imminence and seriousness of the danger was reasonable or not,[16] and the reasonableness of his belief must be viewed from his standpoint at the time he acted.[17] The right of a person to take life in self-defense arises from his belief in the necessity for doing so; and his belief and the reasonableness thereof are to be judged in the light of the circumstances as they then appeared to him, not in the light of circumstances as they would appear to others or based on the belief that others may or might entertain as to the nature and imminence of the danger and the necessity to kill.[18]

The remaining elements of the justifying circumstances were likewise established.

Reasonable necessity of the means employed to repel the unlawful aggression does not mean absolute necessity. It must be assumed that one who is assaulted cannot have sufficient tranquility of mind to think, calculate and make comparisons that can easily be made in the calmness of reason. The law requires rational necessity, not indispensable need. In each particular case, it is necessary to judge the relative necessity, whether more or less imperative, in accordance with the rules of rational logic. The accused may be given the benefit of any reasonable doubt as to whether or not he employed rational means to repel the aggression.[19]

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[15] *People v. White*, 409 N. E., 2d 73, 42 Ill Dec. 578, 87 Ill. App. 3d 321.

[16] *Baker v. Commonwealth*, 677 S. W. 2d 876.

[17] *State v. Leidholm*, 334 N. W. 2d 811; *Tanguma v. State*, App.-Corpus Christi, 721 S.W. 2d 408.

[18] 40 CJS § 131.

[19] *Jayme v. People*, G.R. No. 124506, September 9, 1999, 314 SCRA 117, 123-124.

In determining the reasonable necessity of the means employed, the courts may also look at and consider the number of wounds inflicted. A large number of wounds inflicted on the victim can indicate a determined effort on the part of the accused to kill the victim and may belie the reasonableness of the means adopted to prevent or repel an unlawful act of an aggressor.[20] Here, however, although Arca sustained several wounds, the majority of the wounds were lacerations whose nature and extent were not explained. The lack of explanations has denied us the means to fairly adjudge the reasonableness of the means adopted by Olarbe to prevent or repel Arca's unlawful aggression. Accordingly, to rule out reasonable necessity of the means adopted by Olarbe solely on the basis of the number of wounds would be unfair to him. In any event, we have to mention that the rule of reasonable necessity is not ironclad in its application, but is dependent upon the established circumstances of each particular case.

The courts ought to remember that a person who is assaulted has neither the time nor the sufficient tranquility of mind to think, calculate and choose the weapon to be used. For, in emergencies of this kind, human nature does not act upon processes of formal reason but in obedience to the instinct of self-preservation; and when it is apparent that a person has reasonably acted upon this instinct, it is the duty of the courts to hold the actor not responsible in law for the consequences.[21] Verily, the law requires rational equivalence, not material commensurability, *viz.*:

> It is settled that reasonable necessity of the means employed does not imply material commensurability between the means of attack and defense. What the law requires is *rational equivalence*, in the consideration of which will enter the principal factors **the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than the reason, that moves or impels the**

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[20] *People v. Guarin*, G.R. No. 130708, October 22, 1999, 317 SCRA 244, 253-254.

[21] *Jayme v. People*, *supra*, note 19, at 124.

defense, and the proportionateness thereof does not depend upon the harm done, but rests upon the imminent danger of such injury.[22] [Bold underscoring supplied for emphasis]

Lastly, the absence of any showing that Olarbe had provoked Arca, or that he had been induced by revenge, resentment or other evil motive has been equally palpable. We deem to be established, therefore, that the third elements of the justifying circumstances of self-defense and defense of stranger were present.

With Olarbe being entitled to the justifying circumstances of self-defense and defense of a stranger, his acquittal follows.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on March 22, 2016 in CA-G.R. CR-HC No. 07112; **ACQUITS** accused **RODOLFO OLARBE y BALIHANGO** on the grounds of **SELF-DEFENSE** and **DEFENSE OF A STRANGER**; **DECLARES** him **NOT CIVILLY LIABLE** to the heirs of the late Romeo Arca; and **DIRECTS** his **IMMEDIATE RELEASE FROM CONFINEMENT** unless he is otherwise legally confined for another cause.

Let a copy of this decision be sent to the Director, Bureau of Corrections, in Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections is **DIRECTED TO REPORT** the action taken to this Court within five days from receipt of this decision.

SO ORDERED.

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

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[22] *People v. Gutual*, G.R. No. 115233, February 22, 1996, 254 SCRA 37, 49.

FIRST DIVISION

[G.R. No. 227502. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RANDY GAJILA *y* SALAZAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC); JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; CONCURRENCE OF ESSENTIAL REQUISITES THEREOF MUST BE PROVED BY THE DEFENSE; IN THE ABSENCE OF UNLAWFUL AGGRESSION ON THE PART OF THE VICTIM, SELF-DEFENSE CANNOT BE APPRECIATED SINCE THE TWO OTHER ELEMENTS WOULD HAVE NO FACTUAL AND LEGAL BASES.— In criminal cases, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt. However, when the accused invokes self-defense, the burden of proof is *shifted* from the prosecution to the defense, and it becomes incumbent upon the accused to prove, by clear and convincing evidence, the existence of the following requisites of self-defense: ***first***, unlawful aggression on the part of the victim; ***second***, reasonable necessity of the means employed to prevent or repel such aggression; and ***third***, lack of sufficient provocation on the part of the person defending himself. In such cases, the accused must rely on the strength of his evidence and *not* on the weakness of the prosecution's evidence. After all, by invoking self-defense, the accused, in effect, *admits having killed or injured the victim*, and he can no longer be acquitted of the crime charged *if* he fails to prove the essential requisites of self-defense. The most important requisite of self-defense is **unlawful aggression** which is the condition *sine qua non* for upholding self-defense as a justifying circumstance. In simpler terms, the accused must prove by clear and convincing evidence that the victim committed unlawful aggression against him; otherwise, "self-defense, whether complete or incomplete, *cannot* be appreciated, for the two other essential elements [thereof] would have *no factual and legal bases* without any unlawful aggression to prevent or repel."

2. **ID.; ID.; ID.; ID.; SELF-DEFENSE, NOT ESTABLISHED IN CASE AT BAR.—** [W]e find that appellant failed to discharge the burden of proving that the unlawful aggression had originated from the victim. ***First***, it is undisputed that appellant tried to flee the *situs criminis* immediately after the stabbing incident. It was only through the concerted efforts of the civilians and *barangay tanods* at the market that appellant's escape attempt was thwarted. "Flight is a veritable badge of guilt and negates the plea of self-defense." x x x ***Second***, the location, nature and seriousness of the wounds sustained by the victim are inconsistent with a plea of self-defense; rather, these factors indicate a determined effort to kill. x x x And ***third***, appellant's own account of the stabbing incident is simply *inconsistent* with the evidence on record.

3. **ID.; ID.; MURDER; VICTIM'S KILLING WAS QUALIFIED BY TREACHERY IN THIS CASE.—** We also agree with the CA's conclusion that the victim's killing was qualified by treachery. "There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might make." In this case, the records clearly show that the victim's killing was attended by treachery, considering that: (*a*) the victim was *fatally* stabbed by appellant *from behind*; (*b*) appellant was *holding the victim by the neck* with his left arm when he delivered the first stabbing blow; and (*c*) the attack was so *sudden* and *unexpected* that the victim was unable to defend himself. The totality of these circumstances clearly shows that the means of execution of the attack gave the victim **no opportunity to defend himself** or to retaliate, and said means of execution was **deliberately** adopted by appellant.

4. **ID.; ID.; ID.; CIVIL LIABILITY.—** We likewise affirm the award of loss of earning capacity in the amount of ₱1,383,286.95, considering that: (*a*) the victim died at age 27; and (*b*) before he died, he was earning ₱300.00/day as a butcher. x x x However, we deem it appropriate to *increase* the amount of exemplary damages from ₱30,000.00 to ₱75,000.00 in conformity with prevailing jurisprudence.

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

DEL CASTILLO, *J.*:

Assailed in this appeal is the September 10, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06741 which affirmed with modification the January 10, 2014 Decision[2] of the Regional Trial Court (RTC), Branch 10, Manila, finding appellant Randy Gajila *y* Salazar guilty beyond reasonable doubt of the crime of murder.

The Antecedent Facts

Appellant was charged with the crime of murder in an Information[3] dated January 30, 2008 which reads:

> That on or about January 24, 2008, at night[t]ime purposely sought to better accomplish [his] criminal design, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously, with intent to kill, qualified by treachery, evident premeditation and abuse of superior strength, attack, assault and use personal violence upon the person of one GERRY ALCANTARA Y CABILING, by then and there stabbing him twice using a butcher['s] knife that hits [sic] the right side of his body, thereby inflicting upon the said GERRY ALCANTARA Y CABILING mortal wounds which were the direct and immediate cause of his death.
>
> CONTRARY TO LAW.

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[1] *Rollo*, pp. 2-13; penned by Associate Justice Jose C. Reyes, Jr., and concurred in by Associate Justices Agnes Reyes Carpio and Ramon Paul L. Hernando.

[2] CA *rollo*, pp. 14-41; penned by Judge Virgilio M. Alameda.

[3] Records, p. 1.

During his arraignment on April 1, 2008, 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 January 24, 2008, Ross Dizon (Ross) reported for work at the meat section of the Quinta Market located along Echague St., Quiapo, Manila, where he was a distributor of pork supplied by his uncle, Ryan Dizon (Ryan), to different stall holders in the market. The victim, Gerry Alcantara, was his co-worker who was employed by his uncle as a butcher. Both he and the victim worked at the market from 1:00 a.m. to 5:00 a.m.[5]

On the same day, at about 3:00 a.m., Ross saw appellant arrive at the market, apparently drunk because he walked in a swaying manner. Appellant worked as a butcher across the stalls of Ross' uncle. Because appellant was drunk, Ross told him to just lie down on a bench near their stall.[6]

Moments later, appellant stood up and approached the victim from behind. At the time, the victim was busy weighing sliced pork meat for distribution to the stalls at the market. Appellant then used his left hand to hold the victim in place by the neck, and without saying a word, he suddenly stabbed the victim at the back. The victim turned around but he was stabbed for the second time. Appellant would have succeeded in stabbing the victim again, but it was prevented by Ryan who pushed a cart in appellant's direction.[7]

Appellant immediately fled the scene, still carrying with him the butcher's knife that was stained with the victim's blood. He ran towards the direction of Platerias Street corner Palma

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[4] See Order dated April 1, 2008, *id*. at 26.

[5] CA *rollo*, p. 16.

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

[7] *Id*. at 17.

Street, but he was eventually subdued by civilians and *barangay tanods* at the market.[8]

Unfortunately, the victim died at the hospital the following day.[9] Dr. Romeo T. Salen (Dr. Salen) performed the autopsy on the victim's body.[10] Based on the Medico-Legal Report[11] dated January 29, 2008, the cause of death was the stab wound sustained by the victim at the back.

Version of the Defense

Appellant raised the justifying circumstance of self-defense in order to exculpate himself from criminal liability, *viz.*:

> At around 3:00 o'clock in the [morning] of January 24, 2008, [he] was inside his stall [at the] Quinta Market waiting for the delivery of his pork meat when [the victim] suddenly approached him, uttered "*[E]to ba*" and boxed him. He stood up and fought back upon getting hurt, not knowing what [the victim] was referring to when he uttered those words. [The victim] continued boxing him so he embraced him and [they] both fell on the ground. Since [the victim] was on top of him, he was not able to resist. Thus, he picked up the knife on the ground which fell from [the victim's] waist and stabbed him, without intending to kill him.[12] x x x

Ruling of the Regional Trial Court

In its Decision dated January 10, 2014, the RTC found appellant guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code.[13]

The RTC rejected appellant's contention that he had simply acted in self-defense which resulted in the victim's killing. It explained that:

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[8] *Id.*

[9] Records, p. 8.

[10] CA *rollo*, p. 18.

[11] Records, p. 42.

[12] CA *rollo*, p. 69. Italics supplied.

[13] *Id.* at 41.

x x x The testimony of the accused raising self-defense is difficult to believe because it is replete with contradictions and inconsistencies. The accused claims that the victim boxed him several times but nowhere in his medical certificate [was it shown] that he suffered [any] boxing injur[ies]. In fact, the medical certificate attested that there was no sign of external injuries at the time of the examination. Moreover, he claims that the victim pressed his left arm on his neck but again[,] there is no sign of injuries on his neck that appeared in his medical certificate. x x x x **More importantly, the accused claims that he only stabbed the victim only** [sic] **once which is inconsistent with the autopsy performed on the body of the victim by Dr. Romeo T. Salen which indicated that the victim suffered two (2) stab wounds.**[14] x x x (Emphasis supplied)

Moreover, the RTC held that the victim's killing was attended by the qualifying circumstance of treachery.[15] "By attacking the victim at a time when his attention was drawn to his work of weighing the meat on the scale, [appellant] gave the victim no chance to prepare his defense of the attack."[16] The RTC thus concluded that the mode of attack chosen by appellant made it impossible for the victim to defend himself or retaliate.[17]

The RTC, however, ruled that the attendant circumstances of evident premeditation, taking advantage of superior strength, and nighttime alleged in the Information were not proven beyond reasonable doubt.[18]

Accordingly, the RTC sentenced appellant to suffer the penalty of *reclusion perpetua*. It likewise ordered appellant to pay the heirs of the victim: ₱50,000.00 as civil indemnity, ₱47,641.50 as actual damages, and ₱1,916,250.00 for the loss of the victim's earning capacity.[19]

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[14] *Id.* at 32.

[15] *Id.* at 34.

[16] *Id.* at 35.

[17] *Id.*

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

[19] *Id.* at 41.

Appellant thereafter appealed the RTC Decision before the CA.

Ruling of the Court of Appeals

In its Decision dated September 10, 2015, the CA affirmed the assailed RTC Decision with modifications, in that the appellate court: (*a*) directed appellant to pay the heirs of the victim ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages; (*b*) increased the award of civil indemnity to ₱75,000.00; (*c*) decreased the amount of loss of earning capacity to ₱1,383,286.95; and (*d*) imposed interest at the rate of 6% per annum on all damages awarded from the date of finality of the Decision until fully paid.[20]

The CA agreed with the RTC's finding that appellant had failed to clearly and convincingly prove the elements of self-defense.[21] It also pointed out that appellant himself testified that Ross (the prosecution's eye witness) held no grudges against him and that he had no hostile encounter with the latter.[22]

In addition, the CA held that the victim's killing was indeed qualified by treachery.[23] It noted that, while the victim was busy weighing pork meat on a scale, appellant approached him from behind, strangled his neck and, while in such position, stabbed him at the right side.[24] "A sudden attack against an unarmed victim, such as in this case, clearly constitutes treachery."[25]

Aggrieved, appellant filed the present appeal.

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[20] *Rollo*, p. 12.

[21] *Id*. at 8.

[22] *Id*.

[23] *Id*. at 10.

[24] *Id*. at 9.

[25] *Id*. at 10.

The Issues

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

First, whether appellant was able to sufficiently prove the justifying circumstance of self-defense;

And *second*, whether the victim's stabbing was attended by treachery.

The Court's Ruling

The appeal is unmeritorious.

In criminal cases, the burden lies upon the prosecution to prove the guilt of the accused beyond reasonable doubt.[26] However, when the accused invokes self-defense, the burden of proof is *shifted* from the prosecution to the defense,[27] and it becomes incumbent upon the accused to prove, by clear and convincing evidence, the existence of the following requisites of self-defense: ***first***, unlawful aggression on the part of the victim; ***second***, reasonable necessity of the means employed to prevent or repel such aggression; and ***third***, lack of sufficient provocation on the part of the person defending himself.[28]

In such cases, the accused must rely on the strength of his evidence and *not* on the weakness of the prosecution's evidence. After all, by invoking self-defense, the accused, in effect, *admits having killed or injured the victim*, and he can no longer be acquitted of the crime charged *if* he fails to prove the essential requisites of self-defense.[29]

The most important requisite of self-defense is **unlawful aggression** which is the condition *sine qua non* for upholding self-defense as a justifying circumstance.[30] In simpler terms,

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[26] *People v. Lopez, Jr.*, G.R. No. 232247, April 23, 2018.

[27] *People v. Rubiso*, 447 Phil. 374, 380 (2003).

[28] *Id.* at 380-381. See also REVISED PENAL CODE, Article 11(1).

[29] See *People v. Gumayao*, 460 Phil. 735, 746 (2003).

[30] *People v. Panerio*, G.R. No. 205440, January 15, 2018.

the accused must prove by clear and convincing evidence that the victim committed unlawful aggression against him;[31] otherwise, "self-defense, whether complete or incomplete, *cannot* be appreciated, for the two other essential elements [thereof] would have *no factual and legal bases* without any unlawful aggression to prevent or repel."[32]

Thus, we explained in *People v. Nugas*[33] that:

> x x x The test for the presence of unlawful aggression under the circumstances is **whether the aggression from the victim put in real peril the life or personal safety of the person defending himself; the peril must not be an imagined or imaginary threat**. Accordingly, the accused must establish the concurrence of three elements of unlawful aggression, namely: (*a*) there must be a physical or material attack or assault; (*b*) the attack or assault must be actual, or, at least, imminent; and (*c*) the attack or assault must be unlawful.[34] (Emphasis supplied)

After a thorough review of the records, we find that appellant failed to discharge the burden of proving that the unlawful aggression had originated from the victim.

First, it is undisputed that appellant tried to flee the *situs criminis* immediately after the stabbing incident.[35] It was only through the concerted efforts of the civilians and *barangay tanods* at the market that appellant's escape attempt was thwarted.[36] "Flight is a veritable badge of guilt and negates the plea of self-defense."[37]

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[31] *Id*.

[32] *Id*. Italics supplied.

[33] 677 Phil. 168 (2011).

[34] *Id*. at 177.

[35] TSN, February 17, 2009, p. 6.

[36] *Id*. at 6-7. See also CA *rollo*, pp. 17-18.

[37] *People v. Gumayao*, *supra* note 29.

We find no merit in appellant's contention that he "ran after the stabbing incident because he intended to voluntarily surrender himself at the *barangay*."[38] He could have easily surrendered to Milagros Reyes, one of the *barangay tanods* chasing after him, but he kept on running away until he was eventually subdued by Edgardo Reyes.[39]

Second, the location, nature and seriousness of the wounds sustained by the victim are inconsistent with a plea of self-defense;[40] rather, these factors indicate a determined effort to kill.

On this point, Dr. Salen testified that the stabbing wound sustained by the victim *at the back portion of his body* can be characterized as *fatal*, as it penetrated the intestines, mesentery and right lobe of the victim's liver, *viz.*:

[ACP LEA LLAVORE:]

Q: Mr. [W]itness, could you please describe the wounds and the injuries which are in the Anatomical Sketch?
A: The first stab wound was on the back portion and the second stab wound was on the left thigh, it was [a] thru and thru stab wound, there is an entry and there is an exit wound, ma'am.[41]

x x x x x x x x x

Q: Mr. [W]itness, which of these two wounds were [sic] fatal?
A: The stab wound [at] the back, ma'am.

Q: Why do you consider this as a fatal wound?
A: Considering that **it hits** [sic] **the major organs of the body**[,] it is considered very fatal[;] it hits [sic] the intestines[,] the mesentery and the right lobe of the liver, ma'am.

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[38] CA *rollo*, p. 69. See also TSN, March 13, 2012, p. 14.

[39] TSN, May 4, 2010, pp. 5-8.

[40] See *People v. Rubiso*, *supra* note 27 at 381-382.

[41] TSN, July 12, 2011, p. 7.

Q: How soon would death be expected from the time of the infliction of the stab wound on the back?
A: This stab wound will not cause an immediate [death], but it will cause death when no medical intervention [is administered on the victim], ma'am.

Q: If there is no medical intervention, how long wills [sic] death occur?
A: As short as 20 to 30 minutes, ma'am.[42] (Emphasis supplied)

And ***third***, appellant's own account of the stabbing incident is simply *inconsistent* with the evidence on record.

Appellant testified that he stabbed the victim just once on the left side, right below the armpit,[43] while he was underneath the victim on the ground.[44] Under these circumstances, the direction of the stab wound should have been a downward thrust. However, based on Dr. Salen's post-mortem examination of the victim's body, the victim sustained *two stab wounds*, and the direction of the stab wound at the victim's back was an *upward, not downward, thrust, viz.*:

[ACP LEA LLAVORE:]

Q: With respect to the stab wound [at] the back, you said that the entry point was [at] the back[,] Mr. [W]itness, so what would be the relative position of the attacker at the time that the wound was inflicted?

A: The most probable position was that **the assailant was at the back of the victim**, ma'am.[45] (Emphasis supplied)

x x x x x x x x x

Q: Mr. [W]itness, I am inviting your attention to Exh. "M" which is the medico legal report, would you be able to say [whether the] thrust was it [sic] an upward stroke or downward stroke?

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[42] *Id*. at 7-8.

[43] TSN, March 13, 2012, p. 14.

[44] *Id*. at 12-13.

[45] TSN, July 12, 2011, p. 10.

A: The direction of the stab wound was anterior wards or from the back going to the front, it was upward and lateral wards or from the middle going outside, ma'am.

Q: Would you be able to say if the victim was taller or shorter than the attacker?

A: No ma'am, as long as the direction was upward, **it is an upward thrust**.

Q: But the victim was definitely standing up, is that correct[?] [I]n an upright position?

A: Yes, ma'am.[46] (Emphasis supplied)

We consider, too, the *absence of any physical evidence* showing that appellant sustained some injury from having been allegedly attacked by the victim. In fact, based on his Medical Certificate[47] dated January 24, 2008, appellant showed no external signs of any physical injury at the time of examination.

All told, appellant's *self-serving* and *unsubstantiated* allegations that the victim was the unlawful aggressor must necessarily fail when weighed against the positive, straightforward and overwhelming evidence of the prosecution. After all, "[s]elf-defense cannot be justifiably appreciated when it is uncorroborated by independent and competent evidence or when it is extremely doubtful by itself."[48]

We also agree with the CA's conclusion that the victim's killing was qualified by treachery.[49]

"There is treachery when the offender employs means, methods or forms in the execution of any of the crimes against persons that tend directly and especially to ensure its execution without

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[46] *Id.* at 11.

[47] Records, p. 7.

[48] *People v. Nugas*, *supra* note 33 at 176.

[49] *Rollo*, p. 10.

risk to himself arising from the defense which the offended party might make."[50]

In this case, the records clearly show that the victim's killing was attended by treachery, considering that: (*a*) the victim was *fatally* stabbed[51] by appellant *from behind*;[52] (*b*) appellant was *holding the victim by the neck* with his left arm when he delivered the first stabbing blow;[53] and (*c*) the attack was so *sudden* and *unexpected* that the victim was unable to defend himself.[54]

The totality of these circumstances clearly shows that the means of execution of the attack gave the victim **no opportunity to defend himself** or to retaliate, and said means of execution was **deliberately** adopted by appellant.[55]

Given these circumstances, we find no cogent reason to overturn the factual findings and conclusions of the lower courts as they are supported by the evidence on record and applicable laws.

We likewise affirm the award of loss of earning capacity in the amount of ₱1,383,286.95, considering that: (*a*) the victim died at age 27;[56] and (*b*) before he died, he was earning ₱300.00/day as a butcher.[57]

Net Earning Capacity = life expectancy x [gross annual income (GAI) - living expenses]
= 2/3 [80-age at time of death] x [GAI - 50% of GAI]

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[50] *People v. Alajay*, 456 Phil. 83, 92 (2003).

[51] TSN, July 12, 2011, pp. 7-8.

[52] *Id.* at 10.

[53] TSN, February 17, 2009, p. 5.

[54] TSN, June 23, 2009, pp. 32 and 35.

[55] See *People v. Alajay*, *supra* note 50 at 92.

[56] See Certificate of Death, records, p. 8.

[57] *Id.* at 45.

= 2/3 [80-27] x [₱300.00x261[58] - 50% of GAI]
= 2/3 (53) x [₱78,300.00 - ₱39,150.00]
= 35.333 x ₱39,150.00
= ₱1,383,286.95

However, we deem it appropriate to *increase* the amount of exemplary damages from ₱30,000.00 to ₱75,000.00 in conformity with prevailing jurisprudence.[59]

WHEREFORE, the appeal is **DISMISSED**. The September 10, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06741 is hereby **AFFIRMED with MODIFICATION** in that the award of exemplary damages is increased to ₱75,000.

SO ORDERED.

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

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[58] Number of working days in a year. See *People v. Adlawan*, 425 Phil. 804, 816 (2002).

[59] *People v. Jugueta*, 783 Phil. 806, 847-848 (2016).

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

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

SECOND DIVISION

[G.R. No. 227738. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JACINTO ANDES *y* LORILLA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS; PRESENT IN CASE AT BAR.—** The two elements of rape — *viz.*: (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation—are both present as duly proven by the prosecution in this case. AAA was able to testify in detail how Andes committed the rape. AAA's testimony, found to be clear, straightforward, and believable, was given weight and credence not just by the RTC, but also by the CA upon appeal.

2. **REMEDIAL LAW; EVIDENCE; THE TRIAL COURT HAVING THE FIRST-HAND OPPORTUNITY TO HEAR THE TESTIMONIES OF THE WITNESSES AND OBSERVE THEIR DEMEANOR, CONDUCT, AND ATTITUDE DURING CROSS-EXAMINATION, ITS FINDINGS CARRY VERY GREAT WEIGHT AND SUBSTANCE.—** In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Such matters cannot be gathered from a mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry very great weight and substance.

3. **CRIMINAL LAW; RAPE; FORCE AND INTIMIDATION MUST BE VIEWED IN THE LIGHT OF THE VICTIM'S PERCEPTION AND JUDGMENT AT THE TIME OF THE COMMISSION OF THE CRIME AND NOT BY ANY HARD AND FAST RULE; CASE AT BAR.—**AAA sufficiently explained that despite the fact that no weapon was poked at

her body at the time the actual rapes were committed, she was of the belief that maybe Andes was still holding the weapon and that she could not ascertain where the weapon was because it was dark. It is established that the law does not impose on the rape victim the burden of proving resistance.In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.Contrary to the Andes' contention, the above "admission"even strengthens the finding that there was force and intimidation rather than casts doubt on AAA's testimony. This "admission," taken with the established facts that the crime was committed in a dark place, *in the presence of AAA's son who was sleeping*, coupled with Andes' threat that he would kill the child if AAA would not give him what he wanted, all the more convinces the Court that intimidation was indeed present.

4. ID.; ID.; IN PROSECUTION FOR RAPE, A MEDICAL EXAMINATION IS NOT INDISPENSABLE; CASE AT BAR.—Andes further puts in issue the fact that the presence of lacerations is only corroborative. Andes harps on the testimony of AAA's examining physician that the healed lacerations on the victim's vagina could have resulted from her having given birth twice by normal delivery.The above contention is clearly without merit. The Court has held numerous times in the past that a medical examination is not indispensable in a prosecution for rape. As the Court held in *People v. Docena*, x x x. **Medical findings or proof of injuries**, virginity, or an allegation of the exact time and date of the commission of the crime **are not essential in a prosecution for rape**. This is so because from the nature of the offense, the only evidence that can oftentimes be offered to establish the guilt of the accused is, as in the cases at bar, the complainant's testimony. Andes was convicted not because the lower courts relied on the medical findings, but because both courts found AAA's testimony to be sincere and believable. Andes' conviction rests on the credibility of AAA's testimony, and not on the findings of the examining physician.

5. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; INHERENTLY WEAK DEFENSES WHICH CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE WITNESSES THAT THE

ACCUSED COMMITTED THE CRIME; CASE AT BAR.— The Court has oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has the ring of truth on the one hand, and a mere denial and alibi on the other, the former is generally held to prevail.Further, the continuing case law is that for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.In the present case, Andes was within the immediate vicinity of the place of the crime. Even if Andes' explanation is to be accepted as true that he was in his house at the time of the incident,he was still within a mere 10-minute walk from AAA's house — where the crime actually happened. He even admitted that he left his house in the middle of the night, but offered the explanation that he only went out to go to the comfort room.As it was not physically impossible for him to be at the place of the crime, his defense of alibi must, thus, necessarily fail.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Jacinto Andes y Lorilla (Andes) assailing the Decision[2] dated September 2, 2015 of the Court of Appeals (CA) in CA-

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[1] See Notice of Appeal dated October 5, 2015, *rollo*, pp. 15-16.

[2] *Rollo*, pp. 2-14. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring.

G.R. CR-HC No. 06684, which affirmed the Judgment[3] dated February 13, 2014 of the BBB,[4] Regional Trial Court (RTC) in Criminal Case No. 2012-0455, finding Andes guilty beyond reasonable doubt of rape.

The Facts

An Information was filed against Andes for the rape of AAA,[5] which reads:

"That on or about October 24, 2012, in the City of [BBB], Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation and armed with a bladed weapon, did then and there wilfully (*sic*), unlawfully and feloniously have carnal knowledge of complaining witness, [**AAA**], against her will and consent, to her damage and prejudice.

CONTRARY TO LAW."[6] (Emphasis in the original)

The facts, as summarized by the trial court, are as follows:

On October 24, 2012, at around 1:00 O'Clock (*sic*) in the morning, at Sitio [CCC], [BBB], while the private complainant, [AAA], was sleeping with her 4 year old son, [DDD], in bed inside the room of their house, she was awakened when suddenly somebody covered her mouth, and told her not to shout and simultaneously poked a knife on her neck, saying, "**don't shout, I will kill you and your son**[.]"

While the inside of her house was then dark, **she identified that person as the accused**, JACINTO ANDES Y [LORILLA], **through his voice and the words he uttered**. She has known the accused for about 7 years because they stayed at her mother's house together

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[3] CA *rollo*, pp. 36-46. Penned by Presiding Judge Bernhard B. Beltran.

[4] The name of the city is replaced with fictitious initials pursuant to Supreme Court (SC) Administrative Circular No. 83-2015 dated July 27, 2015.

[5] The name of the victim is replaced with fictitious initials pursuant to SC Administrative Circular No. 83-2015 dated July 27, 2015.

[6] CA *rollo*, p. 36.

with the accused as live-in partner of her mother for about 7 years. For said reason, she knew his voice.

She did not resist in doing what was commanded of her because she was thinking of the safety of her son as he could stab and kill him. She told him that she would accede to his request as long as he would not kill her son.

After undressing, the accused **then placed himself on top of her body**. She felt he was near her son so he moved her away. She was able to grab the handle of his knife. It was impossible for her to escape because he positioned himself near the door and her son was on her side. She was at the middle of them. The accused tried to insert his penis in her vagina but, at first, he was not able to consummate it because his penis was soft and he told her to hold and harden it. It was tried to be inserted again. **That time, his penis was able to penetrate her vagina. The sexual intercourse lasted for about 30 minutes. While on top of her, he told her - "ANG SARAP NAMAN NG ANAK KO[.]**

The accused was calling her anak because he was her stepfather. She told him: "PUTA KA!" "[I]f you treat me as your daughter, you will not do this to me." He told her that: "Even [EEE], I already did this to her because I am the one who send (sic) her to school and I have the right to do it." [EEE] is his 18 year old daughter. After telling her about it, he was just on top of her using her, **his penis inside her vagina**.

The accused rested on her side for a while for about 10 to 15 minutes. He told her that he wanted to have sex with her for a second time. He then put his body again on top of her and told her to lie on her stomach ("pinadapa") on the bed. Again he told her that "My daughter is so delicious." **[W]hile he was saying that, his penis was inside her vagina.** He was on top of her (witness was demonstrating by holding her back). She told him "Do not call me your daughter." She reiterated that the penis of the accused **was again able to penetrate her vagina that lasted again for another 30 minutes**. After the second time that the accused had sexual intercourse with her, he rested beside her and after uttering further some words, he already left.[7] (Emphasis and underscoring in the original)

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

The following morning, AAA was able to tell a cousin, her mother, and later on, barangay authorities about what Andes had done to her.[8] The accused was then arrested. That same evening, AAA had herself subjected to a medical examination by Dr. Zarah Charissa Magnaye Agualada (Dr. Agualada).[9]

During the trial, Dr. Agualada testified that she found a 1x1 cm hematoma on AAA's neck, which she explained could be caused by high pressure from a body part or other material.[10]

On the part of the defense, Andes admitted that AAA's adoptive mother was his live-in partner. However, he denied that he raped AAA. He averred that on the date and time of the alleged incident, he was already sleeping with AAA's adoptive mother. According to him, he slept at around 9:00 p.m., woke up at around 1:30 a.m. to go to the comfort room, and went back to sleep after 5 minutes. The following evening, he was surprised that a *barangay tanod* went to his house along with three policemen and invited him to the *barangay* hall, and subsequently, to the police station. When he arrived, AAA was there in the police station and was accusing him of raping her.[11]

Ruling of the RTC

After trial on the merits, in its Judgment dated February 13, 2014, the RTC convicted Andes of the crime charged. The dispositive portion of the said Judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused **JACINTO ANDES y LORILLA**, guilty beyond reasonable doubt of **RAPE**, defined and penalized under Article 266-A-(l)(a) in relation to Art. 266-B, par. 2, of the Revised Penal Code, as amended by RA 8353, and he is hereby sentenced to suffer the penalty of ***Reclusion Perpetua***, without eligibility of parole, and to pay the victim, [AAA], the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages.

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[8] *Id.* at 37.

[9] *Id.* at 38.

[10] *Id.*

[11] RTC Judgment, *id.*

SO ORDERED.[12] (Emphasis in the original)

The RTC found AAA's identification of Andes sufficient, even if it was done only through his voice. It likewise held that Andes' defense of denial could not prevail over the positive identification by AAA. Lastly, the RTC found AAA's testimony spontaneous and credible after it had observed the demeanors of both AAA and Andes on the witness stand.

Aggrieved, Andes appealed to the CA. In the appeal, Andes raised questions on the believability of AAA's testimony, and if the element of coercion or intimidation was sufficiently proven. According to Andes, it was contrary to human experience for assailants to have a "chat"[13] with their victims, and hence AAA's testimony that she knew of his identity through his voice was incredible. Andes likewise alleged that the element of intimidation was absent because (1) AAA testified that she was able to get hold of his knife;[14] and (2) she even told her abuser "[*p*]*uta ka!* If you treat me as your daughter, you will not do this to me" instead of begging for mercy.[15]

Furthermore, Andes questioned the presence of healed lacerations on AAA's hymen as these were not conclusive evidence of sexual abuse. As testified to by AAA's examining physician, Dr. Agualada, the lacerations may have been caused by her giving birth twice by normal delivery.[16] Finally, Andes reiterated his defense of denial and alibi, and argued that these should not be looked upon with disfavor.[17]

Ruling of the CA

In the questioned Decision dated September 2, 2015, the CA affirmed the RTC's conviction of Andes.

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

[13] *Rollo*, p. 5.

[14] *Id*. at 4.

[15] *Id*. at 5.

[16] *Id*. at 6.

[17] *Id*.

The CA held that denial could not, by itself, overcome AAA's positive and categorical accusation against Andes. The appellate court took note of AAA's straightforward narration, and the fact that she was clearly certain of the identity of her abuser from the onset.[18] The CA agreed with the RTC that AAA's identification of Andes as the perpetrator was sufficient and acceptable, though it was made only through recognition of his voice, because they had personally known each other for seven years, six of which they spent living in the same house.[19]

The CA also did not consider the exchange between Andes and AAA — in which the former made it known to the latter that he already did the same vile act to his own daughter — as a mere "chat." Instead, the CA viewed the same as a threat, in that AAA had no choice but to give in to his desires, "for if he was able to sexually abuse his own daughter, then there is simply no stopping him from doing it to [AAA] who is not even his own blood relative."[20]

The appellate court also ruled against Andes' contention that AAA's act of being able to grab the handle of his knife, and her saying "*puta ka!*" implied that force and intimidation were absent. It held that the argument was premised on the mistaken notion that rape victims must escape, or at least try to fight back.[21] The CA further remarked that the presence of AAA's 4-year old son on the same bed where the assault was performed only bolstered the fact that intimidation was present.

Hence, the instant appeal.

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[18] *Id*. at 8.

[19] *Id*.

[20] *Id*. at 9.

[21] *Id*.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting Andes.

The Court's Ruling

The appeal is unmeritorious. The Court affirms the conviction of Andes as the prosecution was able to prove his guilt beyond reasonable doubt.

The two elements of rape — *viz.*: (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation[22] — are both present as duly proven by the prosecution in this case. AAA was able to testify in detail how Andes committed the rape. AAA's testimony, found to be clear, straightforward, and believable, was given weight and credence not just by the RTC, but also by the CA upon appeal.

In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Such matters cannot be gathered from a mere reading of the transcripts of stenographic notes. Hence, the trial court's findings carry very great weight and substance.[23]

Andes, however, raises an issue out of the alleged improbability of AAA's testimony. According to Andes, it was improbable that AAA was already able to grab the handle of his supposed knife, and yet she failed to take advantage. Andes likewise raises as issue AAA's supposed admission that no

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[22] *People v. Soronio*, 281 Phil. 820, 824 (1991).

[23] *People v. Alemania*, 440 Phil. 297, 304-305 (2002).

weapon was used during the rapes, as shown by the following testimony:[24]

> **"Q:** So, when he started attacking you, he was no longer poking the knife to your neck?
> **A:** When he was already on top of me, ma'am?
>
> **Q:** Yes. When he was already on top of you, he was no longer poking a knife to you?
> **A:** *No more, ma'am*[.]
>
> **Q:** And then, when he told you [to] touch his penis the first time around, there was no weapon poked on your neck?
> **A:** No more, ma'am.
>
> **Q:** And the whole time, for the whole 30 minutes, there was no weapon poked on your neck?
> **A:** None, ma'am.
>
> **Q:** So, after he rested for 10 to 15 minutes, as again, the alleged attacker raped you[,] as you claimed again for 30 minutes. Now during those 30 minutes, the second time around, was there a bladed weapon poked on you[r] neck or any party (*sic*) of your body?
> **A:** *None, ma'm. But I am thinking that maybe he was still holding the weapon. I am not sure because it was dark.*[25] (Emphasis, italics and underscoring in the original)

For Andes, the above testimony was an admission by AAA that force or intimidation was absent during the time the rape was supposedly committed.

The Court disagrees.

AAA sufficiently explained that despite the fact that no weapon was poked at her body at the time the actual rapes were committed, she was of the belief that maybe Andes was still holding the weapon and that she could not ascertain where the weapon was because it was dark. It is established that the law does not impose on the rape victim the burden of proving

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[24] CA *rollo*, pp. 30-31.

[25] *Id*.

resistance.[26] In rape, the force and intimidation must be viewed in the light of the victim's perception and judgment at the time of the commission of the crime and not by any hard and fast rule.[27]

Contrary to the Andes' contention, the above "admission"[28] even strengthens the finding that there was force and intimidation rather than casts doubt on AAA's testimony. This "admission," taken with the established facts that the crime was committed in a dark place, *in the presence of AAA's son who was sleeping*, coupled with Andes' threat that he would kill the child if AAA would not give him what he wanted, all the more convinces the Court that intimidation was indeed present. As the CA correctly pointed out:

> In fact, this Court sees that the close proximity of her son, who shared the same bed where she was abused, may have actually forced private complainant to silently endure the rape. As a mother, private complainant's primary instinct is to protect her child. She knows that accused-appellant brought a knife and the latter threatened to kill her son if she would not give in to his bestial desires. Since she admittedly did not know where the knife was placed by accused-appellant during the entire time she was being abused and the room was pitch-dark, private complainant was understandably apprehensive that one wrong move from her might jeopardize her 4-year old son's life.[29]

Andes also questions AAA's post-rape attitude as not being "that of a true rape victim."[30] Citing AAA's testimony the day after the alleged rape that she texted her cousin stating only that "*Kuya,* [*Andes*] *entered our house last night*,"[31] Andes made

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[26] *People v. Fabian*, 453 Phil. 328, 337 (2003).

[27] *Id*.

[28] CA *rollo*, p. 30.

[29] *Rollo*, p. 10.

[30] CA *rollo*, p. 32.

[31] *Id*.; italics in the original.

an inference that the said testimony supposedly reveals that what he did the night before was merely "peeping" **again** on her, but that it was not rape.[32] Andes argues that AAA was so upset about a "peeping" incident that she decided to file this case to get back at him.

The argument deserves scant consideration.

The "peeping" incident that Andes referred to happened more than a year before the rape was committed. Because of the said "peeping" incident, AAA and Andes had a heated argument that resulted in the former reporting the incident to the police, as proved by a police blotter which is in the records of this case.[33] The argument, however, that the said incident was the driving force for the filing of this case utterly fails to convince — not only for being unsubstantiated, but ultimately for failing to make sense.

Andes questions the post-rape attitude of the victim by extracting a portion of the victim's testimony, taking the same out of context, and then making an issue out of it by taking a significant leap in logic by relating it to an unrelated matter. As sufficiently narrated in the Decision of the CA, the events following the rape incident were as follows:

> In the morning following the rape incident, private complainant immediately went to her mother's house. [FFF], her adoptive mother, was there but she was not able to approach her because accused-appellant was still around. Upon seeing her, [FFF] asked her to cook breakfast and she obliged while waiting for accused-appellant to leave. **She could not however, contain her feelings so she borrowed the cellphone of [EEE], accused-appellant's daughter. She sent a text message to one of her cousins that she has a big problem but she does not know how to tell her mother and her husband. She told this cousin that "Kuya Cinto entered our house last night."** The cousin asked where is her husband (*sic*) and she replied that he is in Manila with their daughter. The cousin told her that she should immediately inform her mother of her predicament. She then returned

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[32] *Id*.

[33] *Rollo*, p. 11.

the cellphone to [EEE] but her cousin sent a text message to [EEE]. Left with no choice, private complainant told [EEE] what happened. x x x[34] (Emphasis and underscoring supplied)

Andes' issue that it was unnatural for a rape victim to only say that the assailant "entered [the] house" could therefore simply be explained by the fact that the victim was overwhelmed or confused by her emotions. It bears stressing that not all rape victims react the same way.[35] Not every victim of a crime can be expected to act reasonably and conformably with the expectation of mankind.[36] There is, unfortunately for Andes, no typical reaction or norm of behavior that ensue forthwith or later from victims of rape.[37] Andes was thus unreasonable to demand a standard rational reaction to an irrational experience[38] — which is rape.

Andes further puts in issue the fact that the presence of lacerations is only corroborative.[39] Andes harps on the testimony of AAA's examining physician that the healed lacerations on the victim's vagina could have resulted from her having given birth twice by normal delivery.[40]

The above contention is clearly without merit. The Court has held numerous times in the past that a medical examination is not indispensable in a prosecution for rape.[41] As the Court held in *People v. Docena*,[42]

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[34] *Id*. at 12.

[35] *People v. Soriano*, 560 Phil. 415, 420 (2007).

[36] *People v. Gecomo*, 324 Phil. 297, 315 (1996).

[37] *People v. Deleverio*, 352 Phil. 382, 400 (1998).

[38] *People v. Pareja*, 724 Phil. 759, 779 (2014).

[39] Brief for the Accused-Appellant, CA *rollo*, p. 33.

[40] *Id*.

[41] *People v. Campos*, 394 Phil. 868, 872 (2000).

[42] 379 Phil. 903 (2000).

x x x. **Medical findings or proof of injuries**, virginity, or an allegation of the exact time and date of the commission of the crime **are not essential in a prosecution for rape**. This is so because from the nature of the offense, the only evidence that can oftentimes be offered to establish the guilt of the accused is, as in the cases at bar, the complainant's testimony.[43] (Emphasis supplied)

Andes was convicted not because the lower courts relied on the medical findings, but because both courts found AAA's testimony to be sincere and believable. Andes' conviction rests on the credibility of AAA's testimony, and not on the findings of the examining physician.

Finally, Andes offers alibi and denial to prove that he did not rape AAA. Andes contends that his defense of alibi and denial should not be looked with disfavor and should assume importance in light of the supposed-weakness of the evidence of the prosecution.[44]

The Court has oft pronounced that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has the ring of truth on the one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[45] Further, the continuing case law is that for the defense of alibi to prosper, the accused must prove not only that he was at some other place when the crime was committed, but also that it was physically impossible for him to be at the scene of the crime or its immediate vicinity through clear and convincing evidence.[46]

In the present case, Andes was within the immediate vicinity of the place of the crime. Even if Andes' explanation is to be accepted as true that he was in his house at the time of the

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[43] *Id.* at 913-914.

[44] Brief for the Accused-Appellant, CA *rollo*, p. 33.

[45] *People v. Piosang*, 710 Phil. 519, 527 (2013).

[46] *People v. Desalisa*, 451 Phil. 869, 876 (2003).

incident,[47] he was still within a mere 10-minute walk from AAA's house[48] — where the crime actually happened. He even admitted that he left his house in the middle of the night, but offered the explanation that he only went out to go to the comfort room.[49] As it was not physically impossible for him to be at the place of the crime, his defense of alibi must, thus, necessarily fail.

With regard to the amount of damages, the Court deems it proper to adjust the award of damages in consonance with *People v. Jugueta*.[50] Thus, Andes is hereby ordered to pay AAA, the amount of seventy-five thousand pesos (₱75,000.00) as civil indemnity, seventy-five thousand pesos (₱75,000.00) as moral damages, and seventy-five thousand pesos (₱75,000.00) as exemplary damages. Interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this decision is likewise imposed to complete the quest for justice and vindication on the part of AAA.[51]

WHEREFORE, in view of the foregoing, the appeal is hereby **DENIED**. The Decision dated September 2, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06684 is hereby **AFFIRMED WITH MODIFICATION** by affirming the amounts of the awards for civil indemnity and moral damages, and increasing the award of exemplary damages from thirty-thousand pesos (₱30,000.00) to seventy-five thousand pesos (₱75,000.00). Accordingly, accused-appellant Jacinto Andes y Lorilla is hereby **CONVICTED** of the crime charged.

SO ORDERED.

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

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[47] RTC Judgment, CA *rollo*, p. 38.

[48] CA Decision, *rollo*, pp. 11-12.

[49] RTC Judgment, CA *rollo*, p. 38.

[50] 783 Phil. 806 (2016).

[51] *People v. Arcillas*, 692 Phil. 40, 54 (2012).

THIRD DIVISION

[G.R. No. 229192. July 23, 2018]

MAGSAYSAY MOL MARINE, INC. and/or MOL SHIP MANAGEMENT (SINGAPORE) PTE. LTD., *petitioners, vs.* **MICHAEL PADERES ATRAJE,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DISABILITY BENEFITS; TO BE COMPENSABLE, REASONABLE PROOF OF WORK-CONNECTION, NOT DIRECT CAUSAL RELATION, IS SUFFICIENT; IN CASE AT BAR.— As a rule, a Rule 45 review by this Court in labor cases does not delve into factual questions or to an evaluation of the evidence submitted by the parties. This Court is tasked to merely determine the legal correctness of the Court of Appeals' conclusion that found no grave abuse of discretion on the part of the Panel of Voluntary Arbitrators in awarding full disability benefits to respondent. Even so, this Court finds Capt. Pisarenko's Certification proffered by petitioners insufficient to prove their claim that Atraje did not incur an accident. Capt. Pisarenko's Certification lacks probative value. First, it was not authenticated by Philippine consular officials. Second, the vessel's logbook, which is the official repository of the daily transactions and occurrences on board the vessel, is the best evidence of its contents. In *Haverton Shipping Ltd. v. NLRC,* this Court declared that entries made in the vessel's logbook, when "made by a person in the performance of a duty required by law[,] are *prima facie* evidence of the facts stated [in it]." However, the logbook itself or authenticated copies of pertinent pages of it must be presented and not merely "typewritten excerpts from the 'logbook' [that] have no probative value at all." x x x Petitioners should have presented the vessel's logbook instead of a mere unauthenticated Certification of a certain Capt. Pisarenko, who was not even shown to be the ship captain during respondent's employment. Moreover, even if no record of the accident is

reflected in the logbook, this does not constitute conclusive proof that it did not happen, especially in light of the positive declarations of Chief Cook Bartolome and Messman De Guzman that respondent suffered a fall while at work. To be compensable, reasonable proof of work-connection, not direct causal relation, is sufficient. "Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings." This Court agrees with the Panel of Voluntary Arbitrators and the Court of Appeals that respondent's illnesses are work-related.

2. ID.; ID.; ID.; TO BE CONCLUSIVE, THE MEDICAL ASSESSMENT OR REPORT OF THE COMPANY-DESIGNATED PHYSICIAN MUST BE COMPLETE AND DEFINITE TO GIVE THE SEAFARER PROPER DISABILITY BENEFITS.— Under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), it is the primary responsibility of the company-designated doctor to determine the disability grading or fitness to work of seafarers. To be conclusive, however, the medical assessment or report of the company-designated physician must be complete and definite to give the seafarer proper disability benefits. x x x Furthermore, while the assessment of the company-designated physician *vis à vis* the schedule of disabilities under the POEA-SEC is the basis for compensability of a seafarer's disability, it is still subject to the periods prescribed in the law. Article 192(c)(1) of the Labor Code provides that temporary total disability lasting continuously for more than 120 days, except as otherwise provided in the Implementing Rules or the Amended Rules on Employee Compensation of Title II, Book IV of the Labor Code, shall be deemed total and permanent. x x x Respondent's inability to perform his customary sea duties, coupled with the company-designated physicians' abdication of their primary duty to declare his fitness or unfitness to work within the prescribed period, transforms his disability to permanent and total by operation of law.

3. ID.; ID.; ID.; THE THIRD DOCTOR-REFERRAL PROVISION DOES NOT APPLY WHEN THERE IS NO DEFINITE DISABILITY ASSESSMENT MADE BY THE COMPANY-DESIGNATED PHYSICIAN; CASE AT BAR.— Under Section 20(A)(3) of the 2010 POEA-SEC, *"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." The *assessment* refers to the declaration of fitness to work or the degree of disability, as can be gleaned from the first paragraph of Section 20(A)(3). It presupposes that the company-designated physician came up with a valid, final, and definite assessment on the seafarer's fitness or unfitness to work before the expiration of the 120- or 240-day period. In this case, the third doctor-referral provision does not apply because there is no definite disability assessment from the company-designated physicians. x x x Respondent was kept in the dark about his medical condition. It is the height of unfairness, bordering on bad faith, for petitioners to demand from respondent compliance with the third doctor rule when they and their designated physicians, in the first place, did not fulfill their obligations under the law and the POEA-SEC. Given the company-designated physicians' inaction or failure to disclose respondent's medical progress, the extent of his illnesses, and their effect on his fitness or disability, respondent was justified in seeking the medical expertise of the physician of his choice. x x x The third doctor rule covers only conflicting medical findings on the fitness to work or degree of disability. It does not cover the determination of whether the disability is work-related or not. x x x Under the circumstances of this case, non-referral to a third doctor will not prejudice respondent's claim. The rigorous process for disability claims prescribed in the POEA-SEC seeks a balance between a seafarer's right to receive a just compensation for his or her injuries and an employer's interest to determine the veracity of disability claims against it. In line with this policy, the third doctor rule was added to enable the parties to expeditiously settle disability claims in case of conflict between the findings of the company- designated physicians and the seafarer's doctor. It was not to be construed to mean that "it is only the company-designated physician who could assess the condition and declare the disability of seamen." Certainly, it cannot be used by employers to limit or defeat the legitimate claims of seafarers.

APPEARANCES OF COUNSEL

Md Pecson Law for petitioners.
Nicomedes Tolentino for respondent.

D E C I S I O N

LEONEN, *J.*:

The third doctor rule does not apply when there is no final and definitive assessment by the company-designated physicians.

This is a Petition for Review on Certiorari[1] against the Court of Appeals August 5, 2016 Decision[2] and January 5, 2017 Resolution[3] in CA-G.R. SP No. 141333. The Court of Appeals affirmed the May 15, 2015 Decision[4] of the Office of the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board granting Michael Paderes Atraje (Atraje) permanent total disability benefits in the amount of US$95,949.00 and 10% attorney's fees. It also denied Magsaysay Mol Marine, Inc. (Magsaysay Mol) and Mol Ship Management (Singapore) Pte. Ltd.'s (Mol Ship) Motion for Reconsideration.

The facts as narrated by the Court of Appeals are as follows:

On February 11, 2014, Atraje entered into a Contract of Employment[5] with Mol Ship, through its local manning agent, Magsaysay Mol, to work on board the vessel Carnation Ace as Second Cook. The employment contract

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[1] *Rollo,* pp. 29-64; Filed under Rule 45.

[2] *Id*. at 10-21. The Decision was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles of the Tenth Division, Court of Appeals, Manila.

[3] *Id*. at 24-25. The Resolution was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles of the Tenth Division, Court of Appeals, Manila.

[4] *Id*. at 131-153. The Decision, docketed as AC-691-RCMB-NCR-MVA-129-08-11-2014, was signed by Chairman Cenon Wesley P. Gacutan and Members Gregorio C. Biares, Jr. and Generoso T. Mamaril.

[5] *Id*. at 178.

was for nine (9) months with a basic monthly salary of US$599.00.[6] It was his seventh (7th) contract with the company.[7]

Atraje boarded the vessel on February 28, 2014.[8]

On March 4, 2014, at around noontime, Atraje slipped and fell while holding a casserole containing water and sliced vegetables. His head hit the stainless disposer and the floor. He had seizure and lost his consciousness for about five (5) hours. The incident was witnessed by the messman who was with him at that time.[9] When the vessel reached Singapore on March 8, 2014, he was brought to Singapore General Hospital,[10] where he underwent brain magnetic resonance imaging (MRI), electroencephalogram (EEG), and brain computed tomography (CT) scan. He was diagnosed to have suffered Epileptic Seizure with post-fit neurological deficit. He was declared unfit to work and recommended to be repatriated.[11]

Atraje arrived in the Philippines on March 12, 2014, and was referred to Shiphealth, Inc. (Shiphealth)[12] for further medical evaluation and treatment. He was noted to have left-sided hemiparesis. He underwent repeat brain CT scan, electrocardiography (ECG), EEG, and brain MRI, which showed normal results. He was advised to undergo physical therapy for motor function and muscle strength improvements.[13]

Atraje likewise underwent cervical spine MRI showing "mild desiccation at C3-4, C4-5, C5-6 with impression of mild cervical

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[6] *Id*. at 11 & 32.

[7] *Id*. at 132.

[8] *Id*. at 11.

[9] *Id*.

[10] *Id*. at 33.

[11] *Id*. at 11.

[12] *Id*. at 291.

[13] *Id*. at 12.

spondylosis with multi-level disc disease." He was still advised to undergo physical therapy.[14]

On April 4, 2014, Atraje was examined by an Orthopedic Spine Surgeon wherein the assessment was Ossified Posterior Longitudinal Ligament. He was advised to continue with the physical therapy and oral medications for the next two (2) weeks, and to undergo laminoplasty, C3-C6, if the left-sided weakness persisted or worsened.[15]

On April 25, 2014, Shiphealth issued a medical report stating that the Neurologist service's reassessment was single seizure episode. There was no indication for Atraje to undergo further diagnostic or treatment intervention neurology-wise. Hence, Atraje was discharged from Neurology service, although referral to Orthopedic Spine Surgery was recommended.[16]

On May 12, 2014, Atraje completed his 12 sessions of physical therapy. However, persistence of gait instability and weakness on his left side were still noted. Additionally, he reported intermittent recurrences of lower back pain.[17]

Shiphealth opined that "the current symptoms of weakness and spasticity of the left upper and lower extremities could be secondary to the [Ossified Posterior Longitudinal Ligament]."[18] Surgery was contemplated or, as an alternative, physical therapy for an indefinite period of time. The company-designated physicians further stated that the cervical Ossified Posterior Longitudinal Ligament may be pre-existing. "However, slight trauma to the neck may cause symptoms which may qualify it as work-aggravated."[19]

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[14] *Id*.

[15] *Id*. at 12 and 299.

[16] *Id*. at 12 and 301.

[17] *Id*. at 12.

[18] *Id*. at 12 and 304.

[19] *Id*.

Atraje continued to suffer from shoulder and neck pain, and had difficulty in using his upper extremities. He complained of tenderness on the paracervical area and was not restored to his pre-injury health status. He consulted an independent specialist, Dr. Manuel Fidel M. Magtira (Dr. Magtira), who issued on June 19, 2014 a Medical Report,[20] which stated that Atraje was "permanently unfit in any capacity to resume his sea duties as a seaman."[21]

On June 25, 2014 or 105 days from disembarkation, Shiphealth issued an Interim Disability Grading[22] of Grade 10: "Head, moderate paralysis of two (2) extremities producing moderate difficulty in movements with self-care activities."[23]

Atraje was referred to Ygeia Medical Center, Inc. (Ygeia Medical Center) for second opinion. In a letter[24] dated October 2, 2014, Dr. Lourdes A. Quetulio (Dr. Quetulio), the Medical Director of Ygeia Medical Center, stated that Atraje's illnesses, namely, "Herniated Nucleus Pulposus L3-4, L4-5, L5-S1 with Spondylosis and Radiculopathy, Bilateral Cervical Radiculopathy C5-C6 with degenerative changes; and Carpal Tunnel Syndrome Left, Moderate, are not work-related."[25]

Atraje sought payment of disability benefits from Magsaysay Mol and Mol Ship, invoking Article 28 of the Collective Bargaining Agreement[26] between All Japan Seamen's Union/ Associated Marine Officers' and Seamen's Union of the Philippines, and Mol Ship, represented by Magsaysay Mol.[27]

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[20] *Id*. at 238–239.

[21] *Id*. at 13.

[22] *Id*. at 306.

[23] *Id*. at 13.

[24] *Id*. at 307–308.

[25] *Id*. at 13.

[26] *Id*.

[27] *Id*. at 179-229.

This Agreement is otherwise known as the IBF JSU/AMOSUP-IMMAJ CBA.[28]

However, Atraje's demands proved futile.[29]

Thus, he filed a Complaint against Magsaysay Mol and Mol Ship for payment of total and permanent disability benefits, damages, and attorney's fees.[30]

On November 17, 2014, the parties agreed to terminate the mediation and to convene a Voluntary Arbitration Panel.[31]

Not reaching an amicable settlement, the parties were directed to submit their respective pleadings.[32]

In its May 15, 2015 Decision,[33] the Panel of Voluntary Arbitrators of the National Conciliation and Mediation Board awarded disability benefits of US$95,949.00 plus 10% of this amount as attorney's fees in favor of Atraje.[34] Finding that his injuries were work-related, it held that there was sufficient evidence to establish that he indeed suffered a fall while on board the ship, which caused injury to his neck area and his wrist. However, pre-existence of epileptic seizure has not been proven.[35] The Panel of Voluntary Arbiters further gave credence to the Grade 1 assessment of Atraje's physician over the company-designated physician's interim assessment of Grade 10.[36] It further noted that while Atraje initiated submitting to examination by a third doctor, there was silence

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[28] *Id*. at 132.

[29] *Id*. at 13.

[30] *Id*.

[31] *Id*.

[32] *Id*. at 14 and 410.

[33] *Id*. at 131–153.

[34] *Id*. at 153.

[35] *Id*. at 149.

[36] *Id*. at 151.

on the part of Magsaysay Mol and Mol Ship. Hence, it held that Atraje could not be faulted anymore if the appointment of a third physician was deemed waived in this case.[37]

Magsaysay Mol and Mol Ship's subsequent Motion for Reconsideration[38] was denied in the Panel of Voluntary Arbiters' July 3, 2015 Resolution.[39]

Atraje filed a Motion for Execution,[40] which was granted by the Panel of Voluntary Arbitrators.[41] Magsaysay Mol and Mol Ship paid Atraje the amount of US$95,949.00 plus 10% of this amount as attorney's fees, without prejudice to the outcome of their Rule 65 petition before the Court of Appeals.[42] A Deed of Conditional Satisfaction of Judgment[43] dated September 24, 2015 was executed between the parties and submitted to the National Conciliation and Mediation Board.[44]

In its August 5, 2016 Decision[45] and January 5, 2017 Resolution,[46] the Court of Appeals affirmed[47] the Panel of Voluntary Arbitrators' decision and denied[48] Magsaysay Mol and Mol Ship's subsequent motion for reconsideration.[49]

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[37] *Id*. at 152.

[38] *Id*. at 391-409.

[39] *Id*. at 129.

[40] *Id*. at 411-413.

[41] *Id*. at 36 and 81.

[42] *Id*. at 81.

[43] *Id*. at 84-86.

[44] *Id*. at 81-83.

[45] *Id*. at 10-21.

[46] *Id*. at 24-25.

[47] *Id*. at 20.

[48] *Id*. at 25.

[49] *Id*. at 440-465.

On March 1, 2017, Magsaysay Mol and Mol Ship filed their Petition for Review on Certiorari before this Court.[50]

Petitioners maintain that respondent is not entitled to permanent total disability benefits because his illnesses are not work-related, according to the letter of Dr. Quetulio on October 2, 2014.[51] They add that respondent's repatriation was not due to his alleged accident but due to a single episode of seizure,[52] the cause of which was unknown per the medical report of the same company-designated doctor.[53] Finally, petitioners argue that referral to a third doctor in case of conflicting findings of the company-designated doctor and the seafarer's personal doctor is mandatory. Since respondent failed to comply with this requirement, the assessment of the company-designated doctor should prevail.[54]

In his Comment,[55] respondent counters that his medical conditions are compensable under the governing Collective Bargaining Agreement[56] and that the Court of Appeals did not err in granting him permanent and total disability benefits.[57] The statements of Messman Francisco M. De Guzman (Messman De Guzman)[58] and Chief Cook Alvin Bartolome (Chief Cook Bartolome)[59] show clearly that respondent suffered an accidental fall while on duty.[60] Respondent adds that petitioners have not

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[50] *Id*. at 29.

[51] *Id*. at 40 and 46-47.

[52] *Id*. at 41.

[53] *Id*. at 45.

[54] *Id*. at 58.

[55] *Id*. at 482-507.

[56] *Id*. at 497.

[57] *Id*. at 488-489.

[58] *Id*. at 230-231, 370.

[59] *Id*. at 371.

[60] *Id*. at 489-490.

presented a Master's Report to prove their allegation that no accident occurred that time.[61] Moreover, the Certification[62] of Capt. Igor Pisarenko (Capt. Pisarenko) that there was no record of an accident involving respondent in the ship's official logbook is not the best evidence of this fact; rather, it is the logbook itself.[63] Respondent contends that "[p]etitioners' unjustifiable failure to present the 'Carnation Ace' logbook is tantamount to willful suppression of evidence, adverse to them if presented."[64]

Respondent further contends that Dr. Quetulio's October 2, 2014 letter relied upon by petitioners does not discount but even lends support to his claim that his medical conditions are work-related.[65] Dr. Quetulio's opinion that his injury is not work-related is negated by the Grade 10 assessment given by the other company-designated physicians at Shiphealth, which constituted "an admission that [respondent's] disabling conditions are work-related nothing less."[66]

Finally, respondent counters that non-referral to a third doctor is not a drawback to his complaint. In the first place, the medical assessment and opinion of the company-designated doctors were not disclosed to him. He came to know about them only after his complaint had been filed. As of April 21, 2014, the company stopped providing for his treatment and he was, since then, left on his own. He could not have complied with the third doctor rule since he was not given any assessment by the company-designated physicians even after his treatment had been supposedly terminated. If at all, it was petitioners who committed a breach of contract by withholding and concealing his medical records.[67]

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[61] *Id*. at 491.

[62] *Id*. at 389.

[63] *Id*. at 491-492.

[64] *Id*. at 491.

[65] *Id*. at 493.

[66] *Id*. at 496.

[67] *Id*. at 499-500.

This Court resolves the issue of whether or not the Court of Appeals erred in affirming the award of permanent and total disability benefits in favor of respondent Michael Paderes Atraje.

This Court denies the Petition.

I

Petitioners insist that respondent's illnesses are not work-related. They anchor their position on Dr. Quetulio's declaration in her October 2, 2014 letter that without any past medical results or examinations, it was difficult to trace the causes of the illnesses, thereby concluding that they were not work-related.[68]

However, the same letter relied upon by petitioners likewise acknowledged that "Herniated Nucleus Pulposus is considered work-related if there is history of trauma or carrying of heavy objects. Carpal Tunnel Syndrome is considered work-related if there is history of repetitive movement of the involved wrist/hand."[69] Shiphealth's earlier report also declared that a "slight trauma to the neck may cause symptoms which may qualify [respondent's injuries] as work[-]aggravated."[70]

In this case, it has been established that there was history of trauma at work involving respondent while on board the vessel. The Panel of Voluntary Arbitrators held that substantial evidence[71] exists showing that respondent indeed suffered a fall while on board the ship, which caused injury to his neck area and his wrist.

> [E]xtant from the uncontested statement of Chief Cook Alvin Bartolome, that he together with Messman De Guzman saw [respondent] had a sudden fall which incident they immediately reported to their superiors . . . [W]hen [respondent] regained his

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[68] *Id*. at 308.

[69] *Id*. at 308.

[70] *Id*. at 304.

[71] *Id*. at 150.

consciousness, he was asked why and he answered that he was not able to sleep due to the noise of the air-conditioning unit in his cabin.

Such recorded event of [respondent] having suffered a fall and/or lost consciousness while in the course of performing duties as Second Cook aboard has gained prominence as the starting point of the medical condition . . .

It does not require a rocket scientist to ascertain the fact that a person who suffers from lack of or without sleep has weakened systems with tendency to pass out and/or prone to accident. Hence, the sudden fall experienced by [respondent] at work which resulted to the disabling injury on his neck area and aggravated by the injury on his wrist otherwise known as Carpal Tunnel Syndrome.[72]

The Panel of Voluntary Arbitrators further found no evidence to prove that respondent's condition "merely arose from wear and tear or degeneration,"[73] or that he was suffering from a preexistent illness.[74]

These factual findings of the Panel of Voluntary Arbitrators, which were affirmed by the Court of Appeals, are binding and will not be disturbed absent any showing that they were made arbitrarily or were unsupported by substantial evidence.[75]

Petitioners would insist, however, that there was no accident involving respondent. They point to the Certification of Capt. Pisarenko, which stated as follows:

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[72] *Id*. at 148–149.

[73] *Id*. at 148.

[74] *Id*. at 149.

[75] *Centennial Transmarine, Inc. v. Quiambao,* G.R. No. 198096, July 8, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/198096.pdf> [Per *J*. Del Castillo, Second Division]; *Dela Rosa v. Michaelmar Philippines, Inc.,* 664 Phil. 154 (2011) [Per *J*. Nachura, Second Division]; *Merin v. National Labor Relations Commission,* 590 Phil. 596 (2008) [Per *J*. Tinga, Second Division]; *DMA Shipping Philippines v. Cabillar,* 492 Phil. 631 (2005) [Per *J*. Callejo, Sr., Second Division]; *Stolt-Nielsen Marine Services, Inc. v. National Labor Relations Commission,* 360 Phil. 881 (1998) [Per *J*. Romero, Third Division].

CERTIFICATION

I, Capt. Igor Pisarenko, am the custodian of the logbook of the ship Carnation Ace. The ship's logbook is a repository of all the ship's activities, including incidents of accidents or injuries onboard. I do certify that upon review of the ship's official logbook, there appears no record of an accident involving Mr. Michael P. Atraje.

Mr. Michael P. Atraje was engaged as 2nd Cook onboard Carnation Ace from 28 February 2014 until 08 March 2014.[76]

This Court is not persuaded.

As a rule, a Rule 45 review by this Court in labor cases does not delve into factual questions or to an evaluation of the evidence submitted by the parties.[77] This Court is tasked to merely determine the legal correctness of the Court of Appeals' conclusion that found no grave abuse of discretion on the part of the Panel of Voluntary Arbitrators in awarding full disability benefits to respondent.[78] Even so, this Court finds Capt. Pisarenko's Certification proffered by petitioners insufficient to prove their claim that Atraje did not incur an accident.

Capt. Pisarenko's Certification lacks probative value. First, it was not authenticated by Philippine consular officials. Second, the vessel's logbook, which is the official repository of the daily transactions and occurrences on board the vessel,[79] is the

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[76] *Rollo,* p. 389.

[77] *Perea v. Elburg Shipmanagement Philippines, Inc.,* G.R. No. 206178, August 9, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/206178.pdf> [Per *J.* Leonen, Third Division]; *Cootauco v. MMS Phil. Maritime Services, Inc.,* 629 Phil. 506 (2010) [Per *J.* Perez, Second Division].

[78] See *Jebsen Maritime, Inc. v. Ravena,* 743 Phil. 371 (2014) [Per *J.* Brion, Second Division]; *Javier v. Philippine Transmarine Carriers, Inc.,* 738 Phil. 374 (2014) [Per *J.* Brion, Second Division]; *Reyes & Lim Co., Inc. v. National Labor Relations Commission,* 278 Phil. 761 (1991) [Per *J.* Medialdea, First Division].

[79] *Transglobal Maritime Agency, Inc. v. Chua, Jr.,* G.R. No. 222430, August 30, 2017 <http://sc.judiciary.gov.ph/jurisprudence/2008/october2008/172800.htm> [Per *J.* Peralta, Second Division].

best evidence of its contents.[80] In *Haverton Shipping Ltd. v. NLRC,*[81] this Court declared that entries made in the vessel's logbook, when "made by a person in the performance of a duty required by law[,] are *prima facie* evidence of the facts stated [in it]."[82] However, the logbook itself or authenticated copies of pertinent pages of it must be presented and not merely "typewritten excerpts from the 'logbook' [that] have no probative value at all."[83]

In *C.F. Sharp Crew Management, Inc. v. Legal Heirs of Repiso*,[84] this Court rejected an employer's claim that a seafarer was merely repatriated at a convenient port and not due to medical illness, and held:

> The burden was thus shifted to petitioners to prove that Godofredo was only repatriated at a convenient port. However, aside from their bare allegations, petitioners did not present any other proof of their purported reason for Godofredo's repatriation. Petitioners explain that they no longer presented in evidence the ship's logbook or master's report since Godofredo did not complain of or suffer any illness on board M/T *Umm Al Lulu*, hence, there was no such entry in the ship's logbook or any master's report of such incident. **The Court notes though that petitioners had possession of and access to all logbooks and records of M/T *Umm Al Lulu*, and presentation of the said logbooks and records would have been material to prove the *actual absence* of any entry or report regarding Godofredo's health while he was on board.** Moreover, it is difficult to believe that petitioners

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[80] See *Centennial Transmarine, Inc. v. Dela Cruz*, 585 Phil. 206 (2008); *Wallem Maritime Services, Inc. v. NLRC,* 331 Phil. 476 (1996) [Per *J*. Romero, Second Division]; *Abacast Shipping and Management Agency, Inc. v. National Labor Relations Commission,* 245 Phil. 487 (1988) [Per *J*. Cruz, First Division].

[81] 220 Phil. 356 (1985) [Per *J*. Melencio-Herrera, First Division].

[82] *Id*. at 362–363.

[83] *Wallem Maritime Services, Inc. v. NLRC,* 331 Phil. 476, 489 (1996) [Per *J*. Romero, Second Division].

[84] G.R. No. 190534, February 10, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/190534.pdf> [Per *J*. Leonardo-De Castro, First Division].

had absolutely no log entry or record regarding Godofredo's repatriation, whether for medical or any other reason. Godofredo could not have disembarked from M/T *Umm Al Lulu* without express authority or consent from the master of the ship or petitioners as Godofredo's employers, and such authority or consent would have most likely stated the justifying cause for the same. **That petitioners did not present such logbooks and records even gives rise to the presumption that something in said logbooks and records is actually adverse to petitioners' case.**[85] (Emphasis supplied)

Petitioners should have presented the vessel's logbook instead of a mere unauthenticated Certification of a certain Capt. Pisarenko, who was not even shown to be the ship captain during respondent's employment. Moreover, even if no record of the accident is reflected in the logbook, this does not constitute conclusive proof that it did not happen, especially in light of the positive declarations of Chief Cook Bartolome and Messman De Guzman that respondent suffered a fall while at work.

To be compensable, reasonable proof of work-connection, not direct causal relation, is sufficient. "Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings."[86] This Court agrees with the Panel of Voluntary Arbitrators and the Court of Appeals that respondent's illnesses are work-related.

II

Neither did the Court of Appeals err in affirming the Panel of Voluntary Arbitrators' award of permanent total disability benefits.

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[85] *Id.* at 20–21.

[86] *Magat v. Interorient Maritime Enterprises, Inc.,* G.R. No. 232892, April 4, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/232892.pdf> 7 [Per J. Peralta, Second Division]; *Leonis Navigation Co., Inc. v. Obrero,* G.R. No. 192754, September 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/192754.pdf> [Per J. Jardeleza, Third Division]; *Leonis Navigation Co., Inc. v. Villamater,* 628 Phil. 81 (2010) [Per J. Nachura, Third Division].

The facts of this case show that respondent was never issued any medical assessment or progress report by the company-designated physicians, from his initial check up on March 13, 2014[87] until his last consultation on October 2, 2014, spanning a total of 204 days. Neither the interim disability rating issued on June 25, 2014 nor Dr. Quetulio's letter dated October 2, 2014 was given to respondent. In fact, respondent came to know about the reports only after his Complaint had been filed with the National Conciliation and Mediation Board. By legal contemplation, Atraje's disabilities are conclusively presumed to be permanent and total.[88]

Under the Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC), it is the primary responsibility of the company-designated doctor to determine the disability grading or fitness to work of seafarers.[89] To be conclusive, however, the medical assessment or report of the company-designated physician must be complete[90] and definite[91]

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[87] *Rollo*, p. 33.

[88] *Cutanda v. Marlow Navigation Phils., Inc.,* G.R. No. 219123, September 11, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/219123.pdf> [Per *J*. Peralta, Second Division]; *Tamin v. Magsaysay Maritime Corp.,* G.R. No. 220608, August 31, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/220608.pdf> [Per *J*. Velasco, Jr., Third Division]; *Fair Shipping Corp. v. Medel,* 693 Phil. 516 (2012) [Per *J*. Leonardo-De Castro, First Division].

[89] *OSG Ship Management Manila, Inc. v. Monje,* G.R. No. 214059, October 11, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/october2017/214059.pdf> [Per *J*. Reyes, Jr., Second Division]; *Magsaysay Maritime Corp. v. Velasquez,* 591 Phil. 839 (2008) [Per *J*. Leonardo-De Castro, First Division].

[90] *Olidana v. Jebsens Maritime, Inc.,* G.R. No. 215313, October 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/215313.pdf> [Per *J*. Mendoza, Second Division].

[91] *Sunit v. OSM Maritime Services, Inc.,* G.R. No. 223035, February 27, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/223035.pdf> [Per *J*. Velasco, Jr., Third Division].

to give the seafarer proper disability benefits. As explained by this Court:

> A **final and definite disability assessment** is necessary in order to truly reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such. Otherwise, the corresponding disability benefits awarded might not be commensurate with the prolonged effects of the injuries suffered.[92] (Emphasis in the original)

Furthermore, while the assessment of the company-designated physician *vis à vis* the schedule of disabilities under the POEA-SEC is the basis for compensability of a seafarer's disability, it is still subject to the periods prescribed in the law.[93]

Article 192(c)(1) of the Labor Code provides that temporary total disability lasting continuously for more than 120 days, except as otherwise provided in the Implementing Rules or the Amended Rules on Employee Compensation of Title II, Book IV of the Labor Code, shall be deemed total and permanent. Rule X, Section 2(a) of the Amended Rules on Employee Compensation in turn provides that:

> Section 2. *Period of entitlement.* — (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days **except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days** from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.[94] (Emphasis supplied)

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[92] *Id.* at 10.

[93] *Carcedo v. Maine Marine Philippines, Inc.,* 758 Phil. 166 (2015) [Per *J.* Carpio, Second Division].

[94] Amended Rules on Employees' Compensation, Rule X, Sec. 2 <http://ecc.gov.ph/wp-content/uploads/2015/09/Booklet_Amended_Rules_on_EC_2014.pdf>.

In *Talaroc v. Arpaphil Shipping Corp.,*[95] this Court summarized the rules regarding the duty of the company-designated physician in issuing a final medical assessment, as follows:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.*, seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[96]

Here, the company-designated physicians clearly breached their duty to provide a definite assessment of respondent's condition. While the records show that reports were regularly issued to update respondent's medical condition, the particular

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[95] G.R. No. 223731, August 30, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/223731.pdf> [Per *J.* Perlas-Bernabe, Second Division]. See also *Olidana v. Jebsens Maritime, Inc.,* G.R. No. 215313, October 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/215313.pdf> [Per *J.* Mendoza, Second Division]; and *Sunit v. OSM Maritime Services, Inc.,* G.R. No. 223035, February 27, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/223035.pdf> [Per *J.* Velasco, Jr., Third Division].

[96] *Id.* at 9.

treatment administered, and the medicines prescribed to him, they were correspondences between the company-designated physicians and petitioners only. There was no indication that respondent was furnished these reports.

Significantly, the interim disability rating of Grade 10 issued on June 25, 2014, or 105 days from respondent's repatriation, was never given to respondent. Also, as an interim disability grade, it does not fully assess respondent's condition and cannot provide sufficient basis for the award of disability benefits in his favor. In fact, the company doctors recommended that respondent undergo MRI of the lumbosacral spine[97] and surgery. Respondent was, instead, referred by petitioners to Ygeia Medical Center for a second medical opinion.

Dr. Quetulio's October 2, 2014 letter, on the other hand, stated that "without any past medical results or examinations from Mr. Atraje, . . . it would be difficult to trace the cause of the illnesses. Therefore, concluding, that Mr. Atraje's illnesses are not work-related."[98] This report lacked a final assessment of respondent's medical condition, of his disability, or of his fitness to work. On the contrary, it is noted from the report that physical therapy was recommended by the Neuro-Psychiatrist for further management of respondent's condition. Similar to the June 25, 2014 interim disability rating, respondent also did not have a copy of this report.

Through all his check-ups and tests, respondent did not receive any medical assessment of his fitness to resume work from the company-designated physicians. Respondent's shoulder and neck pain persisted such that he was forced to consult an independent physician, Dr. Magtira. After evaluating respondent's previous MRI and physical examination, and after giving a brief description of respondent's disease, Dr. Magtira issued his Medical Report on June 19, 2014. He stated that

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[97] *Rollo,* p. 301 (April 25, 2014 Medical Report No. 5), 302 (May 12, 2014 Medical Report No. 6), and 305 (June 25, 2014 Medical Report No. 8).

[98] *Id.* at 308.

respondent "should refrain from activities producing torsional stress on the back and those that require repetitive bending and lifting"[99] and that his work activities must be restricted. He further stated that respondent does not have the physical capacity to return to his previous work and is "permanently unfit in any capacity to resume his sea duties."[100]

Evidently, his illnesses disabled him to continue his job on board the vessel. Despite medication and physical therapy, he was not restored to his pre-injury health status.[101] Moreover, there was no declaration from the company-designated doctors about his fitness to return to work, while his own physician advised him to refrain from undergoing strenuous activities.

This Court has held that:

> [P]ermanent total disability does not mean a state of absolute helplessness but the inability to do substantially all material acts necessary to the prosecution of a gainful occupation without serious discomfort or pain and without material injury or danger to life. In disability compensation, it is not the injury *per se* which is compensated but the incapacity to work.[102]

Respondent's inability to perform his customary sea duties, coupled with the company-designated physicians' abdication of their primary duty to declare his fitness or unfitness to work within the prescribed period, transforms his disability to permanent and total by operation of law.[103]

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[99] *Id*. at 239.

[100] *Id*.

[101] *Id*. at 73.

[102] *Olidana v. Jebsens Maritime, Inc.,* G.R. No. 215313, October 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/215313.pdf> 8 [Per *J*. Mendoza, Second Division].

[103] *Tamin v. Magsaysay Maritime Corp.,* G.R. No. 220608, August 31, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/220608.pdf> [Per *J*. Velasco, Jr., Third Division]; *Carcedo v. Maine Marine Philippines, Inc.,* 758 Phil. 166 (2015) [Per *J*. Carpio, Second Division].

III

Finally, petitioners' contention on non-compliance with the third doctor rule is untenable.

Under Section 20(A)(3)[104] of the 2010 POEA-SEC, *"If a doctor appointed by the seafarer disagrees with the* ***assessment****, a third doctor may be agreed jointly between the Employer and the*

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[104] Section 20. Compensation and Benefits

A. Compensation and Benefits for Injury or Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

. . . . . .

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

seafarer. The third doctor's decision shall be final and binding on both parties."[105] The *assessment* refers to the declaration of fitness to work or the degree of disability, as can be gleaned from the first paragraph of Section 20(A)(3). It presupposes that the company-designated physician came up with a valid, final, and definite assessment on the seafarer's fitness or unfitness to work before the expiration of the 120- or 240-day period.[106]

In this case, the third doctor-referral provision does not apply because there is no definite disability assessment from the company-designated physicians.[107]

In *Kestrel Shipping Co., Inc. v. Munar:*[108]

In addition, that it was by operation of law that brought forth the conclusive presumption that Munar is totally and permanently disabled, there is no legal compulsion for him to observe the procedure prescribed under Section 20-B (3) of the POEA-SEC. **A seafarer's compliance with such procedure presupposes that the company-designated physician came up with an assessment as to his fitness or unfitness to work before the expiration of the 120-day or 240-day periods.**

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[105] POEA Memo. Circ. No. 010-10 (2010), Sec. 20 (A)(3), Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships, <http://www.poea.gov.ph/memorandumcirculars/2010/10.pdf>.

[106] *Saso v. 88 Aces Maritime Service, Inc.,* (Resolution), 770 Phil. 677 (2015) [Per *J*. Del Castillo, Second Division] citing *C.F. Sharp Crew Management, Inc. v. Taok,* 691 Phil. 521 (2012) [Per *J*. Reyes, Second Division].

[107] *Tamin v. Magsaysay Maritime Corp.,* G.R. No. 220608, August 31, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/220608.pdf> [Per *J*. Velasco, Jr., Third Division]; *Carcedo v. Maine Marine Philippines, Inc.,* 758 Phil. 166 (2015) [Per *J*. Carpio, Second Division]. See also *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.,* G.R. No. 217345, July 12, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/217345.pdf> [Per *J*. Mendoza, Second Division]; *Apines v. Elburg Shipmanagement Philippines, Inc.,* G.R. No. 202114, November 9, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/november2016/202114.pdf> [Per *J*. Reyes, Third Division].

[108] 702 Phil. 717 (2013) [Per *J*. Reyes, First Division].

Alternatively put, absent a certification from the company-designated physician, the seafarer had nothing to contest and the law steps in to conclusively characterize his disability as total and permanent.[109] (Emphasis supplied)

Respondent was kept in the dark about his medical condition. It is the height of unfairness, bordering on bad faith, for petitioners to demand from respondent compliance with the third doctor rule when they and their designated physicians, in the first place, did not fulfill their obligations under the law and the POEA-SEC. Given the company-designated physicians' inaction or failure to disclose respondent's medical progress, the extent of his illnesses, and their effect on his fitness or disability, respondent was justified in seeking the medical expertise of the physician of his choice.

In *Sharpe Sea Personnel, Inc. v. Mabunay, Jr.*,[110] a company's belated release of the disability rating and its attempt to discredit the findings of a seafarer's doctor for non-compliance with the third doctor rule was considered by this Court as acts of bad faith, which justified the award of damages in favor of the seafarer. It held:

By not timely releasing Dr. Cruz's interim disability grading, petitioners revealed their intention to leave respondent in the dark regarding his future as a seafarer and forced him to seek diagnosis from private physicians. Petitioners' bad faith was further exacerbated when they tried to invalidate the findings of respondent's private physicians, for his supposed failure to move for the appointment of a third-party physician as required by the POEA-SEC, despite their own deliberate concealment of their physician's interim diagnosis from respondent and the labor tribunals. Thus, this Court concurs with the Court of Appeals when it stated:

> We also grant petitioner's prayer for moral and exemplary damages. Private respondents acted in bad faith when they belatedly submitted petitioner's Grade 8 disability rating only

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[109] *Id.* at 737-738.

[110] G.R. No. 206113, November 6, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/november2017/206113.pdf> [Per J. Leonen, Third Division].

> via their motion for reconsideration before the [National Labor Relations Commission]. By withholding such disability rating from petitioner, the latter was compelled to seek out opinion from his private doctors thereby causing him mental anguish, serious anxiety, and wounded feelings, thus, entitling him to moral damages of ₱50,000.00. Too, by way of example or correction for the public good, exemplary damages of ₱50,000.00 is awarded.[111]

In this case, however, respondent no longer questioned the denial of his claims for moral and exemplary damages. Neither did he raise before the Court of Appeals or this Court the issue of whether he was entitled to these damages. Instead, he sought the execution of the Panel of Voluntary Arbitrators' May 15, 2015 Decision while petitioners' Rule 65 petition was pending before the Court of Appeals. Hence, this matter will no longer be tackled here.

Furthermore, as noted by the Panel of Voluntary Arbitrators, non-referral of the case to a third doctor was attributable to petitioners. For while respondent initiated to be submitted to examination by a third doctor, there was silence on the part of petitioners,[112] who did not respond by setting into motion the process of choosing a third doctor who could rule with finality the disputed medical situation.[113]

Lastly, petitioners were adamant in their position that respondent's disabling medical conditions are not work-related. The third doctor rule covers only conflicting medical findings on the fitness to work or degree of disability. It does not cover the determination of whether the disability is work-related or not. As this Court held in *Leonis Navigation Co. v. Obrero*:[114]

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[111] *Id.* at 16.

[112] *Rollo,* p. 152.

[113] *INC Shipmanagement, Inc. v. Rosales*, 744 Phil. 774 (2014) [Per J. Brion, Second Division] citing *Bahia Shipping Services, Inc. v. Constantino,* 738 Phil. 564 (2014) [Per J. Brion, Second Division].

[114] G.R. No. 197254, September 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/september2016/192754.pdf> [Per J. Jardeleza, Third Division].

> [U]nder Section 20 (B) (3) of the POEA-SEC, referral to a third physician in case of contrasting medical opinions (between the company-designated physician and the seafarer-appointed physician) is a mandatory procedure that must be expressly requested by the seafarer. As a consequence of the provision, the company can insist on its disability rating even against a contrary opinion by another physician, unless the seafarer signifies his intent to submit the disputed assessment to a third physician. We clarify, however, that Section 20 (B) (3) refers only to **the declaration of fitness to work** or **the degree of disability**. *It **does not** cover the determination of whether the disability is work-related.* There is nothing in the POEA-SEC which mandates that the opinion of the company-designated physician regarding work-relation should prevail or that the determination of such relation be submitted to a third physician.[115] (Emphasis in the original, citation omitted)

Under the circumstances of this case, non-referral to a third doctor will not prejudice respondent's claim.

The rigorous process for disability claims prescribed in the POEA-SEC seeks a balance between a seafarer's right to receive a just compensation for his or her injuries[116] and an employer's interest to determine the veracity of disability claims against it. In line with this policy, the third doctor rule was added to enable the parties to expeditiously settle disability claims[117] in case of conflict between the findings of the company-designated physicians and the seafarer's doctor. It was not to be construed to mean that "it is only the company-designated physician who could assess the condition and declare the disability of seamen."[118]

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[115] *Id.* at 9.

[116] *De Andres v. Diamond H Marine Services & Shipping Agency, Inc.,* G.R. No. 217345, July 12, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/217345.pdf> [Per J. Mendoza, Second Division].

[117] *Philippine Hammonia Ship Agency, Inc. v. Dumadag,* 712 Phil. 507 (2013) [Per J. Brion, Second Division].

[118] *Magsaysay Maritime Services v. Laurel,* 707 Phil. 210 (2013) [Per J. Mendoza, Third Division].

Certainly, it cannot be used by employers to limit or defeat the legitimate claims of seafarers.

WHEREFORE, the Petition is **DENIED.** The Court of Appeals August 5, 2016 Decision and January 5, 2017 Resolution in CA-G.R. SP No. 141333 are **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 229955. July 23, 2018]

MELCHOR BARCENAS DEOCARIZA, *petitioner, vs.* **FLEET MANAGEMENT SERVICES PHILIPPINES, INC., MODERN ASIA SHIPPING CORPORATION, A.B.F. GAVIOLA, JR., and MA. CORAZON CRUZ**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE 45 PETITION; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION THERETO, APPLIED.— The general rule is that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect. There are, however, recognized exceptions to this general rule, such as the instant case, where the judgment

is based on a misapprehension of facts and the findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. LABOR AND SOCIAL LEGISLATION; SEAFARER; DISABILITY BENEFITS; WILLFUL CONCEALMENT OR MISREPRESENTATION OF A PRE-EXISTING CONDITION OR ILLNESS ABSOLVES THE EMPLOYER FROM LIABILITY; CONDITIONS BEFORE AN ILLNESS MAY BE CONSIDERED AS PRE-EXISTING.— The Court, however, finds the foregoing conclusion anchored on pure speculation. At the outset, it bears to point out that Section 20 (E) of the 2010 POEA-SEC speaks of an instance where an employer is absolved from liability when a seafarer suffers a work-related injury or illness on account of the latter's willful concealment or misrepresentation of a pre-existing condition or illness. Thus, the burden is on the employer to prove such concealment of a pre-existing illness or condition on the part of the seafarer to be discharged from any liability. In this regard, an illness shall be considered as pre-existing if prior to the processing of the POEA contract, **any** of the following conditions is present, namely: (*a*) the advice of a medical doctor on treatment was given for such continuing illness or condition; or (*b*) the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during the PEME, and **such cannot be diagnosed during the PEME**.

3. ID.; ID.; ID.; ID.; ID.; WHETHER OR NOT PETITIONER WAS IMPLANTED WITH A MECHANICAL HEART VALVE COULD HAVE BEEN EASILY DETECTED DURING THE PRE-EMPLOYMENT MEDICAL EXAMINATION (PEME), HENCE, RESPONDENTS' CLAIM OF CONCEALMENT WITHOUT ANY SUPPORTING EVIDENCE CANNOT STAND.— [I]t is worthy to note that petitioner was initially hired by respondents in 2010 and re-hired anew on June 15, 2011. Among the procedures to be undertaken during his routine PEME were chest x-ray, a common type of exam that reveals, among others, the size and outline of a heart and blood vessels, and 2D echogram, a test in which ultrasound technique is used to take excellent **images of the heart, paracardiac structures and the great vessels**. Therefore, if indeed petitioner was implanted with a mechanical heart valve, it could have been easily detected

by the respondents in the course thereof. x x x Evidently, respondents' claim of concealment based on a bare declaration from a doctor in Singapore without any supporting document cannot stand.

4. ID.; ID.; ID.; APLASTIC ANEMIA BROUGHT ABOUT BY CONSTANT EXPOSURE TO BENZENE IS COMPENSABLE IN CASE AT BAR HAVING BEEN ESTABLISHED THAT IT HAS BEEN CONTRACTED BY PETITIONER DURING HIS LAST EMPLOYMENT WITHOUT SHOWING THAT HE WAS NEGLIGENT IN THE EXERCISE OF HIS FUNCTION.— To be considered as work-related, Aplastic Anemia should be contracted under the condition that there should be exposure to x-rays, ionizing particles of radium or other radioactive substances or other forms of radiant energy. As pointed out by the company-designated physician, "exposure to benzene and its compound derivatives may predispose to development of such condition," and that work-relatedness will depend on exposure to any of the above-mentioned factors. x x x [A]s borne out by the records, it was not disputed that petitioner, as Chief Officer of M.V. Morning Carina, actively supervised the loading and unloading operations of cars/motor vehicles in every voyage that constantly exposed him to an atmosphere of cargoes with nearly 6,000 cars in just one voyage alone. Benzene, an important component of gasoline, is emitted from the engines of these cars in the course of their loading and unloading. Since studies show that Benzene is highly volatile, and exposure occurs mostly through inhalation, it cannot be denied that petitioner was constantly exposed to the hazards of benzene in the course of his employment. The use of safety gears in the performance of his duties, as advanced by respondents, did not foreclose the possibility of petitioner's exposure to such harmful chemical, given that he was in fact diagnosed with Aplastic Anemia brought about by chronic exposure to benzene. Under the foregoing circumstances, it is evident that petitioner's illness is clearly work-related in accordance with the POEA-SEC. In fine, having sufficiently established by substantial evidence the reasonable link between the nature of petitioner's work as Chief Officer and the illness contracted during his last employment with no showing that he was notoriously negligent in the exercise of his functions, the latter's ailment, as well as the resulting disability, is a

compensable work-related illness under Section 32-A of the 2010 POEA-SEC.

5. ID.; ID.; ID.; SINCE 247 DAYS HAD LAPSED AND THE COMPANY-DESIGNATED PHYSICIAN STILL FAILED TO MAKE A DEFINITIVE ASSESSMENT OF PETITIONER'S DISABILITY, HE IS CONCLUSIVELY PRESUMED TOTALLY AND PERMANENTLY DISABLED; PETITIONER IS ENTITLED TO PERMANENT TOTAL DISABILITY COMPENSATION.— In this case, records reveal that from the time petitioner was repatriated on December 26, 2011, a total of 247 days had lapsed when he last consulted with the company-designated physician on August 29, 2012. Concededly, said period have already exceeded the maximum 240-day extension as explained by this Court in a long line of cases, without any definitive assessment of petitioner's disability. Hence, petitioner is conclusively presumed totally and permanently disabled. However, petitioner is entitled to the payment of total and permanent disability benefits under the 2010 POEA-SEC and not under the CBA as he claimed, considering the lack of proof that he met an accident and was injured while on board the vessel, or while traveling to or from the same. Thus, petitioner is entitled to US$60,000.00, which is the amount due for permanent total disability under Section 32 of the 2010 POEA-SEC.

6. ID.; ID.; ID.; PETITIONER IS LIKEWISE ENTITLED TO ATTORNEY'S FEES.— The Court likewise finds petitioner entitled to attorney's fees in accordance with Article 2208 of the New Civil Code which grants the same in actions for indemnity under the workmen's compensation and employer's liability laws. It is also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest, as in this case. Case law states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to [ten percent] (10%) of the award."

APPEARANCES OF COUNSEL

Bantog & Andaya Law Offices for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 3, 2016 and the Resolution[3] dated February 9, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 135118 which affirmed the Decision[4] dated January 30, 2014 and the Resolution[5] dated February 28, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. (OFW-M) 01-000041-14, dismissing petitioner Melchor Barcenas Deocariza's (petitioner) complaint for total and permanent disability benefits.

The Facts

Petitioner was initially hired in 2010 as Chief Officer by Fleet Management Services Philippines., Inc., for and in behalf of its principal, Modern Asia Shipping Corporation (collectively, respondents) on board the vessel, M.V. Morning Carina, a car and motor carrier ship.[6] On June 15, 2011, he was re-hired by respondents for the same position under a six (6)-month contract[7] with a basic monthly salary of US$1,350.00, exclusive of overtime pay and other benefits, and covered

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[1] *Rollo*, pp. 26-56.

[2] *Id*. at 11-19. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios, concurring.

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

[4] CA *rollo*, pp. 29-40. Penned by Presiding Commissioner Alex A. Lopez with Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr., concurring.

[5] *Id*. at 42-43.

[6] *Rollo*, p. 101.

[7] See Contract of Employment; CA *rollo*, p. 75.

by a Collective Bargaining Agreement (CBA).[8] His duties[9] entailed, among others, the supervision in the loading and unloading of vehicles in the vessel.[10] After undergoing the required pre-employment medical examination (PEME), where the company-designated physician declared him fit for sea duty,[11] petitioner boarded the vessel on July 19, 2011.[12]

In the course of his employment, or on December 3, 2011, petitioner complained of bruises on both thighs, rashes on his neck, delayed healing of abrasion wound on his left forearm, fever, sore throat, and loss of appetite.[13] Thus, on December 18, 2011, he was brought to the Seacare[14] Maritime Medical Center Pte., Ltd. (Seacare Maritime) in Singapore, where he was noted to have "decreased hemoglobin, total white cell count and platelet count on complete blood count"[15] for which reason he was declared a "[h]igh-risk patient with mechanical heart valves."[16] Petitioner was thereafter confined at the Parkway East Hospital's Intensive Care Unit in Singapore with the following diagnosis: "[t]o Consider Autoimmune Disease, Hypoplastic Anemia, Viral induced Pantocytopenia and Acute Leukemia."[17] He was medically repatriated on December 26, 2011 and was, consequently, referred to a company-designated

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[8] See International Bargaining Forum All Japan Seamen's Union/ Associated Marine Officers' and Seamen's Union of the Philippines - International Mariners Management Association of Japan (IBF JSU/AMOSUP-IMMAJ CBA); *id.* at 79-104.

[9] See *rollo*, pp. 85-89.

[10] *Id.* at 29.

[11] See Medical Examination Records dated June 8, 2011; CA *rollo*, p.107.

[12] *Id.* at 67.

[13] *Id.* at 31 and 67.

[14] "Seacara" in some parts of the records.

[15] CA *rollo*, p. 108.

[16] *Id.* at 110.

[17] *Id.* at 108.

physician at the Metropolitan Medical Center (MMC) who diagnosed him to be suffering from "Aplastic Anemia."[18]

In the Medical Report[19] dated February 10, 2012, the company-designated physician explained that the cause of Aplastic Anemia is usually "idiopathic (unknown case)," and that the specialist opined that "exposure to benzene and its compound derivatives may predispose to development of such condition." Hence, the company-designated physician expressed that the work-relatedness of petitioner's illness would depend on his exposure to such factors.[20] However, on September 10, 2012, the company-designated physician informed respondents that after petitioner was seen on August 29, 2012, the latter no longer appeared at his next scheduled follow-up session on September 3, 2012.[21]

Meanwhile, claiming that his illness rendered him incapacitated to resume work as a seafarer for more than 240 days, petitioner filed a complaint[22] dated April 16, 2013 against respondents, together with their President, respondent A.B.F. Gaviola, and Treasurer/Director/Finance Manager, respondent Ma. Corazon D. Cruz, for the payment of total and permanent disability benefits in accordance with the CBA, in the amount of US$148,500.00,[23] moral and exemplary damages, and attorney's fees, before the NLRC, docketed as NLRC NCR Case No. (M)-04-05638-13.[24] In support thereof, petitioner presented among others, a letter[25] dated August 15, 2012 signed by Atty. German N. Pascua, Jr. (Atty. Pascua), National Vice President

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[18] See Medical Report dated January 6, 2012; *id*. at 111-112. See also *id*. at 31.

[19] *Rollo*, p. 81.

[20] *Id*.

[21] See letter dated September 10, 2012; CA *rollo*, p. 114.

[22] NLRC records, pp. 1-2; including dorsal portion.

[23] "US$149,000.00" in the Complaint; *id*. at 1; dorsal portion.

[24] See *rollo*, p. 13.

[25] *Id*. at 37.

and Chief Legal Counsel of the Philippine Seafarers' Union-ALU-TUCP-ITF PSU-ITF, who pointed out that petitioner's illness is considered an occupational disease.

In their defense, respondents countered that petitioner was disqualified from claiming disability benefits as the latter knowingly concealed and failed to disclose during his PEME that he had "mechanical heart valves" or artificial heart valves that rendered him a "high-risk" worker, a vital information that would have been considered in hiring him.[26]

They added that the cause of his illness was not work-related, claiming that while the cars loaded in the vessel contained gasoline which is said to have benzene elements, the cars' engines were nonetheless always "OFF" during the voyage and turned "ON" only during the loading and unloading of the vehicles in the vessel; as such, petitioner could not have accumulated benzene elements in his body given that the vessel was equipped with many big exhaust fans that drive away the toxic fumes.[27] Lastly, they contended that since petitioner concealed his true health condition, his other money claims were without basis and thus, moved for the dismissal of the complaint.[28]

The LA's Ruling

In a Decision[29] dated November 20, 2013, the Labor Arbiter (LA) dismissed the complaint for failure of petitioner to establish that his illness was work-related. The LA ruled that it was improbable for petitioner to be poisoned by benzene, considering that the cars' engines were turned on during loading and unloading only, and that such short period of exposure could not have immediately caused petitioner's illness, adding too that petitioner was provided with safety gears to prevent infusion

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[26] See CA *rollo*, pp. 70-71.

[27] See *id*. at 71-72.

[28] See *id*. at 75.

[29] *Id*. at 129-135. Penned by Labor Arbiter Eduardo J. Carpio.

of benzene into his body.[30] In this regard, the LA held that the issue of concealment was immaterial since it was not relevant to petitioner's illness.[31]

Aggrieved, petitioner appealed[32] to the NLRC, docketed as NLRC LAC No. (OFW-M) 01-000041-14.

The NLRC's Ruling

In a Decision[33] dated January 30, 2014, the NLRC agreed with the findings of the LA that petitioner was not able to discharge the burden of proving that his non-listed illness was work-related, and that the same occurred during the term of his employment.[34] It likewise pointed out that petitioner fraudulently concealed his artificial heart that disqualified him from claiming disability benefits under the 2010 Philippine Overseas Employment Administration-Standard Employment Contract (POEA-SEC)[35] and the CBA.[36]

Dissatisfied, petitioner moved for reconsideration[37] which was denied in a Resolution[38] dated February 28, 2014. Hence, the matter was elevated to the CA via a Petition for *Certiorari,*[39]

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[30] See *id*. at 134-135.

[31] *Id*. at 135.

[32] See Notice of Appeal with Memorandum of Appeal dated December 19, 2013; *id*. at 136-149.

[33] *Id*. at 29-40.

[34] See *id*. at 34-35.

[35] POEA Memorandum Circular No. 10, Series of 2010, entitled "AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS" dated October 26, 2010.

[36] See CA *rollo*, p. 36.

[37] See Complainant's Motion for Reconsideration dated February 14, 2014; NLRC records, pp. 232-237.

[38] CA *rollo*, pp. 42-43.

[39] Dated April 30, 2014. *Id*. at 3-25.

docketed as CA-G.R. SP No. 135118. In his petition, petitioner attached a Medical Certificate[40] dated April 8, 2014 issued by his purported attending physician at MMC stating that he had never undergone any heart surgery and that he has no mechanical heart valve as reflected in his chest x-ray[41] and 2D echocardiogram.[42]

The CA Ruling

In a Decision[43] dated June 3, 2016, the CA found no grave abuse of discretion on the part of the NLRC in sustaining the finding that petitioner is not entitled to disability benefits as the latter failed to prove by substantial evidence that his illness was work-related, and that he acquired the same during the term of his last employment contract.[44] It likewise agreed that petitioner was barred from claiming disability benefits under Section 20 (A) of the 2010 POEA-SEC, considering his failure to disclose his artificial heart during his PEME which constitutes misrepresentation or concealment.[45] Accordingly, the CA also denied petitioner's claim for moral and exemplary damages, as well as attorney's fees.[46]

Undaunted, petitioner moved for reconsideration[47] but the same was denied in a Resolution [48] dated February 9, 2017; hence, this petition.

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[40] *Id*. at 52 and 326.

[41] *Id*. at 327.

[42] See results of the Two-Dimensional Echocardiography of petitioner; *id*. at 328-329.

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

[44] See *id*. at 16.

[45] See *id*. at 17-18.

[46] *Id*. at 18.

[47] See motion for reconsideration dated June 29, 2016; CA *rollo*, pp. 303-317.

[48] *Rollo*, pp. 21-24.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly held that petitioner is not entitled to total and permanent disability benefits.

The Court's Ruling

The petition is meritorious.

The general rule is that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record.[49] Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect.[50] There are, however, recognized exceptions[51] to this general rule, such as the instant case, where the judgment is based on a misapprehension of facts and the

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[49] See *Leoncio v. MST Marine Services' (Phils.), Inc.*, G.R. No. 230357, December 6, 2017.

[50] *Maersk Filipinas Crewing, Inc. v. Ramos*, G.R. No. 184256, January 18, 2017, 814 SCRA 428, 442.

[51] 1) when the findings are grounded entirely on speculations, surmises, or conjectures; 2) when the inference made is manifestly mistaken, absurd, or impossible; 3) when there is grave abuse of discretion; 4) when the judgment is based on misapprehension of facts; 5) when the findings of fact are conflicting; 6) when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7) when the findings are contrary to that of the trial court; 8) when the findings are conclusions without citation of specific evidence on which they are based; 9) when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are disputed by the respondent; 10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or 11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (See *Manila Shipmanagement and Manning, Inc. v. Aninang*, G.R. No. 217135, January 31, 2018.)

findings of facts are premised on the supposed absence of evidence and contradicted by the evidence on record.[52]

It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory provisions are Articles 197 to 199[53] (formerly

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[52] *Great Southern Maritime Services Corp. v. Surigao*, 616 Phil. 758, 764 (2009).

[53] **ART. 197. [191] Temporary Total Disability** – (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: **the daily income benefit shall not be** less than Ten Pesos nor more than Ninety Pesos, nor **paid for a continuous period longer than one hundred twenty days**, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

x x x x x x x x x

ART. 198. [192] Permanent Total Disability – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning with the youngest and without substitution: *Provided*, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

x x x x x x x x x

(c) the following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

x x x x x x x x x

ART. 199. [193] Permanent Partial Disability – (a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall, for each month not exceeding the period designated herein, be paid by the System during such a disability an income benefit for permanent total disability.

x x x x x x x x x (Emphases and underscoring supplied)

Articles 191 to 193) of the Labor Code[54] in relation to Section 2 (a), Rule X[55] of the Amended Rules on Employee Compensation.[56] By contract, the material contracts are the POEA-SEC, which is deemed incorporated in every seafarer's employment contract and considered to be the minimum requirements acceptable to the government, the parties' Collective Bargaining Agreement, if any, and the employment agreement between the seafarer and employer. In this case, petitioner executed his employment contract with respondents during the effectivity of the 2010 POEA-SEC; hence, its provisions are applicable and should govern their relations.[57]

I.

Pursuant to Section 20 (A) of the 2010 POEA-SEC, the employer is liable for disability benefits when the seafarer suffers from a work-related injury or illness during the term of his contract. In this regard, Section 20 (E) thereof mandates the seafarer to disclose all his pre-existing illnesses or conditions in his PEME; failing in which shall disqualify him from receiving disability compensation, *viz.*:

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[54] Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[55]
Rule X

Temporary Total Disability

Section 2. Period of entitlement – (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

x x x x x x x x x

[56] (July 21, 1987).

[57] See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, G.R. No. 228504, June 6, 2018.

> E. A seafarer who knowingly conceals a pre-existing illness or condition in the Pre-Employment Medical Examination (PEME) shall be liable for misrepresentation and shall be disqualified from any compensation and benefits. This is likewise a just cause for termination of employment and imposition of appropriate administrative sanctions.

In holding that petitioner was not entitled to disability benefits, the appellate court subscribed to the NLRC's finding of concealment, to wit:

> Complainant's **condition may have been brought about by his artificial heart** which he failed to disclose to the company doctor during the Pre-Employment Medical Examination (PEME). In the examination at the Seacare Maritime Medical Center in Singapore, complainant was noted with decreased hemoglobin, total white cell and platelet count or complete blood count. He was considered a high risk patient with Mechanical Heart Valve.[58] (Emphasis supplied)

The Court, however, finds the foregoing conclusion anchored on pure speculation. At the outset, it bears to point out that Section 20 (E) of the 2010 POEA-SEC speaks of an instance where an employer is absolved from liability when a seafarer suffers a work-related injury or illness on account of the latter's willful concealment or misrepresentation of a pre-existing condition or illness. Thus, the burden is on the employer to prove such concealment of a pre-existing illness or condition on the part of the seafarer to be discharged from any liability. In this regard, an illness shall be considered as pre-existing if prior to the processing of the POEA contract, **any** of the following conditions is present, namely: (*a*) the advice of a medical doctor on treatment was given for such continuing illness or condition; or (*b*) the seafarer had been diagnosed and has knowledge of such illness or condition but failed to disclose the same during the PEME, and **such cannot be diagnosed during the PEME**.[59]

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[58] *Rollo*, p. 17.

[59] See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, *supra* note 57. See also Item No. 11 (a) and (b), Definition of Terms, 2010 POEA-SEC.

Records show that aside from the company-designated physician's diagnosis of Aplastic Anemia,[60] a rare and serious condition wherein there is a reduction in the production of both red and white blood cells from the bone marrow in humans, [61] petitioner was also declared by a foreign doctor at Seacare Maritime in Singapore to have "mechanical heart valves."[62] While the company-designated physician confirmed petitioner's Aplastic Anemia in the 2nd Medical Report[63] dated January 6, 2012 after having undertaken a bone marrow aspiration biopsy, the said report failed to confirm the latter's mechanized heart valves. In fact, there is nothing in the records to support such declaration given that mechanized heart valves are implanted in patients with valvular heart disease.[64]

On the contrary, the Court finds the following pieces of evidence as substantial to support a conclusion that petitioner had no mechanical heart valves.

First, it is worthy to note that petitioner was initially hired by respondents in 2010 and re-hired anew on June 15, 2011. Among the procedures to be undertaken during his routine PEME were chest x-ray, a common type of exam that reveals, among others, the size and outline of a heart and blood vessels,[65] and 2D echogram, a test in which ultrasound technique is used to take excellent **images of the heart, paracardiac structures and the great vessels**.[66] Therefore, if indeed petitioner was

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[60] CA *rollo*, p.112.

[61] <https://www.mayoclinic.org/diseases-conditions/aplastic-anemia/symptoms-causes/syc-20355015> (visited July 5, 2018).

[62] CA *rollo*, p.110.

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

[64] See <https://www.sjm.com/en/patients/heart-valve-disease.> (visited July 5, 2018).

[65] <https://www.mayoclinic.org/tests-procedures/chest-x-rays/about/pac-20393494> (visited July 6, 2018).

[66] <http://www.nmmedical.com/2d-echocolour.html> (visited July 6, 2018).

implanted with a mechanical heart valve, it could have been easily detected by the respondents in the course thereof.

Second, Dr. Melissa Co Sia (Dr. Sia), a specialized cardiologist and petitioner's attending physician at MMC since December 2011 until June 2012 and April 2014, certified[67] that: (*a*) the latter never underwent any heart surgery; (*b*) his heart was in good condition; and (*c*) he did not have mechanical heart valves as evidenced by his x-ray[68] record in 2014 and 2D echocardiogram.[69] This declaration by Dr. Sia, although presented only before the CA, was not controverted by respondents. In fact, records show that petitioner, in his reply to respondents' position paper and reiterated in his motion for reconsideration before the NLRC, had already offered to submit himself for examination by an independent doctor to disprove respondents' claim,[70] which the latter did not heed. Evidently, respondents' claim of concealment based on a bare declaration from a doctor in Singapore without any supporting document cannot stand.

Perforce, it was grave error on the part of the CA to sustain the finding of concealment on the part of petitioner absent substantial evidence to support the foregoing claim.

II.

Section 20 (A) of the 2010 POEA-SEC provides that a seafarer shall be entitled to compensation if he suffers from a work-related injury or illness during the term of his contract. A work-related illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions therein satisfied."[71]

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[67] CA *rollo*, pp. 52 and 326.

[68] *Id*. at 327.

[69] *Id*. at 328-329.

[70] *Id*. at 118 and 172.

[71] See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, *supra* note 57. See also Item No. 16, Definition of Terms, 2010 POEA-SEC.

In this case, petitioner was medically repatriated and diagnosed by the company-designated physician to be suffering from "Aplastic Anemia." In denying petitioner's disability claims, respondents argued that his illness was not a listed disease under Section 32-A of the 2010 POEA-SEC, adding too that the former was not able to present substantial evidence to prove the work-relation of the illness.

Contrary to the claim of respondents, petitioner's illness is an occupational disease listed under Sub-Item Number 7 of Section 32-A of the 2010 POEA-SEC, which provides:

> 7. Ionizing radiation disease, inflammation, ulceration or malignant disease of the skin or subcutaneous tissues of the bones or leukemia, or **anemia of the aplastic type due to x-rays, ionizing particle, radium or other radioactive substances**
>
> a. Acute radiation syndrome
> b. Chronic radiation syndrome
> c. Glass Blower's cataract (Emphasis supplied)

To be considered as work-related, Aplastic Anemia should be contracted under the condition that there should be exposure to x-rays, ionizing particles of radium or other radioactive substances or other forms of radiant energy. As pointed out by the company-designated physician, "exposure to benzene and its compound derivatives may predispose to development of such condition," and that work-relatedness will depend on exposure to any of the above-mentioned factors.[72] In finding that petitioner's illness was not work-related, the CA ruled in this wise:

> Petitioner likewise failed to specify the nature of his work, the working conditions, the risks attendant to the nature of his work with which he was allegedly exposed to, as well as how and to what degree the nature of his work caused or contributed to his alleged medical condition. In the absence of substantial evidence, We cannot just presume that petitioner's job caused his illness or that it aggravated any pre-existing condition he might have had.[73]

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[72] *Rollo*, p. 81.

[73] *Id.* at 17.

However, as borne out by the records, it was not disputed that petitioner, as Chief Officer of M.V. Morning Carina, actively supervised the loading and unloading operations of cars/motor vehicles in every voyage that constantly exposed him to an atmosphere of cargoes with nearly 6,000 cars in just one voyage alone. Benzene, an important component of gasoline,[74] is emitted from the engines of these cars in the course of their loading and unloading. Since studies show that Benzene is highly volatile, and exposure occurs mostly through inhalation,[75] it cannot be denied that petitioner was constantly exposed to the hazards of benzene in the course of his employment. The use of safety gears in the performance of his duties, as advanced by respondents,[76] did not foreclose the possibility of petitioner's exposure to such harmful chemical, given that he was in fact diagnosed with Aplastic Anemia brought about by chronic exposure to benzene. Under the foregoing circumstances, it is evident that petitioner's illness is clearly work-related in accordance with the POEA-SEC.

In fine, having sufficiently established by substantial evidence the reasonable link between the nature of petitioner's work as Chief Officer and the illness contracted during his last employment with no showing that he was notoriously negligent in the exercise of his functions, the latter's ailment, as well as the resulting disability, is a compensable work-related illness under Section 32-A[77] of the 2010 POEA-SEC.

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[74] <https://www.dhs.wisconsin.gov/chemical/benzene. htm.> (visited July 6, 2018).

[75] <http://www.who.int/ipcs/features/benzene.pdf.> (visited July 6, 2018).

[76] NLRC records, p. 46.

[77] SECTION 32-A. OCCUPATIONAL DISEASES

For an **occupational disease and the resulting disability or death to be compensable**, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the described risks;

III.

Section 20 (A) of the 2010 POEA-SEC lays down the procedure to be followed in assessing the seafarer's disability in addition to specifying the employer's liabilities on account of such injury or illness, to wit:

SEC. 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

2. x x x However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x x x x x x

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case,

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3. The disease was contracted within a period of exposure and under such other factors necessary to contract it; and
4. There was no notorious negligence on the part of the seafarer.

x x x x x x x x x (Emphasis and underscoring supplied)

> a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.
>
> x x x x x x x x x

When a seafarer suffers a work-related injury or illness in the course of employment, the latter's fitness or degree of disability shall be determined by the company-designated physician who is expected to arrive at a definite assessment within a period of 120 days from repatriation.[78] If the 120 days initial period is exceeded and no definitive declaration is made because the seafarer requires further medical attention, then the temporary total disability period **may be extended up to a maximum of 240 days**, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists.[79] Should the company-designated physician fail in this respect and the seafarer's medical condition remain unresolved, the seafarer shall be **conclusively presumed totally and permanently disabled**.[80]

In this case, records reveal that from the time petitioner was repatriated on December 26, 2011, a total of 247 days had lapsed when he last consulted with the company-designated physician

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[78] *Sunit v. OSM Maritime Services, Inc. DOF OSM Maritime Services A/S, and Capt. Adonis B. Donato*, G.R. No. 223035, February 27, 2017.

[79] *Vergara v. Hammonia Maritime Services, Inc.*, 588 Phil. 895, 912 (2008).

[80] See *Kestrel Shipping Co., Inc. v. Munar*, 702 Phil. 717, 738 (2013).

on August 29, 2012. Concededly, said period have already exceeded the maximum 240-day extension as explained by this Court in a long line of cases,[81] without any definitive assessment of petitioner's disability. Hence, petitioner is conclusively presumed totally and permanently disabled.

However, petitioner is entitled to the payment of total and permanent disability benefits under the 2010 POEA-SEC and not under the CBA as he claimed, considering the lack of proof that he met an accident[82] and was injured while on board the vessel, or while traveling to or from the same. Thus, petitioner is entitled to US$60,000.00, which is the amount due for permanent total disability under Section 32 of the 2010 POEA-SEC.

The Court likewise finds petitioner entitled to attorney's fees in accordance with Article 2208 of the New Civil Code which grants the same in actions for indemnity under the workmen's compensation and employer's liability laws.[83] It is also recoverable when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest, as in this case. Case law states that "[w]here an employee is forced to litigate and incur expenses to protect his right and interest, he is entitled to an award of attorney's fees equivalent to [ten percent] (10%) of the award." [84]

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[81] See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, *supra* note 57; *Talaroc v. Arpaphil Shipping Corporation*, G.R. No. 223731, August 30, 2017; and *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, 765 Phil. 341, 361-362 (2015).

[82] Accident is an unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct. Accident is that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen (See *Philsynergy Maritime, Inc. v. Gallano, Jr.*, *id.*; citing *C.F. Sharp Crew Management, Inc. v. Perez*, 752 Phil. 46, 57 [2015]).

[83] See Article 2208 (8) of the CIVIL CODE.

[84] See *Atienza v. Orophil Shipping International Co., Inc.*, G.R. No. 191049, August 7, 2017.

On the other hand, the Court finds no basis to award petitioner's claim for moral and exemplary damages absent a showing of ill-motive on the part of respondents in denying petitioner's claim.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 3, 2016 and the Resolution dated February 9, 2017 of the Court of Appeals in CA-G.R. SP No. 135118 are hereby **REVERSED** and **SET ASIDE**. A new judgment is rendered **ORDERING** respondents Fleet Management Services Philippines, Inc., Modern Asia Shipping Corporation, A.B.F. Gaviola, Jr., and Ma. Corazon Cruz to jointly and severally pay petitioner Melchor Barcenas Deocariza the amount of US$60,000.00 or its equivalent amount in Philippine currency at the time of payment, representing total and permanent disability benefits in accordance with the 2010 Philippine Overseas Employment Administration-Standard Employment Contract, as well as ten percent (10%) thereof, as attorney's fees.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Peralta, Caguioa,* and *Reyes, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 230950-51. July 23, 2018]

ELPIDIO TAGAAN MAGANTE, *petitioner, vs.* **SANDIGANBAYAN (THIRD DIVISION) and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES;

FACTORS TO CONSIDER IN DETERMINING INORDINATE DELAY; LENGTH OF THE DELAY; THE RECKONING POINT WHEN DELAY STARTS TO RUN IS THE DATE OF THE FILING OF THE FORMAL COMPLAINT WITH THE OMBUDSMAN; THE PERIOD DEVOTED TO FACT-FINDING INVESTIGATIONS PRIOR TO THE DATE OF THE FILING OF THE FORMAL COMPLAINT SHALL NOT BE CONSIDERED.— [T]he reckoning point when delay starts to run is the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the Ombudsman of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations. The period devoted to the fact-finding investigations prior to the date of the filing of the formal complaint with the Ombudsman shall NOT be considered in determining inordinate delay. After the filing of the formal complaint, the time devoted to fact finding investigations shall always be factored in.

2. **ID.; ID.; ID.; ID.; ID.; VALID REASONS FOR THE DELAY; PERIOD FOR RE-INVESTIGATION CANNOT AUTOMATICALLY BE TAKEN AGAINST THE STATE.—** Valid reasons for the delay identified and accepted by the Court include, but are not limited to: (1) extraordinary complications such as the degree of difficulty of the questions involved, the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record; and (2) acts attributable to the respondent. The period for re-investigation cannot automatically be taken against the State. Re-investigations cannot generally be considered as "vexatious, capricious, and oppressive" practices proscribed by the constitutional guarantee since these are performed for the benefit of the accused.

3. **ID.; ID.; ID.; ID.; ID.; ASSERTION OF RIGHT BY THE ACCUSED; FAILURE OF RESPONDENT TO BRING TO THE ATTENTION OF THE INVESTIGATING OFFICER THE PERCEIVED INORDINATE DELAY IN THE PROCEEDINGS OF THE INVESTIGATION CONSIDERED A WAIVER OF RIGHT TO SPEEDY DISPOSITION OF CASES.—** [I]t is the duty of the respondent to bring to the attention of the investigating officer the perceived inordinate delay in the proceedings of the formal preliminary

investigation. Failure to do so may be considered a waiver of his/her right to speedy disposition of cases. If respondent fails to assert said right, then it may be presumed that he/she is allowing the delay only to later claim it as a ruse for dismissal. This could also address the rumored "parking fee" allegedly being paid by some respondents so that delay can be set up as a ground for the dismissal of their respective cases.

4. **ID.; ID.; ID.; ID.; ID.; PREJUDICE TO THE PARTIES; THE LENGTH OF THE DELAY AND PROFFERED JUSTIFICATION MUST BE COUNTERBALANCED AGAINST ANY PREJUDICE SUFFERED NOT ONLY BY THE RESPONDENT BUT ALSO THE DIFFICULTIES ON THE PART OF THE PROSECUTION TO PERFORM ITS DUTY.—** The length of the delay and the justification proffered by the investigating officer therefor would necessarily be counterbalanced against any prejudice suffered by the respondent. Indeed, reasonable deferment of the proceedings may be allowed or tolerated to the end that cases may be adjudged only after full and free presentation of evidence by all the parties, especially where the deferment would cause no substantial prejudice to any party. x x x In the macro-perspective, though, it is not only the respondent who stands to suffer prejudice from any delay in the investigation of his case. For inordinate delays likewise makes it difficult for the prosecution to perform its bounden duty to prove the guilt of the accused beyond reasonable doubt when the case is filed in court[.] x x x It is for the Courts then to determine who between the two parties was placed at a greater disadvantage by the delay in the investigation.

5. **ID.; ID.; ID.; ID.; THAT THERE WERE TEN RESPONDENTS WHO WERE AFFORDED THE RIGHT TO EXPLAIN COUPLED WITH THE VOLUMINOUS RECORDS OF THE CASE ARE NOT SUFFICIENT REASONS FOR THE DELAY; THE EXCESSIVE DURATION OF THE PRELIMINARY INVESTIGATION WITHOUT ANY ACCEPTABLE EXPLANATION OFFERED BY THE PROSECUTION AMOUNTS TO A VIOLATION OF PETITIONER'S RIGHT TO A SPEEDY DISPOSITION OF CASE WARRANTING THE DISMISSAL OF THE CRIMINAL CASE AGAINST HIM.—** Since the duration of the preliminary investigation is excessive, it is incumbent then on the prosecution to justify the delay. Unfortunately, no

circumstance in this case warranted the protracted period of investigation. The prosecution harps on the fact that there were ten (10) respondents in the complaint filed with the OMB and each of them was afforded the right to explain themselves. Also, the records of the case were allegedly voluminous that entailed considerable time to study and analyze. These reasons, to Our mind, do not sufficiently explain the more than five-year long preliminary investigation. x x x Verily, the Order requiring respondents to file their counter-affidavits was issued on February 15, 2011. No clarificatory hearing or further investigation was conducted that could have added a new dimension to the case. On May 6, 2011, the criminal complaint was then already deemed submitted for resolution. Yet, it would only be on April 15, 2016 when petitioner would once again hear about the case, through his receipt of the adverse ruling finding probable cause to charge him with splitting of contracts and falsification of public documents. Noticeably, the prosecution did not offer any acceptable explanation for this gap between February 15, 2011 and April 15, 2016. Contrary to the finding of the Sandiganbayan, there is a hiatus on the part of the Ombudsman during this period. Left unsatisfactorily explained, this amounts to a violation of petitioner's constitutional right to a speedy disposition of case, corollarily warranting the dismissal of the criminal case against him.

6. **ID.; ID.; ID.; ID.; PETITIONER'S FAILURE TO ASSERT HIS RIGHT IS NOT A VERITABLE GROUND FOR THE DENIAL OF THE MOTION TO DISMISS AND THE SUBSEQUENT FILING OF A MOTION FOR RECONSIDERATION CANNOT BE DEEMED A WAIVER OF HIS RIGHT.—** [P]etitioner's alleged failure to assert his right is not a veritable ground for the denial of the motion in the absence of any motion, pleading, or act on his part that contributed to the delay. It is not for him to ensure that the wheels of justice continue to turn. Rather, it is for the State to guarantee that the case is disposed within a reasonable period. x x x Neither can petitioner be deemed to have waived his right to a speedy disposition of a case when he filed a motion for reconsideration against an adverse resolution of the Ombudsman on May 31, 2015. The filing of this singular motion cannot by itself be considered as active participation in the preliminary investigation proceeding that amounted to a waiver of a constitutional right.

APPEARANCES OF COUNSEL

Roland B. Inting and *Avila Tamayo Law Office* for petititoner.

D E C I S I O N

VELASCO JR., *J.*:

Like the proverbial sharp sword of Damocles, the protracted pendency of a case hangs overhead by the slenderest single strand. And as Cicero quipped: "*...there can be nothing happy for the person over whom some fear always looms*."

Nature of the Case

For this Court's resolution is the Petition for *Certiorari* and Prohibition under Rule 65 of the Rules of Court assailing the Resolutions dated January 9, 2017[1] and March 24, 2017[2] of herein respondent Sandiganbayan, 3rd Division, in Criminal Case Nos. SB-16-CRM-0773-0774, denying petitioner Elpidio Tagaan Magante's Motion to Dismiss the two separate informations filed against him, and the subsequent Motion for Reconsideration thereof.

The antecedents, as found by the Sandiganbayan, are as follows:

In view of the Office of the Ombudsman's Resolution[3] dated April 25, 2016[4] in OMB-V-C-11-0008-A, two separate informations for Falsification of Public Documents,[5] docketed

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[1] Penned by Presiding Justice and Chairperson Amparo Cabotaje-Tang and concurred in by Associate Justices Sarah Jane T. Fernandez and Zaldy V. Trespeses, *rollo*, pp. 24-36.

[2] *Id*. at 57-62.

[3] *Id*. at 63-82.

[4] Date of approval of the Resolution by Ombudsman Conchita Carpio-Morales.

[5] Article 171(4), of the Revised Penal Code (RPC).

as SB-16-CRM-0773,[6] and for Splitting of Contracts,[7] docketed as SB-16-CRM-0774,[8] were filed against petitioner and his five (5) co-respondents therein on October 7, 2016 before the Sandiganbayan.

Thereafter, petitioner filed a Motion to Dismiss[9] the cases against him on the ground that inordinate delay attended the conduct of the preliminary investigation of his alleged crimes, in violation of his constitutional right to a speedy disposition of cases. In concrete, petitioner claimed that it took the Ombudsman about seven (7) years, reckoned from the commencement of the fact-finding investigation in 2009 up to 2016, to issue its Resolution directing the filing of two separate informations against him. Petitioner reckoned the period from April 21, 2009, the date of the Affidavit and Narrative Audit Report that was submitted by Delfin P. Aguilar, Regional Director of the Commission on Audit Regional Office No. VII, which led to the commencement of a fact-finding investigation by the Ombudsman.

Petitioner likewise asserted that even if the period were to be counted from February 15, 2011, which is the date when the Ombudsman issued an Order directing him and his co-respondents therein to submit their respective counter-affidavits, up to the approval of its Resolution, still, there is a clear inordinate delay of five (5) years and two (2) months in resolving his case. He even cited several cases wherein this Court held that the delay of three, five, six, or eight years in the termination of the preliminary investigation of the case amounts to a violation of the constitutional rights of the accused to due process and

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[6] *Rollo*, pp. 83-86.

[7] Section 65(4) in relation to Sections 52 & 54 of Republic Act No. 9184 (RA 9184), known as Government Reform Procurement Act, and Sections 52 & 54 of the Implementing Rules and Regulations (IRR) of RA 9184.

[8] *Rollo*, pp. 87-90.

[9] *Id*. at 37-47.

to a speedy disposition of cases.[10] Specifically, petitioner invoked the Court's pronouncements in *Tatad v. Sandiganbayan*,[11] *Angchangco v. Ombudsman*,[12] *Roque v. Ombudsman*,[13] *Coscolluela v. Sandiganbayan*,[14] and *People v. Sandiganbayan*[15] to advance his theory.

In response thereto, the prosecution (herein respondent People of the Philippines) filed its Comment/Opposition averring that petitioner's Motion to Dismiss deserved scant consideration and maintained that the Ombudsman did not incur inordinate delay in the conduct of the preliminary investigation.

The prosecution stressed the fact that there was neither hiatus, inaction, nor any intentional delay on the part of the Ombudsman from the time that the letter-complaint of Delfin P. Aguilar[16] against petitioner was received by the OMB-Visayas on September 1, 2009, until the approval of the Final Evaluation Report dated June 30, 2010 by the then Ombudsman Merceditas Gutierrez (Gutierrez) on November 18, 2010. The Final Evaluation Report recommended the upgrading of the fact-finding investigation into a criminal and administrative case before the Ombudsman. Pursuant thereto, the Public Assistance and Corruption Prevention Office of the Deputy Ombudsman for Visayas (PACPO-OMB-Visayas) filed a formal complaint against petitioner on January 7, 2011.

The Ombudsman had taken proper action in the ordinary course of things and in accord with its mandate. However, the

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[10] Sandiganbayan Resolution dated January 9, 2017, *id*. at 25-27; Motion to Dismiss dated January 23, 2017, *id*. at 38-46.

[11] G.R. Nos. 72335-39, March 21, 1988.

[12] G.R. No. 122728, February 13, 1997.

[13] G.R. No. 129978, May 12, 1999.

[14] G.R. No. 191411, July 15, 2013.

[15] G.R. No. 188165, December 11, 2013.

[16] Regional Director of the Commission on Audit (COA) Regional Office No. VII, Cebu City.

Resolution finding probable cause was only promulgated on April 15, 2016 due to the fact that there were ten (10) respondents in the complaint and each of them was afforded the right to explain themselves. The records of the case were also voluminous that entailed considerable time to study and analyze.[17]

The prosecution further claimed that petitioner failed to assert his right to a speedy disposition of his cases all throughout the proceedings, and, thus, like any other constitutional right, the same may be waived. The prosecution likewise disputed the applicability of the cases cited by petitioner in his Motion to Dismiss as their factual milieu differs with the present cases.[18]

Ruling of the Sandiganbayan

On January 9, 2017, the Sandiganbayan rendered its first assailed Resolution denying the petitioner's Motion to Dismiss for utter lack of merit. In disposing of the case, the Sandiganbayan made the following disquisitions:

> The Court agrees with the prosecution [herein respondent People of the Philippines] that the rulings in the cases cited by [herein petitioner] in his [Motion to Dismiss] are inapplicable to the cases at bar because of the material differences in their factual milieu. To stress, the Supreme Court has consistently held that in the application of the constitutional guarantee of the right to a speedy disposition of cases, particular regard must also be taken of the facts and circumstance peculiar to each case.
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> x x x x x x x x x
>
> x x x in ***Tatad***, there were peculiar circumstances attendant to the three-year delay in terminating the preliminary investigation against him. According to the Supreme Court, "*political motivations played a vital role in activating and propelling the prosecutorial process*;" and, there was a departure from the established procedure in conducting the preliminary investigation and that the issues involved were simple.

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[17] Sandiganbayan Resolution dated January 9, 2017, *rollo*, pp. 27, 29.

[18] *Id.* at 30.

Unlike in ***Tatad***, the present cases involve no imputation of any political motivation in the filing of the present *Informations* against the [petitioner].

Likewise in ***Roque***, the High Tribunal declared as violation of therein petitioner's right to due process and speedy disposition of cases the delay of six (6) years on the part of the Office of the Ombudsman in resolving the complaints against the petitioner. The Supreme Court so ruled because "*no explanation was given why it took almost six years for the [Ombudsman] to resolve the complaints*." Similarly, in ***People v. Sandiganbayan*** (citation omitted), the Supreme Court held that there was inordinate delay on the part of the Office of the Ombudsman when it resolved a complaint-affidavit only on April 15, 2008, notwithstanding the fact that it was filed on December 23, 2002.

In contrast to the abovementioned cases, **the attendant circumstances in these cases do not show a deliberate attempt to delay the proceedings**. The prosecution appropriately explained the circumstances surrounding the drafting of the two (2) *Informations* against the ten (10) respondents, all of whom were accorded their constitutional right to be heard. Based thereon, this Court does not find that the proceedings before the Office of the Ombudsman were attended by any vexatious, capricious and oppressive delays.

x x x x x x x x x

In ***Achangco, Jr.***, the Supreme Court x x x held the delay of more than six (6) years in resolving the complaints x x x amounted to a violation of the accused's constitutional right to due process and speedy disposition of cases for two (2) reasons, namely: [1] the administrative aspect of the case had already been dismissed; and [2] petitioner's several motions for early resolution and motion to dismiss remained unacted even at the time of the petition for mandamus before the Supreme Court.

The factual circumstances of the abovementioned case differ substantially from the cases at bar. Here, the [petitioner] did not file any *motion* or letter seeking the early resolution of the case against him and signifying that he was not waiving his right to its speedy disposition.

Also, [petitioner's] reliance on ***Coscolluela*** is misplaced.

In the said case, x x x the circumstances x x x showed that the petitioners therein were unaware that a preliminary investigation

against them was on-going; hence, the Court ruled that they could not be faulted for their alleged failure to assert their right to speedy disposition of cases.

Here, [petitioner] was very much aware that there was a pending investigation against him, as in fact he filed his counter-affidavit before the OMB-Visayas on May 6, 2011. He also later filed a *Motion for Reconsideration* of an adverse *Resolution* of the Office of the Ombudsman on May 31, 2015. Surely he cannot now invoke ***Coscolluela*** for he actively participated in the proceedings before the Office of the Ombudsman and failed to assert his right to a speedy disposition of cases.

x x x **the [petitioner] must be deemed to have waived said right for his failure to assert it with reasonable promptitude**. The Supreme Court held in the case of ***Philippine Coconut Producers, Inc. v. Republic*** (citation omitted), that the right to speedy disposition of cases is lost unless seasonably invoked x x x[19] (Emphasis partly in the original and partly supplied; italics in the original.)

The petitioner moved for its reconsideration but it was also denied in the second assailed Resolution dated March 24, 2017 for being *pro forma* and/or lack of merit.

Hence, this Petition.

The Issue

The sole issue raised in the petition is framed in the following manner:

WHETHER OR NOT THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTIONS WITHOUT REGARD TO THE CONSTITUTIONAL RIGHT OF THE PETITIONER TO SPEEDY DISPOSITION OF THE INVESTIGATION OF THE CASE AS PRESCRIBED IN SECTION 16, ARTICLE III OF THE 1987 CONSTITUTION AND TO THE VARIOUS SUPREME COURT DECISIONS UPHOLDING SAID CONSTITUTIONAL RIGHT.[20]

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[19] *Id.* at 31-34.

[20] Petition for *Certiorari* and Prohibition dated April 24, 2017, *id.* at 7.

Succinctly, petitioner calls upon this Court to guard his constitutionally enshrined right to speedy disposition of cases[21] against the perceived inordinate delay of the Ombudsman in conducting the preliminary investigation pertaining to the pending criminal action.

The Court's Ruling

We find merit in the petition.

The right to speedy disposition of cases and the Ombudsman's bounden duty to observe the same

The constitutional guarantee to speedy disposition of cases was first introduced in the 1973 Philippine Constitution[22] and was reproduced verbatim in Article III, Sec. 16 of the 1987 version. Presently, the provision pertinently provides:

SECTION 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

The guarantee recognizes the truism that justice delayed can mean justice denied.[23] It expanded the speedy trial guarantee afforded to the accused in a criminal proceeding, which was already in place in the 1935 Constitution.[24] Though both concepts are subsumed under the more basic tenet of procedural due process, the right to speedy disposition of cases, to contrast with the right to speedy trial, sweeps more broadly as it is not confined with criminal cases; it extends even to other adversarial proceedings before any judicial, quasi-judicial, and administrative

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[21] Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

[22] Article IV, Sec. 16 reads *"All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."*

[23] *Caballero v. Alfonso, Jr.*, G.R. No. L-45647, August 21, 1987.

[24] Article III, Section 1(17) of the 1935 Constitution.

tribunals. No branch of government is, therefore, exempt from duly observing the constitutional safeguard and the right confirms immunity from arbitrary delay. Hence, under the Constitution, any party to a case may demand expeditious action on all officials who are tasked with the administration of justice,[25] including the Ombudsman.

Coincidentally, the seminal case on the speedy disposition of cases involved the conduct of preliminary investigation by the Tanodbayan, the predecessor of the OMB. Even though the right to speedy disposition of cases had been preserved under the Bill of Rights as early as 1973, the 1989 case of *Tatad v. Sandiganbayan (Tatad)*[26] was the first to have applied the provision as a personal right against the conduct of a proceeding, rather than as a constitutional challenge against a statute.[27]

In the said case, a "report" was filed with the Legal Panel of the Presidential Security Command in October 1974, containing charges for alleged violations of RA 3019 against then Secretary of Public Information Francisco S. Tatad (Tatad). No action was taken on the "report" until it became publicly known that Tatad had a falling out with then President Ferdinand Marcos. Following Tatad's resignation from the cabinet, the 1974 complaint was resurrected on December 12, 1979 in the form of a formal complaint filed with the Tanodbayan. All affidavits and counter-affidavits were already submitted by October 25, 1982 and the case was already for disposition by then. However, it was only on June 5, 1985 when the Tanodbayan approved

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[25] *Lopez v. Office of the Ombudsman*, G.R. No. 140529, September 6, 2001, citing *Cadalin v. POEA Administrator*, G.R. Nos. 105029-32, December 5, 1994, 238 SCRA 722.

[26] G.R. Nos. 72335-39, March 21, 1988.

[27] The right to speedy disposition of cases was first in *Caballero*, *supra* note 23, not as a personal right but as a challenge against the validity of Presidential Decree No. 1038. Petitioner therein argued that the additional layer in the bureaucracy introduced by the law infringed on his right to speedy disposition of cases and is therefore unconstitutional.

the resolution finding probable cause and ordering the filing of five (5) criminal informations against Tatad before the Sandiganbayan. Thereafter, Tatad filed a motion to quash the information on the ground that the prosecution deprived him of his right to due process of law and to a speedy disposition of the cases filed against him. The motion was denied by the anti-graft court, prompting Tatad to interpose a petition for certiorari before this Court to enforce his constitutional right.

In granting the petition in *Tatad*, the Court held that the trumped up charges against Tatad were politically motivated. More importantly, the three-year (3-year) delay from the day the investigation was submitted for resolution up to the date the informations were filed in Court was found to be a clear violation of Tatad's right to speedy disposition of cases. The Court observed there was not even substantial compliance with Presidential Decree No. (PD) 911 which prescribed a 10-day period for a prosecutor to resolve a case under preliminary investigation. And that although the period is merely directory, it cannot be disregarded with absolute impunity, lest it become meaningless dead letter. As ratiocinated in the case:

> We are not impressed by the attempt of the Sandiganbayan to sanitize the long delay by indulging in the speculative assumption that "the delay may be due to a painstaking and gruelling scrutiny by the Tanodbayan as to whether the evidence presented during the preliminary investigation merited prosecution of a former high ranking government official." In the first place, such a statement suggests a double standard of treatment, which must be emphatically rejected. Secondly, three out of the five charges against the petitioner were for his alleged failure to file his sworn statement of assets and liabilities required by Republic Act No. 3019, which certainly did not involve complicated legal and factual issues necessitating such "painstaking and gruelling scrutiny" as would justify a delay of almost three years in terminating the preliminary investigation. The other two charges relating to alleged bribery and alleged giving of unwarranted benefits to a relative, while presenting more substantial legal and factual issues, certainly do not warrant or justify the period of three years, which it took the Tanodbayan to resolve the case.
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> It has been suggested that the long delay in terminating the preliminary investigation should not be deemed fatal, for even the

complete absence of a preliminary investigation does not warrant dismissal of the information. True-but the absence of a preliminary investigation can be corrected by giving the accused such investigation. But an undue delay in the conduct of a preliminary investigation can not be corrected, for until now, man has not yet invented a device for setting back time.

After a careful review of the facts and circumstances of this case, we are constrained to hold that the inordinate delay in terminating the preliminary investigation and filing the information in the instant case is violative of the constitutionally guaranteed right of the petitioner to due process and to a speedy disposition of the cases against him.[28] x x x

But as later on clarified, more particularly in *Dansal v. Fernandez*,[29] the right embodied in Article III, Sec. 16 is not limited to the period from when a matter is submitted for resolution until the resolution is so approved. Instead, the broad protection embraces the periods before, during and after trial. Thus, it can properly be invoked even as early as preliminary investigation, even before the investigating officer renders his ruling on the determination of probable cause.

Consistently, no less than the 1987 Constitution expressly puts the OMB to the task of resolving the cases lodged before it with dispatch from the moment that a complaint has been filed therewith. Article XI, Sec. 12 of the Constitution is unequivocal on this matter:

SECTION 12. The Ombudsman and his Deputies, as protectors of the people, **shall act promptly on complaints filed in any form or manner** against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof. (emphasis added)

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[28] *Supra* note 26.

[29] G.R. No. 126814, March 2, 2000.

This constitutional command is further amplified by Sec. 13 of Republic Act No. 6770 (RA 6770), otherwise known as The Ombudsman Act of 1989, *viz*:

Section 13. ***Mandate.***— The Ombudsman and his Deputies, as protectors of the people, **shall act promptly on complaints filed in any form or manner** against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government- owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people. (emphasis added)

To attain this mandate, Secs. 15 and 16 of RA 6770[30] bestowed unto the Ombudsman broad and tremendous powers and functions

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[30] **Section 15.** ***Powers, Functions and Duties.*** The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: provided, that the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into

that are aimed towards enabling the office to be a more active and effective agent of the people in ensuring accountability in public office.[31] Regardless, the above-quoted provisions, as couched, do not specify a period for the OMB to render its ruling in cases or matters before it. Neither did the mentioned laws enumerate the criteria in determining what duration of disposition could be considered as "prompt."

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by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: provided, that the Ombudsman under its rules and regulations may determine what cases may not be made public: provided, further, that any publicity issued by the Ombudsman shall be balanced, fair and true;

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;

(8) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;

(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;

(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

Section 16. ***Applicability*****.**—The provisions of this Act shall apply to all kinds of malfeasance, misfeasance, and non-feasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office.

[31] *Enriquez v. Ombudsman*, G.R. Nos. 174902-06, February 15, 2008.

The lack of statutory definition on what constitutes "prompt" action on a complaint opened the gates for judicial interpretation, which did not draw definite lines, but merely listed factors to consider in treating petitions invoking the right to speedy disposition of cases.

Attempts in jurisprudence to define "inordinate delay"

Prevailing jurisprudence on the speedy disposition of cases is sourced from the landmark ruling of the United States Supreme Court in *Barker v. Wingo*[32] (*Barker*) wherein a delicate balancing test was crafted to determine whether or not the right had been violated:

> A **balancing test** necessarily compels courts to approach speedy trial cases on an *ad hoc* basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant.
>
> **The length of the delay** is to some extent a triggering mechanism. Until there is some delay which is presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance. Nevertheless, because of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case. To take but one example, the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge.
>
> Closely related to length of delay is **the reason the government assigns to justify the delay**. Here, too, different weights should be assigned to different reasons. A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such

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[32] 407 U.S. 514 (1972).

circumstances must rest with the government, rather than with the defendant. Finally, a valid reason, such as a missing witness, should serve to justify appropriate delay.

We have already discussed the third factor, **the defendant's responsibility to assert his right**. Whether and how a defendant asserts his right is closely related to the other factors we have mentioned. The strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences. The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.

A fourth factor is prejudice to the defendant. Prejudice, of course, should be assessed in the light of the interests of defendants which the speedy trial right was designed to protect. This Court has identified three such interests: (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. If witnesses die or disappear during a delay, the prejudice is obvious. There is also prejudice if defense witnesses are unable to recall accurately events of the distant past. Loss of memory, however, is not always reflected in the record, because what has been forgotten can rarely be shown. (emphasis added)

We have adopted this norm set forth in *Barker* in local jurisprudence to gauge whether or not inordinate delay attended the conduct of preliminary investigation.

Following *Tatad*, the right to speedy disposition of cases was once again invoked, albeit unsuccessfully, in *Gonzales v. Sandiganbayan (Gonzales)*.[33] The denial of the petition therein was grounded on the finding that the delay was irremissibly imputable to petitioner's own conduct, barring him from

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[33] G.R. No. 90750, July 16, 1991.

benefitting from both the constitutional protection and his numerous motions that sought affirmative relief. Nevertheless, recognizing the similarity between the right to speedy disposition of cases and the right to speedy trial, the Court imposed the same criteria as in *Barker* in determining whether or not there is a violation of the constitutional right:

> It must be here emphasized that **the right to a speedy disposition of a case**, like the right to speedy trial, **is deemed violated only when the proceeding is attended by vexatious, capricious and oppressive delays**; **or when unjustified postponements of the trial are asked for and secured, or when without cause or justifiable motive a long period of time is allowed to elapse without the party having his case tried**. Equally applicable is the **balancing test** used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed, and such **factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant resulting from the delay, are considered**. (emphasis added)

This criteria laid down in *Barker* and *Gonzales* would be echoed in *Alvizo v. Sandiganbayan (Alvizo)*.[34] Petitioner therein alleged that the criminal case against him, as in *Tatad*, was politically motivated and that the Tanodbayan took almost twelve (12) years from the commencement of criminal investigation in 1979 until the filing of information with the Sandiganbayan in 1990. The Court, however, ruled that petitioner's thesis was not supported by evidence on record. On the contrary, the records disclosed that investigation began in 1989, instead of 1979 as claimed by therein petitioner, and that the determination of probable cause was resolved, and the corresponding information was filed, in due time within a span of one (1) year.

Measured against the standard laid down in *Barker* and *Gonzales*, the Court ruled in *Alvizo* that the one-year "delay" could not have prejudiced therein petitioner since the

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[34] G.R No. 101689, March 17, 1993.

determinative evidence for his case are documentary in nature and already formed part of the records of the case before the Sandiganabayan. The Court likewise took notice of petitioner's insensitivity to the implications and contingencies of the pending criminal case when he did not take any step whatsoever to accelerate the disposition of the matter. This inaction was perceived by the Court as acquiescence to any unobjected supervening delay. In any event, the delay, if at all, was justified because of the frequent amendments to procedural rules and structural reorganizations in the prosecutorial agencies during the martial law regime.

Factors to consider in determining inordinate delay

a. Length of the delay

The Court has never set a threshold period for concluding preliminary investigation proceedings before the Office of the Ombudsman premised on the idea that "speedy disposition" is a relative and flexible concept. It has often been held that a mere mathematical reckoning of the time involved is not sufficient in determining whether or not there was inordinate delay on the part of the investigating officer, and that particular regard must be taken of the facts and circumstances peculiar to each case.[35] This is diametrically opposed with Sec. 58 of the 2008 Manual for Prosecutors[36] observed by the National Prosecutorial

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[35] *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008.

[36] SEC. 58. *Period to resolve cases under preliminary investigation.* — The following periods shall be observed in the resolution of cases under preliminary investigation:

a) The preliminary investigation of complaints charging a capital offense shall be terminated and resolved within ninety (90) days from the date of assignment to the Investigating Prosecutor.

b) The preliminary investigation of all other complaints involving crimes cognizable by the Regional Trial Courts shall be terminated and resolved within sixty (60) days from the date of assignment.

c) In cases of complaints involving crimes cognizable by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts,

Service, which states that the investigating prosecutor must terminate the preliminary investigation proceeding within sixty (60) days from the date of assignment, extendible to ninety (90) days for complaints charging a capital offense. And to further contradistinguish, the Judiciary is mandated by the Constitution to resolve matters and controversies within a definite timeline.[37] The trial courts are required to decide cases within sixty (60) days from date of submission, twelve (12) months for appellate courts, and two (2) years for the Supreme Court. The prescribed period for the Judicial branch at least gives the party litigants an idea on when they could reasonably expect a ruling from the courts, and at the same time ensures that judges are held to account for the cases not so timely disposed.

The Court is not unmindful of the duty of the Ombudsman under the Constitution and Republic Act No. 6770 to act promptly on complaints brought before him. This imposition, however, should not be mistaken with a hasty resolution of cases at the expense of thoroughness and correctness.[38] More importantly, this duty does not license this Court to fix a specific period for the office to resolve the cases and matters before it, lest We encroach upon the constitutional prerogative of the Ombudsman to promulgate its own rules and procedure.[39]

Be that as it may, the Court is not precluded from determining the inclusions and exclusions in determining the period of delay. For instance, in *People v. Sandiganbayan*,[40] We have ruled that

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the preliminary investigation – should the same be warranted by the circumstances – shall be terminated and resolved within sixty (60) days from the date of assignment to the Investigating Prosecutor.

[37] Article VIII, Section 15(1) of the 1987 Constitution relevantly reads:

SECTION 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

[38] *Flores v. Hernandez, Sr.*, G.R. No. 126894, March 2, 2000.

[39] Constitution, Article XI, Section 13 (8).

[40] G.R. No. 188165, December 11, 2013.

the fact-finding investigation should not be deemed separate from the preliminary investigation conducted by the Office of the Ombudsman if the aggregate time spent for both constitutes inordinate and oppressive delay in the disposition of cases.

In the said case, the Ombudsman, on November 25, 2002, ordered the Philippine Anti-Graft Commission (PAGC) to submit documents relevant to the expose on the alleged involvement of then Secretary of Justice Hernando Perez in acts of bribery. The following day, then Ombudsman Simeon Marcelo ordered Cong. Mark Jimenez to submit a complaint-affidavit on the expose, which directive he complied with on December 23, 2002. On January 2, 2003, a Special Panel was created to evaluate and conduct preliminary investigation. The informations based on the complaint of Cong. Jimenez were all filed on April 15, 2008.

Upholding the dismissal of the criminal information by the Sandiganbayan, the court ruled thusly:

> The State further argues that the fact-finding investigation should not be considered a part of the preliminary investigation because the former was only preparatory in relation to the latter; and that the period spent in the former should not be factored in the computation of the period devoted to the preliminary investigation.
>
> The argument cannot pass fair scrutiny.
>
> The guarantee of speedy disposition under Section 16 of Article III of the Constitution applies to *all* cases pending before *all* judicial, quasi-judicial or administrative bodies. The guarantee would be defeated or rendered inutile if the hair-splitting distinction by the State is accepted. Whether or not the fact-finding investigation was separate from the preliminary investigation conducted by the Office of the Ombudsman should not matter for purposes of determining if the respondents' right to the speedy disposition of their cases had been violated.[41] (emphasis added)

This ruling necessitates a re-examination.

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[41] *Id*.

In *Ombudsman v. Jurado*,[42] we ruled that:

> x x x It is undisputed that the FFB of the OMB recommended that respondent together with other officials of the Bureau of Customs be criminally charged for violation of Section 3(e) of R.A. No. 3019 and Section 3601 of the Tariff and Customs Code. The same bureau also recommended that respondent be administratively charged. Prior to the fact-finding report of the FFB of the OMB, respondent was never the subject of any complaint or investigation relating to the incident surrounding Magleis non-existent customs bonded warehouse. In fact, in the original complaint filed by the Bureau of Customs, respondent was not included as one of the parties charged with violation of the Tariff and Customs Code. With respect to respondent, there were **no *vexatious*, *capricious, and oppressive delays* because he was not made to undergo any investigative proceeding prior to the report and findings of the FFB**.
>
> Simply put, prior to the report and recommendation by the FFB that respondent be criminally and administratively charged, respondent was neither investigated nor charged. That respondent was charged only in 1997 while the subject incident occurred in 1992, is not necessarily a violation of his right to the speedy disposition of his case. The record is clear that prior to 1997, respondent had no case to speak of he was not made the subject of any complaint or made to undergo any investigation. x x x (emphasis added)

We must distinguish between fact-finding investigations conducted before and after the filing of a formal complaint. When a formal criminal complaint had been initiated by a private complainant, the burden is upon such complainant to substantiate his allegations by appending all the necessary evidence for establishing probable cause. The fact-finding investigation conducted by the Ombudsman after the complaint is filed should then necessarily be included in computing the aggregate period of the preliminary investigation.

On the other hand, if the fact-finding investigation precedes the filing of a complaint as in incidents investigated *motu proprio* by the Ombudsman, such investigation should be excluded from

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[42] *Supra* note 35.

the computation. The period utilized for case build-up will not be counted in determining the attendance of inordinate delay.

It is only when a formal verified complaint had been filed would the obligation on the part of the Ombudsman to resolve the same promptly arise. Prior to the filing of a complaint, the party involved is not yet subjected to any adverse proceeding and cannot yet invoke the right to the speedy disposition of a case, which is correlative to an actual proceeding. In this light, the doctrine in *People v. Sandiganbayan* should be revisited.

With respect to investigations relating to anonymous complaints or *motu proprio* investigations by the Ombudsman, the date when the Ombudsman receives the anonymous complaint or when it started its *motu proprio* investigations and the periods of time devoted to said investigations cannot be considered in determining the period of delay. For the respondents, the case build up phase of an anonymous complaint or a *motu proprio* investigation is not yet exposed to an adversarial proceeding. The Ombudsman should of course be aware that a long delay may result in the extinction of criminal liability by reason of the prescription of the offense.

Even if the person accused of the offense subject of said anonymous complaint or *motu proprio* investigations by the Ombudsman is asked to attend invitations by the Ombudsman for the fact finding investigations, this directive cannot be considered in determining inordinate delay. These conferences or meetings with the persons subject of the anonymous complaints or *motu proprio* investigations are simply conducted as preludes to the filing of a formal complaint if it finds it proper. This should be distinguished from the exercise by the Ombudsman of its prosecutory powers which involve determination of probable cause to file information with the court resulting from official preliminary investigation. Thus, the period spent for fact-finding investigations of the ombudsman prior to the filing of the formal complaint by the Field Investigation Office of the Ombudsman is irrelevant in determining inordinate delay.

In sum, the reckoning point when delay starts to run is the date of the filing of a formal complaint by a private complainant or the filing by the Field Investigation Office with the Ombudsman of a formal complaint based on an anonymous complaint or as a result of its *motu proprio* investigations. The period devoted to the fact-finding investigations prior to the date of the filing of the formal complaint with the Ombudsman shall NOT be considered in determining inordinate delay. After the filing of the formal complaint, the time devoted to fact finding investigations shall always be factored in.

b. Reasons for the delay

Valid reasons for the delay identified and accepted by the Court include, but are not limited to: (1) extraordinary complications such as the degree of difficulty of the questions involved, the number of persons charged, the various pleadings filed, and the voluminous documentary and testimonial evidence on record; and (2) acts attributable to the respondent.

The period for re-investigation cannot automatically be taken against the State. Re-investigations cannot generally be considered as "vexatious, capricious, and oppressive" practices proscribed by the constitutional guarantee since these are performed for the benefit of the accused. As *Braza v. Sandiganbayan*[43] *(Braza)* instructs:

> Indeed, the delay can hardly be considered as "vexatious, capricious and oppressive." x x x Rather, it appears that Braza and the other accused were merely afforded sufficient opportunities to ventilate their respective defenses in the interest of justice, due process and fair investigation. The re-investigation may have inadvertently contributed to the further delay of the proceedings but this process cannot be dispensed with because it was done for the protection of the rights of the accused. Albeit the conduct of investigation may hold back the progress of the case, the same was essential so that the rights of the accused will not be compromised or sacrificed at the altar of expediency. (emphasis added) x x x

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[43] G.R. No. 195032, February 20, 2013.

A survey of jurisprudence reveals that most of the complaints dismissed for violation of the right to speedy disposition of a case stems from the Ombudsman's failure to satisfactorily explain the inordinate delay.[44]

c. Assertion of Right by the Accused

The Court had ruled in several cases that failure to move for the early resolution of the preliminary investigation or similar reliefs before the Ombudsman amounted to a virtual waiver of the constitutional right. *Dela Peña v. Sandiganbayan (Dela Peña)*, for example, ruled that the petitioners therein slept on their rights, amounting to laches, when they did not file nor send any letter-queries to the Ombudsman during the four-year (4-year) period the preliminary investigation was conducted. The Court, citing *Alvizo*, further held therein that:

> x x x The matter could have taken a different dimension if during all those four years, they showed signs of asserting their right to a speedy disposition of their cases or at least made some overt acts, like filing a motion for early resolution, to show that they are not waiving that right. Their silence may, therefore be interpreted as a waiver of such right. As aptly stated in Alvizo, the petitioner therein was insensitive to the implications and contingencies of the projected criminal prosecution posed against him by not taking any step whatsoever to accelerate the disposition of the matter, which inaction conduces to the perception that the supervening delay seems to have been without his objection, [and] hence impliedly with his acquiescence.

Following *Dela Peña*, it is the duty of the respondent to bring to the attention of the investigating officer the perceived inordinate delay in the proceedings of the formal preliminary investigation. Failure to do so may be considered a waiver of his/her right to speedy disposition of cases. If respondent fails to assert said right, then it may be presumed that he/she is

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[44] *Tatad v. Sandiganbayan, Angchangco v. Ombudsman, Roque v. Ombudsman, Coscolluela v. Sandiganbayan*, and *People v. Sandiganbayan*, *supra* notes 11-15.

allowing the delay only to later claim it as a ruse for dismissal. This could also address the rumored "parking fee" allegedly being paid by some respondents so that delay can be set up as a ground for the dismissal of their respective cases. Needless to say, investigating officers responsible for this kind of delay should be subjected to administrative sanction.

d. Prejudice to the respondent

The length of the delay and the justification proffered by the investigating officer therefor would necessarily be counterbalanced against any prejudice suffered by the respondent. Indeed, reasonable deferment of the proceedings may be allowed or tolerated to the end that cases may be adjudged only after full and free presentation of evidence by all the parties, especially where the deferment would cause no substantial prejudice to any party.[45] As taught in *Coscolluela*:

> Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if, otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.[46] x x x

"*Prejudice,*" as a criterion in the speedy disposition of cases, has been discussed in *Corpuz v. Sandiganbayan*[47] in the following manner:

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[45] *Padua v. Ericta*, No. L-38570, May 24, 1988.

[46] *Supra* note 14.

[47] G.R. No. 162214, November 11, 2004.

x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

In the macro-perspective, though, it is not only the respondent who stands to suffer prejudice from any delay in the investigation of his case. For inordinate delays likewise makes it difficult for the prosecution to perform its bounden duty to prove the guilt of the accused beyond reasonable doubt when the case is filed in court:

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States,* for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.[48]

It is for the Courts then to determine who between the two parties was placed at a greater disadvantage by the delay in the investigation.

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[48] *Caballes v. Court of Appeals*, G.R. No. 163108, February 23, 2005.

Time frame for resolution of criminal complaint

The Ombudsman has the power to formulate its own rules on pleading and procedure. It has in fact laid down its rules on preliminary investigation. All these controversies surrounding inordinate delay can easily be avoided had it prescribed a rule on the disposition period for the investigating graft officer to resolve the preliminary investigation of the formal complaints. Like the Department of Justice with respect to preliminary investigations by its prosecutors, it should provide a disposition period from the date of the filing of the formal complaint within which the graft prosecutor should determine the existence of probable cause. This will potentially solve all the motions and petitions that raise the defense of inordinate delay, putting the perennial issue to rest. In the meantime, the above-enunciated criteria shall be considered in determining the presence of inordinate delay.

Application in the case at bar

After a careful perusal of the records of this case, this Court finds grave abuse of discretion on the part of the Sandiganbayan in rendering its questioned Resolutions denying the petitioner's Motion to Dismiss.

Preliminarily, the Court must first determine the extent of the delay in the conduct of the preliminary investigation before the Ombudsman. In line with our earlier disquisitions, We deem the case against petitioner initiated not on April 21, 2009, the date of the Affidavit and Narrative Audit Report submitted to the Ombudsman, nor on September 1, 2009, when the letter-complaint of Delfin P. Aguilar was received by the office, but on January 7, 2011, when the PACPO-OMB-Visayas filed a formal complaint against petitioner. The fact-finding investigation, having preceded the filing of the formal complaint, is excluded in computing the duration of the delay. Thus, petitioner's preliminary investigation lasted from January 7, 2011 until April 15, 2016, or about five (5) years and three (3) months from the date of the filing of the formal complaint, and

five (5) years and (2) months from February 15, 2011 when petitioner was ordered to file his counter-affidavit.

Since the duration of the preliminary investigation is excessive, it is incumbent then on the prosecution to justify the delay. Unfortunately, no circumstance in this case warranted the protracted period of investigation.

The prosecution harps on the fact that there were ten (10) respondents in the complaint file with the OMB and each of them was afforded the right to explain themselves. Also, the records of the case were allegedly voluminous that entailed considerable time to study and analyze. These reasons, to Our mind, do not sufficiently explain the more than five-year long preliminary investigation. As per the prosecution:

> 6. Case records show that on November 18, 2010, then Ombudsman Merceditas Gutierrez approved the Final Evaluation Report of Rosanna Ortiz (Ms. Ortiz) recommending the upgrading of the Fact Finding Investigation docketed as CPL-V-09-1042 into an Ombudsman Criminal and Administrative Cases. Thereafter, a Supplemental Complaint-Affidavit was executed by Ms. Ortiz representing the [PACPO-OMB-Visayas] against ten respondents namely: 1) Elpidio Magante [Magante]; 2) Ma. Agnes B. Candug (Candug); 3) Ambrosio S. Orillos (Orillos); 4) Trinidad T. Castolo (Castolo); 5) Alan Jaum (Jaum); 6) Gaudioso C. Regenado, Jr. (Renegado Jr.); 7) Lorenzo T. Sarigumba (Sarigumba); 8) Ernesto Rulida (Rulida); 9) Raymundo T. Appari (Appari); and 10) Rochelle Cababan (Cababan). A case was thereafter docketed against the said respondents in 2011. In an Order dated February 25, 2011 the said respondents were directed to file their respective Counter-Affidavit. The Counter-Affidavits of Candug, Renegado, Jaum and Castolo were received by the OMB-Visayas on May 3, 2011. As to the Counter-Affidavits of Magante, Orillos, Sarigumba, Rulida and Appari these were received by the OMB-Visayas on May 6, 2011. In a Resolution dated 15 April 2016, the Office of the Ombudsman found probable cause x x x against Magante, Sarigumba, Orillos, Jaum, and Cababan.[49] x x x

Verily, the Order requiring respondents to file their counter-affidavits was issued on February 15, 2011. No clarificatory

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[49] *Rollo*, pp. 27-28.

hearing or further investigation was conducted that could have added a new dimension to the case. On May 6, 2 011, the criminal complaint was then already deemed submitted for resolution. Yet, it would only be on April 15, 2016 when petitioner would once again hear about the case, through his receipt of the adverse ruling finding probable cause to charge him with splitting of contracts and falsification of public documents. Noticeably, the prosecution did not offer any acceptable explanation for this gap between February 15, 2011 and April 15, 2016. Contrary to the finding of the Sandiganbayan, there is a hiatus on the part of the Ombudsman during this period. Left unsatisfactorily explained, this amounts to a violation of petitioner's constitutional right to a speedy disposition of case, corollarily warranting the dismissal of the criminal case against him.

The Court disagrees with the anti-graft court's ratiocinations for the denial of the Motion to Dismiss. The plea for dismissal cannot be premised on the finding that the instant criminal complaints were not politically-motivated unlike in *Tatad*. To recall, *Duterte* had modified the ruling to the effect that the Court is now agnostic of whether or not the political strong-arm is being flexed to prosecute the accused. That the filing of the criminal complaint is ill-motivated is then not a requisite before the right to a speedy disposition of a case can be invoked.

Likewise, petitioner's alleged failure to assert his right is not a veritable ground for the denial of the motion in the absence of any motion, pleading, or act on his part that contributed to the delay. It is not for him to ensure that the wheels of justice continue to turn. Rather, it is for the State to guarantee that the case is disposed within a reasonable period. Thus, it is of no moment that petitioner herein, unlike in *Angchangco*, did not file any motion before the Ombudsman to expedite the proceeding. It is sufficient that he raised the constitutional infraction prior to his arraignment before the Sandiganbayan.

Neither can petitioner be deemed to have waived his right to a speedy disposition of a case when he filed a motion for reconsideration against an adverse resolution of the Ombudsman on May 31, 2015. The filing of this singular motion cannot by

itself be considered as active participation in the preliminary investigation proceeding that amounted to a waiver of a constitutional right. At most, this can only be weighed against herein petitioner in determining whether or not the delay in his investigation was justified. The ground for the refusal of the Sandiganbayan to apply *Coscoluella* is therefore misplaced.

Lastly, there could have been no grave prejudice suffered by the State from the delay since the criminal charges for falsification of public documents and splitting of contracts are offenses that chiefly rely on the presentation of documentary evidence that, at this point, has already formed part of the records of the case. The evidence of the prosecution is then sufficiently protected and preserved. This weighs heavily against the State and in favor of petitioner who is at a tactical disadvantage in going against the well-oiled machinery of the government and its infinite resources.

WHEREFORE, finding grave abuse of discretion on the part of the Sandiganbayan in denying the petitioner's Motion to Dismiss, as well as the subsequent Motion for Reconsideration thereof, the Court **GRANTS** the instant Petition for *Certiorari* and Prohibition and hereby **REVERSES** and **SETS ASIDE** Sandigabayan Resolutions dated January 9, 2017 and March 24, 2017 in Criminal Case Nos. SB-16-CRM-0773-0774. Let a new one be entered dismissing Criminal Case Nos. SB-16-CRM-0773-0774 for violating petitioner's constitutional right to a speedy disposition of his case.

SO ORDERED.

Bersamin, Leonen, Martires, and *Gesmundo, JJ.*, concur.

FIRST DIVISION

[G.R. No. 232275. July 23, 2018]

SOLPIA MARINE AND SHIP MANAGEMENT, INC., *petitioner, vs.* **MICHAEL V. POSTRANO,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; TEMPORARY TOTAL DISABILITY; WHEN THE DISABILITY HAS NOT YET EXCEEDED THE 120-DAY PERIOD ESTABLISHED BY LAW AND THERE IS NO FINAL ASSESSMENT OF THE COMPANY-DESIGNATED PHYSICIAN DUE TO MEDICAL ABANDONMENT, THE SEAFARER IS ENTITLED ONLY TO THE PAYMENT OF BENEFITS FOR TEMPORARY TOTAL DISABILITY; CASE AT BAR.— We cannot give credence to Postrano's position that the company-designated physician's failure to give him a disability grading automatically amounts to a declaration that he is indeed suffering from a total permanent disability. A careful examination of the records shows that it was important for Postrano to report to the company-designated physician after undergoing the physical therapy sessions because only then can the latter definitely assess his condition. The advice of undergoing additional physical therapy sessions was an *indicia* that Postrano's temporary total disability would be greatly addressed. Thus, the assessment of the company-designated physician would be dependent on the outcome of said sessions, as Postrano's condition was notably improving as a result of the treatment. When Postrano failed to report to the company-designated physician, there was no way for the latter to make a definitive findings. As held by the NLRC:It can however be concluded that no date of return was specified since it was contingent upon the completion by [Postrano] of the additional physical therapy sessions thus beyond the control of the company-designated physician. x x x.Without the final assessment of the company-designated physician, Postrano is deemed suffering from temporary total disability. More so, the 120 day-period provided by law had not yet lapsed.

APPEARANCES OF COUNSEL

Fernando & Fernando Law Offices for petitioner.
Valmores & Valmores 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 assailing the Decision[2] dated November 14, 2016 and Resolution dated June 15, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 143725.

The Facts

Respondent Michael V. Postrano (Postrano) was engaged by petitioner Solpia Marine and Ship Management, Inc. (Solpia) as an able seaman aboard MV Daebo IBT, for and in behalf of its principal Daebo Ship Management Co., Ltd. on a 10-month contract[3] signed by the parties and approved by the Philippine Overseas Employment Administration (POEA) on March 13, 2012. Postrano's work involved strenuous manual work, including supervising the work of junior ratings, standing watch at bow or on wing of bridge to look for obstructions in the path of the vessel, measuring the depth of water in shallow or unfamiliar waters, steering the ship by automatic, remote, or manual control, breaking out rigs, overhauling and stowing cargo handling gears, among others.[4]

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[1] *Rollo*, pp. 12-46.

[2] Penned by Associate Justice Ma. Luisa C. Quijano-Padilla, concurred in by Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan; *id*. at 863-874.

[3] *Id*. at 932.

[4] *Id*. at 864.

On December 9, 2012, Postrano sustained a fracture on his right hand and an open wound on his left hand when he was pinned while arranging a ladder. Consequently, he was given medical attention in Indonesia and thereafter, in Korea. Although his condition was resolved, he was repatriated to the Philippines on January 1, 2013.[5]

Upon his arrival, Postrano was referred to the YGEIA Medical Center, Inc. for x-ray. The results of the same disclosed that his right forearm suffered incomplete fracture on the middle third shaft of the right ulna. The company-designated physician then prescribed medication for pain management.[6]

On February 5, 2013, Postrano was advised to undergo physical therapy. However, he opted, with permission, to continue the same in Compostela Valley as it is his place of residence. The permission secured was with the condition that Postrano must return to the company-designated physician for follow-up.[7]

After completing 10 sessions of physical therapy in Tagum Doctors Hospital, Inc. on March 14, 2013, Postrano complied with the company-designated physician's order to come back for a follow-up. During such consultation, the latter advised him to continue with the physical therapy and to return thereafter. Despite said advice, Postrano instead merely continued with physical therapy and failed to return to the company-designated physician after completing another series of sessions.[8]

In a letter dated June 4, 2013, Postrano asked Ms. Shirley E. Valbuena for the release of his remaining sickness allowance to enable him to continue his required treatment but to no avail. He once again demanded the same in a letter dated July 18, 2013; still to no avail. Subsequently, he forwarded to Solpia

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[5] *Id*.

[6] *Id*. at 864-865.

[7] *Id*. at 865.

[8] *Id*.

the certification issued by the Tagum Doctors Hospital, Inc. that he underwent physical therapy sessions, for which he demanded the reimbursement of medical and transportation expenses.[9]

As he was worried of his condition, Postrano consulted an independent physician who pronounced that Postrano suffered a Grade 9 disability.[10]

Postrano filed a complaint for permanent total disability benefits against Solpia, Carlito C. Mendoza (Mendoza) and/or Daebo Ship Management Co., Ltd. He argued that the 120/240 day-period had lapsed without the company-designated physician's diagnosis of his condition. On this note, he reasoned financial constraints anent his failure to comply with the company-designated physician's instruction to return for a check-up.[11]

For their part, Solpia, Mendoza and Daebo Ship Management Co., Ltd. contended that it was because of Postrano's own doing that the company-designated physician was prevented from making his medical assessment as Postrano failed to return after March 14, 2014 for a follow-up session.[12]

Ruling of the Labor Arbiter

In a Decision[13] dated April 30, 2015, the Labor Arbiter (LA) dismissed the complaint for lack of merit. The LA ruled that Postrano's medical sessions with the company-designated physician was not yet completed when he secured the opinion of an independent physician, a violation under the POEA Standard Employment Contract (SEC).[14] The *fallo* thereof reads:

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[9] *Id*. at 865-866.

[10] *Id*. at 866.

[11] *Id*.

[12] *Id*.

[13] Rendered by Labor Arbiter Gaudencio P. Demaisip, Jr.; *id*. at 200-211.

[14] *Id*. at 207.

IN VIEW OF THE FOREGOING, the complaint, for disability benefit, filed in the instant case, is DISMISSED for lack of merit.

Notwithstanding, [Solpia] should pay the complainant of his sickness allowance of US$ 1,635.00.

Also, [Postrano] should be repaid of his medical and transportation expenses in total amount of ₱ 33,998.96.

SO ORDERED.[15]

Ruling of the National Labor Relations Commission

The National Labor Relations Commission (NLRC), in a Resolution[16] dated August 27, 2015, affirmed the ruling of the LA and maintained that Postrano prematurely consulted an independent physician as he was obligated to report to the company-designated physician after undertaking physical therapy sessions, thus:

WHEREFORE, premises considered, [Postrano's] appeal is **DISMISSED** for lack of merit.

SO ORDERED.[17]

Postrano filed a Motion for Reconsideration,[18] which was denied in a Resolution[19] dated October 29, 2015.

On appeal, the CA reversed and set aside the NLRC ruling in a Decision[20] dated November 14, 2016. The CA ruled that the failure of the company-designated physician to give a definitive impediment rating of respondent's disability is

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[15] *Id*. at 211.

[16] Penned by Commissioner Erlinda T. Agus, concurred in by Presiding Commissioner Gregorio O. Bilog III and Commissioner Alan A. Ventura; *id*. at 253-269.

[17] *Id*. at 268.

[18] *Id*. at 270-280.

[19] *Id*. at 305-306.

[20] *Id*. at 863-874.

sufficient basis to declare that he suffered permanent and total disability. The *fallo* thereof reads:

> **WHEREFORE**, premises considered, the petition is **GRANTED**. The Resolutions promulgated on August 27, 2015 and October 29, 2015 of the [NLRC], in NLRC LAC No. 07-000526-15 [NLRC NCR-OFW-M-07-08335-14] are **REVERSED and SET ASIDE**. Solpia, [Mendoza] and/or Daebo Ship Management Co., Ltd. are hereby **ORDERED** to pay [Postrano] the amount of US$60,000.00 as full disability benefits in addition to the sickness allowance in the amount of US$1,635.00 as well as the medical transportation expenses amounting to US$33,998.96 as ordered by the LA in his April 30, 2015 Decision.
>
> **SO ORDERED.**[21]

A motion for reconsideration[22] was filed by Solpia, Mendoza and/or Daebo Ship Management Co., Ltd., which was denied in a Resolution[23] dated June 15, 2017, thus:

> **WHEREFORE**, premises considered, the Motion for Reconsideration is **DENIED** for lack of merit.
>
> **SO ORDERED.**[24]

Issue

Is Postrano entitled to the award of permanent and total disability benefits?

Ruling of the Court

Essentially, Solpia and Daebo Ship Management Co., Ltd. contend that the award of permanent and total disability benefits was erroneous as Postrano abandoned his treatment which prevented the company-designated physician from making any assessment.

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[21] *Id*. at 873.

[22] *Id*. at 875-897.

[23] *Id*. at 908-910.

[24] *Id*. at 910.

The petition is impressed with merit.

Article 192(c)(1) of the Labor Code provides that:

> Art. 192. Permanent disability.
>
> x x x x x x x x x
>
> C. The following disabilities shall be deemed total and permanent:
>
> (1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided in the Rules;

Rule VII, Section 2(b) of the Amended Rules on Employees' Compensation (AREC) provides:

> Sec. 2. Disability — x x x
>
> (b) A **disability is total and permanent** if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days, except as otherwise provided for in Rule X of these Rules.

Rule X, Section 2 of the AREC Amended Rules on Employees' Compensation provides that:

> Sec. 2. Period of entitlement.
>
> (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

Section 20(3) of the POEA-SEC states:

> Sec. 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x x x x x x

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

x x x x x x x x x

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. x x x Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

In this case, Postrano was repatriated on January 1, 2013. Upon his return, he was referred to the company-designated physician for examination and the latter prescribed medication for Postrano's condition. He was then advised to undergo physical therapy sessions for the betterment of his condition. After completing ten sessions of physical therapy or on March 14, 2013, he reported to the company-designated physician who further advised him to continue with said therapy as his condition was notably improving. He was also asked to report again for a follow-up. However, Postrano failed to return to the company-designated physician after completing another series of physical therapy sessions.

It bears stressing that when Postrano reported on March 14, 2013, it had only been 72 days since he was first attended to

by said doctor. During such time, Postrano was only suffering from temporary total disability since the 120 day-period had not yet lapsed.

We cannot give credence to Postrano's position that the company-designated physician's failure to give him a disability grading automatically amounts to a declaration that he is indeed suffering from a total permanent disability.

A careful examination of the records shows that it was important for Postrano to report to the company-designated physician after undergoing the physical therapy sessions because only then can the latter definitely assess his condition. The advice of undergoing additional physical therapy sessions was an *indicia* that Postrano's temporary total disability would be greatly addressed. Thus, the assessment of the company-designated physician would be dependent on the outcome of said sessions, as Postrano's condition was notably improving as a result of the treatment. When Postrano failed to report to the company-designated physician, there was no way for the latter to make a definitive findings. As held by the NLRC:

> It can however be concluded that no date of return was specified since it was contingent upon the completion by [Postrano] of the additional physical therapy sessions thus beyond the control of the company-designated physician. x x x.[25]

Without the final assessment of the company-designated physician, Postrano is deemed suffering from temporary total disability. More so, the 120 day-period provided by law had not yet lapsed.

In a similar case, We overturned the findings that the complainant was suffering from permanent and total disability in the absence of a definitive assessment of the company-designated physician, which absence was attributed to the fault of the complainant who committed medical abandonment.[26]

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[25] *Id*. at 267.

[26] See *New Filipino Maritime Agencies, Inc., et al. v. Despabeladeras*, 747 Phil. 626, 640 (2014).

All told, without any final assessment from the company-designated physician, Postrano's claim for permanent total disability benefits must fail. Section 20(D)[27] of the POEA-SEC instructs that no compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties.

[Postrano] was duty-bound to complete his medical treatment until declared fit to work or assessed with a permanent disability grading. As held in *Splash Philippines, Inc., et al. v. Ruizo*,[28] "[u]nder the POEA-SEC, such a refusal negated the payment of disability benefits."[29]

While We deny Postrano's claim for permanent total disability benefits, We note that Postrano is entitled to the income benefit for temporary total disability benefits during the period of his treatment, although exceeding beyond the 120 day-period but within the 240 day-period, as his condition required further treatment. Hence, We deem it proper to award income benefit equivalent to 218 days. This is computed from his repatriation on January 1, 2013 until August 7, 2013, the completion of the last physical therapy session sanctioned by the company-designated physician as certified[30] by the Tagum Doctors Hospital, Inc.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated November 14, 2016 and Resolution dated June 15, 2017 of the Court of Appeals in

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[27] Section 20. COMPENSATION AND BENEFITS

x x x x x x x x x

D. No compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

[28] 730 Phil. 162 (2014).

[29] *Id*. at 178.

[30] *Rollo*, p. 345.

CA-G.R. SP No. 143725 are **REVERSED** and **SET ASIDE**. Petitioner Solpia Marine and Ship Management, Inc. and Daebo Ship Management Co., Ltd. are **ORDERED**, jointly and severally, to pay Michael V. Postrano income benefit for 218 days and his medical and transportation expenses in the total amount of ₱33,998.96.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 232891. July 23, 2018]

LAMBERTO MARIÑAS *y* FERNANDO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; THE PROSECUTION MUST PROVE THE IDENTITY OF THE DANGEROUS DRUGS AND THE UNBROKEN CHAIN IN THE CUSTODY THEREOF.— To convict an accused who is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) the accused was in possession of dangerous drugs; (b) such possession was not

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

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

authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs. The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST WITHOUT A WARRANT; TWO REQUISITES THAT MUST CONCUR FOR A VALID WARRANTLESS ARREST *IN FLAGRANTE DELICTO*; PRESENT IN THIS CASE.— Paragraph (a) of Section 5 is commonly known as an *in flagrante delicto* arrest. For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (*1*) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (*2*) such overt act is done in the presence or within the view of the arresting officer. All the foregoing requirements for a lawful search and seizure are present in this case. The police officers had prior justification to be at the petitioner's place as they were conducting a follow-up operation on carnapping incidents in the area when they chanced upon the petitioner standing by, holding a plastic sachet containing suspected illegal drugs; when they approached petitioner and upon introducing themselves as police officers, petitioner ran away. As the crystalline substance was plainly visible, the police officers were justified in seizing them. Simply put, when the arresting officers arrested the petitioner and confiscated the subject sachet of drugs, they did so pursuant to a lawful warrantless arrest and seizure.

3. CRIMINAL LAW; R.A. NO. 9165; AMENDMENT THERETO INTRODUCED BY R.A. NO. 10640 REDUCED THE NUMBER OF WITNESSES REQUIRED DURING THE INVENTORY FROM THREE TO TWO; FAILURE TO JUSTIFY THE ABSENCE OF THE REQUIRED WITNESSES CONSTITUTES AS A SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY.— [T]he amendments

introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs from three to two – an elected public official AND a representative of the National Prosecution Service (Department of Justice [DOJ]) OR the media. These witnesses must be present during the inventory stage and are likewise required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. It is likewise worthy to note that failure of the arresting officers to justify the absence of the required witnesses, *i.e.,* the representative from the media or the DOJ and any elected official, constitutes as a substantial gap in the chain of custody.

4. ID.; ID.; ID.; AS THE CRIME WAS COMMITTED BEFORE THE AMENDMENT INTRODUCED BY R.A. NO. 10640, THE PROSECUTION SHOULD HAVE OFFERED JUSTIFIABLE GROUNDS FOR THE ABSENCE OF THE ELECTED PUBLIC OFFICIAL AND DOJ REPRESENTATIVE DURING THE INVENTORY; THERE BEING A SUBSTANTIAL GAP IN THE CHAIN OF CUSTODY CASTING SERIOUS DOUBT ON THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS, PETITIONER MUST BE ACQUITTED.— In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before the amendment introduced by R.A. 10640. As culled from the records, the respondent was able to justify the failure of the arresting officers to mark the seized items at the place of apprehension or arrest. However, no justification was given as to the absence of the other required witnesses, *i.e.*, an elected public official and DOJ representative. The records clearly state that aside from the petitioner and the arresting officers, only media man Nick Luares was present in the inventory[.] x x x The inventory and photographing of seized items form part of the chain of custody rule. Under the old provisions of Section 21, the inventory and photograph must be conducted in the presence of **a representative from the media and the DOJ, AND any elected public official.** x x x There is no question that the prosecution miserably failed to provide justifiable grounds for the arresting officers' non-compliance with Section 21 of R.A. No. 9165, as well as the IRR. The unjustified absence of an elected public official and DOJ representative during the

inventory of the seized item constitutes a substantial gap in the chain of custody. There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti.* As such, the petitioner must be acquitted.

PERALTA, *J.*, *separate concurring opinion*:

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); THE PROSECUTION BEARS THE BURDEN OF PROVING A VALID CAUSE FOR NON-COMPLIANCE WITH SECTION 21 OF R.A. NO. 9165; THE GROUND MUST BE CLEARLY STATED IN THE OFFICERS' AFFIDAVIT COUPLED WITH A STATEMENT ON THE STEPS THEY TOOK TO PRESERVE THE INTEGRITY OF THE SEIZED DRUGS.— The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

2. ID.; ID.; ID.; VALID REASONS FOR NON-COMPLIANCE WITH SECTION 21 OF R.A. NO. 9165, ENUMERATED.— In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media**

representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

3. ID.; ID.; ID.; RELIANCE IN THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY IS FUNDAMENTALLY FLAWED WHERE THERE ARE LAPSES IN THE PROCEDURE UNDERTAKEN BY APPREHENDING TEAM.— Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity. The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.

4. REMEDIAL LAW; EVIDENCE; IF THE EVIDENCE OF ILLEGAL DRUGS WAS NOT HANDLED PURSUANT TO THE CHAIN OF CUSTODY RULE, THE CONSEQUENCE RELATES NOT TO INADMISSIBILITY BUT TO THE WEIGHT OF EVIDENCE; CHAIN OF CUSTODY RULE IS A MATTER OF EVIDENCE AND RULE OF PROCEDURE.— [I]t is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam* that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would

automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress. I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

5. CRIMINAL LAW; R.A. NO. 9165; THE REQUIREMENTS OF SECTION 21 THEREOF ARE POLICE INVESTIGATION PROCEDURES WHICH CALL FOR ADMINISTRATIVE SANCTIONS IN CASE OF NON-COMPLIANCE.— [T]he requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165[.]

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, as amended, seeking to reverse and set aside the Decision[2] and

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[1] *Rollo,* pp. 13-30.

[2] Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba, concurring; *id.* at 36-48.

Resolution[3] of the Court of Appeals (CA) dated December 9, 2016 and July 17, 2017, respectively, in CA-G.R. CR No. 37102, which affirmed the conviction of Lamberto Mariñas *y* Fernando (petitioner) for violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Antecedent Facts

The facts, as culled from the records, read as follows:

The petitioner and a certain George Hermino (Hermino) were both charged with violation of Section 11, Article II of R.A. No. 9165 before the Regional Trial Court (RTC) of San Pedro, Laguna. The Information reads:

> The undersigned Asst. Provincial Prosecutor of Laguna hereby accuses **LAMBERTO MARIÑAS y FERNANDO** of the crime of **VIOLATION OF SECTION 11, ARTICLE II of R.A. No. 9165 (The Comprehensive Dangerous Drugs Act of 2002)**, committed as follows:
>
> That on or about October 5, 2010, in the Municipality of San Pedro, Laguna, Philippines and within the jurisdiction of this Honorable Court, the said accused without authority of the law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) small heat-sealed transparent plastic sachet containing methamphetamine hydrochloride, commonly known as "shabu", a dangerous drug, weighing zero point zero one (0.01) gram.
>
> CONTRARY TO LAW.[4]

On arraignment, petitioner and Hermino, assisted by counsel, entered a plea of "not guilty" to the offense charged.

The prosecution's version of the facts, as summarized by the Office of the Solicitor General (OSG) read as follows:

> On October 5, 2010 at around 2:00 in the morning, PNP San Pedro, Laguna received a report regarding a motorcycle theft in the vicinity

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

[4] *Id*. at 37.

of Barangay Cuyab, San Pedro, Laguna. PO2 Santos, SPO4 Dela Peña, SPO2 Abutal and PO2 Avila responded to the report and conducted a monitoring of the area. At 3:00 in the morning, the police officers decided to go to the house of their asset, also in Barangay Cuyab, and on their way to the house, while walking through an alley, they saw two (2) male persons, the one at the doorway was showing to the other person standing outside the door, a plastic sachet which appeared to be shabu.

The police officers immediately approached the two (2) and introduced themselves as police officers when suddenly one person ran away and fled. PO2 Santos immediately held the other person, later identified as [the petitioner]. SPO2 Abutal, on the other hand, saw from the open door [Hermino], inside the house, holding a plastic sachet of shabu and a pair of scissors. Another empty plastic sachet was confiscated from Hermino, which was lying on top of the table, in plain view from the open door of his house.

After the two were arrested and after informing them of their Constitutional Rights, appellants were brought to the Police Station. PO2 Santos was in possession of the plastic sachet confiscated from Mariñas, while SPO2 Abutal was in possession of the plastic sachet confiscated from Hermino, from the place of arrest to the Police Station. The confiscated plastic sachets and pair of scissors were marked at the Police Station by PO2 Santos and SPO2 Abutal, respectively. Afterwards, the confiscated items were inventoried and a certification of inventory was issued. Appellants and the confiscated items were likewise photographed. Mediaman Nick Luares was present in the inventory also took photographs of the confiscated items and of appellants.

PO2 Santos and SPO2 Abutal prepared a Request for Laboratory Examination for seized items from appellants Mariñas and Hermino. PO2 Santos and mobile driver Eliseo Carmen brought the request for laboratory examination and the confiscated items to the PNP Crime Laboratory at the Camp Vicente Lim, Calamba City for drug analysis. The confiscated specimen, both from appellants Hermino and Mariñas were in the custody of PO2 Santos after marking, up to the submission to the PNP Crime Laboratory. PO2 Santos likewise personally turned over the specimen to the Receiving Clerk of the PNP Crime Laboratory. However, PO2 Eliseo Carmen was the one who signed the formal turn-over documents as PO2 Santos was not in uniform at the time.

Forensic Chemical Officer Lalaine Ong Rodrigo established that she personally received the confiscated items: two plastic sachets;

a pair of scissors; and one empty transparent plastic sachet, including the Request for Laboratory Examination from the Receiving Clerk of the Regional Crime Laboratory, Camp Vicente Lim, Laguna. The two (2) small heat-sealed plastic sachets of shabu marked "LM-P" and "GH-P" were examined by her and found positive for methamphetamine hydrochloride, as contained in Chemistry Report No. D-313-10.

After Rodrigo's examination of the specimen, the same were placed into a container, sealed and marked to prevent tampering. She likewise personally retrieved the object evidence from the evidence custodian and bought (sic) the same before the trial court. She testified before the trial court that the plastic sachets were in the same condition at the time she examined it and when she retrieved it from the evidence custodian.[5]

The version of the defense, insofar as the petitioner is concerned and as summarized[6] by the RTC, reads as follows:

[The petitioner], on the other hand, testified that on October 5, 2010, he was sleeping in his house together with his live-in partner and their two children when police officers knocked so he opened the door. They told him that they were conducting a follow-up operation. Then, they entered and conducted a search in his house. They took and shook the pillows over the heads of his sleeping children. His live-in partner was awakened and surprised of what was happening but she just cried as she cannot do anything. After about thirty minutes, they showed him a small plastic sachet they allegedly found on top of his television set. He was then brought to the police station where he saw accused Hermino.[7]

After trial, the RTC rendered a Consolidated Judgment[8] dated September 10, 2014 finding petitioner and his co-accused guilty beyond reasonable doubt of the crime charged. In so ruling, the RTC opined that both have been positively identified by the witnesses for the prosecution to be the same individuals who were caught in *flagrante delicto* for possession of *shabu*.

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

[6] *Id*. at 40.

[7] *Id*. at 71.

[8] Rendered by Judge Sonia T. Yu-Casano; *id*. at 90-97.

With regard to the identity of the said dangerous drugs, the RTC held that every chain in the custody of the confiscated dangerous drug was accounted for and remained unbroken, in accordance with Section 21 of R.A. No. 9165. The RTC did not give credence to the defense of denial and alibi because the accused failed to present the testimonies of the people living with them to substantiate their arguments. Neither did they file any administrative complaint against the police officers who arrested them.

The dispositive portion of the Consolidated Judgment reads:

> WHEREFORE, foregoing considered, judgment is hereby rendered as follows:
>
> 1. In Criminal Case No. 10-7556-SPL, [the petitioner] is found GUILTY beyond reasonable doubt of violation of Section 11, Article II of [R.A.] No. 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and to pay a fine of Three Hundred Thousand (₱300,000.00) pesos without subsidiary imprisonment in case of insolvency.
>
> 2. In Criminal Case No. 10-7557-SPL, [Hermino] is found GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one (1) day as minimum to fourteen (14) years and eight (8) months as maximum and to pay a fine of Three Hundred Thousand (₱300,000.00) pesos without subsidiary imprisonment in case of insolvency.
>
> The period of his preventive imprisonment should be given full credit.
>
> Let the two plastic sachets of shabu subject matter of these cases be immediately forwarded to the Philippine Drug Enforcement Agency for its disposition as provided by law.
>
> SO ORDERED.[9]

Undeterred, petitioner and Hermino appealed to the CA and assigned the following errors that were allegedly committed by the RTC, to wit:

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[9] *Id*. at 96-97.

I. The trial court gravely erred in convicting the accused-appellants of the crime charged despite the illegality of their supposed in *flagrante delicto* arrest.

II. The trial court gravely erred in convicting the accused-appellants of the crime charged despite the prosecution's failure to establish the admissibility of the allegedly seized prohibited drugs for being fruits of the poisonous tree.

III. The trial court gravely erred in giving full credence to the prosecution's version despite the patent inconsistencies in the testimonies of the police officers with regard to the chain of custody of the seized illegal drugs.[10]

On October 24, 2016, Hermino expired at the National Bilibid Prison Hospital.[11]

On December 9, 2016, the CA rendered a Decision,[12] the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is **DISMISSED.** The Consolidated Judgment dated 10 September 2014 of the [RTC] of San Pedro, Laguna, Branch 31 in Criminal Case Nos. 10-7556-SPL and 10-7557-SPL is **AFFIRMED.**

SO ORDERED.[13]

Petitioner moved for reconsideration but the same was denied by the CA in a Resolution[14] dated July 17, 2017.

Hence, this petition.

The Issues

The core issue for the Court's resolution is whether or not the CA erred in affirming petitioner's conviction for violation of Section 11, Article II of R.A. No. 9165.

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[10] *Id.* at 71.

[11] *Id.* at 21.

[12] *Id.*

[13] *Id.* at 48.

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

Ruling of the Court

To convict an accused who is charged with illegal possession of dangerous drugs, the prosecution must establish the following elements by proof beyond reasonable doubt: (a) the accused was in possession of dangerous drugs; (b) such possession was not authorized by law; and (c) the accused was freely and consciously aware of being in possession of dangerous drugs.[15]

The prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.[16]

In this case, the petitioner was charged with the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11,[17] Article II of R.A. No. 9165. The petitioner

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[15] *People of the Philippines v. Salim Ismael y Radang,* G.R. No. 208093, February 20, 2017; *Reyes v. Court of Appeals,* 686 Phil. 137, 148 (2012), citing *People v. Sembrano,* 642 Phil. 476, 490-491 (2010).

[16] *People of the Philippines v. Ronaldo Paz y Dionisio*, G.R. No. 229512, January 31, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014); *People v. Alivio, et al.*, 664 Phil. 565, 580 (2011); *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

[17] **Sec. 11.** *Possession of Dangerous Drugs*. – 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 possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

insists that he should be acquitted on the following grounds: (a) broken chain of custody of the seized drug; and (b) the inconsistent testimonies of the arresting officers with regard to the chain of custody.

The petitioner argues that the arresting officers marked the sachets at the police station, in clear violation of Section 21 of R.A. No. 9165 which requires *marking* of the subject sachet of drugs to be done at the place of apprehension or arrest. The petitioner also claims that the inconsistencies in the testimonies of the arresting officers as regards custody of the seized item supports his contention that there was a break in the chain of custody.

On these points, the Court disagrees with the petitioner.

The petitioner was caught *in flagrante delicto*. Section 5, Rule 113 of the Rules of Court lists the situations when a person may be arrested without a warrant, thus:

Sec. 5. *Arrest without warrant; when lawful*. – A peace officer or a private person may, without a warrant, arrest a person:

a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense[.]

x x x x x x x x x

Paragraph (a) of Section 5 is commonly known as an *in flagrante delicto* arrest. For a warrantless arrest of an accused caught *in flagrante delicto* to be valid, two requisites must concur: (*1*) the person to be arrested must execute an overt act indicating

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(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*.

that he has just committed, is actually committing, or is attempting to commit a crime; and (*2*) such overt act is done in the presence or within the view of the arresting officer.[18]

All the foregoing requirements for a lawful search and seizure are present in this case. The police officers had prior justification to be at the petitioner's place as they were conducting a follow-up operation on carnapping incidents in the area when they chanced upon the petitioner standing by, holding a plastic sachet containing suspected illegal drugs; when they approached petitioner and upon introducing themselves as police officers, petitioner ran away. As the crystalline substance was plainly visible, the police officers were justified in seizing them. Simply put, when the arresting officers arrested the petitioner and confiscated the subject sachet of drugs, they did so pursuant to a lawful warrantless arrest and seizure.

The Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of R.A. No. 9165 expressly provide that in *warrantless seizures*, the marking of the seized items shall be done immediately at the place where the drugs were seized OR at the nearest police station OR nearest office of the apprehending officer or team, whichever is practicable, to wit:

A. Marking, Inventory and Photograph; Chain of Custody Implementing Paragraph "a" of the IRR.

A.1. The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

A1.1. The marking, physical inventory and photograph of the seized/confiscated items shall be conducted where the search warrant is served.

A1.2. The marking is the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the item/s seized.

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[18] *People v. Laguio, Jr.*, 547 Phil. 296, 328-329 (2007).

> A1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized **or at the nearest police station or nearest office of the apprehending officer/ team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/ team whichever is practicable.** (Emphasis and underscoring Ours)

Relevant jurisprudence[19] on the matter also states that if seizure was made as a consequence of or pursuant to a warrantless arrest, the physical inventory and marking may be conducted at the nearest police station, as was done by the arresting officers in this case. Clearly, there was compliance with respect to venue.

As to the petitioner's contention that the testimonies of the arresting officers were inconsistent and incredible, such inconsistency will not by itself automatically render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items were properly preserved by the apprehending officer or team.

In *People v. Relato*,[20] the Court explained that in a prosecution of the sale and possession of methamphetamine hydrochloride prohibited under R.A. No. 9165, the State not only carries the heavy burden of proving the elements of the offense of, but also bears the obligation to prove the *corpus delicti*, failing in which the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. It is settled that the **State does not establish the *corpus delicti* when the prohibited substance subject of the prosecution is missing or when substantial gaps in the chain of custody of the prohibited substance raise grave doubts about the authenticity of the prohibited substance presented as evidence in court.** Any gap renders the case for the State less than

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[19] *People v. Sanchez*, 590 Phil. 214, 240-241 (2008), citing IRR of R.A. No. 9165, Sec. 21(a); *People v. Beran*, 724 Phil. 788, 819 (2014).

[20] 679 Phil. 268 (2012).

complete in terms of proving the guilt of the accused beyond reasonable doubt.[21]

It now behooves the Court to determine once and for all whether or not there was compliance with the requirements of Section 21 of R.A. No. 9165.

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph (1) provides a list of the witnesses required to be present during the inventory and taking of photographs and the venue where these should be conducted, to wit:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

1. The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/ or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. (Emphasis Ours)

In 2014, R.A. No. 10640[22] amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21

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

[22] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002." Approved on June 9, 2014.

was amended, in that the number of witnesses required during the inventory stage was reduced from three (3) to only two (2), to wit:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

1. The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s for 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 by the apprehending officer/ team, shall not render void and invalid such seizures and custody over said items. (Emphasis and underscoring Ours)

A comparison of the cited provisions show that the amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs from three to two – an elected public official AND a representative of the National Prosecution Service (Department of Justice [DOJ]) OR the media. These witnesses must be present during the inventory stage and are likewise required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of

the seized items are preserved and that the police officers complied with the required procedure. It is likewise worthy to note that failure of the arresting officers to justify the absence of the required witnesses, *i.e.,* the representative from the media or the DOJ and any elected official, constitutes as a substantial gap in the chain of custody.

In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before the amendment introduced by R.A. 10640. As culled from the records, the respondent was able to justify the failure of the arresting officers to mark the seized items at the place of apprehension or arrest. However, no justification was given as to the absence of the other required witnesses, *i.e.*, an elected public official and DOJ representative. The records clearly state that aside from the petitioner and the arresting officers, only media man Nick Luares was present in the inventory, to wit:

> After the two were arrested and after informing them of their Constitutional rights, appellants were brought to the Police Station. PO2 Santos was in possession of the plastic sachet confiscated from Mariñas, while SPO2 Abutal was in possession of the plastic sachet confiscated from Hermino, from the place of arrest to the Police Station. The confiscated plastic sachets and pair of scissors were marked at the Police Station by PO2 Santos and SPO2 Abutal, respectively. Afterwards, the confiscated items were inventoried and a certification of inventory was issued. Appellants and the confiscated items were likewise photographed. Mediaman Nick Luares was present in the inventory also took photographs of the confiscated items and of appellants.[23]

On this point, the petition is impressed with merit.

The inventory and photographing of seized items form part of the chain of custody rule. Under the old provisions of Section 21, the inventory and photograph must be conducted in the presence of **a representative from the media and the DOJ, AND any elected public official.**

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[23] *Rollo,* pp. 38-39.

The Court is well aware that a perfect chain of custody is almost always impossible to achieve and so it has previously ruled that minor procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

The Court's ruling in *People v. Umipang*[24] is instructive on the matter:

> Minor deviations from the procedures under R.A. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.
>
> For the arresting officers' failure to adduce justifiable grounds, we are led to conclude from the totality of the procedural lapses committed in this case that the arresting officers deliberately disregarded the legal safeguards under R.A. 9165. These lapses effectively produced serious doubts on the integrity and identity of the *corpus delicti*, especially in the face of allegations of frame-up. Thus, for the foregoing reasons, we must resolve the doubt in favor of accused-appellant, as every fact necessary to constitute the crime must be established by proof beyond reasonable doubt.

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[24] 686 Phil. 1024 (2012).

As a final note, we reiterate our past rulings calling upon the authorities to exert greater efforts in combating the drug menace using the safeguards that our lawmakers have deemed necessary for the greater benefit of our society. The need to employ a more stringent approach to scrutinizing the evidence of the prosecution especially when the pieces of evidence were derived from a buy-bust operation redounds to the benefit of the criminal justice system by protecting civil liberties and at the same time instilling rigorous discipline on prosecutors.[25] (Citations omitted)

There is no question that the prosecution miserably failed to provide justifiable grounds for the arresting officers' non-compliance with Section 21 of R.A. No. 9165, as well as the IRR. The unjustified absence of an elected public official and DOJ representative during the inventory of the seized item constitutes a substantial gap in the chain of custody. There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti.* As such, the petitioner must be acquitted.

Finally, it cannot be gainsaid that it is mandated by no less than the Constitution[26] that an accused in a criminal case shall be presumed innocent until the contrary is proved. In *People of the Philippines v. Marilou Hilario y Diana and Laline Guadayo y Royo*,[27] the Court ruled that the prosecution bears the burden to overcome such presumption. If the prosecution fails to discharge this burden, the accused deserves a judgment of

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[25] *Id.* at 1053-1054.

[26] Article III, Section 14(2) of the 1987 Constitution mandates:

Sec. 14. x x x x x x x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[27] G.R. No. 210610, January 11, 2018.

acquittal. On the other hand, if the existence of proof beyond reasonable doubt is established by the prosecution, the accused gets a guilty verdict. In order to merit conviction, the prosecution must rely on the strength of its own evidence and not on the weakness of evidence presented by the defense.

WHEREFORE, the petition is **GRANTED**. The Decision and Resolution of the Court of Appeals dated December 9, 2016 and July 17, 2017, respectively, in CA-G.R. CR No. 37102, are hereby **REVERSED** and **SET ASIDE.** Accordingly, petitioner Lamberto Mariñas *y* Fernando is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

Peralta, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

PERALTA, *J.*:

I concur with the *ponencia* in acquitting accused-appellant Lamberto Mariñas y Fernando of the charge of illegal possession of dangerous drugs, or violation of Section 11, Article II of Republic Act No. 9165 (*R.A. No. 9165*),[1] respectively. I agree that the prosecution failed to provide justifiable grounds for the arresting officers' non-observance of the three-witness rule under Section 21[2] of R.A. No. 9165, *i.e.*, why an elected public

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[1] *"AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES."*

[2] Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled*

official and a representative from the Department of Justice were not present during the inventory of the seized items. At any rate, I would like to emphasize on important matters relative to Section 21 of R.A. No. 9165, as amended.

To properly guide law enforcement agents as to the proper handling of confiscated drugs, Section 21 (a), Article II of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 filled in the details as to where the inventory and photographing of seized items had to be done, and added a saving clause in case the procedure is not followed:[3]

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; ***Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.**

Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

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

It bears emphasis that R.A. No. 10640,[4] which amended Section 21 of R.A. No. 9165, now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the National Prosecution Service **or** the media.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe conceded that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop the increasing drug addiction and also, in the conflicting decisions of the courts."[5] Senator Poe stressed the necessity for the amendment of Section 21 based on the public hearing that the Senate Committee on Public Order and Dangerous Drugs had conducted, which revealed that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all comers of the Philippines, especially in the remote areas. For another there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended and thus, it is difficult to get the most grassroot-elected public official to be a witness as required by law."[6]

In his Co-sponsorship speech, Senator Vicente C. Sotto III said that in view of a substantial number of acquittals in drug-related cases due to the varying interpretations of prosecutors and judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our

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[4] *"AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002."*

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

[6] *Id.*

existing law" and ensure [its] standard implementation."[7] Senator Sotto explained why the said provision should be amended:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of the seized illegal drugs.
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> x x x x x x x x x
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> Section 21(a) of RA 9165 need to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.
>
> It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure of illegal drugs or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.
>
> Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances where there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate

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[7] *Id.*

the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[8]

However, under the original provision of Section 21 and its IRR, which is applicable at the time the appellant committed the crime charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the media, **and** (b) the DOJ, **and**; (c) any elected public official who shall be required to sign copies of the inventory and be given copy thereof. The presence of the three witnesses was intended as a guarantee against planting of evidence and frame up, as they were "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[9]

The prosecution bears the burden of proving a valid cause for non- compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law.[10] Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items.[11] Strict adherence to Section 21

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

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

[10] *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz*, G.R. No. 229512, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018.

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

is required where the quantity of illegal drugs seized is minuscule, since it is highly susceptible to planting, tampering or alteration of evidence.[12]

In this case, the prosecution never alleged and proved that the presence of all the required witnesses was not obtained for any of the following reasons, such as: (1) **their attendance was impossible because the place of arrest was a remote area**; (2) **their safety during the inventory and photograph of the seized drugs were threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf**; (3) **the elected official themselves were involved in the punishable acts sought to be apprehended**; (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125**[13] **of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention**; or (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**.

Invocation of the disputable presumptions that the police officers regularly performed their official duty and that the integrity of the evidence is presumed to be preserved, will not suffice to uphold appellant's conviction. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the

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[12] *Id.*

[13] Art. 125. ***Delay in the delivery of detained persons to the proper judicial authorities.*** — The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

agents of the law is fundamentally flawed because the lapses themselves are affirmative proofs of irregularity.[14] The presumption may only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21 or when the saving clause found in the IRR is successfully triggered. In this case, the presumption of regularity had been contradicted and overcome by evidence of non-compliance with the law.[15]

At this point, it is not amiss to express my position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, I agree with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam*[16] that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.

I subscribe to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.

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[14] *People v. Ramirez*, *supra* note 3.

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

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

I further submit that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165**, to wit:

Section 29. *Criminal Liability for Planting of Evidence*. – Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.

Section 32. *Liability to a Person Violating Any Regulation Issued by the Board*. – The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence.

FIRST DIVISION

[G.R. No. 233033. July 23, 2018]

ROMEO IGDALINO AND ROSITA IGDALINO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; EVALUATION OF THE LOWER COURTS' FINDINGS IS BEYOND THE REVIEW FUNCTION OF THE SUPREME COURT, EXCEPT WHEN THE LOWER COURTS OVERLOOKED CERTAIN MATERIAL AND RELEVANT MATTERS; CASE AT BAR.— We reverse the assailed Decision of the CA and acquit the Igdalinos of the charge of qualified theft. While the determination of guilt necessitates the appreciation of evidentiary matters — a province beyond the Court's review function under Rule 45 of the Rules of Court — an evaluation of the factual findings of the lower courts is permitted in exceptional circumstances, as when the lower courts overlooked certain material and relevant matters.

2. CRIMINAL LAW; THEFT; ELEMENTS; WHEN QUALIFIED.— Oft-cited, the elements of the crime of theft are: (1) there was a taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things.On the other hand, theft becomes qualified if attended by any of the circumstances enumerated under Article 310 of the RPC, thus: ART. 310. *Qualified Theft*. The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or **if the property stolen** is motor vehicle, mail matter or large cattle or **consists of coconuts taken from the premises of the plantation or** fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

3. ID.; ID.; ID.; INTENT TO STEAL IS PRESUMED FROM THE TAKING OF PERSONAL PROPERTY WITHOUT

THE CONSENT OF THE OWNER OR ITS LAWFUL POSSESSOR; WHEN THE TAKING IS OPEN AND NOTORIOUS, UNDER AN HONEST AND IN GOOD FAITH BELIEF OF THE ACCUSED OF HIS OWNERSHIP OVER THE PROPERTY, THE PRESUMPTION THAT THERE IS INTENT TO STEAL IS DEFEATED; CASE AT BAR.— [F]or the crime of theft to prosper, it must be established beyond doubt that the accused had the intent to steal personal property. This *animus furandi* pertains to the intent to deprive another of his or her ownership or possession of personal property, apart from but concurrent with the general criminal intent which is an essential element of *dolo malus*. The intent to steal is presumed from the taking of personal property without the consent of the owner or its lawful possessor. As in all presumptions, this may be rebutted by evidence showing that the accused took the personal property under a *bona fide* belief that he owns the property. x x x Clearly, jurisprudence has carved out an instance when the act of taking of personal property defeats the presumption that there is intent to steal — when the taking is open and notorious, under an honest and in good faith belief of the accused of his ownership over the property. x x x Contrary to the CA's observations, the Court finds that the Igdalinos' open and notorious harvesting of coconuts was made under their belief that they, in fact, owned the land where the plantation is situated.

APPEARANCES OF COUNSEL

Public Attorney's Office for petititoners.
The Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated February 23,

[1] *Rollo*, pp. 9-26.

[2] Penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Marilyn B. Lagura-Yap and Gabriel T. Robeniol. *Id*. at 88-102.

2017 and Resolution[3] dated June 29, 2017 of the Court of Appeals (CA) in CA-G.R. CEB CR. No. 02642 entitled "*People of the Philippines v. Romeo Igdalino and Rosita Igdalino*" which affirmed the Decision[4] dated December 2, 2014 of the Regional Trial Court (RTC), Branch 28 of Catbalogan City, finding herein petitioners spouses Romeo Igdalino (Romeo) and Rosita Igdalino (Rosita) (collectively, Igdalinos) both guilty of the crime of qualified theft for having harvested 2,500 pieces of nuts of coconut fruits valued at Php4,000.00 from the coconut plantation of Avertino Jaboli (Avertino).

The Antecedents

The Igdalinos, together with their sons Rowel Igdalino (Rowel) and Romeo Igdalino, Jr. (son Romeo, Jr.), were charged in an Information for the crime of qualified theft defined and punished under Article 310 of the Revised Penal Code in relation to Article 308 thereof, as follows:

> That on or about the 29th day of June 2000, at about 8:00 o'clock, more or less, in the morning, at Barangay Camarubo-an, Municipality of Jiabong, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating together and mutually helping and aiding one another, with deliberate intent to gain, did then and there wilfully, unlawfully and feloniously pick, harvest, gather and carry away with them Two Thousand Five Hundred (2,500) pieces of nuts of the coconut fruits valued at Four Thousand Pesos (₱4,000.00), from the coconut plantation of Avertino Jaboli without the knowledge and consent of the latter to the damage and prejudice of the above-named owner, in the aforementioned sum of ₱4,000.00, Philippine Currency.
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> CONTRARY TO LAW.[5]

When arraigned, petitioners pleaded not guilty. The case against the son Romeo, Jr. was dismissed considering that he

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[3] *Id*. at 110-111.

[4] *Id*. at 43-66.

[5] *Id*. at 10-11, 43 and 72.

was below fifteen (15) years of age at the time of the alleged commission of the crime.[6]

The evidence for the prosecution tends to establish that Lot No. 1609, the land on which the subject coconut trees were planted, is registered in the name of Francisco Jaboli (Francisco) and covered by Transfer Certificate of Title No. T-7296. Said land was allegedly acquired by Francisco through sale from one Mauricio Gabejan.[7] Upon Francisco's death, his children, one of who is Avertino, inherited the property.[8] A caretaker in the person of Felicisimo Bacarra (Felicisimo) was hired by Avertino to oversee the land beginning 1985.[9]

In the morning of June 29, 2000, Felicisimo saw the Igdalinos together with their two sons picking nuts from the coconut trees. The men climbed the trees while Rosita was on the ground gathering the coconuts. Allegedly, the Igdalinos gathered a total of 2,500 pieces of coconuts which were piled, with the husks removed and shells broken.[10] Avertino's sister, Lilia Dabuet (Lilia), identified TCT No. T-7296 registered under her late father Francisco's name. Lilia was not personally aware that her father acquired lands.[11]

For the defense, Rosita testified that the parcel of land was owned by her father Narciso Gabejan as shown in the Original Certificate of Title No. 1068 covering Lot No. 1609. She testified that her father tilled the land and harvested coconuts from the plantation every three months without anybody preventing him from doing it. She further testified that her father continued to till the land until she married Romeo. When her father died in 1985, she inherited the said property.[12] She admitted having

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[6] *Id.* at 73.

[7] *Id.* at 125.

[8] *Id.*

[9] *Id.* at 11.

[10] *Id.*

[11] *Id.* at 12.

[12] *Id.*

known Avertino because the latter had filed a case against them, the status of which she had no knowledge of until she inquired from the Register of Deeds sometime in 2002 and while the criminal case for qualified theft was already pending.

Romeo also testified that he lived on the land beginning 1981 when he and Rosita got married. Since then, he helped on the farm and started planting coconut trees around 100 in all. By the time the coconut trees were already fruit-bearing, he started harvesting the coconuts.[13]

The testimony of Pedro Labay, a former barangay captain since 1987, was also offered to establish that for about twenty years already, the Igdalinos were into farming, including the planting of coconut trees on the land they own. Ruben Dacutanan, a resident of the same barangay, also testified that the Igdalinos were living on the land since their marriage and that Narciso personally cultivated the land and planted coconut trees thereon until his death.[14]

Supporting the foregoing was the testimony of Rowel, testifying that since he was born, no one else tilled the land except their family.[15]

The RTC convicted the Igdalinos, the dispositive portion of which reads:

WHEREFORE, premises considered, Rowel Igdalino is hereby ACQUITTED of the crime of qualified theft for failure of the prosecutor to prove that he acted with discernment at the time he committed the crime charged. Romeo Igdalino and Rosita Igdalino are hereby found GUILTY beyond reasonable doubt for the crime of qualified theft. Thus, by applying the Indeterminate Sentence Law, this Court hereby sentences each of them to suffer an imprisonment of FOUR (4) years, TWO (2) months and 1 day of *prision correccional* as minimum to TEN (10) years of *prision mayor* as maximum term. Likewise, the accused Romeo Igdalino and Rosita Igdalino are directed to pay,

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[13] *Id.* at 13.

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

[15] *Id.* at 14.

jointly and severally, the heirs of complainant Avertino Jaboli actual damages of Four Thousand Pesos (₱4,000.00) and moral damages of Twenty Thousand Pesos (₱20,000.00). With costs *de oficio*.

SO ORDERED.[16]

The Igdalinos appealed to the CA and maintained that they merely exercised their rights as owners of the land and the cultivators of the coconut trees.

The CA, however, rejected the Igdalinos' appeal. The CA held that the belief of the accused of their ownership over the property must be honest and in good faith. It held that this requirement was lacking supposedly because at the time the coconuts were taken, the subject lot had already been adjudicated in favor of Francisco in a separate civil action for quieting of title and damages. Thus, the CA upheld the RTC's conviction of the Igdalinos but deleted the award of moral damages for not having been substantiated.

In disposal, the CA held:

WHEREFORE, the appeal is **DENIED**. The Decision dated December 2, 2014, of the regional Trial Court, 8th Judicial Region, Branch 28, in Criminal Case No. 5094, is **AFFIRMED with MODIFICATION** in that:

(1) Applying the Indeterminate Sentence Law, [the Igdalinos] are sentenced to suffer than [sic] imprisonment of Four (4) years, Two (2) months and One (1) day [sic] prision correccional as minimum to Ten (10) years of prision mayor as maximum;

(2) [The Igdalinos] are ordered to pay the amount of ₱4,000.00 as actual damages which must earn 6% *per annum* computed from finality of the Court's Decision until satisfied.

(3) The award of moral damages is deleted.

SO ORDERED.[17]

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[16] *Id*. at 65-66.

[17] *Id*. at 102.

The Issue

Through the present appeal, the Igdalinos argue that the prosecution failed to establish Avertino's ownership over the disputed parcel of land and that the testimony of the caretaker Felicisimo thereon was merely hearsay. The Igdalinos also argue that the intent to gain, as an element of the crime of qualified theft, was not established since the harvesting of the coconuts was made by them based on their honest belief that they owned the lot where the coconut trees were planted.

Essentially, the issue to be resolved is whether the Igdalinos' guilt beyond reasonable doubt has been established.

The Ruling of the Court

There is merit in the appeal.

We reverse the assailed Decision of the CA and acquit the Igdalinos of the charge of qualified theft. While the determination of guilt necessitates the appreciation of evidentiary matters — a province beyond the Court's review function under Rule 45 of the Rules of Court — an evaluation of the factual findings of the lower courts is permitted in exceptional circumstances, as when the lower courts overlooked certain material and relevant matters.[18]

Defining the crime of theft, Article 308 of the RPC provides:

ART. 308. *Who are liable for theft*. Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;

2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and

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[18] *People v. Esteban*, 735 Phil. 663, 671 (2014).

3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.

Oft-cited, the elements of the crime of theft are: (1) there was a taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things.[19]

On the other hand, theft becomes qualified if attended by any of the circumstances enumerated under Article 310 of the RPC, thus:

ART. 310. *Qualified Theft*. The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or **if the property stolen** is motor vehicle, mail matter or large cattle or **consists of coconuts taken from the premises of the plantation or** fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis ours)

Following the above provision, when coconuts are stolen while they are still in the tree or on the ground within the premises of the plantation, the theft is qualified. Heavier penalty is imposed for theft of coconuts for purposes of encouraging and protecting the development of the coconut industry considering that coconut groves are rendered more difficult to watch over due to the nature of the growth of coconut trees, making it more prone to theft.[20]

Be that as it may, for the crime of theft to prosper, it must be established beyond doubt that the accused had the intent to

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[19] *Cruz v. People*, 586 Phil. 89, 99 (2008).

[20] *Empelis, et al. v. Intermediate Appellate Court, et al.*, 217 Phil. 377 (1984) citing *People v. Isnain*, 85 Phil. 648 (1950).

steal personal property. This *animus furandi* pertains to the intent to deprive another of his or her ownership or possession of personal property, apart from but concurrent with the general criminal intent which is an essential element of *dolo malus*.[21]

The intent to steal is presumed from the taking of personal property without the consent of the owner or its lawful possessor. As in all presumptions, this may be rebutted by evidence showing that the accused took the personal property under a *bona fide* belief that he owns the property.[22]

Gaviola v. People[23] explains:

> In *Black v. State*, the State Supreme Court of Alabama ruled that **the open and notorious taking, without any attempt at concealment or denial, but an avowal of the taking, raises a strong presumption that there is no *animus furandi*. But, if the claim is dishonest, a mere pretense, taking the property of another will not protect the taker:**
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> > x x x "In all cases where one **in good faith** takes another's property under claim of title in himself, he is exempt from the charge of larceny, **however puerile or mistaken the claim may in fact be**. And the same is true where the taking is on behalf of another, believed to be the true owner. Still, **if the claim is dishonest, a mere pretense**, it will not protect the taker."
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> > The **gist of the offense is the intent to deprive another of his property in a chattel, either for gain or out of wantonness or malice to deprive another of his right in the thing taken**. This cannot be where the taker honestly believes the property is his own or that of another, and that he has a right to take possession of it for himself or for another, for the protection of the latter.
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> In *Charles v. State*, the State Supreme Court of Florida ruled that the belief of the accused of his ownership over the property must be

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[21] *Gaviola v. People*, 516 Phil. 228, 237 (2006).

[22] *Supra* at 238.

[23] *Id*.

honest and in good faith and not a mere sham or pretense. (Citations omitted, emphasis ours)

Clearly, jurisprudence has carved out an instance when the act of taking of personal property defeats the presumption that there is intent to steal – when the taking is open and notorious, under an honest and in good faith belief of the accused of his ownership over the property.

In the instant case, the unrebutted testimonial evidence for the defense shows that the Igdalinos had been cultivating and harvesting the fruits of the coconut trees from the plantation since the time of their predecessor, Narciso. Narciso, in turn, had been cultivating and harvesting said coconut trees from the same plantation since Rosita was still a child. The harvesting of the coconuts were made by the Igdalinos openly and notoriously, as testified to by the other barangay residents.

Contrary to the CA's observations, the Court finds that the Igdalinos' open and notorious harvesting of coconuts was made under their belief that they, in fact, owned the land where the plantation is situated. This belief is honest and in good faith considering that they held, in their favor, OCT No. 1068 covering the disputed land under Narciso's name. We find that this honest belief was not tarred by the adjudication in Avertino's favor of the civil case for quieting of title over the same land. Knowledge that the land was finally adjudicated in favor of Avertino came to the Igdalinos only when Rosita inquired from the Register of Deeds in 2002, or long after the complained harvest was made.[24] Neither was there any showing that the civil court had already rendered a final decision in Avertino's favor at the time the coconuts were harvested by the Igdalinos. All these tend to show that the Igdalinos' claim of ownership over the disputed land is *bona fide*. In sum, the prosecution failed to establish the elements of unlawful taking and thus, reasonable doubt persists.

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[24] *Rollo*, p. 52.

WHEREFORE, the appeal is **GRANTED**. The Decision dated February 23, 2017 and Resolution dated June 29, 2017 of the Court of Appeals in CA-G.R. CEB CR. No. 02642, convicting petitioners Romeo Igdalino and Rosita Igdalino of the crime of qualified theft are **REVERSED** and **SET ASIDE**. Romeo Igdalino and Rosita Igdalino are **ACQUITTED** of the crime charged on reasonable doubt. If detained, they are ordered immediately **RELEASED**, unless confined for any other lawful cause. If bail bond has been paid, said amount is ordered immediately **RETURNED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 233334. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHN CARLO SALGA and RUEL "TAWING" NAMALATA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; SPECIAL COMPLEX CRIMES; ROBBERY WITH HOMICIDE;

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[*] Designated as Acting Chairperson of the First Division per Special Order No. 2559, dated May 11, 2018.

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

ELEMENTS; CONVICTION REQUIRES THAT ROBBERY WAS THE MAIN PURPOSE AND THE KILLING WAS MERELY INCIDENTAL TO THE ROBBERY.— Robbery with homicide is a special complex crime that requires the concurrence of the following elements, namely: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.

2. **ID.; ID.; ID.; SPECIAL COMPLEX CRIME OR COMPOSITE CRIME, DEFINED; DISTINGUISHED FROM COMPLEX OR COMPOUND CRIME.—** A special complex crime, also known as a composite crime, is composed of two or more crimes but is treated by the law as a single indivisible and unique offense for being the product of one criminal impulse. It is a specific crime with a specific penalty provided by law, and differs from the compound or complex crime under Article 48 of the *Revised Penal Code*. The composite crime and the complex or compound crime are really distinct and different. The composition of the offenses in the composite crime is fixed by law, but the combination of the offenses in a complex or compound crime is not specified but generalized, that is, grave and/or less grave, or one offense being the necessary means to commit the other. In the composite crime, the penalty for the combination of crimes is specific, but the penalty in the complex or compound crime is that corresponding to the most serious offense, to be imposed in the maximum period. A light felony that accompanies the commission of the complex or compound crime may be subject to a separate information, but the light felony that accompanies the composite crime is absorbed.

3. **ID.; ID.; ID.; ROBBERY WITH HOMICIDE, COMMITTED IN CASE AT BAR.—** We concur with the CA that robbery with homicide was committed. The evidence adduced by the Prosecution in that regard was ample, competent and beyond reasonable doubt. Joan positively identified John as one of the three persons who had entered their home and taken possession

of her phone and money, and househelper Catalina Arcega was killed in the course or on the occasion of the robbery. Without question, the intent to rob the Zulitas preceded the taking of human life.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S EVALUATION OF THE CREDIBILITY OF WITNESSES ACCORDED HIGHEST RESPECT.— There is need to remind, moreover, that the trial court's evaluation of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal considering that the trial court was in the better position to decide such question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Its findings on the credibility of witnesses and the consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, could change the result of the case in favor of the accused.

5. ID.; ID.; OUT-OF-COURT IDENTIFICATION; UNDER THE TOTALITY-OF-THE-CIRCUMSTANCES TEST, THE WITNESS' IDENTIFICATION OF THE ACCUSED AS ONE OF THE ROBBERS WAS WELL-FOUNDED, POSITIVE, AND TOTALLY RELIABLE.— Under the totality-of-the-circumstances test, Joan's out-of-court identification of John satisfied the foregoing standards. It is hardly disputed that Joan had the actual opportunity and enough time to see John by face during the incident, from the time he entered the victims' property until he approached and ordered her to keep quiet and to get the keys to her mother's safety vault. In that span of time, her full attention was riveted to the startling incident that posed extreme threat to her own life. Given the antecedents, her identification of him as one of the robbers – whether out-of-court or in-court – was well-founded, positive, and totally reliable.

6. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; THE PECULIARITY OF CIRCUMSTANTIAL EVIDENCE IS THE COLLECTIVE APPRECIATION OF THE SERIES OF EVENTS POINTING TO THE COMMISSION OF A FELONY; GUIDELINES IN APPRECIATING THE PROBATIVE VALUE OF THE CIRCUMSTANTIAL

EVIDENCE; CIRCUMSTANCES IN CASE AT BAR WERE INSUFFICIENT TO PRODUCE A CONVICTION.— The peculiarity of circumstantial evidence is that the series of events pointing to the commission of a felony is appreciated not singly but *collectively*. The guilt of the accused cannot be deduced from scrutinizing just one particular circumstance, for there must be a combination of several circumstances that when put together reveals a convincing picture pointing to no other conclusion than that the accused was the author of the crime. In *People v. Monje*, the guidelines in appreciating the probative value of circumstantial evidence were laid down, to wit: (a) the court should act upon the matter with caution; (b) all the essential facts must be consistent with the hypothesis of guilt; (c) the facts must exclude every other theory but that of guilt of the accused; and (d) the facts must establish with certainty the guilt of the accused as to convince beyond reasonable doubt that he was the perpetrator of the offense. Here, the circumstances listed by the CA were insufficient to produce the conviction of Ruel. x x x [T]he guilt of Ruel could not be fairly deduced from scrutinizing just one or two particular circumstances, for the law demanded a combination of several circumstances that together paint a convincing picture of his being the author of the crime.

7. ID.; ID.; CONSPIRACY, EXPLAINED; FOR CONVICTION AS CO-PRINCIPAL BY REASON OF CONSPIRACY, THE ACCUSED MUST BE SHOWN TO HAVE PERFORMED AN OVERT ACT IN PURSUANCE OR IN FURTHERANCE OF CONSPIRACY.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Where the several accused were shown to have acted in concert at the time of the commission of the offense, and their acts indicated that they had the same purpose or common design and were united in the execution, conspiracy is sufficiently established. The State must show at the very least that all participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to commit the felony. To be held guilty as a co-principal by reason of conspiracy, therefore, the accused must be shown to have performed an overt act in pursuance or in furtherance of the conspiracy. The overt act or acts of the accused may consist of active participation in the actual commission of the

crime itself, or of moral assistance to his co-conspirators by moving them to execute or implement the criminal plan.

8. ID.; ID.; ID.; ID.; MERE PRESENCE OR EVEN KNOWLEDGE OR AGREEMENT TO COOPERATE IS NOT ENOUGH TO CONSTITUTE ONE A CO-CONSPIRATOR; MERE ACT OF DRIVING OF A MOTORCYCLE WITH THE ACCUSED ON BOARD DID NOT AMOUNT TO AN OVERT ACT INDICATING CONSPIRACY IN COMMITTING ROBBERY WITH HOMICIDE.— We need to stress, too, that the community of design to commit an offense must be a conscious one; and that conspiracy transcends mere companionship. Hence, mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose. x x x Ruel's mere act of driving of the motorcycle with John and the unidentified person on board did not amount to an overt act indicating his having conspired in committing the robbery with homicide. Consequently, he was not John's co-conspirator. He must be acquitted, for the evidence of the Prosecution to establish his guilt for the robbery with homicide was truly insufficient.

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

BERSAMIN, *J.*:

The mere fact that the accused were seen together immediately after the commission of a felony does not necessarily prove the existence of a conspiracy between them. The Prosecution must show that the accused performed overt acts showing unanimity of design or concert of action; otherwise, each is liable only for the consequences of his own acts.

The Case

Accused John Carlo Salga (John) and Ruel "Tawing" Namalata (Ruel) hereby challenge the decision promulgated on April 7, 2017 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 01321-MIN[1] affirming their conviction for robbery with homicide handed down by the Regional Trial Court (RTC), Branch 11, in Manolo Fortich, Bukidnon through the judgment rendered in Criminal Case No. 10-07-4149 on May 27, 2014.[2]

Antecedents

John and Ruel, along with two others identified as John Does, were charged with robbery with homicide under the following information:

That on or about the 14th day of February 2010, in the afternoon, at Barangay Damilag, Municipality of Manolo Fortich, Province of Bukidnon, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another, by means of force and violence, did then and there willfully, unlawfully and feloniously, with intent to gain and without the consent of the owner thereof enter the house of JOSEFINA ZULITA *y* EDRALIN and once inside entered the room of JOAN CAMILLE ZULITA *y* EDRALIN and rob, take, and carry away cash amounting to THIRTY-FOUR THOUSAND PESOS (₱34,000.00), Philippine Currency from the vault and one (1) Samsung Cellphone E590 Model belonging to JOSEFINA ZULITA *y* EDRALIN;

That on the occasion of the said robbery and for the purpose of enabling them to take, rob and carry away the money above-mentioned, accused did then and there willfully, unlawfully, and feloniously, with intent to kill, with the use of a gun, attack, assault, strike the head and shoot the caretaker of the house of CATALINA ARCEGA, thereby inflicting upon the latter mortal injuries which [caused] her death.

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[1] *Rollo*, pp. 3-23; penned by Associate Justice Ronaldo B. Martin with the concurrence of Associate Justice Edgardo T. Lloren and Associate Justice Perpetua T. Atal-Paño.

[2] CA *rollo*, pp. 30-39; penned by Judge Jose U. Yamut, Sr.

CONTRARY to and in violation of Article 294(1) of the Revised Penal Code.[3]

The CA summarized the factual antecedents as follows:

On August 16, 2010, Namalata was arrested by the police and correspondingly detained. When arraigned on September 6, 2010, Namalata, assisted by counsel de parte, entered a plea of "not guilty" to the charge. On April 18, 2011, the pre-trial conference with respect to Namalata was terminated.

On July 11, 2011, Salga surrendered to the police authorities. After Salga was placed into custody, the criminal charge against him proceeded. Hence, on July 25, 2011, Salga, assisted by counsel de officio from the Public Attorney's Office, entered a plea of "not guilty" in Criminal Case No. 10-07-4149. The pre-trial conference with respect to Salga was concluded on August 3, 2011.

Thereafter, trial on the merits ensued. During trial, the prosecution presented in evidence the testimonies of Joan Camille Zulita, Juliano Bernas, Constancio Hinlo, Jr., Dr. Broxil Macabinlar, Patrick Fillarca, Flora Sencil and Josefina Zulita. The defense then presented the testimonies of Marcelo Abenaza, Keren Hope Vivares, Celso Baol, Allan Cahoy, Ruel Namalata, Angelito Salga, Cesar Pabillan and John Carlo Salga.

Joan Camille Zulita testified that on February 14, 2010, around 4:00 o'clock in the afternoon, she was watching television in their house at Barangay Damilag, Manolo Fortich, Bukidnon, when she noticed that three persons entered their gate. The two persons proceeded to the main door while the third one went to the garden where their helper Catalina Arcega was tending to the plants. Joan was shocked and could not move out of fear because the two persons who went towards her were armed. One of the two persons aimed a gun at her and ordered her to keep quiet. Out of fear, she maintained that she could not shout for help nor move as she didn't know what to do. Afterwards, the man who told her to keep quiet and who was later identified as appellant John Carlo Salga (Salga) asked her about the location of the vault. She alleged that when she could not open the vault, Salga told her to get the keys from her mother's room. She followed the robbers' order. While Salga was pointing his gun

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

at her and the second accused was choking her neck, she tried to open the vault using the keys but failed to open it. Thus, she contended that Salga and his companion brought the vault to the sala where they successfully opened it and took all the money inside. At that time, when the robbers left her inside the bedroom, she hurriedly hid under the bed. While hiding under the bed, she affirmed that she heard a gunshot from outside. When she sensed that the armed men had already left, she went out of her hiding place and went to the living room, where she saw the vault already emptied of its content. The armed men took cash amounting to ₱34,000.00 from the vault and her Samsung E590 cellphone worth ₱6,000.00. She declared that she immediately looked for her mother and saw the latter tending the plants in the garden unaware of the robbery inside. She shouted that they had been robbed which prompted her mother to run to her and embrace her. She and her mother looked for their househelp Catalina Arcega, but failed to find the latter. Thus, the two of them sought the help of their family driver who was then at Camp Phillips Terminal. They also found her brother Jackel, who accompanied them to the police station to report the incident. After which, accompanied by her mother and brother Jackel, they went home. Upon arriving at their house, a search for Catalina Arcega was again conducted, and it was her brother Jackel who found the househelp, who at that time was already seriously wounded.

Josefina Zulita professed that on February 14, 2010 at around 4:00 o'clock in the afternoon, she was at the back of their house. She expressed that while she was tending to her garden, she heard a gunshot. She saw her daughter Joan Camille, who shouted that they had been robbed. She rushed to her daughter and embraced the latter. Joan Camille appeared to be in a state of shock. She and Joan Camille went to look for their househelp Catalina Arcega, but could not find the latter. Thus, she and Joan Camille rode their van and went to search for their family driver who at that time was at Camp Phillips Terminal. Josephine further stated that when they found their driver and her son Jackel, they proceeded to the police station. When she and her children went back to their house, Jackel found Catalina Arcega in the garden, seriously injured with a wound on her head. Catalina Arcega was still conscious when she was brought to a nearby hospital. However, she was not operated on because the hospital demanded a downpayment before proceeding with the surgery, thus, Arcega was brought to a public hospital in Cagayan de Oro City for medical attention. Unfortunately, she died the following day.

Dr. Broxil Macabinlar averred that the proximate cause of Catalina Arcega's death was the hacking of her head which resulted to a depressed skull fracture.

Constancio Hinlo, Jr. claimed that he is a civilian volunteer of Damilag, Manolo Fortich. On February 14, 2010, he asserted that he was inside the office of the Civilian Volunteer Organization when he and his fellow civilian volunteers received a call informing them that the house of Josephine Zulita was robbed. He averred that he responded to the call and walked towards Zulita's house. While on his way, he saw a green motorcycle with three riders. He affirmed that he recognized the driver of the motorcycle as appellant Ruel Namalata (Namalata). He also recognized Salga, who was riding at the back of Namalata with a black backpack. A third rider was at the back of Salga, but he could not identify him. He disclosed that he knew Namalata and Salga because they were his drinking buddies.

For Namalata, James Rio Namalata contended that on February 14, 2010, he was at the house of his parents at PCH 2, San Miguel, Manolo Fortich, Bukidnon. He avowed that he and his family spent the day watching the boxing bout of Nonito Donaire and Manuel Vargas, together with friends Marcelo Abenanza and Sherwin Pumatong. He alleged that after the third round, he decided to go to the cockpit in Libona, Bukidnon to bet on a cockfight. Thus, he borrowed his brother Namalata's green Honda motorcycle. He further maintained that he left the cockpit at around 4:20 in the afternoon, and dropped by at Camp Phillips to buy "lechon manok" and fruits. He arrived home at around 5:30 in the afternoon and found his brother Namalata having a drinking session with their friend.

Armando Cañete, an uncle of Namalata, declared that he saw James Rio Namalata at the cockpit in Libona, Bukidnon and that the latter was driving a green motorcycle.

Appellant Ruel Namalata asserted that on February 14, 2010, at around 11:00 o'clock in the morning, he came home to his parents house at PCH 2, San Miguel, Manolo Fortich, Bukidnon, after working as an assistant cook in his aunt's "carenderia" at Crossing, Libona, Bukidnon. When he arrived home, he saw his family and some friends watching the boxing bout of Donaire and Vargas in the television. He allegedly joined them. After the fight, his brother James Rio decided to go to a cockpit in Libona, Bukidnon and borrowed his green Honda motorcycle. He insisted that he spent his afternoon tending to their cockfighting roosters. Later, he averred that he had

a drinking session with his friends. When his brother James Rio arrived home at around 5:30 in the afternoon, the latter also joined him and his friends. He maintained that on the said date, he never left the family home.

Marcelo Abenaza and Celso Baol, Jr. are friends of Namalata. They respectively testified that Namalata stayed at home on February 14, 2010. Both defense witnesses claimed that they had a drinking session with Namalata which started in the afternoon and lasted until the evening of February 14, 2010.

For his defense, appellant Salga maintained that on February 14, 2010, he was living with his paternal uncle Angelito Salga at Luyong Baybayon, Barangay Mintabon, Talisayan, Misamis Oriental. At the time, he was allegedly working as a casual laborer in a fish pond being constructed in Luyong Baybayon. As such, he declared that on that fateful day, he worked from 7:00 o'clock in the morning until 5:00 o'clock in the afternoon. He insisted that he was nowhere near Damilag, Bukidnon on February 14, 2010.

Appellant Salga's testimony was corroborated by Angelito Salga, his uncle, and Cesar Pabillan, who both testified that on February 14, 2010, Salga was working at a fish pond in Luyong Baybayon, Barangay Mintabon, Talisayan, Misamis Oriental.[4]

Judgment of the RTC

After trial, the RTC convicted Ruel and John of robbery with homicide on the basis of the testimonies of Joan Zulita (Joan) and Constancio Hinlo, Jr. (Constancio). Joan had testified that John was one of the three persons who robbed the victims, and pointed his gun to her head, while Constancio attested that Ruel drove off on a green motorcycle with John and another person on board. Concluding that the four perpetrators had conspired in committing robbery with homicide, the RTC disposed:

PREMISES ABOVE CONSIDERED, the court finds the two accused John Carlo Salga and Ruel "Tawing" Namalata guilty beyond reasonable doubt of Robbery with Homicide and hereby sentence each of the accused to suffer the penalty of imprisonment of reclusion

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[4] *Rollo*, pp. 4-8.

perpetua, which the two accused shall continue to serve at the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, as their preventive detention at Manolo Fortich, Bukidnon Jail, is credited to their penalty. In addition, the two accused, Salga and Namalata shall pay damages, in solidum, to the following, as follows:

₱34,000.00	- Actual damages to Josefina Zulita
6,000.00	- Actual damages to Joan Zulita
75,000.00	- Actual damages. to the heirs of Catalina Arcega for loss of the latter's life
50,000.00	- Moral damages to the heirs of Catalina Arcega
50,000.00	- Moral damages to Josefina Zulita
50,000.00	- Moral damages to Joan Camille Zulita
25,000.00	- Exemplary damages to the heirs of Catalina Arcega
25,000.00	- Exemplary damages to Josefina Zulita and Joan Camille Zulita
25,000.00	- Temperate damages to Josefina Zulita

SO ORDERED.[5]

Decision of the CA

As stated, the CA affirmed the conviction of Ruel and John because the witnesses of the Prosecution were credible and had no improper motives to testify falsely against the accused; that Joan's identification of John as one of the robbers was positive; that circumstantial evidence proved Ruel's participation in the crime; and that the trial court correctly found the existence of conspiracy amongst the four individuals, rendering the act of one the act of all. The *fallo* of the assailed decision of the CA reads:

WHEREFORE, the appealed Decision of the Regional Trial Court, Branch 11, in Manolo Fortich, Bukidnon, finding appellants John Carlo Salga and Ruel Namalata guilty beyond reasonable doubt of Robbery with Homicide in criminal Case No. 10-07-4149, is **AFFIRMED with the following MODIFICATION:**

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[5] CA *rollo,* p. 39.

1.) To pay *in solidum* the heirs of Catalina Arcega the following amounts:

   i. ₱75,000.00 as civil indemnity
   ii. ₱75,000.00 as moral damages;
   iii. ₱75,000.00 as exemplary damages; and
   iv. ₱50,000.00 as temperate damages.

2.) To pay *in solidum* to Joan Camille Zulita the following amounts:

   i. ₱50,000.00 as civil liability;
   ii. ₱50,000.00 as moral damages; and
   iii. ₱50,000.00 as exemplary damages.

3.) To pay *in solidum* as restitution the following amount stolen from the Zulita household:

   i. ₱34,000.00 pertaining to the value of the money stolen from the vault owned by Josefina Zulita; and
   ii. ₱6,000.00 pertaining to the amount of the cellular phone owned by Joan Camille Zulita.

Upon finality of this decision, appellant is directed to pay interest at the rate of 6% *per annum*, on all the monetary awards for damages from the date of finality until fully paid.

SO ORDERED.[6]

Hence, this appeal.

Issue

We note that the parties have manifested herein that they would no longer be filing supplemental briefs, and have instead urged that their respective briefs filed in the CA be considered in resolving this appeal.[7]

In the CA, Ruel argued that Constancio was the only one who had implicated him based on having seen him driving a motorcycle with John and an unidentified person on board; and

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[6] *Rollo*, pp. 21-22.

[7] *Id*. at 31-33; 44-45.

that Constancio's testimony did not suffice to support his conviction for robbery with homicide due to its being contrary to human experience.

On his part, John submitted that the elements of robbery were not proved, particularly because there was no evidence showing that any personal property had been taken from the Zulitas apart from the bare allegations of Joan; and that his out-of-court identification by Joan, being highly suggestive, was prejudicial to his rights.

In response, the Office of the Solicitor General (OSG), representing the State, insisted that the Prosecution proved all the elements of the crime beyond reasonable doubt. The OSG contended that the supposed inconsistencies John indicated did not relate to any of the essential elements of the crime and were, therefore, inconsequential; and that there were enough circumstances implicating Ruel in the commission of the crime, specifically: (1) Constancio saw Ruel driving a green motorcycle along Alae National Highway at a speed of 80 km/hour going towards Manolo Fortich, Bukidnon with John as his back rider; (2) Ruel admitted that Constancio knew him, which bolstered the latter's identification of him as one of the perpetrators of the crime; and (3) Ruel owned a Honda Wave motorcycle that was the same type of motorcycle Constancio saw him riding in the highway with John.[8]

Ruling of the Court

The appeal of Ruel is meritorious, but that of John is lacking in merit.

1.

Nature of robbery with homicide

Robbery with homicide is a special complex crime that requires the concurrence of the following elements, namely: (1) the taking of personal property belonging to another; (2) with intent to

[8] CA *rollo*, p. 111.

gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[9]

A special complex crime, also known as a composite crime, is composed of two or more crimes but is treated by the law as a single indivisible and unique offense for being the product of one criminal impulse. It is a specific crime with a specific penalty provided by law, and differs from the compound or complex crime under Article 48[10] of the *Revised Penal Code*.

The composite crime and the complex or compound crime are really distinct and different. The composition of the offenses in the composite crime is fixed by law, but the combination of the offenses in a complex or compound crime is not specified but generalized, that is, grave and/or less grave, or one offense being the necessary means to commit the other. In the composite crime, the penalty for the combination of crimes is specific, but the penalty in the complex or compound crime is that corresponding to the most serious offense, to be imposed in the maximum period. A light felony that accompanies the commission of the complex or compound crime may be subject to a separate information, but the light felony that accompanies the composite crime is absorbed.

We concur with the CA that robbery with homicide was committed. The evidence adduced by the Prosecution in that regard was ample, competent and beyond reasonable doubt.

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[9] *People v. Latam*, G.R. No. 192789, March 23, 2011, 646 SCRA 406, 410.

[10] Article 48. *Penalty for complex crimes*. – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

Joan positively identified John as one of the three persons who had entered their home and taken possession of her phone and money, and househelper Catalina Arcega was killed in the course or on the occasion of the robbery. Without question, the intent to rob the Zulitas preceded the taking of human life.

John assailed the credibility of Joan as a witness. Like the RTC and the CA, however, we do not find any weakness in the credibility of Joan as a witness. Nothing was presented by John to show that Joan had evil motives or ill will towards him as to falsely or unfairly incriminate him in the commission of the heinous crime of robbery with homicide. Neither did John adduce anything by which her testimony could be otherwise discredited.

There is need to remind, moreover, that the trial court's evaluation of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal considering that the trial court was in the better position to decide such question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. Its findings on the credibility of witnesses and the consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, could change the result of the case in favor of the accused.[11]

We further find no violation of John's rights in relation to the out-of-court identification of him made by Joan. In *People v. Teehankee, Jr.*,[12] we have set stringent standards on the conduct of out-of-court identification, stating thusly:

> Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the

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[11] *People v. Bensing*, G.R. No. 138989, September 17, 2002, 389 SCRA 182, 190.

[12] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 95.

suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of *out-of-court* identification contaminates the integrity of *in-court* identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the *totality of circumstances test* where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

Under the totality-of-the-circumstances test, Joan's out-of-court identification of John satisfied the foregoing standards. It is hardly disputed that Joan had the actual opportunity and enough time to see John by face during the incident, from the time he entered the victims' property until he approached and ordered her to keep quiet and to get the keys to her mother's safety vault. In that span of time, her full attention was riveted to the startling incident that posed extreme threat to her own life. Given the antecedents, her identification of him as one of the robbers – whether out-of-court or in-court – was well-founded, positive, and totally reliable.

In contrast, Ruel's conviction rested on circumstantial evidence supposedly establishing him as one of the robbers. The CA concluded that Ruel was guilty based on the following account of his part in the incident:

> In the present case, the circumstances pointing to Namalata's guilt are as follows: (1) on February 14, 2010, at around 4:00 o'clock in the afternoon, the house of Josefina Zulita was robbed; (b) prosecution witness Hinlo, a civilian volunteer of Damilag, Manolo Fortich, was in the office of the Civilian Volunteer Organization, when he and his fellow civilian volunteers received a call informing them of the robbery; (3) he immediately responded; (4) while on his way, he saw an approaching green motorcycle, being driven at a very fast

pace; (5) he recognized the driver of the motorcycle as appellant Namalata; (6) he also recognized Salga, who was riding at the back of Namalata with a black backpack; (7) both appellants were together with an unidentified third rider, who was riding at the back of Salga; and he very well knew Namalata and Salga because they were his drinking buddies.[13]

We cannot concur with the CA's conclusion against Ruel.

For conviction of the accused, circumstantial evidence is deemed sufficient if the conditions fixed by Section 4, Rule 133 of the *Rules of Court* are complied with, *viz.*:

Section 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

The peculiarity of circumstantial evidence is that the series of events pointing to the commission of a felony is appreciated not singly but *collectively*. The guilt of the accused cannot be deduced from scrutinizing just one particular circumstance, for there must be a combination of several circumstances that when put together reveals a convincing picture pointing to no other conclusion than that the accused was the author of the crime. In *People v. Monje*,[14] the guidelines in appreciating the probative value of circumstantial evidence were laid down, to wit: (a) the court should act upon the matter with caution; (b) all the essential facts must be consistent with the hypothesis of guilt; (c) the facts must exclude every other theory but that of guilt of the accused; and (d) the facts must establish with certainty the guilt of the accused as to convince beyond reasonable doubt that he was the perpetrator of the offense.

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[13] *Rollo*, p. 14.

[14] G.R. No. 146689, September 27, 2002, 390 SCRA 160, 177.

Here, the circumstances listed by the CA were insufficient to produce the conviction of Ruel. The lower courts and the Prosecution gave too much weight and emphasis to the fact that Constancio had seen Ruel speeding away on the motorcycle with John and another person on board. The scene, to a detached observer, was certainly far from unequivocal, for it was openly susceptible to various interpretations, including some that would not implicate Ruel in the commission of the robbery with homicide. For one, there is the possibility that Ruel only happened to pass by, and that John and the other person – both of whom Ruel most probably knew – only asked to ride tandem with him. Such possibility, even if highly probable, was still innocent without a clear showing of his deeper involvement in the criminal enterprise. Verily, the guilt of Ruel could not be fairly deduced from scrutinizing just one or two particular circumstances, for the law demanded a combination of several circumstances that together paint a convincing picture of his being the author of the crime.

2.
The Prosecution did not credibly establish the conspiracy between John and Ruel

In ruling on whether or not there was conspiracy between Ruel and John, the CA observed:

> In the instant case, conspiracy was clearly manifested in the concerted efforts of the malefactors. Appellants and their unidentified cohort simultaneously barged inside the gate of the Zulitas. And, while Salga and his unidentified cohort accosted Joan Camille and demanded for her to open the vault inside her room and turn over the money inside the vault, Namalata was outside standing watch. After taking the valuables inside the house, appellants and their unidentified cohort ran towards a waiting motorcycle and escaped together.[15]

To the CA, Ruel was the fourth member who had stood outside the home of the victims to serve as the lookout while John and

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[15] *Rollo*, p. 18.

the two unidentified individuals committed the robbery inside the Zulitas' abode.

The conviction of John and Ruel by the RTC was based on the testimonies of the Joan and Constancio. Joan positively identified John as one of the three persons who had entered the yard and then pointed a gun at her. Ruel was seen by Constancio after the robbery driving the green motorcycle with John and an unidentified person on board. Affirming the RTC, the CA declared that a conspiracy to commit the robbery against the Zulitas had existed among Ruel, John and the two unidentified persons.

The declaration of the existence of the conspiracy among Ruel, John and the two unidentified persons lacked firm factual foundation.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[16] Where the several accused were shown to have acted in concert at the time of the commission of the offense, and their acts indicated that they had the same purpose or common design and were united in the execution, conspiracy is sufficiently established. The State must show at the very least that all participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to commit the felony.[17] To be held guilty as a co-principal by reason of conspiracy, therefore, the accused must be shown to have performed an overt act in pursuance or in furtherance of the conspiracy. The overt act or acts of the accused may consist of active participation in the actual commission of the crime itself, or of moral assistance to his co-conspirators by moving them to execute or implement the criminal plan.[18]

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[16] Article 8, *Revised Penal Code*.

[17] *People v. Bautista*, G.R. No. 188601, June 29, 2010, 622 SCRA 524, 540.

[18] *Ladonga v. People*, G.R. No. 141066, February 17, 2005, 451 SCRA 673, 685.

Conformably to the foregoing, we consider the findings of the lower courts on the existence of the conspiracy to be factually and legally unwarranted. Joan, although present at the scene of the crime, never identified Ruel as part of the group of robbers. In fact, no witness placed him at the crime scene during the entire period of the robbery. If we have always required conspiracy to be established, not by conjecture, but by positive and conclusive evidence, then it was plainly speculative for the CA to count Ruel as the fourth member of the group of robbers and even to name him as the robbers' lookout outside the house despite the absence of evidence to that effect. On the contrary, the records bear out that only Constancio saw Ruel, but such sighting of Ruel was *after the robbery* when he was already driving the green motorcycle with John and another person on board. This was not the overt act necessary to make Ruel a part of the conspiracy.

The character of the overt act as the essential predicate for criminal liability has been explained in *People v. Lizada*:[19]

> An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. **The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is.** It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct

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[19] G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62, 94-95.

movement towards the commission of the offense after the preparations are made." **The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.** (Bold underscoring supplied for emphasis)

We need to stress, too, that the community of design to commit an offense must be a conscious one;[20] and that conspiracy transcends mere companionship.[21] Hence, mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.[22]

In view of the foregoing, Ruel's mere act of driving of the motorcycle with John and the unidentified person on board did not amount to an overt act indicating his having conspired in committing the robbery with homicide. Consequently, he was not John's co-conspirator. He must be acquitted, for the evidence of the Prosecution to establish his guilt for the robbery with homicide was truly insufficient.

3.
Final word

As a final word, the Court considers the awards of damages granted by the CA to have conformed to *People v. Jugueta.*[23] Hence, the awards are all upheld.

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[20] *Bahilidad v. People*, G.R. No. 185195, March 17, 2010, 615 SCRA 597, 606.

[21] *People v. Masinag*, G.R. No. 144621, May 9, 2003, 403 SCRA 167, 176.

[22] *Id.* at 686.

[23] G.R. No. 202124, April 5, 2016, 788 SCRA 331.

WHEREFORE, the Court **ACQUITS** accused **RUEL "TAWING" NAMALATA**, and, accordingly**, ORDERS** his immediate release from confinement unless he is otherwise legally confined for another cause; **AFFIRMS IN ALL RESPECTS** the decision promulgated on April 7, 2017 as to accused **JOHN CARLO SALGA**, accordingly**, SENTENCES** him to pay to the heirs of the late Catalina Arcega the damages fixed by the Court of Appeals, and to indemnify Joan Camille Zulita in the amounts stated in the decision promulgated on April 7, 2017, plus legal interest of 6% *per annum* on all such damages reckoned from the finality of this decision until full satisfaction; and **DIRECTS** accused **JOHN CARLO SALGA** to further pay the costs of suit.

Let a copy of this decision be furnished to the Superintendent of the Davao Prison and Penal Farm in B.E. Dujali, Davao del Norte for immediate implementation.

The Superintendent of Davao Prison and Penal Farm is directed to report the action taken to this Court within five days from receipt of this decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 234154. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JERRY ARBUIS *y* COMPRADO *a.k.a.* "Ontet",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; TO PROVE THAT THE IDENTITY AND INTEGRITY OF THE *CORPUS DELICTI* HAS BEEN PRESERVED, THE PROSECUTION MUST SHOW THAT THERE WAS COMPLIANCE WITH THE PROCEDURE IN SECTION 21, R.A. NO. 9165.— For the successful prosecution of illegal possession of dangerous drugs, the following essential elements must be established: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possesses the said drug. The prosecution *must* prove beyond reasonable doubt not only every element of the crime or offense charged but must likewise establish the identity of the *corpus delicti, i.e.,* the seized drugs. To convince the Court that the identity and integrity of the *corpus delicti* has been preserved, the prosecution must prove that there was compliance with the procedure laid down in Section 21of R.A. No. 9165, specifically the requirements from the time of seizure up to the time the seized item is presented in court as this will ultimately determine the fate of the accused.

2. ID.; ID.; ID.; COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21, PROVEN IN CASE AT BAR; THAT THE OFFICER WAS UNABLE TO IMMEDIATELY TURNOVER THE SEIZED ITEMS TO THE CRIME LABORATORY AS IT WAS BEYOND OFFICE HOURS WAS A MINOR DEVIATION WHICH DID NOT DESTROY

THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY.— Contrary to the accused-appellant's claim that there was a "break" in the chain of custody, a perusal of the records reveal that the arresting officers complied with the requirements of Section 21. *First*, it is not disputed that IO2 Laynesa had custody of the seized items from the time of seizure up to the time it was brought to the crime laboratory for examination. *Second*, the requirements of marking, inventory and photograph were complied with and was conducted in the presence of the accused-appellant and the required witnesses, x x x *Third*, the sole reason why IO2 Laynesa was unable to immediately turnover the seized item to the crime laboratory was because it was already 3:00 a.m. — clearly beyond office hours. Moreover, the seized items remained in her custody as she locked it up in the meantime and had the lone key to the drawer. The fact that she brought it to the crime laboratory for testing that very same morning negates the accused-appellant's claim that such deviation destroyed the presumption of regularity in the performance of duty.

3. **ID.; ID.; ID.; WHERE THE ACCUSED WAS FOUND GUILTY OF POSSESSING 11.221 GRAMS OF SHABU, THE PENALTY OF LIFE IMPRISONMENT AND A FINE OF ₱400,000.00 ARE PROPERLY IMPOSED.—** Section 11, Article II of R.A. No. 9165 is clear as regards the penalty for unauthorized possession of methamphetamine hydrochloride or "*shabu*" weighing ten (10) grams or more but less than fifty (50) grams. Since the accused-appellant was found guilty of possessing five (5) plastic sachets of *shabu* with a total combined weight of **11.221 grams**, the penalty of **life imprisonment and the payment of a fine of ₱400,000.00** as imposed by the RTC and affirmed by the CA are proper.

APPEARANCES OF COUNSEL

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

D E C I S I O N

REYES, JR., *J.*:

This is an Ordinary Appeal[1] filed by Jerry Arbuis *y* Comprado a.k.a. "Ontet" (accused-appellant) assailing the Decision[2] dated June 19, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07066, which affirmed the Decision[3] promulgated on September 24, 2014 of the Regional Trial Court (RTC) of Naga City, Branch 61 in Criminal Case No. 2012-0112, finding accused-appellant guilty beyond reasonable doubt of violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

In an Information, accused-appellant was charged before the RTC for violating Section 11, Article II of R.A. No. 9165, *viz.*:

> That on or about March 01, 2012, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and without prescription or corresponding license, did then and there, willfully, unlawfully and criminally have in his possession, custody and control five (5) heat-sealed transparent plastic sachets containing methamphetamine hydrochloride or shabu all weighing more or less 11.221 grams which is a dangerous drug in violation of the above-cited law.
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> Contrary to law.[4]

On arraignment, accused-appellant pleaded "not guilty." Trial ensued thereafter.

The facts, as summarized by the appellate court, reads:

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[1] CA *rollo*, pp. 125-126.

[2] Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Jose C. Reyes, Jr. and Stephen C. Cruz, concurring; *id*. at 103-115.

[3] Rendered by Judge Antonio C.A. Ayo, Jr.; *id*. at 73-77.

[4] *Id*. at 85.

On March 1, 2012, at around 5:00 p.m., Director 3 Archie Grande of the Philippine Drug Enforcement Agency (PDEA) Regional Office V, coordinated with the Naga City Police Station, and requested for a joint operation between the PDEA and the police regarding the implementation of Search Warrant 2012-35 issued by the RTC against accused-appellant, at the latter's residence located at Sitio Sagrada Familia, Barangay Peñafrancia, Naga City.[5]

At around 5:20 p.m., the composite team proceeded to the target site. Upon arrival at the target site, the composite team secured the area, and waited for the arrival of the accused-appellant and the witnesses whose presence are required during searches. When the accused-appellant arrived, he was informed of the implementation of the search warrant against him. Shortly thereafter, the required witnesses arrived, namely: Rodrigo Borigas (Borigas) (Department of Justice [DOJ] representative), Barangay Kagawad Demetrio Nisolada (Nisolada) (elected public official), and Eutiquio Agor (Agor) (media representative). After the content of the warrant was read to the accused-appellant, the composite team started to search his house. During the search, Intelligence Officer II Mailene S. Laynesa (IO2 Laynesa) found five (5) plastic sachets containing white crystalline substance. She placed the markings "MSL 3/1/12" on the plastic sachets seized from the accused-appellant. Photographs were likewise taken. Thereafter, the Certificate of Inventory were signed by the three witnesses. A receipt of property seized and Certificate of Orderly Search was likewise prepared in the presence of the accused and the three witnesses.[6]

At around 2:00 a.m., the composite team brought the accused-appellant to the Naga police station for further investigation and proper documentation. Since it was nearly 3:00 a.m., the PDEA agents went straight to the PDEA office in Pacol and rested. IO2 Laynesa locked the seized items in a drawer and kept the lone key to said lock. In the morning of March 2,

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[5] *Id*. at 66.

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

2012, IO2 Laynesa brought the seized items to the Camarines Sur Provincial Crime Laboratory Office for examination. From the time of seizure until turnover to the forensic chemist of the crime laboratory, IO2 Laynesa had full and uninterrupted custody of the drugs. Police Senior Inspector Jun Malong, the forensic chemist who received the request and the seized items and likewise performed the qualitative and quantitative examination on the specimen, cited in his Chemistry Report No. D-41-2012 that the specimen weighed a total of 11.221 grams and was indeed methamphetamine hydrochloride (*shabu*), a dangerous drug.[7]

In a Decision[8] dated September 24, 2014, the RTC rendered a judgment of conviction, the dispositive portion of which reads:

> WHEREFORE, on moral certainty, accused JERRY ARBUIS y COMPRADO is CONVICTED of illegal possession of dangerous drugs penalized under Sec. 11, Art. II of RA 9165, and is sentenced to suffer the penalty of life imprisonment and a fine of four hundred thousand pesos (₱400,000.00).
>
> SO ORDERED.[9]

On appeal to the CA, the appellate court affirmed the findings of the trial court and held that there was proof beyond reasonable doubt to convict the accused-appellant of the crime of illegal possession of dangerous drugs. The dispositive portion of the CA Decision[10] dated June 19, 2017 reads:

> We **DISMISS** the appeal, and **AFFIRM** the Decision dated 24 September 2014 of the [RTC], Branch 61, Naga City, in Criminal Case No. 2012-0112.
>
> **IT IS SO ORDERED.**[11]

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[7] *Id*. at 61.

[8] *Id*. at 73-77.

[9] *Id*. at 77.

[10] *Id*. at 103-115.

[11] *Id*. at 114.

Hence, the present appeal.

The Issue

The sole issue to be resolved is whether or not the CA was correct in affirming the conviction of the accused-appellant for violation of Section 11, Article II or R.A. No. 9165.

Ruling of the Court

For the successful prosecution of illegal possession of dangerous drugs, the following essential elements must be established: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possesses the said drug.

The prosecution must prove beyond reasonable doubt not only every element of the crime or offense charged but must likewise establish the identity of the *corpus delicti, i.e.,* the seized drugs. To convince the Court that the identity and integrity of the *corpus delicti* has been preserved, the prosecution must prove that there was compliance with the procedure laid down in Section 21[12] of R.A. No. 9165, specifically the requirements from the time of seizure up to the time the seized item is presented in court as this will ultimately determine the fate of the accused.

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[12] **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.

Contrary to the accused-appellant's claim that there was a "break" in the chain of custody, a perusal of the records reveal that the arresting officers complied with the requirements of Section 21. *First*, it is not disputed that IO2 Laynesa had custody of the seized items from the time of seizure up to the time it was brought to the crime laboratory for examination. *Second*, the requirements of marking, inventory and photograph were complied with and was conducted in the presence of the accused-appellant and the required witnesses, namely: Borigas (DOJ representative), Nisolada (elected public official), and Agor (media representative). *Third*, the sole reason why IO2 Laynesa was unable to immediately turnover the seized item to the crime laboratory was because it was already 3:00 a.m. - clearly beyond office hours. Moreover, the seized items remained in her custody as she locked it up in the meantime and had the lone key to the drawer. The fact that she brought it to the crime laboratory for testing that very same morning negates the accused-appellant's claim that such deviation destroyed the presumption of regularity in the performance of duty.

A perfect chain of custody is almost always impossible to achieve and so the Court has previously ruled that minor

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

3. A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours. (Emphasis Ours)

procedural lapses or deviations from the prescribed chain of custody are excused so long as it can be shown by the prosecution that the arresting officers put in their best effort to comply with the same and the justifiable ground for non-compliance is proven as a fact.

In *People v. Umipang*,[13] the Court held that minor deviations from the procedures under R.A. No. 9165 would not automatically exonerate an accused from the crimes of which he or she was convicted. This is especially true when the lapses in procedure were recognized and explained in terms of justifiable grounds. **There must also be a showing that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason**. However, when there is gross disregard of the procedural safeguards prescribed in the substantive law (R.A. No. 9165), serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. This uncertainty cannot be remedied by simply invoking the presumption of regularity in the performance of official duties, for a gross, systematic, or deliberate disregard of the procedural safeguards effectively produces an irregularity in the performance of official duties. As a result, the prosecution is deemed to have failed to fully establish the elements of the crimes charged, creating reasonable doubt on the criminal liability of the accused.[14]

Applying the foregoing pronouncement to the case at bench, it is clear that the prosecution was not remiss in its duty to prove the arresting officers' compliance with Section 21. Thus, the presumption of regularity in the performance of official duty must be upheld.

Finally, Section 11,[15] Article II of R.A. No. 9165 is clear as regards the penalty for unauthorized possession of

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[13] 686 Phil. 1024 (2012).

[14] *Id.* at 1053-1054.

[15] **Sec. 11.** *Possession of Dangerous Drugs*.– The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos

methamphetamine hydrochloride or "*shabu*" weighing ten (10) grams or more but less than fifty (50) grams. Since the accused-appellant was found guilty of possessing five (5) plastic sachets of *shabu* with a total combined weight of **11.221 grams**, the penalty of **life imprisonment and the payment of a fine of ₱400,000.00** as imposed by the RTC and affirmed by the CA are proper.

WHEREFORE, premises considered, the Decision dated June 19, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07066, affirming the conviction of accused-appellant Jerry Arbuis *y* Comprado for violation of Section 11, Article II of Republic Act No. 9165, is hereby **AFFIRMED.**

SO ORDERED.

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

(₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams;

x x x x x x x x x

SECOND DIVISION

[G.R. No. 234160. July 23, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALJON GUADAÑA *y* ANTIQUERA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; WHERE IT WAS NEITHER PRACTICAL NOR SAFE TO MAKE THE INVENTORY AT THE PLACE OF APPREHENSION AND THE ABSENCE OF THE REQUIRED WITNESSES WAS REASONABLY JUSTIFIED, THE SAVING CLAUSE STATING THAT NON-COMPLIANCE WILL NOT RENDER VOID AND INVALID THE SEIZURE OF AND CUSTODY OVER THE SEIZED ITEMS APPLIES.—[T]he buy-bust operation was conducted past 9:00 p.m., on a bridge that was located in a remote area. Given the surrounding circumstances, it was neither practical nor safe for the arresting team to conduct the required inventory at the place of apprehension. x x x With respect to the absence of the two other required witnesses, *i.e.*, the Department of Justice (DOJ) representative and media representative, the Court agrees with the trial court that the same was reasonably justified[.] x x x Although the Court strongly encourages strict compliance with the provisions of Section 21, it is also well aware that a perfect chain of custody is difficult to achieve especially in cases of buy-bust operations. It is precisely for this reason that the IRR provided a saving clause stating that non-compliance will not render void and invalid the seizure of and custody over the said items so long as there are justifiable grounds to support it. x x x Time, safety, location and availability of the required witnesses are some of the factors that must be considered in determining whether or not to apply the saving clause found in Section 21. In addition to the grounds relied upon, the arresting officers must also prove that earnest efforts were made to comply with the requirements of Section 21 otherwise the presumption of regularity in the performance of official duty will not stand. In the present case,

there is nothing in the records that would suggest that the arresting officers intentionally deviated from the standard conduct of official duty as provided for in the law.

2. ID.; ID.; ID.; SINCE THE CONFISCATED DRUGS WEIGHED 0.058 GRAM, THE PENALTY OF LIFE IMPRISONMENT AND PAYMENT OF ₱1,000,000.00 AS IMPOSED BY THE COURT OF APPEALS ARE PROPER.— [A]pplying Section 5, Article II of R.A. No. 9165, the Court finds that the penalty imposed by the appellate court is correct. In illegal sale of dangerous drugs, the penalty is life imprisonment regardless of the quantity involved. Such quantity will only be considered for the purpose of determining the amount of fine to be imposed. In the present case, since the confiscated drug weighed 0.058 gram, the penalty of life imprisonment and payment of ₱1,000,000.00 as imposed by the CA are proper.

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

REYES, JR., *J.*:

This is an Ordinary Appeal[1] seeking to reverse and set aside the Decision[2] dated March 30, 2017 of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 08300 which affirmed the Judgment[3] of the Regional Trial Court (RTC) of Legazpi City, Branch 4 in Criminal Case No. 13150 finding Aljon Guadaña *y* Antiquera (accused-appellant) guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] CA *rollo*, pp. 158-159.

[2] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Danton Q. Bueser and Marie Christine Azcarraga-Jacob, concurring; *id*. at 121-144.

[3] Rendered by Judge Edgar L. Armes; *id*. at 49-72.

The Facts

On February 27, 2015, an Information for violation of Section 5, Article II of R.A. No. 9165 was filed against the accused-appellant and co-accused Dan Mark Lulu *y* Baraquiel (Lulu). The accusatory portion of the information reads:

> That on or about 9:10 o'clock in the evening of February 26,2015, at P-1, Buyo, Manito, Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law and without any license, did, then and there willfully, unlawfully, criminally and knowingly sell, dispense, deliver and cause to pass upon and/or give PO2 ROGER DAJAC y PALLE, who acted as poseur buyer, one (1) heat-sealed transparent plastic sachet containing zero point zero five eight (0.058) gram of white crystalline substance which tested positive for Methamphetamine Hydrochloride, commonly known as "shabu", a dangerous and prohibited drug, in consideration of the amount of Five Hundred (Php500.00) pesos, in violation of the above-cited law, to the damage and prejudice of the public order and of the State.
>
> ACTS CONTRARY TO LAW.[4]

On arraignment, the accused-appellant pleaded "not guilty." Trial on the merits thereafter ensued.

Version of the Prosecution

Sometime during the first week of February 2015, Police Senior Inspector Johnwen Balueta (PSI Balueta), Acting Chief of Police of Manito Municipal Police Station (MMPS) instructed Police Officer 2 Roger Dajac, Jr. (PO2 Dajac) to conduct surveillance on the accused-appellant. The surveillance confirmed the reports that the accused-appellant was dealing with or selling illegal drugs. He was also included in the watch list of dangerous drugs personalities in the area.[5]

On February 22, 2015, PO2 Dajac was able to get the number of the accused-appellant from the latter's friend. PO2 Dajac

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[4] *Id*. at 49.

[5] *Id*. at 50.

immediately sent accused-appellant text messages asking if the latter had some stock of *shabu*. In the morning of February 24, 2015, the accused-appellant called PO2 Dajac asking if the latter was still interested to buy *shabu*. On February 26, 2015, at about 8:45p.m., a confidential informant went to the MMPS and reported to PO2 Dajac that he had arranged a deal with the accused-appellant at the bridge of Purok 1, Barangay Buyo, Manito, Albay. After an exchange of messages between the accused-appellant and PO2 Dajac, it was agreed upon that the transaction would happen that very same night.[6]

PSI Balueta then organized a buy-bust team consisting of police officers and members of the Philippine Drug Enforcement Agency (PDEA). At about 9:10 p.m., the police team proceeded to the venue agreed upon. Shortly thereafter, the accused-appellant and Lulu arrived at the bridge on board a motorcycle. The accused-appellant got a small, heat-sealed, plastic sachet containing white crystalline substance suspected to be *shabu* from his waist and handed it over to PO2 Dajac. In turn, PO2 Dajac gave the accused-appellant the ₱500.00-bill marked money. PO2 Dajac then switched on his flashlight and declared a buy-bust.[7]

PO2 Dajac recovered from the accused-appellant the ₱500.00-marked money while PO3 Leonardo Astillero contacted Kagawad Jobert Dagsil who immediately proceeded to the venue with Kagawad Roger Daguiso, along with the Chief *Tanod*. PO2 Dajac informed the barangay officials that the marking of the items would be conducted at the barangay hall because it was quite dark at the bridge. In the barangay hall, PO2 Dajac placed the suspected *shabu* and the marked money on the table. He marked the sachet with his initials "RPD 02-26-15" and signature in the presence of the accused-appellant and the barangay officials. After inventory was conducted, a certificate of inventory was issued and duly signed by the two barangay *kagawads*.[8]

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

[7] *Id*. at 52.

[8] *Id*.

PO2 Dajac thereafter brought the confiscated drugs to the Philippine National Police (PNP) Crime Laboratory in Camp Simeon, Legazpi City. The submission was accompanied by a Memorandum dated February 26, 2015 signed by PSI Balueta. At the PNP Crime Laboratory, PSI Wilfredo Idian Pabustan, Jr. (PSI Pabustan) weighed the suspected "*shabu*" where he determined its weight as 0.058 gram. He then conducted a qualitative examination on the specimen which yielded positive for methamphetamine hydrochloride or "*shabu*." PSI Pabustan reduced his findings and conclusion into writing in Chemistry Report No. D-124-2015. PSI Pabustan thereafter turned over the confirmed subject "*shabu*" to their Evidence Custodian PO3 Maribel Bagato (PO3 Bagato) for safekeeping. PO3 Bagato eventually turned over the confirmed subject "*shabu*" contained in the plastic sachet, with all the security measures undertaken, to PSI Pabustan who brought the same to the Court on May 26, 2015 when he was called to testify.[9]

On April 13, 2016, the trial court rendered Judgment[10] which found the accused-appellant guilty beyond reasonable doubt of the crime of illegal sale of dangerous drugs. His co-accused Lulu, on the other hand, was acquitted due to insufficiency of evidence. The dispositive portion of the decision reads:

WHEREFORE, judgment in this is hereby rendered as follows:

1. Finding him GUILTY beyond reasonable doubt of the offense of Selling Methamphetamine Hydrochloride or "shabu," a dangerous drug, defined and penalized under Sec. 5, first paragraph, Article II of [R.A.] No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, the Court hereby sentences [the accused-appellant] to suffer life imprisonment and to pay the fine of One Million Pesos (₱1,000,000.00).

The subject methamphetamine hydrochloride in this case, marked as Exh. "O" and submarkings is hereby ordered confiscated in favor of the Government to be disposed of according to law.

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[9] *Id.* at 53.

[10] *Id.* at 49-72.

2. Due to insufficiency of evidence, accused [LULU] is hereby ACQUITTED of the offense charged, which is Violation of Section 5, first paragraph, Article II of [R.A.] No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Consequently, the Jail Warden of the Sto. Domingo District Jail, BJMP, Sto. Domingo, Albay is hereby ordered to release immediately said accused [Lulu] from custody, unless he is to be further detained due to other lawful cause(s).

Costs against the [accused-appellant].

SO ORDERED.[11]

Invoking his innocence, the accused-appellant appealed his conviction to the CA. In a Decision[12] dated March 30, 2017, the CA affirmed the judgment of the trial court albeit with modification, to wit:

WHEREFORE, the appeal is **DENIED**. Consequently, the assailed *Judgment* is **AFFIRMED** with the **MODIFICATION** that the accused-appellant shall not be eligible for parole in keeping with the Indeterminate Sentence Law.

IT IS SO ORDERED.[13]

Hence, this appeal.

The Issue

The pivotal issue to be resolved is whether or not the CA erred in affirming the accused-appellant's conviction for violation of Section 5, Article II or R.A. No. 9165.

Ruling of the Court

The Court finds no merit in the appeal.

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[11] *Id*. at 71-72.

[12] *Id*. at 121-144.

[13] *Id*. at 143.

In *Kevin Belmonte y Goromeo v. People of the Philippines*,[14] the Court reinstated the factors that must be proven to secure a conviction for Illegal Sale of dangerous drugs, to wit:

> In order to secure the conviction of an accused charged with illegal sale of dangerous drugs, the prosecution must prove the: (*a*) identity of the buyer and the seller, the object, and the consideration; and (*b*) delivery of the thing sold and the payment.
>
> In this relation, it is essential that the identity of the prohibited drug be established beyond reasonable doubt. In order to obviate any unnecessary doubts on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same. It 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*.[15]

Since the confiscated drugs consist the *corpus delicti* of the crime charged, a break or substantial gap in the chain of custody is fatal to the case of the prosecution. It, thus, becomes of paramount importance for the prosecution to prove that there was compliance with the chain of custody rule found in Section 21(1) of R.A. No. 9165, to wit:

> 1. The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Supplementing the above-quoted provision, Article II, Section 21(a) of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 clarifies the step-by-step procedural requirements that must be observed by the arresting officers to confirm the chain of custody, to wit:

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[14] G.R. No. 224143, June 28, 2017.

[15] *Id*.

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further that non-compliance with these requirements **under justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;

x x x x x x x x x

(Emphasis and underscoring Ours)

To recapitulate, the buy-bust operation was conducted past 9:00p.m., on a bridge that was located in a remote area. Given the surrounding circumstances, it was neither practical nor safe for the arresting team to conduct the required inventory at the place of apprehension. The findings of the trial court are clear in this regard, *viz.*:

After the said sale transaction, because it was dark at the scene of the crime, PO2 Dajac marked the plastic sachet containing the subject "shabu" at the barangay hall of Buyo, Manito, Albay, to wit: "RPD 02-26-15" with his signature x x x. Pictures were taken during the said marking. x x x.

The inventory of the said "shabu" and the ₱500.00 bill buy-bust money recovered from [the accused-appellant] after his arrest was made at the said barangay hall, in the presence of the [accused-appellant] and two (2) barangay elected officials. x x x.[16]

With respect to the absence of the two other required witnesses, *i.e.*, the Department of Justice (DOJ) representative and media

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[16] CA *rollo*, p. 65.

representative, the Court agrees with the trial court that the same was reasonably justified, to wit:

> The absence of representatives from the media and the DOJ during the inventory was explained by PO2 Dajac. Accordingly, **there was neither DOJ representative nor media man available in Manito, Albay because of its distance from Legazpi City**, where these representatives are staying. Besides **the highway connecting the Municipality of Manito and the City of Legazpi is a critical area in terms of security due to the insurgency. They tried to contact a DOJ representative to no avail.** Besides fetching those representatives in Legazpi City would take time and it would delay the inventory. x x x. Said explanation justified the absence of representatives from the media and the DOJ during the inventory.[17] (Emphases Ours)

Although the Court strongly encourages strict compliance with the provisions of Section 21, it is also well aware that a perfect chain of custody is difficult to achieve especially in cases of buy-bust operations. It is precisely for this reason that the IRR provided a saving clause stating that non-compliance will not render void and invalid the seizure of and custody over the said items so long as there are justifiable grounds to support it. As to what constitutes "justifiable grounds," the Court's ruling in *People of the Philippines v. Vicente Sipin y De Castro*[18] is relevant:

> The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as (1) **their attendance was impossible because the place of arrest was a remote area;** (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person's acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) **earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required** under Article 125 of the

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[17] *Id*. at 66.

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

Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[19] (Emphases Ours)

Time, safety, location and availability of the required witnesses are some of the factors that must be considered in determining whether or not to apply the saving clause found in Section 21. In addition to the grounds relied upon, the arresting officers must also prove that earnest efforts were made to comply with the requirements of Section 21 otherwise the presumption of regularity in the performance of official duty will not stand. In the present case, there is nothing in the records that would suggest that the arresting officers intentionally deviated from the standard conduct of official duty as provided for in the law. Moreover, it is clear that from the time the subject drug was confiscated by PO2 Dajac from the accused-appellant, the former continued to be in custody of the drugs until it was turned over to the PNP Crime Laboratory for qualitative and quantitative examination and subsequently presented in court as evidence.

Finally, applying Section 5,[20] Article II of R.A. No. 9165, the Court finds that the penalty imposed by the appellate court is correct. In illegal sale of dangerous drugs, the penalty is life imprisonment regardless of the quantity involved. Such quantity will only be considered for the purpose of determining the amount of fine to be imposed. In the present case, since the confiscated

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[19] *Id*.

[20] **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 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.

drug weighed 0.058 gram, the penalty of life imprisonment and payment of ₱1,000,000.00 as imposed by the CA are proper.

WHEREFORE, premises considered, the Decision dated March 30, 2017 of the Court of Appeals in CA-G.R. CR H.C. No. 08300, affirming the conviction of accused-appellant Aljon Guadaña *y* Antiquera for violation of Section 5, Article II of Republic Act No. 9165, is hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 235937-40. July 23, 2018]

JOHANNE EDWARD B. LABAY, *petitioner, vs.* **SANDIGANBAYAN, THIRD DIVISION, and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS OF LAW IS GUARANTEED IN CRIMINAL PROSECUTIONS.— Section 1, Article III of the 1987 Constitution guarantees the right of every person to due process before they are deprived of their life, liberty, or property. Due process in criminal prosecutions is further emphasized under Section 14, Article III which provides that no person shall be held to answer for a criminal offense without due process of law. The same provision also states that the accused shall be presumed innocent until the contrary is proved and shall enjoy the right to be informed

of the nature and cause of the accusation against him. Criminal due process requires that the procedure established by law or the rules be followed to assure that the State makes no mistake in taking the life or liberty except that of the guilty. All the necessary measures must be taken to guarantee procedural due process throughout all stages of a criminal prosecution—from the inception of custodial investigation until rendition of judgment.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION, DEFINED; NATURE AND PURPOSE OF THE RIGHT TO A PRELIMINARY INVESTIGATION; TO DENY A PERSON'S CLAIM TO A PRELIMINARY INVESTIGATION WOULD BE TO DEPRIVE HIM OF THE FULL MEASURE OF HIS RIGHT TO DUE PROCESS OF LAW.— A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial. The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and be formally at risk of incarceration or some other penalty is not a mere formal or technical right. It is a substantive right since the accused in a criminal trial is inevitably exposed to prolonged anxiety, aggravation, humiliation, not to speak of expense, and the right to an opportunity to avoid a painful process is a valuable right. It is meant to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. Indeed, to deny a person's claim to a preliminary investigation would be to deprive him the full measure of his right to due process.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS OF LAW; OMBUDSMAN'S DENIAL OF PETITIONER'S OMNIBUS MOTION TO BE FURNISHED WITH THE COMPLAINT AFFIDAVIT AND THE SUPPORTING DOCUMENTS CONSTITUTES VIOLATION OF THE RIGHT TO DUE PROCESS OF LAW.— [T]he violation of petitioner's constitutional right to due process is made even more evident

when the Ombudsman unceremoniously denied his request to be furnished copies of the complaint affidavit and its supporting documents in the first omnibus motion that he filed, and reiterated in his second omnibus motion. In both orders denying the two omnibus motions, the Ombudsman seemingly ignored petitioner's requests and effectively denied petitioner of his right to secure copies of the complaint affidavit. This should not be tolerated. x x x Time and again, the Court has held that suppression of evidence, regardless of its nature, is enough to violate the due process rights of the accused. In the present case, it was not only the prosecution's evidence which was withheld from petitioner. In denying petitioner Labay's multiple requests for copies of the complaint affidavit, the Ombudsman deprived him of his right to sufficiently and reasonably know the charges and accusations against him. This is a patent violation of his constitutional right to due process.

4. ID.; ID.; ID.; ID.; ID.; IT WAS NOT INCUMBENT FOR PETITIONER TO JUSTIFY HIS WHEREABOUTS DURING THE TIME THAT THE OMBUDSMAN WAS ATTEMPTING SERVICE OF THE SUBPOENA ON HIM AS IT WAS THE STATE WHICH HAS THE RESPONSIBILITY TO USE ITS RESOURCES FOR THE PROPER IMPLEMENTATION OF THE LAW.— The OSP's assertion in its comment that petitioner deliberately evaded the Ombudsman's attempts to serve its orders on him is purely hypothetical and is not supported by any concrete proof. There is also no merit in the OSP's position that it was incumbent on petitioner Labay to justify his whereabouts during the time that the Ombudsman was attempting service of the subpoena on him since no law or regulation requires an accused in a preliminary investigation to submit himself to the Ombudsman or at the very least update the latter of his latest address. The burden should not be placed on the accused since it is the State which has the responsibility to use its resources for the proper implementation of the law. To rule otherwise would effectively curtail the constitutionally protected rights of the people to be secure with their life, liberty and property.

5. ID.; ID.; ID.; ID.; ID.; FAILURE OF THE SANDIGANBAYAN TO GRANT PETITIONER'S *EXTREMELY URGENT OMNIBUS MOTION* DESPITE THE GLARING VIOLATIONS COMMITTED BY THE OMBUDSMAN

AMOUNTS TO GRAVE ABUSE OF DISCRETION.— [T]he Sandiganbayan committed grave abuse of discretion when it failed to grant petitioner Labay's *Extremely Urgent Omnibus Motion* despite the glaring violations committed by the Ombudsman. The Sandiganbayan should have recognized these patent violations and ordered the remand of the case to the Ombudsman for the conduct of a proper preliminary investigation with respect to petitioner Labay's participation in the crimes charged. Instead, it chose to turn a blind eye towards the injustice committed against petitioner.

LEONEN, *J.*, *dissenting opinion*:

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DUE PROCESS IN PRELIMINARY INVESTIGATION IS NOT A CONSTITUTIONAL RIGHT BUT MERELY A STATUTORY PRIVILEGE; BASIS; THE RULES OF PROCEDURE DOES NOT STATE THAT THE SUBPOENA MUST BE SENT TO RESPONDENT REPEATEDLY UNTIL RESPONDENT SUBMITS A COUNTER-AFFIDAVIT.— This Court should not confuse the constitutional rights accorded to an accused in a criminal prosecution and the rights accorded to a respondent in a preliminary investigation. Due process in a preliminary investigation is not a constitutional right but merely a statutory privilege. x x x The rules governing the procedure for the conduct of a preliminary investigation are those outlined in Rule 112, Section 3 of the Rules of Court, which are reproduced in the Rules of Procedure of the Office of the Ombudsman[.] x x x The Revised Rules of Criminal Procedure state that the investigating prosecutor, in proceeding with the investigation, shall "issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents." This is mandatory. However, the Rules of Procedure do not state that the subpoena must be sent to respondent repeatedly until respondent submits a counter-affidavit. They only mandate that the investigating prosecutor must issue a subpoena to the respondent to file his or her counter-affidavit.

2. ID.; ID.; ID.; ID.; WHERE THE PETITIONER WAS GIVEN BY THE OMBUDSMAN THE OPPORTUNITY TO OVERTURN THE FINDING OF PROBABLE CAUSE

AGAINST HIM, HE WAS NOT DENIED THE RIGHT TO DUE PROCESS.— It must likewise be emphasized that while the Ombudsman found probable cause to charge petitioner even before he was aware of the investigation against him, *this finding of probable cause was not yet final*. There was no information yet against petitioner filed with any court. x x x [I]nstead of merely furnishing petitioner with a copy of the Resolution finding probable cause, the Ombudsman allowed petitioner to file a motion for reconsideration of the Resolution within five (5) days from receipt. In other words, *the Ombudsman gave petitioner the opportunity to overturn her finding of probable cause by giving him time to submit his counter-affidavit and any other controverting evidence he might have*. Petitioner was in an even better position than his co-respondents to refute the charges against him since he would have already been made aware, through the May 10, 2016 Resolution, of the specific evidence the Ombudsman found to have been convincing enough to find probable cause. He would have known exactly what evidence he needed to submit to controvert the findings against him, instead of merely guessing what the Ombudsman might find convincing, as he would have done during the preliminary investigation. x x x This Court has stated that "the essence of due process is simply an opportunity to be heard, or an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of." Petitioner was granted an opportunity to be heard. Thus, he was not denied the right to due process.

3. **ID.; ID.; ID.; TWO STAGES IN THE DETERMINATION OF PROBABLE CAUSE; ONCE THE INFORMATION WAS FILED IN COURT, THE COURT ACQUIRES FULL JURISDICTION OVER THE CASE; WHEN THE SANDIGANBAYAN FOUND THAT BASED ON THE RECORDS THERE WAS PROBABLE CAUSE TO ARREST PETITIONER, ANY QUESTION ON THE CONDUCT OF PRELIMINARY INVESTIGATION WAS ALREADY RENDERED MOOT.—** There are two (2) stages in the determination of probable cause. The first stage is the executive determination of probable cause, which is done by the prosecutor in a preliminary investigation. The second stage is the judicial determination of probable cause. Once information has been submitted to the court, the court acquires full jurisdiction over the case. Therefore, any question must be addressed to its sound

discretion. x x x The court's finding of probable cause is arrived at independent of the prosecutor's findings. Thus, any perceived irregularity in the conduct of the preliminary investigation does not affect the court's acquisition of jurisdiction. x x x In this case, Informations were already filed against petitioner with the Sandiganbayan. In its July 10, 2017 Resolution, the Sandiganbayan found the existence of probable cause and issued a warrant of arrest against him. *The Sandiganbayan, independent of the findings of the Ombudsman in the preliminary investigation, found that based on the records, there was probable cause to arrest petitioner.* Thus, any question on the conduct of the preliminary investigation was already rendered moot by the July 10, 2017 Resolution. x x x A defect in procedure is not automatically assumed as a deprivation of what is at most a statutory right. Irregularities in the executive determination of probable cause do not necessarily affect the judicial determination of probable cause. Once the Sandiganbayan has determined that there is probable cause to issue the warrant of arrest, any question as to the conduct of the preliminary investigation is already moot.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

VELASCO JR., *J.*:

The Case

Before the Court is a Petition for Certiorari under Rule 65 of the Rules of Court from the Resolutions dated July 10, 2017[1] and October 19, 2017[2] of the Sandiganbayan, Third Division

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[1] *Rollo*, pp. 68-78. Penned by Presiding Justice/Chairperson Amparo M. Cabotaje-Tang and concurred in by Associate Justices Sarah Jane T. Fernandez and Bernelito R. Fernandez.

[2] *Id*. at 80-89.

in Criminal Case Nos. SB-17-CRM-0642 to 0643 and Criminal Case Nos. SB-17-CRM-0644 to 0645. The first assailed resolution denied petitioner's motion for reinvestigation, among others, while the second assailed motion denied petitioner's motion for partial reconsideration of the first assailed resolution.

The Facts

The case arose from the complaint dated May 11, 2015 filed by the Field Investigation Office I (FIO I) of the Office of the Ombudsman against petitioner Johanne Edward B. Labay (Petitioner Labay) for his participation in the alleged anomalous utilization of the Priority Development Assistance Fund (PDAF) of former Representative of the 1st District of Davao del Sur, Marc Douglas C. Cagas IV (Rep. Cagas IV). The complaint was for violation of Article 217 (Malversation of Public Funds or Property), Article 171 (Falsification of Public Documents), paragraphs (1), (2), (4), and (7), Article 217 in relation to Article 171 (Malversation thru Falsification of Public Documents), all of the Revised Penal Code (RPC), as well as Section 3, paragraphs (a) and (e) of Republic Act (R.A.) No. 3019, as amended. The case was docketed as OMB-C-C-15-0152.[3]

The complaint alleged that Rep. Cagas IV, in conspiracy with other public officials and private individuals such as petitioner Labay, through the Technology Resource Center (TRC), sought the release and transfer of his PDAF in the total amount of Php6,000,000.00 to Farmer business Development Corporation (FDC), which was led by its then president, herein petitioner Labay. However, upon field verification conducted by the FIO I, it appears that the livelihood projects funded by Rep. Cagas IV's PDAF were never implemented and were considered to be "ghost projects."[4]

In a Joint Order dated September 1, 2015, the Ombudsman directed respondents to file their respective counter-affidavits.[5]

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[3] *Id*. at 99.

[4] *Id*. at 100-101; 106-107.

[5] *Id*. at 109.

Several respondents filed their respective counter-affidavits. However, copies of this Order could not be served on petitioner Labay.[6]

According to the Ombudsman, it exerted diligent efforts to serve copies of the September 1, 2015 Joint Order on petitioner Labay through his office and at his last known address. However, the copies were returned unserved because he was no longer employed in that office and he was unknown at the given residential address. As such, the Ombudsman proceeded with the preliminary investigation without any counter-affidavit or participation from petitioner Labay.[7]

In a Resolution dated May 10, 2016,[8] the Ombudsman found probable cause to indict Rep. Cagas IV and his co-respondents, including petitioner Labay, for conspiracy in the commission of two counts of Violation of Section 3(e) of RA 3019, one count of Malversation of Public Funds, and one count of Malversation thru Falsification.

Petitioner alleges that it was unknown to him that preliminary investigations for the charges against him were being conducted by the Ombudsman. According to him, it was only sometime in October 2016 that he learned of the cases when his daughter, Atty. Jo Blanca P.B. Labay, came across the press releases of the Ombudsman wherein petitioner was mentioned as among those who are facing charges.[9]

On October 3, 2016, Atty. Labay, on behalf of her father, attempted to secure information on the cases from the Central

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[6] *Id*. at 208.

[7] *Id*. at 208-210.

[8] *Id*. at 98-140. Prepared by Graft Investigation & Prosecution Officer III Leilani P. Tagulao-Marquez reviewed by Acting Director Ruth Laura A. Mella, recommended for approval by Graft Investigation & Prosecution Officer IV M.A. Christian Uy and approved by Ombudsman Conchita Carpio Morales.

[9] *Id*. at 7.

Records of the Ombudsman, but she was advised to submit a written request. Accordingly, Atty. Labay sent the Ombudsman a letter dated October 4, 2016 in compliance with the said directive.[10]

In a letter dated October 10, 2016, the Ombudsman replied to Atty. Labay's request and served on her copies of its May 10, 2016 Resolution. At the same time, the Ombudsman directed Atty. Labay to file a motion for reconsideration of the said Resolution within five days from receipt thereof.[11]

Accordingly, petitioner, through Atty. Labay, filed an *Omnibus Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavit and Supporting Documents* dated November 16, 2016.[12] In said Omnibus Motion, petitioner prayed that the Ombudsman conduct a reinvestigation on his alleged participation in the crimes charged and take into consideration his answer and counter-evidence which he would present. He pointed out that he had neither been notified that a complaint had been filed against him nor was furnished a copy of the same. Thus, he argued that he was not afforded an opportunity to present his defense and to participate during the preliminary investigation. More importantly, petitioner prayed that he be furnished copies of the complaint-affidavit and other supporting documents and that he be given time to gather his evidence and submit his answer to the complaint. At the same time, he prayed for the deferment of the filing of any charges against him arising out of the May 10, 2016 Resolution pending the reinvestigation of the case.[13]

In its Order dated November 25, 2016,[14] the Ombudsman denied petitioner Labay's Omnibus Motion, ruling thus:

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[10] *Id.* at 91.

[11] *Id.* at 95-96.

[12] *Id.* at 142-156.

[13] *Id.* at 152-155.

[14] *Id.* at 158-178.

This Office had exerted diligent efforts to serve on Labay copies of the 1 September 2015 Order directing him to submit his counter-affidavit and the 10 May 2016 Resolution finding him probably guilty of the charges. The same were sent to his office and at his last known address and were returned unserved because he was no longer employed in that office, or was unknown at the given address. There was sufficient compliance with due process.

The filing by Labay of the *Omnibus Motion for Reinvestigation* on 16 November 2016 cured whatever defect in the observance of due process. *Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.*

WHEREFORE, this Office, through the undersigned, **DENIES** respondents Marc Douglas C. Cagas IV's *Motion for Reconsideration* dated 10 August 2016; Maria Rosalinda M. Lacsamana's *Motion for Reconsideration* dated 08 August 2016; Consuela Lilian R. Espiritu's Motion for Reconsideration dated 10 August 2016; Marivic V. Jover's *Motion for Reconsideration* dated 13 September 2016; and Johanne Edward B. Labay's *Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavits and Supporting Documents* dated 16 November 2016.

All indictments against them, as originally embodied in the Resolution dated 10 May 2016, **STAND**.

SO ORDERED.[15] (Emphasis in the original)

Dissatisfied with this ruling, petitioner Labay filed an *Omnibus Motion for Reconsideration (of the Order dated 25 November 2016) and Deferment of Filing of Information with Reiterative Request for Copies of Complaint-Affidavit and Supporting Documents* dated January 30, 2017.[16] Petitioner essentially reiterated his arguments in his first omnibus motion, but added that the filing of the said omnibus motion did not cure the defects in the Ombudsman's failure to observe due process.[17]

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[15] *Id*. at 173-174.

[16] *Id*. at 179-200.

[17] *Id*. at 191-196.

The Ombudsman treated this second Omnibus Motion as a second motion for reconsideration and denied the same for lack of merit in its Order dated February 1, 2017.[18]

On March 24, 2017, the Ombudsman filed four (4) Informations before the Sandiganbayan against petitioner Labay and his co-accused.[19]

It was only on March 28, 2017, four days after the Informations had already been filed with the Sandiganbayan, that petitioner Labay was furnished a copy of the Complaint-Affidavit and its supporting evidence.[20]

On April 4, 2017, petitioner Labay received copies of the Informations filed by the Ombudsman with the Sandiganbayan. Immediately thereafter, on April 5, 2017, petitioner Labay filed an Extremely Urgent Motion of even date, arguing that he is entitled to a reinvestigation of the case to prevent injustice against him brought about by the wrongful filing of charges without affording him his right to a complete preliminary investigation.[21]

Ruling of the Sandiganbayan

In the assailed Resolution dated July 10, 2017, the Sandiganbayan denied petitioner's motion, the dispositive portion of which reads:

WHEREFORE, the Court —

(1) **DECLARES** the existence of probable cause in these cases. Accordingly, let warrants of arrest be issued against all the accused except for accused Marc Douglas Chan Cagas IV who had already posted bail;

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[18] *Id*. at 202-214.

[19] *Id*. at 9.

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

[21] *Id*. at 10.

(2) **NOTES** the *Urgent Motion for Judicial Determination of Probable Cause With Entry of Appearance* dated April 4, 2017, filed by accused Marc Douglas Chan Cagas IV; and the *Motion To Set Aside No Bail Recommendation in Crim Case No. SB-17-CRM-0644 for Malversation Through Falsification and To Fix the Amount of Bail in Crim Case No. SB-17-CRM-0644 for Malversation Through Falsification* filed by accused Johanne Edward B. Labay; and

(3) **DENIES** the *Motion For Reinvestigation and To Defer the Issuance of Warrants of Arrest* filed by accused Johanne Edward B. Labay for lack of merit.

SO ORDERED.[22]

Aggrieved, petitioner filed a Motion for Partial Reconsideration[23] dated August 3, 2017. However, this was denied for lack of merit and for being *pro forma* in the second assailed Resolution dated October 19, 2017.[24]

Hence, this Petition for *Certiorari*.

The Petition

In the present petition, petitioner prays for the (1) issuance of a temporary restraining order and/or writ of injunction; (2) nullification and setting aside of the assailed Resolutions; (3) remand of the case to the Office of the Ombudsman for a reinvestigation of petitioner; and (4) suspension of the criminal proceedings with respect to petitioner Labay, pending the resolution of the reinvestigation before the Office of the Ombudsman.

Petitioner argues that the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction

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[22] *Id*. at 255-288.

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

[24] *Id*. at 80-89.

when it denied him the constitutional right to due process by denying his prayer for a reinvestigation. Essentially, petitioner argues that he was not accorded a reasonable opportunity to be heard since he could not have effectively and intelligently moved for the reconsideration of the Ombudsman's May 10, 2016 Resolution due to the latter's failure to furnish him with a copy of the complaint affidavit and its attachments upon which the resolution was based.

In a Resolution[25] dated March 21, 2018, this Court required respondent to file its Comment on the Petition and at the same time issued a temporary restraining order enjoining respondent Sandiganbayan to suspend the criminal proceedings against petitioner Labay.

On April 2, 2018, the People of the Philippines represented by the Office of the Ombudsman, through its counsel, the Office of the Special Prosecutor (OSP), filed an *Entry of Appearance with Comment and Motion to Dissolve the Temporary Restraining Order Issued on 21 March 2018*.[26] It claimed that the Sandiganbayan did not act with grave abuse of discretion in denying petitioner Labay's Motion for Partial Reconsideration. It argued that there was no violation of his constitutional right to due process considering that he was given the opportunity to present countervailing evidence through the Ombudsman's effort to issue subpoenas at his last known addresses, especially since the government substantially complied with the requirements of the law in doing so.[27]

Aside from the effort exerted in issuing subpoenas, the OSP contended that petitioner Labay was eventually informed of the nature of the accusations against him when he was furnished a copy of the Ombudsman's May 10, 2016 Resolution, in response

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[25] *Id*. at 294.

[26] *Entry of Appearance with Comment and Motion to Dissolve the TRO Issued on 21 March 2018* dated April 17, 2018.

[27] *Rollo*, pp. 14-16.

to which he was able to file an omnibus motion. It further maintains that petitioner Labay had the opportunity to refute the charges against him and present any countervailing evidence he may have, but faults him for hiding on technicalities and insisting that he was denied due process without presenting any evidence to support his claim of having a valid and meritorious defense. In other words, the OSP asserted that petitioner Labay was afforded due process when he filed two motions seeking reinvestigation and reconsideration of the Ombudsman's rulings.[28]

From the arguments presented by the parties, the Court is now faced with the issue of whether the Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner Labay's motion for reinvestigation and ruling that he was not deprived of due process.

The Court's Ruling

The petition is meritorious.

After a judicious review of the records of the case, the Court finds that petitioner's constitutional right to due process was violated when he was not furnished a copy of the complaint affidavit and its attachments during the preliminary investigation.

Section 1, Article III of the 1987 Constitution guarantees the right of every person to due process before they are deprived of their life, liberty, or property. Due process in criminal prosecutions is further emphasized under Section 14, Article III which provides that no person shall be held to answer for a criminal offense without due process of law. The same provision also states that the accused shall be presumed innocent until the contrary is proved and shall enjoy the right to be informed of the nature and cause of the accusation against him.

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[28] *Id.* at 17-20.

Criminal due process requires that the procedure established by law or the rules be followed to assure that the State makes no mistake in taking the life or liberty except that of the guilty. All the necessary measures must be taken to guarantee procedural due process throughout all stages of a criminal prosecution — from the inception of custodial investigation until rendition of judgment.[29]

A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial.[30]

The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and be formally at risk of incarceration or some other penalty is not a mere formal or technical right. It is a substantive right since the accused in a criminal trial is inevitably exposed to prolonged anxiety, aggravation, humiliation, not to speak of expense, and the right to an opportunity to avoid a painful process is a valuable right.[31] It is meant to secure the innocent against hasty, malicious and oppressive prosecution and to protect him from an open and public accusation of a crime, from the trouble, expenses and anxiety of a public trial. It is also intended to protect the state from having to conduct useless and expensive trials. Indeed, to deny a person's claim to a preliminary investigation would be to deprive him the full measure of his right to due process.[32]

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[29] *Benjamin "Kokoy" Romualdez v. The Honorable Sandiganbayan (First Division) and The People of the Philippines represented by Special Prosecution Officer II Evelyn Tagoba Lucero*, G.R. Nos. 143618-41, July 30, 2002.

[30] The Revised Rules of Criminal Procedure, Rule 112, Section 1.

[31] *Rolito Go y Tambunting v. The Court of Appeals, The Hon. Benjamin V. Pelayo, Presiding Judge, Branch 168, Regional Trial Court, NCJR Pasig, M.M., and People of the Philippines*, G.R. No. 101837, February 11, 1992.

[32] *Reynolan T. Sales v. Sandiganbayan (4th Division), Ombudsman, People of the Philippines and Thelma Benemerito*, G.R. No. 143802, November 16, 2001.

Administrative Order (A.O.) No. 07 otherwise known as the Rules of Procedure of the Office of the Ombudsman (Ombudsman Rules of Procedure) lays down the procedure to be followed in handling preliminary investigations of criminal complaints brought before the Ombudsman for offenses in violation of R.A. 3019, as amended, R.A. 1379 as amended, R.A. 6713, Title VII, Chapter II, Section 2 of the Revised Penal Code, and for such other offenses committed by public officers and employees in relation to their office.[33] It provides:

Section 3. Preliminary investigation; who may conduct. Preliminary Investigation may be conducted by any of the following:

1) Ombudsman Investigators;
2) Special Prosecuting Officers;
3) Deputized Prosecutors;
4) Investigating Officials authorized by law to conduct preliminary investigations or
5) Lawyers in the government service, so designated by the Ombudsman.

Section 4. Procedure – The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.

b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondents to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

c) If the respondent does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer

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[33] Administrative Order No. 07, Rule II, Section 1.

to the complaint. In any event, the respondent shall have access to the evidence on record.

d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If respondents desire any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

e) If the respondents cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record.

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

Section 3, Rule 112 of the Revised Rules of Criminal Procedure also provides similar guidelines in the conduct of preliminary investigation, to wit:

Section 3. *Procedure*. –The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or, in their absence or unavailability, before a notary public, each of who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of there questing party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-

examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (3a)

It is clear from the foregoing that an accused in a criminal case has the right to be informed of the charges against him,[34] to submit a counter- affidavit, and to have access to and examine all other evidence submitted by the complainant.[35]

In the case before Us, a complaint was filed by the FIO I of the Office of the Ombudsman against petitioner Labay for representing the Farmerbusiness Development Corporation (FDC) in the alleged anomalous utilization of the PDAF of Rep. Cagas IV.[36] The Ombudsman directed those charged to file their respective counter-affidavits,[37] but copies of this Order could not be served on petitioner Labay.[38] It appears that the Ombudsman attempted to serve copies of the September 1, 2015 Joint Order on petitioner Labay at his office at the National Anti-Poverty Commission (NAPC) and at his last known residence. However, the copies were returned unserved because he was no longer employed in that office and he was unknown at the given residential address. As such, the Ombudsman

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[34] The 1987 Philippine Constitution, Article III, Section 14.

[35] *Senator Jinggoy Ejercito Estrada v. Office of the Ombudsman, Field Investigation Office, Office of the Ombudsman, National Bureau of Investigation and Atty. Levito D. Baligod*, G.R. Nos. 212140-41, January 21, 2015.

[36] *Rollo*, p. 99.

[37] *Id*. at 109.

[38] *Id*. at 208.

proceeded with the preliminary investigation without any counter-affidavit or participation from petitioner Labay.[39]

Thereafter, the Ombudsman found probable cause to indict petitioner and his co-respondents for conspiracy in the commission of two counts of Violation of Section 3(e) of RA 3019, one count of Malversation of Public Funds, and one count of Malversation thru Falsification.

Upon learning from press releases of the Ombudsman about the criminal charges against him,[40] petitioner Labay, through his daughter, Atty. Labay, attempted to secure information on the cases from the Central Records of the Ombudsman. Upon being advised to submit a written request, Atty. Labay sent the Ombudsman a letter dated October 4, 2016 in compliance with the said directive.[41] In response to Atty. Labay's letter request, the Ombudsman replied to Atty. Labay's request through a letter dated October 10, 2016 and served on her copies of its May 10, 2016 Resolution. In the letter, the Ombudsman directed Atty. Labay to file a motion for reconsideration of the said Resolution within five days from receipt thereof.[42]

Petitioner filed an *Omnibus Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavit and Supporting Documents* dated November 16, 2016,[43] praying, among others, that a reinvestigation be conducted on his behalf, asserting that he was not afforded an opportunity to present his defense and to participate during the preliminary investigation since he had neither been notified that a complaint had been filed against him nor was furnished a copy of the same. Petitioner also prayed that he be furnished copies of the complaint-affidavit and other supporting documents and that he be given time to gather his evidence and submit his

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[39] *Id.* at 208-210.

[40] *Id.* at 7.

[41] *Id.* at 91.

[42] *Id.* at 95-96.

[43] *Id.* at 142-156.

answer to the complaint.[44] However, the Ombudsman denied petitioner Labay's Omnibus Motion, ruling that his right to due process had not been violated since he had the opportunity to be heard when he filed the Omnibus Motion.[45]

Aggrieved, petitioner Labay filed another Omnibus Motion essentially reiterating his arguments in his first omnibus motion, but additionally argued that the filing of the first omnibus motion did not cure the defects in the Ombudsman's failure to observe due process when it failed to serve on him copies of the complaint affidavit.[46] The Ombudsman treated this second Omnibus Motion as a second motion for reconsideration and denied the same for lack of merit in its Order dated February 1, 2017.[47]

Thereafter, on March 24, 2017, the Ombudsman filed four (4) Informations before the Sandiganbayan against petitioner Labay and his co-accused.[48] It was only on March 28, 2017 that petitioner Labay was furnished a copy of the Complaint-Affidavit and its supporting evidence.[49]

Upon receiving copies of the Informations filed by the Ombudsman, petitioner Labay immediately filed an Extremely Urgent Motion with the Sandiganbayan arguing that he is entitled to a reinvestigation of the case to prevent injustice against him brought about by the wrongful filing of charges without affording him his right to a complete preliminary investigation.[50]

The Sandiganbayan, however, sustained the Ombudsman's position in the assailed Resolution dated July 10, 2017, ruling that petitioner's right to due process was not violated since he was afforded reasonable opportunity to address the charges

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[44] *Id*. at 152-155.

[45] *Id*. at 173-174.

[46] *Id*. at 191-196.

[47] *Id*. at 202-214.

[48] *Id*. at 9.

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

[50] *Id*. at 10.

against him when he filed two motions with the Ombudsman. The Sandiganbayan ruled, thus:

> The Court finds accused Labay's motion for reinvestigation bereft of merit.
>
> The essence of due process is that a party is afforded a reasonable opportunity to be heard in support of his case. What the law abhors and prohibits is the absolute absence of the opportunity to be heard. When the party seeking due process was in fact given several opportunities to be heard and to air his side, but it was by his own fault or choice that he squandered these chances, then his cry for due process must fail.
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> Admittedly, there is no showing that accused Labay was served a copy of the order requiring him to file his counter-affidavit. The record shows, however, that on October 4, 2016, accused Labay wrote the Office of the Ombudsman requesting information on case numbers and titles of the cases it referred to in its press release where his name appears. In reply to the said letter, the Office of the Ombudsman confirmed that accused Labay is a respondent in two (2) cases and furnished him copies of the Resolutions dated May 10, 2016 and June 3, 2016. It also reminded accused Labay that he has five (5) days from notice within which to file a motion for reconsideration.
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> Thus, on November 16, 2016, accused Labay filed a Motion for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavits and Supporting Documents assailing the Office of the Ombudsman's Resolution dated May 10, 2016, finding probably cause to indict him. The said motion was denied by the Office of the Ombudsman in its Order dated November 25, 2016 upon the following ratiocination:
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> x x x x x x x x x

Thereafter, accused Labay filed an Omnibus Motion for Reconsideration and Deferment of Filing of Information assailing the above order. In denying the said motion, the Office of the Ombudsman pointed out that while accused Labay asserted that he did not commit the crimes imputed to him and that he did not participate in any conspiracy in the commission of the crimes, he prayed that the Office of the Ombudsman conduct a reinvestigation, furnish him a copy of the complaint, allow him to gather evidence and submit counter-affidavit. Further, the Office of the Ombudsman held that

when accused Labay filed his second motion, he already exhausted his remedy under Section 7(a), Rule II of the Rules of Procedure of the Office of the Ombudsman which allows the filing of only one (1) motion for reconsideration or reinvestigation.

The above circumstances unerringly show that accused Labay was accorded due process by filing two (2) motions before the Office of the Ombudsman.

We disagree.

There is no dispute that the Ombudsman was unable to serve copies of the complaint or of its September 1, 2015 Joint Order on petitioner Labay prior to or even during the preliminary investigation of the case. This was never denied by the OSP in its Comment, stating thus:

20. By *Joint Order* dated 01 September 2015, the Office of the Ombudsman directed therein respondents (including Labay) to file their respective counter-affidavits.

21. Despite earnest efforts, copies of the *Joint Order* could not be served in the last known or given addresses of Cunanan, Semillano, Carrasco, Reyes, and **herein petitioner Labay**, after they have been noted to be unknown in said addresses, or had moved out and left no forwarding address.[51] (emphasis in the original)

As pointed out by petitioner, the Ombudsman only tried to effect service of the order to file his counter affidavit on petitioner on one instance, albeit to two different addresses. However, this service failed since petitioner was no longer employed at his former office at NAPC, as confirmed by the letter sent by the NAPC Secretary and Lead Convenor, and since he was no longer residing at the residential address where the order was sent.

In its Comment, the OSP seeks refuge in paragraph (e), Section 4 of the Ombudsman Rules of Procedure which provides that in cases where the respondents cannot be served with the order to file their counter-affidavit, or having been served but

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[51] *Id.* at 11.

does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record.

While the Ombudsman was correct in resolving the complaint based on the evidence presented in accordance with Paragraph (e), Section 4 of the Ombudsman Rules of Procedure, the situation, however, effectively changed when petitioner made himself available to the Ombudsman when he requested access to the case records. The Ombudsman had a clear opportunity to furnish petitioner with copies of the complaint affidavit and its supporting documents. Instead, it merely decided to furnish petitioner with a copy of its May 10, 2016 Resolution.

Even assuming that the Ombudsman was merely complying with Atty. Labay's request for information when it responded with the case titles and docket numbers of the cases pending against petitioner Labay, it should have exercised its duty to inform petitioner of the charges filed against him by furnishing him copies of the complaint affidavit and its supporting documents. Or at the very least, it should have directed and allowed petitioner to access these records at its office. This, however, was not done by the Ombudsman.

We also cannot subscribe to the Sandiganbayan's justification that petitioner was afforded reasonable opportunity to address the charges against him since he was able to file a motion for reinvestigation with the Ombudsman. By the mere fact that petitioner was not yet even furnished a copy of the complaint affidavit at the time he received the Ombudsman's May 10, 2016 Resolution, it is clear that he could not effectively and sufficiently address the allegations against him. Petitioner Labay should not be blamed for being unable to raise any substantive defense in either the omnibus motions he filed with the Ombudsman since he had not even seen any of the allegations filed against by the FIO. More importantly, he could not have been expected to seek appropriate evidence to support his defense when he was not even given any access to the documents submitted by the FIO in support of its complaint.

In fact, the violation of petitioner's constitutional right to due process is made even more evident when the Ombudsman unceremoniously denied his request to be furnished copies of the complaint affidavit and its supporting documents in the first omnibus motion that he filed, and reiterated in his second omnibus motion. In both orders denying the two omnibus motions, the Ombudsman seemingly ignored petitioner's requests and effectively denied petitioner of his right to secure copies of the complaint affidavit. This should not be tolerated.

Unfortunately, the Sandiganbayan committed grave abuse of discretion when it failed to grant petitioner Labay's *Extremely Urgent Omnibus Motion* despite the glaring violations committed by the Ombudsman. The Sandiganbayan should have recognized these patent violations and ordered the remand of the case to the Ombudsman for the conduct of a proper preliminary investigation with respect to petitioner Labay's participation in the crimes charged. Instead, it chose to turn a blind eye towards the injustice committed against petitioner.

Time and again, the Court has held that suppression of evidence, regardless of its nature, is enough to violate the due process rights of the accused.[52] In the present case, it was not only the prosecution's evidence which was withheld from petitioner. In denying petitioner Labay's multiple requests for copies of the complaint affidavit, the Ombudsman deprived him of his right to sufficiently and reasonably know the charges and accusations against him. This is a patent violation of his constitutional right to due process.

In *Duterte v. Sandiganbayan*,[53] this Court ordered the dismissal of the criminal case against the accused when they were not sufficiently apprised of the charges against them during preliminary investigation, thus:

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[52] *Antonio Lejano v. People of the Philippines*, G.R. No. 176389, December 14, 2010, citing *Brady v. Maryland*, 373 U.S. 83 (1963).

[53] G.R. No. 130191, April 27, 1998.

We have judiciously studied the case records and we find that the preliminary investigation of the charges against petitioners has been conducted not in the manner laid down in Administrative Order No. 07.

In the 12 November 1991 Order of Graft Investigator Manriquez, petitioners were merely directed to submit a point-by-point comment under oath on the allegations in Civil Case No. 20,550-91 and SAR No. 91-05. The said order was not accompanied by a single affidavit of any person charging petitioners of any offense as required by law. They were just required to comment upon the allegations in Civil Case No. 20,550-91 of the Regional Trial Court of Davao City which had earlier been dismissed and on the COA Special Audit Report. Petitioners had no inkling that they were being subjected to a preliminary investigation as in fact there was no indication in the order that a preliminary investigation was being conducted. If Graft Investigator Manriquez had intended merely to adopt the allegations of the plaintiffs in the civil case or the Special Audit Report (whose recommendation for the cancellation of the contract in question had been complied with) as his basis for criminal prosecution, then the procedure was plainly anomalous and highly irregular. As a consequence, petitioners constitutional right to due process was violated. (citations omitted)

While the *Duterte* case is not on all fours with the case before Us, We find that the Ombudsman's failure to furnish petitioner Labay with copies of the complaint affidavit and its supporting documents despite the latter's numerous attempts and requests to secure the same is more severe as it gravely endangers petitioner's right to liberty through no fault of his own. Undeniably, petitioner Labay's receipt of the May 10, 2016 Resolution is not equivalent to receipt of the complaint affidavit and its supporting documents.

The OSP's assertion in its comment that petitioner deliberately evaded the Ombudsman's attempts to serve its orders on him is purely hypothetical and is not supported by any concrete proof. There is also no merit in the OSP's position that it was incumbent on petitioner Labay to justify his whereabouts during the time that the Ombudsman was attempting service of the subpoena on him since no law or regulation requires an accused in a preliminary investigation to submit himself to the

Ombudsman or at the very least update the latter of his latest address. The burden should not be placed on the accused since it is the State which has the responsibility to use its resources for the proper implementation of the law. To rule otherwise would effectively curtail the constitutionally protected rights of the people to be secure with their life, liberty and property.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated July 10, 2017 and October 19, 2017 issued by the Sandiganbayan, Third Division in Criminal Case Nos. SB-17-CRM-0642 to 0643 and Criminal Case Nos. SB-17-CRM-0644 to 0645 are hereby **ANNULLED** and **SET ASIDE**. The Office of the Special Prosecutor is **ORDERED** to file motions to withdraw Information in the aforedescribed criminal cases.

SO ORDERED.

Bersamin, Martires, and *Gesmundo, JJ.*, concur.

Leonen, J., see dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

I dissent. This case should have been elevated to the Court *En Banc* as it is contrary to the doctrine established in *De Lima v. Reyes*,[1] *Pemberton v. De Lima*,[2] *Napoles v. De Lima*,[3] and *Cambe v. Office of the Ombudsman*.[4]

Petitioner was not deprived of due process in the preliminary investigation before the Office of the Ombudsman. Not having been deprived of due process, there is no reason for the Office

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[1] 776 Phil. 623 (2016) [Per *J.* Leonen, Second Division].

[2] 784 Phil. 918 (2016) [Per *J.* Leonen, Second Division].

[3] 790 Phil. 161 (2016) [Per *J.* Leonen, Second Division].

[4] G.R. Nos. 212014-15, December 6, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/212014-15.pdf> (Per *J.* Perlas-Bernabe, *En Banc*].

of the Ombudsman to conduct a reinvestigation of the complaint against him. In any case, the filing of the Information with the Sandiganbayan already vests the Sandiganbayan with jurisdiction to determine the existence of probable cause. The issuance of a warrant of arrest already renders moot any irregularities that may have occurred during the preliminary investigation.

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This Court should not confuse the constitutional rights accorded to an accused in a criminal prosecution and the rights accorded to a respondent in a preliminary investigation. Due process in a preliminary investigation is not a constitutional right but merely a statutory privilege. In *Lozada v. Hernandez*:[5]

> It has been said time and again that a preliminary investigation is not properly a trial or any part thereof but is merely preparatory thereto, its only purpose being to determine whether a crime has been committed and whether there is probable cause to believe the accused guilty thereof. The right to such investigation is not a fundamental right guaranteed by the constitution. At most, it is statutory. And rights conferred upon accused persons to participate in preliminary investigations concerning themselves depend upon the provisions of law by which such rights are specifically secured, rather than upon the phrase "due process of law."[6]

The rules governing the procedure for the conduct of a preliminary investigation are those outlined in Rule 112, Section 3 of the Rules of Court, which are reproduced in the Rules of Procedure of the Office of the Ombudsman:[7]

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[5] 92 Phil. 1051 (1953) [Per *J.* Reyes, *En Banc*].

[6] *Id*. at 1053, citing *U.S. v. Yu Tuico*, 34 Phil. 209 (1916) [Per *J.* Moreland, Second Division]; *People v. Badilla*, 48 Phil. 718 (1926) [Per *J.* Ostrand, *En Banc*]; II MORAN, RULES OF COURT 673 (1952); and *U.S. v. Grant and Kennedy*, 18 Phil. 122 (1910) [Per *J.* Trent, *En Banc*].

[7] Adm. O. No. 7 (1990).

RULE 112
Preliminary Investigation

. . . . . .

Section 3. Procedure.– The preliminary investigation shall be conducted in the following manner:

(a) The complaint shall state the address of the respondent and shall be accompanied by the affidavits of the complainant and his witnesses, as well as other supporting documents to establish probable cause. They shall be in such number of copies as there are respondents, plus two (2) copies for the official file. The affidavits shall be subscribed and sworn to before any prosecutor or government official authorized to administer oath, or in their absence or unavailability, before a notary public, each of whom must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss it if he finds no ground to continue with the investigation, or issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents.

The respondent shall have the right to examine the evidence submitted by the complainant which he may not have been furnished and to copy them at his expense. If the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense.

Objects as evidence need not be furnished a party but shall be made available for examination, copying, or photographing at the expense of the requesting party.

(c) Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall resolve the complaint based on the evidence presented by the complainant.

(e) The investigating officer may set a hearing if there are facts and issues to be clarified from a party or a witness. The parties can be present at the hearing but without the right to examine or cross-examine. They may, however, submit to the investigating officer questions which may be asked to the party or witness concerned.

The hearing shall be held within ten (10) days from submission of the counter-affidavits and other documents or from the expiration of the period for their submission. It shall be terminated within five (5) days.

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial.

The Revised Rules of Criminal Procedure state that the investigating prosecutor, in proceeding with the investigation, shall "issue a subpoena to the respondent attaching to it a copy of the complaint and its supporting affidavits and documents."[8] This is mandatory. However, the Rules of Procedure do not state that the subpoena must be sent to respondent repeatedly until respondent submits a counter-affidavit. They only mandate that the investigating prosecutor must issue a subpoena to the respondent to file his or her counter-affidavit. Thus, Rule 112, Section 3(d) of the Rules of Court provides:

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, *the investigating officer shall resolve the complaint based on the evidence presented by the complainant*. (Emphasis supplied)

In this case, petitioner was sent copies of the Joint Order dated September 1, 2015, where the Ombudsman directed respondents to file their respective counter-affidavits, at two

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[8] REVISED RULES OF CRIMINAL PROCEDURE, Rule 112, Sec. 3(b).

(2) of his addresses on record.[9] The Ombudsman has already complied with what was required by the Rules of Court.

This case cannot be similar to that in *Duterte v. Sandiganbayan*.[10] In *Duterte*, petitioners were merely ordered to comment on the complaints against them. They were not specifically ordered to file their respective counter-affidavits. Thus, they had reasonable ground to believe that a preliminary investigation had been conducted against them:

> In the 12 November 1991 Order of Graft Investigator Manriquez, petitioners were merely directed to submit a point-by-point comment under oath on the allegations in Civil Case No. 20,550-91 and on SAR No. 91-05. The said order was not accompanied by a single affidavit of any person charging petitioners of any offense as required by law. They were just required to comment upon the allegations in Civil Case No. 20,550-91 of the Regional Trial Court of Davao City which had earlier been dismissed and on the COA Special Audit Report. Petitioners had no inkling that they were being subjected to a preliminary investigation as in fact there was no indication in the order that a preliminary investigation was being conducted. If Graft Investigator Manriquez had intended merely to adopt the allegations of the plaintiffs in the civil case or the Special Audit Report (whose recommendation for the cancellation of the contract in question had been complied with) as his bases for criminal prosecution, then the procedure was plainly anomalous and highly irregular. As a consequence, petitioners' constitutional right to due process was violated.[11] (Citation omitted)

What this Court emphasized in *Duterte* was the egregious failure of the Office of the Ombudsman to follow its own rules of procedure. In this instance, Administrative Order No. 7 mandates the Office of the Ombudsman to issue a subpoena for respondents to file their respective counter-affidavits. The Ombudsman, in this case, has already complied with this mandate.

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[9] *Ponencia*, p. 2.

[10] 352 Phil. 557 (1998) [Per *J.* Kapunan, Third Division].

[11] *Id.* at 573.

It must likewise be emphasized that while the Ombudsman found probable cause to charge petitioner even before he was aware of the investigation against him, *this finding of probable cause was not yet final*. There was no information yet against petitioner filed with any court.

According to the facts in the *ponencia*, the Ombudsman issued a Resolution dated May 10, 2016 finding probable cause to charge petitioner with conspiracy in the commission of two (2) counts of Violation of Section 3(e) of Republic Act No. 3019, one (1) count of Malversation of Public Funds and one (1) count of Malversation thru Falsification.[12] Petitioner alleged that he was made aware of this only in October 2016. Upon a letter request to the Ombudsman, the Ombudsman, on October 10, 2016, furnished petitioner with a copy of the May 10, 2016 Resolution.[13]

However, instead of merely furnishing petitioner with a copy of the Resolution finding probable cause, the Ombudsman allowed petitioner to file a motion for reconsideration of the Resolution within five (5) days from receipt. In other words, *the Ombudsman gave petitioner the opportunity to overturn her finding of probable cause by giving him time to submit his counter-affidavit and any other controverting evidence he might have*.

Petitioner was in an even better position than his co-respondents to refute the charges against him since he would have already been made aware, through the May 10, 2016 Resolution, of the specific evidence the Ombudsman found to have been convincing enough to find probable cause. He would have known exactly what evidence he needed to submit to controvert the findings against him, instead of merely guessing what the Ombudsman might find convincing, as he would have done during the preliminary investigation. Instead of taking this opportunity, petitioner instead filed an Omnibus Motion

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[12] *Ponencia*, p. 2.

[13] *Id.* at 3.

for Reinvestigation and Deferment of Filing of Information with Request for Copies of Complaint-Affidavit and Supporting Documents.[14] Thus, in denying this Motion, the Ombudsman stated:

> The filing by Labay of the *Omnibus Motion for Reinvestigation* on 16 November 2016 cured whatever defect in the observance of due process. Denial of due process cannot be successfully invoked by a party who has had the opportunity to be heard on his motion for reconsideration.[15]

This Court has stated that "the essence of due process is simply an opportunity to be heard, or an opportunity to explain one's side or an opportunity to seek for a reconsideration of the action or ruling complained of."[16] Petitioner was granted an opportunity to be heard. Thus, he was not denied the right to due process.

II

Even assuming that there were irregularities in the conduct of the preliminary investigation, any petition filed to question these irregularities would already be rendered moot once the court issues a warrant of arrest against the accused.

There are two (2) stages in the determination of probable cause. The first stage is the executive determination of probable cause, which is done by the prosecutor in a preliminary investigation. The second stage is the judicial determination of probable cause. Once information has been submitted to the court, the court acquires full jurisdiction over the case.[17]

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[14] *Id*.

[15] *Id*. at 4.

[16] *Resurreccion v. People*, 738 Phil. 704 (2014) [Per J. Brion, Second Division] citing *Ray Peter O. Vivo v. Philippine Amusement and Gaming Corporation (PAGCOR)*, 721 Phil. 34 (2013) [Per J. Bersamin, *En Banc*].

[17] See *People v. Castillo and Mejia*, 607 Phil. 754 (2009) [Per J. Quisumbing, Second Division].

Therefore, any question must be addressed to its sound discretion. In *Crespo v. Mogul*:[18]

> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as 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 who 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.[19]

The court's finding of probable cause is arrived at independent of the prosecutor's findings. Thus, any perceived irregularity in the conduct of the preliminary investigation does not affect the court's acquisition of jurisdiction. In *People v. Narca*:[20]

> It must be emphasized that the preliminary investigation is not the venue for the full exercise of the rights of the parties. This is why preliminary investigation is not considered as a part of trial but merely preparatory thereto and that the records therein shall not form part of the records of the case in court. Parties may submit affidavits but have no right to examine witnesses though they can propound questions through the investigating office. In fact, a preliminary investigation may even be conducted ex- parte in certain cases. Moreover, in Section 1 of Rule 112, the purpose of a preliminary investigation is only to determine a well grounded belief if a crime was "probably" committed by an accused. *In any case, the invalidity or absence of a preliminary investigation does not affect the jurisdiction of the court which may have taken cognizance of the information nor impair*

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[18] 235 Phil. 465 (1987) [Per *J*. Gancayco, *En Banc*].

[19] *Id*. at 476.

[20] 341 Phil. 696 (1997) [Per *J*. Francisco, Third Division].

the validity of the information or otherwise render it defective.[21] (Emphasis supplied)

In this case, Informations were already filed against petitioner with the Sandiganbayan. In its July 10, 2017 Resolution, the Sandiganbayan found the existence of probable cause and issued a warrant of arrest against him.[22] *The Sandiganbayan, independent of the findings of the Ombudsman in the preliminary investigation, found that based on the records, there was probable cause to arrest petitioner.* Thus, any question on the conduct of the preliminary investigation was already rendered moot by the July 10, 2017 Resolution.

Thus, in *De Lima v. Reyes*,[23] this Court dismissed a Petition for Review on Certiorari questioning the Secretary of Justice's finding of probable cause against the accused for being moot:

> Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists for the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to the trial court. *A petition for certiorari questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment.*

The Court of Appeals should have dismissed the Petition for Certiorari filed before them when the trial court issued its warrant of arrest. Since the trial court has already acquired jurisdiction over

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[21] *Id*. at 705, citing *Lozada v. Hernandez*, 92 Phil. 1051 (1953) [Per *J*. Reyes, *En Banc*]; RULES OF COURT, Rule 112, Sec. 8; RULES OF COURT, Rule 112, Sec. 3(e); RULES OF COURT, Rule 112, Sec. 3(d); *Mercado v. Court of Appeals*, 315 Phil. 657 (1995) [Per *J*. Quiason, First Division]; *Rodriguez v. Sandiganbayan*, 306 Phil. 567 (I983) [Per *J*. Escolin, *En Banc*]; *Webb v. De Leon*, 317 Phil. 758 (1995) [Per *J*. Puno, Second Division]; *Romualdez v. Sandiganbayan*, 313 Phil. 870 (1995) [Per *C.J.* Narvasa, *En Banc*]; and *People v. Gomez*, 202 Phil. 395 (1982) [Per *J*. Relova, First Division].

[22] *Ponencia*, p. 5.

[23] 776 Phil. 623 (2016) (Per *J*. Leonen, Second Division].

the case and the existence of probable cause has been judicially determined, a petition for certiorari questioning the conduct of the preliminary investigation ceases to be the "plain, speedy, and adequate remedy" provided by law. Since this Petition for Review is an appeal from a moot Petition for Certiorari, it must also be rendered moot.

The prudent course of action at this stage would be to proceed to trial. Respondent, however, is not without remedies. He may still file any appropriate action before the trial court or question any alleged irregularity in the preliminary investigation during pre-trial.[24] (Emphasis supplied)

The same ruling was applied in *Pemberton v. De Lima*,[25] *Napoles v. De Lima*,[26] and *Cambe v. Office of the Ombudsman*.[27] There are no special circumstances in this case to re-visit this Court's ruling in these cases.

Even assuming further that the irregularities were enough to warrant a reinvestigation, it was within the Sandiganbayan's discretion to order its conduct. In *Baltazar v. Ombudsman*,[28] this Court emphasized that "courts are given wide latitude to accord the accused ample opportunity to present controverting evidence even before trial as demanded by due process."[29]

Here, if indeed the Sandiganbayan found that petitioner was deprived of due process, it would have ordered a reinvestigation. However, the Sandiganbayan found that due process had already been accorded to petitioner but that petitioner squandered the opportunities given to submit his defense:

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[24] *Id*. at 652-653, citing RULES OF COURT, Rule 65, Sec 1.

[25] 784 Phil. 918 (2016) [Per *J*. Leonen, Second Division].

[26] 790 Phil. 161 (2016) [Per *J*. Leonen, Second Division].

[27] G.R. Nos. 212014-15, December 6,2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/212014-15.pdf> [Per *J*. Perlas-Bernabe, *En Banc*].

[28] 539 Phil. 131 (2006) [Per *J*. Velasco, Jr., Third Division].

[29] *Id*. at 144.

The essence of due process is that a party is afforded a reasonable opportunity to be heard in support of his case. What the law abhors and prohibits is the absolute absence of the opportunity to be heard. When the party seeking due process was in fact given several opportunities to be heard and to air his side, but it was by his own fault or choice that he squandered these chances, then his cry for due process must fail.[30]

The right to due process applies equally to the State and to the defense. In *People v. Court of Appeals and Jonathan Cerbo*:[31]

The rights of the people from what could sometimes be an "oppressive" exercise of government prosecutorial powers do need to be protected when circumstances so require. But just as we recognize this need, we also acknowledge that the State must likewise be accorded due process. Thus, when there is no showing of nefarious irregularity or manifest error in the performance of a public prosecutor's duties, courts ought to refrain from interfering with such lawfully and judicially mandated duties.[32]

A defect in procedure is not automatically assumed as a deprivation of what is at most a statutory right. Irregularities in the executive determination of probable cause do not necessarily affect the judicial determination of probable cause. Once the Sandiganbayan has determined that there is probable cause to issue the warrant of arrest, any question as to the conduct of the preliminary investigation is already moot.

Accordingly, I vote to **DENY** the Petition for Certiorari. The Sandiganbayan should proceed with the resolution of Criminal Case Nos. SB-17-CRM-0642 to 0643 and Criminal Case Nos. SB-17-CRM-0644 to 0645 with due and deliberate dispatch.

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[30] *Ponencia*, p. 13, the Sandiganbayan July 10, 2017 Resolution.

[31] 361 Phil. 401 (1999) [Per *J*. Panganiban, Third Division].

[32] *People v. Court of Appeals and Jonathan Cerbo*, 361 Phil. 401 (1999) [Per *J*. Panganiban, Third Division].

THIRD DIVISION

[G.R. No. 236629. July 23, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **LIBERATO P. MOLA CRUZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY; THE RULING THAT *MOLINA* GUIDELINES SHOULD NO LONGER BE VIEWED AS A STRINGENT CODE WHICH ALL NULLITY CASES ON THE GROUND OF PSYCHOLOGICAL INCAPACITY SHOULD MEET WITH EXACTITUDE, REITERATED.— [T]he Court is mindful that the *Molina* guidelines should no longer be viewed as a stringent code which all nullity cases on the ground of psychological incapacity should meet with exactitude, in consonance with the Family Code's ideal to appreciate allegations of psychological incapacity on a case-to-case basis and "to allow some resiliency in its application" as legally designed.

2. ID.; ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE COURT OF APPEALS RELATIVE TO THE HISTRIONIC PERSONALITY DISORDER SUFFERED BY THE WIFE, ACCORDED GREAT WEIGHT; TOTALITY OF EVIDENCE INCLUDING THE PSYCHOLOGICAL REPORT SUFFICIENTLY ESTABLISHED THE WIFE'S PSYCHOLOGICAL INCAPACITY.— [T]he Court holds that both the CA and the RTC did not err in finding that the totality of evidence presented by respondent in support of his petition, sufficiently established the link between Liezl's actions showing her psychological incapacity to understand and perform her marital obligations and her histrionic personality disorder. The Court respects the RTC's appreciation of respondent's testimony during trial on what transpired before and during the marriage, considering that "[t]he totality of the behavior of one spouse during the cohabitation and marriage is generally and genuinely witnessed mainly by the other." In addition, Dr. Tudla was able

to collect and verify largely the same facts in the course of her psychological evaluation of both spouses and her interview of Liezl's sister. Dr. Tudla's report gave a description of histrionic personality disorder, and correlated the characteristics of this disorder with Liezl's behavior from her formative years through the course of her marriage to petitioner. Indubitably, Dr. Tudla's report and testimony enjoy such probative force emanating from the assistance her opinion gave to the courts to show the facts upon which her psychological conclusion was based.

3. **ID.; ID.; ID.; ID.; THE COURT OF APPEALS DID EXPOUND ON THE CIRCUMSTANCES WHY THE WIFE'S PSYCHOLOGICAL INCAPACITY WAS GRAVE, INCURABLE, AND EXISTING PRIOR TO THE TIME OF THE MARRIAGE.—** [C]ontrary to petitioner's allegation, the CA did expound on the reasons why it found Liezl's disorder grave, deeply rooted in her childhood and incurable. x x x The CA explained that Liezl's histrionic personality disorder was the cause of her inability to discharge her marital obligations to love, respect and give concern, support and fidelity to her husband. The CA also narrated how the disorder was evidenced by Liezl's actions after the marriage was celebrated, starting from when she and petitioner lived together in Japan. The gravity of her disorder is shown by appreciating the totality of her actions after she got married. Liezl was unable to accommodate the fact that she was already married into the way she wanted to live her life, and essentially treated petitioner as a manipulable inconvenience that she could ignore or threaten to accede to her desires. It is clear that Liezl is truly incognitive of her marital responsibilities. The disorder was found by the CA to have begun when Liezl was an adolescent and continued well into adulthood. It fully appreciated Liezl's psychological evaluation that revealed her unconsciousness of her disorder. Together with its rootedness in Liezl's personality since her teens, the CA came to agree with the expert findings that any medical or behavioral treatment of her disorder would prove ineffective.

4. **ID.; ID.; ID.; ID.; WHERE THE SEVERANCE OF MARITAL *VINCULUM* WILL BETTER PROTECT THE STATE'S INTEREST TO PRESERVE THE SANCTITY OF MARRIAGE AND FAMILY, THE COURT HAS TO AFFIRM THE DECLARATION OF RESPONDENT'S MARRIAGE AS VOID *AB INITIO*.—** The Court has to affirm

the declaration of respondent's marriage as void *ab initio*, even as it is clear from the records how much petitioner must love his wife to endure the pain and humiliation she callously caused him in the hope that their relationship could still work out. Clearly, Liezl does not recognize the marital responsibilities that came when she married petitioner. The severance of their marital *vinculum* will better protect the state's interest to preserve the sanctity of marriage and family, the importance of which seems utterly lost on respondent.

LEONEN, *J.*, *concurring opinion*:

CIVIL LAW; FAMILY CODE; DECLARATION OF NULLITY OF MARRIAGE; PSYCHOLOGICAL INCAPACITY; SINCE 2009, THE PRESENT CASE WOULD ONLY BE THE SIXTH CASE VOIDING THE PARTIES' MARRIAGE DUE TO PSYCHOLOGICAL INCAPACITY; PROTECTING MARRIAGES IS NOT THE SAME AS FORCING PARTNERS TO STAY TOGETHER; MARRIAGE SHOULD BE PROTECTED ONLY INSOFAR AS IT AFFECTS THE STABILITY OF SOCIETY; OTHERWISE, THE STATE HAS NO BUSINESS OF INTERFERING WITH INTIMATE ARRANGEMENTS.— Since *Ngo Te's* promulgation in 2009, *Kalaw* would only be the fifth case voiding the parties' marriage due to psychological incapacity, at least through a signed decision or resolution. The present case would only be the sixth. The State's interpretation of its constitutional mandate to protect marriages as the foundation of the family remains the same: all Article 36 petitions are to be challenged until they reach this Court. Protecting marriages, however, is not the same as forcing partners to stay together when they clearly no longer wish to do so. While the law characterizes marriage as an "inviolable social institution" and a "permanent union," its inviolability and permanence should be consistent with its purpose of establishing conjugal and family life. This is obviously not the case here, with Liezl having left Liberato to cohabit with another man. Forcing Liberato to stay married to a woman who has no intention of sharing her life with him would have been cruel and inhuman. Furthermore, the notion of "psychological incapacity" should not only be based on a medical or psychological disorder; it should consist of the inability to comply with the essential marital obligations

such that public interest is imperiled. Marriage should be protected only insofar as it affects the stability of society; otherwise, the State has no business interfering with intimate arrangements.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Melvin S. Pascual for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is an appeal by *certiorari* filed by the Republic of the Philippines *(petitioner)* asking the Court to reverse and set aside the April 25, 2017 Decision[1] and January 11, 2018 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 105873, which affirmed the May 8, 2015 Decision[3] and September 16, 2015 Order[4] of the Regional Trial Court of Gapan City, Nueva Ecija, Branch 34 *(RTC)* declaring the marriage of Liberato P. Mola Cruz *(respondent)* and Liezl S. Conag *(Liezl)* void *ab initio*.

The Antecedents

Respondent and Liezl were married on August 30, 2002 in Bacolod City. Their dating relationship began when Liezl's sister gave Liezl's mobile phone number to respondent so they could become textmates. In the course of their relationship, Liezl left for Japan to work as an entertainer for six (6) months. The couple got married after Liezl returned home. They lived

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[1] *Rollo*, pp. 56-66; penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon Paul L. Hernando and Ma. Luisa Quijano-Padilla, concurring.

[2] *Id*. at 68-69.

[3] *Id*. at 92-101; penned by Judge Celso O. Baguio.

[4] *Id*. at 116-118.

for some time in Manila where respondent worked, but later moved to Japan where Liezl again secured a contract as an entertainer and respondent found work as a construction worker. It was while living in Japan when respondent noticed changes in Liezl. She began going out of the house without respondent's permission and started giving respondent the cold treatment. Liezl also started getting angry at respondent for no reason. The couple later returned to the Philippines after Liezl was released from detention due to overstaying in Japan. It was then that Liezl confessed to respondent her romantic affair with a Japanese man. Despite the confession, Liezl did not end the illicit relationship, which caused petitioner such stress that he was hospitalized. Respondent expressed her willingness to forgive Liezl but she chose to walk away from their marriage.

The couple reconciled after respondent made efforts to woo Liezl back. One day, however, respondent found Liezl's Japanese lover in their house. To respondent's surprise, Liezl introduced him to her lover as her elder brother. Respondent went along with the charade, and allowed Liezl to share her bed with her lover as she threatened to leave their home. Liezl went on with her partying ways, and continued working in a Manila nightclub despite respondent's offer for her to start a business.

Despite the concessions given her, Liezl left respondent a second time. Respondent tried to move on and left for Singapore to work in 2008. Though abroad, he continued to woo his wife back, but found out that Liezl already cohabited with her lover.

Respondent decided to file a petition for declaration of nullity of marriage under Article 36 of the Family Code. The public prosecutor assigned to the case reported, submitted a written report to the RTC, stating, among others, that the filing of the petition was not a result of collusion between the spouses.[5] Thereafter, pre-trial was held and trial on the merits ensured.

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[5] *Id*. at 92-93.

The RTC's Decision

The RTC granted respondent's petition, and declared respondent and Liezl's marriage *void ab initio* and their property regime dissolved.

The RTC relied on the psychological report and testimony of expert witness, Dr. Pacita Tudla *(Dr. Tudla)* a clinical psychologist. Based on the evaluation and assessment procedure she followed, Dr. Tudla found that Liezl was afflicted by histrionic personality disorder, a pervasive pattern of behavior characterized by excessive emotionality and attention seeking. A histrionic so afflicted tends to be perceived by others as selfish, egotistical and unreliable; seeking immediate gratification; over-reactive to even minor provocations; suggestible; and lacking in analytical ability.

Dr. Tudla presented the following indicators of Liezl's disorder: going out without her husband's knowledge or permission; coldly treating her husband, verbally and sexually; quick anger at the slightest provocation or for no reason; arrest in Japan due to overstaying; admission to an affair; insensitivity towards her husband's feelings, as shown by introducing her husband as her brother to her Japanese lover; threats of leaving if her ideas are not agreed to; unabashed declaration of having no feelings for her husband; maintaining a night life with friends; and choosing to work in a nightclub instead of engaging in a decent job.

Dr. Tudla found that Liezl's psychological incapacity existed prior to the marriage because she grew up irritable, hard-headed and more fond of friends than family. She despised advice or suggestion from her elders, and would rebel when her demands were not met. This personality aberration was determined by Dr. Tudla as rooted on Liezl's poor upbringing – Liezl's father resorted to corporal punishment to instill discipline, while her mother tolerated her whims. Liezl also tended to skip house and spend nights with her friends to avoid her father's spanking. According to Dr. Tudla, the irregular treatment she received from her parents led to Liezl acquiring unsuitable behavioral patterns.

Aside from the existence of Liezl's psychological incapacity prior to the marriage, Dr. Tudla found her incapacity too grave that it seriously impaired her relationship with her husband, and caused her failure to discharge the basic obligations of marriage which resulted in its breakdown. Her incapacity was also found incurable because it was deeply ingrained in her personality. Further, Dr. Tudla found Liezl unconscious of her personality disorder and, when confronted, would deny it to avoid criticism. The disorder was also permanent as it started during her adolescence and continued until adulthood. Treatment was also deemed ineffective as lack of any indication that behavioural or medical therapy would play a significant role, considering Liezl's unawareness of her disorder. Only the people around her noticed her maladaptive behavior.

The RTC found that Liezl was largely responsible for the failure of her marriage. Her moral bankruptcy, coupled with respondent's weakness in character inconsistent with what is expected of the head of a family, left the marital union bereft of any mutual respect. According to the RTC, the marriage was wrong from the very beginning.

Petitioner moved for reconsideration, and argued that Dr. Tudla's findings were based on hearsay because she lacked personal knowledge of the facts on which her evaluation was anchored; and that the hopelessness of the parties' reconciliation should not mean that their marriage should be declared void *ab initio*.

In its Order,[6] the RTC denied the motion for lack of merit.

The Court of Appeals' Decision

On appeal, petitioner raised the sole issue of whether respondent was able to prove Liezl's psychological incapacity to perform her marital obligations. It claimed that respondent failed to do so, and that witness Dr. Tudla only made a sweeping statement that Liezl's condition was grave and permanent.

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[6] *Id*. at 116-118.

Petitioner questioned Dr. Tudla's report as it lacked details regarding Liezl's condition and how Liezl was unable to comply with her marital obligations. Petitioner contended that the change in Liezl's behavior was only caused by her illicit relationship and not because of psychological incapacity. Petitioner asserted that sexual infidelity, indulgence and abandonment can only be grounds for legal separation as they do not constitute psychological incapacity.

In its decision, the CA dismissed the appeal for lack of merit and affirmed the RTC's decision. It reasoned that:

> What matters in cases of declaration of nullity of marriage under Article 36 of the Family Code is whether the totality of evidence presented is adequate to sustain a finding of psychological incapacity. In the task of ascertaining the presence of psychological incapacity as a ground for the nullity of marriage, the courts, which are concededly not endowed with expertise in the field of psychology, must rely on the opinions of experts in order to inform themselves on the matter, and thus enable themselves to arrive at an intelligent and judicious judgment. Indeed, the conditions for the malady of being grave, antecedent and incurable demand the in-depth diagnosis of experts.
>
> In the present case, the Psychological Evaluation Report prepared by petitioner's witness Pacita P. Tudla. Ph.D concluded [that] respondent is suffering from histrionic personality disorder. From interviews of said psychologist with petitioner, respondent and her sister, it was revealed how her psychological disorder resulted in the failure of their marriage. At the time the parties were living in Japan, respondent had an affair with a Japanese national which she admitted to petitioner. Furthermore, her attitude towards her husband had changed ever since she met her Japanese lover, giving him the cold treatment and getting angry at him at the slightest provocation. She likewise refused to have sexual intercourse with petitioner. Respondent preferred to work at a nightclub over a decent business offered to her by petitioner. Worst, she let her Japanese boyfriend visit the conjugal home she shared with petitioner and introduced the latter as her older brother to her lover. Petitioner was forced to keep silent because she threatened to leave him. And ultimately, Liezl left Liberato and cohabited with her Japanese boyfriend.
>
> According to Ms. Tudla, respondent's psychological incapacity has antecedence since it already existed long before she married

petitioner. Growing up, Liezl was irritable, hard-headed and was fond of her group of friends. She did not know how to accept advice and suggestion from elders.

Respondent's psychological incapacity is considered by the expert witness to be grave, permanent and incurable. Liezl's histrionic personality disorder seriously impaired the quality of her relationship with her husband and caused her failure to discharge the basic obligations of marriage – love, respect, concern, support and fidelity to her husband. Further, she is unconscious of her personality disorder and if confronted about it, she would deny it in her attempt to protect herself from criticisms.

Ms. Tudla said in her report that Liezl's psychological incapacity is permanent because it started in the adolescent stage of her life and continued to manifest as she grew up into adulthood. Thus, it is already ingrained in her personality make-up and no treatment will be effective.[7]

The CA described Liezl's acts of allowing her lover to stay in the conjugal home and introducing her husband as her brother as extreme perversion and depravity. It then concluded that, in dissolving marital bonds on account of psychological incapacity, the court is actually protecting the sanctity of marriage.

Petitioner filed a motion for reconsideration but it was denied.

The Present Appeal

Petitioner now questions whether the totality of the evidence adduced by respondent proves Liezl's psychological incapacity, thus warranting the declaration of their marriage as null and void under Art. 36 of the Family Code.

Using the guidelines set forth in the case of *Republic v. Court of Appeals and Molina (Molina)*,[8] petitioner argues that the CA erred in affirming the RTC's findings because there was no sufficient evidence to prove that Liezl is psychologically

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[7] *Id*. at 64-65. Citations omitted.

[8] 335 Phil. 664 (1997).

incapacitated to perform her marital obligations. Dr. Tudla's assessment, based only on the information given by respondent, Liezl and her sister, must be weighed strictly and with due care. Petitioner avers that there must be a thorough and in-depth assessment of the couple to obtain a conclusive diagnosis of psychological incapacity that is grave, severe and incurable. Information retrieved from Liezl's interview does not necessarily enhance Dr. Tudla's conclusion because the details Liezl conveyed were wanting. There is also no independent collateral informants, which made Dr. Tudla's evaluation fallible. Therefore, Dr. Tudla's findings should not be accepted without question.

For petitioner, Liezl's purported actuations were not proven to have existed prior to the marriage; nor was it alleged in respondent's petition that she showed abnormal and peculiar character and behavior prior to the celebration of the marriage that would support a conclusion that she is suffering from any psychological incapacity. Petitioner argues that the CA observed nothing peculiar about the spouses that would insinuate that they are suffering from psychological incapacity, and that the finding that Liezl was suffering from a psychological disorder was merely based on incidents that occurred after the celebration of the marriage. Petitioner, thus, avers that Liezl's incapacity is merely conjectural since there was no mention or proof that her incapacity manifested, or at least was hinted at, before the celebration of the marriage.

Petitioner also claims that the CA failed to detail how Liezl's disorder could be characterized as grave, deeply rooted in her childhood and incurable. There should be a causal connection between the failure of the marriage and the psychological disorder. Psychological incapacity must be more than just a "difficulty", a "refusal" or a "neglect" in the performance of some marital obligations. Petitioner maintains that sexual infidelity and abandonment are only grounds for legal separation and not for the declaration of nullity of marriage. The change in the spouses' feelings toward each other could hardly be described as a psychological illness.

Issue

Whether Liezl's psychological incapacity to comply with her marital obligations was sufficiently established by the totality of evidence presented by respondent.

The Court's Ruling

The petition lacks merit.

In *Santos v. Court of Appeals*,[9] the Court explained psychological incapacity as follows:

> "[P]sychological incapacity" should refer to no less than a mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed by Article 68 of the Family Code, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. There is hardly any doubt that the intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. x x x.[10]

Further, "xxx psychological incapacity pertains to the inability to understand the obligations of marriage, as opposed to a mere inability to comply with them x x x."[11]

Jurisprudence consistently adhered to the guidelines in appreciating psychological incapacity cases set in *Molina.* We quote the fairly recent iteration of the guidelines in *Republic v. Pangasinan*[12] for reference:

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[9] 310 Phil. 21 (1995).

[10] *Id.* at 40.

[11] *Antonio v. Reyes*, 519 Phil. 337, 351 (2006).

[12] 792 Phil. 808 (2016).

x x x [P]sychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. Thereafter, in *Molina*, the Court laid down more definitive guidelines in the disposition of psychological incapacity cases, to wit:

> (1) Burden of proof to show the nullity of the marriage belongs to the plaintiff.
>
> (2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.
>
> (3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage.
>
> (4) Such incapacity must also be shown to be medically or clinically permanent or incurable.
>
> (5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.
>
> (6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife, as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.
>
> (7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.
>
> (8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition.

In sum, a person's psychological incapacity to comply with his or her essential obligations, as the case may be, in marriage must be rooted on a medically or clinically identifiable grave illness that is

incurable and shown to have existed at the time of marriage, although the manifestations thereof may only be evident after marriage. x x x.[13]

In addition, the Court is mindful that the *Molina* guidelines should no longer be viewed as a stringent code which all nullity cases on the ground of psychological incapacity should meet with exactitude, in consonance with the Family Code's ideal to appreciate allegations of psychological incapacity on a case-to-case basis and "to allow some resiliency in its application" as legally designed.[14] *Ngo Te v. Yu-Te*[15] predicated, thus:

> Lest it be misunderstood, we are not suggesting the abandonment of *Molina* in this case. We simply declare that, as aptly stated by Justice Dante O. Tinga in *Antonio v. Reyes*, there is need to emphasize other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36. At the risk of being redundant, we reiterate once more the principle that each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. And, to repeat for emphasis, courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.[16]

In the case at hand, petitioner is again assailing the CA's affirmance of the RTC's conclusion that Liezl is psychologically incapacitated to carry out her marital obligations to respondent (1) by attacking the reliability of expert witness Dr. Tudla's medical conclusions on the ground that they were based only on interviews of Liezl and her sister; (2) by claiming that Liezl's actions manifesting her disorder occurred after the celebration of the marriage; and (3) because the CA failed to detail why it found Liezl's disorder grave, deeply rooted in her childhood and incurable. These issues were resolved by the CA by affirming

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[13] *Id*. at 819-820. Citations omitted.

[14] *Supra* note 8 at 36.

[15] 598 Phil. 666 (2009).

[16] *Id*. at 699. Citation omitted.

the factual findings earlier made by the RTC as regards the histrionic personality disorder suffered by Liezl, all of which were deemed binding to the Court. The Court is so bound "xxx owing to the great weight accorded to the opinion of the primary trier of facts, and the refusal of the Court of Appeals to dispute the veracity of these facts."[17] A sharper pronouncement on the respect accorded to the trial court's factual findings in the realm of psychological incapacity was made in *Kalaw v. Fernandez (Kalaw):*[18]

> The findings of the Regional Trial Court (RTC) on the existence or non-existence of a party's psychological incapacity should be final and binding for as long as such findings and evaluation of the testimonies of witnesses and other evidence are not shown to be clearly and manifestly erroneous. In every situation where the findings of the trial court are sufficiently supported by the facts and evidence presented during trial, the appellate court should restrain itself from substituting its own judgment. It is not enough reason to ignore the findings and evaluation by the trial court and substitute our own as an appellate tribunal only because the Constitution and the Family Code regard marriage as an inviolable social institution. We have to stress that the fulfilment of the constitutional mandate for the State to protect marriage as an inviolable social institution only relates to a valid marriage. No protection can be accorded to a marriage that is null and void *ab initio*, because such a marriage has no legal existence.[19]

The CA decision itself recognized and Our own review of Dr. Tudla's psychological report confirms, contrary to petitioner's allegation, that Dr. Tudla personally interviewed both spouses regarding their personal and familial circumstances before and after the celebration of their marriage. Information gathered from the spouses was then verified by Dr. Tudla with Ma. Luisa Conag, Liezl's youngest sister,[20] a close relation privy

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[17] *Antonio v. Reyes*, *supra* note 10 at 358.

[18] 750 Phil. 482 (2015).

[19] *Id*. at 500-501. Citations omitted.

[20] *Rollo*, p. 86.

to Liezl's personal history before and after she got married. Dr. Tudla then based her psychological evaluation and conclusions on all the information she gathered. Her findings were, thus, properly anchored on a holistic psychological evaluation of the parties as individuals and as a married couple under a factual milieu verified with an independent informant. The courts *a quo* properly accorded credence to the report and utilized it as an aid in determining whether Liezl is indeed psychologically incapacitated to meet essential marital functions. Clearly, petitioner has no basis to assail Dr. Tudla's psychological findings as wanting evidentiary support.

Even the failure of an expert to conduct personal examination of the couple will not perforce result to the expert's opinion becoming unreliable, as petitioner advances. In *Kalaw*, a case also involving a petition for declaration of nullity of marriage wherein the expert witnesses declared the respondent spouse therein as suffering from narcissistic personality disorder without personally examining the latter albeit with the support of the medical findings of the respondent spouse's own clinical psychologist. In said case, the Court had the occasion to re-emphasize that such lack of personal examination does not *per se* invalidate the experts' findings of psychological incapacity. Citing *Marcos v. Marcos*,[21] the Court emphasized the importance of the presence of evidence that adequately establishes the party's psychological incapacity and the inessentiality of a physician's personal examination to have a party declared psychologically incapacitated. *Kalaw* expounded on the point, as follows:

> Verily, the totality of the evidence must show a link, medical or the like, between the acts that manifest psychological incapacity and the psychological disorder itself. If other evidence showing that a certain condition could possibly result from an assumed state of facts existed in the record, the expert opinion should be admissible and be weighed as an aid for the court in interpreting such other evidence on the causation. Indeed, an expert opinion on psychological incapacity should be considered as conjectural or speculative and without any

[21] 397 Phil. 840 (2000).

probative value only in the absence of other evidence to establish causation. The expert's findings under such circumstances would not constitute hearsay that would justify their exclusion as evidence. This is so, considering that any ruling that brands the scientific and technical procedure adopted by Dr. Gates as weakened by bias should be eschewed if it was clear that her psychiatric evaluation had been based on the parties' upbringing and psychodynamics.[22]

Guided by the foregoing jurisprudential premise, the Court holds that both the CA and the RTC did not err in finding that the totality of evidence presented by respondent in support of his petition, sufficiently established the link between Liezl's actions showing her psychological incapacity to understand and perform her marital obligations and her histrionic personality disorder. The Court respects the RTC's appreciation of respondent's testimony during trial on what transpired before and during the marriage, considering that "[t]he totality of the behavior of one spouse during the cohabitation and marriage is generally and genuinely witnessed mainly by the other."[23] In addition, Dr. Tudla was able to collect and verify largely the same facts in the course of her psychological evaluation of both spouses and her interview of Liezl's sister. Dr. Tudla's report gave a description of histrionic personality disorder, and correlated the characteristics of this disorder with Liezl's behavior from her formative years through the course of her marriage to petitioner. Indubitably, Dr. Tudla's report and testimony enjoy such probative force emanating from the assistance her opinion gave to the courts to show the facts upon which her psychological conclusion was based.[24]

The fact that Liezl's disorder manifested itself through actions that occurred after the marriage was celebrated does not mean, as petitioner argues, that there is no psychological incapacity

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[22] *Supra* note 17 at 503. Citations omitted.

[23] *Tani-De La Fuente v. De La Fuente, Jr.*, G.R. No. 188400, March 8, 2017.

[24] See *Castillo v. Republic*, G.R. No. 214064, February 6, 2017.

to speak of. As held in *Republic v. Pangasinan*,[25] psychological incapacity may manifest itself after the celebration of the marriage even if it already exists at the time of the marriage. More importantly, Art. 36 of the Family Code is explicit – a marriage contracted by a psychologically incapacitated party is also treated as void even if the incapacity becomes manifest only after the marriage was celebrated.[26]

Also, contrary to petitioner's allegation, the CA did expound on the reasons why it found Liezl's disorder grave, deeply rooted in her childhood and incurable.

To entitle a petitioner spouse to a declaration of the nullity of his or her marriage, the totality of the evidence must sufficiently prove that the respondent spouse's psychological incapacity was grave, incurable and existing prior to the time of the marriage.[27] The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.[28] "There must be proof of a natal or supervening disabling factor in the person – an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to the marriage

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[25] *Supra* note 12 at 825-826.

[26] Art. 36 of the Family Code provides:

Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization. *(As amended by E.O. 227)*

[27] *Mendoza v. Republic*, *et al.,* 698 Phil. 241, 243 (2012).

[28] *Santos v. Court of Appeals*, *supra* note 8 at 39.

– which must be linked with the manifestations of the psychological incapacity."[29]

The CA explained that Liezl's histrionic personality disorder was the cause of her inability to discharge her marital obligations to love, respect and give concern, support and fidelity to her husband. The CA also narrated how the disorder was evidenced by Liezl's actions after the marriage was celebrated, starting from when she and petitioner lived together in Japan. The gravity of her disorder is shown by appreciating the totality of her actions after she got married. Liezl was unable to accommodate the fact that she was already married into the way she wanted to live her life, and essentially treated petitioner as a manipulable inconvenience that she could ignore or threaten to accede to her desires. It is clear that Liezl is truly incognitive of her marital responsibilities.

The disorder was found by the CA to have begun when Liezl was an adolescent and continued well into adulthood. It fully appreciated Liezl's psychological evaluation that revealed her unconsciousness of her disorder. Together with its rootedness in Liezl's personality since her teens, the CA came to agree with the expert findings that any medical or behavioral treatment of her disorder would prove ineffective.

Petitioner also relies on the premise that Liezl's sexual infidelity and abandonment are only grounds for legal separation and cannot be used as basis to hold a marriage void *ab initio*. According to petitioner, Liezl cheated on and abandoned her husband because of her illicit affair and not because she is psychologically incapacitated.

It is true that sexual infidelity and abandonment are grounds for legal separation. It may be noted, however, that the courts *a quo* duly connected such aberrant acts of Liezl as actual manifestations of her histrionic personality disorder. A person with such a disorder was characterized as selfish and egotistical,

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[29] *Del Rosario v. Del Rosario*, G.R. No. 222541, February 15, 2017.

and demands immediate gratification.[30] These traits were especially reflected in Liezl's highly unusual acts of allowing her Japanese boyfriend to stay in the marital abode, sharing the marital bed with his Japanese boyfriend and introducing her husband as her elder brother, all done under the threat of desertion. Such blatant insensitivity and lack of regard for the sanctity of the marital bond and home cannot be expected from a married person who reasonably understand the principle and responsibilities of marriage.

The Court has to affirm the declaration of respondent's marriage as void *ab initio*, even as it is clear from the records how much petitioner must love his wife to endure the pain and humiliation she callously caused him in the hope that their relationship could still work out. Clearly, Liezl does not recognize the marital responsibilities that came when she married petitioner. The severance of their marital *vinculum* will better protect the state's interest to preserve the sanctity of marriage and family, the importance of which seems utterly lost on respondent.

WHEREFORE, the petition is **DENIED.** The April 25, 2017 Decision and January 11, 2018 Resolution of the Court of Appeals in CA-G.R. CV No. 105873 are **AFFIRMED**.

SO ORDERED.

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

Leonen, J., see separate concurring opinion.

CONCURRING OPINION

LEONEN, *J.*:

I concur. The marriage between Liberato P. Mola Cruz (Liberato) and Liezl (Liezl) Conag is void due to psychological incapacity.

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[30] *Rollo*, p. 89.

To recall, this Court first interpreted Article 36 of the Family Code in the 1995 case of *Santos v. Court of Appeals*.[1] In *Santos*, this Court outlined the history of Article 36, noting that the term "psychological incapacity" was not defined in the law "to allow some resiliency in its application."[2] The Family Code Revision Committee gave no examples of psychological incapacity to prevent "[limiting] the applicability of the provision under the principle of *ejusdem generis*."[3]

Still, standards were set in *Santos*. At the very least, the psychological incapacity should be a "mental (not physical) incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage."[4] In addition, psychological incapacity must refer to "the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage"[5] and should be characterized by gravity, juridical antecedence, and incurability.[6]

This Court went on to lay down more specific guidelines for resolving Article 36 petitions in the 1997 case of *Republic v. Court of Appeals and Molina*.[7] The *Molina* guidelines, as they have been called since, are as follows:

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[1] 310 Phil. 21 (1995) [Per *J*. Vitug, *En Banc*].

[2] *Id.* at 36.

[3] *Id*. citing *Salita v. Magtolis*, 303 Phil. 106 (1994) [Per *J*. Bellosillo, First Division]. See also *Republic v. Court of Appeals and Molina*, 335 Phil. 664, 677 (1997) [Per *J*. Panganiban, *En Banc*].

[4] *Id*. at 40.

[5] *Id*.

[6] *Id*. at 39.

[7] 335 Phil. 664 (1997) [Per *J*. Panganiban, *En Banc*].

(1) The burden of proof to show the nullity of the marriage belongs to the plaintiff. Any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity. This is rooted in the fact that both our Constitution and our laws cherish the validity of marriage and unity of the family. Thus, our Constitution devotes an entire Article on the Family, recognizing it "as the foundation of the nation." It decrees marriage as legally "inviolable," thereby protecting it from dissolution at the whim of the parties. Both the family and marriage are to be "protected" by the state.

The Family Code echoes this constitutional edict on marriage and the family and emphasizes their permanence, inviolability and solidarity.

(2) The root cause of the psychological incapacity must be (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision. Article 36 of the Family Code requires that the incapacity must be psychological — not physical, although its manifestations and/or symptoms may be physical. The evidence must convince the court that the parties, or one of them, was mentally or psychically ill to such an extent that the person could not have known the obligations he was assuming, or knowing them, could not have given valid assumption thereof. Although no example of such incapacity need be given here so as not to limit the application of the provision under the principle of *ejusdem generis*, nevertheless such root cause must be identified as a psychological illness and its incapacitating nature fully explained. Expert evidence may be given by qualified psychiatrists and clinical psychologists.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage. The evidence must show that the illness was existing when the parties exchanged their "I do's." The manifestation of the illness need not be perceivable at such time, but the illness itself must have attached at such moment, or prior thereto.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable. Such incurability may be absolute or even relative only in regard to the other spouse, not necessarily absolutely against everyone of the same sex. Furthermore, such incapacity must be relevant to the assumption of marriage obligations, not necessarily to those not related to marriage, like the exercise of a profession or employment in a job. Hence, a pediatrician may be effective in

diagnosing illnesses of children and prescribing medicine to cure them but may not be psychologically capacitated to procreate, bear and raise his/her own children as an essential obligation of marriage.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage. Thus, "mild characterological peculiarities, mood changes, occasional emotional outbursts" cannot be accepted as root causes. The illness must be shown as downright incapacity or inability, not a refusal, neglect or difficulty, much less ill will. In other words, there is a natal or supervening disabling factor in the person, an adverse integral element in the personality structure that effectively incapacitates the person from really accepting and thereby complying with the obligations essential to marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts. It is clear that Article 36 was taken by the Family Code Revision Committee from Canon 1095 of the New Code of Canon Law, which became effective in 1983 and which provides:

> "The following are incapable of contracting marriage: Those who are unable to assume the essential obligations of marriage due to causes of psychological nature."

Since the purpose of including such provision in our Family Code is to harmonize our civil laws with the religious faith of our people, it stands to reason that to achieve such harmonization, great persuasive weight should be given to decisions of such appellate tribunal. Ideally — subject to our law on evidence — what is decreed as canonically invalid should also be decreed civilly void

This is one instance where, in view of the evident source and purpose of the Family Code provision, contemporaneous religious interpretation is to be given persuasive effect. Here, the State and the Church — while remaining independent, separate and apart from each other — shall walk together in synodal cadence towards the

same goal of protecting and cherishing marriage and the family as the inviolable base of the nation.[8] (Citations omitted)

With the *Molina* guidelines, psychological incapacity petitions were rarely granted by this Court. From 1997 to 2008,[9] only the parties in *Antonio v. Reyes*[10] were found to have complied with all the requirements of *Molina*.

This led the Court to state in *Ngo Te v. Yu Te*,[11] decided in 2009, that "jurisprudential doctrine has unnecessarily imposed a perspective by which psychological incapacity should be viewed."[12] As accurately noted by the Court, this view was "totally inconsistent with the way the concept [of psychological

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[8] *Id.* at 676-679. The eighth guideline on the certification from the Solicitor General briefly stating his or her reasons for agreeing or opposing the Petition for declaration of nullity of marriage on the ground of psychological incapacity has been dispensed with under A.M. No. 02-11-10-SC (Re: Proposed Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages).

[9] *Navales v. Navales*, 578 Phil. 826 (2008) [Per J. Austria-Martinez, Third Division]; *Bier v. Bier*, 570 Phil. 442 (2008) [Per J. Corona, First Division]; *Navarro, Jr. v. Cecilia-Navarro*, 549 Phil. 632 (2007) [Per J. Quisumbing, Second Division]; *Tongol v. Tongol*, 562 Phil. 725 (2007) [Per J. Austria-Martinez, Third Division]; *Republic v. Tanyag-San Jose*, 545 Phil. 725 (2007) [Per J. Carpio Morales, Second Division]; *Antonio v. Reyes*, 519 Phil. 337 (2006) [Per J. Tinga, Third Division]; *Villalon v. Villalon*, 512 Phil. 219 (2005) [Per J. Ynares-Santiago, First Division]; *Republic v. Iyoy*, 507 Phil. 485 (2005) [Per J. Chico-Nazario, Second Division]; *Republic v. Quintero-Hamano*, 472 Phil. 807 (2004) [Per J. Corona, Third Division]; *Ancheta v. Ancheta*, 468 Phil. 900 (2004) [Per J. Callejo, Sr., Second Division]; *Dedel v. Court of Appeals*, 466 Phil. 266 (2004) [Per J. Ynares-Santiago, First Division]; *Choa v. Choa*, 441 Phil. 175 (2002) [Per J. Panganiban, Third Division]; *Pesca v. Pesca*, 408 Phil. 713 (2001) [Per J. Vitug, Third Division]; *Republic v. Dagdag*, 404 Phil. 249 (2001) [Per J. Quisumbing, Second Division]; *Marcos v. Marcos*, 397 Phil. 840 (2000) [Per J. Panganiban, Third Division]; *Hernandez v. Court of Appeals*, 377 Phil. 919 (1999) [Per J. Mendoza, Second Division].

[10] 519 Phil. 337 (2006) [Per J. Tinga, Third Division].

[11] 598 Phil. 666 (2009) [Per J. Nachura, Third Division].

[12] *Id.* at 669.

incapacity] was formulated."[13] The *Molina* guidelines were then compared to a "strait-jacket" to which all Article 36 petitions are "forced to fit," thus:

> In hindsight, it may have been inappropriate for the Court to impose a rigid set of rules, as the one in *Molina*, in resolving all cases of psychological incapacity. Understandably, the Court was then alarmed by the deluge of petitions for the dissolution of marital bonds, and was sensitive to the [Office of the Solicitor General's] exaggeration of Article 36 as the "most liberal divorce procedure in the world". The unintended consequences of Molina, however, has taken its toll on people who have to live with deviant behavior, moral insanity and sociopathic personality anomaly, which, like termites, consume little by little the very foundation of their families, our basic social institutions. Far from what was intended by the Court, *Molina* has become a strait-jacket, forcing all sizes to fit into and be bound by it. Wittingly or unwittingly, the Court, in conveniently applying Molina, has allowed diagnosed sociopaths, schizophrenics, nymphomaniacs, narcissists and the like, to continuously debase and pervert the sanctity of marriage.[14] (Citation omitted)

The same observation of the "rigidity" of the *Molina* guidelines was made in *Kalaw v. Fernandez*,[15] resolved on reconsideration in 2015, thus:

> The [*Molina*] guidelines have turned out to be rigid, such that their application to every instance practically condemned the petitions for declaration of nullity to the fate of certain rejection. But Article 36 of the Family Code must not be so strictly and too literally read and applied given the clear intendment of the drafters to adopt its enacted version of "less specificity" obviously to enable "some resiliency in its application." Instead, every court should approach the issue of nullity "not on the basis of a priori assumptions, predilections or generalizations, but according to its own facts" in

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[13] *Id*.

[14] *Id.* at 695-696.

[15] G.R. No. 166357, January 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/166357.pdf> [Per *J.* Bersamin, Special First Division].

recognition of the verity that no case would be on "all fours" with the next one in the field of psychological incapacity as a ground for the nullity of marriage; hence, every "trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court."[16] (Citations omitted)

Since *Ngo Te*'s promulgation in 2009, *Kalaw* would only be the fifth[17] case voiding the parties' marriage due to psychological incapacity, at least through a signed decision or resolution. The present case would only be the sixth. The State's interpretation of its constitutional mandate to protect marriages as the foundation of the family remains the same: all Article 36 petitions are to be challenged until they reach this Court.

Protecting marriages, however, is not the same as forcing partners to stay together when they clearly no longer wish to do so. While the law characterizes marriage as an "inviolable social institution"[18] and a "permanent union,"[19] its inviolability and permanence should be consistent with its purpose of establishing conjugal and family life.[20] This is obviously not the case here, with Liezl having left Liberato to cohabit with another man. Forcing Liberato to stay married to a woman who has no intention of sharing her life with him would have been cruel and inhuman.

Furthermore, the notion of "psychological incapacity" should not only be based on a medical or psychological disorder; it

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

[17] The other four cases are *Azcueta v. Republic*, 606 Phil. 177 (2009) [Per *J*. Leonardo-De Castro, First Division]; *Halili v. Santos-Halili*, 607 Phil. 1 (2009) [Per *J*. Corona, Special First Division]; *Camacho-Reyes v. Reyes*, 642 Phil. 602 (2010) [Per *J*. Nachura, Second Division]; and *Aurelio v. Aurelio*, 665 Phil. 693 (2011) [Per *J*. Peralta, Second Division].

[18] CONST., Art. XV, Sec. 2 provides:

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

[19] FAMILY CODE, Art. 1.

[20] FAMILY CODE, Art. 1.

should consist of the inability to comply with the essential marital obligations such that public interest is imperiled. Marriage should be protected only insofar as it affects the stability of society; otherwise, the State has no business interfering with intimate arrangements.

I maintain that divorce is more consistent with our fundamental rights to liberty and autonomy. We had absolute divorce laws in the past,[21] but as the law stands now, former partners have to pathologize each other in order to separate. This is inconsistent with the reality that we are humans and that we make mistakes. There is no need to punish those who simply made the wrong choice of people to love.

ACCORDINGLY, I vote to **DENY** the Petition and **AFFIRM** the Decision of the Court of Appeals[22] voiding the marriage between Liberato P. Mola Cruz and Liezl Conag.

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[21] Act No. 2710 (1917) allowed the filing of a petition for divorce on the ground of adultery on the part of the wife, or concubinage on the part of the husband. (*Valdez v. Tuason*, 40 Phil. 943, 948 (1920) [Per *J.* Street, *En Banc*]) Executive Order No. 141, or the New Divorce Law, effective during the Japanese occupation, provided for eleven 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." (*Baptista v. Castañeda*, 76 Phil. 461, 462 (1946) [Per *J.* Ozaeta, *En Banc*]).

[22] CA-G.R. CV No. 105873.

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for the issuance of the freeze order, but also the finding of probable cause for the issuance of the bank inquiry order. (*Id*.)

APPEALS

Appeal in criminal cases –– An appeal in a criminal proceeding throws the whole case open for review, and it becomes the duty of this Court to correct any error in the appealed judgment, whether it is made the subject of an assignment of error or not. (People *vs*. Patricio *y* Castillo, G.R. No. 202129, July 23, 2018) p. 509

–– An appeal in criminal cases opens the entire case for review and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned; the appeal confers to 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. (People *vs*. Lumagui *y* Maligid, G.R. No. 224293, July 23, 2018) p. 821

Appeal under Rule 43 of the Rules of Court –– Sec. 6 of Rule 43 of the Revised Rules of Court mandates that the petitioner must state the specific material dates showing that his/her petition was filed within the period fixed; the inclusion of a complete statement of material dates in a petition for review is essential to allow the Court to determine whether the petition was indeed filed within the period fixed in the rules; the absence of such a statement will leave the Court at a quandary on whether the petition was in fact filed on time. (Victoriano *vs*. Dominguez, G.R. No. 214794, July 23, 2018) p. 573

Factual findings of quasi-judicial bodies –– Actual findings of construction arbitrators may be reviewed by the Court when the petitioner proves affirmatively that: (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were

as the factual findings of appellate courts are final, binding or conclusive on the parties and upon this court when supported by substantial evidence; in labor cases, however, the Court has to examine the CA's Decision from the prism of whether the latter had correctly determined the presence or absence of grave abuse of discretion in the NLRC's Decision. (Maricalum Mining Corp. *vs*. Florentino, G.R. No. 221813, July 23, 2018) p. 655

—— The general rule is that only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. (Deocariza *vs*. Fleet Mgm't. Services Phils., Inc., G.R. No. 229955, July 23, 2018) p. 1087

—— When there is sufficient evidence before the Court to enable it to resolve fundamental issues, it will dispense with the regular procedure of remanding the case to the lower court or appropriate tribunal in order to avoid a further delay in the resolution of the case; a remand is only necessary when the proceedings below are grossly inadequate to settle factual issue. (Maricalum Mining Corp. *vs*. Florentino, G.R. No. 221813, July 23, 2018) p. 655

—— While the determination of guilt necessitates the appreciation of evidentiary matters a province beyond the Court's review function under Rule 45 of the Rules of Court, an evaluation of the factual findings of the lower courts is permitted in exceptional circumstances, as when the lower courts overlooked certain material and relevant matters. (Igdalino *vs*. People, G.R. No. 233033, July 23, 2018) p. 1178

Question of law —— For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by any of the litigants, and the resolution of the issue must solely depend on what the law provides on the given set of circumstances; where an interpretation of the true agreement between the parties

clients. (Palencia *vs*. Atty. Linsangan, A.C. No. 10557 [Formerly CBD Case No. 07-1962], July 10, 2018) p. 1

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; 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. (Sioson *vs*. Atty. Apoya, Jr., A.C. No. 12044, July 23, 2018) p. 322

—— Canon 16 and its rules remind a lawyer to: (1) hold in trust all moneys and properties of his client that may come into his possession; (2) deliver the funds and property of his client when due or upon demand subject to his retaining lien; and (3) account for all money or property collected or received for or from his client; money collected by a lawyer on a judgment rendered in favor of his client constitutes trust funds and must be immediately paid over to the client; as he holds such funds as agent or trustee, his failure to pay or deliver the same to the client after demand constitutes conversion. (Palencia *vs*. Atty. Linsangan, A.C. No. 10557 [Formerly CBD Case No. 07-1962], July 10, 2018) p. 1

—— The fact alone that a lawyer has a lien for his attorney's fees on money in his hands collected for his client does not entitle him to unilaterally appropriate his client's money for himself. (*Id*.)

—— The violation of the lawyer's oath and/or breach of the ethics of the legal profession embodied in the CPR may, depending on the exercise of sound judicial discretion based on the surrounding facts, result in the suspension or disbarment of a member of the Bar. (*Id*.)

Disbarment —— An administrative complaint is not the appropriate remedy for every act of a judge deemed aberrant or irregular where a judicial remedy exists and is available; an administrative complaint is not the proper remedy for an adverse decision, order or resolution of an administrative adjudicator deemed by a complaining

them by this Court in the exercise of its constitutional power to regulate the practice of law. (*Id*.)

–– The IBP-CBD's delegated function of entertaining complaints against lawyers is public in nature; but the responsible officer performing such function is a private individual, not a public officer; it also follows that IBP Commissioners are not "public officers" in context of Sec. 3 (b) of R.A. No. 6713, Art. 203 the Revised Penal Code, Sec. 4(e) R.A. No. 9485, or even Sec. 2(b)of R.A. No. 3019; especially in the context of R.A. No. 6713, they are not "public officials" as they are not elective or appointive officials of the "government" as defined by Sec. 3 (a) of the same law. (*Id*.)

Liability of — Actions in violation of the *sub judice* rule may be dealt with not only through contempt proceedings but also through administrative actions; this is because a lawyer's speech is subject to greater regulation for two significant reasons: *one*, because of the lawyer's relationship to the judicial process; and *two*, the significant dangers that a lawyer's speech poses to the trial process. (Re: Show Cause Order in the Decision Dated May 11, 2018 in G.R. No. 237428 [Rep. of the Phils., Represented by Sol. Gen. Jose C. Calida *v*. Maria Lourdes P.A. Sereno], A.M. No. 18-06-01-SC, July 17, 2018) p. 166

–– Lawyers must conduct themselves with great propriety, and their behavior must be beyond reproach anywhere and at all times, whether they are dealing with their clients or the public at large; lawyers may be disciplined for acts committed even in their private capacity for acts which tend to bring reproach on the legal profession or to injure it in the favorable opinion of the public. (*Id*.)

–– No matter how passionate a lawyer is towards defending his cause or what he believes in, he must not forget to display the appropriate decorum expected of him, being a member of the legal profession, and to continue to afford proper and utmost respect due to the courts. (*Id*.)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Application of — Sec. 11, Art. II of R.A. No. 9165 is clear as regards the penalty for unauthorized possession of methamphetamine hydrochloride or "*shabu*" weighing ten (10) grams or more but less than fifty (50) grams; since the accused-appellant was found guilty of possessing five (5) plastic sachets of *shabu* with a total combined weight of 11.221 grams, the penalty of life imprisonment and the payment of a fine of ₱400,000.00 as imposed by the RTC and affirmed by the CA are proper. (People *vs*. Arbuis *y* Comprado, G.R. No. 234154, July 23, 2018) p. 1210

— The *corpus delicti* is a compound fact made up of two things, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result; the dangerous drug is itself the *corpus delicti* of the violation of the law prohibiting the mere possession of the dangerous drug. (People *vs*. Rojas *y* Villablanca, Jr., G.R. No. 222563, July 23, 2018) p. 757

— Time, safety, location and availability of the required witnesses are some of the factors that must be considered in determining whether or not to apply the saving clause found in Sec. 21; to the grounds relied upon, the arresting officers must also prove that earnest efforts were made to comply with the requirements of Sec. 21 otherwise the presumption of regularity in the performance of official duty will not stand. (People *vs*. Guadaña *y* Antiquera, G.R. No. 234160, July 23, 2018) p. 1219

Buy-bust operation — As a "trap for the unwary criminal," a buy-bust operation is generally considered a valid means of arresting those who commit violations under R.A. No. 9165, where the idea to commit the crime originates from the offender without inducement or prodding from anybody; it finds its basis in the validity of an *in flagrante delicto* arrest, when a suspect has just committed, or is in the act of committing, or is attempting to commit an

—— In case of a stipulation by the parties to dispense with the attendance and testimony of the forensic chemist, it should be stipulated that the forensic chemist would have testified that he had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he resealed it after examination of the content; and (3) that he placed his own marking on the same to ensure that it could not be tampered with pending trial. (People *vs*. Cabuhay, G.R. No. 225590, July 23, 2018) p. 903

—— Sec. 21, Art. II of R.A. No. 9165 provides the chain of custody rule, outlining the procedure that police officers must follow in handling the seized drugs in order to ensure that their integrity and evidentiary value are preserved; Under the said section, prior to its amendment by R.A. No. 10640, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and take photographs of the seized items in the presence of the accused or the person from whom such items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall then sign the copies of the inventory and be given a copy of the same; and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination purposes; jurisprudence has been instructive in illustrating the links in the chain that need to be established: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized by the forensic chemist

the forensic chemist to the trial court make up the fourth part. (People *vs*. Rojas *y* Villablanca, Jr., G.R. No. 222563, July 23, 2018) p. 757

—— The following links should be established in the chain of custody of the confiscated item: *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. (People *vs*. Ubungen *y* Pulido, G.R. No. 225497, July 23, 2018) p. 888

—— There being a substantial gap or break in the chain, it casts serious doubts on the integrity and evidentiary value of the *corpus delicti*; *a*s such, the petitioner must be acquitted. (Mariñas *y* Fernando *vs*. People, G.R. No. 232891, July 23, 2018) p. 1150

Illegal possession of dangerous drugs — For the successful prosecution of illegal possession of dangerous drugs, the following essential elements must be established: (a) the accused is in possession of an item or object that is identified to be a prohibited or dangerous drug; (b) such possession is not authorized by law; and (c) the accused freely and consciously possesses the said drug. (People *vs*. Arbuis *y* Comprado, G.R. No. 234154, July 23, 2018) p. 1210

—— Necessary 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. (People *vs*. Lumagui *y* Maligid, G.R. No. 224293, July 23, 2018) p. 821

—— Requires the prosecution to establish the following: (1) that the accused was in possession of dangerous drugs;

as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. (*Id.*)

COURT OF TAX APPEALS

Revised Rules of the Court of Appeals — In cases within the jurisdiction of the Court, the criminal action and the corresponding civil action for the recovery of civil liability for taxes and penalties shall be deemed jointly instituted in the same proceeding; the filing of the criminal action shall necessarily carry with it the filing of the civil action; no right to reserve the filing of such civil action separately from the criminal action shall be allowed or recognized; civil liability arising from a different source of obligation, such as when the obligation is created by law, such civil liability is not deemed instituted with the criminal action; the taxpayer's obligation to pay the tax is an obligation that is created by law and does not arise from the offense of tax evasion, as such, the same is not deemed instituted in the criminal case. (Lim Gaw, Jr. *vs*. Commissioner of Internal Revenue, G.R. No. 222837, July 23, 2018) p. 773

— Rule 4, Sec. 3(a), par. 1 of the RRCTA provides that the CTA First Division has exclusive appellate jurisdiction over decisions of the Commissioner of Internal Revenue on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR. (*Id.*)

— Under Rule 16, Sec. 1of the RRCTA, the Supreme Court's review of the decision of the CTA *En Banc* is limited in determining whether there is grave abuse of discretion on the part of the CTA in resolving the case. (*Id.*)

CRIMINAL PROCEDURE

Preliminary investigation — Defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably

held to answer for a criminal offense without due process of law. (Labay *vs*. Sandiganbayan, G.R. Nos. 235937-40, July 23, 2018) p. 1129

–– Suppression of evidence, regardless of its nature, is enough to violate the due process rights of the accused. (*Id*.)

EMPLOYER-EMPLOYEE RELATIONSHIP

Four-fold test — Employer-employee relationship is determined if the following are present: a) the selection and engagement of the employee; b) the payment of wages; c) the power of dismissal; and d) the power to control the employee's conduct, or the so-called control test; the "control test" is the most important and crucial among the four tests. (Maricalum Mining Corp. *vs*. Florentino, G.R. No. 221813, July 23, 2018) p. 655

–– In cases where there is no written agreement to base the relationship on and where the various tasks performed by the worker bring complexity to the relationship with the employer, the better approach would therefore be to adopt a two-tiered test involving: a) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and b) the underlying economic realities of the activity or relationship; in applying the second tier, the determination of the relationship between employer and employee depends upon the circumstances of the whole economic activity (economic reality or multi-factor test), such as: a) the extent to which the services performed are an integral part of the employer's business; b) the extent of the worker's investment in equipment and facilities; c) the nature and degree of control exercised by the employer; d) the worker's opportunity for profit and loss; e) the amount of initiative, skill, judgment or foresight required for the success of the claimed independent enterprise; f) the permanency and duration of the relationship between the worker and the employer; and g) the degree of dependency of the worker upon the employer for his continued employment in that line of business. (*Id*.)

EVIDENCE

Burden of proof — The prosecution assumes the burden to establish its case with evidence that is relevant, that is, the evidence must throw light upon, or, have a logical relation to, the facts in issue; in all instances, the test of relevancy is whether evidence will have any value, as determined by logic and experience, in proving the proposition for which it is offered, or whether it will reasonably and actually tend to prove or disprove any matter of fact in issue, or corroborate other relevant evidence. (People *vs*. San Jose *y* Suico, G.R. No. 179148, July 23, 2018) p. 355

Circumstantial evidence — The guidelines in appreciating the probative value of circumstantial evidence were laid down, to wit: (a) the court should act upon the matter with caution; (b) all the essential facts must be consistent with the hypothesis of guilt; (c) the facts must exclude every other theory but that of guilt of the accused; and (d) the facts must establish with certainty the guilt of the accused as to convince beyond reasonable doubt that he was the perpetrator of the offense. (People *vs*. Salga, G.R. No. 233334, July 23, 2018) p. 1188

Proof beyond reasonable doubt — To sustain a conviction for a criminal offense, the State must establish the guilt of the accused by proof beyond reasonable doubt; proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty; moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. (People *vs*. San Jose *y* Suico, G.R. No. 179148, July 23, 2018) p. 355

Weight and sufficiency of — In criminal prosecutions, "proof beyond reasonable doubt" does not mean such degree of proof, excluding possibility of error, that produces absolute certainly; only "moral certainty" is required, or that degree of proof which produces conviction in an unprejudiced mind. (People *vs*. XXX, G.R. No. 225059, July 23, 2018) p. 847

JUDGMENTS

Annulment of judgment –– A person not adversely affected by a decision in the civil action or proceeding cannot bring an action for annulment of judgment under Rule 47 of the Rules of Court; the exception is if he is a successor in interest by title subsequent to the commencement of the action, or if the action or proceeding is *in rem*, in which case the judgment is binding against him; assuming that the petitioner is not an indispensable party to the case that is being annulled, he may still file for a petition for annulment of judgment; what is essential is that he can prove his allegation that the judgment was obtained by the use of fraud and collusion and that he would be adversely affected thereby. (Encarnacion *vs*. Johnson, G.R. No. 192285, July 11, 2018) p. 76

–– It is a remedy in law independent of the case where the judgment sought to be annulled is rendered; the ultimate objective of the remedy is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. (*Id*.)

–– The extraordinary nature and objective of the remedy of annulment of judgment or final order, there are requirements that must be complied with before the remedy is granted: *first*, the remedy is only available when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief, or other appropriate remedies through no fault of the petitioner; *second*, the ground for the remedy is limited to either extrinsic fraud or lack of jurisdiction, although lack of due process has been cited as a ground by jurisprudence; *third*, the time for availing the remedy is set by the rules: if based on extrinsic fraud, it must be filed within four years from the discovery of extrinsic fraud; if based on lack of jurisdiction, it must be brought before it is barred by laches or estoppels; and *fourth*, the petition should be verified and should allege with particularity the facts

accused, self-defense, whether complete or incomplete, cannot be appreciated, for the two other essential elements thereof would have no factual and legal bases without any unlawful aggression to prevent or repel; unlawful aggression contemplates an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. (People *vs*. Japag, G.R. No. 223155, July 23, 2018) p. 798

–– To successfully invoke self-defense, an accused must prove the following: (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; among these three elements, the condition *sine qua non* for the justifying circumstance of self-defense is unlawful aggression. (People *vs*. Caliao, G.R. No. 226392, July 23, 2018) p. 966

–– When an accused invokes self-defense, the burden of proof is shifted from the prosecution to the defense, and it becomes incumbent upon the accused to prove, by clear and convincing evidence, the existence of the following requisites of self-defense: *first*, unlawful aggression on the part of the victim; *second*, reasonable necessity of the means employed to prevent or repel such aggression; and *third*, lack of sufficient provocation on the part of the person defending himself. (People *vs*. Japag, G.R. No. 223155, July 23, 2018) p. 798

Unlawful aggression –– Being entitled to the justifying circumstances of self-defense and defense of a stranger, his acquittal follows. (People *vs*. Olarbe *y* Balihango, G.R. No. 227421, July 23, 2018) p. 1015

–– By invoking self-defense, the accused, in effect, admits having killed or injured the victim and he can no longer be acquitted of the crime charged if he fails to prove the essential requisites of self-defense; the most important requisite of self-defense is unlawful aggression which is the condition *sine qua non* for upholding self-defense as

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. (Juego-Sakai *vs*. Rep. of the Phils., G.R. No. 224015, July 23, 2018) p. 810

—— Since both the foreign divorce decree and the national law of the alien, recognizing his or her capacity to obtain a divorce, purport to be official acts of a sovereign authority, Sec. 24 of Rule 132 of the Rules of Court applies; what is required is proof, either by (1) official publications or (2) copies attested by the officer having legal custody of the documents; if the copies of official records are not kept in the Philippines, these must be: (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept; and (b) authenticated by the seal of his office. (*Id*.)

Psychological incapacity —— The Molina guidelines should no longer be viewed as a stringent code which all nullity cases on the ground of psychological incapacity should meet with exactitude, in consonance with the Family Code's ideal to appreciate allegations of psychological incapacity on a case-to-case basis and to allow some resiliency in its application as legally designed. (Rep. of the Phils. *vs*. Mola Cruz, G.R. No. 236629, July 23, 2018) p. 1266

—— The severance of their marital *vinculum* will better protect the state's interest to preserve the sanctity of marriage and family, the importance of which seems utterly lost on respondent. (*Id*.)

MOTION FOR RECONSIDERATION

Filing of —— The very purpose of a motion for reconsideration is to point out the findings and conclusions of the decision which in the movant's view, are not supported by law or the evidence; the movant is very often confined to the

present incontrovertible evidence that the land subject of the application is alienable or disposable. (*Id*.)

PARTIES

Locus standi –– Requirements for granting legal standing to "non-traditional suitors thus: 1) for *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional; 2) for *voters*, there must be a showing of obvious interest in the validity of the election law in question; 3) for concerned citizens, there must be a showing that the issues raised are of transcendental importance which must be settled early; and 4) for *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators; another exception is the concept of third-party standing; under this concept, actions may be brought on behalf of third parties provided the following criteria are met: first, the party bringing suit must have suffered an 'injury-in-fact,' thus giving him or her a sufficiently concrete interest in the outcome of the issue in dispute; second, the party must have a close relation to the third party; and third, there must exist some hindrance to the third party's ability to protect his or her own interests. (The Provincial Bus Operators Assoc. of the Phils. (PBOAP) *vs*. DOLE, G.R. No. 202275, July 17, 2018) p. 205

–– The right of appearance in a court of justice on a given question; to possess legal standing, parties must show a personal and substantial interest in the case such that they have sustained or will sustain direct injury as a result of the governmental act that is being challenged. (*Id*.)

2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Disability benefits –– An illness shall be considered as pre-existing if prior to the processing of the POEA contract, any of the following conditions is present, namely: (*a*) the advice of a medical doctor on treatment was given

illness or condition on the part of the seafarer to be discharged from any liability. (*Id*.)

–– To be considered as work-related, Aplastic Anemia should be contracted under the condition that there should be exposure to x-rays, ionizing particles of radium or other radioactive substances or other forms of radiant energy; exposure to benzene and its compound derivatives may predispose to development of such condition, and that work-relatedness will depend on exposure to any of the above-mentioned factors. (*Id*.)

Permanent total disability –– As a general rule, permanent disability is the inability of a worker to perform his job for more than 120 days, regardless of whether or not he loses the use of any part of his body; however, the Rules provide that the period of 120 days may be extended to 240 days when further medical treatment is required; temporary total disability only becomes permanent when so declared by the company-designated physician within the periods he/she is allowed to do so, or upon the expiration of the maximum 240-day medical treatment period provided by the Rules without a declaration of either fitness to work or the existence of a permanent disability. (Anuat *vs*. Pacific Ocean Manning, Inc., G.R. No. 220898, July 23, 2018) p. 618

–– Implementing rules and the 2000 POEA-SEC may be condensed into the following guidelines: 1) the seafarer shall submit himself to a post-employment medical examination by a company–designated physician within three working days upon his return; If physically incapacitated to do so, written notice to the agency within the same period shall be deemed compliance; 2) the seafarer shall cooperate with the company-designated physician on his medical treatment and regularly report for follow-up check-ups or procedures, as advised by the company-designated physician; 3) the company-designated physician must issue a final medical assessment on the seafarer's disability grading within 120 days from repatriation; the period may be extended to 240 days if

RES JUDICATA

RETIREMENT BENEFITS OF JUSTICES OF THE SUPREME COURT AND THE COURT OF APPEALS, AS AMENDED BY R.A. NO. 1797 AND R.A. NO. 9946

TAXATION

personal property; this *animus furandi* pertains to the intent to deprive another of his or her ownership or possession of personal property, apart from but concurrent with the general criminal intent which is an essential element of *dolos malus*. (*Id.*)

THIRD-PARTY CLAIMANT

Remedy of –– Sec. 16, Rule 39 of the Rules of Court provides for the remedies of a third-party claimant of an alleged wrongfully levied property; a third-party claimant has the following cumulative remedies: (a) he may avail of "*terceria*" by serving on the levying officer making the levy an affidavit of his title, and serving also a copy to the judgment creditor; (b) he may file a case for damages against the bond issued by the judgment debtor within 120 days from the date of the filing of the bond; and (c) he may file any proper action to vindicate his claim to the property. (Encarnacion *vs*. Johnson, G.R. No. 192285, July 11, 2018) p. 76

WITNESSES

Credibility of –– An appellant can justifiably be convicted of rape based solely on the credible testimony of the victim; when it comes to credibility, the trial court's assessment deserves great weight and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence; matters of credibility are addressed basically to the trial judge who is in a better position than the appellate court to appreciate the weight and evidentiary value of the testimonies of witnesses who have personally appeared before him. (People *vs*. CCC, G.R. No. 220492, July 11, 2018) p. 133

–– In rape cases, an accused may be convicted based on the victim's sole testimony, provided that it is logical, credible, consistent, and convincing; the rule becomes more binding where the victims are young and immature, not only because of their relative vulnerability, but also because of the shame and embarrassment which they stand to suffer during trial, if indeed the matters to be testified

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