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OF THE

PHILIPPINES

FOR THE PERIOD

AUGUST 20, 2018 - SEPTEMBER 5, 2018

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 189626. August 20, 2018]

GREGORIO AMOGUIS and TITO AMOGUIS, *petitioners, vs.* **CONCEPCION BALLADO and MARY GRACE BALLADO LEDESMA, and ST. JOSEPH REALTY, LTD.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; NATIONAL HOUSING AUTHORITY (NOW THE HOUSING AND LAND USE REGULATORY BOARD); HAS EXCLUSIVE ORIGINAL JURISDICTION FOR SPECIFIC PERFORMANCE OF CONTRACTUAL AND STATUTORY OBLIGATIONS FILED BY BUYERS OF SUBDIVISION LOTS OR CONDOMINIUM UNITS AGAINST THE OWNER, DEVELOPER, DEALER, BROKER OR SALESMAN.— Presidential Decree No. 957 instituted the National Housing Authority as the administrative body with exclusive jurisdiction to regulate the trade and business of subdivision and condominium developments. x x x Presidential Decree No. 1344 was later on enacted to add to the National Housing Authority jurisdiction. It was no longer just a licensing body for subdivision and condominium developers. Section 1 of Presidential Decree No. 1344 gave authority to the National Housing Authority to hear and decide cases x x x. Section 3 of Presidential Decree No. 1344 provided that appeals from decisions of the National

Housing Authority shall be made to the President of the Philippines within 15 days from receipt. In between the approval of Presidential Decree Nos. 957 and 1344, the Maceda Law was approved. x x x Presidential Decree No. 957 was approved on July 12, 1976, 11 years before the Ballado Spouses filed their complaint. This means that the law mandating the jurisdiction of the National Housing Authority, which later on became the [Housing] and Land Use Regulatory Board, had long been in effect when petitioners filed their Answer and participated in trial court proceedings. x x x According to Presidential Decree No. 1344, exclusive original jurisdiction for specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, dealer, broker or salesman is lodged with the National Housing Authority. x x x Presently, jurisprudence still dictates that when a buyer wants to compel a developer to conform with the terms of the contract it executed, jurisdiction lies with the Housing and Land Use Regulatory Board.

2. **REMEDIAL LAW; ACTIONS; JURISDICTION; SUBJECT MATTER JURISDICTION, DEFINED; WHERE THERE IS NO JURISDICTION OVER A SUBJECT MATTER, THE JUDGMENT IS RENDERED NULL AND VOID.—** Subject matter jurisdiction is a court's or tribunal's power to hear and determine cases of a general class or type relating to specific subject matters. This jurisdiction is conferred by law. To determine a court's or an administrative body's jurisdiction over a subject matter, allegations in the complaint must be examined. The nature of the action, as reflected in the allegations in the complaint, and the reliefs sought determine jurisdiction over the subject matter. It is immaterial whether the claimant has a right to the relief sought. x x x Where there is no jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment has absolutely no legal effect, "by which no rights are divested, from which no rights can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out of are void." Because there is in effect no judgment, *res judicata* does not apply to commencing another action despite previous adjudications already made.

3. ID.; ID.; ESTOPPEL BY LACHES; WHEN APPLICABLE.— Estoppel by laches bars a party from invoking lack of jurisdiction in an unjustly belated manner especially when it actively participated during trial. Estoppel by laches has its origins in equity. It prevents a party from presenting his or her claim "when, by reason of abandonment and negligence, he [or she] allowed a long time to elapse without presenting [it]. x x x In estoppel by laches, a claimant has a right that he or she could otherwise exercise if not for his or her delay in asserting it. This delay in the exercise of the right unjustly misleads the court and the opposing party of its waiver. Thus, to claim it belatedly given the specific circumstances of the case would be unjust. x x x *Calimlim v. Hon. Ramirez* unequivocally ruled that it is only when the exceptional instances in Tijam [v. Sibonghanoy] are present should estoppel by laches apply over delayed claims x x x. *Tijam* applies to a party claiming lack of subject matter jurisdiction when: (1) there was a statutory right in favor of the claimant; (2) the statutory right was not invoked; (3) an unreasonable length of time lapsed before the claimant raised the issue of jurisdiction; (4) the claimant actively participated in the case and sought affirmative relief from the court without jurisdiction; (5) the claimant knew or had constructive knowledge of which forum possesses subject matter jurisdiction; (6) irreparable damage will be caused to the other party who relied on the forum and the claimant's implicit waiver.

4. ID.; EVIDENCE; PRESENTATION OF EVIDENCE; OFFER AND OBJECTION; ALL EVIDENCE MUST BE FORMALLY OFFERED BEFORE THE COURT CAN CONSIDER THEM, HOWEVER, TESTIMONIAL EVIDENCE NOT FORMALLY OFFERED BUT NOT TIMELY OBJECTED TO BY AN OPPOSING PARTY MAY STILL BE CONSIDERED BY THE COURT.— All evidence must be formally offered. Otherwise, the court cannot consider them. This rule ensures that judges will carry out their constitutional mandate to render decisions that clearly state the facts of cases and the applicable laws. Jugments must be based "only and strictly upon the evidence offered by the parties to the suit." This rule also affords parties their right to due process by examining the evidence presented by their opponent, and to object to its presentation when warranted. However, testimonial evidence not formally offered but not timely objected

to by an opposing party may still be considered by the court. The purpose of offering a witness' testimony is for the court to expertly assess whether questions propounded are relevant and material, and if the witness is competent to answer. It is to aid the court in ruling over objections made by opposing counsel. x x x The rules on examination of witnesses and objecting to them are not separate for civil and criminal cases. A witness, whether in a criminal or civil case, is presented to support and prove the allegations made by the party presenting him or her. The witness must be competent, and his or her testimony must be relevant and material. Whether the case is civil or criminal, objection or failure to offer the testimony of a witness must be made immediately. x x x When a party fails to formally offer his or her documentary or object evidence within a considerable period after the presentation of witnesses, he or she is deemed to have waived the opportunity to do so.

5. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; BUYER IN GOOD FAITH, DEFINED; IT IS INCUMBENT UPON A BUYER TO PROVE GOOD FAITH SHOULD HE ASSERT IT AND THE BURDEN CANNOT BE DISCHARGED BY MERELY INVOKING THE LEGAL PRESUMPTION OF GOOD FAITH.— A buyer in good faith is one who purchases and pays fair price for a property without notice that another has an interest over or right to it. If a land is registered and is covered by a certificate of title, any person may rely on the correctness of the certificate of title, and he or she is not obliged to go beyond the four (4) corners of the certificate to determine the condition of the property. x x x It is incumbent upon a buyer to prove good faith should he or she assert this status. This burden cannot be discharged by merely invoking the legal presumption of good faith.

APPEARANCES OF COUNSEL

Lagare Law Offices for petitioners.

Falgui Law Offices for respondent St. Joseph Realty, Ltd.

Gacal Gacal and Gacal for respondents Sps. Francisco & Concepcion Ballado.

D E C I S IO N

LEONEN, *J.*:

Jurisdiction over the subject matter of a complaint is conferred by law. It cannot be lost through waiver or estoppel. It can be raised at any time in the proceedings, whether during trial or on appeal.[1] The edict in *Tijam v. Sibonghanoy*[2] is not an exception to the rule on jurisdiction. A court that does not have jurisdiction over the subject matter of a case will not acquire jurisdiction because of estoppel.[3] Rather, the edict in *Tijam* must be appreciated as a waiver of a party's right to raise jurisdiction based on the doctrine of equity. It is only when the circumstances in *Tijam* are present that a waiver or an estoppel in questioning jurisdiction is appreciated.[4]

The unique circumstances in *Tijam* are present in this case. Indeed, as the petitioners in this case belatedly argue, the Regional Trial Court did not have jurisdiction over the subject matter of the Complaint. However, under the doctrine in *Tijam*, petitioners cannot now raise lack of jurisdiction as they have waived their right to do so. Estoppel by laches has set in. Petitioners did not question the jurisdiction of the Regional Trial Court during trial and on appeal. It is only before this Court, *22 long years* after the Complaint was filed, that petitioners raised the Regional Trial Court's lack of jurisdiction.

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[1] *Magno v. People of the Philippines*, 662 Phil. 726, 735 (2011) [Per *J.* Brion, Third Division], citing *Machado v. Gatdula*, 626 Phil. 457 (2010) [Per *J.* Brion, Second Division].

[2] 131 Phil. 556 (1968) [Per *J.* Dizon, *En Banc*].

[3] *Magno v. People of the Philippines*, 662 Phil. 726, 735 (2011) [Per *J.* Brion, Third Division], citing *Machado v. Gatdula*, 626 Phil. 457 (2010) [Per *J.* Brion, Second Division].

[4] See *Republic v. Bantigue Development Corporation*, 684 Phil. 192 (2012) [Per *J.* Sereno, Second Division]; *Frianela v. Banayad, Jr.*, 611 Phil. 765 (2009) [Per *J.* Nachura, Third Division].

On November 24, 1969, Francisco Ballado (Francisco) and Concepcion Ballado (Concepcion) (collectively, the Ballado Spouses) entered into Contract Nos. 5(M)[5] and 6(M)[6] with owner and developer St. Joseph Realty, Ltd. (St. Joseph Realty) to buy on installment parcels of land, which were designated as Lot Nos. 1 and 2, and were located in Block No. 1, Dadiangas Heights Subdivision, General Santos City. Lot No. 1 had an area of 411 square meters, and Lot No. 2 covered 402 square meters.[7] The Ballado Spouses initially paid a total of ₱500.00 for the lots, and had to pay ₱107.13[8] and ₱97.15[9] per month for Lot Nos. 1 and 2, respectively, both for 180 months starting on December 30, 1969.[10]

St. Joseph Realty characterized the contracts as contracts to sell[11] and provided for automatic rescission and cancellation, thus:

> 3) This contract shall be considered automatically rescinded and cancelled and no further force and effect, upon failure of the VENDEE to pay when due, three (3) consecutive monthly installments or to comply with any of the terms and conditions hereof, in which case the VENDORS shall have the right to resell the said parcel of land to any person or purchaser, as if this contract has never been entered into. In such a case[,] as cancellation of this contract, all the amounts paid in accordance with the agreement together with all the improvements made on the premises shall be considered as rents paid for the use and occupation of the above mentioned premises and as payment for the damages suffered for the failure of the VENDEE to fulfill his/her part of this agreement and the buyer hereby renounces

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[5] *Rollo*, pp. 92-92-A.

[6] *Id*. at 93-93-A.

[7] *Id*. at 92 and 93.

[8] *Id*. at 92.

[9] *Id*. at 93.

[10] *Id*. at 87.

[11] *Id*. at 99.

his/her right to demand or reclaim the return of the same and obliges himself/herself to peacefully vacate the premises and deliver the same to the VENDORS.[12]

The Ballado Spouses amortized until 1979 when Crisanto Pinili (Pinili), St. Joseph Realty's collector, refused to receive their payments. They erected a small house made of light materials for their caretaker. Pinili informed them that it was an eyesore and was against the rules of the subdivision. He advised to suspend the payment for the lots, and directed the Ballado Spouses to remove the small house before payments could continue. He also promised to return and collect after he had put their records in order, but he never did. Francisco informed St. Joseph Realty that the small house had already been taken down, but Pinili still did not come to collect.[13]

On February 17, 1987, the Ballado Spouses discovered that St. Joseph Realty rescinded their contracts.[14] They found out that St. Joseph Realty had sent written demands to pay to the address of Lot Nos. 1 and 2, and not to their residence as declared in the contracts.[15] They were only able to receive the last letter dated December 31, 1986 in January 1987 as it had their home address handwritten beside the typewritten address of the lots.[16]

Concepcion immediately wrote St. Joseph Realty to ask for reconsideration. She enclosed a check for their remaining balance worth ₱30,000.00. She was the payee of the check issued by her employer, P. I. Enterprises. She borrowed money from P. I. Enterprises and indorsed the check in favor of St. Joseph Realty. After six (6) months, St. Joseph Realty returned the

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[12] *Id*. at 92-A.

[13] *Id*. at 109.

[14] *Id*. at 110.

[15] *Id*. at 108.

[16] *Id*. at 112.

check to the Ballado Spouses. St. Joseph Realty claimed that it only inadvertently received the check.[17]

Meanwhile, on February 9, 1987, St. Joseph Realty sold Lot Nos. 1 and 2 to Epifanio Amoguis (Epifanio),[18] father of Gregorio Amoguis (Gregorio) and Tito Amoguis (Tito) (collectively, the Amoguis Brothers).[19] Epifanio paid ₱56,280.00 for one lot and ₱52,650.00 for the other.[20] The Amoguis Brothers then occupied the lots.[21] On August 18, 1987, titles were issued in the Amoguis Brothers' names.[22]

Francisco confronted the Amoguis Brothers when he saw that the barbed fences, which he had installed around the lots, were taken down. Epifanio told him that he bought the lots from St. Joseph Realty. Thereafter, the Amoguis Brothers took down Francisco's mango and chico trees.[23]

Compelled by these events, the Ballado Spouses filed a Complaint for damages, injunction with writ of preliminary injunction, mandatory injunction, cancellation and annulment of titles, and attorney's fees on December 23, 1987.[24] They also prayed for a temporary restraining order to enjoin the Amoguis Brothers from erecting walls around the lots.[25]

St. Joseph Realty filed its Answer.[26] It was its affirmative defense that the Regional Trial Court had no jurisdiction to

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[17] *Id*.

[18] *Id*.

[19] *Id*. at 110.

[20] *Id*.

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

[22] *Id*. at 112.

[23] *Id*. at 107.

[24] *Id*. at 86-91.

[25] *Id*. at 89.

[26] *Id*. at 99-102.

hear the case, and that jurisdiction was properly vested in the Human Settlements Regulatory Commission.[27] The Amoguis Brothers, on the other hand, filed their Answer with Cross-Claim against St. Joseph Realty, and Counterclaim against the Ballado Spouses.[28] The parties did not reach an amicable settlement. The case was archived in 1989 without prejudice, pending the submission of a settlement by the parties. Five (5) years later, on April 8, 1994, the case was revived upon motion by the Ballado Spouses.[29]

After numerous postponements, on February 7, 1996, the Ballado Spouses were finally able to present their evidence in chief.[30] They testified and presented their evidence, among which were receipts to prove payments of installments, original copies of the contracts, the transmittal letter of the ₱30,000.00 check to St. Joseph Realty, and the check. They also presented St. Joseph Realty's rescission letter with its envelope, addressed to the lots and not to their residence, bearing "first attempt, cannot be located," "second attempt, cannot be located," and "third attempt, cannot be located" written on it.[31]

Finally, they presented as evidence Concepcion's February 21, 1987 reply letter asking for her remaining payables,[32] St. Joseph Realty's letter acknowledging receipt of Concepcion's February 21, 1987 letter, documents of sale of the lands from St. Joseph Realty to the Amoguis Brothers, and Concepcion's September 12, 1987 letter to St. Joseph Realty,

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[27] *Id*. at 101.

[28] *Id*. at 94-98.

[29] *Id*. at 106.

[30] *Id*. In the trial court's decision, it noted that trial commenced "after so many postponements by the parties."

[31] *Id*. at 107-108. A portion of St. Joseph Realty's rescission letter stated, "If you desire to seek reconsideration of the notice of rescission, please see us in our office within ten days from your receipt of this letter and file your request in writing."

[32] *Id*. at 108.

proving that she did not know that the lands had already been sold to and titled under the names of the Amoguis Brothers in August 1987.[33]

The Regional Trial Court ruled in favor of the Ballado Spouses, and against St. Joseph Realty and the Amoguis Brothers:

> WHEREFORE, judgment is hereby rendered in favor of plaintiffs, ordering —
>
> 1. Defendant St. Joseph to receive the sum of ₱30,000.00 from plaintiffs to fully pay the two residential lots;
>
> 2. To execute registrable deeds of sale in favor of plaintiffs over the two parcels of land;
>
> 3. To pay plaintiffs —
>
> a. ₱50,000.00 for moral damages;
> b. ₱20,000.00 as exemplary damages;
> c. ₱30,000.00 in concept of attorney's fees;
> d. and the cost of suit.
>
> 4. Declaring Transfer Certificates of Title Nos. T-25862 and T-29295 in the names of Gregorio Amoguis and Tito Amoguis, respectively, NULL and VOID, and ordering the Register of Deeds to cancel said titles;
>
> 5. Ordering St. Joseph to refund the Amoguises the total sum of ₱108,730.00 with interest at 6% per annum from February 1987 until fully paid; and
>
> 6. Ordering the Amoguises to remove all their improvements from the land, to vacate the same and deliver possession thereof to plaintiffs upon presentation of new certificates of title in their names.
>
> SO ORDERED.[34]

Based on the preponderance of evidence, the Regional Trial Court concluded that the Ballado Spouses proved their desire to complete their payment, and that it was Pinili who refused

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[33] *Id*. at 109.

[34] *Id*. at 114.

to receive their payment because of the small house erected on the lands for their caretaker. It also ruled that based on evidence, St. Joseph Realty never made attempts to collect from them. St. Joseph Realty's notices of rescission were deliberately sent to the wrong address of the lands involved, and not to the Ballado Spouses' home address.[35]

The Regional Trial Court did not give credence to St. Joseph Realty's allegation that it only inadvertently received the check for ₱30,000.00. It was clear that St. Joseph Realty was already negotiating the sale of the lands to Epifanio when it received Concepcion's check. When St. Joseph Realty saw that it could sell the lots for higher prices, it returned the check to Concepcion. As regards the Amoguis Brothers, the Regional Trial Court ruled that they were in bad faith when they bought the lots. Epifanio did not deny that Francisco informed him that they were in the process of completing payment. Despite this, Epifanio still cut down Francisco's trees and set up his own fence.[36]

Finally, the Regional Trial Court noted that the Ballado Spouses failed to file a formal offer of evidence. However, this was not detrimental to their case as some of these documents were admitted by St. Joseph Realty, including the contracts to sell and the letters that it sent to the Ballado Spouses through the wrong address.[37]

Only the Amoguis Brothers timely filed their appeal brief. Since St. Joseph Realty failed to file its appeal brief, the Court of Appeals considered it to have abandoned its appeal.[38]

The Amoguis Brothers argued that the Regional Trial Court should have considered valid the rescission or cancellation of the contract to sell, and that they should not have been declared

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[35] *Id*. at 111-3.

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

[37] *Id*. at 113.

[38] *Id*. at 16.

as buyers in bad faith. They contended that the evidence presented by the Ballado Spouses should not have been considered as it was not formally offered. They averred that in case there was no valid rescission or cancellation of contract, St. Joseph Realty should have been ordered to pay them the cost of their improvements, attorney's fees, litigation expense, and moral and exemplary damages.[39] They did not raise the Regional Trial Court's lack of jurisdiction.

On September 26, 2008, the Court of Appeals rendered its Decision,[40] affirming the Regional Trial Court February 28, 2001 Decision[41] with modification:

> WHEREFORE, premises foregoing, the appealed decision is hereby AFFIRMED with modification. We uphold the findings of the court *a quo* nullifying the certificates of title issued to the Amoguises. The award of ₱50,000.00 as moral damages, ₱20,000.00 as exemplary damages and ₱30,000.00 as attorney's fees plus cost of the suit in favor of the Ballados is likewise affirmed with the modification that such should be paid solely by St. Joseph. St. Joseph and the Ballados are likewise ordered to execute an absolute deed of sale upon full payment by the Ballados of the deficiency in the purchase price of the subdivision lots. The amount adjudged to be paid by St. Joseph to the Amoguises should however, be modified as the same should only be ₱108,930.00. The Amoguises' other monetary claims are denied for want of basis.
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> SO ORDERED.[42]

Though not raised, the Court of Appeals discussed at the outset the issue of jurisdiction. Since the Ballado Spouses wanted

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[39] *Id*.

[40] *Id*. at 56-83. The Decision, docketed as CA-G.R. CV No. 73758-MIN, was penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Michael P. Elbinias and Ruben C. Ayson of the Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[41] *Id*. at 104-115. The Decision, docketed as Civil Case No. 3687, was penned by Pairing Judge Jose S. Majaducon of Branch 22, Regional Trial Court, General Santos City.

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

St. Joseph Realty to comply with the provisions of the contracts to sell, the Complaint was for specific performance. The subject matter of the case involved subdivision lots. Therefore, jurisdiction was lodged with the Housing and Land Use Regulatory Board:

Such being the case, the court *a quo* should not have taken cognizance of the case as it is the Housing and Land Use Regulatory Board (HLURB, for brevity) which exercises exclusive original jurisdiction over such matters pursuant to Section 3 of Presidential Decree No. 957 entitled "Regulating the sale of Subdivision Lots and Condominiums, providing penalties for violations thereof." The provision states:

> SECTION 3. National Housing Authority. — **The National Housing Authority shall have exclusive jurisdiction to regulate the real estate trade and business in accordance with the provisions of this Decree.**

This jurisdiction was later delineated and clarified by Presidential Decree No. 1344 which provides:

> SECTION 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:
>
> **A. Unsound real estate business practices;**
> B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
> **C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.**

Moreover, the prefatory statement of Presidential Decree No. 957 which Presidential Decree No. 1344 sought to expand states:

> WHEREAS, numerous reports reveal that many real estate subdivision owners, developers, operators and/or sellers have reneged on their representations and obligations to provide and maintain properly subdivision roads, drainage, sewerage, water

> systems, lighting systems, and another similar basic requirements, thus endangering the health and safety of home and lot buyers;
>
> **WHEREAS, reports of alarming magnitude also show cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision and condominium sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances, and to pay real estate taxes, and fraudulent sales of the same subdivision lots to different innocent purchasers for value[.]**

We may likewise add that litigants with cases cognizable by the HLURB cannot directly resort to judicial review as Section 2 of Presidential Decree No. 1344 additionally states:

> SECTION 2. The decision of the National Housing Authority shall become final and executory after the lapse of fifteen (15) days from the date of its receipt. **It is appealable only to the President of the Philippines and in the event the appeal is filed and the decision is not reversed and/or amended within a period of thirty (30) days, the decision is deemed affirmed.** Proof of the appeal of the decision must be furnished the National Housing Authority.[43] (Emphasis in the original, citations omitted)

The Court of Appeals ruled, however, that since neither St. Joseph Realty nor the Amoguis Brothers raised the issue of jurisdiction before the Regional Trial Court, they must be considered estopped from raising it on appeal.[44]

On the issue that the Ballado Spouses did not formally offer their evidence, the Court of Appeals cited *Vda. De Oñate v. Court of Appeals*.[45] That case ruled that evidence not formally offered may still be appreciated by a trial court provided that "first, [it] must have been duly identified by testimony duly recorded and, second, [it] must have been incorporated in the records of the case."[46] The Court of Appeals cited *People of*

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

[44] *Id.* at 68.

[45] 320 Phil. 344 (1995) [Per *J.* Kapunan, First Division].

[46] *Id.* at 350.

the Philippines v. Alicante,[47] where this Court ruled that when a party fails to offer the purpose of a witness' testimony, the opposing party has the duty to immediately object "at the time when the victim was called to the witness stand, without proper explanation thereof or at anytime before the prosecution rested its case."[48] In this case, St. Joseph Realty and the Amoguis Brothers failed to timely enter their objection.

As to the admissibility of documentary evidence over which no formal offer of evidence was made, the Court of Appeals reviewed the transcript of stenographic notes and noted that of the documents which Concepcion identified, only the contracts to sell were attached. The Regional Trial Court should have considered only these documents as documentary evidence for the Ballado Spouses.[49]

As to the rescission of contracts to sell, the Court of Appeals sustained that it was improperly and unlawfully done by St. Joseph Realty. It cited *Palay Inc. v. Clave*,[50] where this Court ruled that while the suspensive condition of full payment of purchase price has not been complied with, there must, at the very least, be a notice to the defaulting buyer of the rescission. With the passage of Republic Act No. 6552, also known as the Maceda Law, the manner to rescind or cancel a contract to sell or a contract of sale has been codified. Rescission or cancellation shall take place 30 days from receipt of the buyer of a notarized notice of cancellation or demand for rescission.[51] The buyer must also be paid the full cash surrender value.[52] The Court of

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[47] 388 Phil. 233 (2000) [*Per Curiam*, *En Banc*].

[48] *Id*. at 245.

[49] *Rollo*, pp. 73-75.

[50] 209 Phil. 523 (1983) [Per *J*. Melencio-Herrera, First Division].

[51] *Rollo*, pp. 77-78.

[52] Rep. Act No. 6552, Sec. 3 provides:

Section 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to

Appeals likewise cited *Siska Development Corporation v. Office of the President*,[53] which provided that the Maceda Law shall apply to contracts entered into before its effectivity. Thus, even if the Maceda Law was passed close to three (3) years after the contracts to sell were executed, it still must apply to them.[54]

The Court of Appeals affirmed the factual findings of the Regional Trial Court. St. Joseph Realty presented a notarized demand of rescission during trial. However, the Ballado Spouses had always insisted that they never received any notice of rescission from St. Joseph Realty. Furthermore, St. Joseph Realty did not offer to pay the cash surrender value of the payments they had made. Thus, the requirements for a valid rescission under the Maceda Law were not met.[55]

The Court of Appeals stated that since St. Joseph Realty did not validly rescind the contracts to sell, it had no legal basis to

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tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:

(a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.

(b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five per cent every year but not to exceed ninety per cent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

Down payments, deposits or options on the contract shall be included in the computation of the total number of installment payments made.

[53] 301 Phil. 678 (1994) [Per *J.* Quiason, *En Banc*].

[54] *Rollo*, pp. 78-79.

[55] *Id*. at 79.

sell the properties to the Amoguis Brothers. It should make a refund of the purchase price to them, with a 6% per annum interest rate reckoned from February 1988 until fully paid.[56]

Finally, the Court of Appeals reconsidered the Regional Trial Court's finding of bad faith on the part of the Amoguis Brothers, who merely relied on the misrepresentation of St. Joseph Realty that the properties were already abandoned by the Ballado Spouses. The Amoguis Brothers only discovered the Ballado Spouses' subsisting claim after they had already purchased the properties. The Court of Appeals ordered that only St. Joseph Realty should pay damages to the Ballado Spouses.[57]

The Amoguis Brothers filed their Motion for Reconsideration, which was denied by the Court of Appeals in its August 7, 2009 Resolution.[58]

Hence, the Amoguis Brothers filed this Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking a reversal of the Court of Appeals September 26, 2008 Decision and August 7, 2009 Resolution.[59]

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

First, whether or not the Regional Trial Court's lack of jurisdiction was lost by waiver or estoppel;

Second, whether or not testimonial and documentary pieces of evidence which are not formally offered may be appreciated by a trial court; and

Finally, whether or not petitioners Gregorio Amoguis and Tito Amoguis are buyers in good faith and have preferential right to Lot Nos. 1 and 2.

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[56] *Id*. at 79-80.

[57] *Id*. at 81-82.

[58] *Id*. at 84-85. The Resolution was penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Michael P. Elbinias and Ruben C. Ayson of the Former Twenty-Third Division, Court of Appeals, Cagayan de Oro City.

[59] *Id*. at 40.

I

Petitioners argue that lack of jurisdiction over the subject matter was timely raised by St. Joseph Realty in its Answer with Counterclaims. Even assuming that it was never raised, jurisdiction is a question of law that cannot be lost through waiver or estoppel, and may be raised at any time, even during appeal. Further, if there was a remedy under the law, that remedy must be exhausted first before the parties come to court. The administrative remedy should have been sought before the Housing and Land Use and Regulatory Board, and then appealed to the Office of the President.[60] The Ballado Spouses counter that St. Joseph Realty never moved that its affirmative defense of lack of jurisdiction be heard; instead, it actively participated in the proceedings together with the Amoguis Brothers.[61]

Petitioners are already estopped from questioning the jurisdiction of the Regional Trial Court. Laches had already set in.

As the Court of Appeals discussed *motu proprio*, Presidential Decree No. 957 instituted the National Housing Authority as the administrative body with exclusive jurisdiction to regulate the trade and business of subdivision and condominium developments. It provided for mechanisms where entities can apply for licenses to develop and sell subdivision lots or condominiums with the intent of curbing fraud instigated on purchasers of real estate. A performance bond is also required of these entities to guarantee their undertaking under the subdivision and condominium plans. For greater transparency, their subdivision and condominium plans must likewise be registered. The following transactions, however, were beyond the administrative body's regulatory supervision, and were exempt from license and performance bond requirements:

(a) Sale of a subdivision lot resulting from the partition of land among co-owners and co-heirs.

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[60] *Id*. at 47.

[61] *Id*. at 130.

(b) Sale or transfer of a subdivision lot by the original purchaser thereof and any subsequent sale of the same lot.

(c) Sale of a subdivision lot or a condominium unit by or for the account of a mortgagee in the ordinary course of business when necessary to liquidate a bona fide debt.[62]

Presidential Decree No. 1344[63] was later on enacted to add to the National Housing Authority's jurisdiction. It was no longer just a licensing body for subdivision and condominium developers. Section 1 of Presidential Decree No. 1344 gave authority to the National Housing Authority to hear and decide cases:

> Section 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:
>
> A. Unsound real estate business practices;
>
> B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and
>
> C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

Section 3 of Presidential Decree No. 1344 provided that appeals from decisions of the National Housing Authority shall be made to the President of the Philippines within 15 days from receipt.

In between the approval of Presidential Decree Nos. 957 and 1344, the Maceda Law was approved.[64]

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[62] Pres. Decree No. 957, Sec. 7.

[63] Approved on April 2, 1978.

[64] Approved on August 26, 1972.

Subject matter jurisdiction is a court's or tribunal's power to hear and determine cases of a general class or type relating to specific subject matters.[65] This jurisdiction is conferred by law.[66] To determine a court's or an administrative body's jurisdiction over a subject matter, allegations in the complaint must be examined.[67] The nature of the action, as reflected in the allegations in the complaint, and the reliefs sought determine jurisdiction over the subject matter.[68] It is immaterial whether the claimant has a right to the relief sought.[69]

Presidential Decree No. 957 was approved on July 12, 1976, 11 years before the Ballado Spouses filed their complaint. This means that the law mandating the jurisdiction of the National Housing Authority, which later on became the Housing and Land Use Regulatory Board,[70] had long been in effect when petitioners filed their Answer and participated in trial court proceedings. It behooved them to raise the issue of jurisdiction then, especially since St. Joseph Realty, their co-respondent, raised it in its Answer albeit superficially and without any discussion.

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[65] *Mitsubishi Motors v. Bureau of Customs*, 760 Phil. 954, 960 (2015) [Per J. Perlas-Bernabe, First Division]; *De Joya v. Judge Marquez*, 516 Phil. 717, 723-724 (2006) [Per J. Azcuna, Second Division].

[66] *Magno v. People of the Philippines*, 662 Phil. 726, 735 (2011) [Per J. Brion, Third Division], citing *Machado v. Gatdula*, 626 Phil. 457 (2010) [Per J. Brion, Second Division].

[67] *Padlan v. Dinglasan*, 707 Phil. 83, 91 (2013) [Per J. Peralta, Third Division].

[68] *Fort Bonifacio Development Corporation v. Domingo*, 599 Phil. 554, 561 (2009) [Per J. Chico-Nazario, Third Division].

[69] *City of Dumaguete v. Philippine Ports Authority*, 671 Phil. 610, 629 (2011) [Per J. Leonardo-De Castro, First Division].

[70] Exec. Order No. 648 (1981) transferred the regulatory and quasi-judicial functions of the National Housing Authority to the Human Settlements Regulatory Commission. Executive Order No. 90 dated December 17, 1986, renamed the Human Settlements Regulatory Commission to the Housing and Land Use Regulatory Board.

In their Complaint, the Ballado Spouses alleged that the properties already sold to them by St. Joseph Realty were sold to the Amoguis Brothers for a better price. They sought the cancellation of the titles issued to petitioners as a result of their subsisting contracts to sell, which were neither rescinded nor annulled. They argued that when St. Joseph Realty received their check for ₱30,000.00, they had fully paid the purchase price. As against St. Joseph Realty, they sought damages and specific performance. They based their claim of full payment when St. Joseph Realty accepted the check for ₱30,000.00. Upon St. Joseph Realty's acceptance, the Ballado Spouses were able to fully comply with the terms of the contracts to sell. Without any valid rescission, St. Joseph Realty was bound to carry out its obligations under the contracts. As against petitioners, the Ballado Spouses sought injunction and the cancellation of titles issued under their names. The Amoguis Brothers were beneficiaries of St. Joseph Realty's breach of the contracts to sell. They had no authority under the law to occupy the properties and have them titled under their names.

According to Presidential Decree No. 1344, exclusive original jurisdiction for specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, dealer, broker or salesman is lodged with the National Housing Authority.

In *Antipolo Realty v. National Housing Authority*,[71] this Court ruled that the National Housing Authority, and not the regular courts, have initial jurisdiction to determine the rights and obligations of the subdivision developer and of the buyer under a contract to sell.

Solid Homes v. Payawal[72] stressed that the jurisdiction of National Housing Authority excluded that of the regular courts even in a concurrent capacity. The respondent in that case, Teresita Payawal, argued that regular courts had jurisdiction

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[71] 237 Phil. 389 (1987) [Per *J.* Feliciano, *En Banc*].

[72] 257 Phil. 914 (1989) [Per *J.* Cruz, First Division].

based on Batas Pambansa Blg. 129,[73] a law passed after Presidential Decree No. 1344. This Court ruled otherwise:

> The language of [Section 1, Presidential Decree 1344], especially the italicized portions, leaves no room for doubt that "exclusive jurisdiction" over the case between the petitioner and the private respondent is vested not in the Regional Trial Court but in the National Housing Authority.
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> . . . . . .
>
> It is obvious that the general law in this case is BP No. 129 and PD No. 1344 the special law.
>
> The argument that the trial court could also assume jurisdiction because of Section 41 of PD No. 957, earlier quoted, is also unacceptable. We do not read that provision as vesting concurrent jurisdiction on the Regional Trial Court and the Board over the complaint mentioned in PD No. 1344 if only because grants of power are not to be lightly inferred or merely implied. The only purpose of this section, as we see it, is to reserve to the aggrieved party such other remedies as may be provided by existing law, like a prosecution for the act complained of under the Revised Penal Code.[74] (Citation omitted)

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[73] Batas Blg. 129, Sec. 19 provides:

> Section 19. Jurisdiction in civil cases. — Regional Trial Courts shall exercise exclusive original jurisdiction:
> (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;
> (2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where such the value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;
> . . . . . .
> (8) In all other cases in which the demand, exclusive of interest and cost or the value of the property in controversy, amounts to more than twenty thousand pesos (₱20,000.00). * Before amendment by Republic Act No. 7691.

[74] *Solid Homes v. Payawal*, 257 Phil. 914, 918-920 (1989) [Per *J.* Cruz, First Division].

Solid Homes cemented the National Housing Authority's jurisdiction to hear and decide claims for damages and attorney's fees incidental to unsound business practices, claims for refund, and for specific performance against subdivision lot or condominium unit owners, developers, dealers, brokers, or salesmen. This Court ruled that the qualifier "and any other claims" in Section 1(b) of Presidential Decree No. 1344 meant so. In *Solid Homes*, this Court also ruled that as an administrative body, the National Housing Authority possessed specialized competence and experience to determine these allied matters.[75]

In the years that followed, this Court tackled the issue of whether the Housing and Land Use and Regulatory Board's jurisdiction included the cancellation of land titles issued to third parties due to the subdivision developer's or owner's unsound business practices. *Fajardo v. Hon. Bautista*[76] ruled that it did. Apart from unsound business practices, the cancellation of titles issued to third parties also involved claims for specific performance against subdivision developers and owners. In *Fajardo*, the claimants sought that the developer perform its obligations under the contract to sell, and the cancellation of titles were but incidental.

These doctrines have been observed by this Court even in recent cases. Presently, jurisprudence still dictates that when a buyer wants to compel a developer to conform with the terms of the contract it executed, jurisdiction lies with the Housing and Land Use Regulatory Board.[77]

The Ballado Spouses' rights and interests lie not just as buyers of any property, but buyers of subdivision lots from a subdivision developer. From the circumstances between St. Joseph Realty and the Ballado Spouses, there is no doubt that the then National

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[75] *Id*.

[76] 302 Phil. 324 (1994) [Per *J*. Davide, Jr., First Division].

[77] See *Francel Realty Corporation v. Sycip*, 506 Phil. 407 (2005) [Per *J*. Panganiban, Third Division]; *Roxas v. Court of Appeals*, 439 Phil. 966 (2002) [Per *J*. Quisumbing, Second Division].

Housing Authority had jurisdiction to determine the parties' obligations under the contracts to sell and the damages that may have arisen from their breach. The Ballado Spouses' Complaint should have been filed before it. The National Housing Authority also had jurisdiction over the injunction and annulment of titles sought against petitioners as these were incidental to St. Joseph Realty's unsound business practices.

Where there is no jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment has absolutely no legal effect, "by which no rights are divested, from which no rights can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out of are void."[78] Because there is in effect no judgment, *res judicata* does not apply to commencing another action despite previous adjudications already made.[79]

II

However, this Court has discussed with great nuance the legal principle enunciated in *Tijam*. Estoppel by laches bars a party from invoking lack of jurisdiction in an unjustly belated manner especially when it actively participated during trial.

Estoppel by laches has its origins in equity. It prevents a party from presenting his or her claim "when, by reason of abandonment and negligence, he [or she] allowed a long time to elapse without presenting [it]."[80] It is further elaborated by this Court in *Regalado v. Go*,[81] thus:

Laches is defined as the "failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due

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[78] *Arevalo v. Benedicto*, 157 Phil. 175, 181 (1974) [Per *J.* Antonio, Second Division].

[79] *Hilado v. Chavez*, 482 Phil. 104 (2004) [Per *J.* Callejo, Second Division].

[80] *International Banking Corp. v. Yared*, 59 Phil. 72, 92 (1933) [Per *J.* Villareal, First Division].

[81] 543 Phil. 578, 598 (2007) [Per *J.* Chico-Nazario, Third Division].

diligence, could or should have been done earlier, it is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."[82] (Citation omitted)

In estoppel by laches, a claimant has a right that he or she could otherwise exercise if not for his or her delay in asserting it. This delay in the exercise of the right unjustly misleads the court and the opposing party of its waiver. Thus, to claim it belatedly given the specific circumstances of the case would be unjust.

In *Tijam*, the spouses Serafin Tijam and Felicitas Tagalog (the Tijam Spouses) filed a collection case against the spouses Magdaleno Sibonghanoy and Lucia Baguio (the Sibonghanoy Spouses). The Court of First Instance of Cebu issued a writ of attachment over the Sibonghanoy Spouses' properties. It was dissolved afterwards as the Sibonghanoy Spouses and the Manila Surety and Fidelity Co., Inc. (Manila Surety), their surety, filed a counterbond. The decision on the collection case became final and executory. As collection could not be made against the Sibonghanoy Spouses, the Tijam Spouses tried to satisfy the judgment against the surety's bond. Manila Surety opposed and argued that no demand was made on it. The Court of First Instance ruled in the surety's favor. However, demand on the surety was eventually made, and the Court of First Instance issued a writ of execution. Again, Manila Surety opposed and tried to quash the writ of execution. It argued that a summary hearing was required before the writ should issue. Upon the Court of First Instance's denial to quash, Manila Surety appealed to the Court of Appeals. It assigned errors committed by the Court of First Instance in the issuance of the writ of execution but did not raise the issue of jurisdiction. The Court of Appeals affirmed the Court of First Instance's orders to execute. After Manila Surety received a copy of the Court of Appeals decision, it asked for additional time to file its motion for reconsideration. The Court of Appeals granted an extension. Instead of filing a

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[82] *Id*. at 598.

motion for reconsideration, the surety filed a motion to dismiss raising, for the first time, the Court of First Instance's lack of jurisdiction over the subject matter of the case. As the amount involved was only ₱1,908.00, inferior courts, and not the Court of First Instance, had exclusive original jurisdiction over the collection case. This was mandated by Republic Act No. 296, the Judiciary Act of 1948, which came into effect a month after the Tijam Spouses filed their complaint before the Court of First Instance.[83]

This Court ruled that the surety could no longer question the Court of First Instance's jurisdiction over the subject matter due to estoppel by laches. It premised that since Manila Surety actively participated during trial and prevailed; invoking the Court of First Instance's lack of jurisdiction was a last ditch effort to absolve itself from the effects of an unfavorable judgment on appeal. On the 15-year delay before the issue on jurisdiction was raised, this Court ruled that it could have and should have been raised earlier. The surety's failure to do so was negligence on its part, "warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."[84] *Tijam* set a precedent to stop legal machinations where jurisdiction was raised at the very last minute when the parties have already gone through long years of litigation. It was not so much an issue of time than it was an issue of fairness. Though conferred by law, fairness and equity must temper the parties' bravado to raise jurisdiction when they have participated in proceedings in the lower courts or when an unfavorable judgment against them has been rendered.

The following circumstances were present in *Tijam: first, there was a statutory right in favor of the claimant*. Manila Surety had the right to question the Court of First Instance's jurisdiction because it was the inferior courts that had authority

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[83] *Magno v. People of the Philippines*, 662 Phil. 726, 735 (2011) [Per *J*. Brion, Third Division], citing *Machado v. Gatdula*, 626 Phil. 457 (2010) [Per *J*. Brion, Second Division].

[84] *Id*.

to try cases that involved the amount claimed. *Second, the statutory right was not invoked.* Manila Surety participated in the trial and execution stages. It even sought relief from the Court of Appeals without questioning the Court of First Instance's jurisdiction. *Third, an unreasonable length of time had lapsed before the claimant raised the issue of jurisdiction.* It was only after the Court of Appeals affirmed the Court of First Instance's order of execution did Manila Surety pursue the issue of jurisdiction. Jurisdiction over collections for the amount involved was already determined by law a month before the case was filed. Fifteen years had lapsed before the surety pointed this out. *Fourth, the claimant actively participated in the case and sought affirmative relief from the court without jurisdiction.* The unreasonable length of time was, therefore, inexcusable as the claimant was apprised of the prevailing law, as well as all stages of the proceeding.

Calimlim v. Hon. Ramirez[85] unequivocally ruled that it is only when the exceptional instances in *Tijam* are present should estoppel by laches apply over delayed claims:

> A rule that had been settled by unquestioned acceptance and upheld in decisions so numerous to cite is that the jurisdiction of a court over the subject-matter of the action is a matter of law and may not be conferred by consent or agreement of the parties. The lack of jurisdiction of a court may be raised at any stage of the proceedings, even on appeal. This doctrine has been qualified by recent pronouncements which stemmed principally from the ruling in the cited case of *Sibonghanoy*. It is to be regretted, however, that the holding in said case had been applied to situations which were obviously not contemplated therein. The exceptional circumstance involved in *Sibonghanoy* which justified the departure from the accepted concept of non-waivability of objection to jurisdiction has been ignored and, instead a blanket doctrine had been repeatedly upheld that rendered the supposed ruling in *Sibonghanoy* not as the exception, but rather the general rule, virtually overthrowing altogether the time-honored principle that the issue of jurisdiction is not lost by waiver or by estoppel.[86]

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[85] 204 Phil. 25 (1982) [Per *J*. Vasquez, First Division].

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

Calimlim clarified the additional requirement that for estoppel by laches to be appreciated against a claim for jurisdiction, there must be an ostensible showing that the claimant had "knowledge or consciousness of the facts upon which it is based."[87]

Figueroa v. People of the Philippines[88] framed the exceptional character of *Tijam*:

> The Court, thus, wavered on when to apply the exceptional circumstance in *Sibonghanoy* and on when to apply the general rule enunciated as early as in *De La Santa* and expounded at length in *Calimlim*. The general rule should, however, be, as it has always been, that the *issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. Estoppel by laches, to bar a litigant from asserting the court's absence or lack of jurisdiction, only supervenes in exceptional cases similar to the factual milieu of Tijam v. Sibonghanoy.* Indeed, the fact that a person attempts to invoke unauthorized jurisdiction of a court does not estop him from thereafter challenging its jurisdiction over the subject matter, since such jurisdiction must arise by law and not by mere consent of the parties. This is especially true where the person seeking to invoke unauthorized jurisdiction of the court does not thereby secure any advantage or the adverse party does not suffer any harm.[89] (Emphasis in the original, citation omitted)

Thus, *Tijam* will only apply when given the circumstances of a case, allowing the belated objection to the jurisdiction of the court will additionally cause irreparable damages, and therefore, injustice to the other party that relied on the forum and the implicit waiver.

In *Tijam*, this Court ruled that long delay in raising lack of jurisdiction is unfair to the party pleading laches because he or she was misled into believing that this defense would no longer be pursued. A delay of 15 years in raising questions on subject

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[87] *Id*. at 36.

[88] 580 Phil. 58 (2008) [Per *J*. Nachura, Third Division].

[89] *Id*. at 76.

matter jurisdiction was appreciated by this Court as estoppel by laches.

In *Metromedia Times Corporation v. Pastorin*,[90] this Court recognized the unfairness in allowing a party who sought affirmative relief from a tribunal and invoked its jurisdiction to later disavow the same jurisdiction upon passage of an adverse ruling. It ruled that raising lack of jurisdiction over a subject matter a little under a year since a complaint is filed does not amount to laches.

In *Figueroa*, this Court observed the injustice caused to the party pleading laches. Restoration of and reparation towards the party may no longer be accomplished due to the changes in his or her circumstances. Laches, however, was not appreciated as it was a mere four (4) years since trial began that the petitioner in that case raised the issue of jurisdiction on appeal.

In *Bernardo v. Heirs of Villegas*,[91] this Court identified the propensity of litigants who, to exhaust the time and resources of their opponents, will plead lack of jurisdiction only when an unfavorable decision is obtained in order to re-litigate the case. The delay of 10 years in raising jurisdictional issues in that case was appreciated as laches.

In summary, *Tijam* applies to a party claiming lack of subject matter jurisdiction when:

(1) there was a statutory right in favor of the claimant;
(2) the statutory right was not invoked;
(3) an unreasonable length of time lapsed before the claimant raised the issue of jurisdiction;
(4) the claimant actively participated in the case and sought affirmative relief from the court without jurisdiction;
(5) the claimant knew or had constructive knowledge of which forum possesses subject matter jurisdiction;

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[90] 503 Phil. 288 (2005) [Per *J.* Tinga, Second Division].

[91] 629 Phil. 450 (2010) [Per *J.* Perez, Second Division].

(6) irreparable damage will be caused to the other party who relied on the forum and the claimant's implicit waiver.

Tijam applies in this case. The allegations, determinative of subject matter jurisdiction, were apparent on the face of the Complaint. The law that determines jurisdiction of the National Housing Authority had been in place for more than a decade when the Complaint was filed. St. Joseph Realty raised lack of jurisdiction in its Answer. Petitioners sought affirmative relief from the Regional Trial Court and actively participated in all stages of the proceedings. Therefore, there was no valid reason for petitioners to raise the issue of jurisdiction only now before this Court.

III.

On the issue of the admissibility of the Ballado Spouses' testimonial and documentary evidence, the Amoguis Brothers argue that it was unfair to fault them for not objecting when the former's counsel started his direct examination without offering the purpose of the witnesses' testimonies. Had they done so, it would alert the Ballado Spouses' counsel of the defect. Rule 132, Sections 34 and 35 of the Rules of Court are mandatory, regardless if an opposing party timely objected. The jurisprudence relied upon by the Court of Appeals is not applicable in this case as *People of the Philippines v. Alicante*[92] was a rape case and it was the 13-year-old victim's testimony that was not offered. Meanwhile, this is a civil case. In *Alicante*, there was already a sworn statement made by the victim before she took the stand; in this case, only Francisco verified the Complaint, while Concepcion identified the documents and testified on their claims. The Regional Trial Court judge could not have known the purpose of Concepcion's testimony.[93] The Ballado Spouses, on the other hand, reiterated that timely objections should have been made.[94]

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[92] 388 Phil. 233 (2000) [*Per Curiam*, *En Banc*].

[93] *Rollo*, pp. 48-49.

[94] *Id*. at 131.

Rule 132, Sections 34 to 36 of the Rules of Court govern the manner of offering and objecting to evidence:

> Section 34. *Offer of evidence*. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.
>
> Section 35. *When to make offer*. — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.
>
> Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing.
>
> Section 36. *Objection*. — Objection to evidence offered orally must be made immediately after the offer is made.
>
> Objection to a question propounded in the course of the oral examination of a witness shall be made as soon as the grounds therefor shall become reasonably apparent.
>
> An offer of evidence in writing shall be objected to within three (3) days after notice of the offer unless a different period is allowed by the court.
>
> In any case, the grounds for the objections must be specified.

Following these provisions, a witness' testimony must be offered at the start, when he or she takes the stand for the first time and before questions are propounded to him or her. Documentary or object evidence, on the other hand, must be orally offered after the presentation of a party's witnesses unless the court orders or allows that a written formal offer is filed.

All evidence must be formally offered. Otherwise, the court cannot consider them.[95] This rule ensures that judges will carry out their constitutional mandate to render decisions that clearly state the facts of cases and the applicable laws.[96] Judgments

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[95] *Heirs of Pasag v. Spouses Parocha*, 550 Phil. 571, 581 (2007) [Per *J.* Velasco, Jr., Second Division].

[96] CONST., Art. VIII, Sec. 14 provides:

> Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

must be based "only and strictly upon the evidence offered by the parties to the suit."[97] This rule also affords parties their right to due process by examining the evidence presented by their opponent, and to object to its presentation when warranted.[98]

However, testimonial evidence not formally offered but not timely objected to by an opposing party may still be considered by the court. The purpose of offering a witness' testimony is for the court to expertly assess whether questions propounded are relevant and material, and if the witness is competent to answer. It is to aid the court in ruling over objections made by opposing counsel. *Catuira v. Court of Appeals*[99] was instructive:

> The petition is devoid of merit. The reason for requiring that evidence be formally introduced is to enable the court to rule intelligently upon the objection to the questions which have been asked. As a general rule, the proponent must show its relevancy, materiality and competency. Where the proponent offers evidence deemed by counsel of the adverse party to be inadmissible for any reason, the latter has the right to object. But such right is a mere privilege which can be waived. Necessarily, the objection must be made at the earliest opportunity, lest silence when there is opportunity to speak may operate as a waiver of objections.
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> Thus, while it is true that the prosecution failed to offer the questioned testimony when private respondent was called to the witness stand, petitioner waived this procedural error by failing to object at the appropriate time, *i.e.*, when the ground for objection became reasonably apparent the moment private respondent was called to testify without any prior offer having been made by the proponent. Most apt is the observation of the appellate court:
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> > While it is true that the prosecution failed to offer in evidence the testimony of the complaining witness upon calling her to

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[97] *People of the Philippines v. Franco*, 336 Phil. 206, 210 (1997) [Per *J*. Francisco, Third Division] citing *6 Comments on the Rules of Court* 123 (1980 ed.), *U.S. v. Solaña*, 33 Phil. 582 (1916) [Per *J*. Carson, First Division] and *Dayrit v. Gonzalez*, 7 Phil. 182 (1906) [Per *J*. Tracey, *En Banc*].

[98] *Republic of the Philippines v. Gimenez*, 776 Phil. 233, 256 (2016) [Per *J*. Leonen, Second Division].

[99] 306 Phil. 424 (1994) [Per *J*. Bellosillo, First Division].

> testify and that it was only after her testimony and after the petitioner moved that it be stricken that the offer was made, the respondent Court did not gravely err in not dismissing the case against the petitioner on the ground invoked. For, she should have objected to the testimony of the complaining witness when it was not first offered upon calling her and should not have waited in ambush after she had already finished testifying. By so doing she did not save the time of the Court in hearing the testimony of the witness that after all according to her was inadmissible. And for her failure to make known her objection at the proper time, the procedural error or defect was waived.[100] (Citations omitted)

Catuira also discussed that litigation is not a game of surprises. Rules of procedure and evidence are in place to ensure the smooth and speedy dispensation of cases. Where the opposing party belatedly raises the technicality that the witnesses' testimonies were not formally offered to "ambush"[101] the party presenting them, the court may not expunge or strike them out.

Under the rules, a timely objection is a remedy available to petitioners. They waived their right to this remedy when they waited until the case was submitted for resolution to do so.

The rules on examination of witnesses and objecting to them are not separate for civil and criminal cases. A witness, whether in a criminal or civil case, is presented to support and prove the allegations made by the party presenting him or her. The witness must be competent, and his or her testimony must be relevant and material. Whether the case is civil or criminal, objection or failure to offer the testimony of a witness must be made immediately.[102]

As to the Ballado Spouses' documentary evidence, the Court of Appeals was correct to consider only the contracts to sell. These were the only documents attached to the written formal

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[100] *Id*. at 426-427.

[101] *Id*.

[102] RULES OF COURT, Rule 132, Sec. 36.

offer of evidence that they filed. Hence, these documents should be considered as the only documentary evidence formally offered. When a party fails to formally offer his or her documentary or object evidence within a considerable period after the presentation of witnesses, he or she is deemed to have waived the opportunity to do so.[103] The party, therefore, as in this case, runs the risk of weakening his or her claim or defense.

IV

Petitioners argue that they are buyers in good faith, as determined by the Court of Appeals. As innocent purchasers, reconveyance is no longer a feasible option against them especially since they have introduced a multitude of improvements on the properties. They have occupied the land since 1987.[104] According to the Ballado Spouses, the Amoguis Brothers never denied that they were buyers in bad faith. They testified that they told Epifanio that they had bought the lands as the latter was destroying the fences they had put up and cut down the trees they had planted. Despite protests from the Ballado Spouses, petitioners continued introducing improvements over the properties.[105]

In their Reply, petitioners argued that the finding of good faith by the Court of Appeals can no longer be disturbed by the Ballado Spouses as they did not appeal the Court of Appeals September 26, 2008 Decision.[106]

A buyer in good faith is one who purchases and pays fair price for a property without notice that another has an interest over or right to it.[107] If a land is registered and is covered by

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[103] *Constantino v. Court of Appeals*, 332 Phil. 68 (1996) [Per *J*. Bellosillo, First Division].

[104] *Rollo*, pp. 51-52.

[105] *Id*. at 131.

[106] *Id*. at 144-145.

[107] *Hemedes v. Court of Appeals*, 374 Phil. 692, 719-720 (1999) [Per *J*. Gonzaga-Reyes, Third Division].

a certificate of title, any person may rely on the correctness of the certificate of title, and he or she is not obliged to go beyond the four (4) corners of the certificate to determine the condition of the property.[108] This rule does not apply, however,

> when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.[109] (Citation omitted)

The Regional Trial Court ruled that petitioners were in bad faith because they did not deny Francisco's testimony that he had informed them of his ownership when they occupied the properties. Despite this, petitioners continued to make improvements on the lands.[110] The Court of Appeals, on the other hand, made a conflicting finding. It ruled that it was St. Joseph Realty that made representations to the Amoguis Brothers and assured them that the previous buyers had abandoned their purchase of the properties. It appreciated that the Amoguis Brothers found out about the Ballado Spouses' claim only after they had bought them.[111] Due to these conflicting findings, this Court is compelled to review whether respondents were bad faith purchasers.[112]

It is incumbent upon a buyer to prove good faith should he or she assert this status. This burden cannot be discharged by merely invoking the legal presumption of good faith.[113] This

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[108] *Id*.

[109] *Sigaya v. Mayuga*, 504 Phil. 600, 614 (2005) [Per *J*. Austria-Martinez, Second Division].

[110] *Rollo*, p. 113.

[111] *Id*. at 81-82.

[112] *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per *J*. Leonen, Second Division].

[113] *Potenciano v. Reynoso*, 449 Phil. 396, 410 (2003) [Per *J*. Panganiban, Third Division].

Court rules that based on the evidence on record, petitioners failed to discharge this burden. Though they were informed by Francisco on his claim to the properties only after their purchase, it is undisputed from the records that mango and chico trees were planted on the properties, and that they were cordoned off by barbed wires. St. Joseph Realty also informed them that there were previous buyers, who allegedly abandoned their purchase. To merely claim that they were buyers in good faith, absent any proof, does not make the case for them.

The Regional Trial Court found that petitioners were in bad faith. However, it did not order their solidary liability with St. Joseph Realty. It ordered damages, attorney's fees, and the cost of suit to be borne by St. Joseph Realty alone. The modification in this regard made by the Court of Appeals was, therefore, superfluous.

WHEREFORE, the Petition for Review is **DENIED**. The Court of Appeals' September 26, 2008 Decision and August 7, 2009 Resolution in CA-G.R. CV No. 73758-MIN are hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro (*Chairperson*), *Bersamin, Reyes, A. Jr.*, and *Gesmundo, JJ.*, concur.

FIRST DIVISION

[G.R. No. 193138. August 20, 2018]

ANICETO G. SALUDO, JR., *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF PARTNERSHIP; TWO OR MORE PERSONS MAY ALSO FORM A PARTNERSHIP FOR THE EXERCISE OF A PROFESSION; CASE AT BAR.— Article 1767 of the Civil Code provides that by a contract of partnership, two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves. *Two or more persons may also form a partnership for the exercise of a profession.* Under Article 1771, a partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary. Article 1784, on the other hand, provides that a partnership begins from the moment of the execution of the contract, unless it is otherwise stipulated. Here, x x x SAFA Law Office was constituted as a partnership at the time its partners signed the Articles of Partnership wherein they bound themselves to establish a partnership for the practice of law, contribute capital and industry for the purpose, and receive compensation and benefits in the course of its operation. x x x The subsequent registration of the Articles of Partnership with the SEC, x x x was made in compliance with Article 1772 of the Civil Code, since the initial capital of the partnership was ₱500,000.00. x x x The other provisions of the Articles of Partnership also positively identify SAFA Law Office as a partnership. It constantly used the words "partners" and "partnership." Indeed, x x x for all intents and purposes, SAFA Law Office is a partnership created and organized in accordance with the Civil Code provisions on partnership.

2. ID.; ID.; ID.; RULE ON PLACING A LIMIT ON THE INDIVIDUAL ACCOUNTABILITY OF PARTNERS.— The

law, in its wisdom, recognized the possibility that partners in a partnership may decide to place a limit on their individual accountability. Consequently, to protect third persons dealing with the partnership, the law provides a rule, embodied in Article 1816 of the Civil Code, which states: Art. 1816. All partners, including industrial ones, shall be liable *pro rata* with all their property and after all the partnership assets have been exhausted, for the contracts which may be entered into in the name and for the account of the partnership, under its signature and by a person authorized to act for the partnership. However, any partner may enter into a separate obligation to perform a partnership contract. The foregoing provision does not prevent partners from agreeing to limit their liability, but such agreement may only be valid as among them. [As provided under] Article 1817 of the Civil Code x x x. In *Guy v. Gacott*, we held that under Article 1816 of the Civil Code, the partners' obligation with respect to the partnership liabilities is subsidiary in nature. It is merely secondary and only arises if the one primarily liable fails to sufficiently satisfy the obligation. Resort to the properties of a partner may be made only after efforts in exhausting partnership assets have failed or if such partnership assets are insufficient to cover the entire obligation.

3. ID.; ID.; ID.; PARTNERSHIP FOR THE PRACTICE OF LAW ACQUIRES JURIDICAL PERSONALITY BY OPERATION OF LAW.— Having settled that SAFA Law Office is a partnership, we hold that it acquired juridical personality by operation of law. The perfection and validity of a contract of partnership brings about the creation of a juridical person separate and distinct from the individuals comprising the partnership (Article 1768 of the Civil Code). x x x It is this juridical personality that allows a partnership to enter into business transactions to fulfill its purposes. Article 46 of the Civil Code provides that "[j]uridical persons may acquire and possess property of all kinds, as well as incur obligations and bring civil or criminal actions, in conformity with the laws and regulations of their organization." [As a partnership with juridical personality, SAFA Law Office's] rights and obligations, as well as those of its partners, are determined by law and not by what the partners purport them to be.

4. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *OBITER DICTUM*; AN OPINION OF THE COURT UPON

A QUESTION WHICH WAS NOT NECESSARY TO THE DECISION OF THE CASE BEFORE IT.— [U]nder the old and new Civil Codes, Philippine law has consistently treated partnerships as having a juridical personality separate from its partners. In view of the clear provisions of the law on partnership, as enriched by jurisprudence, we hold that our reference to *In re Crawford's Estate* in the *Sycip* case (ruling otherwise) is an *obiter dictum*. x x x An *obiter dictum* is an opinion of the court upon a question which was not necessary to the decision of the case before it. It is an opinion uttered by the way, not upon the point or question pending, as if turning aside from the main topic of the case to collateral subjects, or an opinion that does not embody the court's determination and is made without argument or full consideration of the point. It is not a professed deliberate determination of the judge himself.

5. ID.; ID.; REAL PARTY-IN-INTEREST.— Section 2, Rule 3 of the Rules of Court defines a real party-in-interest as the one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." In *Lee v. Romillo, Jr.*, we held that the "real [party-in-interest]-plaintiff is one who has a legal right[,] while *a real* [*party-in-interest*]-*defendant* is one who has a correlative legal obligation whose act or omission violates the legal rights of the former." x x x Section 2, Rule 3 of the Rules of Court requires that every action must be prosecuted or defended in the name of the real party-in-interest. As it was SAFA Law Office that entered into a contract of lease with respondent PNB, it should also be impleaded in any litigation concerning that contract. Accordingly, the complaint filed by Saludo should be amended to include SAFA Law Office as plaintiff. x x x [T]he court has full powers, apart from that power and authority which are inherent, to amend processes, pleadings, proceedings, and decisions by substituting as party-plaintiff the real party-in-interest.

APPEARANCES OF COUNSEL

Saludo Fernandez Aquino & Taleon Law Office for petitioner.

Alvin C. Go, Antonio M. Elicaño & Salvador J. Ortega, Jr. for respondent.

D E C I S I O N

JARDELEZA, *J.*:

In this petition, we emphasize that a partnership for the practice of law, constituted in accordance with the Civil Code provisions on partnership, acquires juridical personality by operation of law. Having a juridical personality distinct and separate from its partners, such partnership is the real party-in-interest in a suit brought in connection with a contract entered into in its name and by a person authorized to act on its behalf.

Petitioner Aniceto G. Saludo, Jr. (Saludo) filed this petition for review on *certiorari*[1] assailing the February 8, 2010 Decision[2] and August 2, 2010 Resolution[3] issued by the Court of Appeals (CA) in CA-G.R. SP No. 98898. The CA affirmed with modification the January 11, 2007 Omnibus Order[4] issued by Branch 58 of the Regional Trial Court (RTC) of Makati City in Civil Case No. 06-678, and ruled that respondent Philippine National Bank's (PNB) counterclaims against Saludo and the Saludo Agpalo Fernandez and Aquino Law Office (SAFA Law Office) should be reinstated in its answer.

Records show that on June 11, 1998, SAFA Law Office entered into a Contract of Lease[5] with PNB, whereby the latter agreed to lease 632 square meters of the second floor of the PNB Financial Center Building in Quezon City for a period of three years and for a monthly rental fee of ₱189,600.00. The rental fee is subject to a yearly escalation rate of 10%.[6] SAFA Law

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[1] *Rollo*, pp. 102-150.

[2] *Id.* at 152-165. Penned by Associate Justice Florito S. Macalino, with Associate Justices Hakim S. Abdulwahid and Normandie B. Pizarro, concurring.

[3] *Id.* at 167-169.

[4] *Id.* at 272-273. Issued by Presiding Judge Eugene C. Paras.

[5] CA *rollo*, pp. 85-90.

[6] *Id.* at 85.

Office then occupied the leased premises and paid advance rental fees and security deposit in the total amount of ₱1,137,600.00.[7]

On August 1, 2001, the Contract of Lease expired.[8] According to PNB, SAFA Law Office continued to occupy the leased premises until February 2005, but discontinued paying its monthly rental obligations after December 2002.[9] Consequently, PNB sent a demand letter[10] dated July 17, 2003 for SAFA Law Office to pay its outstanding unpaid rents in the amount of ₱4,648,086.34. PNB sent another letter[11] demanding the payment of unpaid rents in the amount of ₱5,856,803.53 which was received by SAFA Law Office on November 10, 2003.

In a letter[12] to PNB dated June 9, 2004, SAFA Law Office expressed its intention to negotiate. It claimed that it was enticed by the former management of PNB into renting the leased premises by promising to: (1) give it a special rate due to the large area of the place; (2) endorse PNB's cases to the firm with rents to be paid out of attorney's fees; and (3) retain the firm as one of PNB's external counsels. When new management took over, it allegedly agreed to uphold this agreement to facilitate rental payments. However, not a single case of significance was referred to the firm. SAFA Law Office then asked PNB to review and discuss its billings, evaluate the improvements in the area and agree on a compensatory sum to be applied to the unpaid rents, make good its commitment to endorse or refer cases to SAFA Law Office under the intended terms and conditions, and book the rental payments due as receivables payable every time attorney's fees are due from the bank on the cases it referred. The firm also asked PNB to give a 50%

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[7] *Rollo*, p. 216.

[8] *Id.* at 153; CA *rollo*, p. 100.

[9] *Rollo*, pp. 226-227.

[10] CA *rollo*, p. 143.

[11] *Id.* at 144.

[12] *Id.* at 94-96.

discount on its unpaid rents, noting that while it was waiting for case referrals, it had paid a total amount of ₱13,457,622.56 from January 1999 to December 2002, which included the accelerated rates of 10% *per annum* beginning August 1999 until July 2003.

In February 2005, SAFA Law Office vacated the leased premises.[13] PNB sent a demand letter[14] dated July 7, 2005 requiring the firm to pay its rental arrears in the total amount of ₱10,951,948.32. In response, SAFA Law Office sent a letter dated June 8, 2006, proposing a settlement by providing a range of suggested computations of its outstanding rental obligations, with deductions for the value of improvements it introduced in the premises, professional fees due from Macroasia Corporation, and the 50% discount allegedly promised by Dr. Lucio Tan.[15] PNB, however, declined the settlement proposal in a letter[16] dated July 17, 2006, stating that it was not amenable to the settlement's terms. Besides, PNB also claimed that it cannot assume the liabilities of Macroasia Corporation to SAFA Law Office as Macroasia Corporation has a personality distinct and separate from the bank. PNB then made a final demand for SAFA Law Office to pay its outstanding rental obligations in the amount of ₱25,587,838.09.

On September 1, 2006, Saludo, in his capacity as managing partner of SAFA Law Office, filed an amended complaint[17] for accounting and/or recomputation of unpaid rentals and damages against PNB in relation to the Contract of Lease.

On October 4, 2006, PNB filed a motion to include an indispensable party as plaintiff,[18] praying that Saludo be ordered

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[13] *Id.* at 101.

[14] *Id.* at 145.

[15] *Rollo*, pp. 227-228.

[16] CA *rollo*, pp. 146-147.

[17] *Rollo*, pp. 194-211.

[18] CA *rollo*, pp. 120-123.

to amend anew his complaint to include SAFA Law Office as principal plaintiff. PNB argued that the lessee in the Contract of Lease is not Saludo but SAFA Law Office, and that Saludo merely signed the Contract of Lease as the managing partner of the law firm. Thus, SAFA Law Office must be joined as a plaintiff in the complaint because it is considered an indispensable party under Section 7, Rule 3 of the Rules of Court.[19]

On October 13, 2006, PNB filed its answer.[20] By way of compulsory counterclaim, it sought payment from SAFA Law Office in the sum of ₱25,587,838.09, representing overdue rentals.[21] PNB argued that as a matter of right and equity, it can claim that amount from SAFA Law Office *in solidum* with Saludo.[22]

On October 23, 2006, Saludo filed his motion to dismiss counterclaims,[23] mainly arguing that SAFA Law Office is neither a legal entity nor party litigant. As it is only a relationship or association of lawyers in the practice of law and a single proprietorship which may only be sued through its owner or proprietor, no valid counterclaims may be asserted against it.[24]

On January 11, 2007, the RTC issued an Omnibus Order denying PNB's motion to include an indispensable party as plaintiff and granting Saludo's motion to dismiss counterclaims in this wise:

> The Court **DENIES the motion of PNB to include the SAFA Law Offices**. Plaintiff has shown by documents attached to his pleadings that indeed SAFA Law Offices is a mere single proprietorship and not a commercial and business partnership. More importantly, plaintiff has admitted and shown sole

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[19] *Id.* at 121.

[20] *Id.* at 124-141.

[21] *Id.* at 138.

[22] *Id.* at 137-138.

[23] *Rollo*, pp. 237-271.

[24] *Id.* at 239.

> responsibility in the affairs entered into by the SAFA Law Office. PNB has even admitted that the SAFA Law Office, being a partnership in the practice of law, is a non-legal entity. Being a non-legal entity, it cannot be a proper party, and therefore, it cannot sue or be sued.
>
> Consequently, **plaintiff's Motion to Dismiss Counterclaims (claimed by defendant PNB) should be GRANTED**. The counterclaims prayed for to the effect that the SAFA Law Offices be made to pay in solidum with plaintiff the amounts stated in defendant's Answer is disallowed since no counterclaims can be raised against a non-legal entity.[25]

PNB filed its motion for reconsideration[26] dated February 5, 2007, alleging that SAFA Law Office should be included as a co-plaintiff because it is the principal party to the contract of lease, the one that occupied the leased premises, and paid the monthly rentals and security deposit. In other words, it was the main actor and direct beneficiary of the contract. Hence, it is the real party-in-interest.[27] The RTC, however, denied the motion for reconsideration in an Order[28] dated March 8, 2007.

Consequently, PNB filed a petition for *certiorari*[29] with the CA. On February 8, 2010, the CA rendered its assailed Decision,[30] the dispositive portion of which reads:

> **WHEREFORE**, the petition is **PARTIALLY GRANTED**. The assailed Omnibus Order dated 11 January 2007 and Order dated 8 March 2007, issued by respondent Court in Civil Case No. 06-678, respectively, are **AFFIRMED** with **MODIFICATION** in that petitioner's counterclaims should be reinstated in its Answer.
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> **SO ORDERED**.[31]

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[25] *Id.* at 272-273. Emphasis in the original.

[26] *Id.* at 274-279.

[27] *Id.* at 275-277.

[28] *Id.* at 300.

[29] *Id.* at 301-326.

[30] *Supra* note 2.

[31] *Rollo*, p. 164.

The CA ruled that an order granting Saludo's motion to dismiss counterclaim, being interlocutory in nature, is not appealable until after judgment shall have been rendered on Saludo's complaint. Since the Omnibus Order is interlocutory, and there was an allegation of grave abuse of discretion, a petition for *certiorari* is the proper remedy.[32]

On the merits, the CA held that Saludo is estopped from claiming that SAFA Law Office is his single proprietorship. Under the doctrine of 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. Here, SAFA Law Office was the one that entered into the lease contract and not Saludo. In fact, the latter signed the contract as the firm's managing partner. The alleged Memorandum of Understanding[33] (MOU) executed by the partners of SAFA Law Office, which states, among others, that Saludo alone would be liable for the firm's losses and liabilities, and the letter of Saludo to PNB confirming that SAFA Law Office is his single proprietorship did not convert the firm to a single proprietorship. Moreover, SAFA Law Office sent a letter to PNB regarding its unpaid rentals which Saludo signed as a managing partner. The firm is also registered as a partnership with the Securities and Exchange Commission (SEC).[34]

On the question of whether SAFA Law Office is an indispensable party, the CA held that it is not. As a partnership, it may sue or be sued in its name or by its duly authorized representative. Saludo, as managing partner, may execute all acts of administration, including the right to sue. Furthermore, the CA found that SAFA Law Office is not a legal entity. A partnership for the practice of law is not a legal entity but a mere relationship or association for a particular purpose. Thus, SAFA Law Office cannot file an action in court. Based on these

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[32] *Id.* at 157.

[33] CA *rollo*, pp. 103-105.

[34] *Rollo*, pp. 158-159.

premises, the CA held that the RTC did not gravely abuse its discretion in denying PNB's motion to include an indispensable party as plaintiff.[35]

Nonetheless, the CA ruled that PNB's counterclaims against SAFA Law Office should not be dismissed. While SAFA Law Office is not a legal entity, it can still be sued under Section 15,[36] Rule 3 of the Rules of Court considering that it entered into the Contract of Lease with PNB.[37]

The CA further ruled that while it is true that SAFA Law Office's liability is not *in solidum* with Saludo as PNB asserts, it does not necessarily follow that both of them cannot be made parties to PNB's counterclaims. Neither should the counterclaims be dismissed on the ground that the nature of the alleged liability is solidary. According to the CA, the presence of SAFA Law Office is required for the granting of complete relief in the determination of PNB's counterclaim. The court must, therefore, order it to be brought in as defendant since jurisdiction over it can be obtained pursuant to Section 12,[38] Rule 6 of the Rules of Court.[39]

Finally, the CA emphasized that PNB's counterclaims are compulsory, as they arose from the filing of Saludo's complaint. It cannot be made subject of a separate action but should be

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[35] *Id.* at 160-161.

[36] Sec. 15. *Entity without juridical personality as defendant*. – When two or more persons not organized as an entity with juridical personality enter into a transaction, they may be sued under the name by which they are generally or commonly known.

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[37] *Rollo*, p. 162.

[38] Sec. 12. *Bringing new parties*. – When the presence of parties other than those to the original action is required for the granting of complete relief in the determination of a counterclaim or cross-claim, the court shall order them to be brought in as defendants, if jurisdiction over them can be obtained.

[39] *Rollo*, pp. 162-163.

asserted in the same suit involving the same transaction. Thus, the Presiding Judge of the RTC gravely abused his discretion in dismissing PNB's counterclaims as the latter may forever be barred from collecting overdue rental fees if its counterclaims were not allowed.[40]

Saludo and PNB filed their respective motions for partial reconsideration dated February 25, 2010[41] and February 26, 2010.[42] In a Resolution dated August 2, 2010, the CA denied both motions on the ground that no new or substantial matters had been raised therein. Nonetheless, the CA addressed the issue on the joining of SAFA Law Office as a defendant in PNB's compulsory counterclaim. Pertinent portions of the CA Resolution read:

The Private Respondent claims that a compulsory counterclaim is one directed against an opposing party. The SAFA Law Office is not a party to the case below and to require it to be brought in as a defendant to the compulsory counterclaim would entail making it a co-plaintiff. Otherwise, the compulsory counterclaim would be changed into a third-party complaint. The Private Respondent also argues that Section 15, Rule 3 of the Rules of Court (on entities without juridical personality) is only applicable to initiatory pleadings and not to compulsory counterclaims. Lastly, it is claimed that since the alleged obligations of the SAFA Law Office is solidary with the Private Respondent, there is no need to make the former a defendant to the counterclaim.

We disagree with the reasoning of the Private Respondent. That a compulsory counterclaim can only be brought against an opposing party is belied by considering one of the requisites of a compulsory counterclaim it — does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. This shows that non-parties to a suit may be brought in as defendants to such a counterclaim. x x x

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[40] *Id.* at 163-164.

[41] *Id.* at 170-191.

[42] *Id.* at 449-454.

In the case at bench, the trial court below can acquire jurisdiction over the SAFA Law Office considering the amount and the nature of the counterclaim. Furthermore, the inclusion of the SAFA Law Office as a defendant to the counterclaim will enable the granting of complete relief in view [of] the liability of a partner to the partnership's creditors under the law.[43]

Hence, this petition, where Saludo raises the following issues for our resolution:

(1) Whether the CA erred in including SAFA Law Office as defendant to PNB's counterclaim despite its holding that SAFA Law Office is neither an indispensable party nor a legal entity;

(2) Whether the CA went beyond the issues in the petition for *certiorari* and prematurely dealt with the merits of PNB's counterclaim; and

(3) Whether the CA erred when it gave due course to PNB's petition for *certiorari* to annul and set aside the RTC's Omnibus Order dated January 11, 2007.[44]

The petition is bereft of merit.

We hold that SAFA Law Office is a juridical entity and the real party-in-interest in the suit filed with the RTC by Saludo against PNB. Hence, it should be joined as plaintiff in that case.

I.

Contrary to Saludo's submission, SAFA Law Office is a partnership and not a single proprietorship.

Article 1767 of the Civil Code provides that by a contract of partnership, two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves. *Two or more persons*

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[43] *Id.* at 167-169. Citations omitted.

[44] *Id.* at 110-111.

may also form a partnership for the exercise of a profession. Under Article 1771, a partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary. Article 1784, on the other hand, provides that a partnership begins from the moment of the execution of the contract, unless it is otherwise stipulated.

Here, absent evidence of an earlier agreement, SAFA Law Office was constituted as a partnership at the time its partners signed the Articles of Partnership[45] wherein they bound themselves to establish a partnership for the practice of law, contribute capital and industry for the purpose, and receive compensation and benefits in the course of its operation. The opening paragraph of the Articles of Partnership reveals the unequivocal intention of its signatories to form a partnership, to wit:

> WE, the undersigned ANICETO G. SALUDO, JR., RUBEN E. AGPALO, FILEMON L. FERNANDEZ, AND AMADO D. AQUINO, all of legal age, Filipino citizens and members of the Philippine Bar, have this day voluntarily associated ourselves for the purpose of forming a partnership engaged in the practice of law, effective this date, under the terms and conditions hereafter set forth, and subject to the provisions of existing laws[.][46]

The subsequent registration of the Articles of Partnership with the SEC, on the other hand, was made in compliance with Article 1772 of the Civil Code, since the initial capital of the partnership was ₱500,000.00.[47] Said provision states:

> Art. 1772. Every contract of partnership having a capital of Three thousand pesos or more, in money or property, shall appear in a public instrument, which must be recorded in the Office of the Securities and Exchange Commission.
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> x x x x x x x x x

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[45] CA *rollo*, pp. 202-213.

[46] *Id.* at 204.

[47] *Id.* at 206.

The other provisions of the Articles of Partnership also positively identify SAFA Law Office as a partnership. It constantly used the words "partners" and "partnership." It designated petitioner Saludo as managing partner,[48] and Attys. Ruben E. Agpalo, Filemon L. Fernandez, and Amado D. Aquino as industrial partners.[49] It also provided for the term of the partnership,[50] distribution of net profits and losses, and management of the firm in which "the partners shall have equal interest in the conduct of [its] affairs."[51] Moreover, it provided for the cause and manner of dissolution of the partnership.[52] These provisions would not have been necessary if what had been established was a sole proprietorship. Indeed, it may only be concluded from the circumstances that, for all intents and purposes, SAFA Law Office is a partnership created and organized in accordance with the Civil Code provisions on partnership.

Saludo asserts that SAFA Law Office is a sole proprietorship on the basis of the MOU executed by the partners of the firm. The MOU states in full:[53]

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[48] *Id.* at 207.

[49] *Id.* at 206, 210.

[50] Item V of the Articles of Partnership provides:

The term for which the partnership is to exist shall be for an indefinite period from date hereof, until dissolved for any cause recognized by law. *Id.* at 205.

[51] *Id.* at 207.

[52] Item X of the Articles of Partnership provides:

That the partnership shall be dissolved by agreement of the partners or for any cause as and in accordance with the manner provided by law, in which event the Articles of Dissolution of said partnership shall be filed with the Securities and Exchange Commission. All remaining assets upon dissolution shall accrue exclusively to A.G. Saludo, Jr. and all liabilities shall be solely for his account. *Id.* at 212.

[53] *Id.* at 103-105. Italics and emphasis in the original.

MEMORANDUM OF UNDERSTANDING

WHEREAS, the undersigned executed and filed with the SEC the Articles of Incorporation of SALUDO, AGPALO, FERNANDEZ and AQUINO on March 13, 1997;

WHEREAS, among the provisions of said Articles of Incorporation are the following:

1. That partners R. E. Agpalo, F. L. Fernandez and A. D. Aquino shall be industrial partners, and they shall not contribute capital to the partnership and shall not in any way be liable for any loss or liability that may be incurred by the law firm in the course of its operation.

2. That the partnership shall be dissolved by agreement of the partners or for any cause as and in accordance with the manner provided by law, in which event the Articles of Dissolution of said partnership shall be filed with the Securities and Exchange Commission. All remaining assets upon dissolution shall accrue exclusively to A. G. Saludo, Jr. and all liabilities shall be solely for his account.

WHEREAS, the SEC has not approved the registration of the Articles of Incorporation and its Examiner required that the phrase "shall not in any way be liable for any loss or liability that may be incurred by the law firm in the course of its operation" in Article VII be deleted;

WHEREAS, the SEC Examiner likewise required that the sentence "All remaining assets upon dissolution shall accrue exclusively to A. G. Saludo, Jr. and all liabilities shall be solely for his account" in Article X be likewise deleted;

WHEREAS, in order to meet the objections of said Examiner, the objectionable provisions have been deleted and new Articles of Incorporation deleting said objectionable provisions have been executed by the parties and filed with the SEC.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenant of the parties, the parties hereby agree as follows:

1. Notwithstanding the deletion of the portions objected to by the said Examiner, by reason of which entirely new Articles of Incorporation have been executed by the parties removing the objected portions, the actual and real intent of the parties is still as originally envisioned, namely:

a) That partners R. E. Agpalo, F. L. Fernandez and A. D. Aquino shall not in any way be liable for any loss or liability that may be incurred by the law firm in the course of its operation;

b) That all remaining assets upon dissolution shall accrue exclusively to A. G. Saludo, Jr. and all liabilities shall be solely for his account.

2. That the parties hereof hereby bind and obligate themselves to adhere and observe the real intent of the parties as above-stated, any provisions in the Articles of Incorporation as filed to meet the objections of the SEC Examiner to the contrary notwithstanding.

IN WITNESS WHEREOF, we have set our hands this _____ day of May, 1997 at Makati City, Philippines.

[Sgd.]

A.G. SALUDO, JR.

[Sgd.] [Sgd.] [Sgd.]

RUBEN E. AGPALO FILEMON L. FERNANDEZ AMADO D. AQUINO

The foregoing evinces the parties' intention to entirely shift any liability that may be incurred by SAFA Law Office in the course of its operation to Saludo, who shall also receive all the remaining assets of the firm upon its dissolution. This MOU, however, does not serve to convert SAFA Law Office into a sole proprietorship. As discussed, SAFA Law Office was manifestly established as a partnership based on the Articles of Partnership. The MOU, from its tenor, reinforces this fact. It did not change the nature of the organization of SAFA Law Office but only excused the industrial partners from liability.

The law, in its wisdom, recognized the possibility that partners in a partnership may decide to place a limit on their individual accountability. Consequently, to protect third persons dealing with the partnership, the law provides a rule, embodied in Article 1816 of the Civil Code, which states:

Art. 1816. All partners, including industrial ones, shall be liable *pro rata* with all their property and after all the partnership assets have been exhausted, for the contracts which may be entered into in the name and for the account of the partnership, under its signature

and by a person authorized to act for the partnership. However, any partner may enter into a separate obligation to perform a partnership contract.

The foregoing provision does not prevent partners from agreeing to limit their liability, but such agreement may only be valid as among them. Thus, Article 1817 of the Civil Code provides:

> Art. 1817. Any stipulation against the liability laid down in the preceding article shall be void, except as among the partners.

The MOU is an agreement forged under the foregoing provision. Consequently, the sole liability being undertaken by Saludo serves to bind only the parties to the MOU, but never third persons like PNB.

Considering that the MOU is sanctioned by the law on partnership, it cannot change the nature of a duly-constituted partnership. Hence, we cannot sustain Saludo's position that SAFA Law Office is a sole proprietorship.

II.

Having settled that SAFA Law Office is a partnership, we hold that it acquired juridical personality by operation of law. The perfection and validity of a contract of partnership brings about the creation of a juridical person separate and distinct from the individuals comprising the partnership. Thus, Article 1768 of the Civil Code provides:

> Art. 1768. The partnership has a juridical personality separate and distinct from that of each of the partners, even in case of failure to comply with the requirements of Article 1772, first paragraph.

Article 44 of the Civil Code likewise provides that partnerships are juridical persons, to wit:

> Art. 44. The following are juridical persons:
>
> (1) The State and its political subdivisions;
> (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;

(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.[54]

It is this juridical personality that allows a partnership to enter into business transactions to fulfill its purposes. Article 46 of the Civil Code provides that "[j]uridical persons may acquire and possess property of all kinds, as well as incur obligations and bring civil or criminal actions, in conformity with the laws and regulations of their organization."

SAFA Law Office entered into a contract of lease with PNB as a juridical person to pursue the objectives of the partnership. The terms of the contract and the manner in which the parties implemented it are a glaring recognition of SAFA Law Office's juridical personality. Thus, the contract stated that it is being executed by PNB as the lessor and "SALUDO AGPALO FERNANDEZ & AQUINO, *a partnership organized and existing under the laws of the Republic of the Philippines*," as the lessee.[55] It also provided that the lessee, *i.e.*, SAFA Law Office, shall be liable in case of default.[56] Furthermore, subsequent communications between the parties have always been made for or on behalf of PNB and SAFA Law Office, respectively.[57]

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[54] Emphasis supplied.

[55] CA *rollo*, p. 85. Italics supplied.

[56] The lease contract provides:

SECTION 12. DEFAULT AND SURRENDER OF LEASED PREMISES

x x x x x x x x x

In addition[,] the Lessee shall pay the Lessor (i) all accrued and unpaid rents and penalty charges; (ii) all expenses incurred by the Lessor in repossessing and [clearing] the Leased Premises; and (iii) any other damages incurred by the Lessor due to the default of the Lessee. *Id.* at 88.

[57] *Id.* at 91-102.

In view of the above, we see nothing to support the position of the RTC and the CA, as well as Saludo, that SAFA Law Office is not a partnership and a legal entity. Saludo's claims that SAFA Law Office is his sole proprietorship and not a legal entity fail in light of the clear provisions of the law on partnership. To reiterate, SAFA Law Office was created as a partnership, and as such, acquired juridical personality by operation of law. Hence, its rights and obligations, as well as those of its partners, are determined by law and not by what the partners purport them to be.

III.

In holding that SAFA Law Office, a partnership for the practice of law, is not a legal entity, the CA cited[58] the case of *Petition for Authority to Continue Use of the Firm Name "Sycip, Salazar, Feliciano, Hernandez & Castillo"*[59] (*Sycip* case) wherein the Court held that "[a] partnership for the practice of law is not a legal entity. It is a mere relationship or association for a particular purpose. x x x It is not a partnership formed for the purpose of carrying on trade or business or of holding property."[60] These are direct quotes from the US case of *In re Crawford's Estate*.[61] We hold, however, that our reference to this US case is an *obiter dictum* which cannot serve as a binding precedent.[62]

An *obiter dictum* is an opinion of the court upon a question which was not necessary to the decision of the case before it. It is an opinion uttered by the way, not upon the point or question pending, as if turning aside from the main topic of the case to collateral subjects, or an opinion that does not embody the court's determination and is made without argument or full consideration

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[58] *Id.* at 160-161.

[59] July 30, 1979, 92 SCRA 1.

[60] *Id.* at 9.

[61] Cited as 184 NE 2d 779, 783. *Id.*

[62] See *Republic v. Gingoyon*, G.R. No. 166429, December 19, 2005, 478 SCRA 474.

of the point. It is not a professed deliberate determination of the judge himself.[63]

The main issue raised for the court's determination in the *Sycip* case is whether the two petitioner law firms may continue using the names of their deceased partners in their respective firm names. The court decided the issue in the negative on the basis of "legal and ethical impediments."[64] To be sure, the pronouncement that a partnership for the practice of law is not a legal entity does not bear on either the legal or ethical obstacle for the continued use of a deceased partner's name, inasmuch as it merely describes the nature of a law firm. The pronouncement is not determinative of the main issue. As a matter of fact, if deleted from the judgment, the rationale of the decision is neither affected nor altered.

Moreover, reference of the *Sycip* case to the *In re Crawford's Estate* case was made without a full consideration of the nature of a law firm as a partnership possessed with legal personality under our Civil Code. *First*, we note that while the Court mentioned that a partnership for the practice of law is not a legal entity, it also identified petitioner law firms as partnerships over whom Civil Code provisions on partnership apply.[65] The Court thus cannot hold that a partnership for the practice of law is not a legal entity without running into conflict with Articles 44 and 1768 of the Civil Code which provide that a partnership has a juridical personality separate and distinct from that of each of the partners.

Second, our law on partnership does not exclude partnerships for the practice of law from its coverage. Article 1767 of the

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[63] *Advincula-Velasquez v. Court of Appeals*, G.R. No. 111387, June 8, 2004, 431 SCRA 165, 188, citing *Auyong Hian v. Court of Tax Appeals*, G.R. No. L-28782, September 12, 1974, 59 SCRA 110, 120 and *People v. Macadaeg*, 91 Phil. 410, 413 (1952).

[64] *Petition for Authority to Continue Use of the Firm Name "Sycip, Salazar, Feliciano, Hernandez & Castillo," supra* at 59.

[65] *Id.* at 7.

Civil Code provides that "[t]wo or more persons may also form a partnership for the exercise of a profession." Article 1783, on the other hand, states that "[a] particular partnership has for its object determinate things, their use or fruits, or a specific undertaking, or the exercise of a profession or vocation." Since the law uses the word "profession" in the general sense, and does not distinguish which professional partnerships are covered by its provisions and which are not, then no valid distinction may be made.

Finally, we stress that unlike Philippine law, American law does not treat of partnerships as forming a separate juridical personality for all purposes. In the case of *Bellis v. United States*,[66] the US Supreme Court stated that law firms, as a form of partnership, are generally regarded as distinct entities for specific purposes, such as employment, capacity to be sued, capacity to hold title to property, and more.[67] State and federal laws, however, do not treat partnerships as distinct entities for all purposes.[68]

Our jurisprudence has long recognized that American common law does not treat of partnerships as a separate juridical entity unlike Philippine law. Hence, in the case of *Campos Rueda & Co. v. Pacific Commercial Co.*,[69] which was decided under the old Civil Code, we held:

> Unlike the common law, the Philippine statutes consider a limited partnership as a juridical entity for all intents and purposes, which personality is recognized in all its acts and contracts (Art. 116, Code of Commerce). This being so and the juridical personality of a limited partnership being different from that of its members, it must, on general principle, answer for, and suffer, the consequence of its acts as such an entity capable of being the subject of rights and obligations.[70] x x x

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[66] 417 U.S. 85 (1974).

[67] *Id.* at 97.

[68] *Id.* at 101.

[69] 44 Phil. 916 (1922).

[70] *Id.* at 918.

On the other hand, in the case of *Commissioner of Internal Revenue v. Suter*,[71] which was decided under the new Civil Code, we held:

> It being a basic tenet of the Spanish and Philippine law that the partnership has a juridical personality of its own, distinct and separate from that of its partners (unlike American and English law that does not recognize such separate juridical personality), the bypassing of the existence of the limited partnership as a taxpayer can only be done by ignoring or disregarding clear statutory mandates and basic principles of our law.[72] x x x

Indeed, under the old and new Civil Codes, Philippine law has consistently treated partnerships as having a juridical personality separate from its partners. In view of the clear provisions of the law on partnership, as enriched by jurisprudence, we hold that our reference to *In re Crawford's Estate* in the *Sycip* case is an *obiter dictum.*

IV.

Having settled that SAFA Law Office is a juridical person, we hold that it is also the real party-in-interest in the case filed by Saludo against PNB.

Section 2, Rule 3 of the Rules of Court defines a real party-in-interest as the one "who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit." In *Lee v. Romillo, Jr.*,[73] we held that the "real [party-in-interest]-plaintiff is one who has a legal right[,] while *a real* [*party-in-interest*]-*defendant* is one who has a correlative legal obligation whose act or omission violates the legal rights of the former."[74]

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[71] G.R. No. L-25532, February 28, 1969, 27 SCRA 152.

[72] *Id.* at 158.

[73] G.R. No. 60937, May 28, 1988, 161 SCRA 589.

[74] *Id.* at 595. Italics supplied.

SAFA Law Office is the party that would be benefited or injured by the judgment in the suit before the RTC. Particularly, it is the party interested in the accounting and/or recomputation of unpaid rentals and damages in relation to the contract of lease. It is also the party that would be liable for payment to PNB of overdue rentals, if that claim would be proven. This is because it is the one that entered into the contract of lease with PNB. As an entity possessed of a juridical personality, it has concomitant rights and obligations with respect to the transactions it enters into. Equally important, the general rule under Article 1816 of the Civil Code is that partnership assets are primarily liable for the contracts entered into in the name of the partnership and by a person authorized to act on its behalf. All partners, including industrial ones, are only liable *pro rata* with all their property after all the partnership assets have been exhausted.

In *Guy v. Gacott*,[75] we held that under Article 1816 of the Civil Code, the partners' obligation with respect to the partnership liabilities is subsidiary in nature. It is merely secondary and only arises if the one primarily liable fails to sufficiently satisfy the obligation. Resort to the properties of a partner may be made only after efforts in exhausting partnership assets have failed or if such partnership assets are insufficient to cover the entire obligation.[76] Consequently, considering that SAFA Law Office is primarily liable under the contract of lease, it is the real party-in-interest that should be joined as plaintiff in the RTC case.

Section 2, Rule 3 of the Rules of Court requires that every action must be prosecuted or defended in the name of the real party-in-interest. As the one primarily affected by the outcome of the suit, SAFA Law Office should have filed the complaint with the RTC and should be made to respond to any counterclaims that may be brought in the course of the proceeding.

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[75] G.R. No. 206147, January 13, 2016, 780 SCRA 579.

[76] *Id.* at 593.

In *Aguila, Jr. v. Court of Appeals*,[77] a case for declaration of nullity of a deed of sale was filed against a partner of A.C. Aguila & Sons, Co. We dismissed the complaint and held that it was the partnership, not its partners, which should be impleaded for a cause of action against the partnership itself. Moreover, the partners could not be held liable for the obligations of the partnership unless it was shown that the legal fiction of a different juridical personality was being used for fraudulent, unfair, or illegal purposes. We held:

> Rule 3, §2 of the Rules of Court of 1964, under which the complaint in this case was filed, provided that "every action must be prosecuted and defended in the name of the real party in interest." A real party in interest is one who would be benefited or injured by the judgment, or who is entitled to the avails of the suit. This ruling is now embodied in Rule 3, §2 of the 1997 Revised Rules of Civil Procedure. Any decision rendered against a person who is not a real party in interest in the case cannot be executed. Hence, a complaint filed against such a person should be dismissed for failure to state a cause of action.
>
> Under Art. 1768 of the Civil Code, a partnership "has a juridical personality separate and distinct from that of each of the partners." The partners cannot be held liable for the obligations of the partnership unless it is shown that the legal fiction of a different juridical personality is being used for fraudulent, unfair, or illegal purposes. In this case, private respondent has not shown that A.C. Aguila & Sons, Co., as a separate juridical entity, is being used for fraudulent, unfair, or illegal purposes. Moreover, the title to the subject property is in the name of A.C. Aguila & Sons, Co. and the Memorandum of Agreement was executed between private respondent, with the consent of her late husband, and A.C. Aguila & Sons, Co., represented by petitioner. Hence, it is the partnership, not its officers or agents, which should be impleaded in any litigation involving property registered in its name. A violation of this rule will result in the dismissal of the complaint.[78]

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[77] G.R. No. 127347, November 25, 1999, 319 SCRA 246.

[78] *Id.* at 253-254. Citations omitted.

In this case, there is likewise no showing that SAFA Law Office, as a separate juridical entity, is being used for fraudulent, unfair, or illegal purposes. Hence, its partners cannot be held primarily liable for the obligations of the partnership. As it was SAFA Law Office that entered into a contract of lease with respondent PNB, it should also be impleaded in any litigation concerning that contract.

Accordingly, the complaint filed by Saludo should be amended to include SAFA Law Office as plaintiff. Section 11,[79] Rule 3 of the Rules of Court gives power to the court to add a party to the case on its own initiative at any stage of the action and on such terms as are just. We have also held in several cases[80] that the court has full powers, apart from that power and authority which are inherent, to amend processes, pleadings, proceedings, and decisions by substituting as party-plaintiff the real party-in-interest.

In view of the above discussion, we find it unnecessary to discuss the other issues raised in the petition. It is unfortunate that the case has dragged on for more than 10 years even if it involves an issue that may be resolved by a simple application of Civil Code provisions on partnership. It is time for trial to proceed so that the parties' substantial rights may be adjudicated without further unnecessary delay.

WHEREFORE, the petition is **DENIED**. Petitioner is hereby ordered to amend his complaint to include SAFA Law Office as plaintiff in Civil Case No. 06-678 pending before Branch 58 of the Regional Trial Court of Makati City, it being the real party-in-interest.

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[79] Sec. 11. *Misjoinder and non-joinder of parties*. – Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

[80] See *Salvador v. Court of Appeals*, G.R. No. 109910, April 5, 1995, 243 SCRA 239, 257; *Domingo v. Scheer*, G.R. No. 154745, January 29, 2004, 421 SCRA 468, 484; and *Pacaña-Contreras v. Rovila Water Supply, Inc.*, G.R. No. 168979, December 2, 2013, 711 SCRA 219, 244.

SO ORDERED.

Peralta[*] (*Acting Chairperson*), *del Castillo, Tijam*, and *Gesmundo*,[**] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 215504. August 20, 2018]

SOCIETE INTERNATIONALE DE TELECOMMUNICATIONS AERONAUTIQUES (SITA), SITA INFORMATION NETWORKING COMPUTING B.V. (SITA, INC.), EQUANT SERVICES, INC. (EQUANT) and LEE CHEE WEE, *petitioners, vs.* **THEODORE L. HULIGANGA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS.— As a general rule, only questions of law raised *via* a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or *quasi-judicial* bodies,

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[*] Designated as Acting Chairperson of the First Division per Special Order No. 2582 (Revised) dated August 8, 2018.

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

including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present: 1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures; 2. when the inference made is manifestly mistaken, absurd or impossible; 3. when there is grave abuse of discretion; 4. when the judgment is based on a misapprehension of facts; 5. when the findings of fact are conflicting; 6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent; 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and] 11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; COLLECTIVE BARGAINING AGREEMENT (CBA); BENEFITS; TO BE CONSIDERED A COMPANY PRACTICE, THE GIVING OF THE BENEFITS MUST HAVE BEEN PRACTICED FOR A LONG PERIOD OF TIME AND MUST BE SHOWN TO BE CONSISTENT AND DELIBERATE.— It is an indisputable fact that Huliganga was a managerial employee of SITA and, as such, he is not entitled to retirement benefits exclusively granted to the rank-and-file employees under the CBA. It must be remembered that under Article 245 of the Labor Code, managerial employees are not eligible to join, assist or form any labor organization. [T]o be entitled to the benefits under the CBA, the employees must be members of the bargaining unit, but not necessarily of the labor organization designated as the bargaining agent. The Labor Arbiter, therefore, did not commit any error when it applied the said provisions and ruled that Huliganga failed to sufficiently establish that there is an established company practice of extending the benefits of the CBA to managerial employees

x x x. To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate. The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof. To prove that the giving of the benefits claimed by Huliganga had been a company practice, he presented the affidavit of Delia M. Beaniza who was the Administrative Assistant to the Country Manager/Representative stating that SITA had adopted the formulation provided in the CBA to its managerial employees. The NLRC, however, is correct in ruling that the said affidavit deserves scant consideration because Beaniza lacks the competency to determine what is considered as a company practice x x x. Huliganga, therefore, failed to substantially establish that there is an established company practice of extending CBA concessions to managerial employees. Again, to be considered a company practice or policy, the act of extending benefits of the CBA to managerial employees must have been practiced for a long period of time and must be shown to be consistent and deliberate.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF LABOR OFFICIALS WHO ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR RESPECTIVE JURISDICTIONS ARE GENERALLY ACCORDED NOT ONLY RESPECT, BUT EVEN FINALITY, AND ARE BINDING ON THE COURTS; EXCEPTION.— [F]actual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and are binding on the courts. Only upon clear showing of grave abuse of discretion, or that such factual findings were arrived at arbitrarily or in disregard of the evidence on record will this Court step in and proceed to make its own independent evaluation of the facts.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioners.
Ferdinand D. Ayahao for respondent.

D E C I S I O N

PERALTA,* ***J.*****:**

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated November 28, 2014, of petitioners *Societe Internationale De Telecommunications Aeronautiques,* SITA Information Networking Computing B.V., Equant Services, Inc./Lee Chee Wee that seeks to reverse and set aside the Decision[1] dated March 21, 2014 and the Resolution[2] dated October 7, 2014, both of the Court of Appeals *(CA)* granting respondent Theodore L. Huliganga *(Huliganga)* the amount of ₱2,645,175.87 as deficiency in his retirement benefit.

The facts follow.

Huliganga was hired by Societe International De Telecommunications Aeronautiques *(SITA)* on April 16, 1980 as Technical Assistant to the Representative-Manager. Eventually, he became the Country Operating Officer, the highest accountable officer of SITA in the Philippines and his current position at the time of his retirement on December 31, 2008. He received his retirement benefits computed at 1.5 months of basic pay for each year of service, or the total amount of ₱7,495,102.84 in retirement and other benefits.

On January 27, 2009, Huliganga filed a Complaint against SITA, SITA Information Networking Computing B. V. *(SITA, INC.)* and Equant Services, Inc. *(EQUANT)* for unfair labor practices, underpayment of salary/wages, moral and exemplary damages, attorney's fees, underpayment of sick and vacation leave and retirement benefits.

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* Designated Acting Chairperson, per Special Order No. 2582 (Revised), dated August 8, 2018.

[1] Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Ricardo R. Rosario and Mario V. Lopez, concurring; *rollo,* pp. 45-53.

[2] *Id.* at 54-55.

In his Position Paper, Huliganga alleged the following: (1) The coefficient/payment factor that applies to him should be 2 months and not 1.5 months for every year of service in accordance with the 2005-2010 Collective Bargaining Agreement; (2) The coefficient/payment factor as provided under the 2005-2010 is the applicable rate because it is already a well-established company practice of SITA to adopt, update and apply the new and/or additional economic benefits arising from the CBA as amendments to the Employee Regulations manual; (3) SITA, INC. is a foreign corporation created by SITA in 2003 to concentrate on providing Air Transport Industry application whereas EQUANT was created by SITA in the mid-1990s to cater to its non-airline customers; and (4) He was required by EQUANT to represent and manage its Philippine operations and was given the additional task of managing SITA, INC. but was not compensated for his work at EQUANT and SITA, INC.

Petitioners, on the other hand, raised the following counter-arguments: (1) Huliganga has already received from SITA the full amount of his retirement and other monetary benefits; thus, his claim for any supposed deficiency has simply no basis; (2) There is no employer-employee relationship between Huliganga, SITA, INC. and EQUANT which will entitle the former to a claim for salary and other monetary benefits from said entities; and (3) Having received the full amount of his retirement and other benefits from his employer SITA, Huliganga has no right to claim moral and exemplary damages and attorney's fees.

On September 29, 2009, the Labor Arbiter rendered a Decision[3] dismissing the complaint against SITA for lack of merit, the dispositive portion of which states:

> WHEREFORE, premises considered, the instant complaint against respondent SITA is hereby DISMISSED for lack of merit.

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[3] *Id.* at 74-78.

The complaints against respondents SITA, INC and EQUANT are hereby DISMISSED for lack of employer-employee relationship between complainant and said respondents.

SO ORDERED.[4]

Huliganga appealed the said decision, however, on July 21, 2010, the NLRC, Third Division rendered a Decision[5] denying the appeal for lack of merit and affirming the September 29, 2009 Decision of the Labor Arbiter, thus:

WHEREFORE, the appeal filed by complainant is DENIED for lack of merit. The decision dated 29 September 2009 is AFFIRMED.

SO ORDERED.[6]

After the denial of Huliganga's motion for reconsideration, he filed a petition for *certiorari* with the CA. The CA, on March 21, 2014, partly granted the petition in its decision, the dispositive portion of which states:

WHEREFORE, in view of the foregoing, the instant petition is PARTIALLY GRANTED. The challenged decision of the NLRC, Third Division dated 21 July 2010 is AFFIRMED WITH MODIFICATION. As modified, SITA is directed to pay petitioner THEODORE L. HULIGANGA the amount of Php2,645,175.87 representing the deficiency in his retirement benefit plus legal interest of six percent (6%) *per annum* from the date of filing of his complaint up to actual payment.

SO ORDERED.[7]

The CA ruled that Huliganga was able to prove that the new and/or additional economic benefits arising from the CBA as amendments to the Employee Regulations Manual has ripened into a company practice. It added that at the time of Huliganga's

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[4] *Id* at 78.

[5] *Id.* at 151-167.

[6] *Id.* at 167.

[7] *Id* at 53.

retirement, the applicable CBA was that concluded on April 27, 2006 and in the said CBA, it is provided that the coefficient/payment factor in the computation of retirement benefits for employees who have rendered 25 years or more of service was 2 months for every year of service and not 1.5 months for every year of service. The CA, however, held that Huliganga is not entitled to salaries and emoluments from SITA, INC. and EQUANT.

Hence, the present petition with the following grounds relied upon:

I.

THE DECISION OF THE COURT OF APPEALS HAS NO LEGAL AND FACTUAL BASIS BECAUSE THE RETIREMENT BENEFITS FOR SITA'S MANAGERIAL EMPLOYEES WERE SEPARATE AND DISTINCT FROM THE RETIREMENT BENEFITS OF [RANK-AND-FILE] EMPLOYEES.

II.

THE CONCLUSION OF THE COURT OF APPEALS THAT MANAGERIAL EMPLOYEES OF SITA ARE ENTITLED TO THE SAME RETIREMENT BENEFITS AS THOSE OF RANK-AND-FILE EMPLOYEES HAS NO FACTUAL AND LEGAL BASIS.

III.

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN MODIFYING THE UNIFORM FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC.[8]

According to petitioners, the 2006 CBA unequivocally provides that managerial employees, like Huliganga, are excluded from its coverage and application, thus, the provisions of the CBA should not be extended to him as there is no basis to warrant the same. Petitioners also argue that there is no credible evidence submitted by Huliganga that it has been an established practice of SITA to amend its employment regulations for personnel recruited by SITA Philippines by adopting the

[8] *Id.* at 22.

improved economic benefits in the CBA. They further aver that factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and are binding on the courts.

In his Comment[9] dated April 3, 2015, Huliganga insists that the CA did not err in ruling that he is entitled to the amount of ₱2,645,175.87 representing the deficiency in his retirement benefit. According to him, the CA has legal and factual basis to support its decision.

The petition is meritorious.

As a general rule, only questions of law raised *via* a petition for review under Rule 45[10] of the Rules of Court are reviewable by this Court.[11] Factual findings of administrative or *quasi*-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[12] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

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[9] *Id.* at 873-937.

[10] Section 1, Rule 45 of the Rules of Court, as amended, provides:

Section 1. Filing of petition with Supreme Court. A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari.* The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[11] *Philippine Transmarine Carriers, Inc., et al. v. Cristina,* 755 Phil. 108, 121 (2015), citing *Heirs of Pacencia Racaza v. Spouses Abay-Abay,* 687 Phil. 584, 590 (2012).

[12] *Id.,* citing *Merck Sharp and Dohme (Phils.), et al. v. Robles, et al.,* 620 Phil. 505, 512 (2009).

1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
2. when the inference made is manifestly mistaken, absurd or impossible;
3. when there is grave abuse of discretion;
4. when the judgment is based on a misapprehension of facts;
5. when the findings of fact are conflicting;
6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
7. when the findings are contrary to that of the trial court;
8. when the findings are conclusions without citation of specific evidence on which they are based;
9. when the facts set forth in the petition[,] as well as in the petitioner's main and reply briefs[,] are not disputed by the respondent;
10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[13]

Since the factual findings of the CA are completely different from that of the Labor Arbiter and the NLRC, this case falls under one of the exceptions, therefore, this Court may now resolve the issues presented before it.

It is an indisputable fact that Huliganga was a managerial employee of SITA and, as such, he is not entitled to retirement benefits exclusively granted to the rank-and-file employees under the CBA. It must be remembered that under Article 245 of the Labor Code, managerial employees are not eligible to join, assist or form any labor organization.[14] [T]o be entitled to the benefits

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[13] *Id.,* citing *Co v. Vargas,* 676 Phil. 463, 471 (2011).

[14] Art. 245. Ineligibility of Managerial Employees to Join any Labor Organization; Right of Supervisory Employees – Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in the collective bargaining

under the CBA, the employees must be members of the bargaining unit, but not necessarily of the labor organization designated as the bargaining agent.[15]

The Labor Arbiter, therefore, did not commit any error when it applied the said provisions and ruled that Huliganga failed to sufficiently establish that there is an established company practice of extending the benefits of the CBA to managerial employees, thus:

> Along this vein, it should be stressed that before his retirement on 31 December 2008, complainant occupies the position of Country Operating Officer of respondent SITA. It is beyond dispute that complainant is occupying the highest managerial position in the country for his employer SITA. Now, Article 245 of the Labor Code expressly states that "managerial employees are not eligible to join, assist or form any labor organization." An exception to this prohibition is when the employer extends the CBA benefits to the managerial employee as a matter of policy or established practice. Complainant failed to present evidence to justify his claim. He failed to sufficiently establish that there is an established company practice of extending the CBA concessions to managerial employees. To be considered as a company practice, the act of extending the benefits of the CBA to managerial employees must have been practiced for a long period of time and must be shown to be consistent and deliberate. x x x[16]

The CA, however, ruled that Huliganga was able to prove that the new and/or additional economic benefits arising from the CBA as amendments to the Employee Regulations Manual has ripened into a company practice.

To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be

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unit of the rank and file employees but may join, assist or form separate collective bargaining units and/or legitimate labor organizations of their own. (As amended by Section 18, R.A. 6715, March 21, 1989)

[15] *Philippine Airlines, Incorporated v. Philippine Airlines Employee Association (PALEA),* 571 Phil. 548, 561 (2008).

[16] *Rollo*, p. 76.

shown to have been consistent and deliberate.[17] The test or rationale of this rule on long practice requires an indubitable showing that the employer agreed to continue giving the benefits knowing fully well that said employees are not covered by the law requiring payment thereof.[18]

To prove that the giving of the benefits claimed by Huliganga had been a company practice, he presented the affidavit of Delia M. Beaniza who was the Administrative Assistant to the Country Manager/Representative stating that SITA had adopted the formulation provided in the CBA to its managerial employees. The NLRC, however, is correct in ruling that the said affidavit deserves scant consideration because Beaniza lacks the competency to determine what is considered as a company practice, thus:

> In her affidavit, Ms. Beaniza stated that respondent SITA had consistently adopted the policy to extend to managerial and confidential employees all favorable benefits agreed upon in the CBA with union members. However, as correctly held by the Labor Arbiter, the said affidavit deserves scant consideration considering that Ms. Beaniza had been retired from service since 1997 or 12 years ago. She, therefore, lacks the competency to determine with accuracy what is considered a company practice. It was also held by the Labor Arbiter that even if Ms. Beaniza's retirement was based on the rate provided in the then prevailing CBA, this does not convert the concession into a company practice.
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> We also have noted that though Ms. Beaniza stated that company policies have been implemented as early as the time when SITA Employees' Union was formed in the 1970s, she was employed by respondent SITA only in September 1980. Accordingly, she cannot testify on matters or circumstances that happened before she was employed by SITA.
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> Ms. Beaniza attested that she and other previous retirees have availed of the company practice. However, she failed to name or

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[17] *National Sugar Refineries Corporation v. NLRC, et al.,* 292-A Phil. 582, 594 (1993).

[18] *Philippine Appliance Corporation v. CA, et al.,* 474 Phil. 595, 604 (2004).

identify any other employee who had availed of the said company practice and given retirement benefits under the CBA. If indeed Ms. Beaniza was given retirement benefits above the amount she is entitled to, this could be interpreted to be based merely on the generosity on the part of SITA.

It is noted that Ms. Beaniza retired sometime in 1997. She, therefore, has no knowledge of circumstances that transpired after her retirement to present. She was in no position and had no authority to say that there was an established long standing company policy of extending CBA benefits to managerial employees.

In the same affidavit, Ms. Beaniza was supposed to have communicated to SITA office based in Singapore stating that SITA's practice in the grant of retirement benefits was lifted from the CBA provisions existing at the time. Even if such communication was sent, it does not categorically prove or establish that CBA benefits were actually granted to managerial and confidential employees.[19]

Huliganga, therefore, failed to substantially establish that there is an established company practice of extending CBA concessions to managerial employees. Again, to be considered a company practice or policy, the act of extending benefits of the CBA to managerial employees must have been practiced for a long period of time and must be shown to be consistent and deliberate.

It must also be remembered that factual findings of labor officials who are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect, but even finality, and are binding on the courts.[20] Only upon clear showing of grave abuse of discretion, or that such factual findings were arrived at arbitrarily or in disregard of the evidence on record will this Court step in and proceed to make its own independent evaluation of the facts.[21] In this

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[19] *Rollo*, pp. 162-164.

[20] *Pelayo v. Aareme Shipping and Trading Co. Inc., et al.,* 520 Phil. 896, 906 (2006)

[21] *Columbus Philippines Bus Corporation v. NLRC,* 417 Phil. 81, 99 (2001).

case, the CA erred in disregarding the factual findings of the Labor Arbiter and the NLRC.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated November 28, 2014 of petitioners *Societe Internationale De Telecommunications Aeronautiques,* SITA Information Networking Computing B.V. and Lee Chee Wee is **GRANTED.** Consequently, the Decision dated March 21, 2014 and the Resolution dated October 7, 2014, both of the Court of Appeals, are **REVERSED** and **SET ASIDE** and the Decision dated July 21, 2010 of the National Labor Relations Commission is **REINSTATED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 217036. August 20, 2018]

SKIPPERS UNITED PACIFIC, INC., and/or IKARIAN MOON SHIPPING, CO., LD., *petitioners, vs.* **ESTELITO S. LAGNE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS.— As a general rule, only questions of law

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

raised *via* a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or *quasi-judicial* bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present: 1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures; 2. when the inference made is manifestly mistaken, absurd or impossible; 3. when there is grave abuse of discretion; 4. when the judgment is based on a misapprehension of facts; 5. when the findings of fact are conflicting; 6. when in making its findings, the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; 7. when the findings are contrary to that of the trial court; 8. when the findings are conclusions without citation of specific evidence on which they are based; 9. when the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or 11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION – STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SECTION 20(B)(4) ON REQUISITES FOR DISABILITY TO BE COMPENSABLE; THAT THE INJURY OR ILLNESS IS WORK-RELATED; REASONABLE PROOF OF WORK-CONNECTION IS SUFFICIENT.— For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract. The POEA-SEC defines a work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an

occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related. However, notwithstanding the presumption, We have held that on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease. This is because awards of compensation cannot rest entirely on bare assertions and presumptions. In order to establish compensability of a non-occupational disease, reasonable proof of work-connection is sufficient – direct causal relation is not required. Thus, probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. x x x It is enough that his employment contributed, even if only in a small degree, to the development of the disease.

3. **ID.; ID.; SECTION 20(B)(3);SEAFARER ENTITLED TO SICKNESS ALLOWANCE UPON SIGN OFF FROM THE VESSEL FOR MEDICAL TREATMENT.—** We affirm the award of sickness allowance in favor of Lagne, since there is no evidence on record that the same had been duly paid by the petitioners. They have likewise not disputed that Lagne was repatriated for medical reasons, thus, petitioner's liability subsists, pursuant to Section 20 (B) (3) of the POEA-SEC which provides that: 3. Upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall the period exceed one hundred twenty (120) days.

4. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PROPER AS RESPONDENT WAS COMPELLED TO LITIGATE TO SATISFY A VALID CLAIM.—** With respect to attorney's fees, it is clear that Lagne was compelled to litigate due to petitioners' failure to satisfy his valid claim. Where an employee is forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Justiniano B. Panambo, Jr. for respondent.

D E C I S I O N

PERALTA,[*] *J.*:

This is a Petition for Review on *Certiorari* under Rule 45[1] of the Rules of Court seeking the reversal of the Decision[2] dated April 30, 2014 and the Resolution[3] dated February 23, 2015 of the Court of Appeals in CA-G.R. SP No. 123897 entitled "*Skippers United Pacific, Inc. and/or Ikarian Moon Shipping Co., Ltd.* v. *Estelito* S. *Lagne.*"[4]

The facts are as follows:

Estelito S. Lagne *(Lagne)* was hired by Skippers United Pacific, Inc. *(petitioner)* to serve as Oiler on board the vessel "Nicolaos M" which is owned and operated by its foreign principal, co-petitioner Ikarian Moon Shipping Co., Ltd. On September 14, 2009, Lagne signed his employment contract which included the standard terms and conditions governing the employment of Filipino seafarers as prescribed by the Philippine Overseas Employment Administration *(POEA).* The contract has a duration of nine months with basic salary of US$465.00.

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[*] Designated Acting Chairperson, per Special Order No. 2582 (Revised), dated August 8, 2018.

[1] *Rollo,* pp. 3-15.

[2] *Id.* at 11-22.

[3] *Id.* at 24-25.

[4] Penned by Associate Justice Edwin D. Sorongon, with Associate Justices Rosmari D. Carandang and Marlene Gonzalez-Sison, concurring.

Part of his pre-employment requirements, Lagne was subjected to a Pre-Employment Medical Examination *(PEME)* where he was declared "fit for sea duty." Thus, on September 25, 2009, Lagne boarded his assigned vessel to commence his work.

Sometime in January 2010, Lagne started to feel pain on his anus whenever he carries heavy weights or performs laborious tasks. He also experienced chest pains and difficulty in breathing during his work which he tried to endure. However, his ailment persisted as he even experienced intolerable pain even during defecation. Later, Lagne felt that there was a protruding mass on his anus which he noticed to be increasing in size. Alarmed, he reported the matter to his supervisor.

On May 12, 2010, Lagne was brought to the clinic at 51 Rue D'ansou 66600 Saint Nazaire, Montoir, France, where he was attended by a certain Dr. Bourgois. He was diagnosed to have a "rectal mass" and was recommended for medical repatriation after having been declared "unfit for duty." Based on said findings, on May 17, 2010, Lagne was repatriated to the Philippines.

Upon his arrival, Lagne was referred for medical check-up at the General Med Health Services. After a series of laboratory tests, he was advised to undergo surgical evaluation and biopsy of the rectal mass. Subsequently, Lagne was endorsed at the Metropolitan Medical Center, under the care of Dr. Esther G. Go *(Dr. Go),* the company-designated physician, who conducted colonoscopy and biopsy on Lagne. The results confirmed the presence of "anorectal mass." Lagne was also subjected to CEA determination and CT scan of his whole abdomen and chest. While his medical assessment was ongoing, Lagne filed a complaint before the arbitration branch of the NLRC claiming permanent total disability benefits, sick wages, damages and attorney's fees against petitioners. The case was docketed as NLRC NCR OFW Case no. (M) 09-12437-10.

On September 16, 2010, Dr. Go issued a follow-up medical evaluation report on Lagne's condition containing the following findings:

x x x x x x x x x

Repeat, complete blood count showed decreased hemoglobin (98 g/L), hematocrit (0.30), elevated eosinophils and adequate platelet count.

His CEA result showed markedly elevated result.

Histopath result of the rectal biopsy showed moderately differentiated adenocarcinoma.

His CT Scan of the whole abdomen with contrast revealed rectosigmoid mass. Consider adenocarcinoma with probable beginning pericolonic tumoral spread or congestion. Multiple hepatic nodule. Metastatic (?)

CT Scan of the chest with contrast showed multiple tiny pulmonary nodules, right upper lobe probably due to inflammatory or metastatic process. Degenerative changes, thoracic spine.

x x x x x x x x x[5]

Later, Dr. Go diagnosed Lagne as suffering from "*Moderately Differentiated Rectosigmoid Adenocarcinoma.*" Lagne was advised to undergo Abdominal Perineal Resection of the Rectosigmoid Tumor which includes the placement of permanent colostomy as management for his condition. Dr. Go, likewise, recommended transfusion of two (2) units of packed red blood cells in preparation for his surgery. Lagne, however, refused and manifested his desire to seek second opinion from his private doctor.[6]

Lagne then sought the expertise of Dr. May S. Donato-Tan (*Dr. Donato-Tan*), a specialist in internal medicine and cardiology at the Philippine Heart Center, for the assessment and evaluation of his health condition. On November 30, 2010, Dr. Donato-Tan found Lagne to have sustained a permanent disability due to "*Moderately Differentiated Rectosigmoid Adenocarcinoma*

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[5] *Rollo,* p. 295.

[6] *Id.*

and Atherosclerotic Cardiovascular Disease" and declared him "UNFIT FOR DUTY in whatever capacity as seaman."[7]

In his claim for disability compensation, Lagne asserted that his illness, *rectosigmoid adenocarcinoma,* was directly caused by his employment with petitioners. He alleged that the food regularly served in their assigned vessel involved mostly carbohydrates and meat, usually with saturated fat. He also averred that his duties as an oiler exposed him to manual and laborious tasks such as carrying heavy equipment and other materials which contributed to the worsening of his condition.

Lagne further claimed entitlement to sickness allowance as provided under Section 20 (B), paragraph 3 of the POEA Standard Contract for Seafarers, to wit:

> 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.

Lagne, thus, prayed that petitioners be ordered to pay him permanent total disability benefits in the amount of US$60,000.00, sickness allowance in the sum of US$2,536.36, moral as well as exemplary damages of ₱500,000.00 each, and attorney's fees.

Meanwhile, petitioners argued that Lagne is not entitled to any disability compensation since *rectosigmoid adenocarcinoma* is not listed as one of the occupational diseases under Section 32-A of the POEA Standard Employment Contract for Seafarers *(POEA-SEC).* They insisted that the same is not connected with his duties as an oiler and, therefore, is not compensable under the provisions of the POEA-SEC. They further claimed that even the medical conclusion of the company-designated physician confirmed that Lagne's illness is not work-related.

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

On February 28, 2011, the Labor Arbiter dismissed Lagne's claim for total permanent disability benefits for his failure to substantiate his claim that his illness is work-related.[8] It ruled that the findings of Dr. Go should be upheld over the assessment of Dr. Donato-Tan because the former conducted an extensive and regular monitoring of Lagne's condition as opposed to the latter who made her conclusion after a single consultation only. The Labor Arbiter, likewise, denied the prayer for sickness allowance, damages and attorney's fees. The dispositive portion of the Decision reads:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered DISMISSING the instant complaint for lack of merit.
>
> SO ORDERED.[9]

Aggrieved, Lagne appealed to the NLRC. In a Decision[10] dated September 15, 2011, the NLRC reversed the decision of the Labor Arbiter and granted Lagne's prayer for monetary awards. It held that the food provisions on the ship consisting mostly of frozen meat and canned goods, as well as Lagne's arduous job as an oiler, undoubtedly aggravated the latter's rectal illness entitling him to recover permanent total disability benefits under the POEA-SEC. The dispositive portion of the Decision reads:

> WHEREFORE, the Decision on Appeal is SET ASIDE and REVERSED and a NEW ONE entered declaring all the respondents-appellee liable to pay complainant, in peso equivalent at the time of payment, the following amounts:
>
> a) USD $1,860 as sickness allowance;
> b) USD $60,000.00 as disability benefits; and
> c) 10% of the money awards as and for attorney's fees.
>
> SO ORDERED.[11]

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[8] *Id.* at 191-196.

[9] *Id.* at 196.

[10] *Id.* at 159-167.

[11] *Id.*

Dissatisfied, petitioners sought reconsideration but the NLRC in a Resolution[12] dated January 27, 2012, denied the same.

On April 30, 2014, in its disputed Decision,[13] the Court of Appeals affirmed the Resolutions dated September 15, 2011 and January 27, 2012 of the NLRC.

Petitioners moved for reconsideration but was denied in a Resolution[14] dated February 23, 2015. Thus, the instant petition for review on *certiorari* raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS COMMITTED ERROR OF LAW WHEN IT AFFIRMED THE GRANT OF CONTRACTUAL BENEFITS TO LAGNE DESPITE THE LATTER'S FAILURE TO PRESENT ANY SUBSTANTIAL EVIDENCE TO SHOW THAT HIS COLORECTAL CANCER IS WORK-RELATED.

II

WHETHER OR NOT THE COURT OF APPEALS COMMITTED ERROR OF LAW IN AFFIRMING THE AWARD OF ATTORNEY'S FEES DESPITE THE ABSENCE OF ANY EVIDENCE SHOWING BAD FAITH ON THE PART OF PETITIONERS.

Petitioners' claim that Lagne's allegation that his illness is work-related is self-serving, as he failed to substantiate his claim. They insisted that Lagne's illness, *rectosigmoid adenocarcinoma,* is not listed as compensable under Section 32-A of the POEA-SEC. They further contend that the Court of Appeals committed error in adopting the conclusion of the NLRC that Lagne was served with unhealthy food provisions which aggravated his colorectal cancer as the same was unsupported by any evidence.

On the other hand, Lagne reiterated the ruling of the CA that his illness is work-related, and insisted that the food

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[12] *Id* at 169-171.

[13] *Id.* at 11-22.

[14] *Id.* at 24-25.

provisions on the ship consisting mostly of frozen meat and canned goods and his strenuous work as an oiler aggravated his rectal illness. He argued that due to his inability to return to his work because of his illness, he is entitled to permanent total disability.[15]

We deny the instant petition.

As a general rule, only questions of law raised *via* a petition for review under Rule 45 of the Rules of Court are reviewable by this Court. Factual findings of administrative or *quasi*-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence.[16] However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:[17]

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

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[15] *Id.* at 421-448.

[16] *De Leon v. Maunlad Trans., Inc.,* G.R. No. 215293, February 8, 2017.

[17] *Id.*

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.[18]

Whether or not Lagne's illness is compensable is essentially a factual issue. However, in view of the conflicting views of the Labor Arbiter, and the NLRC and CA, this Court is compelled to look into its factual domain.

For disability to be compensable under Section 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.[19]

The POEA-SEC defines a work-related injury as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[20]

For illnesses not mentioned under Section 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related. However, notwithstanding the presumption, We have held that on due process grounds, the claimant-seafarer must still prove by substantial evidence that his work conditions caused or, at least, increased the risk of contracting the disease. This is because awards of compensation cannot rest entirely on bare assertions and presumptions. In order to establish compensability of a non-occupational disease, reasonable proof of work-connection is sufficient – direct causal relation is not required. Thus,

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[18] *Id.*

[19] *Leonis Navigation Co., Inc., et al. v. Eduardo C. Obrero, et al.,* 802 Phil. 341, 347 (2016); citing *Tagle v. Anglo-Eastern Crew Management, Phils., Inc., et al.,* 738 Phil. 871, 888 (2014).

[20] *De Leon v. Maunlad Trans, Inc., supra* note 16.

probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings.[21]

In the instant case, a careful review of the findings of the NLRC and the CA would show that Lagne was able to meet the required degree of proof that his illness is compensable as it is work-connected. In his Position Paper dated December 8, 2010, Lagne stated that he boarded the vessel on September 25, 2009 where he proceeded to work on his duties as an oiler. He enumerated his duties and responsibilities, to wit:

> (1) performing general duties, including wiping oil, maintaining tools; cleaning, preparing, and painting of machinery, equipment, and related spaces;
>
> (2) lubricates moving parts of propulsion engines and auxiliary equipments;
>
> (3) pumps bilges, and cleans strainers, filters, and centrifuges;
>
> (4) checks, during the scheduled rounds the proper operation of machinery; maintains proper temperatures and pressures; and records data in engineering log;
>
> (5) assists engineers, while in port, with maintenance and repair of engine room equipment and spaces; loading freshwater, stores, and bunkers;
>
> (6) connecting to shore side power and water, and maintenance and inventory of spare parts;
>
> (7) keeps the log of all watch operations and conditions, including unusual occurrences and emergency signals;
>
> (8) may stand engine room watch, and generator watch in port; and
>
> (9) may be assigned day work and performs other duties as required.[22]

Considering the manual and laborious job that Lagne does, we surmised that he was able to reasonably prove that his working conditions exposed him to factors that could have aggravated his medical condition. We give credence to his positive assertion

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[21] *Id.*

[22] *Rollo*, pp. 270-271.

that he felt pain on his anus whenever he carries heavy weights, chest pains and difficulty in breathing during his work, and the increasing size of the protruding rectal mass. To note, petitioners have not refuted having assigned to Lagne such task of carrying heavy weights.

We likewise give weight to the NLRC's findings that his work conditions caused or, at least, increased the risk of contracting the disease, to wit:

> Being a seafarer, We can take judicial notice of the food provisions on a ship which are produced at one time for long journeys across the oceans and seas. The food provided to seafarers are mostly frozen meat, canned goods and seldom are there vegetables which easily rot and wilt and, therefore, impracticable for long trips. These provisions undoubtedly contributed to the aggravation of appellant's rectal illness.

Moreover, as pointed out by both the NLRC and the CA, the compensability of colorectal cancer has already been ruled upon in the case of *Leonis Navigation Co., Inc., et al. v. Heirs of the late Catalino V. Villamater, et al.,*[23] to wit:

> Factors that increase a person's risk of colorectal cancer include high fat intake, a family history of colorectal cancer and polyps, the presence of polyps in the large intestine, and chronic ulcerative colitis.
>
> Diets high in fat are believed to predispose humans to colorectal cancer. In countries with high colorectal cancer rates, the fat intake by the population is much higher than in countries with low cancer rates. It is believed that the breakdown products of fat metabolism lead to the formation of cancer-causing chemicals (carcinogens). Diets high in vegetables and high-fiber foods may rid the bowel of these carcinogens and help reduce the risk of cancer.
>
> A person's genetic background is an important factor in colon cancer risk. Among first-degree relatives of colon-cancer patients, the lifetime risk of developing colon cancer is 18%. Even though family history of colon cancer is an important risk factor, majority (80%) of colon cancers occur sporadically in patients with no family

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[23] 628 Phil. 81 (2010).

history of it. Approximately 20% cancers are associated with a family history of colon cancer. And 5% of colon cancers are due to hereditary colon cancer syndromes. Hereditary colon cancer syndromes are disorders where affected family members have inherited cancer-causing genetic defects from one or both of the parents.[24]

We also quote with approval the appellate court's findings in support of the compensability of Lagne's rectal illness, to wit:

> While there is no specific cause of colorectal cancer, certain factors can increase risk of developing the disease. These factors include genetics, diet, age and health. Experts say that individuals with a family history of colorectal cancer, especially if more than one relative has had the disease, are at increased risk. Meanwhile, age also plays a definite role in the predisposition to colorectal cancer, ***According to studies, two-thirds of all cases occur after age 50 and the average age for those who develop the disease is 62. In addition, diets high in fat, red meat, total calories, and alcohol are significantly associated with the formation of cancer-causing chemicals known as carcinogens which predisposes humans to contracting the disease.***
>
> ***In the case of private respondent, it is apparent that the interplay of age and dietary factors contributed to the development of his colorectal cancer. It must be noted that at the time he signed his employment contract on September 14, 2009, private respondent was already 55 years old, having been born on October 19, 1954, an age at which the incidence of rectosigmoid cancer is more likely.*** The NLRC found his illness to be compensable for permanent and total disability because it found that ***his dietary provisions while at sea increased his risk of contracting colon cancer because of lack of choice of what to eat on board except those provided on the vessels and those consisted mainly of high-fat, high-cholesterol, and low-fiber foods.***[25]

Notably, even Dr. Go, the company-designated doctor, while declaring that *rectosigmoid adenocarcinoma* is not work-related,

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[24] *Leonis Navigation Co., Inc., et al. v. Heirs of the Late Catalino V. Villamater, et al., supra* note 23, at 97-98. (Citations omitted)

[25] *Rollo,* p. 19. (Emphasis supplied)

she, however, admitted that *rectosigmoid adenocarcinoma's* risk factors include age, diet rich in saturated fat, fatty acid and linoleic acid, and genetic predisposition.[26]

As above-stated, both the NLRC and the CA found Lagne's rectal illness to be compensable for permanent and total disability, because they found that his dietary provisions while at sea increased his risk of contracting colon cancer because he had no choice of what to eat on board. Suffice it to say, the strenuous nature of Lagne's job, combined with his poor diet which consists of mostly carbohydrates and meat, usually with saturated fat, his advanced age as he was 55 at the time of hiring, we find it reasonable to conclude that Lagne acquired or developed his illness during the term of his contract. There is a probability that Lagne's work as an oiler caused or contributed even to a small degree to the development or aggravation of his rectal illness.

We, thus, stress that in determining the compensability of an illness, we do not require that the employment be the sole factor in the growth, development, or acceleration of a claimants' illness to entitle him to the benefits provided for. It is enough that his employment contributed, even if only in a small degree, to the development of the disease.[27]

Even assuming that the ailment of the worker was contracted prior to his employment, this still would not deprive him of compensation benefits. For what matters is that his work had contributed, even in a small degree, to the development of the disease. Neither is it necessary, in order to recover compensation, that the employee must have been in perfect health at the time he contracted the disease. A worker brings with him possible infirmities in the course of his employment, and while the

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[26] *Id.* at 241.

[27] *C.F. Sharp Crew Management, Inc. v. Legal Heirs of the Late Godofredo Repiso,* 780 Phil. 645, 671 (2016).

employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability.[28]

As to the second element, we find the same to be likewise present in this case. It is undisputed that Lagne boarded the vessel on September 25, 2009. He began experiencing pain in his anus sometime in January 2010. Later, on May 12, 2010, he was in fact brought to a clinic in France where he was attended by a certain Dr. Bourgois after he complained to his superior about his condition. It was also during said time when he was first diagnosed to have a rectal mass and was recommended for medical repatriation on May 17, 2010. Clearly, from the foregoing, it can be assumed Lagne's illness started to exist or developed during his nine-month employment contract.

We also affirm the award of sickness allowance in favor of Lagne, since there is no evidence on record that the same had been duly paid by the petitioners. They have likewise not disputed that Lagne was repatriated for medical reasons, thus, petitioner's liability subsists, pursuant to Section 20 (B) (3) of the POEA-SEC which provides that:

> 3. Upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall the period exceed one hundred twenty (120) days.

With respect to attorney's fees, it is clear that Lagne was compelled to litigate due to petitioners' failure to satisfy his valid claim. Where an employee is forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees equivalent to ten percent (10%) of the total award at the time of actual payment.[29]

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[28] *Seagull Shipmanagement and Transport, Inc., et al. v. NLRC, et al.* 388 Phil. 906, 914 (2000).

[29] *Maersk Filipinas Crewing Inc., et al. v. Mesina,* 710 Phil. 531, 538 (2013); *Valenzona v. Fair Shipping Corporation, et al.,* 675 Phil. 713, 731 (2011); *Quitoriano v. Jebsens Maritime, Inc., et al.,* 624 Phil. 523, 532 (2010); *Crystal Shipping, Inc. v. Natividad,* 510 Phil. 332, 340 (2005).

Finally, consistent with the State's avowed policy to afford full protection to labor as enshrined in Article XIII of the 1987 Philippine Constitution, the POEA-SEC was designed primarily for the protection and benefit of Filipino seafarers in the pursuit of their employment on board ocean-going vessels. As such, it is a standing principle that its provisions are to be construed and applied fairly, reasonably, and liberally in their favor.[30]

WHEREFORE, the petition is **DENIED.** The assailed Decision dated April 30, 2014 and the Resolution dated February 23, 2015 of the Court of Appeals in CA-G.R. SP No. 123897 are **AFFIRMED.** Costs against petitioners.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 223681. August 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJAMIN SALAVER *y* LUZON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; ELEMENTS. Rape is qualified when "the victim is under eighteen (18) years of age and the offender is a parent,

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[30] *Racelis v. United Philippine Lines, Inc., et al.,* 746 Phil. 758, 772 (2014).

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

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." The elements of qualified rape are: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [eighteen] years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim."

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.** The Court gives great weight to the findings of the lower courts on the credibility of "AAA". "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." x x x "AAA's" recount of her horrific experience at the hands of her father was clear and straightforward.

3. **ID.; ID.; DEFENSES OF IMPROPER MOTIVE AND DENIAL; CANNOT PREVAIL OVER THE VICTIM S POSITIVE AND CATEGORICAL TESTIMONY.** Appellant's defenses of improper motive and denial, which deserves no weight in law, cannot prevail over "AAA's" positive and categorical testimony. The Court has ruled that "a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction." This legal dictum especially applies in cases where the assailant was her father.

4. **ID.; ID.; CREDIBILITY OF WITNESSES; INCONSISTENCIES ON MINOR DETAILS ARE BADGES OF TRUTH, CANDIDNESS, AND THE FACT THAT THE WITNESS IS UNREHEARSED.** The inconsistency alluded to in "AAA's" testimony, with respect to whether or not she immediately reported the first rape incident to her mother, was trivial and should be liberally construed considering that it was not an essential element of the crime of rape. "What is decisive is that [appellant's] commission of the crime charged has been sufficiently proved." "Such inconsistencies on minor details

are in fact badges of truth, candidness, and the fact that the witness is unrehearsed."

5. ID.; ID.; ID.; PEOPLE REACT TO SIMILAR SITUATIONS DIFFERENTLY, AND THERE IS NO STANDARD FORM OF HUMAN BEHAVIORAL RESPONSE WHEN ONE IS CONFRONTED WITH A STARTLING OR FRIGHTFUL EXPERIENCE. Appellant points out that "AAA's" actions after the rape incidents, such as her lack of fear and disgust towards him by continuing to stay in his house, as well as the delay in reporting the alleged rape, raised doubts as to the truth of her allegations. This assertion is unfounded. x x x [I]t was not inconceivable that "AAA" resumed with her usual routine of going to school and returning back to the house of appellant despite the sexual molestations. "AAA's" actions were not unusual for victims who are minors. "Behavioral psychology teaches us that, even among adults, people react to similar situations differently, and there is no standard form of human behavioral response when one is confronted with a startling or frightful experience." Moreover, the failure or delay in the reporting of rape incidents cannot be taken against rape victims as they are oftentimes overwhelmed with fear. This Court has recognized the moral ascendancy and influence the father has over his child. "[T]here can be no greater source of fear or intimidation than your own father, [the] one, who, generally, has exercised authority over your person since birth."

6. CRIMINAL LAW; REVISED PENAL CODE; RAPE; LACERATIONS, WHETHER HEALED OR FRESH, ARE THE BEST PHYSICAL EVIDENCE OF FORCIBLE DEFLORATION. Appellant x x x maintains that Dr. Legaspi's medical finding that there were no evident signs of external injuries lends credence to his claim that no rape incident took place as it negates evidence of physical force. The contention, however, fails to persuade. "[W]e have ruled that it is not indispensable that marks of external bodily injuries should appear on [rape victims]." Nonetheless, the completely healed lacerations at 1, 4, 6, 9 and 11 o'clock positions on "AAA's" hymen, as testified by Dr. Legaspi, corroborated the findings of rape. "[L]acerations, whether healed or fresh, are the best physical evidence of forcible defloration.

7. ID.; ID.; QUALIFIED RAPE; VIOLENCE OR INTIMIDATION; IN CASES OF QUALIFIED RAPE,

MORAL ASCENDANCY OR INFLUENCE SUPPLANTS THE ELEMENT OF VIOLENCE OR INTIMIDATION. Appellant then suggests that "AAA's" lack of strong resistance to the advances of her assailant rendered the charge of rape doubtful. Suffice it to say that this assertion does not affect the merits of the charge against him because resistance is not an element of rape. Nevertheless, in "AAA's" testimony before the trial court, she recalled and explained her failure to resist her father's sexual advances x x x. The Court has held that "[t]he failure to physically resist the attack, x x x, does not detract from the established fact that a reprehensible act was done to a child[-]woman by no less than a member of her family. In cases of qualified rape, moral ascendancy or influence supplants the element of violence or intimidation. Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear."

8. ID.; ID.; ID.; PENALTY IN CASE AT BAR. Under Article 266-B of the Revised Penal Code, the proper penalty for qualified rape is death, which, however, cannot be imposed in view of Republic Act No. 9346. Hence, the Court finds proper the penalty imposed upon appellant by the trial court and affirmed by the CA, which is *reclusion perpetua* without eligibility of parole in each of the three counts of qualified rape.

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 May 19, 2014 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05478 affirming the

[1] CA *rollo*, pp. 114-128; penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Rodil V. Zalameda and Maria Elisa Sempio Diy.

August 24, 2011 Joint Decision[2] of the Regional Trial Court (RTC), Branch 40, Calapan City, Oriental Mindoro, finding Benjamin Salaver *y* Luzon (appellant) guilty of three counts of qualified rape.

Factual Antecedents

Appellant was charged with the crime of rape in three separate Informations which read:

In Criminal Case No. CR-06-8596:

That on or about the 19th day of July 2006, at around 5:00 o'clock in the afternoon, x x x City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously [have] carnal knowledge of one [AAA],[3] his fifteen (15)[4] year old daughter and therefore a relative within [the] 3rd civil degree by consanguinity, and living with him in the same house, against her will and without her consent, acts which debase, degrade and demean the intrinsic worth and dignity of the said [AAA], to her damage and prejudice.

CONTRARY TO LAW.[5]

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[2] Records, Criminal Case No. CR-06-8596, pp. 144-153; penned by Judge Tomas C. Leynes.

[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).

[4] "AAA" is sixteen (16) years of age at the time of alleged rape incidents as she was born on May 7, 1990 as per her Certificate of Live Birth (Records, Criminal Case No. CR-06-8596, p. 28).

[5] Records, Criminal Case No. CR-06-8596, pp. 1-2.

In Criminal Case No. CR-06-8597:

That on or about the 23rd day of August 2006, at around 5:00 o'clock in the afternoon, x x x City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously [have] carnal knowledge of one [AAA], his fifteen (15) year old daughter and therefore a relative within [the] 3rd civil degree by consanguinity, and living with him in the same house, against her will and without her consent, acts which debase, degrade and demean the intrinsic worth and dignity of the said [AAA], to her damage and prejudice.

CONTRARY TO LAW.[6]

In Criminal Case No. CR-06-8598:

That on or about the 8th day of September 2006, at around 7:00 o'clock in the morning, x x x City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously [have] carnal knowledge of one [AAA], his fifteen (15) year old daughter and therefore a relative within [the] 3rd civil degree by consanguinity, and living with him in the same house, against her will and without her consent, acts which debase, degrade and demean the intrinsic worth and dignity of the said [AAA], to her damage and prejudice.

CONTRARY TO LAW.[7]

The three cases were tried and heard jointly. During arraignment, appellant entered a plea of not guilty. Trial on the merits ensued.

The prosecution's evidence consisted of the testimonies of "AAA", Dr. Angelita C. Legaspi (Dr. Legaspi), and "AAA's" younger brother, "BBB".

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[6] Records, Criminal Case No. CR-06-8597, pp. 1-2.

[7] Records, Criminal Case No. CR-06-8598, pp. 1-2.

The trial court summarized the narration of "AAA", as follows:

[AAA], x x x born on 07 May 1990 (Exh. F) to the spouses [appellant] Benjamin Salaver and [DDD,[8]] testified x x x that: at around 5:00 o'clock in the afternoon of 19 July 2006, she and [appellant] were then inside their house x x x [in] Calapan City when the latter x x x pulled her towards his bedroom; x x x then, [appellant] told her to remove her shorts but she refused; [appellant] got angry and removed her shorts and panty after which, he laid her on the bed; then, [appellant] removed his shorts enabling her to see his erect sex organ; after instructing her to spread her legs, [appellant] inserted his sex organ into her private organ causing her to feel pain; while [appellant] was holding her hands and making an up and down motion, she struggled and pleaded to him but her pleas fell on deaf ears; she was not able to shout anymore because [appellant] warned her that he would do something bad if she did; when the incident happened, her younger brother x x x [and] eldest brother [were] not in their house; on the other hand, her mother, who was a house help, was staying in the house of [her] employer; after the incident, she left their house and spent the night with her mother x x x she informed her older brother about the incident but the latter ignored her; when she informed her mother about the incident, the latter told her not to sleep in their house anymore; that at around 5:00 o'clock in the afternoon of 23 August 2006, she and [appellant] were inside their house while her younger brother was playing outside their house; [appellant] told her to go inside his room x x x once inside [appellant's] bedroom, he told her to lie down on the bed and she complied; then, [appellant] told her to remove her clothes but she refused[,] so [appellant] removed her shorts and panty; just like what he did during the first rape incident, [appellant] inserted his sex organ into her private organ and made an up and down movement of his body; she tried to resist but she was unsuccessful; when she informed her older brother about the second rape incident, her brother [was] shocked; she also informed her mother about the incident and her mother asked her why she still went back to their house;although her mother already told her not to sleep in their house anymore after the first rape incident, she still went back to their house after school because she intended to get something in their house; she did not expect that [appellant] would rape her for the second time; that at around 7:00 o'clock in

[8] Mother of AAA.

the morning of 08 September 2006, she went to their house and while she was washing the dishes, [appellant] suddenly held her hand and pulled her inside his room; at the time, her younger brother was sent by [appellant] on an errand; then, [appellant] told her to remove her shorts but she refused; as [appellant] was trying to remove her panty, she tried to push him away but she was unsuccessful; then, [appellant] made her lie down on the bed and held her hands while inserting his sex organ into her private organ causing her to feel pain; once again, [appellant] made an up and down movement with his body; she struggled against [appellant] and pleaded, "*Huwag po*" but her efforts were in vain; she was not also able to shout because [appellant] threatened to kill all of them if she did; accompanied by her mother and a barangay tanod, she submitted herself to medical examination on 08 September 2006; she was investigated at the PNP Provincial Headquarters in [B]arangay Suqui, Calapan City. She affirmed the truthfulness and correctness of the contents of her affidavit (Exh. A).

On cross-examination, she testified that she did not inform her mother about the first rape incident but on 12 September 2006, she informed her mother about the second rape incident that happened on 23 August 2006; her mother left their house in August 2006 because [appellant] was inflicting physical harm on her mother. She maintained that [appellant] was able to insert his sex organ into her private organ during the three rapes committed by [appellant] on her.[9]

Dr. Legaspi was the Rural Health Physician of the Calapan City Health and Sanitation Department. She testified that she examined "AAA" on September 8, 2006 and that she found no external injuries on the body of AAA; however, she confirmed that "AAA" sustained "old healed complete hymenal lacerations at 1, 4, 6, 9 and 11 o'clock positions, [with] no hymenal nor vaginal bleeding at the time of examination."[10] Dr. Legaspi testified that these lacerations could have been caused by the insertion of a male sex organ into "AAA's" private organ and

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[9] Records, Criminal Case No. CR-06-8596, pp. 146-148.

[10] See Dr. Legaspi's Medical Certificate dated September 8, 2006, *id*. at 10.

that it was possible that "AAA" had been sexually molested about three or more times.[11]

"BBB", "AAA's" younger brother, also testified. He confirmed the truthfulness of the contents of the affidavit he voluntarily executed in relation to the incident that happened on September 8, 2006.[12] In this affidavit,[13] "BBB" narrated that at around 7:00 a.m. of September 8, 2006, appellant asked him to buy a can of sardines at a nearby store; that when he returned to their house, he saw appellant half- naked while lying on top of "AAA". Frightened, he went to the house of "EEE", their uncle on the maternal side, and reported the incident. "BBB" likewise testified that he was not compelled by the prosecution to testify against his father; he disclosed, however, that he went to court because he wanted to request the dismissal of the case against his father as per his agreement with "AAA".[14] On cross-examination, "BBB" admitted that he was compelled to attend the case hearings by his mother's live-in partner as he was afraid of him.[15]

On the other hand, the defense presented appellant as its lone witness. Appellant denied the accusations against him and claimed that they were fabricated by his brother-in-law, "EEE", who harbored a grudge against him.[16] According to appellant, he was being suspected by "EEE" of having a relationship wi1h the latter's wife.[17] When asked about the sworn statement of "BBB", appellant countered that what "BBB" actually saw was him putting on his work clothes.[18]

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[11] TSN, May 26, 2010, pp. 10-11.

[12] TSN, October 13, 2010, pp. 12-14.

[13] Records, Criminal Case No. CR-06-8596, p. 5.

[14] TSN, October 13, 2010, pp. 17-19.

[15] *Id*. at 25-27.

[16] TSN, May 23, 2011, p. 5.

[17] *Id*. at 5-6.

[18] *Id*.

Ruling of the Regional Trial Court

On August 24, 2011, the RTC rendered a Joint Decision[19] finding appellant guilty beyond reasonable doubt of three (3) counts of qualified rape. It held that appellant's bare denial and imputation of ill motives on "EEE" were insufficient to rebut the evidence of the prosecution. It further held that "AAA's" categorical and positive identification of appellant as her rapist prevailed over his denial.

The trial court, thus, ruled:

> In sum, after a judicious evaluation of the totality of evidence adduced by both the prosecution and the defense, this Court finds nothing which would destroy the moral certainty of the accused's guilt.
>
> In the case at bar, the accused [was] being charged of the crime of qualified rape considering that at the time the rape incidents took place, the private complainant was only fifteen (15) years of age and x x x the daughter of the accused. Records x x x clearly [showed] that both the private complainant's minority and her relationship with the accused as her father [were] both alleged in the informations and were proven beyond reasonable doubt by the prosecution during the trial. The prosecution was able to prove that the private complainant [AAA] was only fifteen (15) years old at the time the incidents of rape took place by presenting the private complainant's Certificate of Live Birth (Exhibits F, F-1 to F-4), issued by the Local Civil Registrar x x x wherein x x x it [was stated] that her father [was] the accused Benjamin Salaver y Luzon (Exhibit F-3).

The RTC disposed of the case, as follows:

> ACCORDINGLY, finding herein accused Benjamin Salaver y Luzon x x x guilty beyond reasonable doubt of three (3) counts of rape, said accused is hereby sentenced to suffer the THREE (3) penalties of RECLUSION PERPETUA without eligibility for parole and with all the accessory penalties as provided for by law. The accused is hereby directed to indemnify the private complainant civil indemnity ex-delicto in the amount of Seventy-Five Thousand Pesos

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[19] Records, Criminal Case No. CR-06-8596, pp. 144-153.

(Php75,000.00) for each case x x x; moral damages in the amount of Seventy-Five Thousand Pesos (Php75,000.00) for each case x x x and exemplary damages of Twenty-Five Thousand Pesos (Php25,000.00) for each case x x x.

SO ORDERED.[20]

Ruling of the Court of Appeals

In his Brief,[21] appellant argued that the trial court failed to correctly appreciate "AAA's" as well as her witnesses' testimony. First, despite her claim of having been thrice raped, "AAA" appeared to have no apparent fear or disgust against appellant as she continued to stay at the same house with him, always obliged when invited to go inside his room, and even agreed with "BBB" to have the case dismissed. These acts, according to appellant, were contrary to human nature and experience. Second, "AAA's" testimony suffered from inconsistency in that on direct examination, she said that she told her mother about the first rape incident, but on cross-examination, she testified that she did not immediately report the incident to anyone. Third, the medical examination showed no signs of employment of force nor any physical injuries. Fourth, "AAA's" conduct after the alleged sexual assaults raised suspicion as to the truthfulness of the rape charges since she continued with her usual routine and did not report the matter to the authorities. Fifth, the testimonies of "AAA" and "BBB" indicated that the rape charges were filed through "EEE's" manipulation coupled with the dislike of the mother of "AAA" towards appellant. Lastly, there was an apparent lack of resistance or struggle to the assaults.

After review, the CA denied the appeal and found "AAA's" testimony clear, straightforward, and worthy of belief, and the alleged inconsistencies trivial. As to the other arguments raised by appellant, the CA noted that:

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[20] *Id.* at 152-153.

[21] CA *rollo*, pp. 30-56.

Appellant's assertion that AAA – (a) continued to live with him in their house after the alleged first rape incident; (b) did not immediately report the rape to authorities; and [c] did not have any fresh hymenal lacerations and bruises on her body, give rise to doubt as to the veracity of the rape, deserves scant consideration. First, where did appellant expect AAA to go[?] She was a minor, only fifteen (15) years of age, when appellant raped her. Second, [it was] not uncommon for a rape victim to initially conceal the assault against her person for several reasons, including that of fear of threats posed by her assailant, specially when the assailant [was] her father. Third, well-settled is the rule that in rape cases, the absence of fresh lacerations in complainant's hymen does not prove that she was not raped. A freshly broken hymen is not an essential element of rape. Healed lacerations do not negate rape. Lastly, settled is the rule that in incestuous rape, the father's moral ascendancy and influence over his daughter substitutes for violence and intimidation. x x x[22]

The CA disposed of appellant's appeal, as follows:

All told, appellant's denial and alibi cannot prevail over the positive testimony of AAA.

WHEREFORE, the Decision dated August 24, 2011 is AFFIRMED *in toto*.

SO ORDERED.[23]

Appellant, thus, filed a Notice of Appeal.[24] On July 11, 2016, the Court required the parties to submit their respective supplemental briefs.[25] However, in separate Manifestations,[26] both parties opted not to file the same.

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[22] *Id.* at 126-127.

[23] *Id.* at 127.

[24] *Rollo*, pp. 17-19.

[25] *Id.* at 22.

[26] *Id.* at 26-31 and 32-36.

Our Ruling

After careful review of the records of the case, we find the appeal to be devoid of merit.

Article 266-A, paragraph (1) of the Revised Penal Code reads, as follows:

> Article 266-A. Rape: When And How Committed. - Rape is committed:
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or is otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.[27]

Rape is qualified 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."[28] The elements of qualified rape are: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [eighteen] years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim."[29]

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[27] REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

[28] REVISED PENAL CODE, Article 266-B, as amended by Republic Act No. 8353 (1997).

[29] *People v. Colentava*, 753 Phil. 361, 372-373 (2015).

The prosecution satisfactorily established the elements of qualified rape. The Court, thus, finds no reason to reverse the CA in affirming the ruling of the RTC finding appellant guilty of three counts of qualified rape. "AAA's" testimony was a candid narration of her ordeal in the hands of appellant. Moreover, it was established by the evidence on record, specifically "AAA's" Birth Certificate, that "AAA" was a minor at the time she was raped by her father-assailant.

The Court gives great weight to the findings of the lower courts on the credibility of "AAA". "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."[30] As correctly held by the CA, "AAA's" recount of her horrific experience at the hands of her father was clear and straightforward. Appellant's defenses of improper motive and denial, which deserves no weight in law, cannot prevail over "AAA's" positive and categorical testimony.[31] The Court has ruled that "a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction."[32] This legal dictum especially applies in cases where the assailant was her father.[33]

The inconsistency alluded to in "AAA's" testimony, with respect to whether or not she immediately reported the first rape incident to her mother, was trivial and should be liberally construed considering that it was not an essential element of the crime of rape. "What is decisive is that [appellant's]

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[30] *People v. Vergara*, 724 Phil. 702, 709 (2014).

[31] *People v. Colentava*, *supra* note 29 at 377.

[32] *People v. Dalipe*, 633 Phil. 428, 448 (2010).

[33] *People v. Melivo*, 323 Phil. 412, 427-428 (1996).

commission of the crime charged has been sufficiently proved."[34] "Such inconsistencies on minor details are in fact badges of truth, candidness, and the fact that the witness is unrehearsed."[35]

Appellant points out that "AAA's" actions after the rape incidents, such as her lack of fear and disgust towards him by continuing to stay in his house, as well as the delay in reporting the alleged rape, raised doubts as to the truth of her allegations. This assertion is unfounded. "AAA" explained that after the first rape incident, she never slept again in her father's house as advised by her mother, but only came back to get something from the house after her classes in school.[36] Further, she testified that right after the rape, she immediately conveyed the incident to her brother and mother.[37] At any rate, it was not inconceivable that "AAA" resumed with her usual routine of going to school and returning back to the house of appellant despite the sexual molestations. "AAA's" actions were not unusual for victims who are minors. "Behavioral psychology teaches us that, even among adults, people react to similar situations differently, and there is no standard form of human behavioral response when one is confronted with a startling or frightful experience."[38] Moreover, the failure or delay in the reporting of rape incidents cannot be taken against rape victims as they are oftentimes overwhelmed with fear. This Court has recognized the moral ascendancy and influence the father has over his child.[39] "[T]here can be no greater source of fear or intimidation than your own father, [the] one, who, generally, has exercised authority over your person since birth."[40]

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[34] *People v. Lagbo*, 780 Phil. 834, 844 (2016).

[35] *People v. Descartin*, G.R. No. 215195, June 7, 2017, 826 SCRA 650, 663.

[36] TSN, August 15, 2007, pp. 28-30.

[37] *Id.* at 23.

[38] *People v. Francisco*, 406 Phil. 947, 959 (2001).

[39] *People v. Buclao*, 736 Phil. 325, 338 (2014).

[40] *Id.*

Appellant further maintains that Dr. Legaspi's medical finding that there were no evident signs of external injuries lends credence to his claim that no rape incident took place as it negates evidence of physical force. The contention, however, fails to persuade. "[W]e have ruled that it is not indispensable that marks of external bodily injuries should appear on [rape victims]."[41] Nonetheless, the completely healed lacerations at 1, 4, 6, 9 and 11 o'clock positions on "AAA's" hymen, as testified by Dr. Legaspi, corroborated the findings of rape. "[L]acerations, whether healed or fresh, are the best physical evidence of forcible defloration."[42]

Appellant then suggests that "AAA's" lack of strong resistance to the advances of her assailant rendered the charge of rape doubtful. Suffice it to say that this assertion does not affect the merits of the charge against him because resistance is not an element of rape.[43] Nevertheless, in "AAA's "testimony before the trial court, she recalled and explained her failure to resist her father's sexual advances, to wit:

Pros. Lalia:

Q And at the time that your father inserted his penis inside your private part, x x x [w]hat kind of movement [did] your father [make]?

A While holding my hands, my father made an up and down bodily motion, sir.

Q And at the time that your father was making the up and down bodily motion while holding x x x your hands, did you have the opportunity to at least shout or [manifest] that you did not like what he was doing?

A I struggled and begged my father not to do that to me, sir.

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[41] *People v. Bayona*, 383 Phil. 943, 956 (2000).

[42] *People v. Galvez*, 656 Phil. 487, 500-501; citing *People v. Cuadro*, 405 Phil. 173 (2001).

[43] *People v. Baldo*, 599 Phil. 382, 389 (2009).

Q You want to tell us that it was only physical struggle that you did?
A Because he warned me that he would do something bad if ever I shout, sir.[44]

x x x x x x x x x

Court:
Q During the third time that you were raped by your father, did you shout?
A I did not because he was threatening me, Your Honor.

Q What was the threat [of] your father x x x?
A That he would kill us, Your Honor.[45]

The Court has held that "[t]he failure to physically resist the attack, x x x, does not detract from the established fact that a reprehensible act was done to a child[-]woman by no less than a member of her family. In cases of qualified rape, moral ascendancy or influence supplants the element of violence or intimidation. Physical resistance need not be established when intimidation is brought to bear on the victim and the latter submits herself out of fear."[46]

Appellant further attempts to discredit the testimony of "AAA" claiming that the filing of the charges was ill-motivated and was impelled by the manipulation of "AAA's" uncle, "EEE", coupled with dislike for him due to his treatment towards "AAA's" mother. We are not persuaded. "[W]e have reiterated time and time again that it is most unlikely for a young girl x x x, or even her family, to impute the crime of rape to no less than relatives and to face social humiliation, if not to vindicate her honor."[47]

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[44] TSN, August 15, 2007, pp. 21-22.

[45] *Id.* at 35-36.

[46] *People v. Palanay*, G.R. No. 224583, February 1, 2017, 816 SCRA 493, 505.

[47] *People v. Mendoza*, 441 Phil. 193, 206 (2002).

All told, we therefore affirm the conviction of appellant for three counts of qualified rape. Under Article 266-B of the Revised Penal Code, the proper penalty for qualified rape is death, which, however, cannot be imposed in view of Republic Act No. 9346.[48] Hence, the Court finds proper the penalty imposed upon appellant by the trial court and affirmed by the CA, which is *reclusion perpetua* without eligibility of parole in each of the three counts of qualified rape. However, there is a need to modify the amounts of damages awarded. Pursuant to *People v. Jugueta*,[49] we hold that "AAA" is entitled to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages, for each of the three counts of qualified rape. In addition, interest at the rate of 6% *per annum* is imposed on all damages awarded from the date of the finality of this Decision until fully paid.[50]

WHEREFORE, the appeal is **DISMISSED**. The assailed May 19, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05478 is **AFFIRMED with MODIFICATION** that the awards of civil indemnity, moral damages, and exemplary damages are hereby increased to ₱100,000.00 each, for each of the three counts of qualified rape and all damages awarded shall earn interest at the rate of 6% *per annum* from finality of this Decision until fully paid.

SO ORDERED.

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

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[48] An Act Prohibiting the Imposition of the Death Penalty in the Philippines.

[49] 783 Phil. 806, 848 (2016).

[50] *Nacar v. Gallery Frames*, 716 Phil. 267, 282 (2013).

[*] Designated as Acting Chairperson per Special Order No. 2582 (Revised) dated August 8, 2018.

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

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

SECOND DIVISION

[G.R. No. 225783. August 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHRISTOPHER BAPTISTA *y* VILLA**, *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.—** [A]n appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. **CRIMINAL LAW; DANGEROUS DRUGS ACT (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; IDENTITY OF THE DANGEROUS DRUG MUST BE SUFFICIENTLY ESTABLISHED.—** In this case, Baptista was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In every prosecution for Illegal Sale of Dangerous Drugs, it is essential that the following elements are proven with moral certainty: *(a)* the identity of the buyer and the seller, the object, and the consideration; and *(b)* the delivery of the thing sold and the payment. Case law states that it is equally essential that the identity of the prohibited drug be established beyond reasonable doubt, considering that the prohibited drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drug so as to obviate any unnecessary doubts on the identity of the dangerous drug on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment the illegal drugs are seized up to their presentation in court as evidence of the crime.

3. ID.; ID.; CHAIN OF CUSTODY; PROCEDURE TO BE FOLLOWED UNDER SECTION 21, ARTICLE II; RULE IN CASE OF NON-COMPLIANCE.— Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police Crime Laboratory within twenty-four (24) hours from confiscation for examination. x x x The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible. x x x [Thus,] **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.** x x x In *People v. Almorfe,* **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.** Also, *in People v. De Guzman,* it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.** x x x The absence of the required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** must therefore be adduced.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.

Agbayani Augustin Leonador & Vallestero Law Offices for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Christopher Baptista *y* Villa (Baptista) assailing the Decision[2] dated September 11, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06275, which affirmed *in toto* the Decision[3] dated June 11, 2013 of the Regional Trial Court of Laoag City, Branch 13 (RTC) in Crim. Case No. 14935-13 finding him guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC, charging Baptista with the crime of Illegal Sale of Dangerous Drugs, the accusatory portion of which states:

> That on or about 7:30 o'clock in the evening of October 3, 2011 at Brgy. 3, [M]unicipality of San Nicolas, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, feloniously and knowingly sell one (1) [heat-sealed] transparent plastic sachet containing methamphetamine hydrochloride, commonly known as "*shabu*," a dangerous drug, weighing 0.0389 gram, worth Five Hundred Pesos (Php500.00) to poseur-buyer, IO1 DEXTER D.

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[1] See Notice of Appeal dated October 15, 2015; *rollo*, 17-19.

[2] *Id*. at 2-16. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring.

[3] CA *rollo*, pp. 34-47. Penned by Presiding Judge Philip G. Salvador.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Dated October 4, 2011. Records, pp. 1-2.

REGASPI, without the necessary license or authority from the appropriate government agency or authority to do so.

CONTRARY TO LAW.[6]

The prosecution alleged that at around five (5) o'clock in the afternoon of October 3, 2011, a confidential informant (CI) told Intelligence Officer 1 (IO1) Dexter D. Regaspi (IO1 Regaspi) that a certain Christopher Baptista alias "Toti" was selling *shabu* at Brgy. 8, San Nicolas, Ilocos Norte and other nearby barangays. The CI and IO1 Regaspi then arranged a meet-up with Baptista who, however, could not sell them *shabu* worth ₱500.00 at the time because he had no available stock. As such, IO1 Regaspi and the CI returned to the office where they planned a buy-bust operation.[7] At around seven (7) o'clock in the evening, the buy-bust team went to the transaction area. IO1 Regaspi gave the marked money to Baptista, who, in turn, handed over one (1) heat-sealed plastic sachet. After examining the same, IO1 Regaspi executed the pre-arranged signal by removing his ball cap and immediately declared his authority as a Philippine Drug Enforcement Agency (PDEA) agent, while Police Officer 3 Joey P. Aninag (PO3 Aninag) and the rest of the buy-bust team rushed to the scene.[8] IO1 Regaspi then marked the plastic sachet with his initials "DDR," but since it was about to rain, the requisite inventory could not be conducted. Thus, the team went back to the PDEA Office wherein IO1 Regaspi prepared the inventory[9] of the seized items in the presence only of a media representative, while IO1 Ranel Cañero took photographs[10] of the same.[11] After the requests

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[6] *Id.* at 1.

[7] See Brief for the Appellee dated June 30, 2014; CA *rollo*, pp. 123-124.

[8] *Id.* at 124-125.

[9] See Certificate of Inventory dated October 3, 2011; records, p. 23.

[10] *Id.* at 26.

[11] CA *rollo*, p. 125.

for laboratory[12] and medical examinations[13] were made, the apprehending officers proceeded to the Ilocos Norte Police Provincial Crime Laboratory Office, where they were informed that there was no chemist available.[14] Eventually, at around 4:30 in the morning of the following day, they proceeded to the PDEA Regional Office 1 Regional Laboratory in San Fernando, La Union where the seized item tested positive for the presence of methamphetamine hydrochloride, or *shabu*, a dangerous drug.[15]

In his defense, Baptista denied the charges against him.[16] He claimed that in the evening of October 3, 2011, he was on his way to the *tiangge* located in front of a church to drink with a friend. Before reaching the *tiangge*, however, some unknown men grabbed and handcuffed him and shortly after, he and his friend were brought to an office where he was accused by the PDEA agents of selling *shabu*. Later, at around two (2) o'clock in the morning of the following day, the PDEA agents took him to the municipal hall.[17]

The RTC Ruling

In a Decision[18] dated June 11, 2013, the RTC found Baptista guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount

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[12] Records, p. 24. Signed by Ilocos Norte SET Team Leader IAV (not defined in the records) Melvin S. Estoque.

[13] Records, p. 22.

[14] CA *rollo*, p. 125.

[15] See Chemistry Report No. PDEARO1-DD011-0036 dated October 4, 2011; records, p. 25.

[16] See Brief of the Accused-Appellant dated February 11, 2014; CA *rollo*, pp. 85-96.

[17] See CA *rollo*, pp. 89-90. See also *rollo*, p. 5.

[18] CA *rollo*, pp. 34-47.

of ₱500,000.00.[19] It ruled that the prosecution proved all the elements of the crime charged, as it was established that Baptista sold the seized drug to IO1 Regaspi in exchange for the ₱500.00 marked money recovered from him.[20] On the other hand, it held that his unsubstantiated defense of denial could not prevail over the credible testimonies of the prosecution witnesses who positively identified him as the seller of the said drug.[21]

Moreover, the RTC found that the buy-bust team complied with the procedural requirements under Section 21, Article II of RA 9165.[22] It ruled that the conduct of inventory and photography in the PDEA Office was valid, even if the same were made without the presence of a barangay official and a representative from the Department of Justice (DOJ), since the same provision principally requires the presence of the accused during the inventory, which was complied with.[23]

Aggrieved, Baptista appealed[24] to the CA.

The CA Ruling

In a Decision[25] dated September 11, 2015, the CA affirmed *in toto* the ruling of the RTC.[26] Among others, it ruled that the apprehending officers' non-compliance with the requirements under Section 21, Article II of RA 9165 was amply justified, considering that the integrity and evidentiary value of the seized drug were properly preserved.[27]

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[19] *Id*. at 47.

[20] See *id*. at 41-42.

[21] See *id*. at 43-44.

[22] See *id*. at 46.

[23] *Id*.

[24] See Notice of Appeal dated June 26, 2013; *id*. at 53-54.

[25] *Rollo*, pp. 2-16.

[26] *Id*. at 15.

[27] See *id*. at 11-13.

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Baptista's conviction for the crime of Illegal Sale of Dangerous Drugs should be upheld.

The Court's Ruling

The appeal is meritorious.

Preliminarily, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[28] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine the records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[29]

In this case, Baptista was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In every prosecution for Illegal Sale of Dangerous Drugs, it is essential that the following elements are proven with moral certainty: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[30] Case law states that it is equally essential that the identity of the prohibited drug be established beyond reasonable doubt, considering that the prohibited drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drug so as to obviate any unnecessary doubts on the identity of the dangerous drug on

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[28] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[29] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[30] *People v. Sumili*, 753 Phil. 342, 348 (2015).

account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment the illegal drugs are seized up to their presentation in court as evidence of the crime.[31]

In this regard, Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[32] Under the said section, prior to its amendment by RA 10640,[33] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police Crime Laboratory within twenty-four (24) hours from confiscation for examination.[34] In the case of *People v. Mendoza*,[35] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting,' or contamination of the evidence** that had tainted

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[31] See *People v. Manansala*, G.R. No. 229029, February 21, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014). See also *People v. Alivio*, 664 Phil. 565, 576-580 (2011) and *People v. Denoman*, 612 Phil. 1165, 1175 (2009).

[32] See *People v. Sumili*, *supra* note 30, at 349-350.

[33] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[34] See Section 21 (1) and (2), Article II of RA 9165.

[35] 736 Phil. 749 (2014).

the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[36]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.[37] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[38] – provide that **the said inventory and**

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[36] *Id*. at 764; emphases and underscoring supplied.

[37] See *People v. Sanchez*, 590 Phil. 214, 234 (2008).

[38] Section 1 of RA 10640 states:

Section 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment so confiscated, seized and/ or surrendered, for proper disposition in the following manner:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/ or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant

photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team**.[39] Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[40] In *People v. Almorfe*,[41] **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**[42] Also, *in People v. De Guzman*,[43] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because**

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is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided*, *finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x"

[39] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[40] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[41] 631 Phil. 51 (2010).

[42] *Id*. at 60.

[43] 630 Phil. 637 (2010).

the Court cannot presume what these grounds are or that they even exist.[44]

After a judicious study of the case, the Court finds that the apprehending officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the items purportedly seized from Baptista.

Records disclose that while the inventory and photography of the seized plastic sachet were conducted in the presence of Baptista and a representative from the media, the same were not done in the presence of an elected public official and a representative from the DOJ as required by the rules prevailing at that time (*i.e.*, Section 21, Article II of RA 9165, prior to its amendment by RA 10640). In their testimonies, both IO1 Regaspi and PO3 Aninag explicitly admitted these lapses, *viz.*:

IO1 Regaspi on Cross-examination

[Atty. Wayne Manuel]: When inventory was done at your office, we noticed in the Certificate of Inventory that a certain Jaezem Ryan Gaces of the Bombo Radyo, Laoag City was present, is that what you mean?

[IO1 Regaspi]: Yes, sir.

Q: At what point in time did he come?

A: At around 8:20, sir.

Q: At around 8:20 and of course, you had to call him?

A: Yes, sir.

Q: You did not call for any barangay officials?

A: We called for the barangay officials but the barangay officials did not come, sir.

Q: You did not try to call any member of the DOJ?

A: No, sir.

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[44] *Id.* at 649.

x x x x x x x x x[45] (Emphases and underscoring supplied)

PO3 Aninag on Direct Examination

[Prosecutor Robert Garcia]: Aside from you, who were also present in the conduct of inventory if you still recall?

[PO3 Aninag]: One of the members of the media who is from Bombo Radyo.

x x x x x x x x x[46]

The absence of the aforementioned required witnesses does not *per se* render the confiscated items inadmissible.[47] However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** must therefore be adduced.[48]

In this case, IO1 Regaspi did not provide a sufficient explanation why no barangay official was present during the requisite inventory and photography. Simply stating that the witnesses were invited, without more, is too plain and flimsy of an excuse so as to justify non-compliance with the positive requirements of the law. Worse, the police officers had no qualms in admitting that they did not even bother contacting a DOJ representative, who is also a required witness. Verily, as earlier mentioned, there must be genuine and sufficient efforts to ensure the presence of these witnesses, else non-compliance with the set procedure would not be excused.

Jurisprudence dictates that the procedure enshrined in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction

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[45] TSN, March 30, 2012, pp. 4-5.

[46] TSN, May 17, 2012, p. 15.

[47] *People v. Umipang*, 686 Phil. 1024, 1052 (2012).

[48] See *id.* at 1052-1053.

of illegal drug suspects.[49] For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[50]

In view of the foregoing, the Court thus concludes that there has been an unjustified breach of procedure and hence, the integrity and evidentiary value of the *corpus delicti* had been compromised.[51]Consequently, Baptista's acquittal is in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.
>
> Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. [For indeed,] [o]rder is too high a price for the loss of liberty. x x x[52]

"In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge**

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[49] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang*, *id*. at 1038.

[50] *Gamboa v. People*, 799 Phil. 584, 597 (2016).

[51] See *People v. Sumili*, *supra* note 30, at 352.

[52] See *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988). See also *People v. Miranda*, G.R. No. 229671, January 31, 2018.

but also justify any perceived deviations from the said procedure during the proceedings before the trial court. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction."[53]

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 11, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06275 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Christopher Baptista *y* Villa is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio (*Chairperson*), *Caguioa, Reyes, A. Jr.,* and *Reyes, J. Jr., JJ.,* concur.

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[53] See *People v. Miranda*, *id*.

THIRD DIVISION

[G.R. No. 230084. August 20, 2018]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), *petitioner*, *vs.* **COURT OF APPEALS and ANGELINE V. PAEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE RIGHT TO APPEAL IS MERELY A STATUTORY PRIVILEGE AND MAY BE EXERCISED ONLY IN THE MANNER AND IN ACCORDANCE WITH THE PROVISIONS OF LAW.— The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the ROC. Failure to do so often leads to the loss of the right to appeal. Under Section 1, Rule 45 of the ROC, the proper remedy to question the CA's judgment, final order or resolution, as in the present case, is an appeal by *certiorari*. The petition must be filed within fifteen (15) days from notice of the judgment, final order or resolution appealed from; or of the denial of petitioner's motion for reconsideration filed in due time after notice of the judgment.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AN EXTRAORDINARY PROCESS FOR THE CORRECTION OF ERRORS OF JURISDICTION AND CANNOT BE AVAILED OF AS A SUBSTITUTE FOR THE LOST REMEDY OF AN ORDINARY APPEAL.— [A] special civil action for *certiorari* under Rule 65 is an independent action based on the specific grounds therein provided and proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. It is an extraordinary process for the correction of errors of jurisdiction and cannot be availed of as a substitute for the lost remedy of an ordinary appeal. Mere invocation of "grave abuse of discretion amounting to lack or excess of jurisdiction" will not permit the substitution of a lost remedy of appeal with a special civil action for *certiorari*.

3. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; THE NEGLIGENCE OF COUNSEL BINDS THE CLIENT; EXCEPTIONS.—[T]he negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client. We have, however, carved out exceptions to this rule; as where the reckless or gross negligence of counsel deprives the client of due process of law; or where the application of the rule will result in outright deprivation of the client's liberty or property; or where the interests of justice so requires and relief ought to be accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence. In order to apply the exceptions rather than the rule, the circumstances obtaining in each case must be looked into.

4. ID.; ID.; ID.; ID.; ID.; GROSS NEGLIGENCE; MUST BE PROVEN AND SUPPORTED BY EVIDENCE.— In the case at bar, PAGCOR argues that the negligence of its former counsel was so gross that it effectively deprived it of due process. Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It exhibits a thoughtless disregard of consequences without exerting any effort to avoid them. Mere allegation of gross negligence does not suffice. The fact of gross negligence must be proven and supported by evidence. The Court finds in the instant case that PAGCOR failed to prove that the negligence of its former counsel was so gross that it effectively deprived it of due process. x x x PAGCOR was not deprived of due process. On the contrary, it was given every opportunity to be heard, which is the very essence of due process. x x x The acts of its former counsel did not deprive PAGCOR of due process. PAGCOR was given every opportunity to be heard but it failed to take advantage of the said opportunities. Hence, the general rule that the negligence of the counsel binds the client applies herein.

APPEARANCES OF COUNSEL

PAGCOR Corporate and Legal Services Department for petitioner.

Gonzales & Associates Law Firm for private respondent.

R E S O L U T I O N

GESMUNDO, *J.*:

This is a petition for *certiorari* under Rule 65 of the 1997 Rules of Court (*ROC*) assailing the April 27, 2016[1] and January 3, 2017[2] Resolutions of the Court of Appeals *(CA)* in CA-G.R. SP No. 126110, which deemed abandoned the petition for review brought by the Philippine Amusement and Gaming Corporation (*PAGCOR)* under Rule 43 of the ROC. The said petition for review sought to reverse and set aside the January 24, 2012 Resolution[3] of the Civil Service Commission *(CSC),* which nullified the dismissal of Angeline V. Paez *(respondent)* and reinstated her into service.

The Antecedents

Respondent was an employee of PAGCOR with a position of Dealer stationed at Casino Filipino-Waterfront Hotel, Lahug, Cebu City. In a random drug testing conducted by PAGCOR to all its employees, respondent allegedly tested positive for methamphetamine. Thus, in its March 30, 2006 Letter,[4] respondent was informed that she was dismissed from the service

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[1] *Rollo*, pp. 20-21; penned by Associate Justice Pedro B. Corales with Associate Justice Sesinando E. Villon and Associate Justice Rodil V. Zalameda, concurring.

[2] *Id.* at 23-25.

[3] *Id.* at 57-63; penned by Commissioner Mary Ann Z. Fernandez-Mendoza with Chairman Francisco T. Duque III and Commissioner Rasol L. Mitmug, concurring.

[4] *Id.* at 72.

for gross misconduct and violation of company rules and regulations. Respondent moved for reconsideration which PAGCOR denied in its May 11, 2006 letter.

On May 19, 2006, respondent appealed her dismissal with the CSC. The CSC, in its March 24, 2008 resolution, dismissed the appeal and affirmed her dismissal. When respondent moved for reconsideration of this resolution, the CSC, in its January 24, 2012 resolution, reversed itself and reinstated respondent into service.

The CSC exonerated respondent from the administrative charges on account of PAGCOR's failure to comply with the requirements of Section 38 of Republic Act *(R.A.)* No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*. It found that respondent was not notified of the positive screening result, which should have given her a window of opportunity to impugn the result through a confirmatory testing. It held that notice of the screening test is part of her substantive rights and the absence thereof is tantamount to denial of the due process granted to her by law. Thus, it exonerated her of the administrative charges.

PAGCOR filed a motion for reconsideration but it was denied by the CSC in its July 17, 2012 resolution.[5]

Thus, on August 17, 2012, PAGCOR filed a petition for review before the CA under Rule 43 of the ROC.

In a Resolution,[6] dated June 13, 2014, the CA required PAGCOR, within ten (10) days from notice, to (1) submit proof that copies of the petition, together with its annexes, had been duly received by respondent or her counsel; and (2) manifest the current correct and complete address of respondent and of her counsel. This is because copies of all resolutions of the CA furnished to counsel for respondent, the Yap Gonzales & Associates Law Firm, were returned unserved with uniform postal notation on the envelopes "RTS-MOVED (out)."

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[5] *Id.* at 64-67.

[6] *Id.* at 150.

The CA Ruling

In a Resolution,[7] dated November 28, 2014, the CA dismissed the petition.

It noted that PAGCOR failed to comply with its June 13, 2014 resolution as of November 17, 2014. It further noted that the copy of its June 13, 2014 resolution to respondent's counsel was again returned unserved with the same postal notation of "Moved."

It held that due to PAGCOR's failure to provide the exact addresses of respondent and her counsel, it failed to acquire jurisdiction over respondent as provided for under Section 4, Rule 46 of the ROC. Thus, it dismissed the petition for failure to acquire jurisdiction over respondent.

PAGCOR moved for reconsideration of this resolution. Meanwhile, respondent filed a Manifestation,[8] dated May 13, 2015, and Motion cum Manifestation,[9] dated August 5, 2015, insisting that she be provided copies of the petition and the CA's November 28, 2014 resolution. She also alleged that PAGCOR had prior knowledge of her counsel's change of address and requested that all subsequent court processes be sent to her counsel's new address.

In a Resolution,[10] dated October 22, 2015, the CA reinstated the petition in view of respondent's voluntary submission to its jurisdiction. It ordered PAGCOR to furnish respondent a copy of the petition for review, complete with annexes, within five (5) days from notice and to submit proof of compliance therewith.

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[7] *Id*. at 152-154; penned by Associate Justice Pedro B. Corales with Associate Justice Sesinando E. Villon and Associate Justice Melchor Quirino C. Sadang, concurring.

[8] *Id.* at 181-184.

[9] *Id.* at 190-192.

[10] *Id*. at 199-201; penned by Associate Justice Pedro B. Corales with Associate Justice Sesinando E. Villon and Associate Justice Melchor Quirino C. Sadang, concurring.

In a resolution, dated April 27, 2016, the CA deemed the petition abandoned and dismissed the same. It noted that, as of March 3, 2016, PAGCOR had yet to comply with its October 22, 2015 resolution. Accordingly, it dismissed the petition.

PAGCOR moved for reconsideration of this resolution, which the CA denied in its January 3, 2017 resolution.

Hence, this petition, anchored on the ground that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it rendered the April 27, 2016 and January 3, 2017 resolutions.

PAGCOR argues that its failure to comply with the CA's October 22, 2015 resolution was unintentional. It was merely due to the heavy workload of its former counsel, as well as the effect of the recurring water intrusion/leakage in its offices due to bursting of the PAGCOR FCU Chilled Water. This outpour of water soaked and damaged the computers, case files, confidential documents and other materials belonging to the lawyers.

Further, PAGCOR argues that the gross negligence of its former handling lawyer should not bind it as it would be tantamount to a deprivation of its right to due process and to be rightfully heard on the merits of the case.

In her Comment/Opposition,[11] dated July 22, 2017, respondent alleges that PAGCOR failed to demonstrate a highly meritorious ground for the relaxation of the rules of procedure in its favor. Thus, the CA rightfully dismissed the action.

In its Reply,[12] dated March 14, 2018, PAGCOR insists that its former counsel's negligence was so gross that it should not be bound thereby. Otherwise, it would amount to a deprivation of due process.

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[11] *Id*. at 222-226.

[12] *Id*. at 231-237.

ISSUE

WHETHER THE CA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR REVIEW OF PAGCOR.

The Court's Ruling

The petition is devoid of merit.

PAGCOR comes before this Court seeking exemption from the general rule that a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique.[13] However, PAGCOR's disregard for technical procedure is made manifest by the fact that the instant petition is a substitute for a lost appeal. Further, the CA did not commit any grave abuse of discretion when it dismissed the petition for review before it.

The instant petition is a substitute for a lost appeal.

The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the ROC. Failure to do so often leads to the loss of the right to appeal.[14]

Under Section 1, Rule 45 of the ROC, the proper remedy to question the CA's judgment, final order or resolution, as in the present case, is an appeal by *certiorari*. The petition must be filed within fifteen (15) days from notice of the judgment, final

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[13] *Producers Bank of the Philippines v. Court of Appeals, et al.*, 430 Phil. 812-823 (2002).

[14] *Prieto v. Alpadi Development Corporation*, 715 Phil. 705, 717 (2013); *Nueva Ecija II Electric Cooperative, Inc., et al. v. Mapagu*, G.R. No. 196084, February 15, 2017, citing *National Transmission Corporation v. Heirs of Teodulo Ebesa*, 781 Phil. 594, 602-603 (2016), citing *Julian v. Development Bank of the Philippines, et al.*, 678 Phil. 133, 143 (2011).

order or resolution appealed from; or of the denial of petitioner's motion for reconsideration filed in due time after notice of the judgment.[15]

PAGCOR received the January 3, 2017 resolution of the CA denying its motion for reconsideration on January 11, 2017. Hence, PAGCOR had fifteen (15) days, or until January 26, 2017, to file its appeal. It let this period lapse and, instead, filed herein petition for *certiorari* on March 13, 2017. Evidently, the present petition is a substitute for the lost remedy of appeal.

Time and again, the Court has ruled that a special civil action for *certiorari* under Rule 65 is an independent action based on the specific grounds therein provided and proper only if there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. It is an extraordinary process for the correction of errors of jurisdiction and cannot be availed of as a substitute for the lost remedy of an ordinary appeal.[16] Mere invocation of "grave abuse of discretion amounting to lack or excess of jurisdiction" will not permit the substitution of a lost remedy of appeal with a special civil action for *certiorari.*

Since PAGCOR filed the instant special civil action for *certiorari* instead of the lost remedy of appeal by *certiorari*, the petition should be dismissed.

The negligence of PAGCOR's counsel binds it. None of the recognized exceptions obtains in this case.

The petition necessarily fails even if the Court were to consider it as a petition for *certiorari.* The CA did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the petition for review of PAGCOR on the ground that it abandoned the same.

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[15] *Indoyon, Jr. v. Court of Appeals*, 706 Phil. 200, 208 (2013).

[16] *Jan-Dec Construction Corp. v. Court of Appeals*, *et al.,* 517 Phil. 96, 104-105 (2006).

It is settled that the negligence of counsel binds the client. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. Consequently, the mistake or negligence of counsel may result in the rendition of an unfavorable judgment against the client. We have, however, carved out exceptions to this rule; as where the reckless or gross negligence of counsel deprives the client of due process of law; or where the application of the rule will result in outright deprivation of the client's liberty or property; or where the interests of justice so requires and relief ought to be accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence. In order to apply the exceptions rather than the rule, the circumstances obtaining in each case must be looked into.[17]

In the case at bar, PAGCOR argues that the negligence of its former counsel was so gross that it effectively deprived it of due process.

Gross negligence has been defined as the want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It examines a thoughtless disregard of consequences without exerting any effort to avoid them.[18] Mere allegation of gross negligence does not suffice.[19] The fact of gross negligence must be proven and supported by evidence.

The Court finds in the instant case that PAGCOR failed to prove that the negligence of its former counsel was so gross that it effectively deprived it of due process.

PAGCOR argues in its petition that its failure to comply with the CA's October 22, 2015 resolution was unintentional. It contends that its failure was merely due to the heavy workload of its former counsel and an effect of the recurring water intrusion/ leakage in its offices. The Court fails to see how these excuses

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[17] *Multi-Trans Agency Phils., Inc. v. Oriental Assurance Corp.,* 608 Phil. 478, 493-494 (2009); citations omitted.

[18] *Id.* at 494.

[19] *Baclaran Marketing Corp. v. Nieva, et al.,* G.R. No. 189881, April 19, 2017.

could amount to gross negligence on the part of its former counsel. In fact, they themselves characterized it as a mere, unintentional lapse. This is simple negligence. There is simply no gross negligence to speak of in the instant case.

Further, PAGCOR was not deprived of due process. On the contrary, it was given every opportunity to be heard, which is the very essence of due process. The merits of its case were heard by the CSC. It appealed the decision of the CSC to the CA. The CA initially dismissed the case for failure to acquire jurisdiction over respondent due to PAGCOR's failure to comply with its orders regarding service of a copy of the petition to respondent and/or her counsel. When the CA reinstated the case in view of respondent's voluntary submission to its jurisdiction, PAGCOR squandered the second chance given to it by failing to comply with the CA's directive to furnish respondent with a copy of the petition. This is despite respondent volunteering the current address of her counsel through the manifestations she filed. To add salt to injury, PAGCOR let the period to appeal the January 3, 2017 resolution of the CA before this Court lapse. Instead, it filed the present petition for *certiorari* as a substitute for its lost appeal.

The acts of its former counsel did not deprive PAGCOR of due process. PAGCOR was given every opportunity to be heard but it failed to take advantage of the said opportunities. Hence, the general rule that the negligence of the counsel binds the client applies herein.

On a last note, PAGCOR's cavalier attitude towards court processes and procedure is plain to see. Its conduct before the CA and before this Court underscores this. The Court reminds PAGCOR, as we have consistently reminded countless other litigants, that the invocation of substantial justice is not a magic potion that will automatically compel this Court to set aside technical rules. This principle is especially true when a litigant, as in the present case, shows a predilection for utterly disregarding the ROC, as well as court directives.[20]

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[20] *Indoyon, Jr. v. Court of Appeals*, *supra* note 15 at 209.

WHEREFORE, the petition is **DISMISSED.** The April 27, 2016 and January 3, 2017 Resolutions of the Court of Appeals in CA-G.R. SP No. 126110 are **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro (*Chairperson*), *Bersamin, Leonen,* and *Reyes, A. Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 231981. August 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HENRY BANQUILAY *y* ROSEL,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY; THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE DULY PRESERVED IN THE ABSENCE OF A SERIOUS FLAW.— As demonstrated by the testimonies of the prosecution witnesses and the supporting documents they presented and offered, the chain of custody did not suffer from serious flaws. In the recently promulgated *People of the Philippines v. Vicente Sipin y De Castro*, citing *People of the Philippines v. Teng Moner y Adam*, We held 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 the inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case**." The Court further held that: x x x **[N]on-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. x x x The integrity of the evidence is presumed to be preserved unless there is showing of bad faith, ill-will, or proof that the evidence has been tampered with. The appellant bears the burden to make some showing that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharge their duties.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA,[*] *J.*:

This is an appeal from the Decision[1] dated October 28, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 02127 affirming the Decision[2] dated August 11, 2015 of the Regional Trial Court (*RTC*) of Caibiran, Naval, Biliran, Branch 37, in Criminal Case No. CB-12-435 finding herein accused-appellant Henry Banquilay *y* Rosel (*Banquilay*) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.[3]

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[*] Designated Acting Chairperson, per Special Order No. 2582 (Revised), dated August 8, 2018.

[1] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi, concurring; *rollo*, pp. 4-16.

[2] CA *rollo*, pp. 56-78.

[3] *Id.* at 78.

In an Information[4] dated May 3, 2012, Banquilay was charged with violation of Section 5, Article II of R.A. No. 9165, which reads:

> That on or about the 2nd day of May 2012, at around 5:15 o'clock in the afternoon, more or less, in the Municipality of Caibiran, Biliran and within the jurisdiction of this Honorable Court, [the] above-named accused Henry Banquilay *y* Rosel, with intent of gain and without being authorized by law, did then and there, willfully, unlawfully, sell, trade, and deliver to one Floro Katangkatang, Jr., of PDEA [Region] 8, one (1) heat-sealed plastic sachet containing methylamphetamine hydrochloride or locally known as "shabu," a dangerous drug, per laboratory examination conducted by PNP Regional Crime Laboratory Office VIII, Camp Ruperto Kangleon, Palo, Leyte, to the damage and prejudice of the State.

Upon arraignment, Banquilay pleaded not guilty[5] to the offense charged.

The prosecution's evidence consists of the testimonies of: (1) PSI Viviene Mae del Pilar-Malibago (*PSI Malibago*), the forensic chemist who examined the one (1) heat-sealed sachet containing a white crystalline substance (the *specimen*)[6] seized from Banquilay; (2) IO1 Floro Y. Katangkatang, Jr. (*IO1 Katangkatang*), the assigned poseur-buyer who seized the specimen from, and conducted the body search on the accused to retrieve the marked ₱1,000.00 bill with serial number DN858085,[7] among others;[8] (3) PO1 James Philip Canaleja (*PO1 Canaleja*), the officer assigned as the receiving police non-commissioned officer (*PNCO*) and the one who received the specimen from 101 Katangkatang;[9] (4) IO1 Silas Aurelia (*IO1 Aurelia*), the assigned photographer during the buy-bust

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[4] *Id.* at 9.

[5] *Id.*

[6] Exhibit "H".

[7] Exhibit "I"; Exhibit "Q". (re-marked).

[8] Exhibits "B" to "B-1".

[9] Exhibits "D" to "D-1".

operation;[10] (5) IO3 Alex Tablate (*IO3 Tablate*), the assigned operation team leader and the one who arrested Banquilay;[11] (6) *Barangay* Captain Leo Insigne (*Insigne*), the local elected official present to witness the body search on the accused and the inventory of the seized items, as well as the person who signed the inventory receipt; and (7) PO2 Leopoldo Vivero, Jr. (*PO2 Vivero*), the assigned arresting officer of the Caibiran Police Station and the one who assisted IO3 Tablate in arresting the accused.[12]

The evidence of the prosecution based on the records is summarized as follows: On May 2, 2012, at around 9:00 in the morning, several Philippine Drug Enforcement Agency (*PDEA*) agents, namely IO3 Tablate, IO1 Katangkatang, and IO1 Aurelia, among others, received instructions from their superior to conduct a buy-bust operation in Caibiran, Biliran. IO3 Tablate was assigned as the operation's team leader, while IO1 Aurelia was assigned as the operation photographer. IO1 Katangkatang was designated as the poseur-buyer and would be accompanied by their informant. The team prepared the PDEA pre-operation report[13] with Authority to Operate with control number M005-01-12A.[14] At around 1:00 in the afternoon, the team arrived at a beach resort outside of Caibiran, Biliran, to meet the rest of the team consisting of members of the Caibiran Police Station, and their informant. IO3 Tablate, along with PO2 Vivero of the Caibiran Police Station, were assigned as the arresting officers, while the rest served as back-up.

Upon reaching the town proper, the informant contacted Banquilay, and was told that the transaction would take place near a pharmacy store. Thereafter, IO1 Katangkatang and the informant proceeded to the pharmacy store and upon their arrival,

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[10] Exhibits "E" to "E-1".

[11] Exhibits "A" to "A-1".

[12] Exhibits "C" to "C-2".

[13] Exhibits "F" to "F-1".

[14] Exhibits "G" to "G-1".

they immediately saw a man wearing a white *sando* and a light colored pair of shorts, whom the informant identified as the accused-appellant Henry Banquilay *y* Rosel. The informant approached Banquilay and introduced IO1 Katangkatang as the buyer, and the latter asked if the "item" was available. Banquilay, in response, asked if they had the money. At around 5:20 in the afternoon, after handing the marked ₱1,000.00 bill to Banquilay, he handed one (1) heat-sealed sachet containing a white crystalline substance which he suspected to be "*shabu*."

After receiving the sachet, IO1 Katangkatang, serving as the custodian of the evidence seized, initiated the agreed upon signal by sending a missed call to IO3 Tablate. Afterwards, at around 5:30 in the afternoon, IO3 Tablate and PO2 Vivero saw that Banquilay was heading towards the bus terminal and they ordered him to stop. IO3 Tablate announced that they were PDEA agents and arrested Banquilay thereafter. Banquilay was then brought to the Caibiran Police Station wherein they waited for the necessary witnesses, with the media representative, Sajid Primo of *Radyo Natin*, awaiting their arrival. Upon Barangay Captain Insigne's arrival, IO1 Katangkatang conducted a body search on Banquilay and retrieved the marked ₱1,000.00 bill, a ₱500.00 bill, a cellular phone, four (4) capsules of *Mefenamic* acid, and three (3) capsules of *Amoxicillin*. The inventory was then conducted in the presence of Banquilay, the elected official, and the media representative, and IO1 Katangkatang placed his initials "FYK" and the date 5-1-12 on the plastic sachet. After that, the witnesses were asked to sign the Inventory Receipt,[15] and at around 8:00 in the evening, the team left for Tacloban City to have the white crystalline substance subjected to laboratory examination.

At around 12:35 past midnight on May 2, 2012, PO1 Canaleja, the assigned receiving PNCO at the Regional Crime Laboratory Office Region VIII, Camp Kangleon, Palo, Leyte, received a transparent plastic sachet containing a white crystalline substance and marked with "FYK" and "5-1-12" from IO1 Katangkatang

[15] Exhibits "L" to "L-1".

for laboratory examination. After receipt, he placed the same in a locker that only he could access as the receiving PNCO. At around 8:00 in the morning, he turned over the sachet to PSI Malibago for examination. Based on PSI Malibago's examination, the white crystalline substance tested positive for *methamphetamine hydrochloride* otherwise known as "*shabu*." She then prepared Chemistry Report No. D-04-2012[16] and signed the same.

The defense, on the other hand, presented two (2) witnesses: (1) one Christy P. Porpogo (*Porpogo*), who personally knew Banquilay as he was her neighbor; and (2) Banquilay himself.

Porpogo testified that she saw two (2) persons in civilian attire approach Banquilay, which she believed to be police officers. One of the persons held Banquilay's right arm, while the other one pointed a gun at him. Banquilay was then handcuffed and was brought to the police station. She was not able to do anything since she, along with the other witnesses, were all shocked at what happened.

Banquilay testified that on May 2, 2012, at around 5:15 in the afternoon, he was at a *lugawan* in Brgy. Victory. More or less six (6) persons arrived, one of which he recognized as PO2 Vivero. Afterwards, Vivero called him and asked for the location of one Monsa Veronque (*Veronque*), who was his close friend. Banquilay responded that he hasn't seen Veronque, and he was then invited to the police station for further questioning which he resisted. He maintained that the charges against him were not true and that the officers wanted him to accompany them to Veronque's house. He added that it was Veronque who sold the "*shabu*" to him, and that he was only at the *lugawan* to buy cheaper fish for him to re-sell, as a fish vendor.

In its Decision[17] dated August 11, 2015, the RTC held Banquilay guilty beyond reasonable doubt of the offense charged, the dispositive portion of which reads:

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[16] Exhibits "K" to "K-1".

[17] CA *rollo*, pp. 56-78.

WHEREFORE, in view of all the foregoing, the Court hereby renders judgment finding accused HENRY BANQUILAY *y* ROSEL guilty beyond reasonable doubt of the offense of Violation of Section 5, Article II, Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002), and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of Php500,000.00.

According to the RTC, Banquilay's bare denial that no buy-bust operation took place cannot prevail against the positive testimony of the prosecution witnesses. The positive declaration of IO1 Katangkatang as the poseur-buyer cannot be overcome by the simple and bare denial of Banquilay, given that there was marking, photographs, and inventory of the items in the presence of the witnesses required by law. The court also found that the integrity of the evidence relative to the "*shabu*" sold to the poseur-buyer has been well preserved.

Aggrieved, Banquilay filed a *Notice of Appeal* and elevated the case to the Court of Appeals. However, convinced by the credibility of the prosecution witnesses and their testimony, the appellate court affirmed the RTC Decision. Citing *People of the Philippines v. Palomares*,[18] the Court of Appeals held that the prosecution sufficiently established the following elements, namely the: (1) identity of the buyer and the seller, the object, and the consideration; and (2) delivery of the thing sold and the payment therefor.[19]

In his Notice of Receipt of Decision with Withdrawal of Counsel[20] dated December 2, 2016, Banquilay informed the Court of Appeals that he will now be represented by the Public Attorney's Office (*PAO*). The PAO filed an Entry of Appearance with Notice of Appeal[21] dated December 6, 2016, which the Court of Appeals granted and elevated to this Court.[22]

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[18] 726 Phil. 637 (2014).

[19] *Rollo*, p. 10.

[20] CA *rollo*, pp. 122-124.

[21] *Rollo*, pp. 17-19.

[22] *Id.* at 20.

In his Supplemental Brief[23] before this Court, Banquilay noted that the Court of Appeals erred in: (a) affirming the Decision of the RTC despite the improbability of two (2) simultaneous buy-bust operations utilizing the same poseur-buyer, which affected the integrity of the seized item; and (b) convicting Banquilay despite failure of the prosecution to establish the unbroken chain of custody of the seized item.[24]

The appeal is unmeritorious.

According to Banquilay, the Court of Appeals failed to consider that there were two (2) simultaneous buy-bust operations that were conducted on that particular day, which utilized the same poseur-buyer. Hence, the integrity of the seized *shabu* was compromised as there was no evidence to prove that it was still in the hands of the poseur-buyer IO1 Katangkatang, who went to participate in the other buy-bust operation. Banquilay noted in IO3 Tablate's testimony that there was another buy-bust operation against one Dominiciano Veronque. In addition, Banquilay cited that by IO3 Tablate's admission, the latter stated that he proceeded to the other operation accompanied by IO1 Katangkatang, the supposed evidence custodian of the seized *shabu*.

Banquilay, however, miserably failed to provide an explanation as to the positive testimony of the witnesses that the marked ₱1,000.00 bill was retrieved from his person, which IO1 Katangkatang handed to him in exchange for one (1) plastic sachet containing white crystalline substance. It is important to note that, despite Banquilay's claims that the integrity of the evidence seized was compromised when IO1 Katangkatang proceeded to the other buy-bust operation, the marked ₱1,000.00 bill remained in his person while he was brought to the Caibiran Police Station. In fact, in citing IO3 Tablate's testimony,[25] Banquilay admitted that he was already at the Caibiran Police

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[23] *Id.* at 37-61.

[24] *Id.* at 37.

[25] *Rollo*, p. 48.

Station at 5:40 in the afternoon, with the marked ₱1,000.00 bill still in his person.

Banquilay further argues that the prosecution failed to establish the unbroken chain of custody of the seized item since the marking and inventory of the same was done in the police station two (2) hours after the buy-bust operation, and not in the place of seizure as required by law.

As demonstrated by the testimonies of the prosecution witnesses and the supporting documents they presented and offered, the chain of custody did not suffer from serious flaws. In the recently promulgated *People of the Philippines v. Vicente Sipin y De Castro*,[26] citing *People of the Philippines v. Teng Moner y Adam*,[27] We held 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 the inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case**." The Court further held that:

> x x x **requirements of marking of the seized items, conduct of inventory, and taking of photographs 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 RA No. 9165**, to wit:
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> x x x x x x x x x
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> **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.

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

[27] G.R. No. 292296, March 5, 2018.

As correctly observed by the Court of Appeals, the testimony of IO1 Katangkatang was well corroborated in its material points by the operation team leader IO3 Tablate, and the back-up arresting officer, PO2 Vivero, and that the plastic sachet of *shabu* was positively identified by IO1 Katangkatang during trial. These facts persuasively prove that the plastic sachet of *shabu* presented in court was the same item sold by Banquilay to IO1 Katangkatang during the buy-bust operation. Therefore, the integrity and evidentiary value thereof was duly preserved. The integrity of the evidence is presumed to be preserved unless there is showing of bad faith, ill-will, or proof that the evidence has been tampered with.[28] The appellant bears the burden to make some showing that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by public officers and a presumption that public officers properly discharge their duties.[29]

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The October 28, 2016 Decision of the Court of Appeals in CA-G.R. CR HC No. 02127, which sustained the August 11, 2015 Decision of the Regional Trial Court, Branch 37, Caibiran, Naval, Biliran, in Criminal Case No. CB-12-435, convicting accused-appellant Henry Banquilay *y* Rosel of illegal sale of *shabu*, in violation of Section 5, Article II of Republic Act No. 9165, is **AFFIRMED**.

SO ORDERED.

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

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[28] *People v. Miranda*, 560 Phil. 795, 810 (2007).

[29] *Id.*

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

SECOND DIVISION

[G.R. No. 232154. August 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BENJAMIN FERIOL *y* PEREZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; AN APPEAL IN CRIMINAL CASES OPENS THE ENTIRE CASE FOR REVIEW.— [A]n appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; IDENTITY OF THE DANGEROUS DRUG MUST BE SUFFICIENTLY ESTABLISHED.— In this case, Feriol was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the following elements must be proven with moral certainty: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. Case law instructs that it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on their identity on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain from the moment that the drugs are seized up to their presentation in court as evidence of the crime.

3. ID.; ID.; PROCEDURE TO BE FOLLOWED UNDER SECTION 21 OF ARTICLE II; RULE IN CASE OF NON-COMPLIANCE.— Section 21, Article II of RA 9165 outlines the procedure which the apprehending officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police Crime Laboratory within twenty-four (24) hours from confiscation for examination. x x x The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.** x x x In *People v. Almorfe,* **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.** Also, in *People v. De Guzman,* it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before this Court is an ordinary appeal[1] filed by accused-appellant Benjamin Feriol *y* Perez (Feriol) assailing the Decision[2] dated June 14, 2016 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07201, which affirmed the Decision[3] dated November 27, 2014 of the Regional Trial Court of Makati City, Branch 65 (RTC) in Criminal Case No. 14-104 finding him guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC, charging Feriol with the crime of Illegal Sale of Dangerous Drugs, the accusatory portion of which states:

> On the 28th day of January 2014, in the City of Makati, the Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver, and distribute a total of zero point twenty three (0.23) gram of white crystalline substance containing methamphetamine hydrochloride, a dangerous drug, in consideration of ₱500.

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[1] See Notice of Appeal dated July 4, 2016, *rollo,* pp. 12-13.

[2] *Id*. at 2-11. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Stephen C. Cruz and Jhosep Y. Lopez concurring.

[3] CA *rollo,* pp: 14-20. Penned by Presiding Judge Edgardo M. Caldona.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] Dated January 30, 2014. CA *rollo,* p. 10.

CONTRARY TO LAW.[6]

The prosecution alleged that at around four (4) o'clock in the afternoon of January 28, 2014, the Makati City Police received an information from a confidential informant (CI) that a certain "Allan," who was later on identified as Feriol, was engaged in illegal drug activities along Sampaloc Street, Barangay Cembo, Makati City. Acting on the information, a buy-bust team was organized with Makati Anti-Drug Abuse Council Operative Delno A. Encarnacion (MADAC Encarnacion) as the designated poseur-buyer and Police Officer 1 Mark Anthony L. Angulo (PO1 Angulo) as the immediate back-up. Subsequently, the team, together with the CI, proceeded to the target area where the latter introduced MADAC Encarnacion to Feriol as buyer of *shabu.* MADAC Encarnacion handed over the marked money in the amount of ₱500.00 to Feriol who, in turn, gave him a small plastic sachet containing white crystalline substance. MADAC Encarnacion then executed the pre-arranged, signal, causing PO1 Angulo to rush and assist him in arresting Feriol. The buy-bust team conducted a body search upon Feriol and recovered from the latter's left pocket the marked money. Due to security reasons, the buy-bust team brought Feriol and the seized items to the barangay hall, where the required inventory and photography were conducted in the presence of Feriol and Barangay Kagawad Roderick P. Bien (Kagawad Bien). Afterwards, Feriol and the seized items were turned over to the investigator on duty, Senior Police Officer 1 Ramon D. Esperanzate, who then prepared the letter request for laboratory examination. Shortly after, the said letter request and the plastic sachet were given to MADAC Encarnacion, who delivered the same to the crime laboratory for examination, during which the substance recovered from Feriol tested positive for the presence methamphetamine hydrochloride, a dangerous drug.[7]

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[6] *Id.*

[7] See *id.* at 3-4.

In his defense, Feriol denied the accusations against him, claiming that at around four (4) o'clock in the afternoon of January 28, 2014, he was taking a bath inside his house when he heard a number of individuals shouting his name. He averred that upon opening the door of the bathroom, someone suddenly poked a gun at him and asked for his ID. Thereafter, he was handcuffed and brought to the barangay hall where all the pieces of evidence were shown to him.[8]

The RTC Ruling

In a Decision[9] dated November 27, 2014, the RTC found Feriol guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[10] It ruled that the prosecution adequately proved all the elements of the crime of Illegal Sale of Dangerous Drugs. Moreover, it established an unbroken chain of custody over the seized dangerous drug, as it was shown that: *(a)* MADAC Encarnacion purchased from Feriol a sachet containing a white crystalline substance which he marked with "Allan"; *(b)* after conducting the inventory and photography, MADAC Encarnacion delivered the seized drug to the crime laboratory; *(c)* upon delivery, the said drug was received and examined by the forensic chemist, who confirmed that it was *shabu*; and *(d)* the said drug was officially brought to the court and presented as evidence.[11]

In addition, the RTC observed that the apprehending officers' failure to secure the representatives from the Department of Justice (DOJ) and the media during the conduct of inventory was not fatal – and thus did not render Feriol's arrest void and the evidence obtained from him inadmissible – as it was proved

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[8] See *id.* at 4.

[9] CA *rollo,* pp. 14-20.

[10] *Id.* at 20.

[11] See *id.* at 17-18.

that the integrity and the evidentiary value of the seized items were duly preserved.[12]

Aggrieved, Feriol appealed[13] to the CA.

The CA Ruling

In a Decision[14] dated June 14, 2016, the CA affirmed *in toto* the ruling of the RTC.[15] It found no showing that the chain of custody had been broken from the moment the dangerous drug was seized by the apprehending officers until such time that it was introduced in evidence. Furthermore, it declared that Feriol had the burden of proving that the confiscated item had been tampered with, the integrity of the evidence is presumed to have been preserved absent any showing of bad faith or ill will on the part of the apprehending officers. Feriol, however, failed to discharge such burden in this case.[16]

Hence, the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld Feriol's conviction for the crime charged.

The Court's Ruling

The appeal is meritorious.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[17] "The appeal confers the appellate court full

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[12] See *id*. at 18-19.

[13] See Notice of Appeal dated December 3, 2014. *Id*. at 21-22.

[14] *Rollo,* pp. 2-11.

[15] *Id*. at 11.

[16] See *id*. at 6-10.

[17] See *People v. Dahil,* 750 Phil. 212, 225 (2015).

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."[18]

In this case, Feriol was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the following elements must be proven with moral certainty: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[19] Case law instructs that it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on their identity on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain from the moment that the drugs are seized up to their presentation in court as evidence of the crime.[20]

Section 21, Article II of RA 9165 outlines the procedure which the apprehending officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.[21] Under the said section, prior to its amendment by RA 10640,[22] the apprehending team shall, among others, **immediately**

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[18] *People v. Comboy,* G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[19] *People v. Sumili,* 753 Phil. 342, 348 (2015).

[20] See *People v. Manansala,* G.R. No. 229092, February 21, 2018, citing *People v. Viterbo,* 739 Phil. 593, 601 (2014). See also *People v. Alivio,* 664 Phil. 565, 576-580 (2011); and *People v. Denoman,* 612 Phil. 1165, 1175 (2009).

[21] See *People v. Sumili, supra* note 19, at 349-350.

[22] 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

after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the DOJ, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the Philippine National Police Crime Laboratory within twenty-four (24) hours from confiscation for examination.[23] In the case of *People v. Mendoza,*[24] the Court stressed that **"[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of [RA] 6425 *(Dangerous Drugs Act of 1972)* again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti,* and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."[25]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.[26] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[27] – provide that the said inventory and photography

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THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[23] See Section 21 (1) and (2), Article II of RA 9165.

[24] 736 Phil. 749 (2014).

[25] *Id*. at 764; emphases and underscoring supplied.

[26] See *People v. Sanchez,* 590 Phil. 214, 234 (2008).

[27] Section 1 of RA 10640 states:

may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**[28]

SECTION 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002", is hereby amended to read as follows:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, lnstruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

"(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally,* That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

x x x x x x x x x"

[28] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde,* G.R. No. 228894, August 7, 2017.

Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is justifiable ground for non-compliance; **and** *(b)* the integrity and evidentiary value of the seized items are properly preserved.[29] In *People v. Almorfe,*[30] **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**[31] Also, in *People v. De Guzman,*[32] it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.**[33]

After a judicious study of the case, the Court finds that the apprehending officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drug allegedly seized from Feriol.

In this case, while the, inventory[34] and the photography of the seized items were made in the presence of Feriol and an elected public official, the records do not show that the said inventory and photography were done before any representative from the DOJ and the media. The apprehending officers did not bother to acknowledge or explain such lapse, as the records even fail to disclose that there was an attempt to contact or secure these witnesses' presence.

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[29] See *People v. Goco,* G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[30] 631 Phil. 51 (2010).

[31] *Id.* at 60.

[32] 630 Phil. 637 (2010).

[33] *Id.* at 649.

[34] See Inventory Receipt dated January 28, 2014; RTC records, p. 13.

In the recent case of *People v. Miranda,*[35] the Court held that "the procedure in Section 21[, Article II] of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects. **Therefore, as the requirements are clearly set forth in the law, then the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo;* otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review.**"[36]

In the same vein, the Court, in recent drug cases, has exhorted:

> [P]rosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.** Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused and, perforce, overturn a conviction.[37]

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[35] See G.R. No. 229671, January 31, 2018.

[36] See *id.*; citation omitted.

[37] See *People v. Sanchez,* G.R. No. 231383, March 7, 2018; *People v. Ramos,* G.R. No. 233744, February 28, 2018; *People v. Manansala,* G.R. No. 229092, February 21, 2018; *People v. Miranda,* G.R. No. 229671, January 31, 2018; and *People v. Mamangon,* G.R. No. 229102, January 29, 2018.

Thus, in view of the prosecution's failure to provide justifiable grounds which would excuse their transgression in this case, the Court is constrained to conclude that the integrity and evidentiary value of the item purportedly seized from Feriol have been compromised, thereby militating against a finding of guilt beyond reasonable doubt. As such, Feriol's acquittal is in order.[38]

WHEREFORE, the appeal is **GRANTED**. The Decision dated June 14, 2016 of the Court of Appeals in CA-G.R. CR-H.C. No. 07201 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Benjamin Feriol *y* Perez is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa, Reyes, A. Jr.*, and *Reyes*, *J. Jr.*, *JJ.,* concur.

SECOND DIVISION

[G.R. No. 232905. August 20, 2018]

OSCAR D. GAMBOA, *petitioner, vs.* **MAUNLAD TRANS, INC. and/or RAINBOW MARITIME CO., LTD. and CAPT. SILVINO FAJARDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED;

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[38] See *People v. Gamboa,* G.R. No. 233702, June 20, 2018.

ONE EXCEPTION IS WHERE THE JUDGMENT IS BASED ON A MISAPPREHENSION OF FACTS.— The general rule is that only questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, 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; OVERSEAS EMPLOYMENT; ENTITLEMENT OF SEAFARER TO DISABILITY BENEFITS UNDER THE LAW.—** It is settled that the entitlement of a seafarer on overseas employment to disability benefits is governed by law, by the parties' contracts, and by the medical findings. By law, the relevant statutory provisions are Articles 197 to 199 (formerly Articles 191 to 193) of the Labor Code in relation to Section 2(a), Rule X of the Amended Rules on Employee Compensation. 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 the employer. Section 20 (A) of the 2010 POEA-SEC, which is the rule applicable to this case since petitioner was employed in 2014, governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board sea-going vessels during the term of his employment contract.

3. **ID.; ID.; 2010 POEA-STANDARD EMPLOYMENT CONTRACT; WORK-RELATED ILLNESS; IT IS ENOUGH THAT THE EMPLOYMENT HAD CONTRIBUTED, EVEN IN A SMALL MEASURE, TO THE DEVELOPMENT OF THE DISEASE.—** Under the 2010 POEA-SEC, a "work-related" illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied." In

the case at bar, petitioner was diagnosed with "Bronchial Asthma; Degenerative Changes, Thoracolumbar Spine, Left Parathoracic Muscle Strain." x x x [P]etitioner, as Bosun of respondents' cargo vessel that transported logs, undeniably performed tasks that clearly involved unduly heavy physical labor and joint strain. Hence, the NLRC cannot be faulted in finding petitioner's back problem to be work-related. In the same vein, petitioner's bronchial asthma, which is also a listed occupational disease, undeniably progressed while in the performance of his duties and in the course of his last employment contract. Respondents' assertion that the said illness also existed prior to petitioner's embarkation, and therefore a pre-existing ailment, was not substantiated given that no such declaration was made by the company-designated physician or the attending specialist. Besides, such fact alone does not detract from the compensability of an illness. It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits incident thereto. It is enough that the employment had contributed, even in a small measure, to the development of the disease.

4. **ID.; ID.; ID.; ID.; RULES ON THE COMPANY-DESIGNATED PHYSICIAN'S DUTY TO ISSUE A FINAL MEDICAL ASSESSMENT ON THE SEAFARER'S DISABILITY GRADING; WITHOUT A VALID FINAL AND DEFINITIVE ASSESSMENT FROM THE COMPANY-DESIGNATED PHYSICIAN WITHIN THE 120/240-DAY PERIOD, A TEMPORARY TOTAL DISABILITY BECOMES TOTAL AND PERMANENT BY OPERATION OF LAW.—** [I]n *Elburg Shipmanagement Philippines, Inc. v. Quiogue, Jr.*, summarized the rules regarding the company-designated physician's **duty to issue a final medical assessment** on the seafarer's disability grading, 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 **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 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. Case law states that without a valid final and definitive assessment from the company-designated physician within the 120/240-day period, the law already steps in to consider petitioner's disability as total and permanent. Thus, a temporary total disability becomes total and permanent by operation of law.

5. ID.; ID.; ID.; ID.; THIRD-DOCTOR REFERRAL; COMPLIANCE NOT REQUIRED IN THE ABSENCE OF FINAL ASSESSMENT FROM THE COMPANY-DESIGNATED PHYSICIAN.— Neither is petitioner's complaint for disability compensation rendered premature by his failure to refer the matter to a third-doctor pursuant to Section 20 (A) (3) of the 2010 POEA-SEC. It bears stressing that a seafarer's compliance with the conflict-resolution procedure under the said provision 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. As aptly pointed out in *Kestrel Shipping Co., Inc. v. Munar*, absent a final assessment 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.

6. CIVIL LAW; DAMAGES; ATTORNEY'S FEES PROPER AS PETITIONER WAS COMPELLED TO LITIGATE TO SATISFY HIS CLAIMS FOR DISABILITY BENEFITS; MORAL AND EXEMPLARY DAMAGES WERE NOT SUBSTANTIATED.— [W]ith respect to the award of attorney's fees in favor of petitioner, the Court finds the same to be in order pursuant to Article 2208 of the New Civil Code as petitioner was clearly compelled to litigate to satisfy his claims for disability benefits. However, the claims for moral and exemplary damages are not warranted for lack of substantial evidence showing that respondents acted with malice or in bad faith in refusing petitioner's claims.

APPEARANCES OF COUNSEL

De Vera & De Vera Law Firm 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 January 24, 2017and the Resolution[3] dated July 5, 2017of the Court of Appeals (CA) in CA-G.R. SP No. 141109 which annulled and set aside the Decision[4]dated March 18, 2015and the Resolution[5] dated April 29, 2015of the National Labor Relations Commission (NLRC) in NLRC LAC No. OFW (M) 02-000112-15, and instead, dismissed petitioner Oscar D. Gamboa's (petitioner) complaint for disability benefits, damages, and attorney's fees.

The Facts

On January 17, 2014, petitioner entered into a nine (9)-month contract of employment[6] as Bosun with respondent Maunlad Trans, Inc. (MTI), for its principal, Rainbow Maritime Co., Ltd. (RMCL), on board the vessel, MV Oriente Shine, a cargo vessel transporting logs from Westminster, Canada to several

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[1] *Rollo*, pp. 8-25.

[2] *Id.* at 30-41. Penned by Associate Justice Henri Jean-Paul B. Inting with Associate Justices Marlene B. Gonzales-Sison and Ramon A. Cruz, concurring.

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

[4] *Id.* at 464-487. Penned by Commissioner Numeriano D. Villena with Commissioner Angelo Ang Palaña and Presiding Commissioner Herminio V. Suelo, concurring.

[5] *Id.* at 511-512. Penned by Commissioner Numeriano D. Villena with Commissioner Angelo Ang Palaña, concurring.

[6] *Id.* at 67-68.

Asian countries.[7] Prior thereto, or in 2013, petitioner was likewise hired by MTI on board M/V Global Mermaid, also a cargo vessel.[8]

After undergoing the required pre-employment medical examination (PEME) where he was declared fit for duty,[9] petitioner disembarked and joined the vessel on January 24, 2014 that was then docked at Tokushima, Japan.[10] The following day, or on January 25, 2014, petitioner assisted in the unloading of raw logs from the vessel, as well as in the clean-up thereafter of the debris and log residue that were meter-deep. As petitioner could not withstand the strong odor of the logs and was gasping for breath, the latter asked for leave which was granted, and as such, was excused from the activity.[11] However, the incident already triggered an asthma attack on petitioner which initially started as a cough that was later accompanied by wheezing breath.[12]

On February 4, 2014, during the voyage back to Westminster, Canada, petitioner claimed that he slipped and lost his footing while going down the ship's galley,which caused a writhing pain on the upper left side of his back.[13]The ship master, Captain Julius B. Cloa (Captain Cloa), gave him Salonpas for his back, as well as medicine for his persistent cough.[14] On February 12, 2014, during the rigging operation, petitioner experienced back pain and difficulty in breathing that prompted Captain Cloa to disembark him for medical consultation at the Mariner's Clinic,

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[7] *Id.* at 11.

[8] See *id.* at 259-260.

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

[10] Id. at 260.

[11] See *id.* at 11 and 260-261.

[12] See *id.* at 11 and 261.

[13] See *id.* at11, 31, and 261.

[14] See Report of Medical Treatment dated February 12, 2014; *id.* at 81 and 225.

Ltd., in Canada.[15] While the foreign port doctor, Dr. Stanley F.Karon, took note of petitioner's back pain, it was his diagnosed asthma that prompted the said doctor to declare him unfit for duty.[16]

Thus, on February 15, 2014, petitioner was medically repatriated[17] and brought to Marine Medical Services where he was seen by a company-designated physician, Dr. Mylene Cruz-Balbon, who confirmed his bronchial asthma.[18] Subsequent check-ups further disclosed that petitioner was suffering from "Degenerative Changes, Thoracolumbar Spine" and was found to have a "metallic foreign body on the anterior cervical area noted on x-ray,"[19] which, as pointed out by the company-designated physician, was not related to the cause of petitioner's repatriation.[20] Petitioner was thereafter referred to orthopedic doctors, Dr. Pollyana Gumba Escano (Dr. Escano),[21] for rehabilitation and therapy, and Dr. William Chuasuan, Jr. (Dr. Chuasuan),[22] for expert evaluation and management.[23]

On May 14, 2014, the company-designated physician, Dr. Karen Frances Hao-Quan, issued a medical report[24] to respondent Captain Silvino Fajardo (Captain Fajardo) stating that petitioner still has occasional asthma attacks that have not been totally controlled despite three (3) months of maintenance medication. She also noted that petitioner still has tenderness and muscle spasm on his left paraspinal muscle. As such, the company-

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[15] See *id*. at 12 and 261.

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

[17] *Id*. at 467.

[18] *Id*. at 226-227.

[19] *Id*. at 228.

[20] *Id*.

[21] *Id*. at 87 and 89.

[22] *Id*. at 88.

[23] See *id*. at 467.

[24] *Id*. at 236.

designated physician gave an interim assessment of "Grade 8 (orthopedic) - 2/3 loss of lifting power and Grade 12- (pulmonary) slight residual or disorder."[25]

Likewise, the orthopedic specialist, Dr. Escano, consistently reported that petitioner has not been relieved of his back pain despite rehabilitation, and further recommended that the latter undergo MRI (Magnetic Resonance Imaging) of the spine,[26] which she pointed out could be done only after the removal of the foreign bodies embedded in petitioner's neck area.[27]She added that there was a need to control petitioner's blood pressure and asthma which prevented them from doing spiral stabilization exercises on him.[28]

Since MTI refused to shoulder the extraction procedure as it was not part of the cause for petitioner's repatriation, the latter had the procedure done at his expense.[29] However, MTI still denied petitioner's request for MRI, and instead, issued medical certificates indicating petitioner's illness as "Bronchial Asthma; Degenerative Changes, Thoracolumbar Spine, Left Parathoracic Muscle Strain."[30]

Thus, on June 4, 2014, petitioner filed a complaint[31] for non-payment of his sickness allowance, medical expenses, and rehabilitation fees, against MTI, before the NLRC, docketed as NLRC Case No. SUB-RAB I (OFW)7-06-0106-14. The complaint was subsequently amended[32] on June 18, 2014 to

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[25] *Id*.

[26] See *id*. at 91-A, 92, 94, and 95.

[27] *Id*. at 92-93.

[28] *Id*. at 95.

[29] See *id*. at 269. See also Medical Certificate and Record of Operation; *id*. at 101-102.

[30] *Id*. at 85-86. Medical Certificates dated June 16, 2014 separately issued by Doctors Karen Frances Hao-Quan and Mylene Cruz-Balbon of the Marine Medical Services.

[31] *Id*. at 240.

[32] *Id*. at 45; including dorsal portion.

include a claim for permanent total disability benefits pursuant to the IBF JSU/AMOSUP (IMMAJ) Collective Bargaining Agreement (CBA)[33] for failure of the company-designated physician to make a final assessment within the mandated 120-day period, and further impleaded RMCL and Captain Fajardo (respondents) as parties thereto.

On June 20, 2014, petitioner's pulmonologist, Dr. Edgardo O.Tanquieng, issued a note to the company-designated physician suggesting petitioner's disability to be "Grade 12 – slight residual or disorder."[34] On the other hand, petitioner's orthopedic specialist, Dr. Chuasuan, in his letter[35] dated July 10, 2014, explicated that petitioner's degenerative changes may have occurred overtime and could not have developed during his 22-day stay on board the vessel, hence, was a pre-existing condition.

Meanwhile, petitioner claimed that he still suffered from severe back pain and asthma attacks, which prompted him to consult on June 27, 2014,an independent physician, Dr. Sonny Edward Urbano of the Eastern Pangasinan District Hospital, who declared him unfit for work or maritime voyage given that he was found to be suffering from "Hypertension stage II, Hypertensive cardiovascular disease, Bronchial asthma, Community acquired pneumonia."[36]

In their defense, respondents denied liability contending, among others, that the complaint was prematurely filed given that the 120-day period had not yet expired at the time petitioner filed his complaint on June 4, 2014, and that the latter even returned for a follow-up check-up with his attending specialist on June 20, 2014.[37] They further contended that petitioner was

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[33] 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; *id.* at 178-221.

[34] *Id.* at 242.

[35] *Id.* at 243.

[36] See Medical Certificate; *id.* at 106.

[37] See *id.* at 146-147.

not entitled to disability benefits under the CBA as his condition was not due to an accident,[38] and that his illnesses were not compensable,considering that his degenerative changes (back condition) was declared by the specialist to be a pre-existing condition, while his bronchial asthma was not work-related since he already manifested its symptoms at the time he joined the vessel on January 24, 2014.[39] They likewise averred that petitioner failed to follow the procedure in contesting the findings of the company-designated physician.[40] Lastly, they asserted that the claims for sickness allowance and reimbursement for medical and transportation expenses had already been paid,[41] while the damages and attorney's fees sought were without factual and legal bases.[42]

The Labor Arbiter's Ruling

In a Decision[43] dated October 25, 2014, the Labor Arbiter (LA) ruled in favor of petitioner, and accordingly ordered respondents to jointly and severally pay him permanent total disability benefits pursuant to the CBA in the amount of US$127,932.00, ₱100,000.00 moral damages, ₱50,000.00 exemplary damages, and ten percent (10%) of the total judgment award as attorney's fees.[44]

In so ruling, the LA held that the complaint was not prematurely filed given that it was initially for non-payment of sickness allowance and reimbursement of medical expenses, and that even if it subsequently sought payment of disability benefits, there was already an interim assessment made by the

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[38] See *id*. at 148-151.

[39] See *id*. at 151-158.

[40] See *id*. at 163-168.

[41] See *id*. at 168-169. See also *id*. at 244-247 and 252-257.

[42] See *id*. at 169-171.

[43] *Id*. at 330-341. Penned by Labor Arbiter Isagani Laurence G. Nicolas.

[44] *Id*. at 341.

company-designated physician on May 14, 2014 equivalent to Grade 8 (orthopedic) – 2/3 loss of lifting power, and Grade 12 (pulmonary) – slight residual or disorder, notwithstanding that petitioner was still continuously suffering from back pain.[45] Moreover, the LA has observed that petitioner cannot be faulted in not observing the procedure for contesting the assessment since the company-designated physicians themselves were in disagreement as to the management of his condition.[46]Finally, the LA did not give credence to respondents' claim that petitioner was not involved in any accident on board MV Oriente Shine, noting that the Ship Master's "Report of Medical Treatment"[47] dated February 12, 2014 showed that he had prescribed "Salonpas" and "paracetamol" for petitioner's back pain.[48] Considering that petitioner has not recovered from his spinal injury that rendered him incapable to resume work,and his bronchial asthma, being a listed illness under Item Number 20 of Section 32-A of the2010 Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), the LA declared his entitlement to permanent total disability benefits under the CBA.[49] The LA also awarded moral and exemplary damages as petitioner was subjected to unfair treatments from respondents, as well as attorney's fees for having been compelled to litigate to protect his rights and interests.[50]

Aggrieved, respondents appealed[51] the LA Decision to the NLRC.

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[45] See *id*. at 333-334.

[46] See *id*. at 338-339.

[47] *Id*. at 81 and 225.

[48] See *id*. at 337-338.

[49] See *id*. at 340-341.

[50] See *id*. at 341.

[51] See Notice of Appeal with Memorandum of Appeal dated January 6, 2015; *id*. at 342-369.

The NLRC Ruling

In a Decision[52] dated March 18, 2015, the NLRC affirmed with modification the LA Decision by deleting the award of moral and exemplary damages.[53]It ruled that petitioner's illnesses, *i.e.*, bronchial asthma and degenerative changes or osteoarthritis, were work-related diseases arising out of and in the course of petitioner's employment. They are listed as occupational diseases under the 2010 POEA-SEC.[54] It held that since the company-designated physicians failed to controvert the foreign doctor's declaration that petitioner was unfit for duty at the time the latter was repatriated, and considering further that petitioner remained incapacitated to resume his duties despite a partial permanent disability assessment on May 14, 2014, the finding of unfitness to work remained,warranting petitioner's entitlement to permanent total disability benefits.[55] It likewise sustained the applicability of the CBA, holding that while Article 28.1[56] thereof speaks of disability as a result of an accident, paragraphs 28.2 to 28.4,[57] on the other hand, merely referred to the general term "disability" which may result from accident, injury, disease, and illness.[58]

On the contrary, the NLRC disagreed with the findings of the LA that the company-designated physician refused to provide medical care and attention after the May 14, 2014 check-up session, noting that the medical reports showed that petitioner was subsequently attended to by respondents' specialists on various occasions; hence, there was no bad faith on the latter's part to warrant the award of moral and exemplary damages.[59]

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[52] *Id*. at 464-487.

[53] *Id*. at 487.

[54] See *id*. at 476-479.

[55] See *id*. at 483-484.

[56] *Id*. at 195.

[57] *Id*.

[58] See *id*. at 485.

[59] See *id*. at 486.

Respondents moved for partial reconsideration[60] which was denied in a Resolution[61] dated April 29, 2015, prompting them to elevate the matter to the CA on *certiorari*.[62]

The CA Ruling

In a Decision[63] dated January 24, 2017, the CA annulled and set aside the NLRC Decision, and instead, dismissed the complaint.[64] It ruled that petitioner had no cause of action at the time he filed his complaint given that the May 14, 2014 assessment was not final, and that he was still undergoing treatment well within the allowable 240-day treatment period.[65] It likewise found no basis to support petitioner's claim that he is entitled to permanent total disability benefits, holding that the latter's independent physician examined him only once[66] and that the lapse of the 120-day period did not automatically entitle him thereto.[67]

Petitioner's motion for reconsideration[68] was denied in a Resolution[69] dated July 5, 2017; hence, the petition.

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[60] See motion for partial reconsideration dated April 6, 2015; *id.* at 489-509.

[61] *Id.* at 511-512.

[62] See Petition for *Certiorari* (with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) dated July 1, 2015; *id.* at 513-546.

[63] *Id.* at 30-41.

[64] *Id.* at 40.

[65] See *id.* at 37.

[66] *Id.* at 39.

[67] See *id.*

[68] See motion for reconsideration dated February 23, 2017; *id.* at 578-591.

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

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in finding that petitioner is not entitled to permanent total disability benefits.

The Court's Ruling

The petition is meritorious.

I.

The general rule is that only questions of law may be raised and resolved by this Court on petitions brought under Rule 45 of the Rules of Court, because the Court, not being a trier of facts, is not duty bound to reexamine and calibrate the evidence on record.[70] Findings of fact of quasi-judicial bodies, especially when affirmed by the CA, are generally accorded finality and respect.[71] 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.[72]

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[73] (formerly

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[70] See *Leoncio v. MST Marine Services (Phils.), Inc.*, G.R. No. 230357, December 6, 2017.

[71] *Maersk Filipinas Crewing, Inc. v. Ramos*, G.R. No. 184256, January 18, 2017, 814 SCRA 428, 442.

[72] *Great Southern Maritime Services Corp. v. Surigao*, 616 Phil. 758, 764 (2009).

[73] **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**

Articles 191 to 193) of the Labor Code[74] in relation to Section 2(a), Rule X[75] of the Amended Rules on Employee Compensation.

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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)

[74] Department Advisory No. 1, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED" dated July 21, 2015.

[75]

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

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 the employer.

Section 20 (A) of the 2010 POEA-SEC, which is the rule applicable to this case since petitioner was employed in 2014, governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board sea-going vessels during the term of his employment contract, 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

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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

(Emphasis supplied)

> assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.
>
> x x x x x x x x x
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.
>
> x x x x x x x x x

Under the 2010 POEA-SEC, a "work-related" illness is defined as "any sickness as a result of an occupational disease listed under Section 32-A of this Contract with the conditions set therein satisfied."[76]

In the case at bar, petitioner was diagnosed with"Bronchial Asthma; Degenerative Changes, Thoracolumbar Spine, Left Parathoracic Muscle Strain." In a medical report dated May 14, 2014,the company-designated physician gave petitioner an "interim" assessment of Grades 8 and 12 for his orthopedic and pulmonary conditions, respectively.[77] While the orthopedic

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[76] See Item No. 16, Definition of Terms, 2010 POEA SEC.

[77] See *rollo*, p. 236.

specialist, in his medical report dated July 10, 2014, opined that petitioner's Degenerative Changes, Thoracolumbar Spine, Left Parathoracic Muscle Strain "may be [a] pre-existing"[78] condition, and therefore not work-related, the pulmonary specialist, on the other hand, merely reiterated the previous disability rating of Grade 12, *i.e.*, slight residual or disorder.[79] From the foregoing medical report, it can be reasonably inferred that petitioner's bronchial asthma was deemed a work-related illness unlike his degenerative changes of the spine (back condition),which was declared by the specialist to be not work-related in view of the specialist's observation that it was a pre-existing condition that "could not have developed during his [22-day] period on board."[80]

However, there are conditions that should be met before an illness, such as degenerative changes of the spine, can be considered as pre-existing under the 2010 POEA-SEC, 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 PEME, and such cannot be diagnosed during the PEME,[81]none of which had been established in this case.

Moreover, degenerative changes of the spine, also known as osteoarthritis,[82] is a listed occupational disease under Sub-Item Number 21 of Section 32-A of the 2010 POEA-SEC if the occupation involves **any** of the following:

a. Joint strain from carrying heavy loads, or unduly heavy physical labor, as among laborers and mechanics;
b. Minor or major injuries to the joint;

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[78] *Id.* at 243.

[79] *Id.* at 242.

[80] *Id.* at 243.

[81] See Item No. 11 (a) and (b), Definition of Terms, 2010 POEA-SEC.

[82] <https://www.physioadvisor.com.au/injuries/upper-back-chest/spinal-degeneration> (visited August 10, 2018).

c. Excessive use or constant strenuous usage of a particular joint, as among sportsmen, particularly those who have engaged in the more active sports activities;
d. Extreme temperature changes (humidity, heat and cold exposures) and;
e. Faulty work posture or use of vibratory tools[.]

Here, petitioner, as Bosun of respondents' cargo vessel that transported logs, undeniably performed tasks that clearly involved unduly heavy physical labor and joint strain. Hence, the NLRC cannot be faulted in finding petitioner's back problem to be work-related.

In the same vein, petitioner's bronchial asthma, which is also a listed occupational disease, undeniably progressed while in the performance of his duties and in the course of his last employment contract. Respondents' assertion that the said illness also existed prior to petitioner's embarkation, and therefore a pre-existing ailment, was not substantiated given that no such declaration was made by the company-designated physician or the attending specialist. Besides, such fact alone does not detract from the compensability of an illness. It is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits incident thereto. It is enough that the employment had contributed, even in a small measure, to the development of the disease.[83] Perforce, absent controverting proof that petitioner's illnesses were not work-related, no grave abuse of discretion was committed by the NLRC in declaring petitioner's bronchial asthma and degenerative changes of the thoracolumbar spine to be compensable ailments.

II.

Pursuant to Section 20 (A) of the 2010 POEA-SEC, when a seafarer suffers a work-related injury or illness in the course of employment, the company-designated physician is obligated

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[83] *De Jesus v. National Labor Relations Commission*, 557 Phil. 260, 266 (2007).

to arrive at a **definite assessment** of the former's fitness or degree of disability within a period of 120 days from repatriation.[84] During the said period, the seafarer shall be deemed on **temporary total disability** and shall receive his basic wage 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-SEC and by applicable Philippine laws. However, if the 120-day 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.[85] But before the company-designated physician may avail of the allowable 240-day extended treatment period, he must perform some significant act to justify the extension of the original 120-day period.[86] Otherwise, **the law grants the seafarer the relief of permanent total disability benefits due to such non-compliance**.[87]

In this regard, the Court, in *Elburg Shipmanagement Philippines, Inc. v. Quiogue, Jr.*,[88] summarized the rules regarding the company-designated physician's **duty to issue a final medical assessment** on the seafarer's disability grading, 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;

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[84] See *Sunit v. OSM Maritime Services, Inc.*,G.R. No. 223035, February 27, 2017, 818 SCRA 663, 677-678.

[85] *Vergara v.Hammonia Maritime Services*, *Inc.*, 588 Phil. 895, 912(2008).

[86] See *Talaroc v. Arpaphil Shipping Corporation,* G.R. No. 223731, August 30, 2017.

[87] *Elburg Shipmanagement Philippines, Inc. v. Quiogue, Jr.*, 765 Phil. 341, 362 (2015).

[88] *Id*.

2. If the company-designated **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 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.[89] (Emphases supplied)

Case law states that without a valid final and definitive assessment from the company-designated physician within the 120/240-day period, the law already steps in to consider petitioner's disability as total and permanent.[90] Thus, a temporary total disability becomes total and permanent by operation of law.[91]

In the case at bar, there is no dispute that the company-designated physician issued an "interim" assessment on May 14, 2014, or just 88 days from petitioner's repatriation on February 15, 2014, declaring his disability to be "Grade 8 (orthopedic) -2/3 loss of lifting power and Grade 12 - (pulmonary) slight residual or disorder."[92] The gradings were based on the findings that petitioner's asthma was "*still not totally controlled*," while his back problem "*still presents with tenderness and muscle spasm on the left paraspinal muscle*."[93] Being an interim disability grade, the declaration was merely an initial determination of petitioner's condition for the time being and therefore cannot

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[89] *Id*. at 362-363.

[90] See *Talaroc v. Arpaphil Shipping Corporation*, *supra* note 86.

[91] See *Tamin v. Magsaysay Maritime Corporation*, G.R. No. 220608, August 31, 2016, 802 SCRA 111, 128.

[92] *Rollo*, p. 236.

[93] *Id*.; italics supplied.

be considered as a definite prognosis. Notwithstanding the temporariness of his findings, the company-designated physician, however, failed to indicate the need for further treatment/ rehabilitation or medication, and provide an estimated period of treatment to justify the extension of the 120-day treatment period. In fact, while petitioner had subsequent follow-up sessions, the company-designated physician still failed to arrive at a definitive assessment within the 120-day period or indicate the need for further medical treatment. Evidently, without the required final medical assessment declaring petitioner fit to resume work or the degree of his disability, the characterization of the latter's condition after the lapse of the 120-day period as total and permanent ensued in accordance with law, since the ability to return to one's accustomed work before the applicable periods elapse cannot be shown.[94] Thus, because of these circumstances, petitioner should be entitled to permanent total disability benefits by operation of law.

Notwithstanding petitioner's apparent entitlement to permanent total disability benefits as discussed above, the CA nonetheless declared petitioner's complaint to have been prematurely filed on June 4, 2014 due to the fact that there wasno final disability assessment issued at that time. However, it should be made clear that what was filed on June 4, 2014 was for non-payment of sickness allowance, medical expenses, and rehabilitation fees. Petitioner only sought permanent total disability benefits when he filed his amended complaint therefor on June 18, 2014. At that time, the 120-day period within which the company-designated physician should have issued a final assessment of petitioner's condition already lapsed. Further, as mentioned, there was no reason for respondents to extend this period to 240 days since no sufficient justification exists to extend the treatment period for another 120 days. As such, contrary to the findings of the CA, petitioner had rightfully commenced his complaint for disability compensation on June 18, 2014, or after the expiration of the 120-day period from

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[94] *Belchem Philippines, Inc. v. Zafra, Jr.*, 759 Phil. 514, 526-527 (2015).

the time of his repatriation on February 15, 2014 (*i.e.*, 123 days). As aptly ruled in *C.F. Sharp Crew Management, Inc. v. Taok*,[95] "**a seafarer may pursue an action for total and permanent disability benefits** if xxx the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse 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** xxx,"[96] as in this case.

Neither is petitioner's complaint for disability compensation rendered premature by his failure to refer the matter to a third-doctor pursuant to Section 20 (A) (3) of the 2010 POEA-SEC. It bears stressing that a seafarer's compliance with the conflict-resolution procedure under the said provision 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. As aptly pointed out in *Kestrel Shipping Co., Inc. v. Munar*,[97] absent a final assessment 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.[98] Hence, although petitioner did consult an independent physician regarding his ailment, the lack of a conclusive and definite assessment from respondents left him nothing to properly contest and as such, negates the need for him to comply with the third-doctor referral provision under the 2010 POEA-SEC.

III.

With petitioner declared to be totally and permanently disabled by operation of law in view of the company-designated physician's failure to issue a final assessment within the given

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[95] 691 Phil. 521 (2012).

[96] *Id.* at 538; emphasis and underscoring supplied.

[97] See 702 Phil. 717 (2013).

[98] *Id.* at 738.

period, the corollary matter to be determined is the amount of benefits due him under the 2010 POEA-SEC or the CBA,[99] of which petitioner is a member.

Article 28 of the CBA on disability provides:

> Article 28: Disability
>
> 28.1 A seafarer who suffers **permanent disability as a result of an accident** whilst in the employment of the Company **regardless of fault**, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to willful acts, shall in addition to sick pay, be entitled to compensation according to the provisions of this Agreement.
>
> 28.2 The disability suffered by the seafarer shall be determined by a doctor appointed by the Company. If a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties.
>
> 28.3 **The Company shall provide disability compensation to the seafarer in accordance with APPENDIX 3, with any differences, including less than ten percent (10%) disability, to be pro rata**.
>
> 28.4 A seafarer whose disability, in accordance with 28.2 above is assessed at fifty percent (50%) or more under the attached APPENDIX 3 shall, for the purpose of this paragraph, be regarded as permanently unfit for further sea service in any capacity and be entitled to one hundred percent (100%) compensation. Furthermore, any seafarer assessed at less than fifty percent (50%) disability but certified as permanently unfit for further sea service in any capacity by the Company-nominated doctor, shall also be entitled to one hundred percent (100%) compensation. Any disagreement as to the assessment or entitlement shall be resolved in accordance with clause 28.2 above.

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[99] *Rollo*, pp. 178-221. Effective from January 1, 2012 to December 31, 2014.

28.5 Any payment effected under 28.1 to 28.4 above, shall be without prejudice to any claim for compensation made in law, but may be deducted from any settlement in respect of such claims.

x x x x x x x x x

(Emphases supplied)[100]

Under Article 28.1, a seafarer suffering from permanent disability as a result of an accident regardless of fault shall be entitled to disability benefits. An 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.[101]

In this case, records fail to disclose that petitioner's illnesses were the result of an accident. Nevertheless, petitioner's disability is still compensable under Article 28.3 thereof which expressly provides that "the Company shall provide ***disability compensation to the seafarer in accordance with APPENDIX 3*** xxx."[102]

In *NFD International Manning Agents, Inc. v. Illescas*,[103] the Court declared that the seafarer's sustained back injury was not the result of an accident but nonetheless ordered the payment of his disability in accordance with the provisions of the CBA.

Here, since the company-designated physician failed to arrive at a final and definitive assessment of petitioner's disability within the prescribed period, the law deems the same to be

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[100] *Id.* at 195-196.

[101] *C.F. Sharp Crew Management, Inc. v. Perez*, 752 Phil. 46, 57 (2015), citing *Sunga v. Virjen Shipping Corporation*, 734 Phil. 281, 291 (2014).

[102] *Rollo*, p. 195; emphasis supplied.

[103] See 646 Phil. 244 (2010).

total and permanent, which is classified as Grade 1[104] under the POEA-SEC. As such, its equivalent rate under APPENDIX 3 of the CBA is the 100% rating, and the amount of compensation for petitioner's position as Bosun, which is for "Junior Officers and Ratings Above AB"[105] for the year 2014, is in US$127,932.00.[106]

Finally,with respect to the award of attorney's fees in favor of petitioner, the Court finds the same to be in order pursuant to Article 2208[107] of the New Civil Code as petitioner was clearly compelled to litigate to satisfy his claims for disability benefits. However, the claims for moral and exemplary damages are not warranted for lack of substantial evidence showing that respondents acted with malice or in bad faith in refusing petitioner's claims.[108]

WHEREFORE, the petition is **GRANTED**. The Decision dated January 24, 2017 and the Resolution dated July 5, 2017 of the Court of Appeals in CA-G.R. SP No. 141109 are hereby **REVERSED** and **SET ASIDE**. The Decision dated March 18,

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[104] Impediment Grade 1 under the POEA-SEC is equivalent to 120.00% Impediment.

[105] The rank of Bosun or Boatswain is higher than an Able Seaman, see APPENDIX 2-1-3 of the CBA, *rollo*, p. 213.

[106] See *id*. at 215.

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

> (2) **When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest**;
>
> x x x x x x x x x
>
> (8) **In actions for indemnity under workmen's compensation and employer's liability laws**
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> x x x x x x x x x
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> (Emphases supplied)

[108] See *Esguerra v. United Philippine Lines, Inc.*, 713 Phil. 487, 501 (2013).

2015 and the Resolution dated April 29, 2015 of the National Labor Relations Commission in NLRC LAC No. OFW (M) 02-000112-15 are **REINSTATED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*)*, Caguioa, Reyes, A. Jr.,* and *Reyes, J. Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 233207. August 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANTHONY MADRIA *y* HIGAYON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT; CHAIN OF CUSTODY.— The Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment defines "chain of custody" as follows: Section 1 (b) – "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.] Corollary thereto, in *Junie Mallillin y Lopez v. People of the Philippines*, the Court explained that the chain of custody rule requires that the

admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.

2. ID.; ID.; ID.; IT IS IMPORTANT THAT THE SEIZED DRUGS BE IMMEDIATELY MARKED AFTER SEIZURE.— In *Howard Lescano y Carreon v. People of the Philippines*, this Court briefly discussed the rigid requirements under Sec. 21, Article II of R.A. No. 9165, on the marking, inventory, and photographing of the contraband seized, including the personalities required to be present during the buy-bust operation x x x Notably, the procedures mentioned in R.A. No. 9165 are mandatory in nature, as indicated by the use of the word "shall" in its directives and its implementing rules. x x x Indeed, it is important that the seized drugs be immediately marked, if possible, as soon as they are seized from the accused. x x x The Court has previously held that, "failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence warranting an acquittal on reasonable doubt." x x x [Further,] [b]y jurisprudence, it must be shown that the marking was done in the presence of the accused to assure that the identity and integrity of the drugs were properly preserved. x x x [Also,] the presence of any representative from the media, Department of Justice (DOJ), or any elected official, who must sign the inventory, or be given a copy is required by R.A. No. 9165 and its IRR.

3. ID.; ID.; ID.; NON-COMPLIANCE CANNOT BE EVADED BY RELYING ON THE PRESUMPTION OF REGULAR PERFORMANCE OF OFFICIAL DUTIES.— [T]he prosecution cannot evade its non-compliance with the chain of custody by relying on the presumption of regularity. This presumption, it must be stressed, is not conclusive. Any taint of irregularity affects the whole performance and should make the presumption unavailable. The presumption, in other words, obtains only when nothing in the records suggests that the law enforcers involved deviated from the standard conduct of official duty, as provided for in the law. However, as had been discussed earlier, the police officers' acts during the buy-bust operation were marred by irregularities. Thus, an adverse presumption arises as a matter of course.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

Before the Court is an appeal[1] from the Court of Appeals' (CA's) Decision[2] dated March 8, 2017 in CA-G.R. No. CR-HC No. 01357-MIN, affirming the Decision[3] dated October 27, 2014 of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, convicting accused-appellant Anthony Madria y Higayon (Madria) for violation of: (1) Section 11 (possession), Article II of Republic Act (R.A.) No. 9165 in Criminal Case No. 2010-001 for illegal possession of *shabu*; and (2) Section 5 (selling), Article II of R.A. No. 9165[4] in Criminal Case No. 2010-002 for illegal sale of *shabu*.

The Facts of the Case

The judgment of convictions stemmed from two criminal Informations, the accusatory portions of each, read:

Criminal Case No. 2010-001

That on or about December 28, 2009, at more or less 6:25 o'clock in the evening, at Ramonal St., Barangay 29, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there willfully, unlawfully,

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[1] *Rollo*, pp. 16-17.

[2] Penned by Associate Justice Edgardo A. Camello, with Associate Justices Edgardo T. Lloren and Perpetua T. Atal-Paño, concurring. *Id.* at 3-15.

[3] Penned by Presiding Judge Arthur L. Abundiente. CA *rollo*, pp. 46-56.

[4] *Comprehensive Dangerous Drugs Act of 2002*.

criminally, and knowingly have in his possession, custody, and control, six (6) small heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride, locally known as *Shabu*, a dangerous drug, with a total weight of 0.42 gram, accused well-knowing that the substance recovered from his possession is a dangerous drug.[5]

Criminal Case No. 2010-002

That on or about December 28, 2009, at more or less 6:25 o'clock in the evening, at Ramonal St., Barangay 29, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally, and knowingly sell and/or offer for sale, and give away to a poseur-buyer One (1) small heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride, locally known as *Shabu*, a dangerous drug, weighing 0.02 gram, accused knowing the same to be a dangerous drug in consideration of Five Hundred pesos (Php500.00) with Serial No. EL 240363, which was previously marked for the purpose of the buy-bust operation.[6]

Upon arraignment, both appellant Madria and Lorenzo De Ala (De Ala) entered a plea of "Not Guilty" to the crimes charged. Joint trial of the cases ensued.

The Prosecution's Version

The prosecution presented the following witnesses, namely: Philippine Drug Enforcement Agency (PDEA) Officer-in-Charge IA5 Joseph Theodore Atila (IA5 Atila); IO1 Naomie Siglos (IO1 Siglos); IO2 Neil Vincent Pimentel (IO2 Pimentel); and, Forensic Chemist PS1 Charity P. Caceres (Caceres).[7]

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[5] *Id.* at 4.

[6] *Id.* at 3.

[7] CA *rollo*, pp. 48-49.

On December 28, 2009, IA5 Atila entertained a "walk-in" civilian informant (CI), disclosing that accused Madria and De Ala were engaged in illegal drug activities. Acting on this information, IA5 Atila formed a team consisting of IO1 Siglos, as poseur-buyer and IO2 Pimentel as the back-up and arresting officer.[8]

At around 6:00 p.m., IO2 Pimentel and IA5 Atila rode on separate vehicles and proceeded to the area of operation in Justo Ramonal Street, Brgy. 29, Cagayan de Oro City. Thereafter, the CI and IO1 Siglos rode on a taxi and followed them. Upon arrival at the area, the CI alighted from the taxi and approached Madria and De Ala who were standing outside a store. They followed the CI toward the place where the taxi was parked. Madria stood at the right side of the taxi's door, while De Ala stood at the left side. When the right side door of the taxi opened, De Ala asked IO1 Siglos, who was still inside the taxi, as to how much she was going to buy, but IO1 Siglos insisted to see the *shabu* first. De Ala turned to Madria, who then handed to him a small heat-sealed transparent plastic sachet. De Ala in turn gave it to IO1 Siglos. After examining the sachet, IO1 Siglos gave the buy-bust money to De Ala, who then passed it to Madria. Immediately, IO1 Siglos "missed-called" IO2 Pimentel, as the pre-arranged signal that the sale had already been consummated. IO2 Pimentel and the rest of the buy-bust team rushed in and arrested appellant Madria and De Ala. IO2 Pimentel bodily searched Madria and De Ala and recovered six (6) heat-sealed plastic sachets from Madria, including the marked money, but nothing was recovered from De Ala.[9]

Upon noticing that it was already dark and the crowd was getting bigger, IA5 Atila ordered his team to withdraw from the area with the two accused, so as not to compromise the safety of the buy-bust team. Thereafter, they proceeded to the PDEA office, where IO2 Pimentel marked with his initial the

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[8] *Id.* at 49, 67-68.

[9] *Id.* at 49-50, 68-69; *Rollo*, pp. 6-7.

confiscated items, *i.e.*, one (1) heat-sealed plastic sachet and six (6) heat-sealed plastic sachets; prepared the inventory receipts; and took pictures thereof.[10]

At around 9:30 p.m., IO2 Pimentel and the other PDEA agents, together with the two accused, went to the Philippine National Police (PNP) Crime Laboratory and requested the examination of both accused and the seized items. Caceres received the specimen, *i.e.*, one (1) transparent plastic sachet of white crystalline substance weighing 0.02 gram; and another six (6) sachets of white crystalline substance weighing a total of 0.42 grams. The examination yielded positive for Methamphetamine Hydrochloride known as *shabu*. Also, the urine sample taken from both accused tested positive for *shabu*.[11]

The Defense' Version

The defense presented as its witnesses, the accused Madria and De Ala.

Madria testified that in the afternoon of December 28, 2009, while he was walking towards Gaisano Store at Cogon Street to have the "LCD" of his cellphone repaired, a driver from a parked Toyota Revo vehicle asked him twice if he knew the place where a PDEA agent committed suicide; that when he ignored the question and walked away, he felt his nape struck by someone. Afterwards, he was handcuffed and forced to board a vehicle with his face covered. When he alighted from the vehicle, the cover of his face was removed. He then realized that he was at the PDEA office together with De Ala. He was forced to point at the items placed on top of the table. When he refused, he was mauled.[12]

As for De Ala, he testified that he was working as a taxi driver; that at around 6:25 p.m. of December 28, 2009, while he was waiting for his shift reliever, a vehicle stopped in front

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[10] CA *rollo*, pp. 50-69.

[11] *Rollo*, pp. 5-6.

[12] *Id.* at 7-8; CA *rollo*, pp. 50-51.

of him. Three men approached with their guns pointed at him and ordered him not to run. He was forced to board the vehicle while his face was covered, and he sensed the presence of another person, whom he later on recognized to be Madria. When he disembarked the vehicle, the cover of his eyes was removed. Like Madria, he too was forced to identify the items on top of the table. He insisted that he neither signed any inventory receipt, nor was he given a copy of the same. He denied that he sold one (1) sachet of *shabu* to a PDEA agent.[13]

The Trial Court's Ruling

On October 27, 2014, the RTC rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, this Court hereby finds that:
>
> 1. In Criminal Case No. 2010-001, accused ANTHONY MADRIA Y HIGAYON is hereby found GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 11, Article II of R.A. 9165 and each is hereby sentenced to an indeterminate penalty of IMPRISONMENT ranging from twelve (12) years and one (1) day to thirteen (13) years, and to pay a Fine in the amount of ₱300,000.00 without subsidiary imprisonment in case of non-payment of Fine;
>
> 2. In Criminal Case No. 2010-002, accused ANTHONY MADRIA Y HIGAYON and LORENZO DE ALA are GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 5, Article II of R.A. 9165, and hereby sentences him to a penalty of LIFE IMPRISONMENT and for each of them to pay a Fine in the amount of Five Hundred Thousand Pesos [₱500,000.00] without subsidiary imprisonment in case of non-payment of Fine. x x x
>
> SO ORDERED.[14]

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[13] CA *rollo*, pp. 51-52.

[14] *Id.* at 55-56.

The CA's Ruling

In questioning the RTC's decision, both accused Madria and De Ala appealed their conviction with the CA.[15] The appeal, however, was denied in the CA's decision[16] dated March 8, 2017, and succinctly disposed as follows:

FOR THESE REASONS, the Judgment in Criminal Case Nos. 2010-001 and 2010-002 appealed from is AFFIRMED *in toto*.

SO ORDERED.[17]

Thereafter, only accused Madria filed this instant petition[18] raising this sole assignment of error:

THE PROSECUTION FAILED TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT.

The Court's Ruling

The petition is meritorious.

While a buy-bust operation has been proven to be "an effective way to flush out illegal transactions that are otherwise conducted covertly and in secrecy, it has a significant downside that has not escaped the attention of the framers of the law. It is susceptible to police abuse, the most notorious of which is its use as a tool for extortion."[19] Thus, courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses.[20]

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[15] *Id*. at 26-45 and 80-94.

[16] *Rollo*, pp. 3-15.

[17] *Id*. at 14.

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

[19] *People v. Garcia*, 599 Phil. 416, 426-427 (2009).

[20] *People v. Tan*, 401 Phil. 259, 273 (2000); citing *People v. Pagaura*, 334 Phil. 683-689 (1997).

Accordingly, specific procedures relating to the seizure and custody of drugs have been that the prosecution must adduce evidence that these procedures have been followed[21] in light with the chain of custody rule in drug cases.

The Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment[22] defines "chain of custody" as follows:

> Section 1 (b) – "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.]

Corollary thereto, in *Junie Mallillin y Lopez v. People of the Philippines*,[23] the Court explained that the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. Thus:

> x x x It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the

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[21] *People v. Garcia*, *supra* note 19, at 427.

[22] *Dangerous Drugs Board (DDB) Regulation No. 1, Series of 2002.*

[23] 576 Phil. 576 (2008).

condition of the item and no opportunity for someone not in the chain to have possession of the same.[24]

We find merit in Madria's protestations that the prosecution failed to establish the charges against him due to the gaps in the chain of custody and due to the assailable integrity of the evidence in view of the police officers' non-compliance with Section 21,[25] Article II of R.A. No. 9165 and its Implementing Rules and Regulations (IRR).[26]

In *Howard Lescano y Carreon v. People of the Philippines*,[27] this Court briefly discussed the rigid requirements under Sec. 21, Article II of R.A. No. 9165, on the marking, inventory, and photographing of the contraband seized, including the

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[24] *Id.* at 587.

[25] Article II – Unlawful Acts and Penalties

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: x x x

[26] Section 21 (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 requirement under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; x x x

[27] 778 Phil. 460 (2016).

personalities required to be present during the buy-bust operation, thus:

> As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."
>
> Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.[28]

Notably, the procedures mentioned in R.A. No. 9165 are mandatory in nature, as indicated by the use of the word "shall" in its directives and its implementing rules.[29]

In the case of *People v. Myrna Gayoso*,[30] the Court explained the use of marking on the seized items, thus:

> "Marking" is the placing by the arresting officer or the poseur-buyer of his/her initials and signature on the items after they have

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[28] *Id.* at 475.

[29] *People v. Morales y Midarasa*, 630 Phil. 215, 230 (2010).

[30] G.R. No. 206590, March 27, 2017; citing *People v. Alejandro*, 671 Phil. 33, 46 (2011).

been seized. It is the starting point in the custodial link. It is vital that the seized items be marked immediately since the succeeding handlers thereof will use the markings as reference.

Likewise, in the case of *People v. Joselito Beran y Zapanta*,[31] the Court held that:

> To truly ensure that they are the same items that enter the chain and are eventually the ones offered in evidence, the chain of custody rule requires that the marking of the seized contraband be done (1) in the presence of the apprehended violator, and (2) immediately upon confiscation.[32]

Indeed, it is important that the seized drugs be immediately marked, if possible, as soon as they are seized from the accused.[33]

This crucial process, however, was ignored in this case.

The records do not show that the arresting officers marked the seized items with their initials in the presence of Madria and De Ala, and immediately upon confiscation.

IA5 Atila's allegation that the marking had to be done at the police station, and not at the crime scene, so as not to compromise the arresting officers' "security" is not sufficient to justify their non-compliance with the law. Apparently, IA5 Atila's allegation was belied by the testimony of the poseur-buyer, IO1 Siglos, when she testified as follows:

> [CROSS-EXAMINATION by Atty. Amarga]
>
> x x x x x x x x x
>
> Q: Now what were the things that you brought to the target area?
> A: Only the marked money.

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[31] 724 Phil. 788 (2014); citing *People v. Sanchez*, 590 Phil. 214, 241 (2008).

[32] *Id.* at 819.

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

Q: You do not have any ball pen or sign pen?
A: No, Sir.

Q: You do not have a masking tape?
A: No, Sir.

Q: You do not have a camera?
A: No, Sir.

x x x x x x x x x.[34]

Based on IO1 Siglos' testimony, it can be deduced, that at the outset, even before the buy-bust team initiated its operation on Madria and De Ala, no arresting officer was so minded to mark or even take a photo of the possible contraband that they may recover from both accused. This is manifested by the fact that none of them had a ball pen, sign pen, masking tape and camera – basic tools that can be used to mark the seized items. To put it differently, the allegation regarding the arresting officers' supposed security being compromised was already predetermined. Obviously, right from the start, the arresting officers had no intention to comply with the law by marking the seized items in the presence of the accused and immediately upon confiscation.

Due to this break in the chain of custody, it was possible that the seized item subject of the sale transaction was swapped with the seized items subject of the illegal possession case, while the contraband was being transported from the crime scene to the PDEA office. This is material considering that the imposable penalty for illegal possession of *shabu* depends on the quantity or weight of the seized drug. The Court has previously held that, "failure to mark the drugs immediately after they were seized from the accused casts doubt on the prosecution evidence warranting an acquittal on reasonable doubt."[35] In short, the marking immediately upon confiscation

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[34] TSN dated August 3, 2010, pp. 14-15.

[35] *People v. Umipang y Abdul*, 686 Phil. 1024, 1050 (2012); citing *People v. Laxa*, 414 Phil. 156 (2001); *People v. Casimiro*, 432 Phil. 966 (2002).

or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.[36]

Even if the Court glosses over this error, there are other significant gaps in the prosecution's evidence that – viewed as a whole – cast reasonable doubt on its case against Madria.

For one thing, neither in the direct examination, nor in the cross-examination of IO2 Pimentel was it mentioned that the markings were made in the presence of the accused or his representative. There was, likewise, no proof that a copy of the confiscation receipts were given to and signed by the accused Madria. IO2 Pimentel merely testified that he placed the markings at the PDEA office, without any allusion to the identities of the persons who were present when he did the markings. By jurisprudence, it must be shown that the marking was done in the presence of the accused to assure that the identity and integrity of the drugs were properly preserved.[37]

For another thing, the seized items were marked, inventoried and photographed in the PDEA office, without the presence of any representative from the media, Department of Justice (DOJ), or any elected official, who must sign the inventory, or be given a copy thereof as required by R.A. No. 9165 and its IRR.

When asked to explain why there was failure to comply with this requirement, IO2 Pimentel simply said that doing so could compromise the buy-bust operation.

[REDIRECT EXAMINATION by Prosecutor Vicente]

Q: Why is it that you did not inform the barangay of your operation?
A: Because there is a possibility that the information would leak, Sir.

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[36] *People v. Gonzales*, 708 Phil. 121, 131 (2013).

[37] *People v. Ismae*l, *supra* note 33.

Q: You also said that there was no media. Why?
A: To contact a media is very hard, Sir, because most media are willing to hear the news regarding a buy-bust operation but not willing to appear in Court as witnesses.

x x x x x x x x x[38]

[RECROSS EXAMINATION by Atty. Blanco]

Q: This PDEA office that you mentioned is the one at Corrales just right next to the *Bombo Radio*?
A: Yes, Ma'am.

Q: Yet at few steps to the *Bombo Radio*, you did not inform the radio personnel as to your operation?
A: Yes, Ma'am.

x x x x x x x x x[39]

This justification, however, is insufficient. Other than the bare allegation that coordination with the media and the barangay officials could have compromised the buy-bust operation, the prosecution offered no factual evidence to substantiate this claim. Likewise, there was no allegation that these people, required by law, could similarly compromise the operation if they had been informed of and present before, during, and after the operation. In *People v. Macud*,[40] we emphasized the importance of this requirement, thus:

> The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody. We have noted in several cases that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law are strictly observed.

Here, this procedure has not been followed, and its breach not justifiably explained. To note, it is the prosecution who

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[38] TSN dated July 15, 2010, p. 39.

[39] *Id.* at 39-40

[40] G.R. No. 219175, December 14, 2017.

had the concomitant part to "establish that earnest efforts were employed in contacting the representatives enumerated" under the law.[41] This, it failed to do.

In fact, even the trial court recognized the police officers' indifference in complying with the requirements under Sec. 21, Article II of R.A. No. 9165, thus:

> x x x Admittedly, the apprehending police officers merely paid a lip service on the procedural requirement provided for under Section 21. The pictures were taken, but no pictures depicting the arrest were offered in evidence. An inventory was made, but no signatures of the personalities mentioned under Section 21, appeared thereon, x x x.[42]

To compound the flaws in the chain of custody, this Court observed that the prosecution failed to proffer evidence on how the items were stored, preserved, labeled, and recorded from the moment they were confiscated at the crime scene, to the time they were inventoried at the PDEA office, until they were brought to the PNP Crime Laboratory for examination, and finally presented to the trial court. IO2 Pimentel could not even identify the particular item which was the subject of the illegal sale as a result of the buy-bust operation. He even admitted that the same could have been co-mingled with the items seized from Madria for illegal possession. Thus:

> [CROSS-EXAMINATION by Atty. Blanco]
>
> x x x x x x x x x
>
> Q: And the sachet of *shabu* which was the alleged subject of the buy-bust operation was given to you by Siglos right there at the area?
> A: Yes, Ma'am.
>
> Q: Therefore, you had in your possession the 6 sachets of *shabu* including the one sachet of *shabu* given to you by Siglos in your left hand?
> A: Yes, Ma'am.

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[41] *People v. Umipang y Abdul*, *supra* note 35, at 1053.

[42] CA *rollo*, p. 55.

Q: ***The one sachet was co-mingled because it was in your palm and there was no marking made yet during the operation?***
A: ***Yes, Ma'am.***

Q: From the seven (7) sachets, you cannot identify which one was the subject of the buy-bust operation?
A: The poseur-buyer can identify, Ma'am.

Q: How can he identify when you said you were the one who marked the sachet in your office?
A: He was there during the marking, Ma'am.

Q: But there was no marking in the crime scene?
A: Yes, Ma'am.

Q: ***You are saying that the one sachet of shabu, the alleged subject of the buy-bust operation, was co-mingled with the other 6 sachets?***
A: ***Yes, Ma'am.***

Q: Therefore, you cannot identify the sachet which was the subject of the buy-bust operation?
A: Siglos can identify that, Ma'am.

x x x x x x x x x[43]
(Emphasis Ours)

Interestingly, IO1 Siglos' testimony, likewise, reveals that she did not disclose to IO2 Pimentel which item was the subject of the buy-bust operation, thus:

[COURT]

x x x x x x x x x

Q: When Pimentel recovered the six (6) sachets of *shabu*, were you present?
A: Yes, Your Honor.

Q: ***Did you tell him which of the sachets was taken by you from the accused?***
A: ***No, Your Honor.***

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[43] TSN dated July 15, 2010, pp. 36-37.

Q: ***How did Pimentel know that this is the particular sachet of shabu that you bought?***
A: ***He just hold [sic] it, Your Honor.***

Q: From Justo Ramonal Street to your office, he was holding only one (1) sachet?
A: Yes, Your Honor.

Q: ***It was not further placed in a container; Not even placed inside his pocket?***
A: ***Yes, Your Honor.***[44] (Emphasis Ours)

Based on the testimonies of the police officers, we find that there is no assurance that the confiscated items presented here as evidence are the same articles that had been the subject of the crime of illegal sale and illegal possession charges against Madria. The indeterminateness of the identities of the seized items even before they were marked, and the failure of the police officers to adequately show how these items were handled and preserved,[45] while in their possession, broke the chain of custody. It entertains the likelihood that these items were switched or replaced. As such, it tainted the integrity of the alleged *shabu* ultimately presented as evidence before the trial court.

The totality of the procedural lapses committed by the police officers leads this Court to conclude that the integrity of the seized items presented in court was compromised; the very identity of the seized drugs became highly questionable. Consequently, the prosecution cannot apply the saving mechanism of Sec. 21 of the IRR of R.A. No. 9165, because it miserably failed to prove that the integrity and the evidentiary value of the seized items were preserved. The links required to establish the proper chain of custody were breached. Otherwise stated, the justifiable ground for non-compliance must be proven as a fact. Hence, courts cannot assume what these reasons are, if they even exist at all.[46]

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[44] TSN dated August 3, 2010, pp. 23-24.

[45] *People v. Ismael*, *supra* note 33.

[46] *People v. Segundo y Iglesias*, G.R. No. 205614, July 26, 2017.

Corollarily, the prosecution cannot evade its non-compliance with the chain of custody by relying on the presumption of regularity. This presumption, it must be stressed, is not conclusive. Any taint of irregularity affects the whole performance and should make the presumption unavailable. The presumption, in other words, obtains only when nothing in the records suggests that the law enforcers involved deviated from the standard conduct of official duty, as provided for in the law.[47] However, as had been discussed earlier, the police officers' acts during the buy-bust operation were marred by irregularities. Thus, an adverse presumption arises as a matter of course.

Given the procedural lapses on the part of the police officers in faithfully observing the requirements under Sec. 21, Article II of R.A. No. 9165, *vis-a-vis* the chain of custody rule in drug cases, serious doubt on Madria's guilt is created. Hence, a verdict for his acquittal is proper.

WHEREFORE, We **REVERSE** and **SET ASIDE** the Court of Appeals' Decision promulgated on March 8, 2017 in CA-G.R. CR-HC No. 01357-MIN; **ACQUIT** accused **ANTHONY MADRIA y HIGAYON** for failure of the Prosecution to prove his guilt beyond reasonable doubt; **DIRECT** the immediate release from detention of **ANTHONY MADRIA y HIGAYON**, unless he is also detained for some other lawful cause; and, **ORDER** the Director of the Bureau of Corrections to forthwith implement this Decision upon receipt, and to report his action hereon to this Court within ten (10) days from receipt. No pronouncement as to costs of suit.

SO ORDERED.

Peralta[*] (*Acting Chairperson*), *del Castillo, Jardeleza*, and *Gesmundo*,[**] *JJ.*, concur.

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[47] *Cariño, et al. v. People*, 600 Phil. 433, 451 (2009); see *People v. Capuno*, 655 Phil. 226, 244 (2011).

[*] Designated Acting Chairperson per Revised Special Order No. 2582 dated August 8, 2018.

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

THIRD DIVISION

[G.R. No. 235467. August 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CELSO PLAZA *y* CAENGLISH *alias* JOBOY PLAZA, JOSEPH GUIBAO BALINTON *alias* JOABS,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS.—** For the successful conviction of an accused under Sec. 5, Art. II of R.A. No. 9165, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. It is likewise essential for a conviction that the drugs subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. 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.*

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** [I]n the absence of glaring errors or gross misapprehension of facts on the part of the CA, the Court accords respect to the findings of the trial court on the credibility of witnesses because of the trial court's unique advantage of directly observing the demeanor of the witnesses as they testified. There is even more reason for the Court to accord respect when the CA affirmed the factual findings as the appellate court. In the absence of allegation and proof about the law enforcement officers harboring any ill motive to falsely testify against the accused, the factual findings and conclusions of the lower courts on the credibility of a witness should prevail.

3. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); CHAIN OF CUSTODY; LINKS THAT MUST BE ESTABLISHED.— As to the chain of custody, the Court has consistently ruled that the following links must 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 from the forensic chemist to the court.

4. ID.; ID.; ID.; NON-COMPLIANCE REQUIRES JUSTIFIABLE GROUNDS; PRESUMPTION OF REGULAR PERFORMANCE OF OFFICIAL DUTY FAILS AS AGAINST PRESUMPTION OF INNOCENCE.— The law itself has provided a possibility of non-compliance due to the impracticability of the requirement. However, there should be *justifiable grounds* and such should be detailed by the prosecution for the Court to consider the exceptional circumstances to the chain of custody rule. x x x Though the presumption of regularity in the performance of duty is of course available, it has to be remembered that the presumption of innocence of a person accused of committing a crime prevails over the presumption of regularity of the performance of official duty. The presumption of regularity cannot by itself support a judgment of conviction. Further, the Court reiterates its previous rulings that buy-bust teams should be more meticulous in complying with Sec. 21 of R.A. No. 9165 to preserve the integrity of the seized *shabu* most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with.

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

GESMUNDO, *J.*:

This resolves the appeal from the Decision[1] of the Court of Appeals-Cagayan De Oro City (*CA*) dated August 25, 2017 docketed as CA-G.R. CR HC No. 01534-MIN affirming the Decision[2] of the Regional Trial Court, Butuan City, Branch 4 (*RTC*) dated February 2, 2016 in Criminal Case No. 14839. Herein accused-appellants Celso Plaza *y* Caenglish alias Joboy Plaza and Joseph Guibao Balinton alias Joabs (*accused-appellants*) were found guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 (*R.A. No. 9165*), otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The Antecedents

The information against accused-appellants reads:

> That at more or less 7:05 o'clock in the evening of March 28, 2011 at Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver one (1) sachet of methamphetamine hydrochloride, otherwise known as shabu weighing zero point zero five two four (0.0524) gram, a dangerous drug to a poseur buyer for a consideration of five hundred ([₱]500.00) pesos.
>
> CONTRARY TO LAW: (Violation of Section 5, Article II of R.A. 9165)[.][3]

Upon arraignment, with the assistance of counsel, accused-appellants pleaded not guilty to the charge.[4]

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[1] *Rollo*, pp. 3-14; penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring.

[2] CA *rollo*, pp. 38-54; penned by Judge Godofredo B. Abul, Jr.

[3] Records, p. 1.

[4] *Id.* at 35.

The prosecution presented four (4) witnesses: Philippine Drug Enforcement Agency (*PDEA*) Agent Alex B. Subang (*PDEA Agent Subang*), Police Senior Inspector Joel P. Signar (*PSInsp.Signar*), Barangay Captain Ramonita M. Boholano (*Boholano*), and PDEA Agent Simplicio Cubero Bautista (*PDEA Agent Bautista*). For the defense, accused-appellants testified for themselves.

The testimonies of the prosecution witnesses are condensed as follows:

1. PDEA Agent Subang

A walk-in police asset relayed information about the illegal drug trafficking of accused-appellants. Upon further investigation, it also appeared that accused-appellant Plaza was listed in PDEA's target drug personalities. A buy-bust operation was planned, with PDEA Agent Subang assigned as the poseur-buyer and PDEA Agent Bautista as the arresting officer. When PDEA Agent Subang and the police asset arrived along the highway in front of the Iglesia Ni Cristo church, accused-appellant Plaza asked PDEA Agent Subang how much the latter intended to buy, to which he replied "₱500.00". Accused-appellant Plaza opened his belt bag and took out one (1) sachet of *shabu*, gave the same to accused-appellant Balinton with instruction for the latter to give an aluminum foil, which PDEA Agent Subang received. In exchange, PDEA Agent Subang gave the marked money to accused-appellant Plaza. After the signal, PDEA Agent Bautista rushed in to arrest both accused-appellants, who resisted. Accused-appellant Balinton shouted for help and caught the attention of several persons in the neighborhood. Several persons then arrived, forcing the team to withdraw from the area to conduct further investigation and did their documentation elsewhere. PDEA Agent Subang marked the purchased sachet of *shabu* in transit to the office. The documentation and actual body search was likewise conducted at the PDEA office.

2. PSInsp. Signar

His testimony was the subject of stipulation. Among the stipulations was that the PNP Crime Laboratory received a request

for laboratory examination involving a sachet of *shabu* with corresponding markings from PDEA Agent Subang; that he conducted laboratory examination on the items, which yielded a positive result for the presence of methamphetamine hydrochloride; that the two accused-appellants likewise submitted their urine samples, and the examination thereon also yielded a positive result for the presence of methamphetamine hydrochloride for accused-appellant Plaza and TLC metabolites for marijuana for accused-appellant Balinton.

3. Barangay Captain Boholano

Her testimony was likewise subject to stipulation by the prosecutor and defense counsel.Said stipulations were: that she was the barangay captain of Brgy. Bading, where accused-appellants were arrested; that she was present during the conduct of inventory of the drug and non-drug items in the presence of both accused and other witnesses; and that she signed the Certificate of Inventory.

4. PDEA Agent Bautista

The witness testified that he was a member of the buy-bust team which conducted an operation against accused-appellants acting as arresting officer. After completion of the sale, PDEA Agent Bautista received a missed call from PDEA Agent Subang, which was the pre-arranged signal, he and the rest of the team rushed to arrest both accused who attempted to run. A scuffle followed. Despite the ensuing commotion, accused-appellants were neutralized. Considering the precarious and dangerous situation, after the arrest of both accused-appellants, the team withdrew to conduct further investigation and documentation at the PDEA office.

Accused-appellants, on the other hand, essentially testified as follows:

Accused-appellant Plaza sent a text message to accused-appellant Balinton to drink liquor and the latter agreed. They consumed two (2) bottles of Red Horse Grande and decided to go home. It took some time for them to get a tricycle ride home,

so they decided to walk. A tricycle full of passengers blocked their path. A person, who identified himself as a PDEA agent, then disembarked and threatened them with a drawn gun. The other passengers (around seven) surrounded them. The first person tried to handcuff accused-appellant Plaza, and he resisted, which resulted to a brawl. He was still eventually handcuffed, forced to board a vehicle, and brought to the PDEA office. At the PDEA office, they were shown an alleged sachet of *shabu*. They both vehemently denied the allegations of selling *shabu*.

Accused-appellants filed a Demurrer to Evidence with Leave of Court. The same was denied through a Resolution[5] dated July 10, 2015.

The RTC Ruling

The RTC found that the elements for proving violation of Section 5, Article II of R.A. No. 9165 – (1) identity of the buyer and seller and actual exchange of the prohibited drug and consideration; and (2) compliance with Section 21 of R.A. No. 9165 and presentation of the *corpus delicti* in court – were sufficiently shown.

As to the first element, the same was duly established by the testimony of poseur-buyer PDEA Agent Subang. As the second element, the trial court found substantial compliance with Sec. 21 of R.A. No. 9165. Since both prosecution and defense were in agreement that: (1) the place of incident in front of Iglesia Ni Cristo church was unlighted; (2) both accused tried to evade arrest and force had to be applied to subdue accused-appellants; and (3) the ensuing scuffle and noise invited the attention of people in the neighborhood, the Court was persuaded that justifying circumstances were present to apply the exception to the rule of strict compliance with Sec. 21.

The conspiracy between accused-appellants was also sufficiently proven. On the other hand, the defense of general denial and planting of evidence, common defenses in these cases, were not given credence.

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[5] *Id.* at 125-128.

Thus, the RTC ruled against accused-appellants, the dispositive portion of the decision stated:

> WHEREFORE, premises considered, accused Celso Caenglish Plaza, Jr. alias "Joboy Plaza" and Joseph Guibao Balinton alias "Joabs" having acted in conspiracy, the Court finds both accused guilty beyond reasonable doubt of violation of Section 5 of Article II of Republic Act 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentence both accused Plaza and Balinton to suffer the extreme penalty of Life [I]mprisonment and each to pay a fine of [₱]500,000.00, without subsidiary imprisonment in case of insolvency.
>
> Both accused shall serve this penalty at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte and shall be entitled to the benefits of their preventive detention in accordance with Article 29 of the Revised Penal Code, as amended.
>
> The sachet of shabu is ordered confiscated in favor of the government to be dealt with as the law provides.
>
> SO ORDERED.[6]

Accused-appellants interposed an appeal from the adverse decision.

The CA Ruling

In its decision, the CA found no merit in the appeal of accused-appellants. PDEA Agent Subang duly established the existence of the elements of an illegal sale of dangerous drugs. His testimony was replete with details surrounding the consummation of the sale. As to the failure of the buy-bust team to mark and inventory the *shabu* at the crime scene, the CA found the omission adequately explained by PDEA Agent Subang that they had to hastily leave the crime scene as they feared for their safety and decided to do the marking, photographing and inventory at the PDEA office. Thus, the failure to strictly comply with Sec. 21 of R.A. No. 9165 was due to security and logistical considerations, and fully justified owing to these exigent

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[6] CA *rollo*, pp. 50-51.

circumstances. On the other hand, the defense of frame-up must be proved with strong and convincing evidence, this was not done in this case.

The dispositive portion of the decision reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The 2 February 2016 *Decision* rendered by the Regional Trial Court, Branch 4, Butuan City in *Criminal Case No. 14839* is **AFFIRMED**.

SO ORDERED.[7]

Hence, this appeal.

In compliance with this Court's resolution dated December 13, 2017, accused-appellants filed a Manifestation in Lieu of a Supplemental Brief dated February 20, 2018,[8] stating that they had sufficiently articulated their claims and arguments in their appellants' brief submitted to the CA. The Office of the Solicitor General representing the People of the Philippines filed a Manifestation and Motion[9] on February 26, 2018, stating that all matters and issues raised in the appellants' brief had been extensively discussed, thus praying that it be excused from filing a supplemental brief.

Issues

Appellants submit to this Court the following issues for resolution:

1. Whether there was a legitimate buy-bust operation; and
2. Whether there was compliance with the requirements under Section 21 of R.A. No. 9165.

Arguments for accused-appellants

Accused-appellants contend that: there was no legitimate buy-bust operation as PDEA Agent Subang's testimony was

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[7] *Rollo*, p.13.

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

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

inconsistent and unbelievable; since it was a dark place, it would have been impossible for the accused-appellants to know the amount of money allegedly handed to them, and it was impossible for PDEA Agent Subang to physically examine the alleged sachet of *shabu*; other parts of PDEA Agent Subang's testimony were improbable, *i.e.* initially not testifying that he received aluminum foil, that accused-appellant Plaza had to hand the *shabu* to accused-appellant Balinton before reaching PDEA Agent Subang, and that the belt bag was not presented; PDEA Agent Subang's testimony was uncorroborated; there was non-compliance with Sec. 21 of R.A. No. 9165 as PDEA Agent Subang admitted that he failed to mark, inventory, and photograph the sachet of *shabu* immediately after its seizure; there was no showing that necessary steps were taken to ensure that the sachet was the same that was allegedly marked; there was no testimony that the alleged sachet was handled and stored to preserve its integrity from the time it came into PDEA's custody up to the time it was presented in court; and PSInsp. Signar failed to show that he took the necessary steps to ensure the preservation of the integrity of the sachet of *shabu*.

Arguments for the People

In the appellee's brief, the prosecution maintains that: the objective test in establishing the credibility of an eyewitness in a buy-bust operation was satisfied; the accused-appellants were positively identified; the inconsistencies in the testimony of PDEA Agent Subang were minor and do not affect his credibility as an eyewitness; accused-appellants can still identify the ₱500.00 bill despite the poor lighting in the area; what was essential in this case was the exchange of money for illegal drugs between PDEA Agent Subang and accused-appellants; the belt-bag confiscated from accused-appellants not being part of the certificate of inventory was inconsequential as it was not the *corpus delicti*; Sec. 21 of R.A. No. 9165 allows for substantial adherence to the rule provided that the prosecution gives justifiable grounds for the procedural lapses and it can be proven that the integrity and evidentiary value of the items were preserved; it was shown that PDEA Agent Subang had

exclusive possession of the sachet of illegal substance; that the PDEA agents were justified in their actions because of the commotion as well as the aggression from bystanders; the continuous whereabouts of the subject sachet of *shabu* were accounted for with moral certainty; and there were no gaps in the crucial links in the chain of custody.

The Court's Ruling

After a careful review of the records, the Court finds the appeal impressed with merit.

Accused-appellants were charged with violation of Sec. 5, Art. II of R.A. No. 9165, which pertinently states:

> 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.

For the successful conviction of an accused under Sec. 5, Art. II of R.A. No. 9165, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment. It is likewise essential for a conviction that the drugs subject of the sale be presented in court and its identity established with moral certainty through an unbroken chain of custody over the same. 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*.[10]

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[10] *People v. Año*, G.R. No. 230070, March 14, 2018.

Accused-appellants' arguments can be classified into two: (1) questioning the existence of a valid buy-bust operation, and (2) the law enforcement agents' compliance with the chain of custody rule laid down in Sec. 21 of R.A. No. 9165. It is on the latter ground that the Court finds basis for accused-appellants' acquittal.

There was a valid buy-bust operation

Accused-appellants zero in on the seeming inconsistencies of PDEA Agent Subang's account, thus impugning the buy-bust operation on the basis of these inconsistencies. The Court is not persuaded.

It should be remembered that in the absence of glaring errors or gross misapprehension of facts on the part of the CA, the Court accords respect to the findings of the trial court on the credibility of witnesses because of the trial court's unique advantage of directly observing the demeanor of the witnesses as they testified. There is even more reason for the Court to accord respect when the CA affirmed the factual findings as the appellate court. In the absence of allegation and proof about the law enforcement officers harboring any ill motive to falsely testify against the accused, the factual findings and conclusions of the lower courts on the credibility of a witness should prevail.[11]

An analysis of PDEA Agent Subang's testimony reflects truthfulness and the lack of reason for the Court to doubt the factual findings of the courts *a quo* on this matter. The court observes that PDEA Agent Subang's declarations were clear, categorical, and unwavering, and were substantially corroborated by PDEA Agent Bautista. The positive identification of accused-appellants by the poseur-buyer as those who peddled the *shabu* unequivocally establish the illicit sale as he is the best witness to the transaction. Moreover, his testimony was substantiated in every material detail by the other operatives who participated in the buy-bust operation.[12]

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[11] *People v. Lamama,* G.R. No. 188313, August 23, 2017.

[12] *People v. Chua Tan Lee,* 457 Phil. 443, 450 (2003).

From this discussion, the Court rules that the operation conducted by the PDEA was legitimate.

The chain of custody rule was not strictly followed

The foregoing finding notwithstanding, the Court is constrained to grant the instant appeal for failure of the prosecution to establish that there is an unbroken chain of custody.

The showing of the continuous chain of custody fulfills the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.[13] The same requirement on the custody of confiscated, seized and/or surrendered dangerous drugs is embodied in Sec. 21, R.A. No. 9165, to wit:

SECTION 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the 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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[13] *People v. Reyes*, G.R. No. 199271, October 19, 2016, 806 SCRA 513, 532.

(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;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provide[d]*, *further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of

the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same[.]

This provision was amended in 2014 by R.A. No. 10640 as to paragraphs (1) and (3).The difference between the requirements in R.A. No. 9165 and R.A. No. 10640 is the requirement of having representatives of the media *or* National Prosecution Service instead of previously requiring the presence of both to witness the inventory process; and the relaxation of the rule regarding the certification of the forensic laboratory examiner.

As to the chain of custody, the Court has consistently ruled that the following links must 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 from the forensic chemist to the court.[14]

In this case, accused-appellants question the inability of PDEA Agent Subang to mark, inventory, and photograph the sachet of *shabu* immediately after its seizure, and the lack of proof on the necessary steps taken to ensure that the sachet presented to the RTC was the same that was allegedly marked. Accused-appellants also raise the point that there was no testimony as

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[14] *People v. Guillergan,* G.R. No. 218952, October 19, 2016, 806 SCRA 631, 642-643.

to how the alleged sachet was handled and stored to preserve its integrity.These arguments are well-taken.

As to the failure of PDEA Agent Subang to mark the sachet of *shabu* immediately after seizure, it should be emphasized that the Implementing Rules and Regulations of R.A. No. 9165 (*IRR*) provides for an exception to the requirement of the evidence being marked and photographed soon after the confiscation of the items. Sec. 21 of the IRR 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:
>
> (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 (underscoring supplied)

The law itself has provided a possibility of non-compliance due to the impracticability of the requirement. However, there should be *justifiable grounds* and such should be detailed by the prosecution for the Court to consider the exceptional circumstances to the chain of custody rule.

Here, the prosecution managed to demonstrate the necessity of doing the marking, inventory and photography-taking belatedly and not at the scene of the crime. As remarked by the CA:

> In this instance, Agent Subang testified that they had to hastily leave the crime scene as Plaza was able to call his brother through his cellphone. At the moment when Plaza's brother arrived along with several individuals, the buy-bust team feared for their safety and thus decided to do the marking, photographing and inventory at the police station to prevent any untoward incident.[15]
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> x x x x x x x x x
>
> As revealed in the above-testimony, the failure of the buy-bust team to immediately comply with the guidelines in Section 21, IRR of R.A. No. 9165 was due to security and logistical considerations, considering that a mob had began to gather putting the police operatives[,] lives at risk.[16]

There is no reason for the Court to reverse these observations as these are supported by the testimonies of PDEA Agent Subang and PDEA Agent Bautista. The evidence offered also show that there were some PDEA agents who suffered hematoma and contusion[17] due to the scuffle between the law enforcement agents and accused-appellants. Thus, PDEA Agent Subang's actions were warranted since their safety was compromised and they had to suppress the struggle put up by accused-appellants. Accordingly, the first link in the chain was supported by convincing proof and testimony.

The second and third links were also adequately demonstrated. PDEA Agent Subang's statements showed that he was the arresting and investigating officer, and he had exclusive custody of the drug subject of the buy-bust operation which he personally brought to the PNP Crime Laboratory.

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[15] *Rollo*, p. 11.

[16] *Id.* at 13.

[17] See Exhibits "Q" and "S" offered by the prosecution; records, pp. 23-24.

However, even if the first three (3) links may have been substantially complied with, the fourth link is where the Court takes issue.

The forensic chemical officer of the Provincial Crime Laboratory Office PSInsp. Signar was presented by the prosecution but his testimony was the subject of stipulation. The complete stipulation of his testimony is as follows:

PROS. GO:	Your Honor, may we stipulate with the defense the testimony of the witness?
COURT:	Atty. Plaza?
ATTY. PLAZA:	Yes, Your Honor.
COURT:	Okay, continue.

PROS. GO:

1) That the witness is a licensed Chemical Engineer and an expert witness;

2) That he has been testifying before this Honorable Court on illegal drug examination in numerous cases;

3) That on March 29, 2011, their office, the PNP Crime Laboratory received a Request for Laboratory Examination involving a one (1) sachet of *shabu* with corresponding markings from Agent Alex B. Subang, Jr. of the PDEA;

4) That, thereafter, he conducted laboratory examination on the items submitted;

5) That he reduced his findings in writing showing that the specimen yielded a positive result for the presence of methamphetamine hydrochloride;

6) That on the same occasion, their office received a Request for Drug Test involving the two (2) accused in this case from Agent Subang; and

7) That the two (2) accused submitted their urine sample for laboratory examination and that the urine sample yielded positive result for the presence of methamphetamine hydrochloride for accused Celso Plaza and TLC metabolites for marijuana for accused Joseph Balinton y Guibao.

For this purpose, we would like to adopt the Request for Laboratory Examination, found in page 10 of the records of the case and already marked as Exh. "C", with some sub-markings, to form part of the evidence of the prosecution.

We likewise adopt the result of examination under Chemistry Report No. D-040-2011 already marked as Exh. "D" and found in page 12 of the records.

Additionally, Your Honor, we pray that the specimen submitted, be marked as Exh. "D-1"; the purpose of examination Exh. "D-2"; the Findings and Conclusion as Exh. "D-3"; the signature of the witness as Exh. "D-4"; and the Jurat portion as Exh. "D-5".

COURT: Okay, mark it.

PROS. GO: We also adopt the Request for Drug Test Examination presented by the prosecution during the testimony of Agent Subang which was already marked as Exh. "J" for the prosecution, and the stamped portion Exh. "J-1".

We likewise adopt, Your Honor, the result of the drug test examination under Chemistry Report No. DT-037-2011 thru DT-038-2011 already marked as Exh. "K" for the prosecution, and found in page 14 of the records.

For this purpose, Your Honor, we pray that the specimen submitted, be marked as Exh. "K-1"; the purpose of examination as Exh. "K-2"; the Findings and Conclusion as Exh. "K-3"; the signature of the witness as Exh. "K-4"; and the Jurat portion as Exh. "K-5".

COURT: Mark it.

PROS. GO: May we ask the witness, Your Honor, to produce the *shabu*, subject of the Request for Laboratory Examination submitted by Agent Subang to the PNP Crime Laboratory?

COURT (to the witness): You produce the *shabu* Mr. Witness?

WITNESS: Here, Your Honor.

(Witness at this juncture, handed to the City Prosecutor a brown envelope)

PROS. GO: We request the interpreter to open the envelope and describe the same, Your Honor.

COURT: (To Court Interpreter) Okay, you open the brown envelope?

COURT INTERPRETER: (Open[s] the envelope and describe the same) (The said envelope contained markings D-040-2011 0730H 29 March 2011 initials JPS. Contained in said brown envelope is a one (1) small sachet with markings JBP-1 sealed with a masking tape with markings D-040-2011 A, initials JPS, 0730H 29 March 2011 0.0524 gram and a signature).

PROS. GO: We pray, Your Honor, that the brown envelope containing the item, be marked as Exh. "G" for the prosecution; and the sachet, be marked as Exh. "G-1".

COURT: Mark it.

PROS. GO: At this point, Your Honor, we are depositing the *shabu* submitted by Forensic Chemical Officer Joel P. Signar to the Court for safekeeping.
We have no more proposal, Your Honor.

COURT: Do you have additional proposal defense counsel?

Atty. Plaza: No additional proposal, Your Honor.

PROS. GO: May we ask that the Chain of Custody document, be marked as our Exh. "L"; the items submitted as Exh. "L-1"; the signature of the receiving officer PO1 Dispo as Exh. "L-2"; the signature of the witness as Exh. "L-3"; and the signature of the evidence custodian PO1 Migullas as Exh. "L-4".

COURT: Mark it.

PROS. GO: We are through, Your Honor.[18]

The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are

[18] TSN, April 16, 2014, pp. 2-6.

presented in court. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and there was no opportunity for someone not in the chain to have possession of the same.[19]

It has been held that there is a gap or break in the fourth link of the chain of custody where there is absence of evidence to show how the seized *shabu* was handled, stored, and safeguarded pending its presentation in court.[20] In some instances, when the stipulation failed to identify who received the *shabu* at the crime laboratory and who exercised custody and possession before and after it was examined, the Court similarly considered that there was a gap in the chain of custody.[21]The instant case has stark similarities with the case of *People v. Prudencio,* where the Court noted:

> As mentioned previously, PO1 Magora's testimony never touched upon the details on how the seized drugs were turned over to the investigating officer, nor on how it was turned over to the forensic chemist, P/Sr. Insp. Sta. Maria, for laboratory examination. The only pieces of evidence representing the third link in the chain consisted of the letter-requests for laboratory examination and for drug test, and the corresponding chemistry reports issued by P/Sr. Insp. Sta. Maria.
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> As to the fourth link, when P/Sr. Insp. Sta. Maria was called to the witness stand, the prosecution and the defense decided to enter

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[19] *Valencia v. People,* 725 Phil. 268, 279 (2014).

[20] *People v. Villarta*, G.R. No. 217887, March 14, 2018.

[21] *People v. Prudencio*, 800 Phil. 128 (2016).

into a stipulation regarding what P/Sr. Insp. Sta. Maria would be testifying on if he were presented. Yet, all they stipulated was that he would identify the request for laboratory examination, request for drug test, the subject sachets of *shabu,* and the chemistry reports.

These pieces of evidence failed to identify the person who personally brought the seized *shabu* to the Bulacan Provincial Crime Laboratory Office. It also failed to identify who received the *shabu* at the crime laboratory and who exercised custody and possession before and after it was examined. Neither was there evidence to show how the seized *shabu* were handled, stored, and safeguarded pending its presentation in court.

Notably, Section 6, Paragraph 8 of Dangerous Drugs Board Regulation No. 2, Series of 2003 requires laboratory personnel to document the chain of custody each time a specimen is handled or transferred until the specimen is disposed; it also requires the identification of the individuals participating in the chain. The records are silent regarding compliance with this regulation.

Simply put, serious lapses in the handling of the seized *shabu* as well as the evidentiary gaps or breaks in the chain of custody are fatal to the prosecution's cause. In effect, the prosecution failed to fully prove the elements of the crimes charged, creating a reasonable doubt on the criminal liability of the accused.[22] (citations omitted, underscoring supplied)

More recently, in *People of the Philippines v. Mola,* the Court was also dissatisfied with the mere stipulation of the forensic chemist which lacked in details as to the chain of custody, *viz:*

Moreover, in dispensing with the testimony of the forensic chemist, it is evident that the prosecution failed to show another link in the chain of custody. Since her testimony was limited to the result of the examination she conducted and not on the source of the substance, PS/Insp. Malojo-Todeño failed to certify that the chemical substance presented for laboratory examination and tested positive for *shabu* was the very same substance recovered from Mola. The turnover and submission of the marked illegal drugs seized from the forensic chemist to the court was also not established. Neither was there any

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[22] *Id.* at 141-142.

evidence to indicate how the sachet of *shabu* was handled during and after the laboratory examination and on the identity of the person/s who had custody of the item before it was presented to the court as evidence. Without the testimonies or stipulations stating the details on when and how the seized sachet of *shabu* was brought from the crime laboratory to the court, as well as the specifics on who actually delivered and received the same from the crime laboratory to the court, it cannot be ascertained whether the seized item presented in evidence was the same one confiscated from Mola upon his arrest.This gap in the chain of custody creates doubt as to whether the *corpus delicti* of the crime had been properly preserved.[23] (citations omitted, underscoring supplied)

Even a painstaking review of the records and transcripts yields no results as to information on the chain of custody between the time PDEA Agent Subang confiscated the subject sachet of drugs up to the time it was presented in court. Though the Chain of Custody Document[24] was presented during PSInsp. Signar's testimony, the same was not identified by any witness. While the document contains the signatures of a certain PO1 Randy Dispo and another recipient of the sachet for "safekeeping," the Court is left to surmise on whether the proper procedure was followed during this intervening period. Clearly, there was no identification of all persons who handled the sachet nor was there testimony as to every relevant link in the chain, nor a showing that all possible safeguards were done by the law enforcement agents to protect the integrity of the evidence, as mandated by law and jurisprudence. This goes against the settled doctrines of this Court requiring these pieces of evidence in the prosecution of drug cases.

Though the presumption of regularity in the performance of duty is of course available, it has to be remembered that the presumption of innocence of a person accused of committing a crime prevails over the presumption of regularity of the performance of official duty. The presumption of regularity

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[23] G.R. No. 226481, April 18, 2018.

[24] Exhibit "L".

cannot by itself support a judgment of conviction.[25] Further, the Court reiterates its previous rulings that buy-bust teams should be more meticulous in complying with Sec. 21 of R.A. No. 9165 to preserve the integrity of the seized *shabu* most especially where the weight of the seized item is a miniscule amount that can be easily planted and tampered with.[26]

It appears from the way the prosecution presented its case that it took liberties to show that there was an unbroken chain of custody. However, much as the Court searched to complete the link of custody of the confiscated dangerous drug, there is a serious gap in showing how the sachet of *shabu* transferred hands. The Court must be convinced that there was no room for the dangerous drug to be replaced by or contaminated with other pieces of evidence for other cases. The prosecutors in drug cases have to be reminded that in order to successfully convict these alleged sellers of illegal drugs, they must show *beyond reasonable doubt* not only the fact of sale, but that the evidence presented to the Court is untainted by uncertainty that it is indeed the confiscated item from the accused.This was unsatisfactorily done by the prosecution. It is the State's duty to prove, beyond any suspicion, that all elements of the crime are shown, especially in instances such as this where the dangerous drug involved is extremely small.[27] Such duty the prosecutors cannot simply shirk by inattentive presentation of evidence.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 25, 2017 of the Court of Appeals in CA-G.R. CR H.C. No. 01534-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Celso Plaza *y* Caenglish alias Joboy Plaza and Joseph Guibao Balinton alias Joabs are **ACQUITTED** of the crime charged. The Director of the Bureau

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[25] *People v. Briones*, 334 Phil. 227, 234 (1997).

[26] *People v. Alvarado, et al.*, G.R. No. 234048, April 23, 2018.

[27] See *Lescano v. People*, 778 Phil. 460, 479 (2016).

of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drug Enforcement Agency for their information.

SO ORDERED.

Leonardo-de Castro (*Chairperson*), *Bersamin, Leonen,* and *Reyes, A. Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 235980. August 20, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH PONTIJOS LIBRE @ "JOYJOY" and LEONILA PUEBLAS LIBRE @ "INDAY NILAY,"** *accused*, **LEONILA PUEBLAS LIBRE @ "INDAY NILAY,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL IN CRIMINAL CASES; ENTIRE CASE OPENED FOR REVIEW.— [A]n appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment

whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."

2. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; REQUISITES.— [T]he accused were charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, jurisprudence requires that the prosecution must prove the following: (*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. Of these elements, proof that the transaction actually took place, coupled with the presentation before the court of the dangerous drugs, the *corpus delicti* of the crime, are crucial. Consequently, the prosecution must show an unbroken chain of custody over the same by accounting for each link in the chain of custody from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*, in order to prove its identity beyond reasonable doubt.

3. ID.; ID.; CHAIN OF CUSTODY; SECTION 21 ON THE PROCEDURES TO OBSERVE IN THE HANDLING OF THE SEIZED ILLEGAL DRUGS.— Considering the importance of ensuring that the dangerous drugs seized from an accused is the same as that presented in court, Section 21, Article II of RA 9165, prior to its amendment by RA 10640, and Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165 provide the procedures that the apprehending team should observe in the handling of the seized illegal drugs in order to preserve their identity and integrity as evidence. As part of the procedure, the apprehending team shall, **immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person/s from whom the items were seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and,

within twenty-four (24) hours from confiscation, the seized drugs must be turned over to the PNP Crime Laboratory for examination. According to jurisprudence, the law requires the presence of an elected public official, as well as representatives from the DOJ and the media in order to remove any suspicion of tampering, switching, planting or contamination of evidence which could considerably affect a case, and thus, ensure that the chain of custody rule is observed. Since the police actions relative to the handling of the drugs seized in this case were committed in 2012, and thus prior to RA 9165's amendment by RA 10640, the presence of all three witnesses during the conduct of inventory and photography is required.

4. ID.; ID.; ID.; ID.; NON-COMPLIANCE UNDER JUSTIFIABLE GROUNDS ALLOWED SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— [W]hile the "chain of custody" rule demands strict compliance from the police officers, the saving clause under Section 21, Article II of the IRR of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provides that non-compliance with the requirements of Section 21, Article II of RA 9165 – **under justifiable grounds** – will not irretrievably prejudice the prosecution's case and render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. x x x In *People v. Almorfe*, the Court explained that for the saving clause to apply, **the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**. Additionally, *People v. De Guzman* emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**. Finally, in explaining the procedural lapse/s, *People v. Umipang* stressed that the prosecution must establish the fact that genuine and **earnest efforts were employed in contacting and securing the presence of the representatives** enumerated under Section 21 (1), Article II of RA 9165, or that there was a justifiable ground for failing to do so, so as to convince the Court that the failure to comply was reasonable under the given circumstances.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; EFFECT OF APPEAL BY ANY OF SEVERAL ACCUSED; FAVORABLE JUDGMENT SHALL BENEFIT THE CO-ACCUSED WHO DID NOT APPEAL.— [In] the acquittal of the accused-appellant, Leonila, [her] co-accused in this case, Joseph, must also be acquitted in view of Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure, as amended, which states: Section. 11. *Effect of appeal by any of several accused*. – (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter. x x x While it is true that it was only Leonila who successfully perfected her appeal, the rule is that an appeal in a criminal proceeding throws the entire case out in the open, including those not raised by the parties. Considering that, under Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure as above-quoted, a favorable judgment – as in this case – shall benefit the co-accused who did not appeal or those who appealed from their judgments of conviction but for one reason or another, the conviction became final and executory, Leonila's acquittal for the crime charged is likewise applicable to Joseph.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Leonila Pueblas Libre @ "Inday Nilay" (Leonila) assailing the Decision[2] dated August 28, 2015 and the

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[1] See Entry of Appearance with Notice of Appeal dated June 8, 2017; *rollo*, pp. 19-20.

[2] *Id.* at 4-18. Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo L. Delos Santos and Renato C. Francisco, concurring.

Resolution[3] dated February 2, 2017 of the Court of Appeals (CA) in CA-G.R. CEB CR-HC No. 01817, which affirmed *in toto* the Decision[4] dated January 24, 2014 of the Regional Trial Court of Cebu City, Branch 13 (RTC) in Crim. Case No. CBU-96141 finding Leonila and her co-accused, Joseph Pontijos Libre @ "Joyjoy" (Joseph; collectively, the accused), guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] dated June 8, 2012 filed before the RTC charging the accused with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165, the accusatory portion of which reads:

> That on or about the 6th day of June, 2012, at about 12:30 a.m., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conniving and confederating together and mutually helping x x x each other, with deliberate intent and without being authorized by law, did then and there sell and deliver to a police [poseur- buyer] one (1) heat-sealed transparent plastic pack containing 24.80 grams of white crystalline substance, which, after laboratory examination, gave positive results to the tests for the presence of Methamphetamine Hydrochloride, a dangerous drug.
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> CONTRARY TO LAW.[7]

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[3] CA *rollo*, pp. 131-133. Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo L. Delos Santos and Gabriel T. Robeniol, concurring.

[4] *Id.* at 23-27. Penned by Judge Meinrado P. Paredes.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[6] Records, pp. 1-2.

[7] *Id.* at 1.

The prosecution alleged that on June 5, 2012, the Regional Anti-Illegal Drug Special Operations Task Group 7 (RAIDSOTG-7), Cebu City received a report from a confidential informant that Leonila and a cohort, later identified as Joseph, were engaged in selling *shabu* in Cebu City and neighboring cities and municipalities. Acting upon the report, Police Officer 1 Julius Codilla (PO1 Codilla), together with the confidential informant, proceeded to Colonade Mall at Colon St., Cebu City, where he was introduced to the accused as buyer of *shabu*. It was agreed that a sale of 25 grams of *shabu* for ₱100,000.00 would take place between twelve (12) o'clock that midnight and one (1) o'clock in the morning of the next day at a designated place along Pelaez Extension, Barangay Sta. Cruz, Cebu City.[8]

After the meeting, PO1 Codilla reported the agreement to their office and a buy-bust operation was consequently organized in coordination with the Philippine Drug Enforcement Agency, Regional Office VII.[9] A Pre-Operation Report[10] was then prepared, and the buy-bust money, consisting of one marked ₱500.00 bill placed on top of wad papers, was entered in the Police Blotter.[11] Later in the evening, the buy-bust team went to the target area and positioned themselves at strategic places. PO1 Codilla and the informant waited along the road for the accused's arrival, carrying with them the boodle money. Soon after, the accused arrived, got out from their car, and approached PO1 Codilla. Joseph then took out a medium-sized transparent plastic sachet of suspected *shabu* from the right pocket of his *maong* pants and handed the same to PO1 Codilla, who inspected it and gave the marked money to Leonila, who demanded payment. At that point, PO1 Codilla reversed his ball cap – the

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[8] See *rollo*, pp. 5-6. See also TSN, January 16, 2013, pp. 4-9; and TSN, Apri1 17, 2013, pp. 9-10.

[9] See CA *rollo*, p. 24. See also Certificate of Coordination dated June 7, 2012, *id*. at 31; and TSN, January 16, 2013, p. 10.

[10] Dated June 5, 2012, *id*. at 32.

[11] With Serial No. KG458430, marked with "HPB." See CA *rollo*, pp. 24, 33, and 40. See also TSN, January 30, 2013, pp. 2-4.

pre-arranged signal – which prompted the other members of the buy-bust team to rush towards the scene, informed the accused of their constitutional rights, and arrested them. The team recovered the marked money from Leonila and likewise seized the accused's vehicle, ignition key, and cellphones.[12]

PO1 Codilla marked the confiscated plastic sachet with "JPL/LPL-BB 06/06/12" and conducted an actual physical inventory at the crime scene.[13] The inventory was witnessed by representatives from the media and a councilor of Barangay Sta. Cruz.[14] Photographs of the seized items, the accused, and the witnesses signing the inventory were taken.[15] Subsequently, the accused were brought to the RAIDSOTG-7 and eventually detained at Station 3, Cebu City Police Office holding cell;[16] while the marked sachet was submitted to the Philippine National Police (PNP), Regional Crime Laboratory Office 7 for examination,[17] and later tested positive for the presence of methamphetamine hydrochloride.[18]

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[12] See *rollo*, p. 6. See also CA *rollo*, pp. 24-25; TSN, January 30, 2013, pp. 7-11 and 18; and TSN, April 17, 2013, pp. 15-17.

[13] See TSN, January 30, 2013, pp. 12-14.

[14] Namely: Monching Auxtero from GMA-7, Jaworski Alipon (Jaworski Alipon per the CA Decision; Jonorsa Agpon per the RTC Decision) from ABS-CBN, and Barangay Councilor Vicente Quintana of Brgy. Sta. Cruz. The team allegedly exerted efforts to contact a representative from the Department of Justice but no one came. (See CA *rollo*, p. 25. See also *rollo*, p. 7; and TSN, January 30, 2013, pp. 14-16)

[15] See *rollo*, p. 7. See also CA *rollo*, pp. 35 to 35-A; and TSN, January 30, 2013, pp. 16-17.

[16] See Spot Report dated June 6, 2012; CA *rollo*, pp. 38-39.

[17] The confiscated pack was handed over by PO1 Codilla to SPO2 Honorato S. Tano, Investigator who, after securing the necessary letter-request (see CA *rollo*, p. 37), turned over the same to the PNP Regional Crime Laboratory Office 7 where it was received by PO3 Domael Thomas. See Chain of Custody Form; CA *rollo*, p. 36; and TSN, January 30, 2013, pp. 18-22.

[18] See Chemistry Report No. D-548-2012 issued by Police Senior Inspector and Forensic Chemist Mary Shiela Garcia Atienza; CA *rollo*, p 41.

Upon arraignment, the accused pleaded not guilty and denied the charges leveled against them. They claimed that at about six (6) o'clock in the evening of June 5, 2012, they were at the second floor of Chowking, Colonade Mall, Colon St., Cebu City waiting for their order, when three (3) persons approached them and invited them to go outside. They were then made to board a vehicle, blindfolded, and brought to the RAIDSOTG-7 where they were investigated separately. Later, they were brought to the reclamation area in Mandaue City. All the while, the police officers kept asking them about the identity of their supposed employer and even threatened to kill them if they would not cooperate. They were eventually brought back to the RAIDSOTG-7, made to sign a document against their will, and were consequently charged. They asserted that they have nothing against those who testified against them, noting that they were not the same police officers who brought them for investigation and planted evidence against them. Further, they admitted that media representatives were present and took photographs of them, their phones, their vehicle, and the pack of white crystalline substance.[19]

The RTC Ruling

In a Decision[20] dated January 24, 2014, the RTC found the accused guilty beyond reasonable doubt of violating Section 5, in relation to Section 26, Article II of RA 9165, and accordingly, sentenced each of them to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00 each.[21]

The RTC found that the prosecution had successfully established all the elements of the crime of Illegal Sale of Dangerous Drugs. Further, it pointed out that the presumption of regularity in the performance of official function must prevail over the mere denials of the accused, more so considering that

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[19] See *rollo*, pp. 7-8. See also CA *rollo*, pp. 25-26; TSN, December 11, 2013, pp. 2-9; and TSN, January 22, 2014, pp. 3-7 and 20.

[20] CA *rollo*, pp. 23-27.

[21] *Id.* at 27.

they did not assail the genuineness of the chain of custody form nor of the inventory, as well as the accuracy of the photographs.[22]

Aggrieved, the accused appealed[23] to the CA.

The CA Ruling

In a Decision[24] dated August 28, 2015, the CA affirmed the accused's conviction *in toto*,[25] finding that all the elements constituting the crime of Illegal Sale of Dangerous Drugs were present.[26] Moreover, it observed that the integrity and identity of the seized *shabu* were preserved and the chain of custody thereof was unbroken.[27]

Unperturbed, the accused moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated February 2, 2017; hence, this appeal filed by one of the accused, *i.e.*, Leonila.

The Issue Before the Court

The issue for the Court's resolution is whether or not the conviction of the accused for violation of Section 5, Article II of RA 9165 should be upheld.

The Court's Ruling

The appeal is meritorious.

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[22] See *id.* at 26-27.

[23] See Formal Notice of Appeal (with Entry of Appearance) dated February 14, 2014; records, p. 112.

[24] *Rollo*, pp. 4-18.

[25] *Id.* at 17.

[26] See *id.* at 9-12.

[27] See *id.* at 15-17.

[28] See motion for reconsideration dated October 12, 2015; CA *rollo*, pp. 102-107.

[29] *Id.* at 131-133.

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[30] "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[31]

In this case, the accused were charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5,[32] Article II of RA 9165. In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, jurisprudence requires that the prosecution must prove the following: (*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.[33] Of these elements, proof that the transaction actually took place, coupled with the presentation before the court of the dangerous drugs, the *corpus delicti* of the crime, are crucial.[34] Consequently, the prosecution

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[30] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

[31] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[32] It pertinently reads:

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 such transactions. (Emphases supplied)

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[33] *People v. Sumili*, 753 Phil. 342, 348 (2015).

[34] See *People v. Almodiel*, 694 Phil. 449, 460 (2012); and *People v. dela Cruz*, 666 Phil. 593, 605 (2011).

must show an unbroken chain of custody over the same by accounting for each link in the chain of custody from the moment of seizure up to its presentation in court as evidence of the *corpus delicti*, in order to prove its identity beyond reasonable doubt.[35]

Considering the importance of ensuring that the dangerous drugs seized from an accused is the same as that presented in court, Section 21, Article II of RA 9165, prior to its amendment by RA 10640,[36] and Section 21 (a), Article II of the Implementing

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[35] See *People v. Lintag*, 794 Phil. 411, 417 (2016), citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[36] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,"' approved on July 15, 2014, Section I of which states:

SEC. 1. Section 21 of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," is hereby amended to read as follows:

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

Rules and Regulations (IRR) of RA 9165 provide the procedures that the apprehending team should observe in the handling of the seized illegal drugs in order to preserve their identity and integrity as evidence. As part of the procedure, the apprehending team shall, **immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person/s from whom the items were seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and, within twenty-four (24) hours from confiscation, the seized drugs must be turned over to the PNP Crime Laboratory for examination.[37] According to jurisprudence, the law requires the presence of an elected public official, as well as representatives from the DOJ and the media in order to remove any suspicion of tampering, switching, planting or contamination of evidence which could considerably affect a case, and thus, ensure that the chain of custody rule is observed.[38] Since the police actions relative to the handling of the drugs seized in this case were committed in 2012, and thus prior to RA 9165's amendment by RA 10640, the presence of all three witnesses during the conduct of inventory and photography is required.

It is important to state, however, that while the "chain of custody" rule demands strict compliance from the police officers, the saving clause under Section 21, Article II of the IRR of RA 9165 – which is now crystallized into statutory law with

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warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. x x x"

[37] See Section 21 (1) and (2), Article II of RA 9165.

[38] See *People v. Mendoza*, 736 Phil. 749, 761, and 764 (2014).

the passage of RA 10640 – provides that non-compliance with the requirements of Section 21, Article II of RA 9165 **under justifiable grounds** – will not irretrievably prejudice the prosecution's case and 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.[39]

In other words, the failure of the apprehending team to strictly comply with the procedure laid down in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the item/s as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for such non-compliance; and (*b*) the integrity and evidentiary value of the seized item/s are properly preserved.[40] In *People v. Almorfe*,[41] the Court explained that for the saving clause to apply, **the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved**.[42] Additionally, *People v. De Guzman*[43] emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist**.[44] Finally, in explaining the procedural lapse/s, *People v. Umipang*[45] stressed that the prosecution must establish the fact that genuine and **earnest efforts were employed in contacting and securing the presence of the representatives** enumerated under Section 21 (1), Article

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[39] See Section 21 (a), Article II of the IRR of RA 9165. See also *People v. Ceralde*, G.R. No. 228894, August 7, 2017.

[40] See *People v. Goco*, G.R. No. 219584, October 17, 2016, 806 SCRA 240, 252.

[41] 631 Phil. 51 (2010).

[42] *Id.* at 60.

[43] 630 Phil. 637 (2010).

[44] *Id.* at 649.

[45] 686 Phil. 1024 (2012).

II of RA 9165, or that there was a justifiable ground for failing to do so, so as to convince the Court that the failure to comply was reasonable under the given circumstances.[46]

Applying the above principles, the Court finds that the police officers in this case committed unexplained and unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the item purportedly seized from the accused.

While the prosecution was able to show that the seized item was inventoried and photographed by the police officers in the presence of the accused, representatives from the media, and *barangay* councilor Quintana, records fail to disclose that said inventory and photography were conducted in the presence of a representative from the DOJ as required by law.

Notably, the absence of a DOJ representative during the inventory and photography of the seized drugs is not *per se* fatal to the prosecution's cause. However, as earlier intimated, it is incumbent upon the prosecution to demonstrate that genuine and earnest efforts were employed in securing the presence of the DOJ representative or that there exists a justifiable reason for non-compliance. Here, the police officers, in their affidavits, merely stated that "*the team exerted efforts to contact any representative from the Department of Justice but to no avail.*"[47] Far from satisfying the legal requirement, this statement partakes of a mere general conclusion that is bereft of any discernible detail regarding the steps and efforts the police officers had undertaken to secure the presence of the DOJ representative. As the Court held in *People v. Umipang*,[48] "[a] sheer statement that representatives were unavailable – without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances – is to be

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[46] See *id.* at 1052-1053.

[47] Affidavit of Poseur-Buyer dated June 7, 2012; records, pp. 4-5.

[48] *Supra* note 45.

regarded as a flimsy excuse"[49] – as in this case – and hence, not a valid excuse for non-compliance.

At this juncture, it must be emphasized that the procedure in Section 21, Article II of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality.[50] Accordingly, in light of the unjustified breach of procedure as explained above, the Court is impelled to conclude that the integrity and evidentiary value of the *corpus delicti* had been compromised.[51] As such, the acquittal of the accused-appellant, Leonila, is in order.

In addition, Leonila's co-accused in this case, Joseph, must also be acquitted in view of Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure, as amended, which states:

> Section. 11. *Effect of appeal by any of several accused.* –
>
> (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.
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> x x x x x x x x x (Underscoring supplied)

While it is true that it was only Leonila who successfully perfected her appeal, the rule is that an appeal in a criminal proceeding throws the entire case out in the open, including those not raised by the parties.[52] Considering that, under Section 11 (a), Rule 122 of the Revised Rules of Criminal Procedure as above-quoted, a favorable judgment – as in this case – shall benefit the co-accused who did not appeal or those who appealed from their judgments of conviction but for one reason or another, the conviction became final and executory,[53]

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[49] *Id*. at 1053.

[50] See *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, 686 Phil. 1024, 1038 (2012).

[51] See *People v. Sumili*, *supra* note 33, at 352.

[52] See *Benabaye v. People*, 755 Phil. 144, 157 (2015).

[53] See *id*.

Leonila's acquittal for the crime charged is likewise applicable to Joseph.[54]

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

> The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the protection of liberty of every individual in the realm, including the basest of criminals. The Constitution covers with the mantle of its protection the innocent and the guilty alike against any manner of high-handedness from the authorities, however praiseworthy their intentions.
>
> Those who are supposed to enforce the law are not justified in disregarding the right of the individual in the name of order. Order is too high a price for the loss of liberty. x x x.[55]

"In this light, prosecutors are strongly reminded that they have the positive duty to prove compliance with the procedure set forth in Section 21[,Article II] of RA 9165, as amended. As such, they must have the initiative to not only acknowledge but also justify any perceived deviations from the prescribed procedure during the proceedings before the trial court. Since compliance with this procedure is determinative of the integrity and evidentiary value of the *corpus delicti* and ultimately, the fate of the liberty of the accused, the fact that any issue regarding the same was not raised, or even threshed out in the court/s below, would not preclude the appellate court, including this Court, from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to excuse

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[54] See *People v. Lumaya*, G.R. No. 231983, March 7, 2018.

[55] See *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Go*, 457 Phil. 885, 925 (2003), citing *People v. Aminnudin*, 246 Phil. 424, 434-435 (1988).

any deviation. If no such reasons exist, then it is the appellate court's bounden duty to acquit the accused, and perforce, overturn a conviction."[56]

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 28, 2015 and the Resolution dated February 2, 2017 of the Court of Appeals in CA-G.R. CEB CR-HC No. 01817 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the accused Joseph Pontijos Libre @ "Joyjoy" and Leonila Pueblas Libre @ "Inday Nilay" are **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa, Reyes, A. Jr.*, and *Reyes, J. Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 181154. August 22, 2018]

RAMCHRISEN H. HAVERIA, *petitioner, vs.* **SOCIAL SECURITY SYSTEM, CORAZON DE LA PAZ, and LEONORA S. NUQUE,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 1161 (SOCIAL SECURITY ACT OF 1954); VOLUNTARY MEMBERSHIP AND COMPULSORY COVERAGE,

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[56] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

DISTINGUISHED; CASE AT BAR.— Under R.A. No. 1161, there are two kinds of coverage: compulsory coverage and voluntary coverage. x x x Accordingly, under R.A. No. 1161, compulsory members are those employees in the private sector between the ages of 18 to 60 years old whose employer is required to register under the SSS. Voluntary coverage applies to employees of private employers who volunteer to be members although not required by the law, and employees of government agencies and corporations, and any individual employed by a private entity not subject to compulsory membership. Voluntary coverage was expanded by R.A. No. 8282 to include spouses who devote full time to management of the household and overseas Filipino workers. Compulsory membership was likewise expanded to include self-employed professionals, partners and single proprietors of business, actors, actresses, news correspondents, professional athletes, coaches, trainers, jockeys, and individual farmers and fishermen. For compulsory members, both the employer and employee contribute to the employee's monthly premium contributions. Voluntary members pay for their own monthly premiums; as such, they are required to pay twice the amount of the employee's contribution prescribed in Section 19 of R.A. No. 1161. x x x Haveria was reported by the SSSEA as an employee, and he claims coverage as a compulsory member of the SSS. As correctly held by the SSC and CA, the SSSEA, a labor organization, cannot be considered an employer under the law. x x x As a government employee, Haveria would have been qualified for voluntary coverage under Section 9 (b) of R.A. No. 1161, had he registered as a voluntary member while working with the SSS. However, he was registered as a compulsory member on the mistaken claim that he was an employee of a private entity, the SSSEA. Consequently, his compulsory coverage while supposedly employed with the SSSEA was erroneous. Thus, as correctly found by the SSC and affirmed by the CA, Haveria's compulsory coverage with the SSS validly started only in 1989 when he was reported as an employee of private employer, Stop Light Diners until his retirement with his second private employer, First Ivory Pharma Trade, Inc. in 1997.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESTOPPEL; ESTOPPEL WILL NOT ARISE IF THE ACT, CONDUCT OR MISREPRESENTATION OF THE PARTY SOUGHT TO BE ESTOPPED IS DUE TO IGNORANCE

FOUNDED ON INNOCENT MISTAKE; CASE AT BAR.— On the issue of estoppel, the Court holds that the principle cannot be invoked against the SSS. Article 1431 of the Civil Code provides: 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. In the present case, it was the SSSEA and Haveria who made the incorrect representation to the SSS that an employment relationship existed between them. As a result of said representation, the SSS erroneously registered Haveria as a compulsory member. In *Noda v. SSS,* the Court held that if the act, conduct or misrepresentation of the party sought to be estopped is due to ignorance founded on innocent mistake, estoppel will not arise. Thus, Haveria cannot claim estoppel against the SSS as the latter merely relied on the former's representation.

3. **REMEDIAL LAW; EVIDENCE; FINDINGS OF ADMINISTRATIVE AGENCIES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS.—** The Court finds that the CA did not commit any error in affirming the SSC Resolution and Order. Findings of administrative agencies are generally accorded great weight and respect, especially when affirmed by the CA. In *Spouses Hipolito v. Cinco, et al.,* the Court ruled: "By reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact in that regard are generally accorded great respect, if not finality, by the courts." Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant. It is not the task of the appellate court to once again weigh the evidence submitted before and passed upon by the administrative body and to substitute its own judgment regarding sufficiency of evidence.

APPEARANCES OF COUNSEL

Zosimo Alegre & Associates for petitioner.
SSS Legal Department for respondents.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on Certiorari[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] of the Court of Appeals (CA) dated October 22, 2007 and Resolution[3] dated January 14, 2008 in CA-G.R. SP No. 98296 which affirmed the Resolution[4] and Order[5] of the Social Security Commission (SSC) in SSC Case No. 4-15695-04. Corazon de la Paz was the President and Chief Executive Officer at the time of filing of the case and Leonora S. Nuque was the officer-in-charge of the Social Security Services (SSS) at the time of suspension of payments of petitioner Ramchrisen H. Haveria's (Haveria) monthly pension.

Facts

Haveria was employed with the SSS from May 1958 to July 1984.[6] During his employment, he became a member of, and was elected as an officer/treasurer of the SSS Employees' Association (SSSEA). He was reported by the SSSEA as an employee for SSS coverage and Haveria's membership was approved. Thereafter, the SSSEA remitted his monthly contributions from May 1966 to December 1981.[7]

After his employment with the SSS, Haveria was employed with private entities, Stop Light Diners from July 1989 to

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[1] *Rollo,* pp. 8-28.

[2] *Id*. at 29-40, penned by Associate Justice Romeo F. Barza and concurred in by then CA Associate Justice (now Supreme Court Associate Justice) Mariano C. Del Castillo and Associate Justice Arcangelita M. Romilla Lontok.

[3] *Id*. at 41.

[4] CA *rollo,* pp. 20-26.

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

[6] *Rollo,* pp. 209-247.

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

December 1996 and then with First Ivory Pharma Trade from January to March 1997. He earned a total of 281 monthly contributions. Haveria reached retirement age (60 years old) on August 8, 1997. During his coverage under the SSS, Haveria was able to obtain salary loans, a housing loan in 1968, partial disability benefits in 1995, and retirement benefits from August 1997 until July 2002.[8]

In June 2002, Haveria received a letter[9] from the SSS which ordered the suspension of Haveria's retirement benefits. The letter cited a legal opinion in a separate claim for SSS benefits of Genaro Ledesma (Ledesma) and Filemon Pahuyo (Pahuyo) rendered by the SSS Legal and Collection Group. Similar to Haveria, Ledesma and Pahuyo were former employees of the SSS and officers of the SSSEA. The SSS had denied the claim of Ledesma and Pahuyo for their pension benefits. The SSS held that they were not entitled to any benefits under the Social Security Act of 1997 or Republic Act (R.A.) No. 8282[10] (SS Law) as there was no employment relationship between the two and the SSSEA.[11]

This prompted Haveria to file a letter-petition[12] with the Social Security Commission (SSC) for the declaration of validity of his SSS membership and restoration of his monthly pension. He argued that his monthly contributions to the SSS were valid as he was an employee of the SSSEA. He also averred that the SSS had registered him as a member and accepted his monthly contributions. Assuming that his registration was erroneous,

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[8] *Id.*

[9] *Id.* at 127. Signed by respondent Leonora S. Nuque, as officer-in-charge.

[10] AN ACT FURTHER STRENGTHENING THE SOCIAL SECURITY SYSTEM THEREBY AMENDING FOR THIS PURPOSE REPUBLIC ACT NO. 1161, AS AMENDED, OTHERWISE KNOWN AS THE SOCIAL SECURITY LAW, dated May 1, 1997.

[11] See CA *rollo,* p. 127.

[12] *Id.* at 29-35.

he held that he is entitled to retirement pension on grounds of equity and estoppel.

The SSC Resolution

In a Resolution[13] dated December 7, 2005, the SSC held that Haveria's coverage under the SSS was erroneous. It pointed out that Haveria was not an employee of the SSSEA, but of the SSS, a government agency. It also held that there was no employment relationship between Haveria and the SSSEA and that labor unions or associations are not employers with respect to its officers or members. The SSC also said that Haveria cannot also claim coverage under the expanded coverage scheme of the SSS which allowed the inclusion of self-employed workers, precisely because he claimed coverage as an employee of the SSSEA. On the issue of estoppel, the SSC held that SSS' acceptance of Haveria's registration documents did not *ipso facto* result in his membership because he did not meet the qualifying conditions for membership in the first place.

The SSC found that Haveria had made a total of 281 monthly contributions, more than the minimum number of 120 monthly contributions for entitlement to a monthly pension. However, Haveria's actual coverage started only in July 1989 when he was employed by Stop Light Diners. While employed with Stop Light Diners, he remitted 90 monthly contributions and with First Ivory Pharma Trade Inc., three monthly contributions, for a total of 93 valid monthly contributions.

In the interest of justice, the SSC held that the contributions remitted by the SSSEA may be considered as voluntary contributions after March 1997, when last employer First Ivory Pharma Trade remitted its final contribution. Being voluntary, the SSS may credit only such number of monthly contributions to satisfy the required 120 monthly contributions minimum for eligibility to the monthly pension. The SSS was further ordered to refund any remaining premiums to Haveria. The pensions prematurely paid to Haveria were also to be offset with his

[13] *Id.* at 20-26.

future pensions. Thus, the dispositive portion of the SSC Resolution reads:

> Accordingly, the Commission hereby orders the SSS:
>
> 1. To credit Ramchrisen Haveria's contributions remitted by SSSEA as voluntary contributions from April 1997 up to the time when said petitioner would have been credited the total of 120 monthly contributions, and to offset all the refundable contributions with the monthly pensions paid to him in advance;
> 2. To make a recomputation of all paid monthly pensions of Haveria and make an adjustment in the date of accrual of the same in accordance with paragraph 1 hereof; and
> 3. To offset all pensions prematurely paid to petitioner to his future pensions.[14]

Haveria filed a motion for reconsideration (MR) which was denied by the SSC in its Order dated November 15, 2006. Thus, Haveria filed a petition for review on certiorari to the CA.

The CA Decision

The CA affirmed the SSC's Resolution and Order. The CA held that Haveria was not an employee of the SSSEA. The CA pointed out that there was no employment relationship between the two; and that Haveria was merely an officer of the labor association. While an officer of the SSSEA, Haveria was a full-time employee of the SSS, a government agency. The CA said that a government employee cannot be an employee of a private entity at the same time. As such, the SSS contributions made by Haveria should be considered erroneous. On the issue of estoppel, the CA held that the SSS is a government agency and the principle of estoppel does not lie against the government. Lastly, the CA held that findings of administrative agencies, such as the SSC, on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of

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[14] *Id*. at 25.

discretion, fraud, or error of law. Haveria's MR was likewise denied.

The Petition

In his Petition before the Court, Haveria maintains that he was an employee of the SSSEA and that his SSS membership was valid. The ruling of the CA, Haveria avers, was too simplistic and erroneous. He claims that there is no law prohibiting government employees from employment in private entities or from registration with the SSS. Even then, membership in the SSS is not predicated on the existence of an employment relationship as even voluntary membership is allowed.

Haveria further contends that the SSS is a government-owned or controlled corporation performing a proprietary function; as such, estoppel can be claimed against it. He claims that the SSS is a corporate body performing non-governmental functions, thus, it should be treated as any ordinary party.

Lastly, Haveria contends that as a social justice measure, the SS Law should be interpreted in favor of giving benefits to its members. In cases of doubt, he argues the ruling should be in favor of the claimant.

The Comment

The SSS filed its Comment[15] through the Office of the Solicitor General (OSG). The SSS maintains that Haveria's coverage from May 1966 until December 1981, supposedly during his employment with the SSSEA, was erroneous because there was no actual employment relationship between the two. The SSS covers three kinds of members: (1) regular members (employed members); (2) self-employed members; and (3) voluntary members who are separated employees and overseas Filipino workers.

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[15] *Rollo,* pp. 209-246.

According to the SSS, Haveria anchors his coverage on the first kind, as a regular member since he claims that he was an employee of the SSSEA. However, the SSSEA cannot be considered an employer under the law. Article 219 of the Labor Code[16] specifically excludes labor organizations from the definition of an employer.

Neither does the SSSEA qualify as an employer under the SS Law or R.A. No. 8282:

> Section 1. Republic Act No. 1161, as amended, otherwise known as the "Social Security Law," is hereby further amended to read as follows:
>
> "x x x x x x x x x
>
> Section 8. x x x
>
> x x x x x x x x x
>
> c) *Employer* – Any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government: *Provided,* That a self-employed person shall be both employee and employer at the same time.
>
> x x x x x x x x x."

The SSS contends that the SSSEA is not an employer but a mere labor association within the SSS. It does not undertake any kind of business or service. It merely acts as representative of the members of the association. Furthermore, Haveria's relationship with the SSSEA did not pass the four-fold test.[17]

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[16] Presidential Decree No. 442 (Amended & Renumbered), dated July 21, 2015.

[17] The elements of employment relationship in jurisprudence has been settled to the following: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct, or the so-called "control test." *(Atok Big Wedge Company, Inc. v. Gison,* 670 Phil. 615, 626-627 [2011]).

He was not hired by SSSEA but merely elected by its members as an officer/treasurer. He was not receiving a salary but merely an honorarium. Moreover, Haveria was employed with the SSS. He could not have been an employee of the SSSEA at the same time as he was a full-time government employee.

Lastly, the SSS maintains that the principle of estoppel does not apply against the SSS. A government agency is not estopped by the mistakes of its agents, without prejudice to the said agents' administrative liability.

Issue

Whether Haveria's inclusion as a compulsory member of the SSS was valid and consequently, whether he is entitled to receive monthly pensions.

The Court's Ruling

The petition lacks merit.

R.A. No. 1161 or the Social Security Act of 1954[18] was enacted with the policy "to develop, establish gradually, and perfect a social security service which shall be suitable to the needs of the people throughout the Philippines, and shall provide protection against the hazards of unemployment, disability, sickness, old age and death."[19] R.A. No. 1161 was amended by R.A. No. 8282 in 1997. Haveria was registered with the SSS in May 1966 when R.A. No. 1161 was still effective.

Under R.A. No. 1161, there are two kinds of coverage: compulsory coverage and voluntary coverage. The Act provides:

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[18] AN ACT TO CREATE A SOCIAL SECURITY SYSTEM PROVIDING SICKNESS, UNEMPLOYMENT, RETIREMENT, DISABILITY AND DEATH BENEFITS FOR EMPLOYEES, dated June 18, 1954.

[19] *Id.* at Sec. 2.

C. *Scope of the System*

SECTION 9.

(a) *Compulsory Coverage.* — x x x all employees between the ages of eighteen and sixty years, inclusive, if they have been for at least six months in the service of an employer who is a member of the System: *Provided,* That the Commission may not compel any employer to become a member of the System unless he shall have been in operation for at least three years and has, at the time of admission, two hundred employees: x x x.

x x x x x x x x x

(b) *Voluntary Coverage.* — x x x **any employer not required to be a member of the System may become a member thereof and have his employees come under the provisions of this Act if the majority of his employees do not object;** and **any individual in the employ of the Government,** or of any of its political subdivisions, branches, or instrumentalities, including corporations owned or controlled by the Government, as well as **any individual employed by a private entity not subject to compulsory membership under this Act may join the System by paying twice the employee's contribution** prescribed in section nineteen. Any other individual may likewise join the System, subject to such rules and regulations as may be prescribed by the Commission. (Emphasis supplied)

Accordingly, under R.A. No. 1161, compulsory members are those employees in the private sector between the ages of 18 to 60 years old whose employer is required to register under the SSS. Voluntary coverage applies to employees of private employers who volunteer to be members although not required by the law, and employees of government agencies and corporations, and any individual employed by a private entity not subject to compulsory membership.

Voluntary coverage was expanded by R.A. No. 8282 to include spouses who devote full time to management of the household and overseas Filipino workers.[20] Compulsory membership was likewise expanded to include self-employed professionals, partners and single proprietors of business, actors, actresses,

[20] See R.A. No. 8282, Sec. 9 (b) and (c).

news correspondents, professional athletes, coaches, trainers, jockeys, and individual farmers and fishermen.[21]

For compulsory members, both the employer and employee contribute to the employee's monthly premium contributions.[22] Voluntary members pay for their own monthly premiums; as such, they are required to pay twice the amount of the employee's contribution prescribed in Section 19 of R.A. No. 1161.[23]

"Employer" is defined under R.A. No. 1161 as:

> Any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking, or activity of any kind and uses the services of another person who is under his orders as regards the employment, except the Government and any of its political subdivisions, branches or instrumentalities, including corporations owned or controlled by the Government.[24]

The Labor Code also provides its own definition of the word:

> Article 219. *Definitions* – x x x
>
> x x x x x x x x x

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[21] R.A. No. 8282, Sec. 9-A.

[22] Section 20. *Employer's Contributions.* — Beginning as of the last day of the month immediately preceding the month when an employee's compulsory coverage takes effect and every month thereafter during his employment, his employer shall pay, with respect to such covered employee in his employ, a monthly contribution equal to three *per centum* of the monthly compensation of said covered employee. Notwithstanding any contract to the contrary, an employer shall not deduct, directly or indirectly, from the compensation of his employees covered by the System or otherwise recover from them the employer's contributions with respect to such employees. (R.A. No. 1161)

[23] Section 19. *Employee's Contribution.* — Beginning as of the last day of the calendar month immediately preceding the month when an employee's compulsory coverage takes effect and every month thereafter during his employment, there shall deducted and withheld from the monthly compensation of such covered employee *contribution equal to three per centum of his monthly compensation.* (R.A. No. 1161) (Italics supplied)

[24] *Id.* at Sec. 8 (c).

(e) *"Employer"* includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

Haveria was reported by the SSSEA as an employee, and he claims coverage as a compulsory member of the SSS. As correctly held by the SSC and CA, the SSSEA, a labor organization, cannot be considered an employer under the law. The Labor Code expressly excludes labor organizations from the definition of an employer, except when they directly hire employees to render services for the union or association. Aside from his bare allegation that he was an employee of the SSSEA, Haveria did not present any other fact to substantiate his claim of employment with the SSSEA. He did not state his day-to-day duties or responsibilities and work hours; he did not even present proof of employment such as pay slips and contract of employment. Thus, the SSSEA was not an employer and Haveria was not its employee, but merely a member or officer thereof.

As a government employee, Haveria would have been qualified for voluntary coverage under Section 9 (b) of R.A. No. 1161,[25] had he registered as a voluntary member while working with the SSS. However, he was registered as a compulsory member on the mistaken claim that he was an employee of a private entity, the SSSEA. Consequently, his compulsory coverage while supposedly employed with the SSSEA was erroneous.

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[25] *Voluntary Coverage.* — Under such rules and regulations as the Commission may prescribe, any employer not required to be a member of the System may become a member thereof and have his employees come under the provisions of this Act if the majority of his employees do not object; and any individual in the employ of the Government, or of any of its political subdivisions, branches, or instrumentalities, including corporations owned or controlled by the Government, as well as any individual employed by a private entity not subject to compulsory membership under this Act may join the System by paying twice the employee's contribution prescribed in section nineteen. Any other individual may likewise join the System, subject to such rules and regulations as may be prescribed by the Commission.

Thus, as correctly found by the SSC and affirmed by the CA, Haveria's compulsory coverage with the SSS validly started only in 1989 when he was reported as an employee of private employer, Stop Light Diners until his retirement with his second private employer, First Ivory Pharma Trade, Inc. in 1997.

On the issue of estoppel, the Court holds that the principle cannot be invoked against the SSS. Article 1431 of the Civil Code provides:

> 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.

In the present case, it was the SSSEA and Haveria who made the incorrect representation to the SSS that an employment relationship existed between them. As a result of said representation, the SSS erroneously registered Haveria as a compulsory member. In *Noda v. SSS,*[26] the Court held that if the act, conduct or misrepresentation of the party sought to be estopped is due to ignorance founded on innocent mistake, estoppel will not arise. Thus, Haveria cannot claim estoppel against the SSS as the latter merely relied on the former's representation.

The Court finds that the CA did not commit any error in affirming the SSC Resolution and Order. Findings of administrative agencies are generally accorded great weight and respect, especially when affirmed by the CA. In *Spouses Hipolito v. Cinco, et al.,*[27] the Court ruled:

> "By reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact in that regard are generally accorded great respect, if not finality, by the courts." Such findings must be respected as long as they are supported by substantial evidence, even if such

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[26] 195 Phil. 769, 776 (1981).

[27] 677 Phil. 331 (2011).

evidence is not overwhelming or even preponderant. It is not the task of the appellate court to once again weigh the evidence submitted before and passed upon by the administrative body and to substitute its own judgment regarding sufficiency of evidence.[28]

Thus, the Court agrees with the ruling of the SSC, as affirmed by the CA, that, in the interest of justice and equity, Haveria's contributions remitted by the SSSEA shall be considered as voluntary contributions so that his contributions can reach the minimum 120 monthly contributions for qualification to a retirement pension.[29] The remainder shall be returned to Haveria, subject to offsetting of the pensions paid to him in excess, if any. The SSS shall make a recomputation of all paid monthly pensions of Haveria and make necessary adjustment thereto.

WHEREFORE, premises considered, the Petition is **DENIED.** The CA Decision dated October 22, 2007 and Resolution dated January 14, 2008 in CA-G.R. SP No. 98296 are **AFFIRMED.** The SSS is further **ORDERED** to:

(1) **CREDIT** Haveria with a total of 120 monthly contributions;
(2) **RECOMPUTE** all paid monthly pensions in accordance with No. 1; and
(3) **RETURN** the remainder of 167 monthly premium contributions, subject to offsetting against the monthly pensions paid to him in excess of what he is entitled to, if any, in accordance with the computation in No. 2.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr.,*[*] *JJ.*, concur.

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[28] *Id.* at 349.

[29] R.A. No. 8282, Sec. 12-B.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 205888. August 22, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **XXX,**[*] *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WHILE DEATH OF THE VICTIM DID NOT EXTINGUISH CRIMINAL LIABILITY OF THE ACCUSED, BUT THE DIRECT TESTIMONY OF SAID VICTIM MUST BE EXCLUDED FROM THE RECORDS IN THE ABSENCE OF CROSS-EXAMINATION BY THE ACCUSED.— [T]he Court notes that the RTC correctly proceeded with the trial despite the death of the private complainant, AAA. In criminal cases, the offended party is the State and the role of the private complainant is limited to the determination of the civil liability of the accused. Hence, in this case, considering that the death of AAA did not extinguish the criminal liability of XXX, the trial rightfully

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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, 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.)

ensued with the rest of the evidence for the prosecution. However, the intervening death of AAA was not without consequence. The Court herein reiterates, as initially observed by the RTC, that an accused is guaranteed by no less than the Constitution the right to cross-examine a witness. Section 14(2), Article III of the Constitution provides that an accused shall have the right to meet the witnesses face to face, which is echoed in Section 1(f), Rule 115 of our Rules on Criminal Procedure. The right of an accused to cross-examine a witness is essential to test the credibility and truthfulness of the testimony offered and likewise provides an opportunity for the accused to demonstrate substantial inconsistencies that could create reasonable doubt as to his guilt. In this regard, the RTC was correct in excluding AAA's direct testimony from the records notwithstanding the incriminating contents thereof.

2. ID.; ID.; HEARSAY EVIDENCE GENERALLY INADMISSIBLE; REQUISITES THAT MUST BE SATISFIED FOR ADMISSION OF HEARSAY EVIDENCE AS PART OF THE *RES GESTAE*.— It is well entrenched that a witness may only testify on facts derived from his own perception and not on what he has merely learned or heard from others. Hearsay evidence, or those derived outside of a witness' personal knowledge, are generally inadmissible due to serious concerns on their trustworthiness and reliability; such evidence, by their nature, are not given under oath or solemn affirmation and likewise have not undergone the benefit of cross-examination to test the reliability of the out-of-court declarant on which the relative weight of the out-of-court statement depends. Hence, as a general rule, hearsay evidence is inadmissible in courts of law. As an exception, however, Section 42 of Rule 130 allows the admission of hearsay evidence as part of the *res gestae*[.] x x x The following requisites must, thus, be satisfied for the exception to apply: (i) that the principal act, the *res gestae*, be a startling occurrence; (ii) that the statements were made before the declarant had the time to contrive or devise a falsehood; and (iii) that the statements must concern the occurrence in question and its immediate attending circumstances.

3. ID.; ID.; ID.; ID.; TEST TO DETERMINE THE ADMISSIBILITY OF EVIDENCE AS PART OF THE *RES GESTAE*; FACTORS IN DETERMINING WHETHER THE

STATEMENTS AS PART OF THE *RES GESTAE* HAVE SATISFIED THE REQUIREMENT OF SPONTANEITY.— In [*People v. Estibal*], the Court held that in determining the admissibility of evidence as part of the *res gestae*, the test is whether the act or declaration was made as a spontaneous reaction and is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself and whether it negates any premeditation or purpose to manufacture testimony. Anent the requirement of spontaneity, the Court in *People v. Manhuyod, Jr.* (*Manhuyod, Jr.*) laid down several factors in determining whether statements offered in evidence as part of the *res gestae* have satisfied the requirement of spontaneity: **It goes without saying that the element of spontaneity is critical. The following factors are then considered in determining whether statements offered in evidence as part of the *res gestae* have been made spontaneously,** *viz.*, (1) the time that lapsed between the occurrence of the act or transaction and the making of the statement; (2) the place where the statement was made; (3) the condition of the declarant when he made the statement; (4) the presence or absence of intervening events between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself.

4. **ID.; ID.; ID.; ID.; ID.; WHILE THE UTTERANCES WERE MADE A FEW HOURS AFTER THE INCIDENTS, THEY ARE CONSIDERED AS PART OF THE *RES GESTAE* AS LONG AS THEY REMAINED TO BE "SO CONNECTED WITH IT AS TO MAKE THE ACT OR DECLARATION AND THE MAIN FACT PARTICULARLY INSEPARABLE".—** [T]he Court finds that the CA and RTC correctly considered the statements of AAA as part of the *res gestae*. x x x [I]t is clear that at the time AAA uttered her statements to EEE — a few hours after the incidents — the effect of the occurrence on her mind still continued. Her demeanor, as narrated by EEE, showed that she was still suffering as a result of the violation of her person and honor by her father, herein accused-appellant XXX. Moreover, following the standard in *Manhuyod, Jr.*, while the utterances were not made contemporaneous to the act described, the Court finds that they remained to be "so connected with it as to make the act or declaration and the main fact particularly inseparable."

5. ID.; ID.; ID.; ID.; ID.; WHERE THE STATEMENTS WERE MADE THREE DAYS AFTER THE INCIDENTS, THEY ARE NOT DEEMED PART OF THE *RES GESTAE* SINCE THERE WAS ALREADY A SIGNIFICANT BREAK IN THE CONNECTION BETWEEN THE INCIDENT AND THE TIME THEY WERE MADE.— While the Court notes the similarity between the accounts of EEE and Calug as regards AAA's utterances, the records nevertheless disclose that AAA helped in the household chores for several days in EEE's home and subsequently looked for a job elsewhere. AAA would then end up working as a house help for a certain Pedro delos Santos, where she would eventually meet Calug. Such circumstances, coupled with the fact that AAA's statements to Calug were made **three (3) days after** the **April 15, 2001** incidents, lead to the conclusion that there was already a significant break in the connection between the rape incidents and the time AAA made her statements to Calug on **April 18, 2001**. In this light, the Court finds that the utterances made to Calug are far too removed from the event described as to form part of the *res gestae*.

6. ID.; ID.; DEFENSE OF DENIAL AND ALIBI FAILED TO OVERCOME THE PROSECUTION'S EVIDENCE.— For the defense of alibi to overcome a *prima facie* finding of guilt, 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. Such defense must be supported by strong evidence of innocence independent of the accused's self-serving statements. In this case, XXX, simply claimed that he was elsewhere (*i.e.*, Palawan) at the time the alleged rapes occurred. However, the RTC remained unconvinced as his testimony was replete with uncertainties as XXX could not even remember the date when he was allegedly working on a fishing boat in Palawan. Moreover, XXX failed to produce any other witness to corroborate his testimony despite having the opportunity to do so.

7. CRIMINAL LAW; REVISED PENAL CODE; RAPE; SUFFICIENTLY ESTABLISHED IN CASE AT BAR; ACCUSED IS GUILTY FOR THE REPEATED DEFILEMENT OF HIS OWN DAUGHTER; PENALTY.—

> [T]he Court finds that the critical element of carnal knowledge through force was sufficiently established by the evidence on record. The clear and straightforward testimony of EEE, together with the medico-legal findings consistent with the facts described, produces a conviction beyond reasonable doubt that XXX is guilty for the repeated defilement of his own daughter, AAA. x x x Accused-appellant XXX is hereby found **GUILTY** beyond reasonable doubt of three (3) 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* for each count.

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 April 19, 2012 (questioned Decision) of the Court of Appeals – Cebu City, Nineteenth Division (CA), in CA-G.R. CR-HC No. 00332, which affirmed in part the Joint Decision[3] dated February 16, 2005 (RTC Decision) of the Regional Trial Court of Bais City, Branch 45 (RTC) in Criminal Case Nos. F-02-03-A, F-02-01-A, F-2001-171-A, F-02-02-A, and F-2001-170-A, convicting herein accused-appellant XXX for three (3) counts of Rape.

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[1] *Rollo*, pp. 14-15.

[2] *Id.* at 4-13. Penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Nina G. Antonio Valenzuela and Abraham B. Boretta concurring.

[3] CA *rollo*, pp. 19-30. Penned by Judge Ismael O. Baldado.

The Facts

Four (4) separate Informations for Rape and one (1) Information for Attempted Rape were filed in the RTC against XXX, as follows:

CRIMINAL CASE NO. F-02-03-A (For: Attempted Rape)

That on or about the 18th day of July, 1999 in the Municipality of Ayungon, Negros Oriental, Philippines, and within the jurisdiction of the Honorable Court, the said accused, being the father of the 16-year-old girl, [AAA],[4] and taking advantage of his ascendancy and influence over his daughter did then and there, willfully, unlawfully and feloniously with the use of force, violence and intimidation, commence to commit the crime of rape directly by overt acts to wit: that while [AAA] was sleeping in their house, accused suddenly covered her mouth with his hand, forcibly took off her short and panty, then thereafter, accused mounted his body over his daughter's body, then proceeded to the push and pull movement over her body, accused endeavoring to have sexual intercourse with his daughter but not succeeding thereat because of the struggle of his daughter [AAA] and her persistent resistance. Thus, the said accused has commence (*sic*) the execution of which would have produce (*sic*) the said crime for reason of some cause other than his spontaneous desistance.

Contrary to Article 266-A in relation to Article 5 and 51 of the Revised Penal Code.[5]

CRIMINAL CASE NO. F-02-01-A (For: Rape)

That on or about the 8th day of April, 2001, in the municipality of Ayungon, Negros Oriental, Philippines, and within the jurisdiction of the Honorable Court, the said accused being the father of the 16-year-old girl, [AAA], and taking advantage of his ascendancy and influence over his daughter, did then and there willfully, unlawfully and feloniously, with the use of force, violence and intimidation, have sexual intercourse with his daughter [AAA] against her will.

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[4] Pseudonym in lieu of private complainant's true identity in compliance with Section 29 of Republic Act No. 7610.

[5] *Id*. at 20.

Contrary to Article 335 of the Revised Penal Code.[6]

CRIMINAL CASE NO. F-2001-171-A (For: Rape)

That on or about the 15th day of April, 2001, at about 7:00 o'clock in the evening, in the municipality of Ayungon, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused being the father of the 16-year-old girl, [AAA], and taking advantage of his ascendancy and influence over her (*sic*) daughter, did then and there willfully, unlawfully and feloniously, with the use of force, violence and intimidation, have sexual intercourse with his daughter [AAA] against her will.

Contrary to Article 335 of the Revised Penal Code, as amended.[7]

CRIMINAL CASE NO. F-02-02-A (For: Rape)

That on or about the 15th day of April, 2001, at about 9:00 o'clock in the evening, in the municipality of Ayungon, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused being the father of the 16-year-old girl, [AAA], and taking advantage of his ascendancy and influence over her (*sic*) daughter, did then and there willfully, unlawfully and feloniously, with the use of force, violence and intimidation, have sexual intercourse with his daughter [AAA] against her will.

Contrary to Article 335 of the Revised Penal Code, as amended.[8]

CRIMINAL CASE NO. F-2001-170-A (For: Rape)

That on or about the 15th day of April, 2001, at about 12:00 o'clock midnight, in the municipality of Ayungon, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the said accused being the father of the 16-year-old girl, [AAA], and taking advantage of his ascendancy and influence over her (*sic*) daughter, did then and there willfully, unlawfully and feloniously, with the use of force, violence and intimidation, have sexual intercourse with his daughter [AAA] against her will.

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

[7] *Id.* at 21.

[8] *Id.*

Contrary to Article 335 of the Revised Penal Code, as amended.[9]

Upon arraignment, XXX pleaded "not guilty" to all charges.[10] Trial on the merits ensued thereafter. During trial, the victim, AAA, died on January 4, 2003 before she could be subjected to cross-examination.[11]

As summarized in the RTC Decision, the antecedents are as follows:

In her direct testimony, [AAA] testified that the accused is her father, and she is the eldest of the three children. Her younger brother [BBB] is 13 years old, and the youngest, [CCC] is 7 years old. She recalled that in the evening of July 18, 1999, her mother was in Dumaguete City to sell mats, and when they settled for the night, she slept with her two younger brothers and her father, the accused. Later in the evening, she was awakened, and she found out that she had no more short pants and panty, and her father was beside and behind her, and felt that the penis of her father was directed to her anus. She managed to keep her legs together, and thus, accused was not successful in inserting his organ into her vagina. She was fourteen (14) years old at that time. Her father warned her not to tell her mother otherwise he would kill her.

[AAA] further recalled that April 8, 2001 was her birthday. She was prepared to be alone in their house for the night as her father and mother in company with her younger brothers were in the house of her grandmother in Campuan – a neighboring barangay. But suddenly, her father arrived in their house at about 5:00 in the afternoon, and immediately held her, and took off her short pants and panty. Inspite of her struggle to resist, her father was able to lay her down on the floor of their house, and was successful in inserting his penis into her sexual organ. She felt pain, as this was her first sexual intercourse. He threatened her with death if she would tell her mother about the incident.

[AAA] further testified that in the afternoon of April 15, 2001, she was in the house of her aunt, [DDD] when her father arrived and

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[9] *Id.*

[10] *Id.*

[11] CA *rollo*, pp. 46, 79.

told her to go home with him as he told her that her mother was crying because she left home without permission. But, when she and her father arrived at their house, she found out that her mother was not there. Her father held and hugged her, and took off her short pants and panty, laid her down, and inserted his sexual organ into hers. After the sexual abuse by her father, she wanted to get out of their house, but her father locked the door. At about 9:00 in the evening of that same day, her father took off her shorts and panty again, and her father forcibly inserted his sexual organ again. Again, at about 12:00 midnight, her father took of her short pants and panty, laid on top of her, and forcibly inserted his penis. She was about to free herself, but her father held her tightly. She cried and was not able to sleep the whole night due to the pain she was experiencing from her sex organ.

Without waiting for her mother and brothers to arrive, she left their house in the morning of the following day, April 16, 2001, and went to [DDD].

At the hearing on January 20, 2003, Public Prosecutor Marites Macarubbo informed the court that [AAA] died. On May 15, 2003, Ms. Welgieta Banzuelo, a social worker at the Department of Social Welfare and Development, presented to the court the Death Certificate of [AAA]. Upon motion by the defense, the direct testimony of [AAA] was ordered expunged from the records x x x on grounds that [AAA] was not subjected to cross-examination.

x x x x x x x x x

However, inspite of the death of [AAA] and her direct testimony having been expunged from the records, the prosecution presented other prosecution witnesses, namely: Gelmie [Calug], [EEE], Lovella Opada and Vicente Tiengo, and in an effort to salvage the cause for the state, the prosecution adduced evidence of *res gestae* through the testimonies of its witnesses, Gelmie Calug and [EEE].

[EEE], an aunt of [AAA], being the sister of the mother of the latter, testified that at noontime on April 16, 2001, [AAA] arrived at her house. She noticed that [AAA] was sad and crying. Upon her inquiry, [AAA] told her that she was raped by her father on April 8, and three (3) times hours ago on April 15, 2001. During the few days of [AAA]'s stay at her house, she often saw [AAA] crying. A few days after, [AAA] went to the house of Pedro de los Santos to work as a house helper. Her employer, Pedro de los Santos, helped

her in instituting these rape cases, and [EEE] and de los Santos accompanied [AAA] to report the incident to the police.

Gelmie Calug testified that on April 18, 2001, [AAA] reported for work for the first time as a househelper in the house of Pedro de los Santos. He noticed that [AAA] was sad and lonely, and often saw her crying. She confided to him her problems, and revealed to him that she was raped by her own father on April 8 and 15 of that year 2001. He noticed that [AAA] had told their employer, Pedro de los Santos, of what had befallen to (*sic*) her. After eight (8) months, she left the de los Santos household, and he did not know anymore of her whereabouts and only to hear (*sic*) from the radio broadcast that [AAA] was dead.[12]

Ruling of the RTC

In the RTC Decision, XXX was found guilty only for the three (3) counts of Rape committed on April 15, 2001 and acquitted from the charges in Criminal Case Nos. F-02-01-A and F-02-03-A for Rape and Attempted Rape, respectively:

WHEREFORE, premises considered, this Court finds accused **[XXX], GUILTY** beyond reasonable doubt of three (3) counts of Rape and is thereby sentenced to suffer **in each the penalty of *reclusion perpetua*, and ordered to pay the heirs of the victim in each case, the amount of FIFTY THOUSAND PESOS (₱50,000.00) as civil indemnity and the amount of FIFTY THOUSAND PESOS (₱50,000.00) as moral damages, and to pay costs**.

For failure on the part of the prosecution to prove the guilt of accused beyond reasonable doubt, he is thereby declared **ACQUITTED from the charges in Criminal Case Nos. F-02-01-A and F-02-03-A**.

The accused is hereby credited in full for the period he had undergone preventive imprisonment provided he agrees in writing to abide with the rules prescribed for convicted prisoners.

SO ORDERED.[13] (Emphasis in the original)

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[12] *Id*. at 22-25.

[13] *Id*. at 30.

The RTC, despite the lack of AAA's testimony due to her intervening death, mainly relied on the separate testimonies of Gelmie Calug (Calug) and EEE in finding XXX guilty beyond reasonable doubt. The RTC found that the utterances made by AAA to them, while not made immediately or simultaneous to the rape incidents, could still be considered part of the *res gestae* as they were "so connected with it as to make the act or declaration and the main fact inseparable, or be generated by an excited feeling which extends, without break or let down, from the moment of the event they illustrate."[14] The RTC also found that such statements were made under such circumstances as to preclude a deliberate design or an opportunity to devise anything contrary to the actual events that transpired.[15]

Notably, the RTC did not appreciate the special qualifying circumstance of filiation as the same was not proved during trial through competent evidence.[16] The baptismal records presented by the prosecution were not considered by the RTC as they were not public records and therefore insufficient to establish such filial relationship.[17]

Anent XXX's defense, the RTC did not give any weight thereto for being a simple denial of the accusations.[18] Moreover, XXX's ancillary defense of alibi was likewise rejected for being laden with confusion and uncertainty from XXX himself as lone witness for the defense.[19]

Unsatisfied, XXX elevated the case to the CA via Notice of Appeal[20] dated February 28, 2005. Briefs were then filed by

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[14] *Id*. at 27.

[15] *Id*.

[16] *Id*. at 29.

[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 31.

XXX and plaintiff-appellee respectively dated April 24, 2008[21] and September 17, 2010.[22]

In his appeal, XXX mainly argued that the RTC erred in considering the testimonies as *res gestae* and instead claimed that such statements were purely hearsay as they were offered in court only after two (2) years from the date of the alleged incident.[23]

Ruling of the CA

On April 19, 2012, the CA rendered the questioned Decision, affirming the RTC Decision, to wit:

> WHEREFORE, premises considered, the appeal is hereby DENIED and the Decision dated February 16, 2005, of the Regional Trial Court, Branch 45, Bais City in Criminal Case Nos. F-2001-171-A, F-02-02-A, F-2001-170-A, [is] hereby affirmed *in toto*.
>
> SO ORDERED.[24]

Hence, the instant appeal.[25]

In lieu of supplemental briefs, plaintiff-appellee filed a Manifestation[26] dated January 3, 2014 while XXX filed a Manifestation in Lieu of Supplemental Brief[27] dated January 7, 2014.

Issue

Whether XXX's guilt for the three (3) counts of Rape was proven beyond reasonable doubt.

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[21] *Id*. at 40-52.

[22] *Id*. at 74-89.

[23] *Id*. at 49.

[24] *Rollo*, p. 12.

[25] *Id*. at 14.

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

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

The Court's Ruling

The appeal lacks merit.

The evidence is sufficient to prove XXX's guilt beyond reasonable doubt

In his appeal, XXX argues that he cannot be convicted based mainly on the testimonies of Calug and EEE, which he claims are purely hearsay evidence. Without the testimony of AAA identifying him as the perpetrator of all acts complained of, XXX claims that he can no longer be found guilty under the crimes charged.

At the outset, the Court notes that the RTC correctly proceeded with the trial despite the death of the private complainant, AAA. In criminal cases, the offended party is the State and the role of the private complainant is limited to the determination of the civil liability of the accused.[28] Hence, in this case, considering that the death of AAA did not extinguish the criminal liability of XXX, the trial rightfully ensued with the rest of the evidence for the prosecution.

However, the intervening death of AAA was not without consequence. The Court herein reiterates, as initially observed by the RTC, that an accused is guaranteed by no less than the Constitution the right to cross-examine a witness. Section 14(2), Article III of the Constitution provides that an accused shall have the right to meet the witnesses face to face, which is echoed in Section 1(f), Rule 115 of our Rules on Criminal Procedure. The right of an accused to cross-examine a witness is essential to test the credibility and truthfulness of the testimony offered and likewise provides an opportunity for the accused to demonstrate substantial inconsistencies that could create reasonable doubt as to his guilt.[29] In this regard, the RTC was correct in excluding AAA's direct testimony from the records notwithstanding the incriminating contents thereof.

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[28] *People v. Lacson*, 459 Phil. 330, 355 (2003).

[29] *People v. Rivera*, 414 Phil. 430, 447 (2001).

Prescinding from the foregoing, the only issue that remains is simply whether the testimonies of Calug and EEE pertaining to the statements of AAA can be considered part of the *res gestae* and thus produce a conviction.

The Court rules in the affirmative.

It is well entrenched that a witness may only testify on facts derived from his own perception and not on what he has merely learned or heard from others.[30] Hearsay evidence, or those derived outside of a witness' personal knowledge, are generally inadmissible due to serious concerns on their trustworthiness and reliability; such evidence, by their nature, are not given under oath or solemn affirmation and likewise have not undergone the benefit of cross-examination to test the reliability of the out-of-court declarant on which the relative weight of the out-of-court statement depends.[31]

Hence, as a general rule, hearsay evidence is inadmissible in courts of law. As an exception, however, Section 42 of Rule 130 allows the admission of hearsay evidence as part of the *res gestae*, to wit:

> Sec. 42. *Part of the res gestae*. — Statements made by a **person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof**, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance may be received as part of the *res gestae*. (Emphasis supplied)

The following requisites must, thus, be satisfied for the exception to apply: (i) that the principal act, the *res gestae*, be a startling occurrence; (ii) that the statements were made before the declarant had the time to contrive or devise a falsehood; and (iii) that the statements must concern the occurrence in

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[30] *Miro v. Vda. de Erederos*, 721 Phil. 772, 790 (2013).

[31] *Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc.*, 425 Phil. 511, 520 (2002).

question and its immediate attending circumstances.[32] In *People v. Estibal*,[33] the Court, citing *People v. Sanchez*,[34] explained the *ratio* behind such exception:

> *Res gestae* means the "things done." It "refers to those exclamations and statements made by either the participants, victims, or spectators to a crime immediately before, during, or immediately after the commission of the crime, when the circumstances are such that the statements were made as a spontaneous reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement." A spontaneous exclamation is defined as "a statement or exclamation made immediately after some exciting occasion by a participant or spectator and asserting the circumstances of that occasion as it is observed by him. **The admissibility of such exclamation is based on our experience that, under certain external circumstances of physical or mental shock, a stress of nervous excitement may be produced in a spectator which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock. Since this utterance is made under the immediate and uncontrolled domination of the senses, rather than reason and reflection, and during the brief period when consideration of self-interest could not have been fully brought to bear, the utterance may be taken as expressing the real belief of the speaker as to the facts just observed by him.**" In a manner of speaking, the spontaneity of the declaration is such that the declaration itself may be regarded as the event speaking through the declarant rather than the declarant speaking for himself.[35] (Emphasis supplied)

In the same case, the Court held that in determining the admissibility of evidence as part of the *res gestae*, the test is whether the act or declaration was made as a spontaneous reaction and is so intimately interwoven or connected with the principal

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[32] *People v. Estibal*, 748 Phil. 850, 868 (2014).

[33] 748 Phil. 850 (2014).

[34] 287 Phil. 1003 (1992).

[35] *People v. Estibal*, *supra* note 33 at 875.

fact or event that it characterizes as to be regarded as a part of the transaction itself and whether it negates any premeditation or purpose to manufacture testimony.[36]

Anent the requirement of spontaneity, the Court in *People v. Manhuyod, Jr.*[37] (*Manhuyod, Jr.*) laid down several factors in determining whether statements offered in evidence as part of the *res gestae* have satisfied the requirement of spontaneity:

> **It goes without saying that the element of spontaneity is critical. The following factors are then considered in determining whether statements offered in evidence as part of the *res gestae* have been made spontaneously**, *viz.*, (1) the time that lapsed between the occurrence of the act or transaction and the making of the statement; (2) the place where the statement was made; (3) the condition of the declarant when he made the statement; (4) the presence or absence of intervening events between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself. **As to the first factor**, the following proves instructive:
>
> > The rule is that the statements, to be admissible, should have been made before there had been time or opportunity to devise or contrive anything contrary to the real facts that occurred. What the law altogether distrusts is not afterspeech but afterthought.
> >
> > **[T]here are no limits of time within which the *res gestae* can be arbitrarily confined. These limits vary in fact with each particular case. The acts or declarations are not required to be contemporaneous with the primary fact, but they must be so connected with it as to make the act or declaration and the main fact particularly inseparable, or be generated by an excited feeling which extends, without break or let-down, from the moment of the event they illustrate.** In other words, if the acts or declarations sprang out of the principal transaction, tend to explain it, were voluntary and spontaneous, and were made at a time so near it as to preclude the idea of deliberate design, they may be regarded as contemporaneous in point of time, and are admissible.

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[36] *Id.* at 869-870.

[37] 352 Phil. 866 (1988).

In *People v. Sanchez*, this Court had occasion to state that the cases are not uniform as to the interval of time that should separate the occurrence of the startling event and the making of the declaration. What is important is that the declarations were voluntarily and spontaneously made "so nearly contemporaneous as to be in the presence of the transaction which they illustrate or explain, and were made under such circumstances as necessarily to exclude the ideas of design or deliberation."

As to the second factor, it may be stressed that "a statement made, or an act done, at a place some distance from the place where the principal transaction occurred will not ordinarily possess such spontaneity as would render it admissible."

Anent the third factor, "**[a] statement will ordinarily be deemed spontaneous if, at the time when it was made, the conditions of the declarant was such as to raise an inference that the effect of the occurrence on his mind still continued, as where he had just received a serious injury, was suffering severe pain, or was under intense excitement.** Conversely, a lack of spontaneity may be inferred from the cool demeanor of declarant, his consciousness of the absence of all danger, his delay in making a statement until witnesses can be procured, or from the fact that he made a different statement prior to the one which is offered in evidence."

With regard to the fourth factor, what is to be considered is whether there intervened between the event or transaction and the making of the statement relative thereto, any circumstance calculated to divert the mind of the declarant which would thus restore his mental balance and afford opportunity for deliberations.

The last factor needs no further elaboration.[38] (Emphasis supplied)

Guided by the foregoing standards, the Court finds that the CA and RTC correctly considered the statements of AAA as part of the *res gestae*.

As reflected in the records, EEE's testimony places AAA's utterances only several hours from the time the disputed incidents took place on April 15, 2001, *i.e.*, 7 p.m., 9 p.m., and 12 midnight:

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[38] *Id.* at 882-884.

Q: Where were you on **April 16, 2001**?
A: I was in my house.

Q: While you were in your house, what were you doing?
A: I was washing foods (*sic*) and cooked food.

Q: Did you meet the complainant, AAA on that day?
A: Yes, she was in our house on the 16th.

Q: **What time did she arrive in your house?**
A: **At noon time.**

Q: **When she arrived in your house, what did you notice at (*sic*) her?**
A: **She was crying and sad.**

Q: **Did you ask her why she was crying?**
A: **Yes.**

Q: What was her answer?
A: She said she was raped by her father.

Q: Did she mention the date when she was raped?
A: Yes.

Q: **What were those dates that she mentioned?**
A: **April 8, 2001 and April 15, 2001.**

Q: Did she mention how many times she was raped on **April 15, 2001?**
A: Yes.

Q: What date (*sic*)?
A: **She told me that she was raped at 7:00 o'clock in the evening, 9:00 o'clock and 12:00 o'clock midnight.**

x x x x x x x x x

Q: How did she tell you that she was raped by her father?
A: She was raped by her father but she cannot shout and cannot free herself. She was not able to shout because her mouth was covered.

Q: What was her reaction when she told you that she raped (*sic*) by her father and she cannot free herself because her mouth was covered[?]
A: I told her that somebody will help you for that and that few days after she went to Pedro delos Santos to work as a helper who helped her.

Q: Did you not advise her to tell her mother?
A: I told her and they went to the municipal hall then a medical certificate was taken from her and she was accompanied by her mother at that time.[39] (Emphasis supplied)

Based on the foregoing account, it is clear that at the time AAA uttered her statements to EEE — a few hours after the incidents — the effect of the occurrence on her mind still continued. Her demeanor, as narrated by EEE, showed that she was still suffering as a result of the violation of her person and honor by her father, herein accused-appellant XXX. Moreover, following the standard in *Manhuyod, Jr.*, while the utterances were not made contemporaneous to the act described, the Court finds that they remained to be "so connected with it as to make the act or declaration and the main fact particularly inseparable."[40] More importantly, the Court finds nothing on the records that would show an intervening event between the time of the rape incidents and the time of AAA's revelation to EEE that would indicate a restoration of her mental balance as in fact, she was still under distress when she arrived at EEE's home. The Court thus adopts the RTC's disquisition on this score, which was affirmed *in toto* by the CA:

In the case at bar, [AAA] went to, and arrived at the house of her aunt [EEE] by noon on April 16, 2001 — about twelve (12) hours after she was ravished by her father. She left their house that day after she was raped three (3) times by her own father, and went to her aunt's house located in the same municipality. Upon arrival at her aunt's house, [AAA] was sad and crying, and revealed to her aunt that she was raped by her father. Although her utterances may not have been made immediately or simultaneous with the actual rape, the said utterances were "so connected with it as to make the act or declaration and the main fact inseparable, or be generated by an excited feeling which extends, without break or let down, from the moment of the event they illustrate." On this factual backdrop, it is clearly evident that [AAA] made this revelation to her aunt before

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[39] *Rollo*, pp. 7-8.

[40] *People v. Manhuyod, Jr.*, *supra* note 37 at 883.

she could make a deliberate design or had the opportunity "to devise or contrive" anything contrary to the real facts that occurred.

Applying the rule in *People vs. Sanchez*, the Court finds that [AAA]'s revelation to her aunt about twelve (12) hours after she was raped, was voluntarily and spontaneously made "so nearly contemporaneous as to be in the presence of the transaction which they illustrate or explain. And were made under such circumstances to exclude the idea of design or deliberation."

When [AAA] arrived at her aunt's house in barangay Candana-an of the same municipality where [AAA] lives in barangay Manogtong, she must have walked the whole morning considering that according to [EEE], her aunt, when one starts walking from the house of [AAA], one will arrive at her house by noontime.

x x x x x x x x x

Based on the foregoing dissertations of the factual scenario and the applicable jurisprudence, the Court is convinced beyond reasonable doubt that accused should be held liable for the crime of Rape for the three (3) counts, specifically, those committed for three (3) consecutive times on the night of April 15, 2001. However, the alleged incidents on July 18 and April 8, 2001 may not be covered by *res gestae*, and thus, the Court finds that the accused should not be held liable for the said two incidents.[41]

Meanwhile, with respect to Calug's testimony, which consisted of statements given by AAA on April 18, 2001, or three (3) days after the April 15, 2001 incidents, the Court finds that the RTC and CA incorrectly considered the same as part of the *res gestae*.

Q: **When was the first time you met AAA?**
A: **April 18**

Q: **What year?**
A: **2001.**

Q: Where did you meet each other?
A: In the house of Pedro delos Santos.

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

Q: What were you both doing in the house of Pedro delos Santos?
A: We were both house help (*sic*) in the house of Pedro.

Q: While you were or both of you in the house of Mr. Pedro delos Santos, did you notice anything, if any with the actuation of AAA?
A: Yes.

Q: What was that?
A: She was always sad.

Q: What else if any?
A: She was always crying at that time.

Q: When you say always crying, can you tell this Honorable Court what time or what part of the day is she crying?

x x x x x x x x x

A: I do not know the time but I usually saw (*sic*) her crying in the morning, afternoon, and night time.

Q: Considering that you are living in the same household, did you ask her why she was always crying in the morning, afternoon, and evening?

x x x x x x x x x

A: She told me, "Gel, I have a problem with my father. My father raped me."

Q: Did AAA mention to you when she was raped by her father?
A: Yes.

Q: What did she say?
A: **She told me that she was raped by her father on April 8, 15 and 16.**[42] (Emphasis supplied)

While the Court notes the similarity between the accounts of EEE and Calug as regards AAA's utterances, the records nevertheless disclose that AAA helped in the household chores for several days in EEE's home and subsequently looked for a job elsewhere.[43] AAA would then end up working as a house

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[42] *Rollo*, p. 9.

[43] *Id.* at 8.

help for a certain Pedro delos Santos, where she would eventually meet Calug.[44] Such circumstances, coupled with the fact that AAA's statements to Calug were made **three (3) days after** the **April 15, 2001** incidents, lead to the conclusion that there was already a significant break in the connection between the rape incidents and the time AAA made her statements to Calug on **April 18, 2001**. In this light, the Court finds that the utterances made to Calug are far too removed from the event described as to form part of the *res gestae*.

Notwithstanding the foregoing, the Court finds that the critical element of carnal knowledge through force was sufficiently established by the evidence on record. The clear and straightforward testimony of EEE, together with the medico-legal findings consistent with the facts described,[45] produces a conviction beyond reasonable doubt that XXX is guilty for the repeated defilement of his own daughter, AAA.

In numerous occasions, the Court has held 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.[46] In this case, the Court finds no cogent reason to reverse the RTC's appreciation of the evidence, which was affirmed *in toto* by the CA.

XXX's defense of alibi and denial failed to overcome the prosecution's evidence

For the defense of alibi to overcome a *prima facie* finding of guilt, 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.[47]

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[44] *Id.*

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

[46] *People v. Gerola*, G.R. No. 217973, July 19, 2017, pp. 5-6.

[47] *People v. Alvarez,* 461 Phil. 188, 200 (2003).

Such defense must be supported by strong evidence of innocence independent of the accused's self-serving statements.

In this case, XXX, simply claimed that he was elsewhere (*i.e.*, Palawan) at the time the alleged rapes occurred.[48] However, the RTC remained unconvinced as his testimony was replete with uncertainties as XXX could not even remember the date when he was allegedly working on a fishing boat in Palawan.[49] Moreover, XXX failed to produce any other witness to corroborate his testimony despite having the opportunity to do so.[50]

In sum, the Court finds that XXX's guilt was proven beyond reasonable doubt by the evidence of the prosecution. In criminal cases, "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.[51]

Anent the penalty, the Court accordingly modifies the award of damages to conform to prevailing jurisprudence.[52]

WHEREFORE, in view of the foregoing, the appeal is **DISMISSED** for lack of merit and the Decision dated April 19, 2012 of the Court of Appeals — Cebu City in CA-G.R. CR-HC No. 00332 is hereby **AFFIRMED** with **MODIFICATION**. Accused-appellant XXX is hereby found **GUILTY** beyond reasonable doubt of three (3) 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* for each count.

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[48] CA *rollo*, p. 63.

[49] *Id.*

[50] *Id.*

[51] RULES OF COURT, Rule 133, Sec. 2.

[52] *People v. Jugueta*, 783 Phil. 806 (2016).

The amount of damages awarded is hereby increased, ordering accused-appellant to pay the heirs of 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 for each count of Rape in Criminal Case Nos. F-2001-171-A, F-02-02-A, F-2001-170-A. 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.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr., JJ.*, concur.

FIRST DIVISION

[G.R. No. 217051. August 22, 2018]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH); ENGR. REBECCA J. ROCES, District Engineer, 2nd District Engineering Office of Camarines Sur; and ENGR. VICTORINO M. DEL SOCORRO, JR., Project Engineer, DPWH, Baras, Canaman, Camarines Sur, *petitioners, vs.* **SPOUSES CORNELIO ALFORTE and SUSANA ALFORTE,** *respondents.*

SYLLABUS

POLITICAL LAW; LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN (CA 141); LEGAL EASEMENT OF RIGHT-OF-WAY EXISTS IN FAVOR OF THE

GOVERNMENT OVER LAND THAT WAS ORIGINALLY PUBLIC LAND AWARDED BY FREE PATENT EVEN IF THE LAND WAS SUBSEQUENTLY SOLD TO ANOTHER; CASE AT BAR.— [On issue is the interpretation] of Section 112 of CA 141, as amended. x x x Respondents' TCT 29597 specifically contains a proviso stating that said title is "subject to the provisions of the x x x Property Registration Decree and the Public Land Act, as well as to those of the Mining Laws x x x." Their title is therefore necessarily subject to the easement provided in Section 112, as amended. Such a proviso exists in TCT 29597 since it was derived from a free patent issued on March 21, 1956. A legal easement of right-of-way exists in favor of the Government over land that was originally public land awarded by free patent even if the land was subsequently sold to another. x x x [Thus] [r]espondents are x x x required to execute the corresponding quitclaim in favor of the State, with respect to the 127 square meters of respondents' land [for the road project]. Nonetheless, the Court observes that respondents' land is only 300 square meters, [and taking] *nearly half of the whole property* x x x could affect the integrity of the whole property, and may materially impair the land to such extent that it may be deemed a taking of the same – which thus entitles respondents to just compensation for the remaining portion of their property. In this regard, a thorough determination by the trial court must be made.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Simando and Associates for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

On pure questions of law, herein petitioners directly come to this Court via this Petition for Review on *Certiorari*[1] to

[1] *Rollo*, pp. 10-43.

nullify and set aside the July 28, 2014 Decision (Partial)[2] and March 3, 2015 Order[3] of the Regional Trial Court of Naga City, Branch 22 (Naga RTC), in Civil Case No. RTC 2012-0013.

Factual Antecedents

Respondents Cornelio and Susana Alforte were the registered owners of a 300-square meter parcel of land (subject property) covered by Transfer Certificate of Title No. 29597 (TCT 29597).[4] The subject property, which appears to be a vacant lot, was originally covered by a March 21, 1956 Free Patent and April 14, 1956 Original Certificate of Title No. 235,[5] issued pursuant to Commonwealth Act No. 141 (CA 141) or the Public Land Act.

A total of 127 square meters of the subject property will be traversed by the Naga City-Milaor Bypass Road construction project of the Department of Public Works and Highways (DPWH). For this reason, respondents filed a Complaint[6] – docketed as Civil Case No. RTC 2012-0013 – before the Naga RTC to compel petitioners to pay them just compensation for the 127-square meter area that would have been lost to the road project, in the amount of ₱381,000.00, with additional prayer for attorney's fees and litigation expenses.

Petitioners filed their Answer[7] praying for the dismissal on the ground, among others, of lack of cause of action - arguing that, since the property was originally acquired by free patent, an easement in favor of the government of 60 meters existed without need of payment of just compensation – except if there were improvements, pursuant to Section 112 of CA 141, as

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[2] *Id.* at 44-57; penned by Judge Efren C. Santos.

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

[4] *Id.* at 60.

[5] *Id.* at 73-78.

[6] *Id.* at 79-84.

[7] *Id.* at 85-99.

amended by Presidential Decree (PD) No. 1361,[8] which states thus:

> Sec. 112. Said land shall further be subject to a right-of-way not exceeding sixty (60) meters on width for public highways, railroads, irrigation ditches, aqueducts, telegraph and telephone lines, airport runways, including sites necessary for terminal buildings and other government structures needed for full operation of the airport, as well as areas and sites for government buildings for Resident and/or Project Engineers needed in the prosecution of government-infrastructure projects, and similar works as the Government or any public or quasi-public service or enterprise, including mining or forest concessionaires, may reasonably require for carrying on their business, with damages for the improvements only.
>
> Government officials charged with the prosecution of these projects or their representatives are authorized to take immediate possession of the portion of the property subject to the lien as soon as the need arises and after due notice to the owners. It is however, understood that ownership over said properties shall immediately revert to the title holders should the airport be abandoned or when the infrastructure projects are completed and buildings used by project engineers are abandoned or dismantled, but subject to the same lien for future improvements.

Petitioners argued that this lien followed the property even when respondents acquired the same from the original grantee of the patent or the latter's successor-in-interest, pursuant PD 1529, or the Property Registration Decree, which provides, thus:

> SECTION 44. Statutory liens affecting title. — Every registered owner receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted in said certificate and any of the following encumbrances which may be subsisting, namely:

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[8] FURTHER AMENDING THE PROVISIONS OF SECTION ONE HUNDRED TWELVE OF COMMONWEALTH ACT NUMBERED ONE HUNDRED FORTY-ONE, AS AMENDED BY PRESIDENTIAL DECREE NUMBERED SIX HUNDRED THIRTY-FIVE. April 26, 1978.

First. Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrancers of record.

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A writ of possession was issued in favor of petitioners.

After proceedings in due course, the Naga RTC issued the assailed Partial Decision, which contained the following pronouncement:

DEFENDANTS raised the issue that Section 112, CA No. 141 otherwise known as 'The Public Land Act' as amended by P.D. 653, imposes a 60-meter wide legal encumbrance on the property and thus, preclude[s] the SPS. ALFORTE from claiming just compensation.

The court is not persuaded by this argument.

It is not disputed that SPS. ALFORTE are the owners of a parcel of land consisting of 300 square meters, situated at Mabulo, Naga City and covered by TCT No. 29597. The same parcel of land was originally covered by Original Certificate of Title No. 235, dated April 14, 1956 pursuant to a Free Patent issued to Beatriz Santos and Bienvenido Santos who later on transferred the property to SPS. ALFORTE. Of the 300 square meters lot, 127 square meters thereof will be traversed by the Naga City-Milaor By-pass Road. SPS. ALFORTE agreed and Defendant DPWH assured them that [the latter] would pay the just compensation for the affected area. In fact[,] in a letter dated July 13, 2010 then District Engineer Rolando Valdez x x x even made a formal offer to pay the affected area. However, in a letter dated May 11, 2011 ENGR. VALDEZ informed SPS. ALFORTE that they [were] not entitled to the payment of just compensation of the affected area, such that before the Court could fix the amount of just compensation, the issue on the entitlement of the SPS. ALFORTE to the payment of just compensation [had] first to be resolved.

SPS. ALFORTE argued that they [were] entitled to just compensation based on the Constitutional precept that no private property should be taken for public use without payment of just compensation. They claimed that[,] as the subject property [was] now a private property, it [was] now beyond the coverage of CA

No. 141 or the Public Land Act. On the other hand, DEFENDANTS insisted that SPS. ALFORTE [were] not entitled to just compensation for the reason that the subject land was acquired by SPS. ALFORTE from BEATRIZ SANTOS and BIENVENIDO SANTOS who acquired the subject property by virtue of a Free Patent under the Public Land Act. Section 112 of CA No. 141 or the Public Land Act provides that lands acquired under said Act shall be subject to a right-of-way not exceeding 60 meters in width for public highways.

x x x x x x x x x

Settled is the rule that no person may be deprived of his property without due process of law. The power of eminent domain therefore, whether exercised by the State itself or by agencies to which it has delegated such power, can be exercised only in accordance with the law of the land. There must be appropriate expropriation proceedings and payment of indemnity. A statute authorizing a corporation to exercise the power of eminent domain, being a derogation of general right and conferring upon it exceptional privileges with regard to the property of others, should be construed strictly in favor of landowners whose property is affected by its terms. Hence, before any right to take possession of land under such statute can be fully exercised by the corporation, the provisions of the statute must be fully and fairly complied with.

The Court is convinced that as between the provisions of CA No. 141 imposing [an] encumbrance in favor of the government on the subject property up to 60-meters in width as road right of way and the provisions of the Constitution particularly Article III, Section 1 which provides that "*no one should be deprived of life, liberty and property without due process of law, xxx*" and Section 9 which provides that "*Private property shall not be taken for public use without just compensation,*" it is the latter that should prevail.

x x x x x x x x x

Thusly, the entitlement to just compensation of the SPS. ALFORTE having been determined and resolved, the Court can now proceed with the second stage in expropriation, that is, the compulsory determination of just compensation by the Court with the assistance of not more than three (3) commissioners designated by the court. Only upon completion of the two stages that expropriation is completed, and only upon payment of just compensation that title to the property passes to the Government.

In this case and pending determination by the Court of the issue on the entitlement of the SPS. ALFORTE to just compensation of their property affected by the Naga City-Milaor By-Pass Road Project, it issued an Order of Condemnation and/or granted the issuance of the writ of possession on February 15, 2013 that authorized the DEFENDANTS to take possession of the aforesaid parcel of land which was implemented on July 1, 2013 at its instance, without the latter depositing with the authorized government depositary bank an amount equivalent to the assessed value of the property for purposes of taxation to be held by such bank subject to the orders of the court as prescribed under Section 2, Rule 67.

Under the Rules, the determination of just compensation is done by the Court with the assistance of not more than three commissioners. The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final. It would finally dispose of the second stage of the suit and leave nothing more to be done by the court regarding the issue. Since this stage was omitted after the DEFENDANTS [were] placed in possession of the 127 square meters portion of the property of the SPS. ALFORTE and in order not to deny them due process, there is compelling reason and need to re-open this case and appoint in accordance with Section 5 of Rule 67, three (3) competent and disinterested persons as commissioners to ascertain and report to the court the just compensation for the property sought to be taken. The determination of just compensation by the trial court with the aid of the commissioners is a substantial right that may not be done away with capriciously or for no reason at all.

All told, this Court finds the SPS. ALFORTE [have] a cause of action against the DEFENDANTS and [are] therefore entitled to just compensation. Since the entire property of the SPS. ALFORTE consisting of 300 square meters and almost half of it or a total of 127 square meters was taken by the Government through the DPWH, as the same was traversed by the Naga City-Milaor By-Pass Road, it will indeed result to injustice if they will not be paid just compensation for their property just because of the provisions of CA No. 141.

WHEREFORE, premises considered, a Partial Decision is hereby rendered:

a) DECLARING the Plaintiffs Spouses Cornelio and Susana Alforte entitled to the payment of just compensation for the 127 square meters

portion of their 300 square meters parcel of land covered by Transfer Certificate of Title No. 29597 of the Registry of Deeds for Naga City traversed and/or affected by the Naga City-Milaor By-Pass Road;

b) RECALLING the Order dated September 16, 2014 submitting this case for Decision and consequently, RE-OPENING the same for the determination only of just compensation in accordance with Section 5, Rule 67 of the 1997 Rules of Civil Procedure;

c) ORDERING the Defendants to deposit the amount of Php 190,500, the assessed value of the property taken and/or affected by the Naga City-Milaor By- Pass Road, with any authorized government depositary bank to be held by such bank until further orders from this Court within 15 days from receipt hereof in accordance with Section 2, Rule 67 of the 1997 Rules of Civil Procedure;

d) APPOINTING the following:

1. Alberto C. Villafuerte [III] - Local Assessment Operations Officer III, City Assessor's Office, Naga City;
2. Engr. Jose C. Ferro - No. 5 Jacod Ext., Liboton, Naga City;
3. Engr. Mar Basco - 383 Diamond St., Filoville Subd., Barangay Calauag, Naga City

as Commissioners to ascertain and report to this Court the just compensation of the 127 square meters parcel of land taken and affected by the Naga City-Milaor By-Pass Road.

ALBERTO C. VILLAFUERTE III, Local Assessment Officer III of the City Assessor's Office of Naga City and a Licensed Real Estate Appraiser is hereby designated as Chairman of the Board of Commissioners.

Meanwhile, ALBERTO C. VILLAFUERTE III, ENGR. JOSE C. FERRO, and ENGR. MAR BASCO are hereby directed to report to this Court on September 15, 2014 at 8:30 o'clock in the morning and signify their willingness to accept their appointment as Members of the Board of Commissioners and to take their oath before the Branch Clerk of Court. Thereafter, the said Commissioners shall meet in first session and their report must be filed with this Court not later than October 31, 2014.

e) ORDERING the plaintiffs to pay the fees of the Commissioners pursuant to Section 12, Rule 67.

The Branch Clerk of Court is hereby directed to notify the appointed Commissioners of their appointment.

SO ORDERED.[9] (Citations omitted)

Petitioners filed a Motion for Reconsideration, which the trial court denied through its March 3, 2015 Order, stating –

Before this Court is a Motion for Reconsideration of the Partial Decision issued by this Court on July 28, 2014 filed by the Defendants and the Comment/Opposition thereto filed by the Plaintiffs. The Motion for Reconsideration is anchored on the following grounds:

1. [T]hat Plaintiffs' land being originally covered by Free Patent is subject to the 60-meter wide perpetual legal easement of right of way or statutory lien for public highway at no cost to the government, imposed by Section 112 of the Public Land Act, thereby precluding Plaintiffs from claiming just compensation;

2. That the Republic's enforcement of its right-of-way or legal easement under Section 112 of the Public Land Act was upheld by the Supreme Court in the case of NIA vs. CA as well as in Republic vs. Andaya;

3. Plaintiffs admittedly failed to exhaust administrative remedies.

In their comment/opposition the Plaintiffs alleged that the issues being raised have been exhaustively addressed and determined by this Court and in fine there is no ground for reconsideration.

After considering the allegations of both parties this Court resolves to DENY the motion for reconsideration.

Granting *arguendo* that the Public Land Act will be followed, the right of way provided therein is only up to 60-meters. In the case of NIA vs. Manglapus cited by the Defendants, the canal constructed by NIA was only eleven (11) meters and was well within the 60-meter right of way provided by law. This is not true in this case because the portion of the property of the Plaintiffs occupied or traversed by the Naga City-Milaor By-Pass Road is 127 square meters. Besides, this Court maintains that other laws should be considered and interpreted in a manner consistent 1th our Constitution and that

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[9] *Rollo*, pp. 50-57.

the issues raised in the motion had been passed upon and considered by this Court, thus no new matters were raised which will warrant a reconsideration of the Partial Decision issued by this Court.

WHEREFORE, premises considered, the Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED.[10] (Citations omitted)

Hence, this Petition.

Issues

Petitioners submit the following issues for resolution:

THE RTC ERRED IN HOLDING THAT RESPONDENTS ARE ENTITLED TO JUST COMPENSATION DESPITE THE UNDISPUTED FACT THAT THE LAND WAS ORIGINALLY PUBLIC LAND AWARDED TO RESPONDENTS' PREDECESSORS-IN-INTEREST BY FREE PATENT, AND THUS A LEGAL EASEMENT OF SIXTY-METER WIDE RIGHT-OF-WAY EXISTS IN FAVOR OF THE GOVERNMENT.

RESPONDENTS' LAND BEING ORIGINALLY COVERED BY A FREE PATENT, IT IS SUBJECT TO THE 60-METER WIDE PERPETUAL LEGAL EASEMENT OF RIGHT-OF-WAY OR STATUTORY LIEN FOR PUBLIC HIGHWAYS, ETC. AT NO COST TO THE GOVERNMENT, IMPOSED BY SECTION 112 OF THE PUBLIC LAND ACT, THEREBY PRECLUDING RESPONDENTS FROM CLAIMING JUST COMPENSATION.

THE REPUBLIC'S ENFORCEMENT OF ITS RIGHT-OF-WAY OR LEGAL EASEMENT UNDER SECTION 112 OF THE PUBLIC LAND ACT WAS UPHELD BY THIS HONORABLE COURT IN *NATIONAL IRRIGATION ADMINISTRATION VS. COURT OF APPEALS*, 340 SCRA 661 (2000), AS WELL AS IN *REPUBLIC VS. ANDAYA*, 524 SCRA 671 (2007).

THE TRIAL COURT'S RATIOCINATION - THAT THE PUBLIC LAND ACT PROVIDES FOR A RIGHT OF WAY OF UP TO SIXTY (60) METERS, WHILE THE PORTION OF RESPONDENTS' PROPERTY TRAVERSED BY THE NAGA-MILAOR BY-PASS

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

ROAD IS 127 SQUARE METERS IS PATENTLY ERRONEOUS. THE LAW SPEAKS OF WIDTH, NOT AREA OF THE RIGHT OF WAY.

THE RTC, IN PRONOUNCING THAT "INJUSTICE" WILL RESULT "BECAUSE OF THE PROVISIONS OF CA NO. 141," VIOLATED THE PLAIN-MEANING RULE OR *VERBA LEGIS*.

BESIDES, RESPONDENTS MANIFESTLY FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.[11]

Petitioners' Arguments

Praying that the assailed Naga RTC dispositions be set aside and that Civil Case No. RTC 2012-0013 be dismissed, petitioners contend in their Petition and Reply[12] that the trial court erred in declaring that respondents were entitled to just compensation, as CA 141 specifically provides that every title to land obtained under its provisions shall further be subject to a right-of-way easement not exceeding 60 meters on width, with damages for the improvements only; that this lien followed the subject property even when respondents acquired the same from the original grantee of the patent or the latter's successor-in-interest, pursuant to Section 44 of PD 1529; that these provisions of law were upheld by the Court in several cases, particularly *National Irrigation Administration v. Court of Appeals*[13] and *Republic v. Andaya*;[14] that the trial court erred in stating essentially that government was only entitled to 60 square meters, as opposed to 127 square meters that was being taken from respondents; and that respondents failed to exhaust administrative remedies by filing a case in court instead of filing a claim with the Commission on Audit.

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

[12] *Id*. at 198-211.

[13] 395 Phil. 48 (2000).

[14] 552 Phil. 40 (2007).

Respondents' Arguments

In their Comment,[15] respondents maintain that they were entitled to just compensation for the 127-square meter portion taken from their land for use by the government in its road project; that CA 141 cannot prevail over the constitutional provision that no private property shall be taken for public use without payment of just compensation; that as the owners of the subject property, they have vested rights over the same which must be protected; and that there was no need to exhaust administrative remedies because there was nothing of an administrative nature involved in this case.

Our Ruling

The Petition is partially granted.

Petitioners are correct in their supposition that the only issue involved in this case is a purely substantive one – that is, an interpretation or reiteration of Section 112 of CA 141, as amended. The controversy concerns the correct application of the said law, and does not call for an examination of the probative value of the evidence presented, the truth or falsehood of the facts being admitted.

Neither were petitioners mistaken in coming directly to this Court; the controversy involves a major road project, the completion of which is of the utmost importance. For the respondents, the case is no less urgent; their property has been taken, which thus entitles them to reparation – "just compensation" as we call it in eminent domain cases.

Respondents' TCT 29597 specifically contains a proviso stating that said title is "subject to the provisions of the x x x Property Registration Decree and the Public Land Act, as well as to those of the Mining Laws x x x."[16] Their title is therefore necessarily subject to the easement provided in Section 112,

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[15] *Rollo*, pp. 176-190.

[16] *Id*. at 60.

as amended. Such a proviso exists in TCT 29597 since it was derived from a free patent issued on March 21, 1956. A legal easement of right-of-way exists in favor of the Government over land that was originally public land awarded by free patent even if the land was subsequently sold to another. This was the ruling in *Republic v. Spouses Regulto*,[17] where the Court made the following pronouncement:

> This Court finds that the RTC erroneously ruled that the provisions of C.A. No. 141 are not applicable to the case at bar. On the contrary, this Court held that 'a legal easement of right-of-way exists in favor of the Government over land that was originally a public land awarded by free patent even if the land is subsequently sold to another.' This Court has expounded that the 'ruling would be otherwise if the land was originally a private property, to which just compensation must be paid for the taking of a part thereof for public use as an easement of right-of-way.'
>
> It is undisputed that the subject property originated from and was a part of a 7,759-square-meter property covered by free patent registered under OCT No. 235. Furthermore, the Spouses Regulto's transfer certificate of title, which the RTC relied, contained the reservation: '*subject to the provisions of the Property Registration Decree and the Public Land Act, as well as to those of the Mining Law, if the land is mineral, and subject, further, to such conditions contained in the original title as may be subsisting*.'
>
> Jurisprudence settles that one of the reservations and conditions under the Original Certificate of Title of land granted by free patent is that the said land is subject '*to all conditions and public easements and servitudes recognized and prescribed by law especially those mentioned in Sections 109, 110, 111, 112, 113 and 114, Commonwealth Act No. 141, as amended*.'
>
> Section 112 of C.A. No. 141, as amended, provides that lands granted by patent shall be subjected to a right-of-way in favor of the Government, to wit:
>
> > Sec. 112. Said land shall further be subject to a right-of-way not exceeding sixty (60) meters on width for public

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[17] 784 Phil. 805 (2016).

> highways, railroads, irrigation ditches, aqueducts, telegraph and telephone lines, airport runways, including sites necessary for terminal buildings and other government structures needed for full operation of the airport, as well as areas and sites for government buildings for Resident and/or Project Engineers needed in the prosecution of government-infrastructure projects, and similar works as the Government or any public or quasi-public service or enterprise, including mining or forest concessionaires, may reasonably require tor carrying on their business, **with damages for the improvements only**.
>
> Government officials charged with the prosecution of these projects or their representatives are authorized to take immediate possession of the portion of the property subject to the lien as soon as the need arises and after due notice to the owners. It is however, understood that ownership over said properties shall immediately revert to the title holders should the airport be abandoned or when the infrastructure projects are completed and buildings used by project engineers are abandoned or dismantled, but subject to the same lien for future improvements.

In other words, lands granted by patent shall be subject to a right-of-way not exceeding 60 meters in width for public highways, irrigation ditches, aqueducts, and other similar works of the government or any public enterprise, free of charge, except only for the value of the improvements existing thereon that may be affected.

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With the existence of the said easement of right-of-way in favor of the Government, the petitioners may appropriate the portion of the land necessary for the construction of the bypass road without paying for it, except for damages to the improvements. Consequently, the petitioners are ordered to obtain the necessary quitclaim deed from the Spouses Regulto for the 162-square-meter strip of land to be utilized in the bypass road project.[18] (Citations omitted)

Respondents are therefore required to execute the corresponding quitclaim in favor of the State, with respect to the 127 square meters of respondents' land.

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[18] *Id.* at 817-819.

Nonetheless, the Court observes that, while respondents' land is only 300 square meters, the State requires 127 square meters thereof for its road project – or *nearly half of the whole property*. This could affect the integrity of the whole property, and may materially impair the land to such extent that it may be deemed a taking of the same – which thus entitles respondents to just compensation for the remaining portion of their property. In this regard, a thorough determination by the trial court must be made.

In the *Regulto* case cited above, the State took 162 square meters of the landowners' 300-square meter property, for which the Court declared that there was a taking of the whole property. It was held therein that –

> It is noted that the 162 square meters of the subject property traversed by the bypass road project is well within the limit provided by the law. While this Court concurs that the petitioners are not obliged to pay just compensation in the enforcement of its easement of right-of-way to lands which originated from public lands granted by free patent, we, however, rule that petitioners are not free from any liability as to the consequence of enforcing the said right-of-way granted over the original 7,759-square-meter property to the 300-square-meter property belonging to the Spouses Regulto.
>
> There is 'taking,' in the context of the State's inherent power of eminent domain, when the owner is actually deprived or dispossessed of his property; when there is a practical destruction or material impairment of the value of his property or when he is deprived of the ordinary use thereof. Using one of these standards, it is apparent that there is taking of the remaining area of the property of the Spouses Regulto. It is true that no burden was imposed thereon, and that the spouses still retained title and possession of the property. The fact that more than half of the property shall be devoted to the bypass road will undoubtedly result in material impairment of the value of the property. It reduced the subject property to an area of 138 square meters.
>
> Thus, the petitioners are liable to pay just compensation over the remaining area of the subject property, with interest thereon at the rate of six percent (6%) per annum from the date of writ of possession or the actual taking until full payment is made.

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Consequently, the case is remanded to the court of origin for the purpose of determining the final just compensation for the remaining area of the subject property. The RTC is thereby ordered to make the determination of just compensation payable to the respondents Spouses Regulto with deliberate dispatch. The RTC is cautioned to make a determination based on the parameters set forth by law and jurisprudence regarding just compensation.[19] (Emphasis and italics in the original; citations omitted)

On the other hand, in *Bartolata v. Republic*,[20] the Court held:

To recapitulate, two elements must concur before the property owner will be entitled to just compensation for the remaining property under Sec. 112 of CA 141: (1) that the remainder is not subject to the statutory lien of right of way; and (2) that the enforcement of the right of way results in the practical destruction or material impairment of the value of the remaining property, or in the property owner being dispossessed or otherwise deprived of the normal use of the said remainder.

This doctrine in *Andaya* was reiterated in the recent *Republic v. Regulto*. We now apply the same parameters for determining petitioner's entitlement to just compensation in the case at bar.

Recall that the subject property in this case is a 400 square meter parcel of land. The 223 square meter portion of the subject property was traversed by respondents' Metro Manila Skyway Project And as noted by the CA, the subdivision plan shows that the covered area corresponds to the widths of 13.92 meters and 13.99 meters, well within the 60-meter width threshold provided by law. Respondents are then not under any legal obligation to pay just compensation for utilizing the 223 square meter portion pursuant to the Republic's right of way under Sec. 112 of CA 141, and in accordance with our ruling in *Andaya*.

Anent the remaining 177 square meters of the 400 square meter lot, suffice it to state that it was never proved that the said area was not subject to the statutory lien. Neither was it established that despite

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[19] *Id.* at 819-821.

[20] G.R. No. 223334, June 7, 2017, 827 SCRA 100, 119-120.

not having been utilized for the Metro Manila Skyway Project, the enforcement of the easement resulted in the 'taking' of the remaining property all the same. There is then no evidentiary basis for awarding petitioner just compensation, as correctly ruled by the RTC and the CA. However, petitioner remains the owner of the said 177 square meters and can fully exercise all the rights of ownership over the same.

Thus, there must be a thorough determination by the trial court if the utilization and taking of the 127-square meter portion of respondents' land amounts to a taking of the whole property – as it amounts to the material impairment of the value of the remaining portion, or if the respondents are being dispossessed or otherwise deprived of the normal use thereof.

Just compensation is defined as 'the full and fair equivalent of the property taken from its owner by the expropriator.' The word 'just' is used to qualify the meaning of the word 'compensation' and to convey the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample. On the other hand, the word 'compensation' means 'a full indemnity or renumeration for the loss or damage sustained by the owner of property taken or injured tor public use.'[21]

Thereafter, the amount of just compensation — if any — shall be determined and computed.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The July 28, 2014 Decision (Partial) and March 3, 2015 Order of the Regional Trial Court of Naga City, Branch 22 in Civil Case No. RTC 2012-0013 are **REVERSED AND SET ASIDE**, except for that portion of the July 28, 2014 Decision (Partial) appointing commissioners, which becomes necessary in the event that respondents are found to be entitled to payment of just compensation.

The case is **ORDERED REMANDED** to the court of origin for the conduct of further proceedings to resolve the issue of

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[21] *Republic v. Judge Mupas*, 769 Phil. 21, 122 (2015).

whether there is a taking of the remaining portion; and if so, how much shall be paid to respondents by way of just compensation.

SO ORDERED.

Peralta[*] (*Acting Chairperson*), *Tijam, Gesmundo*,[**] and *Reyes, J. Jr.*,[***] *JJ.*, concur.

EN BANC

[A.C. No. 12066. August 28, 2018]

VICENTE FERRER A. BILLANES, *complainant, vs.* **ATTY. LEO S. LATIDO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISCIPLINARY CASES AGAINST LAWYERS; SUBSTANTIAL EVIDENCE IS THE PROPER EVIDENTIARY THRESHOLD TO BE APPLIED.— [T]he Court is satisfied that there exists substantial evidence to hold respondent administratively liable for procuring the spurious RTC Decision which caused great prejudice to complainant as his client. According to jurisprudence, substantial evidence is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." Contrary to the finding of the Investigating Commissioner, substantial

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[*] Designated Acting Chairperson per Special Order No. 2582 (Revised) dated August 8, 2018.

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

[***] Designated Additional Member per August 20, 2018 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

evidence – and not "clear preponderant evidence" – is the proper evidentiary threshold to be applied in disciplinary cases against lawyers.

2. **ID.; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY OF A LAWYER NOT TO ENGAGE IN UNLAWFUL, DISHONEST, IMMORAL AND DECEITFUL CONDUCT; VIOLATION IN CASE AT BAR WARRANTS DISBARMENT FROM THE PRACTICE OF LAW.—** [T]he Court finds that respondent's acts are in gross violation of Rule 1.01, Canon 1 of the 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. Rule 1.01, Canon 1 of the CPR instructs that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing." Indubitably, respondent fell short of such standard when he committed the afore-described acts of misrepresentation and deception against complainant. Such acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they further reveal basic moral flaws that make respondent unfit to practice law. x x x Accordingly, following prevailing jurisprudence, the Court finds respondent guilty of violating Rule 1.01, Canon 1 of the CPR. Hence, he is disbarred from the practice of law and his name is ordered stricken off from the roll of attorneys, effective immediately.

APPEARANCES OF COUNSEL

Gargantiel & Estrada for respondent.

D E C I S I O N

PER CURIAM:

This administrative case stemmed from a complaint[1] dated February 14, 2013 filed by complainant Vicente Ferrer A.

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

Billanes (complainant), before the Integrated Bar of the Philippines (IBP), against respondent Atty. Leo S. Latido (respondent), praying that the latter be administratively sanctioned for his alleged professional misconduct.

The Facts

Complainant alleged that sometime in 2009, he decided to engage respondent as counsel in order to have his marriage with his estranged Filipina wife, Meriam R. Arietta (Arietta), annulled. After undergoing a series of interviews with respondent and paying the appropriate legal fees, respondent told complainant to await the notice from the court where the former filed the petition.[2] About a month later, respondent informed complainant that his petition was filed before the Regional Trial Court of Ballesteros, Cagayan, Branch 33 (RTC-Ballesteros), docketed as Civil Case No. 33-306B-2008, and that, in fact, a Decision[3] dated May 14, 2009 (RTC Decision), penned by Executive Judge Francisco S. Donato (Judge Donato), was already rendered in his favor.[4] Complainant was then shown a copy of the said Decision; however, he doubted the authenticity of the same, given that: *(a)* regarding the venue of the case, he was a resident of Lipa City, Batangas and yet his petition was filed before the RTC-Ballesteros; and *(b)* the RTC-Ballesteros purportedly granted his petition, without him even participating in the proceedings therein. These concerns notwithstanding, respondent assured complainant of the RTC Decision's authenticity, claiming that "non-appearance" in annulment cases is already allowed.[5] Eventually, respondent caused the annotation[6] of the RTC Decision on complainant's marriage contract that was on file at the Office of the Civil Registrar of

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[2] See *id.* at 2.

[3] *Id.* at 7-9.

[4] See *id.* at 3.

[5] See *id.*

[6] See Marriage Contract; *id.* at 6.

Dumaguete City (OCR-Dumaguete). Respondent also assisted in the celebration of complainant's marriage to Minh Anh Nguyen[7] (Nguyen), an Australian national, in San Jose, Batangas, sometime in September 2011.[8]

After his marriage to Nguyen, complainant filed an application for an Australian visa, attaching thereto the RTC Decision as a supporting document. In the process, complainant received an electronic mail[9] dated January 24, 2012 from the Australian Embassy, informing him that the RTC Decision was actually "fraudulent" and his submission of the same may result in the denial of his visa application. Surprised, complainant himself verified the matter with the RTC-Ballesteros, which in turn, issued a Certification[10] dated June 15, 2012, stating that: *(a)* Civil Case No. 33-306B-2008,[11] entitled *"Vicente Ferrer A. Billanes, petitioner versus Meriam R. Arietta-Billanes, respondent,"* is not filed in the said office; and *(b)* the signatures of Judge Donato and Clerk of Court VI Atty. Rizalina G. Baltazar-Aquino (COC Aquino) appearing on the RTC Decision and Certificate of Finality,[12] respectively, are fake.[13]

Aggrieved, complainant confronted respondent, who maintained that the RTC Decision was not spurious and that the RTC-Ballesteros just disowned the same. According to complainant, respondent's malpractice caused him prejudice as the RTC Decision not only caused the denial of his Australian visa application, but also forced him to incur more costs in undergoing annulment proceedings all over again.[14]

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[7] "Minh Anh Thi Nguyen" in the Certificate of Marriage; *id*. at 56.

[8] *Id*. at 66.

[9] *Id*. at 10.

[10] *Id*. at 11. Signed by Clerk of Court VI Rizalina G. Baltazar-Aquino.

[11] Incorrectly referred to as "Civil Case No. 33-360B-2008" in the said Certification; see *id*.

[12] Issued on August 4, 2009. *Id*. at 30.

[13] See *id*. at 3 and 66-67.

[14] See *id*. at 4 and 67.

In his Answer[15] dated April 29, 2013, respondent denied any involvement with the procurement of the RTC Decision. He averred that sometime in 2009, complainant sought his assistance in annulling his marriage so he can re-marry an Australian citizen, and thereafter, migrate to Australia.[16] However, at that time, respondent was planning to give his all-out support to a local candidate, and thus, would require much of his time. Given the situation, respondent, with complainant's knowledge and consent, referred the case to another lawyer by the name of "Atty. Aris Panaligan" (Atty. Panaligan), who in turn, referred the same to another lawyer.[17] Since then, respondent claimed that he no longer had any active participation in complainant's case.[18] Later on, he found out that complainant already secured a favorable decision in connection with his annulment case.[19]

Complainant expressed to respondent that he was unfamiliar as to what follows when a court renders a decision declaring a marriage null and void. Because of that, respondent supposedly felt obliged to assist complainant. Relying on the Certificate of Finality, respondent caused the annotation of the RTC Decision in the records of the OCR-Dumaguete. In addition, respondent also assisted in the celebration of the civil wedding rites of complainant to Nguyen.[20]

Respondent maintained that he himself was surprised when complainant discovered that the RTC Decision was fake, and that the same resulted in the denial of complainant's Australian visa application. As respondent felt responsible for complainant's predicament, he: *(a)* assisted complainant in appealing the denial of his Australian visa application before the Australian Migration

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[15] *Id*. at 23-29.

[16] See *id*. at 23.

[17] See *id*. at 23-24.

[18] *Id*. at 24.

[19] See *id*.

[20] See *id*.

Review Tribunal (MRT), but to no avail; *(b)* offered to refer complainant's case to another lawyer, which complainant declined; and *(c)* voluntarily gave complainant the amount of ₱108,000.00 in an honest effort to rectify the situation and to share in the expenses for his new lawyer.[21]

Finally, respondent claimed that he had taken efforts to find out the circumstances surrounding the fabrication of the spurious RTC Decision. He averred that he contacted Atty. Panaligan, but failed to receive any valuable information from the latter.[22] Further, he made inquiries with the RTC-Ballesteros and the Office of the Civil Registrar of Ballesteros, Cagayan (OCR-Ballesteros), and found out that there had already been previous instances where rulings in annulment cases purportedly issued by the RTC-Ballesteros were registered in the OCR-Ballesteros, but later on, the said court would disown the same.[23]

Accordingly, the administrative complaint was referred to the IBP-Commission on Bar Discipline for investigation. During the mandatory conference, however, only respondent appeared.[24]

The IBP's Report and Recommendation

In a Report and Recommendation[25] dated February 24, 2015, the Investigating Commissioner recommended that respondent be reprimanded for failure to exercise the diligence required of a lawyer to his client.[26]

The Investigating Commissioner found that complainant failed to prove with "clear preponderant evidence" his allegations of

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[21] See *id*. at 25-26.

[22] See *id*. at 26.

[23] *Id*. at 26-28.

[24] See Order dated March 4, 2014 signed by Commissioner Mario V. Andres; *id*. at 42.

[25] *Id*. at 65-70.

[26] *Id*. at 70.

respondent's malpractice and gross misconduct. On the other hand, the Investigating Commissioner gave credence to respondent's defense of good faith, considering that he had a genuine desire to help complainant by assisting him in the appeal process of his visa application and by giving him the amount of ₱108,000.00 in an effort to help rectify the situation and share in the additional expenses that may occur.[27]

Nevertheless, the Investigating Commissioner still found basis to hold respondent liable for violation of Canon 18 of the Code of Professional Responsibility (CPR). He explained that an attorney-client relationship was still formed between complainant and respondent, despite the latter's non-participation in the former's case. As such, respondent should have exercised reasonable care and diligence by verifying the authenticity of the RTC Decision with the issuing court, and his failure to do so resulted in his client spending more time and money regarding his legal matter.[28]

In a Resolution[29] dated April 19, 2015, the IBP Board of Governors adopted and approved with modification the Investigating Commissioner's Report and Recommendation, meting upon respondent the penalty of suspension from the practice of law for a period of two (2) years for violating Canon 18 of the CPR.

Aggrieved, respondent moved for reconsideration[30] which was, however, denied by the IBP Board of Governors in a Resolution[31] dated April 20, 2017.

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[27] See *id*. at 68-69.

[28] See *id*. at 69-70.

[29] See Notice of Resolution in Resolution No. XXI-2015-301 issued by National Secretary Nasser A. Marohomsalic; *id*. at 64, including dorsal portion.

[30] See motion for reconsideration dated November 16, 2015; *id*. at 71-89.

[31] See Notice of Resolution in Resolution No. XXII-2017-1303 issued by National Secretary Patricia-Ann T. Prodigalidad; *id*. at 93-94.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable.

The Court's Ruling

Essentially, complainant claims that he engaged respondent as his lawyer to handle the annulment of his marriage and was made to believe that they were following the correct legal process. Notwithstanding the fact that complainant was a resident of Lipa City, Batangas, and that he never participated in any court proceedings, respondent eventually presented to him the RTC Decision issued by the RTC-Ballesteros purportedly granting his petition for annulment. As respondent assured complainant of the Decision's authenticity, the latter submitted a copy of the same as one of the supporting documents of his Australian visa application. To complainant's surprise, the Australian Embassy informed him of the spurious nature of the RTC Decision, which hence, caused him prejudice, not only in terms of jeopardizing his visa application, but also resulting in more legal expenses since he had to process the annulment of his marriage anew.

For his part, respondent disavows any knowledge of the RTC Decision's spurious nature. He invokes the defense of good faith, averring that he, in fact, had no participation in any court proceedings before the RTC-Ballesteros since he actually refused to take on complainant's case.

While the Investigating Commissioner found merit in respondent's asseverations, the Court is, however, inclined to do otherwise. Upon an assiduous scrutiny of this case, it has observed that respondent's own account of the events is not only unsupported by any credible evidence; it is, in fact, riddled with key inconsistencies that ultimately belie the truth of his defense. The following circumstances are revelatory:

(1) As earlier mentioned, respondent denies handling the annulment case of complainant because of another engagement involving a local candidate in Batangas for which he pledged his all-out support. As such, he allegedly referred complainant's

case to a certain Atty. Panaligan, who, in turn, referred the same to another lawyer. However, records fail to show that an Atty. Panaligan or any other lawyer indeed took up complainant's case. Other than respondent's self-serving declaration, no other evidence was presented on this score. Verily, if respondent's assertions were indeed true, then he could have easily secured corroborating statements from such lawyers or any other person connected to these lawyers who supposedly took complainant's case, in order to prove his point.

(2) Moreover, respondent failed to disclose the circumstances on how he had come to return to complainant's cause, process the annotation of the RTC Decision before the OCR-Dumaguete, and furthermore, arrange complainant's marriage with Nguyen. In the natural course of things, it should have been the original handling lawyer, who procured the RTC Decision, who would be tasked to do these things. And yet, respondent, who had already begged-off from the engagement, suddenly re-entered the picture and admittedly took upon the task of fixing complainant's consequential affairs.

(3) Even on the assumption that respondent was re-engaged by complainant to take-over the matter left by the original handling lawyer, respondent would have necessarily inquired about the antecedents of the RTC Decision and thereupon, noticed that it was tainted by a glaring flaw, particularly on the venue[32] of the subject annulment case. Records reveal that neither complainant nor his spouse was a resident of Ballesteros, Cagayan;[33] yet, it was purportedly the RTC-Ballesteros that

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[32] Section 4 of A.M. No. 02-11-10-SC, entitled "PROPOSED RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES" (March 15, 2003), reads:

> Sec. 4. *Venue.* — The petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing, or in the case of a non-resident respondent, where he may be found in the Philippines, at the election of the petitioner.

[33] Records show that complainant is a native of Banilad, Dumaguete City but transferred his residence several times and now resides in Lipa

granted the petition. This palpable circumstance should have reasonably alerted respondent, and accordingly, prompted him to confront the original handling lawyer about the case, which he failed to do so. Instead, respondent proffered that upon learning from complainant that a Decision had already been issued in his favor, he immediately caused its annotation on complainant's marriage certificate. Either respondent was grossly negligent when he, without any semblance of hesitation, took-over complainant's case ***or*** was the one who actually procured the fake RTC Decision. To the Court, the latter scenario seems to be more plausible, in light of the fact that: *(a)* on the one hand, complainant, who had no motive at all to implicate respondent unless he was telling the truth, adamantly claimed that it was respondent who solely handled his case and presented him with a copy of the RTC Decision; and *(b)* on the other hand, respondent presented no proof at all of any engagement between complainant and any other lawyer.

(4) What further diminishes the credibility of respondent's defense was his own admission that he went on to handle the appeal of complainant's visa application before the Australian MRT, and more so, voluntarily shouldered a portion of complainant's legal expenses in the fairly significant amount of ₱108,000.00. Respondent argued that he did such "noble" things on his own volition because he felt obligated to rectify the situation. However, it, once more, goes against the grain of ordinary human experience for respondent to feel so obligated and exert such magnanimous efforts if his only participation was to refer complainant's case to another lawyer. Instead, it is more reasonable to conclude that respondent went to such great lengths for complainant because he was the one who actually handled the latter's annulment case since its very inception and hence, responsible for any impropriety attending the same.

(5) And finally, respondent attempted to cover up his faults by claiming that he tried to investigate the circumstances behind

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City, Batangas, while Arietta was a native of Calindagan, Dumaguete City; see *rollo,* pp. 2, 4, 6, 43, and 56.

the fabrication of the RTC Decision. He maintained that he contacted Atty. Panaligan to seek clarification regarding complainant's case; and that he even inquired with the OCR-Ballesteros, where he supposedly found out that there had already been irregularities occurring with annulment cases resolved by the RTC-Ballesteros. However, same as above, respondent only bases these assertions on bare allegations, without any other evidence to substantiate the same. "The basic rule is that mere allegation is not evidence, and is not equivalent to proof."[34]

Thus, based on the afore-mentioned circumstances, the Court is satisfied that there exists substantial evidence to hold respondent administratively liable for procuring the spurious RTC Decision which caused great prejudice to complainant as his client.

According to jurisprudence, substantial evidence is "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."[35] Contrary to the finding of the Investigating Commissioner, substantial evidence – and not "clear preponderant evidence" – is the proper evidentiary threshold to be applied in disciplinary cases against lawyers. In the recent case of *Reyes v. Nieva,*[36] the Court had the opportunity to clarify that the proper evidentiary threshold in disbarment cases is substantial evidence. It explained that:

> [T]he evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending [to these types] of cases. As case law elucidates, "[d]isciplinary proceedings against lawyers are *sui generis.* Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor

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[34] *Villanueva v. Philippine Daily Inquirer, Inc.,* 605 Phil. 926, 937 (2009).

[35] *Peña v. Paterno,* 710 Phil. 582, 593 (2013). See also Section 5, Rule 133 of the REVISED RULES ON EVIDENCE.

[36] 794 Phil. 360 (2016).

therein. It may be initiated by the Court *motu proprio.* Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor."[37]

Applying this standard, the Court finds that respondent's acts are in gross violation of Rule 1.01, Canon 1 of the 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.

Rule 1.01, Canon 1 of the CPR instructs that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing."[38] Indubitably, respondent fell short of such standard when he committed the afore-described acts of misrepresentation and deception against complainant. Such acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they further reveal basic moral flaws that make respondent unfit to practice law.[39]

In *Tan v. Diamante,*[40] the Court found the lawyer therein administratively liable for violating Rule 1.01, Canon 1 of the

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[37] *Id.* at 379-380; citation omitted.

[38] *Spouses Lopez v. Limos,* 780 Phil. 113, 122 (2016), citing *Tabang v. Gacott,* 713 Phil. 578, 593 (2013).

[39] *Id.*, citing *Spouses Olbes v. Deciembre,* 496 Phil. 799, 812 (2005).

[40] 740 Phil. 382 (2014).

CPR as it was established that he, among others, falsified a court order. In that case, the Court deemed the lawyer's acts to be "so reprehensible, and his violations of the CPR are so flagrant, exhibiting his moral unfitness and inability to discharge his duties as a member of the bar."[41] Thus, the Court disbarred the lawyer.

Similarly, in *Taday v. Apoya, Jr.,*[42] promulgated just last July 3, 2018, the Court disbarred the erring lawyer for authoring a fake court decision regarding his client's annulment case, which was considered as a violation also of Rule 1.01, Canon 1 of the CPR. In justifying the imposition of the penalty of disbarment, the Court held that the lawyer "committed unlawful, dishonest, immoral[,] and deceitful conduct, and lessened the confidence of the public in the legal system. Instead of being an advocate of justice, he became a perpetrator of injustice. His reprehensible acts do not merit him to remain in the rolls of the legal profession. Thus, the ultimate penalty of disbarment must be imposed upon him."[43]

Accordingly, following prevailing jurisprudence, the Court likewise finds respondent guilty of violating Rule 1.01, Canon 1 of the CPR. Hence, he is disbarred from the practice of law and his name is ordered stricken off from the roll of attorneys, effective immediately.

WHEREFORE, the Court finds respondent Leo S. Latido **GUILTY** of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility. Accordingly, he is **DISBARRED** from the practice of law and his name is ordered **STRICKEN OFF** from the roll of attorneys, effective immediately.

Let a copy of this Decision be attached to respondent Leo S. Latido's record in this Court. Further, let copies of this Decision be furnished the Integrated Bar of the Philippines for their

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[41] *Id.* at 392.

[42] See A.C. No. 11981.

[43] See *id.*

information and guidance and the Office of the Court Administrator for circulation to all the courts in the country.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.,* concur.

Bersamin, J., no part due to close relations with a party.

EN BANC

[A.C. No. 12174. August 28, 2018]

ALFRED LEHNERT, *complainant, vs.* **ATTY. DENNIS L. DIÑO,** *respondent.*

SYLLABUS

LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATED WHEN LAWYER ISSUED WORTHLESS CHECKS; PENALTY IS TWO (2)-YEAR SUSPENSION FROM THE PRACTICE OF LAW.—[T]he issuance of worthless checks constitutes gross misconduct and violates Canon 1 of the Code of Professional Responsibility, which mandates all members of the bar "to obey the laws of the land and promote respect for law." Issuance of worthless checks also violates Rule 1.01 of the Code, which mandates that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Thus, this Court has imposed the penalty of one (1)-year suspension from the practice of law for a cavalier attitude toward incurring debts. This Court has imposed a higher penalty of two (2)-year suspension on a lawyer who issued worthless checks and also disregarded the Integrated Bar of

the Philippines' orders in administrative proceedings. In light of the foregoing, this Court finds the recommended penalty of two (2)-year suspension from the practice of law proper.

R E S O L U T I O N

LEONEN, *J.*:

Complainant Alfred Lehnert (Lehnert) filed this administrative Complaint[1] before the Integrated Bar of the Philippines on November 11, 2015. He prayed that respondent Atty. Dennis L. Diño (Atty. Diño) be permanently disbarred for violating the lawyer's oath, as well as the Code of Professional Responsibility, when he committed two (2) violations of Batas Pambansa Blg. 22.

In his Complaint, Lehnert narrated that an Information against Atty. Diño was filed with Branch 34, Metropolitan Trial Court, Quezon City, charging him with two (2) counts of violation of Batas Pambansa Blg. 22. A Warrant of Arrest[2] was then issued for Atty. Diño's arrest. Members of the Philippine National Police and National Bureau of Investigation attempted to serve the warrant on Atty. Diño. However, despite their exhaustive efforts, they were unable to locate him at his residential addresses in Bulacan, Quezon City, San Lazaro, and Sta. Cruz, or even at his office address in Intramuros, Manila.[3] Thus, considering that Atty. Diño was hiding to evade arrest, Lehnert prayed for his immediate disbarment.[4]

In a Notice of Mandatory Conference dated March 4, 2016, Atty. Diño and Lehnert were directed to submit their respective mandatory conference briefs, and to appear before the Commission on Bar Discipline of the Integrated Bar of the

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

[2] *Id.* at 27.

[3] *Id.* at 2.

[4] *Id.* at 3.

Philippines on April 29, 2016.[5] However, Atty. Diño did not appear or submit any brief to the Commission on Bar Discipline.[6]

On June 29, 2016, the Investigating Commissioner found Atty. Diño guilty of violating Canon 1, Rule 1.01[7] of the Code of Professional Responsibility by issuing in favor of Lehnert post-dated checks, which were subsequently dishonored. Moreover, the Investigating Commissioner noted that although Atty. Diño had not yet been convicted of the crime charged, his acts of evading arrest and failing to participate in the administrative proceedings before the Commission on Bar Discipline further gave the impression that he was probably guilty. Thus, she recommended that Atty. Diño be suspended from the practice of law for two (2) years.[8]

On July 17, 2017, the Board of Governors of the Integrated Bar of the Philippines passed Resolution No. XXII-2017-1164, adopting the findings of fact and recommendation of the Investigating Commissioner imposing on Atty. Diño the penalty of suspension of two (2) years from the practice of law.[9]

This Court agrees with the findings of the Board of Governors and sustains its recommended penalty.

In *Lao v. Medel*,[10] this Court stressed that a lawyer's payment of financial obligations is part of his duties:

> Verily, lawyers must at all times faithfully perform their duties to society, to the bar, to the courts and to their clients. As part of those duties, they must promptly pay their financial obligations. Their

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[5] *Id.* at 20.

[6] *Id.* at 33.

[7] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes. Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[8] *Rollo*, pp. 44-45.

[9] *Id.* at 39.

[10] 453 Phil. 115 (2003) [Per *J.* Panganiban, *En Banc*].

conduct must always reflect the values and norms of the legal profession as embodied in the Code of Professional Responsibility. On these considerations, the Court may disbar or suspend lawyers for any professional or private misconduct showing them to be wanting in moral character, honesty, probity and good demeanor — or to be unworthy to continue as officers of the Court.

It is equally disturbing that respondent remorselessly issued a series of worthless checks, unmindful of the deleterious effects of such act to public interest and public order.[11] (Citations omitted)

This Court continues to state that the issuance of worthless checks constitutes gross misconduct and violates Canon 1 of the Code of Professional Responsibility, which mandates all members of the bar "to obey the laws of the land and promote respect for law." Issuance of worthless checks also violates Rule 1.01 of the Code, which mandates that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

Thus, this Court has imposed the penalty of one (1)-year suspension from the practice of law for a cavalier attitude toward incurring debts.[12] This Court has imposed a higher penalty of two (2)-year suspension on a lawyer who issued worthless checks and also disregarded the Integrated Bar of the Philippines' orders in administrative proceedings.[13]

In light of the foregoing, this Court finds the recommended penalty of two (2)-year suspension from the practice of law proper.

WHEREFORE, respondent Atty. Dennis L. Diño is **SUSPENDED** from the practice of law for two (2) years. He is likewise **WARNED** that a repetition of similar acts shall be dealt with more severely.

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[11] *Id*. at 120-121.

[12] *Co v. Bernardino*, 349 Phil. 16 (1998) [Per *J*. Bellosillo, First Division].

[13] *Wong v. Moya*, 590 Phil. 279 (2008) [Per *J*. Leonardo-De Castro, *En Banc*].

The respondent, upon receipt of this Resolution, shall immediately serve his suspension. He shall formally manifest to this Court that his suspension has started, and copy furnish all courts and quasi-judicial bodies where he has entered his appearance, within five (5) days from receipt of this Resolution. Respondent shall also serve copies of his manifestation on all adverse parties in all the cases he entered his formal appearance.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be attached to Atty. Dennis L. Diño's personal record. Copies of this Resolution should also be served on the Integrated Bar of the Philippines for its proper disposition, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.*, concur.

EN BANC

[G.R. No. 188492. August 28, 2018]

GUAGUA NATIONAL COLLEGES, *petitioner, vs.* **COURT OF APPEALS, GNC FACULTY AND LABOR UNION and GNC NON-TEACHING MAINTENANCE LABOR UNION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL FROM THE ARBITRATOR'S DECISION; RULE.— The petition for review shall be filed within 15

days pursuant to Section 4, Rule 43 of the *Rules of Court*; the 10-day period under Article 276 of the *Labor Code* refers to the filing of a motion for reconsideration vis-à-vis the Voluntary Arbitrator's decision or award x x x In the 2010 ruling in *Teng v. Pagahac*, the Court clarified that the 10-day period set in Article 276 of the *Labor Code* gave the aggrieved parties the opportunity to file their motion for reconsideration, which was more in keeping with the principle of exhaustion of administrative remedies, x x x Hence, the 10-day period stated in Article 276 should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion for reconsideration. Only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by filing the petition for review under Rule 43 of the *Rules of Court* within 15 days from notice pursuant to Section 4 of Rule 43.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GENERALLY, DENIAL OF A MOTION TO DISMISS CANNOT BE ASSAILED BY PETITION FOR *CERTIORARI*; EXCEPTION; ONLY WHEN THE SAME IS TAINTED WITH GRAVE ABUSE OF DISCRETION.— Generally, the denial of a motion to dismiss cannot be assailed by petition for *certiorari*. As we indicated in *Biñan Rural Bank v. Carlos*: The denial of a motion to dismiss generally cannot be questioned in a special civil action for *certiorari*, as this remedy is designed to correct only errors of jurisdiction and not errors of judgment. Neither can a denial of a motion to dismiss be the subject of an appeal which is available only after a judgment or order on the merits has been rendered. Only when the denial of the motion to dismiss is tainted with grave abuse of discretion can the grant of the extraordinary remedy of *certiorari* be justified. x x x Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
Emmanuel Noel A. Cruz for private respondents.

D E C I S I O N

BERSAMIN, *J.*:

This case focuses on the correct period for appealing the decision or award of the Voluntary Arbitrator or Panel of Arbitrators. The issue arises because the decision or award of the Voluntary Arbitrator or Panel of Arbitrators is appealable to the Court of Appeals (CA) by petition for review under Rule 43 of the *Rules of Court*, which provides a period of 15 days from notice of the decision or award within which to file the petition for review. On the other hand, Article 262-A (now Article 276)[1] of the *Labor Code* sets 10 days as the period within which the appeal is to be made.

The Case

Petitioner Guagua National Colleges (GNC) hereby assails by petition for *certiorari* the resolution promulgated on December 15, 2008,[2] whereby the Court of Appeals (CA) denied its *Motion to Dismiss* filed vis-à-vis the respondents' petition for *certiorari* in the following manner:

> This Court resolves:
>
> 1. x x x
>
> 2. To **Deny**:
>
> a) respondent's **Motion to Dismiss** dated 22 July 2008. While it is true that ***Coca-Cola Bottlers Philippines, Inc., Sales***

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[1] See DOLE Department Advisory No. 01, Series of 2015.

[2] *Rollo,* pp. 32-35; penned by Associate Justice Vicente S.E. Veloso, with Associate Justice Rebecca De Guia-Salvador and Associate Justice Ricardo R. Rosario concurring.

Force Union-PTGWO-Balais vs. Coca-Cola Bottlers Philippines, Inc. held in part:

> "x x x [U]nder Section 6, Rule VII of the same guidelines implementing Article 262-A of the Labor Code, this Decision, as a matter of course, would become final and executory after ten (10) calendar days from receipt of copies of the decision by the parties x x x unless, in the meantime, a motion for reconsideration or a petition for review to the Court of Appeals under Rule 43 of the Rules of Court is filed within the same 10-day period. x x x;",

We, more importantly recognize the pronouncement of the Supreme Court in ***Manila Midtown vs. Borromeo*** which reads in part:

> "Upon receipt of a copy of the Voluntary Arbitrator's Decision, *petitioner should have filed with the Court of Appeals, within the 15-day reglementary period, a petition for review* xxx"

Coca-Cola Bottlers is not in direct conflict with ***Manila Midtown*** as there is no categorical ruling in the former that the petition for review under Rule 43 of the Rules of Court assailing the decision of the Voluntary Arbitrator should be filed within ten (10) days from receipt thereof and not the customary reglementary period of fifteen (15) days. Likewise, ***Leyte IV Electric Cooperative, Inc. vs. LEYECO IV Employees Unio-ALU***, reiterating the landmark **Case of *Luzon Development Bank vs. Association of Luzon Development Bank Employees*, declared that the proper remedy from the award of a voluntary arbitrator is a petition for review to the CA**, following Revised Administrative Circular No. 1-95, which in turn provides for a reglementary period of fifteen (15) days within which to appeal.

Keeping in mind Article 4 of the Labor Code which mandates that all doubts in the implementation and interpretation of its provisions, including its implementing rules and regulations, should be resolved in favor of labor and considering that technicalities are not supposed to stand in the way of equitably and completely resolving

the rights and obligations of labor and capital, We rule that the Petition for Review was seasonably filed. Moreso that We have already granted petitioners' Urgent Motion for Extension.

3. x x x

SO ORDERED.

Antecedents

Under Section 5(2)[3] of Republic Act No. 6728 (*Government Assistance To Students and Teachers In Private Education Act*), 70% of the increase in tuition fees shall go to the payment of salaries, wages, allowances and other benefits of the teaching and non-teaching personnel. Pursuant to this provision, the petitioner imposed a 7% increase of its tuition fees for school year 2006-2007.[4]

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[3] Section 5. Tuition Fee Supplement for Students in Private High School. (1) x x x

(a) x x x

(b) x x x

(2) Assistance under paragraph (1), subparagraphs (a) and (b) shall be granted and tuition fees under subparagraph (c) may be increased, on the condition that seventy percent (70%) of the amount subsidized allotted for tuition fee or of the tuition fee increases shall go to the payment of salaries, wages, allowances and other benefits of teaching and non-teaching personnel except administrators who are principal stockholders of the school, and may be used to cover increases as provided for in the collective bargaining agreements existing or in force at the time when this Act is approved and made effective: *Provided*, That government subsidies are not used directly for salaries of teachers of non-secular subjects. At least twenty percent (20%) shall go to the improvement or modernization of buildings, equipment, libraries, laboratories, gymnasia and similar facilities and to the payment of other costs of operation. For this purpose, school shall maintain a separate record of accounts for all assistance received from the government, any tuition fee increase, and the detailed disposition and use thereof, which record shall be made available for periodic inspection as may be determined by the State Assistance Council, during business hours, by the faculty, the non-teaching personnel, students of the school concerned, the Department of Education, Culture and Sports and other concerned government agencies.

[4] *Rollo*, p. 43.

Shortly thereafter, and in order to save the depleting funds of the petitioner's Retirement Plan, its Board of Trustees approved the funding of the retirement program out of the 70% net incremental proceeds arising from the tuition fee increases.[5] Respondents GNC-Faculty Labor Union and GNC Non-Teaching Maintenance Labor Union challenged the petitioner's unilateral decision by claiming that the increase violated Section 5(2) of R.A. No. 6728.

The parties referred the matter to voluntary arbitration after failing to settle the controversy by themselves.[6]

Decision of the Voluntary Arbitrator

After hearing the parties, Voluntary Arbitrator Froilan M. Bacungan rendered his decision dated June 16, 2008 in favor of GNC,[7] holding that retirement benefits fell within the category of "*other benefits*" that could be charged against the 70% net incremental proceeds pursuant to Section 5(2) of R.A. No. 6728.

After receiving a copy of the decision on June 16, 2008, the respondents filed an *Urgent Motion for Extension* praying that the CA grant them an extension of 15 days from July 1, 2008, or until July 16, 2008, within which to file their petition for review.[8]

Ruling of the CA

On July 2, 2008, the CA issued a resolution granting the *Urgent Motion for Extension*.[9] The respondents filed the petition for review[10] on July 16, 2008.[11]

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

[6] *Id.* at 57.

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

[8] *Id.* at 6.

[9] *Id.* at 55.

[10] *Id.* at 56-78.

[11] *Id.* at 7.

Subsequently, the petitioner filed its *Motion to Dismiss*,[12] asserting that the decision of the Voluntary Arbitrator had already become final and executory pursuant to Article 276 of the *Labor Code* and in accordance with the ruling in *Coca-Cola Bottlers Philippines, Inc. Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc.*[13]

The CA acted on the *Motion to Dismiss* on December 15, 2008 through the now assailed resolution denying the *Motion to Dismiss*.[14]

The petitioner sought reconsideration,[15] but the CA denied the motion for reconsideration on January 30, 2009.[16]

Hence, the petitioner instituted its petition for *certiorari*.

Issue

The petitioner submits the lone issue that—

THE COURT OF APPEALS, WITH ALL DUE RESPECT, IS ACTING WITHOUT OR IN EXCESS OF ITS JURISDICTION IN CA-G.R. SP NO. 104109 CONSIDERING THAT THE DECISION OF THE VOLUNTARY ARBITRATOR IN AC-025-RB3-04-01-03-2007, FOLLOWING RULE [276] OF THE LABOR CODE AND THE DECISION OF THE HONORABLE COURT IN COCA-COLA BOTTLERS PHILIPPINES, INC. SALES FORCE UNION-PTGWO-BALAIS v. COCA-COLA BOTTLERS PHILIPPINES, INC. XXXX, HAD ALREADY BECOME FINAL AND EXECUTORY, HENCE UNCHALLENGEABLE SINCE THE "URGENT MOTION FOR EXTENSION" DATED 30 JUNE 2008 AND 16 JULY 2008 RESPECTIVELY, OR TEN (10) DAYS AFTER THE UNIONS AND THEIR COUNSEL OF RECORD WERE PERSONALLY SERVED THE VOLUNTARY ARBITRATOR'S DECISION ON 16 JUNE 2008.[17]

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[12] *Id*. at 79-81.

[13] G.R. No. 155651, July 28, 2005, 464 SCRA 507.

[14] *Rollo*, pp. 32-35.

[15] *Id*. at 95-104.

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

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

The petitioner argues that the CA went beyond its jurisdiction when it denied the *Motion to Dismiss* despite the finality of the decision of the Voluntary Arbitrator pursuant to Article 276 of the *Labor Code*; that following the pronouncement in *Coca-Cola Bottlers Philippines, Inc. Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc.*,[18] the CA was no longer authorized to exercise its appellate jurisdiction;[19] that the CA's reliance on the rulings in *Manila Midtown Hotel v. Borromeo*[20] and *Leyte IV Electric Cooperative, Inc. v. Leyeco IV Employees Union-ALU*[21] was misplaced because said rulings did not define the reglementary period to appeal the decision or award of the Voluntary Arbitrator;[22] and that the CA misapplied the rule on equity in the absence of strong or compelling reasons to suspend the rules of procedure.[23]

The petitioner emphasizes the need to harmonize Rule 43 of the *Rules of Court* with Article 276 of the *Labor Code* in view of their conflicting provisions on the period for the appeal from the decision of the Voluntary Arbitrator. It maintains that unless Congress amends Article 276 of the *Labor Code*, the reglementary period within which to appeal the decision or award of the Voluntary Arbitrator is 10 days following the ruling in *Coca-Cola Bottlers Philippines, Inc. Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc.*, instead of 15 days under Rule 43 of the *Rules of Court*.

In contrast, the respondents insist that they have a meritorious case because the controversy involves the interpretation of Section 5(2) of R.A. No. 6728 on the disposition of the tuition fee increase;[24] that the CA did not abuse its discretion given

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[18] *Supra* note 13.

[19] *Rollo*, p. 9.

[20] G.R. No. 138305, September 22, 2004, 438 SCRA 653.

[21] G.R. No. 157775, October 19, 2007, 537 SCRA 154.

[22] *Rollo*, pp. 14-17.

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

[24] *Id.* at 125.

the rule on the liberal application of rules of procedure to achieve substantial justice, and the policy on the liberal construction of laws in favor of labor;[25] that a long line of jurisprudence[26] set the remedy of appeal under Rule 43 of the *Rules of Court* as applicable in challenging the decisions or awards of the Voluntary Arbitrator.

Did the CA gravely abuse its discretion in denying the petitioner's *Motion to Dismiss* despite the finality of the decision of the Voluntary Arbitrator pursuant to Article 276 of the *Labor Code*?

Ruling of the Court

We dismiss the petition for *certiorari*.

I

The petition for review shall be filed within 15 days pursuant to Section 4, Rule 43 of the *Rules of Court*; the 10-day period under Article 276 of the *Labor Code* refers to the filing of a motion for reconsideration vis-à-vis the Voluntary Arbitrator's decision or award

In resolving whether or not the CA committed grave abuse of discretion, the Court has first to determine which between the two periods found in Article 276 of the *Labor Code* and Section 4 of Rule 43 of the *Rules of Court* governs the appeal from the decision or award by the Voluntary Arbitrator or Panel of Arbitrators.

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[25] *Id.* at 137.

[26] Notably: *Oceanic Bic Division (FFW) v. Romero*, No. L-43890, July 16, 1984, 130 SCRA 392; *Mantrade/FMMC Division Employees and Workers' Union v. Bacungan*, No. L-48437, September 30, 1986, 144 SCRA 510; *Continental Marble Corp. v. NLRC*, No. L-43825, May 9, 1988, 161 SCRA 151; *Luzon Development Bank v. Association of Luzon Development Bank Employees*, G.R. No. 120319, October 6, 1995, 249 SCRA 162; *National Steel Corporation v. Court of Appeals*, G.R. No. 134468, August 29, 2002, 388 SCRA 85; *Mora v. Avesco Marketing Corporation*, G.R. No. 177414, November 14, 2008, 571 SCRA 226; *Samahan ng mga Manggagawa sa Hyatt-NUWHRAIN-APL v. Bacungan,* G.R. No. 149050, March 25, 2009,

The petitioner posits that the appeal from the decision or award of the Voluntary Arbitrator should be filed within 10 days in view of Article 276 of the *Labor Code* which reads in full:

> Article 276. Procedures. – The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have the power to hold hearings, receive evidences and take whatever action is necessary to resolve the issue or issues subject of the dispute, including efforts to effect a voluntary settlement between parties.
>
> All parties to the dispute shall be entitled to attend the arbitration proceedings. The attendance of any third party or the exclusion of any witness from the proceedings shall be determined by the Voluntary Arbitrator or panel of Voluntary Arbitrators. Hearings may be adjourned for cause or upon agreement by the parties.
>
> Unless the parties agree otherwise, it shall be mandatory for the Voluntary Arbitrator or panel of Voluntary Arbitrators to render an award or decision within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration.
>
> **The award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.**
>
> Upon motion of any interested party, the Voluntary Arbitrator or panel of Voluntary Arbitrators or the Labor Arbiter in the region where the movant resides, in case of the absence or incapacity of the Voluntary Arbitrator or panel of Voluntary Arbitrators, for any reason, may issue a writ of execution requiring either the sheriff of the Commission or regular courts or any public official whom the parties may designate in the submission agreement to execute the final decision, order or award. (Bold underscoring supplied for emphasis)

Article 276 is an amendment introduced by R.A. No. 6715.[27] Prior to the effectivity of the amendment on March 21,

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582 SCRA 369; and *Manila Midtown Hotel v. Borromeo*, G.R. No. 138305, September 22, 2004, 438 SCRA 653.

[27] Entitled *An Act to Extend Protection To Labor, Strengthen The Constitutional Rights Of Workers To Self-Organization, Collective Bargaining And Peaceful Concerted Activities, Foster Industrial Peace and Harmony,*

1989,[28] Article 262 (the predecessor provision) stated that voluntary arbitration decisions or awards would be *final*, *unappealable* and *executory*. Despite such immediately executory nature of the decisions and awards of the Voluntary Arbitrators, however, the Court pronounced in *Oceanic Bic Division (FFW) v. Romero*[29] that the decisions or awards of the Voluntary Arbitrators involving interpretations of law were within the scope of the Court's power of review. The Court explained:

> x x x We agree with the petitioner that the decisions of voluntary arbitrators must be given the highest respect and as a general rule must be accorded a certain measure of finality. This is especially true where the arbitrator chosen by the parties [enjoys] the first rate credentials of Professor Flerida Ruth Pineda Romero, Director of the U.P. Law Center and an academician of unquestioned expertise in the field of Labor Law. It is not correct, however, that this respect precludes the exercise of judicial review over their decisions. Article 262 of the Labor Code making voluntary arbitration awards final, inappealable, and executory except where the money claims exceed ₱100,000.00 or 40% of paid-up capital of the employer or where there is abuse of discretion or gross incompetence refers to appeals to the National Labor Relations Commission and not to judicial review.
>
> Inspite of statutory provisions making "final" the decisions of certain administrative agencies, we have taken cognizance of petitions questioning these decisions where want of jurisdiction, grave abuse of discretion, violation of due process, denial of substantial justice, or erroneous interpretation of the law were brought to our attention. There is no provision for appeal in the statute creating the Sandiganbayan but this has not precluded us from examining decisions of this special court brought to us in proper petitions. Thus, we have ruled:

Promote The Preferential Use Of Voluntary Modes Of Settling Labor Disputes, And Reorganize The National Labor Relations Commission, Amending For These Purposes Certain Provisions Of Presidential Decree No. 442, As Amended, Otherwise Known As The Labor Code Of The Philippines, Appropriating Funds Therefore And For Other Purposes.

[28] See *Omnibus Rules Implementing the Labor Code*.

[29] G.R. No. L-43890, July 16, 1984, 130 SCRA 392.

"Yanglay raised a jurisdictional question which was not brought up by respondent public officials. He contends that this Court has no jurisdiction to review the decisions of the NLRC and the Secretary of Labor `under the principle of separation of powers' and that judicial review is not provided for in Presidential Decree No. 21.

"That contention is a flagrant error, it is generally understood that as to administrative agencies exercising quasi-judicial or legislative power there is an underlying power in the courts to scrutinize the acts of such agencies on questions of law and jurisdiction even though no right of review is given by statute' (73 C.J.S. 506, note 56).

"The purpose of judicial review is to keep the administrative agency within its jurisdiction and protect substantial rights of parties affected by its decisions' (73 C.J.S. 507, Sec. 165). It is part of the system of checks and balances which restricts the separation of powers and forestalls arbitrary and unjust adjudications.

"Judicial review is proper in case of lack of jurisdiction, grave abuse of discretion, error of law, fraud or collusion (Timbancaya vs. Vicente, 62 O.G. 9424; Macatangay vs. Secretary of Public Works and Communications, 63 O.G. 11236; Ortua vs. Singson Encarnacion, 59 Phil. 440).

"`The courts may declare an action or resolution of an administrative authority to be illegal (1) because it violates or fails to comply with some mandatory provision of the law or (2) because it is corrupt, arbitrary or capricious' (Borromeo vs. City of Manila and Rodriguez Lanuza, 62 Phil. 512, 516; Villegas vs. Auditor General, L-21352, November 29, 1966, 18 SCRA 877, 891). [San Miguel Corporation v. Secretary of Labor, 64 SCRA 60].

x x x x x x x x x

"It is now settled rule that under the present Labor Code, (Presidential Decree No. 442, as amended [1974] if lack of power or arbitrary or improvident exercise of authority be shown, thus giving rise to a jurisdictional question, this Court may, in appropriate certiorari proceedings, pass upon the validity of the decisions reached by officials or administrative agencies in labor controversies. So it was assumed in Maglasang v. Ople,

> (L-38813, April 29, 1975, 63 SCRA 508). It was explicitly announced in San Miguel Corporation v. Secretary of Labor, (L-39195, May 16, 1975, 64 SCRA 56) the opinion being penned by Justice Aquino. Accordingly, cases of that character continue to find a place in our docket. (Cf. United Employees Union of Gelmart Industries v. Noriel, L-40810, Oct. 3, 1975, 67 SCRA 267) The present suit is of that category. [Kapisanan ng mga Manggagawa sa La Suerte-Foitaf vs. Noriel, 77 SCRA 415-416].

A voluntary arbitrator by the nature of her functions acts in a quasi-judicial capacity. There is no reason why her decisions involving interpretation of law should be beyond this Court's review. Administrative officials are presumed to act in accordance with law and yet we do not hesitate to pass upon their work where a question of law is involved or where a showing of abuse of authority or discretion in their official acts is properly raised in petitions for *certiorari*.[30]

Accordingly, the decisions and awards of Voluntary Arbitrators, albeit immediately final and executory, remained subject to judicial review in appropriate cases through petitions for *certiorari*.[31]

Such was the state of things until the promulgation in 1995 of the ruling in *Luzon Development Bank v. Association of Luzon Development Bank Employees*.[32] Therein, the Court noted the silence of R.A. No. 6715 on the availability of appeal from the decisions or awards of the Voluntary Arbitrators. In declaring the Voluntary Arbitrators or Panels of Voluntary Arbitrators as quasi-judicial instrumentalities, *Luzon Development Bank v. Association of Luzon Development Bank Employees* pronounced the decisions or awards of the Voluntary Arbitrators to be appealable to the CA, *viz.*:

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[30] G.R. No. L-43890, July 16, 1984, 130 SCRA 392, 399-401.

[31] *Sime Darby Pilipinas, Inc. v. Magsalin*, G.R. No. 90426, December 15, 1989, 180 SCRA 177, 182.

[32] G.R. No. 120319, October 6, 1995, 249 SCRA 162.

It will thus be noted that the jurisdiction conferred by law on a voluntary arbitrator or a panel of such arbitrators is quite limited compared to the original jurisdiction of the labor arbiter and the appellate jurisdiction of the National Labor Relations Commission (NLRC) for that matter. The state of our present law relating to voluntary arbitration provides that "(t)he award or decision of the Voluntary Arbitrator x x x shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties," while the "(d)ecision, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders." Hence, while there is an express mode of appeal from the decision of a labor arbiter, Republic Act No. 6715 is silent with respect to an appeal from the decision of a voluntary arbitrator.

Yet, past practice shows that a decision or award of a voluntary arbitrator is, more often than not, elevated to the Supreme Court itself on a petition for *certiorari,* in effect equating the voluntary arbitrator with the NLRC or the Court of Appeals. In the view of the Court, this is illogical and imposes an unnecessary burden upon it.

In *Volkschel Labor Union, et al. v. NLRC, et al.,* on the settled premise that the judgments of courts and awards of [quasi-judicial] agencies must become final at some definite time, this Court ruled that the awards of voluntary arbitrators determine the rights of parties; hence, their decisions have the same legal effect as judgments of a court. In *Oceanic Bic Division (FFW), et al. v. Romero, et al.,* this Court ruled that "a voluntary arbitrator by the nature of her functions acts in a quasi-judicial capacity." Under these rulings, it follows that the voluntary arbitrator, whether acting solely or in a panel, enjoys in law *the status of a quasi-judicial agency* but independent of, and apart from, the NLRC since his decisions are not appealable to the latter.

Section 9 of B.P. Blg. 129, as amended by Republic Act No. 7902, provides that the Court of Appeals shall exercise:

> "xxx xxx xxx (3) Exclusive appellate jurisdiction over *all* final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, *instrumentalities*, boards or commissions, including the Securities and Exchange Commission, the Employees' Compensation

> Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.
>
> x x x x x x x x x"

Assuming arguendo that the voluntary arbitrator or the panel of voluntary arbitrators may not strictly be considered as a [quasi-judicial] agency, board or commission, still both he and the panel are comprehended within the concept of a "quasi-judicial instrumentality." It may even be stated that it was to meet the very situation presented by the quasi-judicial functions of the voluntary arbitrators here, as well as the subsequent arbitrator/arbitral tribunal operating under the Construction Industry Arbitration Commission, that the broader term "instrumentalities" was purposely included in the above-quoted provision.

An "instrumentality" is anything used as a means or agency. Thus, the terms governmental "agency" or "instrumentality" are synonymous in the sense that either of them is a means by which a government acts, or by which a certain government act or function is performed. The word "instrumentality," with respect to a state, contemplates an authority to which the state delegates governmental power for the performance of a state function. An individual person, like an administrator or executor, is a judicial instrumentality in the settling of an estate, in the same manner that a sub-agent appointed by a bankruptcy court is an instrumentality of the court, and a trustee in bankruptcy of a defunct corporation is an instrumentality of the state.

The voluntary arbitrator no less performs a state function pursuant to a governmental power delegated to him under the provisions therefor in the Labor Code and he falls, therefore, within the contemplation of the term "instrumentality" in the aforequoted Sec. 9 of B.P. 129. The fact that his functions and powers are provided for in the Labor Code does not place him within the exceptions to said Sec. 9 since he is a quasi-judicial instrumentality as contemplated therein. It will be noted that, although the Employees' Compensation Commission is also provided for in the Labor Code, Circular No. 1-91, which is the forerunner of the present Revised Administrative Circular No. 1-95, laid down the procedure for the appealability of its decisions

to the Court of Appeals under the foregoing rationalization, and this was later adopted by Republic Act No. 7902 in amending Sec. 9 of B.P. 129.

A fortiori, the decision or award of the voluntary arbitrator or panel of arbitrators should likewise be appealable to the Court of Appeals, in line with the procedure outlined in Revised Administrative Circular No. 1-95, just like those of the quasi-judicial agencies, boards and commissions enumerated therein.

This would be in furtherance of, and consistent with, the original purpose of Circular No. 1-91 to provide a uniform procedure for the appellate review of adjudications of all quasi-judicial entities not expressly excepted from the coverage of Sec. 9 of B.P. 129 by either the Constitution or another statute. Nor will it run counter to the legislative intendment that decisions of the NLRC be reviewable directly by the Supreme Court since, precisely, the cases within the adjudicative competence of the voluntary arbitrator are excluded from the jurisdiction of the NLRC or the labor arbiter.[33]

In other words, the remedy of appeal by petition for review under Rule 43 of the *Rules of Court* became available to the parties aggrieved by the decisions or awards of the Voluntary Arbitrators or Panels of Arbitrators.

In the 2004 ruling in *Sevilla Trading Company v. Semana*,[34] the Court ruled that the decision of the Voluntary Arbitrator became final and executory after the expiration of the 15-day reglementary period within which to file the petition for review under Rule 43. *Manila Midtown Hotel v. Borromeo*[35] also ruled so. The 15-day period was likewise adverted to in the ruling in *Nippon Paint Employees Union-Olalia v. Court of Appeals*,[36] promulgated in November 2004.

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[33] *Id.* at 167-171.

[34] G.R. No. 152456, April 28, 2004, 428 SCRA 239.

[35] G.R. No. 138305, September 22, 2004, 438 SCRA 653.

[36] G.R. No. 159010, November 19, 2004, 443 SCRA 286.

In 2005, the Court promulgated the decision in *Coca-Cola Bottlers Philippines, Inc., Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc.*,[37] wherein it made reference for the first time to the 10-day period for the filing of the petition for review vis-à-vis decisions or awards of the Voluntary Arbitrator provided in Article 262-A (now Article 276).[38] Within the same year, *Philex Gold Philippines, Inc. v. Philex Bulawan Supervisors Union*[39] applied the period of 10 days in declaring the appeal to have been timely filed.

Thereafter, the Court has variantly applied either the 15-day or the 10-day period as the time within which to appeal the decisions or awards of the Voluntary Arbitrators or Panels of Arbitrators. Thus, in the 2007 ruling in *Leyte IV Electric Cooperative, Inc. v. Leyeco IV Employees Union-ALU*,[40] the Court recognized the 15-day reglementary period under Rule 43. This was reiterated in *AMA Computer College-Santiago City, Inc. v. Nacino* (2008),[41] *Mora v. Avesco Marketing Corporation*[42] (2008), *Samahan Ng Mga Manggagawa sa Hyatt-NUWHRAIN-APL v. Bacungan* (2009),[43] *Saint Luis University, Inc. v. Cobarrubias*[44] (2010), *Samahan ng mga Manggagawa*

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[37] G.R. No. 155651, July 28, 2005, 464 SCRA 507.

[38] The Court declared: "[T]he Decision of the Panel was in the form of a dismissal of petitioner's complaint. Naturally, this dismissal was contained in the main decision and not in the dissenting opinion. Thus, under Section 6, Rule VII of the same guidelines implementing Article 262-A of the Labor Code, this Decision, as a matter of course, would become final and executory after ten (10) calendar days from receipt of copies of the decision by the parties even without receipt of the dissenting opinion unless, in the meantime, a motion for reconsideration or a petition for review to the Court of Appeals under Rule 43 of the Rules of Court is filed within the same 10-day period. (*Id*., pp. 515-516)

[39] G.R. No. 149758, August 25, 2005, 468 SCRA 111.

[40] G.R. No. 157775, October 19, 2007, 537 SCRA 154.

[41] G.R. No. 162739, February 12, 2008, 544 SCRA 502.

[42] G.R. No. 177414, November 14, 2008, 571 SCRA 226.

[43] G.R. No. 149050, March 25, 2009, 582 SCRA 369.

[44] G.R. No. 187104, August 3, 2010, 626 SCRA 649.

sa Hyatt (SAMASAH-NUWHRAIN) v. Magsalin[45] (2011) and *Royal Plant Workers Union v. Coca Cola Bottlers Philippines, Inc.-Cebu Plant* (2013).[46]

But in *Philippine Electric Corporation (PHILEC) v. Court of Appeals*[47] (2014), *Baronda v. Court of Appeals*[48] (2015), and *NYK-FIL Ship Management, Inc. v. Dabu*[49] (2017), the Court, citing Article 276 of the *Labor Code*, applied the 10-day period. Notably, the Court opined in *Philippine Electric Corporation (PHILEC) v. Court of Appeals* that despite the period provided in Rule 43, the 10-day period should apply in determining the timeliness of appealing the decision or award of the Voluntary Arbitrator or Panel of Arbitrators, to wit:

> Despite Rule 43 providing for a 15-day period to appeal, we rule that the Voluntary Arbitrator's decision must be appealed before the Court of Appeals within 10 calendar days from receipt of the decision as provided in the Labor Code.
>
> Appeal is a "statutory privilege," which may be exercised "only in the manner and in accordance with the provisions of the law." "Perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional so that failure to do so rendered the decision final and executory, and deprives the appellate court of jurisdiction to alter the final judgment much less to entertain the appeal."
>
> We ruled that Article 262-A of the Labor Code allows the appeal of decisions rendered by Voluntary Arbitrators. Statute provides that the Voluntary Arbitrator's decision "shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties." Being provided in the statute, this 10-day period must be complied with; otherwise, no appellate court will have jurisdiction over the appeal. This absurd situation occurs when

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[45] G.R. No. 164939, June 6, 2011, 650 SCRA 445.

[46] G.R. No. 198783, April 15, 2013, 696 SCRA 357.

[47] G.R. No. 168612, December 10, 2014, 744 SCRA 361.

[48] G.R. No. 161006, October 14, 2015, 772 SCRA 276.

[49] G.R. No. 225142, September 13, 2017.

the decision is appealed on the 11th to 15th day from receipt as allowed under the Rules, but which decision, under the law, has already become final and executory.

Furthermore, under Article VIII, Section 5 (5) of the Constitution, this court "shall not diminish, increase, or modify substantive rights" in promulgating rules of procedure in courts. The 10-day period to appeal under the Labor Code being a substantive right, this period cannot be diminished, increased, or modified through the Rules of Court.

In *Shioji v. Harvey*, this Court held that the "rules of court, promulgated by authority of law, have the force and effect of law, if not in conflict with positive law." Rules of Court are "subordinate to the statute." In case of conflict between the law and the Rules of Court, "the statute will prevail."

The rule, therefore, is that a Voluntary Arbitrator's award or decision shall be appealed before the Court of Appeals within 10 days from receipt of the award or decision. Should the aggrieved party choose to file a motion for reconsideration with the Voluntary Arbitrator, the motion must be filed within the same 10-day period since a motion for reconsideration is filed "within the period for taking an appeal."[50]

The ratiocination in *Philippine Electric Corporation (PHILEC) v. Court of Appeals* backstopped the ruling in *NYK-FIL Ship Management, Inc. v. Dabu.*

Given the variable rulings of the Court, what should now be the period to be followed in appealing the decisions or awards of the Voluntary Arbitrators or Panel of Arbitrators?

In the 2010 ruling in *Teng v. Pagahac*,[51] the Court clarified that the 10-day period set in Article 276 of the *Labor Code* gave the aggrieved parties the opportunity to file their motion for reconsideration, which was more in keeping with the principle of exhaustion of administrative remedies, holding thusly:

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[50] *Philippine Electric Corporation (PHILEC) v. Court of Appeals*, G.R. No. 168612, December 10, 2014, 744 SCRA 361, 387-389.

[51] G.R. No. 169704, November 17, 2010, 635 SCRA 173.

In the exercise of its power to promulgate implementing rules and regulations, an implementing agency, such as the Department of Labor, is restricted from going beyond the terms of the law it seeks to implement; it should neither modify nor improve the law. The agency formulating the rules and guidelines cannot exceed the statutory authority granted to it by the legislature.

By allowing a 10-day period, the obvious intent of Congress in amending Article 263 to Article 262-A is to provide an opportunity for the party adversely affected by the VA's decision to seek recourse via a motion for reconsideration or a petition for review under Rule 43 of the Rules of Court filed with the CA. Indeed, a motion for reconsideration is the more appropriate remedy in line with the doctrine of exhaustion of administrative remedies. For this reason, an appeal from administrative agencies to the CA *via* Rule 43 of the Rules of Court requires exhaustion of available remedies as a condition precedent to a petition under that Rule.

The requirement that administrative remedies be exhausted is based on the doctrine that in providing for a remedy before an administrative agency, every opportunity must be given to the agency to resolve the matter and to exhaust all opportunities for a resolution under the given remedy before bringing an action in, or resorting to, the courts of justice. Where Congress has not clearly required exhaustion, sound judicial discretion governs, guided by congressional intent.

By disallowing reconsideration of the VA's decision, Section 7, Rule XIX of DO 40-03 and Section 7 of the 2005 Procedural Guidelines went directly against the legislative intent behind Article 262-A of the Labor Code. These rules deny the VA the chance to correct himself and compel the courts of justice to prematurely intervene with the action of an administrative agency entrusted with the adjudication of controversies coming under its special knowledge, training and specific field of expertise. In this era of clogged court dockets, the need for specialized administrative agencies with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or intricate questions of facts, subject to judicial review, is indispensable. In *Industrial Enterprises, Inc. v. Court of Appeals*, we ruled that relief must first be obtained in an administrative proceeding before a remedy will be

supplied by the courts even though the matter is within the proper jurisdiction of a court.[52] (Emphasis supplied)

Hence, the 10-day period stated in Article 276 should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion for reconsideration. Only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by filing the petition for review under Rule 43 of the *Rules of Court* within 15 days from notice pursuant to Section 4 of Rule 43.

The Court notes that despite the clarification made in *Teng v. Pagahac*, the Department of Labor and Employment (DOLE) and the National Conciliation and Mediation Board (NCMB) have not revised or amended the *Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings* insofar as its Section 7 of Rule VII[53] is concerned. This inaction has obviously sown confusion, particularly in regard to the filing of the motion for reconsideration as a condition precedent to the filing of the petition for review in the CA. Consequently, we need to direct the DOLE and the NCMB to cause the revision or amendment of Section 7 of Rule VII of the *Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings* in order to allow the filing of motions for reconsideration in line with Article 276 of the *Labor Code*.

II

Certiorari does not lie in assailing the CA's denial of a motion to dismiss

Generally, the denial of a motion to dismiss cannot be assailed by petition for *certiorari*. As we indicated in *Biñan Rural Bank v. Carlos*:[54]

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[52] *Teng v. Pagahac*, G.R. No. 169704, November 17, 2010, 635 SCRA 173, 184-185.

[53] Section 7. Motions for Reconsideration. The decision of the voluntary arbitrator is not subject of a motion for reconsideration.

[54] G.R. No. 193919, June 15, 2015, 757 SCRA 459, 463.

The denial of a motion to dismiss generally cannot be questioned in a special civil action for *certiorari*, as this remedy is designed to correct only errors of jurisdiction and not errors of judgment. Neither can a denial of a motion to dismiss be the subject of an appeal which is available only after a judgment or order on the merits has been rendered. Only when the denial of the motion to dismiss is tainted with grave abuse of discretion can the grant of the extraordinary remedy of *certiorari* be justified.

Although it admits being aware of this rule, the petitioner insists on the propriety of its petition for *certiorari* based on its belief that the CA had gravely abused its discretion in assuming jurisdiction over the respondents' petition. It argues that the decision rendered by Voluntary Arbitrator Bacungan had already become final pursuant to Article 276 of the *Labor Code*, and, accordingly, the CA could no longer exercise its appellate jurisdiction.

The petitioner is mistaken.

Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[55]

Here, the CA did not act arbitrarily in denying the petitioner's *Motion to Dismiss*. It correctly noted that *Coca-Cola Bottlers Philippines, Inc. Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Philippines, Inc.* did not make a definitive ruling on the correct reglementary period for the filing of the petition for review. Given the varying applications of the periods defined

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[55] *Biñan Rural Bank v. Carlos,* G.R. No. 193919, June 15, 2015, 757 SCRA 459, 463; *Bordomeo v. Court of Appeals*, G.R. No. 161596, February 20, 2013, 691 SCRA 269, 289.

in Article 276 and Section 4 of Rule 43, the CA could not be objectively held to be guilty of grave abuse of discretion in applying the equitable rule on construction in favor of labor. To be underscored is that the underlying aim for the requirement of strict adherence to procedural rules, particularly on appeals, should always be the prevention of needless delays that could enable the unscrupulous employers to wear out the efforts and meager resources of their workers to the point that the latter would be constrained to settle for less than what were due to them.[56]

ACCORDINGLY, the Court **DISMISSES** the unmeritorious petition for *certiorari*; **AFFIRMS** the decision promulgated on December 15, 2008 by the Court of Appeals; and **DIRECTS** the Department of Labor and Employment and the National Conciliation and Mediation Board to revise or amend the *Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings* to reflect the foregoing ruling herein.

No pronouncement on costs of suit.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.,* concur.

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[56] *Opinaldo v. Ravina*, G.R. No. 196573, October 16, 2013, 707 SCRA 545, 557.

SECOND DIVISION

[G.R. No. 197733. August 29, 2018]

SAMUEL and EDGAR BUYCO, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

CIVIL LAW; LAND REGISTRATION ACT (ACT NO. 496); LAND TITLES; TWO DOCUMENTS REQUIRED TO PROVE THAT LAND APPLIED FOR REGISTRATION IS ALIENABLE AND DISPOSABLE, CITED.— In the recent case of *In Re: Application for Land Registration Suprema T. Dumo v. Republic of the Philippines* (*Dumo*), the Court reiterated the requirement it set in *Republic of the Philippines v. T.A.N. Properties, Inc.* that there are TWO documents that must be presented to prove that the land subject of the application for registration is alienable and disposable: (1) 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, and (2) a certificate of land classification status issued by the CENRO or the Provincial Environment and Natural Resources Office (PENRO) based on the land classification approved by the DENR Secretary. *Dumo* also stated that: "a CENRO or PENRO certification is not enough to prove the alienable and disposable nature of the property sought to be registered because the **only** way to prove the classification of the land is through the original classification approved by the DENR Secretary or the President himself." x x x Given that the proofs which the petitioners presented in this case to prove the alienable and disposable character of the Subject Land proceed mainly from a Certification dated August 14, 1998 issued by the CENRO of Odiongan, Romblon, which is insufficient, their second attempt to register the Subject Land under the Torrens system must suffer the same fate as their first.

APPEARANCES OF COUNSEL

Sorayda M. Omar for petitioners.
Office of the Solicitor General for respondent.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated January 26, 2011 (Decision) of the Court of Appeals[3] (CA) in CA-G.R. CV No. 68708, reversing and setting aside the Decision[4] dated August 15, 2000 rendered by the Regional Trial Court of Odiongan, Romblon, Branch 82 (RTC) in LRC Case No. OD-06 that granted the petitioners' application for land registration over a large parcel of land described as Lot 1, Psu-127238 (Subject Land) with an area of approximately 3,194,788 square meters located in barrios Canduyong, Anajao[5] and Ferrol, Tablas, Romblon, and the Resolution[6] dated June 30, 2011 of the CA denying the motion for reconsideration filed by the petitioners.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

On October 14, 1976, brothers Edgardo H. Buyco and Samuel H. Buyco, through their attorney-in-fact Rieven H. Buyco, filed an application for registration of a parcel of land with [then] Court of First Instance of Ro[m]blon, Branch 82. The case was docketed as LRC Case No. N-48, LRC Record No. N-51706. The parcel of land sought to be registered was particularly described as follows:

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[1] *Rollo*, pp. 4-39, excluding Annexes.

[2] *Id*. at 40-69. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Noel G. Tijam (now a Member of this Court) and Marlene Gonzales-Sison concurring.

[3] Eleventh Division.

[4] *Rollo*, pp. 127-154. Penned by Executive Judge Francisco F. Fanlo, Jr.

[5] Sometimes referred to as Anahao in some parts of the records.

[6] *Rollo*, pp. 70-71.

> "A parcel of land (Lot I, under surveyed for the heirs of Lilia Hankins situated in the barrios of Canduyong, Anahao, and Ferrol, Municipality of Odiongan, province of Romblon, Tablas Island under PSU 127238) LRC Record No. _____: Bounded on the North by properties of the heirs of Rita Fiedacan and Alexander Hankins; on the Northeast, by Canduyong River and property of Alexander Hankins; on the East, by properties of Andres Cuasay, Escolastica Feruelo, Candido Mendoza, Raymundo Goray, Pedro Goray, Manuel Yap, Feliza Fedri and Silverio Mierculecio; on the Southeast, by property of Candido Mendoza, the Heirs of Benita Formilleza, Silverio Mierculecio[,] Zosimo Llorca, Lot 2, and properties of Beatrice Hankins and Zosimo Llorca; on the West, by properties of Maria Llorca and Miguel Llorca; and on the Nort[h]west, by property of Catalino Fabio, Pont 'I' is S. 33 deg. 24"., 4075.50 m. From B.L.L.M. 1, Odiongan, Romblon. Area THREE MILLION ONE HUNDRED NINETY[-]FOUR THOUSAND SEVEN HUNDRED EIGHTY[-]EIGHT (3,194,788) SQUARE METERS, more or less."

The Republic of the Philippines through the Director of Lands opposed the application for registration.

Trial on the merits ensued.

On February 5, 1985, the Land Registration Court rendered its judgment granting aforesaid application, the dispositive portion of the Decision reads:

> "PREMISES CONSIDERED, this Court hereby orders the registration of title to the parcel of land designated as Lot No. 1 PSU-127238 and its technical description together with all the improvements thereon, in the name of the herein applicants, recognizing the interest of the Development Bank of the Philippines to be annotated on the certificate of title to be issued as mortgagee for the amount of ₱200,00[0].00 with respect to the share of applicants Samuel H. Buyco."
>
> 'Upon the decision become (sic) final let the corresponding decree and certificate of title be issued accordingly."

The Director of Lands appealed said Decision to [the CA] on the basis that the trial court erred as follows:

"(1) in not declaring the applicants barred by the Constitution from applying for registration because they are American citizens and are thus disqualified from acquiring lands in the Philippines;

"(2) in holding that applicants had established proprietary rights over the land even before acquiring American citizenship through naturalization; and

"(3) in not dismissing the application for registration because of applicants' failure to overthrow the presumption that the land applied for is public land belonging to the State. (Director of Lands vs. Buyco, 216 SCRA 78 [1992])"

The case was docketed as CA-G.R. CV No. [0]5824.

On November 21, 1989, the [CA] dismissed for lack of merit the appeal interposed by the Director of Lands.

The Director of Lands filed a petition under Rule 45 of the Rules of Court seeking the review and reversal of the decisions of the trial court in LRC Case No. N-48 and the [CA] in CA-G.R. CV No. 05824. The case was docketed as G.R. No. 91189.

On November 27, 1991, the Supreme Court rendered its judgment, the dispositive portion of the Decision reads:

"WHEREFORE, the Petition is GRANTED. The challenge Decision of the public respondent of 21 November 1989 in CA-G.R. CV No. 05824 is hereby SET ASIDE and the Decision of 5 February 1985 of Branch 82 of the Regional Trial Court of Romblon in Land Registration Case No. N-48, LRC Record No. N-51706 is REVERSED.

"SO ORDERED."

On December 6, 1995, or approximately six (6) years later, Edgar Buyco and Samuel Buyco filed for the second time an application for registration of title covering the same parcel of land, particularly described as follows:

"A parcel of land, described on plan as Lot 1, Psu-127238 situated in the Barrios of Canduyong, Anajao and Ferrol, of Tablas. Bounded on the North along lines 30-34 by property of Catalino Fabro; along line 34-35 by property of Heirs of Rita Fiedacan and Esnislao Sulit; along lines 35-51 by property of Alexander Hankins; along lines 51-56 by Condoyong River,

about 12 meters wide; on the East, along lines 56-62 by property of Alexander Hankins; along line 62-63 by property of Andres Cuasay; along line 63-64 by property of Escolastica Feruelo; along line 64-65 by property of Candido Mendoza; along line 65-66 by property of Raymundo Goray; along lines 66-68 by property of Pedro Goray; along lines 68-70 by property of Manuel Yap; along line 70-72 by property of Feliza Fadri; along line 72-1 by property of Silverio Mierculecio; on the South along line 1-2 by property of Candido Mendoza; along lines 2-4 by property of Heirs of Benita Formelleza; along line 4-5 by property of Silverio Merculecio; along line 5-6 by property of Zosimo Llorca; along line 6-7 by property of Beatrice Hankins; along lines 7-10 by Lot 2, Psu-127238; along lines 10-12 by property of Beatrice Hankins; along lines 12-14 by property of Zosimo Llorca; on the West along lines 14-22 by property of Maria Llorca; and along lines 22-30 by property of Miguel Llorca. Beginning from a point marked "1" on plan being S. 33 deg. 24 min. W., 4075.50 meters from B.L.L.M. No. 1, Municipality of Odiongan, Province of Romblon, xxx xxx xxx. Containing an area of Three Million One Hundred Ninety[-]Four Thousand, Seven Hundred Eighty[-]Eight (3,194,788) Square Meters."

On February 23, 1996, appellant Republic of the Philippines filed its opposition with a motion to dismiss the application for registration of title on the bases that 1) res judicata has already set in; and that 2) the applicants did not acquire vested rights over the subject parcel of land before acquiring American citizenship.

The Buycos opposed the Republic's motion to dismiss contending that res judicata was not applicable to the present case and that appellee Samuel A. Buyco has already reacquired his Filipino citizenship.

On May 29, 19[9]6, the trial court denied the Republic's motion to dismiss, opining that, in the case at bar being a land registration case, the provisions of Act No. 496 prevails (*sic*) over those of the Rules of Court. The Rules of Court can only apply by analogy or in a suppletory character, and only when practicable and convenient. vis-a-vis Section 1(f) of the Revised Rules of Court, Section 37 of Act No. 496, thus, prevails. Section 37 of said Act states, to wit:

"If in any case, the court finds that the applicant has no proper title for registration, a decree shall be entered dismissing the application and such decree may be ordered to be without

prejudice. The applicant may withdraw his application at any time before final decree, upon terms to be fixed by the court; provided, however, that in a case where there is an adverse claim, the court shall determine the conflicting interests of the applicant and the adverse claimant, and after taking evidence shall dismiss the application for the registration or shall enter a decree awarding the land applied for or any part thereof, to the person entitled thereto and such degree, when final, shall entitle to the issuance of an original certificate of title to such person."

Thus, according to the trial court:

"Therefore, as mandated by Sec. 37 of Act No. 496, since the order of dismissal is without prejudice, it goes without saying that the applicant, notwithstanding of (*sic*) the dismissal of his application, can, if he believes his evidence warrants for a tenable subsequent application for registration, file another application for (*sic*) because the dismissal of his previous application was without prejudice. He is not barred by the rule on prior judgment or res judicata because this rule has been expressly made not applicable in the case at bar by said Sec. 37 of Act No. 496 when it provides:

> "x x x a decree shall be entered dismissing the application and such decree may be ordered to be without prejudice." x x x

As to the issue of whether applicants, being American citizens, are not qualified to acquire lands in the country and not entitled to the benefits under Act No. 496, the court ratiocinated that the same was still premature and untimely and that said issue [s] can only be resolved after trial on the merits.

Trial on the merits ensued.

On April 13, 1998, the Buycos submitted documents to establish jurisdictional requirements x x x[.]

x x x x x x x x x

[Testimonial evidence were adduced through the presentation of Samuel Buyco, Alfonso Firmalo, Silverio Mercolesio, Manuel Firmalo, Eulalia Fabregas, Buenafe Fetalvero, Jimmy Feltalco, Nilda San Gabriel, Romulae Gadaoni, and Bienvenida Ferrancullo, as witnesses.]

On August 15, 2000, the trial court rendered judgment granting the application for registration of title by the Buycos. The decretal portion of aforesaid Decision states:

> "PREMISES CONSIDERED, this Court hereby orders the registration of title to the parcel of land denominated as Lot No. 1, Psu-127238 and its technical descriptions together with all the improvements thereon in the name of Samuel H. Buyco.
>
> "Upon the decision becoming final, let the corresponding decree and certificate of title be issued accordingly.
>
> "SO ORDERED."

On September 4, 2000, the Republic, through the Office of the Solicitor General, filed a notice of appeal.

On July 9, 2010, [the CA], in aid of resolving the present case, required the parties within fifteen (15) days from notice to inform it as to whether any supervening event or change of circumstances which would materially and substantially affect the result thereof, has already overtaken the present action.

Both parties submitted their compliance but failed to spell out any supervening event that would warrant the dismissal of this case.

Hence, [the CA] deemed this case submitted for resolution.[7]

Ruling of the CA

The CA, in its Decision dated January 26, 2011, granted the appeal holding that *res judicata* finds application to land registration cases and that all its elements are present in this case.[8] Also, the case in G.R. No. 91189, concerning the petitioners' first application for land registration, had been decided with finality. Based on the doctrine of finality of judgment, the issue or cause involved therein should be laid to rest.[9]

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[7] CA Decision dated January 26, 2011, *rollo*, pp. 41-60.

[8] See *id.* at 63-67.

[9] *Id.* at 67-68.

The dispositive portion of the CA Decision states:

WHEREFORE, premises considered, the Decision rendered by the trial court on August 15, 2000 is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.[10]

The petitioners filed a motion for reconsideration, which was denied by the CA in its Resolution[11] dated June 30, 2011.

Hence, the instant Petition. The respondent, through the Office of the Solicitor General (OSG), filed a Comment[12] dated January 30, 2012. The petitioners filed a Reply[13] dated August 30, 2013.

The Issues

The Petition raises the following issues:

1. whether the CA erred in not applying *Henson v. Director of Lands*[14] and its companion cases which held that the dismissal of an application for registration of land cannot be considered prejudicial to its subsequent refiling unless there is an explicit adjudication that the land sought to be registered belongs to the Government.
2. whether the CA violated the petitioners' right to due process when it arbitrarily and capriciously refused to recognize the fact that, in the intervening period between the first and second applications for registration, the petitioners have removed or cured the obstacles to registration mentioned in G.R. No. 91189.[15]

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[10] *Id*. at 68.

[11] *Id*. at 70-71.

[12] *Id*. at 331-351.

[13] *Id*. at 364-376.

[14] 37 Phil. 912 (1918).

[15] *Rollo*, p. 11.

The Court's Ruling

Ultimately, the petitioners implore the Court to grant their second application to bring the Subject Land within the operation of the Torrens system under Act No. 496, despite the passage of Presidential Decree No. 1529,[16] because they "have removed or cured the obstacles to registration mentioned in G.R. No. 91189."

One of the obstacles to their first registration application to bring within the operation of the Land Registration Act[17] the Subject Land as found by the Court in *The Director of Lands v. Buyco*[18] (G.R. No. 91189) was the absence of evidence to prove that the Subject Land is alienable and disposable, to wit:

> In the instant case, private respondents offered no evidence at all to prove that the property subject of the application is an alienable and disposable parcel of land of the public domain. On the contrary, based on their own evidence, the entire property which is alleged to have originally belonged to Charles Hankins was pasture land. According to witness Jacinta Gomez Gabay, this land has been pasture land, utilized for grazing purposes, since the time it was "owned" by the spouses Charles Hankins and Laura Crescini up to the present time (*i.e.*, up to the date she testified). In *Director of Lands vs. Rivas*,[19] this Court ruled:
>
> > "Grazing lands and timber lands *are not alienable* under Section 1, Article XIII of the 1935 Constitution and Sections 8, 10 and 11 of Article XIV of the 1973 Constitution. Section 10 distinguishes *strictly agricultural lands* (disposable) from grazing lands (inalienable)."

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[16] PROPERTY REGISTRATION DECREE, issued on June 11, 1978; see Narciso Peña, *REGISTRATION OF LAND TITLES AND DEEDS* (1980 Rev. Ed.), p. 26.

[17] Act No. 496, approved on November 6, 1902 and effective on February 1, 1903 (January 1, 1903, according to *Sotto v. Sotto*, 43 Phil. 688 [1922]); Peña, *id.* at 25.

[18] 290 Phil. 504 (1992).

[19] 225 Phil. 288, 294 (1986).

The instant application was filed, heard and decided under the regime of the 1973 Constitution.[20]

Since the petitioners' second registration application would rise or fall depending on whether they had adduced sufficient competent evidence to overcome the alienable and disposable classification obstacle, the Court will now scrutinize the proofs that they offered to show that the Subject Land is alienable and disposable. These are:

1. Exhibit "DD" purports to be a blue print copy of the Sketch Plan of Lot 3675, Cad. 341-D as prepared for the Heirs of Lilia Hankins situated in the barrios of Canduyong, Anajao and Tubigon, Odiongan, Tablas, Romblon containing an area of 3,194,788 square meters with technical description and a Certification, which is sub-marked as Exhibit "DD-1" that states:

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

This is to certify that this is a true and correct sketch plan of Lot 3675, Cad. 341-D, ODIONGAN CADASTRE, as traced from the Cadastral Map and checked against the technical description on file in this Office.

This is to certify further that Lot 3675 is within the alienable and disposable zone, Project No. 7, L.C. Map 660.

Issued this 18th day of August, 1976, at Odiongan, Romblon, Philippines.

For the District Land Officer:

(Sgd.)

BRUNO P. NOCHE
Land Investigator
[Officer-in-Charge][21]

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[20] *The Director of Lands v. Buyco*, *supra* note 18 at 521.

[21] Exh. "DD-1", Exhibits for the Applicants.

Bruno Noche was not presented but Exhibit "DD" was testified upon by petitioner Samuel Buyco.[22]

2. Exhibit "OO" which is the one-page report of Romulae Gadaoni (Gadaoni), who was Land Management Officer III, of the Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR) stationed at Odiongan, Romblon, and the Land Investigator who conducted an ocular inspection of the property of the petitioners in 1976 and July 3, 1998,[23] states:

> In compliance with your Subpoena Duces Tecum Adtestificandum (*sic*) dated 15 July 1998, the undersigned has the honor to submit report.
>
> 1. The land is covered by survey plan PSU-127238 and correspondingly assigned as Lot 3675, CAD 341-D, Odiongan Cadastre with a total area of 319.4788;
> 2. The area is within the alienable and disposable zone as classified under Project No. 7, LC Map 660 and released and certified as such on 21 May 1927;
> 3. Upon inspection on 3 July 1998 with Mr. Buyco, I found out that the bigger portion of the land is utilized as a ranch by the Tan Brothers. The land is level and rolling and enclosed with fence;
> 4. There are lots of improvements (Please see attached Xerox Copy made an integral part of this investigation report);
> 5. That there are agencies/entities which have shown interest in acquiring the land, namely Romblon State College, Odiongan, Romblon, the Municipal Government of Odiongan, and etc.;
> 6. That there are around three hundred fifty (350) cows roaming the area.

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[22] See CA Decision dated January 26, 2011, *rollo*, p. 50.

[23] *Id*. at 57.

August 14, 1998, Odiongan, Romblon.

Submitted by,

(Sgd.)
ROMULAE S. GADAONI
Land Management Officer III[24]

3. The testimony of Gadaoni on August 19, 1998. He testified, among others, that:

DIRECT EXAMINATION BY ATTY. CASANOVA:

x x x x x x x x x

Q – Mr. Witness, what did you find in this ocular inspection, what was used in the identification of the land?

A – The land was covered by a survey plan PSU-127238, and correspondingly assigned as Lot No. 3675 with a total area of 319.4788 hectares. The land was developed to cattle grazing and it is hilly and rolling but enclosed with barbwire fence, and within the land I can see about 350 cows and some improvements also like buildings.

Q – Mr. Witness, you said that the land is partly level and partly rolling did you ascertain whether or not the land is under alienable and disposable area?

A – Yes, sir.

Q- Now, Mr. Witness, have you prepared and rendered a written report?

A – I have sir.

May I request that this report of the witness dated August 14, 1998 be marked as Exhibit "OO".

x x x x x x x x x

ATTY. CASANOVA: May I request that the attached list of assets, facilities and improvements introduced by the applicants on the land be marked as Exhibit "PP". x x x

[24] Exh. "OO", Exhibits for the Applicants.

CROSS EXAMINATION BY FISCAL FRADEJAS:

x x x x x x x x x

Q – Now, I believed you are aware of the previous application for title over the same parcel of land?

A – Yes, sir.

Q – Was/there an ocular inspection conducted in that previous application?

A – Yes, I conducted an ocular inspection.

Q – And x x x what improvements were found on this property?

A – I also found cows, there is a ranch and there are some coconuts.

Q – In other words, there are improvements found on the property?

A – Yes, sir.

Q – And was that parcel also fenced at that time?

A – It was fenced x x x.

x x x x x x x x x

Q – Can you tell this Court, how did you come to know that the land falls within the alienable and disposable zone?

A – We have a record in the office and they can easily be determined by placing the LC Map and other maps.

Q – Is there any law on that matter placing that parcel of land within the alienable and disposable zone?

A – Because you know in a certain map there is a cadastral map, the alienable and disposable land is indicated and the forest land is also indicated.

Q – And the map covers the whole of Island of Tablas?

A – We have a cadastral map of Odiongan, and every municipality.

Q – And after verifying the map of Odiongan, you came to know that the land subject matter of the application falls within the alienable and disposable zone?

A – Yes, sir.[25]

[25] TSN, August 18, 1998, pp. 34-40.

The foregoing proofs, however, fall short of the evidentiary requirements to sufficiently establish that the Subject Land is within the alienable and disposable lands of the public domain.

In the recent case of *In Re: Application for Land Registration Suprema T. Dumo v. Republic of the Philippines*[26] (*Dumo*), the Court reiterated the requirement it set in *Republic of the Philippines v. T.A.N. Properties, Inc.*[27] that there are TWO documents that must be presented to prove that the land subject of the application for registration is alienable and disposable: (1) 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, and (2) a certificate of land classification status issued by the CENRO or the Provincial Environment and Natural Resources Office (PENRO) based on the land classification approved by the DENR Secretary.[28]

Dumo also stated that: "a CENRO or PENRO certification is not enough to prove the alienable and disposable nature of the property sought to be registered because the **only** way to prove the classification of the land is through the original classification approved by the DENR Secretary or the President himself."[29] This is consistent with *Republic of the Philippines v. Nicolas*,[30] which cited *Republic of the Philippines v.*

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[26] G.R. No. 218269, June 6, 2018.

[27] 578 Phil. 441 (2008).

[28] *In Re: Application for Land Registration Suprema T. Dumo v. Republic of the Philippines*, *supra* note 26, at 15-16. In the Concurring and Dissenting Opinion of *J.* Caguioa, he called attention to the issuance of DENR Administrative Order No. 2012-09, which delegated unto CENRO, PENRO and the National Capital Region Regional Executive Director not only the authority to issue certifications on land classification status, but also certified true copies of approved land classification maps with respect to lands falling within their respective jurisdictions. (*J.* Caguioa, Concurring and Dissenting Opinion, *In Re: Application for Land Registration Suprema T. Dumo v. Republic of the Philippines*, G.R. No. 218269, June 6, 2018, pp. 1-2.)

[29] *Id.* at 16.

[30] G.R. No. 181435, October 2, 2017, pp. 11-12.

Lualhati,[31] wherein the Court rejected the attempt of the applicant to prove the alienable and disposable character of the subject land through PENRO or CENRO certifications.[32]

Given that the proofs which the petitioners presented in this case to prove the alienable and disposable character of the Subject Land proceed mainly from a Certification dated August 14, 1998 issued by the CENRO of Odiongan, Romblon, which is insufficient, their second attempt to register the Subject Land under the Torrens system must suffer the same fate as their first.

The Petition, being unmeritorious based on the resolution of the second issue, the Court deems that a resolution of the first issue is no longer necessary.

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated January 26, 2011 and Resolution dated June 30, 2011 of the Court of Appeals in CA-G.R. CV No. 68708 are **AFFIRMED** in reversing and setting aside the Decision dated August 15, 2000 of the Regional Trial Court of Odiongan, Romblon, Branch 82 in LRC Case No. OD-06. The Application for Registration of the petitioners in LRC Case No. OD-06 is dismissed without prejudice.

SO ORDERED.

Perlas-Bernabe (*Acting Chairperson*), *Reyes, A. Jr., Gesmundo*,[*] and *Reyes, J. Jr.,*[**] *JJ.,* concur.

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[31] 757 Phil. 119, 132(2015).

[32] *In Re: Application for Land Registration Suprema T. Dumo v. Republic of the Philippines*, *supra* note 26, at 17.

[*] Designated additional Member per Raffle dated August 20, 2018.

[**] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

FIRST DIVISION

[G.R. No. 219835. August 29, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HASHIM ASDALI *y* NASA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DRUGS; ELEMENTS; AS THE DANGEROUS DRUGS SEIZED FROM THE ACCUSED CONSTITUTE THE *CORPUS DELICTI* OF BOTH OFFENSES, ITS IDENTITY MUST BE ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUIRED TO MAKE A FINDING OF GUILT.— The elements necessary for the prosecution of illegal sale of drugs are: (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 to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti* evidence. For illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused was in possession of an item or an object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. "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." "The prosecution, to prove guilt beyond reasonable doubt, must present in evidence the *corpus delicti* of the case." Furthermore, the illegal drugs seized from the suspect must be the very same substance offered in evidence in court, as the identity of the drug must be established with the same unwavering exactitude as that required to make a finding of guilt. To this end, "the chain of custody requirement ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed."

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; NON-COMPLIANCE WITH THE PROCEDURE LAID DOWN IN SECTION 21, ARTICLE II OF RA 9165 IS NOT AN OPTION AS THE LAW ACTUALLY CONTEMPLATES SUBSTANTIAL COMPLIANCE; CONDITIONS THAT MUST BE COMPLIED WITH FOR A VALID SUBSTANTIAL COMPLIANCE.— [T]he prosecution confuses non-compliance with substantial compliance. While Section 21, Article II of R.A. No. 9165, in relation to its IRR, anticipated that there might be instances of non-compliance, such is allowed only for justifiable reasons and if the integrity and evidentiary value of the seized items had been duly preserved by the apprehending officers. Non-compliance is clearly not an option, as the law actually contemplates substantial compliance. The prosecution has the burden of showing that two conditions were complied with: *first*, deviation was called for under the circumstances; and *second*, that the identity and integrity of the evidence could not have been, at any stage, compromised. These two conditions ensure that the spirit and intention of the chain of custody requirement are complied with. Viewed in this light, substantial compliance is not mere token compliance, but essentially conforms to strict compliance with the chain of custody requirement.

3. ID.; ID.; ID.; WHERE THE INTEGRITY OF THE *CORPUS DELICTI* OF THE CRIMES HAS NOT BEEN ESTABLISHED, IT IS PROPER THAT ACCUSED BE ACQUITTED.— As the integrity of the *corpus delicti* of the crimes for which accused-appellant was charge has not been established, it follows that there was insufficient basis for a finding of guilt beyond reasonable doubt. For the same reason, the presumption of regularity in the performance of official duty does not hold. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. It is thus proper that accused-appellant be acquitted.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

This resolves an appeal[1] from a conviction for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165,[2] otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The subject conviction was upheld by the Court of Appeals (CA) in a Decision[3] dated March 27, 2015 in CA-G.R. CR-HC No. 01023-MIN.

Hashim Asdali *y* Nasa (accused-appellant), was indicted for the sale and illegal possession of *shabu* under two separate Informations, as follows:

Criminal Case No. 5427 (20880)

That on or about September 6, 2004, 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 drug, did then and there willfully, unlawfully and feloniously, sell and deliver to PO1 Wifredo Bobon, PNP, who acted as poseur buyer, two (2) pieces heat-sealed transparent plastic sachet containing white crystalline substance, having a total weight 0.036 gram, which when subjected to qualitative examination gave positive result to the test for the presence of METHAMPHETAMINE HYDROCHLORIDE (SHABU), said accused knowing the same to be a dangerous drug.

CONTRARY TO LAW.[4]

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[1] *Rollo*, pp. 14-15.

[2] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved January 23, 2002.

[3] Penned by Associate Justice Oscar V. Badelles, concurred in by Associate Justices Romulo V. Borja and Rafael Antonio M. Santos; *rollo*, pp. 3-13.

[4] CA *rollo*, p. 32.

Criminal Case No. 5428 (20881)

That on or about September 6, 2004, 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, sixteen (16) pieces heat-sealed transparent plastic sachet containing white crystalline substance having a total weight 0.368 grams, which when subjected to qualitative examination gave positive result to the test for the presence of METHAMPHETAMINE HYDROCHLORIDE (SHABU), said accused knowing the same to be a dangerous drug.

CONTRARY TO LAW.[5]

As alleged by the prosecution, a civilian informant (CI) appeared at the Zamboanga City Police Station on September 6, 2004 and reported to Senior Police Officer 1 Amado Mirasol, Jr. (SPO1 Mirasol), team leader of the Anti-Illegal Drugs Special Operation Task Force, the illegal drug pushing activities of a certain Hashim, later identified as the accused-appellant, at Barangay Campaner, Zamboanga City.[6]

SPO1 Mirasol immediately gathered his team members, SPO1 Sergio Rivera (SPO1 Rivera), PO3 Roberto Roca, PO1 Ronald Cordero, PO1 Hilda Montuno, and PO1 Wilfredo Bobon (PO1 Bobon), including the CI, conducted a briefing for the entrapment of accused-appellant. PO1 Bobon was designated as the poseur-buyer. SPO1 Rivera would serve as back-up. The rest of the team members were to serve as perimeter security. PO1 Bobon was given two (2) one-hundred peso bills as marked money to buy two sachets of *shabu* worth ₱200 with instructions to call SPO1 Rivera upon consummation of the sale.[7]

At 11:00 a.m. of the same day, the entrapment team proceeded to Barangay Campaner with PO1 Bobon and the CI on a single motorcycle and the rest of the team in an L-300 van. Upon

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[5] *Id.* at 33.

[6] *Rollo*, pp. 4-5.

[7] *Id.* at 5.

arriving at the target area, PO1 Bobon and the CI walked towards the inner area of Barangay Campaner. After about 150 meters, the CI spotted accused-appellant standing near the gate of a house.[8]

The CI inquired from accused-appellant if the latter still had some *shabu*, pointing to PO1 Bobon as the buyer. Accused-appellant then asked for money from PO1 Bobon, who then gave the ₱200 marked money to accused-appellant. Upon receipt of the money, accused-appellant pulled out two plastic sachets containing white crystalline substance from his right pocket, which he handed over to PO1 Bobon.[9]

PO1 Bobon instantly grabbed accused-appellant's right arm, dialed SPO1 Rivera's mobile number per their pre-arranged signal, and introduced himself to accused-appellant as a police officer. Accused-appellant tried to evade arrest by wrestling away his arm from the grip of PO1 Bobon, but the latter got hold of accused-appellant's shirt, causing accused-appellant to stumble and fall to the ground. SPO1 Rivera arrived shortly thereafter and assisted PO1 Bobon in handcuffing accused-appellant.[10]

SPO1 Rivera frisked accused-appellant and recovered from the latter's possession the marked money and 16 more sachets of *shabu* inside a cigarette pack. The buy-bust team brought accused-appellant to the police station where PO1 Bobon and SPO1 Rivera marked with their initials, "WB" and "SR," the two sachets that were subject of the buy-bust operation. They similarly marked the 16 sachets that were seized in the ensuing search, before the sachets were handed over to PO3 Allan Benasing (PO3 Benasing) who also placed his own initials "AB." PO3 Benasing then prepared the request for laboratory examination and personally delivered the marked specimens to the Philippine National Police (PNP) Crime Laboratory.[11]

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[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.* at 6.

Upon qualitative examination conducted by Police Senior Inspector and Forensic Chemist Melvin L. Manuel (P/S Insp. Manuel), the specimens tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[12]

On the other hand, accused-appellant denies the charges against him and insists he was illegally arrested without a warrant. According to accused-appellant, he was just resting at his rented house in the interior portion of Barangay Campaner with his wife and children on September 6, 2004 at 11:00 a.m., when seven armed men in civilian clothing suddenly entered his house and asked if he knew a certain Rexon or if he had seen the said Rexon pass by. The men proceeded to search the house, but found nothing. Despite accused-appellant's protests, he was brought to the police station. He claimed he did not know why he was detained and only came to know of the charges against him at the Hall of Justice.[13]

After trial, the Regional Trial Court (RTC) of Zamboanga City, Branch 13, rendered Decision[14] on November 18, 2011, convicting accused-appellant, the dispositive portion of the Decision reads:

> **WHEREFORE,** in light of the foregoing, this Court finds:
>
> (1) In Criminal Case No. 5427 (20880), [accused-appellant] **"GUILTY"** beyond reasonable doubt for violating Section 5, Article II of 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 (₱500,000)** without subsidiary imprisonment in case of insolvency; and
>
> (2) In Criminal Case No. 5428 (20881), [accused-appellant] **"GUILTY"** beyond reasonable doubt for violating Section 11, Article II of Comprehensive Dangerous Drugs Act of 2002 (R[.]A[.] 9165) and sentences him to suffer the

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

[13] *Id*. at 19-20, *rollo*, p. 6.

[14] CA *rollo*, pp. 32-40.

> penalty of **12 years** [and] **1 day to 14 years of imprisonment and pay** [a] **fine of THREE HUNDRED THOUSAND PESOS (Php300,000)** without subsidiary imprisonment in case of insolvency.[15]

The RTC gave more credence to the version of the prosecution and accorded the police officers, who were witnesses, the presumption of regularity in the performance of their official duties. It concluded that the guilt of accused-appellant, on both charges of sale and illegal possession of dangerous drugs, was established beyond reasonable doubt.

On appeal[16] to the CA, accused-appellant harped on the prosecution's failure to discharge their burden of proving his guilt beyond reasonable doubt, and argued that the *corpus delicti* was not established with moral certainty. The CA, nonetheless, affirmed the RTC Decision in its entirety through the presently assailed Decision[17] dated March 27, 2015. The dispositive portion of the Decision reads:

> **WHEREFORE**, the appeal id **DENIED**. The Decision dated 17 November 2011 of the [RTC] of Zamboanga City, Branch 13 convicting accused-appellant of violation of Sections 5 and 11, Article II of [R.A.] No. 9165 is hereby **AFFIRMED** *in toto*.
>
> **SO ORDERED**.[18]

Undeterred, accused-appellant filed an Appeal.[19]

In the Resolution[20] dated October 7, 2015, this Court noted the records forwarded by the CA and informed the parties that they may file their supplemental briefs.

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[15] *Id*. at 39-40, *rollo*, pp. 6-7.

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

[17] *Rollo*, pp. 3-13.

[18] *Id*. at 13.

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

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

On November 24, 2015, through a Manifestation in lieu of Supplemental Brief,[21] the Office of the Solicitor General, on behalf of the People of the Philippines, noted that the CA had already passed upon the matters raised by accused-appellant, such that the filing of a brief before this Court is no longer necessary.

In turn, accused-appellant filed his Manifestation in lieu of Supplemental Brief[22] dated December 15, 2015, indicating that his defences have already been amplified in his Appellant's Brief before the CA. Thus, he adopts the same to avoid a repetition of the issues and arguments already discussed.

Ruling of the Court

The elements necessary for the prosecution of illegal sale of drugs are: (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.[23] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of the *corpus delicti* evidence.[24]

For illegal possession of regulated or prohibited drugs, the prosecution must establish the following elements: (1) the accused was in possession of an item or an object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously possessed the drug.[25]

"In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes

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[21] *Id*. at 22-24.

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

[23] *People of the Philippines v. Salim Ismael y Radang*, G.R. No. 208093, February 20, 2017.

[24] *People v. Arenas*, 791 Phil. 601, 608 (2016).

[25] *People v. Eda*, 793 Phil. 885, 898 (2016).

the *corpus delicti* of the offense."[26] "The prosecution, to prove guilt beyond reasonable doubt, must present in evidence the *corpus delicti* of the case."[27] Furthermore, the illegal drugs seized from the suspect must be the very same substance offered in evidence in court, as the identity of the drug must be established with the same unwavering exactitude as that required to make a finding of guilt.[28] To this end, "the chain of custody requirement ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed."[29]

In the present case, several observations jump out as red flags to be considered. The marking of the sachets allegedly recovered from accused-appellant was conducted at the police station, with no statement that it was done in the presence of accused-appellant and absent any indication as to why it was not done in the vicinity of the arrest. Furthermore, it is undisputed that no inventory of the seized drugs was made by the arresting team, nor were there photographs taken of the seized evidence, whether at the site of the arrest and seizure or at the police station. There was no media representative, elected official, or representative from the Department of Justice to witness even the initial marking of the evidence. No explanation was proffered to justify the lapses. Worse, the evidence for the prosecution yields no plausible reason for the deviation. Finally, there was no attempt to show what measures the arresting team had taken to ensure that the seized specimens subjected to laboratory testing and presented during trial were the very same substances allegedly recovered from accused-appellant.

Considering that the buy-bust team ostensibly underwent a pre-operation briefing, with ample time to prepare, it is baffling that not a single member of the arresting team could secure the

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[26] *Supra* note 23.

[27] *People v. Bulotano*, 736 Phil. 245, 251 (2014).

[28] *Id.* at 252.

[29] *People of the Philippines v. Richard F. Tripoli, et al.*, G.R. No. 207001, June 7, 2017.

presence of even a single barangay *kagawad* at the place of arrest and seizure. It may be recalled that other team members were assigned to secure the perimeter. Both the planning and the arrest took place at regular hours of the day. While it is alleged that accused-appellant resisted arrest, he was unarmed, alone, outnumbered, and was easily overcome. Such an incident could not have gone unnoticed by barangay officials, yet the marking of the seized drugs was not promptly conducted at or near the place of arrest and seizure, like the *barangay* hall. The Zamboanga City Police Station could not have been without resources to properly conduct an inventory and/or photograph the evidence.

All told, it is difficult to share the RTC and CA's conclusion, that the prosecution successfully established an unbroken chain of custody of the seized drugs conformably with Section 21,[30] Article II of R.A. No. 9165.

The law is certainly not rigid and unresponsive to challenges faced by law enforcers in making drug-related arrests. In fact, the proper procedure to be followed in Section 21(a) of R.A. No. 9165, as elaborated in its Implementing Rules and Regulations (IRR), provides:

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[30] 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[.]

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:

> (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[.]** (Emphasis ours)

In this case, however, the prosecution confuses non-compliance with substantial compliance. While Section 21, Article II of R.A. No. 9165, in relation to its IRR, anticipated that there might be instances of non-compliance, such is allowed only for justifiable reasons and if the integrity and evidentiary value of the seized items had been duly preserved by the apprehending officers. Non-compliance is clearly not an option, as the law actually contemplates substantial compliance.

The prosecution has the burden of showing that two conditions were complied with: *first*, deviation was called for under the circumstances; and *second*, that the identity and integrity of

the evidence could not have been, at any stage, compromised. These two conditions ensure that the spirit and intention of the chain of custody requirement are complied with. Viewed in this light, substantial compliance is not mere token compliance, but essentially conforms to strict compliance with the chain of custody requirement.

As discussed in *People of the Philippines v. Vivian Bulotano*:[31]

> As thus provided, noncompliance with the enumerated requirements in Section 21 of the law, does not automatically exonerate the accused. Upon proof that noncompliance was due to justifiable grounds, and that the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, the seizure and custody over said items are not, by the noncompliance, rendered void. This is the "chain of custody" rule.
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> x x x x x x x x x
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> In the chain of custody, the marking immediately after seizure is the starting point in the custodial link. Thereafter, the specimen shall undergo different processes and will inevitably be passed on to different persons. Thus, it is vital that there be an unbroken link in the chain to obviate switching, "planting," or contamination of evidence, *a fortiori*, to segregate the marked evidence from the corpus of all other similar and related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings.
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> x x x x x x x x x
>
> The requirements laid down in Section 21 are not a statement of duties or a job description of the drugs law enforcement officers. It is a statement of procedure for compliance with the imperative that the thing presented as proof of violation of the law is precisely that which was confiscated or taken from the accused, recognizing the unique characteristic of illegal drugs being vulnerable to tampering, altering or substitution. When it is not followed without any justifiable reason, an acquittal of the accused results.

Thus, while minor deviations from the procedures under Republic Act No. 9165 would not automatically exonerate an accused, when

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[31] 736 Phil. 245 (2014).

there is gross disregard of the procedural safeguards prescribed in the substantive law, serious uncertainty is generated about the identity of the seized items that the prosecution presented in evidence. Which is why the rule of chain of custody was included in the IRR of the law.

As the integrity of the *corpus delicti* of the crimes for which accused-appellant was charge has not been established, it follows that there was insufficient basis for a finding of guilt beyond reasonable doubt. For the same reason, the presumption of regularity in the performance of official duty does not hold. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.[32] It is thus proper that accused-appellant be acquitted.

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated March 27, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 01023-MIN is **REVERSED and SET ASIDE**. Accused-appellant Hashim Asdali *y* Nasa is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED** immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished the Officer-in-Charge of the Bureau of Corrections, San Ramon Prison and Penal Farm, Zamboanga City, for immediate implementation. The Officer-in-Charge of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken.

SO ORDERED.

Leonardo-de Castro (*Chairperson*), *Bersamin, del Castillo,* and *Leonen,*[*] *JJ.,* concur.

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[32] *People v. Dela Cruz*, 744 Phil. 816, 832 (2014).

[*] Designated additional Member per Raffle dated August 20, 2018 *vice* Associate Justice Francis H. Jardeleza.

SECOND DIVISION

[G.R. No. 227523. August 29, 2018]

AMALIA S. MENEZ[*] (In behalf of the late JONATHAN E. MENEZ), *petitioner, vs.* **STATUS MARITIME CORPORATION, NAFTOTRADE SHIPPING AND COMMERCIAL S.A., and MOILEN ALOYSIUS VILLEGAS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); 2000 POEA-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; POST-EMPLOYMENT MEDICAL EXAMINATION; A SEAFARER IS REQUIRED TO APPEAR BEFORE THE COMPANY-DESIGNATED DOCTOR WITHIN THREE DAYS FROM REPATRIATION.— Here, the Court finds that the CA was correct in affirming the factual findings of the NLRC that petitioner failed to comply with the requirement that he should appear before the company-designated doctor x x x, [pursuant to] Section 20(B) of the 2000 POEA-SEC x x x. Although this rule is not absolute, petitioner failed to provide a reason for Jonathan's failure to report within three (3) days from repatriation. If Jonathan, as petitioner claims, was already experiencing bleeding gums, prolonged nosebleed and severe urinary and gastrointestinal hemorrhage even before his repatriation, then it was imperative that he reported this to his employer as soon as he arrived in the Philippines and have himself checked by the company-designated physician. As the Court held in *Jebsens Maritime, Inc. v. Undag*: "To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of

[*] Also spelled as Meñez in some parts of the *rollo*.

a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims."

2. ID.; ID.; ID.; ID.; FOR THE BENEFICIARIES OF A SEAFARER TO BE ENTITLED TO DEATH COMPENSATION, IT MUST BE PROVEN THAT THE DEATH OF THE SEAFARER IS WORK-RELATED AND IT OCCURRED DURING THE TERM OF HIS CONTRACT.— As the Court ruled in *Yap v. Rover Maritime Services Corp*., "x x x in order for the beneficiaries of a seafarer to be entitled to death compensation from the employer, it must be proven that the death of the seafarer (1) is work-related; and (2) occurred during the term of his contract." Here, petitioner failed to prove by substantial evidence the causal connection between Jonathan's death and the nature of his work. x x x [A]bsent any medical report or any relevant document showing that Jonathan contracted the illness during the term of his employment, such claim is just a mere allegation x x x. Further, the death of Jonathan occurred two (2) months after the expiration of his contract, thus, there was a failure to comply with the requirement that the death should have occurred during the term of the contract. As the Court held in *Klaveness* [Maritime Agency, Inc. v. Beneficiaries of the Late Second Officer Anthony S. Allas], "x x x in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract." The only exception to this rule is when the death occurs after the employee's medical repatriation, which is absent in this case as Jonathan was repatriated because of the expiration of his contract.

APPEARANCES OF COUNSEL

Emerson T. Barrientos for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Petitioner Amalia S. Menez (petitioner), on behalf of her deceased husband Jonathan E. Menez (Jonathan), filed a petition

for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated April 29, 2016 and Resolution[3] dated October 3, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 119694. The CA dismissed the petition for *certiorari* and affirmed the National Labor Relations Commission (NLRC) Decision[4] that petitioner was not entitled to death benefits, reimbursement of medical expenses, and attorney's fees.

Facts

The CA's findings of facts are as follows:

Petitioner is the surviving spouse of deceased seafarer, Jonathan, with whom she has three (3) children.

On February 20, 2009, Jonathan was hired by Status Maritime Corporation (private respondent), a local manning agency engaged in the recruitment and/or deployment of Filipino seafarers for its foreign principal, Naftotrade Shipping and Commercial S.A., as second engineer of M/V Naftocement with a basic monthly salary of US$1,000.00, for a period of six (6) months. Jonathan passed the pre-employment medical examination (PEME) and had been declared fit for sea service.

On February 25, 2009, Jonathan was deployed and embarked on the M/V Naftocement II, a vessel carrying cement. As 2nd engineer, Jonathan was in charge of the main engine piston, generator engine piston, hydraulic oil jack and cleats, sea water ballast pump, fire and G.S. Pump, F.W. Pump, and cleaning the air sides of the main

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[1] *Rollo,* pp. 28-53.

[2] *Id*. at 55-67. Penned by Associate Justice Victoria Isabel A. Paredes, with Associate Justices Francisco P. Acosta and Elihu A. Ybañez concurring.

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

[4] *Id*. at 217-231. Decision dated December 30, 2010 of the NLRC First Division in NLRC LAC No. OFW(M)-10-000876-10, penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

engine and cooler of sea water with chemicals. Jonathan was exposed to undue pressure a[n]d strain as he was required to be on call twenty-four (24) hours a day to monitor the condition of the vessel's engine. Such pressure and strain was *(sic)* aggravated by being away from his family for months on end. Due to long hours of duty in the engine room, Jonathan felt dizzy and nauseous; however, he just ignored it, thinking that it was only due to fatigue. Jonathan also experienced redness of his eyes and purple patches on his skin, but he did not mind it as it was not painful. He also suffered bleeding gums, prolonged nosebleed and severe urinary and gastrointestinal hemorrhage, but these were not entered in the ship's logbook despite the knowledge of the ship master.

On September 11, 2009, Jonathan disembarked from M/V Naftocement II and arrived in the Philippines on September 12, 2009. Thinking that his illness was not serious, Jonathan immediately went to his hometown in Bacolod City. He did not submit to a post-employment medical examination in anticipation of another deployment with private respondents.

Upon Jonathan's arrival, petitioner was shocked at Jonathan's hemorrhage. Jonathan rested to recover his strength, but his health deteriorated. Days after, Jonathan noticed traces of blood in his urine which prompted petitioner to bring him to Dr. Brian Antonio T. Togle (Dr. Togle), an internist-nephrologist. Jonathan was referred to MP Analysis and Laboratory Inc. in Bacolod City, where he was subjected to laboratory examinations and ultrasound of the lower abdomen. The medical result interpreted by Dr. Manuel M. Arboleda showed that Jonathan had *"Borde[r]line Prostatic Size (23gms). Symmetrical Small Cystic Dilatation of the Ejaculatory Duct. Tiny Right Renal Cortical Cyst. Negative for Urinary Tract Stone or Obstruction"*. Dr. Togle prescribed *sodium bicarbonate grX/tab, 2 tabs 3x a day after meals for one week.*

On October 29, 2009, Jonathan was admitted at The Doctors' Hospital, Inc., Bacolod City for gum bleeding and redness of the eye. He underwent hematology examination, roentgenoscopy and chest PA. The examinations revealed that Jonathan had acute myelogenous leukemia and was recommended for bone marrow aspiration. Jonathan was discharged from the hospital on the same day. He went home to recuperate while taking his medicines.

On November 4, 2009, Jonathan was admitted to the Bacolod Our Lady of Mercy Specialty Hospital, Bacolod City, for the same

complaint of epigast[r]ic pain and there, he was diagnosed with: (a) *uncal herniation 2 to the parenchymal hemorrhages, right frontal and temporal cortical areas;* (b) *upper GI bleed;* and (c) *acute myelogenous leukemia.* On November 11, 2009, Jonathan died from his illness at the Bacolod Our Lady of Mercy Specialty Hospital, Bacolod City.

On April 14, 2010, petitioner filed a complaint with the Labor Arbiter, for nonpayment of death benefits in the amount of US$60,000.00; US$7,000.00 each for the three (3) minor children (or a total of US$21,000.00); medical reimbursement; US$1,000.00 burial expenses; ₱500,000.00 moral damages; ₱500,000.00 exemplary damages; ₱500,000.00 compensatory damages; and 10% of the recoverable amounts as and for attorney's fees.

Mandatory conferences were held before the Labor Arbiter[,] but no settlement was reached by the parties, who were then required to submit their respective pleadings and supporting evidence. On September 10, 2010, the Labor Arbiter rendered a Decision, the dispositive portion of which, reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents Status Maritime Corporation, and/or the foreign principal/employer Naftotrade Shipping & Commercial S.A., and/or to pay, jointly and severally complainant Amalia S. Menez, widow of deceased seafarer Jonathan E. Menez, for and on behalf of their minor children, the Philippine Peso equivalent at the time of actual payment of SEVENTY TWO THOUSAND US DOLLARS (US$72,000.00) representing death benefits and allowance, and burial allowance, and One Hundred Forty Seven Thousand Seventy Six Pesos (₱147,076.00) representing reimbursement of medical expenses, plus ten percent (10%) thereof as and for attorney's fees.
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.

Private respondents appealed the decision to the NLRC arguing that: (1) the deceased seafarer died after the effectivity of his employment contract with private respondents; (2) the illness which caused the seafarer's demise was not proven to be work-related; (3) the seafarer's illness, *acute myelogenous leukemia,* was undetected during his pre-employment medical examination; (4) cancer is judicially ruled to be not a work-related disease; and (5) the seafarer

failed to comply with the mandatory post-employment medical examinations.

On December 30, 2010, the NLRC rendered the assailed Decision, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the appealed Decision is hereby REVERSED and SET ASIDE, and another one entered DISMISSING the instant complaint for lack of merit.
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> SO ORDERED.

Petitioner's subsequent motion for reconsideration was denied on March 29, 2011.[5]

Petitioner filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA assailing the NLRC decision. In its Decision, the CA affirmed the NLRC and ruled that petitioner failed to prove by substantial evidence compliance with Section 20(A) of the 2000 Philippine Overseas Employment Administration Standard Employment Contract (2000 POEA-SEC) when petitioner failed to show proof that her husband's death was work-related.[6]

Further, the CA ruled that Jonathan failed to submit himself to post-employment medical examination as soon as he arrived in the Philippines, or within three (3) days therefrom in violation of Section 20(B) of the 2000 POEA-SEC.[7]

Petitioner moved for reconsideration, but the CA denied it in its Resolution.

Hence, this Petition.

Issue

Whether Jonathan's death is compensable under the 2000 POEA-SEC.

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[5] *Id.* at 56-59.

[6] See *id.* at 60-62.

[7] *Id.* at 63.

The Court's Ruling

The Petition lacks merit.

Petitioner argues that Jonathan's death due to acute myelogenous leukemia is compensable because it is work-related,[8] and that Jonathan's death occurred during the term of his employment as his symptoms manifested during the term of his employment.[9] These are factual issues that are generally not reviewable in a petition under Rule 45 of the Rules of Court. As the Court ruled in *Madridejos v. NYK-Fil Ship Management, Inc.*:[10]

> As a rule, we only examine questions of law in a Rule 45 petition. Thus, "we do not reexamine conflicting evidence, reevaluate the credibility of witnesses, or substitute the findings of fact of the [National Labor Relations Commission], an administrative body that has expertise in its specialized field." Similarly, we do not replace our "own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible." The factual findings of the National Labor Relations Commission, when confirmed by the Court of Appeals, are usually "conclusive on this Court."[11]

Here, the Court finds that the CA was correct in affirming the factual findings of the NLRC that petitioner failed to comply with the requirement that he should appear before the company-designated doctor. Section 20(B) of the 2000 POEA-SEC states:

> **SECTION 20. COMPENSATION AND BENEFITS**
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> x x x x x x x x x
>
> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

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[8] See *id.* at 35-36.

[9] See *id.* at 39.

[10] G.R. No. 204262, June 7, 2017, 826 SCRA 452.

[11] *Id.* at 472.

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied)

Although this rule is not absolute,[12] petitioner failed to provide a reason for Jonathan's failure to report within three (3) days from repatriation. If Jonathan, as petitioner claims, was already experiencing bleeding gums, prolonged nosebleed and severe urinary and gastrointestinal hemorrhage even before his repatriation, then it was imperative that he reported this to his employer as soon as he arrived in the Philippines and have himself checked by the company-designated physician. As the Court held in *Jebsens Maritime, Inc. v. Undag*:[13] "To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of

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[12] See *Jebsens Maritime, Inc. v. Undag,* 678 Phil. 938, 948 (2011).

[13] *Id.*

seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims."[14]

Even if the Court were to excuse Jonathan's failure to comply with the reporting requirement, petitioner failed to prove that Jonathan's death was work-related and compensable.

As the Court ruled in *Yap v. Rover Maritime Services Corp.,*[15] "x x x in order for the beneficiaries of a seafarer to be entitled to death compensation from the employer, it must be proven that the death of the seafarer (1) is work-related; and (2) occurred during the term of his contract."[16]

Here, petitioner failed to prove by substantial evidence the causal connection between Jonathan's death and the nature of his work. The ruling in *Klaveness Maritime Agency, Inc. v. Beneficiaries of the Late Second Officer Anthony S. Allas,*[17] *(Klaveness)* where the Court denied the claim for death benefits because of the failure to prove by substantial evidence that the deceased's work increased the risks of acquiring bladder cancer, applies here:

> The deceased allegedly suffered bouts of painful urination while on-board petitioner's vessel. The pain would however subside upon the taking of pain relievers. Nevertheless, in the absence of substantial evidence, we cannot conclude that the pain was due to cancer. After all, painful urination is non specific to cancer and may be linked to other conditions. Moreover, there was no indication that petitioner was made aware of such painful spells while the deceased was on-board.

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[14] *Id.* at 949.

[15] 741 Phil. 222 (2014).

[16] *Id.* at 233.

[17] 566 Phil. 579 (2008).

Respondents were unable to adduce evidence that the deceased's work exposed him to the chemicals suspected to increase the risks of acquiring bladder cancer. Neither were they able to prove that his bladder cancer was acquired during his employment. As we earlier noted, one's predisposition to develop cancer is affected not only by one's work, but also by many factors outside of one's working environment. **In the absence of substantial evidence, the deceased's working conditions cannot be assumed to have increased the risk of contracting bladder cancer.**[18] (Emphasis and underscoring supplied)

The CA therefore correctly held that absent any medical report or any relevant document showing that Jonathan contracted the illness during the term of his employment, such claim is just a mere allegation, thus:

In this case, Jonathan was repatriated on September 11, 2009 due to completion of contract; he died on November 11, 2009 or two (2) months after his repatriation. Moreover, there is no proof that the illness which was the cause of death, was work-related.

x x x x x x x x x

Petitioner claims that Jonathan was exposed to undue pressure and strain as he was required to be on call twenty-four (24) hours a day to monitor the condition of the vessel's engine; the pressure and strain was *(sic)* aggravated by being away from his family for months; that due to long hours of duty in the engine room, Jonathan experienced dizziness and nausea, however, he ignored it, thinking that it was only due to fatigue; that Jonathan also experienced redness of the eyes and purple patches on the skin, but he did not mind it as it was not painful; that Jonathan had suffered bleeding gums, prolonged nosebleed and severe urinary and gastrointestinal hemorrhage. **No complaint, medical report or such relevant document was presented regarding the illness contracted by Jonathan on-board M/V Naftocement. Without any record of illness during his voyage, it is difficult to state that Jonathan had acquired or developed *acute myelogenous leukemia* during his employment.**

In view of the basic rule that mere allegation is not evidence and is not equivalent to proof, the allegation is essentially self-serving and devoid of any evidentiary weight.

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[18] *Id.* at 589.

The Labor Arbiter failed to establish a factual basis for the award, merely concluding that since Jonathan passed the PEME, and he was diagnosed with *acute myelogenous leukemia* a month after his repatriation, dying from such illness two (2) [months] from repatriation, the cause of the illness is work-related. The conclusion does not lend itself to the facts of the case; it is *non-sequitur.*[19] (Emphasis and underscoring supplied)

Further, the death of Jonathan occurred two (2) months after the expiration of his contract, thus, there was a failure to comply with the requirement that the death should have occurred during the term of the contract. As the Court held in *Klaveness,* "x x x in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract."[20] The only exception to this rule is when the death occurs after the employee's medical repatriation,[21] which is absent in this case as Jonathan was repatriated because of the expiration of his contract.

WHEREFORE, premises considered, the Petition is **DENIED.** The Decision dated April 29, 2016 and Resolution dated October 3, 2016 of the Court of Appeals in CA-G.R. SP No. 119694 are **AFFIRMED.**

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[**] *JJ.,* concur.

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[19] *Rollo,* pp. 61-63.

[20] *Supra* note 17, at 585-586.

[21] See *Canuel v. Magsaysay Maritime Corporation,* 745 Phil. 252, 266 & 269 (2014).

[**] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

FIRST DIVISION

[G.R. No. 228877. August 29, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DOMINADOR ESPINOSA *y* PANSOY,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; PARRICIDE; ELEMENTS.—** Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of accused. In the instant case, all the elements of the crime were clearly and sufficiently proved beyond reasonable doubt by the prosecution.

2. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; CAN BE THE BASIS FOR CONVICTION IF THERE IS MORE THAN ONE CIRCUMSTANCE, THE FACTS FROM WHICH THE INFERENCES ARE DERIVED HAVE BEEN PROVEN, AND THE COMBINATION THEREOF PRODUCES A CONVICTION BEYOND REASONABLE DOUBT.—** It is settled that "[d]irect evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can sufficiently establish his guilt." Circumstantial evidence can be the basis for conviction if there is more than one circumstance, the facts from which the inferences are derived have been proven, and the combination thereof produces a conviction beyond reasonable doubt. In the instant case, the circumstances already identified and enumerated by the appellate court bear restating. *First*, appellant was the only adult present at the time of the incident. *Second*, Junel suffered several hematomas and cigarette burns on different parts of his body which were inconsistent with the alleged accidental falling off the cradle. *Third*, the medico-legal report revealed that Junel had sustained injuries which could not have been caused by mere falling off the cradle. x x x Thus, even if there was no direct evidence presented and even

if the testimony of Medina pertaining to what the neighbors had told her was not given probative value, the attendant circumstances as enumerated all point to appellant as the guilty person. Moreover, it must be stressed that only moral certainty, and not absolute certainty, is required for a conviction. Here, based on the attendant circumstances, we are morally convinced that appellant's guilt for the crime of parricide has been proved beyond reasonable doubt.

3. CRIMINAL LAW; REVISED PENAL CODE; PARRICIDE; PENALTY IN CASE AT BAR.— Under Article 246 of the Revised Penal Code, as amended by Republic Act (RA) No. 7659, the penalty for parricide is *reclusion perpetua* to death. Under the prevailing circumstances, the proper imposable penalty is *reclusion perpetua* there being no modifying circumstances alleged or proved. Hence, both the RTC and the CA correctly imposed upon appellant the penalty of *reclusion perpetua*. Pursuant to Section 3 of RA No. 9346, appellant is not eligible for parole.

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.*:

We resolve the appeal[1] from the August 2, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07212 which affirmed with modification the May 12, 2014 Decision[3] of the Regional Trial Court (RTC), San Mateo, Rizal, Branch 76,

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[1] *Rollo*, p. 12.

[2] *Id.* at 2-11; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Samuel H. Gaerlan and Ma. Luisa C. Quijano-Padilla.

[3] CA *rollo*, pp. 39-42; penned by Presiding Judge Josephine Zarate Fernandez.

finding appellant Dominador Espinosa *y* Pansoy (appellant) guilty beyond reasonable doubt of the crime of parricide.

The Antecedent Facts

On August 4, 2009, appellant was charged with parricide in an Information[4] which reads:

> That on or about the 14th day of March 2009, in the Municipality of Rodriguez, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, did then and there willfully, unlawfully and feloniously push to the wall of the house the cradle of his biological child Junel Medina y San Jose, six (6) months old, who was then inside said cradle, thereby causing the latter to sustain "traumatic injuries to the head and trunk" which directly caused his death soon thereafter.
>
> CONTRARY TO LAW.[5]

Appellant pleaded not guilty to the charge.[6] After the conduct and termination of the pre-trial, trial proceeded.

Version of the Prosecution

The prosecution presented the testimony[7] of Edeltrudes Medina (Medina), the mother of the victim (Junel), and live-in partner of appellant.[8] She narrated that on March 14, 2009, she left Junel, then six months old, under appellant's care as she went to help in her aunt's catering business.[9] On March 15, 2009, while at her aunt's house, she received a phone call from appellant informing her that Junel had fallen off the cradle and died.[10]

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[4] Records, pp. 1-2.

[5] *Id.* at 1.

[6] *Id.* at 34.

[7] TSN, October 4, 2010, pp. 1-12.

[8] *Id.* at 1-2.

[9] *Id.* at 4.

[10] *Id.*

Medina immediately went home where she found appellant seated before the lifeless body of Junel.[11] Noting that Junel's mouth had injuries, his upper lips and chest had cigarette burns and his chest had hematomas,[12] she was unconvinced that Junel had really fallen off the cradle.[13]

The prosecution also presented the testimony[14] of Dr. Felimon C. Porciuncula, Jr. (Dr. Porciuncula) who conducted the autopsy on the body of the victim and issued Medico-Legal Report No. A-164-09.[15] Dr. Porciuncula testified that Junel had several contusions on the lips, ear, head, lungs and lower back; abrasions on the lips, head, chest and lower back; and fractures on two different parts of the head – injuries which were not sustained merely from falling off a cradle.[16] He concluded that the cause of death of the victim was the traumatic injuries sustained in the head and trunk.[17]

Version of the Defense

The defense presented the testimony[18] of appellant who stated that he worked as a construction worker but was home on that day because he had been sick.[19] He claimed that, while Medina had always looked after their children, Junel and two-year-old Althea, he looked after them on that day because Medina had to help out at her aunt's house.[20] He claimed that at around 1:00 p.m. of March 14, 2009, he went out to fetch water after

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[11] *Id.*

[12] *Id.* at 5.

[13] *Id.*

[14] TSN, November 8, 2010, pp. 1-16.

[15] Records, p. 74.

[16] TSN, November 8, 2010, pp. 15-16.

[17] *Id.* at 7.

[18] TSN, March 14, 2013, pp. 1-8; TSN, May 27, 2013, pp. 1-13.

[19] TSN, March 14, 2013, p. 4.

[20] *Id.* at 4.

he had put the two children to sleep, Junel in the hammock and Althea on the bed.[21] When he came back, he found Junel lying face down on the floor with blood on his lips.[22] He noticed that the rope used in tying the hammock to the ceiling had come loose.[23] Appellant insisted that Junel was still alive at that time as he had even given him milk and put him back to sleep.[24] During the night, however, he was roused from his sleep by Althea's cries and, while he was preparing milk for the two children, he noticed that Junel was already lifeless.[25] He then sought help from the neighbors and informed Medina through the phone about what happened.[26]

Ruling of the Regional Trial Court

The RTC found appellant guilty as charged, *viz.*:

> WHEREFORE, judgment is hereby rendered finding accused Dominador Espinosa *y* Pansoy GUILTY beyond reasonable doubt of the crime of PARRICIDE as defined and penalized under Article 246 of the Revised Penal Code, in relation to Republic Act 8369, as amended and sentencing him to suffer the penalty of Reclusion Perpetua and to indemnify the heirs of the victim in the amount of ₱50,000.00 as death indemnity and ₱50,000.00 as moral damages. No pronouncement as to cost.
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> SO ORDERED.[27]

The RTC ratiocinated that:

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[21] *Id.* at 5.

[22] *Id.* at 6.

[23] *Id.*

[24] *Id.* at 7.

[25] *Id.*

[26] *Id.* at 7-8.

[27] CA *rollo*, p. 42.

[T]he injuries sustained by the victim are too plainly shown by the Autopsy Report to be open to doubt. The principal question that projects itself for resolution is simply whether or not the injuries were inflicted by the [accused] under the circumstances threshed out by the prosecution witnesses so as to render them amenable to the liability for the charge leveled against him.

The instant Information provides that the accused with intent to kill willfully, unlawfully and feloniously push to the wall of the house the cradle of the six (6) month old victim causing the latter traumatic injuries on the head and trunk that caused his death.

The findings contained in Medico-Legal Report No. A-164-09 sufficiently prove [d] the criminal responsibility of the accused considering the calculative injuries sustained were obviously expected to end the life of the victim especially so when [his] age is taken into account. The defense [of accident] posed by the accused x x x finds no support in the light of the overwhelming evidence presented by the prosecution. In a way the accused admitted responsibility. He was the only adult companion of the victim at the time of the incident such that it is therefore not difficult to conclude that he was the only one who could have inflicted the injuries sustained that resulted to the victim's death.[28]

Ruling of the Court of Appeals

On appeal, appellant argued that the trial court erred in finding that his guilt had been proven beyond reasonable doubt.[29] He claimed that the narration of Medina in her Sworn Statement[30] that their neighbors, Andrea Barona and Angelyn Tulbo, heard Junel's cries, appellant's shouts, and the pounding on the wall, and that they saw how Junel's cradle twice hit the wall while he was being carelessly rocked, should not be given probative weight for being hearsay.[31] Appellant also argued that the

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

[29] *Id*. at 32.

[30] Records, p. 15.

[31] CA *rollo*, p. 34.

neighbors who had initially executed Sworn Statements[32] were not even presented during trial.[33] He further claimed that the trial court erred in finding him guilty based only on the medico-legal report.[34]

On the other hand, the People, through the Office of the Solicitor General (OSG), maintained that the guilt of appellant for the crime of parricide was proven beyond reasonable doubt.[35] According to the OSG, the totality of the following circumstantial evidence warranted a conviction: (1) Medina left Junel well and healthy with appellant; (2) appellant was the only adult companion of Junel at the time; (3) Junel suffered injuries in the mouth, cigarette burns on the upper lip and chest, and hematomas on the chest; (4) appellant merely reasoned that what happened was an accident; (5) the autopsy report revealed injuries — contusion and abrasions - which could have been sustained before the victim died; and (6) the testimony of the medico-legal officer indicated that considering the nature of the injuries, it could not be possible that Junel had merely fallen off his cradle.[36]

The appellate court affirmed the ruling of the RTC, with modification as to the amounts of damages, to wit:

> WHEREFORE, the appeal is DENIED. The assailed disposition is MODIFIED increasing the award of civil indemnity from Fifty Thousand Pesos (PhP50,000.00) to One Hundred Thousand Pesos (PhP100,000.00) and moral damages from Fifty Thousand Pesos (PhP50,000.00) to One Hundred Thousand Pesos (PhP 100,000.00); awarding exemplary damages in the amount of One Hundred Thousand Pesos (PhP 100,000.00); with legal interest of six percent (6%) per

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[32] Records, p. 16 (Sworn Statement of Andria Barona); *id*. at 17 (Sworn Statement of Angelyn Tulbo).

[33] CA *rollo*, p. 34.

[34] *Id*. at 35.

[35] *Id*. at 65.

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

annum on all monetary awards from the finality of this judgment until fully paid. Costs against Accused-Appellant.

SO ORDERED.[37]

Hence, this appeal.

Our Ruling

The appeal lacks merit.

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of accused.[38] In the instant case, all the elements of the crime were clearly and sufficiently proved beyond reasonable doubt by the prosecution.

It is settled that "[d]irect evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can sufficiently establish his guilt."[39] Circumstantial evidence can be the basis for conviction if there is more than one circumstance, the facts from which the inferences are derived have been proven, and the combination thereof produces a conviction beyond reasonable doubt.[40]

In the instant case, the circumstances already identified and enumerated by the appellate court bear restating. *First*, appellant was the only adult present at the time of the incident. *Second*, Junel suffered several hematomas and cigarette burns on different parts of his body which were inconsistent with the alleged accidental falling off the cradle. *Third*, the medico-legal report revealed that Junel had sustained injuries which could not have been caused by mere falling off the cradle.

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[37] *Rollo*, p. 10.

[38] LUIS B. REYES, *The Revised Penal Code*, 2006 Edition, Book II, p. 457.

[39] *People v. Calonge*, 637 Phil. 435, 453 (2010).

[40] *Id.* at 453-454.

The extent of the injuries sustained by Junel and the impossibility that these had been sustained by mere falling off the cradle were sufficiently explained by Dr. Porciuncula as follows:

Q And what does this sketch of the human head refer to, what injuries, Mr. Witness?

A On the anterior portion of the head there is contusion on the oral region, upper and lower lips and on the buccal region, there is abrasion, sir. At the back of the head underneath the scalp, there is scalp hematoma and at the right side of the head there is an abrasion, a scalp hematoma and at the right parietal and right temporal region are fractured and on the left ear there is a contusion. Inside the head, sir, there is a massive brain hemorrhage and on the rear portion of the chest there is x x x contusion and there is also abrasion on the vertebral portion, sir. This chest produced massive pulmonary contusion or wherein the lungs are contused, sir.

Q Going first on the head portion, Mr. Witness, it would appear that the injuries are located on different portion[s] of the head?

A Yes, sir.

x x x x x x x x x

Q Could they have been made on a single time, the injuries, single infliction?

A No, sir.

Q Why so?

A Because the location of the injuries are located on different parts of the body, especially on the left and right side[s] of the head including the back portion of the head, the anterior portion of the head, sir. All portions of the head were injured, sir.[41]

Thus, even if there was no direct evidence presented and even if the testimony of Medina pertaining to what the neighbors had told her was not given probative value, the attendant circumstances as enumerated all point to appellant as the guilty

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[41] TSN, November 8, 2010, pp. 6-7.

person. Moreover, it must be stressed that only moral certainty, and not absolute certainty, is required for a conviction. Here, based on the attendant circumstances, we are morally convinced that appellant's guilt for the crime of parricide has been proved beyond reasonable doubt.

Under Article 246 of the Revised Penal Code, as amended by Republic Act (RA) No. 7659, the penalty for parricide is *reclusion perpetua* to death. Under the prevailing circumstances, the proper imposable penalty is *reclusion perpetua* there being no modifying circumstances alleged or proved. Hence, both the RTC and the CA correctly imposed upon appellant the penalty of *reclusion perpetua*. Pursuant to Section 3 of RA No. 9346, appellant is not eligible for parole. As regards the damages awarded, prevailing jurisprudence[42] instructs that, for the crime of parricide punishable by *reclusion perpetua*, the amounts of damages should be as follows: ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. In addition, temperate damages in lieu of actual damages in the amount of ₱50,000.00 is awarded. Finally, all monetary awards shall earn interest at the rate of 6% *per annum* from the finality of this Decision until full payment.[43]

WHEREFORE, premises considered, the appeal is hereby **DISMISSED**. The August 2, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 07212 finding appellant Dominador Espinosa *y* Pansoy **GUILTY** beyond reasonable doubt of the crime of parricide and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATION** that appellant is not eligible for parole and is directed to pay the heirs of Junel Medina *y* San Jose civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00. In addition, all monetary awards shall earn interest at the legal rate of 6% *per annum* from the finality of this Decision until full payment.

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[42] *People v. Jugueta*, 783 Phil. 806 (2016).

[43] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

SO ORDERED.

Leonardo-de Castro, C.J., Bersamin,[*] *Jardeleza*, and *Tijam, JJ.*, concur.

SECOND DIVISION

[G.R. No. 230030. August 29, 2018]

PHILIPPINE PIZZA, INC., *petitioner, vs.* **JENNY PORRAS**[*] **CAYETANO, RIZALDO G. AVENIDO, PEE JAY T. GURION, RUMEL A. RECTO, ROGELIO T. SUMBANG, JR., and JIMMY J. DELOSO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; SUPREME COURT REVIEW OF A COURT OF APPEALS RULING IN A LABOR CASE; THE COURT EXAMINES WHETHER THE CA CORRECTLY DETERMINED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION IN THE NLRC DECISION. At the outset, the Court stresses the distinct approach in reviewing a CA ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA Decision from the prism of whether the

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[*] Per Special Order No. 2586 dated August 28, 2018.

[*] "Poras" in the title of the Petition. See *rollo*, Vol. I, p. 9.

CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION ATTRIBUTED TO THE NLRC WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE. Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor cases, grave abuse of discretion may be attributed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.

3. ID.; ID.; ID.; ID.; THE COURT OF APPEALS ERRONEOUSLY ASCRIBED GRAVE ABUSE OF DISCRETION ON THE PART OF THE NLRC AS THE CA ADOPTED THE COURT S MINUTE RESOLUTION IN A RELATED CASE WHICH IS NOT A BINDING PRECEDENT TO CASES INVOLVING OTHER PERSONS NOT PARTIES TO THE CASE. [T]he Court finds that the CA erroneously ascribed grave abuse of discretion on the part of the NLRC. In arriving at its Decision, the CA adopted the Court's minute resolution in *Philippine Pizza, Inc*., as it purportedly stemmed from a similar complaint for illegal dismissal filed by a delivery rider against PPI and CBMI. In the said case, the Court found CBMI to be a labor-only contractor and held PPI as the employer of the delivery rider. The CA's reliance on the *Philippine Pizza, Inc.*'s minute resolution is, however, misplaced. Case law instructs that although the Court's dismissal of a case via a minute resolution constitutes a disposition on the merits, the same could not be treated as a binding precedent to cases involving other persons who are not parties to the case, or another subject matter that may or may not have the same parties and issues.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo for petitioner.
Ernesto Arellano 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 March 30, 2016 and the Resolution[3] dated January 6, 2017 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 136333, which reversed and set aside the Decision[4] dated January 28, 2014 and the Resolution[5] dated April 30, 2014 of the National Labor Relations Commission (NLRC) in NLRC-NCR Nos. 04-05060-13, 05-06931-13, 05-07363-13, 05-07941-13, and 06-08125-13, and thereby, reinstated the Decision[6] dated August 30, 2013 of the Labor Arbiter (LA) in NLRC NCR Case Nos. 04-05060-13, 05-06931-13, 05-07363-13, 05-07941-13, and 06-08125-13, finding petitioner Philippine Pizza, Inc. (PPI) and Consolidated Building Maintenance, Inc. (CBMI) jointly and severally liable for illegal dismissal.

The Facts

On various dates,[7] respondents Jenny Porras Cayetano (Cayetano), Rizaldo G. Avenido (Avenido), Pee Jay T. Gurion

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[1] *Id.* at 9-40.

[2] *Id.* at 46-60. Penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Marlene Gonzales-Sison and Ramon A. Cruz, concurring.

[3] *Id.* at 62-63.

[4] *Rollo*, Vol. II, pp. 537-552. Penned by Presiding Commissioner Gerardo C. Nograles with Commissioners Perlita B. Velasco and Romeo L. Go, concurring.

[5] *Id.* at 553-555.

[6] CA *rollo*, Vol. I, pp. 52-65. Penned by J. Potenciano F. Napenas, Jr.

[7] Respondents were hired on the following dates: Cayetano on November 9, 2004; Avenido in March 2006; Gurion in August 2006; Recto in May

(Gurion), Rumel A. Recto (Recto), Rogelio T. Sumbang, Jr. (Sumbang, Jr.), and Jimmy J. Deloso (Deloso; collectively, respondents) were hired by CBMI, a job contractor which provides kitchen, delivery, sanitation, and allied services to PPI's[8] Pizza Hut chain of restaurants (Pizza Hut),[9] and were thereafter deployed to the various branches of the latter. Cayetano and Deloso worked as team members/service crew, while Avenido, Gurion, Recto, and Sumbang, Jr. served as delivery riders.[10]

Respondents alleged that they rendered work for Pizza Hut, ranging from seven (7) to eleven (11) years, hence, they were regular employees of PPI and not of CBMI. They claimed to have been initially hired by PPI but were subsequently transferred to CBMI so as to prevent them from attaining their regular employment status. Despite the said transfer, however, they were still under the direct supervision of the managers of Pizza Hut and had been using its tools and machines for work.[11] Thus, respondents, along with several others,[12] filed separate complaints for Illegal Dismissal against PPI and CBMI,[13] before the NLRC, docketed as NLRC NCR Case Nos. 04-05060-13, 05-06931-13, 05-07363-13, 05-07941-13, and 06-08125-13.

For its part, PPI denied any employer-employee relationship with respondents, averring that it entered into several Contracts

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2002; Sumbang, Jr. on June 23, 2003; and Deloso on June 10, 2002 (see *rollo*, Vol. I, p. 47).

[8] *Rollo*, Vol. II, p. 506.

[9] *Rollo*, Vol. I, p. 10.

[10] *Rollo*, Vol. II, p. 507.

[11] See *rollo*, Vol. I, p. 48; and *rollo*, Vol. II, pp. 540-541.

[12] Complaints were likewise filed by Alexander Castillo and Jojo N. Nace in NLRC Case No. 04-05060-13, but the latter opted to settle their claims with PPI and CBMI. As to Eduardo M. Buot, Jr. and Michael Bachicha, the latter failed to appear and file their respective position papers; thus, their complaints were dismissed for lack of interest (see *id.* at 53).

[13] The Complaints were likewise filed against PPI and CBMI's respective Presidents, *i.e.*, Jorge Araneta, and Salvador Ortañez (see CA *rollo*, Vol. I, pp. 66-88).

of Services[14] with CBMI to perform janitorial, bussing, kitchen, table service, cashiering, warehousing, delivery, and allied services in PPI's favor. It also contended that respondents were assigned to various branches of Pizza Hut and were performing tasks in accordance with CBMI's manner and method, free from the direction and control of PPI.[15]

On the other hand, CBMI admitted that respondents were its employees, and that it paid their wages and remitted their SSS,[16] PhilHealth,[17] and Pag-IBIG[18] contributions. It insisted that it is a legitimate job contractor, as it possesses substantial capital and a Department of Labor and Employment (DOLE) Certificate of Registration;[19] undertakes a business separate and distinct from that of PPI based on its Articles of Incorporation;[20] and more importantly, retained and exercised the right of control over respondents. Moreover, CBMI explained that it had no choice but to recall, and subsequently, place respondents in floating status, considering that PPI had reduced its need for services in some Pizza Hut branches. Lastly, CBMI maintained that before it had the opportunity to re-assign respondents, the latter already filed their complaints.[21]

The LA s Ruling

In a Decision[22] dated August 30, 2013, the LA found PPI and CBMI jointly and severally liable for illegal dismissal, and

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[14] See copies of various contracts of service between Pizza Hut and CBMI; *rollo*, Vol. I, pp. 112-202.

[15] See *id*. at 48-49.

[16] Stands for "Social Security Service."

[17] Stands for "Philippine Health Insurance Corporation."

[18] Stands for "*Pagtutulungan sa Kinabukasan: Ikaw, Bangko, Industria at Gobyerno*."

[19] See CA *rollo*, Vol. I, p. 479.

[20] See CA *rollo*, Vol. II, p. 754.

[21] See *rollo*, Vol. I, p. 50.

[22] CA *rollo*, Vol. I, pp. 53-65.

accordingly, ordered them to immediately reinstate respondents to their former positions without loss of seniority rights and privileges and to pay respondents their full backwages and moral and exemplary damages.[23]

The LA ruled that respondents were regular employees of PPI and not of CBMI, as they were repeatedly hired to perform work that was usually necessary and desirable to the main business of PPI. It observed that while CBMI was able to establish compliance with the substantial capital requirement, it failed to show that it undertook the contract work on its own account. On the other hand, it found that PPI exercised control over respondents through the numerous certifications issued to them, *e.g.*, for delivering hospitality behavior, for demonstrating skills and knowledge in the areas of cooking, for having completed training, for being an outstanding rider, and for exemplary performance.[24]

Moreover, the LA took judicial notice of the case of *Philippine Pizza, Inc. v. Noel Matias*[25] (*Philippine Pizza, Inc.*), which involved a similar complaint for illegal dismissal filed by a delivery rider of Pizza Hut. In the said case, the Court disregarded the separate personalities of PPI and CBMI, holding that they were engaged in a prohibited labor-only contracting arrangement.[26]

Aggrieved, PPI and CBMI appealed[27] to the National Labor Relations Commission (NLRC).

The NLRC s Ruling

In a Decision[28] dated January 28, 2014, the NLRC reversed and set aside the LA's Decision and dismissed the complaints

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[23] See *id*. at 63-65.

[24] See *id*. at 59-60.

[25] See Minute Resolution in G.R. No. 200656, April 16, 2012.

[26] See CA *rollo*, Vol. I, p. 61.

[27] See *rollo*, Vol. II, pp. 453-471 (for PPI) and 504-536 (for CBMI).

[28] *Id*. at 537-552.

for lack of merit.[29] The NLRC found that CBMI is a legitimate job contractor, as it has sufficient capital and investment to properly carry out its obligation with PPI, as well as adequate funds to cover its operational expenses. It also observed that CBMI is presumed to have complied with all the requirements of a legitimate job contractor in light of the Certificate of Registration issued by the DOLE.[30]

The NLRC also held that there was no employer-employee relationship between PPI and respondents, observing that the mere issuance of Pizza Hut's certifications was insufficient to show the element of control. On the contrary, CBMI was the one which ultimately exercised control and supervision over respondents, as it assigned at least one (1) supervisor in respondents' respective workplaces to regularly control, supervise, and monitor their attendance and performance.[31]

Meanwhile, the NLRC ruled that the principle of *stare decisis* could not be applied to the instant case, since *Philippine Pizza, Inc.*'s case was resolved through a mere minute resolution, and as such, was bereft of a complete statement of the facts of the case, as well as the applicable laws and jurisprudence. It also declared that respondents' floating status did not constitute dismissal from service, as it was done in the exercise of CBMI's management prerogative.[32]

Dissatisfied, respondents sought reconsideration,[33] which was denied in a Resolution[34] dated April 30, 2014. Thus, they filed a petition for *certiorari*[35] before the CA.

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[29] *Id.* at 551.

[30] See *id.* at 549-550.

[31] *Id.* at 550.

[32] See *id.* at 550-551.

[33] Not attached to the records.

[34] *Rollo*, Vol. II, pp. 553-554.

[35] Dated July 11, 2014. *Id.* at 556-580.

The CA s Ruling

In a Decision[36] dated March 30, 2016, the CA annulled and set aside the NLRC ruling, and accordingly, reinstated the LA's ruling.[37] In holding PPI and CBMI jointly and severally liable to respondents, the CA applied the principle of *stare decisis*, relying on the Court's ruling in *Philippine Pizza, Inc*. that CBMI is engaged in prohibited labor-only contracting and thus, PPI is the principal employer of respondents. According to the CA, there was no showing that CBMI supervised and evaluated the performance of the employees who were deployed to Pizza Hut. CBMI likewise did not prove that it had established the working methods and procedures of the said employees. On the contrary, it found PPI to have exercised control and supervision over its employees in view of the awards and seminars given to them.[38]

Moreover, the CA declared that respondents were regular employees of PPI, having rendered service for more than a year, specifically ranging from seven (7) to eleven (11) years.[39]

Unperturbed, PPI and CBMI moved for reconsideration,[40] which was denied in a Resolution[41] dated January 6, 2017; hence, this petition filed by PPI.

The Issues Before the Court

The issues to be resolved by the Court are whether or not the CA: (*a*) correctly relied on the ruling in *Philippine Pizza, Inc*. in concluding that CBMI is engaged in a prohibited labor-only contracting arrangement with PPI; and (*b*) correctly ruled that respondents were illegally dismissed from employment.

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[36] *Rollo*, Vol. I, pp. 46-60.

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

[38] See *id*. at 55-57.

[39] *Id*. at 57.

[40] See *rollo*, Vol. II, pp. 617-641 (for PPI) and pp. 643-667 (for CBMI).

[41] *Rollo*, Vol. I, pp. 62-63.

The Court s Ruling

The petition is meritorious.

At the outset, the Court stresses the distinct approach in reviewing a CA ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC Decision.[42]

Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[43]

In labor cases, grave abuse of discretion may be attributed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition.[44]

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[42] See *Quebral v. Angbus Construction, Inc.*, G.R. No. 221897, November 7, 2016, 807 SCRA 176, 184, citing *Montoya v. Transmed Manila Corporation*, 613 Phil. 696, 707 (2009).

[43] See *Quebral v. Angbus Construction, Inc.*, *id.* at 186, citing *Gadia v. Sykes Asia, Inc.*, 752 Phil. 413, 419-420 (2015).

[44] See *Quebral v. Angbus Construction, Inc.*, *id.*, citations omitted.

Guided by the foregoing considerations, the Court finds that the CA erroneously ascribed grave abuse of discretion on the part of the NLRC. In arriving at its Decision, the CA adopted the Court's minute resolution in *Philippine Pizza, Inc.*, as it purportedly stemmed from a similar complaint for illegal dismissal filed by a delivery rider against PPI and CBMI. In the said case, the Court found CBMI to be a labor-only contractor and held PPI as the employer of the delivery rider.

The CA's reliance on the *Philippine Pizza, Inc.*'s minute resolution is, however, misplaced. Case law instructs that although the Court's dismissal of a case via a minute resolution constitutes a disposition on the merits, the same could not be treated as a binding precedent to cases involving other persons who are not parties to the case, or another subject matter that may or may not have the same parties and issues.[45] In other words, a minute resolution does not necessarily bind non-parties to the action even if it amounts to a final action on a case.[46]

In this case, records do not bear proof that respondents were also parties to the *Philippine Pizza, Inc.*'s case or that they participated or were involved therein. Moreover, there was no showing that the subject matters of the two (2) cases were in some way similar or related to one another, since the minute resolution in the case of *Philippine Pizza, Inc.* did not contain a complete statement of the facts, as well as a discussion of the applicable laws and jurisprudence that became the basis for the Court's minute resolution therein. In this light, the principle of *stare decisis* cannot be invoked to obtain a dismissal of the instant petition.

Instead, independently considering the attending circumstances of this case, the Court finds that the NLRC did not in fact gravely abuse its discretion in holding that CBMI

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[45] See *Read-Rite Philippines, Inc. v. Francisco*, G.R. No. 195457, August 16, 2017, citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, 616 Phil. 387, 421 (2009).

[46] See *Read-Rite Philippines, Inc. v. Francisco*, *id.*, citing *Alonso v. Cebu Country Club, Inc.*, 426 Phil. 61, 86 (2002).

is a legitimate job contractor, and consequently, the employer of respondents. As the NLRC aptly pointed out, CBMI is presumed to have complied with all the requirements of a legitimate job contractor, considering the Certificates of Registration[47] issued to it by the DOLE. Although not a conclusive proof of legitimacy, the certification nonetheless prevents the presumption of labor-only contracting from arising. It gives rise to a disputable presumption that the contractor's operations are legitimate.[48]

The NLRC was also correct in holding that CBMI has substantial capital and investment. Based on CBMI's 2012 General Information Sheet,[49] it has an authorized capital stock in the amount of ₱10,000,000.00 and subscribed capital stock in the amount of ₱5,000,000.00, ₱3,500,000.00 of which had already been paid-up. Additionally, its audited financial statements[50] show that it has considerable current and non-current assets amounting to ₱85,518,832.00. Taken together, CBMI has substantial capital to properly carry out its obligations with PPI, as well as to sufficiently cover its own operational expenses.

More importantly, the NLRC correctly gave credence to CBMI's claim that it retained control over respondents, as shown by the deployment of at least one (1) CBMI supervisor in each Pizza Hut branch to regularly oversee, monitor, and supervise the employees' attendance and performance. This claim was further substantiated by CBMI's area coordinators, who admitted in their Affidavits[51] that: (*a*) they oversee, monitor, and ensure CBMI employees' compliance with company policies, rules, and regulations whichever Pizza Hut branch they may be assigned; (*b*) they are responsible for ensuring that CBMI

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[47] CA *rollo*, Vol. I, pp. 479-481.

[48] See *W.M. Manufacturing, Inc. v. Dalag*, 774 Phil. 353, 378 (2015).

[49] CA *rollo*, Vol. II, pp. 768-777.

[50] *Id*. at 780-782.

[51] *Id*. at 803-811.

employees perform their tasks and functions in the manner that CBMI mandates; (*c*) they regularly visit and monitor each area of deployment; (*d*) they track and confirm the attendance and punctuality of CBMI employees; and (*e*) they constantly inform CBMI's Human Resource Department (HRD) Manager of any company violations committed by the employees.

Furthermore, the existence of the element of control can also be inferred from CBMI's act of subjecting respondents to disciplinary sanctions for violations of company rules and regulations as evidenced by the various Offense Notices and Memoranda[52] issued to them. Additionally, records show that CBMI employed measures to ensure the observance of due process before subjecting respondents to disciplinary action. In fact, CBMI's HRD Manager, Sarah G. Delgado, attested in her Affidavit[53] that one of her duties is to make sure that due process is equally afforded to all erring CBMI employees before a disciplinary action is imposed upon them.

Lastly, the NLRC correctly found that no employer-employee relationship exists between PPI and respondents, and that the latter were employees of CBMI. Records reveal that respondents applied for work with CBMI and were consequently selected and hired by the latter.[54] They were then required by CBMI to attend orientations and seminars wherein respondents were apprised of the working conditions, basic customer service, basic good grooming, and company rules and regulations.[55] During the course of their employment, CBMI paid their wages[56] and remitted/paid their SSS, PhilHealth, and Pag-IBIG

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[52] See copies of various Offense Notices and Memoranda issued to respondents; *id*. at 812-818.

[53] *Id*. at 800-802.

[54] See copies of respondents' bio-data and personnel information sheets; *id*. at 641-642, 645-649, and 651-655.

[55] See copies of various certifications; *id*. at 643, 644, and 650.

[56] See copies of respondents' pay slips; *id*. at 656-667.

contributions.[57] CBMI also exercised the power of discipline and control over them as discussed in the preceding paragraphs.

From all indications, the Court finds that CBMI is a legitimate job contractor, and thus, the employer of respondents.

As to the issue of illegal dismissal, the Court agrees with the finding of the NLRC that respondents were not illegally dismissed from work. Records show that while PPI denied the existence of an employer-employee relationship with respondents, CBMI actually acknowledged that respondents were its employees. CBMI likewise presented proof that it duly informed respondents of their impending lay-off, yet they immediately filed the complaints before it had the chance to re-deploy them.[58] On the other hand, respondents did not even refute CBMI's claim that they were informed of its decision to place them in floating status pending their re-deployment. As such, respondents could not have been illegally terminated from work, for they were placed in a temporary lay-off status when they prematurely filed the complaints.[59] There being no dismissal to speak of, respondents were thus not illegally dismissed by CBMI, their actual employer.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 30, 2016 and the Resolution dated January 6, 2017 rendered by the Court of Appeals in CA-G.R. SP No. 136333 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the

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[57] See copies of computer-generated reports of the SSS, PhilHealth, and Pag-IBIG remittances/payments made by CBMI for respondents; *id*. at. 668-724. See also copies of the certifications of such remittances; *id*. at 725-730.

[58] See copies of various memoranda issued by CBMI to respondents informing them of their impending lay-off; *id*. at 731-735. See also copies of affidavits of CBMI's officials attesting to PPI's decision to reduce its need for services in some of its branches; *id*. at 736-740.

[59] See *Innodata Knowledge Services, Inc. v. Inting*, G.R. No. 211892, December 6, 2017 and *Mindanao Terminal and Brokerage Service, Inc. v. Nagkahiusang Mamumuo sa Minterbro-Southern Philippines Federation of Labor*, 700 Phil. 205 (2012).

Decision dated January 28, 2014 and the Resolution dated April 30, 2014 of the National Labor Relations Commission in NLRC-NCR Nos. 04-05060-13, 05-06931-13, 05-07363-13, 05-07941-13, and 06-08125-13 are **REINSTATED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[**] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 232354. August 29, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANNY LUMUMBA *y* MADE,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, AS AMENDED BY R.A. 10640; REQUIREMENTS OF SECTION 21 FOR THE CUSTODY AND DISPOSITION OF THE CONFISCATED DRUGS, NOT COMPLIED WITH; THE ABSENCE OF JUSTIFIABLE EXPLANATION AS TO NON-COMPLIANCE WITH THE RULES MILITATE AGAINST A FINDING OF GUILT BEYOND REASONABLE DOUBT AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAD BEEN COMPROMISED,

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[**] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

HENCE, ACCUSED IS ACQUITTED.— Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, spells out the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs, and/or drug paraphernalia. x x x The rules clearly provide that the apprehending team should mark and conduct a physical inventory of the seized items, and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence. x x x Contrary to the conclusion of the CA, the reason given cannot be deemed a justifiable ground for non-compliance of the requirement for the presence of the insulating witnesses. There was no proof that other measures were taken to ensure that any other elected public official could be present after the alleged members of the said barangay refused to do so. Police officers must prove that they exerted efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. We do not find that to be so in this case. x x x Considering the absence of a justifiable explanation as to non-compliance with the rules, as well as the conflicting testimonies on material facts, We find that the prosecution failed to prove its case. The *corpus delicti's* integrity cannot then be said to have been properly established. The breaches in the procedure committed by the police officers, and left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the *corpus delicti* had been compromised. The Court, therefore, acquits accused-appellant on the basis of reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

Before Us is an appeal, assailing the September 30, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07444, which affirmed the March 31, 2015 Decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 227, which convicted accused-appellant for violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the "Comprehensive Drugs Act of 2002".

The Facts

An Information[3] for the sale of 0.64 gram of *marijuana fruiting tops* was filed against accused-appellant, to which he pleaded not guilty to. During the pre-trial conference, the parties stipulated, among others, to dispense with the testimony of the Forensic Chemist, Police Senior Inspector May Andrea Bonifacio (PSI Bonifacio).

During trial, the prosecution established that on September 19, 2008, a confidential informant (CI) went to the Quezon City Police District (QCPD), to report to Police Inspector Romeo Rabuya (PI Rabuya), the illegal drug activities of accused-appellant. The CI claimed that he personally knew accused-appellant as a drug pusher in Barangay Tatalon, Quezon City.[4]

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[1] Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Franchito N. Diamante and Carmelita Salandanan-Manahan. CA *rollo*, pp. 108-121.

[2] Penned by Presiding Judge Elvira D.C. Panganiban. *Id.* at 47-53.

[3] "That on or about the 21st day of September (,) 2008, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as a broker in the said transaction, 0.64 (zero point sixty four) grams (sic) of Marijuana Fruiting Tops, a dangerous drug.

CONTRARY TO LAW." *Id.* at 47-108.

[4] *Id.* at 110.

PI Rabuya then directed PO1 Franklin Gadia (PO1 Gadia) and PO1 Erwin Bautista (PO1 Bautista) to validate the report and conduct surveillance. PO1 Gadia, PO1 Bautista, and the CI proceeded to Barangay Tatalon, where the CI conducted a test buy through a contact and was able to confirm that accused-appellant was selling illegal drugs.[5]

A buy-bust operation was then recommended, and approved to be executed against accused-appellant. PO1 Gadia was designated as the poseur-buyer, and PO1 Bautista was the arresting officer. The buy-bust money consisting of a One Hundred Peso bill with serial number JYO75711 was marked with PO1 Gadia's initial. A pre-operation report and coordination form were submitted to the Philippine Drug Enforcement Agency (PDEA), setting forth the details of the operation.[6]

On September 21, 2008, the team proceeded to the target area in Barangay Tatalon, Quezon City, and strategically positioned themselves within visible sight of the operation. The team saw a man standing in front of the Bolanos Compound ROTC Hunters, who, turned out to be the accused-appellant. PO1 Gadia and the CI approached him, and the CI introduced PO1 Gadia to accused-appellant. PO1 Gadia told accused-appellant that he wanted to buy marijuana worth ₱100.00. After he was assured that PO1 Gadia was indeed interested in buying marijuana, accused-appellant took out from his right pocket a small heat-sealed transparent plastic sachet, containing dried marijuana leaves with fruiting tops. PO1 Gadia then gave accused-appellant the marked ₱100.00 bill who placed the same in his pocket. PO1 Gadia placed the plastic sachet he bought inside his pocket, and executed the pre-arranged signal by scratching his head. He then held the right hand of accused-appellant and introduced himself as a police officer.[7]

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[5] *Id.*

[6] *Id.* at 48, 111.

[7] *Id.* at 49, 111.

PO1 Bautista approached accused-appellant upon seeing the pre-arranged signal and informed him that he was being arrested for illegal sale of drugs. The buy-bust money was recovered from the right front pocket of accused-appellant's pants.[8]

Evidence for the Prosecution

The seized item was inventoried and photographed in the presence of accused-appellant, the other police operatives, and media representative, Alice Francisco of DZAM.[9] It was raised during cross-examination that the media representative's address was not stated, thus, the court would be unable to subpoena her to affirm her presence during the inventory.[10]

During trial, PO1 Gadia testified that the inventory and photographs were taken at the actual site, while PO1 Bautista claimed that no photographs were taken at the place of arrest, but at the police station already.[11]

Accused-appellant was thereafter brought to the police station. PO1 Gadia, who was in possession of the seized marijuana, turned over the same to PO2 Caranza. PO2 Caranza, prepared the Request for Laboratory Examination. PO1 Gadia and PO1 Bautista delivered the seized specimen, and thereafter requested for its examination to the crime laboratory.

PSI Bonifacio personally received the specimen and the request for examination from PO1 Bautista. Her qualitative examination of the same found it positive for the presence of marijuana.[12]

Evidence for the Defense

Accused-appellant, for his part, denied the allegations against him. He claimed that he was resting in his room on September 19,

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[8] *Id.* at 111.

[9] *Id.* at 49, 112.

[10] *Id.* at 49-50, 112.

[11] *Id.* at 50.

[12] *Id.* at 112.

2008 when someone knocked on the door. When he opened it, PO1 Bautista, PO1 Gadia and PO2 Caranza were there and invited him to go to the precinct.

At the police station, the police officers asked him about the whereabouts of his niece Juday, who was living with him. Since he was not able to answer the question, he was then placed in the detention cell. During his detention, accused-appellant claimed that marijuana was planted on him.[13]

The RTC Ruling

In a Decision[14] dated March 31, 2015, the RTC found that all elements of the crime for illegal sale of dangerous drugs were established. It also found that although there were inconsistencies in the testimonies of PO1 Gadia and PO1 Bautista as to where the photographs were taken, it found the same to be minor as it did not affect the credibility of the witnesses nor the prosecution's case. It disposed, thus:

WHEREFORE, IN THE LIGHT OF THE FOREGOING, JUDGMENT IS HEREBY RENDERED finding Accused DANNY LUMUMBA Y MADE GUILTY beyond reasonable doubt of the offense charged for violation of Section 5, ART, II, R.A. 9165 for having sold 0.64 gram of Marijuana Fruiting Tops, a dangerous drug and he is hereby sentenced to suffer THE PENALTY OF LIFE IMPRISONMENT AND TO PAY A FINE OF FIVE HUNDRED THOUSAND (₱500,000.00) PESOS.

In the service of his sentence, herein accused shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

The Branch Clerk of this Court is hereby ordered to record the dispositive portion of this Decision in the Criminal Docket of the Court and to turn over the subject specimen covered by Chemistry Report No. D-465-08, consisting of 0.64 gram of Marijuana Fruiting

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[13] *Id*. at 51, 112.

[14] *Id*. at 47-53.

Tops too (sic) the Chief of PDEA Crime Laboratory so that the same shall be included in PDEA's next scheduled date of burning and destruction.

She is also ordered to prepare the Mittimus and necessary documents for the immediate transfer of the accused' (sic) custody to the Bureau of Corrections in Muntinlupa City, pursuant to the SC Circular.

SO ORDERED.

On appeal, the CA sustained accused-appellant's conviction. It echoed that the elements for the illegal sale of marijuana were established. It found that the non-compliance with Sec. 21 of RA 9165 was negligible, considering that the prosecution was able to preserve the integrity and evidentiary value of the illegal drug.

Hence, this appeal.

The Court's Ruling

Accused-appellant questions the integrity of the *corpus delicti* and points out the various non-compliance with Sec. 21 of RA 9165, *i.e.,* accused-appellant was not asked to sign the inventory or furnished a copy therewith; there were no elected official or DOJ representative; the media representative could not be subpoenaed because the prosecution never gave her address; the photographs were questionable; and, the prosecution gave no sufficient justification as to the police officer's lapses.

The Office of the Solicitor General (OSG) counters that the prosecution had established an unbroken chain of custody of the illegal drug seized from accused-appellant, and that the identity and integrity of the substance seized and examined was clearly established. It emphasized that the rules do not require strict compliance with procedural requirements as long as the integrity of the seized evidence has been duly preserved. It also insisted on the credibility of the witnesses and disregarded the minor inconsistencies in their testimonies, if any.

The appeal is meritorious.

Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, spells out the requirements

for the custody and disposition of confiscated, seized, and/or surrendered drugs, and/or drug paraphernalia. Section 21(1) to (3) stipulate the requirements concerning custody prior to the filing of a criminal case:[15]

> Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) *The apprehending team* having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment ***shall, immediately after seizure and confiscation****, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof:* Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That *noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items;*
>
> (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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[15] *People vs. Que*, G.R. No. 212994, January 31, 2018.

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject items: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.]

The rules clearly provide that the apprehending team should mark and conduct a physical inventory of the seized items, and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence.[16]

The case of *People of the Philippines vs. Año*[17] makes a thorough discussion of the procedural requirements as regards the presence of insulating witnesses required by law, thus:

In this relation, Section 21, Article II of RA 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 RA 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

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[16] *People v. Que, supra* note 15.

[17] G.R. No. 230070, March 14, 2018.

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. In the case of *People v. Mendoza*, the Court stressed that **"[w]ithout the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, 'planting' or contamination of the evidence** that had tainted the buy-busts conducted under the regime of [RA] 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to **negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21of RA9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 - which is now crystallized into statutory law with the passage of RA 1064030 - provide that **non-compliance with the requirements of Section 21, Article II of RA 9165 - under justifiable grounds – will not 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 are properly preserved by the apprehending officer or team.** In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe,* **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.** Also, in *People v. De Guzman,* it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.** (Emphasis Supplied)

Here, there were various lapses in the procedure that were left unexplained or with no justifiable grounds for non-

compliance. *First*, a scrutiny of the inventory receipt[18] would reveal that accused-appellant did not sign the same, which was also confirmed during trial, in the testimony of PO1 Gadia:

FISCAL BACOLOR: Who were present when you conducted the said Inventory?
WITNESS: Myself, PO1 Erwin Bautista and my other operatives.

FISCAL BACOLOR: Where is the accused when you conducted the Inventory?
WITNESS: He was with us present when we conducted an Inventory.

FISCAL BACOLOR: Did you ask him to sign the Inventory?
WITNESS: No, sir.[19]

x x x x x x x x x

Second, only the media representative was present and signed the said inventory receipt:

FISCAL BACOLOR: You mentioned that there was a representative from the Media who was present when you made the Inventory, can you please tell us who was that representative from the Media?
WITNESS: Yes, this person, Alice Francisco from DZAM.[20]

x x x x x x x x x

FISCAL COLES: And who were present during the inventory?
WITNESS: P01 Franklin Gadia, I, and a representative from OFW Asia, a media representative Alice Francisco, Ma'am.

FISCAL COLES: Where was the accused at that time?
WITNESS: He was also present, Ma'am.

FISCAL COLES: Why there w ere (sic) no representatives from DOJ and from the barangay?
WITNESS: That was only the available witness na nakuha namin, si Alice Francisco, from media.

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[18] Original Records, p. 17.

[19] TSN, May 19, 2010, p. 8.

[20] TSN, May 19, 2010, p. 9.

COURT: What time was this?
WITNESS: 1:00 o'clock p.m., your Honor.

COURT: In the afternoon, and yet there were no available witnesses, mandated witnesses required by the law?
WITNESS: Yun pong kasi mga nasa barangay, your Honor, hindi po sila nikikialam (sic), sa madali't salita, your Honor, naglilinis po sila, hindi po sila tumitistigo.

COURT: Are you trying to tell the court that they refused?
WITNESS: Yes, your Honor, parang ayaw po nilang makialam.

COURT: Saan barangay yan?
WITNESS: Barangay Tatalon, your Honor.

COURT: Were you able to talk to the Barangay Chairman?
WITNESS: No, your Honor, that was only the media representative, your Honor.

COURT: Be candid with the court, wala kayong pinuntahang barangay?
WITNESS: It was the investigator who invited the supposed witnesses, your Honor.

x x x x x x x x x[21]

Contrary to the conclusion of the CA, the reason given cannot be deemed a justifiable ground for non-compliance of the requirement for the presence of the insulating witnesses. There was no proof that other measures were taken to ensure that any other elected public official could be present after the alleged members of the said barangay refused to do so. Police officers must prove that they exerted efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[22] We do not find that to be so in this case.

Third, there was disparity in the testimonies of PO1 Gadia and PO1 Bautista as to where the photographs were taken:

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[21] TSN, March 18, 2014, pp. 4-5.

[22] *People v. Angeles*, G.R. No. 218947, June 20, 2018.

x x x x x x x x x

Q: And, where did you conduct the inventory, Mr. Witness?
A: At the area, sir.

Q: And, who in particular conducted the inventory?
A: I was the one and PO1 Bautista.

Q: Who wrote the entries in the inventory?
A: PO1 Bautista, sir.

x x x x x x x x x

Q: Now, were there pictures taken, Mr. Witness?
A: Yes, sir, at the area.

Q: So there were pictures taken in the area?
A: Yes, sir.

Q: Pictures of the accused as well as the surrounding of the area or the place of operation?

A: Picture of the accused and the specimen.[23]

x x x x x x x x x

ATTY. MALLABO: Aside from the markings, did you take photographs at the place of seizure?
WITNESS: No, sir.

ATTY. MALLABO: Are you not supposed to photograph the item you received or you recovered or you seized from any person right there at the place of seizure, that is the requirement of the law? Hindi mo ginawa?
WITNESS: Hindi po, sir.

ATTY. MALLABO: So, your statement is insufficient?
WITNESS: Sir, ginawa naman po namin sa opisina, sir.

ATTY. MALLABO: You are not supposed to bring the money right at the place of seizure, that is my question. Your answer is, no, I did not. Therefore, your statement is insufficient, correct?
WITNESS: No, sir.

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[23] TSN, March 20, 2012, p. 4.

FISCAL ZULUETA: It is up to the court to determine.

x x x x x x x x x

ATTY. MALLABO: And also the inventory, there is lack of the mandatory witnesses as required by Section 21 of Republic Act 9165?
WITNESS: Yes, sir.

x x x x x x x x x[24]

As a rule, inconsistencies or discrepancies in the testimonies of witnesses on minor details do not impair the credibility of the witnesses. However, irreconcilable inconsistencies on material facts diminish, or even destroy, the veracity of their testimonies.[25]

In case of non-compliance, the prosecution must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are, or that they even exist. Indeed, failure to strictly comply with this rule, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved."[26] Here, the justifiable grounds were markedly absent.

Considering the absence of a justifiable explanation as to non-compliance with the rules, as well as the conflicting testimonies on material facts, We find that the prosecution failed to prove its case. The *corpus delicti's* integrity cannot then be said to have been properly established.

The breaches in the procedure committed by the police officers, and left unacknowledged and unexplained by the State, militate

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[24] TSN, March 18, 2014, pp. 11-12.

[25] *People v. Rashid Binasing,* G.R. No. 221439, July 4, 2018.

[26] *People v. Dumagay,* G.R. No. 216753, February 7, 2018; see *People v. Almorfe*, *et al.,* 631 Phil. 51, 60 (2010).

against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the *corpus delicti* had been compromised.[27] The Court, therefore, acquits accused-appellant on the basis of reasonable doubt.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 30, 2016, docketed as CA-G.R. CR-H.C. No. 07444 is hereby **REVERSED** and **SET ASIDE**.

Accordingly, accused-appellant DANNY LUMUMBA y MADE is hereby **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is **DIRECTED** to cause the immediate release of accused-appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five (5) days from notice.

SO ORDERED.

Leonardo-de Castro, C.J. (*Chairperson*), *Bersamin, del Castillo,* and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 232619. August 29, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOMAR QUILANG *y* BANGAYAN**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF

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[27] *People v. Ferrer*, G.R. No. 213914, June 6, 2018.

DANGEROUS DRUGS; ELEMENTS, PRESENT IN CASE AT BAR.— For the conviction of an accused charged with Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. Here, the courts *a quo* correctly found that all the elements of the crime charged are present, as the records clearly show that Quilang was caught *in flagrante delicto* selling *shabu* to the poseur-buyer during a legitimate buy-bust operation conducted by the operatives of PDEA Region 2.

2. ID.; ID.; ID.; IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY; REQUIREMENTS OF THE CHAIN OF CUSTODY PROCEDURE, SUFFICIENTLY COMPLIED WITH.— In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. It is well to clarify, however, that under Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640, the foregoing procedures may be instead conducted at the place where the arrest or seizure occurred, at the nearest police station or at the nearest office of the apprehending officer/ team, whichever is practicable, in instances of warrantless seizures – such as in buy-bust operations. In fact, case law recognizes that "***marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team***." Hence, the failure to immediately mark the confiscated items at the place of arrest

> neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. x x x [T]he Court holds that there is sufficient compliance with the chain of custody rule, and thus, the integrity and evidentiary value of the *corpus delicti* has been preserved. Perforce, Quilang's conviction must stand.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated June 22, 2016 of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 06116, which affirmed the Judgment[3] dated April 26, 2013 of the Regional Trial Court of Tuguegarao City, Branch 3(RTC) in Criminal Case No. 14123, finding accused-appellant Jomar Quilang *y* Bangayan (Quilang) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

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[1] See Notice of Appeal dated July 27, 2016; *rollo*, pp. 22-23.

[2] *Id.* at 2-21. Penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Rosmari D. Carandang and Socorro B. Inting, concurring.

[3] CA *rollo*, pp. 50-58. Penned by Judge Marivic A. Cacatian-Beltran.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

The Facts

This case stemmed from an Information[5] filed before the RTC accusing Quilang of violating Section 5, Article II of RA 9165.The prosecution alleged that at around 12:30 in the afternoon of March 28, 2011, operatives of the Philippine Drug Enforcement Agency (PDEA) Region 2 Office conducted a buy-bust operation against Quilang, during which a plastic sachet containing 0.06 gram of suspected methamphetamine hydrochloride, or *shabu*, was recovered from him. The team, together with Quilang, then proceeded to the PDEA Region 2 Office where the seized item was marked, photographed, and inventoried in the presence of Barangay Captain Marcelo Narag, Department of Justice (DOJ) representative Ferdinand Gangan, and media representative Edmund Pancha. Thereafter, the seized sachet was brought to the crime laboratory where, after examination, it was confirmed to be containing *shabu*.[6]

In defense, Quilang denied the charge against him. He narrated that at around two (2) o'clock in the afternoon of March 28, 2011, he was watching television with his son inside the house of his grandmother when suddenly, armed men, who identified themselves as PDEA agents, alighted from a van and accused him of selling drugs. When Quilang denied the accusation, one of the armed men reached inside the front pocket of Quilang's shirt and took out three (3) ₱500.00 bills and a cellphone. Thereafter, the armed men dragged him into the van and brought him to the police station, where he first saw the sachet allegedly seized from him.[7]

In a Judgment[8] dated April 26, 2013, the RTC found Quilang guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs, and accordingly, sentenced him to suffer the penalty of

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[5] Dated April 25, 2011. Records, p. 1.

[6] See *rollo*, pp. 4-9.

[7] See *id*. at 9-10.

[8] CA *rollo*, pp. 50-58.

life imprisonment and to pay a fine in the amount of ₱500,000.00.[9] The RTC held that the prosecution sufficiently established all the elements of the said crime, and further ruled that the integrity and evidentiary value of the *corpus delicti* were preserved. In light of the positive testimonies of the prosecution witnesses, the RTC rejected Quilang's defense of denial, further pointing out that if he and his family were truly aggrieved by the PDEA agents' actions, they could have easily filed a complaint against them.[10] Aggrieved, Quilang appealed the RTC ruling to the CA.[11]

In a Decision[12] dated June 22, 2016, the CA affirmed the RTC ruling,[13] holding, among others, that the marking of the seized item at the nearest office of the apprehending team constitutes sufficient compliance with the chain of custody rule.[14]

Hence, this appeal seeking that Quilang's conviction be overturned.

The Court's Ruling

The appeal is without merit.

For the conviction of an accused charged with Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[15] Here, the courts *a quo* correctly found that all the elements of the crime charged are present, as the records clearly show that Quilang was caught *in flagrante delicto* selling *shabu* to the poseur-buyer during a

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

[10] See *id.* at 55-57.

[11] See Notice of Appeal dated April 26, 2013; records, p. 169.

[12] *Rollo*, pp. 2-21.

[13] *Id.* at 20.

[14] See *id.* at 13-20.

[15] *People v. Sumili*, 753 Phil. 342, 348 (2015).

legitimate buy-bust operation conducted by the operatives of PDEA Region 2. Since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.[16]

In an attempt to absolve himself from criminal liability, Quilang argues, *inter alia*, that the PDEA agents failed to comply with the chain of custody rule as the marking and inventory of the seized items were not done immediately at the place of the alleged buy-bust operation but at the PDEA Region 2 Office, and that such failure had created doubt as to the integrity and evidentiary value of the seized item.[17]

Quilang's contention is untenable.

In cases for Illegal Sale and/or Possession[18] of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus*

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[16] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, citing *Peralta v. People*, G.R. No. 221991, August 30, 2017, further citing *People v.Matibag*, 757 Phil. 286, 293 (2015).

[17] See *rollo*, p. 13. See also Brief for the Accused-Appellant dated April 4, 2014, *CA Rollo*, pp. 38-48.

[18] The elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*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. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Bio,* 753 Phil. 730, 736 [2015].)

delicti of the crime.[19] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[20]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[21] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. It is well to clarify, however, that under Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640,[22] the foregoing procedures may be instead conducted at the place where the arrest or seizure occurred, at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in instances of warrantless seizures – such as in buy-bust operations. In fact, case law recognizes that "***marking upon immediate confiscation contemplates even marking at the nearest police***

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[19] See *People v. Crispo*, *id.*; *People v. Sanchez*, *id.*; *People v. Magsano*, *id.*, *People v. Manansala*, *id.*, *People v. Miranda*, *id.*; *People v. Mamangon*, *id.* See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[20] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012). See also *People v. Manansala*, *id.*

[21] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v.Crispo*, *supra* note 18; *People v. Sanchez*, *supra* note 18; *People v. Magsano*, *supra* note 18; *People v. Manansala*, *id.*; *People v. Miranda*, *supra* note 18; and *People v. Mamangon*, *supra* note 18. See also *People v. Viterbo*, *supra* note 19.

[22] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

station or office of the apprehending team."[23] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[24]

In this case, it is glaring from the records that the buy-bust team comprising of PDEA operatives conducted the marking, physical inventory, and photography of the item seized from Quilang at their office, *i.e.*, PDEA Region 2 Office, and in the presence of a public elected official, a DOJ representative, and a media representative. Moreover, the poseur-buyer, IO1 Benjamin Binwag, Jr., positively identified during trial the item seized from Quilang during the buy-bust operation.[25] In view of the foregoing, the Court holds that there is sufficient compliance with the chain of custody rule, and thus, the integrity and evidentiary value of the *corpus delicti* has been preserved. Perforce, Quilang's conviction must stand.

WHEREFORE, the appeal is **DISMISSED**. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated June 22, 2016 of the Court of Appeals in CA-G.R. CR.-H.C. No. 06116 and **AFFIRMS** said Decision finding accused-appellant Jomar Quilang *y* Bangayan **GUILTY** beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165. Accordingly, he is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.

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[23] *People v. Mamalumpon*, 767 Phil. 845, 855 (2015), citing *Imson v. People*, 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia*, 718 Phil. 330, 348 (2013), citing *People v. Resurreccion*, 618 Phil. 520, 532 (2009).

[24] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

[25] See *rollo*, pp. 18-19. See also TSN, September 29, 2011, pp. 11-12.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.,* concur.

SECOND DIVISION

[A.C. No. 12196. September 3, 2018]

PABLITO L. MIRANDA, JR., *complainant, vs.* **ATTY. JOSE B. ALVAREZ, SR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; 2004 RULES ON NOTARIAL PRACTICE (NOTARIAL RULES); NOTARIES PUBLIC MUST OBSERVE WITH UTMOST CARE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF THEIR DUTIES; RATIONALE.— Time and again, the Court has held "[t]hat notarization of a document is not an empty act or routine. ***It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public***. Notarization converts a private document into a public document, thus, making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies[,] and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. For this reason, notaries public must observe with the utmost care the basic requirements in the performance of their duties. Otherwise, the confidence

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

of the public in the integrity of this form of conveyance would be undermined." The basic requirements a notary public must observe in the performance of his duties are presently laid down in the 2004 Rules on Notarial Practice. The failure to observe the requirements and/or comply with the duties prescribed therein shall constitute grounds for the revocation of the notarial commission of, as well as the imposition of the appropriate administrative sanction/s against, the erring notary public.

2. **ID.; ID.; NOTARIES PUBLIC; UNDER THE RULE, ONLY PERSONS WHO ARE COMMISSIONED AS NOTARY PUBLIC MAY PERFORM NOTARIAL ACTS WITHIN THE TERRITORIAL JURISDICTION OF THE COURT WHICH GRANTED THE COMMISSION; EXPLAINED.—** Under the Notarial Rules, "a person commissioned as a notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made. Commission either means the grant of authority to perform notarial [acts] or the written evidence of authority." "**Without a commission, a lawyer is unauthorized to perform any of the notarial acts**. A lawyer who acts as a notary public without the necessary notarial commission is remiss in his professional duties and responsibilities." Moreover, it should be emphasized that "[u]nder the rule, only persons who are commissioned as notary public may perform notarial acts **within the territorial jurisdiction of the court which granted the commission**."

3. **ID.; ID.; ID.; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE SIGNATORY TO THE DOCUMENTS IS IN THE NOTARY'S PRESENCE PERSONALLY AT THE TIME OF THE NOTARIZATION, AND PERSONALLY KNOWN TO THE NOTARY PUBLIC OR OTHERWISE IDENTIFIED THROUGH COMPETENT EVIDENCE OF IDENTITY.—** Under the Notarial Rules, "a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, the signatory shall sign or affix with a thumb or mark the notary public's notarial register. The purpose of these requirements is to enable the notary public

to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act." In *Gaddi v. Velasco*, the Court ruled that a notary public who notarizes a document despite the missing details anent the signatory's competent evidence of identity not only fails in his duty to ascertain the signatory's identity but also improperly notarizes an incomplete notarial certificate.

4. ID.; ID.; ID.; A NOTARY PUBLIC MUST FORWARD TO THE CLERK OF COURT WITHIN THE FIRST TEN (10) DAYS OF THE MONTH FOLLOWING, A CERTIFIED COPY OF EACH MONTH'S ENTRIES AND A DUPLICATE ORIGINAL COPY OF ANY INSTRUMENT ACKNOWLEDGED BEFORE THE NOTARY PUBLIC.— Under the Notarial Rules, a notary public must forward to the Clerk of Court, within the first ten (10) days of the month following, a certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public. According to case law, failure to comply with this requirement is "[a] ground for revocation of a notary public's commission."

5. ID.; ID.; ID.; FOR THE NUMEROUS VIOLATIONS OF THE NOTARIAL RULES, THE REVOCATION OF NOTARIAL COMMISSION AND PERPETUAL DISQUALIFICATION FROM BEING COMMISSIONED AS A NOTARY PUBLIC IS PROPER; CASE AT BAR.— x x x [T]he Court finds that respondent committed the following violations of the Notarial Rules: ***First***, respondent performed notarial acts without the proper notarial commission therefor. x x x ***Second***, respondent notarized a document that is bereft of any details regarding the identity of the signatory. x x x ***And third***, respondent failed to forward to the Clerk of Court (COC) of the commissioning court a certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before him. x x x Accordingly, in view of respondent's numerous violations of the Notarial Rules, the Court upholds the IBP's recommendation to revoke his incumbent notarial commission, if any, as well as to perpetually disqualify him from being commissioned as a notary public.

6. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); BY FLOUTING THE NOTARIAL RULES ON NUMEROUS OCCASIONS, A LAWYER IS ENGAGED IN UNLAWFUL CONDUCT WHICH RENDERS HIM LIABLE FOR VIOLATION OF THE PROVISIONS OF THE CPR; CASE AT BAR.— It should be emphasized that respondent's transgressions of the Notarial Rules also have a bearing on his standing as a lawyer. As a member of the Bar, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might erode the trust and confidence reposed by the public in the integrity of the legal profession. By flouting the Notarial Rules on numerous occasions, respondent engaged in unlawful conduct which renders him liable for violation of the following provisions of the CPR: 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 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar. Thus, aside from the above-stated penalties, the Court further suspends respondent from the practice of law for a period of two (2) years, consistent with prevailing jurisprudence on the subject matter.

7. REMEDIAL LAW; DISCIPLINE OF ATTORNEYS; THE LIFTING OF A LAWYER'S SUSPENSION IS NOT AUTOMATIC UPON THE EXPIRATION OF THE SUSPENSION PERIOD, SINCE THE SUSPENDED LAWYER MUST STILL FILE BEFORE THE COURT THE NECESSARY MOTION TO LIFT SUSPENSION AND OTHER PERTINENT DOCUMENTS.— In *Ladim v. Ramirez*, the Court explained that the lifting of a lawyer's suspension is not automatic upon the expiration of the suspension period. The lawyer must still file before the Court the necessary motion to lift suspension and other pertinent documents, which include certifications from the Office of the Executive Judge of the court where he practices his legal profession and from the IBP's Local Chapter where he is affiliated affirming that he ceased and desisted from the practice of law and has not appeared in court as counsel during the period of his suspension. Thereafter,

the Court, after evaluation, and upon a favorable recommendation from the OBC, will issue a resolution lifting the order of suspension and thus allow him to resume the practice of law. Prior thereto, the "suspension stands until he has satisfactorily shown to the Court his compliance therewith."

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is an administrative case against respondent Atty. Jose B. Alvarez, Sr. (respondent) for disbarment and perpetual disqualification as a notary public on the grounds of gross negligence and grave misconduct, as well as violation of the 2004 Rules on Notarial Practice[1] (Notarial Rules).

The Facts

On January 16, 2012, complainant Pablito L. Miranda, Jr. (complainant) filed a Complaint-Affidavit[2] before the Integrated Bar of the Philippines (IBP) – Commission on Bar Discipline, averring that respondent notarized certain documents during the year 2010 notwithstanding that his notarial commission for and within the jurisdiction of San Pedro, Laguna had already expired way back in December 31, 2005 and has yet to be renewed before the Regional Trial Court (RTC) of San Pedro, Laguna (RTC-San Pedro) where he resides and conducts his notarial businesses.[3]

In support thereof, complainant listed the following addresses, all located in San Pedro, Laguna, where respondent allegedly maintained his notarial offices: *(a)*Alvarez & Alvarez Law Office at Room 202, 2nd Floor, Fil-Em Building, A. Luna St., Poblacion; *(b)* Golden Peso Enterprises and Loan Center at Macaria Ave., Pacita Complex; and *(c)* Pacita Arcade/Commercial Complex

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[1] A.M. No. 02-8-13-SC (August 1, 2004).

[2] Dated January 13, 2012. *Rollo,* pp. 2-7.

[3] See *id.* at 2 and 114.

in Pacita Complex.[4] He also presented pictures of respondent's offices in San Pedro, Laguna,[5] and documents to prove that respondent notarized: (1) a 2010 Application for Business Permit[6] of one Ronald Castasus Amante (Amante), which, coincidentally, also did not have a valid proof of identification and bore a fictitious address; and (2) a Special Power of Attorney[7] (SPA), executed by Amante on December 7, 2010.[8] Likewise, complainant submitted a copy of: (1) Certification No. 11-0067[9] dated October 5, 2011 (October 5, 2011 Certification) issued by Catherin B. Beran-Baraoidan,[10] Clerk of Court VI (COC Beran-Baraoidan) of the RTC-San Pedro, stating that respondent was commissioned as a notary public for San Pedro, Laguna from 1998 to 2005; and (2) Certification No. 11-0053[11] dated September 21, 2011 (September 21, 2011 Certification) issued by COC Beran-Baraoidan, stating that *"no document entitled [SPA] x x x executed by [Amante] x x x notarized by [respondent] for the year 2010, is submitted before this Office."*[12]

Furthermore, complainant claimed that respondent failed to comply with his duties under the Notarial Rules, particularly: *(a)* to register one (1) notarial office only; *(b)* to keep only one (1) active notarial register at any given time; *(c)* to file monthly notarial books, reports, and copies of the documents notarized in any given month; and *(d)* to surrender his notarial register and seal upon expiration of his commission.[13]

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[4] *Id.* at 70. See also *id.* at 114.

[5] *Id.* at 9.

[6] See Doc. No. 706, Page No. 144, Book No. 11, Series of 2010; *id.* at 11 (including dorsal portion).

[7] See Doc. No. 6576, Page No. 671, Book No. X, Series of 2010; *id.* at 13.

[8] See *id.* at 115.

[9] *Id.* at 8.

[10] Spelled as "Beran-Baraoldan" in some parts of the *rollo.*

[11] *Rollo,* p. 10.

[12] *Id.*

[13] See *id.* at 115.

Also, complainant alleged that respondent authorized unlicensed persons to do notarial acts for him using his signatures, stamps, offices, and notarial register, and that he further violated Section 12, Rule II of the Notarial Rules regarding competent evidence of identity by making untruthful statements in a narration of facts, and causing it to appear that persons have participated in an act or proceeding when they did not in fact so participate.[14] Because of these acts, complainant asserted that respondent committed grave violations of the Notarial Rules.[15]

In his Answer[16] dated March 7, 2012, respondent asserted that he was a duly commissioned notary public in 2010 in Biñan, Laguna, as shown by the attached Certification of Notarial Commission No. 2009-21[17] issued by Presiding Judge Marino E. Rubia of the RTC of Biñan, Laguna, Branch 24 (RTC-Biñan).[18]

In compliance with the IBP's Order,[19] complainant submitted his Position Paper,[20] additionally pointing out that in 1993, respondent notarized a Joint Affidavit[21] despite the absence of a notarial commission therefor,[22] as well as an Affidavit for Death Benefit Claim[23] in April 10, 2012 after his notarial commission for and within Biñan, Laguna had already expired.[24]

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[14] See *id*.

[15] Complainant stated "Notarial Law" in his complaint, albeit clearly referring to the 2004 Rules on Notarial Practice.

[16] *Rollo,* pp. 21-23.

[17] Issued on December 29, 2009. *Id*. at 24.

[18] See *id*. at 21.

[19] Dated August 17, 2012. *Id*. at 68.

[20] Dated August 31, 2012. *Id*. at 69-87.

[21] Dated October 31, 1993. *Id*. at 97.

[22] See *id*. at 71.

[23] *Id*. at 98.

[24] See *id*. at 71-72.

For his part, respondent simply reiterated his defense that he was a duly commissioned notary public in 2010 in Biñan, Laguna.[25]

The IBP's Report and Recommendation

In a Report and Recommendation[26] dated April 19, 2013, the IBP Investigating Commissioner (IBP-IC) found respondent administratively liable for violating the Notarial Rules,[27] the Code of Professional Responsibility (CPR), and the Lawyer's Oath, and accordingly, recommended that respondent's notarial commission, if existing, be revoked, that he be barred perpetually as a notary public, and that he be suspended from the practice of law for a period of two (2) years from notice, with a warning that any infraction of the canons or provisions of law in the future shall be dealt with more severely.[28]

In particular, the IBP-IC found that: *(a)* respondent's three (3) notarial offices, including his residence, are all within the jurisdiction of San Pedro, Laguna, whereas his notarial commission existing in 2010 was not issued by the RTC-San Pedro but by the RTC-Biñan; *(b)* respondent notarized an Affidavit of Death Benefit Claim and Amante's Application for Business Permit in his notarial offices in San Pedro, Laguna which is outside his notarial jurisdiction; and *(c)* respondent notarized the Application for Business Permit even though it bore a fictitious address and lacked details regarding the signatory's competent evidence of identity, thus causing it to appear that persons have participated in an act or proceeding when they did not in fact so participate. To the IBP-IC, these facts, taken together, clearly show that respondent violated his oath of office and his duty as a lawyer, and committed unethical

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[25] See Position Paper dated December 12, 2012; *id*. at 108-109.

[26] *Id*. at 114-117. Penned by Commissioner Honesto A. Villamor.

[27] The IBP-IC stated "Notarial Law" in its Report and Recommendation, albeit clearly referring to the 2004 Rules on Notarial Practice.

[28] *Rollo,* p. 117.

behavior as a notary public, for which he should be held administratively liable.[29]

In a Resolution[30] dated May 11, 2013 (1st Resolution), the IBP Board of Governors adopted and approved the above report and recommendation of the IBP-IC with modification, reducing the recommended penalty of suspension to one (1) year, instead of two (2) years.

Dissatisfied, respondent filed a motion for reconsideration,[31] arguing that he maintains only one (1) notarial office which is located at 888 Lucky Gem. Bldg., Brgy. San Antonio, Biñan, Laguna, where he, together with one Atty. Edgardo Salandanan (Atty. Salandanan) as Senior Partner, has been holding office and conducting all his notarial works for several years. He added that the office in San Pedro, Laguna is managed and owned by his son, Atty. Jose L. Alvarez, Jr.[32] In his Comment,[33] complainant reiterated his allegations against respondent and insisted that the latter be disbarred.

In a Resolution[34] dated May 4, 2014 (2nd Resolution), the IBP Board of Governors partially granted respondent's motion,

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[29] See *id*. at 116-117.

[30] See Notice of Resolution in Resolution No. XX-2013-622 signed by National Secretary Nasser A. Marohomsalic; *id*. at 113 (including dorsal portion).

[31] Dated September 16, 2013. *Id*. at 118-121. Respondent signed his address at "Alvarez & Alvarez Law Office, 888 Lucky Gem Bldg., Brgy. San Antonio, Biñan, Laguna." See also respondent's Motion For Extension of Time to File Motion for Reconsideration [of] the Resolution of the Honorable Commission dated August 28, 2013 (*id*. at 130-131); and Reply [to] the Comment, dated December 4, 2013 (*id*. at 152-153), wherein he signed his address at "Alvarez & Alvarez Law Office, Rm. 202 Fil-Em Bldg., Luna St., San Pedro, Laguna."

[32] See *id*. at 118.

[33] Dated November 24, 2013. *Id*. at 133-139.

[34] See Notice of Resolution in Resolution No. XX1-2014-323; *id*. at 160-161. See also Extended Resolution dated June 2, 2014, signed by Director for Bar Discipline Dominic C.M. Solis; *id*. at 162-164.

and accordingly, modified the 1st Resolution by deleting the penalty of suspension *"considering that [r]espondent's violation relates to the Notarial Law."*[35]

This time it was complainant who moved for reconsideration,[36] seeking, respondent's disbarment. Notably, in his motion, complainant further pointed out that, as per the Certification[37] dated May 7, 2015 issued by the Office of the Bar Confidant (OBC), respondent *"has been suspended from the practice of law for five (5) months x x x effective upon receipt of the Resolution of the Court dated December 04, 2000 in G.R. No. 126025 x x x and re-docketed as an Administrative Case No. 9723 x x x. Said Resolution was received by the respondent on January 09, 2001"* and *"[t]o date, the said order of suspension has not yet been lifted by the Court."*

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[35] *Id.* at 160 and 164.

[36] See Motion for Reconsideration in the Light of the New Evidence dated January 11, 2016; *id.* at 165-166.

[37] *Id.* at 168. Signed by Deputy Clerk of Court and Bar Confidant Ma. Cristina B. Layusa. The Certification pertinently reads:

> "THIS IS TO CERTIFY that, according to the records of this Office, **ATTY. JOSE B. ALVAREZ** of San Pedro, Laguna has been **SUSPENDED** from the practice of law for five (5) months, and to pay a fine of ₱3,000.00, effective upon receipt of the Resolution of the Court dated December 4, 2000 in G.R. No. 126025 x x x and re-docketed as an Administrative Case No. 9723 (Re: Resolution of the Court dated December 04, 2000 in G.R. No. 126025 vs. Atty. Jose B. Alvarez). Said Resolution was received by the respondent on January 09, 2001.
>
> To date, the said order of suspension has not yet been lifted by the Court.
>
> x x x x x x x x x"

See also the Certification dated March 30, 2015 (*id.* at 169) issued by the OBC, stating that *"according to the records of this Office,* ***MR. JOSE B. ALVAREZ, SR.*** *using Roll of Attorney's No. 51160 is* ***not*** *a member of the Philippine Bar;"* copy of receipts issued between 2013 and 2015 under the name "Alvarez Law Office" for acceptance fees (*id.* at 172-174); and letter dated June 25, 2014 signed by respondent as counsel for Spouses Caridad Capistrano and Renato Bagtas (*id.* at 175).

Complying with the IBP Board of Governors' Order[38] to comment, respondent merely insisted that he is a full-fledged lawyer with Roll No. 20776, and that complainant filed this administrative case simply to extort money from him.[39]

The IBP Board of Governors denied complainant's motion in a Resolution[40] dated August 31, 2017.

The Issue Before the Court

The issue for the Court's resolution is whether or not the IBP correctly found respondent administratively liable.

The Court's Ruling

I.

Time and again, the Court has held "[t]hat notarization of a document is not an empty act or routine. ***It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.*** Notarization converts a private document into a public document, thus, making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies[,] and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. For this reason, notaries public must observe with the utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined."[41]

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[38] Dated February 9, 2016, signed by Director for Bar Discipline Ramon S. Esguerra; *id*. at 178.

[39] See undated Comment on the Motion for Reconsideration; *id*. at 179-180. Respondent no longer indicated any address and simply signed his name and Roll Number.

[40] See Notice of Resolution in Resolution No. XXIII-2017-029 signed by Assistant National Secretary Doroteo B. Aguila; *id*. at 184-185.

[41] *Spouses Gacuya v. Spouses Solbita,* A.C. No. 8840, March 8, 2016, 785 SCRA 590, 595; citations omitted.

The basic requirements a notary public must observe in the performance of his duties are presently laid down in the 2004 Rules on Notarial Practice. The failure to observe the requirements and/or comply with the duties prescribed therein shall constitute grounds for the revocation of the notarial commission of, as well as the imposition of the appropriate administrative sanction/s against, the erring notary public.[42]

In this case, the Court finds that respondent committed the following violations of the Notarial Rules:

First, respondent performed notarial acts without the proper notarial commission therefor.

Under the Notarial Rules, "a person commissioned as a notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made. Commission either means the grant of authority to perform notarial [acts] or the written evidence of authority."[43] **"Without a commission, a lawyer is unauthorized to perform any of the notarial acts.** A lawyer who acts as a notary public without the necessary notarial commission is remiss in his professional duties and responsibilities."[44] Moreover, it should be emphasized that "[u]nder the rule, only persons who are commissioned as notary public may perform notarial acts **within the territorial jurisdiction of the court which granted the commission**."[45]

In this case, it was established that respondent notarized a Joint Affidavit[46] in **1993** and an Application for Business Permit,[47]

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[42] See Section 1, Rule XI of the Notarial Rules.

[43] *Japitana v. Parado,* 779 Phil. 182, 188 (2016). See also Section 3, Rule II of the Notarial Rules.

[44] *Japitana v. Parado, id.* at 189.

[45] *Re: Violation of Rules on Notarial Practice,* 751 Phil. 10, 15 (2015).

[46] *Rollo,* p. 97.

[47] *Id.* at 11 (including dorsal portion).

as well as the SPA[48] of Amante, in **2010,** all in **San Pedro, Laguna.** However, as per the October 5, 2011 Certification[49] issued by COC Beran-Baraoidan of the RTC-San Pedro, respondent was commissioned as a notary public for and within San Pedro, Laguna only from **1998 to 2005,** and that the said commission has not been renewed in 2010 and therefore, already expired.

Furthermore, it was shown that although respondent has been issued a notarial commission by the RTC-Biñan (which was valid from **January 1, 2010 until December 31, 2011),** he: ***(a)*** conducted business as a notary public during such time not only in his Biñan, Laguna law office (which he shared with a certain Atty. Salandanan) but also in his other law offices in San Pedro, Laguna, and thus, performed notarial acts beyond the territorial jurisdiction of the said commissioning court; and ***(b)*** notarized an Affidavit for Death Benefit Claim[50] in **Biñan, Laguna** on **April 10, 2012,** during which time the said commission had already expired.

Second, respondent notarized a document that is bereft of any details regarding the identity of the signatory.

Under the Notarial Rules, "a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, the signatory shall sign or affix with a thumb or mark the notary public's notarial register. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act."[51]

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[48] *Id*. at 13.

[49] *Id*. at 8.

[50] *Id*. at 98.

[51] *Gaddi v. Velasco,* 742 Phil. 810, 815-816 (2014).

In *Gaddi v. Velasco*,[52] the Court ruled that a notary public who notarizes a document despite the missing details anent the signatory's competent evidence of identity not only fails in his duty to ascertain the signatory's identity but also improperly notarizes an incomplete notarial certificate, *viz.*:

> In the present case, contrary to [Atty.] Velasco's claim that Gaddi appeared before him and presented two identification cards as proof of her identity, the notarial certificate, in rubber stamp, itself indicates: "SUBSCRIBE AND SWORN TO BEFORE ME THIS APR 22, 2010 x x x AT MAKATI CITY. AFFIANT EXHIBITING TO ME HIS/HER C.T.C. NO. _____ ISSUED AT/ON _____." **The unfilled spaces clearly establish that Velasco had been remiss in his duty of ascertaining the identity of the signatory to the document.** Velasco did not comply with the most basic function that a notary public must do, that is, to require the presence of Gaddi; otherwise, he could have ascertained that the handwritten admission was executed involuntarily and refused to notarize the document. **Furthermore, Velasco affixed his signature in an incomplete notarial certificate.** x x x[53] (Emphases supplied)

Similar to this case, the *jurat* of the 2010 Application for Business Permit which respondent notarized did not bear the details of the competent evidence of identity of its principal-signatory. While this application appears to be a ready-made form issued by the Municipality of San Pedro, Laguna, this fact alone cannot justify respondent's non-compliance with his duties under the Notarial Rules.

And third, respondent failed to forward to the Clerk of Court (COC) of the commissioning court a certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before him.

Under the Notarial Rules, a notary public must forward to the Clerk of Court, within the first ten (10) days of the month following, a certified copy of each month's entries and a duplicate

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[52] *Id.*

[53] *Id.* at 816.

original copy of any instrument acknowledged before the notary public.[54] According to case law, failure to comply with this requirement is "[a] ground for revocation of a notary public's commission."[55]

As per the September 21, 2011 Certification[56] issued by COC Beran-Baraoidan, a copy of the SPA executed by Amante was not submitted before the Office of the COC of the RTC-San Pedro. This omission comes as no surprise considering that, as previously discussed, his notarial commission therefor had already expired.

Accordingly, in view of respondent's numerous violations of the Notarial Rules, the Court upholds the IBP's recommendation to revoke his incumbent notarial commission, if any, as well as to perpetually disqualify him from being commissioned as a notary public.

However, the Court cannot affirm the IBP's deletion of the penalty of suspension from the practice of law, which penalty was originally recommended by the IBP-IC. It should be emphasized that respondent's transgressions of the Notarial Rules also have a bearing on his standing as a lawyer. As a member of the Bar, respondent is expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might erode the trust and confidence reposed by the public in the integrity of the legal profession.[57] By flouting the Notarial Rules on numerous occasions, respondent engaged in unlawful conduct which renders him liable for violation of the following provisions of the CPR:

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[54] See Section 2 (h), Rule VI of the Notarial Rules.

[55] *Peña v. Paterno,* 710 Phil. 582, 595-596 (2013).

[56] *Rollo,* p. 10.

[57] See Canon 7 of the CPR. See also *Re: Violation of Rules on Notarial Practice, supra* note 45, at 16; *Zoreta v. Simpliciano,* 485 Phil. 395 (2004); and *Spouses Gacuya v. Solbita, supra* note 41, at 596.

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 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.

Thus, aside from the above-stated penalties, the Court further suspends respondent from the practice of law for a period of two (2) years, consistent with prevailing jurisprudence on the subject matter.[58]

II.

Separately, in his Motion for Reconsideration in the Light of the New Evidence,[59] complainant pointed out that, as per the May 7, 2015 Certification[60] issued by the OBC, respondent had previously been suspended by the Court for five (5) months in "*Resolution x x x dated December 04, 2000 in G.R. No. 126025 x x x and re-docketed as an Administrative Case No. 9723.*" Records of the OBC show that respondent received the Order of Suspension (Resolution in G.R. No. 126025[61] and re-docketed as Administrative Case No. 9723) on January 9, 2001.[62] However, it does not appear that the said suspension has already been lifted following the prescribed procedure therefor.[63]

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[58] See the following cases where the Court imposed a similar penalty for violation of the Notarial Rules:

Re: Violation of Rules on Notarial Practice, id.; *Spouses Gacuya v. Solbita, id.*; *Japitana v. Parado, supra* note 43; and *Zoreta v. Simpliciano, id.* See also *Nunga v. Viray,* 366 Phil. 155 (1999) where the Court suspended the lawyer for three (3) years for notarizing an instrument without a commission.

[59] *Rollo,* pp. 165-166.

[60] *Id.* at 168.

[61] *People v. Almendral,* 477 Phil. 521 (2004).

[62] *Rollo,* p. 168.

[63] *Id.*

In *Ladim v. Ramirez,*[64] the Court explained that the lifting of a lawyer's suspension is not automatic upon the expiration of the suspension period. The lawyer must still file before the Court the necessary motion to lift suspension and other pertinent documents, which include certifications from the Office of the Executive Judge of the court where he practices his legal profession and from the IBP's Local Chapter where he is affiliated affirming that he ceased and desisted from the practice of law and has not appeared in court as counsel during the period of his suspension.[65] Thereafter, the Court, after evaluation, and upon a favorable recommendation from the OBC, will issue a resolution lifting the order of suspension and thus allow him to resume the practice of law.[66] Prior thereto, the "suspension stands until he has satisfactorily shown to the Court his compliance therewith."[67]

Records do not show that respondent complied with the foregoing process. And yet, as complainant averred, respondent has been practicing law, as demonstrated by photos taken of court calendar of cases wherein respondent appeared as counsel for the accused in two (2) criminal cases,[68] receipts issued bearing the Alvarez Law Office logo for the payment of acceptance fee,[69] and a letter dated June 25, 2014 addressed to the COC & Ex-Oficio Sheriff of the RTC-San Pedro signed by respondent as counsel for a certain Spouses Caridad Capistrano and Renato Bagtas.[70]

Thus, in view of the foregoing, the Court hereby requires respondent to show cause within ten (10) days from notice why

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[64] See Minute Resolution in A.C. No. 10372, August 1, 2016.

[65] See *id*.

[66] See *Maniago v. De Dios,* 631 Phil. 139, 144-145 (2010).

[67] See Minute Resolution in *Balagtas v. Fernandez,* A.C. No. 10313, April 20, 2016.

[68] *Rollo,* p. 171.

[69] *Id*. at 172-174.

[70] *Id*. at 175.

he should not be held in contempt of court and/or further disciplined for allegedly practicing law although his suspension therefor has yet to be lifted.

WHEREFORE, the Court hereby finds respondent Atty. Jose B. Alvarez, Sr. (respondent) **GUILTY** of violation of the 2004 Rules on Notarial Practice and of the Code of Professional Responsibility. Accordingly, effective immediately, the Court: **SUSPENDS** him from the practice of law for two (2) years; **REVOKES** his incumbent commission as a notary public, if any; and, perpetually **DISQUALIFIES** him from being commissioned as a notary public. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely. He is **DIRECTED** to report to this Court the date of his receipt of this Decision to enable it to determine when his suspension from the practice of law, the revocation of his notarial commission, and his disqualification from being commissioned as a notary public shall take effect.

Further, respondent is **DIRECTED** to **SHOW CAUSE** within ten (10) days from notice why he should not be held in contempt of court and/or further disciplined for allegedly practicing law despite the suspension therefor as discussed in this Decision.

Let copies of this Decision be furnished to: (1) the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; (2) the Integrated Bar of the Philippines for its information and guidance; and, (3) the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.,* concur.

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[A.M. No. 18-07-131-RTC. September 3, 2018]

RE: DROPPING FROM THE ROLLS OF NOEL C. LINDO, Sheriff IV, BRANCH 83, Regional Trial Court, Quezon City.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RACCS); ABSENT WITHOUT OFFICIAL LEAVE (AWOL); THE PROVISIONS OF THE RULE DOES NOT REQUIRE PRIOR NOTICE TO DROP FROM THE ROLLS THE NAME OF THE EMPLOYEE WHO HAS BEEN CONTINUOUSLY ABSENT WITHOUT APPROVED LEAVE FOR AT LEAST 30 DAYS; RATIONALE.** Section 107 (a-1), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (RACCS) does not require prior notice to drop from the rolls the name of the employee who has been continuously absent without approved leave for at least 30 days. x x x Prolonged unauthorized absence causes inefficiency in the public service. A court employee's continued absence without leave disrupts the normal functions of the court. It contravenes the public servant's duty to serve the public with the utmost degree of responsibility, integrity, loyalty, and efficiency. x x x The Court has also repeatedly held that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with the heavy burden of responsibility. The Court cannot countenance any act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.

2. **ID.; ID.; ID.; SEPARATION FROM SERVICE FOR UNAUTHORIZED ABSENCES IS NON-DISCIPLINARY IN NATURE, HENCE, THE OFFICIAL OR EMPLOYEE IS STILL QUALIFIED TO RECEIVE THE BENEFITS HE MAY BE ENTITLED TO UNDER EXISTING LAWS AND MAY STILL BE REEMPLOYED IN THE GOVERNMENT;**

CASE AT BAR. The Court also notes that separation from the service for unauthorized absences is non-disciplinary in nature in accordance with Section 110, Rule 20 of the 2017 RACCS. x x x Hence, the Court agrees with the recommendation of the OCA that Lindo is still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government. This is, however, without prejudice to the outcome of the pending case against him.

R E S O L U T I O N

A. REYES, JR., *J.*:

The present administrative matter concerns Noel C. Lindo (Lindo), Sheriff IV, Regional Trial Court (RTC) of Quezon City, Branch 83.

It appears from the records of the Employees' Leave Division (ELD), Office of Administrative Services (OAS), Office of the Court Administrator (OCA) that Lindo failed to submit his Daily Time Records (DTRs) from November 2017 up to the present. Neither did he file any application for leave for his absences. Thus, he has been on absence without official leave (AWOL) since November 2, 2017.[1]

On August 2, 2017, the OCA issued a Memorandum[2] ordering the withholding of Lindo's salaries and benefits for his failure to submit his DTRs from the period of May 2017 to June 2017.

Atty. Pearl Angeli G. Formilleza-Ronquillo (Atty. Formilleza-Ronquillo), in a Letter[3] dated November 9, 2017, informed the OCA that Lindo has been remiss in the submission of his DTR and Applications for Leave for several months despite several chances given to him to submit the same. Also, per transmittal

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[1] *Rollo,* p. 1.

[2] Signed by OAS OCA Chief of Office Caridad A. Pabello and approved by Court Administrator Jose Midas P. Marquez; *id*. at 8.

[3] *Id*. at 6.

letters dated December 13, 2017[4] and January 9, 2017,[5] both signed by Atty. Formilleza-Ronquillo, and subscribed and sworn to before Presiding Judge Ralph S. Lee (Judge Lee), Lindo did not submit his DTR for the months of November 2017 and December 2017.

In a Letter[6] dated February 8, 2018, Judge Lee recommended that Lindo be declared AWOL and accordingly, he requested that the position of Deputy Sheriff in his branch be declared vacant.

The OCA, on the basis of the records of its different offices, likewise informed the Court of the following: **(a)** Lindo has not filed an application for retirement; **(b)** he is still in the plantilla of personnel, and thus, considered to be in active service; and **(c)** he is not an accountable officer. Notably, Lindo has a pending case, docketed as OCA IPI No. 13-4112-P per verification made with the Docket and Clearance Division, Legal Office of the OCA.[7]

OCA Recommendation

In its Report[8] dated June 13, 2018, the OCA recommended that Lindo's name be dropped from the rolls effective November 2, 2017 for having been on AWOL. The OCA further recommended that his position be declared vacant and he be informed of his separation from service or dropping from the rolls at his last known address at 1617 O'este Street, Alvarez Extension, Sta. Cruz, Manila. The OCA, however, pointed out that he is still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the

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[4] *Id.* at 3.

[5] *Id.* at 4.

[6] *Id.* at 5.

[7] *Id.* at 9.

[8] Signed by Court Administrator Jose Midas P. Marquez, Assistant Court Administrator Lilian C. Baribal-Co and OAS OCA Chief of Office Caridad A. Pabello; *id.* at 1-2.

government, without prejudice to the outcome of OCA IPI No. 13-4112-P.[9]

Ruling of the Court

The recommendation of the OCA is well-taken.

Section 107(a-1), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (RACCS)[10] states:

Section 107. ***Grounds and Procedure for Dropping from the Rolls.*** – Officers and employees who are absent without approved leave, have unsatisfactory performance, or have shown to be physically or mentally unfit to perform their duties may be dropped from the rolls within thirty (30) days from the time a ground therefore arises subject to the following procedures:

a. Absence Without Approved Leave

1. An official or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days may be dropped from the rolls without prior notice which shall take effect immediately.

He/she shall, however, have the right to appeal his/her separation within fifteen (15) days from receipt of the notice of separation which must be sent to his/her last known address.

x x x x x x x x x. (Underscoring Ours)

The above provision does not require prior notice to drop from the rolls the name of the employee who has been continuously absent without approved leave for at least 30 days. Hence, Lindo should be separated from, the service or dropped from the rolls in view of his continued absence since November 2, 2017.

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[9] *Id.* at 2.

[10] Promulgated by the Civil Service Commission through Resolution No. 1701077 dated July 3, 2017.

Prolonged unauthorized absence causes inefficiency in the public service.[11] A court employee's continued absence without leave disrupts the normal functions of the court.[12] It contravenes the public servant's duty to serve the public with the utmost degree of responsibility, integrity, loyalty, and efficiency.

Lindo, by going on AWOL, grossly disregarded and neglected the duties of his office. He failed to adhere to the highest standards of public accountability imposed on those in government service.[13]

The Court has also repeatedly held that the conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with the heavy burden of responsibility.[14] The Court cannot countenance any act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the Judiciary.[15]

The Court also notes that separation from the service for unauthorized absences is non-disciplinary in nature in accordance with Section 110, Rule 20 of the 2017 RACCS, to wit:

Section 110. ***Dropping From the Rolls; Non-disciplinary in Nature.*** This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical or mental disorder is non-disciplinary in nature and shall not result in the forfeiture of any benefit on the part of the official or employee or in disqualification from reemployment in the government. (Underscoring Ours)

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[11] *Re: Dropping From the Rolls of Rowie A. Ouimno,* A.M. No. 17-03-33-MCTC, April 17, 2017.

[12] *Id.*

[13] *Re: Absence Without Official Leave of Mr. Borcillo,* 559 Phil. 1, 4 (2007).

[14] *Re: Absence Without Official Leave of Mr. Faraon,* 492 Phil. 160, 163 (2005).

[15] *Re: AWOL of Mrs. Borja,* 549 Phil. 533, 536 (2007).

Hence, the Court agrees with the recommendation of the OCA that Lindo is still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government. This is, however, without prejudice to the outcome of the pending case against him.

WHEREFORE, Noel C. Lindo, Sheriff IV, Regional Trial Court of Quezon City, Branch 83, is hereby **DROPPED** from the rolls effective November 2, 2017 and his position is declared **VACANT**. He is, however, still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government without prejudice to the outcome of OCA IPI No. 13-4112-P.

Let a copy of this Resolution be served upon Noel C. Lindo at 1617 O'este Street, Alvarez Extension, Sta. Cruz, Manila, the last known address appearing on his 201 file.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 216430. September 3, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **YASSER ABBAS ASJALI,** *defendant-appellant.*

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[*] Designated as additional Member per Special Order No. 2587 dated August 28, 2018.

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR POSSESSION OF DANGEROUS DRUGS; IN THE PROSECUTIONS FOR VIOLATIONS OF THE PROVISIONS OF THE DANGEROUS DRUGS ACT OF 2002, THE STATE BEARS THE BURDEN NOT ONLY OF PROVING THE ELEMENTS OF THE OFFENSES BUT ALSO OF PROVING THE *CORPUS DELICTI*; ELUCIDATED. It is a basic legal tenet in the prosecutions for violations of Sections 5 and 11 of Republic Act No. 9165 that the State bears the burden not only of proving the elements of the offenses of sale of dangerous drug and of the offense of illegal possession of dangerous drug, but also of proving the *corpus delicti*, the body of the crime. *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 was actually committed. In all prosecutions for violations of Republic Act No. 9165, the *corpus delicti* is the dangerous drug itself. The *corpus delicti* is established by proof that the identity and integrity of the prohibited or regulated drug seized or confiscated from the accused has been preserved; hence, the prosecution must establish beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused. The prosecution can only forestall any doubts on the identity of the dangerous drug seized from the accused to that which was presented before the trial court if it establishes an unbroken chain of custody over the seized item. 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*. In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY IN A BUY-BUST SITUATION, ENUMERATED; NOT ESTABLISHED IN CASE AT BAR. The links that must be established in the chain of custody in a buy-bust situation are as follows: *first*, the seizure and marking, if practicable,

of the illegal drug recovered from the accused by the apprehending officer; *second*, the turn over of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turn over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turn over and submission of the marked illegal drug seized from the forensic chemist to the court. Section 21(a), Article II of Republic Act No. 9165 lays down the procedure for the first link in the chain of custody. It describes in detail the steps to be taken by the apprehending team having initial custody and control of the drugs, x x x In furtherance of the aforequoted provision, Section 21, Article II of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," provides: x x x Although not specifically mentioned by the law or the implementing rules, the first link in the chain of custody necessarily involves the marking of the seized or confiscated drugs for reference of all succeeding handlers and to render the same distinct and identifiable from all other drugs in custody. x x x Ultimately, the *corpus delicti* has not been satisfactorily established by the prosecution in this case. That the prosecution failed to present evidence to account for the very first link in the chain of custody already puts the rest of the chain into question and compromises the integrity and evidentiary value of the three sachets of *shabu* supposedly seized from accused-appellant. Thus, there is already reasonable doubt as to whether the seized drugs were exactly the same drugs presented in court as evidence.

3. ID.; ID.; ID.; NON-COMPLIANCE WITH THE 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 SEIZURE OF AND CUSTODY OVER SAID ITEMS; NOT PRESENT IN CASE AT BAR. It is true that the IRR states 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." This saving clause, however, applies only (1) where the prosecution

recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. In which case, the prosecution loses the benefit of invoking the presumption of regularity and bears the burden of proving with moral certainty that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest. In this case, the noncompliance with the chain of custody rule by the buy-bust team was not explained by the prosecution. Without any explanation on why the buy-bust team was unable to comply with the chain of custody rule, then there is no basis for the Court to determine if there is a justifiable ground for the same. Regardless of the weakness of accused-appellant's evidence, a judgment of acquittal must follow when the prosecution failed to discharge its burden of proving accused-appellant's guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *C.J.*:

On appeal is the Decision[1] dated October 9, 2014 of the Court of Appeals in CA-G.R. CR. HC. No. 01004-MIN, which affirmed *in toto* the Judgment[2] dated July 18, 2011 rendered by the Regional Trial Court (RTC), Branch 12, 9th Judicial Region, Zamboanga City in Criminal Case Nos. 4995 and 4996, finding accused-appellant Yasser Abbas Asjali guilty beyond reasonable doubt of illegal sale of dangerous drugs and illegal possession of dangerous drugs, defined and penalized under Article II,

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[1] *Rollo*, pp. 3-17; penned by Associate Justice Pablito A. Perez with Associate Justices Edgardo A. Camello and Henri Jean Paul B. Inting concurring.

[2] CA *rollo,* pp. 44-57.

Sections 5 and 11 of Republic Act No. 9165, otherwise known as the Dangerous Drugs Act of 2002.

The Informations against accused-appellant read as follows:

[Criminal Case No. 4995]

That on or about August 19, 2003, 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 drug, did then and there willfully, unlawfully, and feloniously, sell and deliver to PO2 ALBERT REARIO SERIL, PNP, Zamboanga City Mobile Group, who acted as poseur-buyer, one (1) small size heat-sealed blue plastic straw containing white crystalline substance weighing 0.0111 gram which when subjected to qualitative examination gave positive result to the tests for Methamphetamine Hydrochloride *(SHABU),* knowing [the] same to be a dangerous drug.[3]

[Criminal Case No. 4996]

That on or about August 19, 2003, 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 two (2) small size heat-sealed blue plastic straws each containing white crystalline substance having a total weight of 0.0186 gram which when subjected to qualitative examination gave positive result to the tests for Methamphetamine Hydrochloride *(SHABU),* knowing [the] same to be a dangerous drug.[4]

During his arraignment on January 13, 2004, accused-appellant pleaded not guilty to both charges.[5]

Trial ensued only in 2008.

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[3] Records, p. 1.

[4] *Id.* at 2.

[5] Accused-appellant was assisted by Atty. Roberto M. Buenaventura, his counsel *de officio* from the Integrated Bar of the Philippines (IBP) Legal Aide Committee; *Id.* at 13.

The prosecution presented the testimonies of Senior Police Officer (SPO) 1 Samuel T. Jacinto (Jacinto),[6] Police Officer (PO) 2 Albert I. Seril (Seril),[7] and SPO2 Jason M. Lahaman (Lahaman),[8] all from the Zamboanga City Police Office. The prosecution dispensed with the presentation of the testimonies of Police Inspector (P/Insp.) Eulogio A. Tubo (Tubo),[9] the investigator in charge of the case against accused-appellant; and Police Superintendent (P/Supt.) Mercedes D. Diestro (Diestro),[10] a forensic chemist, upon admission by the defense of the subject matter of their testimonies.

The prosecution also presented object and documentary exhibits consisting of the Request for Laboratory Examination[11] (of the sachets of *shabu* marked ET-1, ET-2, and ET-3) dated August 19, 2003 prepared by P/Insp. Tubo; two heat-sealed sachets of *shabu* (marked ET-2 and ET-3) with a total weight of 0.0186 grams, which were allegedly seized from accused-appellant's possession;[12] one heat-sealed sachet of *shabu* (marked ET-1) weighing 0.0111 grams, which was sold by accused-appellant to PO2 Seril;[13] P/Supt. Diestro's Chemistry Report No. D-344-2003[14] dated August 19, 2003; Complaint Assignment Sheet[15]signed by SPO1 Jacinto and P/Insp. Tubo, reporting the conduct of the buy-bust operation and arrest of accused-appellant and the turn-over of the marked money and sachets of *shabu*

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[6] TSN, September 4, 2008.

[7] TSN, August 31, 2010.

[8] TSN, September 1, 2010.

[9] TSN, September 2, 2008.

[10] TSN, April 17, 2008.

[11] Records, p. 84.

[12] *Id*. at 80.

[13] *Id*.

[14] *Id*. at 85.

[15] *Id*. at 86, signed when they were still then PO3 Jacinto and SPO4 Tubo.

from accused-appellant; Case Report[16] dated August 19, 2003 of Police Chief Inspector (PC/Insp.) Nickson Babul Muksan (Muksan) and P/Insp. Tubo; Memorandum[17] dated August 13, 2003 for the City Prosecutor of Zamboanga City, prepared by PO2 Proceso de la Cruz Remigio, Jr., for the registration of marked money; marked ₱100.00-bill with serial number CK 705444;[18] PO2 Seril's Affidavit[19] dated August 20, 2003; Joint Affidavit of Arrest[20] dated August 20, 2003 executed by SPO1 Jacinto and SPO2 Lahaman; and P/Insp. Tubo's Inquest Report[21] dated August 20, 2003. In an Order[22] dated November 15, 2010, the RTC admitted all the evidence proffered by the prosecution.

Based on the evidence presented by the prosecution, the buy-bust operation against accused-appellant transpired as follows:

On August 19, 2003, SPO1 Jacinto, head of the intelligence section of the Zamboanga City Mobile Group, received information from his confidential informant that accused-appellant was illegally peddling dangerous drugs at their local wharf located at Zone 4, Sta. Barbara, Zamboanga City. SPO1 Jacinto relayed this information to their group director, PC/Insp. Muksan, who immediately organized a buy-bust team to entrap accused-appellant. PO2 Seril was designated as the poseur-buyer while SPO1 Jacinto and SPO2 Lahaman were assigned as PO2 Seril's back-up officers. After the briefing, the buy-bust team together with the confidential informant, proceeded to the local wharf at around 5:00 in the afternoon to execute the operation.

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[16] *Id*. at 87.

[17] *Id*. at 88.

[18] *Id*. at 82.

[19] *Id*. at 89.

[20] *Id*. at 90.

[21] *Id*. at 91.

[22] *Id*. at 94.

Upon arriving at the local wharf, the buy-bust team positioned themselves and waited for accused-appellant to arrive. After waiting for 10 to 20 minutes, the confidential informant spotted accused-appellant standing beside a cigarette vendor. PO2 Seril and the confidential informant approached accused-appellant. The confidential informant, speaking the *Tausug* dialect, introduced PO2 Seril to accused-appellant. Accused- appellant then agreed to sell *shabu* to PO2 Seril for ₱100.00. After handing over the marked ₱100.00-bill to accused-appellant and receiving a packet of *shabu* in return from accused-appellant, PO2 Seril scratched his head, the pre-arranged signal to the buy-bust team that the sale had already been consummated.

SPO1 Jacinto and SPO2 Lahaman approached accused-appellant and identified themselves as police officers, and then placed accused-appellant under arrest for illegally selling dangerous drugs. As an incident to a lawful warrantless arrest, SPO1 Jacinto searched accused-appellant's body and recovered from the latter's right pants' pocket the marked ₱100.00-bill and two more sachets of *shabu.*Thereafter, the buy-bust team brought accused-appellant to the police station. PO2 Seril kept with him the packet of *shabu* that was sold to him by accused-appellant, while SPO1 Jacinto kept in his custody the marked ₱100.00-bill and the two sachets of *shabu* which he found in accused-appellant's possession.

At the police station, PO2 Seril and SPO1 Jacinto turned over to P/Insp. Tubo the marked ₱100.00-bill and the three sachets of *shabu* they got from accused-appellant. It was P/Insp. Tubo who marked the packet of *shabu* accused-appellant sold to PO2 Seril with ET-1 ("ET" representing P/Insp. Tubo's initials) and the two sachets of *shabu* confiscated by SPO1 Jacinto from accused-appellant's possession with ET-2 and ET-3. P/Insp. Tubo then requested and submitted said items for forensic analysis.

Acting on P/Insp. Tubo's request, P/Supt. Diestro conducted a chemical analysis of the submitted specimens and issued Chemistry Report No. D-344-2003 dated August 19, 2003, which stated:

SPECIMEN SUBMITTED:

Transparent plastic wrapper with marking ET-BB-08-19-03 with one (1) small size heat-sealed blue plastic straw with marking ET-1 containing 0.0111 gram of white crystalline substance and marked as Exh. MD. (Buy-bust)

Transparent plastic wrapper with marking ET-P 08-19-03 with two (2) small size heat-sealed blue plastic straws with marking ET-2 and ET-3 respectively each contains white crystalline substance having a total weight of 0.0186 gram and marked as Exh. MD-1 to Exh. MD-2 respectively. (Possession)

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs.

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE *(shabu),* a dangerous drug.[23]

Accused-appellant strongly denied the charges against him and proffered in evidence his own testimony and that of his eldest child, Nijar Asjali (Nijar), and they both recounted on the witness stand the following:

Accused-appellant was working as a laborer at the local wharf of Zamboanga City. In the afternoon of August 19, 2003, accused-appellant reported for work and brought with him his 11-year-old daughter, Nijar. While waiting for the arrival of a vessel coming from the island of Basilan, accused-appellant was playing a card game with two other companions in full public view. Three armed men then suddenly approached accused-appellant's group and tried to apprehend them. Accused-appellant's companions managed to escape and only accused-appellant was taken into custody and brought to the central police office of Zamboanga City by the three armed men. The three armed men also confiscated the playing cards and money from the card game.

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[23] *Id.* at 85.

The police informed accused-appellant that he would be charged with playing the card game *"tong-its."* However, accused-appellant came to know, as he appeared before the trial court, that he was actually charged with selling *shabu.*

On July 18, 2011, the RTC promulgated its Judgment, finding accused-appellant guilty as charged and sentencing him thus:

> WHEREFORE, in view of all the foregoing, Judgment is hereby rendered finding the accused herein, Yasser Asjali y Abbas, guilty beyond reasonable doubt in both the above-entitled cases and hereby sentences him in Criminal Case No. 4995 (19919) to suffer the penalty of Life Imprisonment and to pay the fine of ₱1,000,000.00 and in Criminal Case No. 4996 (19920) to suffer the penalty of imprisonment for Twelve (12) Years and One (1) day as Minimum to Fifteen [15] Years as Maximum and to pay the fine of ₱300,000.00 and to further pay the costs of this suits.[24]

In his appeal before the Court of Appeals, accused-appellant, represented by the Public Attorney's Office, asserted that the RTC gravely erred in finding him guilty beyond reasonable doubt of the offenses of illegal sale of dangerous drugs and illegal possession of dangerous drugs.

Accused-appellant argued that the alleged entrapment operation was dubious since it was not coordinated with the Philippine Drug Enforcement Agency (PDEA); the supposed informant of the police was never identified or presented to testify; no surveillance was conducted prior to the buy-bust operation; and SPO1 Jacinto even confirmed that he did not actually see PO2 Seril give money to accused-appellant in exchange for a packet of *shabu.* Accused-appellant also averred that there was enough reason to doubt whether the sachets of *shabu* actually came from him because the chain of custody of the said sachets as required by law was not substantially followed by the members of the buy-bust team. Accused-appellant pointed out that no marking, physical inventory, and photograph of the sachets of *shabu* were taken in his presence or his counsel,

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[24] CA *rollo,* p. 55.

a representative from the media and the Department of Justice (DOJ), and an elective official, immediately after the alleged buy-bust operation.

Accused-appellant additionally contended that Criminal Case Nos. 4995 and 4996 involved the same subject matter, so the charge against him for illegal possession of dangerous drugs in Criminal Case No. 4996 should have been deemed absorbed by the charge (and his eventual conviction) for illegal sale of dangerous drugs in Criminal Case No. 4995.

In its Decision dated October 9, 2014, the Court of Appeals denied accused-appellant's appeal and affirmed the judgment of conviction of the RTC.

Hence, accused-appellant lodged his present appeal.

The Court finds the appeal meritorious.

It is a basic legal tenet in the prosecutions for violations of Sections 5 and 11 of Republic Act No. 9165 that the State bears the burden not only of proving the elements of the offenses of sale of dangerous drug and of the offense of illegal possession of dangerous drug, but also of proving the *corpus delicti,* the body of the crime. *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 was actually committed.[25]

In all prosecutions for violations of Republic Act No. 9165, the *corpus delicti* is the dangerous drug itself. The *corpus delicti* is established by proof that the identity and integrity of the prohibited or regulated drug seized or confiscated from the accused has been preserved; hence, the prosecution must establish beyond reasonable doubt the identity of the dangerous drug to prove its case against the accused. The prosecution can only forestall any doubts on the identity of the dangerous drug seized from the accused to that which was presented before the trial court if it establishes an unbroken chain of custody over the

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[25] *People v. Calates,* G.R. No. 214759, Apri1 4, 2018.

seized item. 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.* In other words, it must be established with unwavering exactitude that the dangerous drug presented in court as evidence against the accused is the same as that seized from him in the first place.[26]

The links that must be established in the chain of custody in a buy- bust situation are as follows: *first,* the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second,* the turn over of the illegal drug seized by the apprehending officer to the investigating officer; *third,* the turn over by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth,* the turn over and submission of the marked illegal drug seized from the forensic chemist to the court.[27]

Section 21(a), Article II of Republic Act No. 9165[28] lays down the procedure for the first link in the chain of custody. It describes in detail the steps to be taken by the apprehending team having initial custody and control of the drugs, thus:

> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs shall, **immediately after seizure and confiscation, physically inventory and photograph the same in the presence**

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[26] *People v. Calvelo,* G.R. No. 223526, December 6, 2017.

[27] *Id*.

[28] Amended by Republic Act No. 10640, enacted on July 22, 2014.

> **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 furtherance of the aforequoted provision, Section 21, Article II of the Implementing Rules and Regulations (IRR) of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," provides:

> Sec. 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: ***Provided,*** **that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures;** ***Provided, further,*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**[.] (Emphasis supplied.)

Although not specifically mentioned by the law or the implementing rules, the first link in the chain of custody necessarily involves the marking of the seized or confiscated drugs for reference of all succeeding handlers and to render the same distinct and identifiable from all other drugs in custody. As the Court pronounced in *People v. Gonzales*:[29]

> The first stage in the chain of custody is the marking of the dangerous drugs or related items. **Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of the dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting, or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value. (Emphasis supplied.)

There is dearth of evidence in the case at bar that the buy-bust team complied with the prescribed procedure for handling the alleged illegal drugs from accused-appellant.

Per the prosecution's evidence, the Zamboanga City Police conducted a buy-bust operation against accused-appellant; in the course of said operation, PO2 Seril bought a packet of *shabu* from accused-appellant for ₱100.00, while SPO1 Jacinto seized from accused-appellant's possession, during body search, two more sachets of *shabu* and the marked ₱100.00-bill paid by PO2 Seril; the apprehending team brought accused-appellant to the police station, where PO2 Seril and SPO1 Jacinto turned over the sachets of *shabu* seized from accused-appellant to P/Insp. Tubo, the investigator-in-charge; and P/Insp. Tubo marked the sachets with his initials.

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[29] 708 Phil. 121, 130-131 (2013).

However, the prosecution's evidence failed to establish that the buy- bust team complied with the directives under Republic Act No. 9165 and its IRR, as well as relevant jurisprudence, *viz.*:

(1) That the buy-bust team marked the three sachets of *shabu* from accused-appellant in the latter's presence immediately upon arrest;

(2) That the buy-bust team conducted a physical inventory and took photographs of the three sachets of *shabu* from accused-appellant (a) immediately at the place of the arrest or subsequently at the police station and (b) in the presence of accused-appellant or his representative or counsel, representatives from the media and the DOJ, and an elected public official; and

(3) That the buy-bust team prepared a certificate of inventory or inventory receipt and had the same signed by accused-appellant or his representative or counsel, the representatives from the media and the DOJ, and the elected public official who witnessed the inventory.

The markings on the three sachets of *shabu,* purportedly seized or confiscated from accused-appellant, was done not by any of the members of the buy-bust team who apprehended accused-appellant, but by P/Insp. Tubo, the assigned investigating officer, at the police station where accused-appellant was brought following his arrest. In addition, there is totally no proof that the markings were done in the presence of accused-appellant.

Moreover, the records do not bear any stipulation between the parties, or a statement in the affidavits of the buy-bust team members, or an averment in the prosecution witnesses' testimonies that a physical inventory and photograph of the seized drugs were actually taken immediately upon accused-appellant's arrest or even later on at the police station. No certificate of inventory or inventory receipt or photograph of the seized drugs is attached to the records of the case. There is also no showing at all that representatives from the media and the DOJ and an elected public official were present at the place of arrest or at the police station to witness, together with accused-

appellant or his representative or counsel, the conduct of the physical inventory and taking of photographs of the seized drugs:

Ultimately, the *corpus delicti* has not been satisfactorily established by the prosecution in this case. That the prosecution failed to present evidence to account for the very first link in the chain of custody already puts the rest of the chain into question and compromises the integrity and evidentiary value of the three sachets of *shabu* supposedly seized from accused-appellant. Thus, there is already reasonable doubt as to whether the seized drugs were exactly the same drugs presented in court as evidence.

It is true that the IRR states 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." This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved. In which case, the prosecution loses the benefit of invoking the presumption of regularity and bears the burden of proving with moral certainty that the illegal drug presented in court is the same drug that was confiscated from the accused during his arrest.[30]

In this case, the noncompliance with the chain of custody rule by the buy-bust team was not explained by the prosecution. Without any explanation on why the buy-bust team was unable to comply with the chain of custody rule, then there is no basis for the Court to determine if there is a justifiable ground for the same.

Regardless of the weakness of accused-appellant's evidence, a judgment of acquittal must follow when the prosecution failed to discharge its burden of proving accused-appellant's guilt beyond reasonable doubt.

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[30] *People v. Dela Rosa,* G.R. No. 230228, December 13, 2017.

WHEREFORE, in view of the foregoing, the Decision dated October 9, 2014 of the Court of Appeals in CA-G.R. CR. HC. No. 01004-MIN is **REVERSED** and **SET ASIDE. YASSER ABBAS ASJALI** is **ACQUITTED** of the crimes charged for failure of the prosecution to prove his guilt beyond reasonable doubt and ordered immediately **RELEASED** from detention unless he is otherwise legally confined for another cause.

Let a copy of this Decision be sent to the Director of the Bureau of Corrections, San Ramon Prison and Penal Farm, Zamboanga City, for immediate implementation, and to report the action taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

Carpio,[*] *SAJ, Bersamin,* and *Tijam, JJ.,* concur.

Del Castillo, J., on official leave.

SECOND DIVISION

[G.R. No. 232249. September 3, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILT SAM BANGALAN *y* MAMBA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR

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[*] Per Raffle dated July 4, 2018.

POSSESSION OF DANGEROUS DRUGS; *CORPUS DELICTI*; FAILURE TO PROVE THE INTEGRITY OF THE *CORPUS DELICTI* RENDERS THE EVIDENCE FOR THE STATE INSUFFICIENT TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT AND HENCE, WARRANTS AN ACQUITTAL. In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY, THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME; ELUCIDATED.** To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; ID.; FOR THE SAVING CLAUSE TO APPLY, THE PROSECUTION MUST DULY EXPLAIN THE REASONS BEHIND THE PROCEDURAL LAPSES, AND THAT THE JUSTIFIABLE GROUND FOR NON-COMPLIANCE MUST BE PROVEN AS FACT. [T]he Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would 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 a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist. Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated February 3, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07883, which affirmed the Judgment[3] dated September 8, 2015 of the Regional Trial Court of Tuguegarao City, Branch 5 (RTC) in Criminal Case No. 14938, finding accused-appellant Wilt Sam Bangalan *y* Mamba (Bangalan) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC accusing Bangalan of violating Section 5, Article II of RA 9165. The prosecution alleged that at around 5:30 in the afternoon of July 27, 2012, a team composed of members of the Philippine National Police Tuguegarao City Police Station, with coordination from the Philippine Drug Enforcement Agency, conducted a buy-bust operation against Bangalan, during which 8.12 grams of dried marijuana leaves were recovered from him. The team, together with Bangalan, then proceeded to the Tuguegarao City Police Station where the seized item was marked, photographed, and inventoried in the presence of Barangay *Kagawad* Remigio Cabildo (Kgwd. Cabildo).

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[1] See Notice of Appeal dated February 24, 2017; *rollo,* pp. 15-16.

[2] *Id*. at 2-14. Penned by Associate Justice Pedro B. Corales with Associate Justices Sesinando E. Villon and Renato C. Francisco, concurring.

[3] CA *rollo,* pp. 50-55. Penned by Judge Jezarene C. Aquino.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[5] See records, p. 1. See also *rollo,* p. 3.

Thereafter, it was brought to the crime laboratory where, after examination, it was confirmed to be marijuana, a dangerous drug.[6]

In defense, Bangalan denied the charges against him, claiming instead, that he was forcefully taken by two (2) men and brought to the police station where he was asked if he knew a certain Ifan Lacambra. When he answered in the negative, the men hit him, and committed to release him if he would just disclose where Ifan Lacambra is. When he disclaimed any knowledge thereof, he was detained for selling marijuana.[7]

In a Judgment[8] dated September 8, 2015, the RTC found Bangalan guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs and, accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱400,000.00.[9] The RTC held that the prosecution sufficiently established all the elements of the said crime, and further ruled that the integrity and evidentiary value of the *corpus delicti* were preserved. On the other hand, it rejected Bangalan's defense of denial and frame-up for being unsubstantiated.[10] Aggrieved, Bangalan appealed[11] the RTC ruling to the CA.

In a Decision[12] dated February 3, 2017, the CA affirmed with modification the RTC ruling, increasing the fine payable to ₱500,000.00.[13] Among others, the CA observed that while there were slight deviations from the chain of custody rule, the same did not compromise the *corpus delicti.*[14]

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[6] See *rollo,* pp. 3-5.

[7] See *id.* at 3 and 5-6.

[8] CA *rollo,* pp. 50-55.

[9] *Id.* at 55.

[10] See *id.* at 52-55.

[11] Records, p. 110.

[12] *Rollo,* pp. 2-14.

[13] *Id.* at 13.

[14] *Id.* at 10-12.

Hence, this appeal[15] seeking that Bangalan's conviction be overturned.

The Court s Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165,[16] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[17] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[18]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized

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[15] *Id*. at 15-16.

[16] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: *(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; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: *(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. (See *People v. Crispo,* G.R. No. 230065, March 14, 2018; *People v. Sanchez,* G.R. No. 231383, March 7, 2018; *People v. Magsano,* G.R. No. 231050, February 28, 2018, *People v. Manansala,* G.R. No. 229092, February 21, 2018, *People v. Miranda,* G.R. No. 229671, January 31, 2018; and *People v. Mamangon,* G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili,* 753 Phil. 342, 348 [2015] and *People v. Bio,* 753 Phil. 730, 736 [2015]).

[17] See *People v. Crispo, id.*; *People v. Sanchez, id.*; *People v. Magsano, id.*, *People v. Manansala, id.*, *People v. Miranda, id.*; and *People v. Mamangon, id*. See also *People v. Viterbo,* 739 Phil. 593, 601 (2014).

[18] See *People v. Gamboa,* G.R. No. 233702, June 20, 2018, citing *People v. Umipang,* 686 Phil. 1024, 1039-1040 (2012).

up to their presentation in court as evidence of the crime.[19] As part of the chain of custody procedure, the law requires, *inter alia,* that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[20] The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely:

(a) if **prior** to the amendment of RA 9165 by RA 10640,[21] "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official";[22] or *(b)* if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media."[23] The law requires the presence of these witnesses

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[19] See *People v. Año,* G.R. No. 230070, March 14, 2018; *People v. Crispo, supra* note 16; *People v. Sanchez, supra* note 16; *People v. Magsano, supra* note 16; *People v. Manansala, supra* note 16; *People v. Miranda, supra* note 16; and *People v. Mamangon, supra* note 16. See also *People v. Viterbo, supra* note 17.

[20] In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." *(People v. Mamalumpon,* 767 Phil. 845, 855 [2015], citing *Imson v. People,* 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia,* 718 Phil. 330, 348 [2013], citing *People v. Resurreccion,* 618 Phil. 520, 532 [2009].) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumulak,* 791 Phil. 148, 160-161 [2016]; and *People v. Rollo,* 757 Phil. 346, 357 [2015].)

[21] Entitled "AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9165, OTHERWISE KNOWN AS THE 'COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002,'" approved on July 15, 2014.

[22] Section 21 (1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

[23] Section 21, Article II of RA 9165, as amended by RA 10640.

primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[24]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[25] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[26]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[27]As such, the failure of the apprehending team to strictly comply with the same would 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 a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved.[28] The foregoing is based on the saving clause found in Section 21 (a),[29] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted

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[24] *People v. Miranda, supra* note 16. See also *People v. Mendoza,* 736 Phil. 749, 764 (2014).

[25] See *People v. Miranda, id*. See also *People v. Macapundag,* G.R. No. 225965, March 13, 2017, citing *People v. Umipang, supra* note 18, at 1038.

[26] Sec *People v. Segundo,* G.R. No. 205614, July 26, 2017, citing *People v. Umipang, id*.

[27] See *People v. Sanchez,* 590 Phil. 214, 234 (2008).

[28] See *People v. Almorfe,* 631 Phil. 51, 60 (2010).

[29] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: ***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.*f***

into the text of RA 10640.[30] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[31] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[32]

Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[33] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[34] These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[35]

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[30] Section 1 of RA 10640 pertinently states: ***Provided, finally,*** **That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.*f***

[31] *People v. Almorfe, supra* note 28.

[32] *People v. De Guzman,* 630 Phil. 637, 649 (2010).

[33] See *People v. Manansala, supra* note 16.

[34] See *People v. Gamboa, supra* note 18, citing *People v. Umipang, supra* note 18, at 1053.

[35] See *People v. Crispo, supra* note 16.

Notably, the Court, in *People v. Miranda,*[36] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "(since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[37]

In this case, it is apparent that the inventory of the seized item was not conducted in the presence of any representative of the DOJ and the media contrary to the afore-described procedure. During trial, Police Officer 2 Albert Caranguian (PO2 Caranguian) effectively admitted to this lapse when he testified as follows:

> [Atty. Evaristo Caleda III]:
>
> Q: Few questions, Your Honor. Were you a participant to the inventory of the property seized?
>
> WITNESS [PO2 Caranguian]:
>
> A: Yes, sir.
>
> Q: And did you require or invite DOJ representative when you conducted the inventory?
>
> A: I cannot remember, sir.
>
> Q: Did you also require or invite media men when you conducted the inventory?
>
> A: I cannot remember, sir.[38]

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[36] *Supra* note 16.

[37] See *id*.

[38] TSN, August 13, 2013, p. 20.

As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Similar to sheer statements of unavailability, the failure to remember if such witnesses were present during the inventory, without more, is undoubtedly too flimsy of an excuse and hence, would not pass the foregoing standard to trigger the operation of the saving clause. To add, records are bereft of any indication that photographs of the confiscated items were duly taken. This lapse was completely unacknowledged and perforce, left unjustified by the prosecution altogether. Because of these deviations, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Bangalan were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED.** The Decision dated February 3, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 07883 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Wilt Sam Bangalan *y* Mamba is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.,* concur.

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

FIRST DIVISION

[G.R. No. 232487. September 3, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EMMA T. PAGSIGAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR POSSESSION OF DANGEROUS DRUGS; *CORPUS DELICTI*; NON-COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF THE COMPREHENSIVE DANGEROUS DRUGS ACT IS TANTAMOUNT TO FAILURE IN ESTABLISHING IDENTITY OF *CORPUS DELICTI* WHICH IS AN ESSENTIAL ELEMENT OF THE CRIME. Section 21 of the Comprehensive Dangerous Drugs Act, as amended by R.A. No. 10640, spells out the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21(1) to (3) stipulate the requirements concerning custody prior to the filing of a criminal case: x x x "Compliance with Section 21's requirements is critical. Non-compliance is tantamount to failure in establishing identity of *corpus delicti*, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused." The rules provide that the apprehending team should mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence.

2. ID.; ID.; ID.; REQUIREMENTS OF SECTION 21, ARTICLE II OF R.A. NO. 9165; IN CASE OF NON-COMPLIANCE, THE PROSECUTION MUST BE ABLE TO EXPLAIN BEHIND THE PROCEDURAL LAPSES AND THAT THE JUSTIFIABLE GROUNDS FOR NON-COMPLIANCE MUST BE PROVEN AS A FACT; NOT ESTABLISHED IN CASE AT BAR. The Court acknowledges that the strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 may not always be possible. x x x However, in case of non-compliance, the prosecution must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are or that they even exist." Also, "the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist." Here, We cannot accept the grounds or reasons cited by the police officers as justifiable to explain their non-compliance. We note that both police officers have been members of the force for more than five years and have stated that they are familiar with the rules set forth in R.A. No. 9165. Despite the same, the glaring non-compliance and seemingly nonchalant attitude in their attempts to comply with the said requirements appalls the Court. Had these police officers truly understood the utmost significance of the said requirements and what it seeks to protect, they would surely have found time to bring provisions to prepare an inventory, take photographs and ensure the presence of the insulating witnesses. Considering the absence of a justifiable explanation as to the non-compliance with the rules, We find that the prosecution failed to show that the seized substance from the accused-appellant was the same substance offered in Court, especially since the amount involved in this case is minuscule.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

Before Us is an appeal, assailing the Decision[1] dated January 11, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 07934, which affirmed the Joint Decision[2] dated August 7, 2015 of the Regional Trial Court (RTC) of San Fernando City, Pampanga, Branch 44 in Criminal Case Nos. 15510 and 15511, which convicted Emma T. Pagsigan (accused-appellant) for violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165,[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant was charged with the sale and possession of dangerous drugs, as follows:

Criminal Case No. 15510

That on or about the 27th day of July, 2007, in Barangay San Nicolas, City of San Fernando, (P) (sic), Philippines and within the jurisdiction of this Honorable Court, the above-named [accused-appellant], without having been lawfully permitted and/or authorized, did then and there wil[l]fully, unlawfully and feloniously have in her possession, custody and control one (1) heat sealed transparent plastic sachet containing TWO HUNDRED SIX TENTH THOUSANDTH of a gram (0.0206 gms), which when subjected for laboratory examination was found positive for Meth[yl]amphetamine Hydrochloride, a prohibited drug.

Contrary to Law.[4]

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[1] Penned by Associate Justice Japar B. Dimaampao, concurred in by Associate Justices Franchito N. Diamante and Carmelita Salandanan-Manahan; CA *rollo,* pp. 111-122.

[2] Rendered by Presiding Judge Esperanza S. Paglinawan-Rozario; *id.* at 50-60.

[3] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved January 23, 2002.

[4] Records (Crim. Case No. 15511), p. 2.

Criminal Case No. 15511

That on or about the 27th day of July, 2007, in Barangay San Nicolas, City of San Fernando, (P) Philippines, and within the jurisdiction of this Honorable Court, the above-named [accused-appellant], not being authorized nor permitted by the law, did then and there wil[l]fully, unlawfully and feloniously sell, convey and deliver meth[yl]amphetamine hydrochloride (Shabu), weighing more or less TWO HUNDRED TWENTY ONE TENTH THOUSANDTH of a gram (0.0221 grams), to a poseur buyer for and in consideration of THREE HUNDRED PESOS (₱300.00), Philippine Currency, which when subjected for laboratory examination was found positive for meth[yl]amphetamine hydrochloride, a prohibited drug.

Contrary to Law.[5]

During trial, the prosecution established that it received information from a confidential informant (CI) that accused-appellant was selling *shabu* in Barangay San Nicolas, San Fernando City, Pampanga. A buy-bust team was then formed with Police Officer 2 Jayson Constantino (PO2 Constantino) as poseur-buyer and PO2 Gerald Pediglorio (PO2 Pediglorio) as back up and the buy-bust money was marked.[6]

PO2 Constantino, PO2 Pediglorio and the CI first went to Barangay San Nicolas for coordination and for the buy-bust operation to be "blottered" before proceeding to the target area.[7]

PO2 Constantino and the CI approached accused-appellant while PO2 Pediglorio positioned himself at a distance of three meters away. The CI introduced PO2 Constantino as the person interested to buy *shabu.* PO2 Constantino handed to accused-appellant the marked money and in exchange, she handed to him one plastic sachet containing *shabu.* PO2 Pediglorio then rushed to the scene after PO2 Constantino executed the pre-arranged signal of taking off his hat.[8]

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[5] Records (Crim. Case No. 15510), p. 2.

[6] CA *rollo,* p. 113, *rollo,* p. 4.

[7] *Rollo,* p. 4.

[8] CA *rollo,* pp. 51-52.

When asked to empty her pockets, another plastic sachet of *shabu* and the marked money were recovered from accused-appellant. She was then brought to the barangay hall where the seized plastic sachets were marked by PO2 Constantino in the presence of barangay officials. The seized drugs were then turned over to the assigned investigator, PO3 Randy Santos (PO3 Santos), who prepared the request for laboratory examination. PO3 Santos also delivered the plastic sachets to the Regional Crime Laboratory Office for forensic examination which were received by a certain PO2 Villar. The examination yielded positive results for methylamphetamine hydrochloride, or *shabu.*[9]

On cross-examination, PO2 Constantino testified that the seized items were marked at the barangay hall because the place of arrest is a critical place but they did not execute any inventory confiscation receipt. He also testified that they did not coordinate with the Department of Justice (DOJ) and media representatives.[10]

On re-direct examination, PO2 Pediglorio testified that the conduct of the buy bust operation was conducted in a short period of time to prevent the escape of accused-appellant and that they were unable to take photographs because they had no camera, cellular phone and no resources to list evidence. He claimed that they did not have time to grab a piece of paper, pen and camera.[11]

Accused-appellant, for her part, testified that she accompanied her friend Ana to the house of spouses Josie and Vando in Barangay San Nicolas, San Fernando City. Accused-appellant stayed at the back of the house while Ana talked to the spouses out front. Suddenly, they were arrested by police officers. She was forced to go with the policemen where she was brought to a dark place. A gun was pointed at her and was repeatedly asked about Ana's whereabouts. Spouses Josie and Vando were later allowed to go but she was left detained.[12]

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[9] *Rollo,* pp. 4-5; Records (Crim. Case No. 15510), p. 170.

[10] CA *rollo,* p. 52.

[11] *Id.* at 54.

[12] *Id.* at 56.

In a Joint Decision[13] dated August 7, 2015, the RTC found that the prosecution has proven its cases against accused-appellant for violation of Sections 5 and 11, Article II of R.A. No. 9165 beyond reasonable doubt. It disposed, thus:

> WHEREFORE, premises considered, the Court finds [accused-appellant] **guilty beyond reasonable doubt** of violation of Sec. 11, Art. II of R.A. 9165 in Crim. Case No. 15510 and imposes upon her the penalty of imprisonment for twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum, and to pay a **FINE** of Three Hundred Thousand Pesos (₱300,000.00).
>
> Said [accused-appellant] is also **found guilty beyond reasonable doubt** of violation of Sec. 5, Art. II of R.A. 9165 in Crim. Case No. 15511 and imposes upon her the penalty of **LIFE IMPRISONMENT** and to pay a **FINE** of Five Hundred Thousand Pesos (₱500,000.00).
>
> The prohibited dangerous drugs, subject of these cases, are ordered **CONFISCATED** in favor of the government.
>
> The OIC-Branch Clerk of Court is directed to prepare the Mittimus for the immediate transfer of the herein [accused-appellant] to the Correctional Institute (sic) for Women and to immediately turn over the specimens subject of these cases to the Director, PDEA, Region III, Camp Olivas, City of San Fernando, Pampanga, for proper disposition.
>
> Furnish all concerned parties with copies of this Joint Decision.
>
> SO ORDERED.[14]

On appeal, the CA, in its Decision[15] dated January 11, 2017 sustained the accused-appellant's conviction. It cited that the non-compliance with Section 21 of R.A. No. 9165 does not *ipso facto* render the evidence inadmissible especially when there are justifiable grounds and proof that the integrity and

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[13] *Id.* at 50-60.

[14] *Id.* at 59.

[15] *Id.* at 111-122.

evidentiary value of the evidence have been preserved. It ruled that the integrity of the seized drugs in the case remained unscathed. It dismissed accused-appellant's denials and unsubstantiated allegations. The dispositive portion of the Decision reads:

> **WHEREFORE,** the *Appeal* is hereby **DENIED.** The Joint Decision dated 7 August 2015 of the [RTC], Third Judicial Region, San Fernando City, Pampanga, Branch 44, in Criminal Case Nos. 15510 and 15511, is **AFFIRMED.**
>
> **SO ORDERED.**[16]

Hence, this appeal.

Accused-appellant questions her conviction and submits that the prosecution failed to prove beyond reasonable doubt the *corpus delicti* of the crime on account of substantial gaps in the chain of custody and points out the various non-compliance with Section 21 of R.A. No. 9165, *i.e.,* failed to have any inventory, confiscation receipt or photographs of the drugs allegedly seized, failed to present evidence to prove that they contacted any member of the media and the DOJ to witness the marking. She stresses that no justifiable ground to explain their failure to comply with the law was offered.

The Office of the Solicitor General (OSG) counters that the identity and integrity of the seized illegal drug were duly established. It also insists that the failure of the police officers to photograph the seized drugs and conduct the physical inventory thereof did not compromise the integrity of the illegal drugs.[17]

Ruling of the Court

The appeal is meritorious.

We have ruled that non-compliance with the requirements of Section 21 of R.A. No. 9165 casts doubt on the integrity of

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[16] *Id.* at 121.

[17] *Id.* at 97.

the seized items and creates reasonable doubt on the guilt of the accused-appellant.[18]

Section 21 of the Comprehensive Dangerous Drugs Act, as amended by R.A. No. 10640, spells out the requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21(1) to (3) stipulate the requirements concerning custody prior to the filing of a criminal case:

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

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[18] *People of the Philippines v. Raslid Binasing y Disalungan,* G.R. No. 221439, July 4, 2018.

are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, 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 by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject items: *Provided,* That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however,* That a final certification shall be issued immediately upon completion of the said examination and certification[.] (Emphasis ours)

"Compliance with Section 21's requirements is critical. Non-compliance is tantamount to failure in establishing identity of *corpus delicti,* an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused."[19]

The rules provide that the apprehending team should mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media.[20] The law mandates that the insulating witnesses be present during the

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[19] *Lescano v. People,* 778 Phil. 460, 470 (2016).

[20] *Supra* note 17.

marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence.[21]

Here, there was failure all together by the police to conduct the inventory and photograph the same before the insulating witnesses as testified by PO2 Constantino:

Q: Mr. Witness, what did you recover from the accused?
A: Two (2) plastic sachets of suspected shabu, madam.

Q: And when you recovered these, did you mark those two (2) plastic sachets containing illegal specimen?
A: At the Barangay Hall of San Nicolas, madam.

Q: Did you execute any inventory or confiscatory receipt?
A: None, sir (sic).[22]

The lack of inventory and photographs was corroborated by PO2 Pediglorio:

Q: Did you comply with the requirements of preparing an inventory, Mr. Witness, do you have it with you?
A: None, sir.

Q: Why you were not able to prepare an inventory of the evidence seized or the evidence confiscated
A: We do (sic) not have enough resources to make an inventory, sir.[23]

Q: Mr. Witness, how long have you been a police officer?
A: Eight (8) years, madam.

x x x x x x x x x

Q: How many times did you conduct a buy bust operation prior to Emma Tamama Pagsigan?
A: Maybe more than ten (10), madam.

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[21] *People of the Philippines v. Alsarif Bintaib y Florencia, a.k.a."Leng,"* G.R. No. 217805, April 2, 2018.

[22] TSN, February 3, 2012, p. 12.

[23] TSN, August 31, 2012, p. 11.

Q: So, you are actually familiar with R.A. 9165?
A: Yes, madam.

Q: And you are familiar with the procedures with regards (sic) to the conduct of a buy bust?
A: Yes, madam.

x x x x x x x x x

Q: You also said that the markings of the alleged plastic sachets of the shabu were done in the barangay hall and not in the placed (sic) of the alleged confiscation, correct?
A: Yes, madam.

Q: You also know that it is actually required in R.A. 9165 that markings should be done in the place of arrest, correct?
A: Yes, madam.

Q: Mr. Witness, you also know that there is a requirement as to the photographs of the presence of the barangay officials, of the DOJ and of the media, correct?
A: Yes, madam.

Q: You also did not comply with that, correct?

A: Yes, madam.

Q: There was also no inventory, correct?

A: Yes, madam.

Q: There was also no confiscation receipt, correct?

A: Yes, madam.[24]

The lack of insulating witnesses was also apparent in the testimony of PO2 Constantino:

Q: Did you coordinate with any official of the DOJ, Mr. Witness?
A: No, madam.

Q: How about any representative from the media?
A: No madam.

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[24] TSN, February 8, 2013, pp. 3-4.

Q: And for how long have you been a police officer prior to July 27, 2007, Mr. Witness?
A: Five (5) years, madam.

Q: And for how long have you been conducting a buy-bust operation, Mr. Witness?
A: More or less, two (2) years, madam.

Q: And with those two (2) years, I presumed (sic) that you are aware of Section 21 of the Republic Act 9165 correct?
A: Yes, madam.

Q: Despite of knowing such act, you did not comply with the strict requirements provided particularly on Section 21 of Republic Act 9165?
A: Yes, madam.[25]

The lack of insulating witnesses and non-compliance with the rules was elaborated on by PO2 Pediglorio:

Q: Mr. Witness, it appears that during cross-examination questions propounded by the defense counsel to you, it appears that there was no compliance of Section 21 when you made the conduct of the buy bust operation against the accused, such as the presence of the barangay officials, presence of media representative and presence of the DOJ representative. Now, can you please explain to this Court why there was no compliance on this particular Section 21 of R.A. 9165 with respect to these matters?
A: The reason was the buy bust operation was in a hurry and we did not comply with the presence of the barangay, media and DOJ because the buy bust operation should be conducted in a short period of time, sir.

Q: What do you mean by the buy bust operation should be conducted in a short period time?
A: Due to the information gathered from the confidential informant that the accused will not stay longer in that place that is why we hurriedly went to the house and we conducted buy bust operation, sir.

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[25] TSN, February 3, 2012, p. 14.

Q: You also stated that there were no photographs done on the accused as well as the substance that was bought and confiscated from the accused, can you explain to us why there were no photographs or pictures made on those aspects?
A: Because in the crime scene, sir, we do not have the resources to take photographs and also the resources for the listing of evidence, sir.

Q: What do you mean when you said you do not have the resources in taking photographs of the substance as well as of the accused?
A: Because that was in 2007, we do not have the cellular phone and camera, sir.

Q: When you were asked by the defense counsel if you conducted inventory, can you tell us again if there was an inventory made?
A: In the place of the incident, there was no inventory, sir. When the markings were made, we went to the barangay hall to mark the evidence.

Q: Can you tell us why you decided to go to the barangay hall to make the inventory and marking the evidence instead of marking the evidence to (sic) the site where you apprehended the accused?
A: Because it is much safer to us as police officers to do the inventory in the barangay hall instead in the place of incident, sir.

x x x x x x x x x

Q: Mr. Witness, were you actually informed by the informant at exactly 7:00 in the afternoon (sic) and you went there at 8:30 in the evening, correct?
A: Yes, madam.

Q: So, you did not have a (sic) time to grab a piece of paper and a pen, correct?
A: Yes, madam.

Q: You also did not have the time to grab a camera, correct?
A: Yes, madam.

Q: And you chose not to, correct?
A: Yes, madam.[26]

Despite the attempts to clarify the lack of compliance with insulating witnesses, however, the fact remains that no inventory and photographs were taken or made even when the markings were made at the barangay hall. In *Lescano v. People,*[27] We "underscored that the mere marking of seized paraphernalia, unsupported by a physical inventory and taking of photographs, and in the absence of the persons required by Section 21 to be present, does not suffice."[28]

The Court acknowledges that the strict compliance with the requirements of Section 21, Article II of R.A. No. 9165 may not always be possible. In *People of the Philippines v. Jesus Dumagay y Suacito,*[29] We have stated that:

> Failure to strictly comply with rules of procedure, however, does not *ipso facto* invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved."[30] (Citations omitted)

However, in case of non-compliance, the prosecution must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved x x x because the Court cannot presume what these grounds are or that they even exist."[31] Also, "the justifiable ground for non-compliance must be proven as

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[26] TSN, February 8, 2013, pp. 5-6.

[27] 778 Phil. 460 (2016).

[28] *Id*. at 476, citing *People v. Garcia,* 599 Phil. 416 (2009).

[29] G.R. No. 216753, February 7, 2018.

[30] *Id*.

[31] *People v. Geronimo,* G.R. No. 225500, September 11, 2017, citing *People v. Almorfe, et al.,* 631 Phil. 51 (2010).

a fact, because the Court cannot presume what these grounds are or that they even exist."[32]

Here, We cannot accept the grounds or reasons cited by the police officers as justifiable to explain their non-compliance. We note that both police officers have been members of the force for more than five years and have stated that they are familiar with the rules set forth in R.A. No. 9165. Despite the same, the glaring non-compliance and seemingly nonchalant attitude in their attempts to comply with the said requirements appalls the Court. Had these police officers truly understood the utmost significance of the said requirements and what it seeks to protect, they would surely have found time to bring provisions to prepare an inventory, take photographs and ensure the presence of the insulating witnesses.

Considering the absence of a justifiable explanation as to the non-compliance with the rules, We find that the prosecution failed to show that the seized substance from the accused-appellant was the same substance offered in Court, especially since the amount involved in this case is minuscule. In *Mallillin v. People,*[33] this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives."[34] The integrity then of the *corpus delicti* cannot be said to have been properly established. The Court, therefore, acquits accused-appellant on the basis of reasonable doubt.

WHEREFORE, the appeal is **GRANTED.** The Decision dated January 11, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 07934, which affirmed the Decision dated August 7, 2015 of the Regional Trial Court of San Fernando

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[32] *People v. Crispo,* G.R. No. 230065, March 14, 2018, citing *People v. De Guzman,* 630 Phil. 637 (2010).

[33] 576 Phil. 576 (2008).

[34] *Id.* at 588.

City, Pampanga, Branch 44 in Criminal Case Nos. 15510 and 15511, is hereby **REVERSED and SET ASIDE.**

Accordingly, accused-appellant Emma T. Pagsigan is hereby **ACQUITTED** based on reasonable doubt.

The Director of the Correctional Institution for Women is directed to cause the immediate release of accused-appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of her release or reason for her continued confinement within five (5) days from notice.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), Bersamin, and *Jardeleza, JJ.,* concur.

Del Castillo, J., on official leave.

SECOND DIVISION

[G.R. No. 234023. September 3, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JENNIE MANLAO *y* LAQUILA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED THEFT; ELEMENTS. The elements of Qualified Theft are as follows: (*a*) the taking of personal property; (*b*) the said property belongs to another; (*c*) the said taking be done with intent to gain; (*d*) it be done without the owner's consent; (*e*) it be accomplished without the use of violence or intimidation against persons, nor force upon things; and (*f*) it be done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, committed by a domestic servant.

2. ID.; ID.; ID.; ID.; INTENT TO GAIN OR *ANIMUS LUCRANDI*; ACTUAL GAIN IS IRRELEVANT AS THE IMPORTANT CONSIDERATION IS THE INTENT TO GAIN; ESTABLISHED IN CASE AT BAR. Jurisprudence provides that intent to gain or *animus lucrandi* is an internal act which can be established through the overt acts of the offender and is presumed from the proven unlawful taking. Actual gain is irrelevant as the important consideration is the intent to gain. In this case, suffice it to say that Jennie's *animus lucrandi* is presumed from her admitted taking of the stolen items. Further, her aforesaid excuse that she was merely tricked cannot be given credence for likewise being illogical, especially in view of Carmel's warning against scammers and explicit directive not to entertain such phone calls. Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same. As such, Jennie's conviction for Qualified Theft must be upheld.

3. ID.; ID.; ID.; WHILE IT IS CONCEDED THAT THE CRIME WAS COMMITTED BEFORE THE AMENDMENT TO THE PENALTIES UNDER REPUBLIC ACT NO. 10951, THE NEWLY-ENACTED LAW EXPRESSLY PROVIDES FOR RETROACTIVE EFFECT IF IT IS FAVORABLE TO THE ACCUSED; IMPOSABLE PENALTY IN CASE AT BAR. Anent the proper penalty to be imposed on Jennie, it is well to stress that pending the final resolution of this case, Republic Act No. (RA) 10951 was enacted into law. As may be gleaned from the law's title, it adjusted the value of the property and the amount of damage on which various penalties are based, taking into consideration the present value of money, as opposed to its archaic values when the RPC was enacted in 1932. While it is conceded that Jennie committed the crime way before the enactment of RA 10951, the newly-enacted law expressly provides for retroactive effect if it is favorable to the accused, as in this case. Section 81 of RA 10951 adjusted the graduated values where the penalties for Theft are based. x x x Thus, applying the provisions of RA 10951, the Indeterminate Sentence Law, the increase of the aforesaid penalty

by two (2) degrees in instances of Qualified Theft under the RPC, and considering further the absence of any mitigating or aggravating circumstances and the fact that the aggregate value of the stolen items amounts to ₱1,189,000.00, the Court finds it proper to sentence Jennie to suffer the penalty of imprisonment for an indeterminate period of seven (7) years, four (4) months, and one (1) day of *prision mayor*, as minimum, to eleven (11) years, six (6) months, and twenty-one (21) days of *reclusion temporal*, as maximum.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Jennie Manlao *y* Laquila (Jennie) assailing the Decision[2] dated May 11, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 06882, which affirmed the Decision[3] dated June 19, 2014 of the Regional Trial Court of Quezon City, Branch 85 (RTC) in Crim. Case No. Q-11-171127 convicting her of Qualified Theft, defined and penalized under Article 310, in relation to Article 309, of the Revised Penal Code (RPC).

The Facts

An Information[4] was filed before the RTC, charging Jennie with the crime of Qualified Theft, the accusatory portion of which reads:

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[1] See Notice of Appeal dated May 31, 2017; *rollo*, pp. 14-15.

[2] *Id*. at 2-13. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Ramon R. Garcia and Henri Jean Paul B. Inting, concurring.

[3] CA *rollo*, pp. 46-60. Penned by Acting Presiding Judge Luisito G. Cortez.

[4] Records, pp. 1-2 and 3-4.

That on or about the 1st day of July 2011, in Quezon City, Philippines, the said accused, being then employed as housemaid of one CARMEL ACE QUIMPO-VILLARAZA with residential address located at No. 125 Baltimore Street, Vista Real Subdivision, Brgy. Batasan Hills, this City, conspiring together, confederating with other persons whose true names, identities and present whereabouts have not as yet been ascertained and mutually helping each [other] and as such had free access to the property stolen, with grave abuse of confidence reposed upon her by her employer with intent to gain and without the knowledge and consent of the owner thereof, did then and there, willfully, unlawfully and feloniously take, steal and carry away the following:

1. Rolex watch worth Php360,000.00
2. Omega watch worth Php120,000.00
3. Huer watch worth Php60,000.00
4. Philip Charriol watch worth Php72,000.00
5. Diamond engagement ring worth Php150,000.00
6. Wedding diamond earrings worth Php150,000.00
7. [Diamond] stud worth Php150,000.00
8. Diamond cross pendant (princess cut) worth Php50,000.00
9. Diamond cross pendant worth Php25,000.00
10. Diamond donut pendant worth Php15,000.00
11. [Heart-shaped crushed] diamond earrings and ring worth Php50,000.00
12. Princess cut diamond earring and ring, gold worth Php120,000.00
13. [Oval-shaped] diamond earring, [ring] and pendant set worth Php100,000.00
14. Diamond [Creola] earring and ring set worth Php25,000.00
15. Diamond [studded Creola] earring and pendant set worth Php25,000.00
16. [White] South Sea Pearl [earring] and pendant set worth Php40,000.00
17. South Sea Champagne Pearl earring and pendant set worth Php40,000.00
18. Baby South Sea Pearl earring and pendant worth Php30,000.00
19. White South Sea Pearl dangling earrings worth Php20,000.00

20. South Sea Pearl [choker] worth Php140,000.00
21. Pearl long necklace worth Php6,000.00
22. Double strand pink pearl necklace worth [Php 6,000.00]
23. [Small] Pearl choker and bracelet worth Php3,000.00
24. Blue Sapphire with diamonds ring worth Php40,000.00
25. Blue Sapphire with diamonds and pendant worth Php15,000.00
26. Amethyst earring worth Php10,000.00
27. Blue Topaz earring and [pendant] set worth Php15,000.00
28. White gold [n]ecklace worth Php8,000.00
29. Gold [n]ecklace worth Php4,000.00

all in total [value] of Php1,849,000.00, Philippine Currency, belonging to said CARMEL ACE QUIMPO-VILLARAZA, to the damage [and] prejudice of the said offended party in the amount aforementioned.

CONTRARY TO LAW.[5]

The prosecution alleged that in February 2011, Carmel Ace Quimpo-Villaraza (Carmel) and her husband, Alessandro Lorenzo Villaraza (Alessandro), hired Jennie as their housemaid, who was tasked to iron their clothes and to clean the house, including the second floor. Jennie was referred to Carmel by a certain Maribel, who was a housemaid of her son's friend. Upon hiring, Carmel briefed Jennie about the house's security, gave her a list of phone numbers to call in case of emergency, cautioned her about scammers calling houses, and explicitly instructed her not to entertain people who would visit or call to say that something happened to her employers. Carmel also stressed that if something happens to her, she would not call her housemaids. After two (2) months, Carmel hired another housemaid, Geralyn Noynay (Geralyn), whose job was to cook, wash clothes, clean the exterior of the house, and do some gardening.[6]

At around 5:30 in the afternoon of July 1, 2011, Geralyn was cooking in the kitchen when she noticed Jennie talking to

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[5] *Id.*

[6] See *rollo*, p. 4. See also CA *rollo*, p. 49.

someone over the house phone and crying. When asked, Jennie replied that their employers met an accident. Geralyn saw Jennie going up and down the stairs and decided to follow her. Upstairs, Geralyn found the bathroom inside the master's bedroom open, and saw Jennie in the act of opening the bathroom drawer using a knife, screwdriver, and hairpins. When Geralyn asked why she destroyed the lock, Jennie responded that Carmel instructed her to open the drawer to look for dollars and told Geralyn not to interfere. Thereafter, Jennie went downstairs to talk to someone over the phone and later on, went up again to the master's bedroom to take Carmel's jewelry. Meanwhile, Geralyn comforted their employers' eight (8)-year old son who began crying due to the commotion. As she comforted the child, Geralyn noticed the pearls as among those which Jennie took from Carmel's drawer. Jennie then left the house with all the pieces of jewelry with her.[7]

Meanwhile, at around 3:30 in the afternoon of even date, Carmel kept calling the house phone to check on her son but the line was continuously busy. She also tried reaching her two (2) housemaids through their mobile phones, but to no avail. After fetching Alessandro, they decided to call the latter's brother, Carlo, who lives in the same village, to ask if he could send his maid to their house and inform the housemaids that they have been calling the house phone. Finally, Geralyn answered the phone and, when asked why the line was busy, Geralyn explained that Jennie used it earlier and left the line hanging. She then informed them that Jennie left the house at around six (6) o'clock in the evening after taking Carmel's jewelry. Upon the couple's request, Carlo stayed in the latter's house and confirmed that he found the bathroom door and drawer open, with the keyhole destroyed.[8]

Upon reaching their house, Carmel found her drawer inside the bathroom open with all of her jewelry, which she accumulated

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[7] See *rollo*, pp. 4-5.

[8] See *id.* at 5-6.

for 20 years, missing. At around 11:30 in the evening of even date, Carmel received a call from the village guards that Jennie was with them. Alessandro then picked up Jennie from the gate, and when they arrived a few minutes later, Carmel opened the car's rear door and immediately asked Jennie if the latter took her jewelry, to which the latter answered yes while crying. When asked for a reason, Jennie stated that somebody called to inform her that Carmel figured in an accident, and asked her to look for dollars in Carmel's cabinet. Instead, she took the jewelry and brought them to a fair-skinned woman in Caloocan. At this juncture, Carmel reminded Jennie again about the house rules on callers, but Jennie kept crying. Thus, the couple decided to bring Jennie to the nearby police station and filed the complaint.[9] The following day, police officers went to the house of Maribel's employers, but they were told that she left on the day of the incident.[10]

For her part, Jennie pleaded not guilty to the crime charged,[11] and presented her own narration of the events. She averred that at three (3) o'clock in the afternoon of that fateful day, a certain Beth Garcia (Beth) called the house phone, asked her if she was Jennie, and apprised her that her employers met an accident. Beth briefed her that "Carmel" would talk over the phone slowly because she has a wound in her mouth. Then, a woman who purported herself to be Carmel instructed Jennie to open the bedroom door and look for dollars, prompting Jennie to go to the kitchen to get a knife. Unable to find dollars, Jennie talked to "Carmel" over the phone again and the latter instructed her to get the jewelry instead, and thereafter, to go to Cubao and ride a bus going to Monumento, where a woman will meet her at 7-Eleven. Upon arrival, a woman approached Jennie, introduced herself as "Carmel's" companion, then took the bag containing the jewelry. After which, Jennie went home. When she arrived at the subdivision gate, the security guards asked

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[9] See *id.* at 6-7.

[10] CA *rollo*, p. 51.

[11] *Rollo*, p. 3.

her to proceed to the second gate where Alessandro was waiting for her.[12]

The RTC Ruling

In a Decision[13] dated June 19, 2014, the RTC found Jennie guilty beyond reasonable doubt of Qualified Theft, and accordingly, sentenced her to suffer the penalty of *reclusion perpetua* and ordered her to restitute to Carmel the amount of ₱1,189,000.00, representing the value of the jewelry and watches stolen.[14]

The RTC held that all the elements of Qualified Theft are present, having found that Jennie is a domestic servant who admittedly took Carmel's jewelry and watches without the latter's consent, but without using violence or intimidation against persons nor force upon things. As regards intent to gain, the RTC held that it is presumed from Jennie's overt acts such as: (*a*) calmly opening the drawer which is contrary to a person's behavior under stressful situations; (*b*) intentionally leaving the phone hanging; and (*c*) deliberately deviating from Carmel's instructions regarding scammers. Anent the value of the missing items, the Court noted that while the Information stated that the aggregate value of the jewelry is ₱1,849,000.00, such amount was merely Carmel's estimates, and thus, cannot be taken on its face value. Nonetheless, since the stolen items consist of various luxury watches and jewelry, including diamonds and pearls, the RTC pegged their aggregate value at, more or less, ₱1,189,000.00.[15]

Aggrieved, Jennie appealed[16] to the CA.

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[12] See *id*. at 7-8.

[13] CA *rollo*, pp. 46-60.

[14] *Id*. at 59.

[15] See *id*. at 55-59.

[16] See Notice of Appeal dated June 19, 2014; *id*. at 10-11.

The CA Ruling

In a Decision[17] dated May 11, 2017, the CA affirmed the RTC ruling.[18] It held that the prosecution had established all the elements of the crime charged, highlighting that the element of intent to gain may be presumed from the proven unlawful taking, as in this case. It also stated that the intent to gain is immediately discernable from Jennie's acts – *i.e.*, she did not show any sign of emotional distress upon learning that Carmel figured in an accident, she damaged only the keyhole of the drawer where the stolen items were kept, and she left the phone hanging after the call – all of which ensured the commission of the crime. The CA further noted that Jennie's low educational attainment is not a basis to presume that she was not fully aware of the consequences of her actions. Moreover, the CA found no error in the RTC's reduction of the value of the jewelry taken by ascertaining their value based on the pictures presented before it.[19]

Hence, this appeal.[20]

The Issue Before the Court

The issue for the Court's resolution is whether or not Jennie is guilty beyond reasonable doubt of Qualified Theft.

The Court s Ruling

The appeal is without merit.

Time and again, it has been held that an appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.[21]

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[17] *Rollo*, pp. 2-13.

[18] *Id.* at 12.

[19] See *id.* at 8-12.

[20] See Notice of Appeal dated May 3, 2017; *id.* at 14-15.

[21] See *People v. Dahil*, 750 Phil. 212, 225 (2015).

"The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[22]

Guided by this consideration, the Court affirms Jennie's conviction with modification as to the penalty and award of damages to private complainant, as will be explained hereunder.

Article 310 of the RPC states:

> Article 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 articles, 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.

The elements of Qualified Theft are as follows: (*a*) the taking of personal property; (*b*) the said property belongs to another; (*c*) the said taking be done with intent to gain; (*d*) it be done without the owner's consent; (*e*) it be accomplished without the use of violence or intimidation against persons, nor force upon things; and (*f*) it be done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, committed by a domestic servant.[23]

Verily, the Court finds that these elements concur in this case as the prosecution, through its witnesses, was able to establish that Jennie, while employed as Carmel's housemaid, admittedly took all of the latter's pieces of jewelry from the bathroom drawer without her authority and consent.

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[22] *People v. Comboy*, G.R. No. 218399, March 2, 2016, 785 SCRA 512, 521.

[23] See *Candelaria v. People*, 749 Phil. 517, 523-524 (2014).

In maintaining her innocence, Jennie insists that as a naive *kasambahay* who hailed from a rural area and only had an educational attainment until Grade 4, she was merely tricked in a *modus operandi* when she complied with the verbal instructions relayed over the phone by a person whom she thought to be Carmel. She further points out that her non-flight manifests her lack of intent to gain; otherwise, she would not have returned to her employers' residence and face prosecution for the enormous value of the items taken.[24]

The Court is not convinced.

Jurisprudence provides that intent to gain or *animus lucrandi* is an internal act which can be established through the overt acts of the offender[25] and is presumed from the proven unlawful taking.[26] Actual gain is irrelevant as the important consideration is the intent to gain.[27] In this case, suffice it to say that Jennie's *animus lucrandi* is presumed from her admitted taking of the stolen items. Further, her aforesaid excuse that she was merely tricked cannot be given credence for likewise being illogical, especially in view of Carmel's warning against scammers and explicit directive not to entertain such phone calls.

Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[28] As such, Jennie's conviction for Qualified Theft must be upheld.

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[24] See Appellant's Brief; CA *rollo*, p. 40.

[25] *People v. Del Rosario*, 411 Phil. 676, 686 (2001).

[26] See *People v. Cabanada*, G.R. No. 221424, July 19, 2017.

[27] See *id*.

[28] See *Peralta v. People*, G.R. No. 221991, August 30, 2017.

Anent the proper penalty to be imposed on Jennie, it is well to stress that pending the final resolution of this case, Republic Act No. (RA) 10951[29] was enacted into law. As may be gleaned from the law's title, it adjusted the value of the property and the amount of damage on which various penalties are based, taking into consideration the present value of money, as opposed to its archaic values when the RPC was enacted in 1932.[30] While it is conceded that Jennie committed the crime way before the enactment of RA 10951, the newly-enacted law expressly provides for retroactive effect if it is favorable to the accused,[31] as in this case.

Section 81 of RA 10951 adjusted the graduated values where the penalties for Theft are based. Pertinent portions of which read:

> Section 81. Article 309 of the same Act is hereby amended to read as follows:
>
> "ART. 309. *Penalties*. – Any person guilty of theft shall be punished by:
>
> x x x x x x x x x
>
> 2. The penalty of *prision correccional* in its medium and maximum periods, if the value of the thing stolen is more than Six hundred thousand pesos (₱600,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).
>
> x x x x x x x x x"

Thus, applying the provisions of RA 10951, the Indeterminate Sentence Law, the increase of the aforesaid penalty by two (2)

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[29] Entitled "AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS 'THE REVISED PENAL CODE,' AS AMENDED," approved on August 29, 2017.

[30] See Article 1 of the RPC.

[31] See Section 100 of RA 10951. See also *Rivac v. People*, G.R. No. 224673, January 22, 2018.

degrees in instances of Qualified Theft under the RPC,[32] and considering further the absence of any mitigating or aggravating circumstances and the fact that the aggregate value of the stolen items amounts to ₱1,189,000.00, the Court finds it proper to sentence Jennie to suffer the penalty of imprisonment for an indeterminate period of seven (7) years, four (4) months, and one (1) day of *prision mayor*, as minimum, to eleven (11) years, six (6) months, and twenty-one (21) days of *reclusion temporal*, as maximum.

Finally, the monetary awards due to Carmel shall earn legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment, pursuant to prevailing jurisprudence.[33]

WHEREFORE, the appeal is **DENIED**. The Decision dated May 11, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 06882 finding accused-appellant Jennie Manlao *y* Laquila **GUILTY** beyond reasonable doubt of the crime of Qualified Theft, defined and penalized under Article 310, in relation to Article 309, of the Revised Penal Code is hereby **AFFIRMED** with **MODIFICATIONS**, sentencing her to suffer the penalty of imprisonment for an indeterminate period of seven (7) years, four (4) months, and one (1) day of *prision mayor*, as minimum, to eleven (11) years, six (6) months, and twenty-one (21) days of *reclusion temporal*, as maximum, and ordering her to pay private complainant Carmel Ace Quimpo-Villaraza the amount of ₱1,189,000.00 as actual damages, with legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.,* concur.

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[32] See Article 310 of the RPC, as amended.

[33] See *People v. Jugueta*, 783 Phil. 806, 854 (2016).

[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

EN BANC

[A.C. No. 9899. September 4, 2018]

DANDIBERTH CANILLO, *complainant, vs.* **ATTY. SERGIO F. ANGELES,** *respondent*.

[A.C. Nos. 9900, 9903-9905. September 4, 2018]

DR. POTENCIANO R. MALVAR, *complainant, vs.* **ATTY. SERGIO F. ANGELES,** *respondent.*

[A.C. No. 9901. September 4, 2018]

LEONORA L. HIZON, *complainant, vs.* **ATTY. SERGIO F. ANGELES,** *respondent.*

[A.C. No. 9902. September 4, 2018]

SHERYL H. CUSTODIO, VENUS H. TUMBAGA, MARYJANE M. HIZON, GLADYS HIZON, and ADONIS HIZON, *complainants, vs.* **ATTY. SERGIO F. ANGELES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); ONCE A LAWYER AGREED TO TAKE UP THE CAUSE OF A CLIENT, HE OWES FIDELITY TO SUCH CAUSE AND MUST ALWAYS BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED ON HIM. As we have consistently held, a lawyer's failure to file a brief for his client, despite notice, amounts to inexcusable negligence. A lawyer is bound to protect his client's interest to the best of his ability and with utmost diligence. Once a lawyer agrees to take up the cause of a client, he owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. A lawyer who discharges his duties with diligence not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and

helps maintain the respect of the community to the legal profession.

2. **ID.; ID.; A LAWYER SHALL NOT REPRESENT CONFLICTING INTERESTS EXCEPT BY WRITTEN CONSENT OF ALL CONCERNED GIVEN AFTER A FULL DISCLOSURE OF FACTS; ELUCIDATED.** x x x [R]ule 15.03 of the Code of Professional Responsibility provides that "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts." The rule prohibiting conflict of interest applies to situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients. It also applies when the lawyer represents a client against a former client in a controversy that is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for the former client. This rule applies regardless of the degree of adverse interests. What a lawyer owes his former client is to maintain inviolate the client's confidence or to refrain from doing anything which will injuriously affect the client in any matter in which the lawyer previously represented him.

3. **ID.; ID.; CHAMPERTOUS CONTRACTS, DEFINED; IN THE LEGAL PROFESSION, AN AGREEMENT WHEREBY THE ATTORNEY AGREES TO PAY EXPENSES OR PROCEEDINGS TO ENFORCE THE CLIENT S RIGHTS IS CHAMPERTOUS, WHICH AGREEMENTS ARE AGAINST PUBLIC POLICY; RATIONALE.** A champertous contract is defined as a contract between a stranger and a party to a lawsuit, whereby the stranger pursues the party's claim in consideration of receiving part or any of the proceeds recovered under the judgment. It is a bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. In the legal profession, an agreement whereby the attorney agrees to pay expenses of proceedings to enforce the client's rights is champertous. Such agreements are against public policy. The execution of this type of contract violates the fiduciary relationship between the lawyer and his client, for which the former must incur administrative sanction.

> Specifically, champertous contracts are contrary to Rule 16.04 of the Code of Professional Responsibility, which states that lawyers shall not lend money to a client, except when in the interest of justice, they have to advance necessary expenses in a legal matter they are handling for the client.

D E C I S I O N

PER CURIAM:

For the Court's resolution are disbarment complaints filed against Atty. Sergio F. Angeles (respondent). In A.C. No. 9899, Dandiberth Canillo (Canillo) charged respondent with gross negligence for failing to comply with the Supreme Court's directive to file a reply which resulted in the dismissal of the petition for review in G.R. No. 153138.[1] In A.C. No. 9900, Dr. Potenciano R. Malvar (Dr. Malvar) charged respondent of representing conflicting interests in various civil cases involving a common parcel of land.[2] In A.C. Nos. 9901 and 9902, the complainants charged respondent for representing conflicting interests and entering into a champertous contract.[3] In A.C. Nos. 9903-9905, Dr. Malvar charged respondent for committing fraudulent and deceitful acts, gross misconduct, malpractice, and violating the Code of Professional Responsibility for failing to account for various sums of money allegedly given to the respondent.[4] Upon recommendation of the Office of the Bar Confidant, we consolidated these administrative cases.[5]

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[1] *Rollo* (A.C. No. 9899), pp. 2-6.

[2] *Rollo* (A.C. No. 9900), pp. 2-9.

[3] *Rollo* (A.C. No. 9901), pp. 2-7; *rollo* (A.C. No. 9902), pp. 2-7.

[4] *Rollo* (A.C. No. 9903), pp. 2-4; *rollo* (A.C. No. 9904), pp. 2-4; *rollo* (A.C. No. 9905), pp. 2-4.

[5] *Rollo* (A.C. No. 9899), p. 1092.

A. C. No. 9899

Canillo was one of the plaintiffs in Civil Case No. Q-96-29389.[6] Respondent acted as counsel for the plaintiffs in the case. The Court of Appeals, on *certiorari,* ordered the case to be dismissed. Respondent subsequently filed a petition for review before this Court docketed as G.R. No. 153138 (the Canillo petition).[7] After the comment to the petition for review was filed, we required petitioners therein to submit a reply within ten days. Respondent failed to comply with our directive, leading to the denial of the Canillo petition.[8] Respondent filed a motion for reconsideration, but we denied reconsideration with finality.[9] The Decision became final and executory upon the entry of judgment on April 29, 2003.[10]

When he heard of the dismissal of his petition, Canillo demanded to speak with respondent. In a meeting held on September 23, 2004 attended by Canillo, Dr. Malvar, who was the financier in the civil cases, and others, Canillo raised the matter, but respondent angrily parried the question regarding the denial of the Canillo petition and left without giving them any explanation as to what happened.[11]

A.C. No. 9900

Dr. Malvar and respondent became acquainted in 1994, and thereafter became close friends. From 1994 to 2004,[12] respondent handled around 24 civil and criminal cases for Dr. Malvar.[13]

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[6] *Id.* at 17-18.

[7] *Id.* at 3.

[8] *Id.* at 380-381.

[9] *Id.* at 386.

[10] *Id.* at 387.

[11] *Id.* at 162.

[12] See allegations on Dr. Malvar's complaint. *Rollo* (A.C. No. 9900), pp. 2-8.

[13] *Id.* at 2-8, 248.

Due to their close relations, respondent introduced Dr. Malvar to Marcelino Lopez (Marcelino), another client and also a business associate. Marcelino co-owned, with his siblings, the land adjacent to the property owned by Dr. Malvar. For business reasons, Dr. Malvar became interested in acquiring portions of the property owned by the Lopezes. The Lopez property was, however, the subject of several civil cases being handled by respondent, namely: (1) Civil Case No. 463-A captioned *Marcelino Lopez, et al. v. Ambrosio Aguilar, et al.*[14] (2) Civil Case No. 96-4193 captioned *Jose Esquivel, Jr. and Carlito Talens v. Marcelino Lopez, et al.* and (3) Civil Case No. 95-3693 captioned *Angelina Villarosa*[15] *Hizon, et al. v. Carlito Talens, et al.* [16] Respondent represented the Lopezes and the Hizons in these cases.[17] Confident of favorable rulings in the cases handled by respondent, Dr. Malvar entered into a joint venture agreement[18] with Marcelino, as attorney-in-fact of his co-owners, where the latter granted Dr. Malvar the exclusive right to negotiate for the financing, development, and construction on part of the litigated property. Subsequently, he started to acquire, by way of conditional[19] and absolute[20] sales, portions thereof. Respondent facilitated the execution of the joint venture agreements and deeds of conditional sale.[21]

However, the Regional Trial Court (RTC) of Antipolo City ruled against the Lopezes in Civil Case No. 96-4193. Dr. Malvar tried to convince respondent to allow him to intervene on appeal, but the latter discouraged such action. Dr. Malvar, through

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[14] *Id.* at 3.

[15] Villaroza in most parts of the records.

[16] *Rollo* (A.C. No. 9900), p. 22.

[17] *Id.* at 3-4.

[18] *Id.* at 317-318.

[19] *Id.* at 319-324.

[20] *Id.* at 341-347.

[21] *Id.* at 6.

another counsel, nonetheless proceeded to file a motion for intervention with the Court of Appeals.[22] Respondent immediately filed his comment, vehemently opposing the motion for intervention.[23] At this point, the relationship between Dr. Malvar and respondent had already soured, following their verbal altercation during the meeting dated September 23, 2004.[24]

Respondent later filed Civil Case No. Q-04-53966 captioned *Feliza Lopez, Ziolo Lopez, Leonardo Lopez, Marcelino E. Lopez and Sergio F. Angeles v. Potenciano Malvar and/or Noel Rubber and Development Corporation* before the RTC of Quezon City, seeking the cancellation of the agreement and deeds of sale executed by Dr. Malvar and the Lopezes.[25] Notably, respondent was himself a plaintiff in the suit.

A.C. Nos. 9901 & 9902

Leonora L. Hizon, Sheryl Hizon Custodio, Venus Hizon Tumbaga, Maryjane M. Hizon, Gladys Hizon, and Adonis Hizon (collectively, the Hizons) are the grandchildren of the late Lauro Hizon and his surviving spouse, Angelina Villaroza Hizon (Angelina).[26] In 1983, Angelina engaged the services of respondent for the purpose of securing a parcel of land in Antipolo. The contract for professional services provided that respondent will pay for and advance all costs and expenses, including taxes, necessary to secure the Torrens certificate of title for the land. In exchange, Angelina agreed to transfer ownership over two hectares of land to respondent.[27]

However, it was only in 1995 or more than a decade after his services were engaged when respondent filed a case for

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

[23] *Id.* at 104-109.

[24] *Id.* at 388-389.

[25] *Id.* at 164-172.

[26] *Rollo* (A.C. No. 9901), p. 2; *rollo* (A.C. No. 9902), p. 2.

[27] *Rollo* (A.C. No. 9901), pp. 3, 8-9.

quieting of title against Carlito Talens and Jose Esquivel, Jr., docketed as Civil Case No. 95-3693. Respondent himself was one of the co-plaintiffs in the case, along with Angelina and the heirs of Lauro Hizon.[28] Respondent also represented the Lopezes in separate civil cases involving property that overlapped with that which was being claimed by the Hizons.[29] Respondent had previously advised Angelina and her children that their claim was dependent upon the Lopezes' claim.[30]

A.C. No. 9903

Respondent, together with Marcelino, facilitated Dr. Malvar's conditional purchase of a 5,000-square meter property in Tandang Sora, Quezon City from one Manuel Silvestre Bernardo (Bernardo), another client of respondent, with an agreed price of ₱650.00 per square meter. The sale was conditioned upon a favorable ruling in Civil Case No. 12645 which was then pending before the RTC of Quezon City.[31] The contract was not signed by Bernardo. On March 13, 1996, two days after the execution of the agreement, Dr. Malvar issued a check amounting to ₱500,000.00, allegedly in connection with the transaction, which was encashed by respondent.[32] Dr. Malvar issued three other checks amounting to ₱250,000.00, ₱333,333.00, and ₱150,000.00 as payment for the Tandang Sora property.[33]

On September 6, 2004, Dr. Malvar demanded an accounting of the sums given to respondent.[34] Respondent failed to comply, which prompted Dr. Malvar to file a complaint for sum of money against respondent and Marcelino, docketed as Civil Case

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[28] *Rollo* (A.C. No. 9901), p. 3.

[29] *Id.* at 92.

[30] *Id.* at 123; *rollo* (A.C. No. 9900), p. 12.

[31] *Rollo* (A.C. No. 9903), pp. 5, 8.

[32] *Id.* at 5-6, 9.

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

[34] *Id.* at 12.

No. Q-04-54479.[35] Respondent also filed his own case, docketed as Civil Case No. Q-04-54356, against Dr. Malvar for collection of attorney's fees.[36]

A.C. Nos. 9904 & 9905

Dr. Malvar purchased from respondent a one-hectare property located in Novaliches, Quezon City allegedly co-owned by respondent. Respondent represented to Dr. Malvar that his claim of co-ownership is based on his contingent attorney's fees in the form of shares in the real property subject of the case.[37] On April 25, 1997, Dr. Malvar issued a check[38] amounting to ₱100,000.00 in favor of respondent, who subsequently prepared a deed of conditional sale for the property signed by him and Dr. Malvar. The contract was conditioned on a favorable decision in Civil Case No. Q-96-29389—the same case respondent handled for Canillo, which reached, and was dismissed by, the Supreme Court (Canillo petition). The contract also provided that in case of an adverse decision, the buyer had no more right to be refunded of the purchase price paid.[39] From June 24, 1997 until October 16, 1997, Dr. Malvar issued seven checks amounting to ₱880,000.00 to respondent and/or Marcelino.[40] Dr. Malvar also agreed to finance the filing and docket fees for the Canillo case, and issued another check amounting to ₱435,000.00 to cover these costs.[41]

In view of the denial of the Canillo petition, Dr. Malvar demanded that respondent and Marcelino return the ₱980,000.00 paid in connection with the Canillo property.[42] In response,

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[35] *Id.* at 6, 13.

[36] *Id.* at 39-51.

[37] *Rollo* (A.C. No. 9904), p. 5; *rollo* (A.C. No. 9899), p. 178.

[38] *Rollo* (A.C. No. 9904), p. 10.

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

[40] *Id.* at 15-22.

[41] *Rollo* (A.C. No. 9905), pp. 5, 10.

[42] *Rollo* (A.C. No. 9904), p. 24.

respondent cited the no-refund clause in the deed of conditional sale.[43] Dr. Malvar also inquired with the Clerk of Court of the RTC where the Canillo case was pending regarding the amount of filing and docket fees.[44] The Clerk of Court certified that the total amount of filing fee was only ₱45,808.50.[45]

Meanwhile, Dr. Malvar was able to obtain a copy of the retainer agreement between Canillo and respondent. This provided that respondent was entitled to the sum equivalent to 30% of the recovery but was silent about respondent's share in the litigated property.[46]

Recommendation of the IBP

In the consolidated Explanation/Recommendation,[47] Integrated Bar of Philippines (IBP) Investigating Commissioner Wilfredo E.J.E. Reyes found respondent guilty of the following:

(1) Failing to serve his client, Canillo, with competence and diligence when respondent failed to file a reply as directed by the Supreme Court, which ultimately led to the denial of his client's petition;[48]

(2) Representing conflicting interests for filing a case, in his own capacity and on behalf of the Lopezes, against Dr. Malvar despite respondent acting as counsel for Dr. Malvar in numerous cases and playing an instrumental role in the dealings between Dr. Malvar and the Lopezes;[49]

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[43] *Id.* at 25.

[44] *Rollo* (A.C. No. 9905), p. 17.

[45] *Id.* at 18.

[46] *Rollo* (A.C. No. 9904), p. 26.

[47] *Rollo* (A.C. No. 9899), pp. 928-931.

[48] CBD Case No. 04-1339, *id.* at 932-937.

[49] CBD Case No. 04-1361, *id.* at 947-954.

(3) Entering into a champertous contract with Angelina;[50]

(4) Breach of trust and fraud for his failure to account for the money given by Dr. Malvar in connection with the Tandang Sora property;[51]

(5) Fraud by entering into a deed of conditional sale without proper authority;[52] and

(6) Gross dishonesty and misconduct for failure to account for and return the amount advanced by Dr. Malvar as payment of docket fees.[53]

Nonetheless, the Investigating Commissioner absolved respondent respecting the charge of alleged conflict of interest in representing both the Hizons and Lopezes.[54] Considering respondent's propensity in violating the Code of Professional Responsibility, the Investigating Commissioner recommended that respondent be indefinitely suspended.[55]

The IBP Board of Governors unanimously adopted and approved the recommendation of the Investigating

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[50] CBD Case Nos. 04-1391 & 04-1399, *id.* at 938-946.

[51] CBD Case No. 05-1404, *id.* at 969-973.

[52] CBD Case No. 05-1422, *id.* at 961-968.

[53] CBD Case No. 05-1487, *id.* at 955-960.

[54] *Id.* at 930.

[55] *Id.* at 931. For the individual charges, the Investigating Commissioner recommended the following penalties:

Case No.	*Recommended Penalty*
CBD Case No. 04-1339	Six months suspension
CBD Case No. 04-1361	One year suspension
CBD Case Nos. 04-1391 & 04-1399	One year suspension
CBD Case No. 05-1404	Three years suspension
CBD Case No. 05-1422	Two years suspension
CBD Case No. 05-1487	Three years suspension

Id. at 929-931.

Commissioner.[56] It subsequently denied respondent's motion for reconsideration.[57]

The Court s Ruling

We concur with the findings of the IBP that respondent violated the Code of Professional Responsibility on numerous occasions. Substantial evidence exists to support the allegations of the complainants.[58] Respondent's propensity in violating his duties as a lawyer merits the penalty of disbarment.

A.C. No. 9899

The reason for the denial of the Canillo petition is clear from the face of our Resolution dated February 5, 2003: "Angeles and Associates, counsel for petitioners, failed to file a reply to the comment on the petition for review on certiorari within the period which expire on November 4, 2002 as required in the resolution of October 16, 2002."[59]

In his answer to the complaint, respondent did not refute the allegation that he failed to file a reply. Neither did he provide any compelling reason why he was unable to file one. Instead, he focused his defense on the fact that it was Dr. Malvar, instead of Canillo, who he was regularly talking to in relation to the case.[60] This, however, is irrelevant because it was Canillo who was the party-litigant, and respondent was his counsel on record. Respondent's negligence violated Rule 18.03 of the Code of Professional Responsibility which provides:

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[56] IBP Board of Governors Resolution No. XVIII-2008-156 dated April 15, 2008, *id.* at 925-927.

[57] IBP Board of Governors Resolution No. XX-2013-34 dated January 3, 2013, *id.* at 1033-1034.

[58] *Re: Complaint of Aero Engr. Darwin A. Reci Against Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Thelma C. Bahia Relative to Criminal Case No. 05-236956,* A.M. No. 17-01-04-SC, February 7, 2017, 817 SCRA 14, 17.

[59] *Rollo* (A.C. No. 9899), p. 381.

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

> A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

As we have consistently held, a lawyer's failure to file a brief for his client, despite notice, amounts to inexcusable negligence. A lawyer is bound to protect his client's interest to the best of his ability and with utmost diligence. Once a lawyer agrees to take up the cause of a client, he owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. A lawyer who discharges his duties with diligence not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[61]

A.C. No. 9900

Respondent admitted handling at least 24 cases for Dr. Malvar.[62] He also admitted handling two land cases for the Lopezes.[63] He was instrumental in facilitating the various dealings between Dr. Malvar and the Lopezes involving the litigated properties he was handling, and in fact signed as a witness in the joint venture agreement and three deeds of conditional sale between the parties.[64] After their falling out, respondent then filed a complaint, with himself as co-plaintiff together with the Lopezes, seeking to invalidate the same agreements he prepared at a time when he enjoyed the confidence of Dr. Malvar.[65] These facts clearly establish that respondent represented conflicting interests in violation of Rule 15.03 of the Code of Professional Responsibility which provides that "[a] lawyer

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[61] See *Ramos v. Jacoba,* A.C. No. 5505, September 27, 2001, 366 SCRA 91, 94-96. Citations omitted.

[62] *Rollo* (A.C. No. 9900), p. 248.

[63] *Id.* at 249-251.

[64] *Id.* at 317-324.

[65] *Id.* at 348-356.

shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts."

The rule prohibiting conflict of interest applies to situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients. It also applies when the lawyer represents a client against a former client in a controversy that is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for the former client. This rule applies regardless of the degree of adverse interests. What a lawyer owes his former client is to maintain inviolate the client's confidence or to refrain from doing anything which will injuriously affect the client in any matter in which the lawyer previously represented him.[66]

A.C. No. 9901 & 9902

A champertous contract is defined as a contract between a stranger and a party to a lawsuit, whereby the stranger pursues the party's claim in consideration of receiving part or any of the proceeds recovered under the judgment. It is a bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. In the legal profession, an agreement whereby the attorney agrees to pay expenses of proceedings to enforce the client's rights is champertous. Such agreements are against public policy. The execution of this type of contract violates the fiduciary relationship between the lawyer and his client, for which the former must incur administrative sanction.[67] Specifically, champertous contracts are contrary to Rule 16.04 of the Code of Professional Responsibility, which states that lawyers shall not lend money to a client, except when in the interest of justice, they have to advance necessary expenses in a legal matter they are handling for the client.

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[66] *Mabini Colleges, Inc. v. Pajarillo,* A.C. No. 10687, July 22, 2015, 763 SCRA 288, 295. Citations omitted.

[67] *Roxas v. Republic Real Estate Corporation,* G.R. Nos. 208205 & 208212, June 1, 2016, 792 SCRA 31, 72-73. Citation omitted.

As correctly found by the IBP, respondent's agreement with Angelina, wherein respondent undertook to pay for and advance all costs and expenses, including taxes, necessary to secure the Torrens certificate of title for the land in exchange for two hectares of land, squarely falls within the above definition.[68]

A.C. Nos. 9903-9905

Dr. Malvar provided documentary evidence, in the form of copies of checks and receipts, to prove that he transmitted the sums of ₱1,233,333.00,[69] ₱980,000.00,[70] and ₱435,000.00,[71] respectively, to respondent. For the first sum, respondent's primary defense was that the agreement was void because the seller did not sign it, and that the checks he received could have been payment for some other transactions. He placed the blame on Dr. Malvar, who as an educated person should not have been ignorant and gullible to pay on the basis of a contract not signed by the owner.[72] For the second sum, respondent relied on the provision of the contract which provides that the buyer, Dr. Malvar, had no more right to be refunded of the amounts already paid in the event of an adverse decision in the case where the subject land was being litigated.[73] For the third sum, respondent claimed that the money is already with a certain Col. Manuel Manalo (Col. Manalo).[74]

Respondent's defenses do not absolve him of his duty under Rule 16.01 of the Code of Professional Responsibility to account for all money or property collected or received for or from his client. Respondent's only means of ensuring accountability was by issuing and keeping receipts.[75] Regrettably, he failed to

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[68] *Rollo* (A.C. No. 9899), pp. 945-946.

[69] *Rollo* (A.C. No. 9903), pp. 9-11.

[70] *Rollo* (A.C. No. 9904), pp. 10, 15-21.

[71] *Rollo* (A.C. No. 9905), p. 10.

[72] *Rollo* (A.C. No. 9899), pp. 970-972.

[73] *Id.* at 962-963.

[74] *Id.* at 959.

[75] *Tarog v. Ricafort,* A.C. No. 8253, March 15, 2011, 645 SCRA 320, 329-330.

live up to this basic professional responsibility. Even if his defense in connection with the sum involving ₱1,233,333.00 was true, *i.e.,* the money was for some other transaction, he failed to render an accounting of the sum so received. The same is also true for the sum amounting to ₱435,000.00. Because of respondent's failure to account for the money he received, Dr. Malvar had to request for a certification from the Clerk of Court to confirm the amount of docket fees. Notwithstanding the admission of Col. Manalo that he used the balance of ₱390,000.00 for administrative expenses,[76] it was incumbent upon respondent to, at the very least, notify Dr. Malvar, or more prudently, ask for his written confirmation, before transferring the money to Col. Manalo.

Respondent's liability, however, is not limited to his failure to account for his client's money. He likewise contravened Rule 1.01[77] and Canon 17[78] of the Code of Professional Responsibility when he knowingly facilitated dubious transactions involving his client, Dr. Malvar. In the transaction involving the Tandang Sora property, respondent was the one who facilitated the contract of conditional sale, and in fact signed thereon as a witness and countersigned the corrections in the document. He did this despite the absence of the owner of the property—then later used the absence of the owner to claim that the contract was void. For the Canillo property, he sold a parcel of land to Dr. Malvar despite not being its owner. He also facilitated a champertous contract between Dr. Malvar and Canillo, where the former acted as financier in exchange for a share of the land in dispute.[79] As a lawyer, respondent ought to have known that these transactions were of suspect legal validity. He was duty-bound to refrain from facilitating such

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[76] *Rollo* (A.C. No. 9905), pp. 51-53.

[77] A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[78] A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

[79] *Rollo* (A.C. No. 9905), pp. 49-50.

kinds of transactions and to dissuade his client, Dr. Malvar, from entering into such agreements.

WHEREFORE, the Court finds respondent Atty. Sergio F. Angeles **GUILTY** of violating Rules 1.01, 15.03, 16.01, 16.04, and 18.03, and Canon 17 of the Code of Professional Responsibility. Accordingly, he is hereby **DISBARRED** from the practice of law and his name ordered stricken off the Roll of Attorneys, effective immediately.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into Atty. Sergio F. Angeles' records. Copies shall likewise be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, Bersamin, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.,*concur

Del Castillo, J., on official leave.

EN BANC

[A.C. No. 10498. September 4, 2018]

JUDGE ARIEL FLORENTINO R. DUMLAO, JR., *complainant, vs.* **ATTY. MANUEL N. CAMACHO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF ATTORNEYS; A LAWYER HAS THE PRIVILEGE AND RIGHT TO

PRACTICE LAW DURING GOOD BEHAVIOR AND CAN ONLY BE DEPRIVED OF IT FOR MISCONDUCT ASCERTAINED AND DECLARED BY JUDGMENT OF THE COURT AFTER OPPORTUNITY TO BE HEARD HAS AFFORDED HIM. Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, every lawyer should act and comport himself in a manner that would promote public confidence in the integrity of the legal profession. It bears stressing that membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, an attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.

2. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER IS DUTY-BOUND TO ACTIVELY AVOID ANY ACT THAT TENDS TO INFLUENCE, OR MAY BE SEEN TO INFLUENCE, THE OUTCOME OF AN ONGOING CASE, LEST THE PEOPLE S FAITH IN THE JUDICIAL PROCESS IS DILUTED. The highly immoral implication of a lawyer approaching a judge — or a judge evincing a willingness — to discuss, in private, a matter related to a case pending in that judge's *sala* cannot be over-emphasized. A lawyer is duty-bound to actively avoid any act that tends to influence, or may be seen to influence, the outcome of an ongoing case, lest the people's faith in the judicial process is diluted. The primary duty of lawyers is not to their clients but to the administration of justice. To that end, their clients' success is wholly subordinate. The conduct of a member of the bar ought to and must always be scrupulously observant of the law and ethics. Any means, not honorable, fair and honest which is resorted to

by the lawyer, even in the pursuit of his devotion to his client's cause, is condemnable and unethical.

3. ID.; ID.; INFLUENCE PEDDLING AND BRIBERY, AS VIOLATION; DEFINED; PRESENT IN CASE AT BAR. A lawyer that approaches a judge to try to gain influence and receive a favorable outcome for his or her client violates Canon 13 of the Code. x x x On the other hand, bribery is classified as a serious charge that constitutes malfeasance in office. When an attempted bribery is committed, the transaction is always done in secret and often only between the two parties concerned. A lawyer who commits attempted bribery, or corruption of public officials, against a judge or a court personnel, violates Canon 10 and Rule 10.01 of the Code, x x x In this case, while CV Case No. 2004-0181-D was pending before the *sala* of complainant, where respondent was the counsel for the plaintiff therein, respondent fraternized with complainant and gave an impression that he was an influence peddler. He tried to impress complainant with his influence by dropping names of two Justices of the Supreme Court, who were supposedly his colleagues and close friends. x x x By implying that he can influence Supreme Court Justices to advocate for his cause, respondent trampled upon the integrity of the judicial system and eroded confidence in the judiciary. This gross disrespect of the judicial system shows that he is wanting in moral fiber and that he lacks integrity in his character. These acts of respondent constitute the height of arrogance and deceit. Respondent violated Canon 13, Rule 13.01, Canon 10 and Canon 10.01 of the Code.

4. ID.; ID.; THREATENING COURT OFFICERS, AS A VIOLATION; A LAWYER SHOULD NOT FILE OR THREATEN TO FILE ANY UNFOUNDED CRIMINAL CHARGES TO OBTAIN AN IMPROPER ADVANTAGE IN ANY CASE OR PROCEEDING. Canon 19 of the Code states that a lawyer shall represent his client with zeal within the bounds of the law, reminding legal practitioners that a lawyer's duty is not to his client but to the administration of justice; to that end, his client's success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of law and ethics. In particular, Rule 19.01 commands that a lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges

to obtain an improper advantage in any case or proceeding. Under this Rule, a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client.

5. ID.; ID.; DISRESPECTING COURT PROCESSES, AS A VIOLATION; IT IS THE DUTY OF A LAWYER TO OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS OF JUSTICE AND JUDICIAL OFFICERS. Further, all lawyers are bound to uphold the dignity and authority of the courts, and to promote confidence in the fair administration of justice. It is the respect for the courts that guarantees the stability of the judicial institution; elsewise, the institution would be resting on a very shaky foundation. Hence, no matter how passionate a lawyer is towards defending his client's cause, 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. Also, a lawyer must not disrespect the officers of the court. Disrespect to judicial incumbents is disrespect to that branch of the government to which they belong, as well as to the State which has instituted the judicial system. It is the duty of a lawyer to observe and maintain the respect due to the courts of justice and judicial officers. A lawyer who disrespects the court and its officers violates Canon 11 and Canon 11.03 of the Code.

6. ID.; ID.; PROPER PENALTY IN VIEW OF RESPONDENT S PREVIOUS DISBARMENT; TWO (2) YEARS SUSPENSION FROM THE PRACTICE OF LAW FOR THE SOLE PURPOSE OF RECORDING IT IN HIS PERSONAL FILE IN THE OFFICE OF THE BAR CONFIDANT OF THE SUPREME COURT. In our laws, there is no double or multiple disbarment. Neither does our jurisdiction have a law mandating a minimum 5-year requirement for readmission. Once a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law. At best, the Court may only impose a fine or order the said lawyer to pay the monetary obligation to his or her client. x x x Nevertheless, there were instances when the Court gave the corresponding penalty against a lawyer, who was previously disbarred, for the sole purpose of recording it in his or her personal file in

> the OBC. x x x In this case, the infractions committed by respondent are influence peddling, attempted bribery, threatening court officers and disrespecting court processes. These offenses are different from that of his previous administrative case that caused his disbarment. There is no monetary penalty that could be imposed against respondent because he has no unpaid debt or misappropriated funds. Verily, a fine or an order to pay a monetary obligation cannot be imposed upon him. Thus, the Court finds that, as respondent was previously disbarred, it is proper to give the corresponding penalty of suspension for two (2) years from the practice of law for the sole purpose of recording it in his personal file in the OBC. In the event that respondent should apply for the lifting of his disbarment in *Sison, Jr. v. Atty. Camacho,* the penalty in the present case should be considered in the resolution of the same.

D E C I S I O N

GESMUNDO, *J.*:

Before this Court is a Verified Complaint-Affidavit[1] for Disbarment filed before the Office of the Bar Confidant *(OBC)* against Atty. Manuel N. Camacho *(respondent)* for violating Rules 10.01, 11.03, 13.01 and 19.01 of the Code of Professional Responsibility *(Code)* in bribing, attempting to influence complainant, and disrespecting court officers.

The Antecedents

Complainant is the Presiding Judge of the Regional Trial Court, Dagupan City, Pangasinan, Branch 42 *(RTC),* where CV Case No. 2004-0181-D, entitled *"Pathways Trading International, Inc. (Pathways) versus Univet Agricultural Products, Inc., et al. (defendants),"* was pending. Respondent is Pathways' counsel.

Complainant alleged that while the case was pending, respondent attempted to fraternize with him. Respondent casually

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

mentioned his closeness to important personages, which included Justices of the Supreme Court. He also tried to impress complainant with his influence by dropping names of notables and his connection with the University of the Philippines *(U.P.)* College of Law, where he served as a professor. Respondent told him that then Chief Justice Maria Lourdes Sereno and Associate Justice Marvic Leonen were his colleagues and close friends.

Complainant averred that out of respect for the elderly and as a fellow U.P. graduate, he initially treated respondent's fraternization as casual, trivial and harmless

In the course of the proceedings, Pathways, through respondent, filed a motion for summary judgment. In its Order[2] dated January 30, 2014, the RTC found the said motion meritorious because there was no genuine issue in the case. It underscored that the issues raised by defendants were contrived and false because the very same issues were denied by the courts in Mandaluyong City and Malolos, Bulacan. The dispositive portion of the RTC order states:

"WHEREFORE, in view of the foregoing, as there is no genuine issue in this case, the Court is constrained to GRANT plaintiff's motion for summary judgment, and hereby renders judgment ordering defendant to pay plaintiff the following amounts:

1. Sixteen Million Pesos (₱16,000,000.[00]) as reimbursement for plaintiff's expenses;
2. Ten percent (10%) of Sixteen Million Pesos as attorney's fees; and
3. Costs of litigation

Other amounts prayed for the by plaintiff, such as lost profit, are hereby denied for being speculative.

SO ORDERED."[3]

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[2] *Id.* at 12-21.

[3] *Id.* at 21.

Defendants, through their new counsel, Atty. Geraldine U. Baniqued *(Atty. Baniqued),* filed a notice of appeal before the RTC.

Thereafter, respondent started to call complainant and even promised to share a portion of his attorney's fees with complainant in exchange for the denial of the notice of appeal filed by defendants and the issuance of the writ of execution. The promise was accompanied by a threat that if the offer is refused, respondent would file a disbarment case against complainant and he insinuated that through his connections, complainant would surely be disbarred. Respondent declared that the case of Pathways was closely monitored by the named Supreme Court Justices and he insisted that a portion of the judgment would be donated to the U.P. Law Center. He also stated that then President Benigno S. Aquino III *(President Aquino III)* would supposedly appoint him as a Presidential Legal Consultant.

Complainant was shocked by the bribery offer and threat of respondent. He was appalled that these statements came from a veteran lawyer and professor. Complainant, however, initially hesitated in taking immediate and drastic measures against the inappropriate acts of respondent as he was cowed by the latter's claim that he had power and influence.

Then, on March 6, 2014, Pathways, through respondent, filed a Motion to Deny Appeal with motion for the issuance of execution.

In its order dated April 1, 2014, the RTC denied defendants' notice of appeal because it was filed by Atty. Baniqued, who was not properly substituted as the counsel for defendants. It underscored that Atty. Baniqued had no standing to represent defendants.

On April 28, 2014, the RTC issued a Certificate of Finality and a Writ of Execution. On the very same morning that the writ of execution was issued, respondent went to the RTC together with the representatives of Pathways. He demanded Court Sheriff Russel Blair Nabua *(Sheriff Nabua)* to go with them and serve

the writ of execution at the office of defendants in Mandaluyong City.

At that point, complainant was convinced of the abusive and scheming character of respondent to influence the court. He resolved to avoid all means of communication with respondent. Complainant then informed Sheriff Nabua to refrain from being influenced by respondent.

Later, Sheriff Nabua issued a Notice of Garnishment as per instruction of respondent to the different bank accounts of defendants. The latter then informed Sheriff Nabua that they have personal properties in the form of poultry and swine feeds that were sufficient to cover the obligation stated in the writ of execution, or in the amount of ₱16,000,000.00. However, Pathways refused to accept the offer of defendants.

In view of defendants' proposal, Sheriff Nabua coordinated with Pathways for the inspection of the personal properties offered by defendants. This is pursuant to the judgment-debtor's right to avail of the three-tiered process in the implementation of a writ of execution, wherein garnishment is listed as the last resort.

On May 22, 2014, at around 8:30 in the morning, respondent barged into complainant's chambers and demanded that he order the court sheriff to sign the Garnishment Order,[4] which respondent himself prepared. The said garnishment order sought the release of the supposed garnished check of one of the defendants, addressed to Rizal Commercial Bank Corporation *(RCBC)* in the amount of ₱18,690,000,643.00, in favor of Pathways. The prepared order also specifically stated that the RCBC should release the said amount to respondent as the counsel for Pathways.

Complainant, who was preparing for his scheduled hearings for the day, peremptorily dismissed respondent and told him to talk instead to Sheriff Nabua. Thereafter, respondent went

[4] *Id.* at 22.

out of complainant's chambers and fiercely demanded Sheriff Nabua to sign the document.

Consequently, Sheriff Nabua justifiably refused to sign the document prepared by respondent. He explained that since defendants offered their personal property for satisfaction of the writ of execution, the enforcement of the notice of garnishment must be held in abeyance pursuant to the prescribed procedure under Section 9, Rule 39 of the Rules of Court.

Thereafter, respondent said the following statements to Sheriff Nabua: *"Kapag hindi mo pipirmahan ito, papatanggal kita*", "*Alam ng nasa itaas ito.*", "*Alam ng dalawang Justices ito.*" As respondent was making a scene, complainant went out of his chamber and tried to pacify him. He told respondent to just leave the document he prepared and let Sheriff Nabua review the same. Respondent agreed to leave the document and uttered, "*Kung hindi niya pipirmahan ito, tutuluyan ko dismissal nito.*"

Meanwhile, complainant received several text messages from respondent:

Date	Time	Message
May 19, 2014	6:37 a.m.	Judge call me you will be involve in the in some of sheriff. He says its all your idea
May 22, 2014	10:24 a.m.	Urgent please call after this
May 23, 2014	6:27 a.m.	You are as guilty as your sheriff of antigraft. Call me I explain
May 23, 2014	6:38 a.m.	Ok don't blame me
May 23, 2014	7:05 am	On Monday you will receive two pleading 1 for supreme court [2] for antigraft.[5]

[5] *Id.* at 25.

Thereafter, complainant made an Incident Report[6] stating the events that transpired on May 22, 2014 when respondent barged into his chambers and threatened Sheriff Nabua. The said report was submitted to the Office of the Court Administrator *(OCA)*.

Hence, this complaint.

In its Resolution[7] dated August 13, 2014, the Court required respondent to file his comment within ten (10) days from notice. However, no comment was interposed by respondent despite receipt of the said resolution. Thus, in its Resolution[8] dated August 26, 2015, the Court resolved to deem as waived the right of respondent to file a comment and referred his case to the Integrated Bar of the Philippines *(IBP)* for investigation, report and recommendation.

In the proceedings before the IBP, only complainant filed his Mandatory Conference Brief[9] dated December 22, 2015.

Report and Recommendation

In its Report and Recommendation[10] dated May 10, 2016, the IBP Commission on Bar Discipline *(Commission)* found respondent guilty of violating the Code and the Lawyer's Oath. It observed that respondent committed various acts of professional misconduct and thereby failed to live up to the exacting ethical standards imposed on members of the bar. The acts of respondent in mentioning his alleged connections with Supreme Court Justices, his prominence, and influence in the legal community constitute a violation of his duty as an attorney and his oath as a lawyer to never mislead the judge or any judicial officer by an artifice or false statement of fact or law. The Commission

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[6] *Id.* at 24.

[7] *Id.* at 67.

[8] *Id.* at 70.

[9] *Id.* at 74-87.

[10] *Id.* at 98-103.

recommended the ultimate penalty of disbarment because it was not respondent's first infraction.

In its Resolution No. XXII-2017-1186,[11] the IBP Board of Governors *(Board)* adopted the findings of fact of the Commission but reduced the recommended penalty of disbarment to suspension from the practice of law for six (6) months.

The Court s Ruling

The Court accepts and adopts the findings of fact but modifies the penalty imposed upon respondent.

Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, every lawyer should act and comport himself in a manner that would promote public confidence in the integrity of the legal profession.[12]

It bears stressing that membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has afforded him. Without invading any constitutional privilege or right, an attorney's right to practice law may be resolved by a proceeding to suspend or disbar him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney.[13] In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.[14]

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[11] *Id*. at 96.

[12] *Belleza v. Atty. Macasa,* 611 Phil. 179, 192 (2009).

[13] *Velasco v. Atty. Doroin, et al.,* 582 Phil. 1, 9 (2008).

[14] *Ceniza v. Atty. Rubia,* 617 Phil. 202, 208-209 (2009).

The Court finds that respondent violated the Code and the Lawyer's Oath for influence peddling, attempted bribery, threatening court officers and disrespecting court processes.

Influence Peddling and Attempted Bribery

The highly immoral implication of a lawyer approaching a judge — or a judge evincing a willingness — to discuss, in private, a matter related to a case pending in that judge's *sala* cannot be over-emphasized.[15] A lawyer is duty-bound to actively avoid any act that tends to influence, or may be seen to influence, the outcome of an ongoing case, lest the people's faith in the judicial process is diluted. The primary duty of lawyers is not to their clients but to the administration of justice. To that end, their clients' success is wholly subordinate. The conduct of a member of the bar ought to and must always be scrupulously observant of the law and ethics. Any means, not honorable, fair and honest which is resorted to by the lawyer, even in the pursuit of his devotion to his client's cause, is condemnable and unethical.[16]

A lawyer that approaches a judge to try to gain influence and receive a favorable outcome for his or her client violates Canon 13 of the Code.[17] Canon 13 and Canon 13.01 state:

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 13.01 – A lawyer shall not extend extraordinary attention or hospitality to, nor seek opportunity for cultivating familiarity with Judges.

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[15] *Bildner, et al. v. Ilusorio, et al.,* 606 Phil. 369-389 (2009).

[16] *Jimenez, et al. v. Atty. Verano, Jr.,* 739 Phil. 49, 57 (2014).

[17] *Fajardo v. Atty. Alvarez,* 785 Phil. 303, 325 (2016).

On the other hand, bribery is classified as a serious charge that constitutes malfeasance in office.[18] When an attempted bribery is committed, the transaction is always done in secret and often only between the two parties concerned.[19] A lawyer who commits attempted bribery, or corruption of public officials, against a judge or a court personnel, violates Canon 10 and Rule 10.01 of the Code, to wit:

> CANON 10 – A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.
>
> Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

In this case, while CV Case No. 2004-0181-D was pending before the *sala* of complainant, where respondent was the counsel for the plaintiff therein, respondent fraternized with complainant and gave an impression that he was an influence peddler. He tried to impress complainant with his influence by dropping names of two Justices of the Supreme Court, who were supposedly his colleagues and close friends.

Then, while defendants' notice of appeal was pending before complainant, respondent asked him to deny the said notice and issue a writ of execution. He declared that the case of Pathways was closely monitored by the said Supreme Court Justices. He also stated that then President Aquino III would supposedly appoint him as the Presidential Legal Consultant. Verily, respondent consistently applied his influence peddling scheme in order to persuade complainant to rule in favor of his client.

At the same time, he related to complainant that he would share a portion of his attorney's fees with complainant in exchange for the issuance of the writ of execution and the denial of the notice of appeal filed by defendants. He also insisted

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[18] See *National Bureau of Investigation v. Judge Reyes,* 382 Phil. 872, 885 (2000).

[19] See *Bildner, et al. v. Ilusorio, et al.,* 606 Phil. 369, 390 (2009).

that a portion of the judgment would be donated to the U.P. Law Center. Evidently, this constitutes attempted bribery or corruption of public officers on the part of respondent as he offered monetary consideration in exchange for a favorable ruling.

Then, on May 22, 2014, respondent barged in the chamber of complainant and required Sheriff Nabua to sign the garnishment order he prepared, he again gave an impression that he would be able to dismiss Sheriff Nabua because of his influence with the higher authorities. He uttered the following statements: "*Kapag hindi mo pipirmahan ito, papatanggal kita*," "*Alam ng nasa itaas ito.*" "*Alam ng dalawang Justices ito*," and *"Kung hindi niya pipirmahan ito, tutuluyan ko dismissal nito*."

Respondent also sent several text messages to complainant stating that the latter and Sheriff Nabua are guilty of graft and that they will receive pleadings from the Supreme Court.

Clearly, respondent continuously and unceasingly asserted that he had influence in the Court and that he would be able to punish complainant and Sheriff Nabua if they do not follow his whims and caprices. At one point, respondent even attempted to bribe complainant with a share of his attorney's fees.

By implying that he can influence Supreme Court Justices to advocate for his cause, respondent trampled upon the integrity of the judicial system and eroded confidence in the judiciary. This gross disrespect of the judicial system shows that he is wanting in moral fiber and that he lacks integrity in his character. These acts of respondent constitute the height of arrogance and deceit. Respondent violated Canon 13, Rule 13.01, Canon 10 and Canon 10.01 of the Code.

Threatening Court Officers and Disrespecting Court Processes

Canon 19 of the Code states that a lawyer shall represent his client with zeal within the bounds of the law, reminding legal practitioners that a lawyer's duty is not to his client but to the

administration of justice; to that end, his client's success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of law and ethics. In particular, Rule 19.01 commands that a lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding. Under this Rule, a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client.[20]

Further, all lawyers are bound to uphold the dignity and authority of the courts, and to promote confidence in the fair administration of justice. It is the respect for the courts that guarantees the stability of the judicial institution; elsewise, the institution would be resting on a very shaky foundation. Hence, no matter how passionate a lawyer is towards defending his client's cause, 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.[21]

Also, a lawyer must not disrespect the officers of the court. Disrespect to judicial incumbents is disrespect to that branch of the government to which they belong, as well as to the State which has instituted the judicial system.[22] It is the duty of a lawyer to observe and maintain the respect due to the courts of justice and judicial officers.[23] A lawyer who disrespects the court and its officers violates Canon 11 and Canon 11.03 of the Code, to wit:

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[20] *Pena v. Atty. Aparicio,* 552 Phil. 512, 523 (2007).

[21] *Judge Alpajora v. Atty. Calayan,* A.C. No. 8208, January 10, 2018.

[22] *De Leon v. Torres,* 99 Phil. 462, 466 (1956).

[23] *Lacson, et al. v. CA, et al.,* 311 Phil. 143, 149 (1995).

CANON 11 — A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

Rule 11.03 — A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

In this case, while defendants' notice of appeal was pending before the *sala* of complainant, respondent called him. Respondent said that if the notice of appeal is not denied, he would file a disbarment case against complainant and insinuated that, through his connections with the Court, the complainant was sure to be disbarred. Complainant admitted that he was shocked by respondent's threat but, at the same time, he was cowed by the latter's claim of power and influence in the Court. Manifestly, respondent threatened complainant that he would suffer consequences, such as a disbarment complaint, if he does not act in favor of respondent.

Then, on May 22, 2014, respondent barged into complainant's chambers, fully aware that he had a pending case before complainant's sala, and demanded he order the court sheriff to sign the garnishment order, which respondent himself prepared. When respondent did not obtain a favorable response from complainant, he turned his ire on Sheriff Nabua and made several threats that he would be dismissed from service if he did not sign the said garnishment order. Respondent was already making a scene in the court that complainant had to pacify him.

Sheriff Nabua was only following the proper court processes when he declined to sign the garnishment order prepared by respondent. He correctly stated that he cannot enforce the order of garnishment because defendants offered their personal property for satisfaction of the writ of execution, thus, the enforcement of the notice of garnishment was held in abeyance pursuant to Section 9, Rule 39 of the Rules of Court.

Instead of respecting the court processes, respondent blatantly seized for himself the execution of the judgment by drafting his own version of the order of garnishment and demanded that Sheriff Nabua sign it. Further, the said garnishment sought

by respondent is highly questionable and dubious because it required the release of the supposed garnished check of one of the defendants, addressed to RCBC in the amount of ₱18,690,000,643.00, in favor of Pathways. However, it is clear from the RTC Order[24] dated January 30, 2014, that the judgment award is only ₱16,000,000.00 with 10% thereof as attorney's fee. Glaringly, the prepared garnishment order also specifically stated that the RCBC should release the check's amount to respondent.

The events that transpired on May 22, 2014 were duly recorded in the incident report submitted by complainant to the OCA. Respondent was given several opportunities to refute the charges against him but he neither submitted his comment before the Court, despite due notice, nor attended the mandatory conference in the IBP.

Manifestly, the acts of respondent are palpably irregular and disrespectful to the court and its officers. Respondent had the gall to barge into the chambers of a judge and threaten his court personnel. For his wanton disregard of the good conduct expected from lawyers before the courts, respondent violated Rules 11.03 and 19.01 and Canons 11 and 19 of the Code.

Further, respondent also violated the Lawyer's Oath to obey the laws as well as the legal orders of the duly constituted authorities therein; to do no falsehood, nor consent to the doing of any in court; and 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.

Proper Penalty

In its report and recommendation, the Commission recommended that the penalty of disbarment be imposed against respondent. However, the IBP Board reduced the recommended penalty to suspension from the practice of law for six (6) months.

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[24] *Id.* at 12-21.

The Court finds that the recommended penalty by the IBP Board must be modified to suspension from the practice of law for two (2) years.

In *Plumptre v. Atty. Rivera,*[25] the lawyer successfully solicited money from his client to allegedly bribe a judge to rule in their favor. The Court imposed a suspension from the practice of law for three (3) years against the lawyer. It was emphasized that a lawyer's act of soliciting money to bribe a judge served to malign the judge and the judiciary by giving the impression that court cases are won by the party with the deepest pockets and not on the merits.

In *Rau Sheng Mao v. Atty. Velasco,*[26] the lawyer therein, among others, sent a letter to the complainant bragging about his influence over judges. The Court suspended him for two (2) years from the practice of law. It was highlighted therein that a lawyer is duty bound to avoid improprieties which give the appearance of influencing the court.

In *Fajardo v. Atty. Alvarez,*[27] the lawyer gave an impression that he is able to influence the Office of the Ombudsman to rule in favor of his client provided that complainant furnish the necessary bribe money for the said office. The Court suspended him for one (1) year from the practice of law for influence peddling. It was stated therein that lawyers who offer no skill other than their acquaintances or relationships with regulators, investigators, judges, or Justices pervert the system, weaken the rule of law, and debase themselves even as they claim to be members of a noble profession.

Given the gravity and seriousness of the offenses committed by respondent, the Court rules that the imposable penalty against respondent for influence peddling, attempted bribery, threatening court officers and disrespecting court processes is suspension from the practice of law for two (2) years.

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[25] 792 Phil. 626 (2016).

[26] 459 Phil. 440 (2003).

[27] 785 Phil. 303 (2016).

Respondent had been disbarred

The Court is aware that respondent had been previously disbarred. In *Sison, Jr. v. Atty. Camacho,*[28] the ultimate penalty of disbarment was imposed against respondent for violating Rule 1.01 and Rule 16.01 of the Code. In that case, respondent entered into a compromise agreement without the conformity of his client and he failed to account for the money he received from his client in the amount of ₱1,288,260.00.

In our laws, there is no double or multiple disbarment. Neither does our jurisdiction have a law mandating a minimum 5-year requirement for readmission.[29] Once a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law. At best, the Court may only impose a fine or order the said lawyer to pay the monetary obligation to his or her client.

In *Yuhico v. Gutierrez,*[30] the Court found that the erring lawyer was previously disbarred. Thus, the said lawyer was simply ordered to pay the amount of ₱90,000.00 to complainant for his unpaid debt.

Similarly, in *Punla v. Atty. Villa-Ona,*[31] it was held that while the lawyer's condemnable acts ought to merit the penalty of disbarment, she may not be disbarred anew because there was no double disbarment in this jurisdiction. Hence, the Court imposed a fine of ₱40,000.00 and ordered the lawyer to pay the amount ₱350,000.00 to complainant as part of her monetary obligation.

Nevertheless, there were instances when the Court gave the corresponding penalty against a lawyer, who was previously disbarred, for the sole purpose of recording it in his or her personal file in the OBC.

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[28] 777 Phil. 1 (2016).

[29] See *Yuhico v. Gutierrez,* 650 Phil. 225, 231 (2010).

[30] *Id.*

[31] A.C. No. 11149, August 15, 2017.

In *Sanchez v. Atty. Torres,*[32] the lawyer therein was previously disbarred. However, considering that the issues and the infraction committed therein were different from his previous infraction, the Court deemed it proper to give the corresponding penalty of suspension for two (2) years from the practice of law for purposes of recording it in his personal file in the OBC.

Likewise, in *Paras v. Paras,*[33] the Court ruled that the penalty of suspension or disbarment can no longer be imposed on a lawyer who had been previously disbarred. Nevertheless, it resolved the issue of the lawyer's administrative liability with a suspension of six (6) months from the practice of law for recording purposes in the lawyer's personal file in the OBC.

Accordingly, in those cases, the purpose of giving the penalty against the disbarred lawyer was only for purposes of recording. The Court shall be fully informed by his personal record in the OBC that aside from his disbarment, he also committed other infractions that would have merited the imposition of penalties were it not for his disbarment. These factors shall be taken into consideration should the disbarred lawyer subsequently file a petition to lift his disbarment.

In this case, the infractions committed by respondent are influence peddling, attempted bribery, threatening court officers and disrespecting court processes. These offenses are different from that of his previous administrative case that caused his disbarment. There is no monetary penalty that could be imposed against respondent because he has no unpaid debt or misappropriated funds. Verily, a fine or an order to pay a monetary obligation cannot be imposed upon him. Thus, the Court finds that, as respondent was previously disbarred, it is proper to give the corresponding penalty of suspension for two (2) years from the practice of law for the sole purpose of recording it in his personal file in the OBC.

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[32] 748 Phil. 18 (2014).

[33] A.C. No. 5333, March 13, 2017.

In the event that respondent should apply for the lifting of his disbarment in *Sison, Jr. v. Atty. Camacho,*[34] the penalty in the present case should be considered in the resolution of the same.

WHEREFORE, the Court finds Atty. Manuel N. Camacho **GUILTY** of violating Canons 10, 11, 13, 19 and Rules 10.01, 11.03, 13.01 and 19.01 of the Code of Professional Responsibility and the Lawyer's Oath and is hereby **SUSPENDED** from the practice of law for two (2) years. However, considering that he has already been previously disbarred, this penalty can no longer be imposed. In the event that he should apply for the lifting of his disbarment in *Sison, Jr. v. Atty. Camacho,* the penalty imposed in the present case should be considered in the resolution of the same.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into the records of Atty. Manuel N. Camacho. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, Bersamin, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., and *Reyes, J. Jr., JJ.,* concur.

Del Castillo, J., on official leave.

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[34] *Supra* note 28.

EN BANC

[A.M. No. RTJ-15-2440. September 4, 2018]
(Formerly A.M. No.14-10-338-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE JULIANA ADALIM-WHITE, Regional Trial Court, Branch 5, Oras, Eastern Samar,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE RULES AND REGULATIONS; PERSONAL DATA SHEET (PDS); THE ACCOMPLISHMENT OF A PDS IS A REQUIREMENT UNDER THE CIVIL SERVICE RULES AND REGULATIONS IN CONNECTION WITH EMPLOYMENT IN THE GOVERNMENT, HENCE, MAKING A FALSE STATEMENT THEREIN AMOUNTS TO DISHONESTY AND FALSIFICATION OF AN OFFICIAL DOCUMENT.** The importance of accomplishing a PDS with utmost honesty cannot be stressed enough. The accomplishment of a PDS is a requirement under the Civil Service Rules and Regulations in connection with employment in the government. The making of untruthful statements therein is, therefore, connected with such employment. As such, making a false statement therein amounts to dishonesty and falsification of an official document. Dishonesty and falsification are considered grave offenses. The Court has not hesitated to impose the extreme penalty of dismissal from the service on employees found guilty of such offenses.

2. **REMEDIAL LAW; DISCIPLINE OF JUDGES; JUDGES SHOULD EXHIBIT MORE THAN JUST A CURSORY ACQUAINTANCE WITH THE STATUTES AND PROCEDURAL RULES, AND SHOULD BE DILIGENT IN KEEPING ABREAST WITH DEVELOPMENTS IN LAW AND JURISPRUDENCE.** To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity and independence. Judges should exhibit more than just a cursory acquaintance with the statutes and procedural rules, and should be diligent in keeping abreast with developments in law and

jurisprudence. The Court has previously held that when a law or rule is basic, judges owe it to their office to simply apply the law. Anything less is ignorance of the law. There is gross ignorance of the law when an error committed by the judge was "gross or patent, deliberate or malicious." It may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or corruption. Gross ignorance of the law or incompetence cannot be excused by a claim of good faith.

3. ID.; ID.; WHEN A JUDGE IS GUILTY OF GROSS IGNORANCE OF THE LAW; IMPOSABLE PENALTY; CASE AT BAR. In this case, respondent Adalim-White's utter disregard to apply the settled laws and jurisprudence on the accomplishment of PDS forms constitutes gross ignorance of the law which merits administrative sanction. Section 8 (9), Rule 140 of the Rules of Court classifies gross ignorance as a serious charge with the following imposable penalties: x x x The **totality** of all these findings underscores the fact that respondent Judge Adalim-White's actions served to erode the people's faith and confidence in the judiciary. She has been remiss in the fulfillment of the duty imposed on all members of the bench in order to avoid any impression of impropriety to protect the image and integrity of the judiciary. Time and time again, the Court has stressed that "the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility." As visible representation of the law, respondent Judge Adalim-White should have conducted herself in a manner which would merit the respect of the people to her in particular and to the Judiciary in general. By her blameworthy conduct, she has tainted the image of the judiciary and no longer deserves to be a member thereof. All told, it is the considered opinion of the Court that the appropriate penalty that should be meted to respondent Judge Adalim-White should be dismissal from the service, with forfeiture of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations. As regards the penalty of suspension imposed by the Ombudsman, considering that respondent Judge Adalim-White is being dismissed by this decision, then, in lieu of suspension, the penalty of fine equivalent to one (1) month salary is hereby imposed.

D E C I S I O N

PER CURIAM:

For resolution is the Indorsement[1] dated March 17, 2014 of the Office of the Ombudsman (Visayas), Cebu City, referring to the Court the Motion for Execution[2] filed by Mr. Roberto T. Lim (Mr. Lim), in his capacity as the complainant in OMB-V-A-02-0186-E relative to the implementation of the administrative penalty of one (1) month suspension meted against respondent Judge Juliana Adalim-White (respondent Judge Adalim-White), Regional Trial Court, Branch 5, Oras, Eastern Samar.

The factual and legal antecedents are as follows:

On May 2, 2002, an administrative complaint for misconduct was filed by Mr. Lim before the Office of the Ombudsman (Visayas) against respondent Judge Adalim-White, or prior to her appointment[3] as judge, for acting as counsel for her brother, Francisco Adalim (Mayor Adalim), former Municipal Mayor of Taft, Eastern Samar, in connection with an administrative case filed against the latter and his wife before the National Telecommunications Commission (NTC) for operating an unlicensed cable television network.

Mr. Lim averred that Mayor Adalim and his business partner, Rolando R. Olog (Olog), were operating Reliance CATV System in Mayor Adalim's compound in Taft, Eastern Samar, without a valid permit and franchise from the NTC.[4] As a result thereof, the NTC *en banc* issued a Show Cause Order dated December 18, 2001, directing Mayor Adalim to cease and desist from operating the subject CATV (NTC Order).[5]

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[1] *Rollo* (A.M. No. RTJ-15-2440), p. 5.

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

[3] Respondent Judge Adalim-White was appointed RTC Judge on December 17, 2003; see *rollo* (A.M. No. RTJ-15-2440), p. 62.

[4] *Rollo* (A.M. No. RTJ-15-2440), p. 10.

[5] *Id.*

On January 16, 2002, NTC officials were in the house of Mayor Adalim to enforce the NTC Order when respondent Judge Adalim-White, who was at the time serving as the District Public Attorney of the Public Attorney's Office (PAO) in Borongan, Eastern Samar, arrived and told them that they could not implement the subject Order because they were filing a Motion for Reconsideration and that Reliance CATV System was under the name of Olog.[6]

During the preliminary conference before the Ombudsman held on January 15, 2003, respondent Judge Adalim-White manifested that she was representing herself and her brother.[7]

Mr. Lim's complaint was grounded on the prohibition against respondent Judge Adalim-White, being then a PAO lawyer, from engaging in private practice or from acting as counsel for immediate members of her family and relatives within the 4th civil degree of consanguinity or affinity without the necessary approval therefor.

In a Decision[8] dated May 28, 2003 (Ombudsman Decision), the Ombudsman found respondent Judge Adalim-White guilty of simple misconduct and meted against her the penalty of one (1) month suspension without pay.

The Ombudsman ruled that respondent Judge Adalim-White was administratively liable for representing her brother as his lawyer on two (2) different occasions without first acquiring a written authority from the Regional Director of PAO.[9] The Ombudsman found that she acted as legal counsel of her brother, Mayor Adalim, when she faced the NTC officials from Tacloban City who went all the way to Taft, Eastern Samar to serve the NTC Order.[10] This fact was even admitted by respondent Judge

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[6] *Id.*

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

[8] *Id.* at 9-17.

[9] *Id.* at 15.

[10] *Id.* at 15-16.

Adalim-White in her counter-affidavit, although she claimed that she was merely expressing her opinion to the NTC officials.[11] The second occasion was during the preliminary conference before the Ombudsman when she entered her appearance as counsel for her brother and for herself, without the written approval from her superior authorizing her to do so.[12]

The Court of Appeals, in a Decision[13] dated January 26, 2006 and a Resolution[14] dated May 3, 2006, denied respondent Judge Adalim-White's petition seeking to reverse the subject Ombudsman Decision.

Aggrieved, respondent Judge Adalim-White filed a petition before the Court.

The First Division of the Court, in a Resolution[15] dated July 14, 2008, denied respondent Judge Adalim-White's petition for failure to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution so as to warrant the exercise of the Court's discretionary appellate jurisdiction. An Entry of Judgment[16] was thereafter issued on October 9, 2008 rendering the denial of respondent Judge Adalim-White's petition as final and executory.

Mr. Lim thereafter filed a Motion for Execution dated October 7, 2013 seeking the implementation of the Ombudsman Decision. The subject Motion was referred to the Court for appropriate action.

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[11] *Id*. at 16.

[12] *Id*.

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

[14] *Id*. at 20-21. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr. concurring.

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

[16] *Id*. at 24.

In a Report[17] dated September 29, 2014, the Office of the Court Administrator (OCA) asserted that there was no reason not to implement the Motion for Execution even if the Ombudsman Decision pertained to acts committed by respondent Judge Adalim-White when she was still a PAO lawyer.[18] The penalty of one (1) month suspension could not have been enforced while respondent Judge Adalim-White was still a PAO lawyer because the decision had not yet, at that time, attained finality.[19] The OCA further noted that the transfer of respondent Judge Adalim-White to the Judiciary could not have had the effect of rendering without force and effect the Ombudsman Decision as affirmed by the Court of Appeals.[20] Respondent Judge Adalim-White's transfer to the Judiciary was, as articulated by the OCA, merely a continuation of her service in the government and any infraction committed while in the service must be penalized, irrespective of the government agency in which she is presently employed.[21]

This notwithstanding, the OCA recommended that the enforcement of the penalty of the one (1) month suspension should be held in abeyance because the OCA had uncovered another infraction committed by respondent Judge Adalim-White in connection with her case before the Office of the Ombudsman.[22] According to the OCA, respondent Judge Adalim-White's Personal Data Sheet (PDS) accomplished on **February 9, 2004** (when she first assumed the position of RTC Judge) revealed that she had failed to disclose that an administrative case had been filed against her on May 2, 2002 before the Office of the Ombudsman (Visayas) and that she

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[17] *Id.* at 1-4.

[18] *Id.* at 2.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

had, in fact, been penalized therefor in the Ombudsman Decision dated May 28, 2003.[23]

As such, the OCA recommended that: (1) the instant Agenda Report, on the failure of respondent Judge Adalim-White to disclose in her February 9, 2004 PDS the case filed by Mr. Lim against her before the Ombudsman, be considered as an administrative complaint against respondent Judge Adalim-White for dishonesty and falsification of an official document and that the same be docketed as a regular administrative matter; (2) respondent Judge Adalim-White be furnished a copy of the instant Agenda Report and be required to comment within ten (10) days from the receipt of the same; (3) respondent Judge Adalim-White be suspended without pay during the pendency of the instant administrative matter; and (4) the action on the Motion for Execution dated October 7, 2013 filed by Mr. Lim be held in abeyance, until the final resolution of the administrative matter.[24]

The Court *en banc* adopted the recommendations of the OCA in a Resolution[25] dated October 20, 2015.

Comment by respondent Judge Adalim-White

Respondent Judge Adalim-White, in her Comment[26] dated December 18, 2015, prayed that the order of suspension against her be reconsidered for being moot and academic, in light of the findings against her in another case entitled, "*Marc Titus D. Cebreros v. Hon. Juliana Adalim-White, Presiding Judge, Regional Trial Court, Branch 5, Oras, Eastern Samar*" docketed as OCA IPI No. 07-2673-RTJ.

In the said case, Cebreros charged respondent Judge Adalim-White with dishonesty for her *"deliberate failure to divulge,*

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[23] *Id.*

[24] *Id.* at 3-4.

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

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

at the time the Judicial and Bar Council was deliberating on her nomination for RTC Judge, that a one-month suspension had been imposed upon her on May 28, 2003, by the Office of the Ombudsman (Visayas) for Simple Misconduct."[27]

Cebreros underscored the fact that notwithstanding the pending administrative case filed against her, respondent Judge Adalim-White indicated in her Judicial and Bar Council (JBC) Form No. 1 on February 14, 2002 that she had never been charged with or convicted of or otherwise imposed a sanction for the violation of any law, decree, ordinance or regulation by any court, tribunal, or any other government office, agency or instrumentality in the Philippines or in any foreign country, or found guilty of an administrative offense or imposed any administrative sanction.

The Court dismissed Cebrero's complaint, ruling that respondent Judge Adalim-White could not be faulted for not disclosing in her JBC Form No. 1 the administrative case because the subject JBC Form No. 1 was accomplished on February 14, 2002, or more than two (2) months before the subject case was filed before the Ombudsman on April 24, 2002.

The Court also ruled that there was insufficient evidence to prove that respondent Judge Adalim-White had deliberately omitted to disclose her pending administrative case because information on the pending administrative case against her was readily available to the JBC as early as April 10, 2003 when the JBC Secretariat received a sworn affidavit of Mr. Roberto Lim vehemently objecting to respondent's application for the judiciary primarily based on the Ombudsman case.

Respondent Judge Adalim-White thus argued in her Supplemental Comment dated March 3, 2016 that she should also be exonerated from the present charge relative to her failure to disclose the same administrative case in her February 9, 2004 PDS *(i.e.,* when she assumed office as a judge) because there

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[27] *Rollo* (OCA IPI No. 07-2673-RTJ), pp. 1 & 9.

was no intent on her part to deliberately fail to disclose the administrative case filed against her.

In her Supplemental Comment, respondent Judge Adalim-White reiterated her prayer for the lifting of the suspension order and the dismissal of the administrative case against her. Respondent Judge Adalim-White averred that while she may have failed to disclose the pendency of an administrative case in the PDS that she submitted upon her assumption as RTC judge, she maintained that the same was unintentional, in good faith and was not intended to defraud anybody.

Respondent Judge Adalim-White explained that she answered "*NO*" to the question, "*Have you ever been declared guilty of any administrative offense*?" because she honestly assumed and believed that 'guilty' meant final and executory judgment. She further added that it was her honest belief that she had not been declared guilty by the Ombudsman, asserting that she was simply penalized with a one (1) month suspension for her simple misconduct. She further asseverated that the source of confusion is the dispositive portion of the Ombudsman Decision, which reads:

> **WHEREFORE,** premises considered, this Office hereby finds **Francisco C. Adalim guilty of Misconduct** and is meted a penalty of three (3) months suspension without pay and a stern warning that he should immediately divest himself of his interest over Reliance CATV and Entertainment Services.
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> **Atty. Juliana Adalim-White is meted with a penalty of one (1) month suspension without pay for simple Misconduct with an admonition that repetition of the same act will be dealt with more severely.**[28] (Emphasis supplied)

Respondent Judge Adalim-White also stated that she had no intention to be dishonest because the administrative case against her was even discussed in her panel interview with the members of the Judicial and Bar Council and in the psychiatric examination she underwent.

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[28] *Rollo* (A.M. No. RTJ-15-2440), p. 16.

The Court *en banc,* in a Resolution[29] dated September 6, 2016, thereafter referred the matter to the OCA for evaluation, report and recommendation.

OCA Report and Recommendation

In a Report[30] dated January 16, 2017, the OCA recommended that respondent Judge Adalim-White be found guilty of dishonesty and be suspended from office for one (1) year to commence from notice; and the Motion for Execution filed by Mr. Lim, seeking the implementation of the penalty of one (1) month suspension that had been meted against by the Ombudsman be granted and said penalty, together with the one (1) year suspension from office imposed in the instant case, be served by respondent Judge Adalim-White successively.[31]

The OCA found respondent Judge Adalim-White's explanation in her Supplemental Comment to be insufficient as this did not erase the fact that she had made an untruthful claim in her PDS.[32]

The OCA asserted that a careful perusal of the wording of the question "*Have you ever been declared guilty of any administrative offense*?" would show that it actively solicits an answer that pertains to any conviction, whether it was already final and executory or not. Respondent Judge, being then a newly-appointed member of the bench, should have known the importance of completing her PDS with honesty and directness notwithstanding her personal belief on the matter.[33]

The OCA explained that judges are expected to have more than a cursory acquaintance with law and jurisprudence. The making of untruthful statements in the PDS amounts to dishonesty

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[29] *Id.* at 131.

[30] *Id.* at 134-140.

[31] *Id.* at 140.

[32] *Id.* at 136.

[33] *Id.* at 137.

and falsification of an official document.[34] Respondent Judge Adalim-White knew exactly what the question called for and what it meant, and that she was committing an act of dishonesty but proceeded to do it anyway.[35]

Dishonesty, being in the nature of a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and perpetual disqualification from reemployment in the government service.[36]

However, the OCA reasoned that while respondent Judge Adalim-White's act of dishonesty is beyond cavil, the same does not warrant the extreme penalty of dismissal. Here, the OCA observed that while the February 9, 2004 PDS was accomplished when respondent Judge Adalim-White was already appointed to the bench, it did not appear that the omission was for the purpose of seeking a promotion.[37]

In recommending the proper penalty, the OCA also noted that respondent Judge Adalim-White had already been reprimanded in A.M. No. MTJ-13-1827[38] and in A.M. No. RTJ-08-2147;[39] suspended for one (1) year in A.M. No. RTJ-16-

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[34] *Ratti v. Mendoza-De Castro,* 478 Phil. 871, 882 & 883 (2004).

[35] *Rollo* (A.M. No. RTJ-15-2440), p. 138.

[36] *Ratti v. Mendoza-De Castro, supra* note 34, at 883.

[37] *Rollo* (A.M. No. RTJ-15-2440), p. 138.

[38] The Second Division of this Court, in a Resolution dated June 6, 2016, reprimanded respondent Judge Adalim-White and enjoined her to be more circumspect in filing administrative cases especially against her fellow judges. In this case, respondent Judge Adalim-White filed an administrative complaint for Grave Misconduct against Judge Chita A. Umil for her "strong conviction" that Judge Umil obtained the custody of a detention prisoner without authority from the court in order to employ the detention prisoner as her household help. Other than her bare allegations, respondent Judge Adalim-White failed to substantiate her allegations.

[39] The Court, in a Minute Resolution dated November 10, 2008, reprimanded respondent for unbecoming conduct for attending a political rally in support of her brother, Mayor Adalim, who lost the mayoralty race to complainant in the municipality of Taft, Samar.

2443;[40] and imposed a fine of ₱10,000.00 in A.M. No. RTJ-I4-2374.[41]

Factoring all these, the OCA deemed it sufficient to impose the penalty of one (1) year suspension from office to commence from notice.

With respect to the service of the penalty of one (1) month suspension meted by the Ombudsman Decision, the OCA recommended that it be served after the one (1) year suspension from office.

The Court's Ruling

The Court agrees with the findings and well-reasoned conclusions of the OCA. However, the Court believes, and so holds, that the penalty should be modified.

Dishonesty has been defined as

x x x intentionally making a false statement on any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, appointment, or registration. It is a serious offense

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[40] The Second Division of this Court, in a Resolution dated January 11, 2016, found respondent Judge Adalim-White guilty of gross ignorance of the law and gross misconduct and suspended her from office for one (1) year, without salary and other benefits, for allowing an accused for Murder several furloughs based on motions that did not contain a notice of hearing, did not comply with the three-day notice rule and were not set for hearing. The Court also found that respondent Judge Adalim-White caused the unauthorized alteration of the transcript of stenographic notes, deleting the exchange between respondent and the prosecutor on the prosecution's presentation of additional witnesses. *(Balanay v. White,* 776 Phil. 1 [2016].)

[41] The Court, in a Minute Resolution dated February 3, 2014, found respondent guilty of impropriety and conduct unbecoming of a judge for actively taking part in a public consultation in the municipal hall of Taft, Samar between her brother, Mayor Francisco Adalim and the twenty-two (22) employees of the municipal government of Taft terminated from work by Mayor Adalim. The Court ruled that "as Presiding Judge, her presence in the meeting, regardless of whether it was accidental, casts aspersions on the position she holds, and on the integrity of the Judiciary as a whole, considering that the respondent is her brother Mayor."

which reflects a person's character and exposes the moral decay which virtually destroys his honor, virtue and integrity. It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary.[42]

The importance of accomplishing a PDS with utmost honesty cannot be stressed enough.[43]

The accomplishment of a PDS is a requirement under the Civil Service Rules and Regulations in connection with employment in the government.[44] The making of untruthful statements therein is, therefore, connected with such employment.[45]As such, making a false statement therein amounts to dishonesty and falsification of an official document. Dishonesty and falsification are considered grave offenses.[46]

The Court has not hesitated to impose the extreme penalty of dismissal from the service on employees found guilty of such offenses.[47]

In *In the Matter of Anonymous Complaint for Dishonesty, Grave Misconduct and Perjury Committed by Judge Contreras,*[48] the Court emphasized that civil service rules mandate the accomplishment of the PDS as a requirement for employment in the government. In the said case, the Court ruled that "[a] careful perusal of the wording of the question *"Have you ever been charged?"* would show that it solicits an answer that pertains to either past or present charge, whether it was already dismissed or not."[49]

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[42] *Office of the Court Administrator v. Bermejo,* 572 Phil. 6, 14 (2008). See also *Civil Service Commission v. Longos,* 729 Phil. 16, 19 (2014).

[43] *Rollo* (A.M. No. RTJ-15-2440), p. 3.

[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] *Id*.

[48] 783 Phil. 9, 11 (2016).

[49] *Id*. at 14; italics supplied.

In *Office of the Court Administrator v. Estacion, Jr.,*[50] respondent Judge therein was dismissed from the service for withholding the information in his application for appointment the fact that he was facing criminal charges for homicide and attempted homicide.

In like manner, respondent Judge in *Re: Inquiry on the Appointment of Judge Enrique A. Cube,*[51] was ordered dismissed because of his concealment of his previous dismissal from the public service, which the JBC would have taken into consideration in acting on his application, which act of dishonesty rendered him unfit to be appointed to, and to remain in, the Judiciary which he has tarnished with his falsehood.[52]

Respondent Judge in *Gutierrez v. Belan,*[53] was likewise dismissed from the service for indicating in his PDS submitted to the JBC that there was no pending criminal or administrative case against him notwithstanding that he had been indicted in a criminal case which then remained pending.

Relative to respondent Judge Adalim-White's argument that she had honestly believed that the term '*guilty*' in the question meant final and executory judgment, the OCA correctly stated that respondent Judge Adalim-White ought to have been familiar with the categorical ruling by the Court in the case of *Alday v. Cruz, Jr.,*[54] citing *Development Bank of the Philippines v. Malaya,*[55] which were decided as early as 2002 and 1999 respectively, holding that penalties imposed in administrative cases are immediately executory.[56]

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[50] 260 Phil. 1 (1990).

[51] 297 Phil. 1141 (1993).

[52] *Id*. at 1146.

[53] 355 Phil. 428 (1998).

[54] 426 Phil. 385 (2002).

[55] A.M. No. P-98-1277 (formerly OCA-IPI No. 95-45 RTJ), July 27, 1999.

[56] *Alday v. Cruz, Jr., supra* note 54, at 388-389.

Even granting that respondent Judge Adalim-White had been motivated by good intentions leading her to disregard the laws governing PDS forms, these personal motivations cannot relieve her from the administrative consequences of her actions as they affect her competency and conduct as a judge in the discharge of her official functions.

To be able to render substantial justice and maintain public confidence in the legal system, judges should be embodiments of competence, integrity and independence.[57] Judges should exhibit more than just a cursory acquaintance with the statutes and procedural rules,[58] and should be diligent in keeping abreast with developments in law and jurisprudence.[59]

The Court has previously held that when a law or rule is basic, judges owe it to their office to simply apply the law. Anything less is ignorance of the law.[60] There is gross ignorance of the law when an error committed by the judge was "gross or patent, deliberate or malicious."[61] It may also be committed when a judge ignores, contradicts or fails to apply settled law and jurisprudence because of bad faith, fraud, dishonesty or corruption.[62] Gross ignorance of the law or incompetence cannot be excused by a claim of good faith.[63]

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[57] *Cabatingan Sr. (Ret.) v. Arcueno,* 436 Phil. 341, 347 (2002), citing CODE OF JUDICIAL CONDUCT, Rule 1.01, Canon 1.

[58] *Savella v. Ines,* 550 Phil. 14, 19 (2007).

[59] See *Amante-Descallar v. Ramas,* 601 Phil. 21, 39 (2009); *Aguilar v. Dalanao,* 388 Phil. 717, 724 (2000).

[60] *Savella v. Ines, supra* note 58, at 19.

[61] *Re: Anonymous Letter dated August 12, 2010, Complaining Against Judge Ofelia T. Pinto, RTC, Br. 60, Angeles City, Pampanga,* 696 Phil. 21, 28, citing *Cabatingan Sr. (Ret.) v. Arcueno, supra* note 57, at 350.

[62] *Cabatingan Sr. (Ret.) v. Arcueno, id.*

[63] See *De los Santos-Reyes v. Montesa, Jr.,* 317 Phil. 101, 112-113 (1995).

In this case, respondent Adalim-White's utter disregard to apply the settled laws and jurisprudence on the accomplishment of PDS forms constitutes gross ignorance of the law which merits administrative sanction. Section 8 (9), Rule 140 of the Rules of Court classifies gross ignorance as a serious charge with the following imposable penalties:

> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided, however,* That the forfeiture of benefits shall in no case include accrued leave credits;
>
> 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
>
> 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[64]

The Court also cannot close its eyes to the fact that respondent Judge Adalim-White had been previously reprimanded by the Court, on several occasions, putting her competency in the discharge of official duties into very serious doubt:

Respondent Judge Adalim-White was reprimanded in the case of *Judge Adalim-White v. Judge Chita A. Umil* docketed as A.M. No. MTJ-13-1827, for filing baseless suits against a fellow judge.

In the case of *Mayor Diego T. Lim v. Judge Adalim-White,* docketed as A.M. No. RTJ-08-2147, respondent Judge Adalim-White was reprimanded for unbecoming conduct for attending a political rally in support of her brother, Mayor Adalim, who lost the mayoralty race in the municipality of Taft, Samar.

In the case of *Armando M. Balanay v. Judge Adalim-White,* docketed as A.M. No. RTJ-16-2443, respondent Judge Adalim-White was found guilty of gross ignorance of the law and gross misconduct and suspended her from office for one (1) year, without salary and other benefits, for allowing an accused for

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[64] RULES OF COURT, Rule 140, Sec. 11.

Murder several furloughs based on motions that did not contain a notice of hearing, did not comply with the 3-day notice rule and were not set for hearing. The Court also found that she had caused the unauthorized alteration of the TSN, deleting the exchange between her and the prosecutor on the prosecution's presentation of additional witnesses.

Lastly, in the case of *Vilma Sulse, et al. v. Judge Adalim-White,* docketed as A.M. No. RTJ-14-2374, the Court found respondent Judge Adalim-White guilty of impropriety and conduct unbecoming of a judge for having actively taken part in a public consultation in the municipal hall of Taft, Samar between her brother, Mayor Francisco Adalim and twenty-two (22) employees of the municipal government of Taft terminated from work by Mayor Adalim. The Court ruled there that as Presiding Judge, her presence in the meeting, regardless of whether it was accidental, cast aspersions on the position she holds, and on the integrity of the Judiciary as a whole, considering that her brother was the Mayor.

The **totality** of all these findings underscores the fact that respondent Judge Adalim-White's actions served to erode the people's faith and confidence in the judiciary. She has been remiss in the fulfillment of the duty imposed on all members of the bench in order to avoid any impression of impropriety to protect the image and integrity of the judiciary.[65]

Time and time again, the Court has stressed that "the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility."[66] As visible representation of the law, respondent Judge Adalim-White should have conducted herself in a manner which would merit the respect of the people to her in particular and to the Judiciary in general.[67] By her

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[65] See *Office of the Court Administrator v. Lerma,* 647 Phil. 216, 249 (2010).

[66] *Santos, Jr. v. Mangahas,* 685 Phil. 814, 821 (2012).

[67] See *Fernandez v. Vasquez,* 669 Phil. 619, 633 (2011).

blameworthy conduct, she has tainted the image of the judiciary and no longer deserves to be a member thereof.

All told, it is the considered opinion of the Court that the appropriate penalty that should be meted to respondent Judge Adalim-White should be dismissal from the service, with forfeiture of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

As regards the penalty of suspension imposed by the Ombudsman, considering that respondent Judge Adalim-White is being dismissed by this decision, then, in lieu of suspension, the penalty of fine equivalent to one (1) month salary is hereby imposed.

WHEREFORE, IN VIEW OF THE FOREGOING, Judge Juliana Adalim-White, Branch 5, Regional Trial Court, Oras, Eastern Samar, is found **GUILTY** of Gross Ignorance of the Law and is hereby **DISMISSED FROM THE SERVICE,** with forfeiture of retirement benefits, except accrued leave credits, and with prejudice to re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporations; and the Motion for Execution filed by Mr. Roberto T. Lim, in his capacity as complainant in OMB-V-A-02-0186-E, seeking the implementation of the penalty of one (1) month suspension meted against Judge Adalim-White while she was the District Public Attorney of the Public Attorney's Office in Borongan, Eastern Samar be **GRANTED.** In lieu of suspension, a **FINE** equivalent to one month salary is hereby imposed upon Judge Adalim-White.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, Bersamin, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.,* concur.

Del Castillo, J., on official leave.

EN BANC

[G.R. No. 193657. September 4, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HEIRS OF IGNACIO DAQUER and THE REGISTER OF DEEDS, PROVINCE OF PALAWAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; ACT NO. 2874 (THE PUBLIC LAND ACT); HOMESTEAD PATENT, DEFINED. A homestead patent is a gratuitous grant from the government "designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation." Being a gratuitous grant, a homestead patent applicant must strictly comply with the requirements laid down by the law.

2. ID.; ID.; CLASSIFICATION OF LANDS OF THE PUBLIC DOMAIN; ELUCIDATED. Under the Public Land Act, the Governor-General (now the President), upon the recommendation of the Secretary of Agriculture and Natural Resources (now Department of Environment and Natural Resources), shall have the power to classify lands of the public domain into: (1) alienable or disposable; (2) timber; and (3) mineral lands. Lands of public domain which have been classified as alienable or disposable may further be classified into: (1) agricultural; (2) commercial, industrial, or for similar productive purposes; (3) educational, charitable and other similar purposes; and (4) reservations for town sites, and for public and quasi-public uses. Once lands of public domain have been classified as public agricultural lands, they may be disposed through any of the following means: (1) homestead settlement; (2) sale; (3) lease; or (4) confirmation of imperfect or incomplete titles. x x x Chapter IV of the Public Land Act governs the disposition of public agricultural lands through a homestead settlement. x x x Thereafter, should the Director of Lands find the application compliant with the requirements of the law, he or she would approve it. Only lands of the public domain which have been classified as public agricultural lands may be disposed of through homestead settlement. The Public Land Act vested the exclusive prerogative to classify lands of the public domain to the Executive

Department, specifically with the Governor-General, now the President. Thus, until and unless lands of the public domain have been classified as public agricultural lands, they are inalienable and not capable of private appropriation.

3. ID.; ID.; ID.; ALIENABLE AND DISPOSABLE LAND; IN CLASSIFYING LANDS OF PUBLIC DOMAIN AS ALIENABLE AND DISPOSABLE, THERE MUST BE A POSITIVE ACT FROM THE GOVERNMENT DECLARING THEM OPEN FOR ALIENATION AND DISPOSITION; NOT ESTABLISHED IN CASE AT BAR. At the outset, it must be emphasized that in classifying lands of the public domain as alienable and disposable, there must be a positive act from the government declaring them as open for alienation and disposition. x x x A positive act is an act which clearly and positively manifests the intention to declassify lands of the public domain into alienable and disposable. "Any person seeking relief under . . . the Public Land Act admits that the property being applied for is public land." "The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable." As aptly argued by petitioner, an act of the government may only be considered as "express or positive if [it] is exercised directly for the very purpose of lifting land from public ownership." In this case, the records are bereft of any evidence showing that the land has been classified as alienable and disposable. Respondents presented no proof to show that a law or official proclamation had been issued declaring the land covered by Homestead Patent No. V-67820 to be alienable and disposable. Having failed to overcome the burden of proving that the land covered by Homestead Patent No. V-67820 is alienable and disposable, the presumption that it is an inalienable land of the public domain remains.

4. ID.; ID.; ID.; CERTIFICATE OF TITLE ISSUED PURSUANT TO HOMESTEAD PATENT; WHEN THE PROPERTY COVERED BY A HOMESTEAD PATENT IS PART OF THE INALIENABLE LAND OF THE PUBLIC DOMAIN, THE TITLE ISSUED PURSUANT TO IT IS NULL AND VOID, AND THE RULE ON INDEFEASIBILITY OF TITLE WILL NOT APPLY. As a rule, a certificate of title issued

pursuant to a homestead patent partakes the nature of a certificate of title issued through a judicial proceeding and becomes incontrovertible upon the expiration of one (1) year. x x x Nevertheless, the rule that "a certificate of title issued pursuant to a homestead patent becomes indefeasible after one year, is subject to the proviso that 'the land covered by said certificate is a disposable public land within the contemplation of the Public Land Law.'" When the property covered by a homestead patent is part of the inalienable land of the public domain, the title issued pursuant to it is null and void, and the rule on indefeasibility of title will not apply. x x x In *Republic v. Ramos,* this Court held that despite the registration of the land and the issuance of a Torrens title, the State may still file an action for reversion of a homestead land that was granted in violation of the law. The action is not barred by the statute of limitations, especially against the State: x x x Lands of the public domain can only be classified as alienable and disposable through a positive act of the government. The State cannot be estopped by the omission, mistake, or error of its officials or agents. It may revert the land at any time, where the concession or disposition is void *ab initio*.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Riguera & Riguera Law Office for respondents.

D E C I S I O N

LEONEN, *J.*:

Any application for a homestead settlement recognizes that the land belongs to the public domain.[1] Prior to its disposition, the public land has to be classified first as alienable and disposable[2] through a positive act of the

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[1] *Republic v. Spouses Noval*, G.R. No. 170316, September 18, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html? file=/jurisprudence/2017/September2017/170316.pdf > 8-9 [Per *J.* Leonen, Third Division].

[2] *Heirs of Malabanan v. Republic*, 717 Phil. 141, 162 (2013) [Per *J.* Bersamin, *En Banc*].

government.[3] This act must be direct and express, not merely inferred from an instrument such as the homestead patent. The State has the right to institute an action for the reversion of an inalienable land of the public domain erroneously awarded by its officials and agents.

This resolves a Petition for Review on Certiorari[4] under Rule 45 of the 1997 Rules of Procedure assailing the January 14, 2010 Decision[5] and September 7, 2010 Resolution[6] of the Court of Appeals in CA-G.R. CV No. 90488, which affirmed the September 28, 2007 Decision[7] of Branch 95, Regional Trial Court, Puerto Princesa City. The Regional Trial Court denied the Republic of the Philippines' Complaint for Cancellation of Free Patent, Original Certificate of Title and Reversion of land[8] for lack of merit.

On October 22, 1933, Ignacio Daquer (Daquer), married to Fernanda Abela,[9] applied for a homestead patent grant over Lot No. H-19731, situated at Brgy. Corong-Corong, Centro, Bacuit, Palawan.[10]

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[3] *Republic v. Vega*, 654 Phil. 521, 511 (2011) [Per *J*. Sereno, Third Division].

[4] *Rollo*, pp. 14-32.

[5] *Id*. at 33-39. The Decision was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Andres B. Reyes, Jr. (now Associate Justice of Supreme Court) and Priscilla J. Baltazar-Padilla of the Second Division, Court of Appeals, Manila.

[6] *Id*. at 41-42. The Resolution was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Presiding Justice Andres B. Reyes, Jr. (now Associate Justice of Supreme Court) and Associate Justice Stephen C. Cruz of the Special Former Second Division, Court of Appeals, Manila.

[7] *Id*. at 61-71. The Decision, docketed as Civil Case No. 3773, was penned by Presiding Judge Bienvenido C. Blancaflor of Branch 95, Regional Trial Court, Puerto Princesa City.

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

[9] Also referred to as Fernanda Abila in some documents. See *rollo*, pp. 46 and 52.

[10] *Rollo*, pp. 17 and 43-44. The Municipality of Bacuit is now El Nido. See *rollo*, p. 61.

Daquer lodged Homestead Application No. 197317[11] before the Bureau of Lands, now Land Management Bureau, seeking nine (9) hectares or 90,000 square meters of land for his "exclusive personal use and benefit."[12]

On September 3, 1936, the Provincial Environment and Natural Resources Officer, by the Director of the Bureau of Lands' authority, approved[13] Daquer's application and issued him Homestead Patent No. V-67820, covering an area of 65,273 square meters.[14]

Thereafter, Homestead Patent No. V-67820 was transmitted to the Registrar of Deeds of Palawan for registration.[15] After registration, Original Certificate of Title (OCT) No. G-3287 was issued in Daquer's name.[16]

On April 3, 1969, Daquer passed away. He was survived by his children, who were his legal heirs, namely, Porcepina Daquer Aban (Porcepina), Alita Daquer Quijano, and Neria Daquer Laguta (collectively, Heirs of Daquer).[17]

Subsequently, the Department Secretary and the Undersecretary for Legal Affairs of the Department of Agriculture and Natural Resources instructed the Community Environment and Natural Resource Office (CENRO) "to submit an inventory of suspected spurious titles cases which may fall within timberland and classified public forest."[18]

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[11] *Id.* at 43-45.

[12] *Id.* at 43-A.

[13] *Id.* at 51.

[14] *Id.* at 61.

[15] *Id.*

[16] *Id.* at 52. The Regional Trial Court interchangeably used OCT No. G-3287 and OCT No. G-3587 to refer to the same parcel of land. The parties also did the same in their pleadings. See *rollo*, pp. 340 and 354. For clarity, this Decision will use OCT No. G-3287 all throughout.

[17] *Id.* at 244. Some portions of the Regional Trial Court Decision refer to Porcepina as "Porcefina."

[18] *Id.* at 63.

Pursuant to their directive, Mariano Lilang, Jr. (Lilang), Land Management Officer III of CENRO, Taytay, Palawan, conducted an investigation to determine whether lands covered by approved patent applications were indeed alienable or disposable.[19]

Upon investigation, Lilang discovered that the land covered by Homestead Application No. 197317 and OCT No. G-3287 fell within the zone of unclassified public forest.[20] Relative to this, Lilang and Senior Forest Management Specialist Chief Leonardo Publico issued a Certification[21] dated July 10, 2000, confirming that Lot No. H-19731 was "still within the Unclassified Zone," thus:

> This CERTIFIES that the area of Plan H. 197317 in CENTRO Bacuit, El Nido, Palawan and with Homestead Patent No. V-67820 and Original Certificate of Title No. G-3287 in the name of Ignacio Daquer *is still within the Unclassified Zone, as per Land Classification Map No. 1467 certified on September 16, 1941.*
>
> Issued in connection with the on-going investigation of questionable land titles being made by this Office.[22] (Emphasis supplied)

Consequently, the Republic of the Philippines (the Republic) filed a Complaint for Cancellation of Free Patent, Original Certificate of Title and Reversion[23] of land to public domain on April 1, 2003.[24] It argued that Lot No. H-19731 could not have been validly registered because it fell within the forest or timberland zone. It stated that the Director of the Lands and Management Bureau[25] was bereft of any jurisdiction over public forests or any lands incapable of registration. It claimed that until and unless these lands were reclassified and considered

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[19] *Id.*

[20] *Id.* at 64.

[21] *Id.* at 53.

[22] *Id.*

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

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

[25] Previously Bureau of Lands.

disposable and alienable, occupying them in the concept of an owner, no matter how long, could not ripen into ownership.[26]

In support of its complaint, the Republic presented Land Management Officer Lilang as its witness.[27]

Lilang testified that he conducted a records investigation on Daquer's land. Based on his investigation, it was disclosed that Lot No. H-19731 fell within the unclassified public forest. He explained that he based his conclusion on Land Classification Map No. 1467. He averred that all lands not within the tract of areas classified as alienable and disposable, as shown in the classification map, were regarded as unclassified public forest. Thus, since Lot No. H-19731 fell outside the alienable and disposable area, it should be considered as part of the unclassified public forest.[28]

The Heirs of Daquer, on the other hand, presented Porcepina as witness. Porcepina testified that she was residing at Lot No. H-19731 and that she had custody of OCT No. G-3287. She paid the taxes over the land after the death of her brother, Francisco Daquer. She admitted that her late father also owned other properties aside from Lot No. H-19731.[29]

The Heirs of Daquer also presented as witness Eduardo Franciso, who testified that he was familiar with the area covered by Lot No. H-19731 because his house was only 10 meters away from it. He admitted that the area where his house and Lot No. H-19731 were located was timber land.[30]

In its September 28, 2007 Decision, the Regional Trial Court denied[31] the Republic's petition for cancellation and reversion for lack of merit.

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[26] *Rollo*, pp. 56-57.

[27] *Id*. at 63.

[28] *Id*. at 64.

[29] *Id*. at 65.

[30] *Id*.

[31] *Id*. at 61-71.

In its ruling, the Regional Trial Court relied heavily on the presumption of regularity of official functions when the Undersecretary of the Department of Agriculture and Natural Resources, acting for the President, granted the homestead patent. It ruled that the President, acting through his alter ego, would not award a homestead patent over forest land but only over public agricultural land.[32]

The Regional Trial Court likewise noted that under the land classification map, areas falling outside the alienable and disposable area were not considered as unclassified public forest, but only unclassified land.[33] Citing *Krivenko v. Register of Deeds*,[34] it ruled that unclassified lands, such as Lot No. H-19731, are presumed to be agricultural lands.[35]

Finally, the Regional Trial Court held that even assuming that Lot No. H-19731 was previously considered as unclassified land, the issuance of Homestead Patent No. V-67820 "could only mean that the land at that point in time had already been expressly classified as alienable or disposable land of public domain."[36]

The Republic appealed before the Court of Appeals,[37] objecting to the ruling that the land was presumed alienable and disposable agricultural land.[38] It also contested the ruling of the Regional Trial Court that the issuance of Homestead Patent No. V-67820 effectively classified the land from public domain land to alienable and disposable land.[39]

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[32] *Id*. at 67.

[33] *Id*. at 64.

[34] 79 Phil. 461 (1947) (Per *C.J*. Moran, Second Division].

[35] *Rollo*, p. 70.

[36] *Id*. at 68.

[37] *Id*. at 72.

[38] *Id*. at 164.

[39] *Id*. at 165.

According to the Republic, public lands may only be classified by the Executive Department through the Office of the President.[40] Citing *Heirs of Spouses Vda. De Palanca v. Republic*,[41] it argued that "[w]hen the property is still unclassified, whatever possession applicants may have had, and however long, still cannot ripen into private ownership."[42] Finally, it asserted that Homestead Patent No. V-67820 suffered from a jurisdictional flaw warranting the reversion of the land to the State:

> The Director of the Lands Management Bureau (then Bureau of Lands] is devoid of jurisdiction over public forests or any land not capable of registration. When he (or she] is misled into issuing patents over such lands, the patents and the corresponding certificates of title are immediately infected with jurisdictional flaw which warrants the institution of suit to revert land to the State[.][43]

In its January 14, 2010 Decision, the Court of Appeals dismissed the appeal and affirmed the Regional Trial Court September 28, 2007 Decision.

The Republic's Motion for Reconsideration[44] was denied by the Court of Appeals on September 7, 2010.[45]

On October 28, 2010,[46] the Republic appealed the Court of Appeals January 14, 2010 Decision and September 7, 2010 Resolution before this Court.

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[40] *Id*.

[41] 531 Phil. 602 (2006) [Per *J*. Azcuna, Second Division].

[42] *Rollo*, p. 165. The Republic mistakenly put the case title as "Heirs of San Pedro," Pedro being the husband's first name in that case. Nevertheless, the citation (500 SCRA 209 (2006]) leads to *Heirs of Spouses Vda. De Palanca v. Republic*.

[43] *Id*. at 35-36.

[44] *Id*. at 93-104.

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

[46] *Id*. at 8.

Thus, for this Court's resolution are the following issues:

First, whether or not the mere issuance of a homestead patent could classify an otherwise unclassified public land into an alienable and disposable agricultural land of the public domain; and

Second, whether or not the issuance of Homestead Patent No. V-67820 was jurisdictionally defective as Lot No. H-19731 was still part of the inalienable public land when Homestead Application No. 197317 was granted.

The Petition is impressed with merit.

I.A

A homestead patent is a gratuitous grant from the government "designed to distribute disposable agricultural lots of the State to land-destitute citizens for their home and cultivation."[47] Being a gratuitous grant, a homestead patent applicant must strictly comply with the requirements laid down by the law.

When Daquer filed Homestead Application No. 197317 on October 22, 1933, the governing law was Act No. 2874 or the Public Land Act, which outlined the procedure for the classification and disposition of lands of the public domain, to wit:

CHAPTER II

Classification, Delimitation, and Survey of Lands of the Public Domain, for the Concession Thereof

Section 6. *The Governor-General*, upon the recommendation of the Secretary of Agriculture and Natural Resources, shall from time to time *classify the lands of the public domain* into —

(a) Alienable or disposable
(b) Timber, and
(c) Mineral lands

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[47] *Pascua v. Talens*, 80 Phil. 792, 793 (1948) [Per *J*. Bengzon, Second Division].

and may at any time and in a like manner, transfer such lands from one class to another, *for the purposes of their government and disposition*.

Section 7. For the purpose of the government and disposition of alienable or disposable public lands, *the Governor-General*, upon recommendation by the Secretary of Agriculture and Natural Resources, *shall from time to time declare what lands are open to disposition or concession under this Act*.

Section 8. *Only those lands shall be declared open to disposition or concession which have been officially delimited and classified* and, when practicable, surveyed, *and which have not been reserved for public or quasi-public uses*, nor appropriated by the Government, nor in any manner become private property, nor those on which a private right authorized and recognized by this Act or any other valid law may be claimed, or which, having been reserved or appropriated, have ceased to be so. However, the Governor-General may, for reasons of public interest, declare lands of the public domain open to disposition before the same have had their boundaries established or been surveyed, or may, for the same reasons, suspend their concession or disposition until they are again declared open to concession or disposition by proclamation duly published or by Act of the Legislature.

Section 9. For the purposes of their government and disposition, the lands of the public domain alienable or open to disposition shall be classified, according to the use or purposes to which such lands are destined, as follows:

(a) Agricultural.
(b) Commercial, industrial, or for similar productive purposes.
(c) Educational, charitable, and other similar purposes.
(d) Reservations for town sites, and for public and quasi-public uses.

The Governor-General, upon recommendation by the Secretary of Agriculture and Natural Resources, shall from time to time make the classifications provided for in this section, and may, at any time and in a similar manner, transfer lands from one class to another. (Emphasis supplied)

Under the Public Land Act, the Governor-General (now the President), upon the recommendation of the Secretary of Agriculture and Natural Resources (now Department of

Environment and Natural Resources), shall have the power to classify lands of the public domain into: (1) alienable or disposable; (2) timber; and (3) mineral lands.

Lands of public domain which have been classified as alienable or disposable may further be classified into: (1) agricultural; (2) commercial, industrial, or for similar productive purposes; (3) educational, charitable and other similar purposes; and (4) reservations for town sites, and for public and quasi-public uses.[48]

Once lands of public domain have been classified as public agricultural lands, they may be disposed through any of the following means: (1) homestead settlement; (2) sale; (3) lease; or (4) confirmation of imperfect or incomplete titles. Section 11 provides:

TITLE II
Agricultural Public Lands

CHAPTER III
Forms of Concession of Agricultural Lands

Section 11. *Public lands suitable for agricultural purposes* can be disposed of only as follows, and not otherwise:

(1) For homestead settlement.
(2) By sale.
(3) By lease.
(4) By confirmation of imperfect or incomplete titles:

(a) By administrative legalization (free patent).
(b) By judicial legalization. (Emphasis supplied)

Chapter IV of the Public Land Act governs the disposition of public agricultural lands through a homestead settlement. Section 12 provides:

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[48] Act No. 2874, Ch. 2, Sec. 9.

CHAPTER IV
Homesteads

Section 12. Any citizen of the Philippine Islands or of the United States, over the age of eighteen years, or the head of a family, who does not own more than twenty-four hectares of land in said Islands or has not had the benefit of any gratuitous allotment of more than twenty-four hectares of land since the occupation of the Philippine Islands by the United States, may enter a homestead of not exceeding twenty-four hectares of agricultural land of the public domain.

Thereafter, should the Director of Lands find the application compliant with the requirements of the law, he or she would approve it.[49]

I.B

Only lands of the public domain which have been classified as public agricultural lands may be disposed of through homestead settlement.[50]

The Public Land Act vested the exclusive prerogative to classify lands of the public domain to the Executive Department, specifically with the Governor-General, now the President.[51] Thus, until and unless lands of the public domain have been classified as public agricultural lands, they are inalienable and not capable of private appropriation.

In the case at bar, the Court of Appeals ruled that the President's issuance of Homestead Patent No. V-67820 in favor of Daquer under the terms stated in it was considered as an

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[49] Act No. 2874, Ch. 4, Sec. 13.

Section 13. Upon the filing of an application for a homestead, the Director of Lands, if he finds that the application should be approved, shall do so and authorize the applicant to take possession of the land upon the payment of ten pesos, Philippine currency, as entry fee. Within six months from and after the date of the approval of the application, the applicant shall begin to work the homestead, otherwise he shall lose his prior right to the land.

[50] Act No. 2874, Ch. 3, Sec. 11.

[51] Act No. 2874, Ch. 2, Sec. 6.

adequate recognition that Lot No. H- 19731 was already classified as alienable and disposable when the patent was issued.[52]

Petitioner argues that contrary to the findings of the Court of Appeals, the mere issuance of a homestead patent does not automatically remove the land from inalienability and convert it into alienable agricultural land.[53] Petitioner contends that before lands of the public domain may be the subject of a homestead application, there must first be a positive act of the government, declassifying a forest land and converting it into alienable or disposable land for agricultural purpose.[54]

This Court finds for petitioner.

At the outset, it must be emphasized that in classifying lands of the public domain as alienable and disposable, there must be a positive act from the government declaring them as open for alienation and disposition. In *Secretary of the Department of Environment and Natural Resources v. Yap*:[55]

> ***A positive act declaring land as alienable and disposable is required.*** In keeping with the presumption of State ownership, the Court has time and again emphasized that there must be a positive act of the government, such as an official proclamation, declassifying inalienable public land into disposable land for agricultural or other purposes. . . . (Emphasis in the original, citations omitted)

A positive act is an act which clearly and positively manifests the intention to declassify lands of the public domain into alienable and disposable.[56]

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

[53] *Id.* at 345.

[54] *Id.* at 343.

[55] 589 Phil. 156, 182 (2008) [Per *J.* Reyes, R.T., *En Banc*].

[56] AMADO D. AQUINO, *LAND REGISTRATION AND RELATED PROCEEDINGS* 42 (4th ed., 2007).

"Any person seeking relief under ... the Public Land Act admits that the property being applied for is public land."[57] "The burden of proof in overcoming the presumption of State ownership of the lands of the public domain is on the person applying for registration (or claiming ownership), who must prove that the land subject of the application is alienable or disposable."[58]

As aptly argued by petitioner, an act of the government may only be considered as "express or positive if [it] is exercised directly for the very purpose of lifting land from public ownership."[59]

In this case, the records are bereft of any evidence showing that the land has been classified as alienable and disposable. Respondents presented no proof to show that a law or official proclamation had been issued declaring the land covered by Homestead Patent No. V-67820 to be alienable and disposable.

Having failed to overcome the burden of proving that the land covered by Homestead Patent No. V-67820 is alienable and disposable, the presumption that it is an inalienable land of the public domain remains.

II.A

Citing *Chavez v. Public Estates Authority*,[60] respondents Heirs of Daquer argue that when Homestead Patent No. V-67820 was issued, Lot No. H-19731 was already alienable and disposable public land. They reason that the passage of "[t]he Public Land Act, coupled with the issuance of Homestead Patent No. V-

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[57] *Republic v. Spouses Noval,* G.R. No. 170316, September 18, 2017, 8 < http://sc.judiciary.gov.ph/pdf/web/viewer.html? file=/jurisprudence/2017/september2017/170316.pdf > [Per *J.* Leonen, Third Division].

[58] *Secretary of the Department of Environment and Natural Resources v. Yap*, 589 Phil. 156, 182-183 (2008) [Per *J.* Reyes, R.T., *En Banc*]. (Citation omitted)

[59] *Rollo*, p. 22.

[60] 433 Phil. 506 (2002) [Per *J.* Carpio, *En Banc*].

67820 over [Lot No. H-19731] in the name of Daquer[,] is equivalent to an official proclamation classifying [Lot No. H-19731] as alienable or disposable land of the public domain."[61]

Private respondents' reliance on *Chavez* is misplaced. *Chavez* is inapplicable since it involves the sale of reclaimed foreshore and submerged lands to a private corporation through a Joint Venture Agreement. The facts of the case are as follows:

In 1973, the government, through the Commissioner of Public Highways, entered into a contract with the Construction and Development Corporation of the Philippines for the reclamation of certain foreshore and offshore areas of Manila Bay. Their contract involved the construction of Manila-Cavite Coastal Road Phases I and II.[62]

Subsequently, then President Ferdinand E. Marcos, issued Presidential Decree No. 1084, which created the Public Estates Authority (PEA) and tasked PEA "to reclaim land, including foreshore and submerged areas,"[63] and "to develop, improve, acquire, . . . lease and sell any and all kinds of lands."[64] Then President Marcos likewise issued Presidential Decree No. 1085, transferring to PEA the "lands reclaimed in the foreshore and offshore area of Manila Bay" under the Manila-Cavite Coastal Road and Reclamation Project.[65]

Thereafter, then President Corazon C. Aquino issued Special Patent No. 3517, granting and transferring to PEA the parcels of land reclaimed under the Manila-Cavite Coastal Road and Reclamation Project. Consequently, Transfer Certificates of Title

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[61] *Rollo*, p. 356.

[62] *Chavez v. Public Estates Authority*, 433 Phil. 506, 515 (2002) [Per *J.* Carpio, *En Banc*].

[63] Pres. Dec. 1084, Sec. 4(a).

[64] Pres. Dec. 1084, Sec. 4(b).

[65] *Chavez v. Public Estates Authority*, 433 Phil. 506, 515 (2002) [Per *J.* Carpio, *En Banc*].

Nos. 7309, 7311, and 7312, covering three (3) reclaimed islands known as the "Freedom Islands," were issued in favor of PEA.[66]

PEA and Amari, a private corporation, then entered into a Joint Venture Agreement for the development of the Freedom Islands.[67] Under the Joint Venture Agreement, Amari would acquire and own a maximum of 367.5 hectares of reclaimed land which would be titled in its name.[68]

On November 29, 1996, then Senator Ernesto Maceda delivered a privilege speech and called the Joint Venture Agreement between PEA and Amari as the "grandmother of all scams."[69] The Senate Committee on Government Corporations and Public Enterprises, and the Committee on Accountability of Public Officers and Investigations held a joint investigation on the matter. They reported that: (1) the reclaimed lands that PEA sought to transfer to Amari under the Joint Venture Agreement "are lands of the public domain which the government has not classified as alienable lands and therefore PEA cannot alienate these lands; (2) the certificates of title covering the Freedom Islands are thus void, and (3) the [Joint Venture Agreement] itself is illegal."[70]

Subsequently, petitioner Francisco Chavez filed a Petition for Mandamus with Prayer for the Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order, assailing the sale of lands of public domain to Amari. He argued that the sale was "a blatant violation of Section 3, Article XII of the 1987 Constitution prohibiting the sale of alienable lands of the public domain to private corporations."[71]

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[66] *Id.* at 516.

[67] *Id.* at 517.

[68] *Id.* at 561.

[69] *Id.* at 517.

[70] *Id.* at 518.

[71] Id. at 519.

On the issue of land classification, this Court held that foreshore and submerged areas belong to the public domain. Mere reclamation by PEA "does not convert these inalienable natural resources of the State into alienable or disposable lands of the public domain. There must be a law or presidential proclamation officially classifying these reclaimed lands as alienable or disposable and open to disposition or concession."[72] Thus:

> Under Section 2, Article XII of the 1987 Constitution, the foreshore and submerged areas of Manila Bay are part of the "lands of the public domain, waters . . . and other natural resources" and consequently "owned by the State." As such, foreshore and submerged areas "shall not be alienated," unless they are classified as "agricultural lands" of the public domain. The mere reclamation of these areas by PEA does not convert these inalienable natural resources of the State into alienable or disposable lands of the public domain. There must be a law or presidential proclamation officially classifying these reclaimed lands as alienable or disposable and open to disposition or concession. Moreover, these reclaimed lands cannot be classified as alienable or disposable if the law has reserved them for some public or quasi-public use.
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> Section 8 of C[ommonwealth] A[ct] No. 141 provides that "only those lands shall be declared open to disposition or concession which have been *officially delimited and classified*." The President has the authority to classify inalienable lands of the public domain into alienable or disposable lands of the public domain, pursuant to Section 6 of C[ommonwealth] A[ct] No. 141.[73] (Emphasis in the original, citations omitted)

Nonetheless, this Court considered the issuance of a presidential decree and a special patent proclaiming the land as alienable and disposable as a positive act of the Executive Department that converted the reclaimed areas into alienable and disposable agricultural lands:

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[72] *Id.* at 563.

[73] *Id.*

P[residential] D[ecree] No. 1085, coupled with President Aquino's ***actual issuance*** of a special patent covering the Freedom Islands, is equivalent to an official proclamation classifying the Freedom Islands as alienable or disposable lands of the public domain. P[residential] D[ecree] No. 1085 and President Aquino's issuance of a land patent also constitute a declaration that the Freedom Islands are no longer needed for public service. ***The Freedom Islands are thus alienable or disposable lands of the public domain, open to disposition or concession to qualified parties.***[74] (Emphasis in the original)

In other words, Presidential Decree No. 1085[75] provides for the express and direct transfer of ownership of the reclaimed lands located in the foreshore and offshore area of Manila Bay. On the other hand, Act No. 2874 merely outlines the procedure for the administration and disposition of alienable lands of the public domain.

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[74] *Id*. at 564-565.

[75] Pres. Dec. No. 1085 provides:

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order the following:

The land reclaimed in the foreshore and offshore area of Manila Bay pursuant to the contract for the reclamation and construction of the Manila-Cavite Coastal Road Project between the Republic of the Philippines and the Construction and Development Corporation of the Philippines dated November 20, 1973 and/or any other contract or reclamation covering the same area is hereby **transferred, conveyed and assigned to the ownership and administration** of the Public Estates Authority established pursuant to P.D. No. 1084; Provided, however, That the rights and interest of the Construction and Development Corporation of the Philippines pursuant to the aforesaid contract shall be recognized and respected.

. . . . . .

Special land patent/patents shall be issued by the Secretary of Natural Resources in favor of the Public Estate Authority without prejudice to the subsequent transfer to the contractor or his assignees of such portion or portions of the land reclaimed or to be reclaimed as provided for in the above-mentioned contract. On the basis of such patents, the Land Registration Commission shall issue the corresponding certificates of title. (Emphasis supplied).

Clearly, the lack of any qualifying words that explicitly declare the lands as alienable and disposable, or convey ownership over them proves that Act No. 2874 was enacted merely to serve as a guideline for the proper administration and disposition of alienable lands.

Act No. 2874, Section 8 provides that only lands which have been officially delimited and classified as alienable may be disposed of through any of the authorized methods.

Therefore, the issuance of Homestead Patent No. V-67820 in favor of Daquer, pursuant to the Public Land Act, did not, by itself, reclassify Lot No. H-19731 into alienable and disposable public agricultural land.

II.B.

In denying petitioner's complaint, the Regional Trial Court ruled that since Lot No. H-19731 falls within the unclassified zone under the Land Classification Map, it should be presumed that it was public agricultural land.[76] In its ruling, the Regional Trial Court relied on *Krivenko v. Register of Deeds*,[77] thus:

> Being unclassified, does it mean that the land subject of this case [is] considered as timberland? The Supreme Court in [the] case of Krivenko v. Register of Manila 79 Phil 461 held that:
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> > The scope of this constitutional provision, according to its heading and its language, embraces all land of any kind of the public domain, its purpose being to establish a permanent and fundamental policy for the conservation and utilization of all natural resources of the Nation. When, therefore, this provision, with reference [to] lands of the public domain, makes mention of only agricultural, timber and mineral lands, it means that all lands of the public domain are classified into said three groups, namely, agricultural, timber and mineral. And this classification finds corroboration in the circumstance that at the time of the adoption of the Constitution, that was the basic classification

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[76] *Rollo*, p. 70.

[77] 79 Phil. 461 (1947) [Per *C.J.* Moran, Second Division].

> existing in the public laws and judicial decisions in the Philippines, and the term "public agricultural lands" under said classification had then acquired a technical meaning that was well-known to the members of the Constitutional Convention who were mostly members of the legal profession.
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> As early as 1908, in the case of Mapa vs. Insular Government (10 Phil., 175, 182), this Court said that the phrase "agricultural public lands" as defined in the Act of Congress of July 1, 1902, which phrase is also to be found in several sections of the Public Land Act (No. 926), means "those public lands acquired from Spain which are neither mineral nor timber lands.["] This definition has been followed in a long line of decisions of this Court. . . . And with respect to residential lands, it has been held that since they are neither mineral nor timber lands, of necessity they must be classified as agricultural.
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> . . . But whatever the test might be, the fact remains that at the time the Constitutional (sic) was adopted, lands of the public domain were classified in our laws and jurisprudence into agricultural, mineral, and timber, and that the term "public agricultural lands" [was] construed as referring to those lands that were not timber or mineral, and as including residential lands[.] It may safely [be] presumed, therefore, that what the members of the Constitutional Convention had in mind when they drafted the Constitutional (sic) was this well-known classification and its technical meaning then prevailing.

Being not classified as mineral or timberland, it could be presumed that the land subject of this case is agricultural applying the afore-quoted jurisprudence.[78]

The Regional Trial Court's reliance on *Krivenko* is erroneous. The pivotal issue in *Krivenko* is whether or not an alien could acquire a residential lot in the Philippines. Here, the issue is whether the mere issuance of a homestead patent could classify an otherwise unclassified public land into an alienable and disposable agricultural land of the public domain.

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[78] *Rollo*, p. 70.

Even if the property falls within the unclassified zone, this Court, in *Heirs of the late Spouses Palanca v. Republic*,[79] ruled that unclassified lands, until released and rendered open to disposition, shall be considered as inalienable lands of the public domain, thus:

> While it is true that the land classification map does not categorically state that the islands are public forests, the fact that they were unclassified lands leads to the same result. In the absence of the classification as mineral or timber land, the land remains unclassified land until released and rendered open to disposition. When the property is still unclassified, whatever possession applicants may have had, and however long, still cannot ripen into private ownership. This is because, pursuant to Constitutional precepts, all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership in such lands and is charged with the conservation of such patrimony. Thus, the Court has emphasized the need to show in registration proceedings that the government, through a positive act, has declassified inalienable public land into disposable land for agricultural or other purposes.[80] (Citations omitted)

II.C

As a rule, a certificate of title issued pursuant to a homestead patent partakes the nature of a certificate of title issued through a judicial proceeding and becomes incontrovertible upon the expiration of one (1) year. Thus, in *Wee v. Mardo*:[81]

> [O]nce a patent is registered and the corresponding certificate of title is issued, the land ceases to be part of public domain and becomes private property over which the Director of Lands has neither control nor jurisdiction. A public land patent, when registered in the corresponding Register of Deeds, is a veritable Torrens title, and becomes as indefeasible upon the expiration of one (1) year from the date of issuance thereof. Said title, like one issued pursuant to a judicial decree, is subject to review within one (1) year from the

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[79] 531 Phil. 602 (2006) [Per *J*. Azcuna, Second Division].

[80] *Id*. at 616-617.

[81] 735 Phil. 420 (2014) [Per *J*. Mendoza, Third Division]

date of the issuance of the patent. This rule is embodied in Section 103 of PD 1529, which provides that:

> Section 103. Certificates of title pursuant to patents. — Whenever public land is by the Government alienated, granted or conveyed to any person, the same shall be brought forthwith under the operation of this Decree. . . . **After due registration and issuance of the certificate of title, such land shall be deemed to be registered land to all intents and purposes under this Decree.**[82] (Emphasis in the original)

Nevertheless, the rule that "a certificate of title issued pursuant to a homestead patent becomes indefeasible after one year, is subject to the proviso that 'the land covered by said certificate is a disposable public land within the contemplation of the Public Land Law.'"[83]

When the property covered by a homestead patent is part of the inalienable land of the public domain, the title issued pursuant to it is null and void, and the rule on indefeasibility of title will not apply.[84] In *Agne v. Director of Lands*:[85]

> The rule on the incontrovertibility of a certificate of title upon the expiration of one year, after the entry of the decree, pursuant to the provisions of the Land Registration Act, does not apply where an action for the cancellation of a patent and a certificate of title issued pursuant thereto is instituted on the ground that they are *null and void* because the Bureau of Lands had no jurisdiction to issue them at all[.][86] (Emphasis supplied)

In *Republic v. Ramos*,[87] this Court held that despite the registration of the land and the issuance of a Torrens title, the

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[82] *Id.* at 429.

[83] *Republic v. Roxas*, 723 Phil. 279, 310 (2013) [Per J. Leonardo De-Castro, First Division].

[84] *Spouses De Guzman v. Agbagala,* 569 Phil. 607, 615 (2008) [Per J. Corona, First Division].

[85] 261 Phil. 13 (1990) [Per J. Regalado, Division).

[86] *Id.* at 25.

[87] 117 Phil. 45 (1963) [Per J. Padilla, *En Banc*].

State may still file an action for reversion of a homestead land that was granted in violation of the law. The action is not barred by the statute of limitations, especially against the State:

> Granting that because the homestead land in controversy has been brought under the operation of the Land Registration Act and the Torrens title issued therefor has become indefeasible, under the prayer of any other or further relief, which the court may deem just and equitable to grant, *a directive for reconveyance may be granted, if after trial on the merits the court should find that the appellee Ricardo Ramos is not entitled to hold and possess title in fee simple to the homestead land erroneously granted to him* ... The action for reconveyance is *not yet barred by the statute of limitations*, even granting that the statute could, which, of course, does not, run against the State.[88] (Emphasis supplied)

Likewise, *Spouses De Guzman v. Agbagala*[89] did not apply the principle of indefeasibility where "the patent and the title based thereon are null and void."[90] In *Mendoza v. Navarette*:[91]

> [T]he Torrens system was not established as a means for the acquisition of title to private land. It is intended merely to confirm and register the title which one may already have on the land. Where the applicant possesses no title or ownership over the parcel of land, he cannot acquire one under the Torrens system of registration . . . The effect is that it is as if no registration was made at all.[92] (Citations omitted)

Heirs of Spouses Vda. De Palanca v. Republic[93] also held that the State may recover non-disposable public lands registered under the Land Registration Act "at any time and the defense

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[88] *Id.* at 49.

[89] 569 Phil. 607 (2008) [Per J. Corona, First Division].

[90] *Id.* at 614.

[91] 288 Phil. 1122 (1992) [Per J. Davide Jr., Third Division].

[92] *Id.* at 1142.

[93] 531 Phil. 602 (2006) [Per J. Azcuna, Second Division].

of *res judicata* would not apply as courts have no jurisdiction to dispose of such lands of the public domain."[94]

As this Court ruled in that case, Lot No. H-19731, the land covered by Homestead Patent No. V-67820, is still part of the inalienable lands of the public domain there being no positive act declassifying it. Consequently, OCT No. G-3287, issued pursuant to Homestead Patent No. V-67820, is null and void. Thus, the State is not estopped from instituting an action for the reversion of Lot No. H-19731 into the lands of the public domain.

Lands of the public domain can only be classified as alienable and disposable through a positive act of the government.[95] The State cannot be estopped by the omission, mistake, or error of its officials or agents.[96] It may revert the land at any time, where the concession or disposition is void *ab initio*.

WHEREFORE, the petition is **GRANTED**. The January 14, 2010 Decision and September 7, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 90488 are **REVERSED AND SET ASIDE.** The ownership and possession of the tract of land covered by Original Certificate of Title No. G-3287 in the name of Ignacio Daquer falling within the unclassified zone is hereby **REVERTED** to and **REACQUIRED** by the Republic of the Philippines.

The Register of Deeds of Palawan is directed to **CANCEL** Original Certificate of Title No. G-3287 for being null and void.

SO ORDERED.

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[94] *Id*. at 614. (Citations omitted)

[95] *Secretary of the Department of Environment and Natural Resources v. Yap*, 589 Phil. 156, 182 (2008) [Per *J*. Reyes, R.T., *En Banc*).

[96] *Director of Lands v. Court of Appeals*, 214 Phil. 606 (1984) [Per *J*. Melencio-Herrera, First Division].

Leonardo-de Castro, C.J., Carpio, Peralta, Bersamin, Perlas-Bernabe, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.*, concur.

Del Castillo, J., on official leave.

Jardeleza, J., no part.

EN BANC

[G.R. No. 222838. September 4, 2018]

PHILIPPINE HEALTH INSURANCE CORPORATION, *petitioner, vs.* **COMMISSION ON AUDIT, CHAIRPERSON MICHAEL G. AGUINALDO, DIRECTOR JOSEPH B. ANACAY, and SUPERVISING AUDITOR ELENA L. AGUSTIN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); 2009 REVISED RULES OF PROCEDURE; APPEALS; APPEAL TO THE COA PROPER FROM THE DECISION OF THE DIRECTOR SHALL BE TAKEN WITHIN THE TIME REMAINING OF THE SIX-MONTH PERIOD, TAKING INTO ACCOUNT THE SUSPENSION OF THE RUNNING THEREOF; CASE AT BAR. Section 4, Rule V of the 2009 Revised Rules of Procedure of the COA provides that an appeal before the Director of a Central Office Audit Cluster in the National, Local or Corporate Sector, or of a Regional Office of the Commission, must be filed within six months after receipt of the decision appealed from. The receipt by the Director of the appeal memorandum shall stop the running

of the period to appeal; the period shall resume to run upon receipt by the appellant of the Director's decision. Section 3, Rule VII further provides that the appeal before the COA Proper shall be taken within the time remaining of the six-month period, taking into account the suspension of the running thereof. There is no dispute that PhilHealth received the ND on July 27, 2012 and filed an appeal before the COA-CGS on January 24, 2013. In ruling that the reglementary period had already lapsed by then, the COA employed 180 days as the equivalent of the six-month period, thereby making January 23, 2013 as the last date for PhilHealth to file its appeal. x x x What is at issue here, x x x, is the computation of the legal period for a "month." Unlike in *Primetown,* there is no incompatibility with respect to the definition of a month under the Civil Code and the Administrative Code. A month is understood under both laws to be 30 days. In ascertaining the last day of the reglementary period to appeal, one month is to be treated as equivalent to 30 days, such that six months is equal to 180 days. Thus, the period began to run on July 27, 2012 upon receipt of the ND and ended on January 23, 2013. The COA was correct, therefore, in denying the appeal on the ground that the six-month period within which to file an appeal from the ND had already lapsed when PhilHealth filed its appeal to the COA-CGS on January 24, 2013.

2. ID.; REPUBLIC ACT NO. 7875, AS AMENDED (THE NATIONAL HEALTH INSURANCE ACT); BOARD OF DIRECTORS (BOD); COMPOSED OF THOSE WHO ARE APPOINTED TO THE POSITION AND OF THOSE DESIGNATED TO SERVE BY VIRTUE OF THEIR OFFICE; APPOINTMENT DISTINGUISHED FROM DESIGNATION. To begin with, we shall distinguish between the appointive and *ex officio* members of the BOD. The composition of the BOD [is stated] under RA No. 9241, which amended RA No. 7875 in 2004. x x x As can be gleaned from [Section 18 (a) of R.A. No. 7875, as amended], there are members of the BOD who are appointed to the position, and there are those who are designated to serve by virtue of their office (or in other words, in an *ex officio* capacity). Appointment is the selection by the proper authority of an individual who is to exercise the functions of an office. Designation, on the other hand, connotes merely the imposition of additional duties, upon

a person already in the public service by virtue of an earlier appointment or election.

3. ID.; ID.; ID.; MEMBERS OF THE BOD WHO ARE ALLOWED BY LAW TO RECEIVE *PER DIEMS* FOR EVERY MEETING THEY ACTUALLY ATTEND REFERS ONLY TO THE APPOINTIVE MEMBERS AND NOT TO THOSE WHO ARE DESIGNATED IN AN *EX OFFICIO* CAPACITY; DISALLOWANCE OF THE INSTITUTIONAL MEETING EXPENSE (IME) GRANTED TO THE MEMBERS OF THE BOD SERVING IN AN *EX OFFICIO* CAPACITY, WARRANTED IN CASE AT BAR. Section 18(d) of RA No. 7875, which allows the members of the BOD to receive *per diems* for every meeting they actually attend, must be understood to refer only to the appointive members and not to those who are designated in an *ex officio* capacity or by virtue of their title to a certain office. The *ex officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive any other form of additional compensation for his services in the said position; otherwise, it would run counter with the constitutional prohibitions against holding multiple positions in the government and receiving additional or double compensation. x x x Prescinding from above, the disallowance of the IME granted to the members of the BOD serving in an *ex officio* capacity is clearly warranted. It would not be inaccurate to say that these members were already receiving these allowances from their respective departments in the form of EME and as appropriated in the GAA. As such, the additional allowances from PhilHealth were no longer necessary.

4. ID.; ID.; ID.; ID.; GRANT OF ADDITIONAL ALLOWANCES, LIKE IME, TO APPOINTIVE MEMBERS BEYOND *PER DIEMS*, NOT ALLOWED BY LAW. [A]s far as the disallowance of the IME granted to the appointive members is concerned, the same is also proper. Contrary to the posturing of PhilHealth, its charter does not authorize the grant of additional allowances to the BOD beyond *per diems*. For one, while Section 18(d) of RA No. 7875 is entitled "allowances and *per diems*," its body significantly fails to mention any other allowances or benefits besides *per diems*. It is a basic precept of statutory construction that the express mention of one person,

thing, act, or consequence excludes all others, as expressed in the oft-repeated maxim *expressio unius est exlusio alterius.* Elsewise stated, *expressium facit cessare tacitum*—what is expressed puts an end to what is implied. *Casus omissus pro omisso habendus est.* A person, object or thing omitted must have been omitted intentionally. If the legislature intended to give PhilHealth the authority to grant allowances to the BOD other than the *per diems,* it could have facilely mentioned so.

5. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); COA CIRCULAR NO. 2006-001; THE AMOUNT OF EXTRAORDINARY AND MISCELLANEOUS EXPENSES (EMEs) FIXED UNDER THE GENERAL APPROPRIATIONS ACT (GAA) SHALL BE THE CEILING IN THE DISBURSEMENTS; VIOLATED IN CASE AT BAR. Having established that RA No. 7875 does not authorize the grant of additional allowances and benefits to the BOD, it does not follow (as we have already mentioned) that such grants are strictly and absolutely proscribed. The authority to grant EMEs may be derived from the GAA. The COA, in its Circular No. 2006-001, recognizes this much. x x x Indeed, in its AOM, the Supervising Auditor acknowledged the authority of PhilHealth to grant EMEs derived from the GAA. Section 28 of RA No. 9970, the 2010 GAA, on the other hand, provides for a ceiling of EMEs to be appropriated. x x x However, the Supervising Auditor observed that the EMEs granted were irregularly charged to other accounts of PhilHealth in order to accommodate reimbursements of EMEs which have already far exceeded the prescribed limitation set under the 2010 GAA. This act of charging was found to be irregular because it was conducted in a manner that deviated from the set standards, which in this case were the budgetary controls in the disbursement of the EME as stated in the GAA and COA Circular No. 2006-001. The irregular charging also resulted to an increase in the "excess from the GAA prescribed annual rate for EME." There is no cogent reason to overturn these findings of the Supervising Auditor, which PhilHealth failed to refute squarely in their comment to the AOM.

6. ID.; ID.; ID.; ID.; NOTICE OF DISALLOWANCE; GOOD FAITH; IN RELATION TO THE REQUIREMENT OF

REFUND OF DISALLOWED BENEFITS OR ALLOWANCES, GOOD FAITH IS THAT STATE OF MIND DENOTING HONESTY OF INTENTION, AND FREEDOM FROM KNOWLEDGE OF CIRCUMSTANCES WHICH OUGHT TO PUT THE HOLDER UPON INQUIRY; CANNOT BE APPRECIATED IN CASE AT BAR. [T]he defense of PhilHealth that its BOD members were reimbursed the IME in good faith and must, therefore, be not required to refund the disallowed amount, does not lie. Insofar as *ex officio* members are concerned, we reiterate our ruling in *Tetangco* that, by jurisprudence, patent disregard of case law and COA directives amounts to gross negligence; hence, good faith on the part of the the approving officers cannot be presumed. x x x Neither can good faith be appreciated with respect to the appointive members of the BOD. The Court can understand that the BOD might have merely relied on, albeit erroneously: (1) PhilHealth's power to fix the compensation of its personnel and for the BOD to exercise fiscal management; and (2) the fact that RA No. 7875 does not expressly prohibit Board members from receiving benefits other than the *per diem* authorized by law. There are findings, however, from the COA-CGS that the BOD members already knew at the time of their receipt of the IMEs that said benefits had no legal basis. This findings remain unrebutted by PhilHealth. x x x Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is "that state of mind denoting 'honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious." In this regard, therefore, this Court finds that the PhilHealth BOD members failed to earn the presumption of good faith.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel and *The Philippine Health Insurance Corporation Legal Sector* for petitioner.

The Solicitor General for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This petition for review on *certiorari*[1] under Rule 64,[2] with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction, seeks to annul and set aside the Decision No. 2015-093[3] dated April 1, 2015 and Resolution[4] dated December 15, 2015, respectively, of the Commission on Audit (COA). The COA affirmed the disallowance of the Institutional Meeting Expenses (IME) for 2010 paid to members of the Board of Directors (BOD) of Philippine Health Insurance Corporation (PhilHealth) in the total amount of ₱2,965,428.59.

In October 2007, the PhilHealth BOD passed Board Resolution No. 1055 approving the entitlement of its members (or their authorized representatives) to the Board Extraordinary and Miscellaneous Expense (BEME) in the reimbursable amount of ₱30,000.00 each per month effective October 4, 2007. These allowances were intended to cover the expenses of said BOD members in the performance of their official functions, which they would otherwise personally shoulder.[5] Correspondingly, a supplemental budget in the amount of ₱1,560,000.00 was also appropriated for the purpose.[6]

In December 2007, the BOD amended Board Resolution No. 1055 through Board Resolution No. 1084. It allowed the unexpended balance of the monthly Extraordinary and Miscellaneous Expense (EME) to be carried over and expended

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[1] *Rollo,* pp. 3-41.

[2] In relation to Rule 65 of the Rules of Court.

[3] *Rollo,* pp. 52-55.

[4] *Id.* at 57.

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

[6] *Id.* at 113-115.

in the succeeding months within the same calendar year, effective retroactively from October 5, 2007.[7]

In another Resolution[8] dated February 12, 2009, the BOD resolved to allocate the amount of ₱4,320,000.00 from the 2009 Corporate Operating Budget (COB) of the Office of the Corporate Secretary and every year thereafter for the reimbursement of expenses incurred by the members of the BOD (or their authorized representatives) in the discharge of their official functions and duties outside board meetings.

On May 24, 2011, the COA Supervising Auditor issued an Audit Observation Memorandum[9] (AOM) which showed that reimbursements of EME totaling ₱19.95 million in calendar year 2010 were charged to the Representation Expenses account under the sub-accounts "Institutional Meeting Expenses (865-10) and Committee Meeting Expenses (865-20)." The AOM noted that PhilHealth had been using IME and Committee Meeting Expenses accounts to accommodate reimbursements of EME since charges to the EME account already far exceeded the General Appropriations Act (GAA) prescribed limitation for each official. The COA Supervising Auditor viewed the charging of EME against other accounts to be irregular because the nature and purpose of these expenses fall under the budgetary controls in the disbursement of EME as stated in the GAA and COA Circular No. 2006-01. The charging of EME against other accounts likewise increased the amount of the excess from the GAA-prescribed annual rate for EME.[10] The Supervising Auditor also observed that ₱5.63 million of the total amount was reimbursement of expenses made by members of the PhilHealth BOD and personnel whose positions were not entitled to EME.[11]

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[7] *Id.* at 116-118.

[8] Board Resolution No. 1215, *id*. at 119-121.

[9] *Id.* at 122-125.

[10] *Id.* at 122-123.

[11] *Id.* at 122.

PhilHealth commented on the AOM, but its comment was found unsatisfactory. Consequently, Notice of Disallowance (ND) No. HO 12-004 (10) was issued on July 18, 2012 disallowing the payment for IME of the members of the PhilHealth BOD for the period January to December 2010 in the amount of ₱2,965,428.59 for lack of legal basis.[12]

PhilHealth filed an appeal before the COA-Corporate Government Sector (CGS), but the same was denied. The COA-CGS affirmed the ruling of the Supervising Auditor that Section 18(d) of Republic Act (RA) No. 7875[13] expressly provides that a *per diem* is precisely intended to be the compensation for members of the PhilHealth BOD. Nowhere in RA No. 7875 can it be found that PhilHealth is authorized to grant additional compensation, allowances or benefits to its BOD. Neither is the BOD authorized to grant compensation beyond what RA No. 7875 provides. Although the BOD is empowered to formulate the necessary rules and regulations pursuant to RA No. 7875, this power must be exercised within the scope of the authority given by the legislature. Thus, the COA-CGS found that the BOD exceeded its authority when it issued Board Resolution No. 1193 authorizing its members to receive EME contrary to Section 18(d) of RA No. 7875.[14]

The COA-CGS further ruled that PhilHealth cannot seek refuge on the previous rulings of the Court with regard to the non-refund of the disallowed benefits. Citing the AOM, the COA-CGS pointed out that the expenses in question were already disallowed in audit. As such, the BOD members already knew, at the time they received the IME, that said benefits had no legal basis.[15]

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[12] *Id.* at 59.

[13] An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose.

[14] *Rollo,* pp. 61-62.

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

PhilHealth filed a petition for review before the COA Proper. In its assailed Decision, however, the COA Proper dismissed the petition for being filed out of time, noting that the ND and the COA-CGS Decision were appealed only after 181 and 42 days, respectively, had lapsed from the dates of their receipt by PhilHealth. The COA Proper also found no compelling reason to relax its procedural rules because PhilHealth did not offer any justification for the belated filing of its petition. PhilHealth moved for reconsideration, but the same was also denied.[16]

Hence, this petition which raises grave abuse of discretion on the part of COA for denying the appeal on mere procedural grounds instead of deciding on the merits of the case in the interest of substantial justice.

We deny the petition.

I

Firstly, PhilHealth maintains that the term "month" in the six-month reglementary period to file an appeal under the 2009 Revised Rules of Procedure of COA should be understood to mean the 30-day month and should, accordingly, not use the equivalent of 180 days. We are not persuaded.

Section 4, Rule V of the 2009 Revised Rules of Procedure of the COA provides that an appeal before the Director of a Central Office Audit Cluster in the National, Local or Corporate Sector, or of a Regional Office of the Commission, must be filed within six months after receipt of the decision appealed from. The receipt by the Director of the appeal memorandum shall stop the running of the period to appeal; the period shall resume to run upon receipt by the appellant of the Director's decision. Section 3, Rule VII further provides that the appeal before the COA Proper shall be taken within the time remaining of the six-month period, taking into account the suspension of the running thereof. There is no dispute that PhilHealth received the ND on July 27, 2012 and filed an appeal before the COA-

[16] *Id.* at 52-55, 57.

CGS on January 24, 2013. In ruling that the reglementary period had already lapsed by then, the COA employed 180 days as the equivalent of the six-month period, thereby making January 23, 2013 as the last date for PhilHealth to file its appeal.

PhilHealth, on the other hand, takes its cue from our Decision in *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*[17] *(Primetown),* positing that the six-month reglementary period should be determined as the entire period from July 28, 2012 to January 27, 2013. This conclusion stemmed from our explanation in *Primetown* which included a definition of a calendar month as one designated in the calendar without regard to the number of days it may contain.[18] Thus:

> It is the "period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, and if there is not a sufficient number of days in the next month, then up to and including the last day of that month." To illustrate, one calendar month from December 31, 2007 will be from January 1, 2008 to January 31, 2008; one calendar month from January 31, 2008 will be from February 1, 2008 until February 29, 2008.[19] (Citations omitted.)

Glaringly, however, the issue in *Primetown* was with respect to the two-year prescriptive period within which to file for a tax refund or credit under the National Internal Revenue Code. In computing this legal period, the Court held that there was a manifest incompatibility with regard to the manner of computing legal periods, particularly as to what constitutes a year, under Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987. Under the Civil Code, a year is equivalent to 365 days, whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months, with

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[17] G.R. No. 162155, August 28, 2007, 531 SCRA 436.

[18] *Rollo,* pp. 11-12.

[19] *Commissioner of Internal Revenue v. Primetown Property Group, Inc., supra* at 443.

the number of days being irrelevant. To address this incompatibility, the Court held that Section 31, Chapter VIII, Book I of the Administrative Code of 1987, being the more recent law, governs the computation of legal periods.[20]

What is at issue here, conversely, is the computation of the legal period for a "month." Unlike in *Primetown,* there is no incompatibility with respect to the definition of a month under the Civil Code and the Administrative Code. A month is understood under both laws to be 30 days. In ascertaining the last day of the reglementary period to appeal, one month is to be treated as equivalent to 30 days, such that six months is equal to 180 days. Thus, the period began to run on July 27, 2012 upon receipt of the ND and ended on January 23, 2013.[21] The COA was correct, therefore, in denying the appeal on the ground that the six-month period within which to file an appeal from the ND had already lapsed when PhilHealth filed its appeal to the COA-CGS on January 24, 2013.

II

Even if we were to relax the rules and entertain the appeal, we find that PhilHealth's case would still fail on its merits. The COA correctly disallowed the IME on the ground that its grant was without legal basis.

A

To begin with, we shall distinguish between the appointive and *ex officio* members of the BOD. The composition of the BOD under RA No. 9241,[22] which amended RA No. 7875 in 2004, is as follows:

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[20] *Id.* at 444.

[21] See *Radaza v. Court of Appeals,* G.R. No. 177135, October 15, 2008, 569 SCRA 223, 236-237.

[22] An Act Amending Republic Act No. 7875, otherwise known as "An Act Instituting a National Health Insurance Program for all Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose."

Sec. 3. Section 18 of the Law shall be amended to read as follows:

"Sec. 18. *The Board of Directors.* –

a) *Composition* – The Corporation shall be governed by a Board of Directors hereinafter referred to as the Board, composed of the following members:

The Secretary of Health;

The Secretary of Labor and Employment or his representative;

The Secretary of the Interior and Local Government or his representative;

The Secretary of Social Welfare and Development or his representative;

The President of the Corporation;

A representative of the labor sector;

A representative of employers;

The SSS Administrator or his representative;

The GSIS General Manager or his representative;

The Vice Chairperson for the basic sector of the National Anti-Poverty Commission or his representative;

A representative of Filipino overseas workers;

A representative of the self-employed sector; and

A representative of health care providers to be endorsed by the national associations of health care institutions and medical health professionals.

The Secretary of Health shall be the *ex officio* Chairperson while the President of the Corporation shall be the Vice Chairperson of the Board.

As can be gleaned from above, there are members of the BOD who are appointed to the position, and there are those who are designated to serve by virtue of their office (or in other words, in an *ex officio* capacity). Appointment is the selection by the proper authority of an individual who is to exercise the

functions of an office. Designation, on the other hand, connotes merely the imposition of additional duties, upon a person already in the public service by virtue of an earlier appointment or election.[23]

Section 18(d) of RA No. 7875, which allows the members of the BOD to receive *per diems* for every meeting they actually attend, must be understood to refer only to the appointive members and not to those who are designated in an *ex officio* capacity or by virtue of their title to a certain office. The *ex officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive any other form of additional compensation for his services in the said position; otherwise, it would run counter with the constitutional prohibitions against holding multiple positions in the government and receiving additional or double compensation.[24] We explained:

> The reason is that these services are already paid for and covered by the compensation attached to his principal office. It should be obvious that if, say, the Secretary of Finance attends a meeting of the Monetary Board as an *ex-officio* member thereof, he is actually and in legal contemplation performing the primary function of his principal office in defining policy in monetary and banking matters, which come under the jurisdiction of his department. **For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a *per diem* or an honorarium or an allowance, or some other such euphemism.** By whatever name it is designated, such additional compensation is prohibited by the Constitution.[25] (Emphasis supplied.)

Prescinding from above, the disallowance of the IME granted to the members of the BOD serving in an *ex officio* capacity is

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[23] *Sevilla v. Court of Appeals,* G.R. No. 88498, June 9, 1992, 209 SCRA 637, 642.

[24] *Civil Liberties Union v. Executive Secretary,* G.R. No. 83896, February 22, 1991, 194 SCRA 317, 333-335.

[25] *Id.* at 335.

clearly warranted.[26] It would not be inaccurate to say that these members were already receiving these allowances from their respective departments in the form of EME and as appropriated in the GAA. As such, the additional allowances from PhilHealth were no longer necessary.[27]

In the same vein, PhilHealth erroneously invokes Department of Budget and Management (DBM)-National Budget Circular No. 2007-510[28] which provides in the last sentence of its Section 5.4 that department secretaries, department undersecretaries, and department assistant secretaries who are *ex officio* members of governing boards of collegial bodies may receive reimbursement for actual transportation and miscellaneous expenses incurred in attending board meetings. This provision must be understood to mean that members of the BOD serving in an *ex officio* capacity may, indeed, receive such allowances, but only as appropriated in the GAA of their own respective departments.

On the other hand, as far as the disallowance of the IME granted to the appointive members is concerned, the same is also proper.

Contrary to the posturing of PhilHealth, its charter does not authorize the grant of additional allowances to the BOD beyond *per diems.* For one, while Section 18(d) of RA No. 7875 is entitled "allowances and *per diems*," its body significantly fails to mention any other allowances or benefits besides *per diems.* It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others, as expressed in the oft-repeated maxim *expressio unius*

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[26] *Rollo,* pp. 65-66. It does not clearly appear from the records, even from ND No. HO 12-004 (10), which among the members of the BOD as payees were appointed or designated (or their representatives).

[27] See *Tetangco, Jr. v. Commission on Audit,* G.R. No. 215061, June 6, 2017, 826 SCRA 179.

[28] Guidelines on the Grant of Honoraria to the Governing Boards of Collegial Bodies.

est exlusio alterius. Elsewise stated, *expressium facit cessare tacitum*—what is expressed puts an end to what is implied.[29] *Casus omissus pro omisso habendus est.* A person, object or thing omitted must have been omitted intentionally.[30] If the legislature intended to give PhilHealth the authority to grant allowances to the BOD other than the *per diems,* it could have facilely mentioned so. Our ruling in *Bases Conversion and Development Authority v. COA*[31] *(BCDA)* is instructive:

> *First,* the BCDA claims that the Board can grant the year-end benefit to its members and full-time consultants because, under Section 10 of RA No. 7227, the functions of the Board include the adoption of a compensation and benefit scheme.
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> The Court is not impressed. The Board's power to adopt a compensation and benefit scheme is not unlimited. Section 9 of RA No. 7227 states that Board members are entitled to a *per diem:*
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> > **Members of the Board shall receive a *per diem* of not more than Five thousand pesos (₱5,000) for every board meeting: *Provided, however,* That the *per diem* collected per month does not exceed the equivalent of four (4) meetings:** *Provided, further,* That the amount of *per diem* for every board meeting may be increased by the President but such amount shall not be increased within two (2) years after its last increase." x x x
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> Section 9 specifies that Board members shall receive a *per diem* for every board meeting; limits the amount of *per diem* to not more than ₱5,000; and limits the total amount of *per diem* for one month to not more than four meetings. In *Magno v. Commission on Audit, Cabili v. Civil Service Commission De Jesus v. Civil Service Commission, Molen, Jr. v. Commission on Audit,* and *Baybay Water District v. Commission on Audit,* the Court held that **the specification**

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[29] *Canet v. Decena,* G.R. No. 155344, January 20, 2004, 420 SCRA 388, 393-394.

[30] *San Miguel Corporation Employees Union-Phil. Transport and General Workers Org. v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang Pilipino,* G.R. No. 171153, September 12, 2007, 533 SCRA 125, 153.

[31] G.R. No. 178160, February 26, 2009, 580 SCRA 295.

of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the *per diem* authorized by law and no other. In *Baybay Water District,* the Court held that:

> "By specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month, x x x the law quite clearly indicates that directors x x x are authorized to receive only the *per diem* authorized by law and no other compensation or allowance in whatever form."

x x x x x x x x x

Fourth, the BCDA claims that the Board can grant the year-end benefit to its members and the full-time consultants because RA No. 7227 does not expressly prohibit it from doing so.

The Court is not impressed. A careful reading of Section 9 of RA No. 7227 reveals that the Board is prohibited from granting its members other benefits. x x x

x x x x x x x x x

Section 9 specifies that Board members shall receive a *per diem* for every board meeting; limits the amount of *per diem* to not more than ₱5,000; limits the total amount of *per diem* for one month to not more than four meetings; and does not state that Board members may receive other benefits. In *Magno, Cabili, De Jesus, Molen, Jr.,* and *Baybay Water District,* the Court held that **the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the *per diem* authorized by law and no other.**

The specification that Board members shall receive a *per diem* of not more than ₱5,000 for every meeting and the omission of a provision allowing Board members to receive other benefits lead the Court to the inference that Congress intended to limit the compensation of Board members to the *per diem* authorized by law and no other. ***Expressio unius est exclusio alterius*. Had Congress intended to allow the Board members to receive other benefits, it would have expressly stated so.** For example, Congress' intention to allow Board members to receive other benefits besides the *per diem* authorized by law is expressly stated in Section 1 of RA No. 9286:

> "SECTION 1. Section 13 of Presidential Decree No. 198, as amended, is hereby amended to read as follows:

"SEC. 13. *Compensation.–Each* director shall receive *per diem* to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive *per diems* in any given month in excess of the equivalent of the total per diem of four meetings in any given month.

Any *per diem* in excess of One hundred fifty pesos (₱150.00) shall be subject to the approval of the Administration. **In addition thereto, each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration**." **x x x**

The Court cannot, in the guise of interpretation, enlarge the scope of a statute or insert into a statute what Congress omitted, whether intentionally or unintentionally.[32] (Emphasis supplied; citations omitted.)

Secondly, PhilHealth, cannot take refuge behind its assertion that it may grant additional benefits on the strength of its fiscal autonomy under Section 16(n)[33] of RA No. 7875, as tempered by the limitations provided in Section 26(b).[34] We have already

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[32] *Id.* at 300-306.

[33] Sec. 16. *Powers and Functions.* – The Corporation shall have the following powers and functions:

x x x x x x x x x

n) to organize its office, fix the compensation of and appoint personnel as may be deemed necessary and upon the recommendation of the president of the Corporation;

[34] Sec. 26. *Financial Management.* – The use, disposition, investment, disbursement, administration and management of the National Health Insurance Fund, including any subsidy, grant or donation received for program operations shall be governed by resolution of the Board of Directors of the Corporation, subject to the following limitations:

x x x x x x x x x

b) The Corporation is authorized to charge the various funds under its control for the costs of administering the Program. Such costs may include administration, monitoring, marketing and promotion, research and development, audit and evaluation, information services, and other necessary activities for the effective management of the Program. The total annual costs for these shall not exceed twelve percent (12%) of the

ruled on this same argument in *PhilHealth v. COA,*[35] where it was posited that it is the intent of the legislature to limit the determination and approval of allowances to the PhilHealth BOD alone, subject only to the 12% to 13% limitation. We have declared in that case that PhilHealth does not have unbridled discretion to issue any and all kinds of allowances, limited only by the provisions of its charter:

> As clearly expressed in *PCSO v. COA,* even if it is assumed that there is an explicit provision exempting a GOCC from the rules of the then Office of Compensation and Position Classification *(OCPC)* under the DBM, the power of its Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the standards laid down by applicable laws: P.D. No. 985, its 1978 amendment, P.D. No. 1597, the SSL, and at present, R.A. 10149. **To sustain petitioners claim that it is the PHIC, and PHIC alone, that will ensure that its compensation system conforms with applicable law will result in an invalid delegation of legislative power, granting the PHIC unlimited authority to unilaterally fix its compensation structure. Certainly, such effect could not have been the intent of the legislature.**[36] (Emphasis supplied; citations omitted.)

It may not be amiss to point out that even on the fair assumption that RA No. 7875 grants PhilHealth the power to fix compensation, the same is limited to; as expressly worded in Section 16(n); the personnel of PhilHealth. In *BCDA*[37] the Court upheld DBM Circular Letter No. 2002-2 which states that "[m]embers of the Board of Directors of agencies are not salaried officials of the government. As non-salaried officials they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law."[38] It appears that the consistent

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total contributions, including government contributions to the Program and not more than three (3%) of the investment earnings collected during the immediately preceding year.

[35] G.R. No. 213453, November 29, 2016, 811 SCRA 238.

[36] *Id.* at 261.

[37] *Supra* note 31.

[38] *Id.* at 301. Emphasis omitted.

rule, therefore, is that the organic law must expressly provide the allowances and benefits due the BOD; entitlement thereto can never be implied.

Neither can PhilHealth find solace in the alleged approval or confirmation by former President Gloria Macapagal-Arroyo of PhilHealth's fiscal autonomy through two executive communications relative to its request to exercise fiscal authority in line with the PhilHealth Rationalization Plan.[39] We observe that the alleged presidential approval was merely on the marginal note of the said communications and was never reduced in any formal memorandum.[40] So, too, the Court has previously held in *BCDA* that the presidential approval of a new compensation and benefit scheme which included the grant of allowances found to be unauthorized by law shall not estop the State from correcting the erroneous application of a statute.[41]

Equally important, we are reminded of our recent ruling in *Social Security System (SSS) v. COA,*[42] where similarly, issues on the grant of EME to the appointive members of the SSS and the alleged fiscal autonomy of a government-owned and controlled corporation were put into fore. In said case, the COA disallowed the EME on the ground that the Social Security Law (SS Law) only mentions the grant of *per diems* and representation and transportation allowances. The SSS countered that the SS Law, when taken as a whole, authorizes the SSS to grant additional allowances to its members. The SSS believed, in particular, that it may grant additional benefits to its members because the SS Law allegedly empowers it to adopt its own budget within the limits provided by the said law. In ruling against the SSS, we took significant note of the nature of the funds possessed by the SSS, citing our previous ruling that the

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

[40] *Id.* at 262-263.

[41] *Bases Conversion and Development Authority v. COA, supra* note 31 at 307-308.

[42] G.R. No. 210940, September 6, 2016, 802 SCRA 229.

funds of the SSS were merely held in trust for the benefit of workers and employees in the private sector. As such, the provisions of the SS Law empowering the Social Security Commission to allocate its funds to pay for the salaries and benefits of its officials and employees are not absolute and unrestricted because the SSS is a mere trustee of the said funds. In other words, the salaries and benefits to be endowed by the SSS must always be reasonable so that the funds, which it holds in trust, will be devoted to its primary purpose of servicing workers and employees from the private sector.[43]

This foregoing analysis is applicable in the instant case. RA No. 7875 was enacted pursuant to the constitutional policy to create a National Health Insurance Program (Program) that would grant discounted medical coverage to all citizens, with priority to the needs of the underprivileged, sick, elderly, disabled, women and children, and free medical care to paupers.[44] The Program is designed to be compulsory, universal in coverage, affordable, acceptable, available, and accessible for all citizens of the Philippines.[45] In order to achieve this noble goal, RA No. 7875 created the National Health Insurance Fund which consists of contributions from members; current balances of the Health Insurance Funds of the SSS and Government Service Insurance System (GSIS) collected under the Philippine Medical Care Act of 1969, as amended, including arrearages of the Government of the Philippines with the GSIS for the said Fund; other appropriations earmarked by the national and local governments purposely for the implementation of the Program; subsequent appropriations; donations and grants-in-aid; and all accruals thereof.[46] The National Health Insurance Fund is managed by PhilHealth through its BOD, subject to certain limitations.[47] In

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[43] *Id.* at 243-245.

[44] CONSTITUTION, Art. XIII, Sec. 11; RA No. 7875, Sec. 2.

[45] RA No. 7875, Sec. 4(v).

[46] RA No. 7875, Sec. 24.

[47] RA No. 7875, Sec. 26. *Financial Management.* – The use, disposition, investment, disbursement, administration and management of the National

line with managing the Program, RA No. 7875 speaks of ensuring fund viability, as well as carrying out a fiduciary responsibility such that the Program shall provide effective stewardship, funds management, and maintenance of reserves.[48] In a lot of ways, therefore, it is also imperative for PhilHealth to utilize funds for the salaries and allowances of its BOD members with as much circumspection and restraint as the SSS. Like the latter, the funds under the PhilHealth's stewardship need to be devoted primarily to providing universal and affordable health care to all Filipinos.

B

Having established that RA No. 7875 does not authorize the grant of additional allowances and benefits to the BOD, it does not follow (as we have already mentioned) that such grants are strictly and absolutely proscribed. The authority to grant EMEs may be derived from the GAA. The COA, in its Circular No. 2006-001,[49] recognizes this much, to wit:

Health Insurance Fund, including any subsidy, grant or donation received for program operations shall be governed by resolution of the Board of Directors of the Corporation, subject to the following limitations:

a) All funds under the management and control of the Corporation shall be subject to all rules and regulations applicable to public funds.

b) The Corporation is authorized to charge the various funds under its control for the costs of administering the Program. Such costs may include administration, monitoring, marketing and promotion, research and development, audit and evaluation, information services, and other necessary activities for the effective management of the Program. The total annual costs for these shall not exceed twelve percent (12%) of the total contributions, including government contributions to the Program and not more than three percent (3%) of the investment earnings collected during the immediately preceding year.

[48] RA No. 7875, Sec. 2(i).

[49] Guidelines on the Disbursement of Extraordinary and Miscellaneous Expenses and other Similar Expenses in Government-Owned and Controlled Corporations/Government Financial Institutions and Their Subsidiaries.

III. Audit Guidelines

1. The amount of extraordinary and miscellaneous expenses, as authorized in the corporate charters of GOCCs/GFIs, shall be the ceiling in the disbursement of these funds. **Where no such authority is granted in the corporate charter and the authority to grant extraordinary and miscellaneous expenses is derived from the General Appropriations Act (GAA), the amounts fixed thereunder shall be the ceiling in the disbursements;**
2. Payment of these expenditures shall be strictly on a non-commutable or reimbursable basis;
3. The claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursements; and
4. No portion of the amounts appropriated shall be used for salaries, wages, allowances, intelligence and confidential expenses which are covered by separate appropriations. (Emphasis supplied.)

Indeed, in its AOM, the Supervising Auditor acknowledged the authority of PhilHealth to grant EMEs derived from the GAA. Section 28 of RA No. 9970,[50] the 2010 GAA, on the other hand, provides for a ceiling of EMEs to be appropriated:

Sec. 28. *Extraordinary and Miscellaneous Expenses.* Appropriations authorized herein may be used for extraordinary expenses of the following officials and those of equivalent rank as may be determined by the DBM, not exceeding:

(a) ₱220,000 for each Department Secretary;
(b) ₱90,000 for each Department Undersecretary;
(c) ₱50,000 for each Department Assistant Secretary;
(d) ₱38,000 for each head of bureau or organization of equivalent rank, and for each head of a Department Regional Office;
(e) ₱22,000 for each head of a Bureau Regional Office or organization of equivalent rank; and
(f) ₱16,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

[50] An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January One to December Thirty-One, Two Thousand and Ten, and for Other Purposes.

In addition, miscellaneous expenses not exceeding Seventy-Two Thousand Pesos (₱72,000) for each of the offices under the above named officials are herein authorized.

x x x x x x x x x

However, the Supervising Auditor observed that the EMEs granted were irregularly charged to other accounts of PhilHealth in order to accommodate reimbursements of EMEs which have already far exceeded the prescribed limitation set under the 2010 GAA. This act of charging was found to be irregular because it was conducted in a manner that deviated from the set standards, which in this case were the budgetary controls in the disbursement of the EME as stated in the GAA and COA Circular No. 2006-001. The irregular charging also resulted to an increase in the "excess from the GAA prescribed annual rate for EME."[51] There is no cogent reason to overturn these findings of the Supervising Auditor, which PhilHealth failed to refute squarely in their comment to the AOM.[52]

C

Finally, the defense of PhilHealth that its BOD members were reimbursed the IME in good faith and must, therefore, be not required to refund the disallowed amount, does not lie. Insofar as *ex officio* members are concerned, we reiterate our ruling in *Tetangco* that, by jurisprudence, patent disregard of case law and COA directives amounts to gross negligence; hence, good faith on the part of the the approving officers cannot be presumed:[53]

As the records bear out, the petitioners who approve the EMEs failed to observe the following: *first,* there is already a law, the GAA, that limits the grant of EMEs; *second,* COA Memorandum No. 97-038 dated September 19, 1997 is a directive issued by the COA to its auditors to enforce the self-executing prohibition imposed

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[51] *Rollo,* p. 122.

[52] *Id.* at 126-129.

[53] *Tetangco, Jr. v. Commission on Audit, supra* note 27 at 187-188.

by Section 13, Article VII of the Constitution on the President and his official family, their deputies and assistants, or their representatives from holding multiple offices and receiving double compensation; and *third,* the irregularity of giving additional compensation or allowances to *ex officio* members was already settled by jurisprudence, during the time that the subject allowances were authorized by the BSP.

Indeed, the petitioners-approving officers' disregard of the aforementioned case laws, COA issuances, and the Constitution, cannot be deemed as a mere lapse consistent with the presumption of good faith.

In line with this, We cannot subscribe to petitioner Favila's insistence that he should not be liable in the approving, processing and receiving of EMEs on the basis that he did not participate in the adoption of the resolutions authorizing the payment of the EMEs.

As pointed out during the deliberation by Our learned colleague, Hon. Justice Lucas P. Bersamin, the doctrine on the non-liability of recipients of disallowed benefits based on good faith did not extend to petitioner Favila for the following reasons: *first,* there was precisely a law (the relevant GAAs) that expressly limited the amounts of the EMEs to be received by the *ex officio* members; and *second,* insofar as ND No. 10-004GF (2007-2008) is concerned, his liability arose from his receipt of the subject allowances in 2008, when he was an *ex officio* member of the Board. Hence, good faith did not favor him not only because he had failed to exercise the highest degree of responsibility, but also because as a cabinet member he was aware of the extent of the benefits he was entitled to.

Verily, petitioners Tetangco, Jr., Favila, Amatong, Favis-Villafuerte, Antonio, and Bunye, who were members of the Monetary Board were expected to keep abreast of the laws that may affect the performance of their functions. The law, jurisprudence and COA issuances subject of this case are of such clearness that the concerned officials could not have mistaken their meaning. It was incumbent upon them to instruct Petitioners Ong, Prudencio, Reyes and Catarroja who participated in the processing of the EMEs, to comply with these laws. Unfortunately, they did not. Thus, they cannot find shelter in the defense of good faith.[54] (Citations omitted.)

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[54] *Id.* at 188-190.

Neither can good faith be appreciated with respect to the appointive members of the BOD. The Court can understand that the BOD might have merely relied on, albeit erroneously: (1) PhilHealth's power to fix the compensation of its personnel and for the BOD to exercise fiscal management; and (2) the fact that RA No. 7875 does not expressly prohibit Board members from receiving benefits other than the *per diem* authorized by law.[55] There are findings, however, from the COA-CGS that the BOD members already knew at the time of their receipt of the IMEs that said benefits had no legal basis.[56] This findings remain unrebutted by PhilHealth. As correctly held by the COA-CGS:

> As can be read from AOM No. 2011-10(10) dated May 24, 2011 and issued by the Supervising Auditor, PhilHealth:
>
> "Claims for reimbursement of EME by the PhilHealth Board of Directors and those holding position titles with SG+ were already disallowed in audit as these reimbursements were not in conformity with the above stated provisions in the GAA that only positions of equivalent rank as may be determined by the DBM are entitled to reimbursements of EME.[57] (Underscoring in the original.)

Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is "that state of mind denoting 'honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious."[58] In this regard,

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[55] See *Bases Conversion and Development Authority v. COA, supra* note 31 at 308.

[56] *Rollo,* p. 63.

[57] *Id.*

[58] *Zamboanga City Water District v. COA,* G.R. No. 213472, January 26, 2016, 782 SCRA 78, 97, citing *Philippine Economic Zone Authority v. COA,* G.R. No. 189767, July 3, 2012, 675 SCRA 513 and *Maritime Industry Authority v. COA,* G.R. No. 185812, January 13, 2015, 745 SCRA 300.

therefore, this Court finds that the PhilHealth BOD members failed to earn the presumption of good faith.

WHEREFORE, the petition is **DENIED.** The Decision No. 2015-093 dated April 1, 2015 of the Commission on Audit disallowing the Institutional Meeting Expenses for 2010 paid to members of the Board of Directors of Philippine Health Insurance Corporation in the total amount of ₱2,965,428.59 is **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, Bersamin, Perlas-Bernabe, Leonen, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.,* concur.

Del Castillo, J., on official leave.

EN BANC

[G.R. No. 231989. September 4, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMY LIM *y* MIRANDA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY RULE; THE CHAIN OF CUSTODY RULE IS A VARIATION OF THE PRINCIPLE THAT REAL EVIDENCE MUST BE AUTHENTICATED PRIOR TO ITS ADMISSION INTO EVIDENCE; EXPLAINED. At the time of the commission of the crimes, the law applicable is

R.A. No. 9165. Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the law, defines chain of custody x x x The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence. To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a **rational basis** from which to conclude that the evidence is what the party claims it to be. In other words, in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could **reasonably believe** that an item still is what the government claims it to be. Specifically in the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with **sufficient completeness** to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

2. **ID.; ID.; ID.; ID.; THE LINKS IN THE CHAIN OF CUSTODY THAT MUST BE ESTABLISHED, ENUMERATED.** Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.

3. **ID.; ID.; ID.; ID.; IN PROSECUTING ILLEGAL DRUG CASES, IT MUST BE ALLEGED AND PROVED THAT THE PRESENCE OF THE THREE WITNESSES TO THE PHYSICAL INVENTORY AND PHOTOGRAPH OF THE ILLEGAL DRUG SEIZED WAS NOT OBTAINED DUE TO JUSTIFYING REASONS, ENUMERATED.** We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount

a counter-assault. x x x It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or** (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**. Earnest effort to secure the attendance of the necessary witnesses must be proven. x x x It bears emphasis that the rule that strict adherence to the mandatory requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR may be excused as long as the integrity and the evidentiary value of the confiscated items are properly preserved applies not just on arrest and/or seizure by reason of a legitimate buy-bust operation but also on those lawfully made in air or sea port, detention cell or national penitentiary, checkpoint, moving vehicle, local or international package/parcel/mail, or those by virtue of a consented search, stop and frisk *(Terry search)*, search incident to a lawful arrest, or application of plain view doctrine where time is of the essence and the arrest and/or seizure is/are not planned, arranged or scheduled in advance. To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings.

4. ID.; ID.; ID.; ID.; A MANDATORY POLICY WHICH MUST BE ENFORCED IN ORDER TO WEED OUT EARLY ON FROM THE COURTS ALREADY CONGESTED DOCKET ANY ORCHESTRATED OR POORLY BUILT UP DRUG-RELATED CASES, CITED. [I]n order to weed out early on from the courts' already congested docket any orchestrated

or poorly built up drug-related cases, the following should henceforth be enforced as a mandatory policy: 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR. 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items. 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause. 4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.

LEONEN, *J.*, *concurring opinion*:

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; CONVICTION IN CRIMINAL ACTIONS REQUIRES PROOF BEYOND REASONABLE DOUBT; EXPLAINED.** Conviction in criminal actions requires proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence spells out this requisite quantum of proof: x x x Proof beyond reasonable doubt is ultimately a matter of conscience. Though it does not demand absolutely impervious certainty, it still charges the prosecution with the immense responsibility of establishing moral certainty. Much as it ensues from benevolence, it is not merely engendered by abstruse ethics or esoteric values; it arises from a constitutional imperative.

2. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.** The requisites that must be satisfied to sustain convictions for illegal sale of dangerous drugs under Section 5 of the Comprehensive Dangerous Drugs Act are settled. In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the

transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.

3. ID.; ID.; ID.; ID.; *CORPUS DELICTI*; WHEN THE IDENTITY OF *CORPUS DELICTI* IS JEOPARDIZED BY NON-COMPLIANCE WITH SECTION 21 OF R.A. NO. 9165, THE SECOND ELEMENT OF THE OFFENSE REMAINS WANTING, WHICH JUSTIFIES AN ACCUSED S ACQUITTAL. On the second element of *corpus delicti,* Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, spells out requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21 (1) to (3) stipulate requirements concerning custody prior to the filing of a criminal case: x x x Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. Conversely, non-compliance with it tarnishes the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed. Fidelity to chain of custody requirements is necessary because, by nature, narcotics may easily be mistaken for everyday objects. Chemical analysis and detection through methods that exceed human sensory perception (such as, specially trained canine units and screening devices) are often needed to ascertain the presence of dangerous drugs. The physical similarity of narcotics with everyday objects facilitates their adulteration and substitution. It also makes conducive the planting of evidence. x x x When the identity of *corpus delicti* is jeopardized by non-compliance with Section 21, the second element of the offense of illegal sale of dangerous drugs remains wanting. It follows then, that this non-compliance justifies an accused's acquittal.

4. ID.; ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY APPLIES ONLY WHEN OFFICERS HAVE SHOWN COMPLIANCE WITH THE STANDARD CONDUCT OF OFFICIAL DUTY REQUIRED BY LAW. As against the objective requirements imposed by statute, guarantees coming from the prosecution concerning the identity and integrity of seized items are naturally designed to advance the prosecution's own cause. These guarantees conveniently aim to knock two targets with one blow.

First, they insist on a showing of *corpus delicti* divorced from statutory impositions and based on standards entirely the prosecution's own. Second, they justify non-compliance by summarily pleading their own assurance. These self-serving assertions cannot justify a conviction. Even the customary presumption of regularity in the performance of official duties cannot suffice. *People v. Kamad* explained that the presumption of regularity applies only when officers have shown compliance with "the standard conduct of official duty required by law[.] "It is not a justification for dispensing with such compliance: Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case.

CAGUIOA, *J.*, *separate concurring opinion*:

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR POSSESSION OF DANGEROUS DRUGS; ELEMENTS; WHAT IS MATERIAL IS THE PROOF THAT THE TRANSACTION OR SALE TRANSPIRED, COUPLED WITH THE PRESENTATION IN COURT OF THE *CORPUS DELICTI*. At the outset, it is important to stress that jurisprudence is well-settled that in all prosecutions for violation of R.A. 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, they being the very *corpus delicti* of the crimes. What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti. Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed. In dangerous drugs cases, it is essential in establishing the *corpus delicti* that the procedure provided in Section 21 of R.A. 9165 is followed. The said section provides: x x x Furthermore, Section 21(a), Article II of the Implementing Rules and Regulations of R.A. 9165 (IRR) filled in the details as to where the physical inventory and photographing of the seized items could be done: *i.e.,* at the place of seizure, at the nearest

police station or at the nearest office of the apprehending officer/ team.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; WHILE THE PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS ARE ALLOWED TO BE DONE AT THE NEAREST POLICE STATION OR AT THE NEAREST OFFICE OF THE APPREHENDING OFFICER/ TEAM, WHICHEVER IS PRACTICABLE, THIS DOES NOT DISPENSE WITH THE REQUIREMENT OF HAVING ALL THE REQUIRED WITNESSES TO BE PHYSICALLY PRESENT AT THE TIME OR NEAR THE PLACE OF APPREHENSION; *RATIONALE*. Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and photograph the same immediately after seizure and confiscation in the presence of the accused, with (l) an elected public official, (2) a representative of the Department of Justice (DOJ), and (3) a representative of the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. In buy-bust situations, or warrantless arrests, the physical inventory and photographing are allowed to be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. But even in these alternative places, such inventory and photographing are still required to be done in the presence of the accused and the aforementioned witnesses. x x x In other words, while the physical inventory and photographing are allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures," this does not dispense with the requirement of having all the required witnesses to be physically present at the time or near the place of apprehension. The reason is simple, it is at the time of arrest - or at the time of the drugs' "seizure and confiscation" - that the presence of the three witnesses is most needed, **as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.**

3. ID.; ID.; ID.; ID.; AS A GENERAL RULE, STRICT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21, OF R.A. NO. 9165 IS MANDATORY; REQUISITES WHEN THE EXCEPTION MAY BE ALLOWED, ELUCIDATED. x x x [I]t has been held that,

as a general rule, strict compliance with the requirements of Section 21 is mandatory. The Court may allow noncompliance with the requirement only in exceptional cases, where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements are present, the seizures and custody over the confiscated items shall not be rendered void and invalid. It has also been emphasized that for the saving clause to be triggered, the prosecution must first recognize any lapses on the part of the police officers and justify the same. Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised. In cases involving procedural lapses of the police officers, proving the identity of the *corpus delicti* despite noncompliance with Section 21 requires the saving clause to be successfully triggered. **For this purpose, the prosecution must satisfy its two-pronged requirement: first, credibly justify the noncompliance, and second, show that the integrity and evidentiary value of the seized item were properly preserved.**

4. ID.; ID.; ID.; ID.; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES BY THE POLICE OFFICERS CANNOT JUSTIFY THEIR NONCOMPLIANCE WITH THE REQUIREMENTS OF THE LAW; *RATIONALE*. At this point, it is imperative to discuss that the presumption of regularity in the performance of duties by the police officers could not justify the police officers' noncompliance with the requirements of law. Verily, the said presumption could not supply the acts which were not done by the police officers. The presumption of regularity in the performance of duties is simply that - a presumption - which can be overturned if evidence is presented to prove that the public officers were not properly performing their duty or they were inspired by improper motive. It is not uncommon, therefore that cases will rely on the presumption when there is no showing of improper motive on the part of the police. x x x Judicial reliance on the presumption of regularity in the performance

> of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. x x x Thus, in case of noncompliance with Section 21, the Court cannot rely on the presumption of regularity to say that the guilt of the accused was established beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

On appeal is the February 23, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR HC No. 01280-MIN, which affirmed the September 24, 2013 Decision[2] of Regional Trial Court *(RTC),* Branch 25, Cagayan de Oro City, in Criminal Case Nos. 2010-1073 and 2010-1074, finding accused-appellant Romy Lim *y* Miranda *(Lim)* guilty of violating Sections 11 and 5, respectively, of Article II of Republic Act *(R.A.)* No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002.*

In an Information dated October 21, 2010, Lim was charged with illegal possession of Methamphetamine Hydrochloride*(shabu),* committed as follows:

> That on or about October 19, 2010, at more or less 10:00 o'clock in the evening, at Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or use any dangerous drugs, did then and there, willfully, unlawfully, criminally and knowingly have in his possession, custody and control one (1) heat-sealed transparent

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[1] Penned by Associate Justice Ronaldo B. Martin, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *rollo,* pp. 3-19; CA *rollo,* pp. 86-102.

[2] Records, pp. 117-125; CA *rollo,* pp. 32-40.

plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, with a total weight of 0.02 gram, accused well-knowing that the substance recovered from his possession is a dangerous drug.

Contrary to, and in violation of, Section 11, Article II of Republic Act No. 9165.[3]

On even date, Lim, together with his stepson, Eldie Gorres *y* Nave *(Gorres),* was also indicted for illegal sale of *shabu,*committed as follows:

That on or about October 19, 2010, at more or less 10:00 o'clock in the evening, at Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a PDEA Agent acting as poseur-buyer One (1) heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, with a total weight of 0.02 gram, accused knowing the same to be a dangerous drug, in consideration of Five Hundred Pesos (Php500.00) consisting of one piece five hundred peso bill, with Serial No. FZ386932, which was previously marked and recorded for the purpose of the buy-bust operation.

Contrary to Section 5, Paragraph 1, Article II of Republic Act No. 9165.[4]

In their arraignment, Lim and Gorres pleaded not guilty.[5] They were detained in the city jail during the joint trial of the cases.[6]

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[3] Records (Criminal Case No. 2010-1073), pp. 3-4.

[4] Records (Criminal Case No. 2010-1074), pp. 3-4.

[5] Records (Criminal Case No. 2010-1073), pp. 19-20; records (Criminal Case No. 2010-1074), pp. 20-22.

[6] *Id.* at 2.

The prosecution presented Intelligence Officer *(IO)* 1 Albert Orellan, IO1 Nestle Carin, IO2 Vincent Orcales, and Police Senior Inspector *(PSI)* Charity Caceres. Aside from both accused, Rubenia Gorres testified for the defense.

Version of the Prosec3ution

Around 8:00 p.m. on October 19, 2010, IO1 Orellan and his teammates were at Regional Office X of the Philippine Drug Enforcement Agency *(PDEA).* Based on a report of a confidential informant *(CI)* that a certain "Romy" has been engaged in the sale of prohibited drugs in Zone 7, Cabina, Bonbon, Cagayan de Oro City, they were directed by their Regional Director, Lt. Col. Edwin Layese, to gather for a buy-bust operation. During the briefing, IO2 Orcales, IO1 Orellan, and IO1 Carin were assigned as the team leader, the arresting officer/back-up/ evidence custodian, and the *poseur*-buyer, respectively. The team prepared a ₱500.00 bill as buy-bust money (with its serial number entered in the PDEA blotter), the Coordination Form for the nearest police station, and other related documents.

Using their service vehicle, the team left the regional office about 15 minutes before 10:00 p.m. and arrived in the target area at 10:00 p.m., more or less. IO1 Carin and the CI alighted from the vehicle near the corner leading to the house of "Romy," while IO1 Orellan and the other team members disembarked a few meters after and positioned themselves in the area to observe. IO1 Carin and the CI turned at the corner and stopped in front of a house. The CI knocked at the door and uttered, *"ayo, nong Romy."* Gorres came out and invited them to enter. Inside, Lim was sitting on the sofa while watching the television. When the CI introduced IO1 Carin as a *shabu* buyer, Lim nodded and told Gorres to get one inside the bedroom. Gorres stood up and did as instructed. After he came out, he handed a small medicine box to Lim, who then took one piece of heat-sealed transparent plastic of *shabu* and gave it to IO1 Carin. In turn, IO1 Carin paid him with the buy-bust money.

After examining the plastic sachet, IO1 Carin executed a missed call to IO1 Orellan, which was the pre-arranged signal.

The latter, with the rest of the team members, immediately rushed to Lim's house. When they arrived, IO1 Carin and the CI were standing near the door. They then entered the house because the gate was opened. IO1 Orellan declared that they were PDEA agents and informed Lim and Gorres, who were visibly surprised, of their arrest for selling dangerous drug. They were ordered to put their hands on their heads and to squat on the floor. IO1 Orellan recited the Miranda rights to them. Thereafter, IO1 Orellan conducted a body search on both. When he frisked Lim, no deadly weapon was found, but something was bulging in his pocket. IO1 Orellan ordered him to pull it out. Inside the pocket were the buy-bust money and a transparent rectangular plastic box about 3x4 inches in size. They could see that it contained a plastic sachet of a white substance. As for Gorres, no weapon or illegal drug was seized.

IO1 Orellan took into custody the ₱500.00 bill, the plastic box with the plastic sachet of white substance, and a disposable lighter. IO1 Carin turned over to him the plastic sachet that she bought from Lim. While in the house, IO1 Orellan marked the two plastic sachets. Despite exerting efforts to secure the attendance of the representative from the media and *barangay* officials, nobody arrived to witness the inventory-taking.

The buy-bust team brought Lim and Gorres to the PDEA Regional Office, with IO1 Orellan in possession of the seized items. Upon arrival, they "booked" the two accused and prepared the letters requesting for the laboratory examination on the drug evidence and for the drug test on the arrested suspects as well as the documents for the filing of the case. Likewise, IO1 Orellan made the Inventory Receipt of the confiscated items. It was not signed by Lim and Gorres. Also, there was no signature of an elected public official and the representatives of the Department of Justice *(DOJ)* and the media as witnesses. Pictures of both accused and the evidence seized were taken.

The day after, IO1 Orellan and IO1 Carin delivered both accused and the drug specimens to Regional Crime Laboratory Office 10. IO1 Orellan was in possession of the sachets of *shabu*

from the regional office to the crime lab. PSI Caceres, who was a Forensic Chemist, and Police Officer 2 *(PO2)* Bajas[7] personally received the letter-requests and the two pieces of heat-sealed transparent plastic sachet containing white crystalline substance. PSI Caceres got urine samples from Lim and Gorres and conducted screening and confirmatory tests on them. Based on her examination, only Lim was found positive for the presence of *shabu*. The result was shown in Chemistry Report No. DTCRIM-196 and 197-2010. With respect to the two sachets of white crystalline substance, both were found to be positive of *shabu* after a chromatographic examination was conducted by PSI Caceres. Her findings were reflected in Chemistry Report No. D-228-2010. PSI Caceres, likewise, put her own marking on the cellophane containing the two sachets of *shabu*. After that, she gave them to the evidence custodian. As to the buy-bust money, the arresting team turned it over to the fiscal's office during the inquest.

Version of the Defense

Around 10:00 p.m. on October 19, 2010, Lim and Gorres were in their house in Cabina, Bonbon, Cagayan de Oro City. Lim was sleeping in the bedroom, while Gorres was watching the television. When the latter heard that somebody jumped over their gate, he stood up to verify. Before he could reach the door, however, it was already forced opened by the repeated pulling and kicking of men in civilian clothing. They entered the house, pointed their firearms at him, instructed him to keep still, boxed his chest, slapped his ears, and handcuffed him. They inquired on where the *shabu* was, but he invoked his innocence. When they asked the whereabouts of "Romy," he answered that he was sleeping inside the bedroom. So the men went there and kicked the door open. Lim was then surprised as a gun was pointed at his head. He questioned them on what was it all about, but he was told to keep quiet. The men let him

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[7] Spelled as "Bajar" in the Request for Laboratory Examination on Drug Evidence (See Records of Criminal Case No. 2010-1073 [pp. 9-10] and Criminal Case No. 2010-1074 [p. 9A]).

and Gorres sit on a bench. Lim was apprised of his Miranda rights. Thereafter, the two were brought to the PDEA Regional Office and the crime laboratory. During the inquest proceedings, Lim admitted, albeit without the assistance of a counsel, ownership of the two sachets of *shabu* because he was afraid that the police would imprison him. Like Gorres, he was not involved in drugs at the time of his arrest. Unlike him, however, he was previously arrested by the PDEA agents but was acquitted in the case. Both Lim and Gorres acknowledged that they did not have any quarrel with the PDEA agents and that neither do they have grudges against them or *vice-versa.*

Rubenia, Lim's live-in partner and the mother of Gorres, was at her sister's house in Pita, Pasil, Kauswagan the night when the arrests were made. The following day, she returned home and noticed that the door was opened and its lock was destroyed. She took pictures of the damage and offered the same as exhibits for the defense, which the court admitted as part of her testimony.

RTC Ruling

After trial, the RTC handed a guilty verdict on Lim for illegal possession and sale of *shabu* and acquitted Gorres for lack of sufficient evidence linking him as a conspirator. The *fallo* of the September 24, 2013 Decision states:

> WHEREFORE, premises considered, this Court finds that:
>
> 1. In Criminal Case No. 2010-1073, accused ROMY LIM *y* MIRANDA is hereby found GUILTY of violating Section 11, Article II of R.A. 9165 and is hereby sentenced to suffer the penalty of imprisonment ranging from twelve [12] years and one [1] day to thirteen [13] years, and to pay Fine in the amount of Three Hundred Thousand Pesos [₱300,000.00] without subsidiary imprisonment in case of non-payment of Fine;
>
> 2. In Criminal Case No. 2010-1074, accused ROMY LIM *y* MIRANDA is hereby found GUILTY of violating Section 5, Article II of R.A. 9165, and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay the Fine in the amount of Five Hundred Thousand Pesos [₱500,000.00].

3. In Criminal Case No. 2010-1074, accused ELDIE GORRES *y* NAVE is hereby ACQUITTED of the offense charged for failure of the prosecution to prove his guilt beyond reasonable doubt. The Warden of the BJMP having custody of ELDIE GORRES *y* Nave, is hereby directed to immediately release him from detention unless he is being charged of other crimes which will justify his continued incarceration.[8]

With regard to the illegal possession of a sachet of *shabu,* the RTC held that the weight of evidence favors the positive testimony of IO1 Orellan over the feeble and uncorroborated denial of Lim. As to the sale of *shabu,* it ruled that the prosecution was able to establish the identity of the buyer, the seller, the money paid to the seller, and the delivery of the *shabu.* The testimony of IO1 Carin was viewed as simple, straightforward and without any hesitation or prevarication as she detailed in a credible manner the buy-bust transaction that occurred. Between the two conflicting versions that are poles apart, the RTC found the prosecution evidence worthy of credence and no reason to disbelieve in the absence of an iota of malice, ill-will, revenge or resentment preceding and pervading the arrest of Lim. On the chain of custody of evidence, it was accepted with moral certainty that the PDEA operatives were able to preserve the integrity and probative value of the seized items.

In so far as Gorres is concerned, the RTC opined that the evidence presented were not strong enough to support the claim that there was conspiracy between him and Lim because it was insufficiently shown that he knew what the box contained. It also noted Chemistry Report No. DTCRIM 196 & 197-2010, which indicated that Gorres was "NEGATIVE" of the presence of any illicit drug based on his urine sample.

CA Ruling

On appeal, the CA affirmed the RTC Decision. It agreed with the finding of the trial court that the prosecution adequately established all the elements of illegal sale of a dangerous drug

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[8] Records (Criminal Case No. 2010-1073), pp. 124-125; CA *rollo,* pp. 39-40.

as the collective evidence presented during the trial showed that a valid buy-bust operation was conducted. Likewise, all the elements of illegal possession of a dangerous drug was proven. Lim resorted to denial and could not present any proof or justification that he was fully authorized by law to possess the same. The CA was unconvinced with his contention that the prosecution failed to prove the identity and integrity of the seized prohibited drugs. For the appellate court, it was able to demonstrate that the integrity and evidentiary value of the confiscated drugs were not compromised. The witnesses for the prosecution were able to testify on every link in the chain of custody, establishing the crucial link in the chain from the time the seized items were first discovered until they were brought for examination and offered in evidence in court. Anent Lim's defense of denial and frame-up, the CA did not appreciate the same due to lack of clear and convincing evidence that the police officers were inspired by an improper motive. Instead, the presumption of regularity in the performance of official duty was applied.

Before Us, both Lim and the People manifested that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.[9] Essentially, Lim maintains that the case records are bereft of evidence showing that the buy-bust team followed the procedure mandated in Section 21(1), Article II of R.A. No. 9165.

Our Ruling

The judgment of conviction is reversed and set aside, and Lim should be acquitted based on reasonable doubt.

At the time of the commission of the crimes, the law applicable is R.A. No. 9165.[10] Section 1(b) of Dangerous Drugs Board

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[9] *Rollo,* pp. 26-35.

[10] R.A. No. 9165 took effect on July 4, 2002 (See *People v. De la Cruz,* 591 Phil. 259, 272 [2008]).

Regulation No. 1, Series of 2002, which implements the law, defines chain of custody as –

> the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[11]

The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.[12] To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a **rational basis** from which to conclude that the evidence is what the party claims it to be.[13] In other words, in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could **reasonably believe** that an item still is what the government claims it to be.[14] Specifically in the prosecution of illegal drugs, the well-established federal evidentiary rule in the United States is that when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with **sufficient completeness** to render it improbable that the original item

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[11] See *People v. Badilla,* 794 Phil. 263, 278 (2016); *People v. Arenas,* 791 Phil. 601, 610 (2016); and *Saraum v. People,*779 Phil. 122, 132 (2016).

[12] *United States v. Rawlins,* 606 F.3d 73 (2010).

[13] *United States v. Rawlins, supra* note 12, as cited in *United States v. Mehmood,* 2018 U.S. App. LEXIS 19232 (2018);*United States v. De Jesus-Concepcion,* 652 Fed. Appx. 134 (2016); *United States v. Rodriguez,* 2015 U.S. Dist. LEXIS 35215 (2015); and *United States v. Mark,* 2012 U.S. Dist. LEXIS 95130 (2012).

[14] See *United States v. Rawlins, supra* note 12, as cited in *United States v. Mark, supra* note 13.

has either been exchanged with another or been contaminated or tampered with.[15] This was adopted in *Mallillin v. People,*[16] where this Court also discussed how, ideally, the chain of custody of seized items should be established:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[17]

Thus, the links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending

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[15] See *United States v. Cardenas,* 864 F.2d 1528 (1989), as cited in *United States v. Yeley-Davis,* 632 F.3d 673 (2011);*United States v. Solis, 55* F. Supp. 2d 1182 (1999); *United States v. Anderson,* 1994 U.S. App. LEXIS 9193 (1994); *United States v. Hogg,* 1993 U.S. App. LEXIS 13732 (1993); *United States v. Rodriguez-Garcia,* 983 F.2d 1563 (1993); *United States v. Johnson,* 977 F.2d 1360 (1992); and *United States v. Clonts,*966 F.2d 1366 (1992).

[16] *Mallillin v. People,* 576 Phil. 576 (2008).

[17] *Mallillin v. People, supra,* at 587, as cited in *People v. Tamaño,* G.R. No. 208643, December 5, 2016, 812 SCRA 203, 228-229; *People v. Badilla, supra* note 11, at 280; *Saraum v. People, supra* note 11, at 132-133; *People v. Dalawis,* 772 Phil. 406, 417-418 (2015); and *People v. Flores,* 765 Phil. 535, 541-542 (2015). It appears that *Mallillin* was erroneously cited as *"Lopez v. People"* in *People v. De la Cruz*, 589 Phil. 259 (2008), *People v. Sanchez,* 590 Phil. 214 (2008), *People v. Garcia,* 599 Phil. 416 (2009), *People v. Denoman,* 612 Phil. 1165 (2009), and *People v. Abelarde,* G.R. No. 215713, January 22, 2018.

officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the illegal drug from the forensic chemist to the court.[18]

Seizure and marking of the illegal drug as well as the turnover by the apprehending officer to the investigating officer

Section 21(1), Article II of R.A. No. 9165 states:

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[.][19]

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[18] *People v. Vicente Sipin y De Castro,* G.R. No. 224290, June 11, 2018; *People v. Amaro,* 786 Phil. 139, 148 (2016); and *People v. Enad,* 780 Phil. 346, 358 (2016).

[19] See *People v. Sic-Open,* 795 Phil. 859, 872 (2016); *People v. Badilla, supra* note 11, at 275 276; *People v. De la Cruz,*783 Phil. 620, 632 (2016); *People v. Asislo,* 778 Phil. 509, 516 (2016); *People v. Dalawis, supra* note 17, at 416; and *People v. Flores, supra* note 17, at 540.

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 mandates:

> (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.[20]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search

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[20] *People v. Sic-Open, supra* note 19, at 873; *People v. Badilla, supra* note 11, at 276; *People v. Dela Cruz, supra* note 19, at 633; *People v. Asislo, supra* note 19, at 516-517; *People v. Dalawis, supra* note 17, at 417; and *People v. Flores, supra* note 17, at 541.

warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."[21] Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended. "[22] In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."[23]

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."[24] In his Co-sponsorship Speech, he noted:

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

[22] *Id.*

[23] *Id.*

[24] *Id.* at 349.

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.

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Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[25]

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

We have held that the immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault.[26] The present case is not one of those.

Here, IO1 Orellan took into custody the ₱500.00 bill, the plastic box with the plastic sachet of white substance, and a disposable lighter. IO1 Carin also turned over to him the plastic sachet that she bought from Lim. While in the house, IO1 Orellan marked the two plastic sachets. IO1 Orellan testified that he immediately conducted the marking and physical inventory of the two sachets of *shabu*.[27] To ensure that they were not interchanged, he separately marked the item sold by Lim to IO1 Carin and the one that he recovered from his possession upon body search as BB AEO 10-19-10 and AEO-RI 10-19-10, respectively, with both bearing his initial/signature.[28]

Evident, however, is the absence of an elected public official and representatives of the DOJ and the media to witness the physical inventory and photograph of the seized items.[29] In fact, their signatures do not appear in the Inventory Receipt.

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[26] See *People v. Mola,* G.R. No. 226481, April l8, 2018.

[27] TSN, June 2, 2011, pp. 25-28.

[28] *Id.* at 17-19.

[29] Under the original provision of Section 21(1) of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and to photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. As amended by R.A. No. 10640, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel,

The Court stressed in *People v. Vicente Sipin y De Castro*:[30]

> 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.[31]

It must be **alleged and proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:

(1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of**

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(2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof (See *People v. Ocampo,* G.R. No. 232300, August 1, 2018; *People v. Allingag,* G.R. No. 233477, July 30, 2018; *People v. Vicente Sipin y De Castro, supra* note 18; *People v. Reyes,* G.R. No. 219953, Apri123, 2018; and *People v. Mola, supra* note 26).

[30] *Supra* note 18.

[31] See also *People v. Reyes, supra* note 29 and *People v. Mola, supra* note 26.

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**.[32]

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos*[33] requires:

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or **a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang,* the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non- compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest - to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[34]

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[32] *People v. Vicente Sipin y De Castro, supra* note 18. See also *People v. Reyes, supra* note 29 and *People v. Mola, supra* note 26.

[33] G.R. No. 233744, February 28, 2018. (Citations omitted).

[34] See also *People v. Crespo,* G.R. No. 230065, March 14, 2018 and *People v. Sanchez,* G.R. No. 231383, March 7, 2018. (Emphasis and underscoring supplied)

In this case, IO1 Orellan testified that no members of the media and barangay officials arrived at the crime scene because it was late at night and it was raining, making it unsafe for them to wait at Lim's house.[35] IO2 Orcales similarly declared that the inventory was made in the PDEA office considering that it was late in the evening and there were no available media representative and barangay officials despite their effort to contact them.[36] He admitted that there are times when they do not inform the barangay officials prior to their operation as they might leak the confidential information.[37] We are of the view that these justifications are unacceptable as there was no genuine and sufficient attempt to comply with the law.

The testimony of team-leader IO2 Orcales negates any effort on the part of the buy-bust team to secure the presence of a barangay official during the operation:

ATTY. DEMECILLO:

x x x x x x x x x

Q x x x Before going to the house of the accused, why did you not contact a barangay official to witness the operation?

A There are reasons why we do not inform a barangay official before our operation, Sir.

Q Why?

A We do not contact them because we do not trust them. They might leak our information.[38]

The prosecution likewise failed to explain why they did not secure the presence of a representative from the Department of Justice (DOJ). While the arresting officer, IO1 Orellan, stated in his Affidavit that they only tried to coordinate with the barangay officials and the media, the testimonies of the

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[35] TSN, June 2, 2011, p. 19.

[36] TSN, August 5, 2011, p. 13.

[37] *Id.* at 15.

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

prosecution witnesses failed to show that they tried to contact a DOJ representative.

The testimonies of the prosecution witnesses also failed to establish the details of an earnest effort to coordinate with and secure presence of the required witnesses. They also failed to explain why the buy-bust team felt "unsafe" in waiting for the representatives in Lim's house, considering that the team is composed of at least ten (10) members, and the two accused were the only persons in the house.

It bears emphasis that the rule that strict adherence to the mandatory requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR may be excused as long as the integrity and the evidentiary value of the confiscated items are properly preserved applies not just on arrest and/or seizure by reason of a legitimate buy-bust operation but also on those lawfully made in air or sea port, detention cell or national penitentiary, checkpoint, moving vehicle, local or international package/parcel/mail, or those by virtue of a consented search, stop and frisk *(Terry search)*, search incident to a lawful arrest, or application of plain view doctrine where time is of the essence and the arrest and/or seizure is/are not planned, arranged or scheduled in advance.

To conclude, judicial notice is taken of the fact that arrests and seizures related to illegal drugs are typically made without a warrant; hence, subject to inquest proceedings. Relative thereto, Sections 1 (A.1.10) of the Chain of Custody Implementing Rules and Regulations directs:

> A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of R.A. No. 9165 shall be presented.[39]

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[39] See *People v. Alvarado,* G.R. No. 234048, April 23, 2018 and *People v. Saragena,* G.R. No. 210677, August 23, 2017.

While the above-quoted provision has been the rule, it appears that it has not been practiced in most cases elevated before Us. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, the following should henceforth be enforced as a mandatory policy:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5,[40] Rule 112, Rules of Court.

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[40] SEC. 5. *When warrant of arrest may issue.* – (a) *By the Regional Trial Court.* – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue

WHEREFORE, premises considered, the February 23, 2017 Decision of the Court of Appeals in CA-G.R. CR HC No. 01280-MIN, which affirmed the September 24, 2013 Decision of Regional Trial Court, Branch 25, Cagayan de Oro City, in Criminal Cases Nos. 2010-1073 and 2010-1074, finding accused-appellant Romy Lim *y* Miranda guilty of violating Sections 11 and 5, respectively, of Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Romy Lim *y* Miranda is **ACQUITTED** on reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be furnished the Superintendent of the Davao Prison and Penal Farm, B.E. Dujali, Davao del Norte, for immediate implementation. The said Director is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

Let copies of this Decision be furnished to the Secretary of the Department of Justice, as well as to the Head/Chief of the National Prosecution Service, the Office of the Solicitor General, the Public Attorney's Office, the Philippine National Police, the Philippine Drug Enforcement Agency, the National Bureau of Investigation, and the Integrated Bar of the Philippines for their information and guidance. Likewise, the Office of the Court Administrator is **DIRECTED** to **DISSEMINATE** copies of this Decision to all trial courts, including the Court of Appeals.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Bersamin, Perlas-Bernabe, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.,* concur.

Leonen and *Caguioa, JJ.,* see separate concurring opinion.

Jardeleza, J., no part, prior OSG action.

Del Castillo, J., on wellness leave.

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must be resolved by the court within thirty (30) days from the filing of the complaint of information.

CONCURRING OPINION

LEONEN, *J.*:

The failure of law enforcement officers to comply with the chain of custody requirements spelled out in Section 21 of Republic Act No. 9165 (otherwise known as the Comprehensive Dangerous Drugs Act of 2002), as amended, coupled with a failure to show justifiable grounds for their non-compliance engenders reasonable doubt on the guilt of persons from whom illegal drugs and drug paraphernalia were supposedly seized. Acquittal must then ensue. This is especially true in arrests and seizures occasioned by buy-bust operations, which, by definition, are preplanned, deliberately arranged or calculated operations.

Asserting proper compliance with chain of custody requirements — and the ensuing acquittal of an accused due to the law enforcement officers' unjustified non-compliance — is not a matter of calibrating jurisprudence. It is merely a matter of applying the clear text of the Comprehensive Dangerous Drugs Act.

I concur that the accused-appellant, Romy Lim, must be acquitted on account of reasonable doubt.

I

Conviction in criminal actions requires proof beyond reasonable doubt. Rule 133, Section 2 of the Revised Rules on Evidence spells out this requisite quantum of proof:

> Section 2. Proof beyond reasonable doubt. – In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainty.
>
> Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind.

Proof beyond reasonable doubt is ultimately a matter of conscience. Though it does not demand absolutely impervious

certainty, it still charges the prosecution with the immense responsibility of establishing moral certainty. Much as it ensues from benevolence, it is not merely engendered by abstruse ethics or esoteric values; it arises from a constitutional imperative:

> This rule places upon the prosecution the task of establishing the guilt of an accused, relying on the strength of its own evidence, and not banking on the weakness of the defense of an accused. Requiring proof beyond reasonable doubt finds basis not only in the due process clause of the Constitution, but similarly, in the right of an accused to be "presumed innocent until the contrary is proved." "Undoubtedly, it is the constitutional presumption of innocence that lays such burden upon the prosecution." Should the prosecution fail to discharge its burden, it follows, as a matter of course, that an accused must be acquitted. As explained in *Basilio v. People of the Philippines*:
>
> We ruled in *People v. Ganguso*:
>
> > An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as, excluding the possibility of error, produce absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.
> >
> > Well-entrenched in jurisprudence is the rule that the conviction of the accused must rest, not on the weakness of the defense, but on the strength of the prosecution. The burden is on the prosecution to prove guilt beyond reasonable doubt, not on the accused to prove his innocence.[1]

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[1] *Macayan, Jr. v. People,* 756 Phil. 202, 213-214 (2015) [Per *J.* Leonen, Second Division], *citing* CONST. (1987), Art. III, Sec. 1; CONST, (1987),

II

The requisites that must be satisfied to sustain convictions for illegal sale of dangerous drugs under Section 5 of the Comprehensive Dangerous Drugs Act are settled.

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[2] (Emphasis in the original, citation omitted)

On the second element of *corpus delicti,* Section 21 of the Comprehensive Dangerous Drugs Act, as amended by Republic Act No. 10640, spells out requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Section 21 (1) to (3) stipulate requirements concerning custody prior to the filing of a criminal case:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) *The apprehending team* having initial custody and control of the dangerous drugs, 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*

Art. III, Sec. 14(2); *People of the Philippines v. Solayao,* 330 Phil. 811, 819 (1996) [Per *J.* Romero, Second Division]; and *Basilio v. People of the Philippines,* 591 Phil. 508, 521-522 (2008) [Per *J.* Velasco, Jr., Second Division].

[2] *People v. Morales y Midarasa,* 630 Phil. 215 (2010) [Per. *J.* Del Castillo, Second Division].

accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, ***with an elected public official and a representative of the National Prosecution Service or the media*** *who shall be required to sign the copies of the inventory and be given a copy thereof: Provided,* That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally,* That *noncompliance of these requirements* ***under justifiable grounds****, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.*

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

People v. Nandi[3] thus, summarized that four (4) links "should be established in the chain of custody of the confiscated item:

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[3] 639 Phil. 134 (2010) [Per *J.* Mendoza, Second Division].

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."[4]

People v. Morales y Midarasa[5] explained that "failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*[.]"[6] It "produce[s] doubts as to the origins of the [seized paraphernalia]."[7]

Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. Conversely, non-compliance with it tarnishes the credibility of the *corpus delicti* around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed.

Fidelity to chain of custody requirements is necessary because, by nature, narcotics may easily be mistaken for everyday objects. Chemical analysis and detection through methods that exceed human sensory perception (such as, specially trained canine units and screening devices) are often needed to ascertain the presence of dangerous drugs. The physical similarity of narcotics with everyday objects facilitates their adulteration and

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[4] *Id.* at 144-145, citing *People v. Kamad,* 624 Phil. 289, 304 (2010) [Per *J.* Brion, Second Division].

[5] 630 Phil. 215 (2010) [Per *J.* Del Castillo, Second Division].

[6] *Id.* at 229.

[7] *People v. Laxa,* 414 Phil. 156, 170 (2001) [Per *J.* Mendoza, Second Division], as cited in *People v. Orteza,* 555 Phil. 700, 708 (2007) [Per *J.* Tinga, Second Division].

substitution. It also makes conducive the planting of evidence. In *Mallillin v. People*:[8]

> *A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature.* The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied,* a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[9] (Emphasis supplied)

People v. Holgado, et al.,[10] recognized that:

> Compliance with the chain of custody requirement ... ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity *(e.g.,* weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner."[11]

When the identity of *corpus delicti* is jeopardized by non-compliance with Section 21, the second element of the offense of illegal sale of dangerous drugs remains wanting. It follows

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[8] 576 Phil. 576 (2008) [Per *J*. Tinga, Second Division].

[9] *Id.* at 588-589.

[10] 741 Phil. 8 (2014) [Per *J*. Leonen, Third Division].

[11] *Id*. at 93.

then, that this non-compliance justifies an accused's acquittal. In *People v. Lorenzo:*[12]

> In both illegal sale and illegal possession of prohibited drugs, *conviction cannot be sustained if there is a persistent doubt on the identity of the drug*. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, *the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.*[13] (Emphasis supplied)

III

As against the objective requirements imposed by statute, guarantees coming from the prosecution concerning the identity and integrity of seized items are naturally designed to advance the prosecution's own cause. These guarantees conveniently aim to knock two targets with one blow. First, they insist on a showing of *corpus delicti* divorced from statutory impositions and based on standards entirely the prosecution's own. Second, they justify non-compliance by summarily pleading their own assurance. These self-serving assertions cannot justify a conviction.

Even the customary presumption of regularity in the performance of official duties cannot suffice. *People v. Kamad*[14] explained that the presumption of regularity applies only when officers have shown compliance with "the standard conduct of official duty required by law[.]"[15] It is not a justification for dispensing with such compliance:

> Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the

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[12] 633 Phil. 393 (2010) [Per *J*. Perez, Second Division].

[13] *Id*. at 403.

[14] 624 Phil. 289 (2010) [Per *J*. Brion, Second Division].

[15] *Id*. at 311.

chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. *A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.* In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

We rule, too, that the discrepancy in the prosecution evidence on the identity of the seized and examined *shabu* and that formally offered in court cannot but lead to serious doubts regarding the origins of the *shabu* presented in court. This discrepancy and the gap in the chain of custody immediately affect proof of the *corpus delicti* without which the accused must be acquitted.

From the constitutional law point of view, the prosecution's failure to establish with moral certainty all the elements of the crime and to identify the accused as the perpetrator signify that it failed to overturn the constitutional presumption of innocence that every accused enjoys in a criminal prosecution. When this happens, as in this case, the courts need not even consider the case for the defense in deciding the case; a ruling for acquittal must forthwith issue.[16] (Emphasis supplied, citation omitted)

Jurisprudence has thus been definite on the consequence of non-compliance. This Court has categorically stated that whatever presumption there is concerning the regularity of the manner by which officers gained and maintained custody of the seized items is "negate[d]":[17]

In *People v. Orteza,* the Court did not hesitate to strike down the conviction of the therein accused for failure of the police officers to

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[16] *Id*.

[17] *People v. Navarrete,* 665 Phil. 738, 749 (2011) [Per *J*. Carpio Morales, Third Division]. See also *People v. Ulat,* 674 Phil. 484, 500 (2011) [Per *J*. Leonardo-De Castro, First Division].

observe the procedure laid down under the Comprehensive Dangerous Drugs Law, thus:

> First, there appears nothing in the records showing that police officers complied with the proper procedure in the custody of seized drugs as specified in *People v. Lim, i.e.,* any apprehending team having initial control of said drugs and/or paraphernalia should, immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with the requirement raises doubt whether what was submitted for laboratory examination and presented in court was actually recovered from appellant. *It negates the presumption that official duties have been regularly performed by the police officers.*
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> . . . . . .
>
> IN FINE, *the unjustified failure of the police officers to show that the integrity of the object evidence-shabu was properly preserved* negates *the presumption of regularity accorded to acts undertaken by police officers* in the pursuit of their official duties.[18] (Emphasis supplied, citations omitted)

The Comprehensive Dangerous Drugs Act requires nothing less than strict compliance. Otherwise, the *raison d'etre* of the chain of custody requirement is compromised. Precisely, deviations from it leave open the door for tampering, substitution and planting of evidence.

Even the performance of acts which approximate compliance but do not *strictly* comply with the Section 21 has been considered insufficient. *People v. Magat,*[19] for example, emphasized the inadequacy of merely marking the items supposedly seized: "Marking of the seized drugs alone by the law enforcers is not

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[18] *People v. Navarrete,* 665 Phil.738, 748-749 (2011) [Per *J.* Carpio Morales, Third Division].

[19] 588 Phil. 395 (2008) [Per *J.* Tinga, Second Division].

enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165":[20]

A review of jurisprudence, even prior to the passage of the R.A. No. 9165, shows that this Court did not hesitate to strike down convictions for failure to follow the proper procedure for the custody of confiscated dangerous drugs. Prior to R.A. No. 9165, the Court applied the procedure required by Dangerous Drugs Board Regulation No. 3, Series of 1979 amending Board Regulation No. 7, Series of 1974.

In *People v. Laxa,* the policemen composing the buy-bust team failed to mark the confiscated marijuana immediately after the alleged apprehension of the appellant. One policeman even admitted that he marked the seized items only after seeing them for the first time in the police headquarters. The Court held that the deviation from the standard procedure in anti-narcotics operations produces doubts as to the origins of the marijuana and concluded that the prosecution failed to establish the identity of the *corpus delicti.*

Similarly, in *People v. Kimura,* the Narcom operatives failed to place markings on the alleged seized marijuana on the night the accused were arrested and to observe the procedure in the seizure and custody of the drug as embodied in the aforementioned Dangerous Drugs Board Regulation No. 3, Series of 1979. Consequently, we held that the prosecution failed to establish the identity of the *corpus delicti.*

In *Zaragga v. People,* involving a violation of R.A. No. 6425, the police failed to place markings on the alleged seized shabu immediately after the accused were apprehended. The buy-bust team also failed to prepare an inventory of the seized drugs which accused had to sign, as required by the same Dangerous Drugs Board Regulation No. 3, Series of 1979. The Court held that the prosecution failed to establish the identity of the prohibited drug which constitutes the *corpus delicti.*

In all the foregoing cited cases, the Court acquitted the appellants due to the failure of law enforcers to observe the procedures prescribed in Dangerous Drugs Board Regulation No. 3, Series of 1979, amending Board Regulation No. 7, Series of 1974, which are similar to the procedures under Section 21 of R.A. No. 9165. Marking of the seized

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[20] *Id.* at 405.

drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures prescribed in Section 21 of R.A. No. 9165.

In the present case, although PO1 Santos had written his initials on the two plastic sachets submitted to the PNP Crime Laboratory Office for examination, it was not indubitably shown by the prosecution that PO1 Santos immediately marked the seized drugs in the presence of appellant after their alleged confiscation. There is doubt as to whether the substances seized from appellant were the same ones subjected to laboratory examination and presented in court.

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they have to be subjected to scientific analysis to determine their composition and nature. *Congress deemed it wise to incorporate the jurisprudential safeguards in the present law in an unequivocal language to prevent any tampering, alteration or substitution, by accident or otherwise. The Court, in upholding the right of the accused to be presumed innocent, can do no less than apply the present law which prescribes a more stringent standard in handling evidence than that applied to criminal cases involving objects which are readily identifiable.*

R.A. No. 9165 had placed upon the law enforcers the duty to establish the chain of custody of the seized drugs to ensure the integrity of the corpus delicti. Thru proper exhibit handling, storage, labeling and recording, the identity of the seized drugs is insulated from doubt from their confiscation up to their presentation in court .[21] (Emphasis supplied, citations omitted)

IV

The precision required in the custody of seized drugs and drug paraphernalia is affirmed by the amendments made to Section 21 by Republic Act No. 10640.

The differences between Section 21(1) as originally stated and as amended are shown below:

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[21] *Id* at 403-406.

Republic Act No. 9165	Republic Act No . 10640
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. —	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:	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,	(1) The apprehending team having initial custody and control of the *dangerous drugs, controlled precursors and essential chemicals, instruments/ paraphernalia and/or laboratory equipment*
physically inventory	shall, immediately after seizure and confiscation,
and photograph the same	*conduct a physical inventory of the seized items*
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,	and photograph the same
a representative from the media and the Department of Justice (DOJ), and any elected public official	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,
who shall be required to sign the copies of the inventory and be given a copy thereof;	*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 police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.*

Section 21(1) was simultaneously relaxed and made more specific by Republic Act No. 10640.

It was relaxed with respect to the persons required to be present during the physical inventory and photographing of the seized items. Originally under Republic Act No. 9165, the use of the conjunctive 'and' indicated that Section 21 required the presence of all of the following, in addition to "the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel":

First, a representative from the media;

Second, representative from the Department of Justice (DOJ); and

Third, any elected public official.

As amended by Republic Act No. 10640, Section 21(1) uses the disjunctive 'or' (i.e., "with an elected public official and a representative of the National Prosecution Service *or* the media"). Thus, a representative from the media and a representative from the National Prosecution Service are now alternatives to each other.

Section 21(1), as amended, now includes a specification of locations where the physical inventory and taking of photographs

must be conducted *(n.b.,* it uses the mandatory "shall"). It now includes the following proviso:[22]

> 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. (Emphasis supplied)

Lescano v. People[23] summarizes Section 21(1)'s requirements:

> As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."
>
> Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.[24]

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[22] This is not entirely novel. The Implementing Rules and Regulations of Republic Act No. 9165 already stated it. Nevertheless, even if it has been previously stated elsewhere, it now takes on a greater significance. It is no longer expressed merely in an administrative rule, but in a statute.

[23] 778 Phil. 460 (2016) [Per *J.* Leonen, Second Division].

[24] *Id.* at 475.

V

Set against the strict requirements of Section 21(1) of Republic Act No. 9165,[25] this case screams of glaring infringements.

the apprehending team having initial custody and control of the drugs shall, *immediately after seizure and confiscation, physically inventory and photograph the same*

The prosecution's witnesses gave contradicting testimonies on the place where the physical inventory was conducted. Intelligence Officer 1 Albert Orellan (Officer Orellan), the arresting officer, testified that he marked the seized items in the house of Romy Lim:

Pros. Vicente: (continuing to the witness [Officer Orellan])
Q How did you know that the one bought and the one searched were not interchanged?
A I marked the item I recovered from Romy Lim, Sir.

Q Where did you mark it Mr. Witness, in what place?
A *At their house,* Sir.[26] (Emphasis supplied)

Meanwhile, Intelligence Officer 1 Nestle N. Carin (Officer Carin), the poseur-buyer, and Intelligence Officer 2 Vincent Cecil Orcales (Officer Orcales), the team leader of the buy-bust operation, both testified that the inventory and marking happened in their office.

ACP VICENTE, JR.: (continuing to the witness [Officer Carin])

Q You said that Romy Lim handed the sachet of shabu to you, what happened to that sachet of shabu, Ms. Witness?

A I turned over it (sic) to IOl Orellan during the inventory.

Q Where did he conduct the inventory?

A *At our office.*

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[25] The buy-bust operation was conducted in 2010.

[26] TSN dated June 2, 2011, pp. 17-18.

Q Where?

A *At the PDEA Office,* sir.

Q ... How did you know that?

. . . . . .

A Because I was there sir, during the inventory.

Q Then, what did he do with the sachet of shabu Ms. Witness?

A He put a marking.

Q How did you know?

A Because I was present, sir.[27] (Emphasis supplied)

ACP VICENTE, JR.: (To the witness [Officer Orcales])

. . . . . .

Q How did Agent Orellan handle the evidence? The drugs he recovered and the buy-bust item? And what did he do with it?

A He made an inventory.

Q How about the marking?

A He made markings on it.

Q How did you know?

A I supervised them.

Q And where did Agent Orellan made the inventory?

A *In the office.*[28] (Emphasis supplied)

Surprisingly, Officer Carin's testimony was corroborated by Officer Orellan in his Affidavit when he narrated that they "brought the arrested suspects in [their] office and conducted inventory."[29]

The taking of pictures was likewise not made immediately after seizure and confiscation. In their separate testimonies, Officers Orellan and Carin stated:

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[27] TSN dated July 22, 2011, pp. 10-12.

[28] TSN dated August 5, 2011, p. l3.

[29] RTC records (Crim. Case No. 2010-1073), p. 5, Affidavit of Arresting Officer.

Pros. Vicente: (continuing to the witness (Officer Orellan])
Q What else did you do *at the office,* Mr. Witness, did you take pictures?
A We asked them of their real identity Sir the two of them, and then *we took pictures together with the evidence seized from them.*

. . . . . .

Court:
These pictures IO1 Orellan were taken *at the office?*
A *Yes,* Your Honor.

Court:
No pictures at the house of the accused?
A *None,* Your Honor.[30] (Emphasis supplied)

ACP VICENTE, JR.: (continuing to the witness [Officer Carin])

. . . . . .

Q Aside from markings what else did you do *at the office?*

A *I took pictures during the inventory* .[31] (Emphasis supplied)

Although Officer Orcales testified that he took pictures "[i]in the house and also in the office,"[32] the only pictures in the records of the case were those taken in the PDEA office.[33]

During cross-examination, Officer Carin reiterated that the inventory and the taking of photographs were done in their office and not in Romy Lim's house.[34]

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[30] TSN dated June 2, 2011, pp. 21-30.

[31] TSN dated July 22, 2011, pp. 10-l2.

[32] TSN dated August 5, 2011, p. 13.

[33] RTC records (Crim. Case No. 2010-1073), p. 18, and RTC records (Crim. Case No. 2010-1074), p. 16.

[34] TSN dated August 5, 2011, p. 17.

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*

Moreover, not one of the third persons required by Section 21(1) prior to its amendment — "a representative from the media and the Department of Justice (DOJ), *and* any elected public official" — was present during the physical inventory and taking of photographs. Instead, only accused-appellant Romy Lim and accused Eldie Gorres were present.

who shall be required to *sign the copies of the inventory* and be given a copy thereof

Since not one of the three required personalities were present during the operation, the inventory was not signed. Even the two accused were not given a chance to sign the shabu sachets that were allegedly found in their possession:

> Atty. Demecillo: (continuing to the witness [Officer Orellan])
> Q In this Inventory, no signature of the two accused?
> A The accused did not sign, Sir.
>
> Q Not also sign[ed] by a man from the DOJ?
> A Yes, Sir.
>
> Q Also from the media?
> A None, Sir.
>
> Q Also by an elected official?
> A None, Sir.[35]

These infringements are fatal errors. The police operatives' conduct failed to dispel all reasonable doubt on the integrity of the shabu supposedly obtained from accused-appellant. The buy-bust team failed to account for the handling and safeguarding of the shabu from the moment it was purportedly taken from accused-appellant.

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[35] TSN dated June 2, 2011, pp. 28-29.

What is critical, however, is not the conduct of an inventory per se. Rather, it is the certainty that the items allegedly taken from the accused are the exact same items ultimately adduced as evidence before courts. *People v. Nandi*[36] requires the ensuring of four (4) *links* in the custody of seized items: from the accused to the apprehending officers; from the apprehending officers to investigating officers; from investigating officers to forensic chemists; and, from forensic chemists to courts. The endpoints in each link *(e.g.,* the accused and the apprehending officer in the first link, the forensic chemist and the court in the fourth link) are preordained. What is precarious is not each of these end points but the transitions or transfers of seized items from one point to another.

Section 21(1)'s requirements are designed to make the first and second links foolproof. Conducting the inventory and photographing immediately after seizure, exactly where the seizure was done (or at a location as practicably close to it) minimizes, if not eliminates, room for adulteration or the planting of evidence. The presence of the accused (or a representative) and of third-party witnesses, coupled with their attestations on the written inventory, ensures that the items delivered to the investigating officer are the items which have actually been inventoried.

The prosecution's case could have benefitted from the presence of the third-party witnesses required by Section 21(1) of the Comprehensive Dangerous Drugs Act. Indeed, the requirement that the inventory and photographing be done "immediately after the seizure and confiscation" necessarily means that the required witnesses must also be present during the seizure or confiscation. *People v. Mendoza*[37] confirms this and characterized the presence of these witnesses as an "insulating presence [against] the evils of switching, 'planting' or contamination":[38]

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[36] 639 Phil. 134, 144 (2010) [Per *J.* Mendoza, Second Division].

[37] *People v. Mendoza,* 736 Phil. 749 (2014) [Per *J.* Bersamin, First Division].

[38] *Id.* at 764.

The consequences of the failure of the arresting lawmen to comply with the requirements of Section 21(1) ... were dire as far as the Prosecution was concerned. Without the insulating presence of the representative from the media or the Department of Justice, or any elected public official during the seizure and marking of the sachets of *shabu,* the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 *(Dangerous Drugs Act of 1972)* again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the corpus delicti, and thus adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.[39]

In blatant disregard of statutory requirements, not one of the three (3) insulating witnesses required by Section 21(1) was shown to be present during the arrest, seizure, physical inventory and taking of pictures.

The Court should not lose sight of how accused-appellant's apprehension was supposedly occasioned by a buy-bust operation. This operation was allegedly prompted by anterior information supplied by an unidentified confidential informant.[40] Acting on the information, Regional Director Lt. Col. Edwin Layese supposedly organized a ten-person buy-bust team[41]and briefed them on the operation. Thereafter, the team claims to have managed to prepare the ₱500.00 bill buy-bust money, a Coordination Form, and other documents.[42] All these happened from the time they were informed by their confidential informant

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[39] *Id.*

[40] *Ponencia,* p. 3.

[41] *Id.*; TSN dated June 2, 2011, p. 8. In Officer Orellan's testimony, he stated that aside from himself, the buy-bust team was composed of "Regional Director Layese, Deputy Director Atila, ... IO1 Carin, IO2 Alfaro, IO1 Genita, IO1 Avila, IO2 Orcales, IA2 Pica, IO1 Cardona[.]"

[42] *Id.*

at 8:00pm up to the time they were dispatched for the operation at around 9:45 pm.[43]

While the team managed to secure preliminaries, it utterly failed at observing Section 21(1)'s requirements. Certainly, if the buy-bust team was so fastidious at preparatory tasks, it should have been just as diligent with observing specific statutory demands that our legal system has long considered to be critical in securing convictions. It could not have been bothered to even have one third-party witness present.

With the buy-bust team's almost two-hour briefing period and the preparation of the necessary documents, the prosecution appears to have been diligently prepared. How the buy-bust team can be so lax in actually carrying out its calculated operation can only raise suspicions. That diligence is the most consummate reason for not condoning the buy-bust team's inadequacies.

The prosecution likewise failed to account for the third link — from the investigating officers to the forensic chemists. Officer Orellan testified that he did not know the person who received the seized items from him in the crime laboratory.

Atty. Demecillo: (continuing to the witness [Officer Orellan])
Q Who was the person who received the drugs you delivered in the crime lab?
A I cannot exactly remember who was that officer who received that request Sir but I am sure that he is one of the personnel of the crime laboratory, Sir.

Q You know Forensic Chemist Charity Peralta Caceres?
A I only heard her name to be one of the forensic chemists in the crime lab, Sir.

Q Usually you have not seen her?
A I saw her but we were not friends, Sir.

Q But that evening of October 20, she was not the very person who received the sachet of shabu for examination?
A Only the receiving clerk, Sir.

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[43] *Id.*

Q Not personally Caceres?
A No, Sir.

Q After delivering these sachets of shabu, you went home?
A I went back to our office, Sir.

Q From there, you did not know anymore what happened to the sachet of shabu you delivered for examination?
A I don't know, Sir.[44]

His statements were corroborated by the testimony of Officer Orcales who stated that he was with Officer Orellan when the latter gave the seized items to the crime laboratory personnel. He confirmed that the person who received it was not Chemist Caceres and that he did not know who it was.[45]

This break in the chain of custody opens up the possibility of substitution, alteration, or tampering of the seized drugs during the turn over to the chemist, especially since the amount was as little as 0.02 grams. Thus, the illegal drugs tested by the chemist may not be the same items allegedly seized by the buy-bust team from accused-appellant. The doubt that the break created should have been enough to acquit accused-appellant.

VI

Section 21(1), as amended, now also includes a proviso that leaves room for noncompliance under "justifiable grounds":

Provided, finally, That noncompliance of these requirements *under justifiable grounds,* as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis supplied)

This proviso was taken from the Implementing Rules and Regulations of Republic Act No. 9165:

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[44] TSN dated June 2, 2011, pp. 36-37.

[45] TSN dated August 5, 2011, p. l6.

Provided, further, that non-compliance with these requirements *under justifiable grounds,* as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.] (Emphasis supplied)

To sanction non-compliance, two requisites must be satisfied. First, the prosecution must identify and prove "justifiable grounds." Second, it must show that, despite non-compliance, the integrity and evidentiary value of the seized items were properly preserved. To satisfy the second requirement, the prosecution must establish that positive steps were observed to ensure such preservation. The prosecution cannot rely on broad justifications and sweeping guarantees that the integrity and evidentiary value of seized items were preserved.

The prosecution presented the following reasons of the buy-bust team as "justifiable grounds" why they failed to have the required witnesses present during their operation: First, the operation was conducted late at night; Second, it was raining during their operation; Third, it was unsafe for the team "to wait at Lim's house";[46] Fourth, they exerted effort to contact the barangay officials and a media representative to no avail.[47] The Ponencia added that "[t]he time constraints and the urgency of the police action understandably prevented the law enforcers from ensuring the attendance of the required witnesses, who were not improbably at a more pressing engagement when their presence was requested."[48] According to the Ponencia, "there was no genuine and sufficient attempt to comply with the law."[49]

I join Justice Diosdado Peralta in finding these explanations inadequate.

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[46] *Ponencia,* p. 14.

[47] *Id*.

[48] *Id.*

[49] *Id*.

First, the testimony of team-leader Officer Orcales negates any allegation of effort that the buy-bust team made to secure the presence of a barangay official in their operation:

> ATTY. DEMECILLO: (To the witness [Officer Orcales])
>
> . . . . . .
>
> Q . . .Before going to the house of the accused, why did you not contact a barangay official to witness the operation?
> A There are reasons why we do not inform a barangay official before our operation, Sir.
>
> Q Why?
> A We do not contact them because we do not trust them. They might leak our information.[50]

Assuming that the buy-bust team has reason not to trust the barangay officials, they could have contacted any other elected official. The presence of barangay officials is not particularly required. What Section 21(1) requires is the presence of *any* elected official.

Second, the prosecution failed to explain why they did not contact a representative of the Department of Justice. Officer Orellan, in his Affidavit, mentioned that they only tried to coordinate with the barangay officials and the media.[51] The testimonies of the prosecution's witnesses were bereft of any statement that could show that they tried to contact a representative of the Department of Justice—one of the three required witnesses.

Third, the buy-bust team did not specifically state the kind of effort they made in trying to contact the required witnesses. A general statement that they exerted earnest effort to coordinate with them is not enough. They should narrate the steps they carried out in getting the presence of a Department of Justice

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[50] TSN dated August 5, 2011, pp. 14-15.

[51] RTC records (Crim. Case No. 2010-1073), p. 5, Affidavit of Arresting Officer.

representative, a media representative, and an elected official. Otherwise, it will be easy to abuse non-compliance with Section 21(1) since a sweeping statement of "earnest effort" is enough justify non-compliance.

Fourth, the prosecution failed to state the basis why the buy-bust team felt "unsafe" in waiting for the representatives in Lim's house. To reiterate, they were composed of at least ten members. They outnumber the two accused, who were the only persons in the house. They were able to control the accused's movement when they ordered them "to put their hands on their heads and to squat on the floor."[52] Moreover, when frisked, the agents did not find any concealed weapon in the body of the two accused. How the PDEA agents could have felt "unsafe" in this situation is questionable, at the very least.

Finally, there was no urgency involved and, certainly, the team was not under any time limit in conducting the buy-bust operation and in apprehending the accused-appellant. As pointed out by Justice Alfredo Benjamin S. Caguioa in his Reflections, there could have been no urgency or time constraint considering that the supposed sale of drugs happened at Lim's house.[53] The team knew exactly where the sale happens. They could have conducted their operation in another day-not late at night or when it was raining — and with the presence of the required witnesses. This could have also allowed them to conduct surveillance to confirm the information they received that accused-appellant was indeed selling illegal drugs.

As farcical as the buy-bust team's excuses are, it would be equally farcical for us to condone it.

VII

The prosecution offers nothing more than sweeping excuses and self-serving assurances. It would have itself profit from the buy-bust team's own inadequacies. We cannot be a party to this profligacy.

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[52] *Ponencia,* p. 3.

[53] *J.* Caguioa's Reflections, p. 2.

Rather than rely on the courts' licentious tolerance and bank on favorable accommodations, our police officers should be exemplary. They should adhere to the highest standards, consistently deliver commendable results, and remain beyond reproach. Section 21's requirements are but a bare minimum. Police officers should be more than adept at satisfying them.

At stake are some of the most sacrosanct pillars of our constitutional order and justice system: due process, the right to be presumed innocent, the threshold of proof beyond reasonable doubt and the duty of the prosecution to build its case upon its own merits. We cannot let these ideals fall by the wayside, jettisoned in favor of considerations of convenience and to facilitate piecemeal convictions for ostensible wrongdoing.

Requiring proof beyond reasonable doubt hearkens to our individual consciences. I cannot accept that the severe consequences arising from criminal conviction will be meted upon persons whose guilt could have clearly been established by police officers' mere adherence to a bare minimum. Certainly, it is not too much to ask that our *law enforcement* officers observe what the law mandates. The steps we now require outlined in the able ponencia of my esteemed colleague Justice Diosdado Peralta is definitely a step forward.

ACCORDINGLY, I vote that the Decision dated February 23, 2017 of the Court of Appeals in CA-G.R. CR HC No. 01280-MIN, be **REVERSED and SET ASIDE.** Accused-appellant Romy Lim *y* Miranda must be **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

I agree with the *ponencia* that accused-appellant Romy Lim y Miranda (Lim) should be acquitted for failure of the prosecution to establish an unbroken link in the chain of custody of the dangerous drugs supposedly seized from him.

The facts are simple:

On October 19, 2010, at around 8:00 p.m., Intelligence Officer 1 Albert Orellan (IO1 Orellan) and his team were at the Regional Office of the Philippine Drug Enforcement Agency (PDEA) when they received information from a confidential informant (CI) that Lim had engaged in the sale of prohibited drugs in his house at Zone 7, Cabina, Bonbon, Cagayan de Oro City. The team immediately prepared to conduct a buy-bust operation and coordinated with the nearest police station. They then left to conduct the buy-bust operation and reached the target area at around 10:00 p.m., or two hours after they received the information from the CI.

Upon reaching the target area, the poseur-buyer and the CI knocked at the door of Lim's house. Eldie Gorres (Gorres), Lim's stepson, came out and invited them to enter. Inside the house, Lim was sitting on the sofa while watching the television while the supposed sale of *shabu* happened between Gorres and the poseur-buyer. After the supposed consummation of the sale, the police officers barged into the house and arrested Lim and Gorres. The two were then prosecuted for violation of Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165.

At the outset, it is important to stress that jurisprudence is well-settled that in all prosecutions for violation of R.A. 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale and possession of dangerous drugs, they being the very *corpus delicti* of the crimes.[1] What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti.*[2] *Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed.[3]

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[1] *People v. Magat,* 588 Phil. 395, 402 (2008).

[2] *People v. Dumangay,* 587 Phil. 730, 739 (2008).

[3] *Id.*

In dangerous drugs cases, it is essential in establishing the *corpus delicti* that the procedure provided in Section 21 of R.A. 9165 is followed. The said section provides:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.*– The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided,* That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however,* That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

Furthermore, Section 21(a), Article II of the Implementing Rules and Regulations of R.A. 9165 (IRR) filled in the details

as to where the physical inventory and photographing of the seized items could be done: *i.e.,* at the place of seizure, at the nearest police station or at the nearest office of the apprehending officer/team, thus:

> **SECTION 21.** ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.*** ˇ The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: **Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures**; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/ team, shall not render void and invalid such seizures of and custody over said items[.] (Emphasis supplied)

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and photograph the same immediately after seizure and confiscation in the presence of the accused, with (l) an elected public official, (2) a representative of the Department of Justice (DOJ), and (3) a representative of the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

In buy-bust situations, or warrantless arrests, the physical inventory and photographing are allowed to be done at the nearest police station or at the nearest office of the apprehending officer/ team, whichever is practicable. But even in these alternative places, such inventory and photographing are still required to be done in the presence of the accused and the aforementioned witnesses.

I submit that the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable can the inventory and photographing then be done as soon as the apprehending team reaches the nearest police station or the nearest office. There can be no other meaning to the plain import of this requirement. **By the same token, however, this also means that the required witnesses should already be physically present at the time of apprehension a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Simply put, the apprehending team has enough time and opportunity to bring with them said witnesses.

In other words, while the physical inventory and photographing are allowed to be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures," this does not dispense with the requirement of having all the required witnesses to be physically present at the time or near the place of apprehension. The reason is simple, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation"— that the presence of the three witnesses is most needed, **as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.**

The presence of the witnesses at the place and time of arrest and seizure is required because " [w]hile buy-bust operations deserve judicial sanction if carried out with due regard for constitutional and legal safeguards, it is well to recall that x x x by the very nature of anti-narcotics operations, the need for

entrapment procedures x x x the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."[4]

In this connection, it is well to point out that recent jurisprudence is clear that the **procedure enshrined in Section 21 of R.A. 9165 is a matter of substantive law**, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[5] For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.

Using the language of the Court in *People v. Mendoza,*[6] without the **insulating presence** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of R.A. 6425 (Dangerous Drugs

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[4] *People v. Santos, Jr.,* 562 Phil. 458, 471 (2007).

[5] *People v. Crispo,* G.R. No. 230065, March 14, 2018, p. 11; *People v. Año,* G.R. No. 230070, March 14, 2018, p. 7; *People v. Lumaya,* G.R. No. 231983, March 7, 2018, p. 12; *People v. Ramos,* G.R. No. 233744, February 28, 2018, p. 9; *People v. Manansala,* G.R. No. 229092, February 21, 2018, p. 9; *People v. Guieb,* G.R. No. 233100, February 14, 2018, p. 9; *People v. Paz,* G.R. No. 229512, January 31, 2018, p. 11; *People v. Miranda,* G.R. No. 229671, January 31, 2018, p. 11; *People v. Jugo,* G.R. No. 231792, January 29, 2018, p. 9; *People v. Mamangon,* G.R. No. 229102, January 29, 2018, p. 9; *People v. Calibod,* G.R. No. 230230, November 20, 2017, p. 9; *People v. Ching,* G.R. No. 223556, October 9, 2017, p. 10; *People v. Geronimo,*G.R. No. 225500, September 11, 2017, p. 9; *People v. Macapundag,* G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215; *Gamboa v. People,* 799 Phil. 584, 597 (2016); see also *People v. Dela Victoria,* G.R. No. 233325, April 16, 2018, p. 10; *People v. Bintaib,* G.R. No. 217805, April 2, 2018; *People v. Segundo,* G.R. No. 205614, July 26, 2017, p. 17.

[6] 736 Phil. 749 (2014).

Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachets that were evidence of the *corpus delicti,* and thus adversely affected the trustworthiness of the incrimination of the accused.[7]

Thus, it is compliance with this most fundamental requirement — the presence of the "insulating" witnesses — that the pernicious practice of planting of evidence is greatly minimized if not foreclosed altogether. Stated otherwise, this is the first and foremost requirement provided by Section 21 to ensure the preservation of the "integrity and evidentiary value of the seized drugs" in a buy-bust situation whose nature, as already explained, is that it is a planned operation.

To reiterate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with **at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs immediately after seizure and confiscation.*f***

The practice of police operatives of not bringing to the intended place of arrest the representative of the DOJ, the media representative, and the elected public official, when they could easily do so — and "calling them in" to the police station to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does **not** achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. I thus encourage the Court to send a strong message that faithful compliance with this most important requirement - bringing them to a place near the intended place of arrest — should be strictly complied with.

In this regard, showing how the drugs transferred hands from the accused to the poseur-buyer, from the poseur-buyer to the

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[7] *Id.* at 764.

investigator and from the investigator to the crime laboratory — much like in this case — without showing compliance with the inventory and photographing as witnessed by the three required witnesses is not enough to ensure the integrity of the seized drugs. Indeed, without such witnessing, the drugs could already have been planted — and the marking, and the transfer from one to another (as usually testified to by the apprehending officers) only proves the chain of custody of **planted** drugs.

I am not unaware that there is now a saving clause in Section 21, introduced by R.A. 10640, which is the portion that states: "noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

The requirements referred to that need not be complied with if there are justifiable grounds are only in respect of the conduct of the physical inventory and the photographing in the presence of the accused, with an elected public official, and a representative of the DOJ, and the media who shall be required to sign the copies of the inventory and be given a copy thereof.

Again, the plain language of this last proviso in Section 21 of R.A. 10640 simply means that the failure of the apprehending officer/team to physically inventory and photograph the drugs at the place of arrest and/or to have the DOJ or media representative and elected public official witness the same can be excused *(i.e.,* these shall not render void and invalid such seizures and custody over said items) so long as there are justifiable grounds for not complying with these requirements **and** "as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team."

Thus, it has been held that, as a general rule, strict compliance with the requirements of Section 21 is mandatory.[8] The Court

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[8] See *People v. Cayas,* 789 Phil. 70, 79 (2016); *People v. Havana,* 776 Phil. 462, 475 (2016).

may allow noncompliance with the requirement only in exceptional cases,[9] where the following requisites are present: (1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.[10] If these two elements are present, the seizures and custody over the confiscated items shall not be rendered void and invalid.

It has also been emphasized that for the saving clause to be triggered, the prosecution must first recognize any lapses on the part of the police officers and justify the same.[11] Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.[12]

In cases involving procedural lapses of the police officers, **proving the identity of the *corpus delicti* despite noncompliance with Section 21 requires the saving clause to be successfully triggered**.

For this purpose, the prosecution must satisfy its two-pronged requirement: first, credibly justify the noncompliance, and second, show that the integrity and evidentiary value of the seized item were properly preserved.[13] This interpretation on when the saving clause is triggered is not novel. In *Valencia v. People,*[14] the Court held:

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[9] See *id*. at 80.

[10] R.A. 9165, Sec. 21(1), as amended by R.A. 10640.

[11] See *People v. Alagarme,* 754 Phil. 449, 461 (2015).

[12] See *People v. Sumili,* 753 Phil. 343, 352 (2015).

[13] See *People v. Capuno,* 655 Phil. 226, 240-241 (2011); *People v. Garcia,* 599 Phil. 416, 432-433 (2009); *People v. Reyes,*G.R. No. 199271, October 19, 2016, 806 SCRA 513, 536-537.

[14] 725 Phil. 268 (2014).

Although the Court has ruled that non-compliance with the directives of Section 21, Article II of R.A. No. 9165 is not necessarily fatal to the prosecution's case, the prosecution must still prove that (a) there is a justifiable ground for the non-compliance, and (b) the integrity and evidentiary value of the seized items were properly preserved. Further, the non-compliance with the procedures must be justified by the State's agents themselves. The arresting officers are under obligation, should they be unable to comply with the procedures laid down under Section 21, Article II of R.A. No. 9165, to explain why the procedure was not followed and prove that the reason provided a justifiable ground. Otherwise, the requisites under the law would merely be fancy ornaments that may or may not be disregarded by the arresting officers at their own convenience.[15] (Citations omitted)

In the case of *People v. Barte,*[16] the Court pronounced that the State has the duty to credibly explain the noncompliance of the provisions of Section 21:

When there is failure to comply with the requirements for proving the chain of custody in the confiscation of contraband in a drug buy-bust operation, the State has the obligation to credibly explain such noncompliance; otherwise, the proof of the *corpus delicti* is doubtful, and the accused should be acquitted for failure to establish his guilt beyond reasonable doubt.[17]

In *People v. Ismael,*[18] the accused was acquitted because "the prosecution failed to: (1) overcome the presumption of innocence which appellant 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 why the provisions of Section 21, RA 9165 were not complied with."[19]

Likewise, in *People v. Reyes*:[20]

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[15] *Id*. at 286.

[16] G.R. No. 179749, March 1, 2017, 819 SCRA 10.

[17] *Id*. at 13.

[18] G.R. No. 208093, February 20, 2017, 818 SCRA 122.

[19] *Id*. at 142; underscoring supplied.

[20] *Supra* note 13.

Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of noncompliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism**. Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti.*** With the chain of custody having been compromised, the accused deserves acquittal. x x x[21] (Emphasis supplied; citations omitted)

Conformably with these disquisitions, I thus express my full support over the institution by the *ponencia* of the following mandatory policies before a case for violation of R.A. 9165, as amended by R.A. 10640, may be filed:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR.

2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the

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[21] *Id.* at 536.

> case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.[22]

To my mind, the Court, through the said policies, actually achieves two laudable objectives, namely: (1) ensuring that the cases filed before the courts are not poorly prepared, thus ultimately leading to the decongestion of court dockets, and (2) further protection of the citizens from fabricated suits.

In connection with the case at hand, I therefore fully concur with the *ponencia* as it acquits Lim of the crime charged. In particular, I wholly agree with the *ponencia* as it holds that the explanations put forth by the apprehending team — that it was late at night, it was raining, and that there were simply no available elected official and representatives from the media and DOJ despite their **unsubstantiated** claim that they exerted efforts to contact them — are simply unacceptable.

As the *ponencia* itself pointed out, "[i]t must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:"[23]

> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[24]

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[22] *Ponencia,* pp. 15-16.

[23] *Id*. at 13; emphasis omitted.

[24] *Id*., citing *People v. Sipin,* G.R. No. 224290, June 11, 2018, p. 17.

Verily, none of the above reasons — or any such justifications similar to the aforementioned — was present in this case.

It is important to note that (1) the report of the CI came in around 8:00 p.m.; (2) the police officers immediately arranged a buy-bust operation; and (3) they arrived at Lim's house at about 15 minutes before 10:00 p.m. While the vigor exerted by the police officers was commendable, it must be pointed out that Lim was supposedly selling drugs **at his house.** In fact, Lim "was sitting on the sofa while watching the television" when the CI and the poseur-buyer arrived. There was thus no issue with regard to urgency and time constraints, as Lim was not a flight risk nor was his supposed commission of the crime bound to a limited period of time. To reiterate, Lim was supposedly **continuously** committing the crime **at his own residence.** The police officers could have, for instance, proceeded with the operation the following day when the presence of the three witnesses — as required by law — could have been obtained.

At this point, it is imperative to discuss that the presumption of regularity in the performance of duties by the police officers could not justify the police officers' noncompliance with the requirements of law. Verily, the said presumption could not supply the acts which were not done by the police officers. The presumption of regularity in the performance of duties is simply that — a presumption — which can be overturned if evidence is presented to prove that the public officers were not properly performing their duty or they were inspired by improper motive.[25] It is not uncommon, therefore that cases will rely on the presumption when there is no showing of improper motive on the part of the police.

To my mind, however, notwithstanding a lack of showing of improper motive, the presumption of regularity of performance of official duty stands only when no reason exists in the records

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[25] RULES OF COURT, Rule 131, Sec. 3(m) provides: "That official duty has been regularly performed."

by which to doubt the regularity of the performance of official duty.[26] As applied to drugs cases, I believe that the presumption shall only arise when there is a showing that the apprehending officer/team followed the requirements of Section 21, or when the saving clause is successfully triggered.

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[27] In *People v. Enriquez,*[28] the Court held:

> x x x [A]ny divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the **non-compliance is an irregularity**, a red flag that casts reasonable doubt on the identity of the *corpus delicti.*[29] (Emphasis supplied)

Thus, in case of noncompliance with Section 21, the Court cannot rely on the presumption of regularity to say that the guilt of the accused was established beyond reasonable doubt. The discussion in *People v. Sanchez*[30] is instructive:

> The court apparently banked also on the presumption of regularity in the performance that a police officer like SPO2 Sevilla enjoys in the absence of any taint of irregularity and of ill motive that would induce him to falsify his testimony. Admittedly, the defense did not adduce any evidence showing that SPO2 Sevilla had any motive to falsify. The regularity of the performance of his duties, however, leaves much to be desired given the lapses in his handling of the allegedly confiscated drugs as heretofore shown.
>
> An effect of this lapse, as we held in *Lopez v. People,* is to negate the presumption that official duties have been regularly performed

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[26] *People v. Mendoza, supra* note 6, at 770.

[27] *Id.*

[28] 718 Phil. 352 (2013).

[29] *Id.* at 366.

[30] 590 Phil. 214 (2008).

by the police officers. Any taint of irregularity affects the whole performance and should make the presumption unavailable. There can be no ifs and buts regarding this consequence considering the effect of the evidentiary presumption of regularity on the constitutional presumption of innocence.[31] (Citation omitted)

What further militates against according the police the presumption of regularity is the fact that even the pertinent internal guidelines of the police (some as early as 1999, predating R.A. 9165) require photographing and inventory during the conduct of a buy-bust operation.

Under the 1999 Philippine National Police Drug Enforcement Manual[32] (PNPDEM), the conduct of buy-bust operations requires the following:

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x x x x x x

V. SPECIFIC RULES

x x x x x x x x x

B. **Conduct of Operation**: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation in the conduct of buy-bust operation, the following are the procedures to be observed:

a. Record time of jump-off in unit's logbook;

b. Alertness and security shall at all times be observed[;]

c. Actual and timely coordination with the nearest PNP territorial units must be made;

d. Area security and dragnet or pursuit operation must be provided[;]

e. Use of necessary and reasonable force only in case of suspect's resistance:

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[31] *Id*. at 242 243.

[32] PNPM-D-0-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;

g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;

h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms[‘] reach;

i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;

j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;

k. **Take actual inventory of the seized evidence by means of weighing and/or physical counting,** as the case may be;

I. **Prepare a detailed receipt of the confiscated evidence** for issuance to the possessor (suspect) thereof;

m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence** with their initials and also indicate the date, time and place the evidence was confiscated/seized;

n. **Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera;** and

o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination. (Emphasis and underscoring supplied)

Chapter 4, Rule 37 of the 2013 Revised Philippine National Police (PNP) Operational Procedures[33] applicable during the pre-amendment of Section 21 provides:

> **37.3 Handling, Custody and Disposition of Evidence**
>
> a. **In the handling, custody and disposition of evidence, the provision of Section 21, RA 9165 and its IRR shall be strictly observed.**
>
> b. 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.
>
> c. 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, 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.
>
> d. Photographs of the pieces of evidence must be taken upon discovery without moving or altering its position in the place where it was situated, kept or hidden, including the process of recording the inventory and the weighing of dangerous drugs, and if possible under existing conditions, with the registered weight of the evidence on the scale focused by the camera, in the presence of persons required, as provided under Section 21, Art II, RA 9165. (Emphasis and underscoring supplied)

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[33] PNP Handbook, PNPM-D0-DS-3-2-13, December 2013.

Further, the Revised PNP Manual on Anti-Illegal Drugs Operation and Investigation[34] (2014 AIDSOTF Manual) similarly requires strict compliance with the provisions:

Section 2-6 Handling, Custody and Disposition of Drug and Non-Drug Evidence

2.33 <u>During handling, custody and disposition of evidence, provisions of Section 21, RA 9165 and its IRR as amended by RA 10640 shall be strictly observed.</u>

2.34 Photographs of pieces of evidence must be taken immediately upon discovery of such, without moving or altering its original position including the process of recording the inventory and the weighing of illegal drugs in the presence of required witnesses, as stipulated in Section 21, Art II, RA 9165, as amended by RA 10640. x x x

a. **Drug Evidence.**

1) Upon seizure or confiscation of illegal drugs or CPECs, laboratory equipment, apparatus and paraphernalia, the operating Unit's Seizing Officer/Inventory Officer must conduct the physical inventory, markings and photograph the same in the place of operation in the presence of:

(a) The suspect/s or the person/s from whom such items were confiscated and/or seized or his/her representative or counsel;

(b) With an elected Public Official; and

(c) Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory.

2) For seized or recovered drugs covered by Search Warrants, the inventory must be conducted in the place where the Search Warrant was served.

3) For warrantless seizures like buy-bust operations, inventory and taking of photographs should be done at the nearest Police Station or Office of the apprehending Officer or Team.

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[34] PNP Manual, PNPM-D-0-2-14 (DO), September 2014.

4) **If procedures during the inventory were not properly observed, as stipulated in Section 21, RA 9165 as amended by RA 10640, law enforcers must make a justification in writing for non-observance of the same to prove that the integrity and evidentiary value of the seized items are not tainted.** (Emphasis and underscoring supplied)

Under Sections Section 3-1(3.1)(b)(6) and (3.1)(b)(7) of the 2014 AIDSOTF Manual, **strict** compliance is similarly demanded from police officers, thus:

6) During the actual physical inventory, the **Seizing Officer must mark, and photograph** the seized/recovered pieces of evidence **in accordance with the provision of Section 21 of RA 9165** as amended by RA 10640 in the presence of:

(a) The suspect or person/s from whom such items were confiscated and/or seized or his/her representative or counsel;

(b) With an elected Public Official; and

(c) Any representatives from the Department of Justice or Media who shall affix their signatures and who shall be given copies of the inventory.

(Note: The presence of the above-mentioned witnesses shall only be required during the physical inventory of the confiscated items. **If in case, witnesses mentioned above are absent, same should be recorded in the report**.

7) In warrantless searches and seizures like buy-bust operations, the inventory and taking of photographs shall be made at the nearest Police Station or Office of the Apprehending Officer or Team whichever is practicable, however, **concerned police personnel must execute a written explanation to justify, non-compliance of the prescribed rules on inventory under Section 21, RA 9165 as amended by RA 10640**. x x x (Emphasis and underscoring supplied)

The Court has ruled in *People v. Zheng Bai Hui*[35] that it will not presume to set an *a priori* basis of what detailed acts police

[35] 393 Phil. 68, 133 (2000).

authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures, it strains credulity why the police officers could not have (1) ensured the presence of the required witnesses, or at the very least (2) marked, photographed, and physically inventoried the seized items pursuant to the provisions of their own operational procedures.[36]

To my mind, therefore, while no *a priori* basis for the conduct of a valid buy-bust operation is set, **the noncompliance of the police with their own procedures** implicates (1) the operation of the saving clause and (2) the appreciation of the presumption of regularity.

With this in mind, anything short of observance and compliance by the PDEA and police authorities with the positive requirements of the law, and even with their own internal procedures, means that they have not performed their duties. If they did, then it would not be difficult for the prosecution to acknowledge the lapses and justify the same — it needs merely to present the justification in writing required to be executed by the police under Sections 2-6(2.33)(a)(4) and 3-1(3.1)(b)(7) of the 2014 AIDSOTF Manual. After which, the court can proceed to determine whether the prosecution had credibly explained the noncompliance so as to comply with the first prong of the saving mechanism. I submit that without a justification being offered, the finding that the integrity and probative weight of the seized items are preserved can only satisfy the second prong and will not trigger the saving clause.

It then becomes error to fill the lacuna in the prosecution's evidence with the presumption of regularity, when there clearly is no established fact from which the presumption may arise. As such, the evidence of the State has not overturned the presumption of innocence in favor of the accused.[37]

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[36] Note also that the same PNPDEM lays down the guidelines for preparation in buy-bust operations, including the preparation of inventory and photographing equipment, save only from the *a priori* basis consideration above.

[37] See *People v. Barte, supra* note 16, at 22.

Based on these premises, I vote to **GRANT** the instant appeal and **REVERSE** and **SET ASIDE** the Decision of the Court of Appeals dated February 23, 2017 finding accused-appellant Romy Lim y Miranda guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165.

EN BANC

[G.R. No. 235058. September 4, 2018]

CONSERTINO C. SANTOS, *petitioner, vs.* **COMMISSION ON ELECTIONS (COMELEC) EN BANC and JENNIFER ANTIQUERA ROXAS,** *respondents.*

[G.R. No. 235064. September 4, 2018]

RICARDO ESCOBAR SANTOS and MA. ANTONIA CARBALLO CUNETA, *petitioners, vs.* **COMMISSION ON ELECTIONS and JENNIFER ANTIQUERA ROXAS,** *respondents.*

SYLLABUS

1. PAMBANSA BLG. 881 (OMNIBUS ELECTION CODE); NUISANCE CANDIDATES; DEFINED; PROCEEDINGS AGAINST NUISANCE CANDIDATES REQUIRE PROMPT DISPOSITION WHICH MUST BE DECIDED NOT LATER THAN SEVEN DAYS BEFORE THE ELECTION IN WHICH THE DISQUALIFICATION IS SOUGHT. Section 69 of Batas Pambansa *(B.P.)* Blg. 881, or the *Omnibus Election Code,* defines nuisance candidates as follow: Sec. 69. Nuisance candidates. – The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among

the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. x x x A petition for disqualification of a nuisance candidate clearly affects the voters' will and causes confusion that frustrates the same. This is precisely what election laws are trying to protect. They give effect to, rather than frustrate, the will of the voter. Thus, extreme caution should be observed before any ballot is invalidated. Further, in the appreciation of ballots, doubts are resolved in favor of their validity. By their very nature, proceedings in cases of nuisance candidates require prompt disposition. The declaration of a duly registered candidate as a nuisance candidate results in the cancellation of his COC. The law mandates the COMELEC and the courts to give priority to cases of disqualification to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought. In many instances, however, proceedings against nuisance candidates remained pending and undecided until election day and even after canvassing of votes had been completed.

2. ID.; ID.; ID.; ID.; ID.; TO EXECUTE A DECISION DECLARING A NUISANCE CANDIDATE, A SEPARATE PROCEEDING IS NOT NECESSARY; CASE AT BAR. Petitioners argue that although Rosalie was declared a nuisance candidate by the COMELEC, the execution of the decision does not cover the transfer of the votes of Rosalie in favor of respondent; there must be a specific proceeding, particularly an election protest or a petition to declare the proceedings before the board of canvassers illegal, before the said votes could be credited so that petitioners' right to due process is respected. The Court is not convinced. Section 69 of the Omnibus Election Code states that the COMELEC may declare a person as a nuisance candidate *motu proprio* or through a verified petition. In *Dela Cruz,* the Court discussed that the said petition to declare a person as a nuisance candidate is akin to a petition to cancel or deny due course a COC under Section 78 of the Omnibus Election Code. A cancelled certificate cannot give rise to a valid candidacy, much less to valid votes. Said votes cannot be counted in favor of the candidate whose COC was cancelled as he or she is not treated as a candidate at all, as if he or she

never filed a COC. **Thus, a petition to declare a person a nuisance candidate or a petition for disqualification of a nuisance candidate is already sufficient to cancel the COC of the said candidate and to credit the garnered votes to the legitimate candidate because it is as if the nuisance candidate was never a candidate to be voted for.**

3. ID.; BILL OF RIGHTS; RIGHT TO DUE PROCESS; NOT VIOLATED IN CASE AT BAR. The Court finds that in a petition for disqualification of a nuisance candidate, the only real parties in interest are the alleged nuisance candidate, the affected legitimate candidate, whose names are similarly confusing. 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. x x x Glaringly, there was nothing discussed in *Timbol* that other candidates, who do not have any similarity with the name of the alleged nuisance candidate, are real parties-in-interest or have the opportunity to be heard in a nuisance petition. Obviously, these other candidates are not affected by the nuisance case because their names are not related with the alleged nuisance candidate. **Regardless of whether the nuisance petition is granted or not, the votes of the unaffected candidates shall be completely the same.** Thus, they are mere silent observers in the nuisance case. Nevertheless, in the case at bench, even if the other candidates are not real parties-in-interest in respondent's petition for disqualification, the Court finds that the COMELEC gave petitioners sufficient opportunity to be heard during the execution proceedings of the nuisance case. x x x The Court is of the view that the COMELEC properly exercised its jurisdiction and gave petitioners the opportunity to ventilate their grievances, even though they are technically not real parties in interests in the nuisance case.

4. ID.; ELECTION LAWS; BATAS PAMBANSA BLG. 881 (OMNIBUS ELECTION CODE); NUISANCE CANDIDATES; COMELEC RESOLUTION NO. 10083; VOTES CAST FOR THE NUISANCE CANDIDATE THAT SHARES THE SAME SURNAME WITH THE FORMER, WHETHER THE DECISION IN THE NUISANCE CASE BECAME FINAL AND EXECUTORY BEFORE OR AFTER ELECTIONS; CASE AT BAR. Petitioners argue that the votes of the nuisance candidate shall only be credited in favor of the legitimate candidate if the decision in the nuisance case

becomes final and executory before the elections. Again, the Court is not convinced. x x x On the contrary, Section 11 (K) (b) of COMELEC Resolution No. 10083, which specifically refers to nuisance petitions under Section 69 of the Omnibus Election Code, states that the votes cast for the nuisance candidate shall be added to the candidate that shares the same surname with the former. **It does not distinguish whether the decision in the nuisance case became final and executory before or after the elections**. Notably, *Dela Cruz* emphasized that Section 72 applies to disqualification cases but not to petitions to cancel or deny due course a certificate of candidacy under Sections 69 for nuisance candidates.

5. ID.; ID.; ID.; ID.; ID.; IN A MULTI-SLOT OFFICE, THE VOTES OF THE NUISANCE CANDIDATE ARE NOT AUTOMATICALLY ADDED TO THE LEGITIMATE CANDIDATE; CASE AT BAR. Nonetheless, while the OSG argues that the votes of Rosalie should be credited in favor of respondent pursuant to *Dela Cruz,* the said votes should not be automatically added. It explained that in a multi-slot office, it is possible that the legitimate candidate and nuisance candidate may both receive votes in one ballot. In that case, the vote cast for the nuisance candidate may not automatically be credited to the legitimate candidate, otherwise, it shall result to a situation where the latter shall receive two votes from one voter. x x x In a multi-slot office, such as membership of the *Sangguniang Panlungsod,* a registered voter may vote for more than one candidate. Hence, it is possible that the legitimate candidate and nuisance candidate, having similar names, may both receive votes in one ballot. The Court agrees with the OSG that in that scenario, the vote cast for the nuisance candidate should no longer be credited to the legitimate candidate; otherwise, the latter shall receive two votes from one voter. Therefore, in a multi-slot office, the COMELEC must not merely apply a simple mathematical formula of adding the votes of the nuisance candidate to the legitimate candidate with the similar name. To apply such simple arithmetic might lead to the double counting of votes because there may be ballots containing votes for both nuisance and legitimate candidates. x x x Thus, to ascertain that the votes for the nuisance candidate is accurately credited in favor of the legitimate candidate with the similar name, the COMELEC must also inspect the ballots. In those ballots that contain both votes for nuisance and legitimate candidate, only

> one count of vote must be credited to the legitimate candidate. While the perils of a fielding nuisance candidates against legitimate candidates cannot be overemphasized, it must also be guaranteed that the votes of the nuisance candidate are properly and fairly counted in favor of the said legitimate candidate. In that manner, the will of the electorate is upheld. x x x As discussed-above, the simple arithmetic formula of the COMELEC in a multi-slot office, where there is a nuisance candidate, is inaccurate. Thus, the ballots containing the votes for nuisance candidate Rosalie must be credited in favor of respondent. However, if there are ballots which contain both votes in favor of Rosalie and respondent, only one vote shall be credited in favor of respondent.

APPEARANCES OF COUNSEL

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D E C I S I O N

GESMUNDO, *J.*:

These are petitions for *certiorari* and prohibition with urgent prayer for the issuance of a temporary restraining order *(TRO)* and/or status quo ante order and/or preliminary injunction seeking to annul and set aside the November 8, 2017 Writ of Execution[1] of the Commission on Elections *(COMELEC-En Banc)* in SPA Case No. 15-029 (DC), a case for declaration of a nuisance candidate.

The Antecedents

On October 14, 2015, Jennifer Antiquera Roxas *(respondent)* filed a certificate of candidacy for the position of member of the *Sangguniang Panlungsod* for the First District of Pasay City for the May 9, 2016 National and Local Elections.

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[1] *Rollo* (G.R. No. 235064), pp. 42-46.

On October 21, 2015, respondent filed a petition for disqualification against Rosalie Isles Roxas *(Rosalie)* before the COMELEC praying that the latter be declared a nuisance candidate because her certificate of candidacy *(COC)* was only filed for the sole purpose of causing confusion among the voters by the similarity of their names. She pointed out that Rosalie stated that her nickname was "Jenn-Rose," to impersonate the former, when Rosalie's real nickname was actually "Saleng."

Respondent also argued that Rosalie's intent to confuse the voters was apparent because she chose the name "Roxas Jenn-Rose" to appear in the official ballot even though respondent, a re-electionist candidate, was already using the name "Roxas Jenny" for election purposes.

After the parties filed their respective memoranda, the case was submitted for resolution.

In its Resolution[2] dated March 30, 2016, the COMELEC Second Division granted the petition and declared Rosalie a nuisance candidate. It found that Rosalie suspiciously indicated her name in the ballot to be "Roxas Jenn-Rose," which was strikingly similar with respondent's name in the ballot as "Roxas Jenny." The COMELEC also observed that the nickname "Jenn-Rose" did not resemble the name of Rosalie as her real nickname was actually "Saleng." It further opined that Rosalie was not financially capable of sustaining the rigors of waging a campaign. COMELEC concluded that the candidacy of Rosalie was clearly meant to cause confusion among the voters with respect to respondent's name and that Rosalie had no *bona fide* intention to run for office. The dispositive portion of the resolution states:

WHEREFORE, the Petition is **GRANTED**. Accordingly, **ROSALIE ISLES ROXAS**, is hereby declared a **NUISANCE CANDIDATE** and her Certificate of Candidacy for Member, Sangguiniang [Panlungsod] of Pasay City for the May 9, 2016 National and Local Elections is hereby **CANCELLED**.

SO ORDERED.[3]

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[2] *Id.* at 47-53.

[3] *Id.* at 52.

On April 18, 2016, Rosalie filed a motion for reconsideration, consisting of three (3) pages, before the COMELEC.

While the motion for reconsideration was pending with the COMELEC, the National and Local Elections proceeded on May 9, 2016. The City Board of Canvassers[4] stated the following results of the elections:

Names	Votes Garnered	Ranking
Calixto, Mark	51,369	1
Advincula, Jerome	45,986	2
Cuneta, Ma. Antonia	41,835	3
Alvina, Abet	36,994	4
Santos, Ricardo	35,756	5
Santos, Consertino	34,291	6
Roxas, Jenny	33,738	7
x x x	x x x	x x x
Roxas, Jenn-Rose	13,328	14

The top six (6) candidates were proclaimed as duly elected members of the First District of the *Sangguniang Panlungsod* of Pasay City. Respondent was not included because she ranked in 7th place; while Rosalie ranked in 14th place with 13,328 votes.

On May 20, 2016, respondent filed an Election Protest *Ad Cautelam*[5] against Consertino C. Santos *(Santos)* before the COMELEC praying, among others, that the votes cast for Rosalie, who was declared a nuisance candidate, be credited to her, that the proclamation of Santos as a member of the *Sangguniang Panlungsod* for the First District of Pasay be annulled, and that she be proclaimed as the winning candidate for the

[4] *Id.* at 90.

[5] *Id.* at 74-88.

Sangguniang Panlungsod of First District of Pasay City. Later, respondent amended her protest and added Jerome Advincula, Alberto Alvina, Ma. Antonia Carballo Cuneta *(Antonia)* and Ricardo Escobar Santos *(Ricardo),* as they were also proclaimed as members of the *Sangguniang Panlungsod.*

Meanwhile, on July 22, 2016, or more than two (2) months after the elections, the COMELEC-*En Banc* issued a Resolution[6] denying Rosalie's motion for reconsideration as follows:

> **WHEREFORE,** premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit. The Resolution dated 30 March 2016 of the Commission (Second Division) is hereby **AFFIRMED.**
>
> **SO ORDERED.**[7]

The process server of COMELEC attempted to personally serve the July 22, 2016 resolution to the counsel of Rosalie on July 27, 2016 and August 18, 2016. However, despite earnest efforts, the resolution was not served because the office of Rosalie's counsel was always closed and the guard on duty refused to receive the same.

On November 14, 2016, respondent filed a motion for execution. In its November 17, 2016 order, the COMELEC-*En Banc* considered the July 22, 2016 resolution as served. In its Certificate of Finality[8] dated February 15, 2017, the COMELEC-*En Banc* declared its July 22, 2016 resolution final and executory.

On March 31, 2017, Ricardo, who was not a party in the nuisance case, filed a Manifestation of Grave Concern with Omnibus Motion [i. To admit attached strong opposition; ii. To defer issuance of writ of execution while this motion is pending; iii. To limit the tenor of the writ of execution to a

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[6] *Id.* at 63-69.

[7] *Id.* at 69.

[8] *Id.* at 70-73.

declaration that respondent is a nuisance candidate; and iv. To immediately set the instant motion for hearing].[9]

On April 4, 2017, Ricardo filed an Extremely Urgent Motion to Set the Case for Hearing.[10]

On April 4, 2017, the COMELEC-*En Banc* issued a Writ of Execution[11] *(first writ of execution)* to implement the March 30, 2016 and July 22, 2016 resolutions, to wit:

> **NOW THEREFORE,** you are hereby **DIRECTED** to immediately implement this Writ of Execution by serving a copy hereof together with certified true copy of the Resolutions of the Second Division, and of the *En Banc,* of this Commission, dated 30 March 2016 and 22 July 2016, respectively, upon respondent **ROSALIE ISLES ROXAS** and to submit a return of service thereof to the Clerk of the Commission.
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> For this purpose, the Commission hereby **DIRECTS**, after due notice to the parties, the Special City Board of Canvassers (SCBOC) of Pasay City, composed of:
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> x x x x x x x x x
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> to do the following:
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> **1.** **CONVENE** on April 20, 2017, 10:00 a.m., at the Comelec Session Hall, 8th Floor, Palacio del Gobernador Building, Intramuros, Manila, with notice to all affected parties;
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> **2.** **COUNT** the Thirteen Thousand Three Hundred Twenty-Eight (13,328) votes cast for [Rosalie] in favor of the [respondent] and **AMEND** the total number of votes garnered by the latter to Forty Seven Thousand Sixty-Six (47,066); and
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> **3.** **SUBMIT,** within three (3) days from reconvening, a report to the Commission *En Banc* on the total number of votes garnered by all the affected candidates for the position of the Sangguniang Panlungsod of Pasay City and await for further orders;

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[9] *Id.* at 306-315.

[10] *Id.* at 316-320.

[11] *Id.* at 321-324.

Accordingly, Dir. Ester Villaflor-Roxas is directed to submit before the Special City Board of Canvassers (SCBOC) a certified true copy of the votes of candidates in the May 9, 2016 National and Local Elections.

SO ORDERED.[12]

On April 20, 2017, the Special City Board of Canvassers of Pasay City *(SCBOC)* convened and counted 13,328 votes for respondent and consequently amended the statement of votes relevant to the position of members of the *Sangguniang Panlungsod* for the May 9, 2016 National and Local Elections.

Meanwhile, on April 24, 2017, Ricardo filed a separate Petition for Annulment of the Illegal Proceedings of the Special Board of Canvassers of Pasay City with Extremely Urgent Prayer for Issuance of Status Quo Ante Order and Suspension of the Effects of the Illegal Proceedings.[13] The case was docketed as SPC No. 17-001.

In the nuisance case, on April 25, 2017, Ricardo filed a Manifestation with Omnibus Motion [i. To quash the writ of execution issued in this case; and ii. To admit the foregoing submission].[14]

On October 25, 2017, Ricardo also filed an Extremely Urgent Manifestation with Motion[15] where he reiterated that the first writ of execution had been rendered moot by the election protest filed by respondent. On November 3, 2017, Ricardo filed a Reiterative Omnibus Motion[16] requesting/praying that the SCBOC be directed to cease and desist from recanvassing the votes.

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[12] *Id*. at 323-324.

[13] *Id*. at 325-332.

[14] *Id*. at 365-373.

[15] *Id*. at 374-376.

[16] *Id*. at 412-418.

On November 8, 2017, the *COMELEC-En Banc* issued its Order[17] denying the motions of Ricardo for lack of merit and considering that there were other actions pending before the COMELEC that would sufficiently address the issues raised.

On the same day, the *COMELEC-En Banc* issued another writ of execution *(second writ of execution),* which states:

> **NOW THEREFORE,** you are hereby **DIRECTED** to immediately implement this Writ of Execution by serving a copy hereof together with certified true copy of the Resolutions of the Second Division and of the *En Banc,* of this Commission, dated 30 March 2016 and 22 July 2016, respectively, upon respondent **ROSALIE ISLES ROXAS** and to submit a return of service thereof to the Clerk of the Commission.
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> For this purpose, the Commission hereby **DIRECTS**, after due notice to the affected parties, the Special City Board of Canvassers for the First District of Pasay City, composed of:
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> to do the following:
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> **1.** **CONVENE** on 5 December 2017, 3:00 p.m., at the Comelec Session Hall, 8th Floor, Palacio del Gobernador Building, Intramuros, Manila;
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> **2.** **ANNUL** the proclamation of Jerome Ruiz Advincula, Ma. Antonia Carballo Cuneta, Alberto Cerdeña Alvina, Ricardo Escobar Santos, and Consertino Claudio Santos as the 2nd, 3rd, 4th, 5th and 6th Members of the Sangguniang Panlungsod for the First District of Pasay City;
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> **3.** **AMEND/CORRECT** the Certificate of Canvass of Votes and Proclamation of Sangguniang Panlungsod Members for the First District of Pasay City based on the Amended Statement of Votes by Precinct.
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> **4.** **PROCLAIM** the following as the duly elected Members of the Sangguniang Panlungsod Members for the First District of Pasay City:

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[17] *Id.* at 419-420.

Names of Candidates	Number of Votes	Ranking
Calixto, Mark Anthony Aguas	51,369	1
Roxas, Jennifer Antiquera	47,066	2
Advincula, Jerome Ruiz	45,986	3
Cuneta, Ma. Antonia Carballo	41,835	4
Alvina, Alberto Cerdeña	36,994	5
Santos, Ricardo Escobar	35,756	6

Accordingly, Dir. Ester Villafor-Roxas [member of the SCBOC] is directed to submit before the Special City Board of Canvassers for the First District of Pasay City a certified true copy of the votes of candidates in the May 9, 2016 National and Local Elections.

Finally, the Special City Board of Canvassers of Pasay City is likewise directed to furnish copy of the Certificate of Proclamation to the Department of Interior [and] Local Government (DILG), Secretary of the Sangguniang Panlungsod for the First District of Pasay City and affected parties.

SO ORDERED.[18]

Santos, Ricardo and Antonia, collectively referred to as petitioners, were served with a copy of the second writ of execution.

Hence, these consolidated petitions:

I. In G.R. No. 235064, Ricardo And Antonia anchored their petition on the following issues:

A. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED WRIT OF EXECUTION DATED NOVEMBER 8, 2017, WITHOUT AFFORDING THE PETITIONERS THE OPPORTUNITY TO BE HEARD IN CLEAR VIOLATION OF THEIR CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.

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[18] *Id*. at 44-46.

B. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED WRIT OF EXECUTION DATED NOVEMBER 8, 2017 IN VIOLATION OF THE RULE ON IMMUTABILITY OF JUDGMENTS GIVEN THAT THE DIRECTIVES MENTIONED IN THE CHALLENGED WRIT OF EXECUTION WERE NOT INCLUDED IN THE MARCH 30, 2016 AND JULY 22, 2016 RESOLUTIONS OF THE PUBLIC RESPONDENT COMELEC IN SPA NO. 15-029 (DC).

C. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED WRIT OF EXECUTION DATED NOVEMBER 8, 2017 IN VIOLATION OF COMELEC RESOLUTION NO. 10083.[19]

II. In G.R. No. 235058, Santos raised the following issues:

A. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED WRIT OF EXECUTION DATED 8 NOVEMBER 2017, WHICH DIRECTED THE ANNULMENT OF THE PROCLAMATION OF THE PETITIONER AS MEMBER OF THE SANGGUNIANG [PANLUNGSOD] OF THE FIRST DISTRICT OF PASAY CITY AND THE PROCLAMATION OF PRIVATE RESPONDENT JENNIFER, WITHOUT AFFORDING THE PETITIONER THE OPPORTUNITY TO BE HEARD IN CLEAR VIOLATION OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.

B. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DIRECTED THE CREDITING OF THE VOTES RECEIVED BY ROSALIE TO THE VOTES RECEIVED BY PRIVATE

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[19] *Id*. at 22.

RESPONDENT JENNIFER AND THE AMENDMENT/ CORRECTION OF THE CERTIFICATE OF CANVASS OF VOTES AND PROCLAMATION OF SANGGUNIANG [PANLUNGSOD] MEMBERS FOR THE FIRST DISTRICT OF PASAY CITY BASED ON THE AMENDMENT STATEMENT OF VOTES BY PRECINCT AS THIS VIOLATES THE RULE ON IMMUTABILITY OF JUDGMENTS GIVEN THAT THE AFOREMENTIONED UNDERTAKINGS WERE NOT INCLUDED IN THE RESOLUTION OF THE PUBLIC RESPONDENT COMELEC DATED 30 MARCH 2016 AND 22 JULY 2016.

C. PUBLIC RESPONDENT COMELEC *EN BANC* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED WRIT OF EXECUTION WHICH BLATANTLY VIOLATED SECTION 11 OF COMELEC RESOLUTION NO. 10083.[20]

Petitioners argue that they were deprived of due process when the COMELEC-*En Banc* hastily issued the first and second writs of execution without any actual or constructive notice to them; that the said writs did not conform to the dispositive portion of the March 30, 2016 and July 22, 2016 resolutions of the COMELEC because the resolutions were silent as to the crediting of the votes of Rosalie in favor of respondent; that under Section 11 of COMELEC Resolution No. 10083, the votes of a nuisance candidate can only be credited to the legitimate candidate if the decision or resolution is final and executory before the proclamation of the winning candidate.

Petitioners also assert that the March 30, 2016 resolution of the COMELEC-Second Division which was affirmed in the July 22, 2016 resolution of the COMELEC-*En Banc* merely declared Rosalie a nuisance candidate; as these resolutions only became final after the proclamation of the winners, there must be a separate election protest or action in order to determine whether the votes for the nuisance candidate are stray votes or

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[20] *Rollo* (G.R. No. 235064), pp. 22-23.

can be credited to the legitimate candidate. They also contend that a TRO and/or status quo ante order and/or preliminary injunction must be issued to prevent serious and irreparable damage, not only to petitioners, but also to the electorate of the first district of Pasay City.

In its Resolution[21] dated November 28, 2017, the Court issued a TRO effective immediately and directed COMELEC-*En Banc* to cease and desist from implementing the second writ of execution.

In her Consolidated Comment,[22] respondent countered that she continues to suffer the consequences of that evil brought by the nuisance candidate when the COMELEC belatedly ruled on her nuisance case and when the Court issued a TRO; that petitioners were never denied due process because Ricardo was able to file several motions in the nuisance case and that they were notified during the implementation of the first and second writs of execution; and that the crediting of votes in respondent's favor was purely a legal consequence of the declaration that Rosalie was a nuisance candidate.

In its Consolidated Comment,[23] the OSG cited *Dela Cruz v. COMELEC*[24] and asserted that the rule on crediting votes can be applied even if the resolution declaring a nuisance candidate became final and executory after the elections. However, it stated that the votes for a nuisance candidate in a multi-slot office should not be automatically credited to the legitimate candidate. It explained that in a multi-slot office, a voter may choose more than one candidate, hence, it is possible that the legitimate candidate and nuisance candidate may both receive votes in one ballot. In that case, the vote cast for the nuisance candidate must no longer be credited to the legitimate candidate, otherwise, the latter shall receive two votes from one voter.

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[21] *Rollo* (G.R. No. 235064), p. 421.

[22] *Id.* at 441-453.

[23] *Id.* at 467-486.

[24] 698 Phil. 548 (2012).

The OSG highlighted that the system of automatically crediting the votes of the nuisance candidate in favor of the legitimate candidate in a multi-slot office may be exploited. A legitimate candidate may seek another person with the same surname to file a candidacy for the same position and the latter will opt to be declared a nuisance candidate. In that scenario, the first candidate shall receive all the votes of the nuisance candidate and may even receive double votes, thereby, drastically increasing his odds. Thus, the OSG averred that the simple arithmetic of adding the votes of the nuisance candidate to the legitimate candidate should not be applied in a multi-slot office.

In their Consolidated Reply,[25] petitioners reiterated that they were denied due process when the COMELEC-*En Banc* issued the first and second writs of execution; and that since the March 30, 2016 and July 22, 2016 resolutions of the COMELEC only became final and executory after the elections, the 13,328 votes of Rosalie should be considered as stray votes.

The Court s Ruling

The Court affirms with modification the November 8, 2017 writ of execution of the COMELEC-*En Banc.*

The COMELEC's declaration of Rosalie as a nuisance candidate, which was sought to be implemented by the assailed writ of execution resulted into: (1) Antonia and Ricardo's ranking were changed from 3rd and 5th place to 4th and 6th place, respectively; and (2) Constantino was dislodged as a winning candidate as member of the *Sangguniang Panlungsod* of the First District of Pasay City.

Nuisance Candidates

Section 69 of Batas Pambansa *(B.P.)* Blg. 881, or the *Omnibus Election Code,* defines nuisance candidates as follows:

Sec. 69. Nuisance candidates. – The Commission may *motu proprio* or upon a verified petition of an interested party, refuse to give due

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[25] *Rollo* (G.R. No. 235064), pp. 559-570.

course to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate.

The rationale behind the prohibition against nuisance candidates and the disqualification of candidates who have not evinced a *bona fide* intention to run for office is easy to divine. The State has a compelling interest to ensure that its electoral exercises are rational, objective, and orderly. Towards this end, the State takes into account the practical considerations in conducting elections. Inevitably, the greater the number of candidates, the greater the opportunities for logistical confusion, not to mention the increased allocation of time and resources in preparation for the election. These practical difficulties should, of course, never exempt the State from the conduct of a mandated electoral exercise. At the same time, remedial actions should be available to alleviate these logistical hardships, whenever necessary and proper. Ultimately, a disorderly election is not merely a textbook example of inefficiency, but a rot that erodes faith in our democratic institutions.[26]

A petition for disqualification of a nuisance candidate clearly affects the voters' will and causes confusion that frustrates the same. This is precisely what election laws are trying to protect. They give effect to, rather than frustrate, the will of the voter. Thus, extreme caution should be observed before any ballot is invalidated. Further, in the appreciation of ballots, doubts are resolved in favor of their validity.[27]

By their very nature, proceedings in cases of nuisance candidates require prompt disposition. The declaration of a duly

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[26] *Pamatong v. Commission on Elections,* 470 Phil. 711, 719-720 (2004).

[27] *Bautista v. Commission on Elections,* 359 Phil. 1, 13 (1998), citing *Silverio v. Clamor, et al.,* 125 Phil. 917, 925 (1967).

registered candidate as a nuisance candidate results in the cancellation of his COC. The law mandates the COMELEC and the courts to give priority to cases of disqualification to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought. In many instances, however, proceedings against nuisance candidates remained pending and undecided until election day and even after canvassing of votes had been completed.[28]

The Court has resolved several petitions involving cases where the COMELEC declared a nuisance candidate before and after the elections.

In *Bautista v. COMELEC (Bautista),*[29] the case involved the disqualification of Edwin "Efren" Bautista as a nuisance candidate for the position of mayor in Navotas because his name was confusingly similar to Cipriano "Efren" Bautista and he had no financial means to support a campaign. Several days before the election or on April 30, 1998, the COMELEC issued a resolution declaring Edwin Bautista as a nuisance candidate and ordered the cancellation of his COC. A motion for reconsideration was filed and it was only resolved by COMELEC on May 13, 1998, or after the elections. Thus, a separate tally for "EFREN BAUTISTA," "EFREN," "E. BAUTISTA," and "BAUTISTA" were made by the municipal board of canvassers. Cipriano Bautista filed a petition to declare illegal the proceedings of the municipal board of canvassers, but, it was denied by the COMELEC stating that the separate tallies should be considered as stray votes.

On appeal, the Court reversed the COMELEC. It ruled that the separate tallies were made to remedy any prejudice that may be caused by the inclusion of a potential nuisance candidate. Such inclusion was brought about by technicality, specifically Edwin Bautista's filing of a motion for reconsideration, which

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[28] *Martinez III v. House of Representatives Electoral Tribunal, et al.,* 624 Phil. 50, 61 (2010).

[29] *Supra* note 27.

prevented the April 30, 1998 resolution from becoming final at that time. Ideally, the matter should have been resolved with finality prior to election day. Its pendency on election day exposed the evils brought about by the inclusion of a nuisance candidate.

The Court further held therein that the votes separately tallied were not stray votes. It emphasized that a stray vote is invalid because there is no way of determining the real intention of the voter. In that case, however, it was clear that the votes for Edwin "Efren" Bautista were actually intended by the electorate for Cipriano "Efren" Bautista, thus, the votes for Edwin "Efren" Bautista should be credited in favor of Cipriano "Efren" Bautista. The Court also underscored that:

> As we said earlier, the instant petition is laden with an issue which involves several ramifications. **Matters tend to get complicated when technical rules are strictly applied.** True it is, the disqualification of Edwin Bautista was not yet final on election day. However, it is also true that the electorate of Navotas was informed of such disqualification. The voters had constructive as well as actual knowledge of the action of the COMELEC delisting Edwin Bautista as a candidate for mayor. Technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself, as in this case.[30] (emphasis supplied)

Similarly, *Martinez III v. House of Representatives Electoral Tribunal*[31] *(Martinez III)* involved a petition to declare Edilito C. Martinez a nuisance candidate for the position of representative in the fourth legislative district of Cebu because his name was confusingly similar with Celestino A. Martinez III. The COMELEC rendered a decision declaring Edilito Martinez as a nuisance candidate only on June 12, 2007, or almost one (1) month after the elections. Thus, the jurisdiction regarding the election was transferred to the House of Representatives Electoral Tribunal *(HRET)* and Celestino Martinez III filed an election

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[30] *Id*. at 17.

[31] *Supra* note 28.

protest therein against the winning candidate Benhur Salimbangon. The HRET ruled that the ballots containing "MARTINEZ" and "C. MARTINEZ" should not be counted in favor of Celestino Martinez III because Edilito Martinez was not yet declared a nuisance candidate at the time of the elections.

The Court reversed the HRET and held that the votes for "MARTINEZ" and "C. MARTINEZ" should have been counted in favor of Celestino Martinez III because such votes could not have been intended for Edilito C. Martinez, who was declared a nuisance candidate in a final judgment. It emphasized that the candidacy of Edilito C. Martinez was obviously meant to confuse the electorate. The Court also stated that Celestino Martinez III should not have been prejudiced by the COMELEC's lethargy in resolving the nuisance case. It was explained therein:

> Ensconced in our jurisprudence is the well-founded rule that laws and statutes governing election contests especially appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities. An election protest is imbued with public interest so much so that the need to dispel uncertainties which becloud the real choice of the people is imperative. The prohibition against nuisance candidates is aimed precisely at preventing uncertainty and confusion in ascertaining the true will of the electorate. **Thus, in certain situations as in the case at bar, final judgments declaring a nuisance candidate should effectively cancel the certificate of candidacy filed by such candidate as of *election day*.** Otherwise, potential nuisance candidates will continue to put the electoral process into mockery by filing certificates of candidacy at the last minute and delaying resolution of any petition to declare them as nuisance candidates until elections are held and the votes counted and canvassed.[32] (emphasis and underscoring supplied)

Recently, in *Dela Cruz v. COMELEC*[33] *(Dela Cruz),* a petition to declare Aurelio Dela Cruz a nuisance candidate for the position of vice-mayor of Bugasong, Antique was filed because his name

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[32] *Id*. at 75.

[33] *Supra* note 24.

was confusingly similar with the name of Casimir Dela Cruz and the former did not have the financial capacity to campaign for the elections. On January 29, 2010, the COMELEC declared Aurelio Dela Cruz a nuisance candidate, however, his name was not deleted in the certified list of candidates and he still received votes during the automated elections. In its Resolution No. 8844, the COMELEC stated that the votes for Aurelio Dela Cruz, a nuisance candidate, should be considered stray. Thus, Casimir Dela Cruz filed a petition for *certiorari* before the Court to annul and set aside the said resolution.

In reversing the COMELEC, the Court ruled that even in the automated elections, the votes for the nuisance candidate should still be credited to the legitimate candidate. It held that the previous COMELEC Resolution No. 4116 – declaring that the vote cast for a nuisance candidate, who had the same surname as the legitimate candidate, should be counted in favor of the latter – remains good law. The Court underscored that:

> x x x **the possibility of confusion in names of candidates if the names of nuisance candidates remained on the ballots on election day, cannot be discounted or eliminated, even under the automated voting system** especially considering that voters who mistakenly shaded the oval beside the name of the nuisance candidate instead of the bona fide candidate they intended to vote for could no longer ask for replacement ballots to correct the same.
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> Finally, upholding the former rule in Resolution No. 4116 is more consistent with the rule well-ensconced in our jurisprudence that laws and statutes governing election contests especially **appreciation of ballots must be liberally construed to the end that the will of the electorate in the choice of public officials may not be defeated by technical infirmities**. Indeed, as our electoral experience had demonstrated, such infirmities and delays in the delisting of nuisance candidates from both the Certified List of Candidates and Official Ballots only made possible the very evil sought to be prevented by the exclusion of nuisance candidates during elections.[34] (emphases supplied)

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

Accordingly, the Court consistently declared that the votes cast for the nuisance candidate must be credited in favor of the legitimate candidate with a similar name to give effect to, rather than frustrate, the will of the voters, even if the declaration of the nuisance candidate became final only after the elections.

No separate proceeding to execute a decision declaring a nuisance candidate

Petitioners argue that although Rosalie was declared a nuisance candidate by the COMELEC, the execution of the decision does not cover the transfer of the votes of Rosalie in favor of respondent; there must be a specific proceeding, particularly an election protest or a petition to declare the proceedings before the board of canvassers illegal, before the said votes could be credited so that petitioners' right to due process is respected.

The Court is not convinced.

Section 69 of the Omnibus Election Code states that the COMELEC may declare a person as a nuisance candidate *motu proprio* or through a verified petition. In *Dela Cruz,* the Court discussed that the said petition to declare a person as a nuisance candidate is akin to a petition to cancel or deny due course a COC under Section 78 of the Omnibus Election Code.[35]

A cancelled certificate cannot give rise to a valid candidacy, much less to valid votes. Said votes cannot be counted in favor of the candidate whose COC was cancelled as he or she is not treated as a candidate at all, as if he or she never filed a COC.[36]

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[35] **Sec. 78. Petition to deny due course to or cancel a certificate of candidacy.** – A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided. after due notice and hearing, not later than fifteen days before the election.

[36] See *supra* note 24 at 563.

Thus, a petition to declare a person a nuisance candidate or a petition for disqualification of a nuisance candidate is already sufficient to cancel the COC of the said candidate and to credit the garnered votes to the legitimate candidate because it is as if the nuisance candidate was never a candidate to be voted for.

Further, while *Bautista* involved a petition to declare illegal the proceedings of the municipal board of canvassers and *Martinez* involved an election protest under jurisdiction of the HRET before the votes for the nuisance candidate was credited to the legitimate candidate, the same cannot be said with *Dela Cruz.*

In *Dela Cruz,* the petition simply involved the petition for *certiorari* for the annulment of COMELEC Resolution No. 8844. The Court credited the votes of the nuisance candidate in favor of the legitimate candidate even though there was neither an election protest nor a petition to declare the proceedings before the board of canvassers illegal. The votes were counted in favor of the legitimate candidate because there was already a final and executory judgment declaring a nuisance candidate.

Evidently, as seen in *Bautista, Martinez III* and *Dela Cruz,* the Court does not require a specific or special proceeding before the votes of the nuisance candidate is credited to the legitimate candidate. As long as there is a final and executory judgment declaring a person a nuisance candidate, the votes received by the nuisance candidate shall be credited to the legitimate candidate.

Likewise, to subscribe to petitioners' argument – that there should be a separate proceeding solely for the purpose of crediting the votes in favor of the legitimate candidate – would be absurd. When a candidate is declared a nuisance candidate, it certainly follows that he or she cannot be voted for as he or she is not a candidate, consequently, the votes shall be credited to the legitimate candidate. Evidently, the crediting of the votes is a logical consequence of the final decision in the nuisance case because the vote for the nuisance candidate is considered a

vote for the legitimate candidate. It would be the height of injustice to require the legitimate candidate to initiate a separate proceeding for the crediting of votes when it was already declared that there was indeed a nuisance candidate, which confused the electorate regarding their votes for the legitimate candidate.

It is a general rule that the writ of execution should conform to the dispositive portion of the decision to be executed, and that the execution is void if it is in excess of and beyond the original judgment or award, for it is a settled general principle that a writ of execution must conform strictly to every essential particular of the judgment promulgated.[37] Nonetheless, the Court had held that a judgment is not confined to what appears on the face of the decision, **but extends as well to those necessarily included therein or necessary thereto**.[38]

Here, the crediting of the votes of the nuisance candidate to respondent as a legitimate candidate, whose names are similar, is a necessary consequence of the COMELEC's declaration that Rosalie is a nuisance candidate. Consequently, the transfer of votes of the nuisance candidate to the legitimate candidate can be validly accomplished in the execution proceedings of the nuisance case.

There was no violation of the right to due process

The Court finds that in a petition for disqualification of a nuisance candidate, the only real parties in interest are the alleged nuisance candidate, the affected legitimate candidate, whose names are similarly confusing. 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.[39]

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[37] *Spouses Mahinay v. Judge Asis, et al.,* 598 Phil. 382, 395 (2009).

[38] *Tumibay, et al. v. Spouses Soro,* 632 Phil. 179, 187 (2010).

[39] *National Power Corporation v. Provincial Government of Bataan, et al. (Resolution),* G.R. No. 180654, March 6, 2017.

In *Timbol v. COMELEC*[40] *(Timbol),* it was stated that to minimize the logistical confusion caused by nuisance candidates, their COC may be denied due course or cancelled by the petition of a legitimate candidate or by the COMELEC. This denial or cancellation may be *motu proprio* or upon a verified petition of an interested party, subject to an opportunity to be heard. It was emphasized therein that the COMELEC should balance its duty to ensure that the electoral process is clean, honest, orderly, and peaceful with the right of an alleged nuisance candidate to explain his or her *bona fide* intention to run for public office before he or she is declared a nuisance candidate.

Thus, when a verified petition for disqualification of a nuisance candidate is filed, the real parties-in-interest are the alleged nuisance candidate and the interested party, particularly, the legitimate candidate. Evidently, the alleged nuisance candidate and the legitimate candidate stand to be benefited or injured by the judgment in the suit. The outcome of the nuisance case shall directly affect the number of votes of the legitimate candidate, specifically, whether the votes of the nuisance candidate should be credited in the former's favor.

Glaringly, there was nothing discussed in *Timbol* that other candidates, who do not have any similarity with the name of the alleged nuisance candidate, are real parties-in-interest or have the opportunity to be heard in a nuisance petition. Obviously, these other candidates are not affected by the nuisance case because their names are not related with the alleged nuisance candidate. **Regardless of whether the nuisance petition is granted or not, the votes of the unaffected candidates shall be completely the same.** Thus, they are mere silent observers in the nuisance case.

Nevertheless, in the case at bench, even if the other candidates are not real parties-in-interest in respondent's petition for disqualification, the Court finds that the COMELEC gave petitioners sufficient opportunity to be heard during the execution proceedings of the nuisance case, to wit:

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[40] 754 Phil. 578 (2015).

1. On March 31, 2017, after the nuisance case became final and executory, Ricardo filed a Manifestation of Grave Concern with Omnibus Motion [i. To admit attached strong opposition; ii. To defer issuance of writ of execution while this motion is pending; iii. To limit the tenor of the writ of execution to a declaration that respondent is a nuisance candidate; and iv. To immediately set the instant motion for hearing].
2. On April 4, 2017, Ricardo filed an Extremely Urgent Motion to Set the Case for Hearing.[41]
3. On April 25, 2017, Ricardo filed a Manifestation with Omnibus Motion [i. To quash the writ of execution issued in this case; and ii. To admit the foregoing submission].[42]
4. On October 25, 2017, Ricardo filed an Extremely Urgent Manifestation with Motion.[43]
5. On November 3, 2017, Ricardo filed a Reiterative Omnibus Motion[44] to direct the SCBOC to cease and desist from recanvassing the votes.
6. On November 8, 2017, the COMELEC issued its Order[45] denying the motions of Ricardo for lack of merit and considering that there are already other actions pending that sufficiently address the issues raised.
7. Petitioners were served with a copy of the second writ.

Based on the foregoing, petitioners were given sufficient opportunity to be heard. Notably, Ricardo exhaustively exercised his right to be heard and filed multiple motions and manifestations before the COMELEC during the execution proceedings of the nuisance case. The COMELEC even considered the said incidents on the merits and issued an order denying the same because other pending actions sufficiently address the issues raised. Petitioners were likewise given a copy of the second writ of execution, thus, they were able to institute these present petitions.

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[41] *Rollo* (G.R. No. 235064), pp. 316-320.

[42] *Id*. at 365-373.

[43] *Id*. at 374-376.

[44] *Id*. at 412-418.

[45] *Id*. at 419-420.

The Court is of the view that the COMELEC properly exercised its jurisdiction and gave petitioners the opportunity to ventilate their grievances, even though they are technically not real parties in interests in the nuisance case.

The votes shall be credited to the legitimate candidate regardless whether the decision in the nuisance case becomes final and executory before or after the elections

Petitioners argue that the votes of the nuisance candidate shall only be credited in favor of the legitimate candidate if the decision in the nuisance case becomes final and executory before the elections.

Again, the Court is not convinced.

Section 11 (K) of COMELEC Resolution No. 10083, or the General Instructions Governing the Consolidation/Canvass, and Transmission of Votes in connection with the May 9, 2016 National and Local Election, states:

K. Proclamation of Winning Candidates

A candidate who obtained the highest number of votes shall be proclaimed by the Board, except the following:

a. In case the certificate of candidacy of the candidate who obtains the highest number of votes has been cancelled or denied due course or disqualified by a final and executory Decision or Resolution **before the elections,** the votes cast for such candidate shall be considered stray, hence, the Board shall proceed to proclaim the candidate who obtains the second highest number of votes, provided, the latter's certificate of candidacy has not likewise ·been cancelled by a final and executory Decision or Resolution **before the elections**;

b. In case a candidate has been declared a nuisance candidate by final and executory Decision or Resolution, **the votes cast for the nuisance candidate shall be added to the candidate who shares the same surname as the nuisance**

candidate and thereafter, the candidate who garnered the highest number of votes shall be proclaimed;

x x x x x x x x x

c. In case the certificate of candidacy of the candidate who obtains the highest number of votes has been cancelled or denied due course or disqualified by a final and executory Decision or Resolution **after the elections** and he/she obtains the highest number of votes cast for a particular position, the Board shall not proclaim the candidate and the rule of succession, if allowed by law, shall be observed. In case the position does not allow the rule of succession under Republic Act No. 7160, the position shall be deemed vacant. (emphases supplied)

As stated above, Section 11 (K) (a) of COMELEC Resolution No. 10083, which refers to petitions for disqualifications under Section 72 of the Omnibus Election Code,[46] requires that the decision of the COMELEC in the said case must become final and executory before the elections. At that moment, the votes for the candidate with the cancelled COC shall be considered stray and the candidate who obtains the second highest number of votes shall be proclaimed. Similarly, under Section 11 (K) (c), if the case becomes final and executory after the elections, then the rule on succession, if allowed, shall apply. Consequently, in petitions to deny due course to or cancel a COC under Section 72, the specific period when the case becomes final and executory before or after the elections, is material and relevant.

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[46] **SEC. 72. Effects of Disqualification cases and priority.** The Commission and the courts shall give priority to cases of disqualification by reason of violation of this Act to the end that a final decision shall be rendered not later than seven days before the election in which the disqualification is sought. Any candidate who has been declared by final judgment to be disqualified shall not be voted for, and the votes cast for him shall not be counted. Nevertheless, if for any reason, a candidate is not declared by final judgment before an election to be disqualified and he is voted for and receives the winning number of votes in such election, his violation of the provisions of the preceding sections shall not prevent his proclamation and assumption of office.

On the contrary, Section 11 (K) (b) of COMELEC Resolution No. 10083, which specifically refers to nuisance petitions under Section 69 of the Omnibus Election Code, states that the votes cast for the nuisance candidate shall be added to the candidate that shares the same surname with the former. **It does not distinguish whether the decision in the nuisance case became final and executory before or after the elections**. Notably, *Dela Cruz* emphasized that Section 72 applies to disqualification cases but not to petitions to cancel or deny due course a certificate of candidacy under Sections 69 for nuisance candidates.[47]

To reiterate, in a nuisance petition, the votes of the nuisance candidate shall be credited to the legitimate candidate once the decision becomes final and executory, whether before or after the elections. *Martinez III* provides the basis for this rule: "final judgments declaring a nuisance candidate should effectively cancel the certificate of candidacy filed by such candidate **as of election day**."[48]

Accordingly, when there is a final and executory judgment in a nuisance case, it shall be effective and operative as of election day. It is as if the nuisance candidate was never a candidate to be voted for because his candidacy caused confusion to the electorate and it showed his lack of *bona fide* intention to run for office. Thus, the votes for the said nuisance candidate shall be transferred to the legitimate candidate, with the similar name, as of election day also.

Similarly, in *Bautista,* even though the decision in the nuisance case only became final and executory after the elections, the Court still credited the votes of the nuisance candidate in favor of the legitimate candidate. It was highlighted therein that technicalities should not be permitted to defeat the intention of the voter, especially so if that intention is discoverable from the ballot itself.

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[47] See *supra* note 24 at 563.

[48] *Supra* note 28 at 75.

Further, the position of petitioners is unjust and oppressive. A declaration – that only decisions or resolutions in nuisance cases that became final and executory before the election shall result in the crediting of votes in favor of the legitimate candidate – would lead to harsh practices of rival political opponents and exploitations in the delays in COMELEC. As discussed in *Martinez III:*

> Given the realities of elections in our country and particularly contests involving local positions, what emerges as the paramount concern in barring nuisance candidates from participating in the electoral exercise is the avoidance of confusion and frustration of the democratic process by preventing a faithful determination of the true will of the electorate, more than the practical considerations mentioned in *Pamatong.* A report published by the Philippine Center for Investigative Journalism in connection with the May 11, 1998 elections indicated that the tactic of fielding nuisance candidates with the same surnames as leading contenders had become one (1) "dirty trick" practiced in at least parts of the country. **The success of this clever scheme by political rivals or operators has been attributed to the last-minute disqualification of nuisance candidates by the Commission, notably its slow-moving*f* decision-making.**
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> x x x x x x x x x
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> xxx The inclusion of nuisance candidates turns the electoral exercise into an uneven playing field where the bona fide candidate is faced with the prospect of having a significant number of votes cast for him invalidated as stray votes by the mere presence of another candidate with a similar surname. **Any delay on the part of the COMELEC increases the probability of votes lost in this manner**. While political campaigners try to minimize stray votes by advising the electorate to write the full name of their candidate on the ballot, still, election woes brought by nuisance candidates persist.[49]

To sanction the argument of petitioners would promote the practice of fielding nuisance candidates and delaying the resolution of nuisance cases after the election in order to prevent the proclamation of legitimate candidates. While the delays in

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[49] *Id.* at 70-72.

the resolution of the nuisance cases in the COMELEC exist, it should not be a valid reason to deprive a legitimate candidate of the votes of the electorate.

The better approach would be to allow the crediting of the votes of the nuisance candidate to the legitimate candidate, who have similar names, **regardless whether the decision or resolution of the COMELEC became final and executory before or after the elections**. In that way, the will of the electorate shall be respected as observed in *Bautista* and *Martinez III*.

In this case, respondent, a re-electionist candidate, was an apparent prey to the unscrupulous practice of fielding nuisance candidates and to the delays of the resolution of cases before the COMELEC. As early as October 21, 2015, she filed a petition to declare Rosalie a nuisance candidate because the latter chose the name "Roxas Jenn-Rose" to appear in the official ballot even though respondent already had a preferred name of "Roxas Jenny," which are confusingly similar. Further, the name "Jenn-Rose" was far from Rosalie's actual name and her real nickname was "Saleng." It was also discovered that Rosalie was not financially capable to campaign for the elections.

However, it was only on March 30, 2016, that the COMELEC declared Rosalie a nuisance candidate. Then, on April 18, 2016, Rosalie filed a motion for reconsideration consisting merely of three (3) pages. COMELEC still had twenty (20) days before the May 9, 2016 elections, to resolve such motion for reconsideration but it failed to do so. Instead, it was only on July 22, 2016, or more than two (2) months after the elections, that COMELEC issued a resolution denying the motion for reconsideration. When COMELEC attempted to serve the said resolution to Rosalie's counsel, the latter could not be located. Thus, it was only on February 15, 2017 that the COMELEC declared its resolutions final and executory.

These manifest delays in the resolution of the nuisance case negatively affected respondent and the will of the electorate. Nevertheless, as declared in *Martinez III*, the legitimate candidate should not be prejudiced by the COMELEC's inefficiency and

lethargy.[50] The technicalities employed by petitioners should not frustrate the voter's will to elect respondent as a member of the *Sangguniang Panlungsod* of Pasay. Thus, the votes for the nuisance candidate must be credited in her favor.

Correspondingly, the votes for Rosalie, a nuisance candidate, should be credited in favor of respondent, the legitimate candidate, under the second writ of execution. Thus, the TRO imposed by the Court's resolution dated November 28, 2017, must be lifted.

In a multi-slot office, the votes of the nuisance candidate are not automatically added to the legitimate candidate

Nonetheless, while the OSG argues that the votes of Rosalie should be credited in favor of respondent pursuant to *Dela Cruz,* the said votes should not be automatically added. It explained that in a multi-slot office, it is possible that the legitimate candidate and nuisance candidate may both receive votes in one ballot. In that case, the vote cast for the nuisance candidate may not automatically be credited to the legitimate candidate, otherwise, it shall result to a situation where the latter shall receive two votes from one voter.[51]

The OSG's argument is meritorious.

Section 11 (K) (b) of COMELEC Resolution No. 10083 states that method of canvassing of votes when there is a nuisance candidate, viz:

> b. In case a candidate has been declared a nuisance candidate by final and executory Decision or Resolution, the votes cast for the nuisance candidate shall be added to the candidate who share the same surname as the nuisance candidate and thereafter, the candidate who garnered the highest number of votes shall be proclaimed;

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[50] *Id*. at 72.

[51] *Rollo* (G.R. No. 235064), p. 482.

> In case of two or more candidate having the same surnames as the nuisance candidate shall be considered as stray votes and shall not be credited to any candidate;
>
> In case the nuisance candidate does not have the same surname as any candidate for the same position, the votes cast for the nuisance candidate shall be considered as stray votes;
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> x x x x x x x x x

Evidently, the rules provided by the COMELEC regarding the canvassing of votes for nuisance candidates are still insufficient because these do not consider a multi-slot office with a nuisance candidate.

In a multi-slot office, such as membership of the *Sangguniang Panlungsod,* a registered voter may vote for more than one candidate. Hence, it is possible that the legitimate candidate and nuisance candidate, having similar names, may both receive votes in one ballot. The Court agrees with the OSG that in that scenario, the vote cast for the nuisance candidate should no longer be credited to the legitimate candidate; otherwise, the latter shall receive two votes from one voter.

Therefore, in a multi-slot office, the COMELEC must not merely apply a simple mathematical formula of adding the votes of the nuisance candidate to the legitimate candidate with the similar name. To apply such simple arithmetic might lead to the double counting of votes because there may be ballots containing votes for both nuisance and legitimate candidates.

As properly discussed by the OSG, a legitimate candidate may seek another person with the same surname to file a candidacy for the same position and the latter will opt to be declared a nuisance candidate. In that scenario, the legitimate candidate shall receive all the votes of the nuisance candidate and may even receive double votes, thereby, drastically increasing his odds.[52]

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[52] *Id.* at 483.

At the same time, it is also possible that a voter may be confused when he reads the ballot containing the similar names of the nuisance candidate and the legitimate candidate. In his eagerness to vote, he may shade both ovals for the two candidates to ensure that the legitimate candidate is voted for. Similarly, in that case, the legitimate candidate may receive two (2) votes from one voter by applying the simple arithmetic formula adopted by the COMELEC when the nuisance candidate's COC is cancelled.

Thus, to ascertain that the votes for the nuisance candidate is accurately credited in favor of the legitimate candidate with the similar name, the COMELEC must also inspect the ballots. In those ballots that contain both votes for nuisance and legitimate candidate, only one count of vote must be credited to the legitimate candidate.

While the perils of a fielding nuisance candidates against legitimate candidates cannot be overemphasized, it must also be guaranteed that the votes of the nuisance candidate are properly and fairly counted in favor of the said legitimate candidate. In that manner, the will of the electorate is upheld.

In this case, the certificate of canvass stated that Rosalie received 13,328 votes; while respondent received 33,738 votes. In the first writ of execution, the COMELEC applied the simple arithmetic formula of counting the 13,328 votes cast for Rosalie in favor of respondent, thus, the total number of votes garnered by respondent was 47,066. Similarly, in the second writ of execution, the COMELEC applied the same simple arithmetic formula and stated that respondent had 47,066 votes.

As discussed-above, the simple arithmetic formula of the COMELEC in a multi-slot office, where there is a nuisance candidate, is inaccurate. Thus, the ballots containing the votes for nuisance candidate Rosalie must be credited in favor of respondent. However, if there are ballots which contain both votes in favor of Rosalie and respondent, only one vote shall be credited in favor of respondent.

Final Note

The present petition arose from the delay in the disposition of nuisance cases by the COMELEC. In *Martinez III,* the Court emphasized that the law mandates the COMELEC and the courts to give priority to cases of disqualification to the end that a final decision shall be rendered not later than **seven days** before the election in which the disqualification is sought.[53]

As discussed earlier, the COMELEC still had **twenty (20) days** before the May 9, 2016 elections to resolve such motion for reconsideration of Rosalie but it failed to do so. Instead, it was only on July 22, 2016, or more than two (2) months after the elections, that the COMELEC denied the motion for reconsideration.

Had the COMELEC promptly resolved the simple motion for reconsideration of Rosalie before the elections, then her name could have been removed from the ballots and prevented confusion among the voters with the similar names. That delay created the unwarranted present scenario. The upcoming election is not a valid excuse for the sluggish disposition of crucial cases for disqualification of nuisance candidates. Any delay on the part of the COMELEC increases the probability of votes lost due to the confusion brought about by nuisance candidates.

Nevertheless, the COMELEC can still rectify itself. The declaration of Rosalie as a nuisance candidate changed the result of the elections for the position of Members of the *Sangguniang Panlungsod* of the First District of Pasay City. Thus, the COMELEC must execute the second writ of execution immediately and without any further delay subject to the modification of the counting of votes in a multi-slot office.

Further, the COMELEC must amend its Resolution No. 10083 to reflect the proper counting of votes in a multi-slot office when there is a nuisance candidate.

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[53] *Supra* note 28 at 61, citing Section 72 of the Omnibus Election Code.

WHEREFORE, the November 8, 2017 Writ of Execution of the Commission on Elections-*En Banc* in SPA Case No. 15-029 (DC) is **AFFIRMED with MODIFICATION** as follows:

1. **RE-CONVENE** the Special Board of Canvassers of Pasay City for the purpose of re-canvassing the votes for the position of Members of the *Sangguniang Panlungsod* of the First District of Pasay City;
2. **COUNT** the votes for nuisance candidate Rosalie Isles Roxas in favor of respondent Jennifer Antiquera Roxas. However, if there is a ballot that contains votes in favor of both Rosalie Isles Roxas and respondent Jennifer Antiquera Roxas, only one vote shall be counted in favor of the latter; and
3. **PROCLAIM** the duly elected Members of the *Sangguniang Panlungsod* for the First District of Pasay City in accordance with the result of the proper counting of votes.

The Temporary Restraining Order imposed by the Court in its Resolution dated November 28, 2017, is **LIFTED**.

This Decision is immediately executory. The Commission on Elections is **ORDERED** to complete the implementation of the November 8, 2017 Writ of Execution, as modified, within thirty (30) days from receipt of this Decision.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, Bersamin, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., and *Reyes, J. Jr., JJ.,* concur.

Del Castillo, J., on official leave.

SECOND DIVISION

[A.C. No. 11826. September 5, 2018]
(Formerly CBD Case No. 13-3801)

ROLANDO N. UY, *complainant, vs.* **ATTY. EDMUNDO J. APUHIN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NOTARY PUBLIC; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSONS WHO SIGNED THE SAME ARE THE VERY SAME PERSONS WHO EXECUTED IT AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND TRUTH OF WHAT ARE STATED THEREIN; SECTION 2 (B), RULE IV OF THE 2004 RULES ON NOTARIAL PRACTICE, VIOLATED IN CASE AT BAR. [A] notary public should not notarize a document unless the persons who signed the same are the very same persons who executed it and personally appeared before him to attest to the contents and truth of what are stated therein. In fact, Section 2(b), Rule IV of the 2004 Rules on Notarial Practice clearly requires, among others, that: "[a] *person shall not perform a notarial act if the person involved as signatory to the instrument or document* x x x *is not in the notary's presence personally at the time of the notarization.*" The records disclose that Atty. Apuhin indeed failed to observe the above Rules in notarizing the *Joint Waiver.*

2. ID.; ID.; ID.; SECTIONS 12 (1) AND (2), RULE II OF THE 2004 RULES ON NOTARIAL PRACTICE REQUIRING THE PRESENTATION OF COMPETENT EVIDENCE OF COMPETENT IDENTITY, VIOLATED IN CASE AT BAR. As well, the finding that Atty. Apuhin lacked due diligence in the performance of his duties as a notary public is fortified by his own statements in his *Counter-Affidavit.* In it, Atty. Apuhin argued not only that it was "beyond his obligation as such Notary Public to investigate the [identity of his] clients," but that he "rel[ied] [solely] on the representation[s] x x x made [to] him [in] his office." Such reliance on mere representations made by parties, without requiring the presentation of competent

evidence of identity, clearly runs counter to the requirement of Sections 12(1) and (2), Rule II of the 2004 Rules on Notarial Practice, that evidence of competent identity must be: SEC. 12. x x x (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification. All told, the Court finds that the evidence adduced is sufficient to support the allegations against Atty. Apuhin.

R E S O L U T I O N

CAGUIOA, *J.*:

Before this Court is a complaint for disbarment[1] filed by Complainant Rolando N. Uy (Uy) against Respondent Atty. Edmundo J. Apuhin (Atty. Apuhin) based on the latter's alleged acts of false notarization of documents in violation of Administrative Matter No. 02-8-13-SC or the 2004 Rules on Notarial Practice.

The Factual Antecedents

Uy worked as an Overseas Filipino Worker in Taiwan between January 29, 2000 and March 16, 2008.[2] Together with his wife, Susan Magon-Uy, he owned a 600-square meter land[3] in Carmen, North Cotabato (subject property).[4] In his *Complaint-Affidavit,* Uy narrates that upon his return to the Philippines, he discovered

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[1] *Rollo,* pp. 3-4.

[2] *Id*. at 3, see also Certification from the Bureau of Immigration, *id*. at 12.

[3] *Id*. at 28.

[4] *Id*.

that a *Joint Waiver of Rights, Interests and Ownership*[5] *(Joint Waiver)* covering the subject property had been ostensibly executed by him and his wife on **July 2, 2006.** In the *Joint Waiver,* it was made to appear that Uy and his wife had conveyed the property to their son, Rick Rosner Uy (Rick Uy).[6] Attached to the *Joint Waiver* was an application for a Building Permit at the Carmen Municipal Engineer's Office – Carmen, North Cotabato, also ostensibly signed by Uy and his wife.[7] The *Joint Waiver* was acknowledged before Atty. Apuhin per Doc. No. 216, Page No. 44, Book No. 29, series of 2006.[8]

On May 8, 2013, knowing that he and his wife were both in Taiwan when the *Joint Waiver* was executed and acknowledged before Atty. Apuhin on July 2, 2006, Uy filed an administrative complaint against Atty. Apuhin before the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP-CBD), charging the latter with falsity in the conduct of his duties as a notary public,[9] and for violation of Sections 3[10] and 5[11] of

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[5] *Id.* at 25.

[6] *Id.*

[7] *Id.* at 45.

[8] *Id.* at 25, 45.

[9] *Id.* at 4.

[10] SEC. 3. *Disqualifications.* — A notary public is disqualified from performing a notarial act if he:

(a) is a party to the instrument or document that is to be notarized;
(b) will receive, as a direct or indirect result, any commission, fee, advantage, right, title, interest, cash, property, or other consideration, except as provided by these Rules and by law; or
(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

[11] SEC. 5. *False or Incomplete Certificate.* — A notary public shall not:

(a) execute a certificate containing information known or believed by the notary to be false.
(b) affix an official signature or seal on a notarial certificate that is incomplete.

Rule IV of the 2004 Rules on Notarial Practice and of the Lawyers' Oath.[12]

Further, Uy alleges that his ownership rights over his land were prejudiced by Atty. Apuhin's false notarization of the *Joint Waiver,* considering that he was compelled to litigate to protect his rights *(i.e.,* Uy needed to institute Civil Case No. 12-05 for *Specific Performance, Quieting of Title, Declaration of Trust, Preliminary Injunction and Accounting* and criminal case for *Falsification of Public Documents,* against his son and his sister, the property's caretaker).[13]

In an *Order*[14] dated May 10, 2013, the IBP-CBD, in CBD Case No. 13-3801, ordered Atty. Apuhin to submit his answer to the complaint.

On June 28, 2013, Atty. Apuhin submitted his *Counter-Affidavit.*[15] In it, he claimed that as a notary public, it was not his task to inquire into the whereabouts of his "clients" and that, insofar as the July 2, 2006 acknowledgement of the *Joint Waiver* was concerned, he merely "[believed] the representation of the parties [that they were] members of the same family" when the *Joint Waiver* was presented to him for notarization.[16] Atty. Apuhin further avers that he could not remember or memorize the face of all his clients, more so as to whether parties have signed the documents personally.[17] Finally, he alleges that the *Joint Waiver* "turned out to be x x x harmless" considering that it was only used by Rick Uy to obtain a Building Permit and the ownership of the property had not been transferred.[18]

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[12] *Rollo,* p. 45.

[13] *Id.* at 3.

[14] *Id.* at 8.

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

[16] *Id.* at 9.

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

[18] *Id.* at 11.

On October 9, 2013, the IBP-CBD[19] directed Uy and Atty. Apuhin to attend the mandatory conference. When the parties failed to appear, the IBP-CBD rescheduled the mandatory conference to December 6, 2013,[20] and later to December 15, 2013.[21]

The Report and Recommendation of the IBP-CBD

In a *Report and Recommendation*[22] dated June 11, 2014 the IBP-CBD recommended that Atty. Apuhin be disqualified from his commission as a notary public for one (1) year and suspended from the practice of law, also for one (1) year,[23] *viz.*:

> Hence, considering the foregoing, it is respectfully recommended that disbarment proceedings against the herein respondent [Atty. Apuhin] be upheld. Furthermore, it appeared *(sic)* that this is the first time respondent counsel committed said violation and considering that he is in his senior years (records show that he is 62 years of age)[,] it is recommended that the notarial commission of herein respondent be revoked, with the disqualification to be commissioned as notary public for one (1) year and the penalty of suspension from law practice be meted for the same period.
>
> Respectfully submitted.[24]

As basis for its recommendation, the IBP-CBD found that Atty. Apuhin violated Section 2(b)(1) & (2), Rule IV of the 2004 Rules on Notarial Practice, which in turn provide:

> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

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[19] Through Commissioner Suzette A. Mamon, see *id.* at 15.

[20] *Rollo,* p. 22.

[21] *Id.* at 36.

[22] *Id.* at 44-50.

[23] *Id.* at 50.

[24] *Id.* at 92.

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

Accordingly, the IBP-CBD ruled that a notary public should not notarize a document unless the person who signed it is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated in that document.[25] Thus, without the personal appearance of the person signing the document, the notary public would have no way of verifying the signature of the acknowledging party and of ascertaining that the document is indeed the party's act or deed.[26]

In Atty. Apuhin's case, the IBP-CBD found that he failed to exercise the due diligence required of a good father of a family in not determining the true identity of the persons who allegedly signed the *Joint Waiver*.[27] The IBP-CBD likewise observed that, having been a practicing lawyer and a notary public for 35 years, Atty. Apuhin should have known and discerned the import of the documents presented before him *(i.e.,* acts involving the alienation of property).[28]

Findings of the IBP Board of Governors

On January 6, 2015, the IBP Board of Governors issued a *Resolution* in CBD Case No. 13-3801 and **adopted and approved with modification,** the Report and Recommendation of the IBP-CBD, *viz.*:

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[25] *Id*. at 47.

[26] *Id*.

[27] *Id*. at 48.

[28] *Id*. at 92.

***RESOLVED** to **ADOPT** and **APPROVE,** as it is hereby **ADOPTED** and **APPROVED, with modification,** the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", finding the recommendation to be fully supported by the evidence on record and applicable laws and Respondent's violation of Rule II Section 12[29] (1) and (2) and Rule IV Section 2[30] (b)(1) & (2) of the 2004 Rules on Notarial Practice. Thus, [Atty. Apuhin's] notarial commission, if presently commissioned, is immediately **REVOKED.** Furthermore, he is **DISQUALIFIED** from being commissioned as a Notary Public for two (2) years and is **SUSPENDED** from the practice of law for six (6) months.*[31] (Additional emphasis supplied and italics in the original)

Subsequently, in a *Resolution* dated January 26, 2017, the IBP Board of Governors denied Atty. Apuhin's motion for reconsideration,[32] there being no new reason or argument adduced to reverse the previous findings and decision of the Board of Governors.[33]

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[29] SEC. 12. *Competent Evidence of Identity.* — The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

[30] SEC. 2. x x x

x x x x x x x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

[31] *Rollo,* p. 84.

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

[33] *Id.* at 82.

The Court s Ruling

After a judicious examination of the records and submission of the parties, the Court upholds and adopts the findings and recommendation of the IBP Board of Governors in CBD Case No. 13-3801.

At the outset, it does not escape the Court's attention that on its face, the *Joint Waiver* shows that it was allegedly signed and executed by Uy and his wife on **July 2, 2006.** Mere reference to the record reveals that Uy was in fact in Taiwan — as evinced by a Certification[34] from the Bureau of Immigration — the day that Atty. Apuhin notarized the *Joint Waiver* in his office in North Cotabato, Philippines.

Suffice it to state that the notarization of a document is vested with substantive public interest.[35] Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.[36] Consequently, acknowledgment of a document *(i.e.,* the act of a person who executed a deed, of going before a competent officer to declare the same to be his act or deed)[37] must be done in accordance with the requirements of the 2004 Rules on Notarial Practice.

Specifically, Section 1, Rule II of the 2004 Rules on Notarial Practice requires that, in the acknowledgment of documents, an individual:

> SECTION 1. x x x
> (a) *appears in person* before the notary public and presents an integrally complete instrument or document;
> (b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

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[34] Dated January 8, 2013, *id*. at 5.

[35] *Fabay v. Atty. Resuena,* 779 Phil. 151, 158 (2016).

[36] *Id*., citing *Bernardo v. Atty. Ramos,* 433 Phil. 8, 15-16 (2002).

[37] *Malvar v. Baleros,* March 8, 2017, 819 SCRA 620, 634.

> (c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity that he has the authority to sign in a particular representative capacity, that he has the authority to sign in that capacity. (Italics and underscoring supplied)

Thus, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed it and personally appeared before him to attest to the contents and truth of what are stated therein.[38] In fact, Section 2(b), Rule IV of the 2004 Rules on Notarial Practice clearly requires, among others, that: "[a] *person shall not perform a notarial act if the person involved as signatory to the instrument or document* x x x *is not in the notary's presence personally at the time of the notarization.*"[39]

The records disclose that Atty. Apuhin indeed failed to observe the above Rules in notarizing the *Joint Waiver.*

As well, the finding that Atty. Apuhin lacked due diligence in the performance of his duties as a notary public is fortified by his own statements in his *Counter-Affidavit.* In it, Atty. Apuhin argued not only that it was "beyond his obligation as such Notary Public to investigate the [identity of his] clients," but that he "rel[ied] [solely] on the representation[s] x x x made [to] him [in] his office."[40]

Such reliance on mere representations made by parties, without requiring the presentation of competent evidence of identity, clearly runs counter to the requirement of Sections 12(1) and (2), Rule II of the 2004 Rules on Notarial Practice, that evidence of competent identity must be:

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[38] See *Fabay v. Resuena, supra* note 35.

[39] Italics supplied.

[40] *Rollo,* p. 9.

SEC. 12. x x x

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

All told, the Court finds that the evidence adduced is sufficient to support the allegations against Atty. Apuhin.

Guided by jurisprudential precedents[41] and to serve as a reminder to notaries public to observe with utmost care the basic requirements in the performance of their duties,[42] the Court deems it proper that the notarial commission of Atty. Apuhin be revoked, if still existing, and to disqualify him from appointment as a notary public for two (2) years. He is also suspended from the practice of law for six (6) months. Contrary, however, to complainant's position that Atty. Apuhin should be disbarred, the Court believes that disbarment is too severe a penalty and that the sanctions herein imposed already suffice. Removal from the Bar should not be decreed when any punishment less severe — reprimand, temporary suspension or fine — would accomplish the end desired.[43]

WHEREFORE, the Court finds Atty. Edmundo J. Apuhin **LIABLE** for violation of Section 12(1) & (2), Rule II and Section 2(b)(1) & (2), Rule IV of the 2004 Rules on Notarial Practice. Atty. Edmundo J. Apuhin's notarial commission, if

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[41] See *Malvar v. Baleros, supra* note 37, at 635-636, citing *Dizon v. Atty. Cabucana, Jr.,* 729 Phil. 109 (2014) and *Atty. Bartolome v. Atty. Basilio,* 771 Phil. 1 (2015).

[42] *Fabay v. Atty. Resuena, supra* note 35.

[43] *Malvar v. Baleros, supra* note 37, at 636.

presently commissioned, is hereby **REVOKED.** Further, he is **DISQUALIFIED** from being commissioned as a Notary Public for **two (2) years** and is **SUSPENDED from the practice of law for six (6) months** effective immediately upon receipt of this Resolution.

SO ORDERED.

Carpio, SAJ (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.,* concur.

SECOND DIVISION

[A.M. No. P-17-3627. September 5, 2018]

ERLINDA A. FOSTER, *complainant, vs.* **RODOLFO T. SANTOS, JR., Sheriff III, Municipal Trial Court in Cities, Branch 2, Laoag City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SHERIFF; A SHERIFF S DUTY TO ENFORCE THE WRIT OF EXECUTION IS MANDATORY AND PURELY MINISTERIAL; CASE AT BAR. A sheriff's duty to enforce the writ of execution is mandatory and purely ministerial. As an agent of the law whose primary duty is to execute the final orders and judgments of the court, a sheriff has the ministerial duty to enforce the writ of execution promptly and expeditiously to ensure that the

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[*] Designated additional member per Special Order No. 2587 dated August 28, 2018.

implementation of the judgment is not unduly delayed. Thus, a sheriff should not wait for the litigants to follow-up the implementation of the writ before proceeding to enforce the writ of execution. Respondent sheriff received the writs of execution on 24 April 2012, but he was only able to serve the writs of execution on Atty. Agtang, the judgment obligor, on 18 September 2012. Despite service of the writs of execution on Atty. Agtang, respondent sheriff still failed to enforce the writs of execution. Respondent sheriff merely relied on Atty. Agtang's statement that he would personally settle the matter with complainant. When complainant filed the administrative complaint on 6 May 2014, or two years after respondent sheriff received the writs of execution, the said writs were still not fully enforced.

2. **REMEDIAL LAW; RULES OF COURT; EXECUTION OF JUDGMENTS FOR MONEY; THE SHERIFF SHALL DEMAND FROM THE JUDGMENT OBLIGOR THE IMMEDIATE PAYMENT OF THE FULL AMOUNT STATED IN THE WRIT OF EXECUTION AND ALL LAWFUL FEES; VIOLATED IN CASE AT BAR.** Under Section 9, Rule 39 of the Rules of Court, respondent sheriff should have demanded from Atty. Agtang, the judgment obligor, the immediate payment of the full amount stated in the writs of execution and all the lawful fees. Respondent sheriff was remiss in his duty when he failed to compel Atty. Agtang to immediately pay the amount of the judgment debt, and instead granted the latter's request to personally settle his debts with complainant which was clearly a tactic to delay the execution of the judgment. It is only when the judgment obligor cannot pay all or part of the judgment debt that the sheriff shall levy on the properties of the judgment obligor or garnish the debts due the judgment obligor and other credits.

3. **ID.; ID.; ID.; THE SHERIFF IS MANDATED TO MAKE A REPORT TO THE COURT WITHIN 30 DAYS AFTER HIS RECEIPT OF THE WRIT OF EXECUTION AND EVERY 30 DAYS THEREAFTER UNTIL JUDGMENT IS SATISFIED IN FULL, OR UNTIL ITS EFFECTIVITY EXPIRES; VIOLATED IN CASE AT BAR.** Not only was respondent sheriff negligent in enforcing the writs of execution,

he also failed to observe the requirement on the return of the writs of execution as provided under Section 14, Rule 39 of the Rules of Court. x x x Under this provision, a sheriff is mandated to make a report to the court within 30 days after his receipt of the writ of execution and every 30 days thereafter until the judgment is satisfied in full, or until its effectivity expires. The periodic reports are necessary to update the court on the status of the writ of execution and to enable the court to take the necessary steps to ensure the speedy execution of decisions. Although respondent sheriff received the writs of execution on 24 April 2012, it was only after two years that he submitted a Sheriff's Report dated 9 May 2014, and only to comply with the court's order dated 7 May 2014, directing him to submit the report within five days. Although respondent sheriff explained why the writs remained unsatisfied, there was no explanation on his failure to make the mandated periodic reports and the delay in the submission of the Sheriff's Return. Respondent sheriff's failure to make the periodic reports on the status of the writ of execution renders him administratively liable.

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SIMPLE NEGLECT OF DUTY; DEFINED AS THE FAILURE OF AN EMPLOYEE TO GIVE ATTENTION TO A TASK EXPECTED OF HIM AND SIGNIFIES A DISREGARD OF DUTY RESULTING FROM CARELESSNESS OR INDIFFERENCE; CASE AT BAR. Respondent sheriff's delay in enforcing the writs of execution and his failure to make the periodic reports on the status of the writs of execution constitute simple neglect of duty. Simple neglect of duty is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of duty resulting from carelessness or indifference. Under Section 46(D) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), simple neglect of duty is classified as a less grave offense and is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. Section 47 of RRACCS allows the penalty of fine in lieu of suspension in certain circumstances.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative complaint filed by complainant Erlinda A. Foster (complainant) charging respondent Rodolfo T. Santos, Jr., (respondent sheriff) Sheriff III of Branch 2, Municipal Trial Court in Cities (MTCC), Laoag City, with gross neglect of duty and inefficiency.

The Facts

Complainant filed an affidavit-complaint dated 6 May 2014 charging respondent sheriff with gross neglect of duty and inefficiency for failure to fully enforce the writs of execution issued by the MTCC, Branch 2 of Laoag City, in connection with Small Claims Case Nos. 2011-0077 and 2011-0079, entitled *Spouses David Foster and Erlinda Foster v. Atty. Jaime Agtang*.

Complainant alleged that on 9 December 2011, she and her husband filed two small claims cases against their former counsel, Atty. Jaime Agtang (Atty. Agtang): (1) Small Claims Case No. 2011-0077 for the ₱100,000 unpaid obligation; and (2) Small Claims Case No. 2011-0079 for the ₱22,000 unpaid obligation. The cases were raffled to MTCC, Branch 2, Laoag City.

On 24 January 2012, MTCC Presiding Judge Jonathan Asuncion rendered judgment in Small Claims Case Nos. 2011-0077 and 2011-0079, ordering Atty. Agtang to pay Spouses David and Erlinda Foster the amount of ₱100,000 and ₱22,000, respectively, plus interest and costs of the suits. The judgment became final and executory and on 23 April 2012, the trial court issued the corresponding writs of execution, which were received by respondent sheriff on 24 April 2012. Complainant paid the sheriff's fees for the implementation of the writs on 24 April 2012. When respondent sheriff failed to contact complainant for updates on the writs of execution, complainant

sent a letter[1] dated 19 July 2012 to Judge Asuncion informing him of respondent sheriff's failure to enforce the writs of execution against Atty. Agtang. Complainant also furnished the Office of the Court Administrator (OCA) with a copy of the letter. In her letter, complainant expressed her disbelief and suspicion over respondent sheriff's inability to locate Atty. Agtang considering that the latter had been frequently seen in the Hall of Justice and the City Hall. Complainant surmised that Atty. Agtang's 39 years of law practice in Laoag City may have caused him to wield considerable influence in the courts. Complainant also requested a meeting with Judge Asuncion regarding the matter.

On 25 July 2012, complainant met with Judge Asuncion, who assured her that respondent sheriff was doing his best to serve the writs of execution on Atty. Agtang. Judge Asuncion tried to allay complainant's fear of bias, stressing that such was unfounded considering that the judgments in the two cases were in her favor.

Subsequently, complainant learned that an Isuzu Crosswind, which was encumbered with China Bank in Laoag City, was registered under the name of Atty. Agtang. Complainant tried to verify the status of the encumbrance from China Bank, which refused to release any information without a court order. Thus, on 16 August 2012, complainant filed with the MTCC an *Ex Parte Manifestation/Motion* for the issuance of an order directing China Bank to submit to the court a statement of the status of the chattel mortgage on the Isuzu Crosswind.[2]

Meanwhile, on 16 September 2012, respondent sheriff sent a letter[3] to Judge Asuncion regarding the matters raised by complainant. In his letter, respondent sheriff explained that he

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[1] *Rollo*, pp. 13-13-A. Annex "B".

[2] *Id.* at 13-B, Annex "C".

[3] *Id.* at 16-17. Annex "D".

tried to serve the writs of execution on Atty. Agtang at his law office but he was informed that Atty. Agtang seldom goes to the office. Respondent sheriff also went to Atty. Agtang's residence where he was told that Atty. Agtang was in Manila. He denied being biased in favor of Atty. Agtang, and alleged that he exerted efforts to locate properties registered in the name of Atty. Agtang in the event of non-payment of the money judgment in cash. However, the Certification dated 14 September 2012 issued by the Land Transportation Office (LTO) shows that the Isuzu Crosswind registered in the name of Atty. Agtang was encumbered to China Bank,[4] and thus, cannot be levied. Also, per Certification of the Office of the Provincial Assessor of Ilocos Norte dated 17 August 2012,[5] the only real property registered under the name of Spouses Jaime and Eva Agtang is their residential home located in Vintar, Ilocos Norte, which under the law is exempt from execution of judgment. Respondent sheriff stated that he was still trying to locate Atty. Agtang in order to formally serve the writs of execution on him.

Relying on the letter of respondent sheriff, complainant waited for the execution of the judgment. When complainant still heard nothing from respondent sheriff, and the judgment remained unsatisfied, complainant sent a letter dated 21 August 2013 to Court Administrator Jose Midas Marquez, reporting the failure of respondent sheriff to implement the writs of execution against Atty. Agtang. Complainant stated that since filing the *Ex Parte Manifestation/Motion* on 16 August 2012, she has not heard anything from respondent sheriff. Complainant assumed that the writs were not served on Atty. Agtang, who still failed to contact her since the hearing on 24 January 2012.

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[4] *Id*. at 20.

[5] *Id*. at 21. The Certification also stated that "no property is declared under the name of ATTY. JAIME AGTANG as sole owner."

In a letter dated 22 October 2013,[6] respondent sheriff requested complainant to furnish him a copy of a certificate of non-encumbrance from China Bank so he could levy the Isuzu Crosswind. Respondent sheriff stated in his letter that China Bank has not issued any certification to him despite his request and follow-up. In her letter-reply dated 12 November 2013,[7] complainant stated that she could not secure a certification of non-encumbrance from China Bank without a court order. Complainant questioned respondent sheriff's act of passing onto her the burden of securing the said certificate which should be the latter's duty. Complainant also inquired from respondent sheriff whether he was able to serve the writs of execution on Atty. Agtang. On the same day, complainant wrote Judge Asuncion on the possibility of issuing a court order to China Bank to furnish the court with the certification of non-encumbrance as regards the Isuzu Crosswind owned by Atty. Agtang.[8]

Judge Asuncion issued an Order dated 21 November 2013,[9] directing Mr. Hipolito Arde, Chief of Office of LTO, Laoag City, to issue a certification indicating the status of the Isuzu Crosswind to determine whether it is still encumbered to China Bank. In a letter dated 23 January 2014, the Acting Records Officer of LTO sent a letter to Judge Asuncion with a certified true copy of the certificate of registration of the Isuzu Crosswind dated 16 July 2002 showing that the vehicle was encumbered to China Bank. On 7 May 2014, Judge Asuncion issued an order directing respondent sheriff to submit his report on the status of the writs of execution issued by the court on 23 April 2012.[10]

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[6] *Id*. at 25.

[7] *Id*. at 26-27. Annex "G".

[8] *Id*. at 28. Annex "H".

[9] *Id*. at 107-108.

[10] *Id*. at 118. Annex "M".

In his Comment dated 29 August 2014,[11] respondent sheriff explained that he did not neglect his duty to serve the writs of execution on Atty. Agtang, who was hard to locate because he seldom goes to his law office and was not at his residence in Laoag. He was finally able to serve the writs on Atty. Agtang on 18 September 2012. Respondent sheriff demanded from Atty. Agtang to pay the judgment obligation but Atty. Agtang said he would talk to complainant about the matter. Whenever respondent sheriff inquired about the judgment obligation, Atty. Agtang always replied that he was already talking with complainant to settle the matter. Respondent sheriff claimed that he requested the LTO and the Provincial Assessor's Office for certifications pertaining to vehicles and real properties registered in the name of Atty. Agtang for possible levy in the event of non-payment in cash of the judgment obligation. The Certification dated 14 September 2012 of the LTO shows that the Isuzu Crosswind vehicle registered in the name of Atty. Agtang was still encumbered to China Bank, and cannot therefore be levied. The Certification dated 17 August 2012 of the Office of the Provincial Assessor of Laoag City stated that no property is declared under the name of Atty. Agtang as sole owner, and that the only real property registered under the name of Spouses Jaime and Eva Agtang is their residential home, which is exempt from execution of judgment. Respondent sheriff stated that he tried to secure a certification of non-encumbrance from China Bank on the Isuzu Crosswind, but the latter never acceded to his request. Finally, respondent sheriff denied that he never made any report on the writ and in fact submitted a Sheriff's Report dated 9 May 2014,[12] in compliance with the court's order dated 7 May 2014.

OCA s Report and Recommendations

On 27 September 2016, the OCA submitted its report with the following recommendations:

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[11] *Id*. at 92-96.

[12] *Id*. at 116-117. Annex "L".

1. the administrative complaint be RE-DOCKETED as a regular administrative matter against respondent Rodolfo T. Santos, Jr., Sheriff III, Branch 2, Municipal Trial Court in Cities, Laoag City, Ilocos Norte;

2. respondent Sheriff Santos be found GUILTY of simple neglect of duty and be FINED in the amount of ₱20,000.00 with STERN WARNING that a repetition of the same or a similar act shall be dealt with more severely by the Court; and

3. respondent Sheriff Santos be DIRECTED to fully implement WITH UTMOST DISPATCH the subject writs of execution issued in Small Claims Case Nos. 2011-0077 and 2011-0079 against Atty. Jaime Agtang.[13]

The OCA found respondent sheriff guilty of simple neglect of duty, which is classified as a less grave offense punishable by suspension from office for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. Considering the long years of service of respondent sheriff and since this is his first offense, the OCA recommended the penalty of a ₱20,000 fine instead of suspension to prevent any undue adverse effect on public service if respondent sheriff is suspended.

The Court s Ruling

The Court agrees with the OCA's finding that respondent sheriff is guilty of simple neglect of duty but increases the fine to an amount equivalent to his salary for one month.

A sheriff's duty to enforce the writ of execution is mandatory and purely ministerial.[14] As an agent of the law whose primary duty is to execute the final orders and judgments of the court, a sheriff has the ministerial duty to enforce the writ of execution promptly and expeditiously to ensure that the implementation

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[13] *Id*. at 137-138.

[14] *Olympia-Geronilla v. Montemayor, Jr.*, A.M. No. P-17-3676, 5 June 2017, 825 SCRA 315.

of the judgment is not unduly delayed.[15] Thus, a sheriff should not wait for the litigants to follow-up the implementation of the writ before proceeding to enforce the writ of execution.[16]

Respondent sheriff received the writs of execution on 24 April 2012, but he was only able to serve the writs of execution on Atty. Agtang, the judgment obligor, on 18 September 2012. Despite service of the writs of execution on Atty. Agtang, respondent sheriff still failed to enforce the writs of execution. Respondent sheriff merely relied on Atty. Agtang's statement that he would personally settle the matter with complainant. When complainant filed the administrative complaint on 6 May 2014, or two years after respondent sheriff received the writs of execution, the said writs were still not fully enforced.

Under Section 9, Rule 39 of the Rules of Court,[17] respondent sheriff should have demanded from Atty. Agtang, the judgment

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[15] *Mahusay v. Gareza*, A.M. No. P-16-3430, 1 March 2016, 785 SCRA 302.

[16] *Atty. Sanglay v. Padua II*, 762 Phil. 314 (2015), citing *Tablate v. Rañeses*, 574 Phil. 536 (2008).

[17] Section 9. *Execution of judgments for money, how enforced.* –

(a) *Immediate payment on demand.* — The officer shall enforce an execution of a judgment for money by demanding from the judgment obligor the immediate payment of the full amount stated in the writ of execution and all lawful fees. The judgment obligor shall pay in cash, certified bank check payable to the judgment obligee, or any other form of payment acceptable to the latter, the amount of the judgment debt under proper receipt directly to the judgment obligee or his authorized representative if present at the time of payment. The lawful fees shall be handed under proper receipt to the executing sheriff who shall turn over the said amount within the same day to the clerk of court of the court that issued the writ.

x x x x x x x x x

(b) *Satisfaction by levy.* — If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor

obligor, the immediate payment of the full amount stated in the writs of execution and all the lawful fees. Respondent sheriff was remiss in his duty when he failed to compel Atty. Agtang to immediately pay the amount of the judgment debt, and instead granted the latter's request to personally settle his debts with complainant which was clearly a tactic to delay the execution of the judgment. It is only when the judgment obligor cannot pay all or part of the judgment debt that the sheriff shall levy on the properties of the judgment obligor or garnish the debts due the judgment obligor and other credits.

Not only was respondent sheriff negligent in enforcing the writs of execution, he also failed to observe the requirement on the return of the writs of execution as provided under Section 14, Rule 39 of the Rules of Court:

Section 14. *Return of writ of execution*. — The writ of execution shall be returnable to the court issuing it immediately after the judgment has been satisfied in part or in full. If the judgment cannot be satisfied in full within thirty (30) days after his receipt of the writ, the officer shall report to the court and state the reason therefor. Such writ shall continue in effect during the period within which the judgment may be enforced by motion. The officer shall make a report to the court every thirty (30) days on the proceedings taken thereon until the judgment is satisfied in full, or its effectivity expires. The returns or periodic reports shall set forth the whole of the proceedings taken, and shall be filed with the court and copies thereof promptly furnished the parties.

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does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

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(c) *Garnishment of debts and credits*. — The officer may levy on debts due the judgment obligor and other credits, including bank deposits, financial interests, royalties, commissions and other personal property not capable of manual delivery in the possession or control of third parties. Levy shall be made by serving notice upon the person owing such debts or having in his possession or control such credits to which the judgment obligor is entitled. The garnishment shall cover only such amount as will satisfy the judgment and all lawful fees.

x x x x x x x x x

Under this provision, a sheriff is mandated to make a report to the court within 30 days after his receipt of the writ of execution and every 30 days thereafter until the judgment is satisfied in full, or until its effectivity expires. The periodic reports are necessary to update the court on the status of the writ of execution and to enable the court to take the necessary steps to ensure the speedy execution of decisions.[18]

Although respondent sheriff received the writs of execution on 24 April 2012, it was only after two years that he submitted a Sheriffs Report dated 9 May 2014, and only to comply with the court's order dated 7 May 2014, directing him to submit the report within five days. Although respondent sheriff explained why the writs remained unsatisfied, there was no explanation on his failure to make the mandated periodic reports and the delay in the submission of the Sheriff's Return. Respondent sheriffs failure to make the periodic reports on the status of the writ of execution renders him administratively liable.[19]

Respondent sheriff's delay in enforcing the writs of execution and his failure to make the periodic reports on the status of the writs of execution constitute simple neglect of duty.[20] Simple neglect of duty is defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of duty resulting from carelessness or indifference.[21] Under Section 46(D) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), simple neglect of duty is classified as a less grave offense and is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense

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

[19] *Id*.

[20] See *Astorga and Repol Law Offices v. Roxas*, 692 Phil. 507 (2012); *Tablate v. Rañeses*, 574 Phil. 536 (2008).

[21] *Office of the Court Administrator v. Licay*, A.M. Nos. P-11-2959 and P-14-3230, 6 February 2018; *Office of the Court Administrator v. Cabrera-Faller*, A.M. Nos. RTJ-11-2301, RTJ-11-2302 and 12-9-188-RTC, 16 January 2018.

and dismissal from the service for the second offense.[22] Section 47 of RRACCS allows the penalty of fine in lieu of suspension in certain circumstances.[23] Thus, the Court has imposed the penalty of fine as an alternative to suspension to prevent any undue adverse effect on public service which would result if work was left unattended on account of respondent's suspension.[24] Since this is respondent sheriff's first offense and considering his years of service in the judiciary, the imposition of a fine equivalent to his salary for one month is deemed more appropriate than suspension.[25]

WHEREFORE, the Court finds respondent Rodolfo T. Santos, Jr., Sheriff III, Municipal Trial Court in Cities, Branch 2, Laoag City, **GUILTY** of simple neglect of duty and imposes upon him a **FINE** in an amount equivalent to his salary for one month, with a **STERN WARNING** that a repetition of the same or similar offense will be dealt with more severely.

Let a copy of this Decision be attached to the records of respondent sheriff Rodolfo T. Santos, Jr. in the Office of the Administrative Services, Office of the Court Administrator.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, A. Jr., and *Reyes, J. Jr.*,[*] *JJ.*, concur.

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[22] This is now covered under Section 50(D) of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS), which took effect on 17 August 2017.

[23] Section 52 under the 2017 RACCS.

[24] *Olympia-Geronilla v. Montemayor, Jr.*, *supra* note 14.

[25] See *Raut-Raut v. Gaputan*, *supra* note 18; *Atty. Sanglay v. Padua II*, *supra* note 16.

[*] Designated additional member per Special Order No. 2586 dated 28 August 2018.

THIRD DIVISION

[G.R. No. 186403. September 5, 2018]

MAYOR JONG*f* AMADO CORPUS, JR. and CARLITO SAMONTE, *petitioners, vs.* **HON. JUDGE RAMON D. PAMULAR OF BRANCH 33, GUIMBA, NUEVA ECIJA, MRS. PRISCILLA ESPINOSA,[*] and NUEVA ECIJA PROVINCIAL PUBLIC PROSECUTOR FLORO FLORENDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NONf* FOR THE FILING OF RULE 65 PETITION; EXCEPTIONS, ENUMERATED. It is settled that a motion for reconsideration is a "condition *sine qua non* for the filing of a Petition for Certiorari." This enables the court to correct "any actual or perceived error" through a "re-examination of the legal and factual circumstances of the case." To dispense with this condition, there must be a "concrete, compelling, and valid reason." However, the following exceptions apply: (a) where the order is a patent of nullity, as where the *court a quo* has no jurisdiction; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due

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[*] In some pleadings, Mrs. Espinosa is referred to as "Priscila." For consistency, this Decision will use "Priscilla" as per her signed Reply-Affidavit. *See rollo,* p. 62.

process; (h) where the proceedings [were] *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

2. ID.; ID.; ID.; ID.; FILING OF A MOTION FOR RECONSIDERATION IS A JURISDICTIONAL AND MANDATORY REQUIREMENT. Nothing in the records shows that petitioners filed a motion for reconsideration with the Regional Trial Court. Apart from bare conclusion, petitioners failed to present any plausible reason why they failed to file a motion for reconsideration before filing a petition before this Court. While this issue was raised by respondent Priscilla in her Comment, this was not sufficiently addressed by petitioners either in their Reply or Memorandum. It must be stressed that the filing of a motion for reconsideration, as well as filing it on time, is not a mere procedural technicality. These are "jurisdictional and mandatory requirements which must be strictly complied with." Therefore, petitioners' failure to file a motion for reconsideration with the Regional Trial Court before filing this Petition is fatal.

3. ID.; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; WHEN THE TRIAL COURT HAD ALREADY DETERMINED THAT PROBABLE CAUSE EXISTS FOR THE ISSUANCE OF A WARRANT OF ARREST, IT CAN PROCEED IN CONDUCTING FURTHER PROCEEDINGS ON THE AMENDED INFORMATION DESPITE THE PENDENCY OF A PETITION FOR REVIEW BEFORE THE DEPARTMENT OF JUSTICE (DOJ). [C]ourts do not meddle with the prosecutor's conduct of a preliminary investigation because it is exclusively within the prosecutor's discretion. However, once the information is already filed in court, the court has acquired jurisdiction of the case. Any motion to dismiss or determination of the guilt or innocence of the accused is within its discretion. x x x Hence, when a Regional Trial Court has already determined that probable cause exists for the issuance of a warrant of arrest, like in this case, jurisdiction is already with the Regional Trial Court. Therefore, it can proceed in conducting further proceedings on the amended information and on the issuance of a warrant despite the pendency of a Petition for Review before the Department of Justice.

4. ID.; ID.; SECTION 11(C), RULE 116 OF THE REVISED RULES OF CRIMINAL PROCEDURE PERTAINS TO SUSPENSION OF ARRAIGNMENT IN CASE OF PENDING PETITION FOR REVIEW WITH THE DOJ; IT DOES NOT SUSPEND THE EXECUTION OF A WARRANT OF ARREST FOR THE PURPOSE OF ACQUIRING JURISDICTION OVER THE ACCUSED. Rule 116, Section 11 of the Revised Rules of Criminal Procedure pertains to a suspension of an arraignment in case of a pending petition for review before the Department of Justice. It does not suspend the execution of a warrant of arrest for the purpose of acquiring jurisdiction over the person of an accused.

5. ID.; ID.; ID.; THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DENIED PETITIONERS MOTION TO SUSPEND ARRAIGNMENT BECAUSE OF THE PENDENCY OF THEIR PETITION FOR REVIEW WITH THE DOJ; SUSPENSION OF ARRAIGNMENT WILL LAST ONLY FOR A MAXIMUM PERIOD OF 60 DAYS FROM THE FILING OF THE PETITION AFTER WHICH THE COURT CAN CONTINUE WITH THE ARRAIGNMENT AND FURTHER PROCEEDINGS. Rule 116, Section 11 of the Revised Rules of Criminal Procedure provides for the grounds for suspension of arraignment. Upon motion by the proper party, the arraignment shall be suspended in case of a pending petition for review of the prosecutor's resolution filed before the Department of Justice. Petitioners filed a Manifestation and Motion dated February 9, 2009 before the Regional Trial Court, informing it about their pending Petition for Review of the Prosecutor's January 26, 2009 Resolution before the Department of Justice. Thus, respondent judge committed an error when he denied petitioners' motion to suspend the arraignment of Corpus because of the pendency of their Petition for Review before the Department of Justice. However, this Court's rule merely requires a maximum 60-day period of suspension counted from the filing of a petition with the reviewing office. Consequently, therefore, after the expiration of the 60-day period, "the trial court is bound to arraign the accused or to deny the motion to defer arraignment." Petitioners jointly filed their Petition for Review before the Department of Justice on February 9, 2009. Thus, the 60-day period has already lapsed since April 10, 2009. Hence, respondent

judge can now continue with the arraignment and further proceedings with regard to petitioner Corpus.

6. ID.; ID.; AMENDMENT OF INFORMATION; SUBSTANTIAL AMENDMENT CANNOT BE MADE AFTER ARRAIGNMENT AND ONLY THE ACCUSED WHO HAS BEEN ARRAIGNED CAN INVOKE THIS RULE; REASONS. Before an accused enters his or her plea, either formal or substantial amendment of the complaint or information may be made without leave of court. After an entry of plea, only a formal amendment can be made provided it is with leave of court and it does not prejudice the rights of the accused. After arraignment, there can be no substantial amendment except if it is beneficial to the accused. Since only petitioner Samonte has been arraigned, only he can invoke this rule. Petitioner Corpus cannot invoke this argument because he has not yet been arraigned. Once an accused is arraigned and enters his or her plea, Section 14 prohibits any substantial amendment especially those that may prejudice his or her rights. One of these rights includes the constitutional right of the accused to be informed of the nature and cause of the accusations against him or her, which is given life during arraignment. Arraignment is necessary to bring an accused in court and in notifying him or her of the cause and accusations against him or her. "Procedural due process requires that the accused be arraigned so that he [or she] may be informed of the reason for his [or her] indictment, the specific charges he [or she] is bound to face, and the corresponding penalty that could be possibly meted against him [or her]." It is during arraignment that an accused is given the chance to know the particular charge against him or her for the first time. There can be no substantial amendment after plea because it is expected that the accused will collate his or her defenses based on the contents of the information. "The theory in law is that since the accused officially begins to prepare his [or her] defense against the accusation on the basis of the recitals in the information read to him [or her] during arraignment, then the prosecution must establish its case on the basis of the same information." Aside from violating the accused's right to due process, any substantial amendment in the information will burden the accused in preparing for his or her defense. In a criminal case, due process entails, among others, that the accusation must be in due form and that the accused is given the opportunity to answer the charges against him or her. There

is a need for the accused to be supplied with the necessary information as to "why he [or she] is being proceeded against and not be left in the unenviable state of speculating why he [or she] is made the object of a prosecution, it being the fact that, in criminal cases, the liberty, even the life, of the accused is at stake." x x x Apart from violating the right of the accused to be informed of the nature and cause of his or her accusation, substantial amendments to the information after plea is prohibited to prevent having the accused put twice in jeopardy.

7. ID.; ID.; RIGHT AGAINST DOUBLE JEOPARDY; REQUISITES TO VALIDLY INVOKE THE RIGHT; DOUBLE JEOPARDY FORBIDS THE PROSECUTION OF A PERSON FOR A CRIME OF WHICH HE/SHE HAS BEEN PREVIOUSLY ACQUITTED OR CONVICTED. The constitutionally mandated right against double jeopardy is procedurally bolstered by Rule 117, Section 7 of the Revised Rules of Criminal Procedure[.] x x x In substantiating a claim for double jeopardy, the following requisites should be present: (1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as in the first. With regard the first requisite, the first jeopardy only attaches: (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent. The test for the third requisite is "whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether the second offense includes or is necessarily included in the offense charged in the first information." Also known as *"res judicata* in prison grey," the mandate against double jeopardy forbids the "prosecution of a person for a crime of which he [or she] has been previously acquitted or convicted." This is to "set the effects of the first prosecution forever at rest, assuring the accused that he [or she] shall not thereafter be subjected to the danger and anxiety of a second charge against him [or her] for the same offense."

8. ID.; ID.; ID.; RATIONALE BEHIND THE RULE ON DOUBLE JEOPARDY. Double jeopardy is a fundamental constitutional concept which guarantees that an accused may not be harassed with constant charges or revisions of the same charge arising out of the same facts constituting a single offense. When an

accused traverses the allegations in the information by entering a plea during the arraignment, he or she is already put in jeopardy of conviction. Having understood the charges, the accused after entering a plea prepares for his or her defense based on the possible evidence that may be presented by the prosecution. The protection given to the accused by the double jeopardy rule does not attach only after an acquittal or a conviction. It also attaches after the entry of plea and when there is a prior dismissal for violation of speedy trial. An arraignment, held under the manner required by the rules, grants the accused an opportunity to know the precise charge against him or her for the first time. It is called for so that he or she is "made fully aware of possible loss of freedom, even of his [or her] life, depending on the nature of the crime imputed to him [or her]. At the very least then, he [or she] must be fully informed of why the prosecuting arm of the state is mobilized against him [or her]." Thereafter, the accused is no longer in the dark and can enter his or her plea knowing its consequences. It is at this stage that issues are joined, and without this, further proceedings cannot be held without being void. Thus, the expanded concept of double jeopardy presupposes that since an accused can be in danger of conviction after his or her plea, the constitutional guarantee against double jeopardy should already apply.

9. ID.; ID.; AMENDMENT OF INFORMATION; FORMAL AND SUBSTANTIAL AMENDMENT, DISTINGUISHED. Any amendment to an information which only states with precision something which has already been included in the original information, and therefore, adds nothing crucial for conviction of the crime charged is only a formal amendment that can be made at anytime. It does not alter the nature of the crime, affect the essence of the offense, surprise, or divest the accused of an opportunity to meet the new accusation. x x x On the other hand, "[a] substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court."

10. ID.; ID.; ID.; AN AMENDMENT STATING THE ORIGINAL INFORMATION EXCEPT TO THE INCLUSION OF ANOTHER ACCUSED AND THE INSERTION OF THE PHRASE CONSPIRING AND CONFEDERATING TOGETHER*f* IS MERELY FORMAL. The facts alleged in the accusatory part of the amended information are similar

to that of the original information except as to the inclusion of Corpus as Samonte's co-accused and the insertion of the phrase "conspiring and confederating together." The allegation of conspiracy does not alter the basic theory of the prosecution that Samonte willfully and intentionally shot Angelito. Hence, the amendment is merely formal.

11. ID.; ID.; ID.; WHILE ALLEGATION OF CONSPIRACY IS MERELY FORMAL AMENDMENT, IT IS NOT ALLOWED AFTER PLEA IF THE ACCUSED WILL BE PREJUDICED. Rule 110, Section 14 similarly provides that in permitting formal amendments when the accused has already entered his or her plea, it is important that the amendments made should not prejudice the rights of the accused. x x x It is undisputed that upon arraignment under the original information, Samonte admitted the killing but pleaded self-defense. While conspiracy is merely a formal amendment, Samonte will be prejudiced if the amendment will be allowed after his plea. Applying the test, his defense and corresponding evidence will not be compatible with the allegation of conspiracy in the new information. Therefore, such formal amendment after plea is not allowed.

12. ID.; ID.; PRELIMINARY INVESTIGATION; REQUIREMENT FOR THE JUDGE TO PERSONALLY EVALUATE THE FINDING OF THE PROSECUTOR, COMPLIED WITH IN CASE AT BAR. It is required for the judge to "personally evaluate the resolution of the prosecutor and its supporting evidence." In case the evidence on record fails to substantiate probable cause, the trial judge may instantly dismiss the case. The records of this case reveal that the February 26, 2009 Order presented a discussion showing both the factual and legal circumstances of the case from the filing of the original information until the filing of the Motion to Amend Information. Respondent Judge Pamular, therefore, is familiar with the incidents of this case, which were his basis for issuing the warrant. Thus, before he issued the assailed Order and warrant, a hearing was conducted on February 13, 2009 regarding the motions and manifestations filed in the case[.] x x x Apart from respondent judge's personal examination of the amended information and supporting documents, the hearing conducted on February 13, 2009 enabled him to find probable cause prompting him to issue the warrant of arrest.

APPEARANCES OF COUNSEL

Napoleon Uy Galit & Associates for petitioners.
Ricardo R. Atayde, Jr. for respondent Priscila Espinosa.
Office of the Solicitor General for public respondents.

D E C I S I O N

LEONEN, *J.*:

An allegation of conspiracy to add a new accused without changing the prosecution's theory that the accused willfully shot the victim is merely a formal amendment.[1] However, the rule provides that only formal amendments not prejudicial to the rights of the accused are allowed after plea.[2] The test of whether an accused is prejudiced by an amendment is to determine whether a defense under the original information will still be available even after the amendment is made and if any evidence that an accused might have would remain applicable even in the amended information.[3]

This Petition for Certiorari[4] under Rule 65 of the Rules of Court assails the February 26, 2009 Order[5] and Warrant of Arrest[6] issued by Judge Ramon D. Pamular (Judge Pamular) of Branch 33, Regional Trial Court, Guimba, Nueva Ecija in Civil Case No. 2618-G. The assailed Order granted the prosecution's Motion to Amend the Original Information for murder filed against Carlito Samonte (Samonte) to include Mayor Amado "Jong" Corpus (Corpus) as his co-accused in the crime

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[1] *People v. Court of Appeals,* 206 Phil. 637 (1983) [Per *J.* Relova, First Division].

[2] *Pacoy v. Cajigal,* 560 Phil. 598 (2007) [Per *J.* Austria-Martinez, Third Division].

[3] *People v. Casey,* 190 Phil. 748-767 (1981) [Per *J.* Guerrero, *En Banc*].

[4] *Rollo,* pp. 3-50.

[5] *Id.* at 51-54.

[6] *Id.* at 55.

charged.[7] Furthermore, it directed the issuance of a warrant of arrest against Corpus.[8]

Angelito Espinosa (Angelito) was shot by Samonte at Corpuz Street, Cuyapo, Nueva Ecjia on June 4, 2008, causing his death.[9] Samonte was caught *in flagrante delicto* and thereafter was arrested.[10] After the inquest proceedings, an Information[11] for murder dated June 5, 2008 was filed against him, thus:[12]

INFORMATION

Undersigned Inquest Prosecutor accuses CARLITO SAMONTE y LAPITAN of the crime of Murder, committed as follows:

That on or about the 4th day of June, 2008 at around 10:30 a.m. at Corpuz St., Dist., in the Municipality/City of Cuyapo, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, with malice aforethought and with deliberate intent to take the life of ANGELITO ESPINOSA, willfully, unlawfully and feloniously, treacherously and taking advantage of superior strength attack the latter and shot with an unlicensed firearm (1 Colt .45 cal. pistol with SN 217815), thereby inflicting upon him gunshot wounds, which directly caused the death of said Angelita Espinosa, to the damage and prejudice of his heirs.

CONTRARY TO LAW.

Cabanatuan City for Guimba, Nueva Ecija June 5, 2008.[13]

Upon arraignment, Samonte admitted the killing but pleaded self-defense. Trial on the merits ensued.[14]

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[7] *Id*. at 53.

[8] *Id*. at 54.

[9] *Id*. at 410.

[10] *Id*.

[11] *Id*. at 58.

[12] *Id*. at 410.

[13] *Id*. at 58.

[14] *Id*. at 410.

The wife of the deceased, Mrs. Priscilla Alcantara-Espinosa (Priscilla), filed a complaint-affidavit captioned as Reply-Affidavit[15] dated September 8, 2008 after the prosecution presented its second witness.[16] She also filed an unsworn but signed Reply to the Affidavit of Witnesses[17] before First Assistant Provincial Prosecutor and Officer-in-Charge Floro F. Florendo (Florendo).[18] Other affidavits of witnesses were also filed before the prosecutor's office, which included the following:

a.) Affidavit[19] of Mr. John Diego, Vice Mayor of Cuyapo, Nueva Ecija;
b.) Original Affidavit[20] and a supplemental affidavit[21] of witness Alexander Lozano y Jacob; and
c.) Joint Affidavit[22] of Victoria A. Miraflex, Ma. Floresmina S. Sacayanan, Ma. Asuncion L. Silao and Corazon N. Guerzon.[23]

Based on the affidavit[24] executed by Alexander Lozano

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[15] *Id.* at 59-62, in I.S. No. 08F-1445 entitled *Priscilla Alcantara-Espinosa v. Mayor Amado "Jong" Corpus, Jr.*

[16] *Id.* at 410.

[17] *Id.* at 63-67.

[18] *Id.* at 410.

[19] *Id.* at 68.

[20] *Id.* at 69.

[21] *Id.* at 70-72.

[22] *Id.* at 73-74.

[23] *Id.* at 411. Ma. Floresmina Sacayanan is named as "Floremina" in the signed Joint Affidavit. See *rollo,* p. 74.

[24] *Id.* at 310-311. The Department of Justice June 26, 2009 Resolution stated, in part:

. . . . . .

"Thereafter, the complainant's witness, Alexander Lozano, executed a supplemental affidavit stating, among others, that on the day of the shooting, at past nine o'clock in the morning (9:00 A.M.), he went to the Sangguniang Bayan Office to inquire from Vice Mayor John Diego about *palay* seeds

(Lozano) on June 30, 2008, Corpuz was the one who instructed Samonte to kill Angelito.[25]

In response to Priscilla's Reply-Affidavit, Corpuz filed a Rejoinder Affidavit.[26] He also filed a Counter-Affidavit[27] against witness Lozano's affidavit.[28]

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being distributed by the Municipality to the farmers. Lozano took the route going to the gym at the back of the respondent mayor's office. When he was beside respondent's office, he saw Samonte whispering something to respondent outside the latter's office. He noticed from the respondent's face that he got angry from what Samonte whispered to him. Lozano saw respondent hand to Samonte a stainless gun, then heard respondent angrily say, "PUTANG INANG LITO YAN, SIGE! BIRAHIN MO!" Lozano immediately assumed that respondent referred to the victim, Espinosa, because he knew respondent entertained a grudge against the victim, since the latter led a campaign against the alleged abuses in the respondent mayor's office, and instigated the filing of criminal and administrative charges against him before the Ombudsman. Thus, he immediately proceeded to the victim's office and told the latter what he witnessed and heard, and advised him to take care.

Lozano did not include the foregoing matters in his first affidavit due to fear of reprisal, since it will implicate the respondent mayor in the killing of the victim."

[25] *Id.* at 514.

[26] *Id.* at 84-88 and 411.

[27] *Id.* at 75-83. See *rollo,* p. 311 where the Department of Justice June 26, 2009 Resolution stated, in part:

. . . . . .

"Respondent, in his counter-affidavit, denied the accusation against him and stated that he neither had any involvement nor participation in the quarrel between Samonte and the victim. What happened between them was a personal matter. Respondent further quoted the police witness' statement that the shooting incident was preceded by a heated altercation between Samonte and the victim.

"Among others, respondent further stressed that Lozano's statement is biased, an afterthought, full of improbabilities and were highly opinionated surmises and conjectures."

[28] *Id.* at 411.

In its October 7, 2008 Resolution,[29] the Regional Trial Court dismissed Priscilla's complaint and the attached affidavits of witnesses.[30]

Priscilla filed a Motion for Reconsideration,[31] which was opposed by Corpus.[32] Florendo reconsidered and set aside the October 7, 2008 Resolution.[33] He also instructed Assistant Public Prosecutor Edwin S. Bonifacio (Bonifacio) to conduct the review.[34]

Bonifacio was not able to comply with the directive to personally submit his resolution by January 22, 2009, prompting Florendo to order him to surrender the records of the case as the latter was taking over the resolution of the case based on the evidence presented by the parties. This order was released on January 23, 2009 and was received by Bonifacio on the same date.[35]

In his January 26, 2009 Resolution,[36] Florendo found probable cause to indict Corpus for Angelita's murder. He directed the filing of an amended information before the Regional Trial Court.[37] The amended information provided:

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[29] *Id*. at 89-95. The Resolution, docketed as I.S. No. 08F-1445, was penned by Prosecutor II Edison V. Rafanan and approved by First Assistant Provincial Prosecutor Floro F. Florendo of the Office of the Provincial Prosecutor of Nueva Ecija, Cabanatuan City.

[30] *Id*. at 411.

[31] *Id*. at 96-107.

[32] *Id*. at 411-412.

[33] *Id*. at 108-109.

[34] *Id*. at 412.

[35] *Id*.

[36] *Id*. at 122-125.

[37] *Id*. at 412.

INFORMATION

Undersigned Prosecutor accuses Carlito Samonte y Lapitan *and Amado Corpuz, Jr. y Ramos* of the crime of Murder, committed as follows:

That on or about the 4th day of June, 2008 at around 10:30 a.m. at Corpuz St., Dist., in the Municipality of Cuyapo, Province of Nueva Ecija, Phillippines (sic), and within the jurisdiction of this Honorable Court, the above-named accused, ***conspiring and confederating together,*** did then and there, with malice aforethought and with deliberate intent to take [the] life of ANGELITO ESPINOSA, willfully, unlawfully and feloniously, treacherously and taking advantage of superior strength attack the latter and shot with an unlicensed firearm (1 Colt .45 cal. Pistol with SN 217815), thereby inflicting upon him gunshot wounds, which directly caused the death of said Angelito Espinosa, to the damage and prejudice of his heirs.

CONTRARY TO LAW.

Cabanatuan City for Guimba, Nueva Ecija, January 26, 2009.[38] (Emphasis supplied)

Despite Florendo taking over the case, Bonifacio still issued a Review Resolution dated January 26, 2009, where he reinstated the Regional Trial Court October 7, 2008 Resolution and affirmed the dismissal of the murder complaint against Corpus.[39] The dispositive portion of his Resolution provided:

In view of the foregoing and probable cause, the Resolution of Assistant Provincial Prosecutor Edison V. Rafanan, dated October 7, 2008, being in accord with the facts obtaining in this case and with established rules, procedures and jurisprudence, is reinstated.

The criminal complaint for murder against respondent Mayor Amado "Jong" Corpu[s] is **DISMISSED.**[40] (Emphasis in the original)

Meanwhile, Florendo filed an undated Motion to Amend Information, praying for the admission of the amended

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[38] *Id.* at 56.

[39] *Id.* at 110-121.

[40] *Id.* at 120-121.

information.[41] Corpus and Samonte opposed this Motion by filing a Joint Urgent Manifestation/Opposition dated February 2, 2009.[42]

The prosecution filed a Motion for Reconsideration.[43] Samonte and Corpus opposed this through a Vehement Opposition and Omnibus Motion dated February 4, 2009.[44] They averred that Judge Pamular's action was premature considering that the Motion to Amend Information has yet to be scheduled for hearing.[45] Moreover, Samonte was already arraigned.[46] Samonte and Corpus also claimed that the issuance of a warrant of arrest should be suspended because the latter intended to appeal through a Petition for Review before the Department of Justice.[47]

Samonte and Corpus jointly filed a Petition for Review dated February 9, 2009 before the Department of Justice.[48] They also filed a Manifestation and Motion dated February 9, 2009 with the Regional Trial Court, asking it to desist from acting further on the Amended Information in view of the Petition for Review filed with the Department of Justice.[49]

However, despite the manifestation, Judge Pamular of Branch 33, Regional Trial Court, Guimba, Nueva Ecija issued the assailed February 26, 2009 Order, which granted the motion to amend the information and to admit the attached amended information. The assailed Order also directed, among others, the issuance

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[41] *Id*. at 230-231 and 413.

[42] *Id*. at 232-240 and 413.

[43] *Id*. at 413. No copy of this Motion for Reconsideration is attached in the *rollo*.

[44] *Id*. at 241-263.

[45] *Id*. at 242-243.

[46] *Id*. at 244-249.

[47] *Id*. at 254-257.

[48] *Id*. at 126-225.

[49] *Id*. at 226-229.

of a warrant of arrest against Corpus.[50] The dispositive portion of the Order read:

WHEREFORE, premises considered, this Court after personally examining the amended information and its supporting documents finds probable cause and hereby orders to:

1. Grant the motion to amend the information;

2. Admit the attached amended information;

3. Issue the Warrant of Arrest for the immediate apprehension of the respondent-movant Amado Corpu[s], Jr.; and

4. Deny the motion to defer/suspend arraignment and further proceedings of this case.

SO ORDERED.[51]

Hence, a direct recourse before this Court, through a Petition for Certiorari under Rule 65 with a prayer for an immediate issuance of a temporary restraining order, was filed by Corpus and Samonte on March 3, 2009.[52] This Petition seeks to enjoin Judge Pamular from enforcing the February 26, 2009 Order and the warrant of arrest issued pursuant to the Order, and from conducting further proceedings in the murder case.

Through its March 9, 2009 Resolution, this Court required respondents to comment on the Petition.[53] It also granted petitioners' prayer for a temporary restraining order. Judge Pamular, Florendo, Priscilla, and all other persons acting on the assailed Regional Trial Court February 26, 2009 Order were enjoined from implementing it and the warrant of arrest issued pursuant to it.[54]

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

[51] *Id*.

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

[53] *Id*. at 254-255.

[54] *Id*. at 256-258.

Priscilla filed her comment on April 3, 2009.[55] She cites *Oaminal v. Castillo,*[56] which provided that in filing a petition for certiorari under Rule 65, Section 1 there should be "no appeal nor any plain, speedy and adequate remedy in the ordinary course of law" available.[57] Considering that there is still a remedy available for the accused apart from filing a petition, the petition shall fail. She claims that petitioners should have first filed a motion for reconsideration with the Regional Trial Court before resorting to a petition for certiorari before this Court.[58]

She insists that the Regional Trial Court is correct in granting the motion to admit the amended information because it has no effect on Samonte's case and reasoned that:

> [F]irst, because there would only be an addition of another accused with prior authority f[ro]m the Honorable Provincial Prosecutor, second, the amendment will not cause any prejudice to the rights of the accused and more importantly, that is what is provided for by the Rules[.][59]

She claims that the alleged lack of determination of probable cause before the issuance of a warrant has no basis since petitioners failed to present evidence or facts that would prove their claim.[60]

Judge Pamular filed his Comment on April 8, 2009.[61] He asserts that he made a careful perusal of the case records in issuing the assailed order. His independent judgment on the existence of probable cause was derived from his reading and evaluation of pertinent documents and evidence. He states that

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[55] *Id*. at 268-276.

[56] 459 Phil. 542 (2003) [Per *J*. Panganiban, Third Division].

[57] *Rollo,* p. 269.

[58] *Id*. at 269-270.

[59] *Id*. at 270.

[60] *Id*. at 271.

[61] *Id*. at 279-282.

he had set the case for hearing on February 13, 2009, when both parties were heard and given the opportunity to argue.[62] He also added:

> Yes, indeed, while the undersigned could rely on the findings of the Honorable Provincial Prosecutor, I am nevertheless not bound thereby. The termination by the latter of the existence of probable cause is for a purpose different from that which is to be made by the herein respondent judge. I have no cogent reason to question the validity of the findings of the Honorable Provincial Prosecutor. I have much respect for the latter. Thus, after giving due course to the arguments of parties and their respective counsels, I was fully convinced in good faith that, indeed, there was a reasonable ground to believe in the existence of probable cause for ... the immediate apprehension and prosecution of Mayor Amado "Jong" Corpu[s], Jr. Hence, the issuance of the assailed controversial Order....[63]

On July 22, 2009, Priscilla filed a Manifestation[64] before this Court. She asserts that this "present petition questioning the alleged impropriety of the admission of the amended information as well as the issuance of a warrant of arrest against Mayor Amado Corpu[s], Jr. has no more legal legs to stand on."[65] She claims[66] that Florendo's January 26, 2009 Resolution was upheld by the Department of Justice in its June 26, 2009 Resolution,[67] the *fallo* of which read:

> WHEREFORE, premises considered, the petition for review is hereby dismissed. Accordingly, the Officer-in-Charge Provincial Prosecutor of Nueva Ecija is **directed to file the appropriate Information** against the respondent Mayor Amado Corpu[s], Jr.,

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[62] *Id*. at 281-282.

[63] *Id*. at 282.

[64] *Id*. at 307-309.

[65] *Id*. at 308.

[66] *Id*. at 307-308.

[67] *Id*. at 310-313. The Resolution, docketed as I.S. No. 08F-1445, was signed by Acting Secretary Agnes VST Devanadera of the Department of Justice.

and to report the action taken thereon within ten (10) days from receipt hereof.

SO ORDERED.[68] (Emphasis supplied)

Priscilla asserts further that the issue regarding the suspension of proceedings pending resolution by the Department of Justice can now be considered moot and academic.[69]

On July 24, 2009, petitioners filed a Counter Manifestation.[70] They claim that respondent Priscilla's prayer for the lifting of the temporary restraining order is premature, thus:[71]

> [Priscilla] should have been more candid. [She] should have informed the Honorable Court that a motion for reconsideration with the Department of Justice was filed by the herein petitioner, and is still pending resolution. And in the event said motion for reconsideration is denied, and as a part of petitioner/accused right to due process of law, it being clearly provided by the rules, ***he would elevate said resolution to the Court of Appeals on certiorari ˇ and, certainly, the aggrieved party would bring the matter before this Honorable Court*** – during which interregnum, the appealed resolution of the Provincial Prosecutor . . . would not have yet attained finality which is what jurisprudence underscores before the respondent court should have proceeded with the amended information.[72] (Emphasis supplied, citations omitted)

They further claim that lifting the temporary restraining order would be a relief "too harsh and preposterous" since Corpus would be immediately imprisoned and constrained to face trial due to a flawed amended information.[73] In case this Court resolves to quash the amended information and nullify the warrant, Corpuz will have already "suffered grave and irreparable injury—as

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[68] *Id.* at 313.

[69] *Id.* at 308.

[70] *Id.* at 315-328.

[71] *Id.* at 316.

[72] *Id.* at 316-317.

[73] *Id.* at 326.

he would not be able to discharge his constitutional mandate/duty to his constituents as their duly elected mayor."[74] As to Samonte, he will be allegedly "forced to face another set of defense—against the theory of conspiracy in the amended information which, as we have heretofore stated, after his arraignment and trial half way, could no longer be proper."[75]

On August 6, 2009, the Office of the Solicitor General filed its Comment.[76] It claims that petitioners should have made a distinction on the propriety of respondent judge's acts in granting the admission of the amended information and in ordering the issuance of a warrant. It posits that these acts are at par with the court's acquisition of jurisdiction over the subject matter and the person of the accused. These acts have nothing to do with the suspension of arraignment provided for under Rule 116, Section 11 of the Revised Rules of Criminal Procedure, which ordinarily happens after a trial court has acquired jurisdiction.[77]

The Office of the Solicitor General also adds that the insertion of the phrase *"conspiring and confederating together"* in the amended information will not affect Samonte's substantial rights.[78] Thus, the original charge against Samonte of murder and his deliberate manner of shooting Angelito remain unaltered:[79]

> Even if one or all of the elements of the crime of murder as alleged in the original information filed against petitioner Samonte is not proven, the addition of conspiracy in the amended information, if duly proven, would not in any way result in his conviction because

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[74] *Id*.

[75] *Id*. at 327.

[76] *Id*. at 409-430.

[77] *Id*. at 416.

[78] *Id*. at 418.

[79] *Id*. at 419.

conspiracy is not an essential or qualifying element of the crime of murder.[80]

The Office of the Solicitor General avers that respondent judge was well acquainted with the legal and factual circumstances behind the filing of the original information against Samonte. The amended information merely added Corpus as a co-conspirator. Thus, before respondent judge issued the assailed order, a prior hearing was held on February 13, 2009, when all the parties were heard.[81]

The Office of the Solicitor General also asserts that while respondent judge committed error when he denied petitioners' motion to suspend proceedings, what the law only requires under Rule 116, Section 11 is a maximum of 60-day suspension of the arraignment. In this case, the 60-day period had already lapsed, rendering the issue raised by petitioners moot. Hence, there is no longer any hindrance for respondent judge to continue with Corpus' arraignment.[82]

Petitioners filed their reply on August 7, 2009.[83] They claim that respondent judge should have suspended action on the issuance of a warrant considering the pendency of their Petition for Review before the Department of Justice.[84] They cite *Ledesma v. Court of Appeals,*[85] which stated:

> Where the secretary of justice exercises his power of review only after an information has been filed, trial courts should defer or suspend arraignment and further proceedings until the appeal is resolved. Such deferment or suspension, however, does not signify that the trial court is *ipso facto* bound by the resolution of the secretary of justice. Jurisdiction, once acquired by the trial court, is not lost despite

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[80] *Id.*

[81] *Id.* at 424-425.

[82] *Id.* at 427-428.

[83] *Id.* at 431-449.

[84] *Id.* at 433.

[85] 344 Phil. 207 (1997) [Per *J.* Panganiban, Third Division].

a resolution by the secretary of justice to withdraw the information or to dismiss the case.[86]

Petitioners also cite the dispositive portion of *Tolentino v. Bonifacio,*[87] which directed the respondent judge in that case to desist from proceeding with the trial until after the Department of Justice would have finally resolved a pending petition for review.[88] Thus:

> While [w]e have noted from the *expediente* that the petitioner has utilized dilatory tactics to bring the case against her to trial, still she is entitled to the remedy she seeks. The respondent judge should not be more anxious than the prosecution in expediting the disposition of the case absent any indication of collusion between it and the defense. *The Ministry of Justice should not be deprived of its power to review the action of the City Fiscal by a precipitate trial of the case.*
>
> **WHEREFORE,** the petition is granted. The respondent judge is hereby ordered not to proceed with the trial of the above-numbered criminal case until after the Ministry of Justice has resolved the petition for review filed by Mila P. Tolentino. No costs.[89] (Emphasis supplied)

Petitioners claim that due to the theory of conspiracy in the amended information, Samonte will have an additional burden of setting up a new defense particularly on any acts of his co-accused since "the act of one is the act of all."[90]

Petitioners also claim that respondent judge failed to comply with the mandate of making a prior determination of probable cause before issuing the warrant. They insist that this mandate "is never excused nor dispensed with by the respondent [judge]'s self-serving narration of the law (not the required facts) stated in [his] assailed order."[91]

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[86] *Id.* at 232.

[87] 223 Phil. 558 (1985) [Per *J.* Abad-Santos, Second Division].

[88] *Rollo,* pp. 472-473.

[89] *Id.* at 435.

[90] *Id.* at 436-437.

[91] *Id.* at 440.

On the issue of whether the arraignment of Corpus may proceed despite the lapse of the 60-day maximum period of suspension under Rule 116, Section 11(c), petitioners aver that "[w]hat jurisprudence underscores is not the lapse of the 60-day period, but the issue of finality of the decision on appeal."[92] The matter should not only cover the suspension of arraignment but for respondent judge to defer from further proceedings on the amended information pending the final resolution of the Department of Justice.[93]

This Court, through its August 26, 2009 Resolution, required the parties to submit their respective memoranda.[94]

Petitioners filed their memorandum on October 15, 2009.[95] In their memorandum, they attached the Department of Justice September 8, 2009 Resolution,[96] which granted their motion for reconsideration, thus:[97]

> **WHEREFORE,** the motion for reconsideration of the respondent is hereby GRANTED. Accordingly, the Resolution promulgated on June 26, 2009 (Resolution No. 473) is hereby **REVERSED AND SET ASIDE.** The Provincial Prosecutor of Nueva Ecija is hereby directed to cause the withdrawal of the information for murder against the respondent, if one has been filed in court, and to report the action taken thereon within ten (10) days from receipt hereof.
>
> **SO ORDERED.**[98] (Emphasis in the original)

Petitioners assert that Rule 116, Section 11(c) of the Revised Rules of Criminal Procedure provides that upon motion by the proper party, the arraignment shall be suspended:[99]

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[92] *Id.* at 446.

[93] *Id.*

[94] *Id.* at 450-451.

[95] *Id.* at 456-495.

[96] *Id.* at 496-499.

[97] *Id.* at 457.

[98] *Id.* at 498.

[99] *Id.* at 473.

Rule 116
Arraignment and Plea

Section 11. Suspension of Arraignment. — Upon motion by the proper party, the arraignment shall be suspended in the following cases:

. . . . . .

(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *provided,* that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.

Petitioners add that respondent judge should have refrained from issuing the assailed warrant of arrest because he was aware of the fact that the amended information was a result of the flip-flopping stand of the public prosecutor from his original stand.[100] Thus, they claim that the motive behind the filing of the amended information that included Corpus as an additional accused is political.[101]

They aver that respondent judge failed to personally make his independent findings of probable cause that will justify the issuance of the warrant. They insist that the February 26, 2009 Order only consists of three (3) short sentences, which merely pointed out a certain legal provision, instead of facts, that would supposedly justify the issuance of the warrant of arrest, thus:[102]

Elementary is the rule that the existence of probable cause is indispensable in the filing of the complaint or information and in the issuance of warrant of arrest. The legion of jurisprudence has defined probable cause to be concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt. The standards of judgment are those of a reasonably prudent man and not the exacting calibrations of a judge after a full blown trial. No law or rule states that probable

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[100] *Id*. at 473-474.

[101] *Id*. at 485.

[102] *Id*. at 476-477.

cause requires a specific kind of evidence. It is determined in the light of conditions obtaining in a given situation.[103]

Petitioners also cite Rule 110, Section 14 of the Revised Rules of Criminal Procedure, which prohibits substantial amendment of information that is prejudicial to the rights of the accused after his or her arraignment, thus:

> Rule 110
> Prosecution of Offenses
>
> Section 14. *Amendment or Substitution.* — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made *with leave of court and when it can be done without causing prejudice to the rights of the accused.*[104] (Emphasis in the original)

They cite *People v. Montenegro,*[105] which provided that an allegation of conspiracy that was not previously included in the original information constitutes a substantial amendment:[106]

> **The allegation of conspiracy among all the private respondents-accused, which was not previously included in the original information, is likewise a substantial amendment saddling the respondents with the need of a new defense in order to meet a different situation in the trial court. In *People v. Zulueta,*** it was held that:
>
> > Surely the preparations made by herein accused to face the original charges will have to be radically modified to meet the new situation. For undoubtedly the allegation of conspiracy enables the prosecution to attribute and ascribe to the accused Zulueta all the acts, knowledge, admissions and even omissions of his co-conspirator Angel Llanes in furtherance of the conspiracy. The amendment thereby widens the battlefront to

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[103] *Id*. at 477-478.

[104] *Id*. at 490.

[105] 242 Phil. 655 (1988) [Per *J*. Padilla, Second Division].

[106] *Rollo,* p. 491.

> allow the use by the prosecution of newly discovered weapons, to the evident discomfiture of the opposite camp. Thus it would seem inequitable to sanction the tactical movement at this stage of the controversy, bearing in mind that the accused is only guaranteed two-days' (sic) preparation for trial. Needless to emphasize, as in criminal cases, the liberty, even the life, of the accused is at stake, it is always wise and proper that he be fully apprised of the charges, to avoid any possible surprise that may lead to injustice. The prosecution has too many facilities to covet the added advantage of meeting unprepared adversaries.
>
> **To allow at this stage the proposed amendment alleging conspiracy among all the accused, will make all of the latter liable not only for their own individual transgressions or acts but also for the acts of their co-conspirators.**[107] (Emphasis in the original)

The Office of the Solicitor General filed its Memorandum on October 16, 2009, which merely reiterated the arguments and discussions in its Comment to the Petition.[108] Similarly, respondent Priscilla's Memorandum adopted the arguments presented by the Office of the Solicitor General in its comment and memorandum.[109]

On March 19, 2014, Priscilla filed a Manifestation,[110] which provides that on October 30, 2013, Samonte executed an affidavit,[111] stating that Corpuz ordered him to kill Angelito.[112] Samonte's affidavit provided:

SALAYSAY

Ako si Carlito Samonte kasalukuyang nakakulong sa Provincial Jail ng Cabanatuan City sa kasong Murder kay Angelito Espinosa sa

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[107] *Id*. at 491-492.

[108] Id. at 500-523.

[109] *Id*. at 534-544.

[110] *Id*. at 556-560.

[111] *Id*. at 559, handwritten Affidavit of Samonte dated October 30, 2013, executed before Atty. Marcus Marcellinus S. Gonzales of the Public Attorney's Office, Cabanatuan City.

[112] *Id*. at 556.

utos po ni Mayor Amado R. Corpuz Jr. ay matagal na pong plano ang pagpatay kay Angelito Espinosa. Nagsimula po ito sa pagwasak sa aircondition sa magiging opisina ni Angelito Espinosa at sa motor niyang single, at iyon ay sa utos ni Mayor Amado R. Corpuz Jr. hanggang umabot sa puntong sabihan ako na ang tagal-tagal mo namang patayin si Angelito Espinosa pagalit na sinabi sa akin.

At noong June 4, 2008 sa pagitan ng 9:30 AM at 10 AM ng nasabing oras sinabi sa akin muli na "Ayokong maupo yang si Angelito Espinosa bilang secretaryo ng Sangguniang Bayan." Sinabi ni Mayor Amado R. Corpuz Jr. na gumawa ka ng senaryo para huwag makaupo yan bilang B-SEC (Sangguniang Bayan Secretary) Bayan at kahit anong klaseng senaryo patayin mo kung kaya mong patayin at ako na ang bahala sa lahat. Kunin mo ang baril dito sa opisina ko, iyan po ang utos sa akin ni Mayor Amado Corpuz Jr.

Kusa po akong gumawa ng sarili kong affidavit at salaysay na walang nagbayad, pumilit at nanakot sa akin para gawin ang salaysay at affidavit kong ito, at marami pa po akong isasalaysay pagharap ko po sa korte.

Gumagalang,
Carlito Samonte
(signed)

Subscribed and sworn to before me:
(signed)
Atty. Marcus Marcellinus S. Gonzales[113]

On April 14, 2014, this Court received Priscilla's letter dated April 11, 2014 addressed to the Chief Justice of the Supreme Court, asking for assistance in the resumption of trial in view of Samonte's affidavit.[114]

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[113] *Id*. at 559.

[114] *Id*. at 564-565. The letter stated, in part:

April 11, 2014

Hon. Maria Lourdes P. A. Sereno
Chief Justice of the Supreme Court
Padre Faura cor. Taft, Manila

Dear Ma'am,

. . . . . .

Ma'am I do appreciate the court's initiative to bring justice to its oppressed people but it seems that efforts made we're all be in vain if orders will not

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

First, whether or not respondent Judge Ramon Pamular committed grave abuse of discretion amounting to lack or excess of jurisdiction when he conducted further proceedings on the Amended Information and consequently issued a warrant of arrest against petitioner Amado Corpus, Jr. despite the pendency of his and petitioner Carlito Samonte's Petition for Review before the Department of Justice;

Second, whether or not the arraignment of petitioner Amado Corpus, Jr. may proceed after the lapse of the maximum 60-day period suspension provided for under Rule 116, Section 11(c) of the Revised Rules of Criminal Procedure;

Third, whether or not respondent Judge Ramon Pamular committed grave abuse of discretion amounting to lack or excess of jurisdiction when he allegedly admitted the Amended Information in clear defiance of law and jurisprudence, which proscribes substantial amendment of information prejudicial to the right of the accused; and

Finally, whether or not respondent Judge Ramon Pamular has personally determined, through evaluation of the Prosecutor's report and supporting documents, the existence of probable cause for the issuance of a warrant of arrest against petitioner Amado Corpus, Jr.

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be implemented with sincerity and can be an avenue for the criminals to escape their crime and left the victims in agony and pain.

Last October 30, 2013 an unexpected turn of event came where Carlito "Kuratong" Samonte executed his extrajudicial confession freely and voluntarily before Atty. Marcus Marcellinus S. Gonzales of the Public Attorney's office in Cabanatuan City where he admitted that it was Mayor Amado Corpus Jr. who ordered him to kill my husband.

This vital event have given me an opportunity to file a manifestation before the honorable Supreme court through my counsel on March 19, 2014 hoping that the case will be brought back to court to resume trial as petitioner Samonte has, in effect, parted ways with his co-petitioner Corpuz; and the allegation that "the new theory of conspiracy in the Amended Information would substancially prejudice accused Samonte's right to due process" would now be not applicable. (Grammatical errors in the original)

The Petition lacks merit.

I

Before this Court delves on the substantive issues in this case, it first rules on the procedural matter involved.

Respondent Priscilla claims that petitioners should have first filed a Motion for Reconsideration with the Regional Trial Court before resorting to this Petition. Failure to do so renders it dismissible.[115]

This issue was not addressed by petitioners in their reply or memorandum. However, petitioners justified their direct recourse before this Court insisting that their case is anchored on pure questions of law and impressed with public interest. Thus, they claim that regardless of the rule on hierarchy of courts, their filing of a petition is not a matter of choice but even mandatory.[116]

Rule 65, Section 1 of the Revised Rules of Civil Procedure provides:

> Section 1. *Petition for Certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, ***and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law,*** a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. (Emphasis supplied)

Rivera v. Espiritu[117] enumerated the essential requisites for a petition for certiorari under Rule 65:

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[115] *Id*. at 270.

[116] *Id*. at 3-4.

[117] 425 Phil. 169 (2002) [Per *J*. Quisumbing, Second Division].

(1) [T]he writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) ***there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.***[118] (Emphasis supplied, citation omitted)

The plain and adequate remedy pertained to by the rules is a motion for reconsideration of the assailed order or decision.[119] Certiorari, therefore, "is not a shield from the adverse consequences of an omission to file the required motion for reconsideration."[120]

It is settled that a motion for reconsideration is a "condition *sine qua non* for the filing of a Petition for Certiorari."[121] This enables the court to correct "any actual or perceived error" through a "re-examination of the legal and factual circumstances of the case."[122] To dispense with this condition, there must be a "concrete, compelling, and valid reason."[123] However, the following exceptions apply:

(a) where the order is a patent of nullity, as where the *court a quo* has no jurisdiction;

(b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

(c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable;

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[118] *Id.* at 179-180.

[119] *Metro Transit Organization, Inc. v. Court of Appeals,* 440 Phil. 743, 753 (2002) [Per *J.* Carpio, First Division].

[120] *Id.* at 752.

[121] *Republic v. Bayao,* 710 Phil. 279, 287 (2013) [Per *J.* Leonen, Third Division].

[122] *Id.*

[123] *Metro Transit Organization, Inc. v. Court of Appeals,* 440 Phil. 743, 753 (2002) [Per *J.* Carpio, First Division).

(d) where, under the circumstances, a motion for reconsideration would be useless;

(e) where petitioner was deprived of due process and there is extreme urgency for relief;

(f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

(g) where the proceedings in the lower court are a nullity for lack of due process;

(h) where the proceedings [were] *ex parte* or in which the petitioner had no opportunity to object; and

(i) where the issue raised is one purely of law or where public interest is involved.[124]

Nothing in the records shows that petitioners filed a motion for reconsideration with the Regional Trial Court. Apart from bare conclusion, petitioners failed to present any plausible reason why they failed to file a motion for reconsideration before filing a petition before this Court. While this issue was raised by respondent Priscilla in her Comment, this was not sufficiently addressed by petitioners either in their Reply or Memorandum.

It must be stressed that the filing of a motion for reconsideration, as well as filing it on time, is not a mere procedural technicality.[125] These are "jurisdictional and mandatory requirements which must be strictly complied with."[126] Therefore, petitioners' failure to file a motion for reconsideration with the Regional Trial Court before filing this Petition is fatal.

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[124] *Id*. at 751, citing *Abraham v. NLRC,* 406 Phil. 310 (2001) [Per *J*. Gonzaga-Reyes, Third Division].

[125] *Republic v. Pantranco North Express, Inc. (Resolution),* 682 Phil. 186 (2012) [Per *J*. Villarama, Jr., First Division].

[126] *Id*. at 195.

II

Two (2) kinds of determination of probable cause exist: executive and judicial.[127] These two (2) kinds of determination of probable cause were distinguished in *People v. Castillo.*[128] Thus,

> There are two kinds of determination of probable cause: executive and judicial. *The* ***executive*** *determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial.* Otherwise stated, such official has the quasi-judicial authority to determine *whether or not a criminal case must be filed in court.* Whether or not that function has been correctly discharged by the public prosecutor, *i.e.,* whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
>
> The ***judicial*** determination of probable cause, on the other hand, is *one made by the judge to ascertain whether a warrant of arrest should be issued against the accused.* The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.
>
> [T]he public prosecutor exercises a wide latitude of discretion in determining whether a criminal case should be filed in court, and that courts *must respect the exercise of such discretion when the information filed against the person charged is valid on its face, and that no manifest error or grave abuse of discretion can be imputed to the public prosecutor.*[129] (Emphasis supplied, citations omitted)

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[127] *People v. Castillo,* 607 Phil. 754 (2009) [Per *J*. Quisumbing, Second Division].

[128] 607 Phil. 754 (2009) [Per *J*. Quisumbing, Second Division].

[129] *Id*. at 764-765.

Thus, courts do not meddle with the prosecutor's conduct of a preliminary investigation because it is exclusively within the prosecutor's discretion.[130]

However, once the information is already filed in court, the court has acquired jurisdiction of the case. Any motion to dismiss or determination of the guilt or innocence of the accused is within its discretion.[131]

Crespo v. Mogul[132] provided:

> The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.
>
> *The preliminary investigation conducted by the fiscal for the purpose of determining whether a prima facie case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court.* Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. *While it is true that the fiscal has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court.* The only qualification is that the action of the Court must not

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[130] *De Lima v. Reyes,* G.R. No. 209330, January 11, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf > [Per *J.* Leonen, Second Division].

[131] *Id.*, citing *Crespo v. Mogul,* 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

[132] 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

impair the substantial rights of the accused or the right of the People to due process of law.

Whether the accused had been arraigned or not and whether it was due to a reinvestigation by the fiscal or a review by the Secretary of Justice whereby a motion to dismiss was submitted to the Court, the Court in the exercise of its discretion may grant the motion or deny it and require that the trial on the merits proceed for the proper determination of the case.

However, one may ask, if the trial court refuses to grant the motion to dismiss filed by the fiscal upon the directive of the Secretary of Justice will there not be a vacuum in the prosecution? A state prosecutor to handle the case cannot possibl[y be] designated by the Secretary of Justice who does not believe that there is a basis for prosecution nor can the fiscal be expected to handle the prosecution of the case thereby defying the superior order of the Secretary of Justice.

The answer is simple. The role of the fiscal or prosecutor as We all know is to see that justice is done and not necessarily to secure the conviction of the person accused before the Courts. Thus, in spite of his opinion to the contrary, it is the duty of the fiscal to proceed with the presentation of evidence of the prosecution to the Court to enable the Court to arrive at its own independent judgment as to whether the accused should be convicted or acquitted. The fiscal should not shirk from the responsibility of appearing for the People of the Philippines even under such circumstances much less should he abandon the prosecution of the case leaving it to the hands of a private prosecutor for then the entire proceedings will be null and void. The least that the fiscal should do is to continue to appear for the prosecution although he may turn over the presentation of the evidence to the private prosecutor but still under his direction and control.

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as [to] its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence. A motion to dismiss the case filed by the fiscal should be addressed to the Court 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.[133] (Emphasis supplied, citations omitted)

Hence, when a Regional Trial Court has already determined that probable cause exists for the issuance of a warrant of arrest, like in this case, jurisdiction is already with the Regional Trial Court.[134] Therefore, it can proceed in conducting further proceedings on the amended information and on the issuance of a warrant despite the pendency of a Petition for Review before the Department of Justice.

III.A

Petitioners insist that respondent judge should have deferred from conducting further proceedings on the amended information and on the issuance of a warrant considering the pendency of their Petition for Review before the Department of Justice.[135] They cite Rule 116, Section 11 (c) of the Revised Rules of Criminal Procedure, which provides:

RULE 116
Arraignment and Plea

. . . . . .

Section 11. Suspension of arraignment — Upon motion by the proper party, ***the arraignment shall be suspended*** in the following cases:

. . . . . .

(c) *A petition for review of the resolution of the prosecutor is pending at either the Department of Justice,* or the Office of the President; *provided, that the period of suspension shall* ***not exceed*** *sixty (60)*

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[133] *Id.* at 474-476.

[134] *De Lima v. Reyes,* G.R. No. 209330, January 11, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> [Per *J.* Leonen, Second Division].

[135] *Rollo,* p. 469.

days counted from the filing of the petition with the reviewing office. (Emphasis supplied)

Rule 116, Section 11 of the Revised Rules of Criminal Procedure pertains to a suspension of an arraignment in case of a pending petition for review before the Department of Justice. It does not suspend the execution of a warrant of arrest for the purpose of acquiring jurisdiction over the person of an accused.

In the assailed February 26, 2009 Order, Judge Pamular denied Corpus' motion to defer or suspend arraignment and further proceedings.[136] Petitioners claim that he should have suspended action on the issuance of a warrant considering the pendency of their Petition for Review before the Department of Justice, citing *Ledesma v. Court of Appeals*[137] and *Tolentino v. Bonifacio*[138] as their bases.[139] Furthermore, they also assert that the assailed Order defies Rule 116, Section 11 of the Revised Rules of Criminal Procedure.[140]

Rule 116, Section 11 of the Revised Rules of Criminal Procedure provides for the grounds for suspension of arraignment. Upon motion by the proper party, the arraignment shall be suspended in case of a pending petition for review of the prosecutor's resolution filed before the Department of Justice.

Petitioners filed a Manifestation and Motion[141] dated February 9, 2009 before the Regional Trial Court, informing it about their pending Petition for Review of the Prosecutor's January 26, 2009 Resolution before the Department of Justice.[142] Thus,

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[136] *Id.* at 54.

[137] 344 Phil. 207 (1997) [Per *J.* Panganiban, Third Division].

[138] 223 Phil. 558 (1985) [Per *J.* Abad-Santos, Second Division].

[139] *Rollo,* pp. 472-473.

[140] *Id.* at 473.

[141] *Id.* at 226-229.

[142] *Id.* at 227.

. . . . . .

respondent judge committed an error when he denied petitioners' motion to suspend the arraignment of Corpus because of the pendency of their Petition for Review before the Department of Justice.

However, this Court's rule merely requires a maximum 60-day period of suspension counted from the filing of a petition with the reviewing office.[143] Consequently, therefore, after the expiration of the 60-day period, "the trial court is bound to arraign the accused or to deny the motion to defer arraignment."[144]

Petitioners jointly filed their Petition for Review[145] before the Department of Justice on February 9, 2009.[146] Thus, the 60-day period has already lapsed since April 10, 2009. Hence, respondent judge can now continue with the arraignment and further proceedings with regard to petitioner Corpus.

III.B

A reading of *Ledesma v. Court of Appeals*[147] reveals that the provided ruling does not mainly tackle the issue presented in this case.

In *Ledesma,* a complaint for libel was filed against Rhodora Ledesma (Ledesma) before the City Prosecutor's Office. Upon

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3. As regards both accused, the said 26 January 2009 Florendo's resolution having been elevated to the DOJ Secretary, by way of appeal, and giving due respect to the power of the DOJ Secretary under its power of control and supervision over all prosecutors, notwithstanding the filing of the information in court, any further proceedings thereto need be immediately deferred/suspended.

. . . . . .

[143] RULES OF COURT, Rule 116, Sec. 11.

[144] *Samson v. Daway,* 478 Phil. 793 (2004) [Per *J.* Ynares-Santiago, First Division].

[145] *Rollo,* pp. 126-225.

[146] *Id*. at 413.

[147] 344 Phil. 207 (1997) [Per *J.* Panganiban, Third Division].

finding "sufficient legal and factual basis,"[148] the City Prosecutor's Office filed an information against Ledesma before the Regional Trial Court. Ledesma then filed a petition for review before the Department of Justice, which gave due course to the petition directing the Prosecutor to move for the deferment of further proceedings and to elevate the records of the case to it. Conformably, the Prosecutor filed a Motion to Defer Arraignment before the Regional Trial Court, which granted the motion and deferred arraignment until termination of the Department of Justice's petition for review. Without the trial prosecutor's consent, the counsel for private complainant filed a motion to lift the order and to set the case for trial or arraignment. The Regional Trial Court granted the motion then consequently scheduled Ledesma's arraignment. However, the Secretary of Justice reversed the prosecutor's findings directing the trial prosecutor to file before the Regional Trial Court a motion to withdraw information, which was subsequently denied. Its denial of the motion was affirmed by the Court of Appeals.

The main issue in *Ledesma* was whether the respondent judge in that case erred in denying the motion to withdraw information and the consequent motion for reconsideration. This Court held that the act of the judge was erroneous since he failed to give his reasons for denying the motions, and to make any independent assessment of the motion and of the resolution of the Secretary of Justice. Thus:

> In the light of recent holdings in *Marcelo* and *Martinez;* and considering that the issue of the correctness of the justice secretary's resolution has been amply threshed out in petitioner's letter, the information, the resolution of the secretary of justice, the motion to dismiss, and even the exhaustive discussion in the motion for reconsideration — all of which were submitted to the court — the trial judge committed grave abuse of discretion when it denied the motion to withdraw the information, based solely on his bare and ambiguous reliance on *Crespo.* The trial court's order is inconsistent with our repetitive calls for an independent and competent assessment

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[148] *Id.* at 218.

of the issue(s) presented in the motion to dismiss. *The trial judge was tasked to evaluate the secretary's recommendation finding the absence of probable cause to hold petitioner criminally liable for libel. He failed to do so. He merely ruled to proceed with the trial without stating his reasons for disregarding the secretary's recommendation.*

Had he complied with his judicial obligation, he would have discovered that there was, in fact, sufficient ground to grant the motion to withdraw the information. The documents before the trial court judge clearly showed that there was no probable cause to warrant a criminal prosecution for libel.[149] (Emphasis supplied)

This was reiterated in the ratio of that case, which read:

When confronted with a motion to withdraw an information on the ground of lack of probable cause based on a resolution of the secretary of justice, *the bounden duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution but is required to evaluate it before proceeding further with the trial. While the secretary's ruling is persuasive, it is not binding on courts.* A trial court, however, commits reversible error or even grave abuse of discretion if it refuses/neglects to evaluate such recommendation and simply insists on proceeding with the trial on the mere pretext of having already acquired jurisdiction over the criminal action.[150] (Emphasis supplied)

Petitioners in this case hinge their claim on *Ledesma* in arguing that respondent Judge Pamular should have suspended action on the issuance of a warrant considering the pendency of their Petition for Review before the Department of Justice, which stated:[151]

Where the secretary of justice exercises his power of review only after an information has been filed, trial courts should defer or suspend arraignment and further proceedings until the appeal is resolved.

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[149] *Id*. at 235-236.

[150] *Id*. at 217.

[151] *Rollo,* p. 433.

Such deferment or suspension, however, does not signify that the trial court is *ipso facto* bound by the resolution of the secretary of justice. Jurisdiction, once acquired by the trial court, is not lost despite a resolution by the secretary of justice to withdraw the information or to dismiss the case.[152]

While the quoted portion relates to the issue on suspending arraignment pending the review of the Department of Justice, there is nothing in *Ledesma* that speaks of suspending the issuance of a warrant of arrest. Although there is an error on the part of Judge Pamular in denying petitioners' motion to suspend the arraignment of Corpus, he can validly issue a warrant of arrest upon finding probable cause to acquire jurisdiction over Corpus. Hence, this was strengthened in the cited case of *Ledesma,* stating that "[j]urisdiction, once acquired by the trial court, is not lost despite a resolution by the secretary of justice to withdraw the information or to dismiss the case."[153]

They also cited the dispositive portion of *Tolentino,* which directed the respondent judge in that case to desist from proceeding with the trial until after the Department of Justice would have finally resolved the pending petition for review:[154]

While We have noted from the *expediente* that the petitioner has utilized dilatory tactics to bring the case against her to trial, still she is entitled to the remedy she seeks. The respondent judge should not be more anxious than the prosecution in expediting the disposition of the case absent any indication of collusion between it and the defense. The Ministry of Justice should not be deprived of its power to review the action of the City Fiscal by a precipitate trial of the case.

WHEREFORE, the petition is granted. The respondent judge is hereby ordered not to proceed with the trial of the above-numbered criminal case until after the Ministry of Justice has resolved the petition for review filed by Mila P. Tolentino. No costs.[155]

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[152] *Id*. at 434-435.

[153] *Id*.

[154] *Id*. at 472-473.

[155] *Id*. at 435.

Tolentino involved a petition for certiorari that sought to annul the order of the respondent judge in that case to proceed with the trial of the case premised on grave abuse of discretion.[156] In that case, petitioners Mila Tolentino (Mila) and Roberto Tolentino were accused of falsification of public documents before the Regional Trial Court of Tagaytay. Prior to Mila's arraignment, she asked for the suspension of the proceedings due to the pendency of a petition for review before the Ministry of Justice. The respondent judge in that case required the fiscal to comment. In the comment, the fiscal interposed no objection on the motion. However, respondent judge denied the motion stating that the city fiscal had already reinvestigated the case and speedy trial should also be afforded to the prosecution. Hence, this Court ruled that respondent judge should not proceed to trial pending the review before the Ministry of Justice.

However, the factual milieu of *Tolentino* is different from the present case. It does not involve the issuance of a warrant of arrest necessary for acquiring jurisdiction over the person of the accused.

IV.A

Petitioners question the inclusion of Corpus and the insertion of the phrase "conspiring and confederating together" in the amended information. They contend that Rule 110, Section 14 of the Revised Rules of Criminal Procedure prohibits substantial amendment of information that is prejudicial to the rights of the accused after his or her arraignment.[157] To buttress their point, they cited *People v. Montenegro,*[158] which provided that an allegation of conspiracy which was not previously included in the original information, constitutes a substantial amendment.[159]

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[156] *Tolentino v. Bonifacio,* 223 Phil. 558 (1985) [Per *J.* Abad-Santos, Second Division].

[157] *Rollo,* p. 490.

[158] 242 Phil. 655 (1988) [Per *J.* Padilla, Second Division].

[159] *Rollo,* pp. 489-490.

Rule 110, Section 14 of the Revised Rules of Criminal Procedure provides:

> Rule 110
> Prosecution of Offenses
>
> Section 14. *Amendment or substitution.* — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. *After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.* ... (Emphasis supplied)

Before an accused enters his or her plea, either formal or substantial amendment of the complaint or information may be made without leave of court. After an entry of plea, only a formal amendment can be made provided it is with leave of court and it does not prejudice the rights of the accused.[160] After arraignment, there can be no substantial amendment except if it is beneficial to the accused.[161]

Since only petitioner Samonte has been arraigned, only he can invoke this rule. Petitioner Corpus cannot invoke this argument because he has not yet been arraigned.

Once an accused is arraigned and enters his or her plea, Section 14 prohibits any substantial amendment especially those that may prejudice his or her rights. One of these rights includes the constitutional right of the accused to be informed of the nature and cause of the accusations against him or her, which is given life during arraignment.[162]

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[160] *Matalam v. Second Division of the Sandiganbayan,* 495 Phil. 664. (2005) [Per *J*. Chico-Nazario, Second Division].

[161] *Mendez v. People,* 736 Phil. 181 (2014) [Per *J*. Brion, Second Division] stated: "Once the accused is arraigned and enters his plea, however, Section 14 prohibits the prosecution from seeking a substantial amendment, particularly mentioning those that may prejudice the rights of the accused."

[162] *Id*.

Arraignment is necessary to bring an accused in court and in notifying him or her of the cause and accusations against him or her.[163] "Procedural due process requires that the accused be arraigned so that he [or she] may be informed of the reason for his [or her] indictment, the specific charges he [or she] is bound to face, and the corresponding penalty that could be possibly meted against him [or her]."[164]

It is during arraignment that an accused is given the chance to know the particular charge against him or her for the first time.[165] There can be no substantial amendment after plea because it is expected that the accused will collate his or her defenses based on the contents of the information. "The theory in law is that since the accused officially begins to prepare his [or her] defense against the accusation on the basis of the recitals in the information read to him [or her] during arraignment, then the prosecution must establish its case on the basis of the same information."[166] Aside from violating the accused's right to due process, any substantial amendment in the information will burden the accused in preparing for his or her defense.

In a criminal case, due process entails, among others, that the accusation must be in due form and that the accused is given the opportunity to answer the charges against him or her.[167] There is a need for the accused to be supplied with the necessary information as to "why he [or she] is being proceeded against and not be left in the unenviable state of speculating why he [or she] is made the object of a prosecution, it being the fact that, in criminal cases, the liberty, even the life, of the accused is at stake."[168]

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[163] *Kummer v. People,* 717 Phil. 670 (2013) [Per J. Brion, Second Division].

[164] *Id.* at 687.

[165] *Id.*

[166] *Mendez v. People,* 736 Phil. 192 (2014) [Per J. Brion, Second Division].

[167] *Buhat v. Court of Appeals,* 333 Phil. 562 (1996) [Per J. Hermosisima, Jr., First Division].

[168] *Id.* at 575.

IV.B

Apart from violating the right of the accused to be informed of the nature and cause of his or her accusation, substantial amendments to the information after plea is prohibited to prevent having the accused put twice in jeopardy.

Article III,[169] Section 21 of the 1987 Constitution provides:

> Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

The Constitutional provision on double jeopardy guarantees the invocation of the law not only against the danger of a second punishment or a second trial for the same offense, "but also against being prosecuted twice for the same act where that act is punishable by . . . law and an ordinance."[170] When a person is charged with an offense and the case against him or her is terminated either by acquittal or conviction or in any other way without his or her consent, he or she cannot be charged again with a similar offense.[171] Thus, "[t]his principle is founded upon the law of reason, justice and conscience."[172]

The constitutionally mandated right against double jeopardy is procedurally bolstered by Rule 117, Section 7 of the Revised Rules of Criminal Procedure,[173] which reads:

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[169] Bill of Rights.

[170] *Ada v. Virola,* 254 Phil. 341 (1989) [Per *C.J.* Fernan, Third Division].

[171] *Mallari v. People,* 250 Phil. 421 (1988) [Per *J.* Fernan, Third Division].

[172] *Id.* at 424.

[173] *Braza v. Sandiganbayan,* 704 Phil. 476 (2013) [Per *J.* Mendoza, Third Division].

RULE 117
Motion to Quash

. . . . . .

Section 7. *Former Conviction or Acquittal; Double Jeopardy.* — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

. . . . . .

In substantiating a claim for double jeopardy, the following requisites should be present:

(1) a first jeopardy must have attached prior to the second; (2) the first jeopardy must have been validly terminated; and (3) the second jeopardy must be for the same offense as in the first.[174]

With regard the first requisite, the first jeopardy only attaches:

(a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused was acquitted or convicted, or the case was dismissed or otherwise terminated without his express consent.[175]

The test for the third requisite is "whether one offense is identical with the other or is an attempt to commit it or a frustration thereof; or whether the second offense includes or is necessarily included in the offense charged in the first information."[176]

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[174] *Id*. at 493.

[175] *Id*. at 492.

[176] *Id*.

Also known as *"res judicata* in prison grey," the mandate against double jeopardy forbids the "prosecution of a person for a crime of which he [or she] has been previously acquitted or convicted."[177] This is to "set the effects of the first prosecution forever at rest, assuring the accused that he [or she] shall not thereafter be subjected to the danger and anxiety of a second charge against him [or her] for the same offense."[178]

People v. Dela Torre[179] underscored the protection given under the prohibition against double jeopardy:

> Double jeopardy provides three related protections: (1) against a second prosecution for the same offense after acquittal, (2) against a second prosecution for the same offense after conviction, and (3) against multiple punishments for the same offense.
>
> . . . . . .
>
> The ban on double jeopardy is deeply rooted in jurisprudence. The doctrine has several avowed purposes. ***Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials.*** It also serves the additional purpose of precluding the State, following an acquittal, from successively retrying the defendant in the hope of securing a conviction. And finally, it prevents the State, following conviction, from retrying the defendant again in the hope of securing a greater penalty.[180] (Emphasis supplied, citations omitted)

Double jeopardy is a fundamental constitutional concept which guarantees that an accused may not be harassed with constant charges or revisions of the same charge arising out of the same facts constituting a single offense. When an accused traverses the allegations in the information by entering a plea during the arraignment, he or she is already put in jeopardy of conviction.

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[177] *Caes v. Intermediate Appellate Court,* 258-A Phil. 620, 626 (1989) [Per *J*. Cruz, First Division].

[178] *Id*. at 626-627.

[179] 430 Phil. 420 (2002) [Per *J*. Panganiban, Third Division].

[180] *Id*. at 430.

Having understood the charges, the accused after entering a plea prepares for his or her defense based on the possible evidence that may be presented by the prosecution. The protection given to the accused by the double jeopardy rule does not attach only after an acquittal or a conviction. It also attaches after the entry of plea and when there is a prior dismissal for violation of speedy trial.

An arraignment, held under the manner required by the rules, grants the accused an opportunity to know the precise charge against him or her for the first time.[181] It is called for so that he or she is "made fully aware of possible loss of freedom, even of his [or her] life, depending on the nature of the crime imputed to him [or her]. At the very least then, he [or she] must be fully informed of why the prosecuting arm of the state is mobilized against him [or her]."[182] Thereafter, the accused is no longer in the dark and can enter his or her plea knowing its consequences.[183] It is at this stage that issues are joined, and without this, further proceedings cannot be held without being void.[184] Thus, the expanded concept of double jeopardy presupposes that since an accused can be in danger of conviction after his or her plea, the constitutional guarantee against double jeopardy should already apply.

IV.C

Any amendment to an information which only states with precision something which has already been included in the original information, and therefore, adds nothing crucial for conviction of the crime charged is only a formal amendment that can be made at anytime.[185] It does not alter the nature of

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[181] *Borja v. Mendoza,* 168 Phil. 83 (1977) [Per *J*. Fernando, Second Division].

[182] *Id*. at 87.

[183] *Id*.

[184] *People v. Estomaca y Garque,* 326 Phil. 429 (1996) [Per *J*. Regalado, *En Banc*].

[185] *People v. Montenegro,* 242 Phil. 655 (1988) [Per *J*. Padilla, Second Division].

the crime, affect the essence of the offense, surprise, or divest the accused of an opportunity to meet the new accusation.[186] Thus, the following are mere formal amendments:

> (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; and (4) an amendment which does not adversely affect any substantial right of the accused, such as his right to invoke prescription.[187] (Citations omitted)

On the other hand, "[a] substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court."[188]

The facts alleged in the accusatory part of the amended information are similar to that of the original information except as to the inclusion of Corpus as Samonte's co-accused and the insertion of the phrase "conspiring and confederating together." The allegation of conspiracy does not alter the basic theory of the prosecution that Samonte willfully and intentionally shot Angelito. Hence, the amendment is merely formal. As correctly pointed out by the Office of the Solicitor General:

> Even if one or all of the elements of the crime of murder as alleged in the original information filed against petitioner Samonte is not proven, the addition of conspiracy in the amended information, if duly proven, would not in any way result to his conviction because *conspiracy is not an essential or qualifying element of the crime of murder. The addition of conspiracy would only affect petitioner Corpuz, if together with the crime of murder leveled against petitioner Samonte,*

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[186] *Ricarze v. Court of Appeals,* 544 Phil. 237 (2007) [Per *J*. Callejo, Sr., Third Division].

[187] *Teehankee, Jr. v. Madayag,* 283 Phil. 956, 966 (1992) [Per *J*. Regalado, *En Banc*].

[188] *Id*.

both circumstances are duly proven by the prosecution.[189] (Emphasis supplied)

In *People of the Philippines v. Court of Appeals,*[190] this Court held that an allegation of conspiracy which does not change the prosecution's theory that the accused willfully shot the victim is merely a formal amendment.

In that case, two (2) informations for frustrated homicide were filed against accused Sixto Ruiz (Ruiz), who pleaded not guilty to both charges. A reinvestigation of these two (2) cases ensued in the Department of Justice, where the State Prosecutor filed a motion for leave of court to amend the information on the ground that the evidence revealed a *prima facie* case against Luis Padilla (Padilla) and Magsikap Ongchenco (Ongchenco) who acted in conspiracy with Ruiz. The trial judge denied the motion and reasoned that the allegation of conspiracy constitutes a substantial amendment. Consequently, the State Prosecutor filed two (2) new informations for frustrated homicide against Padilla and Ongchenco, which included the alleged conspiracy with Ruiz. Padilla and Ongchenco moved to quash the two (2) new informations, which was denied by the Court of First Instance of Rizal. Ruiz also filed a motion to permit to quash and/or strike out the allegation of conspiracy in the two (2) new informations. The trial judge ordered that the motions be stricken out from the records and explained that "the allegation of conspiracy in those cases does not alter the theory of the case, nor does it introduce innovation nor does it present alternative imputation nor is it inconsistent with the original allegations."[191] This prompted Ruiz, Padilla, and Ongchenco to file before the Court of Appeals a petition for certiorari with preliminary injunction, which was subsequently granted. However, this Court ruled:

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[189] *Rollo,* p. 419.

[190] *People v. Court of Appeals,* 206 Phil. 637 (1983) [Per *J.* Relova, First Division].

[191] *Id*. at 640.

There is merit in this special civil action. The trial Judge should have allowed the amendment ... considering that the *amendments sought were only formal.* As aptly stated by the Solicitor General in his memorandum, *"[T]here was no change in the prosecution's theory that respondent Ruiz wilfully[,] unlawfully and feloniously attacked, assaulted and shot with a gun Ernesto and Rogelio Bello ...* The amendments would not have been prejudicial to him because his participation as principal in the crime charged with respondent Ruiz in the original informations, could not be prejudiced by the proposed amendments."[192] (Emphasis supplied)

In that case, the amended information was impelled by a disclosure implicating Padilla and Ongchenco. Thus,

Otherwise stated, the amendments ... would not have prejudiced Ruiz whose participation as principal in the crimes charged did not change. *When the incident was investigated by the fiscal's office, the respondents were Ruiz, Padilla and Ongchenco. The fiscal did not include Padilla and Ongchenco in the two informations because of "insufficiency of evidence." It was only later when Francisco Pagcalinawan testified at the reinvestigation that the participation of Padilla and Ongchenco surfaced and, as a consequence, there was the need for the amendment of the informations or the filing of new ones against the two.*[193] (Emphasis supplied)

The records of this present case show that the original information for murder against Samonte was dated June 5, 2008.[194] Based on Lozano's affidavit dated on June 30, 2008,[195] Corpus was implicated as the one who instructed Samonte to

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[192] *Id*. at 641.

[193] *Id*. at 642.

[194] *Rollo,* p. 410.

[195] *Id*. at 70-72. Lozano's affidavit stated, in part:

KARAGDAGANG SINUMPAANG SALAYSAY.

Ako ay si Alexander Lozano y Jacob, ... ay malaya at kusang loob na nagsasalaysay gaya ng mga sumusunod

. . . . . .

kill Angelito.[196] This prompted the prosecution to conduct a reinvestigation, which resulted in the filing of the amended information.[197]

IV.D

Petitioners quote the portion of *People v. Montenegro*[198] that cited the case of *People v. Zulueta*[199] as their basis for asserting that the allegation of conspiracy is a substantial amendment because it warrants a new defense for the accused:[200]

> Surely the preparations made by herein accused to face the original charges will have to be radically modified to meet the new situation. For undoubtedly the allegation of conspiracy enables the prosecution to attribute and ascribe to the accused Zulueta all the acts, knowledge, admissions and even omissions of his co-conspirator Angel Llanes

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3. Na bago ako pumunta sa tanggapan ni Atty. Geminiano ay nagtungo muna ako sa Sangguniang Bayan lagpas alas-9 ng umagang iyon upang itanong kay Vice Mayor John Diego ang tungkol sa binhi ng palay na ipinamamahaging kasalukuyan ng munisipyo sa mga magsasaka.

4. Na papunta sa tanggapan ni Vice Mayor ay doon ako dumaan sa pasukan papuntang gym sa may likod ng opisina ni Mayor Amado "Jong" Corpus, Jr.

5. Na pagtapat ko sa tanggapan ni Mayor Corpus ay nakita ko si Carlito Samonte na may ibinubulong kay Mayor habang sila ay nandoroon sa labas sa may gilid ng tanggapan ni Mayor, at naging kapansin- pansin sa akin na ang sinasabi ni Samonte kay Mayor ano man iyon dahil pabulong ang pagsasalita niya ay ikinakagalit ni Mayor na bakas na bakas ko sa anyo ng mukha ng nahuli.

6. Na kitang-kita ko rin ng abotan ni Mayor si Samonte ng puting baril na eskwalado (stainless) at dinig na dinig ko ang sabay na pagalit na sinabi nito kay Samonte na *"Putang inang Lito yan! Sige! Birahin mo!"*

. . . . . .

[196] *Id*. at 514.

[197] *Id*.

[198] 242 Phil. 655 (1988) [Per *J*. Padilla, Second Division].

[199] 89 Phil. 752 (1951) [Per *J*. Bengzon, Third Division].

[200] *Rollo,* p. 491.

in furtherance of the conspiracy. The amendment thereby widens the battlefront to allow the use by the prosecution of newly discovered weapons, to the evident discomfiture of the opposite camp. Thus it would seem inequitable to sanction the tactical movement at this stage of the controversy, bearing in mind that the accused is only guaranteed two-days' preparation for trial. Needless to emphasize, as in criminal cases, the liberty, even the life, of the accused is at stake, it is always wise and proper that he be fully apprised of the charges, to avoid any possible surprise that may lead to injustice. The prosecution has too many facilities to covet the added advantage of meeting unprepared adversaries.[201]

Zulueta is inapplicable. In that case, this Court declined the admission of the amended information because it would change the nature of the crime as well as the prosecution's theory:

> Indeed, contrasting the two informations one will perceive that whereas in the first the accused is charged with misappropriation of public property because: (1) he deceived Angel Llanes into approving the bargain sale of nails to Beatriz Poblete or (2) at least, by his abandonment he permitted that woman to obtain the articles at very cheap prices, in the amended information a third ground of responsibility is inserted, namely, that he connived and conspired with Angel Llanes to consummate the give-away transaction.
>
> Again it will be observed that the third ground of action in effect *contradicts the original theory of the information: if the accused conspired with Llanes, he did not deceive the latter, and did not by mere negligence permit the sale.*[202] (Emphasis supplied)

Additionally, *Montenegro* is also inapplicable in this case because the amendment to the information in that case was considered as substantial due to the effect of changing the original crime charged from Robbery under Article 209 to Robbery in an Uninhabited Place under Article 302 of the Revised Penal Code. With this, the accused were exposed to a charge with a

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[201] *Id.* at 491-492.

[202] *People v. Zulueta,* 89 Phil. 752, 754 (1951) [Per *J.* Bengzon, Third Division].

higher imposable penalty than that of the original charge to which they pleaded "not guilty."[203] Furthermore:

> [T]he change in the items, articles and jewelries allegedly stolen into entirely different articles from those originally complained of, *affects the essence of the imputed crime, and would deprive the accused of the opportunity to meet all the allegations in the amended information, in the preparation of their defenses to the charge filed against them.* It will be observed that private respondents were accused as accessories-after-the-fact of the minor Ricardo Cabaloza who had already been convicted of robbery of the items listed in the *original* information. To charge them now as accessories-after-the-fact for a crime different from that committed by the principal, would be manifestly incongruous as to be allowed by the Court.[204] (Emphasis supplied)

The case cited by petitioners in this case rendered the addition of conspiracy in the amended information substantial because it either alters the defense of the accused or alters the nature of the crime to which the accused pleaded. However, the factual incidents of the cited cases are different from this present case because the allegation of conspiracy in the amended information did not change the prosecution's basic theory that Samonte willfully and intentionally shot Angelito.

IV.E

Rule 110, Section 14 similarly provides that in permitting formal amendments when the accused has already entered his or her plea, it is important that the amendments made should not prejudice the rights of the accused.[205] In *People v. Casey,*[206] this Court laid down the test in determining whether an accused is prejudiced by an amendment. Thus,

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[203] *People v. Montenegro,* 242 Phil. 655 (1988) [Per *J.* Padilla, Second Division].

[204] *Id*. at 662.

[205] *Pacoy v. Cajigal,* 560 Phil. 598 (2007) [Per *J.* Austria-Martinez, Third Division].

[206] 190 Phil. 748 (1981) [Per *J.* Guerrero, *En Banc*].

The test as to whether a defendant is prejudiced by the amendment of an information has been said to be ***whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other.*** A look into Our jurisprudence on the matter shows that an amendment to an information introduced after the accused has pleaded not guilty thereto, which does not change the nature of the crime alleged therein, does not expose the accused to a charge which could call for a higher penalty, does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance — not prejudicial to the accused and, therefore, not prohibited by Section 13, Rule 110 of the Revised Rules of Court.[207] (Emphasis supplied, citations omitted)

It is undisputed that upon arraignment under the original information, Samonte admitted the killing but pleaded self-defense.[208] While conspiracy is merely a formal amendment, Samonte will be prejudiced if the amendment will be allowed after his plea. Applying the test, his defense and corresponding evidence will not be compatible with the allegation of conspiracy in the new information. Therefore, such formal amendment after plea is not allowed.

V.A

Petitioners claim that the assailed warrant of arrest was made in utter disregard of the constitutional mandate which directs judges to personally conduct an independent examination, under oath or affirmation, of the complainant and the witnesses he or she may produce.[209] They further assert that the assailed February 26, 2009 Order only consists of three (3) short sentences that merely contain a certain legal provision, instead

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[207] *Id*. at 759.

[208] *Rollo,* p. 410.

[209] *Id*. at 476.

of facts that will supposedly substantiate the issuance of a warrant of arrest.[210]

Article III, Section 2 of the Constitution reads:

> Article III
> Bill of Rights
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> . . . . . .
>
> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no *search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce,* and particularly describing the place to be searched and the persons or things to be seized. (Emphasis supplied)

In *Soliven v. Makasiar,*[211] the issue raised by the petitioner in that case called for the interpretation of Article III, Section 2 of the Constitution. It is apparent that the inclusion of the word "personally" after the word "determined" and the removal of the grant of authority by the 1973 Constitution to issue warrants to "other responsible officers as may be authorized by law" has persuaded the petitioner to believe that what the Constitution now requires is for the "judge to personally examine the complainant and his witnesses"[212] in determining probable cause for the issuance of a warrant. However, this Court ruled that this is not an accurate interpretation.

In that case, this Court underscored that the Constitution gives emphasis on the "exclusive and personal responsibility of the issuing judge to satisfy himself the existence of probable cause."[213] In convincing himself or herself on the presence of probable cause for the issuance of a warrant, the issuing judge

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[210] *Id*. at 477.

[211] 249 Phil. 394 (1988) [*Per Curiam*, *En Banc*].

[212] *Id*. at 399.

[213] *Id*.

"is ***not*** required to personally examine the complainant and his witnesses."[214] "Sound policy dictates this procedure, otherwise judges would be unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts."[215]

In the 1987 Constitution, the judge is required to *"personally"* determine the existence of probable cause.[216] This requirement, however, does not appear in the corresponding provisions found in our previous Constitutions.[217] This gives prominence to the framers' intent of placing "greater degree of responsibility upon trial judges than that imposed under previous Constitutions."[218]

Probable cause cannot be merely established by showing that a trial judge subjectively believes that he or she has good grounds for his or her action.[219] Thus, good faith does not suffice because if "subjective good faith alone were the test, the constitutional protection would be demeaned and the people would be *'secure in their persons, houses, papers and effects'* only in the fallible discretion of the judge."[220] Before issuing a warrant of arrest, the judge must satisfy himself or herself that based on the evidence presented, a crime has been committed and the person to be arrested is probably guilty of it.[221]

In *Lim v. Felix,*[222] the ruling in *Soliven* was reiterated. The main issue raised in *Lim* is whether a judge may issue a warrant

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[214] *Id*.

[215] *Id*. at 399-400.

[216] *Abdula v. Guiani,* 382 Phil. 757 (2000) [Per *J*. Gonzaga-Reyes, Third Division].

[217] *Id*.

[218] *Id*. at 773.

[219] *Allado v. Diokno,* 302 Phil. 213 (1994) [Per *J*. Bellosillo, First Division].

[220] *Id*. at 235.

[221] *Ho v. People,* 345 Phil. 597 (1997) [Per *J*. Panganiban, *En Banc*].

[222] 272 Phil. 122 (1991) [Per *J*. Gutierrez, Jr., *En Banc*].

of arrest without bail "by simply relying on the prosecution's certification and recommendation that a probable cause exists."[223] In that case, the preliminary investigation records conducted by the Municipal Court of Masbate were still in Masbate. However, the Regional Trial Court Judge of Makati still issued a warrant of arrest against the petitioners. This Court ruled that the respondent judge "committed a grave error when he relied solely on the Prosecutor's certification and issued the questioned Order ... without having before him any other basis for his personal determination of the existence of a probable cause"[224] and reasoned that:

> At the same time, the Judge cannot ignore the clear words of the 1987 Constitution which requires "... probable cause to be *personally* determined by the judge ..." not by any other officer or person.
>
> If a Judge relies *solely on the certification of the Prosecutor as in this case where all the records of the investigation are in Masbate, he or she has* ***not*** *personally determined probable cause. The determination is made by the Provincial Prosecutor. The constitutional requirement has not been satisfied. The Judge commits a grave abuse of discretion.*
>
> The records of the preliminary investigation conducted by the Municipal Court of Masbate and reviewed by the respondent Fiscal were still in Masbate when the respondent Fiscal issued the warrants of arrest against the petitioners. *There was no basis for the respondent Judge to make his own personal determination regarding the existence of a probable cause for the issuance of a warrant of arrest as mandated by the Constitution. He could not possibly have known what transpired in Masbate as he had nothing but a certification.* Significantly, the respondent Judge denied the petitioners' motion for the transmittal of the records on the ground that the mere certification and recommendation of the respondent Fiscal that a probable cause exists is sufficient for him to issue a warrant of arrest.

We reiterate the ruling in *Soliven v. Makasiar* that the Judge does not have to personally examine the complainant and his witnesses.

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[223] *Id*. at 130.

[224] *Id*. at 138.

The Prosecutor can perform the same functions as a commissioner for the taking of the evidence. *However, there should be a report and necessary documents supporting the Fiscal's bare certification. All of these should be before the Judge.*

The extent of the Judge's personal examination of the report and its annexes depends on the circumstances of each case. We cannot determine beforehand how cursory or exhaustive the Judge's examination should be. The Judge has to exercise sound discretion for, after all, the personal determination is vested in the Judge by the Constitution. It can be as brief or as detailed as the circumstances of each case require. To be sure, the Judge must go beyond the Prosecutor's certification and investigation report whenever necessary. He should call for the complainant and witnesses themselves to answer the court's probing questions when the circumstances of the case so require.

. . . . . .

We reiterate that in making the required personal determination, a Judge is not precluded from relying on the evidence earlier gathered by responsible officers. The extent of the reliance depends on the circumstances of each case and is subject to the Judge's sound discretion. However, the Judge abuses that discretion when having no evidence before him, he issues a warrant of arrest.[225] (Emphasis supplied)

Soliven provided that as dictated by sound policy, an issuing judge is not required to personally examine the complainant and his witnesses as long as he or she has satisfied himself or herself of the existence of probable cause.[226] To rule otherwise would unduly burden judges with preliminary examination of criminal complaints instead of attending to more important matters. However, due to recent developments in the legal system which include the judicial affidavit rule, the evil sought to be prevented in *Soliven* does not exist anymore. To minimize the time required for completing testimonies of witnesses in litigated cases, this Court approved the use of judicial affidavits in lieu

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[225] *Id.* at 135-137.

[226] *Soliven v. Makasiar,* 249 Phil. 394 (1988) [*Per Curiam*, *En Banc*].

of witnesses' direct testimonies.[227] Thus, this is more in tune with the Constitutional mandate by lessening the burden imposed upon judges by expediting litigation of cases for them to attend to their exclusive and personal responsibility of satisfying themselves with the existence of probable cause when issuing a warrant.

V.B

Rule 112, Section 6 of the Revised Rules of Criminal Procedure provides:

> RULE 112
> Preliminary Investigation
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> . . . . . .
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> Section 6. *When Warrant of Arrest May Issue.* — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, *the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence.* He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (Emphasis supplied)

Pursuant to the provision, the issuing judge has the following options upon the filing of an Information:

> (1) dismiss the case if the evidence on record clearly failed to establish probable cause; (2) if he or she finds probable cause, issue a warrant of arrest; and (3) in case of doubt as to the existence of probable cause, order the prosecutor to present additional evidence within

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[227] *Judicial Affidavit Rule,* A.M. No. 12-8-8-SC (2012).

five days from notice, the issue to be resolved by the court within thirty days from the filing of the information.[228] (Citation omitted)

It is required for the judge to "personally evaluate the resolution of the prosecutor and its supporting evidence."[229] In case the evidence on record fails to substantiate probable cause, the trial judge may instantly dismiss the case.[230]

The records of this case reveal that the February 26, 2009 Order presented a discussion showing both the factual and legal circumstances of the case from the filing of the original information until the filing of the Motion to Amend Information. Respondent Judge Pamular, therefore, is familiar with the incidents of this case, which were his basis for issuing the warrant. Thus, before he issued the assailed Order and warrant, a hearing was conducted on February 13, 2009 regarding the motions and manifestations filed in the case:[231]

> On February 13, 2009, a hearing was held wherein the parties presented their arguments. On the issue regarding the undated motion to amend information without notice of hearing and the motion for reconsideration filed by the prosecution, the court ruled that the same is moot and academic due to the conduct of the said hearing.[232]

Furthermore, respondent Judge Pamular has a working knowledge of the circumstances regarding the amended information that constrained him to find probable cause in issuing the warrant. The pertinent portion of the Order provided:

> Elementary is the rule that the existence of probable cause is indispensable in the filing of complaint or information and in the issuance of warrant of arrest. The legion of jurisprudence has defined probable cause to be concerned with probability, not absolute or even

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[228] *Ong v. Genio,* 623 Phil. 835, 843 (2009) (Per *J.* Nachura, Third Division].

[229] *Id.*

[230] *Id.*

[231] *Rollo,* p. 51.

[232] *Id.* at 52.

moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt. The standards of judgment are those of a reasonably prudent man and not the exacting calibrations of a judge after a full blown trial. No law or rule states that probable cause requires a specific kind of evidence. It is determined in the light of conditions obtaining in a given situation.[233]

In respondent Judge Pamular's Comment, he claimed that:

> Be that as it may, still, the undersigned respondent judge made a careful perusal of the records of the case. ***Sufficient copies of supporting documents and/or evidence were read and evaluated upon which, independent judgment as to the existence of probable cause was based.*** But, then again, still not satisfied, the undersigned even went beyond the face of the resolution and evidences (sic) presented before this Court. On 13 February 2009, Criminal Case No. 2618-G was set for hearing. The prosecution and the defense were given the chance to argue on the matter and ample opportunity to be heard.[234] (Emphasis supplied)

Apart from respondent judge's personal examination of the amended information and supporting documents, the hearing conducted on February 13, 2009 enabled him to find probable cause prompting him to issue the warrant of arrest.[235]

VI

On March 19, 2014, Priscilla filed a Manifestation,[236] which provides that on October 30, 2013, Samonte executed an affidavit[237] stating that Corpus ordered him to kill Angelito.[238]

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[233] *Id*. at 53.

[234] *Id*. at 281-282.

[235] *Id*.

[236] *Id*. at 556-558.

[237] *Id*. at 559-560.

[238] *Id*. at 556.

Settled is the rule that this Court is not a trier of facts.[239] These matters are left to the lower courts, which have "more opportunity and facilities to examine these matters."[240] This Court is not a trier of facts and cannot receive new evidence that would aid in the speedy resolution of this case.[241] It is not this Court's function to "analyze and weigh the evidence all over again."[242]

Therefore, based on the foregoing, this Court remands this case to the Regional Trial Court for it to pass upon this factual issue raised by petitioner Samonte based on his October 30, 2013 affidavit.

WHEREFORE, premises considered, the Petition for Certiorari is **PARTIALLY GRANTED.** The case is remanded to the Regional Trial Court of Guimba, Nueva Ecija for its preliminary examination of probable cause for the issuance of a warrant of arrest and thereafter proceed to the arraignment of petitioner Amado Corpus, Jr.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr., Gesmundo,* and *Reyes, J. Jr., JJ.,* concur.

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[239] *Bernardo v. Court of Appeals,* 290 Phil. 649 (1992) [Per *J*. Campos, Jr., Second Division].

[240] *Id*. at 658.

[241] *Land Bank of the Phils. v. Livioco,* 645 Phil. 337 (2010) [Per *J*. Del Castillo, First Division].

[242] *Alicer v. Compas,* 664 Phil. 730 (2011) [Per *J*. Carpio, Second Division].

FIRST DIVISION

[G.R. No. 201881. September 5, 2018]

SPOUSES FLAVIO P. BAUTISTA and ZENAIDA L. BAUTISTA, *petitioners, vs.* **PREMIERE DEVELOPMENT BANK; and ATTY. PACITA ARAOS, Senior Assistant Vice President & Acting Head of Legal and Collection Group, Premiere Development Bank,** *respondents.*

SYLLABUS

1. CIVIL LAW; ACT 3135 (REAL ESTATE MORTGAGE LAW); PUBLICATION AND POSTING OF THE NOTICE OF THE RESCHEDULED EXTRAJUDICIAL FORECLOSURE SALE ARE MANDATORY AND JURISDICTIONAL; THE ENSUING FORECLOSURE SALE HELD WITHOUT THE PUBLICATION AND POSTING OF THE NOTICE IS VOID *AB INITIO*; CASE AT BAR. [T]he requirements for posting and publication under Act No. 3135 were mandatory and jurisdictional. We have held that statutory provisions governing the publication of notice of mortgage foreclosure sales must be strictly complied with; hence, even slight deviations from the requirements would invalidate the notice and render the sale *at least* voidable. The objective of the notice requirements is to achieve a "reasonably wide publicity" of the public sale so that whoever may be interested may know of and attend the public sale. This is the reason why the publication must be made in a newspaper of general circulation. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation. As such, the publication of the notice of sale in a newspaper of general circulation is essential to the validity of the foreclosure proceedings. To allow the parties to waive the jurisdictional requirement can convert into a private sale what ought to be a public auction. x x x It was, therefore, wrong and presumptuous for Premiere Bank to justify the non-compliance with the requirements of posting and publication by reminding that the petitioners had themselves requested the series of postponements of the sale. We have already settled that the

compliance with the requirements for posting and publication of the notice of the *rescheduled* sale was essential to the validity of the sale. The compliance could not be waived by either of the parties to the mortgage by reason of its being based on public policy considerations. As such, the statutory requirements of posting and publication of the notice were not intended for the protection of the parties to the mortgage but for the benefit of third persons. The foreclosure proceedings are undeniably imbued with public policy considerations, and any waiver made in connection therewith would be inconsistent with the intent and letter of Act No. 3135.

2. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; DOES NOT EXCUSE COMPLIANCE WITH THE NOTICE OF REQUIREMENTS UNDER ACT 3135 WHICH ARE JURISDICTIONAL AND MANDATORY; CASE AT BAR. [T]hat the respondent sheriff was entitled to be presumed to have regularly performed his official duties in conducting the foreclosure proceedings, as Premiere Bank has urged, did not validate the sale. Such presumption could not excuse the non-compliance with the mandatory and jurisdictional requirements of Act No. 3135. At any rate, the disputable presumption of regularity could not even be extended to the respondent sheriff in view of the lack of posting and publication being sufficiently established by the admissions of the parties and their evidence.

3. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; APPEAL IS LIMITED TO QUESTIONS OF LAW BECAUSE THE SUPREME COURT IS NOT A TRIER OF FACTS. The last issue being raised herein is whether or not the loan obligation of the petitioners was fully settled. In this regard, the parties ostensibly disagreed, with the petitioners insisting that they were liable only for ₱401,820.00, the amount they actually tendered to the respondent sheriff in their effort to redeem the property but Premiere Bank belying the adequacy of their tender through its claim of their outstanding obligation already totaling ₱2,062,254.26 as of February 18, 2002. Such issue is a factual one that the Court cannot review and resolve through this mode of appeal. Accordingly, the petitioners' appeal

of this issue should be disallowed for being in contravention of Section 1, Rule 45 of the *Rules of Court*, which limited the appeal to questions of law that the petitioners must distinctly set forth. The limitation to questions of law is observed because the Court is not a trier of fact.

APPEARANCES OF COUNSEL

Desi Karlo G. Mendoza for petitioners.

Tagalog Gempis & Associates for respondents Security Bank Savings Corp.

D E C I S I O N

BERSAMIN, *J.*:

The publication and posting of the notice of the *rescheduled* extrajudicial foreclosure sale are mandatory and jurisdictional. The ensuing foreclosure sale held without the publication and posting of the notice is void *ab initio*. This is because the requirements of publication and posting emanate from public policy considerations, and are not for the benefit of the parties to the mortgage.

The Case

The petitioners assail the decision promulgated on January 27, 2012,[1] whereby the Court of Appeals (CA) affirmed the adverse judgment rendered in Civil Case No. 1792 on February 8, 2008 by the Regional Trial Court, Branch 77, in San Mateo, Rizal dismissing their complaint for the annulment of the extrajudicial foreclosure sale of their property.[2]

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[1] *Rollo*, pp. 92-98; penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justice Samuel H. Gaerlan and Associate Justice Danton Q. Bueser.

[2] CA *rollo*, pp. 138-150; penned by Judge Francisco C. Rodriguez.

Antecedents

The petitioners are the registered owners of the parcel of land located in Rodriguez, Montalban, Rizal, with an area of 1,248 square meters, and covered by Transfer Certificate of Title (TCT) No. 150668 of the Registry of Deeds of Marikina City.[3]

On January 7, 1994, the petitioners obtained a loan of ₱500,000.00 from respondent Premiere Development Bank (Premiere Bank) for which they executed the corresponding promissory note. To secure the performance of their obligation, they also executed a real estate mortgage over the abovestated parcel of land and its improvements.[4] The loan agreement stipulated that the obligation would be payable in three years through monthly amortizations of ₱20,412.51, subject to interest and penalty charges as follows:

(a) Floating rate renewable monthly with an initial interest rate of 27% per annum;

(b) In addition to the aforesaid stipulated interest, penalty charges of 24% per annum on any unpaid principal/amortization/installment/ interest/advances and other charges due to be computed from date of default until full payment of obligation;

(c) Penalty in the amount equivalent to 3% of the outstanding balance of the loan if said loan is pre-terminated or paid before maturity date.[5]

Premiere Bank collected the monthly amortizations by debiting the same from the petitioners' savings account.[6]

For failure of the petitioners to settle their obligation in full, the sheriff sent the first notice of extrajudicial foreclosure sale to them on October 17, 1995, informing that the mortgaged

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[3] Records, pp. 314-315.

[4] *Id.* at 49-52.

[5] CA *rollo*, p. 266.

[6] Records Volume II, p. 273.

property would be sold in a public sale to be conducted on November 17, 1995.[7] The petitioners requested the postponement of the scheduled sale as well as a detailed computation of their outstanding obligations several times, as borne out by the exchange of letters between them and Premiere Bank.[8]

On December 6, 2001, the sheriff prepared sent notice of the extrajudicial foreclosure sale to be held on January 15, 2002.[9] The notice was published in *The Challenger News*, a newspaper of general circulation in the Province of Rizal, in the issues of December 10, 17, and 24, 2001.[10] The sheriff posted the notice of the sale in public places within San Mateo, Rizal and in the place where the property was located. However, the sale did not push through as scheduled because the representative of Premiere Bank did not appear, and was rescheduled to February 18, 2002.[11]

Although no publication and posting of the notice of the rescheduled date of February 18, 2002 were made thereafter,[12] the sheriff conducted the foreclosure sale on February 18, 2002, and struck off the property of the petitioners to Premiere Bank as the lone bidder.[13] The sheriff issued the certificate of sale in the name of Premiere Bank, and the same was annotated on the original copy of TCT No. 150668 on November 7, 2002. The statement of account indicated that the petitioners' outstanding obligation totalled ₱2,062,254.26 as of February 18, 2002.[14]

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[7] Records, p. 180.

[8] *Id.* at 201-208.

[9] *Id.* at 27.

[10] *Id.* at 195.

[11] *Id.* at 197.

[12] *Id.* at 65.

[13] *Id.* at 198.

[14] *Id.* at 164-165.

The petitioners redeemed the property within the required period by tendering the amount of ₱401,820.00.[15] The sheriff issued the certificate of redemption in their name, but Premiere Bank refused to accept the redemption price because their total unpaid outstanding obligation had accumulated to ₱2,062,254.26. Premiere Bank then consolidated its ownership, and the Register of Deeds of Marikina City issued TCT No. 452198 in the name of Premiere Bank.[16]

Judgment of the RTC

On November 6, 2003, the petitioners sued the respondents in the RTC to seek the annulment of the sheriff's foreclosure sale held on February 18, 2002 on the ground of the failure of the respondents to comply with the mandatory and jurisdictional requirements of publication and posting of the notice of sale in accordance with Act No. 3135 (docketed as Civil Case No. 1792).[17] They also prayed that the RTC should order the determination of the correct and lawful interest and penalty charges due from them.

On February 8, 2008, the RTC rendered judgment dismissing the petitioners' complaint.[18]

In upholding the extrajudicial foreclosure sale despite the lack of publication and posting of the notice of the public sale held on February 18, 2002, the RTC observed:

> While it is true that there was no republication and reposting of the notice of the auction sale held on 18 February 2002, wherein the subject property was awarded to the lone bidder, defendant Premiere Development Bank, Inc., it appears that plaintiffs-mortgagors voluntarily waived the same when they asked for a series of

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[15] *Id.* at 320.

[16] *Rollo*, p. 93.

[17] Records, pp. 1-9.

[18] CA *rollo*, pp. 30-42.

postponement as shown by a number of letters by petitioner-mortgagor Flavio Bautista.[19]

The RTC considered the petitioners estopped from assailing the validity of the foreclosure sale, stating that:

> Moreover, considering that plaintiffs tried to redeem the property in the amount of ₱401,820.00, which is way below the amount of their outstanding obligation, they are estopped from questioning the validity of the auction sale and cannot now claim that there were irregularities in the conduct of the same.[20]

The RTC declared that the imposition of onerous and exorbitant interests and penalty charges did not occur considering that the parties had mutually agreed on the payment of interest and penalties; and that they had also freely stipulated on the interest rate to be floating and reviewable monthly.[21]

Decision of the CA

The petitioners appealed, asserting that the RTC had gravely erred, *viz*: (1) when it did not declare as null and void the extrajudicial foreclosure sale held on February 18, 2002 despite the non-compliance with the mandatory requirements of publication and posting of the notice of the rescheduled sale: (2) in ruling that they had waived the mandatory requirements by seeking a series of postponements of the sale; (3) in holding that they were estopped from assailing the sale by their effort to redeem the property; (4) in finding that they had not fully settled their obligation, and in giving due weight and credit to the computation sheets belatedly prepared by Premiere Bank; (5) in refusing to rule on Premiere Bank's violation of the *Truth in Lending Act;* (6) in not declaring that a valid redemption had been made; and (7) in declaring that they had not proved their cause of action.[22]

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[19] *Id*. at 42.

[20] *Id*.

[21] *Id*. at 41.

[22] *Rollo*, pp. 94-95.

On January 27, 2012, the CA promulgated the assailed decision,[23] affirming the validity of the February 18, 2002 foreclosure sale despite the non-posting and non-publication of the notice of the rescheduled sale.[24] It stated that the petitioners were estopped from challenging the validity of the extrajudicial proceedings because they did not seek judicial relief therefrom, and because they redeemed the foreclosed property and tendered the redemption price without any condition or reservation.[25] It upheld the interests and penalty charges imposed on the petitioners because "the *Promissory Note* explicitly provides for the imposition of interest, penalties and other charges in case appellants failed or defaulted in their loan obligation."[26] It found that no irregularities had attended the loan transaction between the parties, to wit:

> In the case at bar, there is no showing that there were irregularities in the (appellants') loan transactions with the bank. The parties in this case as evidenced by the Promissory Note and other loan documents *have mutually agreed to the payment of interest, past due interest and penalties in case the borrowers defaulted to pay their loan obligation on the stipulated date. It is likewise stipulated therein that the interest rate is floating and reviewable monthly*. Considering that the (appellants) defaulted in their monthly amortization, their subsequent payments shall be first applied on the accrued interest and penalties and thereafter to the principal loan. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interest have been covered (Art 1253 of the New Civil Code). x x x *(Appellants) have agreed with the (appellee) that the interest rate was subject to a possible escalation or deescalation without advanced notice to them in the event the law or the Monetary Board prescribed a change in the interest rate*.[27]

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[23] *Id*. at 92-98.

[24] *Id*. at 95.

[25] *Id*. at 96.

[26] *Id*.

[27] *Id*. at 97-98.

The petitioners moved for reconsideration, but the CA denied their motion on May 9, 2012 because it had already passed upon.[28]

Issues

The issues being now presented by the petitioners for our consideration and resolution can be stated as follows:

1. Whether or not the CA erred in declaring that the extrajudicial foreclosure sale was valid despite the failure to publish and post the notice of the rescheduled foreclosure sale;
2. Whether or not the petitioners were estopped from impugning the foreclosure sale by their effort to redeem the property; and
3. Whether or not the loan obligation had already been fully settled by the petitioners.

Ruling of the Court

The appeal is partly meritorious.

1.
The extrajudicial foreclosure sale held on February 18, 2002 was void *ab initio*

Act No. 3135[29] prescribes the requirements of posting and publication of the notice for the extrajudicial foreclosure sale. The law specifically mandates the publication of the notice in a newspaper of general circulation for at least three consecutive weeks if the value of the property is more than ₱400,000.00. Its Section 3 states:

Section 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the

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[28] *Id*. at 101-102.

[29] Entitled *An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages*.

municipality or city where the property is situated, and **if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or the city**. [Bold underscoring supplied for emphasis]

The requirements for the posting and publication of the notice for the extrajudicial foreclosure sale set on January 15, 2002 were complied with by posting the notice in public places in Rizal and in the place where the property of the petitioners was located, and by publishing the notice in *The Challenger News*, a newspaper of general circulation in Rizal. However, the sale set on January 15, 2002 did not push through because the representative of Premiere Bank did not appear, and was rescheduled to February 18, 2002. Thereafter, the notice for the *rescheduled* foreclosure sale was not posted and published as required by Act No. 3135.

We hold that the invalidity of the public sale of the petitioners' property sprang from such non-compliance with the requirements under Act No. 3135.

In its decision, the CA, citing *Perez v. Court of Appeals*[30] to the effect that act of redemption was an implied admission of the regularity of the sale, declared the petitioners herein estopped from assailing the extrajudicial foreclosure sale held on February 18, 2002 by their act of redeeming the property and tendering the redemption price. Accordingly, Premiere Bank submits that the foreclosure sale held on February 18, 2002 should be upheld.

We cannot concur with the CA's decision.

To begin with, the reliance by the CA on *Perez v. Court of Appeals* was patently misplaced. The Court considered therein the respondents' pleas for extension of the time to redeem the foreclosed property as a waiver of the defects and irregularities that had attended the foreclosure proceedings. A careful reading of *Perez v. Court of Appeals* discloses, however, that the defects

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[30] G.R. No. 157616, July 22, 2005, 464 SCRA 89, 110.

and irregularities during the foreclosure proceedings adverted to therein were limited to the erroneous computation of the balance on the respondents' unsettled account and to the lack of notice of sale to the respondents prior to the conduct of the sale. The Court did not directly address and resolve therein whether or not the foreclosure sale was valid despite the failure to publish or to post the notice of the *postponed* sale. In contrast, the irregularity being assailed herein related to the non-compliance with the posting and publication requirements mandated by Act No. 3135. Clearly, the ruling in *Perez v. Court of Appeals* was not relevant and authoritative in this adjudication.

Secondly, the requirements for posting and publication under Act No. 3135 were mandatory and jurisdictional. We have held that statutory provisions governing the publication of notice of mortgage foreclosure sales must be strictly complied with; hence, even slight deviations from the requirements would invalidate the notice and render the sale *at least* voidable.[31] The objective of the notice requirements is to achieve a "reasonably wide publicity" of the public sale so that whoever may be interested may know of and attend the public sale. This is the reason why the publication must be made in a newspaper of general circulation. The Court has previously taken judicial notice of the "far-reaching effects" of publishing the notice of sale in a newspaper of general circulation. As such, the publication of the notice of sale in a newspaper of general circulation is essential to the validity of the foreclosure proceedings.[32] To allow the parties to waive the jurisdictional requirement can convert into a private sale what ought to be a public auction.[33]

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[31] *Philippine National Bank v. Nepomuceno Productions, Inc.*, G.R. No. 139479, December 27, 2002, 394 SCRA 405, 412.

[32] *Metropolitan Bank and Trust Company v. Miranda*, G.R. No. 187917, January 19, 2011, 640 SCRA 273, 283; *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 125838, June 10, 2003, 403 SCRA 460, 470.

[33] *Philippine National Bank v. Maraya, Jr.*, G.R. No. 164104, September 11, 2009, 599 SCRA 394, 400.

In *Philippine National Bank v. Nepomuceno Productions, Inc.*,[34] the Court has expounded on the significance and primary purpose of the requirements for the posting of the notice of the sale and its publication in a newspaper of general circulation, *viz.*:

> The principal object of a notice of sale in a foreclosure of mortgage is not so much to notify the mortgagor as to inform the public generally of the nature and condition of the property to be sold, and of the time, place, and terms of the sale. **Notices are given to secure bidders and to prevent a sacrifice of the property. Clearly, the statutory requirements of posting and publication are mandated, not for the mortgagor s benefit, but for the public or third persons. In fact, personal notice to the mortgagor in extrajudicial foreclosure proceedings is not even necessary, unless stipulated. As such, it is imbued with public policy consideration and any waiver thereon would be inconsistent with the letter and intent of Act No. 3135.**[35] [Bold emphasis supplied]

The petitioner in *Philippine National Bank v. Nepomuceno Productions Inc.* had sought the extrajudicial foreclosure of the respondents' mortgaged properties. The sheriff initially set the foreclosure sale on August 12, 1976, but the sale was rescheduled several times without publishing the notice of the rescheduled sale. The sale finally proceeded on December 20, 1976, and the petitioner turned out to be the highest bidder. The respondents sued to nullify the sale. The Court declared the sale void for non-compliance with the requirements under Act No. 3135 for the posting and publication of the notice of sale, ruling thusly:

> We also cannot accept petitioner's argument that respondents should be held in *estoppel* for inducing the former to re-schedule the sale without need of republication and reposting of the notice of sale.
>
> Records show that respondents, indeed, requested for the postponement of the foreclosure sale. That, however, is all that

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[34] *Supra*, note 31.

[35] *Id.* at 411.

respondents sought. Nowhere in the records was it shown that respondents purposely sought re-scheduling of the sale *without need of republication and reposting of the notice of sale*. To request postponement of the sale is one thing; to request it without need of compliance with the statutory requirements is another. Respondents, therefore, did not commit any act that would have estopped them from questioning the validity of the foreclosure sale for non-compliance with Act No. 3135.[36]

It was, therefore, wrong and presumptuous for Premiere Bank to justify the non-compliance with the requirements of posting and publication by reminding that the petitioners had themselves requested the series of postponements of the sale. We have already settled that the compliance with the requirements for posting and publication of the notice of the *rescheduled* sale was essential to the validity of the sale. The compliance could not be waived by either of the parties to the mortgage by reason of its being based on public policy considerations. As such, the statutory requirements of posting and publication of the notice were not intended for the protection of the parties to the mortgage but for the benefit of third persons. The foreclosure proceedings are undeniably imbued with public policy considerations, and any waiver made in connection therewith would be inconsistent with the intent and letter of Act No. 3135.[37]

In light of the essentiality of the compliance with the notice requirements under Act No. 3135, the argument by Premiere Bank that it should not be responsible for the lack of posting and publication of the notice of the rescheduled sale because the conduct of the foreclosure sale was entirely under the control of the sheriff, and because its only participation in the proceedings was to pay the expenses of the publication as determined by the sheriff[38] was really of no consequence.

And, thirdly, that the respondent sheriff was entitled to be presumed to have regularly performed his official duties in

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[36] *Id*. at 412-413 (italicized portions are in the original text).

[37] *Id*.

[38] *Rollo*, p. 153.

conducting the foreclosure proceedings, as Premiere Bank has urged,[39] did not validate the sale. Such presumption could not excuse the non-compliance with the mandatory and jurisdictional requirements of Act No. 3135. At any rate, the disputable presumption of regularity could not even be extended to the respondent sheriff in view of the lack of posting and publication being sufficiently established by the admissions of the parties and their evidence.

In view of the foregoing, the declaration of the February 18, 2002 sale as void *ab initio* is fully warranted.

2.

The petitioners liability to Premiere Bank, being a factual matter, cannot be determined by the Court

The last issue being raised herein is whether or not the loan obligation of the petitioners was fully settled. In this regard, the parties ostensibly disagreed, with the petitioners insisting that they were liable only for ₱401,820.00, the amount they actually tendered to the respondent sheriff in their effort to redeem the property but Premiere Bank belying the adequacy of their tender through its claim of their outstanding obligation already totaling ₱2,062,254.26 as of February 18, 2002. Such issue is a factual one that the Court cannot review and resolve through this mode of appeal.

Accordingly, the petitioners' appeal of this issue should be disallowed for being in contravention of Section 1,[40] Rule 45

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[39] *Id.* at 154.

[40] Section 1. *Filing of petition with Supreme Court.*—A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth**. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

of the *Rules of Court*, which limited the appeal to questions of law that the petitioners must distinctly set forth. The limitation to questions of law is observed because the Court is not a trier of fact.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for review on *certiorari*; and **MODIFIES** the decision promulgated on January 27, 2012 by:

(1) **DECLARING NULL AND VOID**: (a) the foreclosure sale held on February 18, 2002 of the property located in Rodriguez, Montalban, Rizal to Premiere Development Bank; and (b) the issuance of Transfer Certificate of Title No. 452198 of the Register of Deeds of Marikina City issued in the name of Premiere Bank;

(2) **DIRECTING** the Register of Deeds of Marikina City **TO CANCEL** Transfer Certificate of Title No. 452198 issued in the name of Premiere Development Bank; and **TO REINSTATE** Transfer Certificate of Title No. 150668 issued in the name of petitioners Spouses Flavio P. Bautista and Zenaida L. Bautista; and

(3) **ORDERING** the respondents to comply with the requirements of posting and publication of the extrajudicial foreclosure sale of the petitioners' property.

No pronouncement on costs of suit.

SO ORDERED.

Leonardo-de Castro, C.J. and *Jardeleza, J.*, concur.

Del Castillo and *Tijam, JJ.*, on official leave.

THIRD DIVISION

[G.R. No. 202678. September 5, 2018]

ERNESTINA A. PAGDANGANAN, RODERICK APACIBLE PAGDANGANAN, MARIA ROSARIO LOTA, Represented by her Attorney-in-fact, ERNESTINA A. PAGDANGANAN, ERNEST JEROME PAGDANGANAN, and SANDRA APACIBLE PAGDANGANAN, as the heirs and substitutes of deceased ISAURO J. PAGDANGANAN, ALFONSO ORTIGAS OLONDRIZ, and CITIBANK N.A. HONG KONG, *petitioners, vs.* **THE COURT OF APPEALS and MA. SUSANA A.S. MADRIGAL, MA. ANA A.S. MADRIGAL, MA. ROSA A.S. MADRIGAL, MATHILDA S. OLONDRIZ, VICENTE A.S. MADRIGAL, ROSEMARIE OPIS-MALASIG, MARIA TERESA S. UBANO, EDUARDO E. DELA CRUZ, and GUILLER B. ASIDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *MANDAMUS*; A PETITION FOR *MANDAMUS* MAY BE FILED AGAINST ANY TRIBUNAL, CORPORATION, BOARD, OFFICER, OR PERSON WHO IS ALLEGED TO HAVE UNLAWFULLY NEGLECTED THE PERFORMANCE OF A DUTY ARISING FROM THAT OFFICE, TRUST, OR STATION; CASE AT BAR.— The Petition is dismissed for being moot and academic. A petition for *mandamus* may be filed against any tribunal, corporation, board, officer, or person who is alleged to have unlawfully neglected the performance of a duty arising from that office, trust, or station. In this case, petitioners pray for the issuance of a writ of mandamus to compel the Court of Appeals to resolve their Petition in CA-G.R. SP No. 104291. However, the Court of Appeals has already rendered its Decision on February 8, 2013. It issued a Resolution dated March 10, 2014 on petitioners' Motion for Reconsideration. CA-G.R. SP No. 104291 has already been fully resolved by the Court of Appeals. In *Baldo v. Commission on Elections*: A case becomes moot when there is

no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Courts will not determine a moot question in a case in which no practical relief can be granted. It is unnecessary to indulge in academic discussion of a case presenting a moot question, as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; WHEN THE COURT HAS RESOLVED THE PETITION IN A TIMELY MANNER WITHIN THE PERIOD PROVIDED BY LAW, THE RIGHT IS NOT VIOLATED; CASE AT BAR.— Even assuming that this Court could still pass upon the substantive issue in this case, the Petition would still be denied for lack of merit. The Court of Appeals did not delay in resolving CA-G.R. SP No. 104291. All persons have the constitutional right to speedy disposition of cases. To this end, the Constitution specifies specific time periods when courts may resolve cases: 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. Under this provision, the Court of Appeals is given a 12-month period to resolve any case that has already been submitted for decision. Any case still pending 12 months after submission for decision may be considered as delay. The parties may file the necessary action, such as a petition for *mandamus*, to protect their constitutional right to speedy disposition of cases. In this case, however, petitioners' invocation of the right to speedy disposition of cases is misplaced since the Court of Appeals has resolved the petition in a timely manner within the period provided by law.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioner Citibank.

Balgos Gumaru & Jalandoni for petitioners Pagdanganan.

Ubano Sianghio And Lozada & Cabantac for respondents Madrigal, *et al*.

M.M. Lazaro & Associates for respondents Olondriz and Dela Cruz.

D E C I S I O N

LEONEN, *J.*:

A petition for mandamus praying for this Court to compel the Court of Appeals to resolve a case becomes moot if the Court of Appeals resolves the case with finality during the pendency of the petition.

This is a Petition for Mandamus[1] seeking to compel the Court of Appeals to resolve the Petition in CA-G.R. SP No. 104291,[2] alleging that the Court of Appeals committed inordinate delay in violation of the right to speedy disposition of cases of Ernestina A. Pagdanganan, Roderick Apacible Pagdanganan, Maria Rosario Lota, represented by her Attorney-in-Fact, Ernestina A. Pagdanganan, Ernest Jerome Pagdanganan and Sandra Apacible Pagdanganan, as the heirs and substitutes of deceased Isauro J. Pagdanganan (Pagdanganan), Alfonso Ortigas Olondriz (Alfonso), and Citibank N.A. Hongkong (collectively, petitioners).

Solid Guaranty, Inc. (Solid Guaranty) is a domestic corporation engaged in the insurance business.[3]

On November 23, 2007, Solid Guaranty, through Pagdanganan, a minority stockholder, filed a complaint for interpleader[4] before the Regional Trial Court of Manila. The complaint was filed because of the alleged conflicting claims

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[1] *Rollo*, pp. 3-54.

[2] Entitled *"The Solid Guaranty, Inc., Heirs of Isauro J. Pagdanganan, Alfonso Ortigas Olondriz, and Citbank N.A. Hong Kong v. Judge Antonio M. Eugenio, Jr., Presiding Judge of Branch 24, Regional Trial Court of Manila, Ma. Susana A.S. Madrigal, Ma. Ana A.S. Madrigal, Ma. Rosa A.S. Madrigal, Mathilda S. Olondriz, Vicente A.S. Madrigal, Rosemarie Opis-Malasig, Maria Teresa S. Ubano, Eduardo E. Dela Cruz, and Guiller B. Asido."*

[3] *Rollo*, p. 1037.

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

between Ma. Susana A.S. Madrigal, Ma. Ana A.S. Madrigal, and Ma. Rosa A.S. Madrigal (collectively, the Madrigals), and Citibank N.A. Hongkong (Citibank) over the shares of stock previously held by the late Antonio P. Madrigal.[5] The case was docketed as Civil Case No. 07-118329.[6]

While Civil Case No. 07-118329 was pending, the Madrigals called for a Special Stockholders' Meeting to be held on November 26, 2007 at the Mandarin Hotel, Makati City.[7]

On November 26, 2007, the Special Stockholders' Meeting was held at the Mandarin Hotel. New members of the Board of Directors were elected.[8]

On December 17, 2007, Solid Guaranty and Pagdanganan amended their complaint in Civil Case No. 07-118329 to implead as additional defendants the newly elected directors and officers. They also sought to nullify the stockholders' meeting and election of the directors and officers.[9]

On January 18, 2008, newly elected Corporate Secretary Ma. Teresa S. Ubano (Ubano) filed an Urgent Motion for Permission to Take Custody of the Stock Transfer Book and Other Corporate Records of Solid Guaranty before the Regional Trial Court.[10]

In a letter dated May 15, 2008, the Insurance Commission informed newly elected President Vicente A.S. Madrigal (Vicente) of the consequences of Solid Guaranty's failure to comply with the minimum capitalization of ₱150,000,000.00.[11]

On May 16, 2008, Ubano filed another motion for the purpose of registering the transfer of stock from Balek, Inc. to newly

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[5] *Id.* at 60-61.

[6] *Id.* at 59.

[7] *Id.* at 1037.

[8] *Id.*

[9] *Id.* at 1038.

[10] *Id.*

[11] *Id.* at 1038-1039.

elected General Manager Guiller Asido (Asido) and Terri Madrigal.[12]

On June 17, 2008, the Regional Trial Court granted Ubano's second motion, considering that the shares of stock to be transferred were not subject of the interpleader suit.[13]

On June 19, 2008, Ubano called for the holding of a Special Stockholders' Meeting to be held on June 30, 2008. Among the agenda was the approval of the Minutes of the November 26, 2007 Special Stockholders' Meeting and the ratification of the acts of the newly elected Board of Directors.[14] Solid Guaranty and Pagdanganan filed a motion with the Regional Trial Court to prevent the holding of the meeting.[15]

On June 27, 2008, the Regional Trial Court issued a Joint Order[16] authorizing the holding of the meeting. In particular, the Joint Order stated:

> [T]o avert any serious damage or prejudice to the operation of the corporation, specially in light of complying with the Insurance Commission's Circular on capital requirements, the Court hereby authorizes the holding of a Stockholder's Meeting pursuant and in accordance with the By-Laws and applicable laws.
>
> All items in the agenda whether provided for in the special as well as in the annual stockholders' meeting as called by opposing parties shall be included and discussed in the said Stockholders' Meeting. The classification of the meeting, whether regular or special, shall be determined by the will of the stockholders present thereat taking into consideration the requirements of the quorum.[17]

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[12] *Id*. at 1039.

[13] *Id*. at 987-988. The Order was penned by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

[14] *Id*. at 40.

[15] *Id*. at 1040.

[16] *Id*. at 57-58. The Joint Order was penned by Judge Antonio M. Eugenio, Jr. of Branch 24, Regional Trial Court, Manila.

[17] *Id*.

On June 30, 2008, the Special Annual Stockholders' Meeting was held and new members of the Board of Directors were elected.[18]

On July 11, 2008, Solid Guaranty, Pagdanganan, another minority stockholder, Alfonso, and Citibank filed a Petition for Certiorari, Prohibition, and Mandamus, with Prayer for a Writ of Preliminary Injunction[19] with the Court of Appeals. They alleged that the Regional Trial Court committed grave abuse of discretion in allowing the holding of the June 30, 2008 stockholders' meeting despite the pendency of the interpleader suit.[20] They impleaded the Madrigals, Asido, Ubano, Mathilda S. Olondriz (Mathilda), Vicente, Rosemarie Opis-Malasig (Malasig), Eduardo E. Dela Cruz (Dela Cruz), and Judge Antonio M. Eugenio, Jr., Presiding Judge of Branch 24, Regional Trial Court of Manila.[21]

On July 28, 2008, Solid Guaranty, Pagdanganan, Alfonso, and Citibank filed a Motion for Leave to File Supplemental Petition.[22] Meanwhile, comments to the Petition were filed by the Madrigals, Vicente, Malasig, Ubano, and Asido on August 5, 2008,[23] and by Mathilda and Dela Cruz on August 12, 2008.[24] Solid Guaranty, Pagdanganan, Alfonso, and Citibank filed a Motion to Admit Second Supplemental Petition[25] dated September 30, 2008, which was received by the Court of Appeals on October 6, 2008.[26]

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[18] *Id*. at 1041.

[19] *Id*. at 31-54.

[20] *Id*. at 42.

[21] *Id*. at 31.

[22] *Id*. at 206-217.

[23] *Id*. at 241-263.

[24] *Id*. at 581-589.

[25] *Id*. at 681-694.

[26] *Id*. at 681.

On October 8, 2008, the Court of Appeals granted the Motion for Leave to File Supplemental Petition.[27] On October 13, 2008, it directed the submission of comments on the Second Supplemental Petition.[28] All the parties, however, had submitted their respective memoranda by October 17, 2008.[29]

On December 12, 2008, Solid Guaranty, Pagdanganan, Alfonso, and Citibank filed a Motion for Leave to File Third Supplemental Petition.[30]

In its October 22, 2009 Resolution,[31] the Court of Appeals acknowledged that the case could have already been submitted for decision but was deferred because of the subsequent filing of the Second and Third Supplemental Petitions. Nonetheless, it directed the filing of comments on the Third Supplemental Petition.[32] Thus, a Comment[33] dated November 12, 2009 was filed.

On October 6, 2010, the Court of Appeals issued a Resolution[34] expunging from the record the Second and Third Supplemental Petitions. It also deemed the case submitted for decision.[35] In particular, it noted:

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[27] *Id.* at 714.

[28] *Id.* at 715.

[29] *Id.* at 604-667.

[30] *Id.* at 750-763.

[31] *Id.* at 807-808. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Hakim S. Abdulwahid and Stephen C. Cruz of the Special Fourteenth Division of the Court of Appeals, Manila.

[32] *Id.*

[33] *Id.* at 810-819.

[34] *Id.* at 821-824. The Resolution was penned by Associate Justice Sesinando E. Villon (Acting Chair) and concurred in by Associate Justices Mario V. Lopez and Amy C. Lazaro-Javier of the Special Fifth Division of the Court of Appeals.

[35] *Id.* at 824.

This case is already ripe for determination had it not been for the filing of the instant Motions and the consequent filing of pleadings. For in fact, the parties had already submitted their respective Memoranda.[36]

On October 29, 2010, Solid Guaranty, Pagdanganan, Alfonso, and Citibank filed a Motion for Reconsideration of the October 6, 2010 Resolution.[37]

On March 24, 2011, Pagdanganan passed away; thus, counsel moved for the substitution of parties.[38] On October 21, 2011, the Court of Appeals ordered the filing of comment on the Motion for Reconsideration.[39] A Vigorous Opposition was filed on December 5, 2011.[40]

On January 2, 2012, Solid Guaranty, the Heirs of Pagdanganan, Alfonso, and Citibank filed a Motion for Mediation with the Court of Appeals.[41] On March 1, 2012, they likewise filed a Motion for Resolution.[42]

While the Motions were pending with the Court of Appeals, or on August 2, 2012, the Heirs of Pagdanganan, Alfonso, and Citibank filed this Petition for Mandamus[43] against the Court of Appeals, the Madrigals, Mathilda, Vicente, Malasig, Ubano, Dela Cruz, and Asido before this Court. They allege that the

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[36] *Id*. at 823-824.

[37] *Id*. at 825-831.

[38] *Id*. at 833-836. Pagdanganan was substituted by his heirs, namely, Ernestina Pagdanganan, Roderick Apacible Pagdanganan, Maria Rosario Lota, Ernest Jerome Pagdanganan, and Sandra Apacible Pagdanganan.

[39] *Id*. at 1012. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Mario V. Lopez and Amy C. Lazaro-Javier of the Former Special Fifth Division of the Court of Appeals, Manila.

[40] *Id*. at 841-852.

[41] *Id*. at 853-855.

[42] *Id*. at 856-859.

[43] *Id*. at 3-30.

Court of Appeals committed inordinate delay in resolving their Petition filed on July 11, 2008. They claimed that the Court of Appeals' "continued inaction on the case is clearly a neglect of its judicial duties."[44]

In their Comment/Opposition,[45] respondents the Madrigals, Vicente, Malasig, Ubano, and Asido argue that the Court of Appeals did not neglect its duty to resolve the instant case. They attribute the delay in the resolution of this case to the numerous supplemental petitions filed by petitioners for which the Court of Appeals had to afford respondents an opportunity to be heard. If not for the numerous supplemental petitions, the case would have already been resolved.[46]

In its December 14, 2012 Resolution,[47] the Court of Appeals denied the Motion for Mediation as it was unilaterally made. It also denied the Motion for Reconsideration of its October 6, 2010 Resolution. It again deemed the case submitted for decision.[48]

On February 8, 2013, the Court of Appeals rendered a Decision[49] dismissing the petition as the questioned orders of the Regional Trial Court were not rendered in grave abuse of discretion. Thus, respondents the Madrigals, Vicente, Malasig, Ubano, and Asido filed a Manifestation[50] dated February 18, 2013, attaching a copy of the Court of Appeals February 8,

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[44] *Id*. at 18.

[45] *Id*. at 953-964.

[46] *Id*. at 961-962.

[47] *Id*. at 1014-1021. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Florito S. Macalino and Manuel M. Barrios of the Seventeenth Division, Court of Appeals, Manila.

[48] *Id*. at 1015-1017.

[49] *Id*. at 1036-1052. The Decision was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Florito S. Macalino and Eduardo B. Peralta, Jr. of the Seventeenth Division, Court of Appeals, Manila.

[50] *Id*. at 1032-1034.

2013 Decision and praying that this Court dismiss this case as the issues raised have already become moot and academic.

This Court noted their Manifestation and directed the parties to file their respective memoranda.[51]

In their Memorandum, petitioners claim that the Court of Appeals "did not comply with its constitutional and statutory mandate to decide the incidents and the merits of [the case] within the prescribed period, and had violated the rights of the petitioners to a speedy disposition of their case."[52] In particular, they point out that their 2008 petition was resolved by the Court of Appeals only in 2013, or more than the required 12-month period, in violation of their rights.[53]

Respondents, on the other hand, contend that any delay in the resolution of the case was due to petitioners' numerous motions. They point out that due to these motions, the Court of Appeals was constrained to first resolve pending incidents before repeatedly submitting the case for decision. They likewise argue that the prayer for the issuance of a writ of mandamus has since become moot due to the promulgation of the Court of Appeals February 8, 2013 Decision.[54]

Petitioners counter, however, that the February 8, 2013 Decision did not render the case moot since it had not yet become final. The Court of Appeals had yet to resolve their Motion for Reconsideration.[55]

From the arguments of the parties, the issue for resolution before this Court is whether or not the Court of Appeals committed inordinate delay in resolving the petition in CA-G.R. SP No. 104291. Before this issue can be addressed, however,

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[51] *Id*. at 1075-A-1075-C.

[52] *Id*. at 1089.

[53] *Id*. at 1089-1090.

[54] *Id*. at 1125-1126.

[55] *Id*. at 1093-1094.

this Court must first pass upon the issue of whether or not the petition has already become moot in view of the Court of Appeals February 8, 2013 Decision.

I

The Petition is dismissed for being moot and academic.

A petition for mandamus may be filed against any tribunal, corporation, board, officer, or person who is alleged to have unlawfully neglected the performance of a duty arising from that office, trust, or station.[56] In this case, petitioners pray for the issuance of a writ of mandamus to compel the Court of Appeals to resolve their Petition in CA-G.R. SP No. 104291.

However, the Court of Appeals has already rendered its Decision on February 8, 2013. It issued a Resolution[57] dated March 10, 2014 on petitioners' Motion for Reconsideration. CA-G.R. SP No. 104291 has already been fully resolved by the Court of Appeals. In *Baldo v. Commission on Elections*:[58]

> A case becomes moot when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits. Courts will not determine a moot question in a case in which no practical relief can be granted. It is unnecessary to indulge in academic discussion of a case presenting a moot question, as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.[59]

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[56] See RULES OF COURT, Rule 65, Sec. 3.

[57] *Solid Guaranty, et al. v. Judge Eugenio, et al.*, CA-G.R. SP. No. 104291, March 10, 2014. The Resolution may be viewed at < http://services.ca.judiciary.gov.ph/casestatusinquiry-war/faces/jsp/view/ViewResult.jsp >.

[58] 607 Phil. 281 (2009) [Per *J.* Chico-Nazario, *En Banc*].

[59] *Id.* at 286, citing *Villarico v. Court of Appeals*, 424 Phil. 26, 33-34 (2002) [Per *J.* Quisumbing, Second Division]; *Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor*, 371 Phil. 30, 43 (1999) [Per *J.* Purisima, Third Division]; and *Lanuza, Jr. v. Yuchengco*, 494 Phil. 125 (2005) [Per *J.* Chico-Nazario, Second Division].

In *Philippine Charity Sweepstakes Employees Association v. Court of Industrial Relations*,[60] a petition for mandamus was filed to compel the Court of Industrial Relations to resolve an urgent petition for the issuance of preliminary mandatory injunction. While the petition for mandamus was pending before this Court, the Court of Industrial Relations issued a Resolution denying the application for the issuance of the writ of preliminary mandatory injunction. This Court was, thus, constrained to dismiss the petition for mandamus as it had already become moot and academic.

In *Apao v. Tizon*,[61] several persons were charged with double murder. These persons subsequently filed a motion for bail before the Court of First Instance of Zamboanga del Sur. The motion for bail, however, was denied for being prematurely filed as the information had not yet been filed. Thus, they filed a petition for mandamus before this Court, seeking to compel the Assistant Provincial Fiscal to file the information so that the Court of First Instance could act on their urgent motion for bail. While the petition for mandamus was pending before this Court, the Assistant Provincial Fiscal filed the information for double murder. The Court of First Instance likewise conducted a hearing on the motion for bail. The petition for mandamus, therefore, was dismissed for being moot and academic.

In this Petition, petitioners prayed for the issuance of a writ of mandamus to compel the Court of Appeals to resolve CA-G.R. SP No. 104291.[62] However, the Court of Appeals already rendered a Decision in CA-G.R. SP No. 104291 on February 8, 2013. It also resolved petitioners' Motion for Reconsideration on March 10, 2014. Despite the occurrence of these subsequent events, petitioners, in their Memorandum, reiterated their prayer for this Court to compel the Court of Appeals to resolve CA-G.R. SP No. 104291.[63]

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[60] 150-B Phil. 694 (1972) [Per *J*. Fernando, First Division].

[61] 135 Phil. 171 (1968) [Per *J*. Dizon, *En Banc*].

[62] *Rollo*, p. 24.

[63] *Id*. at 1101.

Any issuance of a writ of mandamus in this case, however, becomes an exercise in futility. The Court of Appeals cannot be compelled to resolve a case it has already fully resolved. This Petition must be dismissed for being moot.

II

Even assuming that this Court could still pass upon the substantive issue in this case, the Petition would still be denied for lack of merit. The Court of Appeals did not delay in resolving CA-G.R. SP No. 104291.

All persons have the constitutional right to speedy disposition of cases.[64] To this end, the Constitution specifies specific time periods when courts may resolve cases:

> 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.[65]

Under this provision, the Court of Appeals is given a 12-month period to resolve any case that has already been submitted for decision. Any case still pending 12 months after submission for decision may be considered as delay. The parties may file the necessary action, such as a petition for mandamus, to protect their constitutional right to speedy disposition of cases.[66]

In this case, however, petitioners' invocation of the right to speedy disposition of cases is misplaced since the Court of Appeals has resolved the petition in a timely manner within the period provided by law.

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[64] CONST., Art. III, Sec. 16.

[65] CONST., Art. VIII, Sec. 15(1).

[66] See *Cagang v. Sandiganbayan*, G.R. No. 206438, July 31, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/july2018/206438.pdf > [Per *J.* Leonen, *En Banc*].

Petitioners filed their Petition for Certiorari, Prohibition, and Mandamus before the Court of Appeals on July 11, 2008.[67] On July 15, 2008, the Court of Appeals required respondents to submit their comment on this Petition.[68] On July 28, 2008, however, petitioners filed a Motion for Leave to File Supplemental Petition.[69]

Meanwhile, respondents filed their Comment on August 5, 2008,[70] while petitioners filed their Reply on August 15, 2008.[71] On September 17, 2008, the Court of Appeals directed the parties to submit their respective memoranda.[72] On September 30, 2008, however, petitioners filed a Motion to Admit Second Supplemental Petition.[73] Thus, on October 13, 2008, the Court of Appeals directed the submission of comments on the Second Supplemental Petition.[74] Nonetheless, all the parties had already submitted their respective memoranda by October 17, 2008.[75]

On December 12, 2008, petitioners again filed a Motion for Leave to File a Third Supplemental Petition.[76] In its frustration, the Court of Appeals issued a Resolution[77] dated October 22, 2009, stating:

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[67] *Rollo*, p. 31.

[68] *Id*. at 205. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Andres B. Reyes, Jr. (Chair, now an Associate Justice of this Court) and Jose Catral Mendoza (now a retired Associate Justice of this Court) of the Fourth Division, Court of Appeals, Manila.

[69] *Id*. at 206-217.

[70] *Id*. at 262.

[71] *Id*. at 410.

[72] *Id*. at 603.

[73] *Id*. at 681-694.

[74] *Id*. at 715.

[75] *Id*. at 604-667.

[76] *Id*. at 750-763.

[77] *Id*. at 807-808. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Hakim S.

From the records, it appears that the herein parties have already submitted their respective memoranda, thus this Court could have very well considered this case submitted for decision.[78]

Owing to the requirements of due process, the Court of Appeals, however, directed respondents to file their comments on the Third Supplemental Petition, after which, the case would be deemed submitted for decision.[79] Thus, respondents submitted a Comment dated November 12, 2009.[80]

After assessing the merits of the Second and Third Supplemental Petitions, the Court of Appeals expunged them both and deemed the case submitted for decision[81] in its October 6, 2010 Resolution.[82] The Court of Appeals reiterated:

> This case is already ripe for determination had it not been for the filing of the instant Motions and the consequent filing of pleadings. For in fact, the parties had already submitted their respective Memoranda.[83]

Despite this pronouncement, petitioners proceeded to file on October 29, 2010 a Motion for Reconsideration of the October 6, 2010 Resolution.[84] However, petitioner Pagdanganan died on March 24, 2011 and had to be substituted as party.[85] It was

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Abdulwahid and Stephen C. Cruz of the Special Fourteenth Division, Court of Appeals, Manila.

[78] *Id*. at 807.

[79] *Id*. at 808.

[80] *Id*. at 810-818.

[81] *Id*. at 824.

[82] *Id*. at 821-824. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Mario V. Lopez and Amy C. Lazaro-Javier of the Special Fifth Division, Court of Appeals, Manila.

[83] *Id*. at 823-824.

[84] *Id*. at 825-831.

[85] *Id*. at 833-836.

only after the substitution of his heirs that the Court of Appeals directed the filing of comment on the Motion for Reconsideration on October 21, 2011. Petitioners' Vigorous Opposition[86] was filed on December 5, 2011.[87]

Seemingly undeterred by the number of pleadings in this case now pending before the Court of Appeals, petitioners filed a Motion for Mediation[88] on January 3, 2012.

On December 14, 2012, the Court of Appeals issued a Resolution[89] denying the Motion for Reconsideration[90] and the Motion for Mediation.[91] The dispositive portion of the Resolution read:

> WHEREFORE, in view of the foregoing, petitioners' Motion for Mediation is DENIED. The parties having filed their respective memoranda, we reiterate our earlier pronouncement considering the instant petition as SUBMITTED FOR DECISION.
>
> SO ORDERED.[92]

It was only on December 14, 2012 that the Court of Appeals declared with finality that CA-G.R. SP No. 104291 was deemed submitted for decision.

The Court of Appeals finally resolved the Petition in its February 8, 2013 Decision,[93] or less than two (2) months

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[86] *Id*. at 1012. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Mario V. Lopez and Amy C. Lazaro-Javier of the Former Special Fifth Division, Court of Appeals, Manila.

[87] *Id*. at 841-852.

[88] *Id*. at 853-855.

[89] *Id*. at 1014-1021. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Florito S. Macalino and Manuel M. Barrios of the Seventeenth Division, Court of Appeals, Manila.

[90] *Id*. at 1015-1016.

[91] *Id*. at 1014-1015.

[92] *Id*. at 1017.

[93] *Id*. at 1036-1050.

from its final pronouncement submitting the case for decision.

It was, thus, inaccurate for petitioners to accuse the Court of Appeals of delay in resolving their petition filed in 2008 without taking into account the numerous pleadings they had filed while the petition was pending.

The Court of Appeals repeatedly explained to petitioners that their case could have been resolved sooner had they not filed their numerous motions. Vigilance should not be a license for parties to incessantly badger courts into action. Inundating courts with countless interlocutory motions for the sole purpose of moving the case along can only be counterproductive. Instead of resolving the main petition, courts will have to devote their time and resources in resolving these pleadings.

Petitioners are reminded that litigation is not won by the party who files the most pleadings. Had they exercised even the slightest bit of patience, they would have realized that the Court of Appeals exerted efforts to resolve their case with due and deliberate dispatch.

WHEREFORE, the Petition is **DISMISSED** for being moot and academic.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr.,*[*] *Gesmundo*, and *Reyes, J. Jr., JJ.,* concur.

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[*] Designated Acting member per Special Order No. 2588 dated August 28, 2018.

THIRD DIVISION

[G.R. No. 203090. September 5, 2018]

KAWAYAN HILLS CORPORATION, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, JUSTICES JUAN ENRIQUEZ, JR., APOLINARIO BRUSELAS, JR., MANUEL BARRIOS, AMELITA G. TOLENTINO, and THE REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CIVIL LAW; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); LAND REGISTRATION; REQUISITES UNDER SECTION 14 (1) THEREOF; PRESENT IN CASE AT BAR.— Contrary to the Court of Appeals' conclusion, petitioner is entitled to registration under Section 14(1). Citing *Republic v. Hanover Worldwide Trading Corp*., *Canlas* broadly considered the requisites for availing registration under Section 14 (1): An applicant for land registration or judicial confirmation of incomplete or imperfect title under Section 14 (1) of Presidential Decree No. 1529 must prove the following requisites: "(1) that the subject land forms part of the disposable and alienable lands of the public domain, and (2) that [the applicant has] been in open, continuous, exclusive and notorious possession and occupation of the same under a bona fide claim of ownership since June 12, 1945, or earlier." Concomitantly, the burden to prove these requisites rests on the applicant. x x x In jurisprudence, there is also a more nuanced reckoning of requisites for registration under Section 14(1). This more nuanced reckoning untangles the necessary characteristics of possession, as the preceding paragraph demonstrated. In this Court's September 3, 2013 Resolution in *Heirs of Malabanan v. Republic*: [T]he applicant must satisfy the following requirements in order for his application to come under Section 14 (1) of the Property Registration Decree, to wit: 1. The applicant, by himself or through his predecessor-in-interest, has been in possession and occupation of the property subject of the application; 2. The possession and occupation must be open, continuous, exclusive, and notorious; 3. The possession and occupation must be under

a bona fide claim of acquisition of ownership; 4. The possession and occupation must have taken place since June 12, 1945, or earlier; and 5. The property subject of the application must be an agricultural land of the public domain.

2. ID.; ID.; ID.; ID.; PAYMENT OF REAL PROPERTY TAXES AND PRESENTATION OF TAX DECLARATIONS WHICH ARE "NOT OF RECENT VINTAGE" ARE GOOD *INDICIA* OF POSSESSION IN THE CONCEPT OF AN OWNER, AND WHEN COUPLED WITH CONTINUOUS POSSESSION, IT CONSTITUTES STRONG EVIDENCE OF TITLE; CASE AT BAR.— The Court of Appeals' grossly dismissive consideration of tax declarations dating back to 1931 is a serious error. While recognizing that tax declarations do not absolutely attest to ownership, this Court has also recognized that "[t]he voluntary declaration of a piece of property for taxation purposes ... strengthens one's bona fide claim of acquisition of ownership." It has stated that payment of real property taxes "is good indicia of possession in the concept of an owner, and when coupled with continuous possession, it constitutes strong evidence of title." For after all: No person in the right mind would pay taxes on real property over which he or she does not claim any title. Its declaration not only manifests a sincere desire to obtain title to a property; it may be considered as an announcement of an adverse claim against State ownership. It would be unjust for the State to take properties which have been continuously and exclusively held since time immemorial without showing any basis for the taking, especially when it has accepted tax payments without question. There have been instances where this Court has favorably considered the presentation of tax declarations which are "not of recent vintage" as indicating possession under a bona fide claim of ownership.

3. REMEDIAL LAW; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ESTABLISHED WHEN A COURT EVADES ITS POSITIVE DUTY TO WEIGH COMPETING CLAIMS AND TO METICULOUSLY CONSIDER EVIDENCE TO ARRIVE AT A JUDICIOUS RESOLUTION; CASE AT BAR.— The Court of Appeals' reductive resort to an aphorism about tax declarations, as though it were an incantation that conveniently resolves the myriad dimensions of this case, is not mere error in judgment; it is grave abuse of discretion. It amounts to its evasion of its positive duty to weigh the competing claims and to meticulously consider

the evidence to arrive at a judicious resolution. In so doing, the Court of Appeals validated what amounted to a mere *pro forma* opposition by the Republic, one that was triggered, not by an independent determination of a fatal error in an application, but by the mere occasion of the filing of an application. In *Spouses Noval,* this Court decried favorable actions on such *pro forma* oppositions as amounting to undue taking of property, thus, violative of the right to due process: When an applicant in the registration of property proves his or her open, continuous, exclusive, and notorious possession of a land for the period required by law, her or she has acquired an imperfect title that may be confirmed by the State. The State may not, in the absence of controverting evidence and in a *pro forma* opposition, indiscriminately take a property without violating due process.

APPEARANCES OF COUNSEL

Leonor L. Infante for petitioner.
Office of the Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

A court confronted with an application for judicial confirmation of imperfect title cannot casually rely on the expedient aphorism that real property tax declarations are not conclusive evidence of ownership as a catch-all key to resolving the application. Instead, it must carefully weigh competing claims and consider the totality of evidence, bearing in mind the recognition in jurisprudence that payment of real property taxes is, nevertheless, "good indicia of possession in the concept of an owner, and when coupled with continuous possession, it constitutes strong evidence of title."[1]

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[1] *Republic v. Spouses Noval*, G.R. No. 170316, September 18, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/170316.pdf > 14 [Per *J.* Leonen, Third Division], citing *Clado-Reyes v. Limpe*, 479 Phil. 669 (2008) [Per *J.* Quisumbing, Second Division]; and *Republic v. Court of Appeals*, 328 Phil. 238 (1996) [Per *J.* Torres, Jr., Second Division].

This resolves a Petition for Certiorari[2] under Rule 65 of the 1997 Rules of Civil Procedure praying that the assailed January 11, 2012 Decision,[3] June 28, 2012 Resolution,[4] July 17, 2012 Resolution,[5] and August 15, 2012 Resolution[6] of the Court of Appeals in CA-G.R. CV No. 95701 be nullified for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction, and that the July 8, 2010 Decision[7] of the Municipal Circuit Trial Court of Paoay-Currimao, Ilocos Norte in Land Reg. Case No. N-4 be reinstated.

The assailed Court of Appeals January 11, 2012 Decision granted the appeal filed by the Office of the Solicitor General, on behalf of the Republic of the Philippines. It reversed and set aside the Municipal Circuit Trial Court's July 8, 2010 Decision, which ruled in favor of Kawayan Hills Corporation (Kawayan Hills), confirmed its title over a 1,461-square-meter lot in Paoay, Ilocos Norte, and ordered the lot's registration in Kawayan Hills' name.[8]

The assailed June 28, 2012 Resolution denied Kawayan Hills' Motion for Reconsideration. The assailed July 17, 2012 Resolution denied the Manifestation/Motion dated July 5, 2012[9] filed by Kawayan Hills subsequent to the denial of its Motion

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[2] *Rollo*, pp. 3-12.

[3] *Id.* at 21-33. The Decision was penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Manuel M. Barrios of the Fifth Division, Court of Appeals, Manila.

[4] *Id.* at 53-54. The Resolution was penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Amelita G. Tolentino and Manuel M. Barrios of the Special Former Fifth Division, Court of Appeals, Manila.

[5] *Id.* at 58.

[6] *Id.* at 62. Minute Resolution of the Special Former Fifth Division.

[7] *Id.* at 13-19. The Decision was penned by Judge Artemio H. Quidilla, Jr.

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

[9] *Id.* at 59-61.

for Reconsideration. The assailed August 15, 2012 Resolution noted without action its Manifestation/Motion dated July 16, 2012.

Kawayan Hills is a domestic corporation dealing with real estate.[10] It is in possession of a 1,461-square-meter parcel of land identified as Cad. Lot No. 2512 (Lot No. 2512), located in Barangay No. 22, Nagbacalan, Paoay, Ilocos Norte.[11] All other lots surrounding Lot No. 2512 have been titled in Kawayan Hills' name.[12]

On August 7, 2001, Kawayan Hills, through its President, Pastor Laya, filed an application for confirmation and registration of Lot No. 2512's title in its name before the Municipal Circuit Trial Court of Paoay-Currimao.[13]

Kawayan Hills claimed to have acquired Lot No. 2512 on December 27, 1995 through a Deed of Adjudication with Sale executed by Servando Teofilo and Maria Dafun, the successors-in-interest of Andres Dafun (Andres). Andres had been Lot No. 2512's real property tax declarant since 1931. Andres, with his eight (8) children, had also allegedly possessed, cultivated, and harvested Lot No. 2512's fruits.[14]

Kawayan Hills submitted the following documents in support of its application:

1. Certificate of Incorporation of Kawayan Hills Corporation
2. Secretary's Certificate
3. Tax Declaration No. ARP No. 96-025-02624
4. Deed of Adjudication with Sale dated 27 December 1995
5. Municipal Treasurer Certificate of Non-Tax Delinquency
6. BIR Certificate Authorizing Registration of Documents

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[10] *Id*. at 14.

[11] *Id*. at 13 and 22.

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

[13] *Id*. at 13.

[14] *Id*. at 15.

7. Municipal Treasurer Certificate that applicant was a real property taxpayer
8. DENR Certificate re: within disposable and alienable lands
9. DENR Certificate re: not identical to previously approved isolated survey
10. DAR Order of Exemption dated 28 March 2001
11. Technical Description
12. Survey/Issuance Plan of Lot 2512 (Ap-01-004666)[15]

On September 4, 2001, the Republic of the Philippines (the Republic), through the Office of the Solicitor General, filed its Opposition to the application. It asserted that Kawayan Hills failed to comply with the requirements of Section 14(1)[16] of

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[15] *Id*. at 23.

[16] Pres. Decree No. 1529, Sec. 14 provides:

Section 14. Who May Apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.
(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.
(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
(4) Those who have acquired ownership of land in any other manner provided for by law.

Where the land is owned in common, all the co-owners shall file the application jointly.

Where the land has been sold under *pacto de retro*, the *vendor a retro* may file an application for the original registration of the land, provided, however, that should the period for redemption expire during the pendency of the registration proceedings and ownership to the property consolidated in the *vendee a retro*, the latter shall be substituted for the applicant and may continue the proceedings.

A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust.

Presidential Decree No. 1529, otherwise known as the Property Registration Decree, for judicial confirmation of imperfect title.[17]

Following the initial hearing of the case, Kawayan Hills presented evidence in support of its application. It adduced a Certificate, dated March 22, 1999, of Community Environment and Natural Resources Office (CENRO) of Laoag City, declaring that Lot No. 2512 was "alienable and disposable land . . . [as] certified by the Director of Forestry."[18] Additionally, it showed a Certificate, dated August 25, 1998, of the Regional Office of the Department of Environment and Natural Resources (DENR)-San Fernando, La Union, stating that "[Lot No. 2512] was not ... identical to any previously approved isolated survey."[19]

Kawayan Hills also presented evidence to the effect that Andres and his successors-in-interest had been tilling Lot No. 2512. In particular, Eufemiano Dafun (Eufemiano), Andres' grandson, testified that Andres had been in possession of Lot No. 2512 since World War II, when the latter was seven (7) years old. He recalled that Andres harvested fruits from Lot No. 2512.[20]

The Municipal Circuit Trial Court ordered the Land Management Bureau and CENRO of Laoag City to submit a report, and/or to certify whether Lot No. 2512 or any portion of it was covered by a land patent.[21]

In a Report dated February 9, 2004, the CENRO of Laoag City noted:

1. that the entire area of the land applied for registration was within the alienable and disposable zone as classified under Land Classification Map No. 1008, Project No. 13, released and certified

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[17] *Rollo*, pp. 23 and 27.

[18] *Id.* at 25.

[19] *Id.*

[20] *Id.* at 118.

[21] *Id.* at 25-26.

on 25 May 1933 by the Bureau of Forestry (now the Forestry Management Service);

2. that the land had never been forfeited in favor of the government for non-payment of taxes nor confiscated as bond;

3. that it was not inside any forestry reserve or unclassified public forest and did not encroach [on] any adjacent lot, road or riverbank;

4. that the subject property was not covered by any kind of public land application, patent, decree or title;

5. that Kawayan Hills declared the property for taxation purposes and paid the corresponding real property taxes thereof; and

6. that Kawayan Hills was in actual occupation and possession of the property.[22]

In its July 8, 2010 Decision,[23] the Municipal Circuit Trial Court ruled in favor of Kawayan Hills, confirmed its title over Lot No. 2512, and ordered Lot No. 2512's registration in Kawayan Hills' name. It reasoned:

The fact that [Lot No. 2512] has been continuously declared in the name of Andres Dafun since 1931, coupled with actual occupation and tillage without disturbance or adverse claim is enough to prove open, continuous, exclusive and notorious possession under a bona fide claim of ownership since June 12, 1945 and even prior thereto pursuant to Section 14 (1) of [Presidential Decree No.] 1529.[24]

In its assailed January 11, 2012 Decision,[25] the Court of Appeals reversed the Municipal Circuit Trial Court July 8, 2010 Decision. It maintained that Kawayan Hills failed to establish its or its predecessors-in--interest's bona fide claim of ownership since June 12, 1945 or earlier, as to enable confirmation of title under Section 14(1) of the Property Registration Decree.[26]

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[22] *Id*.

[23] *Id*. at 13-19.

[24] *Id*. at 17.

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

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

It added that Kawayan Hills could not, as an alternative, successfully claim title by acquisitive prescription under Section 14(2) of the Property Registration Decree. It reasoned that Kawayan Hills failed to show that there has been an express declaration by the State, whether by law or presidential proclamation, that Lot No. 2512 "is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial use."[27]

Kawayan Hills filed a Motion for Reconsideration,[28] which the Court of Appeals denied in its assailed June 28, 2012 Resolution.[29] Subsequent to this, Kawayan Hills filed a Manifestation/Motion dated July 5, 2012,[30] which the Court of Appeals denied in its assailed July 17, 2012 Resolution.[31] Kawayan Hills filed another Manifestation/Motion dated July 16, 2012,[32] which the Court of Appeals noted without action in its assailed August 15, 2012 Resolution.[33]

Thereafter, Kawayan Hills filed the present Petition before this Court on September 6, 2012.[34]

For resolution of this Court is the issue of whether or not petitioner Kawayan Hills Corporation is entitled to have title over Lot No. 2512 confirmed and registered in its favor.

The Court of Appeals was in serious error in granting the Republic's appeal and in concluding that title over Lot No. 2512 cannot be confirmed and registered in petitioner's favor. It failed

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[27] *Id.* at 31, citing *Heirs of Mario Malabanan v. Republic*, 605 Phil. 244 (2009) [Per *J.* Tinga, *En Banc*].

[28] *Id.* at 34-37.

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

[30] *Id.* at 59-61.

[31] *Id.* at 58.

[32] *Id.* at 55-57.

[33] *Id.* at 62.

[34] *Id.* at 3-12.

to acknowledge the prolonged duration of consistent and uninterrupted payment of real property taxes; the absence of any adverse claim, save the Republic's opposition; and the confirmation and tillage since 1942. Its haphazard reliance on the notion that real property tax declarations are not conclusive evidence of ownership demonstrates its failure to go about its duty of resolving the case with care and precision. It indicates grave abuse of discretion.

I

Section 14 of the Property Registration Decree, which "governs the applications for registration of title to land,"[35] reads:

> Section 14. Who May Apply. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:
>
> (1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.
>
> (2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.
>
> (3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.
>
> (4) Those who have acquired ownership of land in any other manner provided for by law.
>
> Where the land is owned in common, all the co-owners shall file the application jointly.
>
> Where the land has been sold under *pacto de retro*, the vendor *a retro* may file an application for the original registration of the land, provided, however, that should the period for redemption expire during

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[35] *Canlas v. Republic*, 746 Phil. 358, 369 (2014) [Per *J*. Leonen, Second Division].

the pendency of the registration proceedings and ownership to the property consolidated in the vendee *a retro*, the latter shall be substituted for the applicant and may continue the proceedings.

A trustee on behalf of his principal may apply for original registration of any land held in trust by him, unless prohibited by the instrument creating the trust.

This Court has distinguished applications for registration pursuant to Section 14, paragraphs (1) and (2). In *Canlas v. Republic*:[36]

In land registration cases, the applicants' legal basis is important in determining the required number of years or the reference point for possession or prescription. This court has delineated the differences in the modes of acquiring imperfect titles under Section 14 of Presidential Decree No. 1529. *Heirs of Mario Malabanan v. Republic* extensively discussed the distinction between Section 14 (1) and Section 14 (2) of Presidential Decree No. 1529. Thus, this court laid down rules to guide the public:

> (1) In connection with Section 14(1) of the Property Registration Decree, Section 48(b) of the Public Land Act recognizes and confirms that "those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a bona fide claim of acquisition of ownership, since June 12, 1945" have acquired ownership of, and registrable title to, such lands based on the length and quality of their possession.
>
> > (a) Since Section 48(b) merely requires possession since 12 June 1945 and does not require that the lands should have been alienable and disposable during the entire period of possession, the possessor is entitled to secure judicial confirmation of his title thereto as soon as it is declared alienable and disposable, subject to the timeframe imposed by Section 47 of the Public Land Act.
> >
> > (b) The right to register granted under Section 48(b) of the Public Land Act is further confirmed by Section 14(1) of the Property Registration Decree.

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[36] 746 Phil. 358 (2014) [Per *J*. Leonen, Second Division].

(2) In complying with Section 14(2) of the Property Registration Decree, consider that under the Civil Code, prescription is recognized as a mode of acquiring ownership of patrimonial property. However, public domain lands become only patrimonial property not only with a declaration that these are alienable or disposable. There must also be an express government manifestation that the property is already patrimonial or no longer retained for public service or the development of national wealth, under Article 422 of the Civil Code. And only when the property has become patrimonial can the prescriptive period for the acquisition of property of the public dominion begin to run.

(a) Patrimonial property is private property of the government. The person [who] acquires ownership of patrimonial property by prescription under the Civil Code is entitled to secure registration thereof under Section 14(2) of the Property Registration Decree.

(b) There are two kinds of prescription by which patrimonial property may be acquired, one ordinary and [the] other extraordinary. Under ordinary acquisitive prescription, a person acquires ownership of a patrimonial property through possession for at least ten (10) years, in good faith and with just title. Under extraordinary acquisitive prescription, a person's uninterrupted adverse possession of patrimonial property for at least thirty (30) years, regardless of good faith or just title, ripens into ownership.

In *Republic v. Gielczyk*, this court summarized and affirmed the differences between Section 14 (1) and Section 14 (2) of Presidential Decree No. 1529 as discussed in *Heirs of Malabanan*:

In *Heirs of Mario Malabanan v. Republic*, the Court further clarified the difference between Section 14(1) and Section 14(2) of P.D. No. 1529. The former refers to registration of title on the basis of possession, while the latter entitles the applicant to the registration of his property on the basis of prescription. Registration under the first mode is extended under the aegis of the P.D. No. 1529 and the Public Land Act (PLA) while under the second mode is made available both by P.D. No. 1529 and the Civil Code. Moreover, under Section 48(b) of

> the PLA, as amended by Republic Act No. 1472, the 30-year period is in relation to possession without regard to the Civil Code, while under Section 14(2) of P.D. No. 1529, the 30-year period involves extraordinary prescription under the Civil Code, particularly Article 1113 in relation to Article 1137.[37]

II

Contrary to the Court of Appeals' conclusion, petitioner is entitled to registration under Section 14(1).

Citing *Republic v. Hanover Worldwide Trading Corp.*,[38] *Canlas* broadly considered the requisites for availing registration under Section 14(1):

> An applicant for land registration or judicial confirmation of incomplete or imperfect title under Section 14 (1) of Presidential Decree No. 1529 must prove the following requisites: "(1) that the subject land forms part of the disposable and alienable lands of the public domain, and (2) that [the applicant has] been in open, continuous, exclusive and notorious possession and occupation of the same under a bona fide claim of ownership since June 12, 1945, or earlier." Concomitantly, the burden to prove these requisites rests on the applicant.[39]

Thus, two (2) things must be shown to enable registration under Section 14(1). First is the object of the application, i.e., land that is "part of the disposable and alienable lands of the public domain." Second is possession. This possession, in turn, must be: first, "open, continuous, exclusive, and notorious"; second, under a bona fide claim of acquisition of ownership; and third, has taken place since June 12, 1945, or earlier.

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[37] *Id*. at 370-373, citing *Heirs of Mario Malabanan v. Republic*, 605 Phil. 244, 281-282 (2009) [Per *J*. Tinga, *En Banc*]; and *Republic v. Gielczyk,* 120 Phil. 385 (2013) [Per *J*. Reyes, First Division].

[38] 636 Phil. 739 (2010) [Per *J*. Peralta, Second Division].

[39] *Canlas v. Republic*, 746 Phil. 358, 373 (2014) [Per *J*. Leonen, Second Division], citing *Republic v. Hanover Worldwide Trading Corporation*, 636 Phil. 739 (2010) [Per *J*. Peralta, Second Division]; and *Roman Catholic Archbishop of Manila v. Ramos*, 721 Phil. 305 (2013) [Per *J*. Brion, Second Division].

In jurisprudence, there is also a more nuanced reckoning of requisites for registration under Section 14(1). This more nuanced reckoning untangles the necessary characteristics of possession, as the preceding paragraph demonstrated. In this Court's September 3, 2013 Resolution in *Heirs of Malabanan v. Republic*:[40]

> [T]he applicant must satisfy the following requirements in order for his application to come under Section 14 (1) of the Property Registration Decree, to wit:
>
> 1. The applicant, by himself or through his predecessor-in-interest, has been in possession and occupation of the property subject of the application;
> 2. The possession and occupation must be open, continuous, exclusive, and notorious;
> 3. The possession and occupation must be under a bona fide claim of acquisition of ownership;
> 4. The possession and occupation must have taken place since June 12, 1945, or earlier; and
> 5. The property subject of the application must be an agricultural land of the public domain.[41]

Proceeding independently of how jurisprudence reckons requisites for registration under Section 14(1), the Court of Appeals identified three (3) requisites:

> Under Section 14 (1), applicants for registration of title must sufficiently establish first, that the subject land forms part of the disposable and alienable lands of the public domain; second, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of

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[40] 717 Phil. 141 (2013) [Per *J*. Bersamin, *En Banc*].

[41] *Id*. at 164, citing Pres. Decree No. 1529, Sec. 14(1). See also *La Tondeña, Inc. v. Republic*, 765 Phil. 795 (2015) [Per *J*. Leonen, Second Division]; and *Republic v. Spouses Noval*, G.R. No. 170316, September 18, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/170316.pdf > [Per *J*. Leonen, Third Division].

the same; and third, that it is under a *bona fide* claim of ownership since 12 June 1945, or earlier.[42]

III

The Court of Appeals conceded that the first of its identified requisites is availing here.[43] Indeed, the February 9, 2004 CENRO-Laoag City Report stated "that the entire area of the land applied for registration was within the alienable and disposable zone as classified under Land Classification Map No. 1008, Project No. 13, released and certified on 25 May 1933 by the Bureau of Forestry (now the Forestry Management Service)."[44]

The Court of Appeals also conceded that the second of its identified requisites is availing:

> Kawayan Hills had likewise met the second requirement as to *ownership and possession*. The [Municipal Circuit Trial Court] found that it had presented sufficient testimonial and documentary evidence to show that *from its first known predecessor-in-interest, Andres Dafun, up to [itself], they were in open, continuous, exclusive and notorious possession and occupation* of the land in question.[45] (Emphasis and underscoring supplied)

Andres was asserted to have been in possession of Lot No. 2512 since 1931, when he started declaring it for real property tax purposes. The Court of Appeals' acknowledgment of his "open, continuous, exclusive and notorious possession and occupation,"[46] which it considered to be the second requisite, is a concession of the duration of possession that is even prior to June 12, 1945.

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[42] *Rollo*, pp. 28-29.

[43] *Id*. at 25.

[44] *Id*. at 25-26.

[45] *Id*. at 29.

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

Despite its acknowledgments and its own categorical statement that "Kawayan Hills ... met the ... requirement as to *ownership*,"[47] the Court of Appeals proceeded to state that the third of its identified requisites has not been satisfied. It faulted the evidence presented by petitioner as failing to establish a *bona fide claim of ownership* that dates to June 12, 1945, or earlier. It decried petitioner's reliance on tax declarations, even if they dated to as far back as 1931, as these supposedly did not prove ownership:

> Well[-]settled is the rule that tax declarations are not conclusive evidence of ownership or of the right to possess land when not supported by any other evidence. The fact that the disputed property may have been declared for taxation purposes in the name of the applicant for registration or of their predecessors-in-interest does not necessarily prove ownership. They are merely indicia of a claim of ownership.[48]

IV

The Court of Appeals' grossly dismissive consideration of tax declarations dating back to 1931 is a serious error.

While recognizing that tax declarations do not absolutely attest to ownership, this Court has also recognized that "[t]he voluntary declaration of a piece of property for taxation purposes ... strengthens one's bona fide claim of acquisition of ownership."[49] It has stated that payment of real property taxes "is good indicia of possession in the concept of an owner, and when coupled with continuous possession, it constitutes strong evidence of title."[50] For after all:

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[47] *Id*. at 29.

[48] *Id*. at 30.

[49] *Director of Lands v. Intermediate Appellate Court*, 284-A Phil. 675, 691 (1992) [Per J. Davide, Jr., Third Division). See also *Republic v. Court of Appeals*, 328 Phil. 238 (1996) [Per J. Torres, Jr., Second Division]; and *Director of Lands v. Court of Appeals*, 367 Phil. 597 (1999) [Per J. Gonzaga-Reyes, Third Division].

[50] *Republic v. Spouses Noval,* G.R. No. 170316, September 18, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/170316.pdf > 14 [Per J. Leonen, Third Division].

No person in the right mind would pay taxes on real property over which he or she does not claim any title. Its declaration not only manifests a sincere desire to obtain title to a property; it may be considered as an announcement of an adverse claim against State ownership. It would be unjust for the State to take properties which have been continuously and exclusively held since time immemorial without showing any basis for the taking, especially when it has accepted tax payments without question.[51]

There have been instances where this Court has favorably considered the presentation of tax declarations which are "not of recent vintage"[52] as indicating possession under a bona fide claim of ownership.

In *Republic v. Court of Appeals,*[53] this Court found no merit in the Republic's opposition asserting that "aside from mere tax declarations all of which are of recent vintage, private respondent has not established actual possession of the property in question in the manner required by law (Section 14, P.D. 1529) and settled jurisprudence."[54] In claiming that the applicant failed to establish actual possession, the Republic was noted as emphasizing that "no evidence was adduced that private respondent cultivated[,] much less, fenced the subject property if only to prove actual possession."[55]

Ruling against the Republic, this Court favorably considered the presentation of tax declarations, tax payment receipts, and a deed of sale as "strong evidence of possession in the concept of owner."[56] It also noted that contrary to the Republic's assertion,

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[51] *Id.* at 14, citing *Clado-Reyes v. Limpe*, 479 Phil. 669 (2008) [Per *J.* Quisumbing, Second Division]; and *Republic v. Court of Appeals,* 328 Phil. 238 (1996) [Per *J.* Torres, Jr., Second Division].

[52] *Director of Lands v. Court of Appeals*, 367 Phil. 597, 603 (1999) [Per *J.* Gonzaga-Reyes, Third Division].

[53] 328 Phil. 238 (1996) [Per *J.* Torres, Jr., Second Division].

[54] *Id.* at 246.

[55] *Id.*

[56] *Id.* at 248.

there were indications that the applicant occupied, possessed, and cultivated the land:

We are not persuaded. On this point, the respondent Court correctly found that:

> "Proof that petitioner-appellee and his predecessors-in-interest have acquired and have been in open, continuous, exclusive and notorious possession of the subject property for a period of 30 years under a *bona fide* claim of ownership are the tax declarations of petitioner- appellee's predecessors-in-interest, the deed of sale, tax payment receipts and petitioner-appellee's tax declarations. The evidence on record reveals that: (1) the predecessors-in-interest of petitioner-appellee have been declaring the property in question in their names in the years 1923, 1927, 1934 and 1960; and, (2) in 1966, petitioner-appellee purchased the same from the Heirs of Gil Alhambra and since then paid the taxes due thereon and declared the property in his name in 1985. . . .
>
> . . . Considering the dates of the tax declarations and the realty tax payments, they can hardly be said to be of recent vintage indicating petitioner-appellee's pretended possession of the property. On the contrary, they are strong evidence of possession in the concept of owner by petitioner-appellee and his predecessors-in-interest. Moreover, the realty tax payment receipts show that petitioner-appellee has been very religious in paying the taxes due on the property. This is indicative of his honest belief that he is the owner of the subject property. We are, therefore, of the opinion that petitioner-appellee has proved that he and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession of the subject property in the concept of owner for a period of 30 years since 12 June 1945 and earlier. By operation of law, the property in question has become private property.
>
> "Contrary to the representations of the Republic, petitioner-appellee had introduced some improvements on the subject property from the time he purchased it. His witnesses testified that petitioner-appellee developed the subject property into a ricefield and planted it with rice, but only for about five years because the return on investment was not enough to sustain the continued operation of the rice1and. Though not in the

category of permanent structures, the preparation of the land into a ricefield and planting it with rice are considered 'improvements' thereon."

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. 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. Such an act strengthens one's bona fide claim of acquisition of ownership.[57]

Director of Lands v. Court of Appeals[58] concerned a cadastral proceeding in which this Court affirmed the rulings of the Regional Trial Court and of the Court of Appeals, "order[ing] the registration and confirmation of Lot 10704 in the name of the Spouses Monico Rivera and Estrella Nota."[59] This Court found no error in the lower courts' findings that "assertion of possession under claim of ownership [was] *tenable*"[60] and that "the claimant, together with his predecessor-in-interest, has 'satisfactorily possessed and occupied the land in the concept of owner openly, continuously, adversely, notoriously and exclusively since 1926, very much earlier to June 12, 1945.'"[61] This was so even when the documentary evidence[62] adduced

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[57] *Id*. at 247-248, citing *Heirs of Severino Legaspi, Sr. v. Vda. de Dayot*, 266 Phil. 569 (1990) [Per *J*. Gancayco, First Division]; and *Director of Lands v. IAC*, 284-A Phil. 675 (1992) [Per *J*. Davide, Jr., Third Division].

[58] 367 Phil. 597 (1999) [Per *J*. Gonzaga-Reyes, Third Division].

[59] *Id*. at 600.

[60] *Id*. at 604.

[61] *Id*. at 600.

[62] The documentary evidence was also supported by testimonial evidence relating to the applicant's and his predecessor-in-interest's occupation and cultivation of the land:

by the claimant in support of a claim of ownership was limited to tax declarations dating back to 1927, and deeds of sale:

Considering the date of the earliest tax declaration, which shows it is not of recent vintage to support a pretended possession of property, it is believed that the respondent court did not commit reversible error in affirming the finding of the trial court that Monico Rivera's assertion of possession under claim of ownership is tenable.

> "Although tax declarations or realty tax payment 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. 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. Such an act strengthens one's *bona fide* claim of acquisition of ownership."[63]

Republic v. Spouses Noval[64] went a step further. It did not only favorably consider tax declarations as "good indicia of possession in the concept of an owner, and ... [as] constitut[ing] strong evidence of title."[65] It also considered the applicants'

Claimant Monico Rivera also testified that Gregoria Rivera from whom he bought the lot in question has been in possession since 1928, and planted corn and coconuts; after having bought the same in 1971 from Gregoria Rivera, claimant continued planting corn and harvesting the coconuts, and built a small hut where his family lives.

[63] *Director of Lands v. Court of Appeals*, 367 Phil. 597, 604 (1999) [Per *J*. Gonzaga-Reyes, Third Division], citing *Republic v. Court of Appeals*, 328 Phil. 238 (1996) [Per *J*. Torres, Jr., Second Division]; and *Heirs of Severo Legaspi, Sr. v. Vda. de Dayot*, 266 Phil. 569 (1990) [Per *J*. Gancayco, First Division].

[64] G.R. No. 170316, September 18, 2017 < sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/170316.pdf > [Per *J*. Leonen, Third Division].

[65] *Id*. at 14.

and their predecessors-in-interest's consistent payment of real property taxes as militating against the Republic's claim that the land subject of the application was not alienable and disposable agricultural land of the public domain:

> The State also kept silent on respondents' and their predecessor-in- interest's continuously paid taxes. The burden to prove the public character of Lot 4287 becomes more pronounced when the State continuously accepts payment of real property taxes. This Court acknowledges its previous rulings that payment of taxes is not conclusive evidence of ownership. However, it is good indicia of possession in the concept of an owner, and when coupled with continuous possession, it constitutes strong evidence of title.
>
> No person in the right mind would pay taxes on real property over which he or she does not claim any title. Its declaration not only manifests a sincere desire to obtain title to a property; it may be considered as an announcement of an adverse claim against State ownership. It would be unjust for the State to take properties which have been continuously and exclusively held since time immemorial without showing any basis for the taking, especially when it has accepted tax payments without question.[66] (Citations omitted)

V

As with *Republic v. Court of Appeals*,[67] *Director of Lands v. Court of Appeals*,[68] and *Republic v. Spouses Noval*,[69] the payment of real property taxes since as far back as 1931 by petitioner Kawayan Hills' predecessor-in-interest, Andres, should not be dismissed so easily. To the contrary, coupled with evidence of continuous possession, it is a strong indicator of possession in the concept of owner.

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[66] *Id.*

[67] 328 Phil. 238 (1996) [Per *J.* Torres, Jr., Second Division].

[68] 367 Phil. 597 (1999) [Per *J.* Gonzaga-Reyes, Third Division].

[69] G.R. No. 170316, September 18, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/170316.pdf > [Per *J.* Leonen, Third Division].

The Court of Appeals' reduction of the resolution of petitioner's application to the expedient aphorism that tax declarations do not absolutely establish ownership fails to account for composite and uncontroverted aspects of petitioner's claim. In addition to Andres' declaration of Lot No. 2512 for the payment of real property taxes for almost a decade and a half ahead of the June 12, 1945 threshold, and his and his successors-in-interest's unfailing diligence in paying real property taxes, there are more details that attest to possession in the concept of owner.

Since the start of Andres' documented possession in 1931, no one has come forward to contest his and his successors-in-interest's possession as owners. It was only on September 4, 2001, about a month after petitioner's filing of its application, that the Republic came forward to contest the confirmation and registration of title in his name. By then, title to every single lot surrounding Lot No. 2512 had been issued in petitioner's name.[70] Throughout the intervening time, Andres and his successors-in-interest tilled Lot No. 2512. Andres' grandson, Eufemiano, testified for petitioner before the Municipal Circuit Trial Court.[71] He unequivocally declared that Andres had been occupying Lot No. 2512 since World War II. He affirmed that he had witnessed his grandfather harvesting fruits.[72] The

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[70] *Rollo*, pp. 9-10.

[71] *Republic v. Spouses Noval*, G.R. No. 170316, September 18, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/170316.pdf > [Per *J*. Leonen, Third Division]) also favorably considered a grandchild's testimony concerning her grandmother's cultivation of the land:

> Respondents' predecessor-in-interest recalled her grandmother to have already cultivated fruit-bearing trees on Lot 4287 when she was 15 years old. Possession prior to that "can hardly be estimated ... the period of time being so long that it is beyond the reach of memory."
>
> Hence, respondents' and their predecessor-in-interest's possession is, with little doubt, more than 50 years at the time of respondents' application for registration in 1999. This is more than enough to satisfy the period of possession required by law for acquisition of ownership.

[72] *Rollo*, p. 118.

Municipal Circuit Trial Court categorically stated that Lot No. 2512 had been used by Andres and his children "for agricultural production since 1942."[73]

VI

The Court of Appeals never bothered to mention any of these details, let alone address the import of each of them. The most that the Court of Appeals resorted to was a vague, dismissive reference to supposedly "unsubstantiated general statements."[74] Its *ratio decidendi* denying petitioner's application boiled down to two (2) paragraphs,[75] centering on how tax declarations "are not conclusive evidence of ownership."[76] This was followed by a discussion of how petitioner was not entitled to confirmation and registration of title under the alternative mechanism of Section 14(2) of the Property Registration Decree.[77] This Court had to sift through the records of the case to ascertain the matters ignored by the Court of Appeals.

The Court of Appeals' reductive resort to an aphorism about tax declarations, as though it were an incantation that conveniently resolves the myriad dimensions of this case, is not mere error in judgment; it is grave abuse of discretion. It amounts to its evasion of its positive duty[78] to weigh the

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[73] *Id*. at 17.

[74] *Id*. at 30.

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

[76] *Id*. at 30.

[77] *Id*. at 30-32.

[78] *Angeles v. Secretary of Justice*, 503 Phil. 93, 100 (2005) [Per *J*. Carpio, First Division]:

An act of a court or tribunal may constitute grave abuse of discretion when the same is performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or personal hostility.

competing claims and to meticulously consider the evidence to arrive at a judicious resolution.

In so doing, the Court of Appeals validated what amounted to a mere *pro forma* opposition by the Republic, one that was triggered, not by an independent determination of a fatal error in an application, but by the mere occasion of the filing of an application. In *Spouses Noval*, this Court decried favorable actions on such *pro forma* oppositions as amounting to undue taking of property, thus, violative of the right to due process:

> When an applicant in the registration of property proves his or her open, continuous, exclusive, and notorious possession of a land for the period required by law, he or she has acquired an imperfect title that may be confirmed by the State. The State may not, in the absence of controverting evidence and in a *pro forma* opposition, indiscriminately take a property without violating due process.[79]

For decades, Andres and his descendants toiled on Lot No. 2512. No one bothered to assail their possession or to claim it as owners. That is, until their transferee had the prudence to submit to legal processes by finally having title over Lot No. 2512 confirmed and registered. Rather than upholding legal objectives, the Republic's perfunctory response disincentivizes submission to judicial mechanisms. It unwittingly sends the message that holders of property, albeit through imperfect titles, are better off not bothering to abide by legal requirements. It is grave error to rule for the Republic in such cases merely on account of unquestioning belief in trite adages. The adjudication of judicial matters demands more than swift invocations. The Court of Appeals was much too accepting of the Republic's position. It was remiss in its duty to be a discriminating adjudicator; it was remiss in its duty to uphold due process and to do justice.

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[79] *Republic v. Spouses Noval*, G.R. No. 170316, September 18, 2017 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/september2017/170316.pdf > 1 [Per *J*. Leonen, Third Division].

WHEREFORE, the Petition for Certiorari is **GRANTED**. The assailed January 11, 2012 Decision, June 28, 2012 Resolution, July 17, 2012 Resolution, and August 15, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 95701 are **NULLIFIED**. The July 8, 2010 Decision of the Municipal Circuit Trial Court of Paoay-Currimao, Ilocos Norte in Land Reg. Case No. N-4 is **REINSTATED**.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr.,*[*] *Gesmundo*, and *Reyes, J. Jr., JJ*., concur.

THIRD DIVISION

[G.R. No. 210736. September 5, 2018]

HERARC REALTY CORPORATION, *petitioner, vs.* **THE PROVINCIAL TREASURER OF BATANGAS, THE PROVINCIAL ASSESSOR OF BATANGAS, THE MUNICIPAL ASSESSOR AND MUNICIPAL TREASURER OF CALATAGAN, BATANGAS, DR. RAFAEL A. MANALO, GRACE OLIVA, and FREIDA RIVERA YAP,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; REPUBLIC ACT NO. 1125 (AS AMENDED BY REPUBLIC ACT NO. 9282); COURT OF TAX APPEALS; HAS EXCLUSIVE APPELLATE JURISDICTION TO REVIEW BY APPEAL THE

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[*] Designated Acting member per Special Order No. 2588 dated August 28, 2018.

DECISIONS, ORDERS, OR RESOLUTIONS OF THE REGIONAL TRIAL COURT IN LOCAL TAX CASES; CASE AT BAR.— Petitioner's direct recourse to the RTC is warranted since the issue of the legality or validity of the assessment is a question of law. However, as a taxpayer not satisfied with the RTC decision, it should have filed a petition for review before the Court of Tax Appeals *(CTA).* The decision, ruling or resolution of the CTA, sitting as Division, may further be reviewed by the CTA *En Banc.* It is only after this procedure has been exhausted that the case may be elevated to this Court. Under Section 7 (a) (3) of Republic Act *(R.A.)* No. 9282, the appellate jurisdiction of the CTA over decisions, orders, or resolutions of the RTC becomes operative when the latter has ruled on a local tax case, *i.e.,* one which is in the nature of a tax case or which primarily involves a tax issue.

2. ID.; APPEALS; PERFECTION OF AN APPEAL IN THE MANNER AND WITHIN THE PERIOD PERMITTED BY LAW IS MANDATORY AND JURISDICTIONAL SUCH THAT FAILURE TO DO SO RENDERS THE JUDGMENT OF THE COURT FINAL AND EXECUTORY; CASE AT BAR.— Evidently, petitioner erred in its appeal. If the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due with respect to the property becomes absolute upon the expiration of the period to appeal. The assessment becomes final, executory and demandable, precluding the taxpayer from assailing the legality/validity (or reasonableness/correctness) of the assessment. Time and again, the Court stresses that perfection of an appeal in the manner and within the period permitted by law is mandatory and jurisdictional such that failure to do so renders the judgment of the court final and executory. The right to appeal is a statutory right, not a natural nor a constitutional right. The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered.

3. TAXATION; LOCAL GOVERNMENT CODE; REAL PROPERTY TAXES; PERSONAL LIABILITY FOR THE TAX DELINQUENCY IS GENERALLY ON WHOEVER IS THE OWNER OF THE REAL PROPERTY AT THE TIME THE TAX ACCRUES; WHERE THE TAX LIABILITY IS IMPOSED ON THE BENEFICIAL USE OF

THE REAL PROPERTY, SUCH AS THOSE OWNED BUT LEASED TO PRIVATE PERSONS OR ENTITIES BY THE GOVERNMENT, OR WHEN THE ASSESSMENT IS MADE ON THE BASIS OF THE ACTUAL USE THEREOF, THE PERSONAL LIABILITY IS ON ANY PERSON WHO HAS SUCH BENEFICIAL OR ACTUAL USE AT THE TIME OF THE ACCRUAL OF THE TAX.— Even if this case is resolved on its substantive merit, the disposition remains the same. As the RTC correctly opined, in real estate taxation, the unpaid tax attaches to the property. The personal liability for the tax delinquency is generally on whoever is the owner of the real property at the time the tax accrues. This is a necessary consequence that proceeds from the fact of ownership. Nonetheless, where the tax liability is imposed on the beneficial use of the real property, such as those owned but leased to private persons or entities by the government, or when the assessment is made on the basis of the actual use thereof, the personal liability is on any person who has such beneficial or actual use at the time of the accrual of the tax. Beneficial use means that the person or entity has the *use and possession* of the property. Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof.

4. **ID.; ID.; ID.; EXEMPTIONS; TAX EXEMPTION OF REAL PROPERTY OWNED BY THE REPUBLIC, ITS POLITICAL SUBDIVISIONS, AGENCIES OR INSTRUMENTALITIES CEASES IF THE BENEFICIAL USE OF THE REAL PROPERTY HAS BEEN GRANTED, FOR CONSIDERATION OR OTHERWISE, TO A TAXABLE PERSON; CASE AT BAR.—** As a general rule, real properties are subject to the RPT since the LGC has withdrawn exemptions from real property taxes of all persons, whether natural or juridical. Entities may be exempt from payment of the RPT if their charters, which were enacted or reenacted after the effectivity of the LGC, exempt them payment of the RPT. Likewise, exceptions to the rule are provided in Section 133(o) of the LGC, which states that local government units have no power to levy taxes of any kind on the national government, its agencies and instrumentalities and local government units. Particularly on the RPT, Section 234 enumerates the persons and real property exempt therefrom.

> The tax exemption of real property owned by the Republic, its political subdivisions, agencies or instrumentalities carries, however, ceases if the beneficial use of the real property has been granted, for a consideration or otherwise, to a taxable person. In such case, the corresponding liability for the payment of the RPT devolves on the taxable beneficial user. As applied in subsequent cases, it is in this context that our ruling in *Testate Estate of Concordia T. Lim* should be understood. Moreover, in said case, the taxpayer that was being assessed with the unpaid RPT was neither the registered owner nor the possessor of the subject property when the tax became due and demandable. In contrast, petitioner herein, an entity that is not tax exempt under the law, is the registered owner of the real property. Therefore, it is personally liable for the RPT at the time it accrued.

APPEARANCES OF COUNSEL

Herrera Teehankee & Cabrera for petitioner.
Somera Peñano & Associates for private respondents.
Office for Legal Services, Province Government of Batangas for public respondents.

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court *(Rules)* seeks to reverse and set aside the November 18, 2013 Decision[1] and January 7, 2014 Resolution[2] of the Regional Trial Court *(RTC),* Branch 8, Pallocan West, Batangas City in Civil Case No. 9428, which held that petitioner Herarc Realty Corporation is liable to pay the deficiency real property tax for the years 2007, 2008, and January to August 12, 2009.

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[1] Penned by Presiding Judge Ernesto L. Marajas; *rollo,* pp. 111-117, 422-427.

[2] *Rollo,* pp. 118-120, 435-437.

Stripped of non-essentials, the facts of the present controversy are simple and undisputed.

Upon acquisition *via* execution sale in August 2004, thirteen (13) parcels of land located in Sta. Ana, Calatagan, Batangas are registered since 2006 in the name of petitioner Herarc Realty Corporation under Transfer Certificate of Title *(TCT)* Nos. T-105907 to T-105919 *(subject property).* From March 2, 2006 up to August 12, 2009, the Subject Property had been in actual possession of private respondents Dr. Rafael A. Manalo, Grace Oliva, and Freida Rivera Yap in their capacity as assignees in an involuntary insolvency proceeding against the Spouses Rosario and Saturnino Baladjay pending before the Muntinlupa City RTC Br. 204.[3] It was only on August 13, 2009 that petitioner was able to take full possession and control of the subject property by virtue of the July 31, 2009 Order of the Makati City RTC Br. 56 granting the issuance of a writ of execution, which, in turn, was based on the final and executory Decision of the Court of Appeals in CA- G.R. SP Nos. 93818 and 93823.[4]

In a letter dated October 9, 2012, public respondent Provincial Treasurer of Batangas sent to petitioner a Statement of Real Property Tax *(RPT)* Liabilities to collect the amount of ₱8,093,256.89, which included the unpaid RPT on the subject property for 2007, 2008, and January to August 2009 *(covered period).*[5] The demand was reiterated in letters dated October 23, 2012 and November 21, 2012.[6]

The assessment was paid under protest on November 20, 2012.[7] Less than a month after, petitioner filed a petition for prohibition and *mandamus*[8] against respondents, praying the trial court to:

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[3] *Id.* at 384-397, 404, 474.

[4] *Id.* at 123-144.

[5] *Id.* at 150-154, 163-166.

[6] *Id.* at 159, 168, 473.

[7] *Id.* at 160-162.

[8] *Id.* at 438-472.

i. [declare], as null and void, the assessments for unpaid real property taxes made against Petitioner Herarc over the Subject Property for the years 2007, 2008 until 12 August 2009;

ii. [declare], the questioned assessments to be chargeable against Dr. Rafael Manalo, et al., they being in possession of the Subject Property [during] the [Covered] Period;

iii. [require] Public Respondents to issue the corresponding tax clearances in favor of Petitioner Herarc for the Subject Property over the period beginning 2007 up to 2012; and

iv. [require] Public Respondents to refund Petitioner Herarc of whatever amount it has paid under protest that is in excess of the real property taxes legally chargeable against Petitioner Herarc.[9]

For petitioner, the RPT assessment is illegal and erroneous, because the subject property was not in its possession during the covered period. Citing *Testate Estate of Concordia T. Lim v. City of Manila*[10] and *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila,*[11] which ruled that unpaid tax is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner, it contended that private respondents should be the one charged therefor as they had its actual or beneficial use and possession at the time.

On November 18, 2013, the RTC denied the petition. In ruling that petitioner is liable to pay the RPT for the covered period, it held:

While it may be true that[,] as stated by the Honorable Supreme Court[,] the unpaid tax attaches to the property and is chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner, it does not follow that the position of the Provincial Treasurer does not [hold]

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[9] *Id.* at 464-465.

[10] 261 Phil. 602 (1990).

[11] 623 Phil. 964 (2009).

true. The doctrine laid down by the Honorable Supreme Court as mentioned by the [herein] Petitioner to substantiate one's position has been predicated on the theory that the registered owner is a tax exempt entity.

In this case under consideration[,] the registered owner is a juridical person subject to tax. Logic dictates that the pronouncement made by the Supreme Court in the two case[s] quoted by Herarc Realty Corporation is not applicable in this case under consideration.

An entity not exempt from payment of taxes must be responsible for the payment of the deficiency taxes under the theory that unpaid taxes attach to the land. This may be the reason why the doctrine of beneficial user of the property owned by tax exempt entity must be answerable for the payment of real property taxes on the real estate property owned by tax exempt entity.

It may be appropriate to state that this rule of law has been modified in the case of City of Pasig versus Republic of the Philippines, G.R. No. 185023, August 24, 2011[.] The Highest Magistrate of the Land made a pronouncement — In sum, only those portions of the properties leased to taxable entities are subject to real estate tax for the period of such leases. Pasig City must, therefore, issue to respondent new real property tax assessments covering the portions of the properties leased to taxable entities. If the Republic of the Philippines fails to pay the real property tax on the portions of the properties leased to taxable entities, then such portions may be sold at public auction to satisfy the tax delinquency.

An [in-depth] examination of the doctrine of the Premier Magistrate of the Philippines in the case of Pasig versus Republic of the Philippines cited above, the owner of the real estate property must be the one who would be responsible for the payment of real property tax if the beneficial user failed to pay the required real property tax. It goes without saying that the Petition filed by Herarc Realty Corporation has to be denied.[12]

When its motion for reconsideration was denied on January 7, 2014, petitioner directly filed before Us a Rule 45 petition.

We deny.

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[12] *Rollo,* pp. 114-116, 424-426.

Petitioner's direct recourse to the RTC is warranted since the issue of the legality or validity of the assessment is a question of law.[13] However, as a taxpayer not satisfied with the RTC decision, it should have filed a petition for review before the Court of Tax Appeals *(CTA).*[14] The decision, ruling or resolution of the CTA, sitting as Division, may further be reviewed by the CTA *En Banc.*[15] It is only after this procedure has been exhausted that the case may be elevated to this Court.

Under Section 7 (a) (3) of Republic Act *(R.A.)* No. 9282,[16] the appellate jurisdiction of the CTA over decisions, orders, or resolutions of the RTC becomes operative when the latter has ruled on a local tax case, *i.e.,* one which is in the nature of a tax case or which primarily involves a tax issue.[17] Local tax cases include those involving RPT, which is governed by Book II, Title II of R.A No. 7160, or *Local Government Code (LGC)* of 1991.[18] Among the possible issues are the legality or validity of the RPT assessment; protests of assessments; disputed

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[13] See *National Power Corp. v. Municipal Government of Navotas, et al.,* 747 Phil. 744, 756 (2014).

[14] *National Power Corp. v Municipal Government of Navotas, et al., supra.*

[15] *Id.*

[16] R.A. No. 9282, which was passed into law on March 30, 2004 and took effect on April 23, 2004, amended Section 7 of R.A. No. 1125. It provides:

> SEC. 7. Section 7 of the same Act is hereby amended to read as follows:
>
> SEC. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> x x x x x x x x x
>
> (3) Decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction[.]

[17] *Ignacio v. Office of the City Treasurer of Quezon City,* G.R. No. 221620, September 11, 2017.

[18] *Salva v. Magpile,* G.R. No. 220440, November 8, 2017 and *Ignacio v. Office of the City Treasurer of Quezon City, supra.*

assessments, surcharges, or penalties; legality or validity of a tax ordinance; claims for tax refund/credit; claims for tax exemption; actions to collect the tax due; and even prescription of assessments.[19]

Evidently, petitioner erred in its appeal. If the taxpayer fails to appeal in due course, the right of the local government to collect the taxes due with respect to the property becomes absolute upon the expiration of the period to appeal.[20] The assessment becomes final, executory and demandable, precluding the taxpayer from assailing the legality/validity (or reasonableness/correctness) of the assessment.[21]

Time and again, the Court stresses that perfection of an appeal in the manner and within the period permitted by law is mandatory and jurisdictional such that failure to do so renders the judgment of the court final and executory.[22] The right to appeal is a statutory right, not a natural nor a constitutional right. The party who intends to appeal must comply with the procedures and rules governing appeals; otherwise, the right of appeal may be lost or squandered.[23]

Even if this case is resolved on its substantive merit, the disposition remains the same. As the RTC correctly opined, in real estate taxation, the unpaid tax attaches to the property.[24]

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[19] *Ignacio v. Office of the City Treasurer of Quezon City, supra* note 17.

[20] *FELS Energy, Inc. v. The Province of Batangas,* 545 Phil. 92, 107-108 (2007).

[21] *Id.* at 108.

[22] *Puyat Steel Corp. v. Central Board of Assessment Appeals* (Notice), G.R. No. 174351, February 18, 2015 and *FELS Energy, Inc. v. The Province of Batangas, supra* note 20, at 108.

[23] *Puyat Steel Corp. v. Central Board of Assessment Appeals* (Notice), *supra* note 22.

[24] *Testate Estate of Concordia T. Lim v. City of Manila,* 261 Phil. 602, 607 (1990), as cited in *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila,* 623 Phil. 964, 982 (2009); *National Power Corp. v. Province of Quezon, et al.,* 610 Phil. 456, 467 (2009); *Republic*

The personal liability for the tax delinquency is generally on whoever is the owner of the real property at the time the tax accrues.[25] This is a necessary consequence that proceeds from the fact of ownership.[26] Nonetheless, where the tax liability is imposed on the beneficial use of the real property, such as those owned but leased to private persons or entities by the government, or when the assessment is made on the basis of the actual use thereof, the personal liability is on any person who has such beneficial or actual use at the time of the accrual of the tax.[27] Beneficial use means that the person or entity has the *use and possession* of the property.[28] Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof.[29]

As a general rule, real properties are subject to the RPT since the LGC has withdrawn exemptions from real property taxes of all persons, whether natural or juridical.[30] Entities may be exempt from payment of the RPT if their charters, which were enacted or reenacted after the effectivity of the LGC, exempt

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of the Philippines v. City of Kidapawan, 513 Phil. 440, 447 (2005); *Manila Electric Co. v. Barlis,* 477 Phil. 12, 37 (2004); and *Manila Electric Co. v. Barlis,* 410 Phil. 167, 178 (2001).

[25] *National Power Corp. v. Province of Quezon, et al., supra* note 24 and *Republic of the Philippines v. City of Kidapawan, supra* note 24, at 452.

[26] *National Power Corp. v. Province of Quezon, et al., supra* note 24.

[27] *Republic of the Philippines v. City of Kidapawan, supra* note 24 at, 452. See also *National Power Corp. v. Province of Quezon, et al., supra* note 24.

[28] See *National Power Corporation v. Province of Quezon, et al.,* 624 Phil. 738, 745 (2010).

[29] Section 199 (b) of the LGC. See also *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila, supra* note 24, at 983, citing *Republic of the Philippines v. City of Kidapawan, supra* note 24, at 449.

[30] *City of Lapu-Lapu v. Philippine Economic Zone Authority,* 748 Phil. 473, 537 (2014).

them payment of the RPT.[31] Likewise, exceptions to the rule are provided in Section 133(o)[32] of the LGC, which states that local government units have no power to levy taxes of any kind on the national government, its agencies and instrumentalities and local government units. Particularly on the RPT, Section 234[33] enumerates the persons and real property

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[31] See *City of Lapu-Lapu v. Philippine Economic Zone Authority, supra,* at 750.

[32] Sec. 133 (o) of the LGC states:

Section 133. *Common Limitations on the Taxing Powers of Local Government Units.*– Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

x x x x x x x x x

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

[33] Sec. 234 of the LGC mandates:

Section 234. *Exemptions from Real Property Tax.*– The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code.

exempt therefrom. The tax exemption of the real property of the Republic, its political subdivisions, agencies or instrumentalities carries, however, ceases if the beneficial use of the real property has been granted, for a consideration or otherwise, to a taxable person. In such case, the corresponding liability for the payment of the RPT devolves on the taxable beneficial user.[34] As applied in subsequent cases,[35] it is in this context that our ruling in *Testate Estate of Concordia T. Lim*[36] should be understood. Moreover, in said case, the taxpayer that was being assessed with the unpaid RPT was neither the registered owner nor the possessor of the subject property when the tax became due and demandable. In contrast, petitioner herein, an entity that is not tax exempt under the law, is the registered owner of the real property. Therefore, it is personally liable for the RPT at the time it accrued.

WHEREFORE, premises considered, the petition for review on *certiorari* under Rule 45 of the Rules of Court, which seeks to reverse and set aside the November 18, 2013 Decision and January 7, 2014 Resolution of the Regional Trial Court, Branch 8, Pallocan West, Batangas City, is **DENIED.**

SO ORDERED.

Leonen, Gesmundo, Reyes, A., Jr., and *Reyes, J. Jr.,*[*] *JJ.,* concur.

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[34] See *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila,* 623 Phil. 964, 985 (2009).

[35] See *City of Pasig v. Republic,* 671 Phil. 791 (2011); *Government Service Insurance System v. City Treasurer and City Assessor of the City of Manila,* 623 Phil. 964 (2009); *Republic of the Philippines v. City of Kidapawan,* 513 Phil. 440 (2005); *Manila Electric Co. v. Barlis,* 477 Phil. 12 (2004); and *Manila Electric Co. v. Barlis,* 410 Phil. 167 (2001).

[36] *Supra* note 24.

[*] Designated additional member per Special Order No. 2588 dated August 28, 2018.

THIRD DIVISION

[G.R. No. 212191. September 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICHARD DILLATAN, SR.** ***y*** **PAT and DONATO GARCIA** ***y*** **DUAZO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS; IT MUST BE ESTABLISHED THAT ROBBERY IS THE CENTRAL PURPOSE AND OBJECTIVE OF THE MALEFACTOR AND THE KILLING IS MERELY INCIDENTAL TO THE ROBBERY; CASE AT BAR.— Robbery with homicide exists when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property belongs to another; (3) the taking is *animo lucrandi* or with intent to gain; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in the generic sense, was committed. A conviction needs certainty that the robbery is the central 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. Under the given facts, the Court finds no error in the findings of both the RTC and the CA that the prosecution was able to clearly establish that: (1) accused-appellants forced Homer, Henry and Violeta to stop their motorcycle; (2) Dillatan declared the holdup and grabbed the belt bag in Violeta's possession; and (3) thereafter, Garcia fired at the victims in order to preserve their possession of the stolen item and to facilitate their escape.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT ON CREDIBILITY OF WITNESSES DESERVE A HIGH DEGREE OF RESPECT AND WILL NOT BE DISTURBED ON APPEAL, ABSENT A CLEAR SHOWING THAT THE TRIAL COURT HAD OVERLOOKED,

MISUNDERSTOOD OR MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND SUBSTANCE WHICH COULD REVERSE A JUDGMENT OR CONVICTION; CASE AT BAR.— In this case, both the trial and appellate courts found Violeta's and Henry's separate testimonies as credible. It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction. In fact, in many instances, such findings are even accorded finality. This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand, which opportunity provides him the unique facility in determining whether or not to accord credence to the testimony or whether the witness is telling the truth or not. The foregoing doctrine finds application in the instant case.

3. **CRIMINAL LAW; CONSPIRACY; EXISTS WHEN TWO OR MORE PERSONS COME TO AN AGREEMENT CONCERNING THE COMMISSION OF A FELONY AND DECIDE TO COMMIT IT; ESTABLISHED IN CASE AT BAR.—** The lower courts, also, correctly ruled that accused-appellants acted in conspiracy with one another. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to, and are indicative of, a joint purpose, concert of action and community of interest. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence; it is sufficient that at the time of the commission of the offense, the malefactors had the same purpose and were united in its execution. In the present case, the coordinated acts and movements of accused-appellants before, during and after the commission of the crime point to no other conclusion than that they have acted in conspiracy with each other. Moreover, it is settled that when homicide is committed by reason or on the occasion of robbery, all those who took part as principals in the robbery would also be held

liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

4. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; INHERENTLY WEAK DEFENSES WHICH CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME; CASE AT BAR.— [A]ccused-appellants' lackluster defenses of denial and alibi fail to cast doubt on the positive identification made by Henry and Violeta and the continuous chain of circumstances established by the prosecution. This Court has consistently held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator of the crime. They are facile to fabricate and difficult to disprove, and are thus generally rejected. Besides, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused-appellants' presence at the crime scene, as in this case, the alibi will not hold water. The Court finds no cogent reason to depart from the ruling of the lower courts that apart from their self-serving testimony that they were some place else at the time of the commission of the crime, accused-appellants were unable to sufficiently show that it was physically impossible for them to be at the scene of the crime when it was committed.

5. CRIMINAL LAW; ROBBERY WITH HOMICIDE; IN A SPECIAL COMPLEX CRIME, THE COMPONENT CRIMES HAVE NO ATTEMPTED OR FRUSTRATED STAGES BECAUSE THE INTENTION OF THE OFFENDER/S IS TO COMMIT THE PRINCIPAL CRIME BUT IN THE PROCESS, COMMITTED ANOTHER CRIME; CASE AT BAR.— [T]he Court notes that, on the occasion of the robbery, aside from Homer being killed, the Spouses Acob also sustained injuries by reason of the gunshots fired by Garcia. It bears to reiterate at this point that the component crimes in a special complex crime have no attempted or frustrated stages because the intention of the offender/s is

to commit the principal crime which is to rob but in the process of committing the said crime, another crime is committed. "Homicide," in the special complex crime of robbery with homicide, is understood in its generic sense and forms part of the essential element of robbery, which is the use of violence or the use of force upon anything. Stated differently, all the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. Thus, as in the present case where, aside from the killing of Homer, the Spouses Acob, on the occasion of the same robbery, also sustained injuries, regardless of the severity, the crime committed is still robbery with homicide as the injuries sustained by the Spouses Acob are subsumed under the generic term "homicide" and, thus, become part and parcel of the special complex crime of robbery with homicide.

6. **CIVIL LAW; DAMAGES; IN ROBBERY WITH HOMICIDE, THE VICTIMS WHO SUSTAINED INJURIES, BUT WERE NOT KILLED, SHALL ALSO BE INDEMNIFIED; AWARD OF CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES, PROPER IN CASE AT BAR.—** [I]t is also settled that in robbery with homicide, the victims who sustained injuries, but were not killed, shall also be indemnified. Hence, the nature and severity of the injuries sustained by these victims must still be determined for the purpose of awarding civil indemnity and damages. It is settled that if a victim suffered mortal wounds and could have died if not for a timely medical intervention, the victim should be awarded civil indemnity, moral damages, and exemplary damages equivalent to the damages awarded in a frustrated stage, and if a victim suffered injuries that are not fatal, an award of civil indemnity, moral damages and exemplary damages should likewise be awarded equivalent to the damages awarded in an attempted stage. In the instant case, while it was alleged in the Information that Henry, who was shot on his right knee, and Violeta, who's left hand was hit by the same bullet that killed Homer, could have died from their injuries were it not for the timely and able medical assistance rendered to them, the prosecution failed to present sufficient evidence to prove such allegation. Thus, their injuries are not considered fatal and, as such, the Spouses Acob are each entitled only to be indemnified amounts which are equivalent to those awarded in an attempted stage.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before the Court is an ordinary appeal filed by herein accused-appellants Richard Dillatan, Sr. y Pat *(Dillatan)* and Donato Garcia y Duazo *(Garcia)* seeking the reversal and setting aside of the Decision[1] of the Court of Appeals *(CA),* dated August 30, 2013, in CA-G.R. CR-H.C. No. 05294, which denied their appeal and affirmed, with modification, the October 24, 2011 Decision[2] of the Regional Trial Court *(RTC)* of Roxas, Isabela, Branch 23, finding herein accused-appellants guilty of the crime of robbery with homicide, imposing upon them the penalty of *reclusion perpetua* and ordering them to pay civil indemnity as well as moral and actual damages.

The facts, as established by the prosecution, are as follows:

Herein private complainants, the spouses Henry and Violeta Acob *(Spouses Acob),* were owners of a market stall at the public market of Sta. Rosa, Aurora, Isabela. Around 6 o'clock in the evening of February 7, 2010, the Spouses Acob, together with their son, Homer, closed their stall and proceeded home by riding together on their motorcycle. Homer was the driver, Violeta sat at the middle, while Henry sat behind her. They were approaching the entrance to their *barangay* around 6:30 p.m. when they noticed two persons, whom they later identified as herein accused-appellants, near a motorcycle. When they passed, accused-appellants rode the motorcycle and tailed them. Accused-

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[1] Penned by Associate Justice Jose C. Reyes, Jr., (now a member of this Court), with Associate Justices Mario V. Lopez and Socorro B. Inting concurring; CA *rollo,* pp. 100-111.

[2] Penned by Judge Bernabe B. Mendoza; records, pp. 126-141.

appellants eventually caught up with them, whereupon, accused Dillatan forced them to stop and immediately declared a holdup. Violeta embraced Homer, while Dillatan grabbed her belt bag which contained ₱70,000.00 cash. Thereafter, Dillatan uttered, *"barilin mo na."* Garcia then fired at the victims hitting, first, the left hand of Violeta. The bullet went through the left hand of Violeta and pierced Homer's chest causing the latter to fall down together with the motorcycle. Henry, on the other hand, was able to get off the motorcycle and tried to escape but Garcia also fired at him thereby hitting his right knee. Accused-appellants, thereafter, fled through their motorcycle. Several people then came to the aid of the private complainants and brought them to the hospital where Homer later expired by reason of his gunshot wound. Violeta and Henry were treated for their wounds. Accused-appellants were apprehended by police authorities later at night where they were subsequently identified by Violeta at the police station as the ones who grabbed her belt bag and shot them. A criminal complaint was subsequently filed against accused-appellants.

On February 8, 2010, an Information was filed against herein accused-appellants, the accusatory portion of which reads, thus:

> That on or about the 7th day of February, 2010 in the Municipality of Aurora, Province of Isabela, Philippines and within the jurisdiction of this Honorable Court, the accused RICHARD DILLATAN, SR. y PAT and DONATO GARCIA y DUAZO, conspiring, confederating together, and helping one another, with intent to gain and by means of force, violence and intimidation against persons, did then and there, willfully, unlawfully and feloniously, take, steal and carry away a belt bag containing cash money in the amount of SEVENTY THOUSAND PESOS (₱70,000.00) and belonging to [complainants] against their will and consent to the damage and prejudice of the said owners, in the aforesaid amount of SEVENTY THOUSAND PESOS (₱70,000.00).
>
> That during the occasion and by reason of the said robbery, the said accused in pursuance of their conspiracy, and to enable them to take, [steal] and bring away the said amount of SEVENTY THOUSAND PESOS (₱70,000.00), with intent to kill and without any just motive, did then and there willfully, unlawfully and feloniously

assault, attack and shoot the [person] of Homer Acob on his chest which directly caused his death and the bullet penetrating Homer Acob's body and hitting Violeta Acob inflicting gunshot wound on [her] left hand and Henry Acob hitting him on his right knee, which injuries would ordinarily cause the death of said Violeta Acob and Henry Acob, thus, performing all the acts of execution which should have produced the crime of homicide, as a consequence, but nevertheless, did not produce it, by reason of causes independent of their will, that is by the timely and able medical assistance rendered to the said Violeta Acob and Henry Acob, which prevented their death.

CONTRARY TO LAW.[3]

Accused-appellants were arraigned on September 29, 2010 where both pleaded not guilty.[4]

In their defense, accused-appellants denied the allegations of the prosecution and also raised the defense of alibi. For his part, Garcia claimed that on February 7, 2010, he was at a tricycle terminal in Aurora, Isabela where he worked as a dispatcher until 7 o'clock in the evening. His allegation was corroborated by the testimony of another tricycle driver who claimed to have seen him during the night in question. On the part of Dillatan, he testified that he was in his bakery in Quezon, Isabela until 7 o'clock in the evening of February 7, 2010. His testimony was corroborated by his own witness.

Pre-trial was conducted on October 20, 2010.[5] Thereafter, trial ensued.

On October 24, 2011, the RTC rendered its Decision finding accused- appellants guilty of the crime of robbery with homicide, the dispositive portion of which reads as follows:

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[3] Records, p. 1.

[4] See RTC Order and Certificate of Arraignment, *id.* at 34 and 35, respectively.

[5] See Pre-Trial Order, *id.* at 54-55.

WHEREFORE, finding them guilty beyond reasonable doubt, a JUDGMENT is hereby rendered convicting accused RICHARD DILLATAN y PAT and DONATO GARCIA y DUAZO of the crime of Robbery with Homicide, defined and penalized under Article 294, par. 1 of the Revised Penal Code, thus, imposing upon them the penalty of ***reclusion perpetua***.

The Accused are also ordered to jointly and severally pay the following:

a. The amount of Fifty thousand pesos (₱50,000) as civil indemnity, and another Fifty thousand pesos (₱50,000) as moral damages to the Heirs of Homer Acob;

b. The amount of seventy thousand pesos (₱70,000) as actual damages to spouses Henry and Violeta Acob;

c. The amount of Forty-eight thousand six hundred seventy-[t]hree and 75/[1]00 pesos (₱48,673.75) to Henry Acob as reimbursement of his medical expenses;

d. The amount of Five thousand five hundred seventy-one pesos (₱5,571) to Violeta Acob as reimbursement of her medical expenses.

SO ORDERED.[6]

The RTC held that: all the elements of the crime of robbery are present in the instant case; robbery was the main purpose of accused- appellants; the killing of Homer and the infliction of injuries upon Violeta and Henry are only committed on the occasion or by reason of the robbery; hence, these crimes are merged into a special complex crime of robbery with homicide, as defined and penalized under Article 294 of the Revised Penal Code *(RPC).* The RTC further held that the prosecution was able to sufficiently establish that the accused-appellants are the perpetrators of the crime when they were positively identified by Violeta.

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[6] CA *rollo,* pp. 56-57.

Accused-appellants appealed the RTC Decision to the CA.

On August 30, 2013, the CA promulgated its assailed Decision affirming the Decision of the RTC with modification by ordering accused-appellants to further pay temperate damages in the amount of ₱25,000.00.

The CA affirmed the ruling of the RTC that the prosecution was able to establish the presence of all the elements of robbery with homicide by proving that Dillatan declared a holdup and grabbed Violeta's belt bag, while Garcia fired at the private complainants in order to facilitate the taking of the bag and their escape from the crime scene. The CA sustained the RTC in giving credence to the testimony of Violeta who positively identified the accused-appellants in court, as well as in the police station, on the same night that the crime took place. The CA also gave credence to Henry's testimony identifying accused-appellants as the perpetrators of the crime. The CA held that accused-appellants' defenses of denial and alibi could not prevail over the positive testimony of Violeta and Henry who pointed to them as the ones who robbed and fired at them.

On September 11, 2013, accused-appellants, through counsel, filed a Notice of Appeal[7] manifesting their intention to appeal the CA Decision to this Court.

In its Resolution[8] dated October 29, 2013, the CA gave due course to accused-appellants Notice of Appeal and ordered the elevation of the records of the case to this Court.

Hence, this appeal was instituted.

In a Resolution[9] dated July 7, 2014, this Court, among others, notified the parties that they may file their respective Supplemental Briefs, if they so desire.

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[7] *Id.* at 116-118.

[8] *Id.* at 120.

[9] *Rollo,* p. 19.

In its Manifestation and Motion[10] dated August 27, 2014, the Office of the Solicitor General (*OSG*) manifested that it will not be filing a Supplemental Brief because it had already adequately addressed in its Brief filed before the CA all the issues and arguments raised by accused-appellants in their Brief.

In the same manner, accused-appellants filed a Manifestation in Lieu of Supplemental Brief[11] dated September 2, 2014, indicating that they no longer intend to file a Supplemental Brief on the ground that the issues have been thoroughly discussed and applicable defenses and arguments were already raised in their Brief which was filed with the CA.

In their Brief, accused-appellants mainly contend that the RTC erred in convicting them of the crime charged, and the CA, in affirming their conviction, despite the incredibility of the testimonies of the prosecution witnesses, and the failure of the prosecution to establish the identity of the assailants.

The appeal lacks merit. The Court finds no cogent reason to reverse accused-appellants' conviction.

Essentially, accused-appellants question the credibility of the prosecution's key witnesses, Henry and Violeta Acob, who identified them as the malefactors.

First, accused-appellants argue that, since the alleged crime happened so fast and in a very short period of approximately two minutes, Violeta and Henry could not have clearly seen and remembered the faces of the perpetrators. *Second,* accused-appellants attempt to cast doubt on their identification by claiming that there was inadequate lighting at the *locus criminis.* They contend that the poor illumination at the crime scene made positive identification impossible; thus, the trial court should not have accepted the identification of accused-appellants as the malefactors.

The Court is not persuaded.

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[10] *Id.* at 20-22.

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

The basic issues raised by accused-appellants are mainly factual and it is a well settled rule that in criminal cases, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record.[12] It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that the Court will evaluate the factual findings of the court below.[13] More importantly, it is an established principle in appellate review that the trial court's assessment of the credibility of the witnesses and the probative weight of their testimonies are accorded great respect and even conclusive effect and that these findings and conclusions assume greater weight if they are affirmed by the CA.[14] Guided by the foregoing principle, the Court finds no cogent reason to disturb the RTC's factual findings, as affirmed by the CA.

Robbery with homicide exists when a homicide is committed either by reason, or on occasion, of the robbery.[15] To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property belongs to another; (3) the taking is *animo lucrandi* or with intent to gain; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in the generic sense, was committed.[16] A conviction needs certainty that the robbery is the central purpose and objective of the malefactor and the killing is merely incidental to the robbery.[17] The intent to rob must precede the taking of human life, but the killing may occur before, during or after the robbery.[18]

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[12] *People v. Palma, et al.,* 754 Phil. 371, 377 (2015).

[13] *Id.*

[14] *People v. Diu, et al.,* 708 Phil. 218, 232 (2013).

[15] *People v. Uy, et al.,* 664 Phil. 483, 498 (2011).

[16] *Id.*

[17] *Id.*

[18] *Id.*

Under the given facts, the Court finds no error in the findings of both the RTC and the CA that the prosecution was able to clearly establish that: (1) accused-appellants forced Homer, Henry and Violeta to stop their motorcycle; (2) Dillatan declared the holdup and grabbed the belt bag in Violeta's possession; and (3) thereafter, Garcia fired at the victims in order to preserve their possession of the stolen item and to facilitate their escape.

The Court, likewise, finds no cogent reason to disturb the rulings of both the RTC and the CA in giving credence to the testimonies of Henry and Violeta, especially, their positive and categorical identification of accused-appellants as the perpetrators of the crime.

Thus, pertinent portions of Violeta's testimony in open court are as follows:

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Q. In going home coming from your store, Madam Witness, can you recall what time did you leave the Public Market of Aurora, Isabela?
A. 6:00 o'clock in the evening, sir.

Q. Were you able to reach your home at Barangay Diamantina, Aurora, Isabela, Madam Witness?
A. No, sir.

Q. Can you please tell us why you were not able to reach your home at Barangay Diamantina, Aurora, Isabela, Madam Witness?
A. When we were about to enter our barangay a motorcycle came near us, sir.

Q. Do you know who are these persons riding on a motorcycle, Madam Witness?
A. No, sir.

Q. When these two (2) persons riding on a motorcycle went near you, what happened then, Madam Witness, if there was any?
A. When the motorcycle came near us I heard the words stop this is a hold-up, give your bag to us, sir.

Q. Did you know who was this person declaring hold-up, Madam Witness?
A. That man, sir. (The witness pointed to a man sitting on the first bench of the Court and who when asked his name gave his name as Richard Dillatan, Sr.)

Q. When accused Richard Dillatan, Sr. declared hold-up, what did you do, Madam Witness, if there was any?
A. When I was about to give my bag he said again "shoot them," sir.

Q. To whom did you give your bag, Madam Witness?
A. It was grabbed from me by that person I previously identified a while ago as Richard Dillatan, Sr., sir.

Q. Was he able to get your bag, Madam Witness?
A. Yes, sir.

Q. You also mentioned a while ago that somebody uttered, "sige barilin mo na sila", do you know who was that person who uttered that (sic) words?
A. The same person who took my bag, sir.

Q. What happened, Madam Witness, when accused Richard Dillatan, Sr. instructed his co-accused to shoot you?
A. I was hit on my left hand and the bullet which penetrated my hand hit my son on his chest, sir.

Q. By the way, Madam Witness, do you know this person who shot you?
A. I know him, sir.

Q. Can you please tell us his name, Madam Witness, if you know?
A. That man, sir (The witness pointed to a man sitting on the first bench of the Court and who when asked his name answered Donato Garcia)

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Q: You mentioned a while ago that a motorcycle went near you, Madam Witness, is that correct?
A: Yes, sir.
Q: How far were these two (2) persons from you when they went near you, Madam Witness?
A: Like this, sir. (The witness demonstrated the distance and when measured it is 25 centimeters away).

Q: When these two (2) male persons you identified as Donato Garcia and Richard Dillatan, Sr. went near you, were you able to recognize their [faces], Madam Witness?
A: I recognized them because we were near with (sic) them, sir.

Q: You mentioned a while ago that the incident transpired at around 6:30 o'clock in the evening, how come that you were able to identify the faces of the two accused, Madam Witness?
A: Because it was still bright that time, sir.

x x x x x x x x x

Q. Madam Witness, when you were shot upon by accused Donato Garcia, what happened next?
A. They shot also my husband and he was hit on his knee, sir.

Q. Who shot your husband, Madam Witness?
A. Donato Garcia, sir.

Q. How many times did he shoot your husband, Madam Witness?
A. Only once, sir.

Q. By the way, where was your husband when accused Donato Garcia shot him, Madam Witness?
A. He was running when he was shot, sir.

Q. And Donato Garcia was using the same firearm then, Madam Witness?
A. Yes, sir.[19]

Henry also testified, during cross-examination, as follows:

Q. Mr. Witness, you said in your direct-testimony that on your way home from the Aurora Public Market on February 7, 2010, you were held up by two (2) men, is this correct?

THE WITNESS:
A. Yes, ma'am.

Q. And that the incident happened at the Barangay Road of Barangay Diamantina, Aurora, Isabela, is that correct?
A. Yes, Sir.

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[19] TSN, October 29, 2010, pp. 9-22.

Q. And that the incident happened at around 6:30 in the evening, is this correct?
A. Yes, Ma'am.

Q. And that you were on board a motorcycle, together with your wife and son, when the incident happened?
A. Yes, Ma'am.

Q. The men who held you up were also on board a motorcycle, is this correct?
A Yes, Ma'am.

Q. And that the motorcycle was one (1) meter away from the motorcycle you were riding at when they declared a hold up, is this correct?
A. Yes, Ma'am.

Q. And that the man driving the other motorcycle immediately shot your son, which caused the motorcycle that you were riding at to fall down, is this correct?
A. Yes, Ma'am.

Q. And that the man who held you up also shot you once, which hit you on your knee, is this correct, Mr. Witness?
A. Yes, Ma'am.

Q. And that the companion of the man, who shot you, immediately grabbed the belt bag from your wife, is this correct?
A. Yes, Ma'am, after we were shot.

Q. Mr. Witness, how long did it take for the men who held you up to declare hold up to time they grabbed the belt bag and sped away?
A. I cannot recall, Ma'am.

Q. Could it be one (1) minute, Mr. Witness?
A. Maybe two (2) minutes, Ma'am.

Q. So, Mr. Witness, you are saying that the incident happened in more or less two (2) minutes?
A. Yes, Ma'am.

Q. And that the assailants were one (1) meter away from you when it happened?
A. Yes, Ma'am.

Q. So, Mr. Witness, can you tell us how were the assailants identified?
A. They were near from (sic) us when they shot us, Ma'am.

Q. You were able to clearly see their faces despite the fact that the incident happened at 6:30 in the evening?
A. Yes, Ma'am.

Q. Mr. Witness, did you personally identify the accused?
A. I recognized their faces, Ma'am.[20]

In this case, both the trial and appellate courts found Violeta's and Henry's separate testimonies as credible. It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which could reverse a judgment of conviction.[21] In fact, in many instances, such findings are even accorded finality.[22] This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand, which opportunity provides him the unique facility in determining whether or not to accord credence to the testimony or whether the witness is telling the truth or not.[23] The foregoing doctrine finds application in the instant case.

Even after carefully going through the records of the case, the Court still finds no sufficient ground to disturb the findings of both the RTC and the CA.

The records show that Henry and Violeta positively, categorically and unhesitatingly identified Dillatan as the one who declared the holdup and successfully grabbed Violeta's

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[20] TSN, November 18, 2010, pp. 3-6.

[21] *People v. Mokammad, et al.,* 613 Phil. 116, 126 (2009).

[22] *Id*.

[23] *Id*.

belt bag, while Garcia was the one who fired at the victims, thereby killing Homer and wounding Henry and Violeta.

The Court is not persuaded by accused-appellants' insistence on their argument that given the circumstances surrounding the commission of the crime, the prosecution failed to establish their identity as the malefactors.

First, this Court has ruled that common human experience tells us that when extraordinary circumstances take place, it is natural for persons to remember many of the important details.[24] This Court has held that the most natural reaction of victims of criminal violence is to strive to see the features and faces of their assailants and observe the manner in which the crime is committed.[25] Most often the face of the assailant and body movements thereof, create a lasting impression which cannot be easily erased from a witness' memory.[26] Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses can remember with a high degree of reliability the identity of criminals at any given time.[27]

Thus, if family members who have witnessed the killing of a loved one usually strive to remember the faces of the assailants, this Court sees no reason how both parents, who witnessed the violence inflicted, not only upon themselves, but especially upon their son, who eventually died by reason thereof, could have done any less. It must be stressed that Henry and Violeta were seated together atop their motorcycle when Dillatan grabbed her bag and Garcia fired at them. In fact, Violeta was embracing her son, Homer, when a single bullet struck them. Both accused-appellants, at that time, were both less than a meter away from the victims. Hence, despite the swiftness of the assault upon

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[24] *People v. Lugnasin, et al.,* 781 Phil. 701, 714 (2016), citing *People v. Martinez,* 469 Phil. 509, 524-525 (2002).

[25] *Id.*

[26] *People v. Pepino, et al.*, 777 Phil. 29, 55 (2016), citing *People v. Esoy, et al.,* 631 Phil. 547, 556 (2010).

[27] *Id.*

them, Henry and Violeta could not have mistaken the identity of accused-appellants as the persons responsible for the attack.

Moreover, Violeta's testimony disproves the poor illumination claim of accused-appellants when she testified that "it was still bright" at the time of the commission of the crime.[28] It is settled that when the conditions of visibility are favorable, as in this case, the eyewitness identification of accused-appellants as the malefactors and the specific acts constituting the crime should be accepted.[29] Add the fact that Violeta and Henry had an unhindered view of the faces of accused-appellants during the whole time that the crime was being committed. Thus, accused-appellants' attack on the positive identification by Violeta and Henry must, therefore, fail.

The lower courts, also, correctly ruled that accused-appellants acted in conspiracy with one another. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[30] Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to, and are indicative of, a joint purpose, concert of action and community of interest.[31] For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence; it is sufficient that at the time of the commission of the offense, the malefactors had the same purpose and were united in its execution.[32] In the present case, the coordinated acts and movements of accused-appellants before, during and after the commission of the crime point to no other conclusion than that they have acted in conspiracy with each other. Moreover, it is settled that when homicide is committed by reason or on the occasion of robbery, all those who took part as principals

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[28] See TSN, October 29, 2010.

[29] *People v. Manchu, et al.*, 593 Phil. 398, 409 (2008).

[30] *People v. Buyagan*, 681 Phil. 569, 574 (2012).

[31] *Id.*

[32] *Id.*

in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.[33]

Lastly, accused-appellants' lackluster defenses of denial and alibi fail to cast doubt on the positive identification made by Henry and Violeta and the continuous chain of circumstances established by the prosecution. This Court has consistently held that alibi and denial being inherently weak cannot prevail over the positive identification of the accused as the perpetrator of the crime.[34] They are facile to fabricate and difficult to disprove, and are thus generally rejected.[35] Besides, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus delicti* or within its immediate vicinity.[36] The excuse must be so airtight that it would admit of no exception.[37] Where there is the least possibility of accused-appellants' presence at the crime scene, as in this case, the alibi will not hold water.[38] The Court finds no cogent reason to depart from the ruling of the lower courts that apart from their self-serving testimony that they were someplace else at the time of the commission of the crime, accused-appellants were unable to sufficiently show that it was physically impossible for them to be at the scene of the crime when it was committed.

As to the penalty, the special complex crime of robbery with homicide is punishable by *reclusion perpetua* to death under Article 294 (1) of the RPC, as amended by Republic Act

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[33] *People v. Diu, et al.*, 708 Phil. 218, 237 (2013), citing *People v. De Jesus*, 473 Phil. 405, 426-428 (2004).

[34] *People v. Manchu*, *supra* note 29, at 410.

[35] *Id*.

[36] *People v. Ambatang,* G.R. No. 205855, March 29, 2017.

[37] *Id*.

[38] *Id*.

No. 7659. Article 63 of the same Code, as amended, states that when the law prescribes a penalty consisting of two (2) indivisible penalties, and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed. Considering that there was no modifying circumstance which attended the commission of the crime, the RTC and the CA correctly imposed the penalty of *reclusion perpetua.*

At this stage, the Court notes that, on the occasion of the robbery, aside from Homer being killed, the Spouses Acob also sustained injuries by reason of the gunshots fired by Garcia. It bears to reiterate at this point that the component crimes in a special complex crime have no attempted or frustrated stages because the intention of the offender/s is to commit the principal crime which is to rob but in the process of committing the said crime, another crime is committed.[39] "Homicide," in the special complex crime of robbery with homicide, is understood in its generic sense and forms part of the essential element of robbery, which is the use of violence or the use of force upon anything.[40] Stated differently, all the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide.[41] Thus, as in the present case where, aside from the killing of Homer, the Spouses Acob, on the occasion of the same robbery, also sustained injuries, regardless of the severity, the crime committed is still robbery with homicide as the injuries sustained by the Spouses Acob are subsumed under the generic term "homicide" and, thus, become part and parcel of the special complex crime of robbery with homicide.

Nonetheless, it is also settled that in robbery with homicide, the victims who sustained injuries, but were not killed, shall also be indemnified.[42] Hence, the nature and severity of the

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[39] *People v. Jugueta,* 783 Phil. 806, 845 (2016).

[40] *Id.* at 846.

[41] *People v. Diu, supra* note 33.

[42] *People v. Jugueta, supra* note 39.

injuries sustained by these victims must still be determined for the purpose of awarding civil indemnity and damages.[43]

It is settled that if a victim suffered mortal wounds and could have died if not for a timely medical intervention, the victim should be awarded civil indemnity, moral damages, and exemplary damages equivalent to the damages awarded in a frustrated stage, and if a victim suffered injuries that are not fatal, an award of civil indemnity, moral damages and exemplary damages should likewise be awarded equivalent to the damages awarded in an attempted stage.[44]

In the instant case, while it was alleged in the Information that Henry, who was shot on his right knee, and Violeta, who's left hand was hit by the same bullet that killed Homer, could have died from their injuries were it not for the timely and able medical assistance rendered to them, the prosecution failed to present sufficient evidence to prove such allegation. Thus, their injuries are not considered fatal and, as such, the Spouses Acob are each entitled only to be indemnified amounts which are equivalent to those awarded in an attempted stage.

Also, this Court has held in the controlling case of *People v. Jugueta*[45] that in special complex crimes like robbery with homicide where the penalty imposed is *reclusion perpetua,* the awards for civil indemnity, moral damages, and exemplary damages are now uniformly pegged at ₱75,000.00. The award of temperate damages is also increased to ₱50,000.00.

Thus, with respect to accused-appellants' civil liabilities, this Court deems it proper to modify the monetary awards granted by the lower courts in conformity with prevailing jurisprudence.

Hence, for the death of Homer, his heirs are entitled to the awards of ₱75,000 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. The award

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[43] *Id.* at 846.

[44] *Id.*

[45] *Supra* note 39.

of temperate damages to the heirs of Homer, for burial expenses, shall be increased from ₱25,000.00 to ₱50,000.00. With respect to the Spouses Acob, in addition to the awards of actual damages to them for their hospitalization expenses and the return of the ₱70,00.00 cash taken from them, each of them are entitled to the awards of ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages.[46]

The Court also imposes interest, at the legal rate of six percent (6%) *per annum,* on all the monetary awards from the date of finality of this Decision until fully paid.

WHEREFORE, the instant appeal is **DISMISSED** and the Decision, dated August 30, 2013, of the Court of Appeals in CA-G.R. CR-H.C. No. 05294, is hereby **AFFIRMED with MODIFICATIONS.** Accordingly, accused-appellants, **RICHARD DILLATAN, SR. Y PAT AND DONATO GARCIA Y DUAZO** are found **GUILTY** beyond reasonable doubt of the special complex crime of Robbery with Homicide, defined and penalized under Article 294 (1) of the Revised Penal Code, as amended, and are sentenced to suffer the penalty of *reclusion perpetua.*

In addition, to the monetary awards granted by the lower courts, accused-appellants are further **ORDERED to PAY** the Heirs of Homer the following:

(1) civil indemnity and moral damages in the increased amounts of ₱75,000.00, each;

(2) exemplary damages in the amount of ₱75,000.00;

(3) temperature damages in the increased amount of ₱50,000.00

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[46] *Id.* at 851.

Accused-appellants are, likewise, **ORDERED** to **PAY** each of the victims, Henry and Violeta Acob, the following:

(1) civil indemnity in the amount of ₱25,000.00;
(2) moral damages in the amount of ₱25,000.00; and
(3) exemplary damages in the amount of ₱25,000.00.

Accused-appellants shall pay interest at the rate of six percent (6%) *per annum* on all the monetary awards, from the date of finality of this Decision until fully paid.

All other awards are **AFFIRMED**.

SO ORDERED.

Bersamin,[*] *Leonen, Gesmundo,* and *Reyes, A. Jr.,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 214312. September 5, 2018]

GERALDINE C. ORNALES, ROSENDO R. EGUIA, VINCENT U. VERGARA, RODOLFO A. DE CASTRO, JR., and RAMIRO V. MAGNAYE, *petitioners, vs.* **OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON, ROBERTO RICALDE, MODESTO DE LEON, ALICIA MANGUBAT, and LENELITA BALBOA,** *respondents.*

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[*] Designated additional member in lieu of Associate Justice Jose C. Reyes, Jr., per Raffle dated September 3, 2018.

[**] Designated additional member per Special Order No. 2588 dated August 28, 2018.

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; AS A QUASI-JUDICIAL AGENCY, DECISIONS OF THE OFFICE OF THE OMBUDSMAN IN ADMINISTRATIVE DISCIPLINARY CASES MAY ONLY BE APPEALED TO THE COURT OF APPEALS THROUGH A RULE 43 PETITION; ORDERS AND DECISIONS THEREOF IN CRIMINAL CASES MAY BE ELEVATED TO THE SUPREME COURT IN A RULE 65 PETITION; CASE AT BAR.—** Section 27 of Republic Act No. 6770, or the Ombudsman Act of 1989, granted this Court appellate jurisdiction over orders, directives, or decisions of the Office of the Ombudsman in administrative disciplinary cases. x x x However, *Fabian v. Desierto* struck down Section 27 of Republic Act No. 6770 for being unconstitutional as it increased this Court's appellate jurisdiction without this Court's advice and consent, contrary to the prohibition imposed in Article VI, Section 30 of the Constitution. x x x Thus, as a quasi-judicial agency, decisions of the Office of the Ombudsman in administrative disciplinary cases may only be appealed to the Court of Appeals through a Rule 43 petition. While Republic Act No. 6770 may have been silent on the remedy available to a party aggrieved with the Office of the Ombudsman's finding of probable cause in a criminal case, *Tirol, Jr. v. Del Rosario* clarified that the remedy in this instance is not an appeal, but a petition for certiorari under Rule 65 of the Rules of Court before this Court. x x x Hence, the Court of Appeals did not err in denying the petition questioning public respondent's finding of probable cause for lack of jurisdiction. Thus, petitioners' failure to avail of the correct procedure with respect to the criminal case renders public respondent's decision final. Furthermore, the present case fails even on its merits.

2. **ID.; ID.; ID.; PROBABLE CAUSE; DEFINED; OFFICE OF THE OMBUDSMAN'S POWER TO DETERMINE PROBABLE CAUSE IS EXECUTIVE IN NATURE AND IS GENERALLY NOT INTERFERED WITH BY THE SUPREME COURT; CASE AT BAR.—** *Dichaves v. Office of the Ombudsman* explained that this Court generally does not interfere with the Office of the Ombudsman's finding of probable cause out of respect for its investigatory and prosecutory powers granted by the Constitution. *Dichaves* pointed out that the Office

> of the Ombudsman's power to determine probable cause is executive in nature, and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate a finding of probable cause or lack of it. Thus, for their petition to prosper, petitioners would have to prove that public respondent "conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law." Probable cause is: [T]he existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. x x x Public respondent found probable cause against petitioners for violating Section 3, paragraphs (e) and (g) of Republic Act No. 3019, and Article 177 of the Revised Penal Code. x x x Clearly, public respondent's findings of probable cause were not arrived at capriciously or with grave abuse of discretion. There is no reason to reverse its Joint Resolution and Order.

APPEARANCES OF COUNSEL

The Law Firm of De Guzman Leynes Rivera and Partners for petitioners.

Office of the Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

Orders and decisions of the Office of the Ombudsman in criminal cases may be elevated to this Court via a Rule 65 petition, while its orders and decisions in administrative disciplinary cases may be appealed to the Court of Appeals via a Rule 43 petition.

This resolves the Petition for Review[1] filed by Geraldine C. Ornales (Ornales), Rosendo R. Eguia (Eguia),[2] Vincent U.

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[1] *Rollo,* pp. 3-36.

[2] Also referred to as "Roger Eguia" in the Complaint-Affidavit. *See rollo,* p. 121.

Vergara (Vergara), Rodolfo A. De Castro, Jr. (De Castro), and Ramiro V. Magnaye (Magnaye) assailing the Court of Appeals April 15, 2014[3] and September 8, 2014[4] Resolutions in CA-G.R. SP No. 133085, which dismissed their petition for certiorari for lack of jurisdiction.

On September 9, 2002, Manuel S. Tabunda, Chief Executive Officer of Amellar Solutions, wrote to then Mayor Raul Bendaña (Bendaña) of Lemery, Batangas with an offer to automate various municipal operations.[5]

On August 15, 2003, the Sangguniang Bayan of Lemery, Batangas (Sangguniang Bayan) issued Resolution No. 03-1001,[6] authorizing Bendaña to enter into an ₱8,250,000.00 loan agreement with Land Bank of the Philippines (Landbank) for the computerization of the municipality's revenue collection system. Bendaña issued Administrative Order No. 2003-11,[7] forming a Technical Evaluation Committee on Computerization (Committee) to evaluate the unsolicited computerization proposals received by the municipality.

On October 20, 2003, Landbank approved Bendaña's loan application of ₱8,193,060.00 for the purchase of computer units and programs for tax collection.[8]

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[3] *Rollo,* pp. 38-40. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Danton Q. Bueser of the Special Thirteenth Division, Court of Appeals, Manila.

[4] *Id*. at 42-43. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Japar B. Dimaampao and Danton Q. Bueser of the Former Special Thirteenth Division, Court of Appeals, Manila.

[5] *Id*. at 55.

[6] *Id*. at 68-69.

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

[8] *Id*. at 75-76.

On October 22, 2003, the Committee recommended[9] that a proprietary computerization package be procured through direct contracting. It also recommended adopting Amellar Solutions' proposal since its "proposal does not have any suitable equivalent capable of delivering the same benefits and advantage already enjoyed by at least fifteen (15) local government units nationwide."[10]

On October 29, 2003, Bendaña wrote then Vice Mayor Ornales, requesting that he be authorized to enter into a contract of loan with Landbank, and into a procurement contract with Arnellar Solutions.[11]

On November 14, 2003, Bendaña once again wrote to Ornales, this time requesting that ₱8,193,060.00 be appropriated for the municipality's computerization program.[12]

On August 5, 2004, the Sangguniang Bayan issued Resolution No. 04-1048,[13] authorizing Bendaña to "acquire a proprietary information technology project [for] Lemery, Batangas; source the appropriate funds; contract a loan or enter into a financing scheme; and enter into a contract with [Amellar Solutions] through direct contracting (single source procurement) procedure."[14]

On August 31, 2004, Bendaña and Amellar Solutions executed an agreement[15] for the computerization of Lemery's revenue generation system.

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[9] *Id*. at 72-74. The Technical Evaluation Committee on Computerization was composed of Rodel P. Morales (Executive Assistant II), Corazon Ellao (Municipal Treasurer), Engr. Sonia Masongsong (Municipal Assessor), Benjie Mendoza (OIC, Business Permits and Licensing Officer), Ligaya Gatoc (Municipal Budget Officer), Engr. Lorninda Magsino (Municipal Planning Development Officer), and Florante M. Barredo (Market Administrator).

[10] *Id*. at 73.

[11] *Id*. at 77.

[12] *Id*. at 78.

[13] *Id*. at 79-81.

[14] *Id*. at 79.

[15] *Id*. at 82-102.

On September 28, 2004, Lemery's Municipal Treasurer certified[16] that the loan proceeds of ₱8,193,060.00 from Landbank were intended for the procurement of the municipality's computerization program.

On October 4, 2004, Amellar Solutions delivered computer equipment and software to the municipality.[17]

On October 6, 2004, the Sangguniang Bayan issued Resolution No. 04-1075,[18] enacting Ordinance No. 04-77, which appropriated the Landbank loan proceeds for the municipality's computerization program.

On October 29, 2004, the Commission on Audit disallowed the municipality's direct procurement of computer equipment and software from Amellar Solutions.[19]

On November 14, 2005, Roberto Ricalde (Ricalde), Modesto De Leon (De Leon), Alicia Mangubat (Mangubat), and Lenelita Balboa (Balboa) filed a complaint affidavit[20] before the Office of the Ombudsman. They accused members of the Sangguniang Bayan of violating Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, and Republic Act No. 9184, or the Government Procurement Reform Act, when they authorized Bendaña to enter into a direct contract with Amellar Solutions. The accused members were Niego Suayan, Melecio Vidal, Christopher Jones Bello, Ivan Ornales, Shirley Atienza, Eguia, Magnaye, Vergara, De Castro, and Ornales.

In their joint Counter-Affidavit,[21] the Sangguniang Bayan members denied violating Republic Act No. 3019, and alleged

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[16] *Id*. at 103.

[17] *Id*. at 107-120.

[18] *Id*. at 104-106.

[19] *Id*. at 137.

[20] *Id*. at 121-122.

[21] *Id*. at 123-128. Ivan Ornales was also referred to as "Romeo Evan C. Ornales."

good faith and lack of malice in issuing the assailed resolutions. They claimed that they merely relied on the Committee's recommendations and that whatever lapses there may have been were procedural in nature, which did not cause undue injury to the municipality.[22]

They likewise denied violating Republic Act No. 9184, since the purchased computer programs were proprietary in nature, therefore, falling under the exception to the general rule of public bidding.[23]

On February 7, 2013, the Office of the Deputy Ombudsman for Luzon issued a Joint Resolution,[24] indicting the Sangguniang Bayan members for violating Article 177 of the Revised Penal Code and Section 3, paragraphs (e) and (g) of Republic Act No. 3019. It also recommended that they be found guilty of grave misconduct.[25]

It pointed out that in authorizing Bendaña to enter into a direct contract with Amellar Solutions, the Sangguniang Bayan members usurped the functions of the Bids and Awards Committee, thereby violating Article 177 of the Revised Penal Code, or usurpation of authority or official functions.[26]

It likewise found that the Sangguniang Bayan members dispensed with the required public bidding under the law when they authorized Bendaña to enter into a direct contract with Amellar Solutions, violating both Republic Act Nos. 3019 and 9184.[27]

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[22] *Id.* at 126.

[23] *Id.* at 126-127.

[24] *Id.* at 129 142. The Joint Resolution, docketed as OMB-L-C-05-1192-K and OMB-L-A-05-0913-K, was penned by Graft Investigation & Prosecution Officer I Johanna A. Young, recommended for approval by Graft Investigation & Prosecution Officer II Paul Elmer M. Clemente, and approved by Deputy Ombudsman for Luzon Gerard A. Mosquera.

[25] *Id.* at 141-142.

[26] *Id.* at 135.

[27] *Id.* at 136.

The fallo of the Joint Resolution read:

WHEREFORE, premises considered, it is respectfully recommended that Geraldine C. Ornales , as Municipal Vice-Mayor of Lemery, Batangas, and Rosendo "Roger" R. Eguia, Vincent U. Vergara, Shirley R. Atienza, Niego B. Suayan, Melecio A. Vidal, Christopher Jones Bello, Ramiro V. Magnaye and Rodolfo A. De Castro, as Municipal Councilors, all of Lemery, Batangas, be indicted for violation of Article 177 of the Revised Penal Code and for violation of Section 3(e) in relation to 3(g) of R.A. No. 3019.

Further, there being no probable cause to indict respondent Sangguniang Kabataan (SK) Federation President Romeo Evan "Ivan" C. Ornales for violation of R.A. No. 3019 and Article 177 of the Revised Penal Code, the criminal complaint against him is hereby recommended to be dismissed for lack of merit. Not being privy to the acts complained of nor a signatory to the unlawful local legislative resolution, the charge of Grave Misconduct is likewise recommended to be dismissed against Romeo Evan "Ivan" C. Ornales.

As to respondents Geraldine C. Ornales, Rosendo R. Eguia, Shirley R. Atienza, Christopher Jones Bello, Vincent U. Vergara, Niego B. Suayan and Ramiro V. Magnaye, they are recommended to be adjudged guilty of Grave Misconduct and meted the penalties of: (i) Fine equivalent to six (6) months of their salaries in lieu of dismissal or removal from government service, to be withheld, deducted or forfeited in favor of the government from whatever salaries, monies, emoluments and benefits that may have accrued in their favor; (ii) Cancellation of Eligibility; (iii) Perpetual Disqualification to Hold Public Office; and, (iv) Forfeiture of Retirement Benefits.

In accordance with Sec. 58(f), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, the penalty of fine shall be paid to this Office, computed on the basis of the respective salaries of herein respondents['] salary at the time this Joint Resolution becomes final.

Accordingly, the Secretary of the Department of Interior and Local Government (DILG) is hereby directed to implement this Order and to submit a compliance report thereon.

SO RESOLVED.[28]

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[28] *Id*. at 141-142.

Ornales , Eguia, De Castro, Vergara, and Magnaye moved for the reconsideration[29] of the Office of the Deputy Ombudsman for Luzon's February 7, 2013 Joint Resolution, and their motion was partially granted in the latter's October 7, 2013 Order.[30]

Due to the re-election of some Sangguniang Bayan members to the same positions, the Office of the Deputy Ombudsman for Luzon applied the condonation doctrine to the administrative charges against them. However, it affirmed its previous finding of probable cause against the Sangguniang Bayan members in the criminal case.[31]

The *fallo* of the Office of the Deputy Ombudsman for Luzon's Order read:

WHEREFORE, premises considered, the motion for reconsideration of the respondents is hereby partially granted, and the Joint Resolution dated February 7, 2013 modified accordingly. The administrative case filed against respondents Geraldine C. Ornales, Rosendo R. Eguia, Vincent U. Vergara, and Rodolfo De Castro, Jr. is, thus, dismissed and the administrative penalties imposed against them are hereby lifted and/or set-aside for the reasons above-discussed.

This Office's previous finding of probable cause against Geraldine C. Ornales, as Municipal Vice-Mayor of Lemery, Batangas, and Rosendo "Roger" R. Eguia, Vincent U. Vergara, Shirley R. Atienza, Niego B. Suayan, Melecio A. Vidal, Christopher Jones Bello, Ramiro V. Magnaye and Rodolfo A. De Castro Jr., as Municipal Councilors, all of Lemery Batangas, for violation of Article 177 of the Revised Penal Code, as amended, and for violation of Section 3 (e) and (g) of R.A. No. 3019, is hereby affirmed. Further, this Office's decision finding respondents liable for Grave Misconduct and imposing upon

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[29] *Id*. at 143-161.

[30] *Id*. at 162-169. The Order was penned by Graft Investigation & Prosecution Officer I Johanna A. Young, recommended for approval by Graft Investigation & Prosecution Officer II Paul Elmer M. Clemente, and approved by Deputy Ombudsman for Luzon Gerard A. Mosquera.

Clemente, and approved by Deputy Ombudsman for Luzon Gerard A. Mosquera.

[31] *Id*. at 164-165.

them the corresponding penalties, as mentioned in our Joint Resolution dated February 7, 2013, insofar as respondents Shirley R. Atienza, Christopher Jones Bello, Niego B. Suayan and Ramiro V. Magnaye are concerned, is likewise affirmed.

SO ORDERED.[32]

Ornales, Eguia, Vergara, De Castro, and Magnaye assailed the Office of the Deputy Ombudsman for Luzon's February 7, 2013 Joint Resolution and October 7, 2013 Order with a Petition for Certiorari[33] filed before the Court of Appeals. They also impleaded the Office of the Deputy Ombudsman for Luzon in their petition.

On April 15, 2014, the Court of Appeals[34] dismissed the petition for lack of jurisdiction.

The Court of Appeals averred that it only had jurisdiction over issuances of the Office of the Ombudsman in administrative disciplinary cases and that jurisdiction over the Office of the Ombudsman's issuances in criminal cases lay with the Supreme Court.[35]

Ornales, Eguia, Vergara, De Castro, and Magnaye moved for the reconsideration[36] of the Court of Appeals April 15, 2014 Resolution, but their motion was denied in the Court of Appeals September 8, 2014 Resolution.[37]

On October 8, 2014, Ornales, Eguia, Vergara, De Castro, and Magnaye filed a Petition for Review[38] before this Court where they emphasized that the Office of the Deputy Ombudsman

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

[33] *Id*. at 170-199.

[34] *Id*. at 38-40.

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

[36] *Id*. at 200-220.

[37] *Id*. at 42-43.

[38] *Id*. at 3-33.

for Luzon took an inordinate amount of time to resolve the complaint affidavit filed by private respondents Ricalde, De Leon, Mangubat, and Balboa. Petitioners maintain that this delay constitutes a violation of their right to the speedy disposition of their case.[39]

Petitioners also point out that the Court of Appeals erred in dismissing their case outright for lack of jurisdiction when it actually had jurisdiction to determine the other issue of whether there was substantial evidence to hold petitioner Magnaye guilty of grave misconduct, which is administrative in nature.[40] Nonetheless, they insist that the Court of Appeals should not have let form prevail over substance because of public respondent's grave abuse of discretion in finding probable cause against them.[41]

They maintain that the agreement with Amellar Solutions was a form of alternative procurement, which did not need to undergo competitive public bidding.[42] Thus, there was no probable cause to indict them for usurping authority or official functions;[43] for causing undue injury to the government; or for giving any unwarranted benefits, advantage, or preference.[44]

Petitioners then insist that there was likewise no probable cause to indict them for grave misconduct or for entering into a contract grossly disadvantageous to the government.[45]

On November 26, 2014,[46] this Court required respondents to file a comment to the Petition for Review.

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

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

[41] *Id.* at 15-18.

[42] *Id.* at 20-23.

[43] *Id.* at 23-25.

[44] *Id.* at 26-29.

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

[46] *Id.* at 221.

On March 9, 2015, public respondent filed its Comment.[47]

On June 15, 2015,[48] this Court noted public respondent's Comment. Private respondents failed to file a comment.

In its Comment,[49] public respondent declares that the Court of Appeals correctly dismissed the petition for being outside the ambit of its jurisdiction.[50] It points out that petitioners not only filed the wrong remedy with the Court of Appeals, but their petition was also filed out of time.[51]

Public respondent denies that petitioners' right to the speedy disposition of their case was violated since they failed to prove that the proceeding was "attended by vexatious, capricious and oppressive delays."[52] Furthermore, petitioners only raised the issue of the violation of their constitutional right to due process and speedy disposition of their case for the first time before this Court.[53]

Public respondent also denies that it committed grave abuse of discretion when it found probable cause against petitioners for violating Article 177 of the Revised Penal Code, and Section 3, paragraphs (e) and (g) of Republic Act No. 3019. It likewise repudiates the allegation that it committed grave abuse of discretion when it found petitioner Magnaye guilty of grave misconduct.[54]

On July 4, 2016,[55] this Court directed petitioners to reply to public respondent's Comment.

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[47] *Id*. at 227-252.

[48] *Id*. at 253.

[49] *Id*. at 227-252.

[50] *Id*. at 234.

[51] *Id*. at 234-235.

[52] *Id*. at 237.

[53] *Id*. at 237-238.

[54] *Id*. at 239-246.

[55] *Id*. at 254.

On October 3, 2016, petitioners filed a Manifestation with Reply,[56] where they manifested that two (2) separate Informations had been filed against them.

The first Information was filed before Branch 5, Regional Trial Court, Lemery, Batangas for violation of Section 3(e) of Republic Act No. 3019, while the second Information was filed before the Municipal Circuit Trial Court of Lemery, Batangas for violation of Article 177 of the Revised Penal Code.[57]

Petitioners state that after undergoing trial on the merits and after the prosecution rested its case, the two (2) cases against them were dismissed by both the Regional Trial Court[58] and Municipal Circuit Trial Court[59] due to insufficiency of evidence, thereby rendering moot and academic the criminal charges subject of the Petition.[60]

Finally, petitioners emphasize that the affidavit complaint against them was filed on November 16, 2005, while the Office of the Deputy Ombudsman for Luzon's Joint Resolution finding probable cause against them was only issued on February 7, 2013. They claim that this subjects them to an unreasonable delay of more than seven (7) years, leading to a violation of their right to due process and the speedy disposition of their case.[61]

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in dismissing the petition for lack of jurisdiction.

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[56] *Id.* at 255-266.

[57] *Id.* at 256.

[58] *Id.* at 267-271. The Order dated July 27, 2016, docketed as Crim. Case No. 96-2014, was penned by Presiding Judge Eleuterio Larisma Bathan.

[59] *Id.* at 272-277. The Order dated May 10, 2016, docketed as Crim. Case No. 2014-23, was penned by Presiding Judge Priscilla U. Acedera.

[60] *Id.* at 256.

[61] *Id.* at 258-264.

The Petition lacks merit.

I

Section 27 of Republic Act No. 6770, or the Ombudsman Act of 1989, granted this Court appellate jurisdiction over orders, directives, or decisions of the Office of the Ombudsman in administrative disciplinary cases:

> Section 27. Effectivity and Finality of Decisions.– (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.
>
> A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:
>
> (1) New evidence has been discovered which materialy affects the order, directive or decision;
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> (2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, that only one motion for reconsideration shall be entertained.
>
> Findings of fact by the [office] of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.
>
> *In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court* by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.
>
> The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require. (Emphasis supplied)

However, *Fabian v. Desierto*[62] struck down Section 27 of Republic Act No. 6770 for being unconstitutional as it increased

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[62] 356 Phil. 787 (1998) [Per *J*. Regalado, *En Banc*].

this Court's appellate jurisdiction without this Court's advice and consent, contrary to the prohibition imposed in Article VI, Section 30[63] of the Constitution.[64]

Namuhe v. Ombudsman[65] elaborated on the import of the *Fabian* ruling as follows:

> In *Fabian,* the Court held that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Civil Procedure.
>
> In so holding, the Court *en Banc,* through Mr. Justice Florenz D. Regalado, declared unconstitutional Section 27 of Republic Act 6770 or the Ombudsman Act of 1989, which provided that decisions of the Office of the Ombudsman may be appealed to the Supreme Court by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court. Such provision was held violative of Section 30, Article VI of the Constitution, as it expanded the jurisdiction of the Supreme Court without its advice and consent.
>
> The Court also took note of the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure. Thus, it held that "[u]nder the present Rule 45, appeals may be brought through a petition for review on *certiorari,* but only from judgments and final orders of the *courts* enumerated in Section 1 thereof. Appeals from judgments and final orders of *quasi judicial agencies* are now required to be brought to the Court of Appeals on a verified petition for review, under the requirements and conditions in Rule 43 which was precisely formulated and adopted to provide for a uniform rule of appellate procedure for quasi-judicial agencies." The Office of the Ombudsman is a *quasi-judicial agency* falling under Rule 43. As the Court succinctly stated:

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[63] CONST., Art. VI, Sec. 30 provides:

> Article VI. The Legislative Department.
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> . . . . . .
>
> Section 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

[64] *Fabian v. Hon. Desierto,* 356 Phil. 787, 806 (1998) [Per *J.* Regalado, *En Banc*].

[65] 358 Phil. 781 (1998) [Per *J.* Panganiban, First Division].

> "It is suggested, however, that the provisions of Rule 43 should apply only to 'ordinary quasi-judicial agencies,' but not to the Office of the Ombudsman which is a 'high constitutional body.' *We see no reason for this distinction for, if hierarchical rank should be a criterion, that proposition thereby disregards the fact that Rule 43 even includes the Office of the President and the Civil Service Commission, although the latter is even an independent constitutional commission, unlike the Office of the Ombudsman, which is a constitutionally-mandated but statutorily-created body.*"[66] (Emphasis supplied)

Thus, as a quasi-judicial agency, decisions of the Office of the Ombudsman in administrative disciplinary cases may only be appealed to the Court of Appeals through a Rule 43 petition.[67]

While Republic Act No. 6770 may have been silent on the remedy available to a party aggrieved with the Office of the Ombudsman's finding of probable cause in a criminal case, *Tirol, Jr. v. Del Rosario*[68] clarified that the remedy in this instance is not an appeal, but a petition for certiorari under Rule 65 of the Rules of Court before this Court:

> True, the law is silent on the remedy of an aggrieved party in case the Ombudsman found sufficient cause to indict him in criminal or non-administrative cases. We cannot supply such deficiency if none has been provided in the law. We have held that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. Hence, there must be a law expressly granting such privilege. The Ombudsman Act specifically deals with the remedy of an aggrieved party from

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[66] *Namuhe v. The Ombudsman,* 358 Phil. 781, 788-789 (1998) [Per *J.* Panganiban, First Division], citing *Fabian v. Hon. Desierto,* 356 Phil. 787 (1998) [Per *J.* Regalado, *En Banc*].

[67] *Fabian v. Hon. Desierto,* 356 Phil. 787, 804 (1998) [Per *J.* Regalado, *En Banc*]; *Namuhe v. The Ombudsman,* 358 Phil. 781, 788-789 (1998) [Per *J.* Panganiban, First Division]; *Nava v. National Bureau of Investigation,* 495 Phil. 354, 365-366 (2005) [Per *J.* Tinga, Second Division]; *Dr. Pia v. Hon. Gervacio, Jr., et al.,* 710 Phil. 196, 203 (2013) [Per *J.* Reyes, First Division].

[68] 376 Phil. 115 (1999) [Per *J.* Pardo, Jr., First Division].

orders, directives and decisions of the Ombudsman in administrative disciplinary cases. As we ruled in *Fabian,* the aggrieved party is given the right to appeal to the Court of Appeals. Such right of appeal is not granted to parties aggrieved by orders and decisions of the Ombudsman in criminal cases, like finding probable cause to indict accused persons.

However, an aggrieved party is not without recourse where the finding of the Ombudsman as to the existence of probable cause is tainted with grave abuse of discretion, amounting to lack or excess of jurisdiction. An aggrieved party may file a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure.[69] (Citation omitted)

This Court has repeatedly pronounced[70] that the Office of the Ombudsman's orders and decisions in criminal cases may be elevated to this Court in a Rule 65 petition, while its orders and decisions in administrative disciplinary cases may be raised on appeal to the Court of Appeals. Hence, the Court of Appeals did not err in denying the petition questioning public respondent's finding of probable cause for lack of jurisdiction. Thus, petitioners' failure to avail of the correct procedure with respect to the criminal case renders public respondent's decision final. Furthermore, the present case fails even on its merits.

II

Dichaves v. Office of the Ombudsman[71] explained that this Court generally does not interfere with the Office of the Ombudsman's finding of probable cause out of respect for its investigatory and prosecutory powers granted by the Constitution. *Dichaves* pointed out that the Office of the Ombudsman's power to determine probable cause is executive in nature, and with

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[69] *Id.* at 122.

[70] *Tirol, Jr. v. Del Rosario,* 376 Phil. 115, 122 (1999) [Per *J.* Pardo, Jr., First Division]; *Kuizon v. Desierto,* 406 Phil. 611, 625-626 (2001) [Per *J.* Puno, First Division];*Baviera v. Zoleta,* 535 Phil 292, 312-314 (2006) [Per *J.* Callejo, Sr., First Division].

[71] G.R. Nos. 206310-11, December 7, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2016/december2016/206310-11.pdf> [Per *J.* Leonen, Second Division].

its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate a finding of probable cause or lack of it. Thus, for their petition to prosper, petitioners would have to prove that public respondent "conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law."[72]

Probable cause is:

> [T]he existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[73] (Citations omitted)

Public respondent found probable cause against petitioners for violating Section 3, paragraphs (e) and (g) of Republic Act No. 3019, and Article 177 of the Revised Penal Code. Section 3, paragraphs (e) and (g) of Republic Act No. 3019 provide:

> Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> . . . . . .
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and

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[72] *Reyes v. Office of the Ombudsman,* G.R. No. 208243, June 5, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2017/june2017/208243.pdf> [Per *J.* Leonen, Second Division].

[73] *Chan v. Formaran III, et al.*, 572 Phil. 118, 132 (2008) [Per *J.* Nachura, Third Division].

employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

. . . . . .

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

Based on opinion, reasonable belief, and the evidence submitted by the parties, public respondent found that all the elements of the crime punishable under Section 3, paragraphs (e) and (g) of Republic Act No. 3019 existed. Petitioners did not deny being public officers when the acts complained of were committed. Furthermore, clear preference was given to Amellar Solutions with the direct contracting mode of procurement, bypassing the usual mode of public bidding and leading to a gross disadvantage to the government:[74]

> The law on public bidding is not an empty formality. The purpose of subjecting all government procurements to competitive bidding is to encourage transparency and ensure that the government acquires the most advantageous contract at the least price. There is no question that the respondent's failure to submit the computerization project to competitive bidding resulted in injury to the government. Considering the amount involved and considering further that no funds were appropriated for said purpose, the Municipality of Lemery was induced to obtain a loan to acquire the contract from Amellar Solutions. Moreover, the Municipality of Lemery had to increase its loan from PhP7.5 Million to PhP8.193 Million, which not only caused injury to the Municipality as it was forced to incur a substantial financial obligation, but also gave Amellar Solutions unwarranted benefits as the contract was awarded to it without compliance with the requirements of the Procurement Law. Needless to state, the contract was manifestly and grossly disadvantageous to the Municipal Government of Lemery, Batangas.[75] (Citation omitted)

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[74] *Rollo,* pp. 136-138.

[75] Id. at 137.

In the same manner, public respondent properly performed its duty when it found probable cause to charge petitioners with violation of Article 177[76] of the Revised Penal Code, or usurpation of authority or official functions.

Again based on opinion, reasonable belief, and the evidence submitted by the parties, public respondent found that by authorizing Bendaña to enter into a direct contracting procedure with Amellar Solutions, petitioners usurped the authority of the Bids and Awards Committee, which had the sole authority to recommend the method of procurement.[77] Public respondent established that:

> By passing the afore-said Resolution, the respondents, in effect, conferred upon themselves functions which, under R.A. No. 9184, only the [Bids and Awards Committee] can perform. And by passing the same, respondent local legislative officials revised and rendered ineffective the power and authority granted by the Procurement Law to the [Bids and Awards Committee].[78]

Clearly, public respondent's findings of probable cause were not arrived at capriciously or with grave abuse of discretion. There is no reason to reverse its Joint Resolution and Order.

WHEREFORE, the Petition for Review is **DENIED.** The Court of Appeals April 15, 2014 and September 8, 2014 Resolutions in CA-G.R. SP No. 133085 are **AFFIRMED.**

SO ORDERED.

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[76] REV. PEN. CODE, Art. 177 provides:

Article 177. Usurpation of authority or official functions.— Any person who shall knowingly and falsely represent himself to be an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prision correccional* in its minimum and medium periods.

[77] *Rollo*, pp. 134-135.

[78] *Id.* at 135.

Peralta (*Chairperson*), *Reyes, A. Jr., Gesmundo,* and *Reyes, J. Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 215280. September 5, 2018]

FRANCISCO C. EIZMENDI JR., JOSE S. TAYAG JR., JOAQUIN L. SAN AGUSTIN, EDUARDO D. FRANCISCO, EDMIDIO V. RAMOS, JR., ALBERT G. BLANCAFLOR, REY NATHANIEL C. IFURUNG, MANUEL H. ACOSTA JR., and VALLE VERDE COUNTRY CLUB, INC., *petitioners, vs.* **TEODORICO P. FERNANDEZ,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES; ELECTION CONTEST; REFERS TO ANY CONTROVERSY OR DISPUTE INVOLVING TITLE OR CLAIM TO ANY ELECTIVE OFFICE IN A STOCK OR NON-STOCK CORPORATION, THE VALIDATION OF PROXIES, THE MANNER AND VALIDITY OF ELECTIONS, AND THE QUALIFICATIONS OF CANDIDATES, INCLUDING PROCLAMATION OF WINNERS, TO THE OFFICE OF DIRECTOR, TRUSTEES OR OTHER OFFICER DIRECTLY ELECTED BY THE STOCKHOLDERS IN A CLOSE CORPORATION OR BY MEMBERS OF A NON-STOCK CORPORATION WHERE THE ARTICLE OF

INCORPORATION SO PROVIDE; CASE AT BAR.— Fernandez's complaint disputes the election of petitioners as members of the BOD of VVCCI on the ground of lack of *quorum* during the February 23, 2013 annual meeting. Verily, his complaint is partly an "election contest" as defined under Section 2, Rule 6 of the *Interim Rules,* which refers to "any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and validity of elections, and the qualifications of candidates, including proclamation of winners, to the office of director, trustees or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the article of incorporation so provide." That Fernandez's complaint is partly an election contest is manifest from the decision of the CA, thus: x x x **[I]n order to fully resolve the issue regarding the legality of the suspension of the petitioner [Fernandez] from VVCCI, it was also necessary for the trial court to admit pieces of evidence which relate to the composition of the board of directors of VVCCI during the time when the penalty of suspension from club membership was imposed upon petitioner**.

2. **ID.; ID.; ID.; ID.; ID.; ELECTION CONTEST MUST BE FILED WITHIN THE 15-DAY REGLEMENTARY PERIOD; VIOLATED IN CASE AT BAR.—** On the issue of whether Fernandez may question the authority of the petitioners to act as the BOD of VVCCI and approve the board resolution suspending his club membership, the Court rules in the negative. To allow Fernandez to indirectly question the validity of the February 23, 2013 election would be a clear violation of the 15-day reglementary period to file an election contest under the *Interim Rules.* As aptly pointed out by the RTC, what cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation; if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.

3. **REMEDIAL LAW; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; MEANT SUCH CAPRICIOUS AND WHIMSICAL EXERCISE OF JUDGMENT AS IS EQUIVALENT TO LACK OF JURISDICTION; NOT**

ESTABLISHED IN CASE AT BAR.— The RTC committed no grave abuse of discretion in disallowing Fernandez from presenting evidence during the hearing of his application for preliminary injunction, relative to the lack of authority of the individual petitioners to suspend him because it would inevitably question the validity of the February 23, 2013 election. The RTC's action of virtually dismissing the first cause of action in Fernandez's complaint for being an election contest filed beyond the 15-day reglementary period, is indeed consistent with the following provisions of the *Interim Rules:* (a) Section 3, Rule 1, because such act promotes the objective of securing a just, summary, speedy and inexpensive determination of every action or proceeding; and (b) Section 4, Rule 6, which authorizes the court to dismiss outright the complaint if the allegations thereof is not sufficient in form and substance. The RTC's action is, likewise, consistent with the inherent power of courts to amend and control its process and orders so as to make them conformable to law and justice, under Section 5, Rule 135 of the Rules of Court. The RTC could not, therefore, be faulted with grave abuse of discretion, which is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Neither could it be blamed for exercising power in an arbitrary or despotic manner by reason of passion or personal hostility, which is so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

4. ID.; JUDGMENTS; *RES JUDICATA*; REQUISITES; NOT ESTABLISHED IN CASE AT BAR.— For *res judicata* to serve as an absolute to a subsequent action, the following requisites must be present: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be between the first and second actions, identity of parties, of subject matter, and causes of action. Here, *res judicata* does not apply because there is no identity of parties, causes of action and reliefs sought between the complaint subject of *Valle Verde* and the complaint subject of this case.

5. ID.; ID.; DOCTRINE OF LAW OF THE CASE; APPLIES ONLY TO THE SAME CASE INVOLVING THE SAME PARTIES; CASE AT BAR.— The doctrine of the "law of the case" is also inapplicable, because it only applies to the same case involving the same parties. *Valle Verde* is separate and distinct from this case in terms of parties, cause of actions and reliefs sought, despite the fact that both intra-corporate controversies arose from the February 23, 2013 election of the individual petitioners as members of the BOD of VVCCI in an annual meeting which was supposedly adjourned due to lack of *quorum. Spouses Sy v. Young* explains the concept of the "law of the case," thus: Law of the case has been defined as the opinion delivered on a former appeal. It means that whatever is once irrevocably established the controlling legal rule of decision between the same parties in the same case continues to be the law of the case whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

6. ID.; ID.; PRINCIPLE OF *STARE DECISIS*; UNDER THIS DOCTRINE, ONCE A COURT HAS LAID DOWN A PRINCIPLE OF LAW AS APPLICABLE TO A CERTAIN STATE OF FACTS, IT WILL ADHERE TO THAT PRINCIPLE AND APPLY IT TO ALL FUTURE CASES WHERE THE FACTS ARE SUBSTANTIALLY THE SAME, EVEN THOUGH THE PARTIES MAY BE DIFFERENT; CASE AT BAR.— While the doctrines of *res judicata* and "the law of the case" are not applicable, the principle of *stare decisis et non quieta movere* [stand by the decision and disturb not what is settled] applies to this case, but only to the extent that *Valle Verde* held that (1) if the allegations and prayers in the complaint raise the issues of validation of proxies, and the manner and validity of elections, such as the nullification of election was unlawfully conducted due to lack of *quorum,* then such complaint falls under the definition of election contest under the *Interim Rules;* and (2) the real parties-in-interest in an election contest are the contenders, and not the corporation. *Abaria, et al. v. National Labor Relations Commission, et al.* expounds on *stare decisis* in this wise: Under the doctrine of *stare decisis,* once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where the facts are substantially

the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. x x x Considering that Fernandez's first cause of action seeks to nullify the claim of the individual petitioners to the office of the BOD of VVCCI due to lack of *quorum* during the election on February 23, 2013, then the Court must adhere to its ruing in *Valle Verde,* and hold that his complaint is partly an election contest. However, *Valle Verde* cannot be invoked to sustain the position that an election contest filed beyond the 15-day reglementary period under the *Interim Rules* is prescribed.

APPEARANCES OF COUNSEL

Ifurung Law Offices for petitioners.
A.D. Corvera & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to nullify and set aside the Court of Appeals (*CA)* Decision[1] dated June 30, 2014 in CA-G.R. SP No. 134704, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the petition filed in this case. The Order that was issued by Branch 158 of the Regional Trial Court of the National Capital Judicial Region in Pasig City on January 28, 2014 in Commercial Case No. 13-202, insofar as it did not allow any evidence to be presented relating to the 23 February 2013 elections

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[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Michael P. Elbinias and Victoria lsabel A. Paredes, concurring, *rollo,* pp. 42-53.

of the board of director of VVCCI, and the subsequent resolution of the said court dated February 3, 2014, are hereby **ANNULLED** and **SET ASIDE**. Consequently, the public respondent judge is **DIRECTED** to allow the presentation of evidence by the petition in connection with the election of the members of the board of directors of VVCCI that was conducted during its annual members' meeting on February 23, 2013.

SO ORDERED.[2]

The facts are as follows:

On November 28, 2013, respondent Teodorico P. Fernandez filed a Complaint[3] for Invalidation of Corporate Acts and Resolutions with Application for Writ of Preliminary Injunction against the individual petitioners, namely: Francisco C. Eizmendi Jr., Jose S. Tayag Jr., Joaquin San Agustin, Eduardo Francisco, Edmidio Ramos, Jr., Albert Blancaflor, Rey Nathaniel Ifurung, Manuel Acosta Jr., who allegedly constituted themselves as new members of the Board of Directors *(BOD)* of Valle Verde Country Club, Inc. (*VVCCI),* despite lack of quorum during the annual members' meeting on February 23, 2013. VVCCI is a duly organized non-stock corporation engaged in promoting sports, recreational and social activities, and the operation and maintenance of a sports and clubhouse, among other matters.

Fernandez averred that he is a proprietary member in good standing of VVCCI, and that the individual petitioners held a meeting on October 18, 2013 during which they supposedly acted for and in behalf of VVCCI, and found him guilty of less serious violations of the by-laws and imposed on him the penalty of suspension of membership for six (6) months from September 21, 2013, or until March 21, 2014.

Fernandez asserted that since petitioners were not validly constituted as the new BOD in the place of the hold-over BOD of VVCCI, they had no legal authority to act as such BOD, to find him guilty and to suspend him. Fernandez added that he

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[2] *Rollo,* p. 52.

[3] *Id.* at 85-95.

was not accorded due process, as petitioners failed to give him opportunity to defend himself by notifying him of the charge and the verdict against him. Not having been notified of his suspension, Fernandez claimed that he had no premonition of what would happen to him when he went to the VVCCI Complex on October 26, 2013 to avail of its facilities, and that he suffered deep pain and severe embarrassment because a security guard directed a waiter not to serve the food he had ordered in the presence of several members on the ground that his name is in the list of members suspended at the instance of the individual petitioners.

Fernandez prayed that after hearing on the merits, judgment be rendered: (a) making the injunction permanent; (b) invalidating the claims of the individual petitioners to the office of director of the VVCCI; (c) nullifying the annual members' meeting on February 23, 2013, as well as subsequent board meetings similarly held and conducted by the individual petitioners, including resolutions and measures approved thereat, particularly those which are related to his suspension from the VVCCI; (d) ordering the individual petitioners, jointly and severally, to pay him ₱500,000.00 as attorney's fees and not less than ₱500,000.00 as exemplary damages, and ₱500,000.00 as moral damages.

In an Urgent Motion or Request for Production/Copying of Documents[4] dated January 10, 2014, Fernandez cited Rule 27 of the Rules of Court and requested the VVCCI, as owner and custodian of corporate documents, to produce them and allow him to copy the following matters in connection with the hearing of his application for issuance of a writ of preliminary injunction:

1. The original of the Stock and Transfer Book and all cancelled Membership Fee Certificates of the VVCCI.
2. The original of the Certificate of Incorporation of VVCCI issued by the Securities and Exchange Commission (SEC) on May 30, 1975.
3. The original of the Directors' Certificate To By-laws dated August 24, 1975 of VVCCI, as filed with the SEC.

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

4. The original of the By-Laws of VVCCI dated June 30, 1975 as filed with the SEC.
5. The original of the Certificate of Filing of By-Laws of VVCCI issued by the SEC on October 20, 1976, as received by VVCCI from the SEC.
6. The original of the duly-signed "Resolution Increasing the Corporation's Membership Certificates To Two Thousand (2000)", adopted and approved by the Board of Directors of VVCCI on June 22, 1979, consisting of two (2) pages including the signature page, together with any covering minutes, under pain of sanctions under Rule 29 of the Rules of Court.

Petitioners opposed the Urgent Motion or Request for Production/Copying of Documents, and prayed that it be denied for lack of merit, for being unreasonable and for not being in their possession.

On January 14, 2014, the hearing of Fernandez's application for issuance of a writ of preliminary injunction was held before the Hon. Maria Rowena Modesto San Pedro, Presiding Judge of the Regional Trial Court of Pasig City, Branch 158. During the hearing, Judge San Pedro stressed that she will not touch on the election contest aspect of the Complaint, but only on the issue of his suspension from the VVCCI, thus:

COURT:

> Before you testify, we are in agreement that the remaining issue ... we will not touch on the election aspect because that is not proper for the instant case. I have already said it's too late in the day to file an election contest. So, the only Issue before the Court is the suspension.

ATTY. FERNANDEZ:

> Yes, your Honor, but with due respect, if your Honor please, our case is not an election contest because this is a suit precisely questioning the legal authority of the board who suspended me.

COURT:

> Yes, even if you do not say that it is an election contest, that will, especially the issue, will still be whether or not the board of directors' composition is legitimate because, in

essence, it was still an election contest. I will not touch on that, as I had continuously said. The only reason I'm still entertaining this complaint is with respect to your suspension. So, your suspension, it cannot be based ... whether or not your suspension is legitimate will not be anchored on the composition of the board of directors but on issues like due process, if you were duly notified, if the grounds for your suspension were valid, etcetera.

ATTY. FERNANDEZ:

We wish to inform the Honorable Court, your Honor, that the dismissal of the case before Judge Bonifacio was not based on trial on the merits. That's the reason we cannot ...

COURT:

At any rate, that will not affect me at all, that case. What I am saying is that the election contest could not have been filed... any disagreement with the composition of that election cannot be raised as an issue in any other facts fifteen days from election.

ATTY. FERNANDEZ:

But, Your Honor, may we be allowed to present evidence in relation to the fact that... I have two allegations, if your Honor please. No. I, is the fact that they have no legal authority to suspend me because when they convened as a board, when they elected themselves as board of directors after the declaration of no quorum, your Honor, they used 1,500 as basis and therefore ...

COURT:

Okay, I will not entertain that. That's still an election contest. That still goes into the validity of the election. No matter how you phrase it, it will still go into the validity of the election.

ATTY. FERNANDEZ:

But that will also deal on the authority... aside from the other ground, if your Honor please, the authority of the Board to suspend me because ...

COURT:

Exactly, you cannot question their authority because no election contest was timely filed.

ATTY . FERNANDEZ:

Well, we will just address that in a ...

COURT:

You can very well file a petition for certiorari against my refusal to entertain that issue.[5]

On January 20, 2014, petitioners filed their Answer with Counterclaim and Grounds for Dismissal.[6] Petitioners specifically denied the material allegations of Fernandez's Complaint, and sought the dismissal thereof on the following grounds (1) he has no cause of action against the individual petitioners who acted as members of the BOD of VVCCI which is a collegial body; (2) the case is an election contest filed more than 15 days from the date of election, in violation of Section 3, Rule 6 of the Rules Governing Intra-Corporate Controversies; (3) non-exhaustion of intra-corporate remedies and non-compliance with condition precedent under the By-Laws of VVCCI; and (4) violation of rules on notarial practice.

In an Order[7] dated January 28, 2014, the RTC pointed out that the application of a Writ of Preliminary Injunction has been rendered moot, upon discussion with counsel and parties present that, in order to expedite proceedings and to proceed with the trial proper, petitioners have graciously agreed to provide the relief sought in the Injunction application which is to immediately reinstate Fernandez. The RTC also reminded the parties that it shall not entertain any issue respecting the February 23, 2013 elections; otherwise, the mandatory period within which to file an Election Contest would be rendered nugatory. The trial court stressed that it cannot allow indirectly what is barred directly by the Rules and, accordingly, the only issue remaining is whether due process was observed in suspending Fernandez.

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[5] *Id.* at 98-101.

[6] *Id.* at 115-130.

[7] *Id* at 110-111.

In a Resolution[8] dated February 3, 2014, the RTC denied the Urgent Motion or Request for Production/Copying of Documents. The trial court reiterated its position that the case is not an election contest since it was filed way beyond the reglementary period under the *Interim Rules of Procedure Governing Intra-Corporate Controversies* for election contests to be brought to court, considering that the only issue that remains to be resolved is with respect to whether due process was observed in suspending Fernandez. It also found no meritorious reason to compel VVCCI to produce the original Stock and Transfer Book and all cancelled Membership Fee Certificates since they do not appear to be material in the resolution of the remaining issue. It further found no necessity to compel VVCCI to produce the original items 2 to 6 of the motion, since VVCCI already admitted their existence and the machine copies thereof were already admitted by the court as documentary exhibits of Fernandez during the application for the issuance of a writ of preliminary injunction.

Aggrieved by the RTC Order dated January 28, 2014 and Resolution dated February 3, 2014, Fernandez filed a petition for *certiorari* before the CA.

The CA summed up the twin issues to be resolved in the petition: *first,* whether or not the RTC gravely abused its discretion when it treated the case as an election contest and disregarded the fact that the real cause of action was Fernandez's purported illegal suspension as member of VVCCI, and *second,* whether the RTC gravely abused its discretion when it merely noted and passed upon the contention of Fernandez's that *res judicata* does not apply in the case.

In a Decision[9] dated June 30, 2014, the CA granted Fernandez's petition for *certiorari,* nullified and set aside the assailed Order and Resolution of the RTC insofar as it did not allow any evidence to be presented relating to the February 23,

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

[9] *Supra* note 1.

2013 elections of the board of directors of VVCCI. The CA directed the judge to allow presentation of evidence in connection with the election of the members of the BOD of VVCCI that was conducted during its annual members' meeting on February 23, 2013. Anent the other matter raised by Fernandez, the CA stated that said issues would be best threshed out in a full-blown trial of the case, because the other allegations in the petition involved evidentiary matters which could be passed upon only during trial on the merits of the case.

The CA ruled that in order to fully resolve the issue regarding the legality of the suspension of Fernandez from VVCCI, it was also necessary for the trial court to admit pieces of evidence which relate to the composition of the BOD of VVCCI during the time when the penalty of suspension from club membership was imposed upon petitioner. As explained by the CA, this is especially true because Fernandez was suspended as member of VVCCI precisely for committing acts that were purportedly inimical to the interest of the club. The aforesaid acts, in turn, related to the allegation that Fernandez, along with other members of VVCCI, caused the expulsion of petitioners as members of VVCCI on the ground that they were "critical of the abuses of the 17-year hold-over board" of directors of VVCCI. In other words, Fernandez was suspended as member of VVCCI on the ground that he and other club members had previously caused the expulsion of some of the members of VVCCI who, according to Fernandez, were illegally constituted as members of the BOD of VVCCI. Consequently, the issues in the case below, while its primary aim is to declare the suspension of Fernandez from club membership as illegal, likewise necessarily related to the legality or illegality of the election of the members of the BOD of VVCCI during the annual members' meeting that was conducted on February 23, 2013. This especially finds relevance in that it had been the position of Fernandez from the very beginning that petitioners were illegally constituted as members of the BOD of VVCCI, thereby refusing to recognize the authority of the acts of the latter.

In support of its ruling, the CA cited the case of *Yu v. Court of Appeals*[10] where it was held that while trial courts have the discretion to admit or exclude evidence, such power is exercised only when the evidence had been formally offered. This is because during the early stages of the development of proof, it is impossible for a trial court judge to know with certainty whether evidence is relevant or not and, thus, the practice of excluding evidence on doubtful objections to its materiality should be avoided.

The CA also relied on *Prats & Co. v. Phoenix Insurance Co.*[11] where it was stressed that in the heat of the battle over which he presides, a judge of first instance may possibly fall into error by judging of the relevancy of proof where a fair and logical connection is in fact shown. When such a mistake is made and proof is erroneously ruled out, the Supreme Court, upon appeal, often finds itself embarrassed and possibly unable to correct the effects of the error without returning the case for a new trial – a step which this court is always very loath to take. On the other hand, the admission of proof in a court of first instance, even if the question as to its form, materiality or relevancy is doubtful, can never result in much harm to either litigant, because the trial judge is supposed to know the law; and it is its duty, upon final consideration of the case, to distinguish the relevant and material from the irrelevant and immaterial. If this course is followed and the cause is prosecuted to the Supreme Court upon appeal, this court then has all the materials before it necessary to make a correct judgment.

In a Resolution dated October 24, 2014, the CA denied petitioners' motion for reconsideration. Aggrieved, petitioners filed a petition for review on *certiorari,* raising the issue of: *Whether the Court of Appeals gravely erred in allowing respondent in Commercial Case No. 13-190 to present evidence in connection with the election of the members of the board of*

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[10] 512 Phil. 802, 807 (2005).

[11] 52 Phil. 807, 816-817 (1929).

directors of VVCCI conducted on February 23, 2013 to invalidate the claims of petitioners to the office of director in relation to respondent's suspension as a member thereof by petitioners as a board of directors in view of the decision of the Honorable Court in G.R. No. 209120 and the 15-day period within which to file an election contest.[12]

Petitioners argue that the CA correctly affirmed the trial court's finding that the cause of action of Fernandez relates to the legality of his suspension as member of VVCCI, but it gravely erred in ruling as follows:

> x x x Consequently, the issue in the case below, while its primary aim is to declare the suspension of the petitioner from club membership as illegal, likewise necessarily relates to the legality or illegality of the election of the members of the board of directors of VVCCI during the annual members' meeting that was conducted on February 23, 2013. This especially finds relevance in that it had been the position of the petitioner from the very beginning that herein private respondents were illegally constituted as members of the board of directors of VVCCI, thereby refusing to recognize the authority or the acts of the latter.[13]

Petitioners contend that Fernandez is attempting to indirectly violate the rules on, and the period for, filing an election contest as provided in the *Interim Rules.* They point out that the trial court has read Fernandez's complaint and readily sensed that the case is partly an election contest; thus, it immediately prevented Fernandez from raising the issue on the election of petitioners as members of the BOD, and limited the issue to whether Fernandez was validly suspended by petitioners. They add that to allow Fernandez to prove the invalidity of petitioners' election is also tantamount to reopening the first case between the hold-over BOD and the petitioners in G.R. No. 209120, entitled *"Valle Verde Country Club, Inc. v. Eizmendi, Jr.,"* dated October 14, 2013 (***Valle Verde***), which stemmed from a complaint filed by VVCCI, for misrepresentation of corporate

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[12] *Rollo,* p. 26.

[13] *Id.* at 54.

office against the defendants [herein individual petitioners] with respect to the February 23, 2013 annual meeting where the latter were elected as directors, despite the alleged lack of *quorum.*

Petitioners submit that the Court Resolution in G.R. No. 20912 — where the complaint for misrepresentation of corporate office was dismissed with finality on two grounds: (1) lack of cause of action for having been filed by VVCCI instead of the contenders, which include Fernandez, who are the real parties-in-interest; and (2) for being essentially an election contest which was filed beyond the 15-day reglementary period under the Interim Rules – is conclusive upon the status of petitioners as the duly-elected members of the BOD of VVCCI. Considering that Fernandez is a party in G.R. No. 209120 as an appointee of the old BOD and being a candidate in the February 23, 2013 elections of the members of the BOD, petitioners claim that he should have filed an election contest within 15 days therefrom or intervened in Commercial Case No. 13-190, which is the RTC case referred to in G.R. No. 209120.

Petitioners posit that while Fernandez asserts that he is not claiming the office as member of the BOD, he is, in effect, attempting to unseat them as members thereof, which is in the nature of an election contest. Besides, petitioners state that their term as members of the BOD of VVCCI already expired on April 5, 2014, which makes the issue on the validity of their election moot. Finally, they invoke that the Resolution in G.R. No. 209120 should also be considered as the "law of the case" under the principle of *stare decisis.*

For his part, Fernandez counters that his cause of action is his wrongful suspension as member of the VVCCI, and that he may question petitioners' authority as a board to order his suspension. He also insists that the case before the RTC is not an election contest as defined by the *Interim Rules,* and that his complaint is not barred by *res judicata,* let alone bound by the Resolution in G.R. No. 209120 under the doctrine of *stare decisis.*

The petition for review is impressed with merit.

On the issue of whether Fernandez's complaint may be considered as an election contest within the purview of the *Interim Rules,* the Court rules in the affirmative.

In *Valle Verde Country Club, Inc. v. Eizmendi Jr., et al.,*[14] the Court ruled that the complaint for misrepresentation of corporate office filed by Valle Verde Country Club, Inc., against the respondents [herein individual petitioners] falls under the definition of election contest because it raises the issues of the validation of proxies, and the manner and validity of elections. The Court noted that a reading of Valle Verde's allegations and prayers in the complaint shows that it is essentially for the nullification of the election on the ground that the election was unlawfully conducted due to the adjournment of the February 23, 2013 meeting for lack of *quorum.*

Here, the allegation in Fernandez's complaint for invalidation of corporate acts and resolutions partly assails the authority of the BOD to suspend his membership on the ground that despite the lack of *quorum* at the same February 23, 2013 meeting, the individual petitioners proceeded to have themselves constituted as the new members of the BOD of VVCCI.[15] His complaint clearly raises an issue on the validity of the election of the individual petitioners. Contrary to Fernandez's claim that the case before the lower court does not involve a claim or title to an elective office in VVCCI, and that his objective is not to unseat the individual petitioners during the term for which they were allegedly elected, the Court finds that a plain reading of the prayers in his complaint betrays his cause:

2. After hearing on the merits, to render judgment in favor of plaintiff and against the defendants.

a) Making the injunction permanent;

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[14] G.R. No. 209120, October 14, 2013. (Minute Resolution)

[15] *Rollo,* p. 89; Complaint in Commercial Case No. 13-202 entitled "Teodorico P. Fernandez vs. Francisco C. Eizmendi, Jr., *et al.* for Invalidation of Corporate Acts and Resolutions With Application for Writ of Preliminary Injunction, p. 5.

b) Invalidating the claims of individual defendants [individual petitioners] Francisco C. Eizmendi Jr., Jose S. Tayag, Jr., Joaquin San Agustin, Eduardo Francisco, Edmidio Ramos, Jr., Albert Blancaflor, Rey Nathaniel lfurung and Manuel Acosta, Jr. to the office of director of VVCCI;

c) Nullifying the so-called annual members' meeting of February 23, 2013, as well as the so-called board meetings similarly held and conducted by the individual defendants, such as but not limited to the so-called board meeting of October 18, 2013, including all resolutions and measures approved thereat, particularly those which related to the suspension of plaintiff [Fernandez] from VVCCI;[16]

Fernandez's complaint disputes the election of petitioners as members of the BOD of VVCCI on the ground of lack of *quorum* during the February 23, 2013 annual meeting. Verily, his complaint is partly an "election contest" as defined under Section 2, Rule 6 of the *Interim Rules,* which refers to "any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and validity of elections, and the qualifications of candidates, including proclamation of winners, to the office of director, trustees or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the article of incorporation so provide."

That Fernandez's complaint is partly an election contest is manifest from the decision of the CA, thus:

x x x **[I]n order to fully resolve the issue regarding the legality of the suspension of the petitioner [Fernandez] from VVCCI, it was also necessary for the trial court to admit pieces of evidence which relate to the composition of the board of directors of VVCCI during the time when the penalty of suspension from club membership was imposed upon petitioner**. This is especially true in that petitioner was suspended as a member of VVCCI precisely for committing acts that were purportedly inimical to the interests of the club. The aforesaid acts, in turn, relate to the allegation that

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[16] *Id.* at 92-93; *Id.* at 8-9. (Emphasis added).

herein petitioner, along with other members of VVCCI, caused the expulsion of herein private respondents [individual petitioners] as members of VVCCI on the ground that the latter were "critical of the abuses of the 17-year hold over board" of directors of VVCCI. In other words, the petitioner was suspended as a member of VVCCI on the ground that he and other club members had previously caused the expulsion of some of the members of VVCCI who, according to petitioner, were illegally constituted as member of the board of directors of VVCCI. x x x[17]

On the issue of whether Fernandez may question the authority of the petitioners to act as the BOD of VVCCI and approve the board resolution suspending his club membership, the Court rules in the negative.

To allow Fernandez to indirectly question the validity of the February 23, 2013 election would be a clear violation of the 15-day reglementary period to file an election contest under the *Interim Rules.* As aptly pointed out by the RTC, what cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation; if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.[18]

The Court agrees with Fernandez that the 15-day reglementary period within which to file an election contest under the *Interim Rules* is meant to hasten the submission and resolution of corporate election controversies, so that the state of uncertainty in the corporate leadership is settled; and that the said period not meant to block suits questioning the unlawful acts of winning directors, including the legitimacy of their authority. However, if the Court were to entertain one of the causes of action in Fernandez's complaint, which is partly an election contest raised beyond the said reglementary period, then the salutary purposes of the said period under the *Interim Rules* would be rendered futile; the floodgates to election contests would be opened, to

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[17] *Rollo,* pp. 50-51. (Emphasis ours).

[18] *Tawang Multi-Purpose Cooperative v. La Trinidad Water District,* 661 Phil. 390, 398 (2011).

the detriment of the regime of efficient and stable corporate governance.

The RTC committed no grave abuse of discretion in disallowing Fernandez from presenting evidence during the hearing of his application for preliminary injunction, relative to the lack of authority of the individual petitioners to suspend him because it would inevitably question the validity of the February 23, 2013 election.

The RTC's action of virtually dismissing the first cause of action in Fernandez's complaint for being an election contest filed beyond the 15-day reglementary period, is indeed consistent with the following provisions of the *Interim Rules:* (a) Section 3, Rule 1, because such act promotes the objective of securing a just, summary, speedy and inexpensive determination of every action or proceeding; and (b) Section 4, Rule 6, which authorizes the court to dismiss outright the complaint if the allegations thereof is not sufficient in form and substance. The RTC's action is, likewise, consistent with the inherent power of courts to amend and control its process and orders so as to make them conformable to law and justice, under Section 5, Rule 135 of the Rules of Court.

The RTC could not, therefore, be faulted with grave abuse of discretion, which is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Neither could it be blamed for exercising power in an arbitrary or despotic manner by reason of passion or personal hostility, which is so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

In allowing the presentation of evidence on the validity of the election of the individual petitioners as members of the BOD of VVCCI, the CA erroneously relied on *Yu v. Court of Appeals*[19] where it was held that (1) while trial courts have the discretion to admit or exclude evidence, such power is exercised

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[19] *Supra* note 11.

only when the evidence had been formally offered; and (2) during the early stages of the development of proof, it is impossible for a trial court to know with certainty whether evidence is relevant or not and, thus, the practice of excluding evidence on doubtful objections to its materiality should be avoided.

Here, there is no doubt as to the materiality or relevancy of the evidence sought to be presented by Fernandez in assailing the validity of the February 23, 2013 election. What the RTC correctly did was to dismiss of the first cause of action because it is essentially an election contest that was filed beyond the 15-day reglementary period under the *Interim Rules,* and to limit the issue of the case to the second cause of action. To stress, the first cause of action is in effect an election contest, inasmuch as Fernandez averred that the individual petitioners had no legal authority to act as BOD of VVCCI, to find him guilty of any violation of the by-laws and to suspend him on the ground of lack of *quorum* during the February 23, 2013 election wherein petitioners constituted themselves as members of the BOD; whereas the second cause of action pertains to his claim for damages for not having been notified of his suspension, which led to an embarrassing incident on October 26, 2013 when he was refused services at the VVCCI complex in front of other club members. Since Fernandez's complaint is partly an election contest, and there being no provision in VVCCI's by-laws that lay down a procedure for resolution of the controversy from which the 15-day period to file such contest may be reckoned with, the first cause of action should be dismissed for having been filed beyond the 15-day reglementary period from the date of the election.

Suffice it to state that Fernandez's reliance on *Valley Golf Club, Inc. v. Vda. De Caram*[20] is misplaced, because no election contest, as defined in the *Interim Rules,* is involved therein. While one of the issues in *Caram* is the lack of due process due to non-service of notice to the member whose membership

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[20] 603 Phil. 219 (2009).

share was sold for being delinquent in the payment of his monthly dues, there is no dispute that the board of directors of the club has authority under the by-laws to expel a member through forfeiture of such member's club share. In contrast, an election contest is involved in this case, as Fernandez is also questioning the authority of the BOD of VVCCI to suspend him when he claimed that the individual petitioners were elected as members thereof despite the supposed lack of quorum during an annual meeting on February 23, 2013.

On the issue of whether or not the final resolution in *Valle Verde Country Club, Inc. v. Eizmendi, et al.,* G.R. No. 209120 dated October 14, 2013 bars Fernandez's complaint under the principles of *res judicata,* law of the case and *stare decisis,* the Court rules that only the *stare decisis* principle applies to this case.

For *res judicata* to serve as an absolute bar to a subsequent action, the following requisites must be present: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be between the first and second actions, identity of parties, of subject matter, and causes of action. Here, *res judicata* does not apply because there is no identity of parties, causes of action and reliefs sought between the complaint subject of *Valle Verde* and the complaint subject of this case.

First, while the defendants in the complaints subject of *Valle Verde* [Commercial Case No. 13-190] and of this case [Commercial Case No. 13-202] are the very same individual petitioners, the plaintiff in the former case is VVCCI, whereas the plaintiff in this case is Fernandez as plaintiff and proprietary member in good standing of VVCCI. The absence of identity of parties is underscored in *Valle Verde* where the Court upheld the dismissal of the complaint because Valle Verde had no cause of action and was not the real party-in-interest. The Court explained that a corporation does not have the right to vote and that the reliefs prayed for in the complaint are for the benefit of the respondents' contenders [like herein respondent Fernandez].

Second, the causes of action of the complaint subject of *Valle Verde* is distinct from that subject of this case. In *Valle Verde,* the cause of action is the individual petitioners' misrepresentation that they were elected as new members of the BOD and the Officers of VVCCI for 2013 to 2014, due to the claim that there was no *quorum* during the February 23, 2013 annual meeting. In this case, the cause of action is the invalidation of corporate acts of VVCCI on the ground of lack of authority of the individual petitioners, as members of the BOD, to suspend the club membership of Fernandez, and the lack of due process which attended his suspension.

Third, there is also a stark contrast between the reliefs sought in the complaint subject of *Valle Verde* and that subject of this case. In *Valle Verde,* VVCCI sought to enjoin the individual petitioners from misrepresenting themselves to be members of the BOD and Officers of the Club. In this case, Fernandez seeks to invalidate the claims of said individual petitioners to the office of BOD of VVCCI and to nullify the annual members' meeting of February 23, 2013, as well as the subsequent board meetings conducted by the individual petitioners, including all resolutions and measures approved thereat relative to his suspension.

The doctrine of the "law of the case" is also inapplicable, because it only applies to the same case involving the same parties. *Valle Verde* is separate and distinct from this case in terms of parties, cause of actions and reliefs sought, despite the fact that both intra-corporate controversies arose from the February 23, 2013 election of the individual petitioners as members of the BOD of VVCCI in an annual meeting which was supposedly adjourned due to lack of *quorum.*

Spouses Sy v. Young[21] explains the concept of the "law of the case,"thus:

> Law of the case has been defined as the opinion delivered on a former appeal. It means that whatever is once irrevocably established the controlling legal rule of decision between the **same parties in**

[21] 711 Phil. 444, 449-450 (2013). (Emphasis supplied; citations omitted).

the same case continues to be the law of the case whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

x x x law of the case does not have the finality of *res judicata.* **Law of the case applies only to the same case**, whereas *res judicata* forecloses parties or privies in one case by what has been done in another case. In law of the case, the rule made by an appellate court cannot be departed from in subsequent proceedings in the same case. Furthermore, law of the case relates entirely to questions of law, while *res judicata* is applicable to the conclusive determination of issues of fact. Although *res judicata* may include questions of law, it is generally concerned with the effect of adjudication in a wholly independent proceeding.

The rationale behind this rule is to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal. Without it, there would be endless litigation. Litigants would be free to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case.

While the doctrines of *res judicata* and "the law of the case" are not applicable, the principle of *stare decisis et non quieta movere* [stand by the decision and disturb not what is settled] applies to this case, but only to the extent that *Valle Verde* held that (1) if the allegations and prayers in the complaint raise the issues of validation of proxies, and the manner and validity of elections, such as the nullification of election was unlawfully conducted due to lack of *quorum,* then such complaint falls under the definition of election contest under the *Interim Rules;* and (2) the real parties-in-interest in an election contest are the contenders, and not the corporation.

Abaria, et al. v. National Labor Relations Commission, et al.[22] expounds on *stare decisis* in this wise:

Under the doctrine of *stare decisis,* once a court has laid down a principle of law as applicable to a certain state of facts, it will adhere

[22] 678 Phil. 64, 97-98 (2011). (Citations omitted).

to that principle and apply it to all future cases where the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.

The doctrine though is not cast in stone for upon a showing that circumstances attendant in a particular case override the great benefits derived by our judicial system from the doctrine of *stare decisis,* the Court is justified in setting it aside. For the Court, as the highest court of the land, may be guided but is not controlled by precedent. Thus, the Court, especially with a new membership, is not obliged to follow blindly a particular decision that it determines, after re-examination, to call for a rectification.

Considering that Fernandez's first cause of action seeks to nullify the claim of the individual petitioners to the office of the BOD of VVCCI due to lack of *quorum* during the election on February 23, 2013, then the Court must adhere to its ruling in *Valle Verde,* and hold that his complaint is partly an election contest. However, *Valle Verde* cannot be invoked to sustain the position that an election contest filed beyond the 15-day reglementary period under the *Interim Rules* is prescribed.

A recap of the facts in *Valle Verde* is in order. The RTC dismissed the complaint for misrepresentation of corporate office filed by VVCCI against the respondents (herein individual petitioners) for lack of cause of action, as the real parties-in-interest were the respondents' contenders. The RTC also ruled that the complaint is essentially an election contest, and should have been filed beyond the 15-day reglementary period under the *Interim Rules.* The CA agreed with the RTC that respondents had no cause of action and that the complaint was essentially an election contest because Valle Verde was seeking the respondents' ouster from their position. While it found no merit in the petition for review on *certiorari* assailing the rulings of the RTC and the CA, the Court merely held that "the factual issues raised relate to the rights of the opposing candidates of the respondents to vote and be voted for; thus, the CA correctly

ruled that Valle Verde has no cause of action." However, the Court did not definitively rule on the effect of the filing of an election contest beyond the 15-day period under the *Interim Rules.* It is not amiss to note that a cursory review of the factual antecedents of *Valle Verde* and the complaint therein would show that it was filed on March 1, 2013, hence, within the 15-day reglementary period from the date of the election during Valle Verde's annual meeting on February 23, 2013. Based on the factual antecedents of *Valle Verde,* it appears that the RTC erred in citing the violation of the 15-day reglementary period under the *Interim Rules* as a ground to dismiss the complaint of VVCCI.

In sum, the CA gravely erred in allowing Fernandez in Commercial Case No. 13-190 to present evidence in connection with the election of the individual petitioners as members of the BOD of VVCCI conducted on February 23, 2013 to invalidate their claims to the office of director, because that is akin to entertaining an election contest filed beyond the 15-day period under the *Interim Rules.*

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED.** The Court of Appeals Decision dated June 30, 2014 and the Resolution dated October 24, 2014 Resolution in CA-G.R. SP No. 134704 are **REVERSED** and **SET ASIDE.** The Order issued by the Regional Trial Court of Pasig City, Branch 158, on January 28, 2014 in Commercial Case No. 13-202, insofar as it did not allow any evidence to be presented relating to the February 23, 2013 elections of the Board of Directors of Valle Verde Country Club, Inc. and the subsequent resolution of the trial court dated February 3, 2014, are hereby **REINSTATED.**

SO ORDERED.

Leonen, Gesmundo, Reyes, A. Jr.,[*] and *Reyes, J. Jr., JJ.*, concur.

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[*] Designated as an additional member per Special Order No. 2588 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 218946. September 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICKY GONZALES *y* COS and RENE GONZALES *y* COS,** *accused,* **RICKY GONZALES *y* COS,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; ABSENT UNLAWFUL AGGRESSION, SELF-DEFENSE, WHETHER COMPLETE OR INCOMPLETE, CANNOT BE APPRECIATED.—** [T]he accused has already admitted that he stabbed and killed the victim, but he advances that his actions were necessary to defend himself. A plea of self-defense admits the commission of the act charged as a crime; accordingly, the *onus probandi* falls on the accused to prove that such killing was justified — failure to discharge which renders the act punishable. Thus, to exonerate himself, the accused must establish; (i) that there was unlawful aggression by the victim; (ii) that the means employed to prevent or repel such aggression were reasonable; and (iii) that there was lack of sufficient provocation on his part. Of the three, unlawful aggression is the foremost requirement; absent such element, self-defense, whether complete or incomplete, cannot be appreciated.

2. **ID.; ID.; ID.; ID.; THE PLEA OF SELF-DEFENSE CANNOT BE JUSTIFIABLY ENTERTAINED WHERE IT IS UNCORROBORATED BY ANY SEPARATE COMPETENT EVIDENCE AND IS IN ITSELF EXTREMELY DOUBTFUL.—** The records of the case indubitably show that Ricky failed to establish that there was unlawful aggression on the part of Bobby. The Court agrees with the CA that Ricky's claim was self-serving, without any corroborating evidence. He did not even give any explanation on why Bobby allegedly attacked him with a knife. The Court, in *Toledo v. People*, held that the plea of self-defense cannot be justifiably entertained where it is uncorroborated by any separate competent evidence and is in itself extremely doubtful. In fact, the evidence is more

in accord with the prosecution's version of the events. Leo, the prosecution eyewitness, positively stated that Ricky was not coming to his brother's aid at the time of the stabbing, as the victim did not retaliate after receiving a blow from Rene.

3. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE; CONDITIONS IN ORDER TO BE APPRECIATED AGAINST THE ACCUSED.—** There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.

4. **ID.; ID.; ID.; ID.; AN ATTACK WHICH WAS SUDDEN AND UNEXPECTED SHOULD NOT NECESSARILY BE DEEMED AS AN ATTACK ATTENDED WITH TREACHERY, FOR THERE MUST BE A SHOWING, FIRST AND FOREMOST, THAT THE OFFENDER CONSCIOUSLY AND DELIBERATELY ADOPTED THE PARTICULAR MEANS, METHODS AND FORMS IN THE EXECUTION OF THE CRIME WHICH TENDED DIRECTLY TO INSURE SUCH EXECUTION, WITHOUT RISK TO HIMSELF.—** The RTC erred when it ruled that treachery was present as said finding is not supported by the evidence. x x x [T]he prosecution was unable to prove that Ricky intentionally sought the victim for the purpose of killing him. Well settled is the rule that the circumstances which would qualify a killing to murder must be proven as indubitably as the crime itself. There must be a showing, first and foremost, that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself. Indeed, it does not always follow that if the

attack was sudden and unexpected, it should necessarily be deemed as an attack attended with treachery. In fact, the wounds of the victim show that the attack was frontal, which indicates that the deceased was not totally without opportunity to defend himself. Moreover, the stabbing, based on the evidence, appears to be the result of a rash and impetuous impulse of the moment arising from the commotion between Bobby and Rene which Ricky witnessed, rather than from a deliberated act of the will.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURTS ARE ACCORDED GREAT WEIGHT, PARTICULARLY IN THE DETERMINATION OF CREDIBILITY OF WITNESSES AS SAID COURTS HAVE THE OPPORTUNITY TO OBSERVE THE WITNESS AND THE MANNER IN WHICH THEY TESTIFIED; EXCEPTIONS.— Generally, findings of fact of the trial courts are accorded great weight, particularly in the determination of credibility of witnesses as said courts have the opportunity to observe the witnesses and the manner in which they testified. However, this can be disregarded when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant facts or circumstances which if considered, would have altered the result. This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.

6. CRIMINAL LAW; REVISED PENAL CODE; HOMICIDE; ABSENT THE QUALIFYING CIRCUMSTANCE OF TREACHERY, THE CRIME IS HOMICIDE AND NOT MURDER; PROPER IMPOSABLE PENALTY.— [W]ith the removal of the qualifying circumstance of treachery, the crime is homicide and not murder. Under Article 249 of the Revised Penal Code, any person found guilty of homicide shall be meted the penalty of *reclusion temporal*, a penalty which contains three periods. Given that Ricky voluntarily surrendered himself, Article 64 (2) states that when only a mitigating circumstance attended the commission of the felony, the penalty shall be imposed in its minimum period. Thus, applying the Indeterminate Sentence Law, the maximum penalty shall be *reclusion temporal* in its minimum period, while the minimum penalty shall be

prision mayor in any of its periods. Thus, he is to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal,* as maximum.

7. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.—[I]n view of the Court's ruling in *People v. Jugueta,* the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

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 appeal[1] filed under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated December 11, 2014 of the Court of Appeals (CA), Second Division in CA-G.R. CR.-H.C. No. 06452, which affirmed the Decision[3] dated September 5, 2013 of the Regional Trial Court of Masbate City, Branch 46 (RTC), in Crim. Case No. 11906, finding herein accused-appellant Ricky Gonzales (Ricky) guilty of the crime of murder under Article 248 of the Revised Penal Code.

The Facts

Ricky and his brother and co-accused Rene Gonzales (Rene) were charged with the crime of murder in an Information dated March 17, 2005. The accusatory portion of which, reads:

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[1] *Rollo,* pp. 18-20.

[2] *Id.* at 2-17. Penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Remedios A. Salazar-Fernando and Danton Q. Bueser.

[3] CA *rollo,* pp. 42-46. Penned by Judge Maximino R. Ables.

That on or about 1:00 o'clock in the morning of January 23, 2005, at Sitio Sabang, Brgy. Bantigue, Masbate City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon the person of one BOBBY SOLOMON, by then and there stabbing him with the use of a knife, hitting him on the chest and on the stomach, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death.

Contrary to Law.[4]

Ricky pleaded not guilty, while Rene remains at large.

Version of the Prosecution

The prosecution presented four witnesses, namely: eyewitness Leo Garcia (Leo); Dr. Renato Quinto (Dr. Quinto); PO3 Dandy Ferriol (PO3 Ferriol); and Bobby Solomon's (Bobby) widow, Mary Jane Solomon (Mary Jane).[5]

Prosecution eyewitness Leo testified that in the morning of January 23, 2005, he was sleeping at his house.[6] At around 1:00 a.m., he was awakened by the cry of his child whose sleep was disturbed by the commotion outside.[7] Leo got up to investigate and, at the same time, to buy cigarettes.[8] Leo then discovered that the commotion came from the house of his neighbor, Bobby.[9] Bobby and his nephew, Rene, were outside

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[4] *Rollo,* p. 3.

[5] *Id.* at 4.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

Bobby's house and were taunting each other.[10] This confrontation led to Rene punching Bobby who failed to retaliate.[11]

Ricky then emerged from the plaza, which was five meters away from Leo's house, and without warning stabbed Bobby three times with a knife which was approximately nine inches long.[12] Bobby was hit at his left forearm, middle of his chest, and at his stomach.[13] When people started arriving to help the victim, Rene and Ricky escaped together.[14]

Dr. Quinto was the doctor who admitted the victim at the Masbate Provincial Hospital on January 23, 2005 at 2:30 in the morning.[15] He testified that the victim suffered four injuries on his body, the most fatal of which was the one he sustained at the upper left quadrant that caused perforations of his large and small intestines, as well as his blood vessels.[16] Bobby died while in surgery.[17]

PO3 Ferriol testified that he was the investigator in relation to the stabbing of the victim. He personally interviewed Leo and Mary Jane on January 24, 2005 or the day after the stabbing incident.[18] He also testified that Barangay Kagawad Dario Gomez (Dario) went to the Masbate City Police Station and turned over the custody of Ricky.[19] He was thereby informed by Dario that Ricky voluntarily surrendered to him.[20]

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[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

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

[17] *Id.* at 5.

[18] *Id.*

[19] *Id.*

[20] *Id.*

Mary Jane testified that Ricky and Rene are the nephews of Bobby.[21] She also mentioned that she had to spend ₱15,000.00 for her deceased husband's hospital bills and undetermined amount for hospital expenses.[22] Unfortunately, she was unable to present any receipt in support thereof.[23]

Version of the Defense

Ricky admitted that he stabbed and killed the victim, but only because it was necessary to defend himself.[24] At around 11:00 p.m. of January 22, 2005, Ricky arrived at a benefit dance in the plaza.[25] He got tired of dancing at around 1:00 a.m. of January 23, 2005, and decided to leave.[26] As he passed by the house of Bobby, Ricky observed that Bobby was staring at him in a bad way.[27] Ricky claimed that he saw Bobby was about to strike him with a knife, but he was fortunate enough to stab him first.[28] When someone fired a warning shot to stop them, he ran away but later voluntarily surrendered himself to their barangay captain upon knowing that Bobby died.[29]

Ruling of the RTC

The RTC found Ricky guilty beyond reasonable doubt of murder. It held that since there was treachery in Ricky's sudden and unexpected attack, the killing was qualified to murder. The dispositive portion of the RTC Decision reads:

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[21] *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 5-6.

[26] *Id*. at 6.

[27] *Id*.

[28] *Id*.

[29] *Id*.

Wherefore, premises considered, this court finds accused RICKY GONZALES Y COS GUILTY beyond reasonable doubt of the crime of MURDER. Considering the attendant circumstance of voluntary surrender pursuant to Article 63 of the Revised Penal Code, accused is hereby sentenced to an imprisonment of reclusion perpetua. His period of detention is credited in his favor. He is also ordered to pay the heirs of Bobby Solomon the amount of Fifty Thousand pesos (₱15,000.00) (sic) as moral damage[s] and Twenty Five Thousand pesos (₱25,000.00) as nominal damage[s].

It appears that the accused Rene Gonzales y Cos remains-at-large despite considerable lapse of time. The case against him is hereby ordered archived pending his arrest.

SO ORDERED.[30]

Ruling of the CA

The CA dismissed the appeal. The CA held that there is no question that Ricky killed the victim. It also found that the RTC was correct in ruling that Ricky miserably failed to prove the justifying circumstance of self-defense.[31]

Further, it ruled that there was indeed treachery as Bobby was completely deprived of a real chance to defend himself.[32] He was just boxed by Rene when Ricky suddenly arrived and stabbed him.[33] The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the appeal is hereby **DENIED.**The Decision dated September 5, 2013 of the Regional Trial Court, Branch 46, Masbate City is **AFFIRMED WITH MODIFICATION** in that the award of nominal damages is **DELETED.** Consequently, accused-appellant Ricky Gonzales is **ORDERED** to pay the heirs of victim Bobby Solomon the following: (a) Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity; (b) Seventy-Five Thousand Pesos (₱75,000.00) as moral damages;

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

[31] *Rollo,* p. 10.

[32] *Id*. at 13.

[33] *Id*.

(c) Twenty-Five Thousand Pesos (₱25,000.00) as temperate damages; and (d) interest on all award of damages at the rate of six percent (6%) per annum reckoned from the date of finality of this Decision until fully paid.

SO ORDERED.[34]

The Court's Ruling

The appeal is partly meritorious.

The elements of self-defense were not established.

In the case at bar, the accused has already admitted that he stabbed and killed the victim, but he advances that his actions were necessary to defend himself. A plea of self-defense admits the commission of the act charged as a crime; accordingly, the *onus probandi* falls on the accused to prove that such killing was justified — failure to discharge which renders the act punishable.[35]

Thus, to exonerate himself, the accused must establish: (i) that there was unlawful aggression by the victim; (ii) that the means employed to prevent or repel such aggression were reasonable; and (iii) that there was lack of sufficient provocation on his part.[36] Of the three, unlawful aggression is the foremost requirement; absent such element, self-defense, whether complete or incomplete, cannot be appreciated.[37]

The records of the case indubitably show that Ricky failed to establish that there was unlawful aggression on the part of Bobby. The Court agrees with the CA that Ricky's claim was

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[34] *Id*. at 16.

[35] *People v. Raytos,* G.R. No. 225623, June 7, 2017, p. 6, citing *People v. Escarlos,* 457 Phil. 580, 594-595 (2003).

[36] *Id*.

[37] *Id.*, citing *People v. Dulin,* G.R. No. 171284, June 29, 2015, 760 SCRA 413, 425.

self-serving, without any corroborating evidence.[38] He did not even give any explanation on why Bobby allegedly attacked him with a knife.[39] The Court, in *Toledo v. People,*[40] held that the plea of self-defense cannot be justifiably entertained where it is uncorroborated by any separate competent evidence and is in itself extremely doubtful.

In fact, the evidence is more in accord with the prosecution's version of the events. Leo, the prosecution eyewitness, positively stated that Ricky was not coming to his brother's aid at the time of the stabbing, as the victim did not retaliate after receiving a blow from Rene. Leo's testimony is as follows:

Q: And what happened after your child woke up?
A: I heard a commotion outside our house.

Q: Can you tell us what was the commotion about?
A: Caused by teasing each other and after my child woke up I also woke up.

Q: And after you woke up what happened next?
A: When I woke up, I went outside our house to buy a cigarette.

x x x x x x x x x

Q: Mr. Witness, after [you] woke up and went outside x x x the house to buy a [cigarette], can you tell us what is the incident that happened?
A: I saw Bobby Solomon was boxed by Rene.

x x x x x x x x x

Q: And after this Rene Gonzales boxed Bobby Solomon, what happened next?
A: I saw Ricky Gonzales get out o[f] the plaza and [stab] Bobby Solomon.

x x x x x x x x x

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[38] *Rollo,* p. 10.

[39] *Id*.

[40] 482 Phil. 292, 309 (2004).

Q: For how many times did Ricky Gonzales [stab] Bobby Solomon?
A: 3 times.

Q: And can you tell this Court [where] was Bobby Solomon [stabbed by] Ricky Gonzales?
A: Witness pointed to his left forearm, at the middle of his chest and at the stomach.

Q: What was the weapon used by Bobby Solomon or Ricky Gonzales rather in stabbing Bobby Solomon?
A: Knife which is about 9 inches long.

x x x x x x x x x

Q: And after Ricky stabbed [Bobby 3 times], what happened next?
A: They helped and brought Bobby to the hospital.

Q: What about Ricky and Rene?
A: Returned to their house.

x x x x x x x x x

Q: And because Rene boxed Bobby and Bobby was hit, Bobby retaliated immediately, right?
A: No Sir.

Q: And how can you be sure x x x that Bobby did not retaliate when he was boxed by Rene?
A: Because I saw it.

x x x x x x x x x

Q: And is it possible also that Ricky merely acted [in] defense of his brother?
A: No sir.[41]

All told, the Court finds the evidence sorely lacking in establishing self-defense on the part of Ricky.

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[41] *Rollo,* pp. 11-12.

The prosecution failed to prove treachery.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[42] To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[43] The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.[44]

The RTC erred when it ruled that treachery was present as said finding is not supported by the evidence. It did not even fully discuss its appreciation of the circumstance of treachery and merely held as follows:

> Was there a treachery in the killing of Bobby Solomon? This court rules in the affirmative. **The stabbing of the victim by the accused was so sudden that the victim had no opportunity to defend himself.** After being boxed by his brother/co-accused Rene Gonzales, accused Ricky Gonzales came to the aid of his brother. However, his act does not constitute defense of a relative since the means he employed to defend his brother [is] above and over that should be employed. It was his brother who boxed the victim. His brother had the upperhand in the fight. Why should he used (sic) a knife to help his brother is appalling and does not constitute a defense but rather it shows a resolute mind to kill immediately the victim.[45] (Emphasis ours)

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[42] *People v. Duran, Jr.,* G.R. No. 215748, November 20, 2017, p. 11.

[43] *Id*., citing *People v. Dulin,* 762 Phil. 24, 40 (2015).

[44] *Id*., citing *People v. Escote, Jr.,* 448 Phil. 749, 786 (2003).

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

Accordingly, the prosecution was unable to prove that Ricky intentionally sought the victim for the purpose of killing him. Well settled is the rule that the circumstances which would qualify a killing to murder must be proven as indubitably as the crime itself.[46] There must be a showing, first and foremost, that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.[47]

Indeed, it does not always follow that if the attack was sudden and unexpected, it should necessarily be deemed as an attack attended with treachery.[48] In fact, the wounds of the victim show that the attack was frontal, which indicates that the deceased was not totally without opportunity to defend himself.[49] Moreover, the stabbing, based on the evidence, appears to be the result of a rash and impetuous impulse of the moment arising from the commotion between Bobby and Rene which Ricky witnessed, rather than from a deliberated act of the will. As far as the prosecution's evidence is concerned, it was only able to establish the following: (a) a commotion was caused when Rene and Bobby were taunting each other; (b) Rene punched Bobby and (c) Ricky went out of the plaza and stabbed Bobby. Considering the foregoing, it was not proven that Ricky deliberately and consciously employed means, methods, or forms in the execution of the criminal act to ensure that Bobby could not defend himself. Thus, it is not possible to appreciate treachery against Ricky.

Generally, findings of fact of the trial courts are accorded great weight, particularly in the determination of credibility of

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[46] *People v. Tugbo, Jr.,* 273 Phil. 346, 351 (1991) citing *People v. Vicente,* 225 Phil. 306 (1986); *People v. Salcedo,* 254 Phil. 74 (1989); *People v. Raquipo,* 266 Phil. 619 (1990).

[47] *Id*., citing REVISED PENAL CODE, Art. 14, par. 16.

[48] *Id*., citing *People v. Sabanal,* 254 Phil. 433 (1989).

[49] See *id*.

witnesses as said courts have the opportunity to observe the witness and the manner in which they testified.[50] However, this can be disregarded when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant facts or circumstances which if considered, would have altered the result.[51] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.[52]

Therefore, with the removal of the qualifying circumstance of treachery, the crime is homicide and not murder. Under Article 249 of the Revised Penal Code, any person found guilty of homicide shall be meted the penalty of *reclusion temporal,* a penalty which contains three periods.[53] Given that Ricky voluntarily surrendered himself, Article 64 (2) states that when only a mitigating circumstance attended the commission of the felony, the penalty shall be imposed in its minimum period.[54] Thus, applying the Indeterminate Sentence Law, the maximum penalty shall be *reclusion temporal* in its minimum period, while the minimum penalty shall be *prision mayor* in any of its periods.[55] Thus, he is to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor,* as minimum, to twelve (12) years and one (1) day *of reclusion temporal,* as maximum.[56]

Finally, in view of the Court's ruling in *People v. Jugueta,*[57] the damages awarded in the questioned Decision are hereby

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[50] *People v. Duran, Jr., supra* note 42 at 14.

[51] *Id*., citing *People v. Gaspar,* 376 Phil. 762, 785 (1999).

[52] *Id*., citing *Luz v. People,* 683 Phil. 399, 406 (2012).

[53] *People v. Endaya, Jr.,* G.R. No. 225745, February 28, 2018, p. 9.

[54] *Id*.

[55] *Id*.

[56] *Id*. at 10.

[57] *People v. Jugueta,* 783 Phil. 806 (2016).

modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED.** The Court **DECLARES** accused-appellant Ricky Gonzales y Cos **GUILTY** of **HOMICIDE,** with the mitigating circumstance of voluntary surrender, for which he is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor,* as minimum, to twelve (12) years and one (1) day of *reclusion temporal,* as maximum. He is further ordered to pay the heirs of Bobby Solomon the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 220042. September 5, 2018]

CASA MILAN HOMEOWNERS ASSOCIATION, INC., *petitioner, vs.* **THE ROMAN CATHOLIC ARCHBISHOP OF MANILA and REGISTER OF DEEDS OF QUEZON CITY,** *respondents.*

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[*] Additional member per S.O. No. 2587 dated August 28, 2018.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. (P.D.) 957 AS AMENDED BY P.D. 1216; THE 1991 *WHITE PLAINS* CASE COMPELLING THE SUBDIVISION OWNERS AND DEVELOPERS TO DONATE OPEN SPACES TO LOCAL GOVERNMENT OR HOMEOWNERS ASSOCIATION PURSUANT TO SECTION 31 OF P.D. 957 WAS OVERTURNED BY THE 1998 *WHITE PLAINS* DECISION WHICH GAVE SUCH OWNERS AND DEVELOPERS THE FREEDOM TO RETAIN OR DISPOSE OF THE OPEN SPACE IN WHATEVER MANNER THEY DESIRE.—** In the 1991 *White Plains* case, this Court held that subdivision owners and developers are **compelled to donate**, among others, the subdivision's open spaces to the local government or to the homeowners association, in accordance with Section 31. However, this Court overturned the 1991 *White Plains* Decision and held in the subsequent 1998 *White Plains* Decision that open spaces belong to the subdivision owners and developers primarily, meaning they have the **freedom to retain or dispose** of the open space in whatever manner they desire.

2. **ID.; ID.; ID.; THE TRANSFER OF OWNERSHIP TO THE LOCAL GOVERNMENT IS NOT AUTOMATIC, IT REQUIRES A POSITIVE ACT FROM THE OWNER OR DEVELOPER BEFORE THE LOCAL GOVERNMENT OR HOMEOWNERS ASSOCIATION CAN ACQUIRE DOMINION OVER OPEN SPACES.—** [P]etitioner's allegation that the Deed of Donation is invalid must have been based on the confusing wording of Section 31. However, jurisprudential law is clear. The transfer of ownership from the subdivision owner or developer to the local government is not automatic, but requires a positive act from the owner or developer before the city, municipality, or homeowners association can acquire dominion over the subdivision open spaces. Therefore, the donation made by Regalado in favor of RCAM is valid and legal because no positive act of donation has yet been made in favor of the local government or the homeowners association. The title to the open space is validly registered in the name of RCAM; thus, the disputed lot remains privately-owned by RCAM. RCAM was not in bad faith when

it built a parish church on the open space because of its valid title over the subject property.

3. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; TWO ASPECTS, EXPLAINED; THE ACTION IS BARRED BY PRIOR JUDGMENT SINCE THE ISSUE OF OWNERSHIP HAD ALREADY BEEN RESOLVED IN THE CASE FOR APPROVAL OF THE DEED OF DONATION, IT CANNOT BE RELITIGATED IN THE INSTANT CASE.— The doctrine of *res judicata* has two aspects. The first aspect is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand, or cause of action. The second aspect precludes the relitigation of a particular fact or issue in another action between the same parties or their successors in interest, on a different claim or cause of action. The second aspect extends to questions "necessarily involved in an issue, and necessarily adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself x x x." In the case at bar, the second aspect applies. The determination of RCAM's right over the subject open space and RCAM's right to construct a parish church on the subject open space hinges on the validity of the Deed of Donation executed by Regalado to RCAM. Since the issue of ownership had been resolved in the case for the approval of the Deed of Donation, it cannot again be litigated in the instant case without virtually impeaching the correctness of the decision in the former case. Hence, RCAM, as the lawful owner of the subject open space by virtue of the Deed of Donation executed by Regalado, has a better right to possess and own the lot in question as against petitioner whose claim of ownership has been rejected with finality in LRC Case No. 07-61570.

4. ID.; ID.; ID.; *LITIS PENDENTIA*; REQUISITES THAT MUST CONCUR TO SUCCESSFULLY INVOKE *LITIS PENDENTIA*, PRESENT; ABSOLUTE IDENTITY OF THE CAUSES OF ACTION IS NOT REQUIRED.— *Litis*

pendentia, "a pending suit," is interposed as a ground for the dismissal of a civil action pending in court. For *litis pendentia* to be invoked, the concurrence of the following requisites is necessary: (a) identity of parties or at least such as represent the same interest in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity in the two cases should be such that the judgment rendered in one would, regardless of which party is successful, amount to *res judicata* in the other. Contrary to petitioner's contention and similar to this Court's ruling above regarding *res judicata*, there is identity in the reliefs prayed for and the facts upon which these reliefs were based. A perusal of both petitions reveals that both parties similarly pray to be recognized as the legal owner of the subject lot and to be allowed to conduct activities on the lot. x x x It is hornbook rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or relief sought. One test in ascertaining whether two suits relate to a single or common cause of action is whether the same facts or evidence would sustain both actions in that the judgment in the first case is a bar to the subsequent action.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Faustino R. Madriaga, Jr. for respondent The Roman Catholic Archbishop of Manila.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review under Rule 45 of the Rules of Court to reverse the Decision[1] dated 20 January 2015 and the

[1] *Rollo*, pp. 41-A-48. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Remedios A. Salazar-Fernando and Edwin D. Sorongon concurring.

Resolution[2] dated 10 August 2015 of the Court of Appeals in CA-G.R. CV No. 98325. The Court of Appeals affirmed the Order[3] of the Regional Trial Court of Quezon City, Branch 100, granting the Motion to Dismiss filed by respondent The Roman Catholic Archbishop of Manila (RCAM) on the ground of failure to state a cause of action.

The Facts

B.C. Regalado & Co., Inc. (Regalado) is the owner of the lots of Casa Milan Subdivision in North Fairview, Quezon City. The approved subdivision plan of Casa Milan designated Lot 34, Block 143, consisting of 6,083 square meters, as an open space or park/playground under Transfer Certificate of Title (TCT) No. RT-78112 in the name of Regalado.

In 1995, RCAM started constructing a church on a portion of Lot 34, Block 143. According to petitioner, in June 1995, RCAM applied with the Housing and Land Use Regulatory Board (HLURB) for the segregation of a 4,000-square meter portion of Lot 34, Block 143 to be used as a parish church in Casa Milan.

The HLURB, through its Executive Brief,[4] stated that the party requesting for the segregation/conversion of the lot was not RCAM, but New North Fairview Realty and Development, Inc. (developer). The Executive Brief further stated that the request was supported by a letter from the residents. The letter requested that the said lot be apportioned for the construction of a multipurpose center. The request was recommended for approval. The Executive Brief and request were accompanied by a letter from the residents and not a written permission from the homeowners association because the petitioner, Casa Milan Homeowners Association, Inc., was only incorporated in 1999,

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[2] *Id.* at 51.

[3] *Id.* at 176-182.

[4] *Id.* at 106.

as shown by the Articles of Incorporation[5] attached to the complaint. The application for the segregation and the letter from the residents were sent in 1995.

Notwithstanding such fact and petitioner's omission to state the date of its incorporation, petitioner alleged that the HLURB's approval was "suspicious, to say the least" because the request was purportedly without the written consent of the then non-existent homeowners association or of a majority of the residents of Casa Milan.

On 29 October 2002, during the pendency of the petition for conversion, Regalado executed a Deed of Donation[6] over the 4,000-square meter portion of Lot 34, Block 143 in favor of RCAM.

On 5 March 2007, the application for the segregation was approved in a Resolution[7] by the City Council of Quezon City, signed by then Vice-Mayor Herbert Bautista. The Resolution also authorized the partial alteration and subsequent conversion of the lot into a multipurpose center. The 4,000-square meter lot is covered by TCT No. N-305323.[8] The remaining 2,083-square meter portion, issued in favor of Regalado, is covered by TCT No. N-305324.[9]

On 3 December 2009, petitioner filed a complaint[10] against RCAM, Regalado, the developer, and the Register of Deeds of Quezon City. The complaint had two main allegations: (1) the Deed of Donation covering a part of the open space is invalid because it was done without petitioner's written consent; and (2) RCAM was in bad faith when it built a parish church on the property without color of title. It prayed for the following reliefs:

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[5] *Id.* at 99-101.

[6] *Id.* at 108, 113-115.

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

[8] *Id.* at 131.

[9] *Id.* at 103.

[10] *Id.* at 84-97. Captioned as a petition.

(1) [T]he [petition] be given due course and a temporary restraining order and/or writ of preliminary injunction issue *ex parte*:

> (a) restraining respondent RCAM and all those acting under it from continuing with the construction of the church on the open space in Casa Milan and prohibiting the latter from conducting any activity in its premises;
>
> (b) restraining respondent RD Quezon City from disposing and or annotating on the title of the open space;

(2) [That] judgment be rendered:

> (a) ordering the cancellation of TCT Nos. 305323 and 305324 and restoring the original TCT No. RT-7 8112;
>
> (b) ordering respondent RCAM to turn over the peaceful possession of the entire open space to petitioner and demolish the improvements it introduced therein at its own expense;
>
> (c) making permanent the temporary restraining order or preliminary injunction prohibiting respondent RCAM from further constructing the church;
>
> (d) ordering respondents to pay the cost[s] of suit.[11]

RCAM filed a Motion to Dismiss,[12] dated 17 December 2009, based on the following grounds:

(1) The filing of the instant complaint violates the rule on forum shopping;

(2) There is another action pending between the petitioner and herein respondent for the same cause;

(3) The cause of action is barred by prior judgment; and

(4) The complaint states no cause of action against herein respondent.[13]

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[11] *Id*. at 95.

[12] *Id*. at 117-124.

[13] *Id*. at 117-118.

The Ruling of the Regional Trial Court

In its Order,[14] the Regional Trial Court, Branch 100 of Quezon City, resolved the Motion to Dismiss in favor of respondents for petitioner's failure to state a cause of action. The dispositive portion reads:

> WHEREFORE, premises considered, the Motion to Dismiss dated 17 December 2009 filed by defendant The Roman Catholic Archbishop of Manila is granted. Accordingly, the Complaint in the case at bar is dismissed for lack of cause of action.
>
> SO ORDERED.[15]

The trial court denied petitioner's Motion for Reconsideration[16] in its Order[17] dated 2 September 2011. The dispositive portion reads:

> WHEREFORE, finding no persuasive argument to warrant a reversal or modification of this court's findings in the challenged Order x x x, the petitioner's Motion for Reconsideration dated 25 February 2011 is hereby denied for lack of merit.
>
> SO ORDERED.[18]

The Ruling of the Court of Appeals

In its Decision[19] dated 20 January 2015, the Court of Appeals found no merit in petitioner's appeal. It held that:

> Indeed, nowhere in the Complaint does it appear that the Association ever acquired a legal right over the subject open space as would obligate defendants to secure its written consent to the construction of the subject parish church and to the donation by Regalado of the

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[14] *Id*. at 176-182.

[15] *Id*. at 182.

[16] *Id*. at 184-190.

[17] *Id*. at 192-193.

[18] *Id*. at 193.

[19] *Id*. at 41-A-48.

4,000-square meter portion to the RCAM. As the trial court correctly ruled, the Association had no cause of action and failed to state a cause of action in the case, thus compelling the dismissal of its complaint.

WHEREFORE, the decision appealed from is AFFIRMED *in toto*.

SO ORDERED.[20]

The subsequent Motion for Reconsideration[21] filed by petitioner was denied by the Court of Appeals. Hence, this petition for review.

The Issues

(1) Whether the Court of Appeals committed grave reversible error in affirming the dismissal of the complaint for failure to state a cause of action;

(2) Whether the Court of Appeals committed grave reversible error in ruling that the action is barred by prior judgment; and

(3) Whether the Court of Appeals committed grave reversible error in ruling that the action is barred by *litis pendentia*.

The Ruling of this Court

Complaint states no cause of action.

Under Section 1(g), Rule 16 of the Rules of Court,[22] a motion to dismiss may be made on the ground that the pleading states no cause of action.

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[20] *Id*. at 47.

[21] *Id*. at 55-63.

[22] Section 1(g), Rule 16 of the Rules of Court states:

SECTION 1. *Grounds*. – Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x x x x x x

(g) That the pleading asserting the claim states no cause of action;

x x x x x x x x x

The case of *Zuñiga-Santos v. Santos-Gran*[23] explains that:

> A complaint states a cause of action if it sufficiently avers the existence of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission on the part of the named defendant violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. If the allegations of the complaint do not state the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.

In its complaint, petitioner alleged the following causes of action: (1) the Deed of Donation covering a part of the open space is invalid; and (2) RCAM was in bad faith when it built a parish church on the property without color of title.

Despite these causes of action, however, petitioner failed to allege legal and factual bases of its asserted right over the open space.

It is established that the title over the subject land was initially in the name of Regalado. Subsequently, on 29 October 2002, Regalado donated the subject land to RCAM; thus, a new title was issued in RCAM's name. Petitioner alleged that the Deed of Donation executed by Regalado in favor of RCAM is null and void, and did not produce any legal effect because the subject land, denominated as an "open space" under Presidential Decree No. (P.D.) 1216,[24] is inalienable. Petitioner cited a whereas

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[23] 745 Phil. 171, 180 (2014), citing *Balo v. Court of Appeals*, 508 Phil. 224, 232 (2005) and *Macaslang v. Spouses Zamora*, 664 Phil. 337, 353-354 (2011).

[24] Defining "Open Space" in Residential Subdivisions and Amending Section 31 of Presidential Decree No. 957 Requiring Subdivision Owners to Provide Roads, Alleys, Sidewalks and Reserve Open Space for Parks or Recreational Use (1977).

clause of P.D. No. 1216 in defining an "open space" as "beyond the commerce of men."[25] It states:

WHEREAS, such open spaces, roads, alleys and sidewalks in residential subdivision are for public use and are, therefore, beyond the commerce of men.

We disagree. Petitioner's mere reliance on a whereas clause of P.D. No. 1216 to nullify a donation is unacceptable. Section 31 of P.D. No. 957,[26] as amended by Section 2 of P.D. No. 1216, is the basis for the definition of "open spaces" in residential subdivisions:

Section 2. Section 31 of Presidential Decree No. 957 is hereby amended to read as follows:

> Section 31. *Roads, Alleys, Sidewalks and Open spaces*. The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or developer shall reserve the thirty percent (30%) of the gross area for open space. Such open space shall have the following standards allocated exclusively for parks, playgrounds and recreational use:
>
> x x x x x x x x x
>
> These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.
>
> Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local governments to accept provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks

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[25] *Rollo*, pp. 15, 90.

[26] The Subdivision and Condominium Buyers' Protective Decree (1976).

and playgrounds donated thereafter shall be converted to any other purpose or purposes.

In the recent case of *Republic v. Spouses Llamas*,[27] this Court explained the definition of "open spaces" in accordance with Section 31 of P.D. No. 957, as amended, by differentiating the 1991 case of *White Plains Association, Inc. v. Legaspi*[28] from the 1998 landmark case of *White Plains Homeowners Association, Inc. v. Court of Appeals*.[29]

In the 1991 *White Plains* case, this Court held that subdivision owners and developers are **compelled to donate**, among others, the subdivision's open spaces to the local government or to the homeowners association, in accordance with Section 31.

However, this Court overturned the 1991 *White Plains* Decision and held in the subsequent 1998 *White Plains* Decision that open spaces belong to the subdivision owners and developers primarily, meaning they have the **freedom to retain or dispose** of the open space in whatever manner they desire. The *Spouses Llamas* case explained it clearly:

> The 1998 *White Plains* Decision unequivocally repudiated the 1991 White Plains Decision's allusion to a compulsion on subdivision developers to cede subdivision road lots to government, so much that it characterized such compulsion as an "illegal taking." It did away with any preference for government's capacity to compel cession, and instead, **emphasized the primacy of subdivision owners' and developers' freedom in retaining or disposing of spaces** developed as roads. In making its characterization of an "illegal taking," this Court quoted with approval the statement of the Court of Appeals:
>
> > **Only after a subdivision owner has developed a road may it be donated to the local government, if it so desires.** On the other hand, **a subdivision owner may even opt to retain ownership of private subdivision roads, as in fact is the usual**

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[27] G.R. No. 194190, 25 January 2017, 815 SCRA 531.

[28] 271 Phil. 806 (1991).

[29] 358 Phil. 184 (1998).

practice of exclusive residential subdivisions for example those in Makati City.[30] (Emphasis supplied)

This Court went on further:

The last paragraph of Section 31 requires – note the use of the word "shall" - subdivision developers to donate to the city or municipality with territorial jurisdiction over the subdivision project all such roads, alleys, sidewalks, and open spaces. It also imposes upon cities and municipalities the concomitant obligation or compulsion to accept such donations.

x x x x x x x x x

The last paragraph of Section 31 is oxymoronic. One cannot speak of a donation and a compulsion in the same breath.

x x x x x x x x x

Section 31's compulsion to donate (and concomitant compulsion to accept) cannot be sustained as valid. Not only does it run afoul of basic legal concepts; it also fails to withstand the more elementary test of logic and common sense. As opposed to this, **the position that** not only **is more reasonable and logical**, but also maintains harmony between our laws, **is that which maintains subdivision owner's or developer's freedom to donate or not to donate**. This is the position of the 1998 *White Plains* Decision. Moreover, as this 1998 Decision has emphasized, to force this donation and to preclude any compensation, is to suffer an illegal taking.[31] (Emphasis supplied)

In this case, petitioner's allegation that the Deed of Donation is invalid must have been based on the confusing wording of Section 31. However, jurisprudential law is clear. The transfer of ownership from the subdivision owner or developer to the local government is not automatic, but requires a positive act from the owner or developer before the city, municipality, or homeowners association can acquire dominion over the subdivision open spaces.[32] Therefore, the donation made by

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[30] *Supra* note 27, at 542.

[31] *Supra* note 27, at 543-545.

[32] *Woodridge School, Inc. v. ARB Construction Co., Inc.*, 545 Phil. 83, 89 (2007).

Regalado in favor of RCAM is valid and legal because no positive act of donation has yet been made in favor of the local government or the homeowners association. The title to the open space is validly registered in the name of RCAM; thus, the disputed lot remains privately-owned by RCAM. RCAM was not in bad faith when it built a parish church on the open space because of its valid title over the subject property.

Despite this established fact, however, Regalado and the developer still obtained a letter from the residents of the subdivision to satisfy the requirement under Section 22 of P.D. No. 957. Section 22 states:

> Section 22. *Alteration of Plans*. No owner or developer shall change or alter the roads, open spaces, infrastructures, facilities for public use and/or other form of subdivision development as contained in the approved subdivision plan and/or represented in its advertisements, without the permission of the [National Housing] Authority [now HLURB] and the written conformity or consent of the duly organized homeowners association, or in the absence of the latter, by the majority of the lot buyers in the subdivision.

Only a letter from the residents was obtained at that time because petitioner Casa Milan Homeowners Association, Inc. was incorporated only in 1999, four years after the HLURB's Resolution to accept and approve the residents' petition for conversion of the open space into a parish church. Thus, petitioner could not have consented to the developer's request in 1995 because the association was still inexistent. The Executive Brief of the HLURB is clear:

x x x x x x x x x

> **In support [of] their request, the developer submitted [a] letter from the resident[s]** address[ed] to the Honorable Mayor of Quezon City thru Comm. Ernesto C. Mendiola petitioning for the use of said lot into a parish church.
>
> Evaluation made on the plans on file with this Office shows that the proposed conversion does not affect the open space allocation and requirements of the above project[,] particularly the 3.5% requirements for Parks and Playground.

With the above findings, x x x the approval of their request for conversion [is hereby recommended].[33] (Emphasis supplied)

This Court agrees with the Regional Trial Court and Court of Appeals in holding that "nowhere in the complaint does it appear that [petitioner] Association ever acquired a legal right over the subject open space as would obligate defendants to secure its written consent to the construction of the subject parish church and to the donation by Regalado of the 4,000-square meter portion to the RCAM."[34] The Court of Appeals did not commit grave reversible error in affirming the dismissal of the complaint for failure to state a cause of action.

The action is barred by prior judgment.

Petitioner contends that the prior judgment in LRC Case No. 07-61570 approving the Deed of Donation executed by Regalado in favor of RCAM does not bar the petition to restrain the construction of the church in the subdivision, and consequently, to cancel TCT Nos. 305323 and 305324 issued in favor of RCAM, and to restore TCT No. RT-78112. Petitioner contends that not all the elements of *res judicata* were present; there was no identity of parties and no identity in the causes of action.

We disagree. The two cases, although involving different parties and different causes of action, have the same underlying issue, that is, whether or not RCAM validly owns the subject property.

The doctrine of *res judicata* is embodied in Section 47, Rule 39 of the Rules of Court:

Section 47. *Effect of judgments or final orders*. – The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

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[33] *Rollo*, p. 106.

[34] *Id*. at 47.

x x x x x x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The doctrine of *res judicata* has two aspects. The first aspect is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand, or cause of action. The second aspect precludes the relitigation of a particular fact or issue in another action between the same parties or their successors in interest, on a different claim or cause of action.[35] The second aspect extends to questions "necessarily involved in an issue, and necessarily adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself x x x."[36]

In the case at bar, the second aspect applies. The determination of RCAM's right over the subject open space and RCAM's right to construct a parish church on the subject open space hinges on the validity of the Deed of Donation executed by

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[35] *Spouses Barretto v. Court of Appeals*, 381 Phil. 580, 589 (2000).

[36] *Prudential Bank v. Mauricio*, 679 Phil. 369, 389 (2012), citing *Lopez v. Reyes*, 166 Phil. 641, 650 (1977).

Regalado to RCAM. Since the issue of ownership had been resolved in the case for the approval of the Deed of Donation, it cannot again be litigated in the instant case without virtually impeaching the correctness of the decision in the former case. Hence, RCAM, as the lawful owner of the subject open space by virtue of the Deed of Donation executed by Regalado, has a better right to possess and own the lot in question as against petitioner whose claim of ownership has been rejected with finality in LRC Case No. 07-61570.

The action is barred by litis pendentia.

Petitioner alleges that the reliefs prayed for in this petition are different from the reliefs prayed for by RCAM, this time, in another case docketed as S.C.A. No. Q-09-65019. Thus, the action is not barred by *litis pendentia*. In its petition for review, petitioner contends that:

> RCAM simply prayed that it be allowed to enter and to construct in Casa Milan Subdivision. On the other hand, petitioner prays for the cancellation of TCT Nos. 305323 and 305324, and restoring the original TCT No. RT-78112 on the basis of: (a) lack of written consent of petitioner or the majority of the homeowners of Casa Milan Subdivision, in the alteration of the Subject Property; and (b) the nullity of the Deed of Donation in favor of RCAM covering an Open Space. The prayers are distinct.[37]

Litis pendentia, "a pending suit," is interposed as a ground for the dismissal of a civil action pending in court. For *litis pendentia* to be invoked, the concurrence of the following requisites is necessary: (a) identity of parties or at least such as represent the same interest in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) the identity in the two cases should be such that the judgment rendered in one would, regardless of which party is successful, amount to *res judicata* in the other.[38]

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[37] *Rollo*, p. 34.

[38] *Feliciano v. Court of Appeals*, 350 Phil. 499, 505-506 (1998).

Contrary to petitioner's contention and similar to this Court's ruling above regarding *res judicata*, there is identity in the reliefs prayed for and the facts upon which these reliefs were based. A perusal of both petitions reveals that both parties similarly pray to be recognized as the legal owner of the subject lot and to be allowed to conduct activities on the lot. In the former case docketed as S.C.A. No. Q-09-65019, RCAM's prayer reads:

> Wherefore, premises considered, it is most respectfully prayed that, after hearing, this Honorable Court issue a Writ of Mandamus, commanding the respondents:
>
> A. To respect the rights of the petitioner [RCAM] over the property in question;
>
> B. To allow the entry of vehicles delivering construction materials to the site;
>
> C. To allow construction personnel to enter and to proceed with the construction;
>
> x x x x x x x x x x x x
>
> Pending further proceedings, it is most respectfully prayed that this Honorable Court forthwith issue a Writ of Preliminary Injunction ordering the respondents, individually and collectively, not to enforce their Memo dated May 07, 2009 in so far as delivery of construction materials for the church edifice is concerned and not to interfere with or prevent the continuation of the construction.
>
> x x x x x x x x x x x x[39]

In contrast, the reliefs prayed for in the petition subject of the appeal read:

> WHEREFORE, it is respectfully prayed that -
>
> 1. Upon filing of this Petition, the same be given due course and a temporary restraining order and/or writ of preliminary injunction issue *ex parte*;

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[39] *Rollo*, p. 32.

a. Restraining respondent RCAM and all those acting under it from continuing with the construction of the church on the open space in Casa Milan and prohibiting the latter from conducting any activity in its premises;

x x x x x x x x x

2. After due proceedings, judgment be rendered:

a. Ordering the cancellation of TCT Nos. 305323 and 305324, and restoring the original TCT No. RT-78112;

b. Ordering respondent RCAM to turn over the peaceful possession of the entire open space to petitioner and demolish the improvements it introduced therein at its own expense;

c. Making permanent the temporary restraining order or preliminary injunction prohibiting respondent RCAM from further constructing the church;

d. Ordering respondents to pay the cost[s] of suit.

Other reliefs are likewise prayed for.[40]

It is hornbook rule that identity of causes of action does not mean absolute identity; otherwise, a party could easily escape the operation of *res judicata* by changing the form of the action or relief sought. One test in ascertaining whether two suits relate to a single or common cause of action is whether the same facts or evidence would sustain both actions in that the judgment in the first case is a bar to the subsequent action.[41]

This Court takes note of the fact that a prior judgment, LRC Case No. 07-61570, had already approved the Deed of Donation executed by Regalado in favor of RCAM. Thus, the issues in the pending action, S.C.A. No. Q-09-65019, could easily be resolved in favor of RCAM by presenting as evidence the decision approving Regalado's Deed of Donation. Subsequently, the issues in the present petition will only be resolved by using the same evidence, that is, the decision approving Regalado's Deed of

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

[41] *Yap v. Chua*, 687 Phil. 392, 402 (2012).

Donation in favor of RCAM. Thus, the judgment in the first case, S.C.A. No. Q-09-65019, would be a bar to this petition before us.

WHEREFORE, the petition is **DENIED** and the assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 98325 are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, A. Jr., and *Reyes, J. Jr.*,* *JJ.*, concur.

THIRD DIVISION

[G.R. No. 221458. September 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCELO SANCHEZ *y* CALDERON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— To secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. 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 important

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* Designated additional member per Special Order No. 2587 dated 28 August 2018.

is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the appellant.

2. **ID.; ID.; IN ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS, THE DRUGS CONFISCATED FROM THE ACCUSED CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE; THUS, EVERY LINK IN THE CHAIN OF CUSTODY MUST BE PROVED BY THE PROSECUTION.—** 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." x x x The prosecution has the duty to prove every link in the chain, from the moment the dangerous drug was seized from the appellant until the time it is offered in court as evidence. The marking of the seized item, the first link in the chain of custody, is crucial in proving an unbroken chain of custody as it is the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point.

3. **ID.; ID.; ID.; FOUR LINKS IN THE CHAIN OF CUSTODY; ALTHOUGH THE SEIZED ITEM WAS IMMEDIATELY MARKED AND THE SUCCEEDING LINKS HAVE BEEN ESTABLISHED, THE CHAIN OF CUSTODY IS STILL DEEMED BROKEN WHEN REASONABLE DOUBT EXIST CONCERNING THE VERY MARKING PLACED ON THE SPECIMEN WHICH COULD HAVE SUCCESSFULLY ESTABLISHED THE IDENTITY OF THE *CORPUS DELICTI*; HENCE, ACCUSED MUST BE ACQUITTED.—** There are four (4) links in the chain of custody, 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. The first link is crucial in proving the chain of custody. It is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. The value of marking of the evidence is to separate the marked evidence from the *corpus* of all other similar or related evidence from the time of seizure from the accused until disposition at the end of criminal proceedings, obviating switching, "planting" or contamination of evidence. Thus, even if, as in this case, the seized item was immediately marked and the succeeding links have been established, the chain of custody is still deemed broken when reasonable doubt exist concerning the very marking placed on the specimen which could have successfully established the identity of the *corpus delicti*. x x x Accordingly, appellant Marcelo Sanchez *y* Calderon is **ACQUITTED** based on reasonable doubt.

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

GESMUNDO, *J.*:

This is an appeal from the October 16, 2014 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR. H.C. No. 06003, which affirmed the January 30, 2013 Decision[2] of the Regional Trial Court of Quezon City, Branch 227 *(RTC)*, in Criminal Case No. Q-06-144570, finding Marcelo Sanchez *y* Calderon *(appellant)* guilty beyond reasonable doubt of 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. 2-12; penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Carmelita S. Manahan, concurring.

[2] CA *rollo*, pp. 54-62.

Antecedents

In an Information[3] filed before the RTC, appellant was charged with violation of Sec. 5, Art. II of R.A. No. 9165 as follows:

> That on or about the 14th day of December, 2006, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver[,] transport or distribute any dangerous drug, did then and there, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero (0.06) point zero six [gram] of white crystalline substance containing Methylamphetamine Hydrochloride also known as"SHABU," a dangerous drug.
>
> CONTRARY TO LAW.[4]

Appellant pleaded not guilty during the arraignment.

The prosecution presented as its witnesses PO1 Erwin Bautista (*PO1 Bautista*), Engr. Leonard M. Jabonillo (*Engr. Jabonillo*), PO1 Aldrin Ignacio (*PO1 Ignacio*) and PO1 Ronaldo Flores (*PO1 Flores*). On the other hand, appellant was the defense's sole witness.[5]

Prosecution's Version

On December 14, 2006 at around 4:30 o'clock in the afternoon, Police Inspector Alberto Gatus (*PI Gatus*) directly received an information from a male informant, who appeared at the Galas Police Station, that a certain "Kiting" was engaged in the illegal drug trade. Thereafter, PI Gatus assigned PO1 Bautista to coordinate with the Philippine Drug Enforcement Agency (*PDEA*) and to prepare the necessary documentation for the conduct of a buy-bust operation.

In the briefing for the buy-bust operation, PO1 Ignacio was designated as the poseur-buyer and PO1 Flores as his backup.

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[3] Records, p. 1.

[4] *Id.*

[5] *Rollo*, p. 3.

PI Gatus also provided PO1 Ignacio with two (2) one hundred peso bills marked with initials "AI."

At 7:00 o'clock in the evening of even date, the buy-bust team arrived at the place of operation. PO1 Ignacio and the informant alighted from the vehicle, and the latter pointed to a man whom he called "Kiting" standing in front of a house. They approached him and the informant introduced PO1 Ignacio. Kiting then asked PO1 Ignacio how much he would buy, to which the latter replied *"Dalawang Piso"* (which meant ₱200.00 worth). PO1 Ignacio handed the buy-bust money to Kiting who, in turn, placed the money inside his right pocket and, thereafter, gave PO1 Ignacio the plastic sachet. PO1 Ignacio then lit a cigarette, the pre-arranged signal, prompting PO1 Flores to approach them. When PO1 Ignacio saw the other policemen closing in on them, he immediately grabbed Kiting while PO1 Flores recovered the buy-bust money from Kiting's right side pocket. PO1 Ignacio showed the plastic sachet to PI Gatus and placed it inside another plastic sachet of suspected *shabu* and marked the same with his initials "AI." After the arrest, the buy-bust team proceeded to take the pictures of Kiting and the plastic sachet of suspected *shabu*.

At the police station, investigator PO1 Bautista booked Kiting and asked the latter to identify himself to which he answered, "Marcelo Sanchez." PO1 Bautista also received the buy-bust money and the plastic sachet of suspected *shabu* from PO1 Ignacio. He then prepared the inventory of the seized items and the requests for laboratory examination and drug dependency examination. He endorsed them to PO1 Ignacio, who brought the letter-requests and the specimen to the crime laboratory for examination. Engr. Jabonillo, a forensic chemical officer, received the letter-requests and the specimen.

In his Chemistry Report No. D-544-2006,[6] Engr. Jabonillo reported that the specimen tested positive for methylamphetamine hydrochloride, a dangerous drug.

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[6] Records, p. 13.

Defense's Version

The appellant denied the charge that he was arrested in a legitimate buy-bust operation. He claimed that he was resting inside his house at around 5:00 o'clock in the afternoon of December 14, 2006 when the police officers suddenly barged into his house and searched for somebody. When the police officers did not find the person they were looking for, they arrested him instead. When they did not find anything, they got appellant's cellphone and wallet which contained ₱200.00. Thereafter, appellant was brought to the police station where he was told that if he could bring out the person they were looking for, he would be released. Later on, he was referred for inquest proceedings and was informed that a charge for selling illegal drugs would be filed against him.

The RTC Ruling

On January 30, 2013, the RTC rendered the assailed judgment convicting the appellant of the crime charged, the dispositive portion reads:

WHEREFORE IN THE LIGHT OF THE FOREGOING PREMISES, judgment is hereby rendered finding the accused MARCELO SANCHEZ Y CALDERON, guilty beyond reasonable doubt of the offense charged. He is ordered to suffer the penalty of life imprisonment and to pay a fine of [₱]500,000.00.

The Branch Clerk of this Court is hereby ordered to forward the specimen subject of this case covered by **Final Chemistry Report No. D-544-2006** to the PDEA Crime Laboratory to be included in PDEA's next scheduled date of burning and destruction.

The Branch Clerk is likewise ordered to prepare the *[mittimus]* for the immediate transfer of the accused to the New Bilibid Prisons in Muntinlupa City.

SO ORDERED.[7]

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[7] CA *rollo*, p. 62. (Emphasis supplied).

The CA Ruling

Appellant appealed his conviction before the CA, arguingthat the evidence against him was inadmissible because he was arrested without any warrant. He also questioned the buy-bust operation, citing the inconsistent testimonies of the prosecution witnesses.[8]

On the other hand, the appellee maintained that the prosecution had competently and convincingly established all the elements necessary for the charge of illegal sale of *shabu* through the positive and credible testimonies of the police officers pointing to appellant as the seller of the confiscated *shabu*.

The CA, however, affirmed appellant's conviction. It found no sufficient reason to depart or interfere with the findings of the court *a quo* on the credibility of witnesses. The prosecution had amply proven all the elements of the drug sale beyond moral certainty.[9] The CA explained that:

> In the instant case, the prosecution witnesses testified in a straightforward manner how they conducted the buy-bust operation that successfully led to the arrest of accused-appellant. Contrary to accused-appellant's assertion, there were no inconsistencies in the testimony of PO1 Ignacio because he candidly testified that after the arrest, he immediately marked the seized items at the place w[h]ere the arrest took place. In fact, the arresting officers took pictures of the accused-appellant together with the seized items at the place where the arrest was effected.
>
> The testimonies of the prosecution witnesses clearly coincide with each other and clearly established how the buy-bust operation was conducted. It bears to stress that the inconsistencies being pointed out by the defense cannot overcome the positive and categorical testimonies of the prosecution witnesses that accused-appellant gave to PO1 Ignacio a plastic sachet containing *shabu* in exchange for the amount of [₱]200.00 or two (2) one hundred peso bills.[10]

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[8] *Rollo*, p. 7.

[9] *Id.* at 9.

[10] *Id.*

The CA also stressed that appellant's denial was not substantiated by clear and convincing evidence. There were no witnesses presented to substantiate his claim.[11]

Ultimately, the CA was convinced that the prosecution was able to prove appellant's guilt beyond reasonable doubt.

Hence, the present appeal.

ISSUE

WHETHER OR NOT THE GUILT OF THE ACCUSED FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.

In a Resolution[12] dated November 21, 2016, the Court required the parties to submit their respective supplemental brief, if they so desired. In his Manifestation in Lieu of a Supplemental Brief[13] dated April 7, 2017, appellant manifested that he was adopting his Appellant's Brief filed before the CA as his supplemental brief for the same had squarely and sufficiently refuted all arguments raised by the appellee. In its Manifestation[14] dated April 24, 2017, the Office of the Solicitor General *(OSG),* likewise, manifested that it would no longer file a supplement to its Appellee's Brief dated May 6, 2014.

The Court's Ruling

The appeal is meritorious.

To secure a conviction for illegal sale of dangerous drugs under Sec. 5, Art. 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.

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[11] *Id*. at 10.

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

[13] *Id*. at 25-27.

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

What is important is that the sale transaction of drugs actually took place and that the object of the transaction is properly presented as evidence in court and is shown to be the same drugs seized from the appellant.[15]

In this case, the identities of the buyer and the seller were duly established. The marked buy-bust money retrieved from the appellant during the entrapment operation was likewise identified. The prosecution witnesses had shown that appellant handed over the illegal drugs to PO1 Ignacio, who, in turn, gave the marked buy-bust money, thus, completing the drug deal.

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."[16]

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002,[17] which implements R.A. No. 9165, defines chain of custody as follows:

> Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

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

[16] *Id.*

[17] Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment.

The prosecution has the duty to prove every link in the chain, from the moment the dangerous drug was seized from the appellant until the time it is offered in court as evidence. The marking of the seized item, the first link in the chain of custody, is crucial in proving an unbroken chain of custody as it is the starting point in the custodial link that succeeding handlers of the evidence will use as a reference point.[18]

To prove the required chain of custody, records show the following: 1) a buy-bust operation involving one "Kiting" took place in the evening of December 14, 2006;[19] 2) the marked buy-bust money was retrieved from the appellant, who gave the sachet of *shabu* to PO1 Ignacio;[20] 3) the marking of the seized item was made after, and at the place of, arrest;[21] 4) the taking of photos of the accused and the seized items were done at the place of arrest;[22] 5) the investigation thereafter took place at the police station;[23] 6) the inventory and signing thereof by a *barangay kagawad* was made at the police station, in the presence of the accused, the operatives and other police officers;[24] 7) the specimen was brought by PO1 Ignacio to the crime laboratory for examination;[25] 8) the specimen was received by the forensic chemical officer;[26] and 9) the chemistry report showed that the specimen yielded positive for metamphetamine hydrochloride.[27]

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

[19] Records, p. 6.

[20] *Id*.

[21] *Id*. at 96-97.

[22] *Id*. at 118-119.

[23] *Id*. at 122-123.

[24] *Id*. at 178-180, 219-221.

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

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

[27] *Id*. at 69.

On the basis thereof, the RTC concluded that:

> In this case, the prosecution was able to establish that the sale – the delivery of the buy-bust money and in exchange, the delivery of the subject specimen, actually took place which consummated the transaction. The "corpus delicti" or the illegal drug was identified by all those who handled it to prove that its integrity was preserved.[28]

The CA affirmed the RTC and wrote as follows:

> Furthermore, the integrity and evidentiary value of the seized items were duly preserved because after the arrest, the seized items were immediately marked and photograph[ed]. Later on, it was inventoried and same items were turned over to the crime laboratory for examination. The seized items were the same items presented in court. Thus, the unbroken chain of custody has been duly established by the prosecution.[29]

After an assiduous examination of the records, however, the Court is not convinced that the identity of the *corpus delicti* was properly established. There is reasonable doubt as to the alleged unbroken chain of custody.

In the Joint Affidavit of Arrest[30] executed by affiants PO1 Ignacio and PO1 Flores, they claimed that the specimen was marked with "AI-MS." Similarly, the Inventory of the Seized Items,[31] Initial Laboratory Report,[32] Request for Laboratory Examination,[33] and Chemistry Report No. D-544-2006,[34] all showed that the specimen had the markings "AI-MS" on it. PO1 Bautista also testified during his direct examination that the sachet of *shabu* was marked with "AI-MS." Particularly, his testimony reveals:

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[28] *Id*. at 275.

[29] *Rollo*, pp. 10-11.

[30] Records, pp. 7-8.

[31] *Id*. at 12.

[32] *Id*. at 13.

[33] *Id*. at 14.

[34] *Id*. at 69.

FISCAL BACOLOR:	And can you identify the plastic sachet turned over to you by the apprehending officers?
WITNESS:	Yes, sir.
FISCAL BACOLOR:	How can you identify?
WITNESS:	If I can see the markings of the arresting officers, sir.
FISCAL BACOLOR:	And what is the marking?
WITNESS:	It was "AI" stands for [Aldrin] Ignacio; "AI-MS", MS stands for Marcelo Sanchez.[35]

Interestingly, however, PO1 Ignacio – the poseur-buyer and apprehending officer who marked the sachet of *shabu* – testified that he marked the specimen with his initials "AI" which means Aldrin Ignacio. The testimony was as follows:

FISCAL BACOLOR:	And, how about you, what did you do with the item handed to you by alias Kiting, Mr. Witness?
WITNESS:	I showed it to my chief and then I placed it inside a plastic sachet.
FISCAL BACOLOR:	After showing it to your chief and placing it in a plastic sachet, Mr. Witness, what did you do next with the item, if any?
WITNESS:	I marked it with my initials, sir.
FISCAL BACOLOR:	Mr. Witness, if shown to you, [would] you be able to identify this plastic sachet you recovered from alias [K]iting?
WITNESS:	If I see it, I can recognize it, sir.
x x x	x x x x x x
FISCAL BACOLOR:	Why are you sure that this is the one you recovered from alias Kiting, Mr. Witness?

[35] *Id*. at 77; TSN, April 28, 2008, p. 3.

WITNESS:	Because I was the one who placed the markings, sir.
FISCAL BACOLOR:	What was that markings, Mr. Witness?
WITNESS:	"**AI**" means Aldrin Ignacio, sir.
FISCAL BACOLOR:	Will you please point to us that markings, Mr. Witness?
WITNESS:	"Ito po."
BRANCH CLERK:	Witness pointing to the initials "**AI**."[36]

Nowhere in the testimony, either during the direct or cross-examination, of PO1 Ignacio did he ever mention marking the specimen with "**AI-MS**." Nothing in the records would show that the prosecution attempted to reconcile the seeming discrepancy between PO1 Ignacio's testimony and the specimen submitted to the crime laboratory for examination relating to the alleged markings made by PO1 Ignacio. In fact, the prosecution merely brushed it aside and considered the same as trivial and inconsequential because it was not even raised during the trial.[37]

The Court cannot, however, treat the matter lightly because the identity and integrity of the *corpus delicti* becomes uncertain. There is now doubt whether the sachet marked with "AI," as testified to by the very witness who placed the said marking, was the same sachet marked with "AI-MS" which was brought to the crime laboratory and ultimately presented in court.

There are four (4) links in the chain of custody, 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

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[36] *Id*. at 95-97; TSN, July 25, 2008, pp. 11-13.

[37] CA *rollo*, pp. 85-86.

marked illegal drug seized from the forensic chemist to the court.[38]

The first link is crucial in proving the chain of custody. It is the starting point in the custodial link that succeeding handlers of the evidence will use as reference point. The value of marking of the evidence is to separate the marked evidence from the *corpus* of all other similar or related evidence from the time of seizure from the accused until disposition at the end of criminal proceedings, obviating switching, "planting" or contamination of evidence.[39] Thus, even if, as in this case, the seized item was immediately marked and the succeeding links have been established, the chain of custody is still deemed broken when reasonable doubt exist concerning the very marking placed on the specimen which could have successfully established the identity of the *corpus delicti*.

In *People v. Garcia*,[40] a similar observation was arrived at by the Court relating to inconsistencies in the markings between a testimony *vis-à-vis* documents presented in court, to wit:

> We further note, on the matter of identifying the seized items, that the lower courts overlooked the glaring inconsistency between PO1 Garcia's testimony *vis-à-vis* the entries in the Memorandum dated February 28, 2003 (the request for laboratory examination of the seized items) and the Physical Science Report No. D-250-03 dated February 28, 2003 issued by the PNP Crime Laboratory with respect to the marking on the seized items.
>
> PO1 Garcia testified that he had marked the seized item (on the wrapper) with the initial "**RP-1.**" However, an examination of the two documents showed a different marking: on one hand, what was submitted to the PNP Crime Laboratory consisted of a single piece telephone directory paper containing suspected dried marijuana leaves

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[38] *People v. Gayoso,* G.R. No. 206590, March 27, 2017, citing *People v. Nandi*, 639 Phil. 134, 144-145 (2010).

[39] *People v. Enriquez,* 718 Phil. 352, 367(2013); citing *People v. Zakaria, et al.,* 699 Phil. 367 (2012).

[40] 599 Phil. 416 (2009).

fruiting tops with the marking "**RGR-1**" and thirteen pieces of rolling paper with the markings "**RGR-RP1**" to "**RGR-RP13**"; on the other hand, the PNP Crime Laboratory examined the following items with the corresponding markings: a printed paper with the marking "**RGR-1**" together with one small brick of dried suspected marijuana fruiting tops and thirteen pieces of small white paper with the markings "**RGP-RP1**" to "**RGP-RP13.**"

PO1 Garcia's testimony is the only testimonial evidence on record relating to the handling and marking of the seized items since the testimony of the forensic chemist in the case had been dispensed with by agreement between the prosecution and the defense. Unfortunately, PO1 Garcia was not asked to explain the discrepancy in the markings. Neither can the stipulated testimony of the forensic chemist now shed light on this point, as the records available to us do not disclose the exact details of the parties' stipulations.

To our mind, the procedural lapses in the handling and identification of the seized items, as well as the unexplained discrepancy in their markings, collectively raise doubts on whether the items presented in court were the exact same items that were taken from Ruiz when he was arrested. These constitute major lapses that, standing unexplained, are fatal to the prosecution's case.[41] (citations omitted, emphasis supplied)

To reiterate, unexplained discrepancy in the markings of the seized dangerous drug, resulting in the uncertainty that said item was the exact same item retrieved from the appellant when he was arrested, is not a mere trivial matter, but a major lapse that is fatal to the prosecution's case.

It is to be stressed that in drug cases, conviction cannot be sustained if there is a persistent doubt on the identity of the drug. The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.[42]

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[41] *Id.* at 431-432.

[42] *People v. Hementiza,* G.R. No. 227398, March 22, 2017.

WHEREFORE, the appeal is **GRANTED**. The Decision of the Court of Appeals dated October 16, 2014 in CA-G.R. CR. H.C. No. 06003, which affirmed the Decision of the Regional Trial Court of Quezon City, Branch 227 in Criminal Case No. Q-06-144570 is **REVERSED** and **SET ASIDE**.

Accordingly, appellant Marcelo Sanchez *y* Calderon is **ACQUITTED** based on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five days from notice.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Reyes, A. Jr.,*[*] and *Reyes, J. Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 221928. September 5, 2018]

ALEX A. JAUCIAN, *petitioner, vs.* **MARLON DE JORAS and QUINTIN DE JORAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; ALLEGATIONS IN THE COMPLAINT DETERMINE THE CAUSE OF ACTION; THE PROPER ACTION IN THE PRESENT CASE IS

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[*] Additional member per Special Order No. 2588 dated August 28, 2018.

RECONVEYANCE AND DECLARATION OF NULLITY OF TITLE.— We agree with the Court of Appeals that Quintin's original complaint could not have been an action for reversion because the allegations did not admit State ownership. The Court of Appeals was correct when it held that the proper action is reconveyance and declaration of nullity of title because of Quintin's allegations as to the "character of ownership of the realty whose title is sought to be nullified." Quintin's allegations refer to (1) his pre-existing right of ownership over the contested lots prior to the issuance of the free patent and certificate of title to Jaucian and (2) Jaucian's use of fraudulent schemes and gross misrepresentation to obtain the documents of title.

2. CIVIL LAW; LAND REGISTRATION; ACT NO. 141 AS AMENDED BY R.A. 6940; WHERE THE REQUIREMENTS FOR FREE PATENT REGISTRATION HAVE NOT BEEN COMPLIED WITH, THE FREE PATENT ISSUED TO HEREIN PETITIONER WAS NULL AND VOID.— Jaucian failed to establish that he and his predecessors-in-interest had been in continuous possession of the subject lands for at least 30 years prior to 15 April 1990, or at least since 15 April 1960, as required in Section 44 of Commonwealth Act No. 141, as amended by Republic Act No. 6940. For this reason alone, Jaucian is not entitled to a free patent to the subject lands. Moreover, the free patent application was not accompanied by a map and technical description of the land, along with affidavits of two disinterested persons proving Jaucian's occupancy. At the very least, Jaucian only attached the Deed of Sale and tax declarations both dated 7 July 1986. x x x [T]he free patent issued to Jaucian was null and void.

3. ID.; ID.; ID.; ID.; WHILE PETITIONER WAS NOT QUALIFIED FOR A FREE PATENT, THE SUBJECT LANDS CANNOT ALSO BE AWARDED TO RESPONDENT QUINTIN AND HIS HEIRS; HOWEVER, RESPONDENTS MAY APPLY FOR A FREE PATENT REGISTRATION PROVIDED THEY CAN SATISFY THE REQUIREMENTS.— Quintin has not shown, in this case at least, that he or his predecessors-in-interest have been in possession of the subject lands for a period of at least 30 years prior to 15 April 1990. While the Director of the Land Management Bureau had no authority to vest any title to Jaucian who was not qualified for a free patent, the subject lands cannot

> also be awarded in this case to Quintin and his heirs. x x x Nevertheless, Quintin and his heirs may, on their own, apply for free patent registration of the subject lands under their name, provided they can satisfy the requirements in *Taar v. Lawan* and *Republic v. Spouses Lasmarias* as discussed above. Their application must, among others, be accompanied by a map and the technical description of the land occupied, along with affidavits proving their occupancy from two disinterested persons residing in the municipality or barrio where the lands are located. Of course, the subject lands must first be shown to have been classified by a positive act as alienable and disposable in accordance with law.

APPEARANCES OF COUNSEL

Edwin A. Hidalgo for petitioner.
Botor-botor Law Offices for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review to set aside the 6 November 2015 Decision[1] of the Court of Appeals in CA-G.R. CV No. 101285 which reversed and set aside the 24 September 2012 Joint Decision[2] of the Regional Trial Court (RTC) of Naga City, Branch 21, in consolidated Civil Case Nos. RTC 2000-0086 and RTC 2000-00141 for *Recovery of Possession and Damages*, and *Reconveyance and Quieting of Title with Damages*, respectively. The subject properties are parcels of land situated in Del Carmen, Minalabac, Camarines Sur covered by Original Certificate of Title (OCT) No. 13019[3] registered with the Office

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[1] *Rollo*, pp. 64-71. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Nina G. Antonio-Valenzuela and Melchor Quirino C. Sadang concurring.

[2] *Id.* at 44-59. Penned by Judge Pablo Cabillan Formaran III.

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

of the Register of Deeds of Camarines Sur in the name of Alex A. Jaucian (Jaucian), identified as Lot No. 306, Pcadm 524-D, Case 1, with an area of 1,359 square meters, and Lot No. 430, Pcadm 524-D, Case 1, with an area of 466 square meters, pursuant to Free Patent No. 051722-95-3973.[4]

The Facts

On 23 May 2000, Jaucian filed a Complaint[5] against Quintin De Joras (Quintin) and his nephew, Marlon De Joras[6] (Marlon), for recovery of possession of the properties and damages.

In his Complaint, Jaucian alleged that the properties had been declared in his name with the Municipal Assessor's Office of Minalabac, Camarines Sur as shown by Tax Declaration Nos. A.R.P. 97-007-0473 and A.R.P. 97-007-0464.[7] Jaucian claimed that the properties were sold by Vicente Abajero to Eriberta dela Rosa in 1945, and Eriberta dela Rosa subsequently sold the properties to Jaucian on 7 July 1986.[8] Jaucian further claimed that sometime in 1992, Quintin and Marlon, claiming ownership of the said lots and without knowledge of Jaucian, occupied the properties. On 15 July 1992, Jaucian sent Marlon a demand letter[9] to vacate the properties. Despite Jaucian's oral and written demands, Quintin and Marlon refused to vacate the properties up to the present time, thereby depriving Jaucian of his continuous possession over the same.

Jaucian explained that the filing of the complaint was delayed because of the previously filed Civil Case No. 527 with the Municipal Trial Court of Minalabac, Camarines Sur, entitled *Alex Jaucian v. Marlon De Joras* for ejectment; and Special

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[4] *Id.*

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

[6] De Joras also appears in the records as "Dejoras" or "Dejuras."

[7] *Rollo*, pp. 20-21.

[8] *Id.* at 22.

[9] *Id.* at 23.

Civil Action No. 93-2844 with the Regional Trial Court, Branch 24, Naga City, entitled *Alex Jaucian v. Hon. Beatriz Contreras Arroyo, the Provincial Sheriff of Camarines Sur and Marlon De Joras for certiorari*. Both cases were dismissed.

Jaucian prayed that judgment be rendered in his favor and that Quintin and Marlon be ordered to vacate the premises. Jaucian further prayed that:

> [Quintin and Marlon] be ordered to pay the plaintiff, jointly and severally, the amount of ₱50,000.00 for [actual] damages; ₱96,000.00 [as rental for the occupancy of the land], plus ₱1,000.00 per month from the filing of this complaint until the possession of the property is [returned] to the plaintiff; ₱10,000.00, plus ₱1,000.00 per counsel's attendance in court as Attorney's fees; ₱10,000.00 as litigation expenses; costs of suit[.] Plaintiff further prays for such other relief[s] [as may be] just and equitable under the premises.[10]

Quintin and Marlon filed their Answer with Counterclaim,[11] dated 4 July 2000, mostly denying Jaucian's claims for want of knowledge thereof. Quintin and Marlon alleged that they have been in continuous, peaceful, open, actual, and physical possession of the properties in the concept of owners since 1976, when Quintin purchased the lots from Vicente Abajero, up to the present. Such purchase was later confirmed by the surviving spouse of Vicente Abajero through a Confirmatory Deed of Sale[12] dated 29 December 1981. They also claimed that, even assuming that the lots in question were registered in the name of Jaucian, such registration was obtained through misrepresentation and fraud because Quintin, who is the absolute owner in fee simple of the properties, was deliberately not notified of Jaucian's application for registration. Thus, Quintin and Marlon failed to file their opposition.

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[10] *Id.* at 25.

[11] *Id.* at 27-30.

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

On 18 September 2000, Quintin filed a Complaint[13] against Jaucian for reconveyance and quieting of title with damages. Quintin reiterated his claims in his Answer with Counterclaim, adding that Jaucian was able to register the properties in his name under a Free Patent registration on 11 April 1995 through "fraudulent schemes and gross misrepresentation." Quintin alleged that there was a "complete absence of notice of such application for registration" from Jaucian, and there was "active connivance" with the Community Environment and Natural Resources Office Land Investigator "who was supposed to conduct an actual inspection and investigation of the subject properties as essential condition *sine qua non* for the processing of free patent application to determine whether or not there are adverse claimants on the properties subject of the free patent application and that the properties are in the possession of third parties other than the applicant."[14]

Quintin prayed that judgment be rendered as follows:

a. Ordering the defendant to reconvey to the plaintiff the subject properties described x x x covered by Original Certificate of Title No. 13019 in the name of the defendant;

b. Declaring the plaintiff as the absolute owner of the subject properties and is entitled to exercise all the attributes of ownership thereon;

c. Ordering the defendant to forever refrain from laying claim of ownership over the subject properties and from disturbing the peaceful possession of plaintiff over the same;

d. Ordering the defendant to pay the plaintiff the following amounts:

d.1. ₱200,000.00 for moral damages;

d.2. ₱100,000.00 for exemplary damages;

d.3. ₱40,000.00 for attorney's fees and ₱2,000.00 per court appearance fee;

d.4. ₱50,000.00 for various expenses of litigation; and

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[13] *Id*. at 33-37.

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

e. Granting the plaintiff such other reliefs as may be just and equitable.[15]

On 17 October 2001, Jaucian filed his Answer with Counterclaim,[16] reiterating his previous allegations and claims. Jaucian claimed that the remedy of reconveyance is not the proper proceeding in the case.

Quintin died during the pendency of the case on 18 December 2008. He was substituted by his heirs, namely, Ma. Sylvana De Joras-Alimango, Merril Angelo De Joras, Magdalena Mylene De Joras, Quintin De Joras, Jr., and Melvin De Joras.[17]

The Ruling of the RTC

In its Joint Decision dated 24 September 2012, the RTC ordered Quintin, substituted by his heirs, and Marlon to vacate the subject lots and turn over the peaceful possession over the properties to Jaucian. The dispositive portion reads:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered x x x as follows:

1. ORDERING Marlon Dejoras and Quintin Dejoras substituted by his heirs; namely, Sylvana Dejoras-Alimango, Merril Angelo Dejoras, Magdalena Mylene Dejoras, Quintin Dejoras, Jr. and Melvin Dejoras and all persons claiming right or interest under them to VACATE the subject lots covered by Original Certificate of Title No. 13019 pursuant to Free Patent No. 051722-95-3973 in the name of Alexander Jaucian or Alex Jaucian and to TURN OVER THE PEACEFUL POSSESSION thereof to the latter or to his duly authorized representative;

2. ORDERING Marlon Dejoras and Quintin Dejoras substituted by his heirs; namely, Sylvana Dejoras-Alimango, Merril Angelo Dejoras, Magdalena Mylene Dejoras, Quintin Dejoras, Jr. and Melvin Dejoras to PAY, jointly and severally, Alex Jaucian the amount of Five hundred pesos (₱500.00) as monthly rental [for] the subject lots

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[15] *Id.* at 36.

[16] *Id.* at 40-43.

[17] *Id.* at 45.

from May 23, 2000 until they completely surrender and vacate said premises;

3. DISMISSING the counterclaim of Marlon Dejoras and Quintin Dejoras in Civil Case No. RTC 2000-0086;

4. DISMISSING the complaint for reconveyance and quieting of title with damages docketed as Civil Case No. RTC 2000-0141 filed by Quintin Dejoras against Alex Jaucian; and

5. ORDERING the Regional Director of the Land Management Bureau, Department of Environment and Natural Resources, Regional Office No. 5, Legaspi City, to CONDUCT AN INVESTIGATION on the application and grant of free patent to Alex Jaucian over the subject properties in the light of the revelation of witness Salve Florendo that her signature appearing in the Joint Affidavit in Support of Free Patent Application (Exhibit 3-E) of Alex Jaucian is not hers, which is indicative of possible fraud and misrepresentation thereon. Said Regional Director is likewise directed to INFORM this Court of the action taken within fifteen (15) days from receipt of this Joint Decision.

No pronouncement as to costs.

SO ORDERED.[18]

The Ruling of the Court of Appeals

The Court of Appeals reversed the RTC and declared Quintin the true owner of the subject properties. The dispositive portion reads:

WHEREFORE, the Joint Decision, dated 24 September 2012, of the Regional Trial Court, Branch 21, Naga City in consolidated Civil Case Nos. RTC 2000-0086 and RTC 2000-00141 for Recovery of Possession and Damages, and Reconveyance and Quieting of Title with Damages, respectively, ordering Marlon Dejoras and Quintin Dejoras to (1) vacate the subject property and turn over its possession to Alex Jaucian; (2) pay ₱500.00 as monthly rental from 23 May 2000; and ordering the Land Management Bureau of DENR to conduct an investigation on the grant of free patent to Alex Jaucian over the subject property is REVERSED and SET ASIDE.

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

Free Patent No. 051722-95-3973 over the subject property is hereby CANCELLED and INVALIDATED for having been obtained by means of fraud and misrepresentation.

Quintin Dejoras is DECLARED the true owner of the subject property covered by OCT No. 13019, which should be canceled. The Register of Deeds is ORDERED to issue a new title in favor of Quintin Dejoras as the true and absolute owner of the subject property.

Alex Jaucian is ORDERED to forever refrain from laying any claim of ownership over the subject property, and/or from disturbing the peaceful possession of Quintin and Marlon Dejoras.

Alex Jaucian is further ORDERED to pay ₱100,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱50,000.00 as attorney's fees, plus costs of litigation.

SO ORDERED.[19]

Hence, this petition for review filed by Jaucian.

The Issue

Whether Jaucian is entitled to the possession of the subject properties and to recover damages.

The Ruling of the Court

We affirm the decision of the Court of Appeals. Jaucian is not entitled to the possession of the properties and to recover damages because the free patent registered under his name is null and void. However, the subject properties cannot be awarded to Quintin and his heirs.

Plaintiff's allegations determine the nature of the action.

Before going into the issue itself, it is necessary to explain that the allegations in plaintiff's complaint determine the nature of plaintiff's action.

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[19] *Id.* at 70.

Quintin's original complaint against Jaucian was an action for reconveyance and quieting of title with damages. The RTC found that Quintin's action for reconveyance and quieting of title is really one for reversion of land to the State because Quintin seeks the annulment of title issued pursuant to a free patent, implying that the land is public land. Thus, the RTC held that Quintin had no legal standing to institute an action for reversion; only the Office of the Solicitor General can bring an action for reversion on behalf of the Republic.

On the other hand, the Court of Appeals found that the case may be filed by Quintin and his heirs as the real parties-in-interest because the allegations in Quintin's complaint pertaining to the ownership of the land refer to an action for reconveyance and declaration of nullity of the free patent and certificate of title over the subject properties. The Court of Appeals relied on the case of *Heirs of Kionisala v. Heirs of Dacut*[20] which differentiated an action for declaration of nullity of free patent from an action for reversion. Citing the case, the Court of Appeals held that:

> In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land. On the other hand, in an action for declaration of nullity of free patents, what is required are allegations of (1) the plaintiff's ownership of the contested lot prior to the issuance of such free patent and certificate of title, and (2) the defendant's fraud or mistake, as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by the plaintiff.

Thus, in *Heirs of Kionisala*, the Supreme Court held:

> An ordinary civil action for declaration of nullity of free patents and certificates of title is not the same as an action for reversion. **The difference between them lies in the allegations as to the character of ownership of the realty whose title is sought to be nullified.** In an action for reversion, the pertinent allegations in the complaint would admit State ownership of the disputed land. Hence in *Gabila v. Barrigal* where the

[20] 428 Phil. 249 (2002).

> plaintiff in his complaint admits that he has no right to demand the cancellation or amendment of the defendant's title because even if the title were canceled or amended[,] the ownership of the land embraced therein or of the portion affected by the amendment would revert to the public domain, we ruled that the action was for reversion and that the only person or entity entitled to relief would be the Director of Lands.
>
> On the other hand, **a cause of action for declaration of nullity of free patent and certificate of title would require allegations of the plaintiff's ownership of the contested lot prior to the issuance of such free patent and certificate of title as well as the defendant's fraud or mistake[,]** as the case may be, in successfully obtaining these documents of title over the parcel of land claimed by plaintiff. In such a case, **the nullity arises strictly not from the fraud or deceit but from the fact that the land is beyond the jurisdiction of the Bureau of Lands to bestow, and whatever patent or certificate of title obtained therefor is consequently void ab initio. The real party in interest is not the State but the plaintiff who alleges a pre-existing right of ownership over the parcel of land in question even before the grant of title to the defendant**.[21] (Emphasis supplied)

We agree with the Court of Appeals that Quintin's original complaint could not have been an action for reversion because the allegations did not admit State ownership. The Court of Appeals was correct when it held that the proper action is reconveyance and declaration of nullity of title because of Quintin's allegations as to the "character of ownership of the realty whose title is sought to be nullified."[22] Quintin's allegations refer to (1) his pre-existing right of ownership over the contested lots prior to the issuance of the free patent and certificate of title to Jaucian and (2) Jaucian's use of fraudulent schemes and gross misrepresentation to obtain the documents of title.

First of all, Quintin's allegations of a pre-existing right of ownership over the disputed lots prior to the issuance of the free patent and the OCT to Jaucian were clear in Quintin's complaint:

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[21] *Rollo*, pp. 67-68.

[22] *Heirs of Kionisala v. Heirs of Dacut*, *supra* note 20, at 260.

2. Herein plaintiff is the absolute owner in fee simple of the following described two (2) parcels of land together with all the improvements existing thereon:

x x x x x x x x x

which two (2) parcels of residential lots together with the improvements thereon had been acquired by the plaintiff by way of purchase from the late Vicente Abajero on May 13, 1976;

3. **Plaintiff has been in open[,] continuous, peaceful, public and in actual physical possession of the above-described properties from the time of their acquisition up to the present time in [the] concept of absolute owner thereof;**[23] (Emphasis supplied)

Secondly, Quintin alleged that Jaucian used fraudulent schemes and gross misrepresentation to obtain the free patent registration and the OCT over the disputed lots. These allegations were also clear in his complaint:

4. Through fraudulent scheme and gross misrepresentation, the defendant was able to register the above-described properties in his name under a Free Patent registration on April 11, 1995, for which plaintiff was issued by the Department of Environment and Natural Resources Original Certificate of Title No. 13019;

5. The **defendant** knowing for a fact that the plaintiff has been in open, continuous, public, peaceful and in actual physical possession of the above-described properties in [the] concept of an owner prior to the filing of his application for registration nevertheless **filed said application by concealing such fact in his said application for registration, thus, depriving the plaintiff of his right to file a formal opposition** to such application for registration by reason of complete absence of notice of such application for registration **and such fraud and misrepresentation was carried out with the active connivance of the CENRO Land Investigator who was supposed to conduct an actual inspection and investigation of the subject properties as essential condition sine qua non for the processing of free patent application** to determine whether or not there are adverse claimants on the properties subject of the free patent application

[23] *Rollo*, pp. 33-34.

and that the properties are in the possession of third parties other than the applicant;

x x x x x x x x x[24] (Emphasis supplied)

Thus, the Court of Appeals was correct when it held that what controls in determining the nature of the action are plaintiff's allegations in the complaint, and not the RTC's presumption that "the character of the disputed lot [was] public land simply from the proposition that it was acquired by virtue of a free patent."[25]

The free patent under Jaucian's name is null and void.

Paragraph 1, Section 44, Chapter VII of Commonwealth Act No. 141,[26] as amended by Republic Act No. 6940,[27] enumerates the requirements an applicant must satisfy before a free patent is granted to him, to wit:

> SECTION 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, for at least thirty years prior to the effectivity of this amendatory Act [April 15, 1990], has continuously occupied and cultivated, either by himself or through his predecessors-in-interest a tract or tracts of agricultural public lands subject to disposition, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares.

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

[25] *Id.* at 69.

[26] The Public Land Act.

[27] An Act Granting a Period Ending on December 31, 2000 for Filing Applications for Free Patent and Judicial Confirmation of Imperfect Title to Alienable and Disposable Lands of the Public Domain Under Chapters VII and VIII of the Public Land Act (Commonwealth Act No. 141, As Amended).

Republic Act No. 782[28] similarly states the same requirements:

Section 1. x x x. The application shall be accompanied with a map and the technical description of the land occupied along with affidavits proving his occupancy from two disinterested persons residing in the municipality or barrio where the land may be located.

Section 2. The Director of Lands upon receipt of the application shall cause notices of the same to be posted in conspicuous places in the capital of the province, the municipality and the barrio where the land applied for is situated for a period of two consecutive weeks, requiring in said notices everyone who has any interest in the matter to present his objections or adverse claims, if any, before the application is granted.

Section 3. At the expiration of the time provided in the preceding section, the Director of Lands, if satisfied of the truth of the statements contained in the application and in the affidavits attached thereto and that the applicant comes within the provisions of this Act, shall issue the corresponding title in favor of the applicant for the tract of land applied for if there had not been any objections or adverse claims registered in his office.

The case of *Taar v. Lawan* summarized the requirements a free patent applicant must satisfy:

The applicant for a free patent should comply with the following requisites: (1) the applicant must be a natural-born citizen of the Philippines; (2) the applicant must not own more than 12 hectares of land; (3) the applicant or his or her predecessor-in-interest must have continuously occupied and cultivated the land; (4) the continuous occupation and cultivation must be for a period of at least 30 years before April 15, 1990, which is the date of effectivity of Republic Act No. 6940; and (5) payment of real estate taxes on the land while it has not been occupied by other persons.[29]

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[28] An Act to Grant Free Patents to Occupants of Public Agricultural Land Since or Prior to July Fourth, Nineteen Hundred and Forty-Five.

[29] G.R. No. 190922, 11 October 2017.

The case of *Republic v. Spouses Lasmarias* added:

> Moreover, the application must be accompanied by a map and the technical description of the land occupied, along with affidavits proving his occupancy from two disinterested persons residing in the municipality or barrio where the land may be located.[30]

In the present case, Jaucian applied for a free patent only in August 1992, and the free patent was granted only in 1995. Jaucian claimed that his predecessors-in-interest were in possession of the properties since 1945 when Vicente Abajero sold the properties to Eriberta dela Rosa. However, Jaucian did not present any evidence to prove the sale in 1945. Jaucian only presented the Deed of Sale executed between him and Eriberta dela Rosa on 7 July 1986.

In short, Jaucian failed to establish that he and his predecessors-in-interest had been in continuous possession of the subject lands for at least 30 years prior to 15 April 1990, or at least since 15 April 1960, as required in Section 44 of Commonwealth Act No. 141, as amended by Republic Act No. 6940. For this reason alone, Jaucian is not entitled to a free patent to the subject lands.

Moreover, the free patent application was not accompanied by a map and technical description of the land, along with affidavits of two disinterested persons proving Jaucian's occupancy. At the very least, Jaucian only attached the Deed of Sale and tax declarations both dated 7 July 1986.

The facts are uncontested that before 1992 and 1995, Quintin, Marlon, and their predecessors-in-interest were already in actual and physical possession of the properties in the concept of owners since 1976. Quintin occupied and possessed the lots 10 years earlier than Jaucian and 16 years earlier than the free patent application, clearly indicating that Jaucian was not in exclusive possession and occupation of the lots when he applied for a free patent in 1992. Quintin's ownership and possession since

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[30] G.R. No. 206168, 26 April 2017, 825 SCRA 43, 54.

1976 was proven by the Confirmatory Deed of Sale signed by the surviving spouse of the lot owner and seller Vicente Abajero. The pertinent portion of the Confirmatory Deed of Sale reads:

> WHEREAS; On May 13, 1976, in Naga City, **VICENTE ABAJERO**, of legal age, married to Maria Alano, resident of Dinaga St., Naga City, **agreed to sell to his nephew, QUINTIN DEJURAS y BARCENAS,** of legal age, married to Lydia Macarilay, resident of Minalabac, Camarines Sur, his "two lots # 4805 & 4801– including house & improvements" x x x; and **this transaction was known to me, MARIA ALANO ABAJERO, wife of the vendor, to whom my said husband turned over the ₱25,000.00 cash which in turn deposited in our joint account; and which proceeds he used in his business**;
>
> x x x x x x x x x
>
> NOW, THEREFORE, for and in consideration of the final payment of the remaining balance of TWO THOUSAND PESOS (₱2,000.00) only, the receipt of which is, by these presents, hereby acknowledged, **I, MARIA ALANO, the surviving spouse of VICENTE ABAJERO and the Administratix of his intestate estate, hereby, cede, transfer, and convey, by way of this confirmatory absolute deed of sale**, x x x:
>
> x x x x x x x x x[31] (Emphasis supplied)

In *Heirs of Spouses De Guzman v. Heirs of Bandong*,[32] we held that "a free patent that purports to convey land to which the Government did not have any title at the time of its issuance does not vest any title in the patentee as against the true owner." We further held that:

> Private ownership of land x x x is not affected by the issuance of a free patent over the same land, because the Public Land Law applies only to lands of the public domain. The **Director of Lands has no authority to grant to another free patent for land that has ceased to be a public land and has passed to private ownership**. x x x.[33] (Emphasis supplied)

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[31] *Rollo*, p. 31.

[32] G.R. No. 215454, 9 August 2017.

[33] *Id.*, citing *De la Concha v. Magtira*, 124 Phil. 961, 964-965 (1966).

In this case, the subject lands, at the time Jaucian applied for a free patent registration, were already in the possession of Quintin. However, Quintin has not shown, in this case at least, that he or his predecessors-in-interest have been in possession of the subject lands for a period of at least 30 years prior to 15 April 1990. While the Director of the Land Management Bureau had no authority to vest any title to Jaucian who was not qualified for a free patent, the subject lands cannot also be awarded in this case to Quintin and his heirs. In any event, the free patent issued to Jaucian was null and void.

Quintin may apply for a free patent registration under his name.

Nevertheless, Quintin and his heirs may, on their own, apply for free patent registration of the subject lands under their name, provided they can satisfy the requirements in *Taar v. Lawan*[34] and *Republic v. Spouses Lasmarias*[35] as discussed above. Their application must, among others, be accompanied by a map and the technical description of the land occupied, along with affidavits proving their occupancy from two disinterested persons residing in the municipality or barrio where the lands are located. Of course, the subject lands must first be shown to have been classified by a positive act as alienable and disposable in accordance with law.[36]

WHEREFORE, we **DENY** the petition for review. Petitioner Alex A. Jaucian is not entitled to the possession of the subject properties or to recover damages. We **AFFIRM** the 6 November 2015 Decision of the Court of Appeals in CA-G.R. CV No. 101285 with **MODIFICATION** to read, as follows:

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[34] *Supra* note 29.

[35] *Supra* note 30.

[36] *Secretary of the Department of Environment and Natural Resources v. Yap*, 589 Phil. 156, 182-183 (2008); *Heirs of the late Spouses Palanca v. Republic of the Philippines*, 531 Phil. 602, 616-617 (2006).

Free Patent No. 051722-95-3973 over the subject property is hereby **CANCELLED** and **INVALIDATED** for having been obtained by means of fraud and misrepresentation.

Petitioner Alex A. Jaucian is **ORDERED** to forever refrain from laying any claim of ownership over the subject property, and/or from disturbing the peaceful possession of respondents Quintin De Joras and Marlon De Joras, and their heirs.

Petitioner Alex A. Jaucian is further **ORDERED** to pay ₱100,000.00 as moral damages; ₱100,000.00 as exemplary damages; and ₱50,000.00 as attorney's fees; plus costs of litigation.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, A. Jr., and *Reyes, J. Jr.*,* *JJ.*, concur.

SECOND DIVISION

[G.R. No. 222364. September 5, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (Second Division) and BLMMM VENTURES, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; NOTICE OF *LIS PENDENS*; CONCEPT; THE EFFECT OF NOTICE OF *LIS*

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* Designated additional member per Special Order No. 2587 dated 28 August 2018.

***PENDENS* IS NOT TO ESTABLISH AN ACTUAL LIEN ON THE PROPERTY BUT TO SERVE AS A NOTICE TO THE WHOLE WORLD THAT ONE WHO BUYS THE SAME DOES SO AT HIS OWN RISK.—** *Lis pendens* – which literally means pending suit – refers to the jurisdiction, power, or control which a court acquires over the property involved in a suit, pending the continuance of the action, and until final judgment. It is an announcement to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property. A notice of *lis pendens* simply means that a certain property is involved in a litigation and serves as a notice to the whole world that one who buys the same does so at his own risk. x x x The effect of a notice of *lis pendens* is not to establish an actual lien on the property affected. All that it does is to give notice to third persons and to the whole world that any interest they may acquire in the property pending litigation will be subject to the eventuality or result of the suit.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG); WHERE THE TENOR OF THE PCGG'S NOTICE OF *LIS PENDENS* WAS DEEMED ONE OF SEQUESTRATION, SUCH NOTICE MUST COMPLY WITH THE REQUIREMENTS OF THE LAW ON SEQUESTRATION.—** [T]he notice issued by Director Parras had a directive to annotate the "lien" at the back of the titles. x x x Also, the notice uses the wording that "the properties are deemed sequestered." "Deemed sequestered" involves a more serious undertaking on a pending litigation concerning "ill-gotten wealth" between the government and the former president and his known allies as opposed to a mere civil case filed in court. The notice states further "not to entertain any transaction that may cause the sale, transfer, conveyance, encumbrance or any other acts of disposition over said properties." This is a command or directive by the PCGG akin to a sequestration or freeze order directed at the Register of Deeds to prevent any act which may affect the title or disposition of the properties. In Executive Order No. 2, the PCGG, under its mandate to recover ill-gotten wealth, has the power to "prohibit all persons from transferring, conveying, encumbering or otherwise depleting or concealing such assets

and properties or from assisting or taking part in their transfer, encumbrance, concealment, or dissipation under pain of such penalties as are prescribed by law." Surely, from the contents of the PCGG's purported "notice of *lis pendens,*" it can be gleaned that this notice is one of sequestration and not *lis pendens* as what the Sandiganbayan declared in the assailed Resolutions dated 18 June 2015 and 11 January 2016. x x x Thus, being a notice of sequestration despite the title given to it by the PCGG, such order or notice must comply with the requirements provided by the law on sequestration.

3. ID.; ID.; ID.; A SEQUESTRATION NOTICE MUST BE ISSUED WITH A CONCURRENCE OF AT LEAST TWO PCGG COMMISSIONERS; FAILURE TO COMPLY THEREWITH RENDERS THE SUBJECT NOTICE NULL AND VOID.— We agree with the ruling of the Sandiganbayan that the notice sent by the PCGG to the Register of Deeds suffers from fatal defects and is therefore void. x x x The PCGG promulgated its own rules and regulations pursuant to Executive Order No. 1 stating that a writ of sequestration or a freeze or hold order may be issued by the PCGG only upon the authority of at least two Commissioners when there are reasonable grounds to believe that such issuance is warranted. Here, the Notice of *Lis Pendens* was issued by the PCGG through its Legal Department Director Manuel Parras. Clearly, Director Parras, not being a PCGG Commissioner, has no authority to issue the sequestration notice without the concurrence of at least two PCGG Commissioners. In *PCGG v. Judge Peña*, we held that the powers, functions, and duties of the PCGG amount to the exercise of quasi-judicial functions, and the exercise of such functions cannot be delegated by the Commission to its representatives or subordinates or task forces because of the well established principle that judicial or quasi-judicial powers may not be delegated. x x x While it is true that the PCGG may still avail of other ancillary writs, other than sequestration, hold or freeze orders, as mentioned in *Republic of the Philippines v. Sandiganbayan*, the PCGG still has to abide by its own rules and the Constitution to ensure the principles of fair play, justice, and due process.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Mendoza & Pangan for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for certiorari[1] assailing the (1) Amended Resolution[2] dated 18 June 2015 and (2) Resolution[3] dated 11 January 2016 of the Sandiganbayan, Second Division, in Civil Case No. 0004 entitled "*Republic of the Philippines v. Andres Genito, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ludivina Leonardo, Elesia Vargas, Raul Genito, Yoshio Kotake, Abundio P. Garrido, Asuncion Castillo, Norma Canonigo, Andres L. Genito III, "Nenita Genito" a.k.a. "Nita Genito" Legal Representative of Benito Genito*."

The Facts

On 17 July 1987, petitioner Republic of the Philippines, through the Presidential Commission on Good Government (PCGG), filed with the Sandiganbayan a Complaint for Reversion, Reconveyance, Restitution, Accounting, and Damages, docketed as Civil Case No. 0004, against Andres Genito, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ludivina Leonardo, Elesia Vargas, Raul Genito, Yoshio Kotake, Abundio P. Garrido, Asuncion Castillo, Norma Canonigo, Andres Genito III, and Rolando Ligon. Andres Genito, Jr. was a close associate of President Marcos while the other defendants were the alleged dummies, nominees, or agents who allegedly allowed themselves to be incorporators, directors, board members and/or stockholders of corporations beneficially held and/or controlled by President Marcos, Mrs. Imelda Marcos, and Andres Genito, Jr.

Petitioner seeks to recover two parcels of land in the names of Andres V. Genito, Jr. and Ludivina L. Genito located in

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[1] Under Rule 65 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 54-66.

[3] *Id.* at 68-75.

Tandang Sora (Old Balara), Quezon City and covered by Transfer Certificate of Title (TCT) Nos. RT-94016 (266423)[4] and RT-94015 (266588).[5] Both of these TCTs were the subject of a Notice of *Lis Pendens*[6] dated 22 March 1989, directed to the Register of Deeds of Quezon City, by then PCGG Commissioner Augusto E. Villarin. The Notice of *Lis Pendens* in the Memorandum of Encumbrances in each TCT, however, refers to "Civil Case No. 0003."

On 24 October 1989, Commissioner Villarin executed a Sworn Statement addressed to the Register of Deeds of Quezon City informing the latter that the PCGG had lifted the Notice of *Lis Pendens* dated 22 March 1989 specifically on TCT Nos. 266423 and 266588 of the Spouses Genito on the ground that there were other sufficient properties which may answer for a favorable judgment that may be rendered against the defendants.

Sometime in 1999, Asian Bank Corporation (Asian Bank) acquired in its name two certificates of title – TCT Nos. N-201383[7] and N-201384[8] covering the subject properties of Andres V. Genito, Jr. These new titles were again the subject of a Notice of *Lis Pendens*[9] dated 23 February 2001, directed to the Register of Deeds of Quezon City, issued by PCGG through Manuel P. Parras, Director — Legal Department. The Register of Deeds annotated a Notice of Sequestration in the Memorandum of Encumbrances at the back of Asian Bank's titles. The annotations in TCT Nos. N-201383 and N-201384 state:

P.E.-4174/T-201383 - MEMORANDUM - NOTICE OF SEQUESTRATION

Executed by Manuel P. Pan-as, Director Legal Dep. stating that the properties listed Nos. TCT No. 201383 and N-201384 in the name

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[4] *Id.* at 76-78.

[5] *Id.* at 79-81.

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

[7] *Id.* at 84-86.

[8] *Id.* at 87-88.

[9] *Id.* at 89.

of the ASIANBANK CORP., are deemed sequestered and are the subject of the Civil Case No. 0004, entitled Republic of the Phils. vs. Andres Genito Jr. et al. and Asian Bank Corp., for Reconveyance, Reversion, Accounting, Restitution and Damages pending before the Sandiganbayan.

Date of Instrument – Feb. 22, 2001

Date of Inscription – 2-27-2001[10]

P.E.-4174/T-201384 - MEMORANDUM - NOTICE OF SEQUESTRATION

Executed by Manuel P. Parras, Director Legal Dep. stating that the properties listed Nos. TCT No. 201383 and N-201384 in the name of the ASIANBANK CORP., are deemed sequestered and are the subject of the Civil Case No. 0004, entitled Republic of the Phils, vs. Andres Genito Jr. et al. and Asian Bank Corp., for Reconveyance, Reversion, Accounting, Restitution and Damages pending before the Sandiganbayan.

Date of Instrument – Feb. 22, 2001

Date of Inscription – 2-27-2001[11]

On 5 February 2001, petitioner filed a Second Amended Complaint impleading Asian Bank as additional defendant. Petitioner also filed a Motion for Separate Trial dated 29 April 2002 since the claim against Asian Bank is distinct and separate from the original defendants.

On 25 June 2004, the Sandiganbayan granted petitioner's motion. Asian Bank questioned this grant before this Court and filed on 21 September 2005 a Petition[12] for Certiorari with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, entitled "*Metropolitan Bank and Trust Company v. Hon. Sandoval*."[13] In a Decision[14] dated 18 February 2013, this Court held that the Sandiganbayan gravely abused its discretion in granting the Republic's motion for separate trial, but was correct in upholding its jurisdiction

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[10] *Id.* at 88.

[11] *Id.* at 86.

[12] Docketed as G.R. No. 169677.

[13] 704 Phil. 98 (2013).

[14] *Id.*

over the Republic's claim against Asian Bank. The Court stated that "the Sandiganbayan has original and exclusive jurisdiction not only over principal causes of action involving recovery of ill-gotten wealth, but also over all incidents arising from, incidental to, or related to such cases."[15] Thus, the Court declared that the Sandiganbayan has original exclusive jurisdiction over the amended complaint in Civil Case No. 0004 as against Asian Bank/Metropolitan Banking and Trust Corporation (Metrobank).

On 1 March 2013, respondent BLMMM Ventures, Inc. (BVI) filed a Motion for Substitution of Party with Entry of Appearance. BVI used as basis the fact that on 8 June 2012, BVI purchased from Global Business Holdings, Inc. (GBHI) the subject two parcels of land located in Tandang Sora (Old Balara), Quezon City. GBHI's predecessors in interest over the parcels of land were Asian Bank and Metrobank. TCT Nos. 004-2013010452 and 004-2013010453 pertaining to the subject parcels of land were issued in the name of BVI.

On 12 March 2013, BVI filed a Motion to Dismiss citing as basis the Decision dated 19 April 2012[16] and Resolution dated 21 February 2013 of the Sandiganbayan dismissing Civil Case No. 0004. The Sandiganbayan declared that the monies and properties subject matter of the case were not ill-gotten and were probable fruits of purely private transactions in which the Republic took no part. Thus, since the Republic failed to establish its causes of action by the quantum of proof required, the Sandiganbayan dismissed the case.

Petitioner opposed the Motion to Dismiss and the Motion for Substitution of Party in its Comment/Opposition dated 26 March 2013.

On 30 September 2013, BVI filed a Motion to Cancel and/or Remove Annotation on its titles, TCT Nos. 004-2013010452 and 004-2013010453, which was carried over from the notice of sequestration found on Asian Bank's titles, TCT Nos. N-201383 and N-201384, involving the same properties, arguing

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[15] *Id.* at 119.

[16] *Rollo*, pp. 286-316.

that the annotation has absolutely no legal or factual basis since there was no order or writ of sequestration issued by the PCGG or the Sandiganbayan, and the notice of sequestration is void *ab initio*.

Petitioner filed a Comment/Opposition on 24 October 2013 asserting that the assets acquired by BVI are in *custodia legis*, and that BVI merely reiterated the same relief sought by its predecessors which has been denied twice.

In a Resolution dated 3 December 2013, the Sandiganbayan denied BVI's Motion for Substitution of Party filed on 1 March 2013 and Motion to Dismiss filed on 12 March 2013.

On 7 January 2014, BVI filed a motion for reconsideration.

In a Resolution dated 15 April 2015, the Sandiganbayan granted the motion for reconsideration and allowed BVI to substitute for Asian Bank or Metrobank as party defendant. The Sandiganbayan also cancelled and/or removed the Notice of Sequestration annotated under the Memorandum of Encumbrances on BVI's two transfer certificates of title — TCT Nos. 004-2013010452 and 004-2013010453.

Petitioner moved for partial reconsideration of the Resolution dated 15 April 2015 in so far as the court ordered the cancellation and/or removal of the notice of sequestration on the two transfer certificates of title registered under BVI. On 5 June 2015, BVI filed its Comment/Opposition.[17]

In an Amended Resolution dated 18 June 2015, the Sandiganbayan jointly resolved, in favor of BVI, the Motion to Cancel and/or Remove the Annotation and the Motion for Reconsideration filed by BVI on 30 September 2013 and 7 January 2014, respectively. The relevant portions of the Amended Resolution state:

Re: Motion to Cancel and/or Remove Annotation

Based on the foregoing incidents showing that BLMMM (BVI in this case) was recognized by the Supreme Court to substitute for

[17] *Id.* at 179-189.

Asian Bank or Metrobank, this Court can and should do no less by consequently allowing BLMMM to substitute for Asian Bank/ Metrobank in order to instill some stability to the parties in the resolution of all incidents and issues in relation to Civil Case No. 0004. On this score, BLMMM now stands as party defendant who may ask affirmative relief or action from this Court. Its Motion for Reconsideration is thus GRANTED, and BLMMM Ventures, Inc. may substitute for Asian Bank in this case.[18]

Re: Motion to Cancel and/or Remove Annotation

x x x [I]n resolving whether or not to cancel and/or remove the said annotation, the so-called Notice of Lis Pendens issued by Director Parras must comply with the requirements provided by law on sequestration. x x x.

x x x x x x x x x

An incisive scrutiny of the Notice of Lis Pendens issued by Director Parras reveals that the same suffers from fatal defects, and is therefore void x x x.

x x x x x x x x x

x x x [I]t is therefore conclusive that the annotation found on the titles of BLMMM has no factual and legal basis and must consequently be removed and/or cancelled.

WHEREFORE, premises considered, the Court hereby:

1. GRANTS the Motion for Reconsideration filed by BLMMM Ventures, Inc. on January 7, 2014 and accordingly allows BLMMM Ventures, Inc. to substitute for Asian Bank or Metropolitan Banking and Trust Corporation as party defendant to this case; and

2. CANCELS AND/OR REMOVES the Notice of Sequestration annotated under the Memorandum of Encumbrances on TCT Nos. 004-2013010452 and 004-2013010453 registered under BLMMM Ventures, Inc. for lack of legal or factual basis.

SO ORDERED.[19]

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[18] *Id.* at 58.

[19] *Id.* at 62, 65.

Petitioner moved for partial reconsideration which was denied by the Sandiganbayan in a Resolution dated 11 January 2016.

Hence, this petition.

The Issue

Whether or not the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the questioned resolutions holding that the notice issued by the PCGG and annotated on the two certificates of title in question was not a notice of *lis pendens* but a notice of sequestration, which must strictly comply with the requirements of the Constitution and the PCGG's own rules on sequestration.

The Court's Ruling

The petition lacks merit.

Petitioner Republic contends that the Sandiganbayan incorrectly ruled that what was annotated on the certificates of title of Asian Bank (BVI's predecessor-in-interest) was a notice of sequestration and not a notice of *lis pendens*. Petitioner asserts that the Sandiganbayan restrictively focused on the words "deemed sequestered" as written in the body of the notice of *lis pendens* when the use of the phrase "deemed sequestered" merely signifies that the assets mentioned therein are subject of litigation in Civil Case No. 0004. Also, petitioner states that the notice was addressed to the Register of Deeds and not to the registered owners of the properties subject of recovery in Civil Case No. 0004, and the notice does not contain a command or directive to the property owners to desist from transferring, encumbering, or concealing the sequestered properties without written authority from the PCGG. Thus, petitioner insists that being a notice of *lis pendens* and not a writ or notice of sequestration then the notice does not have to meet the specific requisites under PCGG's Rules and Regulations (PCGG Rules), as well as the Constitution, to be valid.

Private respondent BVI, on the other hand, maintains that the notices annotated on both TCT Nos. 004-2013010452 and 004-2013010453 are notices of sequestration and not notices

of *lis pendens*. BVI asserts that the annotations are clear and unequivocal as they use the words and phrases "Notice of Sequestration" and "are deemed sequestered." Thus, there should be no room for interpretation or construction. BVI states that if indeed there was an error, then petitioner should have asked to rectify the error since 27 February 2001 when the annotations were recorded in the titles, or even within a reasonable time thereafter. However, petitioner failed to do so.

Also, BVI insists that petitioner, in its very own petition and in earlier pleadings filed in Civil Case No. 0004, had always taken the position that the properties in question were actually sequestered properties. Thus, the notice should conform to the Constitution and the PCGG Rules. BVI asserts that the notice failed to comply with the necessary requirements of sequestration and is void *ab initio* for the following reasons: (1) it was only signed by one PCGG Commissioner; (2) it was only issued on 22 March 1989, or long after the power of the PCGG to sequester properties had expired on 2 August 1987; and (3) Director Parras had no authority to issue the notice since he was not a PCGG Commissioner at that time and any delegation made to him, as the representative of the PCGG, was invalid and ineffective.

Former President Corazon C. Aquino created the PCGG through Executive Order No. 1.[20] Executive Order No. 1 refers to cases of recovery and sequestration of ill-gotten wealth amassed by former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, the Marcos family, their relatives, subordinates, and close associates, directly or through nominees, by taking undue advantage of their public office and/or by using their powers, authority, influence, connections, or relationships. Executive Order No. 2,[21] issued on 12 March 1986, states that ill-gotten wealth includes assets and properties

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[20] Creating the Presidential Commission on Good Government; issued on 28 February 1986.

[21] Regarding the funds, moneys, assets, and properties illegally acquired or misappropriated by former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents, or nominees.

in the form of estates and real properties in the Philippines and abroad.[22]

The PCGG Rules, which took effect on 11 April 1986, followed suit after Executive Order Nos. 1 and 2 were issued. Section 1 of the PCGG Rules defines "ill-gotten wealth" as any asset, property, business enterprise, or material possession of persons within the purview of Executive Order Nos. 1 and 2, acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates, and/or business associates by any of the following means or similar schemes listed down in Section 1(A).[23]

In the present case, petitioner filed a civil case to recover two parcels of land, which are allegedly "ill-gotten wealth" and owned by a close associate of President Marcos. In the course of the said civil case, PCGG issued a notice, denominated as a "Notice of *Lis Pendens*" and addressed to the Register of Deeds of Quezon City. The Register of Deeds, in the Memorandum of Encumbrances, annotated the said notice of the PCGG as a Notice of Sequestration stating that the properties

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[22] *Metropolitan Bank and Trust Company v. Hon. Sandoval*, *supra* note 13, at 118.

[23] (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

(2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned.

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation in any business enterprise or undertaking;

(5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interests; and

(6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

in the name of Asian Bank are deemed sequestered and are the subject of Civil Case No. 0004.

The issue now lies on whether the Sandiganbayan correctly ruled that the notice annotated in the Memorandum of Encumbrances placed at the back of the TCTs of the subject parcels of land was one of sequestration and not *lis pendens*.

We agree with the Sandiganbayan.

The Notice of *Lis Pendens*[24] dated 23 February 2001, directed to the Register of Deeds of Quezon City and issued by the PCGG, through Manuel P. Parras, Director – Legal Department, on the two properties of Asian Bank, states:

THE REGISTER OF DEEDS
Quezon City, Metro Manila

NOTICE OF LIS PENDENS

Greetings:

Notice is hereby given that the properties hereunder are deemed sequestered and are the subject of Civil Case No. 0004 entitled "Republic of the Philippines versus Andres Genito, Jr. et al. and ASIAN BANK CORPORATION" for Reconveyance, Reversion, Accounting, Restitution and Damages pending before the Sandiganbayan.

TCT NO.	LOCATION
1. A parcel of Commercial Land TCT No. N-201383 in the name of ASIANBANK CORPORATION	Culiat, Quezon City
2. A parcel of Commercial Land TCT No. N-201384 in the name of ASIANBANK CORPORATION	Culiat, Quezon City

Likewise, let this notice of lis pendens **serve as sufficient notice to the whole world, particularly your office, not to entertain any transaction that may cause the sale, transfer, conveyance, encumbrance or any other acts of disposition over said properties**.

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[24] *Rollo*, p. 89.

Kindly **cause the annotation of this lien at the back of the titles** of the subject properties. Attached herewith are certified true copies of [the] motion and Amended Complaint. (Emphasis supplied)

The Notice mentions "the properties hereunder are deemed sequestered" and pertains to Civil Case No. 0004 filed by PCGG against the former president and his associates. It also states that this "serve[s] as sufficient notice to the whole world, particularly your office, not to entertain any transaction that may cause the sale, transfer, conveyance, encumbrance or any other acts of disposition over said properties" and this "lien" should be annotated at the back of the titles. Clearly, this is not a simple case involving a notice of *lis pendens*.

Lis pendens – which literally means pending suit – refers to the jurisdiction, power, or control which a court acquires over the property involved in a suit, pending the continuance of the action, and until final judgment.[25] It is an announcement to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property.[26]

A notice of *lis pendens* simply means that a certain property is involved in a litigation and serves as a notice to the whole world that one who buys the same does so at his own risk.[27]

Here, the notice issued by Director Parras had a directive to annotate the "lien" at the back of the titles. The effect of a notice of *lis pendens* is not to establish an actual lien on the property affected. All that it does is to give notice to third persons and to the whole world that any interest they may acquire in the property pending litigation will be subject to the eventuality or result of the suit.[28]

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[25] *J. Casim Construction Supplies, Inc. v. Registrar of Deeds of Las Piñas*, 636 Phil. 725, 733 (2010).

[26] *Seveses v. Court of Appeals*, 375 Phil. 64, 74 (1999).

[27] *People v. Regional Trial Court of Manila*, 258-A Phil. 68, 77 (1989).

[28] *Id.*

Also, the notice uses the wording that "the properties are deemed sequestered." "Deemed sequestered" involves a more serious undertaking on a pending litigation concerning "ill-gotten wealth" between the government and the former president and his known allies as opposed to a mere civil case filed in court.

The notice states further "not to entertain any transaction that may cause the sale, transfer, conveyance, encumbrance or any other acts of disposition over said properties." This is a command or directive by the PCGG akin to a sequestration[29] or freeze order[30] directed at the Register of Deeds to prevent any act which may affect the title or disposition of the properties. In Executive Order No. 2, the PCGG, under its mandate to recover ill-gotten wealth, has the power to "prohibit all persons from transferring, conveying, encumbering or otherwise depleting or concealing such assets and properties or from assisting or taking part in their transfer, encumbrance, concealment, or dissipation under pain of such penalties as are prescribed by law."

Surely, from the contents of the PCGG's purported "notice of *lis pendens*" it can be gleaned that this notice is one of sequestration and not *lis pendens* as what the Sandiganbayan declared in the assailed Resolutions dated 18 June 2015 and 11 January 2016. As correctly observed by the Sandiganbayan in its Resolution dated 11 January 2016:

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[29] "Sequestration", as defined in Section 1 (B) of the PCGG Rules, means the taking into custody or placing under the PCGG's control or possession any asset, fund or other property, as well as relevant records, papers and documents, in order to prevent their concealment, destruction, impairment or dissipation pending determination of the question whether the said asset, fund or property is ill-gotten wealth under Executive Order Nos. 1 and 2.

[30] "Freeze Order", as defined in Section 1(C) of the PCGG Rules, is an order intended to stop or prevent any act or transaction which may affect the title, possession, status, condition, integrity or value of the asset or property which is or might be the object of any action or proceeding under Executive Order Nos. 1 and 2, with a view to preserving and conserving the same or to preventing its transfer, concealment, disposition, destruction or dissipation.

The Court upholds its ruling that what is involved in this case is a Notice of Sequestration and not a Notice of Lis Pendens. In construing the questioned Notice as such, the Court is guided not by its caption but by looking into the purpose or intent of its issuance and taking the text of the Notice as a whole. Jurisprudence is clear and consistent on the nature of a Notice of Lis Pendens, the only purpose of which is to warn third persons that the property is subject to a pending litigation x x x.

x x x x x x x x x

It is but a signal to the intending buyer or mortgagee to take care or beware and to investigate the prospect or non-prospect of the litigation succeeding before he forks down his money. As such, it is at once clear that a Notice of Lis Pendens is not intended for the owner at all but for third persons. Therefore, it should not affect the property rights of the owner or be used to place any limit, burden or restriction thereon.

x x x x x x x x x

The Register of Deeds of Quezon City was therefore correct when it denominated the annotation on the subject titles as a "Notice of Sequestration" instead of a "Notice of Lis Pendens." A "lien" as clearly set forth in the Notice of Director Parras is not synonymous with a simple notice to third persons and cannot be categorized merely as a Notice of Lis Pendens. In fine, when the properties are treated as "deemed sequestered" with prohibition on any disposition or transfer, it is, in the eyes of the Court, no less than a sequestration, which must strictly comply with the requirements provided by law. x x x.[31]

In *Republic of the Philippines v. Sandiganbayan*,[32] we held that sequestration is an extraordinary, harsh, and severe remedy. Since sequestration tends to impede or limit the exercise of proprietary rights by private citizens, it should be construed strictly against the State, pursuant to the legal maxim that statutes in derogation of common rights are in general strictly construed

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[31] *Rollo*, pp. 71-72, 74.

[32] 355 Phil. 181, 195-196 (1998).

and rigidly confined to cases clearly within their scope and purpose.

Thus, being a notice of sequestration despite the title given to it by the PCGG, such order or notice must comply with the requirements provided by the law on sequestration.

We agree with the ruling of the Sandiganbayan that the notice sent by the PCGG to the Register of Deeds suffers from fatal defects and is therefore void. In its Amended Resolution dated 18 June 2015, the Sandiganbayan explained:

> An incisive scrutiny of the Notice of Lis Pendens issued by Director Parras reveals that the same suffers from fatal defects, and is therefore void x x x.
>
> First Ground:
>
> Section 26, Article XVIII of the Constitution in part provides:
>
> > Section 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend such period. x x x
>
> The 1987 Constitution was ratified on February 2, 1987. The date of issuance of the Notice of Lis Pendens by Director Parras, which is February 22, 2001, is certainly beyond the eighteen-month period from February 2, 1987. Clearly, the authority of PCGG to issue the same had already expired by then.
>
> Second Ground:
>
> The Notice of Sequestration was issued by only one PCGG Commissioner, in violation of Section 3 of the Rules and Regulations Implementing Executive Order Nos. 1 and 2 x x x.
>
> x x x x x x x x x
>
> Third Ground:
>
> Director Parras was not a PCGG Commissioner at the time that he issued the Notice of Lis Pendens, and any delegation made to him as the representative of PCGG is invalid and ineffective. x x x.

x x x x x x x x x

At this juncture, it may not be amiss to point out that even the Notice of Lis Pendens issued by PCGG Commissioner Villarin, although already lifted, was also void and fatally defective and could not be a valid basis for the encumbrance on BLMMM's titles on the same grounds that firstly, its issuance on March 22, 1989 was also beyond the eighteen-month period from February 2, 1987, and secondly, it violated the two-Commissioner rule under Section 3 of the Rules and Regulations Implementing Executive Order Nos. 1 and 2.[33]

The PCGG promulgated its own rules and regulations pursuant to Executive Order No. 1 stating that a writ of sequestration or a freeze or hold order may be issued by the PCGG only upon the authority of at least two Commissioners when there are reasonable grounds to believe that such issuance is warranted.[34] Here, the Notice of *Lis Pendens* was issued by the PCGG through its Legal Department Director Manuel Parras. Clearly, Director Parras, not being a PCGG Commissioner, has no authority to issue the sequestration notice without the concurrence of at least two PCGG Commissioners. In *PCGG v. Judge Peña*,[35] we held that the powers, functions, and duties of the PCGG amount to the exercise of quasi-judicial functions, and the exercise of such functions cannot be delegated by the Commission to its representatives or subordinates or task forces because of the well established principle that judicial or quasi-judicial powers may not be delegated.

Also, the annotation in the Memorandum of Encumbrances indicated at the back of the two certificates of title states "Notice of Sequestration" and not "Notice of *Lis Pendens*." Such annotation was placed there by the Register of Deeds of Quezon City since February 2001. If indeed there had been a mistake in the annotation made, the PCGG should have asked the Register of Deeds to amend the annotation at a reasonable

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[33] *Rollo*, pp. 62-65.

[34] See Section 3, PCGG Rules.

[35] 243 Phil. 93 (1988).

time after the annotation was placed. However, the PCGG failed to do so.

While it is true that the PCGG may still avail of other ancillary writs, other than sequestration, hold or freeze orders, as mentioned in *Republic of the Philippines v. Sandiganbayan*,[36] the PCGG still has to abide by its own rules and the Constitution to ensure the principles of fair play, justice, and due process.

Thus, due to the PCGG's failure to comply with the requirements laid down by the Constitution and its own rules on sequestration, we hold that the Sandiganbayan did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned resolutions ordering the cancellation and/or removal of the Notice of Sequestration annotated in the Memorandum of Encumbrances on TCT Nos. 004-2013010452 and 004-2013010453 registered under BVI.

WHEREFORE, we **DISMISS** the petition. We **AFFIRM** the Amended Resolution dated 18 June 2015 and Resolution dated 11 January 2016 of the Sandiganbayan, Second Division in Civil Case No. 0004.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, A. Jr., and *Reyes, J. Jr.*,[*] *JJ.*, concur.

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[36] *Supra* note 32, at 207, citing *Republic v. Sandiganbayan*, G.R. No. 88228, 27 June 1990, 186 SCRA 864, 871.

[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

SECOND DIVISION

[G.R. No. 225336. September 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AQUIL PILPA *y* DIPAZ,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CONSPIRACY, EXPLAINED; ELEMENTS OF CONSPIRACY MUST BE PROVED BEYOND REASONABLE DOUBT; COLLECTIVE ACTS OF THE ASSAILANTS SHOWED THAT CONSPIRACY EXISTS DESPITE ABSENCE OF DIRECT EVIDENCE.— It is well-established that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy is the unity of purpose and intention in the commission of a crime. There is conspiracy if at the time of the commission of the offense, the acts of two or more accused show that they were animated by the same criminal purpose and were united in their execution, or where the acts of the malefactors indicate a concurrence of sentiments, a joint purpose and a concerted action. It is true that the elements of conspiracy must be proved by the same kind of proof — proof beyond reasonable doubt — necessary to establish the physical acts constituting the crime itself. However, this is not to say that direct proof of such conspiracy is always required. The existence of conspiracy need not, at all times, be established by direct evidence; nor is it necessary to prove prior agreement between the accused to commit the crime charged. Indeed, conspiracy is very rarely proved by direct evidence of an explicit agreement to commit the crime. Thus, the rule is well-settled that conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, where such conduct reasonably shows community of criminal purpose or design. In the present case, both the RTC and CA correctly inferred from the collective acts of the assailants that conspiracy exists despite the absence of direct evidence to the effect.

2. ID.; ID.; DEFENSES OF DENIAL AND ALIBI ARE INHERENTLY WEAK; ACCUSED WAS UNABLE TO PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE CRIME

SCENE AT THE TIME OF ITS COMMISSION.— 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 a ring of truth on 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. These, Pilpa was unable to prove.

3. **ID.; ID.; LONG-TIME FRIENDSHIP IS NOT SUFFICIENT TO CONSTITUTE ILL-MOTIVE SO AS TO TAINT A WITNESS' TESTIMONY ESPECIALLY WHEN IT IS CORROBORATIVE TO OTHER WITNESSES' POSITIVE IDENTIFICATION OF THE ACCUSED.—** Long-time friendship, without more, is not sufficient to constitute ill-motive so as to taint an eyewitness' testimony. And even assuming, without conceding, that the Court could not accord Carolina's and Evangeline's testimonies any evidentiary weight, the result would nevertheless be the same. It bears to stress that Pilpa was positively identified, not just by Carolina and Evangeline, but also by the *barangay tanod* Leonila and by the victim himself when the latter was in the hospital.

4. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; MERE SUDDENNESS OF THE ATTACK IS NOT SUFFICIENT TO HOLD THAT TREACHERY IS PRESENT, IT MUST CLEARLY APPEAR THAT THE METHOD OF ASSAULT ADOPTED BY THE AGGRESSOR WAS DELIBERATELY CHOSEN TO ACCOMPLISH THE PURPOSE WITHOUT RISK TO HIMSELF.—** [M]ere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the assailants does not positively tend to prove that they thereby **knowingly intended** to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer. Specifically, it must clearly appear that the method of assault adopted by the aggressor was **deliberately chosen** with a view to accomplishing the act without risk to the aggressor.

5. ID.; ID.; ID.; ID.; WHERE THE ASSAILANT ATTACKED THE VICTIM WHILE HAVING CONVERSATION WITH FOUR FRIENDS IN A PUBLIC HIGHWAY, TREACHERY CANNOT BE APPRECIATED.— In the case at bar, the testimonies of Leonila, Evangeline, and Carolina reveal that the assailants attacked the victim while the latter was having a seemingly random conversation with four friends **in a public highway** (Quirino Highway), and even in the presence of a *barangay tanod*, who later joined the group. Under these circumstances, the Court finds it difficult to agree that the assailants, including Pilpa, deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to themselves arising from the defense that the victim might offer. To repeat, the victim was with five persons who could have helped him, as they had, in fact, helped him repel the attack. The Court thus fails to see how the mode of attack chosen by the assailants supposedly guaranteed the execution of the criminal act without risk on their end.

6. ID.; REVISED PENAL CODE; HOMICIDE; IN THE ABSENCE OF QUALIFYING CIRCUMSTANCE OF TREACHERY, THE CRIME COMMITTED IS HOMICIDE; PENALTY AND CIVIL LIABILITY.— With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years. Thus, Pilpa shall suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. Finally, in view of the Court's ruling in *People v. Jugueta*, the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

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 Aquil Pilpa y Dipaz (Pilpa) assailing the Decision[2] dated June 8, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05822, which affirmed the Decision[3] dated September 26, 2012 of Regional Trial Court (RTC) of Manila, Branch 18 in Criminal Case No. 03-217857, finding Pilpa guilty beyond reasonable doubt of the crime of Murder.

The Facts

An Information was filed against Pilpa for the murder of Dave Alde (Alde), the accusatory portion of which reads:

> "That on or about August 23, 2003, in the City of Manila, Philippines, the said accused, conspiring and confederating with others whose true names, identities and present whereabouts are still unknown and helping one another, did then and there willfully, unlawfully and feloniously, with intent to kill, with treachery and evident premeditation, attack, assault and use personal violence upon the person of one DAVE ALDE Y BURAYAG, by then and there stabbing the latter with a bladed weapon, hitting him on the chest, thereby inflicting upon the said DAVE ALDE Y BURAYAG mortal stab wound which was the direct and immediate cause of his death thereafter.
>
> Contrary to law."[4]

The version of the prosecution, as summarized in its Appellee's Brief,[5] is as follows:

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[1] See Notice of Appeal dated July 8, 2015, *rollo*, pp. 15-16.

[2] *Rollo*, pp. 2-14. Penned by Associate Justice Sesinando E. Villon with Associate Justices Rodil V. Zalameda and Pedro B. Corales, concurring.

[3] CA *rollo*, pp. 48-59. Penned by Presiding Judge Carolina Icasiano-Sison.

[4] *Rollo*, p. 3.

[5] CA *rollo*, pp. 74-91.

On August 23, 2003, around 8:00 in the evening, prosecution eyewitness Barangay Tanod Leonila Abuel went to Quirino Highway, Pandacan, as she was assigned by her officer in charge to look for a certain Reynan. When she arrived at the highway, she saw a group of five persons which include Dave Alde (Alde for brevity), the victim, Carol (Carol Asis) and Eva (Evangeline Abuel) and two other people the names of which she failed to remember. She approached the said group and asked if they knew the whereabouts of Reynan to which Carol answered in the negative. While still talking to the group, another group of five men, which included one named "*JR*" and appellant Aquil Pilpa (Pilpa for brevity) arrived. At this point, "*JR*" stabbed Alde on the chest with a big knife while appellant was positioned at the back of Leonila. After "JR" stabbed Alde, appellant, who was a mere arms-length away from Leonila, poised to thrust Alde as well. At this point, witness Leonila tried to intervene by announcing her position as Barangay Tanod but appellant disregarded said intervention by uttering "wala kaming pakialam kahit Barangay Tanod ka[.]" Witness Leonila sustained injuries as she attempted to parry the thrusts. Appellant's attempts to stab Alde ultimately failed because "*Choy*[,]" a companion of Alde, was able to parry the thrusts. Leonila then ordered Alde to run away which he was able to do despite his wounds, but appellant and his group gave chase. Thereafter, appellant and his group scampered away.

Subsequently, Alde was brought to the Ospital ng Maynila to be given timely medical attention.

While Alde was brought to the hospital, tanod Leonila, accompanied by the police, one of them, PO3 Benedict Cruz, caught up appellant who was found in a house near the railroad. She identified appellant as one of the group. Appellant was then arrested and brought to the hospital as it is the standard operating procedure to provide medical attention to suspects. When appellant was brought to the hospital, the victim Alde positively identified appellant as one of those who stabbed him.

Dr. Nolan Alandino was the physician on duty at the emergency room when Alde was admitted. Alde underwent emergency surgery due to the stab wounds inflicted on him. Dr. Alandino then referred Alde for further surgery. Alde underwent an operation on both sides of the chest and repair was made on his heart. Such operation ended around 11:40 pm of the same day. Unfortunately, twenty minutes after

the operation, while in the recovery room, Alde went into cardiac arrest and succumbed to death.[6]

On the other hand, the version of the defense, as summarized by the RTC, is as follows:

> For his defense, accused alleged that on August 23, 2003 between 8:00 to 8:30 in the evening, he was at the billiard hall operated by a certain Aling Cora located in front of their house. Pilpa played with companions whose names he did not know. After few minutes of playing, he left the billiard hall at around 8:30 pm then went straight home to sleep. The accused lived together with "JR" and the latter's two sisters and mother. Just when he was about to sleep, policemen arrived to arrest him and "JR" Niepes. The policemen informed that JR stabbed somebody and because of this, [Pilpa] was brought to Police Station 10. Incidentally, JR was not at home at the time of the (*sic*) arrest. Herein accused maintained that he was not in the place of incident and denied that he was with alias JR when the stabbing incident happened. [Pilpa] further denied that he had participation in the killing of the victim and stressed that he was not familiar with the identities of the witnesses presented by the prosecution. Further, the accused clarified in court that he had no motive to attack or kill the victim as he did not even personally know Dave Alde.[7]

Pilpa was arraigned on September 27, 2004, in which he pleaded "not guilty" to the crime charged.[8] Pre-trial and trial thereafter ensued.

Ruling of the RTC

After trial on the merits, in its Decision dated September 26, 2012, the RTC convicted Pilpa of the crime of Murder. The dispositive portion of the said Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding accused **AQUIL PILPA GUILTY** beyond reasonable doubt of the crime of Murder defined and penalized under **Article 248 of**

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[6] *Id.* at 79-80.

[7] *Id.* at 52.

[8] *Rollo*, p. 3.

the Revised Penal Code qualified by treachery and hereby sentenced to suffer the penalty of **RECLUSION PERPETUA** without eligibility of parole. They are ordered to indemnify jointly and severally the heirs of the victim DAVE ALDE the sum of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages. Considering that the accused is a detention prisoner, he shall be given full credit for the period of his preventive detention conformably to Article 29 of the Revised Penal Code.

SO ORDERED.[9] (Emphasis in the original)

The RTC found that the positive identification by the prosecution witnesses Leonila Abuel (Leonila), Evangeline Abuel (Evangeline) and Carolina Asis (Carolina) deserved to be given greater evidentiary weight over the general denial by Pilpa that he was not at the place of the incident at the time it took place. The RTC held that Pilpa was liable — although it was only the certain "JR" who was able to inflict stab wounds on the victim — because there was conspiracy among the assailants of Alde.[10] As conspiracy was present, the RTC ruled that all of the assailants were liable as co-principals regardless of the extent and character of their respective active participation in the commission of the crime perpetrated in furtherance of such conspiracy.[11]

The RTC also found that treachery attended the killing of Alde, hence Pilpa was liable for Murder instead of Homicide. The RTC reasoned that "[t]he attack made by Aquil Pilpa and his group to the victim was so swift and unexpected affording the hapless and unsuspecting victim no opportunity to resist or defend himself."[12]

Aggrieved, Pilpa appealed to the CA.

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[9] CA *rollo*, p. 59.

[10] *Id.* at 55.

[11] *Id.* at 55-56.

[12] *Id.* at 58.

Ruling of the CA

In the assailed Decision dated June 8, 2015, the CA affirmed the RTC's conviction of Pilpa, and held that (1) the prosecution was able to sufficiently prove the elements of the crime charged; (2) conspiracy exists among Alde's assailants; and (3) the element of treachery was present in the killing of Alde.

The CA held that conspiracy may be deduced from the conspirators' conduct before, during and after the commission of the crime indicative of a joint purpose, concerted action and community of interests — and that the facts of the present case reveal such concerted action to achieve the purpose of killing Alde.[13] The CA further held that treachery was present despite the fatal assault being a frontal attack, because the said attack was sudden and unexpected and the victim was unarmed.[14]

The CA, however, modified the award of damages to be paid to the heirs of Alde. The CA added the amount of ₱15,000.00 representing additional actual damages because the heirs were able to show receipts with the said amount representing expenses for the wake and burial of Alde.[15]

Hence, the instant appeal.

Issue

For resolution of this Court are the following issues submitted by Pilpa:

(1) Whether the CA erred in convicting Pilpa despite the prosecution's failure to prove his guilt beyond reasonable doubt;[16]

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[13] *Rollo*, p. 7.

[14] *Id.* at 11.

[15] *Id.* at 13.

[16] *Id.* at 6.

(2) Whether the CA erred in convicting Pilpa despite the prosecution's failure to prove that conspiracy exists;[17]

(3) Whether the CA erred in appreciating the qualifying circumstance of treachery.[18]

The Court's Ruling

The appeal is partially meritorious. The Court affirms the conviction of Pilpa but for the crime of Homicide, instead of Murder, as the qualifying circumstance of treachery was not present in the killing of Alde.

First and Second Issues: The existence of conspiracy and Pilpa's criminal liability

The first two issues, being interrelated, are discussed jointly.

In questioning his conviction, Pilpa harps on the fact that the evidence establishes that he *attempted* only to stab Alde *after* "JR" had already stabbed him. He argues essentially that (1) the attempt to stab Alde was not a crime in itself, and (2) in any event, the crime had already been consummated by "JR" alone at the time he made the said attempt. Pilpa further contends that this attempt was not evidence that he was part of the conspiracy, if any, to kill Alde.

The arguments deserve scant consideration.

It is well-established that conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[19] Conspiracy is the unity of purpose and intention in the commission of a crime. There is conspiracy if at the time of the commission of the offense, the acts of two or more accused show that they were animated

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[17] *Id*.

[18] *Id.* at 7.

[19] *Siton v. Court of Appeals*, 281 Phil. 536, 541 (1991).

by the same criminal purpose and were united in their execution, or where the acts of the malefactors indicate a concurrence of sentiments, a joint purpose and a concerted action.[20]

It is true that the elements of conspiracy must be proved by the same kind of proof — proof beyond reasonable doubt — necessary to establish the physical acts constituting the crime itself.[21] However, this is not to say that direct proof of such conspiracy is always required. The existence of conspiracy need not, at all times, be established by direct evidence; nor is it necessary to prove prior agreement between the accused to commit the crime charged.[22] Indeed, conspiracy is very rarely proved by direct evidence of an explicit agreement to commit the crime. Thus, the rule is well-settled that conspiracy may be inferred from the conduct of the accused before, during and after the commission of the crime, where such conduct reasonably shows community of criminal purpose or design.[23]

In the present case, both the RTC and CA correctly inferred the collective acts of the assailants that conspiracy exists despite the absence of direct evidence to the effect. As the prosecution correctly argued:

> To prove conspiracy, it is not needed that a meeting between the perpetrators be proven. Such conspiracy may be inferred from the conduct before and immediately after the act of the people involved. **The conduct of appellant and "*JR*" in approaching the group of Alde, stabbing him and running after him, indubitably shows that they had agreed to kill him. After the incident, appellant was also found to be in "*JR*"*s* home. It is contrary to human experience and logic to be present at the home of a friend who had just stabbed another without being aware of such occurrence as appellant alleges.**
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> x x x x x x x x x

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[20] *People v. Aquino*, 390 Phil. 1176, 1184-1185 (2000).

[21] *People v. Taborada*, 284-A Phil. 736, 742 (1992).

[22] *Id*.

[23] *Id*. at 743.

It cannot be disputed that the acts of appellant and "*JR*" were done with a common goal of achieving the death of Alde. Their act of stabbing him cannot be interpreted to mean anything else other than they wanted to inflict him serious harm. Such acts of stabbing done to achieve a common goal indicate concerted action and concurrence of sentiments which is adequate in proving that a conspiracy exists.

x x x x x x x x x

The fact that appellant was unable to actually stab Alde, not by his own volition but due to the parry of Alde's companion "*Choy*", does not preclude the existence of conspiracy. Conspiracy can rightly be inferred and proven by the acts of stabbing committed by both appellant and "*JR*" jointly and concertedly. The existence of conspiracy renders appellant as a co-principal even if he failed to actually stab Alde.

Appellant's lame attempt to refute the existence of conspiracy relying on the cases of ***People vs. Jorge*** and ***People vs. Iligan, et. al.*** is misplaced because in those cases, the persons involved did not take part in the actual stabbing. In this case, appellant himself took part in the stabbing. **Furthermore, appellant's assertion that such crime was already consummated by "*JR*" and therefore appellant can no longer be liable for conspiracy is untenable and without basis. The fact that "*JR*" was able to stab Alde first does not mean that appellant who stabbed him next can be exculpated from conspiracy. Otherwise, every conspiracy charge may be thwarted by the mere fact that one of the conspirators beat the others to the act.**[24] (Underscoring and additional emphasis supplied; italics in the original)

To further establish his innocence, Pilpa relies on alibi and denial, and the imputation of ill-motive on the prosecution witnesses. Pilpa reiterates that he was not at the scene of the crime at the time of the incident, and the eyewitnesses' testimonies, particularly those of Carolina and Evangeline, should not be accorded evidentiary weight as they were long-time friends of Alde.

Again, Pilpa's arguments fail to convince.

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[24] CA *rollo*, pp. 87-89.

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 a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.[25] 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.[26] These, Pilpa was unable to prove.

Long-time friendship, without more, is not sufficient to constitute ill-motive so as to taint an eyewitness' testimony. And even assuming, without conceding, that the Court could not accord Carolina's and Evangeline's testimonies any evidentiary weight, the result would nevertheless be the same. It bears to stress that Pilpa was positively identified, not just by Carolina and Evangeline, but also by the *barangay tanod* Leonila and by the victim himself when the latter was in the hospital.[27]

In this connection, the Court quotes with approval the following ratiocination of the CA:

> Appellant failed to show that the prosecution witnesses were prompted by any ill-motive to falsely testify or accuse him of a crime as grave as murder. In fact, appellant admitted that it was only during the trial of the present case that he saw the witness Leonila Abuel. Settled is the rule that where no evidence exists to show any convincing reason or improper motive for a witness to falsely testify against an accused, the testimony deserves faith and credit.
>
> In the face of the positive identification by the prosecution witnesses, appellant's denial and alibi vanish into thin air. Alibi and

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[25] *People v. Piosang*, 710 Phil. 519, 527 (2013).

[26] *People v. Desalisa*, 451 Phil. 869, 876 (2003).

[27] *Rollo*, p. 4.

denial are inherently weak defenses and must be brushed aside when the prosecution has sufficiently and positively ascertained the identity of the accused as in this case. It is also axiomatic that positive testimony prevails over negative testimony.[28]

Without doubt, therefore, Pilpa should be liable for the killing of Alde.

Third Issue: Existence of the Qualifying Circumstance of Treachery

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance was present, thereby making Pilpa liable for Murder instead of Homicide. The CA held:

> On the account of the eyewitnesses Leonila Abuel, Evangeline Abuel and Carolina Asis, appellant and his companions suddenly appeared in front of the victim without any warning or provocation. JR stabbed the victim on his chest. Thereafter, appellant aimed to stab the victim but somebody was able to parry his thrust. The sudden and unexpected attack deprived the unsuspecting victim of any real chance to defend himself, ensuring the attack without risk to his assailants and without sufficient provocation on the victim's part. Likewise, the means employed on the victim assured his assailants of no risk at all arising from the defense that the victim might make. What is decisive is that the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate.
>
> Thus, as correctly pointed out by the court *a quo*:
>
> > "The attack made by Aquil Pilpa and his group to the victim was so swift and unexpected affording the hapless and unsuspecting victim no opportunity to resist or defend himself. Even if the victim was with his companions, the attackers were equipped with bladed weapons and this ensures that the victim shall be without chance to keep himself safe from the violent and treacherous acts of the accused[.]"[29]

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[28] *Id.* at 12.

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

On the other hand, Pilpa claims that the existence of treachery must be proved by clear and convincing evidence before the same could be appreciated. He insists that "[i]n the absence of any convincing proof that the accused consciously and deliberately adopted the means by which they committed the crime in order to ensure its execution, the Honorable Court must resolve the doubt in favor of the accused."[30]

On this issue, the Court rules in favor of Pilpa.

It was error for both the RTC and the CA to conclude that the killing was attended by the qualifying circumstance of treachery simply because the attack was "sudden," "unexpected," and "without any warning or provocation."[31] It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery.[32]

As the Court held in *People v. Santos*,[33] "[t]reachery, just like any other element of the crime committed, must be proved by clear and convincing evidence — evidence sufficient to establish its existence beyond reasonable doubt. It is not to be presumed or taken for granted from a mere statement that "the attack was sudden"[;] there must be a clear showing from the narration of facts why the attack or assault is said to be "sudden."[34]

Stated differently, mere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the assailants does not positively tend to prove that they thereby **knowingly intended** to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer.[35] Specifically, it

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[30] CA *rollo*, pp. 43-44.

[31] *Rollo*, p. 11; *id.* at 50, 58.

[32] *People v. Sabanal*, 254 Phil. 433, 436 (1989).

[33] 175 Phil. 113 (1978).

[34] *Id.* at 122.

[35] *People v. Delgado*, 77 Phil. 11, 15-16 (1946).

must clearly appear that the method of assault adopted by the aggressor was **deliberately chosen** with a view to accomplishing the act without risk to the aggressor.[36]

In the case at bar, the testimonies of Leonila, Evangeline, and Carolina reveal that the assailants attacked the victim while the latter was having a seemingly random conversation with four friends **in a public highway** (Quirino Highway),[37] and even in the presence of a *barangay tanod*, who later joined the group. Under these circumstances, the Court finds it difficult to agree that the assailants, including Pilpa, deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to themselves arising from the defense that the victim might offer. To repeat, the victim was with five persons who could have helped him, as they had, in fact, helped him repel the attack. The Court thus fails to see how the mode of attack chosen by the assailants supposedly guaranteed the execution of the criminal act without risk on their end. As the Court similarly held in *People v. Tumaob*:[38]

> x x x. The qualifying circumstance of treachery can not logically be appreciated because the accused **did not make any preparation** to kill the deceased in such a manner as **to insure the commission of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate**.[39] (Emphasis and underscoring supplied)

In addition, the attack itself was frontal. In *People v. Tugbo, Jr.*,[40] the Court held that treachery was not present because the attack was frontal, and hence, the victim had opportunity to defend himself. While a frontal attack, by itself, does not negate the existence of treachery, when the same is considered

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[36] *People v. Bacho*, 253 Phil. 451, 458 (1989).

[37] CA *rollo*, pp. 49-50.

[38] 83 Phil. 738 (1949).

[39] *Id.* at 742.

[40] 273 Phil. 346, 352 (1991).

along with the other circumstances as previously discussed, it already creates a reasonable doubt in the existence of the qualifying circumstance. From the foregoing, the Court must perforce rule in favor of Pilpa and not appreciate the said circumstance.

With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years.

Thus, Pilpa shall suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.[41]

Finally, in view of the Court's ruling in *People v. Jugueta*,[42] the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Court **DECLARES** accused-appellant Aquil Pilpa y Dipaz **GUILTY** of **HOMICIDE**, for which he is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of Dave Alde the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall

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[41] *People v. Duavis*, 678 Phil. 166, 179 (2011).

[42] 783 Phil. 806 (2016).

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.

Carpio, SAJ (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr.*,* *JJ.*, concur.

SECOND DIVISION

[G.R. No. 225697. September 5, 2018]

ROSIEN OSENTAL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE (RPC); *ESTAFA*; ELEMENTS OF *ESTAFA* UNDER PARAGRAPH 1(b) OF THE RPC IN RELATION TO SECTION 4 OF PD 115, ESTABLISHED IN CASE AT BAR.— The four elements of estafa under paragraph 1(b), Article 315 of the Revised Penal Code are: (1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return it; (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) there is demand by the offended party to the offender. The

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* Designated additional member per Special Order No. 2587 dated August 28, 2018.

four elements of estafa under paragraph 1 (b), Article 315 of the Revised Penal Code, in relation to Section 4 of PD 115, were established beyond reasonable doubt in the present case.

2. ID.; ID.; ID.; EXECUTION OF A COMPROMISE AGREEMENT AND PAYMENT OF AMOUNT IN FULL DOES NOT EXTINGUISH CRIMINAL LIABILITY.— [I]n Osental's petition for review, she alleged that the execution of the compromise agreement and her payment of the amount of ₱345,000.00 representing the principal amount and litigation expenses extinguished her civil as well as criminal liability. This is clearly erroneous. It is a fundamental rule that criminal liability is not subject to compromise. A criminal case is committed against the People and parties cannot waive or agree on the extinguishment of criminal liability. The Revised Penal Code **does not** include compromise as a mode of extinguishing criminal liability.

3. ID.; ID.; ID.; PENALTY FOR *ESTAFA* MODIFIED IN VIEW OF REPUBLIC ACT NO. 10951.— The penalty prescribed under Section 85 of Republic Act No. 10951 is *arresto mayor* in its maximum period to *prision correccional* in its minimum period, that is, four (4) months and one (1) day to two (2) years and four (4) months. Applying the Indeterminate Sentence Law, the penalty imposable should be an indeterminate penalty whose minimum term should be within the range of the penalty next lower in degree, which is *arresto menor* in its maximum period to *arresto mayor* in its medium period or thirty (30) days to two (2) months and one (1) day. In view of the attending circumstances and applying the Indeterminate Sentence Law, this Court rules that the minimum penalty be modified to *arresto menor* in its maximum period or thirty (30) days and the maximum penalty to *prision correccional* in its minimum period or two (2) years and four (4) months.

4. REMEDIAL LAW; EVIDENCE; FORGERY CANNOT BE PRESUMED AND MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE; VALIDITY OF THE SUBJECT AGREEMENT PREVAILS OVER THE NEGATIVE AND SELF-SERVING TESTIMONY OF A WITNESS.— We sustain the finding of the RTC and CA that the evidence adduced by Osental is insufficient to sustain her allegation of forgery. Forgery cannot be presumed and must be proved by clear and convincing evidence. The RTC and CA correctly ruled that there

is a marked similarity between Osental's signature in the trust receipt agreement with Osental's sample signatures in her Pag-IBIG identification card and daily time record. x x x [T]he CA did not err in upholding the finding of the RTC that the forgery of Osental's signature in the trust receipt agreement was not conclusively proved by Osental. Consequently, the testimonies of both Te and Escobar with regard to the validity and due execution of the trust receipt agreement must prevail over the negative and self-serving testimony of Osental.

APPEARANCES OF COUNSEL

Ely F. Azarraga, Jr. for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 29 October 2015 Decision[2] of the Court of Appeals (CA) in CA-G.R. CEB CR. No. 02151. The CA affirmed the 5 December 2012 Decision[3] of the Regional Trial Court (RTC) of Roxas City, Branch 15, in Criminal Case No. C-208-10, convicting petitioner Rosien Osental (Osental) of estafa, as defined and penalized under Article 315, paragraph 1(b)[4] of the Revised Penal Code, in relation to Presidential Decree No. 115 (PD 115).

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[1] *Rollo*, pp. 3-15.

[2] *Id.* at 84-102. Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Marilyn B. Lagura-Yap and Marie Christine Azcarraga-Jacob concurring.

[3] *Id.* at 40-57. Penned by Judge Juliana C. Azarraga.

[4] Article 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

x x x x x x x x x

The Facts

Osental was charged with estafa under Article 315, paragraph 1(b) of the Revised Penal Code. The Information reads:

> That on or about the 21st day of August 2008 in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the said accused, having received in trust from Maria Em[i]lyn Te, the amount of Two Hundred Sixty Two Thousand Two Hundred Twenty Five (₱262,225.00) Pesos under Trust Receipt Agreement dated August 21, 2008, with an express obligation on the part of said accused to purchase dry good[s] RTW to be sold on commission basis and deliver the proceeds of the sale or to return the goods unsold to Maria Em[i]lyn Te, on or before 21 October 2008 far from complying with her obligation, did then and there willfully, unlawfully and feloniously fail to remit the proceeds of the sale or return the goods and misappropriate, misapply and convert the aforementioned amount with unfaithfulness or abuse of trust and confidence to her own personal use and benefit, despite verbal and written demands to the damage and prejudice of Maria Em[i]lyn Te in the aforesaid sum of ₱262,225.00, Philippine Currency.[5]

Upon arraignment on 17 November 2010, Osental, assisted by her counsel, entered a plea of *not* guilty. Trial thereafter ensued.

Sometime during the first week of August 2008, Osental approached Maria Emilyn Te (Te) and convinced her to sell ready-to-wear (RTW) goods in Roxas City. Osental claimed

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1. With unfaithfulness or abuse of confidence, namely:

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(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[5] *Rollo*, p. 40.

she had contacts in Manila and Iloilo City from whom she could acquire the RTW goods. On 21 August 2008, Te agreed and delivered ₱262,225.00 to Osental for the purchase of the RTW goods. On the same date, Te entered into a trust receipt agreement with Osental in which the latter agreed to deliver the proceeds of the sale on 21 October 2008. The trust receipt agreement between Te and Osental, which was also signed by Edna Escobar (Escobar) as witness, states:

RECEIPT AND UNDERTAKING

RECEIVED from MRS. MARIA EMILYN R. TE the amount of (₱262.225.00) for the purpose of buying dry goods/RTW with the duty and obligation on my part to sell items/merchandise on cash basis only and at an overprice, the overprice being my commission and I also hereby undertake and bind myself to deliver to her the proceeds of my sales, minus my commission, and/or return the goods unsold on or before Oct. 21, 2008 without need of any notice or demand. Should I fail to perform my aforementioned duties and obligations (more particularly on the delivery of the proceeds of my sales and/or the return of the unsold items) I will be liable for the crime of Estafa under Article 315 of the Revised Penal Code.[6]

On the trust receipt agreement's due date on 21 October 2008, Osental failed to present the RTW goods, deliver the proceeds of the sale of the RTW goods sold, or return the money that was given to her by Te. Te alleged that Osental made promises to return the money but did not do so. On 23 April 2009, Te sent a demand letter[7] to Osental requiring the return of the ₱262,225.00 delivered by her. Osental did not return the money despite repeated demands. On 15 June 2010, Te filed a Complaint[8] against Osental. The complaint included an Affidavit,[9] which was attested and signed by Escobar, stating that she witnessed the execution of the trust receipt agreement between Osental and Te.

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[6] *Id.* at 20.

[7] *Id.* at 21.

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

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

On 9 July 2010, Osental submitted her Counter-Affidavit[10] in which she denied the genuineness and due execution of the trust receipt agreement. Osental denied being involved in the business of buying RTW goods. She likewise denied receiving ₱262,225.00 from Te. Instead, Osental claimed she purchased gift checks from Te in the amount of ₱10,000.00 and has already paid Te ₱24,500.00. Osental claimed she was never given a receipt by Te as evidence of her payment of the ₱24,500.00.

For the prosecution, both Te and Escobar testified and confirmed the existence and due execution of the trust receipt agreement between Te and Osental. Te testified that she was a close friend of Osental. Te claimed Osental approached her and convinced her to purchase RTW goods that would be sold by Osental in Roxas City. Te claimed that because she trusted Osental, she agreed to Osental's proposal that they become business partners. Te agreed to shell out the capital for the RTW business. Te testified that when they executed the trust receipt agreement, Te delivered the ₱262,225.00 and Osental agreed that upon the maturity of the trust receipt agreement on 21 October 2008 she would deliver the proceeds of the sale of the RTW goods or return the ₱262,225.00 to Te. Meanwhile, Escobar testified that she knew both Te and Osental. Escobar confirmed the existence and due execution of the trust receipt agreement for the purchase of the RTW goods and claimed she was present when the trust receipt agreement was executed on 21 August 2008 and when Te delivered the amount of ₱262,225.00 to Osental.

For her defense, Osental testified and denied the allegations of the complaint. Osental also denied the existence and due execution of the trust receipt agreement between her and Te. Osental claimed that she came to know Te through Escobar since the latter worked in the same office. Osental claimed that Te was a businesswoman selling gift checks and that she loaned the gift checks from Te and the loan was payable in two months with five-percent interest. Osental also claimed

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[10] *Id.* at 23-25.

that her signature in the trust receipt agreement was forged. To prove that her signature was forged, Osental submitted identification cards and a copy of her daily time record containing her signature.

The Ruling of the RTC

In a Decision[11] dated 5 December 2012, the RTC found Osental guilty of estafa under Article 315, paragraph 1(b) of the Revised Penal Code. The RTC ruled that the elements of estafa under Article 315, paragraph 1(b) were proven by the prosecution. The RTC gave credence to the straightforward and positive testimonies of Te and Escobar. The RTC ruled that Osental's defense of denial was negative, self-serving, and unsubstantiated.

The RTC ruled that Osental failed to prove that her signature in the trust receipt agreement was forged. The RTC ruled that Osental's signature in the trust receipt undertaking, when compared with the signature in the records of the RTC including the Motion to Reduce Bailbond, Notice of Hearing, Notification, Return Slip and Explanation, had a stark and marked similarity. The RTC ruled that forgery cannot be presumed and must be proved through clear and convincing evidence. The dispositive portion of the Decision reads:

> WHEREFORE, foregoing premises considered, this Court finds accused, ROSIEN OSENTAL, GUILTY beyond reasonable doubt of the crime of ESTAFA defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code and hereby sentences her to suffer the indeterminate penalty of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Pris*[*i*]*on Correc*[*c*]*ional* as Minimum to TWENTY (20) YEARS [of] *Reclusion Temporal* as Maximum, and to indemnify the private offended party the amount of ₱241,255.00.
>
> The bailbond posted for accused Rosien Osental's temporary liberty is cancelled and declared without force and effect and its release to the bondsman/bondswoman ordered.

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

SO ORDERED.[12]

On 28 August 2014, Osental and Te entered into a Compromise Agreement[13] to settle the civil aspect of the case.

The Ruling of the CA

In a Decision[14] dated 29 October 2015, the CA affirmed with modification the decision of the RTC. The CA acknowledged the execution of the compromise agreement and thus deleted the monetary award against Osental. The CA also lowered the minimum penalty, applying the Indeterminate Sentence Law. The dispositive portion of the Decision reads:

> WHEREFORE, the appeal is DISMISSED, the judgment dated 5 December 2012 of the Regional Trial Court, 6th Judicial Region, Branch 15 of Roxas City in *Crim. Case No. C-208-10* is AFFIRMED with modification, to read, as follows:
>
> (1) The accused-appellant is found Guilty of violation of par. 1(b), Article 315 of the Revised Penal Code in relation to the pertinent provisions of PD 115.
>
> (2) The accused-appellant shall suffer the penalty of six (6) months and one (1) day, as minimum, to twenty (20) years as maximum.
>
> (3) The judgment ordering the accused-appellant to indemnify the private complainant is hereby DELETED.
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> SO ORDERED.[15]

Hence, this petition for review.

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[12] *Id.* at 57.

[13] *Id.* at 75-76.

[14] *Id.* at 84-102.

[15] *Id.* at 101-102.

The Issue

Whether petitioner Rosien Osental is guilty of estafa under paragraph 1(b) of Article 315 of the Revised Penal Code, in relation to PD 115.

The Ruling of this Court

This Court affirms the decision of the CA. However, the penalty is modified in view of Republic Act No. 10951.

In the present case, Osental was charged with and convicted of estafa under paragraph 1(b) of Article 315 of the Revised Penal Code, in relation to PD 115. Section 4 of PD 115 defines a trust receipt transaction, to wit:

> Section 4. *What constitutes a trust receipt transaction.* A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as entrustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the entrustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any of the following:
>
> 1. In the case of goods or documents, (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the entrustee has complied fully with his obligation under the trust receipt; or (c) to load, unload, ship or tranship or otherwise deal with them in a manner preliminary or necessary to their sale; or

2. In the case of instruments,

a) to sell or procure their sale or exchange; or

b) to deliver them to a principal; or

c) to effect the consummation of some transactions involving delivery to a depository or register; or

d) to effect their presentation, collection or renewal.

The sale of goods, documents or instruments by a person in the business of selling goods, documents or instruments for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, documents or instruments, or who sells the same to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of this Decree.

In *Colinares v. Court of Appeals*,[16] this Court held that there are two duties in a trust receipt agreement, to wit:

There are two possible situations in a trust receipt transaction. The first is covered by the provision which refers to money received under the obligation involving the duty to deliver it (*entregarla*) to the owner of the merchandise sold. The second is covered by the provision which refers to merchandise received under the obligation to return it (*devolvera*) to the owner.

Failure of the entrustee to turn over the proceeds of the sale of the goods, covered by the trust receipt to the entruster or to return said goods if they were not disposed of in accordance with the terms of the trust receipt shall be punishable as estafa under Article 315 (1) of the Revised Penal Code, without need of proving intent to defraud.[17] (Emphasis supplied)

Section 13 of PD 115 states that the penalty for estafa shall be imposed on a person who violates the enumerated undertakings under Section 4, to wit:

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[16] 394 Phil. 106 (2000).

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

Section 13. *Penalty clause*. The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

Paragraph 1(b), Article 315 of the Revised Penal Code provides:

Article 315. *Swindling (estafa)*. – Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

x x x x x x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even

> though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

The four elements of estafa under paragraph 1(b), Article 315 of the Revised Penal Code are:

> (1) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any obligation involving the duty to make delivery of or to return it;
> (2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
> (3) that such misappropriation or conversion or denial is to the prejudice of another; and
> (4) there is demand by the offended party to the offender.[18]

The four elements of estafa under paragraph 1 (b), Article 315 of the Revised Penal Code, in relation to Section 4 of PD 115, were established beyond reasonable doubt in the present case. *First*, Osental received money in the amount of ₱262,225.00 from Te in trust for the purchase of RTW goods. Likewise, Osental promised Te that she would deliver the proceeds of the sale and/or the unsold goods on 21 October 2008 as evidenced by the trust receipt agreement duly executed and signed in the presence of Escobar who testified to attest to the validity and due execution of the trust receipt agreement. *Second*, there was denial on the part of Osental that she received ₱262,225.00 from Te. In her testimony, Osental specifically denied the existence and due execution of the trust receipt agreement with Te. Osental also denied receiving ₱262,225.00 from Te for the purchase of the RTW goods.[19] *Third*, Te testified that she suffered actual damages in the amount of ₱262,225.00, moral damages, and litigation expenses.[20] Moreover, the fact of prejudice was also established by the duly executed

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[18] *Salazar v. People*, 480 Phil. 444, 452 (2004).

[19] *Rollo*, p. 23.

[20] *Id.* at 99.

compromise agreement dated 28 August 2014 wherein Osental admitted that she owed Te ₱345,000.00 representing the principal amount as well as attorney's fees and litigation expenses. *Fourth*, as testified, a demand letter dated 23 April 2009 was sent by Te to Osental requiring the latter to return the ₱262,225.00 within 15 days which the latter did not comply with.

For her defense, Osental specifically denied the existence and due execution of the trust receipt agreement with Te. Osental insisted that she never signed any trust receipt agreement and that the signature affixed above her printed name is not hers. To prove her innocence, she presented her Pag-IBIG identification card and daily time record which contained her signature. Osental claimed there is a stark difference between her genuine signature against the one contained in the trust receipt agreement.

This Court disagrees.

We sustain the finding of the RTC and CA that the evidence adduced by Osental is insufficient to sustain her allegation of forgery. Forgery cannot be presumed and must be proved by clear and convincing evidence. The RTC and CA correctly ruled that there is a marked similarity between Osental's signature in the trust receipt agreement with Osental's sample signatures in her Pag-IBIG identification card and daily time record. Moreover, the RTC found Osental's signature in the RTC records including the Motion to Reduce Bailbond, Affidavit of Undertaking, Notice of Hearing, Notification, Return Slip and Explanation also had a marked similarity with her signature in the trust receipt agreement.[21] In the present case, the CA did not err in upholding the finding of the RTC that the forgery of Osental's signature in the trust receipt agreement was not conclusively proved by Osental. Consequently, the testimonies of both Te and Escobar with regard to the validity and due

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[21] In *Pontaoe v. Pontaoe*, 575 Phil. 283, 291 (2008), this Court held that a finding of forgery does not entirely depend on the testimonies of handwriting experts because the judge must conduct an examination of the questioned signature in order to arrive at a reasonable conclusion as to the signature's authenticity.

execution of the trust receipt agreement must prevail over the negative and self-serving testimony of Osental.

Lastly, in Osental's petition for review, she alleged that the execution of the compromise agreement and her payment of the amount of ₱345,000.00 representing the principal amount and litigation expenses extinguished her civil as well as criminal liability.

This is clearly erroneous. It is a fundamental rule that criminal liability is not subject to compromise. A criminal case is committed against the People and parties cannot waive or agree on the extinguishment of criminal liability. The Revised Penal Code **does not** include compromise as a mode of extinguishing criminal liability. In *Trinidad v. Office of the Ombudsman*,[22] this Court held:

> **It is a firmly recognized rule, however, that criminal liability cannot be the subject of a compromise. For a criminal case is committed against the People, and the offended party may not waive or extinguish the criminal liability that the law imposes for its commission.** And that explains why a compromise is not one of the grounds prescribed by the Revised Penal Code for the [extinguishment] of criminal liability.[23] (Emphasis supplied)

In view of Republic Act No. 10951,[24] which amended Article 315 of the Revised Penal Code, this Court modifies the penalty. Section 85 of Republic Act No. 10951 states:

> SEC. 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

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[22] 564 Phil. 382 (2007).

[23] *Id.* at 391.

[24] AN ACT ADJUSTING THE AMOUNT OR THE VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE," AS AMENDED.

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3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over Forty thousand pesos (₱40,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

The penalty prescribed under Section 85 of Republic Act No. 10951 is *arresto mayor* in its maximum period to *prision correccional* in its minimum period, that is, four (4) months and one (1) day to two (2) years and four (4) months. Applying the Indeterminate Sentence Law,[25] the penalty imposable should be an indeterminate penalty whose minimum term should be within the range of the penalty next lower in degree, which is *arresto menor* in its maximum period to *arresto mayor* in its medium period or thirty (30) days to two (2) months and one (1) day. In view of the attending circumstances and applying the Indeterminate Sentence Law, this Court rules that the minimum penalty be modified to *arresto menor* in its maximum period or thirty (30) days and the maximum penalty to *prision correccional* in its minimum period or two (2) years and four (4) months.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 29 October 2015 of the Court of Appeals in CA-G.R. CEB CR. No. 02151 finding petitioner Rosien Osental guilty of violation of paragraph 1 (b), Article 315 of the Revised Penal Code, in relation to the pertinent provisions of Presidential Decree No. 115 with **MODIFICATION** that petitioner shall

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[25] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum of which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

suffer the indeterminate penalty of *arresto menor* or thirty (30) days, as minimum, to *prision correccional* or two (2) years and four (4) months, as maximum.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, A. Jr., and *Reyes, J. Jr.*,* *JJ.*, concur.

FIRST DIVISION

[G.R. No. 227312. September 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JESSIE HALOC *y* CODON,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; EXEMPTING CIRCUMSTANCES; INSANITY; CONCEPT; TO BE EXEMPTING, INSANITY REQUIRES THE COMPLETE DEPRIVATION OF INTELLIGENCE IN COMMITTING THE CRIMINAL ACT; MERE ABNORMALITY OF THE MENTAL FACULTIES WILL NOT EXCLUDE IMPUTABILITY.— [A] person acting under any of the exempting circumstances commits a crime but cannot be held criminally liable therefor. The exemption from punishment stems from the complete absence of intelligence or free will in performing the act. The defense of insanity is thus in the nature of a confession or avoidance. The accused who asserts it is, in effect, admitting to the commission of the crime. Hence, the burden of proof shifts to him, and his side must then prove his insanity with clear and

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* Designated additional member per Special Order No. 2587 dated 28 August 2018.

convincing evidence. The defense of insanity rests on the test of cognition on the part of the accused. Insanity, to be exempting, requires the complete deprivation of intelligence, not only of the will, in committing the criminal act. Mere abnormality of the mental faculties will not exclude imputability. The accused must be so insane as to be incapable of entertaining a criminal intent. He must be deprived of reason, and must be shown to have acted without the least discernment because there is a complete absence of the power to discern or a total deprivation of freedom of the will.

2. **ID.; ID.; ID.; ACCUSED'S MENTAL CONDITION WAS NOT SHOWN TO BE SO SEVERE THAT IT HAD COMPLETELY DEPRIVED HIM OF REASON OR INTELLIGENCE WHEN HE COMMITTED THE FELONIES; THAT ACCUSED RECOGNIZED HIS SISTER AND HAD SURRENDERED THE BOLO TO HER AFTER HIS DEADLY ASSAULT SHOWED THAT HE HAD NOT BEEN TOTALLY DEPRIVED OF THE CAPACITY OF COGNITION.—** [T]he accused-appellant did not establish the exempting circumstance of insanity. His mental condition at the time of the commission of the felonies he was charged with and found guilty of was not shown to be so severe that it had completely deprived him of reason or intelligence when he committed the felonies charged. Based on the records, he had been administered medication to cure his mental illness, but there was no showing that he suffered from complete deprivation of intelligence. On the contrary, the medical professionals presented during the trial conceded that he had been treated only to control his mental condition. There was also no showing that the accused-appellant's actions manifested his insanity immediately after the hacking incidents. His own sister, Araceli Haloc-Ayo, declared that he had recognized her and had surrendered the bolo to her after his deadly assault. Clearly, he had not been totally deprived of the capacity of cognition.

3. **ID.; ID.; MURDER AND ATTEMPTED MURDER; FAILURE OF THE ACCUSED TO SUPPORT HIS DEFENSE OF INSANITY COUPLED WITH THE PRESUMPTION IN LAW IN FAVOR OF SANITY WARRANTS HIS CONVICTION FOR MURDER AND ATTEMPTED MURDER; CIVIL LIABILITY, MODIFIED.—** [T]he accused-appellant's actions and actuations prior to, simultaneously with and in the aftermath of the lethal

assaults did not support his defense of insanity. This, coupled with the presumption of law in favor of sanity, now warrants the affirmance of his convictions, for he had not been legally insane when he committed the felonies. Neither should his mental condition be considered as a mitigating circumstance. As we have noted, the Defense presented no evidence to show that his condition had diminished the exercise of his will power. To conform to *People v. Jugueta,* we modify the awards of civil liabilities. In Criminal Case No. 2781, the awards of civil indemnity and moral damages for the death of Arnel are each increased to ₱75,000.00, and exemplary damages of ₱75,000.00 are granted in addition, the same to be paid to the heirs of the late Arnel. In Criminal Case No. 2780, the sums of ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages are granted to Allan. In both cases, all the amounts shall earn interest of 6% *per annum* reckoned from the finality of this decision until full settlement.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

To be exempting from criminal responsibility, insanity is the complete deprivation of intelligence in committing the criminal act. Mere abnormality of the mental faculties does not exempt from criminal responsibility.

The Case

The accused-appellant assails the decision promulgated on August 19, 2015,[1] whereby the Court of Appeals (CA) affirmed

[1] *Rollo,* pp. 2-10; penned by Associate Justice Jose C. Reyes, Jr. (now a Member of the Court), and concurred in by Associate Justice Stephen C. Cruz and Associate Justice Ramon Paul L. Hernando.

with modifications his conviction for murder and attempted murder under the judgment rendered on March 20, 2014 by the Regional Trial Court (RTC), Branch 54, in Gubat, Sorsogon in Criminal Case No. 2780 and Criminal Case No. 2781.[2]

Antecedents

As summarized by the CA, the factual and procedural antecedents are as follows:

> Accused-appellant Jessie Haloc y Codon, then fifty-one (51) years old, was apprehended by barangay officials after he hacked Allan de la Cruz, nine (9) years and his brother Arnel, four (4) years old, inside the de la Cruz's yard at Barangay Union, Gubat, Sorsogon on June 22, 2008 at around 12 noon. Arnel died as a result of the hacking blow to his neck, while Allan sustained injuries on his upper arm. (Records, Criminal Case No. 2780, p. 5, 9)
>
> According to the Joint Inquest Memorandum, the accused, who was armed with a 24-inch bolo, went to the dela Cruzes' and attempted to strike the victims' father, Ambrosio who was able to escape. Unfortunately, Ambrosio's five (5) sons were following him. Jessie took his ire on Ambrosio's children, hacking Allan on the arm and taking Arnel and cutting his neck, severing the jugular veins and nearly decapitating his head resulting to Arnel's immediate death. (Records, Criminal Case No. 2780, p. 5)
>
> The accused-appellant, assisted by the Public Attorney's Office (PAO) did not submit any counter-affidavit. (Records, Criminal Case No. 2780, p. 5)
>
> On June 22, 2008, an Information was filed charging accused-appellant of Attempted Murder in Criminal Case No. 2780 as follows:
>
> > That on or about 12:00 o'clock noon of June 22, 2008 at Barangay Union, municipality of Gubat, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and taking advantage of his superior strength, armed with a bolo, did then and there, wilfully, unlawfully and feloniously, with intent to kill, and acting with discernment,

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[2] CA *rollo,* pp. 39-45; penned by Presiding Judge Bernardo R. Jimenez, Jr.

attack, assault and hack one ALLAN DE LA CRUZ, a 9 year old minor, hitting the victim on his right arm, thus accused commences (sic) the commission of Murder directly by overt acts but was not able to perform all the acts of execution which would have produce (sic) the crime of Murder by reason of causes or accident other than his own spontaneous desistance, that is, the said Allan de la Cruz was brought to a hospital and was given medical assistance which prevented his death, to his damage and prejudice.

CONTRARY TO LAW. (Records, Criminal Case No. 2780, p. 1)

Another Information was filed against accused-appellant for Murder in Criminal Case No. 2781:

That on or about 12:00 o'clock noon of June 22, 2008 at Barangay Union, municipality of Gubat, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and taking advantage of his superior strength, armed with a bolo, did then and there, wilfully, unlawfully and feloniously, with intent to kill, and acting with discernment, attack, assault and hack one ARNEL DE LA CRUZ, a 4 year old minor, inflicting upon him mortal wounds which caused his death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW. (Records, Criminal Case No. 2781, p. 1)

On September 3, 2008, the original date for the accused's arraignment, the PAO manifested that he could not effectively interview the accused as he seemed to be mentally unfit. The PAO asked that the accused be first subjected to psychiatric evaluation which the trial court granted. (Records, Criminal Case No. 2780, p. 20)

On July 7, 2010, the Head of the Department of Psychiatry of Bicol Medical Center, Cadlan, Pili, Camarines Sur submitted a report stating that the accused is already fit for trial. (Records, Criminal Case No. 2780, p. 37)

On July 22, 2010, the accused was arraigned and he pleaded "not guilty" to both charges. (Records, Criminal Case No. 2780, p. 42; Criminal Case No. 2781, p. 21)

Invoking insanity, the (order of) trial was reversed and the accused-appellant was first to present evidence.

Araceli Haloc-Ayo (Araceli) older sister of the accused testified that the victims Arnel and Allan were the accused's neighbours. The

accused got angry at them since as they were noisy and he could not sleep. (Rollo, p. 42; TSN, July 11, 2013, pp. 5-6).

Although she was not present during the actual hacking incident, she went near the accused right after and found him standing by the trail. He recognized her and voluntarily gave the bolo to her. Araceli said that she noticed that her brother's eyes were "blazing" but she just came near him to prevent his brother from inflicting further injury. She said that her brother was acting differently and was very fierce. (Rollo, p. 41; TSN, July 11, 2013, pp. 3-6)

Days before the incident, Araceli visited the accused in his place and she learned that he has been drinking alcohol since he could not sleep, thinking about his child who was about to get married. (Rollo, p. 41; TSN, July 11, 2013, pp. 4-5)

Araceli also admitted that prior to the incident, she brought her brother to the hospital where he was treated. He got well and was not violent. He also recognized members of his family. (Rollo, p. 42; TSN, July 11, 2013, p. 6)

Suson Haloc (Susan), the accused's wife, testified that she has been married with him for thirty (30) years. She claimed that her husband was a kind person. In 2003, Jessie was brought to the Mental Hospital in Cadlan because of a mental disorder. He was cured with the medicines given him. In 2008, her husband's mental disorder recurred as he was drinking liquor again. In the last week of April 2008, the accused was brought to a certain Dr. Gregorio who prescribed four (4) tablets to him which made her husband well. After a month, her husband again suffered a mental disorder. She noticed that his eyes were "glazing", he could not work in the farm normally and he could not recognize her. Thus she left the house two (2) days before the incident and went to Juban, Sorsogon to her siblings. (Rollo, p. 42; TSN, March 14, 2013, pp. 3-7)

Dr. Imelda Escuadra (Dr. Escuadra), a psychiatrist, testified that the accused was brought to Don Susano Memorial Mental Hospital in Cadlan on August 22, 2003 and on July 16, 2007. Although she was not the one who treated the accused, she confirmed that the accused was a patient of the hospital based on their records. Dr. Benedicto Aguirre, now deceased, was the one who personally treated the accused. Another doctor, Dr. Chona Belmonte also saw the accused on October 8, 2008, November 5, 2008 and December 2008. (Rollo, pp. 40-41; TSN, May 2, 2012, pp. 2-8)

The prosecution did not present evidence.[3]

As stated, the RTC rejected the defense of insanity, and convicted the accused-appellant as charged.[4] It opined that there was no evidence to show that he had been totally deprived of reason;[5] that, therefore, he had presented no competent witness to establish his insanity; and that his witnesses had even declared that he had been treated in 2003 and on April 18, 2008,[6] which, when taken together with the presumption of law in favor of sanity, doomed his defense of insanity. The RTC disposed thusly:

WHEREFORE, all premises considered, this court finds accused **JESSIE HALOC** *y* **CODON** guilty beyond reasonable doubt of the crimes of Attempted Murder and Murder.

For Crim. Case No. **2780**: Accused Jessie Haloc y Codon is sentenced to suffer the indeterminate sentence of **six (6) years** of *prision correccional,* maximum as minimum to **eight (8) years and one (1) day** of *prision mayor* medium as **maximum** and to indemnify Allan de la Cruz the amount of ₱5,000 for medical expenses, and.

For Crim. Case No. **2781**: Accused Jessie Haloc y Codon is sentenced to suffer the penalty of ***Reclusion Perpetua*** and to indemnify the heirs of Arnel de la Cruz the amount of ₱50,000 and another ₱50,000 as moral damages

SO ORDERED.[7]

On appeal, the CA affirmed the convictions, observing that even Dr. Imelda Escuadra, the psychiatrist of the Don Susano Memorial Mental Hospital in Cadlan, Pili, Camarines Sur, had testified that the mental condition of the accused-appellant had improved; that during the last time that he had consulted with her, he had no longer shown psychotic signs and symptoms;

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[3] *Rollo,* pp. 2-5.

[4] CA *rollo,* p. 44.

[5] *Id.*

[6] *Id.* at 42-43.

[7] *Id.* at 45.

that his mental condition could not be a mitigating circumstance because no evidence had been presented showing that his mental condition had diminished his will power;[8] and that, nonetheless, the award of actual damages of ₱5,000.00 should be deleted, and interest at the rate of 6% *per annum* on the civil indemnity and moral damages reckoned from the date of finality of the judgment until full satisfaction should be imposed. The *fallo* reads:

> **WHEREFORE**, the appeal is **DENIED** for lack of merit. The Decision dated March 20, 2014 of the Regional Trial Court, Branch 54 of Gubat, Sorsogon, in Criminal Case Nos. 2780 and 2781 is hereby **AFFIRMED with the MODIFICATION** in that the portion ordering the accused-appellant JESSIE HALOC *y* CODON to indemnify Allan de la Cruz in the amount of ₱5,000.00 for medical expenses, in Criminal Case No. 2780, is deleted. The award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages in Criminal Case No. 2781, meanwhile, shall earn interest at the legal rate of 6% per annum from the date of finality of the judgment until fully paid.
>
> **SO ORDERED.**[9]

Hence, this appeal.

Issues

Both the Office of the Solicitor General,[10] representing the People, and the Public Attorney's Office,[11] representing the accused-appellant, manifested that in this appeal they were no longer filing supplemental briefs, and that their briefs filed in the CA be considered.

Hence, the accused-appellant submits that his defense of insanity should have been appreciated; that the records contained sufficient evidence proving his having been deprived of reason

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[8] *Rollo,* p. 9.

[9] *Id.* at 10.

[10] *Id.* at 19-21.

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

at the time he hacked the victims; and that even assuming that he was liable for killing Arnel and injuring Allan, he should be favored with the mitigating circumstance.

Ruling of the Court

The appeal lacks merit.

Article 248 of the *Revised Penal Code,* as amended by Republic Act No. 7659, provides as follows:

> Article 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, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
>
> 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or 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.

The following are the elements of the felony of murder, namely: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the *Revised Penal Code;* and (4) that the killing was not parricide or infanticide.[12]

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[12] *People v. Lagman,* G.R. No. 197807, April 16, 2012, 669 SCRA 512, 522.

There is no denying that the crimes committed by the accused-appellant were murder and attempted murder. Allan dela Cruz, the victim in the attempted murder, declared that the accused-appellant had stormed into their house in order to hack Ambrosio, the victims' father, but Ambrosio had been able to escape the assault by running away. His escape prompted his five sons, including Arnel and Allan, to run away after him. The accused-appellant pursued them, and he first hacked the 9-years old Allan, hitting him in the arm, and then seized the 4-year old Arnel, hacking him in the neck causing his instantaneous death.

The authorship of the crimes by the accused-appellant became undisputed because he himself admitted assaulting the victims. Also undisputed were that Arnel had died from the hacking assault by the accused-appellant, as evidenced by his death certificate, and that both victims were minors below 10 years old, as stipulated during the pre-trial.

The informations charged the accused-appellant with murder and attempted murder, averring that the crimes were committed with treachery. The convictions were warranted. The killing of or assault against a child by an adult assailant is always treated as treacherous,[13] even if the treacherous manner of the assault is not shown. Indeed, the weakness of the minor victim because of his tender years results in the absence of any danger or risk to the adult assailant.[14] The rationale for such treatment is easy to discern – the minor victim cannot be expected to put up any form of effective resistance because of his tender age, relatively small frame, and inexperience in combat. Moreover, a deadly attack against a minor is easier to execute inasmuch as the minor can offer little, if any, resistance, thereby posing no peril to the attacker.

In his attempt to escape criminal responsibility, the accused-appellant submits that he was entitled to the benefit of the

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[13] *People v. Sanchez,* G.R. No. 188610, June 29, 2010, 622 SCRA 548, 560.

[14] *People v. Cabarrubias,* G.R. Nos. 94709-10, June 15, 1993, 223 SCRA 363, 369.

exempting circumstance of insanity. He alleges that he was insane at the time of his lethal assaults, and, therefore, he should not be criminally responsible for the death and injuries he had inflicted.

The submission of the accused-appellant is unwarranted.

Insanity is one of the recognized exempting circumstances under Article 12 of the *Revised Penal Code,* thus:

> Article 12. *Circumstances which exempt from criminal liability.* – The following are exempt from criminal liability:
>
> 1. An imbecile or an insane person, unless the latter has acted during a lucid interval.
>
> x x x x x x x x x

Strictly speaking, a person acting under any of the exempting circumstances commits a crime but cannot be held criminally liable therefor. The exemption from punishment stems from the complete absence of intelligence or free will in performing the act. The defense of insanity is thus in the nature of a confession or avoidance. The accused who asserts it is, in effect, admitting to the commission of the crime. Hence, the burden of proof shifts to him, and his side must then prove his insanity with clear and convincing evidence.[15]

The defense of insanity rests on the test of cognition on the part of the accused. Insanity, to be exempting, requires the complete deprivation of intelligence, not only of the will, in committing the criminal act.[16] Mere abnormality of the mental faculties will not exclude imputability. The accused must be so insane as to be incapable of entertaining a criminal intent. He must be deprived of reason, and must be shown to have acted without the least discernment because there is a complete absence

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[15] *People v. Pantoja,* G.R. No. 223114, November 29, 2017.

[16] *People v. Isla,* G.R. No. 199875, November 21, 2012, 686 SCRA 267, 278-279.

of the power to discern or a total deprivation of freedom of the will.[17]

Further discussion of insanity by the Court in *People v. Dungo*[18] is relevant, thus:

> One who suffers from insanity at the time of the commission of the offense charged cannot in a legal sense entertain a criminal intent and cannot be held criminally responsible for his acts. His unlawful act is the product of a mental disease or a mental defect. In order that insanity may relieve a person from criminal responsibility, it is necessary that there be a complete deprivation of intelligence in committing the act, that is, that the accused be deprived of cognition; that he acts without the least discernment; that there be complete absence or deprivation of the freedom of the will. (People v. Puno, 105 SCRA 151)
>
> It is difficult to distinguish sanity from insanity. There is no definite defined border between sanity and insanity. Under foreign jurisdiction, there are three major criteria in determining the existence of insanity, namely: delusion test, irresistible impulse test, and the right and wrong test. Insane delusion is manifested by a false belief for which there is no reasonable basis and which would be incredible under the given circumstances to the same person if he is of compos mentis. Under the delusion test, an insane person believes in a state of things, the existence of which no rational person would believe. A person acts under an irresistible impulse when, by reason of duress or mental disease, he has lost the power to choose between right and wrong, to avoid the act in question, his free agency being at the time destroyed. Under the right and wrong test, a person is insane when he suffers from such perverted condition of the mental and moral faculties as to render him incapable of distinguishing between right and wrong. (See 44 C.J.S. 2)
>
> So far, under our jurisdiction, there has been no case that lays down a definite test or criterion for insanity. However, We can apply as test or criterion the definition of insanity under Section 1039 of the Revised Administrative Code, which states that insanity is "a

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[17] *People v. Estrada,* G.R. No. 130487, June 19, 2000, 333 SCRA 699, 713.

[18] G.R. No. 89420, July 31, 1991, 199 SCRA 860, 866-868.

manifestation in language or conduct, of disease or defect of the brain, or a more or less permanently diseased or disordered condition of the mentality, functional or organic, and characterized by perversion, inhibition, or by disordered function of the sensory or of the intellective faculties, or by impaired or disordered volition." Insanity as defined above is evinced by a deranged and perverted condition of the mental faculties which is manifested in language or conduct. An insane person has no full and clear understanding of the nature and consequence of his act.

Thus, **insanity may be shown by surrounding circumstances fairly throwing light on the subject, such as evidence of the alleged deranged person's general conduct and appearance, his acts and conduct inconsistent with his previous character and habits, his irrational acts and beliefs, and his improvident bargains.**

Evidence of insanity must have reference to the mental condition of the person whose sanity is in issue, at the very time of doing the act which is the subject of inquiry. However, it is permissible to receive evidence of his mental condition for a reasonable period both before and after the time of the act in question. Direct testimony is not required nor the specific acts of derangement essential to establish insanity as a defense. The vagaries of the mind can only be known by outward acts: thereby we read the thoughts, motives and emotions of a person; and through which we determine whether his acts conform to the practice of people of sound mind. (People v. Bonoan, 64 Phil. 87)

Based on the foregoing, the accused-appellant did not establish the exempting circumstance of insanity. His mental condition at the time of the commission of the felonies he was charged with and found guilty of was not shown to be so severe that it had completely deprived him of reason or intelligence when he committed the felonies charged. Based on the records, he had been administered medication to cure his mental illness, but there was no showing that he suffered from complete deprivation of intelligence. On the contrary, the medical professionals presented during the trial conceded that he had been treated only to control his mental condition.

There was also no showing that the accused-appellant's actions manifested his insanity immediately after the hacking incidents. His own sister, Araceli Haloc-Ayo, declared that he had

recognized her and had surrendered the bolo to her after his deadly assault. Clearly, he had not been totally deprived of the capacity of cognition.

The accused-appellant was subjected to medical tests after the hacking incidents. According to Dr. Imelda Escuadra, the psychiatrist of the Don Susano Memorial Mental Hospital in Cadlan, Pili, Camarines Sur, the medications previously prescribed to him were medicines administered to a patient suffering psychosis. She did not categorically state, however, that he had been psychotic. Nonetheless, even if we were to deduce from her testimony that he had been suffering some form of psychosis, there was still no testimony to the effect that such psychosis had totally deprived him of intelligence or reason.

In view of all the foregoing, the accused-appellant's actions and actuations prior to, simultaneously with and in the aftermath of the lethal assaults did not support his defense of insanity. This, coupled with the presumption of law in favor of sanity, now warrants the affirmance of his convictions, for he had not been legally insane when he committed the felonies.

Neither should his mental condition be considered as a mitigating circumstance. As we have noted, the Defense presented no evidence to show that his condition had diminished the exercise of his will power.[19]

To conform to *People v. Jugueta,*[20] we modify the awards of civil liabilities. In Criminal Case No. 2781, the awards of civil indemnity and moral damages for the death of Arnel are each increased to ₱75,000.00, and exemplary damages of ₱75,000.00 are granted in addition, the same to be paid to the heirs of the late Arnel. In Criminal Case No. 2780, the sums of ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages are granted to Allan. In both cases, all the amounts shall earn interest of 6% *per annum* reckoned from the finality of this decision until full settlement.

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[19] Article 14 (9), *Revised Penal Code.*

[20] G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382.

WHEREFORE, the Court **AFFIRMS IN ALL RESPECTS** the decision promulgated on August 19, 2015 by the Court of Appeals, subject to the following **MODIFICATIONS,** namely:

(1) In Criminal Case No. 2781, the accused-appellant shall pay to the heirs of the late Arnel de la Cruz civil indemnity of ₱75,000.00, moral damages of ₱75,000.00 and exemplary damages of ₱75,000.00;

(2) In Criminal Case No. 2780, the accused-appellant shall pay to Allan de la Cruz ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages and ₱25,000.00 as exemplary damages; and

(3) The accused-appellant shall pay interest at the rate of 6% *per annum* on all the amounts herein granted as civil liabilities reckoned from the finality of this decision until full settlement, plus the costs of suit.

SO ORDERED.

Leonardo-de Castro, C.J., Jardeleza, and *Tijam, JJ.,* concur.

Del Castillo J., on wellness leave.

SECOND DIVISION

[G.R. No. 227405. September 5, 2018]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **AMADO M. BLOR, JESUS R. BARRERA, ANGELINA O. QUIJANO, POTENCIANO G. VICEDO, MIRAFLOR B. SOLIVEN, and ANNIE F. CONSTANTINO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT ACT (RA 9184); PURCHASE OF iPAD UNITS WITHOUT PRIOR PUBLIC BIDDING VIOLATED RA 9184; THE COURT UPHELD THE DISQUISITION OF THE COURT OF APPEALS WHICH AFFIRMED THE FINDINGS OF THE DEPUTY OMBUDSMAN.—** [T]he Court of Appeals affirmed the finding of the Office of the Deputy Ombudsman for Luzon that the purchase violated RA 9184. The following disquisition of the Court of Appeals in its Decision dated 22 January 2016 is instructive, to wit: Evaluating now the DARPO's shopping for iPads in light of the above mentioned standards, We are persuaded that the law on procurement was not observed in the acquisition of these devices. x x x We are convinced that there was a deficient compliance with the law. The erroneous procedure to facilitate the procurement as well as the extraordinary nature of the subject goods, which cannot be shopped, all point to a procurement inconsistent with R.A. No. 9184 and its RIRR. The Court sees no reason to deviate from these findings.

2. **ID.; ID.; ID.; BIDS AND AWARDS COMMITTEE (BAC) MEMBERS ARE NOT ONLY BOUND TO KNOW THE LAW BUT ALSO TO ENSURE COMPLIANCE WITH THE PRESCRIBED PROCEDURE ON GOVERNMENT PROCUREMENT.—** Under RA 9184, the BAC shall ensure that the procuring entity abides by the standards set forth by the procurement law. In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement. x x x Here, respondents Barrera, Quijano, Vicedo, and Constantino held the following positions in the BAC of DARPO-Occidental Mindoro: respondent Barrera as Chairman, respondent Quijano as Vice-Chairman, respondent Vicedo as Member, and respondent Constantino as part of the Technical Working Group. Further, respondents Barrera and Constantino were the heads of the Inspection and Canvass Committees, respectively. By law, respondents Barrera, Quijano, Vicedo, and Constantino were bound, not only to know, but also to ensure compliance by the procuring entity with the prescribed procedure on government procurement. However,

they chose not to, as found by the Office of the Deputy Ombudsman for Luzon and the Court of Appeals.

3. ID.; ID.; PUBLIC OFFICIALS AND EMPLOYEES; GRAVE MISCONDUCT, DEFINED AND EXPLAINED; PURCHASE OF iPAD UNITS BY RESPONDENTS WITHOUT PRIOR PUBLIC BIDDING AMOUNTS TO GRAVE MISCONDUCT; LENGTH OF SERVICE AND LACK OF PRIOR DISCIPLINARY RECORD CANNOT MITIGATE LIABILITY.— Respondents Barrera, Quijano, Vicedo, and Constantino are mistaken in invoking their length of service and lack of prior disciplinary record to mitigate their liability. x x x To the mind of the Court, all these undisputed facts constitute substantial evidence against respondents Barrera, Quijano, Vicedo, and Constantino on their **clear intent to violate the law**. Hence, their length of service in the government and lack of prior disciplinary record cannot mitigate their liability. x x x Collectively, the acts of respondents evince a community of design between the BAC officers and members, on the one hand, and the head and the accountant of the procuring entity, on the other, to circumvent the proper procedure on government procurement. Jurisprudence defines grave misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer," tainted with other "elements such as corruption or **willful intent to violate the law or to disregard established rules**." Similarly, the purchase of the iPad units by respondents amounts to grave misconduct, considering that the unjustifiable failure to hold public bidding is a violation of RA 9184, and their direct resort to shopping was tainted with the intent to violate or to disregard established rules on government procurement.

APPEARANCES OF COUNSEL

Office of the Ombudsman, Office of Legal Affairs for petitioner.

Dante F. Vargas for respondents Jesus R. Barrera, Angelina O. Quijano, Miraflor B. Soliven and Annie O. Constantino.

Wenceslao L. Narido, Jr. for respondents Amado M. Blor and Potenciano G. Vicedo.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review on certiorari assails the Decision dated 22 January 2016[1] and Resolution dated 18 August 2016[2] of the Court of Appeals in CA-G.R. SP No. 138533. The case stems from a complaint against respondents for the alleged illegal procurement of six iPad units for the Department of Agrarian Reform Provincial Office (DARPO) in Occidental Mindoro.

The Antecedent Facts

Per Special Order No. 11-2013,[3] the Bids and Awards Committee (BAC) of DARPO-Occidental Mindoro was reconstituted as follows: respondent Jesus R. Barrera (Barrera), Chairman; respondent Angelina O. Quijano (Quijano), Vice-Chairman; and respondent Potenciano G. Vicedo (Vicedo), Agnes A. Caliboso (Caliboso), and the concerned Municipal Agrarian Reform Officer, Members. Further, under PARO Special Order No. 08-2012,[4] respondents Barrera and Annie R. Constantino (Constantino) would head the Inspection and Canvass Committees, respectively. Both administrative orders were issued by respondent Amado M. Blor (Blor), Officer-in-Charge (OIC)-Provincial Agrarian Reform Officer II (PARO).

On 17 June 2013, the Management Committee of DARPO-Occidental Mindoro held a meeting. The attendees were respondent Blor as PARO, respondent Barrera as Chief Agrarian

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[1] *Rollo*, pp. 62-82. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Ramon A. Cruz and Henri Jean Paul B. Inting concurring.

[2] *Id.* at 85-100.

[3] *Id.* at 154-155.

[4] *Id.* at 161.

Reform Officer (CARO) of the Administrative and Finance Division, respondent Quijano as CARO of the Beneficiaries Development Coordinating Division, respondent Vicedo as OIC-CARO of the Operations Division, and Caliboso, head of the Planning, Monitoring and Evaluation Unit. During the meeting, Rodrigo P. Mazo (Mazo), a procurement officer,[5] was summoned and instructed by respondent Blor to purchase six iPad units for the use of the PARO and CAROs. In other words, the Chairman, Vice-Chairman and two Members of the BAC, all of whom were part of the Management Committee, happened to be the end users of the requisition. An undated Requisition and Issue Slip (RIS)[6] was signed by respondents Barrera and Blor as the requesting party and approving authority, respectively. Notably, the RIS specified "IPAD," with the purpose indicated as "[f]or PARO and CARPO use."[7] Mazo created the online posting[8] at the Philippine Government Electronic Procurement System (PhilGEPS) and drafted the Request for Quotation (RFQ).[9] The approved budget for the contract was PhP239,940, or PhP39,990 per unit. Unlike the RIS, the RFQ did not specify "iPad," but described the article as "Tablet Computer" with the following specifications: "(1) 9.7 inch with Retina display; (2) A6x chip with quadcore graphics; (3) 5MP iSight camera with 1080p HD video rec; (4) Facetime HD camera; (5) up to lOhrs battery life; (6) built-in WIFI (802.11 a/b/g/n); and (7) 64-GB WIFI + Cellular."[10]

Meanwhile, respondent Constantino, Chairperson of the Canvass Committee, sent RFQs[11] to three suppliers based in

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[5] *Id.* at 155. Per Special Order No. 11-2013.

[6] *Id.* at 162, 342.

[7] *Id.*

[8] *Id.* at 175-177, 344-346.

[9] *Id.* at 178.

[10] *Id.*

[11] *Id.* at 397.

SM Megamall, Mandaluyong City, namely, Silicon Valley Computer Centre (Silicon Valley), Electroworld, and Accent Micro Products, Inc. The RFQ was dated 18 June 2013, and signed by respondents Constantino and Blor.[12] Also, per Travel Order No. 203 S-2013 dated 18 June 2013,[13] respondent Miraflor B. Soliven (Soliven), OIC-Accountant II, and respondent Constantino were scheduled to depart on 23 June 2013 and return on 26 June 2013 "to coordinate with central project office regarding the funds of ARISP3 and canvass Ipads."[14] The travel order was recommended by respondent Barrera and approved by respondent Blor.

On 20 June 2013, the three stores replied to respondent Blor. Apart from recommending the Apple iPad at PhP39,990 per unit,[15] the three stores also submitted their respective quotations for the keyboard case accessory: PhP2,000 by Silicon Valley; PhP4,000 by Electroworld; and PhP3,000 by Accent Micro Products, Inc. Incidentally, Mazo published on the same day at PhilGEPS the requisition he earlier created, for a seven-day posting period, or until 27 June 2013.

Having submitted the lowest bid, Silicon Valley, through its owner and operator Tiny.Com Computer, Inc., was issued Land Bank of the Philippines Check No. 127247 dated 24 June 2013 in the amount of PhP238,173.30. Respondent Blor, an authorized signatory, signed the check. Further, three undated documents were stamped "PAID," with the date "JUN 24 2013" superimposed and the number 127247 immediately below. These undated documents included the following: (1) a purchase order signed by respondent Blor as the authorized official and respondent Barrera as head of the requisitioning office;[16] (2) Obligation Slip No. 200-13-06-0478A signed by respondent

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[12] *Id.* at 343.

[13] *Id.* at 351-352.

[14] *Id.*

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

[16] *Id.* at 182.

Barrera as the requesting party and certifying that the allotment for the six iPad units amounting to PhP251,940 was necessary, lawful and under his direct supervision, and respondent Constantino as OIC-Budget Officer, certifying that the appropriation was available and obligated for the indicated purpose;[17] and (3) Disbursement Voucher No. 158-06569-13 in the net amount of PhP238,173.30 signed by respondent Soliven, certifying the availability of funds, and respondent Blor approving the payment, with the accounting entries having been prepared by respondent Constantino as bookkeeper and approved by respondent Soliven.[18] On 28 June 2013, DARPO-Occidental Mindoro was issued Official Receipt No. 1315,[19] evidencing payment in the amount of PhP238,173.30 to Silicon Valley. Based on the Acknowledgment Receipts for Equipment,[20] the six iPad units were acquired on 24 June 2013 and received on 1 July 2013. The recipients were respondents Blor, Barrera, Quijano, and Vicedo, and Lester P. Abeleda, Attorney III. Meanwhile, the iPad unit given to Caliboso, BAC member and head of the Planning, Monitoring and Evaluation Unit, was turned over to Provincial Agrarian Reform Adjudicator Ariel D. Maglalang.[21]

Notably, the requisition for six tablet computers was not included in the 2013 Annual Procurement Plan (APP)[22] of DARPO-Occidental Mindoro. However, on 14 November 2013, the 2013 APP was updated to include the requisition. The updated APP was signed by respondent Barrera who prepared the document, respondent Soliven who certified that funds were available, and respondent Blor who approved the updated APP.[23]

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[17] *Id*. at 183.

[18] *Id*. at 184.

[19] *Id*. at 194.

[20] *Id*. at 302-306.

[21] *Id*. at 369, 625.

[22] *Id*. at 171-174.

[23] *Id*. at 222.

On 18 November 2013, Mazo filed with the Office of the Deputy Ombudsman for Luzon an Affidavit Complaint dated 2 October 2013,[24] charging respondents and Lester P. Abeleda with Violation of Republic Act No. (RA) 9184, or the Government Procurement Reform Act.

The Ruling of the Office of the Deputy Ombudsman for Luzon

Finding substantial evidence on the illegal procurement of the iPad units, having been purchased in violation of RA 9184, the Office of the Deputy Ombudsman for Luzon held respondents administratively liable for grave misconduct. The dispositive portion of the Decision dated 15 September 2014[25] reads:

> WHEREFORE, respondents AMADO M. BLOR, Provincial Agrarian Reform Officer I, JESUS R. BARRERA, Chief Agrarian Reform Program Officer, Administrative and Finance Division, and Chairman, Bids and Awards Committee, ANGELINA O. QUIJANO, Chief Agrarian Reform Officer, Beneficiaries Development Coordinating Division, POTENCIANO G. VICEDO, OIC, Chief Agrarian Reform Officer, LESTER P. ABELEDA, Legal Officer, MIRAFLOR B. SOLIVEN, OIC-Accountant II, and ANNIE CONSTANTINO, Acting Budget Officer/ Bookkeeper, all of the Department of Agrarian Reform Provincial Office (DARPO) San Jose, Occidental Mindoro, are hereby found GUILTY of *Grave Misconduct* and are meted with the penalty of DISMISSAL from the service with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office, as well as in government-owned and -controlled corporations, pursuant to the Revised Rules on Administrative Cases in the Civil Service.
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> SO ORDERED.[26]

On 31 October 2014, respondents filed a Motion for Reconsideration. In its Order dated 14 November 2014,[27] the Office of the Deputy Ombudsman for Luzon denied their motion.

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[24] *Id.* at 144-153.

[25] *Id.* at 131-141.

[26] *Id.* at 140.

[27] *Id.* at 142-143.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the finding of the Office of the Deputy Ombudsman for Luzon that the procurement of the iPad units violated RA 9184. However, only respondents Barrera, Quijano, and Constantino were found administratively liable for being "members of the BAC who worked actively and conceitedly to realize the acquisition of [the] iPads."[28] The dispositive portion of the Decision dated 22 January 2016[29] reads:

> WHEREFORE, premises considered, the APPEAL is found PARTLY MERITORIOUS. The assailed Decision and Order dated 15 September 2014 and 14 November 2014, respectively, are hereby MODIFIED, to the effect that only petitioners Jesus R. Barrera, Angelina O. Quijano, and Annie [F.] Constantino are found guilty of GRAVE MISCONDUCT, and are meted the penalty of DISMISSAL and its attendant penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service.
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> On the other hand, the complaint against petitioners Amado M. Blor, Potenciano G. Vicedo, and Miraflor B. Soliven is DISMISSED.
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> SO ORDERED.[30]

Upon motion by respondents Barrera, Quijano, and Constantino, the Court of Appeals reconsidered its Decision dated 22 January 2016 and appreciated their length of government service and being first-time offenders to have mitigated their liability. On the other hand, the Court of Appeals denied the Motion for Partial Reconsideration filed by petitioner. The dispositive portion of the Resolution dated 18 August 2016[31] reads:

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[28] *Id.* at 80.

[29] *Id.* at 62-82.

[30] *Id.* at 81.

[31] *Id.* at 85-100.

WHEREFORE, premises considered, the Motion for Reconsideration filed by petitioners-movants is hereby found PARTLY MERITORIOUS.

The 22 January 2016 Decision is hereby MODIFIED, to the effect that petitioners Jesus R. Barrera, Angelina Quijano, and Annie [F.] Constantino are hereby meted the penalty of suspension for one (1) year without pay in lieu of dismissal with its attendant penalties, for the offense of Grave Misconduct committed through flagrant disregard of R.A. 9184.

On the other hand, the Motion for Partial Reconsideration filed by the Office of the Ombudsman is DENIED.

SO ORDERED.[32]

The Issues

In gist, petitioner and respondents raise the following two issues: *first*, whether the procurement of the iPad units is lawful; and *second*, if in the affirmative, whether respondents are administratively liable.

The Ruling of this Court

The petition is meritorious.

The purchase of the iPad units without prior public bidding violated RA 9184.

Petitioner argues that the purchase of the six iPad units was contrary to RA 9184. Respondents contend otherwise and pass on the blame to Lazo for failing to inform them that the requisition was posted on PhilGEPS.

Petitioner is correct. In fact, the Court of Appeals affirmed the finding of the Office of the Deputy Ombudsman for Luzon that the purchase violated RA 9184. The following disquisition of the Court of Appeals in its Decision dated 22 January 2016 is instructive, to wit:

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[32] *Id.* at 99-100.

Evaluating now the DARPO's shopping for iPads in light of the above mentioned standards, We are persuaded that the law on procurement was not observed in the acquisition of these devices. We elaborate the reasons below.

Principally, by no means can an Apple iPad be considered an ordinary or regular office supply. Petitioners have not satisfactorily explained why they specifically need an Apple iPad to carry out their transactions or duties. Their arguments that an iPad should be treated as an ordinary or regular office supply borders on the absurd. They would have an iPad be classified with pens, paper clips, bond papers, ink, and similar items and supplies normally used and consumed in a typical office in the course of its daily operations.

x x x x x x x x x

Second, the acquisition of Apple iPads also contravened the "no brand name rule" in procurement, x x x.

x x x x x x x x x

Thus, assuming tablets were needed, the procurement need not have been limited to Apple products. We take judicial notice that an Apple iPad occupies the top rung on the tablet ladder and commands an expensive price. Notably, there are cheaper tablets available on the market and which perform substantially the same functions as an Apple iPad. Consequently, had Sec. 18 been observed, the government would have spent substantially less for each tablet.

Aside from the nature of the goods procured by shopping, We also find that the requirement for posting has not been complied with. This has even been admitted by the petitioners. Sec. 54.2 of the RIRR elucidates on this condition, x x x.

x x x x x x x x x

The defects of the procurement, however, do not stop here. A more fundamental error lay with the non-inclusion of the purchase in the DARPO's Annual Procurement Plan ("APP"), which under the RIRR is indispensable, x x x.

x x x x x x x x x

Another lapse is that no Resolution from the Bids and Awards Committee prescribed the resort to shopping. The argument that such a Resolution is necessary only when the procurement is included in the original APP, and not in an updated one, is weak and baseless.

x x x x x x x x x

Given the above observations, We are convinced that there was a deficient compliance with the law. The erroneous procedure to facilitate the procurement as well as the extraordinary nature of the subject goods, which cannot be shopped, all point to a procurement inconsistent with R.A. No. 9184 and its RIRR.[33]

The Court sees no reason to deviate from these findings.

Respondents Barrera, Quijano, Vicedo, and Constantino, as BAC members, are liable, and their length of service cannot mitigate their liability.

Petitioner argues that respondents Barrera, Quijano, Vicedo, and Constantino, as officers and members of the BAC, must be held administratively liable and dismissed from the service for the illegal procurement of the iPad units. Respondents Barrera, Quijano, and Constantino contend otherwise and insist that the procurement was justified, and that in any event, the imposable penalty must be mitigated by their length of service and lack of any previous offense. For his part, respondent Vicedo maintains that his administrative liability was not proven by substantial evidence, considering that he did not sign any document relating to the procurement of the devices.

Petitioner is correct.

Under RA 9184, the BAC shall ensure that the procuring entity abides by the standards set forth by the procurement law. In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement. Section 12 of RA 9184 reads:

SECTION 12. *Functions of the BAC*. – The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility

[33] *Id*. at 74-77.

of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: *Provided*, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.

The functions of the BAC are echoed in Sections 12.1 and 12.2 of the Revised Implementing Rules and Regulations (RIRR), and even in the earlier IRR, of RA 9184.

Here, respondents Barrera, Quijano, Vicedo, and Constantino held the following positions in the BAC of DARPO-Occidental Mindoro: respondent Barrera as Chairman, respondent Quijano as Vice-Chairman, respondent Vicedo as Member, and respondent Constantino as part of the Technical Working Group. Further, respondents Barrera and Constantino were the heads of the Inspection and Canvass Committees, respectively. By law, respondents Barrera, Quijano, Vicedo, and Constantino were bound, not only to know, but also to ensure compliance by the procuring entity with the prescribed procedure on government procurement. However, they chose not to, as found by the Office of the Deputy Ombudsman for Luzon and the Court of Appeals.

Respondents Barrera, Quijano, Vicedo, and Constantino are mistaken in invoking their length of service and lack of prior

disciplinary record to mitigate their liability. In *Office of the Ombudsman-Mindanao v. Martel*,[34] the Court explained:

> Even though it affirmed the administrative guilt of the respondents for grave misconduct and gross neglect of duty, warranting the penalty of dismissal from service, the CA downgraded their penalty to one (1) year suspension without pay. The appellate court explained that aside from the fact that there was no proof of overpricing or damage to the government, the length of government service of the respondents should mitigate their penalty, x x x.
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> x x x x x x x x x x x x
>
> The Court disagrees.
>
> *First*, the element of misappropriation is not indispensable in an administrative charge of grave misconduct. Thus, the lack of proof of overpricing or damage to the government does not *ipso facto* amount to a mitigated penalty.
>
> *Second*, length of service is not a magic phrase that, once invoked, will automatically be considered as a mitigating circumstance in favor of the party invoking it. Length of service can either be a mitigating or aggravating circumstance depending on the factual milieu of each case. Length of service, in other words, is an alternative circumstance.
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> In *University of the Philippines v. Civil Service Commission*, the length of service of the respondent therein was not considered; instead, the Court took it against the said respondent because her length of service, among other things, helped her in the commission of the offense. In *Bondoc v. Mantala*, it was asserted that jurisprudence was replete with cases declaring that a grave offense could not be mitigated by the fact that the accused was a first-time offender or by the length of service of the accused. While in most cases, length of service was considered in favor of the respondent, it was not considered where the offense committed was found to be serious or grave.
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> Here, Martel and Guiñares had been the Provincial Accountant and the Provincial Treasurer, respectively, and both were members of the PBAC for a number of years. With their extensive experience, it was expected that they were knowledgeable with the various laws

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[34] G.R. No. 221134, 1 March 2017, 819 SCRA 131, 146-147.

on the procurement process. Thus, it is truly appalling that the respondents failed to apply the basic rule that all procurement shall be done through competitive bidding and that only in exceptional circumstances could public bidding be dispensed with. As previously discussed, they also committed several violations during the course of the procurement which underscored the seriousness of their transgressions.

To recall, when the procurement of iPad units was broached during the Management Committee meeting on 17 June 2013, none of respondents Barrera, Quijano, Vicedo, and Constantino objected or raised that the purchase of the devices must undergo public bidding. What is more, respondents Barrera, Quijano, and Vicedo happened to be the end users of the requisition. Further, respondent Constantino sent RFQs to three stores in Manila the immediately following day, showing the lack of intent to follow the regular procedure. A week after the Management Committee meeting and well within the seven-day posting period of the requisition at PhilGEPS, a check dated 24 June 2013 was already issued in favor of the supplier with the lowest quotation. To the mind of the Court, all these undisputed facts constitute substantial evidence against respondents Barrera, Quijano, Vicedo, and Constantino on their **clear intent to violate the law**. Hence, their length of service in the government and lack of prior disciplinary record cannot mitigate their liability.

Respondents Blor and Soliven facilitated the illegal procurement.

Petitioner argues that respondents Blor and Soliven must also be held administratively liable for grave misconduct for facilitating the illegal procurement and the disbursement of public funds. On the other hand, respondents Blor and Soliven refute their liability because they were not part of the BAC of DARPO-Occidental Mindoro.

Petitioner is correct. The Decision dated 15 September 2014 of the Office of the Deputy Ombudsman for Luzon reads in pertinent part:

As for respondents Blor x x x and Soliven, while they were not members of the BAC, the role played by them, in cahoots with the other respondents who were members of the BAC, [was] indispensable to the subject transaction.

To stress, Blor was the head of the procuring entity. He approved the RIS and DV. He "gave the go signal" that prompted the BAC to procure the iPads through shopping. He also approved the payment of the iPads despite the lack of requisite documentation. On top of it, he is an end user. xxx. Meanwhile, respondent Soliven certified in the DV that supporting documents are complete and proper despite the absence of a BAC Resolution approved by the head of the entity which justif[ies] the use of the alternative mode of procurement, and notice of posting for seven days in the PhilGEPS, in the website of the Procuring Entity and its electronic procurement service provider, if any, and in any conspicuous place in the premises of the Procuring Entity.[35]

Further, respondent Blor issued Special Order No. 11-2013, enumerating the responsibilities of the BAC, and Special Order No. 8-2012, describing the functions of the Inspection and Canvass Committees. Hence, respondent Blor cannot feign ignorance about the rules on government procurement. Respondent Soliven also accompanied respondent Constantino, a BAC member, to Manila to canvass iPads and their travel order was signed by respondent Blor. Most telling, respondents Blor and Soliven signed the updated APP, inserting the requisition for the six iPad units previously not found in the original APP for 2013. Collectively, the acts of respondents evince a community of design between the BAC officers and members, on the one hand, and the head and the accountant of the procuring entity, on the other, to circumvent the proper procedure on government procurement.

Jurisprudence defines grave misconduct as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer,"[36]

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[35] *Rollo*, pp. 136-137.

[36] *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

tainted with other "elements such as corruption or **willful intent to violate the law or to disregard established rules**."[37] Similarly, the purchase of the iPad units by respondents amounts to grave misconduct, considering that the unjustifiable failure to hold public bidding is a violation of RA 9184, and their direct resort to shopping was tainted with the intent to violate or to disregard established rules on government procurement.

To clarify, when a civil servant is disciplined, the object sought is not the punishment of the officer or employee, but the improvement of public service and the preservation of the public's faith and confidence in the government.[38] Serious offenses, such as grave misconduct, have always been and should remain anathema in the civil service.[39] The rationale is enshrined in Section 1, Article XI of the Constitution — public office is a public trust.

WHEREFORE, the petition for review on certiorari filed by the Office of the Ombudsman is **GRANTED**. The Decision dated 22 January 2016 and Resolution dated 18 August 2016 of the Court of Appeals in CA-G.R. SP No. 138533 are **REVERSED** and **SET ASIDE**. The Decision dated 15 September 2014 and Order dated 14 November 2014 of the Office of the Deputy Ombudsman for Luzon in OMB-L-A-14-0017 are hereby **REINSTATED**.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, A. Jr., and *Reyes, J. Jr.*,[*] *JJ.*, concur

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[37] *Chavez v. Garcia*, 783 Phil. 562, 573 (2016).

[38] *Office of the Ombudsman-Mindanao v. Martel*, *supra* note 34.

[39] *Office of the Ombudsman-Mindanao v. Martel*, *supra* note 34.

[*] Designated additional member per Special Order No. 2587 dated 28 August 2018.

FIRST DIVISION

[G.R. No. 229204. September 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PACIFICO SANGCAJO, JR.,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; GUIDELINES IN DECIDING SEXUAL ABUSE CASES.—** Jurisprudence has laid down guidelines on how the courts should proceed in deciding sexual abuse cases. The guidelines are: (1) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove the accusation; (2) in the nature of things, only two persons are usually involved in the crime of rape; hence, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the Prosecution must stand or fall on its own merits, and cannot draw strength from the weakness of the evidence for the Defense.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S EVALUATION OF THE EVIDENCE AND CREDIBILITY OF WITNESSES IS ENTITLED TO THE HIGHEST RESPECT BY THE SUPREME COURT ON APPEAL ON ACCOUNT OF THE TRIAL COURT'S BETTER POSITION TO MAKE THE EVALUATION.—** We have generally adhered to the rule that the trial court's evaluation of the evidence and of the credibility of witnesses is entitled to the highest respect by the Court on appeal on account of the trial court's better position to make such evaluation by virtue of its having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. The trial judge's evaluation, once affirmed by the CA, binds the Court on appeal, leaving on the shoulders of the accused the heavy burden of bringing to our attention facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted but would materially affect the disposition of the case differently if duly considered. Only when we are made aware of or come across facts and circumstances of substance and value that the trial court and by the CA had overlooked that, if properly considered, might reverse the outcome, do we set the rule aside and conduct our own re-examination of the trial court's evaluation.

3. ID.; ID.; PRESUMPTIONS; PRESUMPTION OF INNOCENCE; IN RAPE CASES; MERE INVOCATION OF THE TRADITIONAL AND PROVERBIAL MODESTY OF THE FILIPINA DOES NOT PREVAIL OVER OR DISPENSE WITH THE NEED TO PRESENT PROOF SUFFICIENT TO OVERCOME THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE.— We should still demand that the State overcome the presumption of innocence, for every accused has no burden to prove his innocence, and will be entitled to acquittal unless the presumption of innocence in his favor is overcome. The mere invocation of the traditional and proverbial modesty of the Filipina does not prevail over or dispense with the need to present proof sufficient to overcome the constitutional presumption of innocence.

4. ID.; ID.; PROOF BEYOND REASONABLE DOUBT; GUILT OF THE ACCUSED MUST BE ESTABLISHED BEYOND REASONABLE DOUBT, OTHERWISE, HE IS ENTITLED TO AN ACQUITTAL; REASONABLE DOUBT; DEFINED; CASE AT BAR.— In view of the greater probability that the sexual intercourse between the victim and Pacifico was consensual, he is entitled to be acquitted and to be set free on the ground that his guilt for rape had not been established beyond reasonable doubt. *Reasonable doubt of guilt*, according to *United States v. Youthsey*: x x x **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.** x x x.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

The presumption of innocence in favor of an accused in a criminal case is a basic constitutional guarantee. It demands that the State must establish his guilt beyond reasonable doubt.

To do so, the Prosecution must rely on the strength of its evidence, not on the weakness of his defense. Every reasonable doubt of his guilt entitles him to an acquittal.

The Case

Accused-appellant Pacifico Sangcajo, Jr. (Pacifico) seeks the review and reversal of the decision promulgated on March 31, 2016,[1] whereby the Court of Appeals (CA) affirmed with modifications the judgment rendered in Criminal Case No. Q-09-160890 on August 13, 2014 by the Regional Trial Court (RTC), Branch 80, in Quezon City convicting him of rape.[2]

Antecedents

The Office of the City Prosecutor of Quezon City filed in the RTC the following information charging Pacifico with rape, alleging thusly:

> That on or about the 30th day of January 2009 in Quezon City, Philippines, the said accused, by means of force and intimidation, did then and there willfully, unlawfully and feloniously commit an act of sexual intercourse upon the person of one AAA,[3] the latter and the accused after having a drinking spree said complainant felt dizzy and asleep, after which said accused had a carnal knowledge of her, by then and there inserting his penis inside said complainant's vagina against her will and without her consent, to the damage and prejudice of the said offended party.
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> CONTRARY TO LAW.[4]

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Fernanda Lampas Peralta, concurred by Associate Justice Jane Aurora C. Lantion and Associate Justice Nina G. Antonio-Valenzuela.

[2] CA *rollo*, pp. 17-21; penned by Presiding Judge Charito B. Gonzales.

[3] The real name of the victim is withheld pursuant to Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*). Instead, a fictitious name is used to designate her. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA *rollo*, p. 17.

As summarized by the CA, the factual antecedents are as follows:

Accused-appellant is the cousin of AAA's mother. On January 30, 2009, around 10:00 P.M., then 24 year-old AAA was at accused-appellant's house located at XXX, Quezon City, where she was temporarily residing while waiting for her oath taking as new employee of the Bureau of Jail Management and Penology (BJMP). Accused-appellant and AAA were drinking beer because it was AAA's birthday. After consuming two large bottles of Red Horse beer together, AAA felt dizzy and sleepy. Accused-appellant allowed AAA to lie down on his "papag" (wooden bed), where AAA fell asleep. However, AAA was awakened when she felt someone on top of her, who turned out to be accused-appellant. AAA struggled to get up from the "papag" and from the hold of accused-appellant, but the latter held her hands and pinned down her feet with his thighs. AAA could not shout as she was so weak. Accused-appellant then pulled down AAA's shorts and panty, and spread her legs. Thereupon, accused-appellant inserted his penis into AAA's vagina, which caused her pain. Then, AAA passed out. When AAA woke up the following day, she saw the naked accused-appellant lying beside her. AAA was trembling and felt that her private part was swollen. AAA took a bath, got her things, went to her grandmother's office and told her the incident. AAA's grandmother asked a jail officer to accompany AAA to the police station.

On February 1, 2009, AAA submitted herself to medical examination by a medico legal officer at Camp Crame, Quezon City, who issued an "Initial Medico-Legal Report" dated February 1, 2009 showing the following remarks: "fresh healing deep laceration of the hymen at eight o'clock position," "bleaded posterior position" and "findings are compatible with recent vaginal penetration."

Accused-appellant, however, denied the charges and alleged that what happened between him and AAA was a consensual sexual intercourse.

Details of the respective versions of the parties were summarized by the trial court in its Decision dated August 13, 2014 as follows:

> The prosecution evidence shows that at the time of the alleged rape incident, [AAA] was living at the house of the accused located at [XXX], Quezon City as she was waiting for her oathtaking for new job with the Bureau of Jail Management

and Penology (BJMP). The BJMP office is just near the house of the accused. Accused is a cousin of [AAA's] mother and she fondly calls him "Tito Cadong."

At around 10:00 p.m. of January 30, 2009, while [AAA] and the accused were at home, accused invited [AAA] to have a drink as it was [AAA's] birthday. [AAA] gave in to the invitation and they consumed two (2) large bottles of Red Horse beer. Thereafter, [AAA] felt sleepy and dizzy. She told the accused that she would go ahead and sleep. [She] asked permission from the accused to lie down on the "papag" of the accused. The accused agreed. [AAA] fell asleep. She was awaken because she felt some weight on top of her. When she opened her eyes, she saw the accused on top of her. [AAA] struggled to get up from the "papag" and from the hold of the accused but the accused held her hands. Accused pinned down the two (2) feet of [AAA] with his thigh, pulled down her panty and shorts and started kissing her. Accused opened her legs and forced his penis inside her vagina. [AAA] felt pain. [AAA] wanted to shout but she could not do so as she felt very weak. Accused put in and out his penis from her vagina for about three (3) minutes. [AAA] passed out. She woke up the following morning with the accused lying beside her and he was naked. Her body was shaking and she felt her vagina and it was swelling. She went to the bathroom, still shaking. She washed her body thoroughly and she felt as if she was floating. She took her things and called her grandmother. Her grandmother told her to go to her office. When she arrived at her grandmother's office, she asked a jail officer to accompany [AAA] to the police station. The following day, she submitted herself for medical examination at Camp Crame, Quezon City.

Medico-Legal Report No. R09-240 submitted by Dr. Del Rosario contains the following conclusion: "Findings are compatible with recent vaginal penetration."

The defense presented the accused who denied the charge and testified that [AAA] used to live in his house. On 30 January [2009], he arrived at the house at around 10:00 p.m. His wife at that time was in San Juan. [AAA] was already there preparing food. They ate at around 10:45 p.m. Thereafter, [AAA] asked him to fix her hair as according to her, her hair is not good to look at. Accused obliged and fixed [AAA's] haircut for about

> thirty (30) minutes. [AAA] then took a bath in the bathroom near their room. When she went out of the bathroom, she was wearing shorts, white sando without bra as he could see that her nipples were protruding from her sando. [AAA] asked him to drink with her as it was her birthday. He then learned that [AAA] had earlier bought three (3) bottles of Red Horse beer and they were already inside the refrigerator. [AAA] and the accused had a drink for one (1) hour and had consumed two (2) bottles of Red Horse Grande. When [AAA] was already tipsy, she became dizzy and asked his permission to lie on his bed as she was too lazy to arrange her own bed. Accused agreed. [AAA] lied down on his bed while accused cleared the table and washed the glasses that they used. Thereafter, he lied down next to [AAA] and he knew that [AAA] was still awake as when he lied down beside her, she lied down on her back and their hands came into contact. Accused turned off the light, returned to the bed and embraced [AAA] who did not resist. They had sexual intercourse. Thereafter, he kissed her lips, her breast and down to her legs. [AAA] held his head and was moaning. Then, they fell asleep. When he woke up at about 4:00 a.m. the next day, the light was already turned on and [AAA] was having coffee. He said sorry to [AAA] for what happened to them, as he was having a guilty conscience. [AAA] did not reply. Accused went back to sleep and when he woke up at 8:30 a.m., [AAA] was gone.[5]

During the trial, the Prosecution presented AAA, the complainant; and Dr. Rodney G. Rosario, a Medico-Legal Officer from the PNP Crime Laboratory in Camp Crame, Quezon City; while the Defense presented Pacifico himself and his neighbor, Jelleve Loreja.[6]

Judgment of the RTC

As stated, the RTC convicted Pacifico of rape as charged. It found AAA credible and trustworthy, noting that she had even cried while recounting the details of the crime; that, accordingly, the Prosecution had established the elements of

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[5] *Rollo*, pp. 3-5.

[6] *Id.* at 6.

the crime by showing his having had carnal knowledge of her by force; and that his defense of her having consented to the sexual act could not be accepted considering that she would not have willingly subjected herself to the shame and scandal of testifying on her defilement unless the charge were true.

The RTC disposed:

> WHEREFORE, premises considered, the court finds accused PACIFICO SANGCAJO, JR., guilty beyond reasonable doubt of the crime of RAPE and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and to indemnify private complainant [AAA] the amount of Fifty Thousand Pesos.
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> SO ORDERED.[7]

Decision of the CA

On appeal, the CA affirmed the conviction, and declared that AAA had been unconscious at the time Pacifico started to ravish her. It observed that there was nothing in her testimony during the trial that would have triggered suspicion of fabrication on her part; and that the sexual intercourse could not be considered as consensual in the absence of independent evidence to establish a romantic relationship between the parties, like love notes or mementos.

The *fallo* reads:

> **WHEREFORE**, the trial court's Decision dated August 13, 2014 is **AFFIRMED**, subject to modification that accused-appellant is further ordered to pay AAA moral damages of ₱50,000.00 and exemplary damages of ₱30,000.00. In addition, to the civil indemnity of ₱50,000.00 awarded by the trial court, and to pay interest at the rate of six per cent (6%) per annum on all the damages awarded, to be computed from date of finality of this judgment until full payment.
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> **SO ORDERED.**[8]

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[7] CA *rollo*, p. 69.

[8] *Rollo*, p. 17.

Issue

Hence, Pacifico appeals.

The Office of the Solicitor General[9] and the Public Attorney's Office[10] have manifested that neither of them is filing a supplemental brief, and that they were adopting for this appeal their respective briefs filed in the CA.

Accordingly, Pacifico contends that AAA consented to the sexual congress between them; that her testimony suffered from improbabilities, as demonstrated by her claim that he had held both of her hands with his own hands while his thighs had pinned down her legs; that he would have been unable to undress and sexually penetrate her in that situation; that she had also not sustained any physical injuries, thereby debunking his having forced himself on her; and that the force that he had supposedly applied on her and to lay her down on his *papag* should have caused injuries to her.

Ruling of the Court

The Court **ACQUITS** Pacifico due to reasonable doubt of his guilt.

Jurisprudence has laid down guidelines on how the courts should proceed in deciding sexual abuse cases. The guidelines are: (1) an accusation of rape can be made with facility, and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove the accusation; (2) in the nature of things, only two persons are usually involved in the crime of rape; hence, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the Prosecution must stand or fall on its own merits, and cannot draw strength from the weakness of the evidence for the Defense.[11]

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[9] *Id.* at 27-29.

[10] *Id.* at 31-33.

[11] *People v. Salidaga*, G.R. No. 172323, January 29, 2007, 513 SCRA 306, 312.

The scrutiny of the testimony of AAA must be carefully and thoroughly made by applying the foregoing guidelines in order to determine whether or not her testimony was credible and sufficient to produce in the mind of a neutral arbiter a finding of guilt beyond reasonable doubt against Pacifico. Indeed, the Prosecution's case should rise or fall upon the strength and reliability of her testimonial recollections.

Let us examine the version of AAA.

Pacifico invited her to have some drinks with him on January 30, 2009. After the two of them had finished two large bottles of Red Horse Grande, a well-known beer with a high alcohol content, she felt sleepy and tipsy. She asked if she could just lie down and sleep on his *papag*.[12] He obliged her, and she laid down and slept on his *papag*. She remembered waking up because she felt the weight of someone on top of her. It was Pacifico. She tried to resist him, but he held both of her hands down and pinned her legs with his thighs. He quickly removed her undergarments and forcefully inserted his penis into her. He made pumping motions for three minutes until she lost consciousness. Upon her coming to, she was surprised to see him naked and sleeping beside her. She forthwith left his house and reported the rape to the authorities.[13]

We have generally adhered to the rule that the trial court's evaluation of the evidence and of the credibility of witnesses is entitled to the highest respect by the Court on appeal on account of the trial court's better position to make such evaluation by virtue of its having heard the witnesses themselves and observed their deportment and manner of testifying during the trial. The trial judge's evaluation, once affirmed by the CA, binds the Court on appeal, leaving on the shoulders of the accused the heavy burden of bringing to our attention facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted but would materially affect the disposition of

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[12] TSN, February 2, 2012, p. 5.

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

the case differently if duly considered.[14] Only when we are made aware of or come across facts and circumstances of substance and value that the trial court and by the CA had overlooked that, if properly considered, might reverse the outcome, do we set the rule aside and conduct our own re-examination of the trial court's evaluation. Verily, we have never hesitated to set aside our adherence to the rule and to reopen the records and take a long hard look at them if we have reason to doubt the accuracy of the recollections of the victim in rape, or when the matter of credibility of the evidence calls for a second look. After all, the review of criminal convictions, albeit not a trial *de novo*, requires us not to be constricted by the rule for the sake of mere convenience only. To do justice to everyone, particularly to the man on the dock who fights for his freedom, if not his life itself, has always been our foremost task and duty.

The credibility of testimony given in judicial trials is tested by human experience and probability. For, surely:

> Evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself - such as the common experience and observation of mankind can approve as probable under the circumstances. We have no test of the truth of human testimony, except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous and is outside of judicial cognizance.[15]

As judges, therefore, we should not accord credence to and reliance on evidence that is inherently or physically improbable; instead, we should disregard such evidence even though it stands uncontradicted.[16]

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[14] *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 288; *Gerasta v. People*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512.

[15] Salonga, *Philippine Law on Evidence*, 3rd Ed., 1964, p. 774, quoting New Jersey Vice Chancellor Van Fleet in *Daggers v. Van Dyck*, 37 N.J. Eq. 130.

[16] *Louisville & N. R. Co. v. Chambers*, 165 Ky. 703.

Our careful and thorough review has turned up several circumstances that cast serious doubt on the finding of Pacifico's guilt for rape.

The first circumstance related to the insistence of Pacifico that AAA's testimony contained material inconsistencies that demonstrated definite improbabilities in her recollection commands our concurrence. She recalled being roused from sleep by Pacifico's holding both her hands down with his hands and pinning her legs down with his thighs, and removing her shorts and undergarments *at the same time*, spreading her legs, and then sexually penetrating her. The scenario thereby depicted was palpably improbable, if not physically impossible. How could he have taken off her trousers and undergarments when both his hands were then pinning her hands down, and both his thighs were also pinning her legs down? That she never stated that he had employed only one of his hands to subdue her, or that he used his other hand to undress her was quite notable. What we have, therefore, is her testimony of him using both hands to hold down both her hands. She also insisted that he succeeded in spreading her legs apart despite her attesting that he had all the time pinned her legs with his own thighs. She did not explain how she was forced to spread her legs apart, saying only that he had then forcefully inserted his penis in her vagina.

Assuming that force was the relevant element of the rape charged, we must further note that the medico-legal report did not contain any reference to any injury to her hands or any other part of her body. It appears without doubt, too, that she tendered no showing of her resistance except her bare assertion. Moreover, her testimony did not clarify if the level of her intoxication denied her the capacity to resist his advances or to fend off his sexual assault. Although the relevant law on rape did not impose on her as the victim the burden of proving the degree of her resistance in relation to the force applied on her, her allegation on the application of force against her could be open to doubt and suspicion because it did not jibe with human experience, or because no physical evidence (like bruises or scratches) that would have spoken louder than words was

presented to substantiate the application of force on her.[17] Under the circumstances she described in court, there were enough by which to doubt the veracity of her version. Hence, we should not unquestioningly believe her thereon.[18]

And, thirdly, the lower courts' justification for their rejection of Pacifico's defense that the sexual intercourse had been consensual was unfair and unreasonable. The lower courts should not wonder why he did not present *independent* evidence of his romantic relationship with AAA, like letters or mementos. In the first place, he did not at anytime assert that they had been sweethearts. It was improbable, therefore, that they would have such letters or mementos. Moreover, consensual sexual intercourse has not always occurred during a romantic relationship; it also emanated from instant mutual lust.

Given the improbabilities detected in her recollection, albeit summarily rejected by the lower courts, the defense of consensual sexual intercourse was likelier to be true than not. Prior to the sexual intercourse, they had been drinking Red Horse Grande, a strong beer spiked with high alcohol content. With only the two of them consuming the two large bottles of the beer, she surely knew that her discernment would soon be affected. In fact, she conceded that their drinking of the beer ultimately rendered her *tipsy* and *sleepy*, and made her seek his permission to lie down and sleep on his *papag*. Her conduct tended to indicate that she had felt quite comfortable to be alone with him in his own home, as if she desired to be left alone with him even in his own room. There can be no more logical and more natural inference for any neutral observer to draw from such circumstances than that what transpired between them was their having yielded to mutual lust.

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[17] *People v. Cantila, Jr.*, G.R. No. 139458, December 27, 2002, 394 SCRA 393, 404.

[18] *People v. Comesario*, G.R. No. 127811, April 29, 1999, 306 SCRA 400, 406.

We have observed on most occasions in which we ponder and adjudicate the liability of persons charged with rape and other crimes relating to sexual assault or violation of chastity that the recollections of the crimes by the victims, especially the young and the unlettered, should be accorded belief and weight because they would not be telling their stories of defloration or violation, and allow the examination of their private parts as well as permit themselves to be the central attractions during the ensuing public trials unless they were motivated by the honest desire to seek justice.[19] However, such observation should only be a mere presumption that courts have tended to as an aid in the appreciation of credibility. We should eschew the use of the presumption as a rigid and inflexible treatment of testimonial evidence, regardless of other competent proof, for the presumption is not superior to the presumption of innocence in favor of the accused. We should still demand that the State overcome the presumption of innocence,[20] for every accused has no burden to prove his innocence, and will be entitled to acquittal unless the presumption of innocence in his favor is overcome. The mere invocation of the traditional and proverbial modesty of the Filipina does not prevail over or dispense with the need to present proof sufficient to overcome the constitutional presumption of innocence.[21]

In view of the greater probability that the sexual intercourse between the victim and Pacifico was consensual, he is entitled to be acquitted and to be set free on the ground that his guilt for rape had not been established beyond reasonable doubt. *Reasonable doubt of guilt*, according to *United States v. Youthsey*:[22]

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[19] *People v. Gecomo*, G.R. Nos. 115035-36, February 23, 1996, 254 SCRA 83, 95.

[20] *People v. Domogoy*, G.R. No. 116738, March 22, 1999, 305 SCRA 75, 89-92.

[21] *Id*.

[22] 91 Fed. Rep. 864, 868.

x x x **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.** x x x.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on March 31, 2016 by the Court of Appeals in CA-G.R. CR-HC No. 07162 affirming the conviction for rape of accused-appellant **PACIFICO SANGCAJO, JR**; and, accordingly, **ACQUITS** him for failure of the Prosecution to prove his guilt beyond reasonable doubt.

The Court **ORDERS** the immediate release of accused-appellant **PACIFICO SANGCAJO, JR.** from the National Penitentiary unless there are other lawful causes warranting his continuing confinement thereat.

The Director of the Bureau of Corrections is directed to implement the release of the accused-appellant pursuant to this decision, and to report compliance herewith within 10 days from notice.

No pronouncement on costs of suit.

SO ORDERED.

Leonardo-de Castro, C.J., Jardeleza, and *Tijam, JJ.*, concur.

Del Castillo, J., on wellness leave.

THIRD DIVISION

[G.R. No. 229881. September 5, 2018]

JONALD O. TORREDA, *petitioner, vs.* **INVESTMENT AND CAPITAL CORPORATION OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTIONS, ENUMERATED; IN VIEW OF THE CONFLICTING FINDINGS OF THE COURT OF APPEALS AND THE NATIONAL LABOR RELATIONS COMMISSION AND THE LABOR ARBITER, THE COURT DEEMS IT PROPER TO TACKLE THE FACTUAL QUESTION PRESENTED.— The Court is not a trier of facts and the function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts. Nonetheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. Here, two of the exceptions exist – the findings of absence of facts are contradicted by the presence of evidence on record and the findings of the CA are contrary to those of the NLRC and the LA. They have different appreciations of the evidence in determining the propriety of petitioner's complaint for constructive dismissal. To finally resolve the factual dispute, the Court deems it proper to tackle the factual question presented.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL, DEFINED AND EXPLAINED; ILLEGAL AND CONSTRUCTIVE DISMISSAL, DISTINGUISHED.— Constructive dismissal is an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable or unlikely; or when there is a demotion in rank and/or a diminution in pay. It exists when there is a clear act of discrimination, insensibility or disdain by an employer, which makes it unbearable for the employee to continue his/her employment. In cases of constructive dismissal, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment. By definition, constructive dismissal can happen in any number of ways. At its core, however, is the gratuitous, unjustified, or unwarranted nature of the employer's action. As it is a question of whether an employer acted fairly, it is inexorable that any allegation of constructive dismissal be contrasted with the validity of exercising management prerogative. There is a difference between illegal and constructive dismissal. Illegal dismissal is readily shown by the act of the employer in openly seeking the termination of an employee while constructive dismissal, being a **dismissal in disguise**, is not readily indicated by any similar act of the employer that would openly and expressly show its desire and intent to terminate the employment relationship.

3. ID.; ID.; ID.; BASED ON THE CIRCUMSTANCES BEFORE AND AFTER THE RESIGNATION, IT IS CLEAR THAT PETITIONER WAS CONSTRUCTIVELY DISMISSED; THAT PETITIONER HIMSELF ALLEGEDLY EDITED THE PREPARED RESIGNATION LETTER DOES NOT NEGATE CONSTRUCTIVE DISMISSAL.— [P]etitioner had no intention of abandoning his work when he filed the complaint and questioned his purported dismissal. Based on the foregoing circumstances, which transpired before and after the signing of the prepared resignation letter, it is clear that petitioner was constructively dismissed. Respondent forced petitioner to sign the prepared resignation letter. In fact, he was not given any viable option; it was either he sign the resignation letter or he would be terminated from the company. Doubtless, the

resignation of petitioner was involuntary and not genuine. x x x These numerous facts and circumstances certainly contradict the voluntariness of petitioner's resignation. **Any reasonable person in the petitioner's position would have felt compelled to give up his position.** Assuming *arguendo* that petitioner edited the said letter and inserted words of courtesy, these are insufficient to prove the voluntariness of his resignation in light of the various circumstances which demonstrated that he did not have a choice in his forced resignation.

4. ID.; ID.; ID.; RESPONDENT FAILED TO TERMINATE PETITIONER'S EMPLOYMENT ON ANY JUST CAUSE; THERE ARE NO SHORTCUTS IN TERMINATING THE SECURITY OF TENURE OF AN EMPLOYEE, HENCE, PETITIONER'S RESIGNATION LETTER MUST BE STRUCK DOWN FOR BEING INVOLUNTARY.— [R]espondent's allegations against petitioner are unsupported by substantial evidence. Other than its bare assertions and suppositions, respondent failed to cite or present any other credible evidence to substantiate the alleged misconduct or shortcomings of petitioner in his employment with respondent. Oddly, as petitioner was a managerial employee, respondent could have simply dismissed his employment on the basis of loss of trust and confidence. Loss of trust and confidence as a valid ground for dismissal is premised on the fact that the employee holds a position whose functions may only be performed by someone who enjoys the trust and confidence of the management. Still, even on the basis of loss of trust and confidence, respondent did not initiate the termination of petitioner's employment. It bolsters the fact that respondent does not have any genuine ground to dismiss petitioner. The Court cannot allow respondent to resort to an improper method of forcing petitioner to sign a prepared resignation letter. As respondent has no legitimate basis to terminate petitioner as its employee, then he cannot be forced to resign from work because it would be a dismissal in disguise. **Under the law, there are no shortcuts in terminating the security of tenure of an employee.** Thus, the resignation letter of petitioner must be struck down because it was involuntary.

5. ID.; ID.; ID.; WHERE EMPLOYEE'S DISMISSAL WAS NOT PROVEN TO HAVE BEEN DONE IN A WANTON AND OPPRESSIVE MANNER, THE AWARD OF MORAL AND EXEMPLARY DAMAGES MUST BE DELETED.— [T]he LA

imposed moral and exemplary damages against respondent to serve as a deterrent to other employers. On the other hand, the NLRC affirmed the said awards because petitioner suffered from anxiety due to his unlawful termination. The Court finds that the reasons cited by the NLRC and the LA are insufficient to award moral and exemplary damages to petitioner. The said reasons do not show that respondent employed bad faith or fraud against petitioner. Further, it was not proven that the dismissal of petitioner was done in a wanton, oppressive, or malevolent manner. Hence, the award of moral and exemplary damages must be deleted.

APPEARANCES OF COUNSEL

Pasamonte Pascua & Associates Law Office for petitioner.
Sycip Salazar Hernandez & Gatmaitan 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 June 13, 2016 Decision[1] and the February 9, 2017 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 133505. The CA reversed and set aside the June 28, 2013 Decision[3] and the October 31, 2013 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC NCR-01-00610-12. The NLRC affirmed the September 27, 2012 Decision[5] of the Labor Arbiter *(LA),* a case for constructive dismissal.

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[1] *Rollo*, pp. 46-54; penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Noel G. Tijam (now a member of this Court) and Francisco P. Acosta, concurring.

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

[3] *Id.* at 245-258.

[4] *Id.* at 272-276.

[5] *Id.* at 186-197.

The Antecedents

Jonald O. Torreda *(petitioner)* was hired by Investment and Capital Corporation of the Philippines *(respondent)* on May 17, 2010 as an IT Senior Manager and had a monthly salary of ₱93,200.00. He was tasked to supervise his team in the Information Technology *(IT)* Department and manage the IT-related projects. He reported to William M. Valtos, Jr. *(Valtos),* the Officer-in-Charge of the IT Department and the Group President of the Financial Service of respondent.

Petitioner claimed that he instituted reforms in the IT management because the system was outdated and the staff members were unproductive. He had a falling out with the senior management as the Senior Vice President for the Pueblo De Oro Development Corporation wanted to interfere with the functions of the IT department. Further, in November 2011, respondent decided to create an IT-SAP project without the approval of petitioner.

On January 5, 2012, petitioner went to the office of Valtos for a closed-door conference meeting supposedly regarding his IT projects. In said meeting, Valtos discussed another matter with petitioner and told him that if his performance were to be appraised at that time, Valtos would give him a failing grade because of the negative feedback from the senior management and the IT staff. The performance appraisal of petitioner, however, was not due until May 2012.

Valtos then gave petitioner a prepared resignation letter and asked him to sign; otherwise, the company would terminate him. The said letter indicated that the resignation of petitioner would be effective on February 4, 2012. Petitioner refused to sign the resignation letter but Valtos did not accept his refusal. Thus, Valtos edited the resignation letter. Petitioner thought of leaving the room by making an excuse to go to the restroom, but Valtos and respondent's legal counsel followed him. Because of Valtos' insistence, petitioner placed his initials in the resignation letter to show that the letter was not official. Valtos then accompanied petitioner to his room to gather his belongings

and escorted him out of the building. Petitioner was not allowed to report for work anymore and his company e-mail address was deactivated.

Six (6) days after the incident, petitioner filed the instant complaint for illegal dismissal (constructive), moral and exemplary damages and attorney's fees against respondent before the LA.

For its part, respondent countered that petitioner was not illegally dismissed because he voluntarily resigned. It claimed that petitioner was ineffective as an IT manager and that his staff complained about his inefficiencies. Respondent asserted that petitioner failed to integrate himself into the company due to his lack of enthusiasm and cooperation at work, and he did not respond to queries and requests. It even claimed that a female employee resigned because she felt uncomfortable with petitioner.

Respondent stated that while Valtos admitted that he gave a resignation letter to petitioner on January 5, 2012, petitioner himself edited the letter to include courteous words and voluntarily signed the same. Valtos also admitted that the performance appraisal of petitioner was not due until May 2012.

The LA Ruling

In its Decision dated September 27, 2012, the LA held that petitioner was constructively dismissed by respondent. It held that Valtos admitted that he gave a prepared resignation letter. The LA observed that Valtos told petitioner to resign; otherwise, respondent would terminate him. Also, it found that respondent failed to present substantial evidence that petitioner voluntarily resigned from the company due to the following reasons: petitioner did not have a prior contemplation of resigning from the company; Valtos gave a performance appraisal even though it was not yet due; the resignation letter was effective February 4, 2012 but petitioner was barred from the company as early as January 5, 2012; and petitioner immediately filed the constructive dismissal case after signing the resignation letter. The LA also

imposed moral and exemplary damages against respondent to serve as a deterrent to other employers. The dispositive portion of the LA decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered finding the complainant to have been constructively dismissed. Accordingly, respondent ICCP is hereby directed to REINSTATE complainant to his former or equivalent position without loss of seniority rights and to pay him backwages which as of the date of the decision already amounts to ₱766,104.00; and directing respondent ICCP to pay complainant the amount of ₱50,000.00 as moral damages; and ₱50,000.00 as exemplary damages.
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> All other claims are dismissed.
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> **SO ORDERED**.[6]

Aggrieved, respondent appealed to the NLRC.

The NLRC Ruling

In its Decision dated June 28, 2013, the NLRC affirmed the LA ruling. It ruled that the test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. The NLRC found that petitioner did not voluntarily resign from the company; rather, he was constructively dismissed. It reaffirmed that it was Valtos who presented a prepared resignation letter for petitioner to sign. The NLRC did not give credence to the defense of respondent that petitioner voluntarily resigned solely because he edited the resignation letter. Further, it observed that respondent could not terminate the employment of petitioner in a despotic manner.

The NLRC likewise affirmed the award of moral and exemplary damages because petitioner suffered from anxiety due to his unlawful termination. It, however, granted separation pay in lieu of reinstatement because the latter was no longer feasible due to the parties' strained relationship. The *fallo* of the NLRC Decision states:

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[6] *Id*. at 197.

WHEREFORE, in view of the foregoing, the assailed decision of the Labor Arbiter is **AFFIRMED** with **MODIFICATION**, in that, in lieu of reinstatement Investment and Capital Corp. of the Philippines is ordered to pay complainant-appellee separation pay of one (1) month per year of service computed from the time of his employment up to the finality of this decision.

SEPARATION PAY
5/27/10 – 6/28/13 = 3 yrs.
₱93,200.00 x 3 = ₱79,600.00

SO ORDERED.[7]

Respondent filed a motion for reconsideration but it was denied by the NLRC in a Resolution dated October 31, 2013.

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

The CA Ruling

In its Decision dated June 13, 2016, the CA reversed and set aside the NLRC ruling. It ruled that petitioner voluntarily resigned from the company because he willingly signed the resignation letter. The CA opined that even though Valtos presented a prepared resignation letter, it was petitioner who edited the same and voluntarily added words of courtesy. It also held that it was improbable for petitioner to be intimidated by Valtos due to his managerial position and high educational attainment. The CA underscored that petitioner was not an ordinary employee with limited understanding and he could not be duped or compelled to resign. It further opined that petitioner failed to prove that his consent to the resignation was vitiated, hence, there was no constructive dismissal. The CA disposed the case in this wise:

WHEREFORE, by reason of the foregoing premises, the Petition is **GRANTED**. Hence, the Decision dated June 28, 2013 and Resolution dated October 31, 2013 of the NLRC in NLRC NCR-01-00610-12 are **REVERSED** and the Complaint of private respondent for illegal dismissal is **DISMISSED** for lack of merit.

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[7] *Id*. at 257.

SO ORDERED.[8]

Petitioner moved for reconsideration but it was denied by the CA in its Resolution dated February 9, 2017.

Hence, this petition anchored on the following arguments:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT GRANTED RESPONDENT'S PETITION FOR *CERTIORARI* AND DENIED [PETITIONER'S] MOTION FOR RECONSIDERATION WITHOUT ANY CATEGORICAL FINDINGS OF GRAVE ABUSE OF DISCRETION.[9]

II

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN REVERSING THE FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NLRC CONSIDERING THAT THEIR DECISIONS AND RESOLUTION ARE SUPPORTED BY CLEAR AND SUBSTANTIAL EVIDENCE.[10]

III

THE COURT OF APPEALS ERRED IN FINDING THAT PETITIONER'S RESIGNATION WAS VOLUNTARY BECAUSE THE [UNDISPUTED] FACTS AND [CIRCUMSTANCES] OF HIS ALLEGED RESIGNATION CLEARLY SHOWED THAT HE DID NOT [RESIGN] NOR DID HE INTEND TO RESIGN FROM HIS JOB.[11]

IV

THE COURT *A QUO* ERRED IN RULING THAT PETITIONER'S MONEY CLAIMS [HAVE] NO LEGAL FOUNDATION.[12] (italics supplied)

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[8] *Id.* at 53.

[9] *Id.* at 19.

[10] *Id.* at 26.

[11] *Id.* at 29.

[12] *Id.* at 37.

Petitioner insists that he did not voluntarily resign, instead, he was forced to resign from the company; that respondent has no legal or factual basis to terminate his employment; that Valtos gave him a performance appraisal even though it was not yet due; that Valtos forced him to sign the resignation letter; that he attempted to escape but he was accompanied to the comfort room by Valtos and respondent's legal counsel; that he wanted to leave the premises, so he placed his initials on the resignation letter so that Valtos would let him go; that, on the same night of January 5, 2012, he was instructed to get his belongings and was barred from the premises of respondent even though the resignation was effective only on February 4, 2012; and that he immediately filed the complaint before the LA to show that he did not resign from work.

In its Comment,[13] respondent countered that the issues raised by petitioner are factual in nature, hence, cannot be tackled in a petition for review on *certiorari* under Rule 45 of the Rules of Court; that petitioner voluntarily signed the resignation letter because he substantially edited it and even placed words of courtesy in favor of respondent; that petitioner's exhaustion when he signed the resignation letter is not tantamount to coercion; and that petitioner himself admitted that he signed the resignation letter.

In his Reply,[14] petitioner argued that there are exceptional circumstances when the Court may entertain questions of fact, such as when there are conflicting findings of fact; and that there was no benefit to petitioner to resign from work as he was not even offered separation benefits by respondent, hence, it is illogical for him to voluntarily sign the resignation letter.

The Court's Ruling

The Court finds the petition meritorious.

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[13] *Id.* at 474-500.

[14] *Id.* at 511-519.

Generally, a question of fact cannot be entertained by the Court; exceptions

Petitioner essentially raises the issue of whether he was forced to resign from his work by respondent, which constitutes constructive dismissal. The question posited is evidently factual because it requires an examination of the evidence on record. The Court is not a trier of facts and the function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts.[15]

Nonetheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[16]

Here, two of the exceptions exist – the findings of absence of facts are contradicted by the presence of evidence on record and the findings of the CA are contrary to those of the NLRC and the LA. They have different appreciations of the evidence in determining the propriety of petitioner's complaint for constructive dismissal. To finally resolve the factual dispute, the Court deems it proper to tackle the factual question presented.

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[15] *Gepulle-Garbo v. Spouses Garabato,*750 Phil. 846, 854-855 (2015).

[16] *Carbonell v. Carbonell-Mendes,*762 Phil. 529, 537 (2015).

Constructive dismissal; forced resignation

Constructive dismissal is an involuntary resignation resorted to when continued employment is rendered impossible, unreasonable or unlikely; or when there is a demotion in rank and/or a diminution in pay.[17] It exists when there is a clear act of discrimination, insensibility or disdain by an employer, which makes it unbearable for the employee to continue his/her employment.[18]In cases of constructive dismissal, the impossibility, unreasonableness, or unlikelihood of continued employment leaves an employee with no other viable recourse but to terminate his or her employment.[19]

By definition, constructive dismissal can happen in any number of ways. At its core, however, is the gratuitous, unjustified, or unwarranted nature of the employer's action. As it is a question of whether an employer acted fairly, it is inexorable that any allegation of constructive dismissal be contrasted with the validity of exercising management prerogative.[20]

There is a difference between illegal and constructive dismissal. Illegal dismissal is readily shown by the act of the employer in openly seeking the termination of an employee while constructive dismissal, being a **dismissal in disguise**, is not readily indicated by any similar act of the employer that would openly and expressly show its desire and intent to terminate the employment relationship.[21]

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[17] *Philippine Wireless Inc. (Pocketbell) v. National Labor Relations Commission*, 369 Phil. 907, 910 (1999).

[18] See *Montederamos v. Tri-Union International Corporation,* 614 Phil. 546, 552 (2009).

[19] *St. Paul College, Pasig, et al. v. Mancol,et al.,*G.R. No. 222317, January 24, 2018.

[20] *Id*.

[21] Chan, J.G., *Bar Review On Labor Law*, 2nd ed., p. 459 (2014).

In *SHS Perforated Materials, Inc., et al. v. Diaz*,[22] the Court ruled that there is constructive dismissal if an act of clear discrimination, insensibility, or disdain by an employer becomes so unbearable on the part of the employee that it would foreclose any choice by him except to forego his continued employment. In said case, the employee was forced to resign and submit his resignation letter because his salary was unlawfully withheld by the employer.

In *Tuason v. Bank of Commerce, et al.,*[23] it was explained that the law resolves constructive dismissal in favor of employees in order to protect their rights and interests from the coercive acts of the employer. In that case, the employer communicated to the employee therein to resign to save her from embarrassment, and when the latter did not comply, the employer hired another person to replace the employee. The Court ruled that it was a clear case of constructive dismissal.

In this case, respondent argues that even though it was Valtos who initially presented the resignation letter, petitioner still voluntarily signed the same because he substantially edited the letter and added words of courtesy. Respondent insists that petitioner failed to overcome the validity of his resignation letter.

The Court is not convinced.

In *Fortuny Garments/Johnny Co v. Castro,*[24] the Court clarified the procedure to determine the voluntariness of an employee's resignation, *viz.*:

> x x x the intention to relinquish an office must concur with the overt act of relinquishment. **The act of the employee before and after the alleged resignation must be considered to determine whether in fact, he or she intended to relinquish such employment.** If the employer introduces evidence purportedly executed by an employee as proof of voluntary resignation and the employee specifically denies

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[22] 647 Phil. 580, 598 (2010).

[23] 699 Phil. 171, 183 (2012).

[24] 514 Phil. 317 (2005).

the authenticity and due execution of said document, the employer is burdened to prove the due execution and genuineness of such document.[25] (emphasis and underscoring supplied)

Circumstances before the resignation

Before the alleged resignation of petitioner, several circumstances would show that he did not contemplate or had no intention of resigning from the company, *viz.*:

First, on January 5, 2012, petitioner came back from his holiday vacation and was in the office only to present a report on the status of his IT projects and to inquire on the updates in the company with Valtos. Petitioner's presentation started around 4:00 o'clock in the afternoon and it was finished around 5:30 o'clock in the afternoon.[26] He had no other agenda that day and he did not have any prior consideration of resigning from the company.

Second, when petitioner finished his report and updates, Valtos suddenly brought up his performance appraisal even though the said appraisal was supposed to be undertaken in May 2012.[27] Petitioner underscored that in his last performance appraisal in May 2011, he received a satisfactory rating. Thus, he was surprised that Valtos was conducting an early performance appraisal on him. Notably, respondent admitted that the appraisal of its employees' performance was scheduled in May 2012.

Third, the affidavit of Valtos shows that he gave petitioner two options, either to resign or be terminated from his services, to wit:

11. On January 5, 2012, I met with Mr. Torreda for one of our regular update meetings. After discussing with him the updates on the IT

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[25] *Id.* at 323.

[26] *Rollo,* pp. 61-62.

[27] *Id.* at 62.

Department, I started to discuss with him his performance for the past year. I told Mr. Torreda that if I were to give an evaluation on his performance, it would be "Needs Improvement". For a Senior Manager to get a rating of "Needs Improvement", that, to me, was not acceptable. I told him that he may be a better fit somewhere else and so on a friendly basis, I advised him that resignation was an option for him if he wanted to leave this Company gracefully without the embarrassment. x x x.

12. I felt it was all right to discuss this option with him because I was of the impression that he was open to that idea after the Seki incident happened few months earlier. As mentioned above, the impression I got during my meeting with him after the Seki incident is that he may have resigned had I discussed my openness to allow him to go. However, there were still a lot of unfinished work in the IT Department. With the substantial progress of the upgrading of the IT Department, I would be amendable to his departure.

13. I explained to him that if he stayed, this may be bad for the Company given that he is not able to deal directly with the Company's customers and the employees did not want to work with him. He was not successful in motivating his team members in the IT Department. **I felt compelled to discuss with him the option of resignation because I am aware that the Company would commence termination proceedings against him which may lead to his termination due to loss of trust and confidence.** His termination will surely destroy his chances for future employment.[28] (emphasis supplied)

Based on the admission of Valtos, it is clear that petitioner was not given any chance of continued employment by respondent; it was either he resign or he would be terminated. It was Valtos, the Officer-in-Charge of the IT Department and the Group President of the Financial Service of respondent, who presented the prepared resignation letter, and insisted that the petitioner should sign the same. These acts demonstrate the real intent and desire of respondent to remove petitioner. Glaringly, petitioner's supposed resignation was a subterfuge to dismiss him without any just cause.

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[28] *Id.* at 110-111.

Further, Valtos prepared the resignation letter, which contained the name and details of petitioner. Verily, it was respondent, not petitioner, which had a prior contemplation of removing the latter as its employee. Through Valtos, respondent wanted petitioner to sign the prepared resignation letter so that it could effortlessly get rid of him.

Fourth, when the prepared resignation letter was presented to petitioner, he refused to sign it. However, Valtos did not accept petitioner's refusal to sign the document. Petitioner even alleged that if respondent truly wanted to terminate his employment, Valtos should just have given him a poor performance appraisal in May 2012.[29] However, Valtos did not relent.

Around 6:20 o'clock in the evening of January 5, 2012, or almost an hour later, Valtos still insisted that petitioner sign the resignation letter. At that point, petitioner excused himself to go to the washroom so that he could escape the meeting but Valtos and respondent's legal counsel followed him. Respondent never denied that petitioner was indeed followed when he went out of the meeting room. Evidently, these acts show that respondent was unyielding and uncompromising in requiring petitioner to sign the resignation letter.

Fifth, at that moment, when petitioner realized that respondent would be obstinate in forcing him to resign, he had no other choice but to sign the prepared resignation letter handed by Valtos. However, petitioner simply placed his initials in the said letter to show that it was not his signature and it was not official. Again, respondent did not deny that only petitioner's initials were written in the prepared resignation letter.

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[29] *Id.* at 62.

Circumstances after the resignation

After petitioner placed his initials in the prepared resignation letter, the circumstances that transpired thereafter consistently show that there was involuntary resignation on his part, to wit:

First, the prepared resignation letter states that petitioner's resignation was effective February 4, 2012.[30] However, on January 5, 2012, or on the same day that he initialed the said letter, petitioner was already asked to turn over the company items and to leave the building premises, together with his belongings. Thus, contrary to the date stated in the letter, petitioner's resignation from the company was effective immediately. Respondent eagerly wanted to terminate petitioner's employment that it did not anymore respect the stipulated date of his supposed resignation.

Second, after the purported resignation of petitioner, respondent never discussed with him any compensation or separation pay that he would receive as a result of his separation from the company. It simply wanted to remove petitioner as soon as possible. Respondent did not even provide petitioner any compensation or benefit for his years of service to the company. In the same manner, petitioner had absolutely no financial motivation to tender his resignation as he had nothing to gain from leaving the company.

The case of *Habana v. NLRC, et al.,*[31] cited by respondent – where the Court considered the significant separation pay received by the employee as an *indicium* that there was indeed a voluntary resignation – is not applicable herein. In the case at bench, there was no financial consideration given to petitioner in view of his alleged resignation.

Third, after petitioner left the premises, he was not anymore allowed to report for work and his company e-mail address

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[30] *Id.* at 113.

[31] 359 Phil. 65 (1998).

was immediately deactivated. There was no winding up process provided by respondent. Petitioner was not given an opportunity to properly settle or transfer his obligations or pending projects. His employment was abruptly dismissed.

Fourth, petitioner promptly assailed the constructive dismissal committed by respondent because six (6) days after his supposed resignation, he immediately filed a complaint before the LA. It is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with abandonment of employment. An employee who takes steps to protest his dismissal cannot logically be said to have abandoned his work. The filing of such complaint is proof enough of his desire to return to work, thus, negating any suggestion of abandonment.[32]

Clearly, petitioner had no intention of abandoning his work when he filed the complaint and questioned his purported dismissal.

Based on the foregoing circumstances, which transpired before and after the signing of the prepared resignation letter, it is clear that petitioner was constructively dismissed. Respondent forced petitioner to sign the prepared resignation letter. In fact, he was not given any viable option; it was either he sign the resignation letter or he would be terminated from the company. Doubtless, the resignation of petitioner was involuntary and not genuine.

Petitioner's alleged act of editing the prepared resignation letter and his education attainment are immaterial

Citing *St. Michael Academy, et al. v. NLRC, et al.,*[33] respondent argues that since petitioner edited the resignation letter and added words of courtesy, it was improbable for him to involuntarily sign the letter. It further asserts that it was

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[32] *GSP Manufacturing Corp., et al. v. Cabanban,* 527 Phil. 452, 455 (2006). (italics omitted)

[33] 354 Phil. 491 (1998).

impossible to coerce petitioner to sign a prepared resignation letter because he had a managerial position and a high educational status.

Again, the Court is not convinced.

As stated in *Fortuny Garments/Johnny Co. v. Castro,*[34] the circumstances before and after the signing of the resignation letter must be examined to determine the voluntariness of the said resignation: It was uncontroverted that petitioner was actively taking part in several IT projects; that petitioner received a satisfactory performance rating from the previous year; that petitioner was not due for performance appraisal until May 2012; that there was no scheduled appraisal performance due on January 5, 2012; that it was Valtos who presented the prepared resignation letter; that Valtos persistently rejected petitioner's refusal to sign the said letter; that Valtos followed petitioner even when he left the meeting room; that petitioner merely placed his initials in the letter, instead of his customary signature; that even though the resignation was effective February 4, 2012, he was immediately barred from the company premises on January 5, 2012; and that he immediately questioned his alleged resignation before the LA.

These numerous facts and circumstances certainly contradict the voluntariness of petitioner's resignation. **Any reasonable person in the petitioner's position would have felt compelled to give up his position.** Assuming *arguendo* that petitioner edited the said letter and inserted words of courtesy, these are insufficient to prove the voluntariness of his resignation in light of the various circumstances which demonstrated that he did not have a choice in his forced resignation.

Further, *St. Michael Academy, et al. v. NLRC, et al.*[35] is not applicable because, contrary to the facts therein,[36] there

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[34] 514 Phil. 317 (2005).

[35] *St. Michael Academy, et al. v. NLRC, et al., supra* note 33.

[36] *Id.* at 507-509, in that case, the employees simply presented the resignation letter and there was no other circumstance which would show that they were coerced to resign.

are several and notable circumstances in the case at bench that would show the forced resignation of petitioner before and after he placed his initials in the prepared resignation letter. Consequently, it is the burden of respondent to prove the due execution and genuineness of his resignation. Thus, aside from bare conjectures, respondent failed to prove the legitimacy of petitioner's resignation.

Respondent failed to terminate petitioner's employment on any just cause

If respondent truly wanted to terminate the employment of petitioner, then it must have presented a just cause for his dismissal.The just causes for dismissing an employee are provided under Article 282 of the Labor Code.[37]

Respondent asserts that petitioner was ineffective as an IT manager and his staff complained about his inefficiencies; that he failed to integrate himself into the company due to his lack of enthusiasm and cooperation at work and he did not respond to queries and requests; and that a female employee resigned because she felt uncomfortable with petitioner.

However, respondent's allegations against petitioner are unsupported by substantial evidence. Other than its bare assertions and suppositions, respondent failed to cite or present any other credible evidence to substantiate the alleged misconduct or shortcomings of petitioner in his employment with respondent.

Oddly, as petitioner was a managerial employee, respondent could have simply dismissed his employment on the basis of loss of trust and confidence. Loss of trust and confidence as a valid ground for dismissal is premised on the fact that the employee holds a position whose functions may only be performed by someone who enjoys the trust and confidence of the management.[38] Still, even on the basis of loss of trust and

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[37] Now Article 285 of the Labor Code.

[38] *Casco v. National Labor Relations Commission, et al.,* G.R. No. 200571, February 19, 2018.

confidence, respondent did not initiate the termination of petitioner's employment. It bolsters the fact that respondent does not have any genuine ground to dismiss petitioner.

The Court cannot allow respondent to resort to an improper method of forcing petitioner to sign a prepared resignation letter. As respondent has no legitimate basis to terminate petitioner as its employee, then he cannot be forced to resign from work because it would be a dismissal in disguise. **Under the law, there are no shortcuts in terminating the security of tenure of an employee.** Thus, the resignation letter of petitioner must be struck down because it was involuntary.

Award of moral and exemplary damages must be deleted

Moral damages are recoverable when the dismissal of an employee is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages, on the other hand, are recoverable when the dismissal was done in a wanton, oppressive, or malevolent manner.[39]

Here, the LA imposed moral and exemplary damages against respondent to serve as a deterrent to other employers. On the other hand, the NLRC affirmed the said awards because petitioner suffered from anxiety due to his unlawful termination.

The Court finds that the reasons cited by the NLRC and the LA are insufficient to award moral and exemplary damages to petitioner. The said reasons do not show that respondent employed bad faith or fraud against petitioner. Further, it was not proven that the dismissal of petitioner was done in a wanton, oppressive, or malevolent manner. Hence, the award of moral and exemplary damages must be deleted.

WHEREFORE, the petition is **GRANTED.** The June 13, 2016 Decision and the February 9, 2017 Resolution of the Court

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[39] *Symex Security Services, Inc., et al. v. Rivera, Jr., et al.,* G.R. No. 202613, November 8, 2017.

of Appeals in CA-G.R. SP No. 133505 are hereby **REVERSED** and **SET ASIDE**. The June 28, 2013 Decision and October 31, 2013 Resolution of the National Labor Relations Commission in NLRC NCR-01-00610-12, which affirmed the award of backwages and granted separation pay in lieu of reinstatement to Jonald O. Torreda, are hereby **REINSTATED** with **MODIFICATION** that the award of moral and exemplary damages be **DELETED**.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Reyes, A. Jr.,* and *Reyes, J. Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 230831. September 5, 2018]

MARIBELLE Z. NERI, *petitioner, vs.* **RYAN ROY YU,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS; SIMILARLY APPLY IN PETITIONS FOR REVIEW FILED BEFORE THE SUPREME COURT INVOLVING CIVIL, LABOR, TAX OR CRIMINAL CASES.— The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial

evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court. However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are ten (10) recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*: "(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record." These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.

2. ID.; ID.; ID.; QUESTION OF FACT; THERE IS A QUESTION OF FACT WHEN THE REVIEW OF THE TRUTHFULNESS OR FALSITY OF THE ALLEGATIONS OF THE PARTIES IS REQUIRED, OR WHEN THE ISSUE PRESENTED IS THE CORRECTNESS OF THE LOWER COURT'S APPRECIATION OF EVIDENCE.— A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented." There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties.

APPEARANCES OF COUNSEL

Irish L. Silverio-Aclan for petitioner.
The Law Firm Of Uy Cruz Lo & Associates for respondent.

D E C I S I O N

PERALTA,* ***J.*:**

This is to resolve the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated March 8, 2017, of petitioner Maribelle Z. Neri that seeks to reverse and set aside the Decision[1] dated August 19, 2016 and the Resolution[2] dated January 25, 2017 of the Court of Appeals *(CA)* in CA- G.R . CV No. 03495-MIN holding petitioner and Bridgette Insoy jointly liable to respondent Ryan Roy Yu for the amount of ₱1,200,000.00.

The facts follow.

Respondent, on March 12,2009, filed a Complaint before the Regional Trial Court*(RTC),* for "Sum of Money, Damages, Attorney's Fees, Etc." against one Bridgette "Gigi" Insoy *(Insoy)* and petitioner, docketed as Civil Case No. 32-787-09 and raffled to the RTC, Branch 16 of Davao City. Respondent alleged that he and his friends, William Matalam *(Matalam)* and Hsipin Liu a.k.a. Steven Lao *(Lao),* went on a leisure trip to Cebu City on June 24, 2007. Matalam planned to check out a Toyota Prado sports utility vehicle that he intended to buy from petitioner. Around 9:00 a.m. of June 25, 2007, petitioner met the three men at the lobby of the Waterfront Hotel where they were all fetched by a Toyota RAV4 and brought to a Toyota yard. At said yard, petitioner introduced respondent's group to Insoy, petitioner's supposed business partner in Cebu. Thereafter, respondent's group was shown different models of Toyota vehicles that the two women claimed they were authorized to sell. Since the Toyota Prado that Matalam wanted to see was not there and he was not interested in other vehicles, the group left the yard. Petitioner joined respondent's group for lunch at

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[1] Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Ronaldo B. Martin and Perpetua T. Atal-Paño concurring, with the dissent of Associate Justices Edgardo A. Camello and Edgardo T. Lloren; *rollo,* pp. 37-52.

[2] *Id.* at 66-68.

Cafe Laguna in the Ayala Mall, during which, she convinced respondent and Lao to consider buying Toyota vehicles from her, saying they can get a big discount if they buy from her as a group, because it would be considered a bulk purchase. Respondent further alleged that while preparing for their trip to Davao City later that same day, petitioner convinced and accompanied them back to the Toyota yard for a second look at the vehicles there. Respondent test-drove a Toyota Grandia which petitioner claimed that she can sell to him at a discounted price of ₱1.2 Million under bulk purchase as Lao and Matalam already committed to purchase their respective Toyota vehicles from her. Petitioner assured respondent that her transaction is legitimate and aboveboard, and that she can immediately cause the delivery of the vehicle within a week after her receipt of the payment. Petitioner then gave respondent her personal bank account number for fund transfer in case he decides to proceed with the sales transaction. Yu's group returned to Davao City convinced by petitioner's representations. On June 26, 2007, respondent alleged that he transferred the amount of ₱1.2 Million from his Account (No. 1187097203) in Equitable PCI Bank *(EPCIB)* to petitioner's Account (No. 0254022012) in said bank. Thereafter, respondent went to see and inform petitioner of the fund transfer and after the bank's confirmation of the same, she issued respondent a receipt acknowledging payment for a Toyota Super Grandia. Petitioner then assured respondent that the vehicle will be delivered after a week. However, a week after, petitioner told respondent that the delivery of his vehicle will be delayed without giving any reason and she asked for a week's extension. After several extensions and despite repeated demands, no vehicle was delivered to respondent and petitioner started avoiding him and ignoring his calls. Consequently, respondent sought legal counsel and a demand letter was sent to petitioner. Instead of complying with her commitment, the latter denied any liability and passed on the blame to Insoy saying that respondent directly transacted with the latter. Thus, respondent filed a complaint with the RTC.

Petitioner, on the other hand, denied that she was Insoy's business partner or agent. She claimed to have learned that

Insoy was selling Toyota vehicles at a lesser price through her friend Araceli Tan, whose sister in Cebu is Insoy's friend. After meeting Insoy in person, petitioner ordered two (2) units of Toyota Prado and paid ₱2 Million as down payment *via* fund transfer to Insoy's EPCIB account. Having learned of said orders, Belinda Lao, who is Matalam's niece and petitioner's friend, requested petitioner to reserve one of the Toyota Prados for Matalam as he is interested in buying it, to which petitioner acquiesced. Subsequently, the latter and Matalam agreed to meet in Cebu because she wanted to follow up on her order from Insoy and Matalam wanted to see the Prado vehicle. Petitioner claimed meeting Yu for the first time on June 25, 2007 as he was with Matalam and Lao at the Waterfront Hotel. After contacting Insoy, they were fetched at the hotel and brought to a Toyota yard where Insoy showed Yu's group to see the vehicles. Petitioner, who did not join them because the Prados were not there, then learned that Yu's group had already chosen their respective Toyota vehicles and ordered the same directly from Insoy. Insoy supposedly told the men that she preferred to receive their payments at one time since it is a bulk purchase and they all agreed to deposit the same. Thus, after arriving from Cebu on June 26, 2007, Yu's group requested petitioner to deposit their payment in her account and to remit the same to Insoy's account, as she (former) had already done it before. Barely an hour after receiving the payments of Yu's group totaling ₱2,950,000.00 (₱1,200,000.00 for Yu's Grandia, ₱1,000,000.00 for Matalam's Fortuner and ₱750,000.00 for Lao's Yaris), petitioner claimed that she deposited the same to Insoy's account. Moreover, to prove that Yu dealt directly with Insoy on his own, petitioner pointed out that Yu and Lao subsequently went to Cebu on July 4, 2007 to follow-up with their orders from Insoy and that on July 9, 2007, Insoy went to Davao City and had dinner with Yu's group and petitioner, after which, Yu treated Insoy for a night out. Petitioner further averred that except for Lao's Yaris, her two (2) units of Prado ordered and her subsequent order of a Toyota Hi-Lux (for which she deposited another ₱800,000.00 to Insoy's account), as well as the vehicles ordered by Yu's group were never delivered. Consequently, after exerting much effort to contact Insoy to no avail, petitioner

filed a criminal complaint for *estafa* against the former which was docketed as Criminal Case No. 63,689-08 and is pending before the RTC, Branch 17 of Davao City.

The RTC, on October 9, 2013, ruled in favor of respondent Yu. The dispositive portion of the said decision reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants Maribelle Z. Neri and Bridgette Insoy, DIRECTING them to pay plaintiff Ryan Roy Yu, jointly and solidarily, the following amounts:
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> 1. ₱1,200,000.00 as actual damages for reimbursement of the amount paid by Ryan Roy Yu, plus 6% legal interest to commence from the filing of the Complaint and twelve percent (12%) interest from the finality of the Decision until fully paid;
> 2. ₱20,000.00 as Moral Damages;
> 3. ₱10,000.00 as Exemplary damages;
> 4. ₱50,000.00 as Attorney's Fees; and
> 5. Costs of the suit.
>
> The Counterclaim of defendant Maribelle Z. Neri is DISMISSED for want of basis from which to draw the same.
>
> SO ORDERED.[3]

Petitioner elevated the case to the CA, and on August 19, 2016, the CA partially granted petitioner's appeal, and disposed of the case as follows:

> WHEREFORE, the appeal is GRANTED IN PART. The Decision dated 9 October 2013 of the Regional Trial Court, 11th Judicial Region, Branch 16 of Davao City in Civil Case No. 32-787-09, is AFFIRMED with the following MODIFICATION:
>
> 1.) Maribelle Z. Neri and Bridgette Insoy are held jointly liable to Ryan Yu for the amount of Php 1,200,000.00; and
>
> 2.) The awards of moral and exemplary damages, as well as attorney's fees, are deleted.

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[3] *Rollo,* pp. 40-41.

SO ORDERED.[4]

The CA eventually denied petitioner's partial motion for reconsideration in its Resolution[5] dated January 25, 2017.

Hence, the present petition with the following arguments:

THE ACKNOWLEDGMENT RECEIPT CANNOT BE CONCLUSIVELY CONSIDERED AS A MEMORANDUM OF DEED OF SALE OBLIGING PETITIONER TO DELIVER HERSELF THE SUBJECT VEHICLES AS SELLER THERETO WHEN CIRCUMSTANCES AND ADMISSIONS ONLY RELATE TO PURCHASE OF VEHICLE BY PETITIONER FOR YU'S GROUP AND NOT AS THE SELLER HERSELF.

NO BASIS IN LAW IN FINDING THAT PETITIONER IS A VENDOR.

COMMON SENSE DICTATES THAT YU WAS AWARE OF THE ROLE OF PETITIONER IN THE PAYMENT OF ₱1,200,000 FOR THE PURCHASE OF THE VEHICLE.

MATALAM AND LAO'S ACT OF NOT DEMANDING PAYMENT FROM PETITIONER CLEARLY INDICATES THAT THEY KNOW THE ROLE OF PETITIONER IN THE PURCHASE OF THE SUBJECT VEHICLES.

THE DECISION PROMULGATED ON 19 AUGUST 2016 DID NOT CONTAIN CLEAR AND DISTINCTIVE SET OF FACTS AND THE LAW WHICH IT IS BASED.[6]

According to petitioner, the memorandum for all intents and purposes only attested to the fact of payment of one (1) unit of Toyota Grandia, thus, the CA is gravely mistaken by concluding that petitioner is the seller when there is no circumstance, either by declaration or by supporting evidence that she obligated herself to respondent to transfer ownership of and deliver the subject vehicle. She also argues that in the assumption that respondent was really convinced that petitioner was an agent of Insoy in the car dealership business, respondent failed to

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[4] *Id.* at 51.

[5] *Id.* at 66-68.

[6] *Id.* at 13-19.

exert effort to ascertain not only the fact of petitioner's agency but also the nature and extent of her authority to represent Insoy. It is also the contention of petitioner that the CA overlooked the fact that respondent, who is a businessman for decades, would accept a mere acknowledgment receipt from petitioner as only proof of sale of the motor vehicle without requiring her to execute notarized Deed of Sale when the latter document is a customary business practice since only a notarized Deed of Sale is acceptable to the Land Transportation Office for the transfer of Certificate of Registration and Official Receipt. Petitioner further claims that the CA's Decision dated August 19, 2016 was not explicit as to what clear and distinctive set of facts and the law on which it was anchored.

In his Comment,[7] respondent insists that the CA correctly ruled that petitioner should be held liable for the ₱1,200,000.00 that she received from respondent.

The petition lacks merit.

The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45.[8] This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt"[9] when supported by substantial evidence.[10] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[11]

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

[8] Rules of Court, Rule 45, Sec. I.

[9] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil). Inc.,* 364 Phil. 541, 546 (1999) [Per *J.* Pardo, First Division].

[10] *Siasat v. Court of Appeals,* 425 Phil. 139, 145 (2002) [Per *J.* Pardo, First Division]; *Tabaco v. Court of Appeals,* 239 Phil. 485, 490 (1994) [Per *J.* Bellosillo, First Division]; and *Padilla v. Court of Appeals,* 241 Phil. 776, 781 (1988) [Per *J.* Paras, Second Division].

[11] *Bank of the Philippine Islands v. Leobrera,* 461 Phil. 461, 469 (2003) [Per *J.* Ynares-Santiago, Special First Division].

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are ten (10) recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:[12]

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[13]

These exceptions similarly apply in petitions for review filed before this court involving civil,[14] labor,[15] tax,[16] or criminal cases.[17]

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[12] 269 Phil. 225 (1990) [Per *J*. Bidin, Third Division].

[13] *Id.* at 232.

[14] *Dichoso, Jr., et al. v. Marcos,* 663 Phil. 48 (2011) [Per *J*. Nachura, Second Division) and *Spouses Caoili v. Court of Appeals,* 373 Phil. 122, 132 (1999) [Per *J*. Gonzaga-Reyes, Third Division].

[15] *Go v. Court of Appeals,* 474 Phil. 404, 411 (2004) [Per *J*. Ynares-Santiago, First Division] and *Arriola v. Pilipino Star Ngayon, Inc., et al.,* 741 Phil. 171 (2014) [Per *J*. Leonen, Third Division].

[16] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil), Inc.,* 364 Phil. 541, 546-547 (1999) [Per *J*. Pardo, First Division].

[17] *Macayan, Jr. v. People,* 756 Phil. 202 (2015) [Per *J*. Leonen, Second Division]; *Benito v. People,* 753 Phil. 616 (2015) [Per *J*. Leonen, Second Division].

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties.[18] This review includes assessment of the "probative value of the evidence presented."[19]

There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties.[20] In this case, the issues raised by petitioner obviously asks this Court to review the factual findings of the RTC and the CA which is not the role of this Court.

Nevertheless, the CA did not err in ruling that petitioner is engaged in the business of selling cars and that respondent's group directly transacted with her for the purchase of their vehicle, thus, petitioner is jointly liable with Insoy to respondent for the amount of ₱1,200,000.00. As aptly ruled by the CA:

> Neri denied that she is engaged in selling Toyota vehicles and that Yu's group directly transacted with her in the purchase of their Toyota vehicles, insisting that such transaction was purely between the latter and Insoy. Neri contradicts her claim in her own testimony, viz.:
>
> CROSS-EXAMINATION x x x
>
> ATTY. ZARATE: Miss Neri, you mentioned that you are a business woman?
> A: Yes sir.
>
> Q: And you are engaged in what business, just for the record?
> A: Flour and sugar, bakery supplies.

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[18] *Republic v. Ortigas and Company Limited Partnership,* 728 Phil. 277, 287-288 (2014) [Per *J.* Leonen, Third Division] and *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.,* 665 Phil. 784, 788 (2011) [Per *J.* Carpio Morales, Third Division].

[19] *Republic v. Ortigas and Company Limited Partnership, supra* note 18, at 287. [Per *J.* Leonen, Third Division].

[20] *Pascual v. Burgos, et al.,* 776 Phil. 167, 183 (2016).

Q: Aside from selling flour or bakery supplies, are you also engaged in other business?
A: Nos, sir.

x x x x x x x x x

Q: What about selling cars to your friends?

x x x x x x x x x

A: No sir.

x x x x x x x x x

Q: But you will admit that when Anita Quitain bought the Toyota RAV IV from Cebu, it was you who received the final payment of Anita Quitain which you in return, according to your affidavit, delivered to Bridgette Insoy?
A: Yes.

Q: Yes.
A: It was not Bridgette Insoy.

Q: x x x x x x x x x

On June 25, 2007, you mentioned in [your] affidavit on page 3, paragraph 1, xxx that xxx in the end deals were made between Steven Lao, William Matalam and plaintiff Ryan Yu, you in fact enumerated here the amount which you have deposited. My question now is, you knew these deals because when they were negotiating you were around?

A:No.

Q: Now, Ms. Neri, you will admit that xxx, at the time you were maintaining an Equitable-PCI Bank Account?
A: Yes.

x x x x x x x x x

Q: You will also admit that Bridgette Insoy was maintaining an Equitable-PCI Bank Account?
A: Yes.

Q: But you will also admit that all the payments of these cars, ordered in Cebu including that of the plaintiff was made to you and in turn, according to you, you remitted the amount to Bridgette Insoy?
A: Yes sir.

x x x x x x x x x

Q: And in fact on June 26, as admitted, you issued plaintiff Ryan Yu a memorandum receipt acknowledging the receipt of ₱1,200,000.00?
A: Yes sir.

RE-DIRECT: x x x

Q: Ms. Neri, you were asked why Steven Lao gave you the ₱750,000.00 xxx check in payment of his order, the Yaris?

x x x x x x x x x

A: So that will be the one to make the payment?

Q: Why was it you who would make the payment?
A: Because on June 21, I ordered a Toyota Prado for myself, I ordered it online from Gigi (Insoy) for ₱1 Million. On June 22, 2007, I ordered for my sister another Prado. Steven and his group decided that I will be the one to order online since I was able to order online before.

Q: What did you do with the ₱750,000.00 check given to you by Steven Lao?
A: I deposited it in my account in BPI and I ordered online for them.

COURT:

Okay, clarifications from the Court. It appears from the totality of your declarations that you have been receiving orders from persons for you to place an order with Toyota?

x x x x x x x x x

A: No, your Honor. x x x

Q: You are telling me in your statement that "I placed an order, they gave: me the money, place an order on a particular date."
A: They were the one who told me to place an order online.

Q: So, how do you describe your role in accommodating third parsons, in placing an order online?
A: I just accommodated them but I only knew Steven Lao. They just instructed me sir to have their payments online because before I was able to secure a loan on my car.

RE-CROSS x x x

Q: What about the order placed by Matalam, what happened to that?
A: I do not know about the order of Matalam.

Q: But you will admit Ms. Neri that you refunded William Matalam the amount of ₱500,000.00?
A: Yes.

Q: From your personal money?
A: Yes.

It is clear from the foregoing testimonies that Yu's group, of whom only Lao is known to Neri, directly went to her and transacted directly with her for the purchase of their respective Toyota vehicles, and she was the one who ordered these vehicles for them online. Add this to the undisputed fact that Neri received their payments in her bank account and issued an acknowledgment receipt without qualification that such acknowledgment of payment was only for Insoy. The conclusion becomes inescapable that Neri transacted as a seller, not as a mere conduit or middleman or agent.

The main argument of Neri is that she merely "placed an order online." True, Neri cannot be held liable under the transaction if she merely placed an order online. However, it would be an entirely different story if the act of placing an order online is coupled with her efforts in convincing Yu to buy a Toyota Grandia on several occasions. Neri even provided the transportation from the Cebu Waterfront Hotel to the Toyota Yard. In addition to this, Neri received the amount of Php1.2 Million and issued a corresponding Acknowledgment Receipt without qualification with regard to her authority to receive the said amount, or in what capacity she was receiving it, as agent or seller.

Note also the excuse Neri harps on that she only agreed to place the order online and accept the deposit of money using her account "because she has done it once before." Considering the millions of pesos involved and the number of vehicles, but more importantly the persons who supposedly made the request to Neri (Yu, Lao and Matalam), none of whom Neri personally knew before these transactions, the Court cannot but brand Neri's story as incredulous.

It is apparent that the participation of Neri here cannot be discounted as merely accommodating Yu because in the first place Yu had no intention to buy the subject vehicle when he visited Cebu. It was through the sales talk of Neri plus the discount that she gave to YU and his group that Yu was enticed to purchase the subject vehicle. In this regard, how can Neri offer such discounts if she were not the seller?

The testimonies of Yu's witnesses point to Neri as representing herself as a seller. Yu and Hsipin Liu never spoke to Insoy. In fact, when the two Avanzas ordered by Hsipin Liu (known as Steven Lao) were not delivered a week after payments were made to them, Hsipin Liu talked to Neri regarding the status of the vehicles purchased. Neri did not reveal the cause of the delay and merely requested for an extension of another week. Neri gave assurance that she paid for the units which Lao ordered. Why would Neri go to all these trouble if she has absolutely no obligation as a seller?

Moreover, the mere act of Neri in "ordering the vehicles online" cannot overshadow her other acts in negotiating, arranging and facilitating the purchase of the subject vehicles, to wit:

(1) Neri fetched Yu and His Pin Liu (Steven Lao) at the Cebu Waterfront Hotel and brought them to the Toyota Yard;
(2) After Yu was introduced to Insoy, Yu only talked to Neri all the time while Yu was at the Toyota Yard;
(3) Neri convinced Yu and the others to buy vehicles in bulk after their visit at the Toyota Yard while having lunch at Laguna Café in Ayala Mall, by offering them discounts.

Again, this Court respects the factual findings of the CA. The Court of Appeals must have gravely abused its discretion in its appreciation of the evidence presented by the parties and in its factual findings to warrant a review of factual issues by this Court.[21] Grave abuse of discretion is defined, thus:

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

Grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts.[22]

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[21] *Id.* at 185.

[22] *United Coconut Planters Bank v. Looyuko,* 560 Phil. 581, 591-592 (2007) [Per *J.* Austria-Martinez, Third Division].

A careful review of the records would show that the CA did not commit any grave abuse of discretion in the appreciation of the evidence presented by both parties. Thus, this Court finds no merit to reverse the appellate court's decision and resolution.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated March 8, 2017, of petitioner Maribelle Z. Neri is **DENIED** for lack of merit. Consequently, the Decision dated August 19, 2016 and the Resolution dated January 25, 2017 of the Court of Appeals in CA-G.R. CV No. 03495-MIN are **AFFIRMED.** Consequently, the amount of ₱1,200,000.00 due to respondent Ryan Roy Yu shall be paid with legal interest of twelve percent (12%) *per annum* of the said amount from March 12, 2009 to June 30, 2013 and six percent (6%) *per annum* from July 1, 2013 until fully satisfied.[23]

SO ORDERED.

Leonen, Gesmundo, Reyes, A. Jr.,[*] and *Reyes, J. Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 233653. September 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICARDO GUANZON *y* CENETA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR

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[23] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[*] Designated additional member per Special Order No. 2588 dated August 28, 2018.

POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— To sustain convictions for illegal sale and illegal possession of dangerous drugs under R.A. No. 9165, the prosecution must sufficiently establish all the elements of the said crimes. For illegal sale of dangerous drugs under Section 5, the following elements must first be established: (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 therefor. For illegal possession of a dangerous drug under Section 11, it must be shown that: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.

2. ID.; ID.; ID.; IN PROSECUTIONS FOR ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS, THE *CORPUS DELICTI*, APART FROM THE ELEMENTS OF THE OFFENSE, MUST BE ESTABLISHED BEYOND REASONABLE DOUBT.— Although the general rule is that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect, jurisprudence provides for exceptions such as where the evidence of record fails to support or substantiate the findings of fact and conclusions of the lower court; or where the lower court overlooked certain facts of substance and value that, if considered, would affect the outcome of the case. The foregoing exceptional circumstances are present in this case. x x x Time and again, this Court has consistently held that in prosecutions for illegal sale and illegal possession of dangerous drugs, the *corpus delicti*, apart from the elements of the offense, must be established beyond reasonable doubt. In illegal drug cases, the *corpus delicti* is the illegal drug itself. In other words, proving the existence of all the elements of the offense does not suffice to sustain a conviction. The State equally bears the obligation to prove the identity of the seized drug, failing in which, the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt. To ensure that the integrity and identity of the seized drugs in buy-bust operations have been preserved, the procedure for custody and disposition of the same is clearly delineated under Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, x x x The Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of R.A. No. 9165 were also amended pursuant to R.A. No. 10640.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS AND CONCLUSION OF THE TRIAL COURT ARE ENTITLED TO GREAT RESPECT; EXCEPTION, PRESENT IN CASE AT BAR.— Although the general rule is that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect, jurisprudence provides for exceptions such as where the evidence of record fails to support or substantiate the findings of fact and conclusions of the lower court; or where the lower court overlooked certain facts of substance and value that, if considered, would affect the outcome of the case. The foregoing exceptional circumstances are present in this case. x x x Nowhere in his testimony did SPO2 Abalos explain or provide reasons for non-compliance with the requirements under the law. To be clear, We do not depart from the rule that minor discrepancies in the testimonies of the witnesses neither vitiate the essential integrity of the evidence in its material entirety, nor reflect adversely on the credibility of the witnesses. Basic is the rule that inconsistency in the testimonies that has nothing to do with the elements of the offense is not a ground to reverse a conviction. In the case at bar, however, the inconsistencies in the testimonies do not pertain to peripheral matters as observed by the CA. Verily, the said inconsistencies shed light on the crux of the present controversy — the alleged failure to establish chain of custody and preserve the identity and integrity of the seized drugs. Given the foregoing observations, the testimonial evidence adduced by the prosecution, on its own, clearly failed to establish the chain of custody of both drug specimens. Although the seized drugs were marked, circumstances surrounding the marking, such as the author, the time, and the place of marking, were not clearly established. Guanzon was also not present during the said marking.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; THE BROKEN LINKS IN THE CHAIN OF CUSTODY, TAKEN TOGETHER WITH THE ABSENCE OR NON-SUBMISSION OF INVENTORY AND PHOTOGRAPH TO THE COURT IS A BLATANT VIOLATION OF SECTION 21 OF R.A. NO. 9165; CASE AT BAR.— The importance of the marking of seized drugs, as the first link in the chain of custody, is elucidated in the case of *People of the*

Philippines v. Alberto Gonzales y Santos, thus: x x x Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, **should be made in the presence of the apprehended violator immediately upon arrest**. x x x **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.** x x x In recent jurisprudence, marking upon immediate confiscation has been interpreted to include marking at the nearest police station, or the office of the apprehending team. Nonetheless, in this case, even the place of marking was not clearly established by the prosecution. x x x Since the prosecution miserably failed to establish the first two links in this case, there is no more need to discuss the subsequent links. The totality of the evidence presented failed to prove the circumstances surrounding the marking of the seized drugs and the identity of the individual handling the same from the place of arrest, up to the police station. The broken links in the chain of custody, taken together with the absence or non-submission of inventory and photographs to the court, show an utter lack of effort on the part of the police officers to comply with the mandatory procedures under the law. We cannot turn a blind eye on such blatant violations of Section 21 of R.A. No. 9165, a substantive law. Section 21 of the same, as amended by R.A. No. 10640, serves as a procedural safeguard against abuse of police authorities in the conduct of their office through frame-up, and other similar operations related to drug cases.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

In light of the recent surge in drug cases as a result of the ongoing campaign by the administration against the drug epidemic faced by the country, it is timely for this Court to

stress, with utmost importance, the need to strictly comply with Section 21 of Republic Act (R.A.) No. 9165 as amended by R.A. No. 10640 on the custody and disposition of evidence. Where the State fails to comply with the said rules, the Court imposes upon the prosecution the duty to present evidence that would demonstrate the identity of each individual in the chain of custody, and the manner of handling the *corpus delicti*, which is the dangerous drug itself. Only then will the Court be able to ensure that presumption of innocence, a primordial right enshrined under the Constitution, is accordingly bestowed upon the accused.

This is an appeal from the Decision[1] dated May 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08152, affirming *in toto* the Decision[2] dated February 18, 2016 of the Regional Trial Court (RTC) of Antipolo City, Branch 73, in Criminal Case Nos. 03-26225 and 03-26226, finding accused-appellant Ricardo Guanzon y Ceneta (Guanzon) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Facts of the Case

In two separate Informations, Guanzon was charged for violation of Sections 5 and 11 (Illegal Sale and Possession of Dangerous Drugs), Article II of R.A. No. 9165, *viz*:

Criminal Case No. 03-26225

That on or about the 28th day of July 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to PO2 Vandever D.

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[1] Penned by Associate Justice Stephen C. Cruz, and concurred in by Associate Justices Jose C. Reyes, Jr. and Nina G. Antonio-Valenzuela; *rollo*, pp. 2-18.

[2] Penned by Acting Presiding Judge Leili C. Suarez; CA *rollo*, pp. 54-61.

Hernandez, who acted as a poseur buyer, one (1) heat-sealed transparent plastic sachet containing 0.04 gram of white crystalline substance, for and in consideration of the sum of ₱200.00, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave positive result to the tests for Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[3]

Criminal Case No. 03-26226

That on or about the 28th day of July 2003, in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above- named accused, not being lawfully authorized to possess/use any dangerous drugs, did, then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) heat sealed transparent plastic sachet containing 0.01 gram of white crystalline substance, which after the corresponding laboratory examination conducted by the PNP Crime Laboratory gave positive result to the tests for Methylamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

Upon arraignment, Guanzon, with the assistance of counsel, pleaded not guilty to both offenses charged. Thereafter, pre-trial and trial on the merits ensued.[5]

The Prosecution's version

On July 28, 2003, at around 7:00 o'clock in the morning, the elements of the Philippine National Police (PNP), Antipolo City, simultaneously received information from a concerned citizen and the Brgy. Task Force of Mambugan, Antipolo City, that Guanzon was selling dangerous drugs at No. 1622, Kingscup St., Antipolo Valley Subdivision, Brgy. Mambugan, Antipolo City.[6]

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[3] Records (Crim. Case No. 03-26225), p. 1.

[4] *Id.* at 29 (Crim. Case No. 03-26226).

[5] CA *rollo*, p. 55.

[6] *Id.* at 56.

To apprehend Guanzon, the PNP immediately coordinated with the Philippine Drug Enforcement Agency (PDEA) and planned a buy-bust operation against Guanzon. The buy-bust team was composed of: SPO2 Gerry S. Abalos (SPO2 Abalos) as the team leader; PO2 Vandever D. Hernandez (PO2 Hernandez) as the poseur-buyer; PO3 Cesar F. Paulos (PO3 Paulos) and PO3 Sherwin G. Bulan (PO3 Bulan) as back-ups. The team also prepared two (2) 100 peso bills (with serial numbers Z387982 and CN570732), which were used as marked money for the operation.[7]

At around 9:00 o'clock in the morning of the same day, the team arrived at the target area. PO2 Hernandez alighted from their vehicle and approached Guanzon. He told Guanzon, "*tol e-eskor ako*", and gave him the marked money. In exchange, Guanzon handed him a small plastic sachet of white crystalline substance. Upon receipt of the plastic sachet, PO2 Hernandez lit his cigarette as the pre-arranged signal for the consummation of the sale. At this juncture, the rest of the team ran towards Guanzon and assisted in his arrest.[8]

PO3 Paulos frisked Guanzon and recovered from him the marked money. He also recovered from him another plastic sachet of white crystalline substance. Thereafter, they informed Guanzon of his constitutional rights and brought him, together with the confiscated sachets, to their office.[9]

At the office, PO2 Hernandez marked the sachet bought from Guanzon as specimen "A", and the sachet recovered from Guanzon as specimen "B". Thereafter, the sachets were delivered by PO2 Hernandez to the PNP Crime Laboratory Service for chemical examination. Both plastic sachets of white crystalline substance yielded positive results for the presence of Methamphetamine Hydrochloride or *shabu* based on the

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[7] *Id.*

[8] *Id.*

[9] *Id.*

Chemistry Report, dated July 28, 2003, executed by Forensic Chemist, PSI Angel C. Timario (PSI Timario).[10]

The Defense' version

On July 28, 2003 at around 9:30 o'clock in the morning, while Guanzon was with his friend, Sonny, at the latter's house in La Colina Subdivision, Antipolo City, a group of armed men forcibly entered the house and pointed guns at them. They looked for a man called "Jojo Hiwa." When Guanzon told them that he is "Jojo Hiwa," he was arrested by them.[11]

When Guanzon asked the reason for his arrest, they told him to just explain at their office in Lores Plaza, Antipolo City.

At the office, the police officers frisked Guanzon and took all of his money including his cellphone and pack of cigarettes. However, in view of their failure to confiscate any dangerous drugs from him, they asked their asset instead to buy *shabu* which they eventually used to charge Guanzon of the crime of illegal sale and possession of dangerous drugs. They concocted a story that they caught Guanzon in the act of illegally selling and possessing dangerous drugs in a buy-bust operation conducted by their group against him.[12]

On February 18, 2016, the RTC promulgated its Decision,[13] the dispositive portion of which, reads:

WHEREFORE, in light of all the foregoing, judgment is hereby rendered as follow[s]:

1.) In Criminal Case No. 03-26225, Ricardo C. Guanzon is hereby found GUILTY beyond reasonable doubt of illegal sale of dangerous drugs, as defined and penalized under Section 5, 1st paragraph, Article II of R.A. No. 9165, and is hereby sentenced to suffer the penalty

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[10] *Id*. at 57.

[11] *Id*. at 58.

[12] *Id*.

[13] *Id*. at 54-61.

of LIFE IMPRISONMENT and to pay a fine of Five Hundred Thousand (Php500,000.00) pesos; and,

2.) In Criminal Case No. 03-26226, Ricardo C. Guanzon is hereby found GUILTY beyond reasonable doubt of illegal possession of dangerous drugs, as defined and penalized under Section 11, 2nd paragraph, No. 3, Article II of R.A. No. 9165, and is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and to pay a fine of Three Hundred Thousand (Php300,000.00) pesos.

The contrabands subject hereof are hereby confiscated, the same to be disposed of as the law prescribes.

SO ORDERED.[14]

Guanzon appealed his conviction to the Court of Appeals.

The CA's Ruling

In his Brief,[15] he argued, among others, that the police officers disregarded the mandatory procedures in the preservation of the integrity of the seized drugs under Section 21 of the Implementing Rules and Regulations (IRR) of R.A. No. 9165. In particular, no inventory and photographs were submitted and formally offered in court, and nowhere in the records showed that the buy-bust team contacted, or even made an attempt to do so, any representative from the media, the Department of Justice (DOJ), or any elected public official. Moreover, Guanzon pointed out inconsistencies in the testimonies of the police officers as to how the buy-bust operation was conducted.

On May 31, 2017, the CA rendered a Decision[16] affirming *in toto* the RTC Decision. The CA found that the inconsistencies referred to by Guanzon were minor discrepancies and pertained to peripheral matters which did not affect the credibility of the police officers. It also ruled that the totality of the evidence

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[14] *Id*. at 61.

[15] *Id*. at 28-52.

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

adduced by the prosecution, both testimonial and documentary, showed an unbroken chain of custody.

Hence, this appeal.

Issue

The sole issue to be resolved by this Court is, whether the RTC and the CA erred in finding Guanzon guilty beyond reasonable doubt of the crimes charged despite the alleged non-compliance with the mandatory requirements laid down under R.A. No. 9165 and its IRR.

Our Ruling

The appeal is meritorious.

To sustain convictions for illegal sale and illegal possession of dangerous drugs under R.A. No. 9165, the prosecution must sufficiently establish all the elements of the said crimes.

For illegal sale of dangerous drugs under Section 5, the following elements must first be established: (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 therefor.[17]

For illegal possession of a dangerous drug under Section 11, it must be shown that: (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused was freely and consciously aware of being in possession of the drug.[18]

Time and again, this Court has consistently held that in prosecutions for illegal sale and illegal possession of dangerous drugs, the *corpus delicti*, apart from the elements of the offense, must be established beyond reasonable doubt.[19] In illegal drug

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[17] *People v. Opiana*, 750 Phil. 140, 147 (2015).

[18] *People v. Dela Cruz*, 744 Phil. 816, 825-826 (2014).

[19] *Rontos v. People*, 710 Phil. 328, 336-337 (2013).

cases, the *corpus delicti* is the illegal drug itself.[20] In other words, proving the existence of all the elements of the offense does not suffice to sustain a conviction. The State equally bears the obligation to prove the identity of the seized drug, failing in which, the State will not discharge its basic duty of proving the guilt of the accused beyond reasonable doubt.[21]

To ensure that the integrity and identity of the seized drugs in buy-bust operations have been preserved, the procedure for custody and disposition of the same is clearly delineated under Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, *viz*:

> Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs. Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, **conduct a physical inventory of the seized items and photograph the same in the presence of the accused** or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory** and be given a copy thereof: Provided, That **the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable**, in case of warrantless seizures: Provided, finally, That **noncompliance of these requirements under**

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[20] *Id*.

[21] *People v. Relato*, 679 Phil. 268, 277-278 (2012).

justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items. (Emphasis ours)

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The Guidelines on the Implementing Rules and Regulations (IRR) of Section 21 of R.A. No. 9165 were also amended pursuant to R.A. No. 10640, as follows:

Section 1. Implementing Guidelines. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

A. 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:

A.1.1. The marking, physical inventory and photograph of the seized/confiscated items shall be conducted where the search warrant is served.

A.1.2. The marking is the placing by the apprehending officer or the poseur-buyer of his/her initial and signature on the item/s seized.

A.1.3. 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.

A.1.4. In cases when the execution of search warrant is preceded by warrantless seizures, the marking, inventory and photograph of the items recovered from the search warrant shall be performed separately from the marking, inventory and photograph of the items seized from warrantless seizures.

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his/her representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.

A.1.6. A representative of the NPS is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected.

A.1.7. To prevent switching or contamination, the seized items, which are fungible and indistinct in character, and which have been marked after the seizure, shall be sealed in a container or evidence bag and signed by the apprehending/seizing officer for submission to the forensic laboratory for examination.

A.1.8. In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall estimate its count or gross weight or net weight, as the case may be. If it is safe and practicable, marking, inventory and photograph of the seized plant sources may be performed at the plantation site. Representative samples of prescribed quantity pursuant to Board Regulation No. 1, Series of 2002, as amended, and/or Board Regulation No. 1, Series of 2007, as amended, shall be taken from the site after the seizure for laboratory examination, and retained for presentation as the *corpus delicti* of the seized/confiscated plant sources following the chain of custody of evidence.

A.1.9. **Noncompliance, under justifiable grounds, with the requirements of Section 21 (1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items provided the integrity and the**

evidentiary value of the seized items are properly preserved by the apprehending officer/team.

A.1.10. **Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of RA No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items.** Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of RA No. 9165 shall be presented.

A.1.11. The chain of custody of evidence shall indicate the time and place of marking, the names of officers who marked, inventoried, photographed and sealed the seized items, who took custody and received the evidence from one officer to another within the chain, and further indicating the time and date every time the transfer of custody of the same evidence were made in the course of safekeeping until submitted to laboratory personnel for forensic laboratory examination. The latter shall continue the chain as required in paragraph B.5 below.

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Although the incident in this case happened in 2003, the amendatory law, which bolsters the rule on chain of custody, should retroactively apply to Guanzon as it is more favorable to him.[22] The rationale behind requiring observance of the foregoing procedure is clear from the exception found therein, *i.e.*, that the integrity and the evidentiary value of the seized items are properly preserved. This rationale had been the Court's guiding principle in excusing non-compliance with the said mandatory requirements.

In this case, We are tasked to review a conviction tainted with doubts on the integrity and identity of the seized drugs arising from inconsistencies in the testimonies of witnesses.

Bearing in mind that this is an appeal of a criminal case filed in accordance with Rule 122, Section 3(e), in relation to

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[22] *People v. Doroja*, 305 Phil. 253 (1994).

Rule 124, Section 13(c), of the Rules of Court, this Court is not confined to questions of law. The whole case is effectively open for review on both questions of law and of fact whether or not raised by the parties.[23]

At the outset, We stress that the fact of non-compliance with the mandatory procedures under Section 21 of R.A. No. 9165 as amended by R.A. No. 10640 is not disputed in this case. The issue lies on whether the identity and integrity of the seized drugs were established beyond reasonable doubt despite the said non-compliance. As such, it is imperative upon this Court to examine the evidence establishing each link in the chain of custody from the buy-bust operation until the presentation of the seized drugs to the court.

After a careful evaluation of the entire records of the case, We find that the evidence presented by the prosecution failed to establish an unbroken chain of custody of the seized drugs. Consequently, the integrity and identity of the seized drugs were not proven beyond reasonable doubt.

Although the general rule is that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect, jurisprudence provides for exceptions such as where the evidence of record fails to support or substantiate the findings of fact and conclusions of the lower court; or where the lower court overlooked certain facts of substance and value that, if considered, would affect the outcome of the case.[24] The foregoing exceptional circumstances are present in this case.

First, We examine the testimonial evidence presented by the prosecution. Among the prosecution witnesses are SPO2 Abalos (team leader of the buy-bust team) and PO3 Paulos (team member).

To recall, there are two drug specimens presented to the court. One is from the plastic sachet bought by the poseur-buyer

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[23] *People v. Dahil, et al.*, 750 Phil. 212, 225 (2015).

[24] *People v. Hilario*, G.R. No. 210610, January 11, 2018.

("bought drug") and the other was confiscated upon frisking of Guanzon ("confiscated drug").

In his direct examination, PO3 Paulos narrated that he was the one who conducted the bodily search on Guanzon and thus, had first possession of the confiscated drug, thus:

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Q: Upon seeing the pre-arranged signal, what happened next?
A: We rushed to their position and we introduced ourselves.

Q: After that, what happened?
A: We arrested the suspect.

Q: Do you know what happened to the *shabu* bought by the poseur buyer?
A: After introducing ourselves, we conducted bodily search on the suspect.

Q: What was the result of your bodily search?
A: I recovered a small plastic sachet with white crystalline substance and money amounting to two hundred pesos.

Q: Are you familiar with these two hundred pesos?
A: In the two hundred pesos, I noticed the initial of the poseur buyer Vandever Hernandez.

Q: What did you do with the items confiscated from the accused?
A: I gave them to our team leader Gerry Abalos.

Q: What did you do with the marked money and one plastic sachet you confiscated?
A: I turned it over to our team leader.

Q: Who was in possession of the items from the area of the operation up to the police station?
A: Gerry Abalos.

Q: Do you know what happened to the *shabu* bought by the poseur buyer?
A: I do not know, Sir.[25] (Emphasis ours)
x x x x x x x x x

[25] TSN, June 7, 2007, pp. 15-16.

From the foregoing testimony, PO3 Paulos clearly had initial possession of the confiscated drug. He turned it over to SPO2 Abalos, who then had possession of the same up to the police station. As to the bought drug, PO3 Paulos had to be asked twice before he answered that he did not know what happened to the same.

In his cross examination, PO3 Paulos was also asked about the non-compliance with the requirement on inventory and photographs, *viz*:

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Q: Did you prepare any written inventory as regards the items taken from the accused?
A: Our team leader.

Q: Do you know if he submitted that inventory to this Honorable Court?
A: Only in our office.

Q: Did you take any photo of the items taken from the accused?
A: No, sir.

Q: Did you submit the specimen to the PNP Crime Laboratory Service?
A: Yes, sir.[26] (Emphasis ours)

x x x x x x x x x

Taking into account the details shared by PO3 Paulos, We now look into SPO2 Abalos's version of the events. Material portions of the latter's direct examination are reproduced as follows:

Q: After chasing him, what happened next?
A: Police officer Paulos asked him to bring out all the things in his possession.

Q: What was the thing he pulled out?
A: One plastic sachet of white crystalline substance and 2 pcs. of Php100.00, Sir.

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[26] TSN, October 22, 2008, pp. 11-12.

Q: These two (2) pcs. of Php100.00 brought out by the Accused, are they the same marked money?
A: Yes, Sir.

Q: What happened to one (1) plastic sachet that he brought out?
A: We brought it to our office, Sir.

Q: Who confiscated one plastic sachet?
A: Police officer Paulos, Sir.

Q: Can you describe the plastic sachet?
A: Small heat sealed plastic sachet, Sir.

Q: What was the content of the plastic sachet?
A: White crystalline substance, Sir.

Q: Who was in possession of the plastic sachet from the area of operation up to the police station?
A: Police officer Paulos, Sir.

Q: How may sachets were [sic] came from the Accused?
A: One was bought by Vandever Hernandez and one was confiscation [sic] by from the body of the Accused.

Q: In what instance were you able to see illegal drugs bought by Vandever Hernandez?
A: Immediately at the office, Sir.

Q: Do you know who was in possession of the plastic sachet which was bought by Vandever Hernandez from the area of operation up to the police station?
A: Police officer Hernandez.

Q: Were you able to see the specimen bought by police officer Hernandez?
A: Yes, a small heat sealed plastic sachet containing of white crystalline substance, Sir.

Q: And you said you submitted the same for examination, before presenting the specimen for examination, did you do anything with the specimen?
A: Yes. It was marked by police officer Hernandez, Sir.

Q: Where were you when police officer Hernandez marked the specimen?
A: I was beside him, Sir.

Q: What was the marking?
A: A and B.

Q: The specimen bought by Hernandez was marked as "A" and the one confiscated from the Accused was marked as "B".
A: Yes, Sir.[27] (Emphasis ours)

x x x x x x x x x

SPO2 Abalos's testimony above totally contradicts PO3 Paulos's testimony as to who had possession of the confiscated drug from the area of arrest up to the police station. According to PO3 Paulos, he gave it to SPO2 Abalos. On the other hand, SPO2 Abalos narrated that PO3 Paulos had possession of the same during that interval of time. Clearly, there is already a gap in the chain of custody.

With regard to the bought drug, SPO2 Abalos admitted that he saw the same "immediately in the office." Thus, based on the testimonies of both SPO2 Abalos and PO3 Paulos, no one explicitly testified to seeing the bought drug from the hands of Guanzon to PO2 Hernapdez. Only PO2 Hernandez can testify on the chain of custody of the said specimen.

However, nowhere in PO2 Hernandez's direct examination (the defense did not conduct cross examination) did he mention the handling of the bought drug after the arrest. His testimony pertained only to the specifics of the buy-bust operation and did not mention the custody and handling of the seized drug.

Also worth noting is the testimony of SPO2 Abalos in his cross examination, wherein he was asked about the compliance with the requirements on inventory, taking of photographs, and marking:

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Q: What was the items confiscated from the Accused?
A: One small heat sealed plastic sachet and 2 pcs. of Php100.00.

Q: With [regard] to this, did you prepare any inventory?
A: As far as I know there was, Sir.

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[27] TSN, June 10, 2009, pp. 13-14.

Q: Can you submit the same before this Honorable Court?
A: Yes, Sir.

Q: Are you sure?
A: I am not sure.

Q: Did you give the Accused a copy of that inventory?
A: Yes, Sir.

Q: Did you let him sign it?
A: He refused to sign, Sir.

Q: Where did you prepare the inventory?
A: In our office, Sir.

Q: Did you make a photograph on the items confiscated from the Accused?
A: I cannot remember, Sir.

Q: Were you the one who brought the items to Crime Laboratory?
A: Vandever Hernandez and PO2 Marcos [sic], Sir.

Q: What was marking made on the item bought from the Accused?
A: A, Sir.

Q: And the other one?
A: B, Sir.

Q: Letter B is not the initial of the Accused?
A: I do not know, Sir.[28]

x x x x x x x x x

Nowhere in his testimony did SPO2 Abalos explain or provide reasons for non-compliance with the requirements under the law.

To be clear, We do not depart from the rule that minor discrepancies in the testimonies of the witnesses neither vitiate the essential integrity of the evidence in its material entirety, nor reflect adversely on the credibility of the witnesses. Basic is the rule that inconsistency in the testimonies that has nothing to do with the elements of the offense is not a ground to reverse a conviction.[29]

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

[29] *People v. SPO1 Gonzales*, 781 Phil. 149 (2016).

In the case at bar, however, the inconsistencies in the testimonies do not pertain to peripheral matters as observed by the CA. Verily, the said inconsistencies shed light on the crux of the present controversy — the alleged failure to establish chain of custody and preserve the identity and integrity of the seized drugs.

Given the foregoing observations, the testimonial evidence adduced by the prosecution, on its own, clearly failed to establish the chain of custody of both drug specimens. Although the seized drugs were marked, circumstances surrounding the marking, such as the author, the time, and the place of marking, were not clearly established. Guanzon was also not present during the said marking.

We now examine the documentary evidence before the Court.

In its Decision, the CA provided in a chart the list of documentary evidence presented by the prosecution and ruled that the same evidence likewise established the chain of custody.[30] For brevity, We provide a list of the said evidence instead of reproducing the entire chart, as follows:

1. Request for Laboratory Examination;
2. Initial Laboratory Report dated July 28, 2003 signed by PSI Timario;
3. Chemistry Report No. D-947-03 signed by PSI Timario;
4. Certification signed by PSI Timario; and
5. Sinumpaang Salaysay signed by PO3 Paulos and SPO2 Abalos.[31]

Contrary to the CA's findings, none of these pieces of documentary evidence prove the chain of custody of the seized drugs.

As previously discussed, there is already an unmistakable gap in the chain of custody from the place of arrest to the police station. The Sinumpaang Salaysay[32] of PO3 Paulos and SPO2

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[30] *Rollo*, p. 13.

[31] *Id.* at 13-15.

[32] Records (Crim. Case Nos. 03-26225 and 03-28226), pp. 10-11.

Abalos also made no mention of any details regarding the identity of each individual in the chain of custody, and the manner of handling the seized drugs.

In the case of *People of the Philippines v. Gener Villar y Poja*,[33] the Court held that generally, in a buy-bust situation,

> The following links must be established in the chain of custody: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4),the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[34]

Notably, SPO2 Abalos in his testimony, did not mention any other person present during the marking of the specimens other than himself and PO2 Hernandez, who allegedly marked the same. Nowhere in the records show where the said marking took place. In fact, PO2 Hernandez did not testify during trial, nor indicate in his affidavit, that he is the one who marked the seized drugs. On the other hand, PSI Timario testified during her direct and cross examination, that the specimens were marked by the "arresting officers" as they were already pre-marked when submitted to her.[35]

The importance of the marking of seized drugs, as the first link in the chain of custody, is elucidated in the case of *People of the Philippines v. Alberto Gonzales y Santos*,[36] thus:

> The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs,

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[33] 799 Phil. 378 (2016).

[34] *Id.* at 389.

[35] TSN, May 26, 2006, pp. 7-9.

[36] 708 Phil. 121 (2013).

should be made in the presence of the apprehended violator immediately upon arrest. The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. **In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.**[37] (Emphasis ours)

In recent jurisprudence, marking upon immediate confiscation has been interpreted to include marking at the nearest police station, or the office of the apprehending team.[38] Nonetheless, in this case, even the place of marking was not clearly established by the prosecution.

As previously noted, SPO2 Abalos merely testified that he was beside PO2 Hernandez during the marking and before submitting the marked specimens for examination. Taking this into consideration, as well as the absence of the accused during the marking, and the lack of a categorical statement by PO2 Hernandez that he is the author of the marking, We find that the first link in the chain of custody is broken.

With regard to the second link, the contradicting testimonies of PO3 Paulos and SPO2 Abalos on the identity of the officer who had custody of the seized drugs from the place of arrest to the police station already cast serious doubts on whether the drugs brought to the police station is the same drugs seized from Guanzon at the place of arrest.

Moreover, in *People of the Philippines v. Pablo Arposeple y Sanchez*,[39] this Court found that the inherent weakness of the

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

[38] *People v. Rafols*, 787 Phil. 466, 476 (2016).

[39] G.R. No. 205787, November 22, 2017.

first link in the chain of custody caused the subsequent links to fail. Thus, it held:

> The first link in the chain of custody was undoubtedly inherently weak which caused the other links to miserably fail. The first link, it is emphasized, primarily deals on the preservation of the identity and integrity of the confiscated items, the burden of which lies with the prosecution. The marking has a twin purpose, viz: **first**, to give the succeeding handlers of the specimen a reference, and **second**, to separate the marked evidence from the *corpus* of all other similar or related evidence from the moment of seizure until their disposition at the end of criminal proceedings, thereby obviating switching, "planting," or contamination of evidence. **Absent therefore the certainty that the items that were marked, subjected to laboratory examination, and presented as evidence in court were exactly those that were allegedly seized from *Arposeple*, there would be no need to proceed to evaluate the succeeding links or to determine the existence of the other elements of the charges against the appellants. Clearly, the cases for the prosecution had been irreversibly lost as a result of the weak first link irretrievably breaking away from the main chain.** (Emphasis Ours)

Since the prosecution miserably failed to establish the first two links in this case, there is no more need to discuss the subsequent links. The totality of the evidence presented failed to prove the circumstances surrounding the marking of the seized drugs and the identity of the individual handling the same from the place of arrest, up to the police station.

The broken links in the chain of custody, taken together with the absence or non-submission of inventory and photographs to the court, show an utter lack of effort on the part of the police officers to comply with the mandatory procedures under the law. We cannot turn a blind eye on such blatant violations of Section 21 of R.A. No. 9165, a substantive law. Section 21 of the same, as amended by R.A. No. 10640, serves as a procedural safeguard against abuse of police authorities in the conduct of their office through frame-up, and other similar operations related to drug cases.

Given the gravity of the penalty imposed in drug cases, it is incumbent upon this Court to give teeth to the law, specifically

Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, which essentially protects the right of the innocent to be presumed as such. This does not mean that we tolerate or encourage criminality. The primordial duty of the Court is to ensure that safeguards provided by the Constitution and the law, are properly in place and working.

In sum, to be excused from non-compliance with Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, the prosecution must establish each link in the chain of custody, and provide justifiable grounds for any gap in the chain. Non-compliance with the said provision and its IRR triggers the duty of the prosecution to present evidence that would establish every link in the chain of custody to ensure that the identity and integrity of the seized drug is duly preserved. Thus, the identity of the individual handling the seized drug and the manner of handling, like the elements of the offense, must be proven beyond reasonable doubt. Failure to prove the same beyond reasonable doubt, constrains this Court to rule for an acquittal.

WHEREFORE, the Decision dated May 31, 2017 of the Court of Appeals in CA-G.R. CR-HC-08152 is **REVERSED** and **SET ASIDE**. Accused-appellant Ricardo C. Guanzon is **ACQUITTED** of both charges of illegal sale and possession of dangerous drugs, under Sections 5 and 11, Article II of Republic Act No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED** immediately **RELEASED** from detention unless he is confined for another lawful cause.

Let a copy of this Decision be furnished the Superintendent of the New Bilibid Prison, Muntinlupa City, for immediate implementation and to report the action he has taken to this Court within five (5) days from receipt of this Decision.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), Bersamin, and *Jardeleza, JJ.*, concur.

Del Castillo, J., on official leave.

THIRD DIVISION

[G.R. No. 234825. September 5, 2018]

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

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** In reviewing rape cases, the Court is guided by the following principles: (1) to accuse a man of rape is easy, but to disprove the accusation is difficult, though the accused may be innocent; (2) inasmuch as only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and should not be allowed to draw strength from the weakness of the evidence for the defense.

2. **ID.; ID.; ID.; IN RAPE CASES, THE COURT IS COMPELLED TO SCRUTINIZE THE STATEMENTS OF A VICTIM ON WHOSE SOLE TESTIMONY CONVICTION OR ACQUITTAL DEPENDS.—** [T]he review of a criminal case opens up the case in its entirety. The totality of the evidence presented by both the prosecution and the defense are weighed, thus, avoiding general conclusions based on isolated pieces of evidence. In the case of rape, a review begins with the reality that rape is a very serious accusation that is painful to make; at the same time, it is a charge that is not hard to lay against another by one with malice in her mind. Because of the private nature of the crime that justifies the acceptance of the lone testimony of a credible victim to convict, it is not easy for the appellant, although innocent, to disprove his guilt. These realities compel the Court to approach with great caution and to scrutinize the statements of a victim on whose sole testimony conviction or acquittal depends.

3. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.—** The elements of Rape under Article 266-A(1)(a) are: (a) the offender had carnal knowledge of a woman; and

(b) said carnal knowledge was accomplished through force, threat or intimidation. The gravamen of rape is sexual intercourse with a woman against her will. Rape shall be qualified pursuant to Article 266-B(1) of the RPC if: (a) the victim is under eighteen (18) years of age; and (b) 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.

4. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; MAY BE RESORTED TO BY THE PROSECUTION TO DISCHARGE ITS BURDEN IN THE ABSENCE OF DIRECT EVIDENCE.— It is settled that the crime of rape is difficult to prove because it is generally left unseen and very often, only the victim is left to testify for herself. However, the accused may still be proven as the culprit ·despite the absence of eyewitnesses. Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. Section 4, Rule 133, of the Revised Rules of Evidence, as amended, sets forth the requirements of circumstantial evidence that is sufficient for conviction x x x.

5. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIES OF RAPE VICTIMS WHO ARE YOUNG AND OF TENDER AGE ARE CREDIBLE.— The combination of all x x x [the] pieces of circumstantial evidence prove beyond reasonable doubt the crime of qualified rape. The Court is convinced that the testimony of AAA, who was merely fifteen (15) years old at the time of the rape incident, should be given full force and credence. Despite the taxing cross-examination, AAA's testimony regarding the incident of rape in March 1993 was consistent and definite. It is a well-settled rule that the testimonies of rape victims who are young and of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credence.

6. ID.; ID.; ID.; DELAY IN REVEALING THE COMMISSION OF A CRIME DOES NOT NECESSARILY RENDER THE

CHARGE UNWORTHY OF BELIEF, AND ONLY WHEN THE DELAY IS UNREASONABLE OR UNEXPLAINED MAY IT WORK TO DISCREDIT THE COMPLAINANT.— The Court finds that the delay in reporting the incident does not weaken AAA's testimony since YYY threatened to kill her, and because YYY had moral ascendancy over AAA as he was her father. Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant. A rape victim — especially one of tender age — would not normally concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished. Thus, 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. And as long as the testimony meets the test of credibility, the accused may be convicted on that basis alone.

7. ID.; ID.; DENIAL AND ALIBI; WHEN TO PROSPER AS DEFENSES.— YYY merely presented the defense of denial and alibi. x x x [H]is testimony was not substantiated by any other credible evidence. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the appellant and his involvement in the crime attributed to him. Further, for a defense of alibi to prosper, appellant must prove not only that they were somewhere else when the crime was committed, but they must also satisfactorily establish that it was physically impossible for them to be at the crime scene at the time of its commission. Here, YYY failed to present any evidence that it was physically impossible for him to be at the house of AAA, when the rape incident happened, and also at XXX, Cagayan. Hence, his defense of alibi must also 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

GESMUNDO, *J.*:

On appeal is the Decision[1] dated July 31, 2017, of the Court of Appeals *(CA)* in CA-G.R. CR HC No. 07664. The CA affirmed with modification the Decision[2] dated April 22, 2014, of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 4 *(RTC)* in Criminal Case Nos. 10648 and 10649, finding YYY[3] *(appellant)* guilty of Rape and Qualified Rape, respectively.

The Antecedents

In two (2) informations, both dated February 8, 2005, YYY was charged with two (2) counts of rape. The accusatory portion of the informations read:

Criminal Case No. 10648

That on or about March, 1993 and subsequent thereto, in the Municipality of [XXX],[4] Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused [YYY], father of the complainant, [AAA][5] a minor 15 years of age, thus have

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[1] *Rollo,* pp. 2-20; penned by Associate Justice Marie Christine Azcarraga-Jacob with Associate Justice Normandie B. Pizarro and Associate Justice Danton Q. Bueser, concurring.

[2] CA *rollo,* pp. 70-79; penned by Judge Pablo M. Agustin.

[3] The complete names and personal circumstances of the victim's family members or relatives, who may be mentioned in the court's decision or resolution have been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 *(Subject: Protocols and Procedures in the Promulgation,Publication, and Posting on the Websites of Decisions, Final Resolutions and Final Orders Using Fictitious Names/Personal Circumstances).*

[4] 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] The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 *(Subject: Protocols*

*[sic]*moral ascendancy over the aforesaid complainant, armed with soft broom, with lewd design and by use of force, threat and intimidation enter inside the room of the complainant, and once inside hit and struck complainant with the wooden handle of the soft broom which caused her to be unconscious and did, then and there, willfully, unlawfully, and feloniously have sexual intercourse with his own daughter, the herein complainant, [AAA], a minor, 15 years of age. against her will.

Contrary to law.[6]

Criminal Case No. 10649

That on or about November 14, 2001, and sometime prior thereto, in the Municipality of [XXX], Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused [YYY], the father of the offended party, [AAA], thus have *[sic]* moral ascendancy over the complainant, with lewd design and by use of force, threat and intimidation, did, then and there, willfully, unlawfully, and feloniously have sexual intercourse with his own daughter, the herein complainant, [AAA], against her will.

Contrary to law.[7]

During his arraignment, YYY pleaded "not guilty" and, thereafter, the cases were consolidated and jointly tried.

Evidence of the Prosecution

The prosecution presented private complainant AAA, her elder sister BBB, and Dr. Mila F. Lingan-Simangan *(Dr. Lingan-*

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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*).

[6] Records (Crim. Case No. 10648), pp. 1-2.

[7] Records (Crim. Case No. 10649), pp. 1-2.

Simangan). Their combined testimonies tended to establish the following:

AAA was the daughter of YYY. At the time of the first incident, she was fifteen (15) years old. AAA resided in XXX, Cagayan with her parents and seven (7) other siblings. Sometime in March 1993, YYY hit her head with a broom and she lost consciousness. When she regained consciousness, she felt pain in her body, particularly her hands and vagina. AAA saw YYY seated in the veranda.

With regard to the second incident, this allegedly happened on November 14, 2001 at nighttime while AAA was sleeping. She claimed that when she woke up the next morning, she was naked and that YYY was seated at the veranda. AAA felt pain in her vagina. In both instances YYY allegedly threatened to kill AAA, her mother, and her siblings if she would report the incidents.

Dr. Lingan-Samangan testified that she was the Municipal Health Officer of Cagayan and that in 2004, she examined AAA who was already twenty-five (25) years old. No physical injuries were noted during the physical examination. Upon internal examination of the genital, she discovered healed hymenal lacerations at the 4 and 7 o'clock positions, which could mean that the sexual abuse happened at least a month or two months before the examination, or even more than two or ten years before. The tip of her finger was admitted to AAA's vagina, and there was laxity in the vaginal canal indicating that she was no longer a virgin at that time.

BBB testified that upon learning of the sexual abuses committed by YYY in 2002, BBB confronted her sister and the latter related to her what their father did. After which, they decided to file the cases against YYY.

Evidence of the Defense

The defense presented YYY as its sole witness. He vehemently denied the allegations against him. He testified that during the entire month of March 1993, he was living in XXX, Cagayan

and never left the place. Likewise, on November 14, 2001, he was at his house in Cagayan, together with his children because his wife was in Manila.

The RTC Ruling

In its Decision dated April 22, 2014, the RTC found YYY guilty beyond reasonable doubt of: Rape under Article 226-A, (1) and (2) of the Revised Penal Code *(RPC)*in Criminal Case No. 10648; and Qualified Rape under Article 226-A (1), in relation to Article 226-B(1) of the RPC in Criminal Case No. 10649.

The RTC ruled that all the elements of the crimes of rape and qualified rape were present. It opined that YYY had carnal knowledge with AAA against her will and while she was unconscious in the year 1993 and asleep in the year 2001. The RTC also highlighted that the delayed reporting of the incident in 2004 could not be taken against AAA as she was threatened by YYY. The *fallo* of the decision reads:

WHEREFORE, premises considered, the GUILT of accused [YYY] having been established beyond reasonable doubt, sentence is hereby pronounced against him as follows:

1. In Criminal Case No. 10648, accused is held guilty beyond reasonable doubt of rape and is hereby sentenced to suffer the penalty of *reclusion perpetua* and is ordered to pay the offended party, [AAA], ₱50,000.00 by way of civil indemnity and ₱50,000.00 by way of moral damages;

2. In Criminal Case No. 10649, accused is hereby held guilty beyond reasonable doubt of qualified rape and that, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay the private offended party civil indemnity in the amount of Seventy-Five Thousand Pesos (₱75,000.00), moral damages also in the amount of Seventy-Five Thousand Pesos (₱75,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00);

The accused who is [a] detained prisoner is hereby credited in full of the period of this preventive imprisonment in accordance with Article 29 of the Revised Penal Code, as amended.

SO ORDERED.[8]

Aggrieved, YYY appealed to the CA.

The CA Ruling

In its Decision dated July 31, 2017, the CA found YYY guilty of qualified rape in Criminal Case No. 10648. However, it acquitted YYY of the crime charged in Criminal Case No. 10649 for failure of the prosecution to prove his guilt beyond reasonable doubt.

As to the March 1993 incident, the CA sustained YYY's conviction for qualified rape. It held that the prosecution established several circumstantial evidence, to wit: (1) the use of force and intimidation rendering AAA unconscious because YYY hit her with a broom; (2) when AAA regained consciousness, she found herself naked and felt pain in her body, particularly in her hands and vagina; (3) AAA saw her father in the veranda; and (4) YYY then threatened to kill AAA if she would report the incident. The CA underscored that AAA's testimony was corroborated by the physician's testimony because the latter found healed hymenal lacerations. It also highlighted that YYY should be convicted of qualified rape in Criminal Case No. 10648 because the prosecution was able to prove the minority of the victim and her relationship with appellant.

As to the November 14, 2001 incident, the CA acquitted YYY of the crime charged because AAA 's testimony on the alleged second rape did not satisfy the standard of proof beyond reasonable doubt. Based on AAA's testimony, the CA observed there was no admissible evidence to show that YYY inserted his penis into AAA's mouth or anal orifice, or any instrument or object into the victim's genital or anal orifice. The CA emphasized that AAA merely stated she was raped but failed to testify on the facts and circumstances that would lead the court to conclude that there was rape. It determined that the testimony of AAA with respect to the second rape was too general

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[8] CA *rollo,* pp. 78-79.

as it failed to focus on material details as to how the said rape was committed.

As to the award of damages, the CA modified the same to conform with prevailing jurisprudence. It increased the award of civil indemnity and moral damages to ₱100,000.00 each; awarded exemplary damages in the amount of ₱100,000.00; and stated that all monetary awards in Criminal Case No. 10648 shall earn interest at the legal rate of six percent (6%) *per annum* from date of finality of judgment until fully paid. The dispositive portion of the CA decision states:

> **WHEREFORE,** the instant appeal is **PARTLY GRANTED.** The appealed *Decision dated 22 April 2014* is hereby ordered **MODIFIED** as follows:
>
> 1. Appellant [YYY] is **GUILTY** of the crime of Qualified Rape in *Criminal Case No. 10648* and is hereby sentenced to the penalty of *reclusion perpetua* without eligibility for parole. He is likewise ordered to pay AAA the following: civil indemnity of One Hundred Thousand Pesos (Php 100,000.00), moral damages of One Hundred Thousand Pesos (Php 100,000.00), and exemplary damages of One Hundred Thousand Pesos (Php 100,000.000);
>
> 2. Appellant [YYY] is **ACQUITTED** of the crime of Qualified Rape in *Criminal Case No. 10649* for failure of the prosecution to prove his guilt beyond reasonable doubt.
>
> All monetary awards for damages in *Criminal Case No. 10648* shall earn interest at the legal rate of six (6%) *per annum* from date of finality of this *Decision* until fully paid.
>
> **SO ORDERED.**[9]

Hence, this appeal assailing YYY's conviction for the crime of qualified rape in Criminal Case No. 10648. He raises the following assignment of errors in his Brief for the Accused-Appellant:[10]

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[9] *Rollo,* pp. 19-20.

[10] CA *rollo,* pp. 49-68.

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE PRIVATE COMPLAINANT'S LACK OF PERSONAL KNOWLEDGE OF THE ALLEGED INCIDENTS.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE DOUBTFUL IDENTITY OF THE ACTUAL CULPRIT.

III.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE UNCORROBORATED TESTIMONY OF THE PRIVATE COMPLAINANT.

IV.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[11]

In a Resolution[12] dated December 11, 2017, the Court required the parties to submit their respective supplemental briefs, if they so desired. In his Manifestation in lieu of Supplemental Brief[13] dated March 21, 2018, YYY manifested that he did not intend to file a supplemental brief, since all relevant issues were exhaustively discussed in his Appellant's Brief. In its Manifestation and Motion[14] dated March 19, 2018, the Office of the Solicitor General stated that it had already discussed all relevant issues in its brief before the CA and asked that it be excused from filing its supplemental brief.

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[11] *Id*. at 51-52.

[12] *Rollo,* p. 26.

[13] *Id*. at 36-38.

[14] *Id*. at 32-34.

The Court's Ruling

The appeal lacks merit.

In reviewing rape cases, the Court is guided by the following principles: (1) to accuse a man of rape is easy, but to disprove the accusation is difficult, though the accused may be innocent; (2) inasmuch as only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit and should not be allowed to draw strength from the weakness of the evidence for the defense.[15]

Further, the review of a criminal case opens up the case in its entirety. The totality of the evidence presented by both the prosecution and the defense are weighed, thus, avoiding general conclusions based on isolated pieces of evidence. In the case of rape, a review begins with the reality that rape is a very serious accusation that is painful to make; at the same time, it is a charge that is not hard to lay against another by one with malice in her mind. Because of the private nature of the crime that justifies the acceptance of the lone testimony of a credible victim to convict, it is not easy for the appellant, although innocent, to disprove his guilt. These realities compel the Court to approach with great caution and to scrutinize the statements of a victim on whose sole testimony conviction or acquittal depends.[16]

In this case, the Court finds that the prosecution was able to prove beyond reasonable doubt the guilt of YYY for the crime of qualified rape in Criminal Case No. 10648.

Circumstantial evidence prove that YYY raped her daughter

The elements of Rape under Article 266-A(l)(a) are: (a) the offender had carnal knowledge of a woman; and (b) said carnal

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[15] *People v. Patentes,* 726 Phil. 590, 599-600 (2014).

[16] *People v. Fabito,* 603 Phil. 584, 600-601 (2009).

knowledge was accomplished through force, threat or intimidation. The gravamen of rape is sexual intercourse with a woman against her will. Rape shall be qualified pursuant to Article 266-B(l) of the RPC if: (a) the victim is under eighteen (18) years of age; and (b) 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.[17]

The Court rules that all the elements of the crime of qualified rape have been proven by the prosecution. The age of AAA, only fifteen (15) years old at the time of the first incident, had been proven by her birth certificate, and by her testimony. On the other hand, AAA's relationship with YYY, her father, was established by AAA's testimony and YYY's own admission. While AAA did not provide a direct testimony on the details of the actual incident of rape because she was unconscious at the time of the dastardly act, the prosecution established the circumstantial evidence proving that YYY had sexual intercourse with his own daughter against the latter's will.

It is settled that the crime of rape is difficult to prove because it is generally left unseen and very often, only the victim is left to testify for herself. However, the accused may still be proven as the culprit despite the absence of eyewitnesses. Direct evidence is not a condition *sine qua non* to prove the guilt of an accused beyond reasonable doubt. For in the absence of direct evidence, the prosecution may resort to adducing circumstantial evidence to discharge its burden. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.[18] Section 4, Rule 133, of the Revised Rules of Evidence, as amended, sets forth the requirements of circumstantial evidence that is sufficient for conviction, *viz.*:

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[17] *People v. Comboy,* G.R. No. 218399, March 2, 2016, 785 SCRA 512, 522-523.

[18] *People v. Manson,* G.R. No. 215341, November 28, 2016, 810 SCRA 551, 559.

SEC. 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.

Here, there are several circumstantial evidence that would prove the carnal knowledge between AAA and appellant while the former was unconscious.

First, AAA consistently testified that appellant hit her in the head, which made her lose consciousness, to wit:

Pros. Geron:

Q: [AAA], you said last time that when your father hit your head with a broom you lost consciousness, am I correct?
A: I lost consciousness, sir.[19]

x x x x x x x x x

Pros. Geron:

Q: [AAA], previously you said that you were raped by your father[YYY]?
A: Yes, sir.

Q: And you also said that the first time that you were raped by your father was when you were at the porch (biranda) of your house, am I correct?
A: Yes, sir.

Q: And you also said before that before raping you, your father hit your [head] with a broom which resulted to your [losing] of consciousness?[20]

x x x x x x x x x

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[19] TSN, May 8, 2009, p. 1.

[20] TSN, February 9, 2010, p. 1.

Pros. Geron:

Q: AAA you said previously that sometime in March 1993, you were hit by your father with a wood which prompted you to [lose] consciousness, am I right?
A: Yes, sir.[21]

Second, after AAA lost consciousness, it was at that moment that appellant raped her. When AAA woke up, she felt pain in her hands and in her vagina, which are indicative that her father defiled her, *viz.*:

Court:

Q: Did you see your father when you regained consciousness?
A: Yes, ma'am.

x x x x x x x x x

Pros. Geron:

Q: How about with your body, what did you observe?

Atty. Enaman:
We just put on record, your honor, that the witness could not immediately answer on the propound [ed] questions by the fiscal.
A: I felt pain in my body, sir.

Q: Where in particular?

x x x x x x x x x

A: My hands, sir.

Court:

Q: Did you feel pain in your vagina?
A: Yes, ma'am.[22]

Third, after ravishing AAA, appellant also threatened her not to report the incident; otherwise he would kill her and her entire family, to wit:

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[21] TSN, May 20, 2010, p. 2.

[22] TSN, February 9, 2010, pp. 1-2.

Pros. Geron:

Q: One of the persons who were in your house when you were raped for the first time was your father?
A: Yes, sir.

Q: And he was the same person who warned you that you should not report what he did to you otherwise he would kill you and the rest of your family?
A: Yes, sir.

Q: And the person who warned you is no other than your father [YYY]?
A: Yes, sir.

x x x x x x x x x

Q: And you lived with your father from the time you were born up to the time you were raped?
A: Yes, sir.

Q: And you were very familiar with the voice of your father?
A: Yes, sir.

Q: You said that you did not shout, why did you not shout?
A: Because he told me that he will kill all of us, sir.[23] (emphasis supplied)

Fourth, after she woke up, AAA was able to positively identify appellant as the person who raped her, to wit:

Q: And at the time you slept, was there light at that time?
A: It was put off, sir.

Q: Now madam witness, [in] March 1993, you said that you have been molested by accused, will you agree with me that at the time when this incident happened, you have not seen the face of the accused because there was no light, am I right, madam witness?
A: Yes, sir.

Court:

Q: But you knew that it was [YYY] who was there?
A: Yes, ma'am.

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[23] TSN, October 25, 2011, p. 4.

Q: How?
A: Because of his height, ma'am.

x x x x x x x x x

Court:

Q: Did you hear the voice of [YYY] when he raped you?
A: No, ma'am.

Q: He did not tell you anything?
A: He said that he will kill my mother and my brothers and sisters, ma'am.

Q: So you recognized the voice of that male person?
A: Yes, ma'am.
Q: And you know it to be the voice of the accused?
A: Yes, ma'am.[24] (emphases supplied)

Fifth, the prosecution presented the Medico-Legal Report[25] of Dr. Lingan-Samangan regarding the medical examination of AAA. It stated that AAA had healed hymenal lacerations at the 4 & 7 o'clock positions and that her vagina admits a tip of a finger easily. Dr. Lingan-Samangan testified as follows:

Pros. Geron:

Q: Why do you classify the laceration as healed?
A: The lacerations classified healed because there were no erosions or contusions noted at the hymen of the victim, sir.

Q: What does that tell us?
A: It tells us that the sexual abuse could have happened at least for a month or two, sir.

Q: From the date of examination?
A: Yes, sir.

Q: And you also indicate [d] in your report that vagina admits tip of finger easily, what does that tell us, my good doctor?
A: In my examination, vagina admits tip of finger easily what I mean here is upon insertion of my examining finger[,] there is laxity in the vagina canal of the patient, sir.

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

[25] Records (Crim. Case No. 10648), p. 6.

Q: Considering the age, the physical structure of the patient, what does that indicate?
A: The laxity in the vaginal canal in the medical parlance indicates that there were repeated sexual intercourse or sexual penetration in the body of the patient, sir.[26] (emphasis supplied)

On cross-examination, Dr. Lingan-Samangan testified that:

Q: Now Madam witness, you conducted your medico legal examination on February 27, 2004, isn't it?
A: Yes, sir.

Q: And you are sure Madam witness at the time you conducted the medico legal examination, the alleged sexual assault, if any, could have happened one or two months prior to the examination as stated in your direct examination?
A: Yes, sir.

Q: And therefore, you agree with me my good doctor as an expert, that the medico legal examination is not indicative of the fact that a sexual assault happened [in] March 1993 and [on] November 14, 2001 because the alleged hymenal laceration could have happened one or two months prior to the date of examination?
A: Sir, what I said at least a month or two prior to the day, so it could be year or more. It could have been more than a year.

Q: In short doctor, it could happen more than two years before the examination?
A: It could be possible, sir.

Q: It could have happen[ed] more than ten years before the examination?
A: It could be possible, sir.[27] (emphasis supplied)

Thus, based on the medico-legal report, AAA suffered from repeated sexual intercourse and these incidents could have

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[26] TSN, October 4, 2007, p. 4.

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

happened more than ten years before the examination on February 27, 2004. Consequently, the medical findings corroborate the conclusion that AAA was raped sometime in March 1993.

To summarize, there are several circumstantial evidence that establish that YYY raped his own daughter AAA:

1. YYY hit her on the head to make her lose consciousness;
2. While unconscious, YYY raped her; thus, AAA's vagina was in pain when she woke up;
3. YYY threatened AAA not to report the incident; otherwise, he would kill her and her family;
4. When she woke up, AAA positively identified YYY as the perpetrator because of his height and voice; and
5. The medico-legal report corroborate that AAA had healed hymenal lacerations at the 4 & 7 o'clock positions and her vagina admits a tip of a finger easily, which indicate repeated sexual intercourse. It was also established that AAA could have been raped more than ten (10) years before the examination, which covers the March 1993 incident.

The combination of all these pieces of circumstantial evidence prove beyond reasonable doubt the crime of qualified rape. The Court is convinced that the testimony of AAA, who was merely fifteen (15) years old at the time of the rape incident, should be given full force and credence. Despite the taxing cross-examination, AAA's testimony regarding the incident of rape in March 1993 was consistent and definite. It is a well-settled rule that the testimonies of rape victims who are young and of tender age are credible. The revelation of an innocent child whose chastity was abused deserves full credence.[28]

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[28] *People v. Baraga.* 735 Phil. 466, 472 (2014).

Delay in reporting the rape incident does not affect AAA's credibility

The Court finds that the delay in reporting the incident does not weaken AAA's testimony since YYY threatened to kill her, and because YYY had moral ascendancy over AAA as he was her father. Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief.[29] This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny.[30] Only when the delay is unreasonable or unexplained may it work to discredit the complainant.[31]

A rape victim — especially one of tender age — would not normally concoct a story of defloration, allow an examination of her private parts and thereafter permit herself to be subjected to a public trial, if she is not motivated solely by the desire to have the culprit apprehended and punished.[32] Thus, 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.[33] And as long as the testimony meets the test of credibility, the accused may be convicted on that basis alone.[34]

In this case, even though the rape incident in March 1993 was only reported in 2004, the Court gives full credence to the testimony of AAA. As stated earlier, it is understandable that AAA was frightened in reporting the incident due to the death threats of her father. It was only when her sister confronted her that AAA had the courage to speak up regarding the abuses she suffered at the hands of her father. More importantly, as

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[29] *People v. Buenvinoto,* 735 Phil. 724, 735 (2014).

[30] *Id.*

[31] *Id.*

[32] *People v. Galido,* 470 Phil. 345, 362 (2004).

[33] *Id.*

[34] *Id.*

AAA's testimony was credible and consistent in its material parts, then it must stand and prevail.

Defenses of denial and alibi are weak

On the other hand, YYY merely presented the defense of denial and alibi. He testified that during the entire month of March 1993, he was living in XXX, Cagayan and never left the place. However, his testimony was not substantiated by any other credible evidence. Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the appellant and his involvement in the crime attributed to him.[35]

Further, for a defense of alibi to prosper, appellant must prove not only that they were somewhere else when the crime was committed, but they must also satisfactorily establish that it was physically impossible for them to be at the crime scene at the time of its commission. Here, YYY failed to present any evidence that it was physically impossible for him to be at the house of AAA, when the rape incident happened, and also at XXX, Cagayan. Hence, his defense of alibi must also fail.

To conclude, the Court strongly abhors and condemns such an odious act, especially one that is committed against a defenseless child. This kind of barbarousness, although it may drop the victim still alive and breathing, instantly zaps all that is good in a child's life and corrupts its innocent perception of the world. It likewise leaves a child particularly susceptible to a horde of physical, emotional, and psychological suffering later in life, practically stripping it of its full potential. Every child's best interests are and should be the paramount consideration of every member of the society. Children may constitute only a small part of the population, but the future of this nation hugely, if not entirely, depends on them. And the Court will not in any way waver in its sworn duty to ensure that anyone who endangers and poses a threat to that future

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[35] *People v. Amaro,* 739 Phil. 170, 178 (2014).

cannot do so with untouchable impunity, but will certainly be held accountable under the law.[36]

WHEREFORE, the appeal is **DISMISSED.** The Decision dated July 31, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07664 is **AFFIRMED *in toto.***

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Reyes, A. Jr.,*[*] and *Reyes, J. Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 236576. September 5, 2018]

ARIEL P. HORLADOR, *petitioner, vs.* **PHILIPPINE TRANSMARINE CARRIERS, INC., MARINE[*] SHIPMANAGEMENT LTD., and CAPTAIN MARLON L. MALANAO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; ATTORNEY'S FEES; TWO CONCEPTS; IN INSTANCES WHERE ATTORNEY'S FEES AS INDEMNITY FOR DAMAGES MAY BE AWARDED, IT IS GENERALLY PAYABLE NOT TO THE LAWYER BUT TO THE CLIENT.— There are two (2) commonly accepted concepts of attorney's fees – the ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for

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[36] *People v. Manson, supra* note 18 at 561.

[*] Additional member per Special Order No. 2588 dated August 28, 2018.

[*] "Marin" in some parts of the records.

the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation.

2. ID.; ID.; ID.; IN LABOR CASES, WHERE EMPLOYEE WAS FOUND TO BE ENTITLED TO BENEFITS, HE/SHE IS ALSO ENTITLED TO ATTORNEY'S FEES WHEN FORCED TO LITIGATE TO PROTECT VALID CLAIM.— In labor cases involving employees' wages and other benefits, the Court has consistently held that when the concerned employee is entitled to the wages/benefits prayed for, he/she is also entitled to attorney's fees amounting to ten percent (10%) of the total monetary award due him/her. In this case, suffice it to say that the CA erred in deleting the award of attorney's fees, considering that petitioner was found to be entitled to permanent and total disability benefits and was forced to litigate to protect his valid claim. Thus, the reinstatement of such award is in order.

APPEARANCES OF COUNSEL

Justiniano Panambo Law Office for petitioner.
Del Rosario & Del Rosario for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 3, 2017 and the Resolution[3] dated

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[1] *Rollo*, pp. 11-24.

[2] CA *rollo*, pp. 644-658. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios, concurring.

[3] *Rollo*, pp. 36-41.

December 15, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 136386, which affirmed the Decision[4] dated February 28, 2014 and the Resolution[5] dated May 22, 2014 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. (M) 04-06497-13 finding petitioner Ariel P. Horlador (petitioner) entitled to permanent and total disability benefits, with modification deleting the award of attorney's fees amounting to ten percent (10%) of the total monetary award in his favor.

The Facts

On April 18, 2012, respondent Philippine Transmarine Carriers, Inc. (PTCI), for and on behalf of its foreign principal, respondent Marine Shipmanagement Ltd. (Marine), hired[6] petitioner as a Chief Cook on board the vessel PRAIA for a period of eight (8) months starting from his deployment on June 19, 2012.[7] On January 3, 2013 and while on board the vessel, petitioner, while carrying provisions, suddenly felt a severe pain on his waist, abdomen, and down to his left scrotum. As the pain persisted for a number of days, he was airlifted to a hospital in Belgium where he was diagnosed with "infection with the need to rule out Epididymitis and Prostatitis" and advised to undergo repatriation.[8] Upon arrival in the Philippines, petitioner claimed that he immediately reported to PTCI and asked for referral for further treatment, but was ignored. As such, he used his health card in order to seek treatment at the Molino Doctors Hospital where he was diagnosed with hernia.[9]

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[4] CA *rollo*, pp. 36-50. Penned by Commissioner Dolores M. Peralta-Beley with Presiding Commissioner Grace E. Maniquiz-Tan and Commissioner Mercedes R. Posada-Lacap, concurring.

[5] *Id*. at 62-72. Penned by Commissioner Dolores M. Peralta-Beley with Presiding Commissioner Grace E. Maniquiz-Tan, concurring. Commissioner Mercedes R. Posada-Lacap was on leave.

[6] See Contract of Employment; *id*. at 124.

[7] *Id*. at 645.

[8] See *id*. at 37-38.

[9] *Id*. at 646.

Thereafter, petitioner consulted two (2) other physicians who similarly concluded that the nature and extent of his illness permanently and totally prohibited him from further working as a seaman due to his "Chronic prostatitis."[10] Thus, he filed a complaint[11] for, *inter alia*, permanent and total disability benefits against PTCI, Marine, and respondent Captain Marlon L. Malanao as the crewing manager (respondents).

For their part, respondents averred that petitioner is not entitled to permanent and total disability benefits, contending that petitioner: (*a*) was not medically repatriated as his discharge from the vessel was due to contract completion; (*b*) failed to comply with the mandatory post-deployment medical examination; and (*c*) failed to prove his allegation that he had contracted and was diagnosed with hernia.[12]

The Labor Tribunals' Ruling

In a Decision[13] dated September 27, 2013, the Labor Arbiter (LA) dismissed petitioner's complaint for lack of merit, essentially upholding respondents' contentions in this case.[14] Aggrieved, petitioner appealed[15] to the NLRC.

In a Decision[16] dated February 28, 2014, the NLRC reversed and set aside the LA's ruling, and accordingly, ordered respondents to pay petitioner permanent and total disability benefits in the amount of US$60,000.00 or its peso equivalent and ten percent (10%) thereof as attorney's fees.[17] The NLRC

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[10] *Id*. at 647.

[11] Dated April 30, 2013; *id*. at 74-75.

[12] *Id*. at 647.

[13] *Id*. at 52-60. Penned by Labor Arbiter Fedriel S. Panganiban.

[14] See *id*. at 55-59.

[15] See Notice of Appeal (with Memorandum on Appeal) dated November 4, 2013; *id*. at 167-182.

[16] *Id*. at 36-50.

[17] *Id*. at 49.

found that: (*a*) petitioner was medically repatriated; (*b*) after medical repatriation, he tried reporting to PTCI for post-employment medical examination, but was ignored; and (*c*) petitioner's disability was indeed work-related and diagnosed to be permanent and total, and thus, compensable.[18]

Respondents moved for reconsideration,[19] but was denied in a Resolution[20] dated May 22, 2014. Dissatisfied, they filed a petition for *certiorari*[21] before the CA.

The CA Ruling

In a Decision[22] dated February 3, 2017, the CA affirmed the NLRC ruling, with modification deleting the award of attorney's fees.[23] It held that the NLRC did not gravely abuse its discretion in finding, among others, that petitioner suffered a compensable work-related illness that caused his permanent and total disability, and that respondents denied his request for treatment or post-employment medical examination.[24] The CA, however, found it appropriate to delete the award of attorney's fees for the NLRC's failure to present the factual bases therefor.[25]

Both parties moved for reconsideration,[26] which were, however, denied in a Resolution[27] dated December 15, 2017.

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[18] See *id*. at 40-49.

[19] See motion for reconsideration dated April 2, 2014; *id*. at 209-226.

[20] *Id*. at 62-72.

[21] Dated July 23, 2014; *id*. at 3-26.

[22] *Id*. at 644-658.

[23] *Id*. at 657.

[24] See *id*. at 654.

[25] See *id*. at 657.

[26] See respondents' motion for reconsideration dated March 6, 2017 (*id*. at 664-676); and petitioner's motion for partial reconsideration dated March 3, 2017 (*id*. at 681-683).

[27] *Rollo*, pp. 36-41.

Hence, this petition assailing the aforesaid deletion of attorney's fees.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly deleted the award of attorney's fees in petitioner's favor.

The Court's Ruling

The petition is meritorious.

There are two (2) commonly accepted concepts of attorney's fees – the ordinary and extraordinary. In its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or as may be assessed. In its extraordinary concept, attorney's fees are deemed indemnity for damages ordered by the court to be paid by the losing party to the winning party. The instances when these may be awarded are enumerated in Article 2208 of the Civil Code and is payable not to the lawyer but to the client, unless the client and his lawyer have agreed that the award shall accrue to the lawyer as additional or part of compensation.[28] Particularly, Article 2208 of the Civil Code reads:

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

(1) When exemplary damages are awarded;

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

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[28] See *Tangga-an v. Philippine Transmarine Carriers, Inc.*, 706 Phil. 339, 352 (2013), citing *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*, 676 Phil. 262, 275 (2011).

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

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

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

(6) In actions for legal support;

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

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

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

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

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

In all cases, the attorney's fees and expenses of litigation must be reasonable. (Emphases and underscoring supplied)

In labor cases involving employees' wages and other benefits, the Court has consistently held that when the concerned employee is entitled to the wages/benefits prayed for, he/she is also entitled to attorney's fees amounting to ten percent (10%) of the total monetary award due him/her.[29]

In this case, suffice it to say that the CA erred in deleting the award of attorney's fees, considering that petitioner was found to be entitled to permanent and total disability benefits and was forced to litigate to protect his valid claim. Thus, the reinstatement of such award is in order.

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[29] See *Balatero v. Senator Crewing (Manila), Inc.*, G.R. No. 224532, June 21, 2017; *Maersk Filipinas Crewing, Inc. v. Ramos*, G.R. No. 184256, January 18, 2017; *United Philippine Lines, Inc. v. Sibug*, 731 Phil. 294, 303 (2014); and *Fil-Pride Shipping Company, Inc. v. Balasta*, 728 Phil. 297, 314 (2014).

WHEREFORE, the petition is **GRANTED**. The Decision dated February 3, 2017 and the Resolution dated December 15, 2017 of the Court of Appeals in CA-G.R. SP No. 136386 are **MODIFIED** in that the award of attorney's fees equivalent to ten percent (10%) of the total monetary awards due petitioner Ariel P. Horlador is hereby **REINSTATED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa, Reyes, A. Jr.*, and *Reyes, J. Jr.*,[**] *JJ.*, concur.

[**] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

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— For the defense of alibi to overcome a *prima facie* finding of guilt, 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; such defense must be supported by strong evidence of innocence independent of the accused's self-serving statements; in this case, the accused simply claimed that he was elsewhere at the time the alleged rapes occurred; however, the RTC remained unconvinced as his testimony was replete with uncertainties; moreover, he failed to produce any other witness to corroborate his testimony despite having the opportunity to do so. (People *vs*. XXX, G.R. No. 205888, Aug. 22, 2018) p. 252

— Mere denial, without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the appellant and his involvement in the crime attributed to him; for a defense of alibi to prosper, appellant must prove not only that they were somewhere else when the crime was committed, but they must also satisfactorily establish that it was physically impossible for them to be at the crime scene at the time of its commission. (People *vs*. YYY, G.R. No. 234825, Sept. 5, 2018) p. 1147

AN ACT ADJUSTING THE AMOUNT OR VALUE OF PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED AND FINES IMPOSED UNDER THE REVISED PENAL CODE, AMENDING FOR THE PURPOSE ACT NO. 3815, OTHERWISE KNOWN AS "THE REVISED PENAL CODE", AS AMENDED (R.A. NO. 10951)

Application of — Sec. 81 of R.A. No. 10951 adjusted the graduated values where the penalties for Theft are based; applying the provisions of R.A. No. 10951, the Indeterminate Sentence Law, the increase of the aforesaid penalty by two (2) degrees in instances of Qualified Theft under the RPC, merited. (People *vs*. Manlao *y* Laquila, G.R. No. 234023, Sept. 3, 2018) p. 481

APPEALS

sanction; champertous contracts are contrary to Rule 16.04 of the Code of Professional Responsibility, which states that lawyers shall not lend money to a client, except when in the interest of justice, they have to advance necessary expenses in a legal matter they are handling for the client. (*Id*.)

Code of Professional Responsibility — Rule 19.01 commands that a lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding; under this Rule, a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client. (Judge Dumlao, Jr. *vs*. Atty. Camacho, A.C. No. 10498, Sept. 4, 2018) p. 509

Conduct — Respondent's acts are in gross violation of Rule 1.01, Canon 1 of the CPR; Rule 1.01, Canon 1 of the CPR instructs that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing"; respondent fell short of such standard when he committed acts of misrepresentation and deception against complainant; such acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they further reveal basic moral flaws that make respondent unfit to practice law; penalty. (Billanes *vs*. Atty. Latido, A.C. No. 12066, Aug. 28, 2018) p. 292

Conflict of interest — A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts; the rule prohibiting conflict of interest applies to situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients; it also applies when the lawyer represents a client against a former client in a controversy that is related, directly or

CERTIORARI

Grave abuse of discretion — Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law; in labor cases, grave abuse of discretion may be attributed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. (Phil. Pizza, Inc. *vs.* Cayetano, G.R. No. 230030, Aug. 29, 2018) p. 381

Petition for — A motion for reconsideration is a condition *sine qua non* for the filing of a Petition for *Certiorari*; this enables the court to correct "any actual or perceived error" through a re-examination of the legal and factual circumstances of the case; to dispense with this condition, there must be a "concrete, compelling, and valid reason; however, the following exceptions apply: (a) where the order is a patent nullity, as where the *court a quo* has no jurisdiction; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings [were] *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest

chain of custody rule in this case; Quilang's conviction must stand. (People *vs*. Quilang *y* Bangayan, G.R. No. 232619, Aug. 29, 2018) p. 408

—— In *Howard Lescano y Carreon v. People of the Philippines*, this Court briefly discussed the rigid requirements under Sec. 21, Art. II of R.A. No. 9165, on the marking, inventory, and photographing of the contraband seized, including the personalities required to be present during the buy-bust operation; the procedures mentioned in R.A. No. 9165 are mandatory in nature, as indicated by the use of the word "shall" in its directives and its implementing rules; it is important that the seized drugs be immediately marked, if possible, as soon as they are seized from the accused; by jurisprudence, it must be shown that the marking was done in the presence of the accused to assure that the identity and integrity of the drugs were properly preserved; also, the presence of any representative from the media, Department of Justice (DOJ), or any elected official, who must sign the inventory, or be given a copy is required by R.A. No. 9165 and its IRR. (People *vs*. Madria *y* Higayon, G.R. No. 233207, Aug. 20, 2018) p. 179

—— In order to weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, the following should henceforth be enforced as a mandatory policy: 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Sec. 21 (1) of R.A. No. 9165, as amended, and its IRR; 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items; 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court; Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause; 4. If the investigating

properly preserved. (People *vs*. Bangalan *y* Mamba, G.R. No. 232249, Sept. 3, 2018) p. 455

— The Guidelines on the Custody and Disposition of Seized Dangerous Drugs, Controlled Precursors and Essential Chemicals and Laboratory Equipment defines "chain of custody" as follows: Sec. 1 (b) – "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction; such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition; *Junie Mallillin y Lopez v. People of the Philippines*, cited. (People *vs*. Madria *y* Higayon, G.R. No. 233207, Aug. 20, 2018) p. 179

— The immediate physical inventory and photograph of the confiscated items at the place of arrest may be excused in instances when the safety and security of the apprehending officers and the witnesses required by law or of the items seized are threatened by immediate or extreme danger such as retaliatory action of those who have the resources and capability to mount a counter-assault. (People *vs*. Lim *y* Miranda, G.R. No. 231989, Sept. 4, 2018) p. 598

— The links in the chain of custody that must be established are: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the seized illegal drug by the apprehending officer to the investigating officer; (3) the turnover of the illegal drug by the investigating officer to the forensic chemist for laboratory examination; and (4) the turnover and submission of the

or contamination of evidence. (People *vs*. Baptista *y* Villa, G.R. No. 225783, Aug. 20, 2018) p. 108

—— The accused was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Sec. 5, Art. II of R.A. No. 9165; the following elements must be proven with moral certainty: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime; the prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on their identity on account of switching, "planting," or contamination of evidence. (People *vs*. Libre, G.R. No. 235980, Aug. 20, 2018) p. 221

(People *vs*. Feriol *y* Perez, G.R. No. 232154, Aug. 20, 2018) p. 142

Section 21 —— Considering the importance of ensuring that the dangerous drugs seized from an accused is the same as that presented in court, Sec. 21, Art. II of R.A. No. 9165, prior to its amendment by R.A. No. 10640, and Sec. 21 (a), Art. II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165 provide the procedures that the apprehending team should observe in the handling of the seized illegal drugs in order to preserve their identity and integrity as evidence; according to jurisprudence, the law requires the presence of an elected public official, as well as representatives from the DOJ and the media in order to remove any suspicion of tampering, switching, planting or contamination of evidence which could considerably affect a case, and thus, ensure that the chain of custody rule is observed; since the police actions relative to the handling of the drugs seized in this case were committed in 2012, and thus prior to R.A. No. 9165's amendment by R.A. No. 10640, the presence of all three witnesses during the conduct of inventory and photography

CONTRACTS

CORPORATIONS

Election contest — Must be filed within the 15-day reglementary period. (Eizmendi, Jr. *vs*. Fernandez, G.R. No. 215280, Sept. 5, 2018) p. 902

— Refers to any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and validity of elections, and the qualifications of candidates, including proclamation of winners, to the office of director, trustees or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the article of incorporation so provide. (*Id*.)

COURT OF TAX APPEALS

Jurisdiction — The decision, ruling or resolution of the CTA, sitting as Division, may further be reviewed by the CTA *En Banc;* it is only after this procedure has been exhausted that the case may be elevated to this Court; under Sec. 7 (a) (3) of R.A. No. 9282, the appellate jurisdiction of the CTA over decisions, orders, or resolutions of the RTC becomes operative when the latter has ruled on a local tax case, *i.e.*, one which is in the nature of a tax case or which primarily involves a tax issue. (Herarc Realty Corp. *vs*. The Provincial Treasurer of Batangas, G.R. No. 210736, Sept. 5, 2018) p. 848

CRIMINAL LIABILITY

Extinguishment of — A criminal case is committed against the People and parties cannot waive or agree on the extinguishment of criminal liability; the Revised Penal Code does not include compromise as a mode of extinguishing criminal liability. (Osental *vs*. People, G.R. No. 225697. Sept. 5, 2018) p. 1027

CRIMINAL PROCEDURE

Amendment of information — Any amendment to an information which only states with precision something which has already been included in the original information, and

—— Rule 116, Sec. 11 of the Revised Rules of Criminal Procedure pertains to a suspension of an arraignment in case of a pending petition for review before the Department of Justice; it does not suspend the execution of a warrant of arrest for the purpose of acquiring jurisdiction over the person of an accused. (*Id*.)

—— Rule 116, Sec. 11 of the Revised Rules of Criminal Procedure provides for the grounds for suspension of arraignment; upon motion by the proper party, the arraignment shall be suspended in case of a pending petition for review of the prosecutor's resolution filed before the Department of Justice. (*Id*.)

Preliminary investigation — Courts do not meddle with the prosecutor's conduct of a preliminary investigation because it is exclusively within the prosecutor's discretion; however, once the information is already filed in court, the court has acquired jurisdiction of the case; any motion to dismiss or determination of the guilt or innocence of the accused is within its discretion. (Mayor Corpus, Jr. *vs*. Judge Pamular, G.R. No. 186403, Sept. 5, 2018) p. 731

—— It is required for the judge to personally evaluate the resolution of the prosecutor and its supporting evidence. (*Id*.)

DAMAGES

Attorney's fees — In labor cases involving employees' wages and other benefits, the Court has consistently held that when the concerned employee is entitled to the wages/ benefits prayed for, he/she is also entitled to attorney's fees amounting to ten percent (10%) of the total monetary award due him/her. (Horlador *vs*. Phil. Transmarine Carriers, Inc., G.R. No. 236576, Sept. 5, 2018) p. 1167

—— There are two (2) commonly accepted concepts of attorney's fee the ordinary and extraordinary; in its ordinary concept, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services the former renders; compensation is paid for the cost and/or results of legal services per agreement or

v. Sibonghanoy are present should estoppel by laches apply over delayed claims; *Tijam* applies to a party claiming lack of subject matter jurisdiction when: (1) there was a statutory right in favor of the claimant; (2) the statutory right was not invoked; (3) an unreasonable length of time lapsed before the claimant raised the issue of jurisdiction; (4) the claimant actively participated in the case and sought affirmative relief from the court without jurisdiction; (5) the claimant knew or had constructive knowledge of which forum possesses subject matter jurisdiction; (6) irreparable damage will be caused to the other party who relied on the forum and the claimant's implicit waiver. (Amoguis *vs*. Ballado, G.R. No. 189626, Aug. 20, 2018) p. 1

—— Estoppel by laches bars a party from invoking lack of jurisdiction in an unjustly belated manner especially when it actively participated during trial; it has its origins in equity; it prevents a party from presenting his or her claim "when, by reason of abandonment and negligence, he or she allowed a long time to elapse without presenting it; in estoppel by laches, a claimant has a right that he or she could otherwise exercise if not for his or her delay in asserting it; this delay in the exercise of the right unjustly misleads the court and the opposing party of its waiver; thus, to claim it belatedly given the specific circumstances of the case would be unjust. (*Id*.)

EVIDENCE

Circumstantial evidence —— It is settled that "direct evidence of the actual killing is not indispensable for convicting an accused when circumstantial evidence can sufficiently establish his guilt"; circumstantial evidence can be the basis for conviction if there is more than one circumstance, the facts from which the inferences are derived have been proven, and the combination thereof produces a conviction beyond reasonable doubt; here, the circumstances were already identified and enumerated by the appellate court; only moral certainty, and not absolute certainty, is required for a conviction; appellant's guilt for the crime of parricide

the employees must be members of the bargaining unit, but not necessarily of the labor organization designated as the bargaining agent; the Labor Arbiter did not commit any error when it applied the said provisions and ruled that respondent failed to sufficiently establish that there is an established company practice of extending the benefits of the CBA to managerial employees; to be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate. (Societe Internationale De Telecommunications Aeronautiques (SITA) *vs*. Huliganga, G.R. No. 215504, Aug. 20, 2018) p. 62

LAND REGISTRATION (ACT NO. 141, AS AMENDED BY R.A. NO. 6940)

Free patent registration –– Application must, among others, be accompanied by a map and the technical description of the land occupied, along with affidavits proving occupancy from two disinterested persons residing in the municipality or barrio where the lands are located; the subject lands must first be shown to have been classified by a positive act as alienable and disposable in accordance with law. (Jaucian *vs*. De Joras, G.R. No. 221928, Sept. 5, 2018) p. 975

–– Where the requirements for free patent registration have not been complied with, the free patent issued was null and void. (*Id*.)

LAND REGISTRATION ACT (ACT NO. 496)

Application for registration –– In the recent case of *In Re: Application for Land Registration Suprema T. Dumo v. Republic of the Philippines* (*Dumo*), the Court reiterated the requirement it set in *Republic of the Philippines v. T.A.N. Properties, Inc.* that there are TWO documents that must be presented to prove that the land subject of the application for registration is alienable and disposable: (1) a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal

to or cancel a certificate of candidacy if it is shown that said certificate has been filed to put the election process in mockery or disrepute or to cause confusion among the voters by the similarity of the names of the registered candidates or by other circumstances or acts which clearly demonstrate that the candidate has no bona fide intention to run for the office for which the certificate of candidacy has been filed and thus prevent a faithful determination of the true will of the electorate. (*Id*.)

— The said petition to declare a person as a nuisance candidate is akin to a petition to cancel or deny due course a COC under Sec. 78 of the Omnibus Election Code; a cancelled certificate cannot give rise to a valid candidacy, much less to valid votes; said votes cannot be counted in favor of the candidate whose COC was cancelled as he or she is not treated as a candidate at all, as if he or she never filed a COC; a petition to declare a person a nuisance candidate or a petition for disqualification of a nuisance candidate is already sufficient to cancel the COC of the said candidate and to credit the garnered votes to the legitimate candidate because it is as if the nuisance candidate was never a candidate to be voted for. (*Id*.)

— The vote cast for the nuisance candidate may not automatically be credited to the legitimate candidate, otherwise, it shall result to a situation where the latter shall receive two votes from one voter; in a multi-slot office, the COMELEC must not merely apply a simple mathematical formula of adding the votes of the nuisance candidate to the legitimate candidate with the similar name; to apply such simple arithmetic might lead to the double counting of votes because there may be ballots containing votes for both nuisance and legitimate candidates; to ascertain that the votes for the nuisance candidate is accurately credited in favor of the legitimate candidate with the similar name, the COMELEC must also inspect the ballots. (*Id*.)

— The votes cast for the nuisance candidate shall be added to the candidate that shares the same surname with the

2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION–STANDARD EMPLOYMENT CONTRACT (POEA-SEC)

Assessment of disability — *Elburg Shipmanagement Philippines, Inc. v. Quiogue, Jr.*, summarized the rules regarding the company-designated physician's duty to issue a final medical assessment on the seafarer's disability grading, 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 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 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; without a valid final and definitive assessment from the company-designated physician within the 120/240-day period, the law already steps in to consider petitioner's disability as total and permanent. (Gamboa *vs*. Maunlad Trans, Inc., G.R. No. 232905, Aug. 20, 2018) p. 153

— Neither is petitioner's complaint for disability compensation rendered premature by his failure to refer the matter to a third-doctor pursuant to Sec. 20 (A) (3) of the 2010 POEA-SEC; a seafarer's compliance with the conflict-resolution procedure under the said provision 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; as aptly pointed out in *Kestrel Shipping Co.,*

Rules on Employee Compensation; 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 the employer; Sec. 20 (A) of the 2010 POEA-SEC, which is the rule applicable to this case, governs the procedure for compensation and benefits for a work-related injury or illness suffered by a seafarer on board sea-going vessels during the term of his employment contract. (Gamboa *vs.* Maunlad Trans, Inc., G.R. No. 232905, Aug. 20, 2018) p. 153

Section 20(B)(3) — Petitioner's liability subsists, pursuant to Sec. 20 (B) (3) of the POEA-SEC which provides that: 3. Upon sign off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall the period exceed one hundred twenty (120) days. (Skippers United Pacific, Inc. *vs.* Lagne, G.R. No. 217036, Aug. 20, 2018) p. 74

Section 20(B)(4) — For disability to be compensable under Sec. 20(B)(4) of the POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract; work-related injury, defined as "injury(ies) resulting in disability or death arising out of and in the course of employment," and a work-related illness as "any sickness resulting to disability or death as a result of an occupational disease listed under Sec. 32-A of this Contract with the conditions set therein satisfied"; for illnesses not mentioned under Sec. 32, the POEA-SEC creates a disputable presumption in favor of the seafarer that these illnesses are work-related; however, notwithstanding the presumption, on due process grounds, the claimant-seafarer must still prove by substantial evidence that his

properties. (Rep. of the Phils. *vs*. Sandiganbayan, G.R. No. 222364, Sept. 5, 2018) p. 992

—— The powers, functions, and duties of the PCGG amount to the exercise of quasi-judicial functions, and the exercise of such functions cannot be delegated by the Commission to its representatives or subordinates or task forces because of the well-established principle that judicial or quasi-judicial powers may not be delegated. (*Id*.)

PRESUMPTIONS

Presumption of innocence —— Every accused has no burden to prove his innocence, and will be entitled to acquittal unless the presumption of innocence in his favor is overcome; the mere invocation of the traditional and proverbial modesty of the Filipina does not prevail over or dispense with the need to present proof sufficient to overcome the constitutional presumption of innocence. (People *vs*. Sangcajo, Jr., G.R. No. 229204, Sept. 5, 2018) p. 1073

Presumption of regular performance of official duty —— As the integrity of the *corpus delicti* of the crimes for which accused-appellant was charged has not been established, it follows that there was insufficient basis for a finding of guilt beyond reasonable doubt; for the same reason, the presumption of regularity in the performance of official duty does not hold; the presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. (People *vs*. Asdali *y* Nasa, G.R. No. 219835, Aug. 29, 2018) p. 347

—— Such presumption could not excuse the non-compliance with the mandatory and jurisdictional requirements of Act No. 3135; at any rate, the disputable presumption of regularity could not even be extended to the respondent sheriff in view of the lack of posting and publication being sufficiently established by the admissions of the parties and their evidence. (Sps. Bautista *vs*. Premiere Dev't. Bank, G.R. No. 201881, Sept. 5, 2018) p. 792

same under a bona fide claim of ownership since June 12, 1945, or earlier. (*Id.*)

— When an applicant in the registration of property proves his or her open, continuous, exclusive, and notorious possession of a land for the period required by law, he or she has acquired an imperfect title that may be confirmed by the State; the State may not, in the absence of controverting evidence and in a *pro forma* opposition, indiscriminately take a property without violating due process. (*Id.*)

PUBLIC LAND ACT (C.A. NO. 141)

Legal easement of right-of-way — Respondents' TCT specifically contains a proviso stating that said title is "subject to the provisions of the Property Registration Decree and the Public Land Act, as well as to those of the Mining Laws"; their title is therefore necessarily subject to the easement provided in Sec. 112, as amended; such a proviso exists since it was derived from a free patent; a legal easement of right-of-way exists in favor of the Government over land that was originally public land awarded by free patent even if the land was subsequently sold to another; a thorough determination by the trial court must be made. (Rep. of the Phils. *vs.* Sps. Alforte, G.R. No. 217051, Aug. 22, 2018) p. 275

PUBLIC LAND ACT (C.A. NO. 2874)

Alienable and disposable land — As a rule, a certificate of title issued pursuant to a homestead patent partakes the nature of a certificate of title issued through a judicial proceeding and becomes incontrovertible upon the expiration of one (1) year; the rule that "a certificate of title issued pursuant to a homestead patent becomes indefeasible after one year, is subject to the proviso that 'the land covered by said certificate is a disposable public land within the contemplation of the Public Land Law. (Rep. of the Phils. *vs.* Heirs of Ignacio Daquer, G.R. No. 193657, Sept. 4, 2018) p. 548

lands of public domain which have been classified as alienable or disposable may further be classified into: (1) agricultural; (2) commercial, industrial, or for similar productive purposes; (3) educational, charitable and other similar purposes; and (4) reservations for town sites, and for public and quasi-public uses. (*Id*.)

PUBLIC OFFICERS AND EMPLOYEES

Grave misconduct — A transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer, tainted with other elements such as corruption or willful intent to violate the law or to disregard established rules. (Office of the Ombudsman *vs*. Blor, G.R. No. 227405, Sept. 5, 2018) p. 1056

Simple neglect of duty — Defined as the failure of an employee to give attention to a task expected of him and signifies a disregard of duty resulting from carelessness or indifference; under Sec. 46(D) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), simple neglect of duty is classified as a less grave offense and is punishable by suspension of one (1) month and one (1) day to six(6) months for the first offense and dismissal from the service for the second offense. (Foster *vs*. Santos, Jr., A.M. No. P-17-3627, Sept. 5, 2018) p. 718

QUALIFIED RAPE

Elements — Rape is qualified 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"; the elements are: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under eighteen years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim." (People *vs*. Salaver *y* Luzon, G.R. No. 223681, Aug. 20, 2018) p. 90

and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. (*Id.*)

—— To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant; the essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself. (*Id.*)

RAPE

Commission of —— It is not indispensable that marks of external bodily injuries should appear on rape victims; the completely healed lacerations on the victim's hymen, as testified by the doctor, corroborated the findings of rape; lacerations, whether healed or fresh, are the best physical evidence of forcible defloration. (People *vs.* Salaver *y* Luzon, G.R. No. 223681, Aug. 20, 2018) p. 90

—— The crime of rape is difficult to prove because it is generally left unseen and very often, only the victim is left to testify for herself; however, the accused may still be proven as the culprit ·despite the absence of eyewitnesses. (People *vs.* YYY, G.R. No. 234825, Sept. 5, 2018) p. 1147

—— The critical element of carnal knowledge through force was sufficiently established by the evidence on record; the clear and straightforward testimony, together with the medico-legal findings consistent with the facts described, produces a conviction beyond reasonable doubt that the accused is guilty for the repeated defilement of his own daughter; penalty of *reclusion perpetua* for each count. (People *vs.* XXX, G.R. No. 205888, Aug. 22, 2018) p. 252

between the occurrence and the statement relative thereto; and (5) the nature and circumstances of the statement itself. (People *vs*. XXX, G.R. No. 205888, Aug. 22, 2018) p. 252

—— The CA and RTC correctly considered the statements as part of the *res gestae;* it is clear that at the time the statements were uttered, a few hours after the incidents, the effect of the occurrence on her mind still continued; following the standard in *Manhuyod, Jr.*, while the utterances were not made contemporaneous to the act described, the Court finds that they remained to be "so connected with it as to make the act or declaration and the main fact particularly inseparable." (*Id.*)

—— The circumstances, coupled with the fact that the statements were made three (3) days after the incidents, lead to the conclusion that there was already a significant break in the connection between the rape incidents and the time the statements were made; the utterances are far too removed from the event described as to form part of the *res gestae*. (*Id.*)

RES JUDICATA

Aspects of —— The first aspect is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand, or cause of action; the second aspect precludes the relitigation of a particular fact or issue in another action between the same parties or their successors in interest, on a different claim or cause of action; the second aspect extends to questions "necessarily involved in an issue, and necessarily adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented. (Casa Milan Homeowners Assoc., Inc. *vs*. The Roman Catholic Archbishop of Mla., G.R. No. 220042, Sept. 5, 2018) p. 941

however, this can be disregarded when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant facts or circumstances which if considered, would have altered the result. (People *vs*. Gonzales *y* Cos, G.R. No. 218946, Sept. 5, 2018) p. 927

(People *vs*. Dillatan, Sr. *y* Pat, G.R. No. 212191, Sept. 5, 2018) p. 860

— In the absence of glaring errors or gross misapprehension of facts on the part of the CA, the Court accords respect to the findings of the trial court on the credibility of witnesses because of the trial court's unique advantage of directly observing the demeanor of the witnesses as they testified; in the absence of allegation and proof about the law enforcement officers harboring any ill motive to falsely testify against the accused, the factual findings and conclusions of the lower courts on the credibility of a witness should prevail. (People *vs*. Plaza *y* Caenglish, G.R. No. 235467, Aug. 20, 2018) p. 198

— 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; the victim's recount of her horrific experience at the hands of her father was clear and straightforward. (People *vs*. Salaver *y* Luzon, G.R. No. 223681, Aug. 20, 2018) p. 90

— The inconsistency alluded to in the victim's testimony, with respect to whether or not she immediately reported the first rape incident to her mother, was trivial and should be liberally construed considering that it was not an essential element of the crime of rape; "what is decisive is that appellant's commission of the crime charged has been sufficiently proved"; "such inconsistencies on minor details are in fact badges of truth, candidness, and the fact that the witness is unrehearsed." (*Id*.)

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